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## AD PORTAS EUROPAE. SINGULARITY OF MIGRATIONS IN THE STRAIT OF GIBRALTAR AREA. SOUTHERN EXTERNAL BORDERS, EUROPEAN NARRATIVES AND VALUES

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I. THE COMPLEX AREA AND REGION OF THE STRAITS. – II. SINGULARITY OF IRREGULAR IMMIGRATION IN THE STRAIT REGION. – III. RECENT PAN-EUROPEAN NARRATIVES AND MIGRATIONS. – IV. EXTERNAL BORDERS, EUROPEAN VALUES AND HUMAN RIGHTS IN THE STRAIT OF GIBRALTAR REGION

**ABSTRACT:** The Strait is without any doubt one of the most critical places on the planet from multiple points of view, including trade, strategic importance, security and migration. For Spain especially, it is a crucial area, not only for these reasons but also for others closely associated with Spain’s historical and neighbourly relations. In addition, it is the site of many unresolved disputes with Morocco and the United Kingdom.

The control and stability of external borders in the Strait of Gibraltar Region has some characteristics. Because of its structural characteristics and dynamics, the region presents a very specific scenario that is different to that of other Spanish and European zones with external borders.

Immigration in the Straits of Gibraltar must take into account the key elements that are objectively present, making the management of migratory flows particularly complicated. In addition, Morocco has been openly using immigration as a political weapon against Spain since 2021, with the aim of making Spain change its foreign policy on the Western Sahara issue.

In this context, those who suffer most from these structural conditions in the complicated Strait of Gibraltar are immigrants and asylum seekers and refugees, climate refugees or those fleeing areas

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of famine and war. Human rights, democracy and European values must be taken into account, particularly needed in this key geostrategic Region for Europe.

Recent pan-European narratives rest on a powerful foundation of values linked to fundamental democratic principles with a European dimension. European values, when focused on migration issues, imply that there must be a humanitarian reception, which must be inclusive. The full protection of human rights at borders and even their projection beyond, with democratic controls in the action of third countries authorities towards immigrants and refugees, is based on a compassionate attitude towards foreigners *Ad Portas Europae*.

Greater involvement of the European Union in the area and the region of the Strait of Gibraltar would be desirable. Its intervention and mediation could smooth out conflicts and disputes in the area. This would result in better management of migratory flows. A clear European legal framework and a better-defined practice of respect for the human rights of immigrants, refugees and people seeking international protection in this key geostrategic region of southern Europe are urgent and badly needed.

**KEYWORDS:** Strait of Gibraltar, Ceuta, Melilla, Morocco, territorial claims, military bases, European Union, external borders, Migration, maritime rescue, refugees, human rights, EU narratives, European values.

#### **AD PORTAS EUROPAE. SINGULARIDAD DE LAS MIGRACIONES EN LA ZONA DEL ESTRECHO DE GIBRALTAR. FRONTERAS EXTERIORES MERIDIONALES, NARRATIVAS Y VALORES EUROPEOS**

**RESUMEN:** El Estrecho es, sin duda, uno de los lugares más críticos del planeta desde múltiples puntos de vista, como el comercio, la importancia estratégica, la seguridad y las migraciones. Para España especialmente, es una zona crucial, no sólo por estas razones sino también por otras estrechamente asociadas a las relaciones históricas y de vecindad de España. Además, es escenario de numerosos contenciosos no resueltos con Marruecos y el Reino Unido.

El control y la estabilidad de las fronteras exteriores en la Región del Estrecho de Gibraltar presentan algunas características. Por sus características estructurales y su dinámica, la región presenta un escenario muy específico y diferente al de otras zonas españolas y europeas con fronteras exteriores.

La inmigración en el Estrecho de Gibraltar debe tener en cuenta los elementos clave objetivamente presentes, lo que hace especialmente complicada la gestión de los flujos migratorios. Además, Marruecos utiliza abiertamente la inmigración como arma política contra España desde 2021, con el objetivo de que España cambie su política exterior en la cuestión del Sáhara Occidental.

En este contexto, quienes más sufren estas condiciones estructurales en el complicado Estrecho de Gibraltar son los inmigrantes y solicitantes de asilo y refugio, los refugiados climáticos o quienes huyen de zonas de hambruna y guerra. Hay que tener en cuenta los derechos humanos, la democracia y los valores europeos, especialmente necesarios en esta región geoestratégica clave para Europa.

Las recientes narrativas paneuropeas descansan sobre una poderosa base de valores vinculados a los principios democráticos fundamentales con una dimensión europea. Los valores europeos, cuando se centran en cuestiones migratorias, implican que debe haber una acogida humanitaria, que debe ser inclusiva. La plena protección de los derechos humanos en las fronteras e incluso su proyección más allá de ellas, con controles democráticos en la actuación de los poderes públicos hacia los inmigrantes y refugiados, se basa en una actitud compasiva hacia los extranjeros *Ad Portas Europae*.

Sería deseable una mayor implicación de la Unión Europea en la zona y la región del Estrecho de Gibraltar. Su intervención y mediación podría suavizar los conflictos y disputas en la zona. Ello

redundaría en una mejor gestión de los flujos migratorios. Es necesario un marco jurídico europeo claro y una práctica mejor definida de respeto de los derechos humanos de los inmigrantes, refugiados y personas que buscan protección internacional en esta complicada y geoestratégica región del sur de Europa.

**PALABRAS CLAVE:** Estrecho de Gibraltar, Ceuta, Melilla, Marruecos, reclamaciones territoriales, bases militares, Unión Europea, fronteras exteriores, migración, rescate marítimo, refugiados, derechos humanos, narrativas de la UE, valores europeos.

**ADPORTASEUROPAE. SINGULARITÉ DES MIGRATIONS DANS LA ZONE DU DÉTROIT DE GIBRALTAR. FRONTIÈRES EXTÉRIEURES MÉRIDIONALES, NARRATIVES ET VALEURS EUROPÉENS**

**RÉSUMÉ:** Le Déroit est sans aucun doute l'un des endroits les plus critiques de la planète d'un point de vue multiple: commerce, importance stratégique, sécurité et migration. Pour l'Espagne en particulier, il s'agit d'une zone cruciale, non seulement pour ces raisons, mais aussi pour d'autres étroitement liées à l'histoire de l'Espagne et à ses relations de voisinage. En outre, elle est le théâtre de nombreux différends non résolus avec le Maroc et le Royaume-Uni.

Le contrôle et la stabilité des frontières extérieures dans la région du Déroit de Gibraltar présentent certaines caractéristiques. En raison de ses caractéristiques structurelles et de sa dynamique, la région présente un scénario très spécifique, différent de celui des autres zones espagnoles et européennes dotées de frontières extérieures.

L'immigration dans le Déroit de Gibraltar doit tenir compte des éléments clés qui sont objectivement présents, ce qui rend la gestion des flux migratoires particulièrement compliquée. En outre, le Maroc utilise ouvertement l'immigration comme une arme politique contre l'Espagne depuis 2021, dans le but d'amener l'Espagne à modifier sa politique étrangère sur la question du Sahara Occidental.

Dans ce contexte, ceux qui souffrent le plus de ces conditions structurelles dans le déroit compliqué de Gibraltar sont les immigrants, les demandeurs d'asile et les réfugiés, les réfugiés climatiques ou ceux qui fuient les zones de famine et de guerre. Les droits de l'homme, la démocratie et les valeurs européennes doivent être pris en compte, ce qui est particulièrement nécessaire dans cette région géostratégique clé pour l'Europe.

Les récents récits paneuropéens reposent sur un puissant socle de valeurs liées à des principes démocratiques fondamentaux ayant une dimension européenne. Les valeurs européennes, lorsqu'elles sont axées sur les questions de migration, impliquent qu'il doit y avoir un accueil humanitaire, qui doit être inclusif. La pleine protection des droits de l'homme aux frontières et même leur projection au-delà, avec des contrôles démocratiques dans l'action des autorités publiques envers les immigrants et les réfugiés, est basée sur une attitude compatissante envers les étrangers *Ad Portas Europae*.

Une plus grande implication de l'Union Européenne dans la zone et la région du Déroit de Gibraltar serait souhaitable. Son intervention et sa médiation permettraient d'aplanir les conflits et les différends dans la région. Il en résulterait une meilleure gestion des flux migratoires. Un cadre juridique européen clair et une pratique mieux définie du respect des droits de l'homme des immigrants, des réfugiés et des personnes en quête de protection internationale dans cette région géostratégique du sud de l'Europe sont absolument nécessaires.

**MOTS CLÉS:** Déroit de Gibraltar, Ceuta, Melilla, Maroc, revendications territoriales, bases militaires, Union Européenne, frontières extérieures, migration, sauvetage maritime, réfugiés, droits de l'homme, narrativas de l'UE, valeurs européennes.

## **I. THE COMPLEX AREA AND REGION OF THE STRAITS**

The Strait of Gibraltar is without doubt one of the most critical places on the planet from multiple points of view, including trade, strategic importance, security and migration. For Spain especially, it is a crucial area, not only for these reasons but also for others closely associated with Spain's historical and neighbourly relations. In addition, it is the site of many unresolved disputes with Morocco and the United Kingdom.

Contested borders and the lack of delimitation or demarcation in this border area of the Strait have had adverse consequences for the delimitation of maritime spaces and navigation that go beyond Ceuta, Melilla or Gibraltar. They also affect the Spanish islands and islets on the African coast, the question of Saharan waters and conflict in Western Sahara. All of them have a bearing on the necessary stability of Morocco as Spain's southern neighbour and as a neighbour of the EU.

Since 2001, the Strait of Gibraltar Region, Morocco, Ceuta and Melilla have become a necessary focus of attention for the purposes of immigration and cooperation in the field of anti-terrorism security and the fight against human trafficking networks.

The control and stability of external borders in the Strait of Gibraltar Region present some characteristics. Because of its structural characteristics and dynamics, the region presents a very specific scenario that is different to that of other Spanish and European zones with external borders. Suffice it to say that for the purposes of security, the importance of controlling the EU's southern external borders, which also form Spain's and NATO's southern borders, entails responsibilities and duties for the Spanish state on behalf of its allies and accountable to them.

### **1. The 'Strait of Gibraltar' and the 'Strait of Gibraltar Region'. Geopolitics, Choke point, Actors and Military Bases.**

I should like to define the geographical area referred to here as the Strait or the Strait of Gibraltar Region. Surprisingly, there is no clear official definition or concept of the Strait or the Strait of Gibraltar Region for the purposes of foreign policy. Some references to the Strait of Gibraltar Region even encompass a larger geographical area, so the definition is somewhat ambiguous.

For the purposes of this study, I shall distinguish between the smaller

Strait or Strait zone on the one hand, and the wider Strait of Gibraltar Region on the other.

The smaller Strait zone comprises the maritime spaces of the Strait of Gibraltar where maritime traffic is regulated by the International Maritime Organisation-IMO. Thus, the actors in this zone include Spain, Morocco and the United Kingdom in Gibraltar, as well as the United States due to its base at Rota. The Strait area being referred to here is an extensive zone encompassing both ends of the Strait of Gibraltar, where a significant number of sovereignty and border issues cluster together with territorial claims and numerous uncertainties about maritime limits and boundaries. This part of the world that is vital to Spain (Ceuta, Melilla, Gibraltar, the Rota military base, maritime traffic, the ports of Algeciras and Tanger-Med, etc).

The Strait region is larger however, because it can be understood to include the neighbouring and adjacent states to the south of Spain's land and maritime territory, resulting in a larger zone (Morocco, Algeria, the Western Sahara and, in some contexts, Mauritania). Then, the wider Strait of Gibraltar Region encompasses the traditional strategic area of the Strait zone, which includes the Strait zone itself as well as passage to and from the Balearic Islands and the Canary Islands. Linked to Spanish territory and direct control of external borders, this definition yields the following third countries with external land and maritime borders (which excludes Portugal): the UK-Gibraltar and within the Maghreb, Morocco and Algeria, thus including the conflict in Western Sahara and the delimitation of maritime borders around the Canary Islands. In addition, this definition of the Strait of Gibraltar Region indicates that control of external land and sea borders in this part of Mediterranean is the responsibility of Spain, the UK (via Gibraltar) and Morocco.

Furthermore, this Strait of Gibraltar Region could be considered to have a secondary perimeter in other States neighbouring Morocco and Algeria, including the Maghreb States (Mauritania, Tunisia and Libya); and large areas of the Sahel, with conflicts that could exert an indirect influence on Spanish interests in the Strait of Gibraltar and its external land and sea borders in the south. Consequently, the European borders in the Strait of Gibraltar Region present a series of characteristics that affect security: immigration, defence, terrorism, the control of migratory flows and economic and democratic development in neighbouring countries.

To sum up, objectively the Strait is of great value. In addition, it is of extreme importance to Spain and to Europe, because of others circumstances that directly affect their immediate and neighbouring surroundings.

I shall briefly enumerate some of these related issues.

*Choke Point-* The Strait is the sole gateway to the Mediterranean, a sea that has always been of strategic importance. As a boundary between east-west and north-south cultural and political vectors, the Strait has always been extremely valuable in itself and as regards Spanish interests, although this has not always received due recognition. In the International Society, it was considered of high strategic importance during the cold war, but less so immediately afterwards. These days, however, the Strait is considered a choke point worldwide and is thus deemed to be of enormous strategic importance.

*Actors involved-* An analysis of the Strait of Gibraltar Region must also take into account the actors involved in this important space. These include the Kingdom of Morocco and its particular challenges: its relations with Spain and the EU and the conflict in Western Sahara. Morocco is an important actor, which has expressed a growing interest in playing a strategic role in the region.

We cannot overlook the important presence and strategic role played in this area by the United Kingdom and the United States of America. Both have the Strait in their strategies and operational plans. Moreover, these states have a permanent military presence in the area.

*Military Bases -* Analysing the Strait also involves considering the United Kingdom's strategic position through its naval, air and intelligence bases located on the Rock of Gibraltar. The official British position is to prioritise the interests of the Gibraltarian population over the military and security value of the Rock; however, the Royal Air Force RAF-owned airport, the naval base of the Royal Navy and the communications and intelligence systems constitute an extraordinarily important strategic hub that is, furthermore, supported by the United States.

In turn, the United States of America is also an actor in the Straits, due to its bases in Rota (Cádiz Province) and Morón de la Frontera (Sevilla Province). Naval Station Rota has always been one of the three most important military bases in the world. For its part, Moron Air Force Base now comes close following a strategic re-evaluation in recent years, and hosts a unit of US Marines (Special Purpose Marine Air-Ground Task Force – Crisis Response



– Africa). Both Military Bases are labelled as an important hub for US air and naval missions in the Mediterranean and the East.

To all the above must be added NATO's role in the zone, the Russian Federation's growing presence in the Mediterranean and the Russian fleet's use in recent times of the Port of Ceuta for stopovers, among other factors, all of which affect Spain due to its position in the Straits.

## **2. Cooperation, Sovereignty and Border Conflicts. Gibraltar, Ceuta and Melilla, Western Sahara**

According to Spain's geostrategic approach to security, the Strait zone is highly conditioned by territorial disputes and claims. As a result, disputed sovereignty and borders in the land, maritime and air territories of States are particularly sensitive topics as regards the maritime spaces of the Strait and the waters adjacent to these territories. Land and maritime borders alike have proved problematic in a highly sensitive area for navigation, maritime traffic and security at all levels.

In fact, the Strait of Gibraltar Region is the site of numerous international land and maritime border disputes, territorial claims and conflicts.

*First, Morocco's permanent territorial claim* to the Spanish cities, islands, islets and rocks on the African coast has had a singular impact on the autonomous cities of Ceuta and Melilla. In addition, the existence of Spanish territories on the southern mediterranean coast has generated thorny issues as regards economic immigration and human rights.

Spain has legal titles of sovereignty, of various kinds, over certain territories in Africa, which are the object of permanent Moroccan claims. These are the City of Ceuta, the City of Melilla, the Rock of Vélez de la Gomera, the Rock of Al Hoceima and the Chafarinas Islands.

Morocco's pretensions give these territories in Africa a unique conflictive conditioning factor in Spanish foreign policy. The territorial issue also confers permanent insecurity and instability on Spanish-Moroccan relations as a whole. For Morocco's territorial approach, the recovery of Ceuta and Melilla is a permanent "national objective". Therefore, it will always be an open issue, conditioned by internal and international factors, bound to provoke periods of conflict and cooperation in the relations with Morocco. In addition, there is Morocco's use of the territorial claim file as a means of pressure on other issues.



Notwithstanding the above, it should be stressed that there is normally excellent day-to-day cooperation between Spain and Morocco on technical aspects, even in areas in the Strait of Gibraltar that may in principle be highly conflictive. This is the case of cooperation in organising maritime traffic in the Straits between the traffic control centres in Tangiers and Tarifa. Or coordination in matters of maritime search and rescue.

*Second, there is the unresolved problem of Gibraltar*, which is pending decolonisation under UN supervision, but which has historically been claimed by Spain. It is well known that the controversy between Spain and Britain over the issue of Gibraltar straddles a number of political and legal areas, including ceding of the Rock under the Treaty of Utrecht in 1713, the separate controversy over the isthmus where the airport was built in 1938 and the dispute over territorial waters around Gibraltar. Other significant factors are its position as a British Overseas Territory, subject to the United Nations decolonisation process, under which framework it has remained for more than 40 years, being a territory that must be decolonised via talks between Spain and Britain. In short, Gibraltar has had a special statute in the European Union (1973-2020), since as a European territory represented by the United Kingdom it has been outside the customs territory, and outside the Schengen area for the free movement of persons, and its common external borders

The UK's exit from the EU has also implied Gibraltar's exit. Brexit has forced a redefinition of Gibraltar's European status and its relations with Spain and the EU in institutional, legal and economic terms.

Anyway, border and territorial disputes on both sides of the Strait of Gibraltar have also affected cross-border co-operation between local and regional authorities across political and geographical boundaries. This is a necessary but slight aspect of neighbourhood relations, and dependent on foreign policy, since borders in this region are closely linked to relations with neighbouring States, conflict and crises.

Finally, as far as the strait region is concerned, *the question of Western Sahara* must be highlighted. The question of Western Sahara is a fundamental determinant of Morocco's bilateral and multilateral relations, as a matter of principle. This question currently predominates Morocco's domestic and foreign policy agenda and looms larger in bilateral relations with Spain than the territorial dispute surrounding Ceuta and Melilla. Furthermore, relations

with the EU have been affected by a succession of Luxembourg CJEU rulings on treaties applicable to Western Sahara, which do not consider it to form part of the territory of Morocco, instead according it a distinct international status.

Not only does the negative impact of the issue of Western Sahara on EU-Moroccan relations rebound on Spain's activity within the framework of the EU, but it can also adversely affect bilateral relations. Consequently, although the EU has traditionally served as a mediator in bilateral issues through its legislative, judicial and parliamentary activity, it could now start to exert a negative influence on bilateral relations due to the territorial dispute over Western Sahara, introducing an entirely new factor into traditional Spanish-Moroccan bilateral relations. It should not be forgotten that there is no delimitation of maritime spaces between the Canary Islands and Morocco in the Sahara area, where Spanish vessels regularly fish.

Both Spain and the EU place significant importance on the Strait of Gibraltar Region for the purposes of security and anti-terrorism cooperation. From any standpoint, the Strait of Gibraltar Region is thus objectively fundamental to international, European and Spanish security.

## **II. SINGULARITY OF IRREGULAR IMMIGRATION IN THE STRAIT REGION**

The Region is considered a gateway for immigration, mainly by sea to Europe, which has grown considerably recently according to data provided by the European Border and Coast Guard Agency (Frontex).

Immigration in the Straits of Gibraltar must take into account the key elements that are objectively present, which we have analysed in Section I. These characteristic elements of the area make the management of migratory flows particularly complicated due to a multiplicity of factors.

With regard to immigration and human rights, there is also the issue of the “out of territory” (deterritorialisation) measures of European external border control. This is achieved through the ‘outsourcing’ of immigration control and the extraterritorial action of States, which is especially evident in this region of the Western Mediterranean.

### **1. Migratory routes, Sive, Frontex**

Migratory movements have a global dimension, and there are regions of migratory destination on all continents, with both intra-continental and

intercontinental flows and routes. The Arabian Peninsula, South Africa, Argentina, the United States and Canada, Australia and New Zealand, and the European continent are today good examples of this.

Following the awakening of the great migratory movements towards Europe in the 1990s, we now have two fully consolidated migratory routes in the Straits Region:

- Western African (Canary Islands)
- Western Mediterranean (Strait of Gibraltar Area).

These routes may experience periods of greater or lesser intensity in migratory flows, but they are periodically reactivated, as in the case of the Canary Islands route in the crises of 2005-2006 and then in 2019-2022.

Immigration control in this area and region has been carried out through unilateral measures adopted by Spain. But also through bilateral cooperation measures with Morocco, and with the activity carried out at the European level, through collaboration with Morocco and the European Border and Coast Guard Agency - FRONTEX.

*Firstly*, it is worth mentioning the creation of the SIVE system (Integrated External Surveillance System), which is Spain's contribution to immigration control and maritime rescue.

It is a system for detecting and supervising maritime areas set up by Spain on its southern border. It is based on multiple sensor installations, radar and electro-optical systems that include thermal and infrared cameras for day and night surveillance. Initially located in a small area of the Strait of Gibraltar, it was later extended to the entire southern coast of the peninsula and to the Canary Islands and the eastern Mediterranean.

*Secondly*, the Strait Area and region require bilateral collaboration with Morocco. There are Spain-Morocco agreements specifically relating to immigration. These two treaties in particular should be highlighted:

- The Agreement between the Kingdom of Spain and the Kingdom of Morocco on the movement of people, the transit and the readmission of foreigners who have entered illegally, provisionally applied since 13 February 1992, date of its signature. This Treaty entered into force on 21 October 2012.
- Agreement between the Kingdom of Spain and the Kingdom of

Morocco on cooperation in the field of the prevention of illegal emigration of unaccompanied minors, their protection and their concerted return, done at Rabat on 6 March 2007, Spanish Official Journal “BOE” no. 70, of 22 March 2013

However, it should be noted that it is difficult to apply these agreements on the return and readmission of immigrants, partly due to the factors of conflict and Morocco’s territorial claims over the towns, islands and rocks off the African coast.

Also noteworthy is significant Spanish and EU aid to Morocco for the control of migratory flows, in addition to development cooperation aid.

*Thirdly*, the EU is an important actor in migration issues. Collaboration in migration control aid is very important. Morocco’s special agreement as a special status in the EU should be mentioned. Morocco has an “Advanced Status” with the EU and is an essential and necessary country for Europe, European integration and its policies.

This importance is reflected in the cooperation in the field of migration. This is why a Partnership on these matters was signed in June 2013, “Déclaration conjointe établissant un Partenariat de Mobilité entre le Royaume du Maroc et l’Union européenne et ses États Membres” (Joint Declaration establishing a Partnership on Mobility between the Kingdom of Morocco and the European Union and its Member States).

However, the EU has not yet succeeded in concluding a migrant readmission agreement with Morocco, similar to those it has already signed with numerous third countries. This readmission agreement was foreseen in the 2013 Partnership, but the EU has not managed to conclude this treaty.

## **2. Migration at Sea and Maritime Rescue**

The main migratory problem in the Area and in the Strait Region is that it is predominantly carried out by sea, both on the Canary Islands- Western African route and on the Strait of Gibraltar Area- Western Mediterranean route.

The Canary Islands route in particular, coming from Morocco, Sahara, Mauritania and Senegal, is a very complicated and deadly route. The Western Mediterranean-Strait route is equally dangerous, but the distances and journeys are shorter.

In reality, controlling migration in maritime zones is an insoluble problem. Of course, all borders of any kind are areas of great fragility for the protection of migrants' human rights. However, the maritime route in particular constitutes a border space that is very difficult to control and carry out proper border management. The cases of the Italian operation *Mare Nostrum* in 2013, and the EU operations *Triton* in 2014 and *Eunavfor-Med Sophia* in 2015 are exemplary of the unfeasibility of sustaining the migration management system at sea in the medium and long term.

On the other hand, the activity of the FRONTEX border agency has been visible for more than 15 years in maritime surveillance operations. This includes Operation *Indalo* since 2013 in the Strait of Gibraltar, and operations *Hermes* and *Hera* in the Canary Islands, which have been extremely important in terms of migration control, identification and rescue of people at sea.

In the area of maritime rescue, operations coordinated by Frontex can also play a role following the reform of its regulations in 2016.

In this aspect of rescuing people, it should be borne in mind that in the Strait of Gibraltar, there is an overlapping of Moroccan and Spanish SAR zones, recognised by the International Maritime Organisation-IMO. This is the logical consequence of Morocco's non-recognition of Spanish sovereignty over the cities, islands and located on the southern coast of the Mediterranean, as mentioned above.

In the area of the Strait of Gibraltar, this overlapping of zones has not been problematic, as Spain has always had more infrastructure and vessels to carry out rescue operations. Specifically, there is the "Salvamento Marítimo" company, created by the Directorate General of the Merchant Navy in 1992 for the protection of life at sea in the area of Spanish rescue responsibility. These operations have even been carried out in Morocco's SAR zone, at the request or with the consent of Morocco. This demonstrates the existence of important day-to-day cooperation, coexisting with sovereignty claims and frequent crises.

### **3. Migration by Land. Borders and Fences of Ceuta and Melilla**

The external borders of the Autonomous Cities of Ceuta and Melilla have border crossings with Morocco, now closed due to the 2020 pandemic. Since the 1990s, the cities have been delimited by a double border fence. From 2004 on 2005 in particular, there have been regular jumps or attempts to enter the

cities over the perimeter border fence by large groups of people, generally sub-Saharan males, who seek to enter the city and therefore the European Union by this route.

The border fences of Ceuta and Melilla are the only external land borders of Spain and the EU with a third African State. The fence, built on Spanish territory, is double so it normally has an interior corridor. It is common practice to carry out *refoulements* to Morocco of migrants who do not manage to get through the double border fence, but are left in the middle or on top of the first fence.

In these fences, there are ‘hot returns’ of people who have remained in the fences or in the intermediate space of the border fence, with a special undermining of the fundamental rights of people, by proceeding to the immediate return of foreigners detained at the very border, without opening an individual identification file with a regulated procedure.

This is a practice known as “push-backs”, recognised as illegal as it does not proceed to the individual identification of each person before expulsion. Apart from this, collective expulsions of immigrants take place; this is a practice prohibited by the European Convention on Human Rights (Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto) to which Spain is a party. In this area, there has been interesting legal and Case-Law developments.

The conservative government of M. Rajoy regulated new legal definitions for these borders and for situations at the border, a kind of reformulation of the legal concept of international border, to adapt it to the specific cases of Ceuta and Melilla (with the new legal notions of “border rejection” or “operational border”). It is clear that the fence and the space between the border fences is Spanish territory; despite this, there has been a functional attempt to consider these strips as special and subject to internal and international regulations that are different from those applicable to the generality of Spanish land and maritime territory. This Spanish case is illustrative of the fictions legally established through regulations adapted to specific migratory situations. In fact, modifications to legal institutions and general concepts have been introduced in order to differentiate the application of international and European law

on immigration and human rights on the fences and borders of Ceuta and Melilla. In this way, responsibilities for the exercise of state functions in the land territory itself are avoided, which in practice leaves the strip between fences in a limbo outside any Spanish or Moroccan jurisdiction.

The ECtHR annulled these attempts at regulatory and jurisdictional withdrawal on the state's own territory. Although the Spanish government argued that the applicants were outside Spanish jurisdiction, without having entered Spanish territory as they had not passed the border protection device, Spain was condemned in 2017 for the expulsion of migrants in the inter-border space, carried out without identification or legal assistance. However, subsequent rulings by the ECtHR, and later by the Spanish Constitutional Court in November 2020, have upheld the legality of the Spanish regulations that have given rise to the so-called "hot returns". Nonetheless, the Spanish Constitutional Court has established severe restrictions on regulated and individualised treatment, under judicial control and in compliance with international obligations, for each case of expulsion.

#### **4. Weaponising Migration: the Ceuta Migratory Crisis of 2021**

In 2021 there has been a clearly unfriendly and hostile act of illegitimate pressure from Morocco towards Spain, in an attempt to change its foreign policy on the Western Sahara conflict. The migratory avalanches that occurred in Ceuta in April-May 2021 highlight the extreme conflictive nature of these issues and place Spain in a delicate position.

For 3 days Morocco encouraged or allowed approximately 12,000 migrants, 1,500 of them minors, to reach the beaches and territory of Ceuta, in an unprecedented massive avalanche, with the aim of putting this city and the Spanish government in extraordinary difficulty.

This dismantling of border controls with Spain's land and sea borders in Ceuta and Melilla was decided without prior warning by Morocco. Nevertheless, this weaponising of migrants, refugees and children against Spain has had unforeseen effects for the Moroccan authorities, such as the condemnation by the European Parliament in its Resolution on the violation of the UN Convention on the Rights of the Child and the use of minors by the Moroccan authorities in the migration crisis in Ceuta.

Moreover, although the trigger for this decision appeared to be circumstantial (hospitalisation of the Polisario Front's top leader in Spain), the



Moroccan authorities subsequently expressly recognised that the incitement and use of the migratory avalanche had been adopted as a direct means of pressure to make Spain change its position on the Western Sahara issue.

In the case of Ceuta, Morocco has brought together three components that when mixed together are highly explosive: a) an unexpected push and pressure for Spain to alter its foreign policy towards the Sahara, taking it outside the UN, b) directed towards a Spanish city it claims for its own with the intent of overwhelming its borders, c) using as a means an abandonment of border control and a migratory avalanche of Moroccan nationals -including families and children- and from other African countries, in a sudden massive influx of people.

A legal analysis and assessment under international law of the events in Ceuta in May 2021 would probably qualify Morocco's decision as an act of interference, if not an act of aggression. Even if Morocco claims that it is a countermeasure (retaliatory or reprisal measure, probably of the latter category), it is not clear what the prior illegal Spanish act is that Morocco should have warned Spain about, requesting its cessation. It is also unclear what the proportionality of the hypothetical Moroccan countermeasure in response would be, and whether it respects humanitarian or human rights obligations.

It seems clear that these are several acts that can be classified as violations of international rules, perhaps the most serious of which is the attempt to make Spain modify a line of policy and foreign action of the state with respect to its position on the Western Sahara question, in order to provoke it to abandon the United Nations framework and guidelines on this issue. In any case, this is a clear violation of the Treaty of friendship, good-neighbourliness and cooperation, signed at Rabat on 4 July 1991 between Spain and Morocco.

The unfriendly and bad-faith act in neighbourly relations can be explained in a peculiar context of Spanish-Moroccan relations and Spanish foreign policy in the Strait area and region. The magnitude of the illegality towards Spain can also be gauged taking into account the momentum of the Western Sahara issue (US President Donald Trump's presidential proclamation on 10 December 2020, the actions of the covert warfare in the Sahara and the September 2021 rulings of the CJEU in Luxembourg on the 2018 fisheries agreement and on the 2019 Protocol on tariff preferences with Morocco).

Finally, the forced Moroccan pressure culminated in the historical turn of Spain, which with President P. Sánchez structurally changed its position on Western Sahara in March 2022, to redirect it expressly in favour of Morocco. The abandonment of the Spanish position maintained for 47 years on this controversial and neuralgic issue of the State's foreign policy now leads Spain to support the integration of Western Sahara into the Kingdom of Morocco, under its complete sovereignty (in a regional autonomy not defined yet). The new Spanish position is contrary to international law and the doctrine of the United Nations, in a change that was not foreseen in a previously designed and agreed strategic plan for the Maghreb region. In addition, that change has caused an abrupt diplomatic and commercial break from Algeria towards Spain.

### **III. RECENT PAN-EUROPEAN NARRATIVES AND MIGRATIONS**

It is necessary to underline the meaning and importance of the values of the European Union for the European project and the European political identity. This significance of values is essential for the legitimacy of the EU, its viability and its survival as a “federal” common economic and political space with the same rules and common objectives. And also, essential to guarantee a permanent constitutional coexistence of citizens, foreigners, residents, cities and states.

At the same time, there is a need for a common understanding of the past and the future of the European Union as a collective project for the transformation of European societies, a project in permanent evolution. Hence the need to have common perceptions in the construction of a ‘European History’ and a common European project, which has its own European story or narrative.

The EU starts from a greater difficulty at the origin: there is no European nationalism; there is no European nationality, since it is a rational construction based on law. Thus, the project of this European political, economic and legal construction vitally requires what is called a “narrative”, a “story”, global discourses on the evolution of the integration process. It is in these stories that European values are anchored in a very visible way, since they will be decisive for migration and integration, in particular for the values of non-discrimination, tolerance and equality.

In such a way that European values constitute an essential element of the narratives that have arisen in the EU, some of which seek to establish themselves as pan-European ideologies. On this point, the main theoretical constructions that contain approaches to European values promote ideas that serve to shape the pan-European narratives, which have arisen or have been singularly outlined in the last decades of the evolution of European integration, since the 1990s of the 20th century. These stories or narratives also seek to constitute or contribute to a pan-European ideology, with theoretical constructions to interpret, justify and change present and future reality.

We thus have, among others, the original and powerful construction of the Community or European Union as a *Community of law*, of jurisprudential origin, formed by the Court of Justice of Luxembourg. This Court has contributed to uniting the legal system of integration with this idea that the Community or European Union is a community of law and, as a community of law, it is based on the balance of powers and institutions between the States and the citizens. Also, secondly, it is traditional to refer to the idea of “the EU as normative power” (Normative Power Europe), an idea of I. Manners which deploys its influence abroad by promoting its values in relations with third countries. Third, the conception of the EU as participating in a civilizing process based on moral foundations (Andrew Linklater). The EU as a civilizing process of moral foundations implies that the pursuit of European interests is not prejudicial in its relations with third States (with the mandate of *not to be harmful in international politics*) and that it pursues, in accordance with its values, the creation of protective and inclusive societies. Finally, perhaps the most recent presentation of pan-European stories that touch on values is that of the concept of ‘The European Way of Life’, an idea of European modernity promoted by the Commission since 2019.

These stories have, in my opinion, a special relationship with immigration. Pan-European values and ideologies, or some of the narratives that we are constructing today in Europe, suit European nationalism, which has a rational identity. It is not based on the irrational feelings of all nationalisms, but on the contrary, on a particular, voluntarist and open nationalism, characterized by these inclusive components in democratic and tolerant societies such as European societies.

The consequences of these pan-European ideologies on immigration and

refugee issues are obvious, as they all rest on a powerful foundation of values linked to fundamental democratic principles of a European dimension or style. Thus, if we all keep in mind respect for European values, when it comes to immigration, there must be a humanitarian reception from the outset and this reception must be inclusive. This principle of action would imply the complete protection of human rights at borders and even their projection beyond them, with democratic controls in the action of public authorities towards immigrants and refugees and, in general, by adopting a compassionate attitude towards foreigners who are *Ad Portas Europae*.

#### **IV. EXTERNAL BORDERS, EUROPEAN VALUES AND HUMAN RIGHTS IN THE STRAIT OF GIBRALTAR REGION**

The Strait of Gibraltar is a particularly complex Region from a geopolitical and strategic point of view. Added to this are the peculiar problems of conflicts and territorial claims involving three states, the United Kingdom, Spain and Morocco. All this without forgetting the significant military presence of the United States in the area.

Two international organisations are also directly involved, albeit to varying degrees, the United Nations and the European Union.

These conditions determine a lack of definition of competences in certain land and maritime areas, and a contestation of the acts of other states in the area.

Overall, this is a complex area in which the incidence of immigration is a variable that causes conflicts, claims and disputes to escalate -sometimes leading to diplomatic crises.

In addition, Morocco has been openly using immigration as a political weapon against Spain since 2021, with the aim of making Spain change its foreign policy on the Western Sahara issue.

In this context, those who suffer most from these structural conditions in the convoluted Strait of Gibraltar are immigrants and asylum seekers and refugees, climate refugees or those fleeing areas of famine and war. Human rights, democracy and European values must be taken into account, monitored and applied also in the external border areas, since they are particularly needed in this key geostrategic Region for Europe.

After all, all recent pan-European narratives rest on a powerful foundation

of values linked to fundamental democratic principles with a European dimension. These European values, by focusing on migration issues, imply that there must be a humanitarian reception of immigrants and refugees by public authorities, with the obligation to be an inclusive reception. The full protection of human rights at borders and even their projection beyond, with democratic controls in the action of third countries authorities towards immigrants and refugees, is based on a compassionate attitude towards foreigners *Ad Portas Europae*.

A greater involvement of the European Union in the area and the region of the Strait of Gibraltar would be desirable. Its intervention and mediation could smooth out conflicts and disputes in the region. This would result in better management of migratory flows. A clear European legal framework and a better defined practice of respecting the human rights of immigrants, refugees and people seeking international protection in this complex region of southern Europe are urgently needed.

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