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UNIVERSAL PERIODIC REVIEW AS A MIGRATION DESECURITIZATION INSTRUMENT: THE CASE OF SPAIN

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Abstract: For the last decades, it was observed that the migration subject was addressed as a security issue due to a social construction proposed by the state that sees immigrants as a threat to security, in which they are subconsciously considered as “the other”. Thus, migration issues started to be analyzed under the security bias, which resulted in the topic being securitized instead of politicized and discussed by all sectors of society and under the human rights scope. In 2006 the United Nations Human Rights Council created the Universal Periodic Review (UPR) mechanism, which allows all UN member states to have their human rights situations reviewed every four years and a half. In this respect, the paper aims at presenting how the UPR mechanism may be a tool to *desecuritize* the migration subject by using Spain as a study case, which is the country that receives more recommendations about migrants among all UN member states. Therefore, the research focuses on a comprehensive evaluation of documents on Spain outcomes in the first two UPR cycles, in order to identify the main recommendations about the migration subject and to understand the interventions related to Spain's position on accepting or not such recommendations. The purpose here is to check the effectiveness of the UPR as a tool that may contribute to the *desecuritization* of the migration subject under the human rights perspective. The research focuses on a review of documents and bibliographic references, with a qualitative approach and exploratory nature. The initial result points out that the interactive discussion promoted by the UPR mechanism can help support to *desecuritize* the migrant issue.

Keywords: International Security; Migration; Human Rights.

I. Introduction

Given the increase of discussions on issues related to migration throughout the world, it is relevant to reflect on the way international players have approached this subject in the last years. It may be noted that, given the complexity of the subject, different players have been engaged, such as nation-states and international organizations, and they do not always address the problem

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from the same bias. While most of the national states approach migration as a security issue, for the United Nations (UN), it is a human rights issue, which should be analyzed on the no-rights-violation premise.

In this regard, the UN Human Rights Council created the Universal Periodic Review (UPR) mechanism as a tool to inspect and carry out a diagnosis of all United Nations member states as for the achievements and violations of human rights. The purpose of this mechanism is to ensure that states are complying with international agreements and obligations related to human rights. It operates in a cycle dynamic that take place every four years and a half. So, the research object of this paper is the Universal Periodic Review, and because of that we provide an overview about this mechanism. Therefore, the paper aims at presenting the perspective that the UPR is an important tool for the *desecuritization* of the migration issue, that is the UPR is a mechanism of the United Nations that politicizes migrations while approach discussions between civil society and governments.

Under the hypothesis that the UPR mechanism contributes to a *desecuritization* of migration-related issues, Spain was chosen as the study case to check whether the mechanism is effective or not, since it is the state with more recommendations about migrations among all UN member states. In addition, since the country joined the Schengen Area (1991), there has been an increase in the control of external borders to European Union (EU) countries, something materialized, for example, in the visa requirement for the entry of Moroccan immigrants. The immigration control system consolidated by Spain since then followed the trend already prevalent among the members of the EU, to securitize the control of migratory flows and try to contain its increase (PIMENTEL, 2007). With this in mind, by using an exploratory and descriptive manner this paper tries to answer the following question: how can the Universal Periodic Review of the United Nations support the *desecuritization* process of the migration issue in Spain?

The paper was methodologically structured in three parts. In the first section, the purpose is to present a bibliographic review of the literature discussing the securitization of immigration, so as to explain this process-making and its outcomes. As for the second section, the Universal Periodic Review mechanism is analyzed to explain the migration problem under the human rights scope, so as to point out where the human rights vs. security discussions will lead us. Finally, in the third section, a document-based analysis is made on the participation of Spain, as a reviewed State in the migration subject, in the first two Universal Periodic Review cycles.

This investigation consists of analyzing documents from official archives used in the review mechanism, such as national documents, United Nations reports and a compilation of civil society documents, which will be relevant for the understanding of Spain's role as a

reviewed state in the UPR under the migration subject. For data analysis, the following numbers are considered: total recommendations, total noted⁴ recommendations, total recommendations of the migrant issue and total noted recommendations of this issue; as per documents submitted in the working groups of the review mechanism, all of them available at the official website of the Office of the High Commissioner for Human Rights (OHCHR).

II. Securitization of migrations

It may be noted that official speeches and social practices created a restless collective mind that establishes immigrants as “the other”, that poses as a threat and source of uncertainties. However, this image does not comprise all migrations throughout the world, but only the image of migrants coming from poor regions and that, as a rule, face political, economic and social issues. For these marginalized groups, migration represents the search for a better life, something that is intrinsically related to human rights, but that has not been approached as such by policymakers of the main destination countries. Actually, it is quite the opposite: the securitization of the south-north direction⁵ migration subjects predominate. Although there are contestations to the understanding of migrations as security issues, this understanding is the product of a political and social dynamic that reifies migration as an element that challenges the good life (HUYSMANS, 2000) of societies in the global north.

It is relevant to elucidate the concept of securitization, so as to make the proposed analysis easy to understand. When a subject is characterized as security-related, it means that the logic of politics is taken beyond the already established rules of the game, that is, it stipulates the subject to a special kind of politics, or even put its above it (BUZAN; WAEVER; WILDE, 1998). This process may be explained as the opposite to politicization of a determined subject, when it starts to be understood as a security issue and, as a consequence, as an existential threat to the state, thus demanding the immediate use of all available measures against the threat (WAEVER, 1996). Such a threat to stability serves to justify the urgency of determined control measures, as well as extreme actions by the state, resulting in a securitization process (WAEVER, 1995).

In this sense, it is imperative to realize that security, and consequently the perception of

⁴ “*Noted* is a very interesting nuance of the UPR process [...]. Politically, *Noted* is a compromise between rejection and acceptance, that is, by pointing to *Noted*, the state positioning occupies a gray area between non-acceptance and non-rejection. Therefore, in the eyes of the States, it is an interesting nomenclature, as it often softens the effects of constraints of not accepting certain recommendations” (HERNANDEZ; ROSA, 2018, p. 142, own translation).

⁵ On the south-north direction of migrations, we highlight the contribution of Hernandez and Rosa (2019), who assess migratory flows from Mexico, Guatemala, Honduras and El-Salvador to the United States, under the perspective of the Universal Periodic Review mechanism.

threat, come from a discourse act, that is, the securitization occurs when a securitization agent claims that a certain problem is a security issue (WAEVER, 1995). Thus, the threat issue is essentially related to the logic of social construction, since the subjectivity of this concept is related to the need for a collective perception of what is understood as a threat. So, security issues are socially constructed (WENDT, 1992), mainly from discourses from players interested in establishing a security agenda (TANNO, 2003).

It is possible to understand the immigration securitization, among other factors, as one of the effects of the current ascension of the far-right politics⁶, which tries to use elements like racism and intolerance to exert control over the population. Therefore, the conception of state as a closed politic body is at risk by the securitized figure of the immigrant, which, by its turn, is related to the fear that political actors have of losing control over their territorial borders (BIGO, 2002).

Thus, the real intention of governments that have been using such authoritative practices is evident: to try to establish order and create a stable identity, which is something that the current nation-state has not been able to ensure. Thereby, one must consider that

the immigration securitization goes beyond a differentiation process inherent to the entire identity construction, but pursues the exclusion of the immigrant as a political subject, since he/she is a symbol of a gap in the national identity, a circumstance of the modern citizenship (VELASCO, 2014, p. 19).

For example, the treatment that European citizens and citizens from developing countries receive from the European Union is not the same, from explicit privileges for the first, to restrictive measures with the purpose of a comprehensive process of delegitimizing the presence of the latter. In addition, European politics are often considering migration as an instability factor for Western Europe societies, which is a securitization strategy that works better in a scenario that makes the inclusion of migrants in these societies more difficult (HUYSMANS, 2000).

Even though migration securitization is a contemporary and current issue, it is not something new actually. Since the 1980s, as migratory flows started to increase, policy discussions were already establishing the need to keep the internal order and stability, because migrants were considered a challenge and a danger for the welfare of the domestic society (BIGO, 1994; HUYSMANS, 2000). As a consequence, the securitization logic of this issue became a “transversal political technology” used by the rulers as a mode of governability to ensure their condition as protection and security providers (BIGO, 2002, p. 65), which has currently gained more power once again.

⁶ Such a statement may be seen in people like Viktor Orbán (Hungary), Mateusz Morawiecki (Poland), Lars Rasmussen (Denmark), Sebastian Kurz (Austria), among others, mainly elected by their promises to close borders.

Thus, the relationship created between "migration" and "security" is reflected in the political formulations that, as a rule, associate the subject with the fight against criminality, terrorism and, consequently, the reinforcement of the external borders' control. Also, these formulations use a specific type of language full of restrictive terms aiming at polarizing the perception between migrants and natives, as well as justifying control and surveillance acts. Besides, another negative point in the daily life of those who are coming is, in practice, the prevalence of crime-fighting experts to deal with migrants, in the most different departments and agencies related to the subject (DIAS, 2014).

Hence, the dimension of the identity protection of a society under the migration securitization logic is not sufficient to deal with the consequences of migratory flows, thus neglecting the actual complexity of the subject. In order to solve the deadlock of the contact between such different populations, the manichean security method approach, which considers people as enemies or allies only, is not valid. Social relationships are developed in a more complex manner and cannot be analyzed in such a simplistic way, by using exceptionality policies oriented only for the resolution of crises (BRANCANTE; REIS, 2009). The project of a plural society, in which the immigrant is not seen as "the other" or as a social identity threat, shall be executed based on human rights and not on the current securitization approach.

Didier Bigo (2001) points out that it is not possible to state that a challenge to the survival of the society or threats to the national identities exist. What is indeed noted is the securitization of the "daily living", when social and structural transformations, but organically related to the development of the society, are observed and confronted in a hostile manner. Based on these misunderstandings, everything may be seen as a threat, particularly when prominent differences are evident and treated as a security issue.

Securitization transforms the logic of the understanding on a determined issue since it requires a sense of urgency and exception which, by its turn, accelerates the natural performance of democratic procedures. In this respect, such a process goes beyond discourse act to stage a narrative only, becoming an enactment of the exceptionalism in the political life and, for that matter, "questions about which type of politics we want need to be asked" (ARADAU, 2004, p. 392). This logic of exceptionality established through securitization discourses conditions policymaking processes and prevents the necessary approximation between policy makers and civil society from taking place.

That said, the *desecuritization* process may be understood as an ethical-political choice that refuses to allow politics democracy to become an exceptionality. So, it represents a way to fight against the securitization of discourse acts, when it tries to restore the proper democratic

procedures in politics (ARADAU, 2004). As for migrations, the effects of this process have alternative proposals to think about the human mobility crisis and how to prevent the offensive behavior by a large part of the destination states, since even though a lot of criticism about the securitization has been made, migration continues to be associated to a security issue (BIGO, 2002).

In order to do so, institutional approach tools may offer a way to inspect and regulate the practice of the states regarding the subject, which shall be the focus since it is part of the human rights scope, with the purpose detaching the issue from a security point of view. Thus, the next section will explain how the Universal Periodic Review mechanism of the United Nations may contribute as one of these institutional tools for human rights.

III. Universal Periodic Review and migration subject under the Human Rights bias

The Universal Periodic Review of the United Nations is a mechanism created in 2006 by the United Nations Human Rights Council. The mechanism proposes the systematic identification of advances, challenges, and problems on human rights throughout the 193 UN member states. The periodicity of this mechanism is every four years and a half, which is the duration of a cycle.

The implementation of this mechanism was the main change made when the old United Nations Commission on Human Rights was replaced for the United Nations Human Rights Council, and its purpose is to increase the political importance of international human rights questions and renew the reliability of the agency. UPR's commitment is to handle human rights issues universally, with less vulnerability to selectivity criticisms, which were crucial for the replacement of the Commission for the Council, in 2006.

The review process is divided into four steps and at first, the reviewed reports containing human rights achievements and challenges of the state are submitted to the United Nations Human Rights Council. Three document categories are the base of the review: a 20-page state report, 10-page UN reports with conclusions and recommendations by the High Commissioner for Human Rights and 10-page reports prepared by NGOs, the civil society, and stakeholders (RATHGEBER, 2008).

Thus, at the end of the documents' submission to the Council, the second mechanism step takes place, which is adopted in the final report called Working Group. The reviewed state, members of the Council and watchers participate and intervene in this step. Then, recommendations and remarks of the State Under Review (SuR) are prepared. In the last phase

of the review mechanism, the state is free to determine which recommendations will be partially supported or noted⁷ and to submit its positions in the session after the review, considering the report of the United Nations Human Rights Council. If the recommendations are supported by the state, it assumes a human rights international commitment and it shall implement and present advances on the supported aspects of the reviews, which shall be followed and monitored for the next mechanism cycles.

The Universal Periodic Review is a broader and more complex procedure if compared to other UN human rights system mechanisms since it is not limited to submitting official documents to the agency responsible for analyses and issuance of recommendations, but it also contains the tool to implement such recommendations, by the assessment of human rights progress and development, which is made promptly and pursuant to the schedule previously outlined in the agenda. However, it is important to notice that although the mechanism has important advantages for strengthening the UN human rights system, some factors limit its ability to act, such as the politicization of the mechanism and the bureaucratic difficulty in accrediting participating NGOs (MATIAS, 2014).

The review mechanism is an effort created to discuss the main human rights problems the state performs and faces. In this aspect, when the immigrant subject is discussed based on human rights, the states tend to accept the remarks and recommendations, thus implementing new governmental projects to protect and promote fundamental rights. Systematic violations are committed by many states when migrations are addressed under the security scope and the review mechanism may contribute to complaints of disrespect of human rights.

So, when a state addresses migrations under the international security bias, which “focuses on the illegal entry law, criminal activities or terrorism” (FREEDMAN, 2015, p. 85-86), it violates the human rights of the individuals, since it uses security interests for its migratory policies. Therefore “when the migration issue is securitized, it dehumanizes the involved individuals, making it easier to justify or explain human rights abuses” (FREEDMAN, 2015, p. 85-86).

IV. The case of Spain

Since the Universal Periodic Review research institute database, *UPR Info*, verified that Spain is the country that has received more migration recommendations of all UN member states

⁷ There are no sanctions for States that do not comply with the recommendations made by the Universal Periodic Review of the United Nations.

in the first two mechanism cycles, this section aims at understanding how was Spain's participation, as a reviewed state, in the migration UPR, as well as processing how this mechanism may be a support for the migration *desecuritization* process.

To do so, a mapping of Spain's participation in the first two review mechanism cycles is shown, classifying the states that made more recommendations and the main recurrent topics under the migration scope. In addition, Spain's government position is analyzed as for the acceptance or rejection of the mechanism's recommendations, and securitization positions are identified under the migration scope.

IV.1. Spain's participation in the first UPR cycle (2010)

The first Universal Periodic Review mechanism cycle in which Spain was analyzed took place in May 2010. In that occasion, 50 states prepared 140 recommendations; 40 of them were noted by the Spanish government. The most addressed issues in the recommendations were Migrations, with 41 recommendations, Women's Rights, with 34 recommendations, and Racial Discrimination, with 21 recommendations.

As for migrants, the Spanish government stated, in its national report, that:

Spain, in common with all other developed countries that are destinations for international migratory flows, is not a signatory to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. No European Union member State has yet consented to be bound by this Convention. The main reason for this is that part III of the Convention confers rights on all workers and their families without distinction, i.e., regardless of whether or not they are in a regular situation (arts. 8 to 35) (A/HRC/WG.6/8/ESP/1, 2010, p. 06).

Here it is possible to see how the government of Spain used the European Union to evade the responsibility of signing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to support its position. The States that made more recommendations to Spain about migrations in the first cycle were Uruguay and Pakistan, with 3 recommendations each, followed by Brazil, Argentina, Peru, Cuba, Bolivia, Algeria, Nigeria, and Bangladesh, which prepared 2 recommendations each. Then, from the 40 recommendations on migrations, 17 were not supported by the Spanish government.

One example of recommendation supported by Spain's government was the recommendation made by Algeria on the reinforcement of measures to ensure, during a crisis period, an effective protection of the human rights of the migrants and to take additional measures to ensure the access to economic, social and cultural rights of the migrants, which were the main victims of the high unemployment level in Spain (A/HRC/WG.6/8/L.5, 2010).

Another recommendation example, but that was noted by the Spanish government, was prepared by Uruguay, which referred to ensuring that all migrants had effective access to services related to economic, social and cultural rights, regardless of their migration status. The recommendation made by Bangladesh, which addressed the issue of continuing seeking migration policies that are open and egalitarian to migrants with both regular and irregular status, was also noted (A/HRC/WG.6/8/L.5, 2010).

To better understand the characteristics of the states that made recommendations to Spain under the migration scope, we used the 2017 Human Development Index (HDI) of the United Nations, which assesses the quality of life and economic development of the states. As per the United Nations, developing countries have a low economic and social development, that is, in the HDI scale, from 0 to 1, the more developed states are closer to 1 and the less developed states are closer to 0. Developed states have an HDI average of over 0.800, average developed states have an average level between 0.799 and 0.699 and low developed states have an average of less than 0.599.

In this regard, 30 states made 41 recommendations under the migration scope for the first UPR cycle of Spain. When the Human Development Index of the states that prepared the recommendations was categorized, it was verified that most of the States that participated in the review are considered as having an average economic and social development level. A total of 16 states were considered as having an average development level, 11 were considered as developed and 3 were considered as having a low development level.

Most of the developing states recommended the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which UN considered a category 5 recommendation⁸. All recommendations on the ratification of the convention were noted by the Spanish government. Another aspect to be mentioned is the number of recommendations prepared by countries in the African and Asian continents.

IV.2. Spain's participation in the second UPR cycle (2015)

Spain was reviewed in the second mechanism cycle of the Universal Periodic Review in the year of 2015. On the migratory flow, the UN report stated that, in 2013, asylum-seeking

⁸ The UPR recommendations are classified into 1 to 5 categories. So, recommendations under 4 or 5 categories are more specific for the state, since they are more efficient for human rights situations, while those under 1 to 3 categories are more general, to ratify legal instruments.

requests had a 70% increase when compared to the year of 2012. Thus, from 4.513 cases, only 203 people obtained the status of refugees and 146 obtained subsidiary protection (A/HRC/WG.6/21/ESP/1, 2014).

The Spanish government received a total of 209 recommendations from 84 states. The most addressed topics in the second UPR cycle were the following: Migrations, with 62 recommendations, Women's Rights, with 34 recommendations, and International Instruments, with 34 recommendations. On migrants, 47 states made remarks and recommendations to Spain, and 26 recommendations were noted. The states that made more recommendations on migrations were Philippines and Iran.

One example of a supported recommendation by Spain's government was the recommendation prepared by Canada's government to ensure that the Spanish legal framework concerning migrants, refugees, and asylum seekers, with particular attention to the autonomous cities of Ceuta and Melilla, complies with its international human rights obligations, including with regard to procedural safeguards (A/HRC/WG.6/21/L.5, 2015).

As an example of a recommendation that was noted by the Spanish government, we have Turkey's recommendation regarding measures to be taken to reinforce both regular and irregular migrants' rights. Austria recommended to review the current deportation practices for migrants in Ceuta and Melilla, and the Spanish government also noted this recommendation (A/HRC/WG.6/21/L.5, 2015).

To identify the profile of the states that prepared recommendations for Spain's government, the same method applied in the first Spain cycle was used. With data from the 2017 Human Development Index of the reviewer states, it was possible to identify that most of the states that prepared recommendations are considered as developing countries. A total of 35 states are classified as having low or average economic and social development, and 12 are considered as developed. These countries are particularly from Asian and African continents.

As well as in the first cycle, the states with lower human development indexes recommended the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Most of the recommendations on this subject were under category 5, which demands higher structural efforts for the state under review. All recommendations in this setting were noted both in the first and second UPR cycles.

V. Conclusion

In the first two Spain cycles in the Universal Periodic Review mechanism, the Spanish

government received a total of 349 recommendations. 103 of them were related to migrations and 43 were noted. Then, 62 member states submitted recommendations and collaborations on this subject. The states that made more recommendations to Spain under the migration scope were those from regional groups considered as developing countries, particularly Philippines, Iran, Uruguay, and Pakistan.

Throughout the development of the review mechanism, it is possible to make a substantial analysis of the contributions the mechanism brought to the international promotion and protection of human rights, particularly when it comes to the *desecuritization* of migrations. For example, during the cycles, it was possible to observe a considerable increase in the number of recommendations received by Spain. This may be explained by the fact that, as states, entities representing the UN and the civil society began to better understand how the mechanism worked and the proportion that the UPR may represent, they started to participate more in the review processes, thus resulting in more recommendations.

On the other hand, the high number of noted recommendations in more specific categories, such as category 5 recommendations, shows that securitization still prevails, even with the migration subject being approached. The states choose which recommendations are in accordance with their external and domestic policies regarding human rights, so, the mechanism allows them to choose which shall be implemented.

In addition, during the mentioned period, there was a raise of the border control level in the southern region of the European Union, due to the increased number of migrants trying to arrive at the European territory, which had a huge impact on the Spanish migratory control, that was more worried in having fewer migrants entering into the country than in complying with human rights-related rules. By the border externalization, which is the European states signing agreements with third states where human rights are not respected, security practices are put into place to try to keep migrants out of Europe; in addition, there is the fact that migrants do not easily find legal ways to enter and regularly live in Europe.

As Spain's migration flow increased in the last years, some migration policies have been established to control irregular migrations in the borders. Such control and security policies have the purpose of defining an instrumental policy, that is, a unilateral and limited view that usually violates human rights and coordinates migrations according to the interests of the States (DE LUCAS, 2002).

In summary, despite its limitations, the Universal Periodic Review mechanism of the United Nations is an important tool which can help address the *desecuritization* of migrations, since it provides discussions from three points of view: from the government level, from UN

system and from the civil society's opinion. Furthermore, it provides access to reliable information, thus facilitating accusations of systematic violations by the states and is a support for the monitoring of implementations of recommendations, which is crucial for its effectiveness.

In a general sense, recommendations addressed migrations with accusations of issues like racism, xenophobia, and violations of human rights in the most general categories, under 2 to 3 levels. It was recommended the improvement of the infrastructure to receive migrants, such as job opportunities and public and law policies. Another recurring aspect in the recommendations was the concern with children without parents.

Finally, the member states of the European Union almost made no recommendations under the migration scope. However, when they were made, they have usually had an amicable diplomatic speech pattern, that is, only moderate remarks were made, with no serious questioning of behaviors or accusations of human rights violation. In the case of Spain, when any subject related to irregular migration was presented, the recommendations were noted. According to Freedman (2015), even though efforts to create mechanisms to reduce the securitization of the migration as for the human rights, the fact that states are choosing to reject the recommendations is a way to not comply with the laws and tools and continue following the securitization line.

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