Chapter 6

Immigration and the Euro-Mediterranean Partnership

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The third basket of the Euro-Mediterranean Partnership (EMP) relates to social, cultural and human affairs. Entitled 'Developing human resources, promoting understanding between cultures and exchanges between civil societies', it includes recommendations on issues such as respect for other cultures and religions, the development of human resources, improvements within the health sector, decentralised cooperation, civil society contributions and support for the rule of law.

Additionally, it addresses issues related to illegal immigration, terrorism, international crime and drug trafficking. These 'cross-border' risks should have been included within the first basket of the EMP, which deals with 'the definition of a common area of peace and stability through the reinforcement of political and security dialogue.' Perhaps an explanation for their inclusion in the third basket lies in the horizontal nature of the issues or in the 'pillar' structure of the European Union since the Maastricht Treaty.[1] However, the classification of these 'cross-border' risks is nevertheless inappropriate. This inadvisable mode of classification continues with the inclusion of 'illegal' immigration amongst the other 'transnational risks' – terrorism, organised crime and drug trafficking – listed in the Barcelona Declaration. The criminalisation of migration not only makes EU policies unrealistic politically but also inhumane. In general, the overall philosophy of the EMP seems to have as a guiding principle the prioritisation of European security, exposing the Barcelona Process as an order, rather than a *partnership-building* endeavour. [2]

Free Movement and 'Cordons Sanitaires'

The changes in economic trends in Europe, accelerated by the 1973 and 1979 oil crises, led to a revision of European states' migration policies. There was a general move towards increased restrictions (closing of the borders), positive measures (measures for the integration of immigrants already settled in a country, and new incentives (repatriation grants). Today we see how border controls, rather than deterring those wishing to enter European territory, have served to accelerate the shift towards clandestine immigration, including increasingly sophisticated smuggling operations. Integration also remains a controversial issue, mainly because it lays bear the gap that exists between a generous rhetoric and the realities on the ground. Policies to provide repatriation grants have failed miserably[3] while migratory flows have found other ways of circumventing 'cordons sanitaires' such as visas, surveillance and electronic monitoring.

All three measures, that is, closure, repatriation and integration, have exposed the shortcomings and inconsistencies of migration policies. All this took place in the 1980s while the single market with its four freedoms, including the free movement of people, was being implemented. The Schengen visa might have created the illusion that there was some border control, but it did not prevent immigration, and certainly not illegal immigration. Since then we have witnessed a chaotic and inconsistent situation where safety measures – controls, visas, limitation of the use of rights of asylum, etc. – coexist with more realistic practices, on the part of those countries that periodically regularise the situation of so-called illegal immigrants. At the Council in

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[1] Erwan Lannon, *La politique Méditerranéenne de l'Union Européenne* (thesis, University of Rennes), 2002.

[2] See the excellent article by Dimitris Chryssochoou, 'Organising the Mediterranean: the State of the Barcelona Process', *Agora Without Frontiers*, vol. 9, no. 4, 2004.

[3] The immigrants who decided to give up on returning home and took the challenge of permanently settling in their country of destination.

Seville, some even went so far as to threaten linking development aid to the control of immigration in the countries of origin – this whilst offering countries of origin a partnership aimed at curbing migratory flows at source. It is in this same spirit that on 13 June 2002, the Council adopted an action plan on administrative cooperation in matters of borders, visas, asylum and immigration. Similarly, on 14 October of the same year, the Commission published Communication 564 on the European policy for the repatriation of illegal immigrants voluntarily or by force. Finally, the Council adopted a regulation[4] on the creation of an International Agency for the management and operational cooperation between the member states on the outside borders of the EU.

Consequently, the control of the EU's external borders is becoming increasingly sophisticated. On 13 December 2004, the Council adopted a regulation establishing an obligation for national services systematically to stamp people's papers when they enter the Schengen area. Two weeks later the Commission introduced the Visa Information System aimed at improving external border controls by granting border guards access to a database containing all visa information – relating to issued, cancelled or denied visas – as well as the biometric data of visa holders.

Border control is exercised at the authorised entry points along the external border of the EU and even within the EU territory in airports or train stations. But control is not limited to Europe's external borders as there is also some surveillance at EU internal borders. In its 7 May 2002 Communication, the Commission suggested establishing a 'European border control corps' to carry out surveillance missions. An ad-hoc EU agency – provided for by the Regulation of 24 October 2004 – will start operating in 2005. The agency is expected to merge all the antennas created as part of the pilot project carried out by member states.[5] Along the same lines, European states are also strengthening their legal apparatus in a more restrictive fashion: the Spanish *Ley de Extranjería* (national immigration law) of 2003 is tightening up selection criteria, the draft German bill of 2004 on the Restructuring of Immigration Management Procedures points to a selective opening, whilst the November 2002 British Act on Nationality, Immigration and the Right of Asylum tries to fight clandestine immigration and limit the right to asylum.

A European Immigration Policy

The control or surveillance measures advocated by EU authorities as well as the restrictive policies adopted by member states reflect security concerns, especially after 11 September 2001 (9/11), which had an undoubted influence on the EU's approach to free movement of peoples. But other concerns have also played a part. These include the degradation of the environment that would derive from a massive inflow of foreign populations, the risk of excessive pressure on social protection schemes, the danger of 'eroding' Europe's collective identity due to the absorption of foreign populations with different social, cultural and religious traits, increased competition in the labour market and wage dumping. These arguments tend to hide the positive contributions of migrations to the economic, demographic and cultural planes.

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[4] European Council, Regulation EC/2007/2004, 26 October 2004.
[5] These include the Berlin project for land borders, the Rome project for air borders, the Piraeus project for maritime borders and the Madrid project for borders in the western Mediterranean area.

If the EU has started to legislate and multiply its action plans and regulations on the free movement of peoples it is because it has proven difficult to allow free movement within the 'European House' while not reaching agreement on the modes of access into this common house.[6] It is therefore in the third pillar of the Maastricht Treaty (1992), that is, Justice and Home Affairs (JHA), and then in Title IV of the Amsterdam Treaty (1997) that the European immigration and asylum policy was born, a logical counterpart to the free movement of peoples.

This being said, the first signs of a European migration policy appeared in the early 1980s following three important developments:

- 'Border closure' policies adopted after 1974 had failed as immigration continued by means of other legal measures such as family reunifications or student visas;
- The realisation on the part of member states that independent control of immigration was an illusion; and
- The increase in political asylum-seekers in Germany.

The signing of the Saarbrucken Agreement in 1985 – which is the origin of the Schengen system – was not fortuitous. It was as a follow-up to this Agreement that the Commission tried to establish a 'binding coordination' between the member states on issues of entry, residence, access to labour markets, the fight against illegal immigration and cooperation with countries of origin.[7] However, it was not until 14 years later at the Summit in Tampere in 1999 that a 'Europeanisation programme' of migration policies, focused on the control of new flows and on integration policies, was established. While integration policies had mixed results across countries, control policies were an overall failure. Indeed, none of the member states really tried or succeeded in curbing migratory flows. And this despite the adoption of coordinated measures such as mandatory visas, outsourcing of border control activities, asylum policies and penalties for smugglers. It is true that between 1992 and 2004, due to restrictive asylum policies,[8] the number of asylum applications halved; but there was an increase in illegal flows of those using tourist visas or clandestine methods.

This increase is a harsh refutation of one of the presuppositions of the restrictive orthodoxy according to which the European economy does not need unskilled foreign labour.[9] In reality we observe how there is a need within all sectors of the economy for this type of labour. In Spain, the distribution of immigration between the different sectors shows that almost 90 per cent of migrant workers work in sectors such as domestic help, construction, tourism and related services or the lower job categories in the manufacturing industry. This is true particularly for Moroccans in Spain;[10] North Africans in France, Belgium and the Netherlands; Turks and Kurds in Belgium and Germany; and Pakistanis, Indians and Bengalis in the United Kingdom.

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[6] Jean-Yves Carlier, 'L'Union Européenne: quelle politique migratoire?' *La Revue Nouvelle*, Brussels, March 2005, p. 85.

[7] European Commission, ´Guidelines for a Community Policy of Migrations´ (Bulletin of the European Commission), supplement no. 9, 1985.

[8] Sixty-three per cent of all applications for asylum in Germany in 1980 as compared to 24.3 per cent in 2001.

[9] Giuseppe Sciortino, 'La politique migratoire européenne: une orthodoxie restrictive' in Evelyn Ritaine, *L'Europe du Sud face à l'immigration: politique de l'étranger*, Paris, PUF, 2005, p. 223.

[10] Bernabé López García and Mohamed Berriane (dirs), *Atlas de la inmigración marroquí en España*, Madrid, Ediciones UAM, 2004.

In all European countries – and more particularly in southern European countries – the demand for workers is real even if the authorities insist on not recognising this. Surveys have revealed how the rates of activity of migrant workers are much higher than those of the local population.

The failure of illegal immigration control policies can be explained by several factors:

- The majority of illegal immigrants have contacts or networks of friends or relatives already living in the host country;
- The black economy of European countries – mainly in the south – still accounts for a large share of the countries' gross domestic products (GDPs). Hence, official monitoring of illegal immigration would entail the development of systematic controls focused on access to the labour market, and it would involve measures that most governments are wary of adopting.

One could ask whether the participation of illegal immigrants in the black economy is not an effect rather than a cause of restrictive policies. Massimo Carfagna[11] demonstrates how this is the case in Italy. The fact is that the absorption of immigrants – be they illegal or regularised – into Europe's economy demonstrates that the demand for foreign workers has not disappeared but rather has been redistributed in accordance with the evolution of Europe's labour markets.

If the European policy of fighting illegal immigration has not been successful, the coordination of visa and asylum policies seems to have fared better. Member states have in fact agreed on a joint type of visa for Europe as well as on a list of third countries whose nationals require a visa. Today, the Arab countries around the Mediterranean are on the list of those who require visas, but central European countries as well as most South American countries are not. This is an obvious discrimination that fuels the perception that the Mediterranean is considered as an area of crisis and insecurity.

If visa requirements were supposed to guarantee the safety of citizens by preventing terrorism and illegal immigration, we have to recognise that this objective is far from being achieved, as demonstrated by the terrorist attacks perpetrated in Europe. The increase in the number of immigrants is a reality: in Spain, numbers multiplied by seven between 1992 and 2004;[12] and in Italy they multiplied by 30 between 1970 and 2004, and doubled between 2000 and 2004.[13] Visas limit temporary mobility yet seem to encourage both clandestine immigration and permanent settlement in Europe. The removal of visa requirements for central and eastern European countries – before and after they joined the Union – and for South Americans, did not lead to massive inflows of immigrants. The case of Ecuadorian immigrants in Spain remains the only counter-example to date. Based on this analysis, it is legitimate to question the usefulness of visa requirements and to consider whether their removal might be a more realistic policy in terms of easing circulation within the Mediterranean area, perhaps leading

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[11] Massimo Carfagna, 'I Sommersi e i sanati: le regolarizzazioni degli immigrati in Italia', in Asher Colombo and Giuseppe Sciortino (eds), *Assimilati ed esclusi*, Bologna, Il Mulino, 2002.
[12] From 500,000 to 3,500,000 in 2004.
[13] From 1,341,000 in 2000 to 2,730,000 in 2004.

to the disappearance of mafia-like networks of smugglers and, consequently, curbing the flow of illegal immigrants. Aware of these issues, the European Parliament has recommended the establishment of a more flexible visa system.

The Mediterranean as Priority Concern

Although Europe's prescriptive texts refer to immigration and free movement of peoples in general, it is the southern Mediterranean area that is the object of all attention, concern and controls. Of Europe's 20 million migrants of foreign origin, the Mediterranean – mainly from the Maghreb and Turkey – accounts for almost 9 million. One can anticipate that demographic differentials between the two sides of the Mediterranean, differences in age structures[14] and low job-creation potential will increase the desire to emigrate.

In its present format and given its overarching philosophy, the Euro-Mediterranean Partnership will have trouble paving the way for a true free trade area where everyone and everything may travel freely. While goods, services and capital may travel, the people from the South must stay home. And this is precisely one of the legitimate criticisms levied against the Partnership. Will the concern over the protection of European countries prevail over the humanist desire to protect all people? This seems to be the case as illustrated daily by the *espaldas mojadas*[15] arriving on Spanish coasts: in 2003, the Spanish police arrested almost 90,000 of such arrivals as they were trying to land on Spanish soil. It is also made obvious by the proposal to create camps, in or close to the countries of origin, from which asylum seekers would be selected; as was the case with Italy's proposal to establish such camps in Libya. Similarly, under the veil of sound management, outsourcing the review of asylum applications to the source country instead of doing it on arrival pushes the problem upstream.

Periodical regularisations, which take place in Spain, Italy, Belgium and other countries, reveal the fact that most immigrants from the southern side of the Mediterranean are illegal. The last regularisation, which took place in Spain in May 2005, involved almost 700,000 illegal immigrants. Following the Spanish example, France is also considering a regularisation procedure for its 200,000 to 400,000 illegal immigrants.[16]

In order to suppress this type of immigration and rein it in at source, European legislation has multiplied sanctions and control mechanisms, including:

- Sanctions against those transporting people without visas;
- Relaying of passenger information;
- Individual and collective deportations; and
- Signing of readmission agreements with the countries of origin.

Even more worrying is the fact that the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – adopted by the

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[14] Almost 50 per cent of the Arab population around the Mediterranean and 43 per cent of the Turkish population are under 20 years of age.

[15] This term refers to the human wave that arrives to Spanish shores from Africa. It literally means 'wetbacks' and is the term used by Americans to describe Mexicans who swim across the Río Grande to the United States.

[16] Interior Ministry estimates, published in *Le Figaro* on 11 May 2005.

United Nations in 1990 and implemented in 2003 – has been ratified by Morocco and other Mediterranean countries but not by any European country.

Migration in the Euro-Mediterranean Partnership Area

In the third basket of the Barcelona Declaration, the 27 signatory countries make a clear distinction between migration and illegal immigration. But even if the nuance is there, the facts are staggering: in the 1990s, legal immigration from Mediterranean partner countries represented only 8 to 10 per cent of the total immigration to the EU. If on the one hand, the 27 partners acknowledge, in the Barcelona Declaration, 'the importance of the role played by migration in their relationships,' they also add that they must cooperate in order to 'reduce migratory pressures, among other things through vocational training programmes and programmes of assistance for job creation.' These ideas were recaptured during the first Euro-Mediterranean meeting of experts on migration and human exchange held in The Hague.[17] The experts proved to be more realistic than the states they represent. They underlined the need for an integrated and balanced approach in the handling of the migration phenomenon and of exchanges whilst making a distinction between migrations and movement of people. Although in a spirit of cooperation they opposed illegal immigration, they nevertheless recognised that it 'is improbable that in the short to medium-term, there will be a reduction of incentives to immigration from the Mediterranean area to Europe' and that Mediterranean countries themselves would probably continue to face migratory flows from sub-Saharan Africa and Asia. Finally, the experts committed themselves to 'protecting all the rights granted by the present legislation to those immigrants that are legally established in their respective territories.'

The experts' forum made no reference, however, to the measures needed to fight discrimination. In contrast, in regards to illegal immigration, precise rules are being advocated and even being included in association agreements regarding the conditions for the repatriation of illegal immigrants, the reintegration of repatriated people or their readmission into their countries of origin. The latter provision is, however, not found in the Tunisia-EU Agreement even though the largest share of illegal immigrants entering Italy comes from this country. These types of provisions are much more precise when it comes to the association agreement between Egypt and the EU signed in March 2001, where Article 68 states that the two signatories agree to 'prevent and control illegal immigration.' The Jordan-EU Agreement goes even further: the parties not only agree to 'authorise the repatriation of the other party's illegal immigrants present on their soil' but also pledge to 'authorise the repatriation of third country nationals and stateless persons who would have arrived on one of the party's territory coming from the other party.' Essentially, if a Chinese moved illegally to Greece through Jordan, Jordan is then forced to take the immigrant back. In addition to the issue of readmission being included in the association agreements between the EU and its Mediterranean partners, some EU countries have signed national readmission agreements with these same countries, as is the case with the Spain-Morocco Agreement.[18]

Rules to fight illegal immigration become more sophisticated every year. The year 2000 was key in this regard as it witnessed the flowering of multiple initiatives aimed at creating a Euro-Mediterranean judicial system. A seminar held in Marrakech[19] with

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[17] 1-2 March 1999.
[18] Such agreements had been suggested by the Valencia Action Plan in 2002.
[19] 18-20 February 2000.

representation from nine European countries and seven Mediterranean countries in an attempt to set up a typology of judicial systems – Arab-Muslim, Roman-Germanic and Anglo-Saxon – was the start of the process. In April a seminar on 'operational financial cooperation in the Mediterranean area' set the scene for Euro-Mediterranean cooperation in the customs and judiciary areas. At the end of the Marseille Euro-Med Conference in November 2000, ministers for the first time spoke of a 'regional programme in the area of justice and home affairs' taking their inspiration from the conclusions of the April seminar, and even decided to organise a pilot operation for joint monitoring at sea in 2001. In this regard, everything seems to coincide in favouring the creation of a strengthened control mechanism on Europe's borders in order to create a new area of European security. This comes through in readings of the Action Plan of the Valencia Summit, the recommendations of the Interim Summit in Crete[20] and – more importantly – the Naples Euro-Mediterranean Summit.[21]

Even if the texts state that it is important to deal with the issue of migration and the movement of people both from the perspective of security and of the joint management of migratory flows,[22] the first aspect seems to take precedence. Hence, despite the discourse on Euro-Mediterranean fraternity and joint development, the rationale of 'keeping Europe for the Europeans' seems to be winning the battle over the free movement of peoples. Rarely has the issue of a European identity not been posed in the conflicting terminology of 'us versus them', with the term 'others' used to refer to both those living in European suburbs and those living outside Europe. Proof of this are the vivid debates surrounding Turkey's admission to the EU.[23] The problem Turkey poses for Europe is not so much related to physical geography but rather to the issue of mental geography where imaginary identities seem to separate Europe from foreigners located nearby. The problem posed by immigration, in all its forms, into the European Union is therefore mainly of a cultural nature. It is therefore legitimate for it to be included in the social and cultural chapter of the Euro-Mediterranean Partnership. Unfortunately we find immigration grouped in with more negative themes such as drug trafficking and organised crime which are essentially 'cross-border risks.'

Conclusion

The Euro-Mediterranean Partnership has been constructed on the basis of the illusion of being able to prevent free movement of peoples within a contiguous area. A review of the last decade reveals the pointlessness of such an approach. Even if the doors to legal immigration have been locked, the windows have remained half-open.

As Giuseppe Sciortino states, 'Fortress Europe never really lifted its drawbridges.'[24] There is therefore a constant disparity between a restrictive political discourse aimed at winning votes and a pragmatic practice of regularisation of the situation of illegal immigrants. The real problem is therefore not so much the issue of immigration itself but rather how it is viewed by European states and their citizens. The issue tends to be instrumentalised, in order to capitalise on exclusionary, inward-looking attitudes, by the adoption of an exclusively security oriented interpretation. This obsession with

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[20] May 2003.
[21] December 2003.
[22] See the summary by Gemma Aubarell, 'L'année des migrations en Méditerranée', *Annuaire de la Méditerranée* 2003, IEMed and CIDOB, pp. 207-210.
[23] See the dossier of *Questions Internationales* on 'La Turquie et l'Europe' Paris, La Documentation française, no.12, March-April 2005.
[24] Giuseppe Sciortino, op. cit., p. 256.

safety and security vis-à-vis foreigners – especially those closest to us – is not just contrary to making immigration sustainable and to the reality of the demographic and economic need for immigration in an ageing continent; it is also the symptom of a loss of benchmarks. The foreigner, the immigrant, the outsider, each becomes a metaphor for what people cannot comprehend, that is, a metaphor for the globalisation of capital, information and power. This explains the disparity that exists between discourse and policies, and between a security and economic rationale, thereby leading member states to consider retention centres, sorting hubs or even immigration portals.

In the Mediterranean and elsewhere, a social process like immigration became a collective issue, then a public problem, then finally a political challenge. It is therefore not surprising that immigration is, within the framework of the Euro-Mediterranean Partnership, the epitome of political ambiguity – immigration being considered a cross-border risk just like drug trafficking – and the source of all inconsistencies – between restrictive discourse and pragmatic policies.

It is essential to protect the third basket of the Barcelona Process from security concerns and to move to the first basket all strictly security-related matters such as the fight against terrorism, drug trafficking or organised crime. Dorothée Schmid is correct to advocate 'dedicating basket three to the development of a true dialogue between both sides of the Mediterranean Sea, a dialogue which could deal with images, representations and mutual values.'[25] In fact, this idea has already been advocated by the Committee of Experts on cultural dialogue in the Mediterranean area.

As far as illegal immigration is concerned, the security syndrome is dominating Europe's position without providing any true solution to a complex problem.[26] The underlying causes of this phenomenon need to be better understood. More information is also needed on the size of Europe's ethnic minorities. Only the British have started surveys in this area and are now regularly releasing minority ethnic surveys. In Belgium, a consortium of several universities took this task on board in 2005, thanks to private sponsorship.[27] The EU should promote similar surveys in all member states in order to demonstrate that beyond the sense of being invaded, Europe is indeed a welcoming haven fertilised by an immigration that contributes to the continent's prosperity and reputation.

The Euro-Mediterranean Partnership must no longer limit itself to managing the constraints resulting from migration. It must go beyond this and consider migration as an asset instead of a risk. This is why a flexible visa policy – as advocated by the European Parliament – or even the removal of entry visas must be considered. Current restrictions and controls will never eliminate the desire to emigrate; they will only make the process more costly and more dangerous for immigrants and the business more profitable for the networks of smugglers. Understanding all this would constitute a first step towards viewing immigration as an essential part of Europe's proximity policy.

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[25] Dorothée Schmid, 'Optimiser le Processus de Barcelone', EU Institute for Security Studies, *Occasional Paper* no. 36, Paris, July 2002, p. 42. See also Chapter 7 of this volume.
[26] Fouad Ammor, *Le partenariat euro-méditerranéen à l'heure de l'élargissement, perceptions du Sud*, Rabat, GERM, 2004, pp. 36-38.
[27] Seven universities from Flanders, Wallonia and Brussels are part of the consortium, which comes from the *Initiative Belge Inter-Universitaire sur l'Immigration et l'Intégration*, coordinated by Professor Bichara Khader.