Migration policy in the european union law european essay

FINAL PAPER, EUROPEAN EXTERNAL RELATIONS: A THEORETICAL PERSPECTIVEIrene Martinez Marias, Student Number: 10426655, No. words: 3971[Seleccionar fecha]

MIGRATION POLICY IN THE EUROPEAN UNION

Abstract. The goal of this paper is to determine whether the issue of migration can be considered a " push" for more European integration. This will be analyzed trough two theoretical perspectives: constructivism and liberal intergovermentalism. The paper will conclude that migration does indeed call for further integration.

INTRODUCTION

Nowadays, migration is an important issue to the European Union. Over the last decades the concept of migration has been linked with security issues. As a consequence, these issues have been raised by all member states to a greater or lesser degree. On top of that, migration is a new challenge for the European Union. The inexistence of internal borders within the EU has created an entirely new situation. Migration policy is an important political issue which can have a fundamental impact on the member states´ politics. It is necessary, therefore, to ask the following questions: " What role does European Union play regarding migration?", " Can migration be considered a " push" for more European Integration?" To answer these questions, it is necessary to approach the subject from a theoretical perspective in order to organize, structure and give an empirical scope to the paper. As Stoker pointed out: " theories are valuable precisely because they structure observation."[1]The paper will proceed as follows: first, this paper will briefly

describe two theoretical perspectives on integration: constructivism and liberal intergovermentalism. These will be the theoretical core and guidelines. Second, the historical evolution of migration in the European Union between the 1950s and 1990s will be examined. The numerous agreements that were constructed both outside and inside the European Union framework, and the way in which they affected the European Union and its role as supranational body, will be looked at. Third, the implementation of migration policy as a whole will be analyzed. The role played by the European Union will be explored. For this purpose, a case study has been chosen regarding the Spanish migration policy towards Morocco. Throughout this case study, attention will be directed to the Spanish ley de extranjeria (foreigner law) and agreements between Spain and Morocco. The goal is to understand in detail what kind of role the European Union plays in this specific case study. The paper will investigate whether the migration policy in this case study can be considered ´up-loading´ (exogenous) , meaning that the preferences of migration policies are determined and fixed by member states. Therefore, migration polices are created by member states and adopted by the European Union. Or ´down-loading´ (endogenous), where the perceptions of migration policy change in the very process of cooperation and interaction at the European level. Therefore, the migration polices which are created in these interaction 'down-loading' from European level to member states migration polices.

Theoretical perspectives: Constructivism and Liberal Intergovermentalism.

This paper will briefly describe two theoretical perspectives on integration: constructivism and liberal intergovernmentalism. These will serve as the theoretical core and guidelines for the analysis. The issue of migration will be briefly analyzed trough the theoretical lenses of constructivism and liberal intergovermentalism. Constructivism has numerous varieties, as pointed out by Maja Zehfuss.[2]Nevertheless, the one described by Alexander Wendt is fairly accurate and of good application to this paper: " The way that international politics is conducted is made, not given. Because identities and interests are constructed and supported by intersubjective practice"[3]. Therefore, it can be said that constructivism is based on the interaction of humans and their ideas and how this creates/maintains shared realities. This interaction between the actors creates a common interest. Constructivism would argue that migration policy in the European Union is endogenously constitute. Meaning that perceptions of migration change in the very process of cooperation and interaction at the European level. Another argument regarding constructivism and European Integration is made by Jeffry Checkel. He states that the constructivist perspective is based on the establishment and evolution of shared interests which takes place within and between the institutions of the European Union. Institutions are the place where this common interest is developed. Understanding European Union´s institutions is a necessary tool to understand the process of integration which is not as simple as a " strategy behavior "[4], as advocated by liberal intergovermentalism. Checkel further states that many situations of integration occur under rational choice, for example the meetings of the

European Council[5]. Nevertheless, it is important to keep in mind that even in the context of bargaining and self interest, the " social interaction involves dynamics of learning and socialization".[6]Regarding migration, the European Union members share a common concept of the idea of migration as a security issue based on three points: " internal security, cultural security and the crisis of the welfare state."[7]This is understood as the necessity of maintaining order and hegemony inside the European Union. Consequently, from a constructivist perspective, common problems concerning migration will create common and new solutions by the member states. The perspective of Liberal intergovermentalism will be illustrated through the thinking of Moravcsik, who is considered to be its the main precursor. His idea about integration is based on three main aspects. First, " the national states have a rational behavior".[8]Second, " there is a bargaining theory of International Relations"[9]where the states negotiate in order to achieve the highest benefit for themselves. Third, as a consequence of the above mentioned aspects, institutions are created by the European Union in order to simplify, classify and organize the actions of individual differentiated states[10]. Liberal intergovermentalism will argue that migration in the European Union is exogenously constituted. Therefore, migration polices are created by member states and adopted by the European Union. Migration is an important political issue for all member state due to concerns about security and maintaining the cultural value of states. Therefore, it can be observed that liberal intergovernmentalism is based on the idea that states act in a rational way in order to achieve their preferences. It is inside the states where their preferences are created by their social actors, and not in

the process of bargaining between the different states.[11]Another important aspect concerning migration is the perception that the European Union´s developing process in the migration framework has been complex and is also based on intergovernmental cooperation. As an example, migration initially was developed outside the European Community institutions. It was the Maastricht Treaty that connected migration to the European Union structure (third pillar, Justice and Home Affairs).[12]Both theories have strong arguments. However, it is also important to know the historical evolution of migration policy of the European Union in order to discover which of them is better suited for the case of Spain and Morocco.

The evolution of migration policy in the European Union between the 1950s and the 1990.

This paper will focus on the evolution of migration policy between 1950 and 1990. This period has been selected because in this time span migration policies started to gain importance in the member states. This occurred when the concept of migration started to be seen as a security issue. In this time period one can observe how the concept started to develop into a problem, how the states started to cooperate and which role was given to the European Union in this concrete aspect of migration. Migration policy in this period can be divided into two parts, the first one during the 1950-1960s, when migration was not an important agenda-setter. The second one during the end of the 1970s and the subsequent years, when the concept of migration started to rise as a security issue[13]for the different Member States. During the 1950s and 1960s, the migration policies of the European Union countries differed, however, they had one common factor: immigrants

were seen as necessary additional workforce[14]. The legal status of the immigrants in the 1950s was not of such high political importance as it is nowadays.[15]However, in the period of the late 1960s and mainly the 1970s, immigration experienced a change and began to be of public concern.[16]This public concern about migration can be explained through Thomas Malthus' ideas on population in the modern debate about resources and scarcity. These issues were mainly discussed in the late 1960s and early 1970s, when " The Population Bomb" was published by Paul Ehrlich.[17]The idea of overpopulation, connected with migration and security, creates concerns about the " possible scarcity" of the welfare state. As Jeff Huysmans explains: " Scarcity makes immigrants and asylum seekers rivals to national citizens in the labor market and competitors in the distribution of social goods."[18]This issue regarding migration created new concerns for member states and resulted in a number of agreements, summits and treaties between the period of 1970 and 1990; The first summit about migration policies was held in 1973 in Paris, during which it " was agreed to formulate a common legislation for foreigners. The following steps, which were the development of a common position on migration in the European Community and action programs for migrant workers and their families, were taken in 1974"[19]. During 1980s the treaties and agreements intensified cooperation on immigration and asylum. This cooperation was influenced by the security issue.[20]It is important to keep in mind that this cooperation (on immigration and asylum) was outside of the European Union treaties and was developed through intergovernmental agreements. Despite the fact that these " forums were not part of the European integration process in a formal

way, they pre-structured the development of migration policy within the European Union".[21]In 1984 the Schengen group was created. The Schengen area created an area without internal borders, an area of free circulation of goods and persons without being subjected to border checks. [22]The Schengen area has been formulated outside the European Union framework. In 1986 the Single European Act and the " four goods" created more conditions to intensify cooperation on migration.[23]The member states, despite wanting migration policy to remain an intergovernmental issue, understood that it was necessary to give it a European dimension. In the following decade, the Dublin Convention was created (1990) which tried to " establish a one-stop asylum procedure within the EU and establish the impetus for development of new forms of restriction on asylum."[24]It is important to highlight that the Dublin Convention was not established under international law and instead required ratification in each member state. [25]Again, it can be observed that the attempts to include migration policy and asylum in the European Union were based in an intergovernmental process and transnational co-operation. The Maastricht Treaty (1992) was an important step for migration policy in the European Union. Immigration and asylum were placed inside the third pillar of the Union, Justice and Home Affairs (JHA)[26]. With this treaty migration and asylum policy were placed inside the European Union instead of outside of it, as was the case with Schengen. It was an issue of " common interest" and the decision-making was related to the Council, meaning that the decision-making process was still under an intergovernmental structure.[27]The following treaty was the Amsterdam Treaty which " moved immigration and asylum from JHA pillar to

a new Title IV of the Community Pillar. It also added a new article to the Treaty preamble to declare that the EU would henceforth be an area of freedom, security and justice"[28]. There was, however, still a continuity of the intergovernmental process because the Council had to decide on the basis of unanimity. Finally in 1999 another summit meeting was held: the Tampere Summit. The aim of the Tampere summit meeting was further " the creation of an area of freedom, security and justice in the European Union."[29]With this inclusion of migration in the European Union framework, the role of the European Union should be examined. How does migration policy fit in the process of European integration?

The migration policy of the European Union: an endogenous or exogenous policy? A case study on Spanish migration policy regarding Morocco

There is an important aspect about migration policy in the European Union that both theoretical perspectives, constructivism and liberal intergovermentalism, acknowledged. The creation of a common market, together with the free movement inside the European Union, the increase of migration and the external common border, European made it an necessity for the European Union to coordinate migration policy.[30]Despite this common starting point, constructivism will argue that migration policy is endogenously constituted in the European Union. Endogenous must be understood as a process (from inside). The perceptions of migration policy changed in the very process of cooperation and interaction at the European level. First, securitization of migration in European Union member states and the common border is creating a common problem that makes a " common"

and " new" point of view on the issue necessary. The importance of the learning process must be highlighted: " Social learning involves a process whereby actors, through interaction with broader institutional context, acquire new interest and preference."[31]However, within the migration policy of the European Union, as demonstrated, the major numerous agreements had been decided outside the framework of European Union intuitions'.[32]These forums can be seen as the place where the social learning could have happened, and that states can change their point of view because " individuals must not been seen as pre-social entities but as embedded within social relations, constituting individuals into a particular kind of agent."[33]Another important argument is the fact that the new global order after the end of the Cold War and the process of integration in the European Union suppose a new context for member states regarding their roles and point of views and the interaction between them. As Bastiaan van Apeldoorn, Henk Overbeek and Magnus Ryner argue: " In a context of profound change, it becomes increasingly problematic to assume a fixed identity to actors and to abstract their particular attributes from the social context".[34]Through a constructivist perspective the securitization of migration policy can explain that the migration problem is creating little by little a common policy. Despite that it has been a process which has taken place outside the European Union framework, it has now achieved access to the European Union. Moreover, the necessity to harmonize migration policies has been acknowledged. On the other hand, liberal intergovermentalism would argue that migration policy in the European Union is exogenous constituted. Exogenous means that the preferences of migration polices are

determined and fixed by member states. This is a process that takes places outside the European Union. The states, despite having some common points of views about migration policy, " recognize that the institutional imperatives of the single market including free movements of labor common external borders and no internal borders mean that some form of immigration policy harmonization is seen as functionally necessary."[35]The migration policy is lead by member states and is therefore born outside of the European Union. A good example of this is the study developed by Terri Givens and Luedtke. They argue that " depending how important is the immigration issue in the member states (salience) tended to create a restrictive or expanded policy harmonization in the European Union."[36]They illustrated numerous examples such as illegal immigration mutual recognition of expulsion orders. The salience, in those cases, was high in the member states. Therefore it was adopted by the Council but was restrictive towards immigrations rights. In contrast, there are, for example, the low salience issues of anti-discrimination law. The result was that the measure was adopted by the Council and was permissive towards migration rights.[37]Meaning that the importance of an issue to the member states determines the role played by the European Union. The higher the level of importance, the lesser the transfer of power to the European level. This is an important point of view from liberal intergovermentalism because, despite the assumption that internal open market with free labor creates a problem regarding migration. Migration continues to be an important issue inside the member states carrying political costs. Hence, it is inside the states were the preferences of states are created by their social actors, and not in the process of bargaining

between the different actors.[38]Put differently, " migration policy is formulated from the bottom-up because institutions are arising from domestic politics and national immigration policy."[39]The idea that " within the European Union the Council of Ministers has had more influence over immigrations matters"[40]supports this. There is a primary rational behavior from the Member states in the way in which the interest of the state is pursued. When the migration issue has an important political salience in the member states, it does not matter if coordination is necessary. Member states will not delegate too much competences to the European Union institutions. Another important argument it is that migration policy for liberal intergovermentalism is that: " Initial intergovernmental cooperation developed outside European Community institutions, only subsequently becoming loosely connected to the Community structure through the Maastricht Treaty. Most aspects of the frame work continue to be dealt with by ministers of member governments as cooperating agents to the intergovernmental process ".[41]This is justified by historic part in which most of the agreements about migration have been developed outside the European Union. It is a consequence of the bargain process between the different member states to achieve their preferences. Thus, outcomes in migration policy are a consequence of the bargaining process and institutions that are created to simplify, classify and organize the actions of individual differentiated states, which act under state-oriented rationalism. [42]Nevertheless, it is difficult to figure out without an example. The case study here is the Spain migration policy with its neighbor country Morocco. This is an important case because Spain is seen as the gate for immigrants

coming from North Africa. Spain has adopted the migration policy of the European´s external migration which is based on the idea of reducing immigrant flows towards the European Union, as argued by Daniel Wunderlich.[43]It is linked with the idea that immigration is understood as a security issue. In order to combat this problem the European Union has used the tool of cooperation with Non Member States since 2001.[44]The European Union has played an important role in the migration policy between Spain and Morocco. It has affected the Spanish law and different Spanish governments have coordinated strategies to reduce immigrations flows from Morocco. For example, the first Spanish law, ley de extrnajeria 1985 (Foreign law), harmonized Spanish law with the rest of the European Community. As an example of this law " cohesion", Spanish law follows European immigration policies which facilitate the freedom of movement inside European. In 1991 visa requirement was introduced for Morocco. [45]Here, the European Union played a cooperative role: cooperation was used as a tool in order to avoid illegal migrant flows from Morocco. As an example, in 1996 the Association Accord and the Barcelona process were signed. In both of them the European Union aimed to increase cooperation in order to avoid the illegal entrance of migrants. Although the European Union and Spain tried to stop illegal flows, they still continues, thereby increasing tensions between Spain and Morocco. Moreover, Spain and Morocco have other problems such as fishing.[46]The European Union has had an impact on Spanish migration policy. For example, the last reform of Spanish law shows cohesion with the European Union in items such as airport transit. Aspects from European Community law and in particular the Community

Code of visas were incorporated in Spanish law. The third title of the Spanish law introduced modifications which were derived from Community law regarding student exchanges.[47]This is an important aspect because it shows how one of the Member States introduced a European Union norm in its own law. Nevertheless, it has an impact on the member states´ migration policies. However, this does not mean that the process is completely down-loading. This shows that it is a mix between up-loading and down-loading because the member states do not change all their migration polices but, rather, they integrate the common European law in their own law, including its norms.

CONCLUSIONS

To conclude, it can be said that migration in the context of the European Union is a complicated case. From a constructivist perspective, it has been argued that migration policy in the European Union is endogenously constituted, meaning that perceptions about migration change in the process of cooperation and interaction between the member states. Therefore, it is a process that happened inside the European Union through processes such as learning and interaction that are being developed between the states. Because of that, policy making is a down-loading process due to in this interaction which creates new points of views about migration. These are subsequently adopted by the states. On the other hand, liberal intergovermentalism argues that migration is exogenously constituted, meaning that the preferences of migration are determined and fixed by the member states. Therefore, it is an outside and up-loading process, because the decisions are taken by the member states, which followed their own

interests and created certain common polices direct towards issues in which they are willing to share competences. According to this theory, it is not the European Union which creates policies, instead it is the member states which act accordingly to their preferences. Migration and its understanding as a security issue gained importance in the agendas of the member states. This had an impact on the European Union as such. The impact is reflected by the agreements, summits and introduction of migration issues in the Treaties and pillars. In its historical evolution, migration has been a process which, in the most of the cases, has occurred outside the European Union framework. It is after these outside negotiations that migration entered into the European Union framework with the Maastricht Treaty and Amsterdam Treaty. Therefore it can be established that it has been an outside process. However, the integration of the common market and the free movement of people have made it necessary to include migration in the European framework. In the studied case regarding Spanish migration policy towards Morocco the role of the European Union has been analyzed. It has been established that the European Union has an impact on migration policies. This can be portrayed by an example of the foreign law of Spain having adopted the Communitarian law. Furthermore, Spain shared the common approach towards migration, which was based on the common European point of view about security regarding migration. The European Union, in order to control the immigration flows coming from North Africa, has created development policies for Morocco such as the requirement for visas, the Association accord and the Barcelona process. It can be argued that it is a " mix" between down-loading and up-loading process. Member states do not

change all their migration policies, even though it is an important political issue in each country, but they integrate common law about the areas that are considered common interests, such as the control of immigration from outside European borders. It can be established that the European Union migration policy is a complex issue. Due to the fact that it is an important political issue for member states, it can have a considerable impact on their domestic politics. Nevertheless, it can be observed that despite this outside process regarding migration, a common point of view has been reached with regard to migration as a security concept. Sometimes migration polices on the European Union are exogenously constituted meaning that the member states decided and fixed up-loading from that established what will be the role of the European Union. As an example of this migration is an issue included in the third pillar, where the member states have more important role than the European institutions. Nevertheless, sometimes it can be argued that this endogenously constituted, due to the fact that the existence of common problems, such a common border, creates a necessity to coordinate and create common areas of migration policy. This can be understood as a result of the common market. Therefore, European Union migration policy can be considered a " push" because even despite the difficult and outside process there exists a common interest, that is shared by all member states. It is the security and the maintenance of welfare state.

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