

## Securitization of Migration and Human Rights in Europe

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### Abstract

The Post-Cold War period would face the states with new problems in the field of security. Among the most discussed and contested aspects of the respective agendas is the migration. The events of September 11th redefined the concept of security in line with the new non-state actors, that came into the system. Migration in this respect is perceived as associated with terrorism and as a threat to the security of states. The phenomenon is widely regarded as securitized. The question relates to the legitimacy of this process and to what extent it affects and impacts human rights and fundamental freedoms. It is widely recognized that there is a contradiction between the human rights framework and that of security. What is noted is the nature of the discrepancy and alternatives to manage the risks, that political elites see as inextricably linked to migration. The paper focuses on concrete cases, such as France, UK and EU.

**Keywords:** securitization, migration, human rights, sovereignty, Copenhagen School .

### Introduction

Migration is among the most controversial issues of security agendas after the 1980s. The economic crises, conflicts, climate change, state collapse, etc., seem to be key factors of global migration. The phenomenon means extraordinary impact on the social, economic, cultural and political life of nations.

What is widely accepted in academic literature is that migration is securitized. An act of securitization refers to the classification of some specific phenomena (and not a few others), some people or entities as existential threats, that require urgent measures (Collins, 2013:153). Question mark lies in the legitimacy of this process and to what extent it affects human rights and fundamental freedoms.

The paper focuses on the migration – security dichotomy, the perception of the Copenhagen School on the phenomenon and especially on the interrelation securitization – human rights. In this regard it aims to highlight the difficulty of the coexistence of this rapport and what states can specifically do, in order to bring together security and human rights. In view of the analysis, will be considered examples in France, United Kingdom and the EU framework in particular, as a supranational element, just to emphasize the above.

### Migration and Security

IOM defines migration as "the movement of a person or a group of people across international borders or within a country. It is a population movement, encompassing any kind of movement of people regardless of distance, composition and causes; it is about the migration of refugees, displaced persons, economic migrants and persons who move for other purposes, eg family reunification "(Wohlfeld, 2013:62)

It is noteworthy that the international relations literature has reserved a special place to this phenomenon, seen in different ways, given that migration itself as a case study, is interdisciplinary.

The causes are of different nature, from economic, environmental, social to the political ones, such as internal conflicts, authoritarian regimes, regime instability in respective countries. It is widely proclaimed as a feature of weak and least developed states of Third World, although migration itself somehow has undone the notion of boundary or barrier, taking already a transnational dimension.

There is certainly a security - migration dichotomy. The notion of security in this regard has been evolutionary. The events of September 11th and other cases like that of London and Madrid have led to a redefinition of the concept, according to the new circumstances of the international arena and the new type of actors that appeared in the system, of non-state character. So state security, in the traditional and simple sense means the individual protection of the territory by the state.

The issue of migration has escalated intense political debates in Europe. It is regarded as related to socio - economic or political crime, breakdown of law and order, unemployment, epidemics, cultural and religious threat, political instability, etc. So, in short, it is raised as a security threat. The fact that migratory waves are seen this way, has influenced a lot policy development in the European context, as well as internal policies of countries in terms of asylum and migration (Leonard, 2007:5).

Migration is associated particularly with terrorism and 'threat of states' national security'. Border and territorial integrity is perceived as vulnerable and threatened. As a result, countries facing pressure from the consequences of terrorist acts, the outrage according to them of cultural identity of the state, public order and safety at risk, have felt the need to reconsider the border policies and migration law. The latter has undergone numerous interventions, suffering further restrictions.

#### Securitization of Migration according to Copenhagen School

The perception and treatment of the notion of security only within the military aspect of the Cold War was considered insufficient. Three main schools of thought contested and challenged this rigid view of security studies, the Critical Security Studies School, Paris School and the Copenhagen School respectively.

The largest contribution of Copenhagen School is the securitization (Angelescu, 2008:11). As a concept, securitization was originally introduced in 1995 by Ole Waever, to redefine the terminological meaning of security, criticizing and questioning all previous theoretical and ontologically materialist approaches (Themistocleous, 2013:2). It is very important to note that for securitization the concept of security is built or better said constructed by relative and subjective norms and depends on the political objectives of certain actors. According to this line, security is built by acts of speech. It is the discourse that gives the concept a reality, and consequently to the threat to security. This process according to the Copenhagen School includes three main stages (four stages when completed successfully) :

Presentation of a case, individual or entity as a threat to the referent object,

Convincing the audience or public opinion for the existential danger,

This legitimizes the drastic measures taken by the securitizing actor/agent ,

If the process results effective it may be considered desecuritized, which constitutes the final stage.

The contemporary structure of the approach to security is dominated by the dichotomy myself and the other. As it is common among people the discursive practices among states as well, undergo differentiation, discrimination and racism. They are fed by a kind of xenophobia, prey of which Europe is gradually falling. Generally states associate the interior insecurities with those beyond the border. Discourses in this regard are not only a reflection of reality, but also artifacts of the language through which the reality that they need to reflect, is built (Bilgic, 2006:12).

Characteristics of the political discourse mainly, in terms of migrants have to do with:

Positive self-presentation;

Negative Presentation of the other;

Association of migrants and refugees with crime;

Securitization of migrants and refugees.

Language is a structure that implies the deliberate manipulation and states know well how to use it at their advantage. According to the Copenhagen School there is no security issue in itself, but only issues which are constructed as such by the securitizing actors. By saying something, you eventually built it. In the discourse of security, an issue is likely to be

dramatized and exaggerated, presented as a matter of supreme priority. So it is difficult to judge and reason over the securitization of an issue, or whether it constitutes a real threat. As a result, Barry Buzan says rightly, that it would take a more objective measure of security that no security theory has yet managed to identify and even less, realize (Buzan et al., 1998:30).

To conclude this section, it is worth noting that the Copenhagen School is not yet adapted to the new context of security issues, remaining essentially rigid and traditional. The approach is critical, but only that. It only criticizes and does not recommend, what would have to do actually. The securitization framework is essentially linguistic, in other words a specific rhetorical structure. There is a need, for this approach to be reformatted, in order to fit the new circumstances and actors of the international system.

### **Securitization of Migration vs. Human Rights**

The events of September 11th, besides building a new reality and situation in the system, redefined and highlighted more emphatically the security issues. The security - migration interrelation came more to the fore. In this perspective, security became ever more important, and human rights more and more limited. Migration control is key to sovereignty. There is usually a tension, if not contradiction between the Declaration of Human Rights and the state's sovereign right to control the borders. So the transnational migration brings attention to the constitutive dilemma of liberal democracies, as Şeyla Benhabib notes. While the principle of collective self-determination, which includes border control, applies only to the state, the principles of human rights apply to all people. So the contradictory principles of state sovereignty, the interest to control the borders and the obligation of human rights are recognized as the liberal paradox (Fauser, 2006:5).

Sovereignty and borders are important, but so, or even more are human rights. The reconciliation of sovereignty with human rights is probably one of the biggest dilemmas of policy-making and in this context, to determine an issue as a security threat has significant implications in law, norms, policies and procedures (Wohlfeld, 2013:76). There is a clash between state security and human security. Liberal values and human rights collide with the securitization process.

Let's see how the securitization process is presented in the United Kingdom, France and then the EU's formal framework. They were selected this way in order to highlight that states do not always comply with bodies' legislations where they adhere, for the conditions of which they have consented and signed an agreement.

In Britain the discourse on migration and asylum builds a kind of ideology, which is characterized by the identification of migrants and refugees as a threat to the welfare system. The overall securitizing strategy is to link migration with terrorism. This reinforces the perception of migrants as terrorists for the public. Since the 80s, conservatives have been those who have highlighted this more. In the wake of the elections 2005 the former Conservative leader Michael Howard said:

" We face a real terrorist threat in Britain today - a threat to our way of life, to our liberties. But we have absolutely no idea who is coming into or leaving our country. There are a quarter of a million failed asylum seekers living in our country today. No one knows who they are or where they are. To defeat the terrorist threat we need action not talk - action to secure our borders." (Schain, 2008:144)

Another feature of the speech in Britain is on the basis of identity differences, which means that foreigners are traitors and abusers just because they are foreigners and something like that is in their nature. So the securitization or the "war strategy" against asylum seekers is the limitation of the benefits from the welfare system. Asylum and Migration Acts (1996) and that of Labour (1999) reduced these rights more and more, they also conditioned the financial and accommodation assistance. Policy became more exclusionary (Bilgic, 2006:16). Britain's position was made more visible after September 11th, when the government had to retreat by the Act of Human Rights in 2000 on the grounds that there was a terrorist threat within its territory (Omand, 2010:91).

Maggie Ibrahim calls the securitization a modern form of racism. The new security paradigm asserts that, rather than focusing on how migrants in need should be helped, it increases their vulnerability. Description with pejorative terms legitimizes racist waves (Ibrahim, 2005:169).

France on the other hand is something else. Factors that differentiate France from the rest of the world are the greatness and the uniqueness of its culture of *liberté, égalité, fraternité*, to which, foreigners have no sensation. In view of securitization of migration xenophobia, social tensions, special treatment of foreigners and something less the economic side effects

come together. Unlike the British, who emphasize this part more, for French people their culture and identity is more important. Although the French republican tradition is founded on the principle of equality between citizens, it refuses to recognize the existence of different cultures in France, so different identities are rejected by the French political legacy. As a result, from the perspective of the Copenhagen School, these cultures are supposed to be securitized and seen as a threat to French identity and culture. Let's see the speech in France:

" Uncontrolled migratory movement would be a threat against our fundamental national interests."  
(Philippe Marchand)

"You take a father with three or four wives and 20 children who gets 50,000 francs in welfare payments – naturally without working. Add the noise and the smell; the French worker on the same corridor goes crazy. "  
(Jaques Chirac)

"France does not want to be an immigration country anymore. The objective is now immigration zero."  
(Charles Pasqua)

This last assertion by the former leftist Interior Minister Pasqua, was included in a law. This move had totally securitizing and criminal treatment effects on migration and asylum policies. The new law gave new powers to the Border Police (Police de l'Air et des Frontieres) to return immediately anyone who did not have documents. It was this law that abolished the principle of *jus soli* in France. Many of these were not reached however, the process of securitization can be considered to have successfully concluded as a social discursive practice.

The second case of securitization in France, is the Debre Law of 1996. The law required all French citizens to inform local authorities when a stranger came into their home. This generated the greatest movement with a focus on civil rights in the history of France. It is a case to be highlighted because a securitizing move of such proportions was never realized so far as to limit the rights of the local population, as happened in wartime (Bilgic, 2006:22). In France the number of detained migrants is considerable. More than 47,000 migrants were detained in 2004. Reception areas and administrative detention centers have authentically detention characteristics, such as isolation rooms for detainees and irons. Also the general conditions and sanitation in these centers are a matter of concern by the Commissioner for Human Rights (Bourbeau, 2011:28).

In the case of EU, the issue is just a little different from the harsh policies of particular states. The identifying characteristic is only the fact that its initiatives being in a supranational level, tend to be more moderate, but they do not completely undo the securitization as a discourse. Inclusion of migration and asylum in security discussions began with the Schengen Agreement since 1985. Also the Dublin Conventions and Third Pillar of Justice and Internal Affairs, through the social construct and discourse have shifted and identified asylum and migration in a safety problem (Spijkerboer, 2013:216).

Securitization is also reflected in the documents of Council of the European Union and the way they are formulated. Since 1968 the Council differentiated the status between citizens who were part of the community and those who were not, thus making a clear separation. This was the first step towards securitization. In the Seville Presidency Conclusions in 2004 it is said: " In the comprehensive plan to combat illegal immigration, the European Union has equipped itself with effective instruments for the proper management of migratory flows and combating illegal immigration." It is a securitizing discourse and the words war, illegal migration show this. The Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals says: "Member States may revoke, end or refuse to renew the status granted a refugee ... when there are reasonable grounds for regarding him or her as a danger to the community of that Member State." So, contrary to the 1951 Geneva Convention, the Council deems some refugees as a threat. This is again a securitizing discourse. The same thing happens with the Work Programme of the Austrian Presidency in 1998 (Bilgic, 2006:27).

Regulatory policies on migration are left to national governments to design and manage, since countries like Britain, France and Germany rejected the imposition of the EU in this part (Düvell & Vollmer, 2011:9). A space not always managed within the framework of human rights.

Since 1997, Member States have delegated powers to the EU legislation regarding migration and asylum. At the international level there are three organizations that serve the framework of human rights, the UN Human Rights Committee (HRC), the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU). HRC is the monitoring

body for the International Covenant on Civil and Political Rights (ICCPR), and the ECtHR that imposes or enforces the implementation of the European Convention of Human Rights (Costello, 2012:259).

Without focusing yet on the ways states operate, it is very important to underline that even the documents themselves, the Universal Declaration of Human Rights (UDHR) for instance is limited somewhere and opened elsewhere, through certain instruments. So UDHR speaks of "the right to have a nationality", but in one's residence or in the country selected by him / her. Affirms "the right of free movement and residence", but only "within the borders of each State" and "the right to leave any country (even his own state) to come back later", but not to enter another state. Article 14 (1) of the UDHR contains the right to seek, but not to guarantee asylum, claiming that "everyone has the right to seek and enjoy ... asylum from persecution." The statement is therefore controversial (Costello, 2012:261).

Such a contradiction going on since the formulation of the document, what can be said about the applicability then? Add to this the overlapping authority of HRC and the ECtHR. There are also identified cases<sup>1</sup> where treatment, made to the detainees is debatable, if it has been carried out within the established rules of the aforementioned institutions. The legal framework of the three institutions is evasive, gives some rights, but limits many others. States as stated, decide in terms of migrants and border control. EU bodies have no compelling power over this part. National law prevails when it comes to issues of sovereignty. The fact that the contingent of migrants could fall prey to legal restrictions, punishment, expulsion<sup>2</sup>, plus the vacuum created by the terminologic uncertainty over the typology of the migrant makes the securitizing process legitimized in some way. Organisms like FRONTEX and EUROSUR serve for this purpose. It is easier for the states to expel the migrants than to ensure that their rights are adequately protected inside a lawful process of migration control (Human Rights Council, 2013:15).

Securitization can be considered an alternative and practice of lazy states that refuse to cooperate even when this is imposed in treaties, programs, common policies, etc., that deal with the management of the waves of migrants. It is way easier for the states to invest considerable budget on border control rather than on coordinating work, complying with standards and the human rights framework. So there is a need for a strict monitoring of implementation and especially the manner of implementation of the agreements. Cooperation is not impossible, states have shown that they know how to cooperate when they have the will and desire. Securitization is not the only option, as we will see in the last section.

### **The Coordination of Security Strategies with Human Rights**

Coordinating national security with human rights constitutes a big challenge. It is probably the most problematic equilibrium of the states' public sphere and perhaps an attempt for balance does not exist. The two approaches are in a permanent conflict. But before getting used to the typical cliché of difficulty, it can be affirmed that there are alternatives despite securitization.

Global data on international migration and security are limited and mainly developed at a national and regional level. It is intended to work more easily by stopping the entry of migrants than with thorough control of the people who penetrate because it costs less. States in this regard tend to strengthen the legal framework of migration beyond their borders. So basically the issue is about risk management.

Security strategies must be built in accordance with the human rights framework. It is this challenge that authentic liberal democracies deal with. In her report, regarding human rights, Special Rapporteur on Human Rights notes that "In exercising their sovereign right to regulate the entry, stay and movement of migrants and their policy on immigration, asylum and refuge, States should bear in mind the international obligations they have assumed in the area of human rights. In other words, States party to the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, must guarantee to anyone who is in their territory and subject to their jurisdiction the rights recognised in those legal instruments "(UNGA, 2004:11).

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<sup>1</sup> Kadzoev, El-Dridi, Mikolenko v.Estonia, Lokpo & Touré v.Hungary

<sup>2</sup> This happens even against to the principle of non-refoulement, the basic principle of the 1951 Geneva Convention and the European Charter of Human Rights.

Although countries tend to emphasize national security more than human security, more so given that there is no international judicial authority, to monitor the behavior of states in case of breach, there are alternatives to consider before they practice securitization. First, improving pre-entry and entry controls. Secondly, restricting the movement of unauthorized people, especially those who migrate with the help of human traffickers. Third, increasing the capacity to catch and prosecute those that pose a risk. Another effective measure is the use of intelligence services, but in this case it requires a shift of focus from the universal challenge approach to an intelligence one focused on a targeted group (IOM, 2004:15). It is further facilitated through bilateral agreements.

The strategy begins initially at an interstate level through cooperation. For persons potentially dangerous, but even in general, measures to be taken are short-term and as a result, they collide with migration laws that are long-lasting. A very important part of the state migration policy must be the protection of innocent migrants from violent reactions. The political leadership is very important as well, to educate the public opinion on the differences between foreigners and terrorists. Governments can help in a number of ways.

The last thing that should be noted is the principle of proportionality, so that any action in the name of security that impacts human rights should be proportionate to the threat. When there is danger in case of an emergency state, the measures to be taken should be reviewed by independent national bodies. Special measures should remain as such, of limited duration and be tightened only when strictly necessary (IOM, 2004:24).

## Conclusions

The September 11th events were a very big turning point in the international arena, because new threats to global peace and stability were made known. So states faced problems of a different kind such as terrorism, transnational organized crime, trafficking etc. All these phenomena were connected to migration. States are powerless in the management of migratory flows, especially in terms of legal framework, and consequently securitization remains the only option left to cope with the situation. But such a process is not economically costly, it is costly for the lives of migrants, their rights and fundamental freedoms. Because globally there is not any body that imposes this framework, states tend to choose the easier option, with less financial costs. Migration is directly related to the sovereignty and policies are mainly taken at national and state level. Many human rights conventions are not implemented and ratified, especially in the countries I mentioned above, because it effectively means outrage of the sovereignty.

European countries share almost the same problem. The imperial past has made them become more protective towards their identity. In this paper were taken deliberately discourses from France, the leader of the revolution for freedom, equality, brotherhood and United Kingdom, the par excellence democracy. These are the countries that were shaped in the name of protecting human rights and the colonial countries as well, who have subjugated peoples. Alongside these, is the European Union, which is supposed to act precisely to mitigate the arbitrariness of the Member States, but which appears to be evasive and unclear in the formulation of its documents. The situation is now more difficult after Brexit and numerous terrorist acts in France, mainly. This paper tends to have a liberal approach but it should be noted that despite their universality, human rights remain contextual, they can not be otherwise.

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