

Wall Policy: the case of Ceuta and Melilla

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«The tragic events in Ceuta and Melilla also have made it clear that fences - however high these may be - will, under current circumstances, not stop desperate people from trying to enter the EU territory»¹.

Abstract

This paper deals with the hurting and complex situation of migration flows that Europe is going through nowadays. Even though the phenomenon is rooted deeply in the old continent's history, it's only now when it has reached a dimension and complexity that put under question the walling and militarization approach. At its peripheral spots Europe faces its major challenge to the European capability to manage its borders by means of an appropriate policy of connection and openness to the world. Such is the case of Ceuta and Melilla enclaves, where contrast meet and contradictions deepen at human and institutional levels. The particular conditions of the two Spanish blisterings in Moroccan territory depict the encapsulation by which Europe pretends to compensate its failed migration policy. Wired fences in Ceuta and Melilla have proven unable to stop the irregular flux of migrants trying to use the enclaves to bridge unto Europe. The objective of this paper is to expose and analyze the different breakages of a policy that fails at providing community security and human rights. Finally, this work calls for an alternative approach other than geographic and ideological walling in order to rethink Europe as a concept.

1. Introduction

The salient scenario for Europe is migration. This results in a complex condition in which the continent's capacity to comprehend and maintain its *nomos*² is at stake. Sustained fluxes of people both from within and from outside its territory raise the question of how much heteronomy is uprising as institutional practices for the management of resources proves to be unable to face the shaping up of a new order. A lack of preparation to face the many dimensions of the phenomenon seems to try to find its way out by building barriers, thus enhancing differences rather than bridging to a more steady holistic solution.

It is not the intention of the present document to arrive to a detailed plan of specific policies to solve such an extended need. Instead, it aims to a European agenda of thought and discussion on the problem of migration as a present threat to the viability of the continental project. It recognizes there are already institutional instruments that could bring a more sustainable scenario for human interconnection and that should not be displaced by police practices.

This paper is organized in six sections. It starts with the analysis of what has been

¹ European Commission, *Visit to Ceuta and Melilla - Mission Report Technical mission to Morocco on illegal immigration*, 7th October -11th October 2005.

² Pierre Bordieu, *Les règles de l'art*, Seuil, 1992.

called «a forgotten empire»³ (the Spanish North African borderlands). Here, an attempt is made to underline the characteristic features of the two enclaves, Ceuta and Melilla. The second section evaluates the consistency of the European and Spanish approach to manage its borders both in material and human terms. In the third part, a critical description of the heterogeneous and contradictory measures in terms of application of norms and agreements is offered in order to prompt the diverse nature of failures, all of them in need of - at least- some awareness. Later, the paper essays some basic lines calling for a modern approach to arrive to a steady inclusive state of living, rather than building barriers to lock themselves in and keep strangers out. In the concluding part, a call is made to Europe to assume its historic depth and project itself as a plausible model for humankind.

2. The Spanish *perlas* in the North of Africa

Ceuta and Melilla have a long history. Located on the African side of the Strait of Gibraltar, both cities are dated to the Phoenicians, the merchants of the ancient Mediterranean. Ceuta, situated on the site of ancient Abila, which is thought by scholars to be one of the two pillars of Hercules, was a Carthaginian settlement. In the 5th century the city was taken by the Vandals and later by Visigoths, Arabs and Portuguese. Finally, the Spanish set their control in 1668 thanks to the Treaty of Lisbon. Since that time the enclave has remained a jurisdiction of Spain.

From the other side stands Melilla, the ancient Rusadir, placed in the Rif⁴, that was dominated by Phoenicians, Carthaginians and different Berber dynasties until the final Spanish conquest of 1497. The two cities during their colonial history have been important trading points to and from Africa and for this reason they were free port in order to allow an intense commercial activity. By the time the Spaniards «were able to manipulate an increasingly decentralized Moroccan government, and took official control of the Maghreb region surrounding Ceuta and Melilla, creating the Spanish Protectorate of Morocco»⁵. Finally, in 1995 the Spanish government approved statutes of autonomy for both Ceuta and Melilla. Nowadays, their assemblies are similar to those in other Spain's autonomous communities⁶.

³ Barbara Fuchs-Yuen-Gen Liang, *A forgotten empire: the Spanish north African borderlands*, "Journal of Spanish Cultural Studies", Vol. 12, n. 3, September 2011, pp. 261-273.

⁴ The Rif is a mountain range of northern Morocco, extending from Tangier to the Moulouwa River valley near the Moroccan/Algerian frontier. The range licks at the Mediterranean Sea and it has always been a territory rich in ethnic and nationalistic disputes, as happened in the Rif War (1920- 1926) between the Spanish Government, later supported by France, and the Berber population. See Douglas Porch, *Spain's African Nightmare*, "MHQ Journal of Military History", Vol. 18, n. 2, winter 2006, pp. 28-37.

⁵ Xavier Ferrer-Gallardo, *Theorizing the Spanish-Moroccan Border Reconfiguration: Framing a Process of Geopolitical, Functional and Symbolic Rebordering*, "CIBR", Belfast 2006, pp. 1-24, p. 4.

⁶ About the legal status of Ceuta and Melilla see Paloma Requejo Rodríguez, *Ceuta y Melilla: ¿Ciudades con estatuto de autonomía o comunidades autónomas con Estatuto de Heteroorganización?*, "REALA", n.277 may-agost 1998, pp. 55-70.

Even after the independence of Morocco, reached in 1956 after 44 years of French rule, Spain has never wanted to return the territories of Ceuta and Melilla arguing that the last vestiges of Spain's far-flung empire had belonged to the Spanish crown for centuries⁷.

On the other hand, Morocco has never ceased to claim Ceuta and Melilla as its territories basing the request upon historical, geographical and geo-political reasons and «also invoking the principle of territorial integrity and the decolonization laid down in the Charter of UN»⁸.

In the years after Moroccan independence, the issue of the two enclaves began to be strongly associated with that of Gibraltar as pointed out by Rézette: «By an historical paradox, this litigation is exactly analogous to that between Spain and Great Britain with respect to Gibraltar in which Spain, this time, is in the position of the colony and not the colonizer»⁹. This comparison between the situation of Ceuta and Melilla and that of Gibraltar is known as the Hassan II's doctrine even though something changed and in the 1987 he declared: «My attitude towards Ceuta and Melilla is that is a question of an anachronistic situation which cannot be compared to that of Gibraltar, given that Gibraltar is in Europe. Gibraltar is under the control of a European power, allied through the EC and NATO to Spain»¹⁰.

The foundation of the Spanish perception of this dispute, not explicitly recognized by Madrid, rests on the source and origin of the population living Ceuta and Melilla: a predominantly Hispanic and Catholic population. However, it is also true that ethnic, religious and labour composition in both cities has been changing. Muslim communities and, to a lesser extent, Jewish and Hindu (particularly in Ceuta) have marked and still mark the population census and the human arsenal that typify the economy of the two tiny enclaves¹¹. Xavier Ferrer Gallardo underlines that all this features have created «a complex amalgamation of clashes and alliances: Spain and Morocco; Christianity and Islam; Europe and Africa; EU territory and non-EU territory; prosperous north and impoverished south; former colonizer and formerly colonized»¹².

The picture is enhanced even more if, to the ethnic and linguistic composition of the

⁷ Moreover, Spain is still controlling some Moroccan islands: the Chafarine Islands, Badis Peninsula, Nekor Island and the Parsley Island.

⁸ Said Saddiki, *Ceuta and Melilla Fences: a EU Multidimensional Border?*, "82nd Annual Conference of the Canadian Political Science Association", Concordia University, Montreal 2010, Vol. 3, pp. 1-18, p. 7.

⁹ Robert Rézette, *The Spanish Enclaves in Morocco*, Nouvelle Editions Latines, Paris 1978, p. 10.

¹⁰ Robert Aldrich-John Connell, *The Last Colonies*, Cambridge University Press, Cambridge 1998, p. 226.

¹¹ Henk Driessen states that «when Morocco gained its independence in 1956, Ceuta and Melilla remained under Spanish sovereignty, but the vast majority of Berbers and Arabs who continued living in the enclaves were not granted Spanish nationality. The presence of large minorities of ambiguous, stateless inhabitants in the enclaves became an important source of friction, occasionally violent, between Spanish Christian and Moroccan Muslims in the 1980s, as enclave Muslims felt discriminated against, in spite of the fact that many of them had been born and raised in the enclaves» in Bechev Dimitar-Nicolaidis Kalypso, *Mediterranean Frontiers. Borders, conflict and memory in a transnational world*, Tauris Academic Studies, I.B. Tauris Publisher, London - New York 2010, p. 174.

¹² Xavier Ferrer-Gallardo, op. cit., p. 2.

two cities, we add the complexity of the geopolitical landscape that sees Ceuta and Melilla playing the role of a bridge for Europe.

The crucial breakthrough year is 1986 when Spain joined the European Community, since this year all the territories belonging to the Madrid government started to become considered part of European Union¹³. With this historical change, Ceuta and Melilla did no longer represent only the colonial anachronism perpetrated by Spain. Rather, they began to embody the southern border of Europe in Africa. The political landscape is enriched and complicated by the changes that were taking place within the European Union from the nineties onwards and in particular with the implementation of the Schengen Agreement¹⁴ by the Schengen Convention which had the purpose of promoting the abolition of internal borders control and ensure free movement in the European states.

What matters the most to this paper is the consequence of the borders' policy enlargement in relation to a totally anomalous geographical expressions like those of Ceuta and Melilla, considering that:

The Schengen zone creates two kinds of subjects: regular and irregular, and two kind of borders: open and closed. For the irregular migrant, the border becomes a mobility security assemblage consisting of fences, towers, guards, cameras, and sensors, whereas for the regular traveller the border consist of an immigration counter and a rubber stamp on the passport¹⁵.

And this regular / irregular condition, illustrated by Mutlu and Leite, is worsening especially in border areas between one continent and another, such as Europe and Africa¹⁶.

The dismantling of borders started in an attempt to encourage the evolution of the embryonic European formation and to improve the mobility of people and the traffic of goods. However, this had as its flip side a strong feeling of anxiety and underpreparedness in the management of a fairly new phenomenon such as immigration.

In fact, recently, with the escalation of warlike conditions and poverty of many nei-

¹³ In order to get a more accurate scenario of the relationship between Europe Union- Ceuta and Melilla, see Peter Gold, *Europe or Africa? A contemporary study of the Spanish north African enclaves of Ceuta and Melilla*, Liverpool University Press, Liverpool 2000.

¹⁴ Schengen Agreement was signed by the EEC States on 14 June 1985 and enabled citizens to cross internal borders without being subjected to border checks. It is part of a series of treaties that contributed to the political evolution of what we now know as European Union. The legislation of Schengen can be found at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l33020&from=EN>.

¹⁵ Can E. Mutlu-Christopher C. Leite, *Dark side of the Rocks: Borders, Exceptionalism and the Precarious Case of Ceuta and Melilla*, "Eurasia Border Review", Vol. 3, n. 2 Fall 2012, pp. 21- 39, p. 21.

¹⁶ However it is important to remind that the Final Act of the Agreement on the Accession of the Kingdom of Spain, signed in Bonn on 25 June 1991, Declaration on the towns of Ceuta and Melilla, establish some exceptions at point a) and c): «The specific arrangements for visa exemptions for local border traffic between Ceuta and Melilla and the Moroccan provinces of Tetuan and Nador shall continue to apply» and «Moroccan nationals who are not resident in the provinces of Tetuan or Nador and who wish to enter the territory of the towns of Ceuta and Melilla exclusively shall remain subject to the visa requirement». The full text of the Final Act can be found at: [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922\(04\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922(04)&from=EN).

ghbouring states, a considerable number of floating populations invade nearby cities in a desperate attempt to reach the old continent.

3. The Southern fences of the European Union

As described previously, with the approval of the Schengen Treaty, Spain and consequently Ceuta and Melilla, began to represent *de facto* the southern border of Europe. That is as «the border underwent a form of “Europeization”, the subsequent focus of the cities’ borders shifted from being between solely Spain and Morocco, to becoming representative of larger midpoints or zone of transition between Europe and Africa, as well as Christianity and Islam»¹⁷.

Carling emphasizes what means to be the southern border in reference to the migration flows:

the elimination of border controls within the Schengen area and the relative permeability of the borders further south make migration control decisive to a diverse set of migration flows. When unauthorized migration across the Spanish-African borders first became an issue in the 1980s, the majority of migrants were Moroccans, and their final destination was not Spain, but France and other European countries. [...] At the same time, a growing number of migrants originate not in Morocco, but in Sub-Saharan Africa¹⁸.

Indeed, the condition of relative calm of the two cities was undermined by the fact that at the end of the nineties, migrants coming as we saw and will see from different parts of Africa, recognized in the existence of these two smaller European territories in Africa a benefit for their migration: the enclaves became communicating vessels with the wealthy Europe or vulnerable spots of the Fortress Europe.

In the effort of freezing the spreading arrival of migrants on the outskirts of Ceuta and Melilla, in the late nineties, the Spanish government, supported and financed by the European Union, decided to erect a first line of defence to protect and secure the territory¹⁹. As reported by Saddiki: «a remarkable development of these territories occurred in 1993, when fencing of the enclaves’ perimeters started on the pretext of preventing irregular immigration. [...] the construction of a more secure system started in the autumn 1995»²⁰.

The construction of the barrier around the enclaves occurred in the era of Felipe Gonzalez’s (PSOE) and in 1993 the Ceuta barrier already reached a length of 8.3 km.

¹⁷ Can E. Mutlu-Christopher C. Leite, op. cit., p. 32.

¹⁸ Jørgen Carling, *Migration control and migration fatalities at the Spanish- African borders*, “International Migration Review, Vol. 2, n. 41, pp. 361-343, p. 316.

¹⁹ Stefan Alscher notes that «The cost of this project, finished until the year 2000, came to a total of 48 Mio. Euro - whereas the EU financed about 75% of the costs», in *Knocking at the Doors of ‘Fortress Europe’: Migration and Border Control In Southern Spain and Eastern Poland*, The Center for Comparative Immigrations Studies, San Diego 2005, pp. 1-29, p. 11.

²⁰ Said Saddiki, op. cit., p. 3.

In Melilla:

the construction of a first border fence dates back to 1996. This fence was equipped with some rudimental electronic security devices, which however failed constantly in periods of bad climatic conditions. A more sophisticated border system, similar to the one used in Ceuta, has been erected in 1998²¹.

By analyzing the numbers of *devoluciones*²² [rejections] of Ceuta and Melilla, in the framing time that goes more or less from 1993 to 2004, we can highlight the relative efficiency of the barriers built around the two cities, and particularly:

While in each of the years 1992 and 1993 just around 260 persons were rejected at the Spanish-Moroccan border in Ceuta, this number grew up to 42,071 persons in 1994 and reached a preliminary peak in 1995 with 66,841 rejections. Since the construction of the high security border system the number of rejections oscillated between 40,000 and 60,000 persons per year. [...] From 1991 to 1993 *devoluciones* were rarely existent in Ceuta. In 1994, i.e. during the first stage of construction of the simple border fence, the number of *devoluciones* increased to 1,804 cases. In the following years, a strong increase has been observable (1995: 2,116; 1996: 7,020; 1997: 10,163). In the years from 1998 to 2001 the annual number of *devoluciones* was relatively constant at around 8,150 to 8,350 persons, followed by a decreasing tendency from 2002 (5,754) to 2004 (2,584)²³.

The case of Melilla is more complex to construe because it is a route less arduous for the migrants than the one of Ceuta and because the fences have proven their usefulness:

As in the case of Ceuta, denied entries and *devoluciones* barely played a role until 1993. The number of denied entries and *devoluciones* in Melilla increased dramatically in 1994, i.e. even before the construction of the first fence. The cases of denied entries on the borderline between Melilla and Morocco decreased in the following years from 218,450 in 1994 to around 78,000 persons in 1996, but increased again in the years 1997 to 2002. In 2002 the number of denied entries reached nearly 1 Mio. cases. The high amount of denied entries can be interpreted in several ways: as an evidence for the efficiency of the border fencing system, as a shifting of migration routes (from Ceuta to Melilla), but also as a sign of a higher control density²⁴.

²¹ Stefan Alscher, op. cit., p. 11.

²² The returns are established as an administrative penalty measure realized by the police and are aimed to preserve or restore public order. See the document published by Equipo Nizkor on September 10, 2001: *Los procedimientos de expulsión en España: análisis crítico y medidas urgentes* approved by the Comité Ejecutivo de la Comisión Española de Ayuda al Refugiado (CEAR) in <http://www.derechos.org/nizkor/espana/doc/procedexpul.html>. There is another form of *devolución*, more forced, and is called *devoluciones en caliente* [hot returns], which «consist of handing the foreign citizens who have been intercepted by such authorities in the area under Spanish sovereignty over to Moroccan authorities on a de facto basis without carrying out the legally established procedures or meeting the internationally acknowledged guarantees»: Martínez Escamilla, *Hot returns. When the State acts outside the law. Legal report*, 27 June 2014 available online at: <http://eprints.sim.ucm.es/27221/1/HOT%20RETURNS.%20WHEN%20DE%20STATE%20ACTS%20OUTSIDE%20THE%20LAW.%20Legal%20report.pdf>.

²³ Ivi.

²⁴ Ibid., p. 12.

Moreover, “a selective permeability of the border²⁵” is defined by the nature of the free port that characterizes the two cities: a considerable number of people go to Ceuta and Melilla for trading purposes, since:

under Spanish law the territories have been designated as exempted areas for customs purposes, making them in effect tax-free zones, and there is substantial trading in tax-free goods to non resident, with thousand of Moroccans entering the enclaves every day to buy goods for resale in nearby Moroccan towns at a premium²⁶.

A certain part of the trade that takes place in the two enclaves refers to illegal trades, and concerns the sale of cannabis. An atypical trade is carried out by the *porteadoras* mainly women, also called “mule women” since they carry on their shoulders heavy loads of second-hand clothes, bolts of fabric, toiletries and household items, all of it destined for markets in Morocco and beyond²⁷.

The unstoppable osmosis within the two enclaves and the surrounding territories received a bloody break point in October 2005 when some migrants, coming from the South of Sahel, tried to pass the fences of Ceuta: «caught between the Spanish rubber bullets and Moroccan gunfire, a number of migrants died [...] and more than fifty were injured»²⁸.

The consequences of the 2005 bloodbath lead to increase the height of the *mallas metálicas*, that some Spanish government sources have named «*tercermundistas* [...] *sirven para proteger una finca, pero no una frontera*»²⁹. They were raised from three to six meters and «both fences feature barbed-wire [which in Melilla was removed in 2007], motion sensors, CCTV and infra-red cameras along with control towers»³⁰. Unfortunately, the *avalanches* did not stop and in 2006 three people died in Melilla. According to the report made by European Commission in 2005:

The external land border of Melilla is characterised by an approximately 10.5 km double border fence divided into three sectors. The outer fence has a height of 3.5 metres; the inner fence reaches 6 metres in some places. Both fences are equipped with barbed wire in order to prevent illegal immigrants from climbing the fence. The installed surveillance system consists of 106 fixed cameras for video surveillance and an additional microphone cable as well as infra-red surveillance. In case of alarm, an immediate response is guaranteed by a 24 hrs operations centre at the Guardia Civil HQ. As a reaction to the latest incidents helicopters are used to carry

²⁵ Jaume Castan Pinos, *Building Fortress Europe? Schengen and the Cases of Ceuta and Melilla*, School of Politics, “CIBR”, ed. Belfast 2009, pp. 1-29, p. 16.

²⁶ Peter Gold, op. cit., p. 151.

²⁷ Many humanitarian organizations have raised questions about the treatment suffered by the *porteadoras* and elaborated the *Declaración de Tetuán sobre las mujeres porteadoras en las fronteras de Ceuta y Melilla, Tetuán 2012*, APDHA which aimed to alert the public attention about the plight situation of women carrying goods on the borders of Ceuta and Melilla, while requiring competent authorities at all levels that the necessary measures need to be taken to respect their rights and dignity: http://www.apdha.org/media/declaracion_tetuan_porteadoras2012.pdf.

²⁸ Riley M. Townsed, *The European Migrant Crisis*, Lulu.com 2015, p. 102.

²⁹ “El País”, October 5, 2005..

³⁰ Jaume Castan Pinos, op. cit., p. 19.

out additional border surveillance by air supporting the measures on the ground. In total 331 policemen (273 in 2002) and 676 Guardia Civil officers (579 in 2002) are deployed in Melilla³¹.

In the case of Ceuta fences:

At the external land border of Ceuta (7.8 km of double border fence, divided into three sectors) 316 policemen and 626 Guardia Civil officers are currently deployed. Except for 37 installed movable cameras along this border line, the technical equipment used for border surveillance is the same as in Melilla. In addition, helicopters are used for surveillance of the external border after the recent massive attacks. So far this year around 11,000 attempted illegal border crossings were registered at that border line³².

There are no certain numbers of assaults to the borders of Ceuta and Melilla since 2005. Official sources such as the one of Madrid government and those of some humanitarian organization offer different statistics that make almost impossible to figure out the real trend³³. Even the media coverage on Ceuta and Melilla assault has been mostly fluctuating as exemplified by the little space given to the assault of 2008, while Italy and Spain were at penalties of the quarter-finals match for Eurocup 2008. At that time, 20 Sub-Saharanans tried to pass the Spanish border in Melilla and lately another group of 70 immigrants tried to get to the enclaves³⁴.

By the way, human rights groups and the European Union have been showing concerns about Madrid practices of deportation and treatment of illegal immigrants in the Ceti³⁵.

In a tragic scenario, absolutely new to the public agenda, Ceuta and Melilla have become in a short time the current paradigm of the walling uselessness.

4. The routes to and through the fences

The relentless human movement of migration has recently been marked by political and social changes that have increased the flow and, in some way, diversified the routes. Mediterranean countries such as Italy, Spain and Greece are located in the epicenter of this swirling global migration. Having reached a planetary size, human flows embody the contradiction of globalization: unequal growth and weaknesses derived from all kinds of national conflicts.

Some scholars have defined the migration a sixth continent due to the volume it oc-

³¹ European Commission, op. cit., p. 6.

³² Ivi.

³³ According to the Spanish Government, in 2014 more than 20.000 tried to pass the fences, some of them (2.000) reached their purpose.

³⁴ "El País", June 23, 2008.

³⁵ CETI stands for *Centros de Estancia Temporal de Inmigrantes*. They are temporary holding centres for immigrants. There is one in Ceuta (set up in 2000 by the Spanish government as a response to the tents built by irregular immigrants in the forest of Ceuta in the 1990s and has a reception capacity of 512 persons) and another one in Melilla that holds around 1,150 people but was built for 480.

cupies within the global scenario. Although migratory types, subjects, migrant social groups, routes, destinations and reception policies and *refoulement* have been changing lately, one thing remains certain: the growth of the immigrant population made up of men, women and children crossing deserts and seas while waiting to be citizens of a new world.

In such an intricate and complex situation, the most mobile continent in the world is Africa. There, Ceuta and Melilla, tiny strips of land compared to the vastness of the Sahara bloom as nodal points in the routes of human transhumance.

To go further into the issue that embraces the two enclaves and to understand the reasons for the construction of what has been called «la primera alambrada de Europa»³⁶, we must trace the Western Mediterranean route, meaning the one from North Africa to Spain. It includes a sea crossing through the Strait of Gibraltar from Tangier to Tarifa or to the Canary Island in Spain, and a land passage by the enclaves of Ceuta and Melilla. In terms of numbers, the route is not the largest, however it both holds a steady growth and protrudes as the most dangerous.

According to the International Organization for Migration (IOM), the countries of origin of the irregular flow on the Western Mediterranean route «have traditionally been Senegal, Cameroon, Guinea and Nigeria but since 2013 there has been a shift towards more migrants coming from countries of concern, particularly Eritrea and the Syrian Arab Republic»³⁷.

The presence of Eritrean and Syrian within the route derives from the tragic conditions experienced by both populations in their respective countries. Eritrea is one of the most repressive, secretive and inaccessible countries in the world: its president Isaiya Afwerki has imposed a reign of fear in which crimes against humanity are committed, as revealed by Amnesty International and by United Nations Human Rights³⁸. While in Syria the anti-government demonstration started in March 2011, as a part of the Arab Spring, has been contrasted by the violent reaction of the Syrian president Bashar'Al Assad. Since then, over 190,000 men, women and children have been killed. 11.6 million people have fled from violence in Syria, a staggering figure almost three times the population of New Zealand³⁹.

The escalation of violence has generated an incredible number of refugees and asylum seekers «which in the EU rose from 50.000 in 2013 to almost 123.000 in 2014»⁴⁰. Many of them tried to move on to Europe by entering in Ceuta and Melilla even though Syrians who arrived through the enclaves do not tend to apply for asylum in Spain so that they can move to other European countries⁴¹.

³⁶ "El País", May 6, 2016.

³⁷ IOM, *Migration Trends Across the Mediterranean: Connecting the dots*, June 2015, p. 21.

³⁸ See: <https://www.amnesty.org/en/latest/news/2013/05/eritrea-rampant-repression-years-after-independence/> ; United Nation, *Report of the Special Rapporteur on the situation of human rights in Eritrea*, June 2015, p. 1-21.

³⁹ <https://www.amnesty.org.nz/syria-worst-humanitarian-crisis-our-time>.

⁴⁰ IOM, op. cit., p. 102.

⁴¹ Ibid., p. 22.

Within the Western Mediterranean route there are as well those migrants (Syrians, Malians, Ivorians, Cameroonians, Nigerians and Congolese, some of them regular or asylum seekers) who arrive in Morocco with the intention to land in Europe since «there is a perception that it is easier to reach Europe from Morocco»⁴². However, some decide to stay for a few years due to the difficulty in getting through the borders.

In addition to those route features, we have to add a set of both push and pull factors. The most significant push factor tends to be the need to flee from instability⁴³, such as a war, a conflict, a persecution or an economic pressure. It is important to highlight that «even if economic motivations do not constitute the primary reason for which a migrant fled his country, they still play a role in terms of his/her expectations of a host country»⁴⁴. Paradigmatic of the population movements is the fact that while migrants retain the need to escape from totalitarian regimes or bloody wars, they are also fuelled for economic factors due to the gap that has been materializing with the exponential growth of receiving countries. Yet the pull factors, those of attraction of the host country, turn out to be less influential than the push ones.

Previously, we said that there is a substantial flow of sub-Saharan using Morocco as a point of transit to Europe and an internal flow within the same Moroccan territory with the predominance of Senegalese, Guineans and some from Nigeria, Cote d'Ivoire or Benin. The majority of these migrants tries to reach the European states, especially Spain, right through the two enclaves employing different methods such as touring visas or false document, hiding in vehicles on ferries, scaling or swimming around the fences⁴⁵.

Migrants willing to cross the border of Melilla tend to camp in Gougou Mountain⁴⁶ for long periods while waiting for the opportunity to pass the fence. They «usually make the attempted crossings in very large groups (sometimes more than a hundred people and lately even several hundred) who storm the fences together, allowing some migrant to pass through while the majority are stopped by authorities»⁴⁷. The

⁴² Ibid., p. 25.

⁴³ Ibid., p. 26.

⁴⁴ Ibid., p. 28.

⁴⁵ Hein de Haas, *Trans-Saharan Migration to North Africa and the EU: Historical Roots and Current Trends*, "MPI Journal online", 1st November 2006.

⁴⁶ A mountain outside Nador and close to the border of Melilla. The Moroccan authorities have often razed the migrants camps as happened recently in 2015 when Moroccan gendarmes arrested about 300 people that were living in the border camps, mostly from Cameroon and Mali, but also from Ivory Coast. Then, they threw them in several buses to an unknown destination. Many NGOs expressed concerns about the alleged wave of deportations which is not new considering that Morocco forced some 3,300 sub-Saharans to leave the camp in 2005 and that Morocco operate with Spain and the European Union in the border control system; "El Mundo", February 15, 2015. In 2005 the *Asociación Pro Derechos Humanos de Andalucía* had already published an *Informe de Violaciones de los derechos humanos en Marruecos hacia las personas migrantes de origen subsahariano en tránsito* stating that immigrants were victims of serious human rights violations in the North African country and on the borders of Ceuta and Melilla and those violations were carried out directly or with some moral, material and financial complicity between Spanish Government and European Union. APDHA, *Informe de Violaciones de los derechos humanos en Marruecos...* cit., October 2008, pp. 1-8.

⁴⁷ IOM, op. cit., p. 40.

flow into Melilla is bigger than that into Ceuta, where some migrants have tried to enter by boat by sailing around the coast. Nevertheless, the land route continues to be the easier path and generally occurs from Fnediq.

In 2014, the Moroccan authorities built another fence on the Moroccan side of Melilla in order to prevent the increasing number of migrants attempting irregular crossings. In February of the same year, the tragic event of a group of migrant shot by the Spanish Guardia Civil in Ceuta while attempting to reach the enclave by sea⁴⁸. The incident brought into focus the unethical and illegitimate attitude of the Spanish government in which the fear of becoming a new Lampedusa has guided many of its political choices with regard to the illegal immigration⁴⁹.

5. Irregular immigrants in unlawfulness places

According to IOM:

There are a number of civil society organisations in Spain who feel that the Spanish government uses detention arbitrarily and not exceptionally as a last resort [...]. Another issue of concern for civil society organisations in Spain is “express removals” where police issue order and enforce within 72 hours without the right to appeal or the right to speak with a lawyer⁵⁰.

This scenario is even more worrying as migrants are denied the access to the territory for asylum request due to the pushback policies that turn Ceuta and Melilla into some kind of lawless places⁵¹.

Devoluciones violate the art. 14 of the Universal Declaration of Human Rights but also the Convention Relating to the Status of Refugee (1951) and its Protocol of 1967 for which state parties are under obligations to respect some basic refugee rights as the *non refoulement* principle *inter alia*. The right not to be returned belongs not only to refugees but also to asylum seekers. In this respect it is necessary to take note on what the Convention of Refugees states in the introductory note:

The Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. Importantly, the Convention contains various safeguards against the expulsion of refugees. The principle of *non refoulement* is so fundamental that no

⁴⁸ As reported by Amnesty International: 11 migrants drowned and a group of 23 people who reached the shore were forced back across the border to Morocco without formal procedures; <https://www.amnesty.org/en/latest/news/2014/02/spain-accountability-urged-appalling-migrant-deaths-ceuta/>.

⁴⁹ A representative of the Melilla Government, Abdelmalik el Barkani, answering the question about what would have happened if there was no fence, stated that Spain could have become another Lampedusa, http://politica.elpais.com/politica/2016/04/29/actualidad/1461942940_913389.html.

⁵⁰ IOM, *op. cit.*, p. 47.

⁵¹ ECRE Weekly Bulletin, *Spain's attempt to give legal cover to push back policy in Ceuta and Melilla under fire*, 24 October 2014.

reservations or derogations may be made to it⁵².

Despite the obligation that derives from the international treaties just mentioned, in 2015 Spain approved the new *Código de Extranjería*, which established, in the case of Ceuta and Melilla, the possibility for foreigners caught in the attempt of assaulting the fences to be rejected or returned to their countries⁵³.

It also states that application for international protection can be requested in the asylum border posts as the ones that were inaugurated on march 2015 in Ceuta (Tarañal) and Melilla (Beni Enzar). Problem is, as argued by the Spanish Interior Minister Jorge Fernández Díaz, that those who try to enter illegally to Spain, through the fences, have no right to asylum and therefore many of them are economic or social immigrants and this condition doesn't constitute grounds for seeking asylum⁵⁴.

Another paradoxical element is the fact that the majority of asylum seekers in Spain are Syrians⁵⁵ whereas Sub-Saharanans are unlawfully denied the same right, since they are considered economic immigrants or expelled by the Moroccan police who has converted itself into the gendarme of the Southern of Europe⁵⁶: in the splits of the Hispanic Moroccan border acts as a filter for the entries into Europe. Its role, however, is controversial and is regulated by the *Acuerdo entre el reino de España y el reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente* signed in Madrid in 1992 but entered into force in 2012⁵⁷. The agreement provides for minimal formalities to facilitate the return of third-country nationals and according to a joint report of Migreurop there is an evident lack of the principles that constitute the international protection law:

Il est clair que cet accord, qui reprend une série d'exigences en matière d'identification et de droits des personnes refoulées, questionnait la pratique des deux pays: la mise en œuvre de refoulements sans respecter aucune procédure légale comme cela s'observe avec les "refoulements à chaud" à la frontière de Melilla, qui impliquent l'aide des forces auxiliaires marocaines, de même que pour les interceptions maritimes⁵⁸.

The cooperation and the management of the Spanish-Moroccan border was helped

⁵² UNHCR, *Convention and protocol relating to the status of refugee*, Geneva 1951, p. 3, <http://www.unhcr.org/3b66c2aa10.pdf>.

⁵³ BOE, *Código de Extranjería*, Madrid November 2015, p. 44.

⁵⁴ "Eldiario.es", March 17, 2015, http://www.eldiario.es/desalambre/Fernandez-Diaz-Guardia-Civil-Ceuta_0_367113503.html.

⁵⁵ In 2015, 5.720 Syrians applied for asylum procedure. See http://ec.europa.eu/eurostat/statistics-explained/images/1/18/Five_main_citizenships_of_%28non-EU%29_asylum_applicants%2C_2015_%28number_of_first_time_applicants%2C_rounded_figures%29_YB16.png.

⁵⁶ UNHCR Spain, *Spain country update*, October 2015.

⁵⁷ The agreement was ratified as a result of the signing of the Treaty of Good-neighbourliness and Friendly Cooperation on 4 July 1991. See the law text at: <http://www.boe.es/buscar/doc.php?id=BOE-A-1992-8976>.

⁵⁸ MIGREUROP, *Ceuta & Melilla, centres de tri à ciel ouvert aux portes de l'Afrique*, December 2015, p. 20.

and financed by EU agencies such as Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), which was established in 2004⁵⁹.

The true key point about Morocco role of EU borders' protector refers to a repressive approach that follows a law adopted in 2003⁶⁰ that criminalises both irregular entries and sojourns⁶¹.

As we said lately, International and EU law prohibit *refoulement* and the EU Charter of Fundamental Rights recognizes the right of seeking asylum, which more than a legal notion is an institution of the current democracies.

European Union has adopted the Dublin Regime established by the Dublin Convention signed in Dublin in 1990. It was replaced by the Dublin II Regulation in 2003 and finally by the Dublin III Regulation approved in 2013⁶². The convention determines the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities and is intended to ensure that the rights of refugees under international law are protected in its member states. The system sets out minimum standards and procedures for processing and assessing asylum applications, and for the treatment of both asylum seekers and those who are granted refugee status.

Many criticisms have been addressed to the application of the right of asylum in the Spanish confetti of Africa as «the non-entry policy enforced by Spain in Ceuta and Melilla might soon be declared incompatible with the EHCR by the Strasbourg Court, thus re-opening the Western African route for mixed flows and positioning Spain again in the middle of this hot debate»⁶³.

In Ceuta and Melilla, the applicability of asylum right is associated to the “right color” of the skin and to the prevailing situation of each migrant thus is in total contrast

⁵⁹ Council Regulation (EC) No. 2007/2004 Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), OJ L 349/1, 25.11.2004.

⁶⁰ Bulletin Officiel, *Loi 02-03 relative à la entrée et au séjour des étrangers au royaume du Maroc, à l'émigration et l'immigration clandestine*.

⁶¹ As highlighted by Khadija Elmadmad, *La nouvelle loi marocaine du 11 novembre 2003 relative à l'entrée et au séjour des étrangers au Maroc, et à l'émigration et l'immigration irréguliers*, “CARIM”, Robert Schuman Centre, January 2004, pp. 1-7, p. 4: «Les articles 42 à 56 de cette loi sont consacrés aux infractions à la réglementation marocaine en matière de migration et plus précisément pour l'entrée et le séjour illégaux, commises par les personnes physique et morales. L'article 42, par exemple, prévoit une amende de 2000 à 20.000 dirhams (DH) et un emprisonnement de 1 à 6 mois ou de l'une des deux peines seulement pour toute personne qui a pénétré ou a tenté de pénétrer sans documents de voyage en cours de validité ou qui s'est maintenue sur le territoire au-delà de la durée autorisée par son visa. La peine est double en cas de récidive».

⁶² All Member States are bound by Dublin III Regulation, with the exception of Denmark. See the entire law text at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0819\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0819(01)).

⁶³ Marcello Di Filippo, *From Dublin to Athens: A Plea for a Radical Rethinking of the Allocation of Jurisdiction in Asylum Procedures*, International Institute of Humanitarian Law, Policy Brief - January 2016, pp. 1-11, p. 5.

with what is established by international standards⁶⁴.

It seems appropriate then to bring in question why should Europe maintain a fencing strategy that has as its sole result the thinning of the already fine line between legal / illegal, Europe / Africa.

Facing with the critic situation described in the previous pages, the border fences have so far manifested their failure as the bilateral plans and the legal mechanism adopted by Spain and European Union, as confirmed by the table “Inmigrantes irregulares llegados a Ceuta y Melilla” available at the Spanish Ministry of Interior’s website⁶⁵ and the table “illegal border crossings on Western Mediterranean route” by Frontex⁶⁶.

Despite the construction of hypermodern barriers, irregular border crossings have not decreased the intense militarization of the boundaries.

It follows the need for the European Union to regulate the issue in a holistic manner by adopting common policies and strategies without transforming the Moroccan cooperation in a mere armed collaboration⁶⁷. The focal point, however, is the free and unfettered exercise of asylum right, which must necessarily be guaranteed regardless of any ethnic or religious factor in order to safeguard human rights.

6. Conclusions

No one can say for sure where the name “Europe” originated. But some theories have linked the origins of the word with the Greek etymology of *eurus* (large) and *ops* (eye). Probably the spirit of a “wide gaze” has guided the creation of a States community such as the European Union aimed to unify, under tough and democratic principles, geographic and historical expressions more or less similar.

The protective essence that the founding fathers desired to the enhancement of Europe has been getting lost, and today we are witnessing a “closed gaze”. Indeed, new

⁶⁴ About this discrimination the Migreurop joint report includes the testimony of a *guardia civil* who said: «Il y a des voies d’entrée utilisées par le Subsahariens: le saut de la barrière, les embarcations en mer, se cacher dans des véhicules. À la différence des Syriens qui passent par le poste de contrôle à la frontière, en général avec des passeports falsifiés ou usurpés. Ici oui, il y a des Blancs et des Noirs, les Subsahariens ne peuvent pas venir en marchant»; MIGREUROP, op. cit., p. 51.

⁶⁵ http://www.interior.gob.es/noticias/detalle/-/journal_content/56_INSTANCE_1YSSI3xiWuPH/10180/3984870/ (Url accessed September 15, 2016).

⁶⁶ <http://frontex.europa.eu/trends-and-routes/western-mediterranean-route/> (Url accessed September 15, 2016).

⁶⁷ Vigorous endeavours were made in 2006 at the *Conferencia sobre Migración y Desarrollo*, fomented by Spain and Morocco in order to create partnership between the countries of origin, transit and destination and to offer a concrete and appropriate response to the fundamental issue of controlling migratory flows. It was based on the strong conviction that the management of migration between Africa and Europe must be carried out within the context of a partnership to combat poverty and promote sustainable development and co-development. See Rabat Declaration at: http://www.realinstitutoelcano.org/materiales/docs/RabatDeclaration_ActionPlan.pdf. See also Alicia Sorroza Blanco, *La Conferencia Euroafricana de Migración y Desarrollo: más allá del “espíritu de Rabat*, Real Instituto Elcano, http://www.realinstitutoelcano.org/analisis/1028/1028_Sorroza_Conferencia_Euroafricana_Migracion_Desarrollo.pdf.

phenomena as immigration, economic and climate changes, as well as terrorism have pushed Europe to retreat into itself, unable to offer new interpretative paradigms. The continent attacks a new problem by means of a medieval solution: the encapsulation of the cities and militarization of the borders.

The fences of Ceuta and Melilla reveal that the utopia of the global village⁶⁸, the small world thought by McLuhan, in which the geographical and physical distances are overcome, is on its way to be aborted. The open and communicated world-to-be has been replaced by an enclosed space: the enclave as main expression of the 21st Century social architecture.

Zygmunt Bauman defined this phenomenon as the end of *era space*, an age in which no place is far enough not to be able to determine changes in another space-time context⁶⁹. Ceuta and Melilla represent the archetypes of the new city-wall, called “the closed city”⁷⁰ by Lieven de Cauter who prefigured a capsular civilization, archaic and hypermodern at the same time, which has as its reference the jail double exclusion and reclusion effects.

The Spanish protective barriers on the African soil have even negatively reshaped the concept of otherness, overlapped with the categories of social antagonism and territorial invasion. This is reproduced in the legal level as all the treaties, agreements or alliances signed by EU, Spain and Morocco tend to reject the migrants through illegal mechanisms such as the *devoluciones en caliente* collective expulsions, the use of force by Moroccan Royale Gendarmerie. As reported by a Cameroonian refugee:

En quatre ans de forêts à Nador, je suis rentré cinq fois à Melilla par la barrière. Mais à chaque fois on nous a pris et jetés au Maroc. C'était très violent, il y a des gens qui sont morts de leurs blessures lors du refoulement. La quatrième fois, je suis entré bien loin dans la ville, j'étais proche du campo [CETI]. Mais la Guardia tournait, tournait pour attraper ceux qui étaient passés à travers les mailles du filet. Je m'étais caché dans des touffes d'herbe, à un moment j'ai vu les phares sur moi, c'était fini. Ils m'ont mis de force dans la voiture et jeté au Maroc, par une des portes de la barrière⁷¹.

Today we are experiencing the construction of new identities marriage where the opposites are woven together and, on the other side, to the creation of spaces where diversity is crystallized and conflicting. Europe, which is the encounter symbol of civilization, is the most active theater about the critical relationship with the migrant. The pivotal role of the fences in Ceuta and Melilla deepened the gap between citizens and migrants, between «what is inside and what is not, what is Europe and what is

⁶⁸ «But certainly the electro-magnetic discoveries have recreated the simultaneous “field” in all human affairs so that the human family now exists under conditions of a “global village”. Marshall McLuhan, *The Gutenberg Galaxy: the making of typographic man*, University of Toronto Press, Toronto 1962, p. 31.

⁶⁹ Zygmunt Bauman, *Society under siege*, Polity Press, Cambridge 2002, p. 88.

⁷⁰ Lieven De Cauter, *The Capsular Civilization. On the city in the age of fear*, NAI Publisher, Rotterdam 2004, p. 49.

⁷¹ Reported in MIGREUROP, op. cit., p. 37.

foreign»⁷².

The metal grids have proven their uselessness in achieving the objective of curbing illegal immigration. Yet the lesson of Ceuta and Melilla does not seem to be enough on the other side of the Mediterranean: in Calais, Greece, Bulgaria and Hungary new walls born in the desperate attempt to stem the flows of migrants and refugees travelling all over the European land. The gated community is an answer too tied to the past, to a medieval logic that erected cultural and geographical barriers. Continuing to gate the problematical spots would signify forgetting the decades of sacrifices hidden in the creation of a common European space.

By means of institutional practices, Europe must undertake a holistic approach to migration. If misapplication of agreements and laws prevails, the continent's self-understanding and self-esteem will continue to erode. The community must put into practice the instruments it already has in order to develop safe and lawful routes for asylum seekers and refugees into the EU. It must improve as well its cooperation with third countries, in particular on regional protection programmes, resettlements and returns. In sum, Europe has to address the root causes of migration and to analyse how Home Affairs funds are spent in migration and development contexts, including emergency funds and, above all, revising the Dublin III Regulation⁷³.

What is at stake in the European project, reaches far beyond its territory into the very essence of human societies of the 21st century. In such a realization, the Mediterranean origin of migration flows should help to reconnect Europe with its neighbours, to mend in general terms the conjugation between migrant and rights in a free space.

⁷² Jaume Castan Pinos, op. cit., p. 22.

⁷³ EP, *Draft report on the situation in the Mediterranean and the need for a holistic EU approach to migration*, January 2016; <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-575.215&format=PDF&language=EN&secondRef=01>.

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