

# Learning from the *cayuqueros*

*What the African “boat people” are teaching Spain – and Europe – about immigration policy*

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Alanna Ryan, International Catholic Migration Commission  
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If celebrity status were determined merely by the amount of public, political and media attention given to a particular subject, then the southern borders of Spain – and the thousands of migrant men, women and children arriving on the coasts in small fishing boats – are among the world’s greatest celebrities. While the numbers of migrants arriving on Spanish shores by boat are in fact considerably less than those crossing other international borders, the high visibility of the treacherous sea crossings to a European continent with wide-ranging immigration concerns has brought the African-Spanish immigration experience to the forefront of political and humanitarian debates.

With relatively little experience as an immigration country, Spain has found itself in the challenging position of scrambling to develop and implement immigration policies that effectively address current immigration realities and the country’s economic demand for an expanded workforce, while at the same time satisfying the political pressures of the greater European Union (EU) for increasingly congruent immigration policies and tight control of external EU borders. As might be expected from *any* government when improving competencies and developing new operational skills, Spain has undoubtedly experienced a steep social and political learning curve over the last decade as it has attempted to react to the arrival of migrants in *cayucos* (small fishing boats) with the urgency that Spanish citizens, the international community – and the situation itself – demand. Nonetheless, it may be argued that this very experience, together with the persistence of the administration and civil society in exploring innovative approaches to migration, is increasingly being considered as an important point of reference in international migration debates.

In real terms, the number of people arriving by boat to the Spanish Canary Islands represents a negligible percentage of Spain’s total irregular immigrant population, the majority of which comes into the country *legally* only to later overstay their visas, drawing little or no public attention (Duvell 2005). Yet, despite the

relatively small numbers, the steady arrivals of “boat people”, or *cayuqueros* as they have been dubbed in Spain, may well be among the most important factors shaping contemporary Spanish – and broader European – immigration policy. Unlike the majority of immigrants coming into the country through more ‘traditional’ means, the *cayuqueros* have been made exceptionally visible in terms of the extensive media attention given to their dramatic *group* arrivals, thereby making their entries appear particularly illegal and raising important questions of human rights, political jurisdiction and government competency. This exceptional visibility has made the small but manifest undocumented African population in Spain highly influential, in the sense that the government authorities have effectively been obligated to address questions of migration management much more quickly than they might otherwise have done.

It bears noting, however, that this unique influence on the evolution of Spanish – and ultimately European – approaches to immigration has come at great cost to the men, women and children who chose to make Spain part of their migration trajectory. Deemed “the Year of the *Cayucos*” in popular press (Bandera 2006) and recognized by academic scholars as a period of pointed increases in boat-based immigration to Spanish shores (Duvell 2006; Haas 2007), the year 2006 saw some 32,000 *cayuqueros* reach the shores of the Canary Islands alone, not to mention the more than 2,000 that died or disappeared during the difficult crossing (UNHCR 2007). Media reports have frequently detailed the degree to which the Civil Guard, civil society NGOs including the Spanish Red Cross and local communities have struggled to attend adequately to these arrivals and yet rarely have they reported on the situation of migrants beyond their immediate arrival. Receiving considerably less media coverage, the year 2006 also saw record numbers of migrants for whom no repatriation agreement could be made with their countries of origin transported – by the Spanish government and with standing expulsion orders in hand - from their initial point of arrival on the Canary Islands to the Spanish mainland, in accordance with Spanish immigration laws (Carling 2007; Sabhi

2007). Regardless of whether the Spanish administration should be commended for choosing this strategy as an alternative to migrant internment/detention or criticized for consciously “importing” a population thereafter trapped into a state of administrative illegality, social invisibility and overall vulnerability, the experience has provided many valuable lessons and enabled Spain to take a prominent role in addressing migration as a phenomenon of shared international interest and responsibility.

## Research gaps and objectives

In 1991, just as Spain was beginning to recognize itself as a country of immigration, then Spanish Prime Minister Felipe Gonzalez referred to the Strait of Gibraltar as “our Rio Grande”, suggesting the similarities between irregular migration at European-African and US-Mexican borders. Yet today, nearly two decades later, the quantity of empirical research available on irregular African-European immigration pales in comparison to that of its North American counterparts. While notable work has been done on the dynamics of border control (Cornelius 2004; Carling 2007), the origins of migration flows (de Haas 2007; Schapendonk et. al. 2007), the integration of immigrants into the host society (Moya 2004; Obiols 2004; Zapata 2004) and on comparative immigration policy more broadly (Cornelius 2004; Rotaèche 2003), little work has thus far been carried out on the effect that the presence of a particular immigrant population may have on the design of new policies in a State – and region - still defining its national and regional European identities within the migration context.

Placed within the framework of classical theory on policy making, the arrival of the *cayuqueros* has not only served as an important “focusing event” for inspiring political change, but also provided significant experiential learning that has affected the Spanish government’s political agenda and priorities on both domestic and regional levels. Public policy studies by scholars including Hugh Hecló (1974), John Kingdon (1995), Paul Sabatier (1987), Paul Pierson (1993), Colin Bennet and Michael Howlett (1992), among many others, have extensively explored the relationship between public policy formation and external factors and, while views differ as to the *degree* to which notable events and experiences affect decisions within the policy development realm, the importance of political, governmental, policy-oriented and social learning, as well as lesson drawing, has been well documented. As of yet, however, these theories have been applied neither to particular demographic groups such as the African ‘boat people’, nor to Spain’s related

experience with domestic, regional and international migration policy more broadly.

This paper intends to provoke further research in the area by bringing together an analysis of recent Spanish immigration law and approaches to migration, the consequential experience of undocumented *cayuqueros* living in Spanish society, and the resulting changes and developments within both domestic Spanish and greater European responses. The paper argues that Spain’s experience as a country of destination for boat-based immigration originating from Africa and the controversial migration management strategy of bringing thousands of undocumented African immigrants holding expulsion orders to mainland Spain when no repatriation options were available has allowed for important lessons to be drawn, namely: the value of comprehensive, coherent legislation; the recognition that successful migration management extends beyond border control; the advantages of multilateral approaches and the importance of recognizing and adequately evaluating the diversity of needs inherent in mixed-migration flows. This institutional learning has come at great cost to the *cayuqueros* themselves who have endured, first hand, the negative social consequences of these policies. Nonetheless, it is suggested that their visible arrival and long-term “unauthorized” presence, together with the international spotlight focused upon them, have been key factors in bringing Spain to examine its humanitarian assistance policies; reflect on issues of sovereignty and regional responsibilities; envision future socio-economic needs and address the challenges of immigration in its own terms, helping the country redefine its domestic approaches to migration and ultimately influencing the evolution of broader international policies and responses to contemporary migration situations.

## Defining terms and concepts

A great deal of the confusion in current debates on migration may be the result of a lack of clarity on central terms and concepts. It is not uncommon, for instance, to see terms such as “illegal”, “undocumented”, “irregular”, “clandestine”, “alien”, “unauthorized”, “migrant” or “immigrant” used interchangeably and with little consideration of what may be implied or understood. While this paper does not intend to suggest definitional standards for migration discourse, it is important to briefly articulate key terms and concepts relating to irregular African immigration to Spain via the Canary Islands.

For the purposes of this paper, the term ‘migrant’ and ‘immigrant’ are used interchangeably in reference to any non-Spanish citizen entering into Spain for reasons

other than tourism or study, and are inclusive of both “economic migrants”<sup>1</sup> and asylum seekers. It may be relevant to highlight that the arrivals of small African boats carrying people to shores along the full length of Europe’s southern border have been highly influential in generating debate on the protection of potential asylum seekers in what are commonly referred to as ‘mixed-migration flows’ — cross-border movements comprising both economic migrants and asylum seekers. While the distinction between economic migrants and asylum seekers is indeed essential in many situations, both are referred to as “migrants” for the purposes of this paper, given that the focus is the broad policy response to the ‘unauthorized’ arrival of men, women and children from Africa regardless of their motivations for leaving their home countries.

The terms “irregular migration” and “irregular migrant” are used in reference to instances in which migration has occurred — or a migrant has chosen to stay — without the consent of the country entered. As De Haas and other prominent migration scholars have suggested, “‘irregular’ is a broader and less normative term than ‘illegal’”, being less dismissive of the human aspect of migration and better capturing the actual experience of the migrant (De Haas 2007). Irregular immigration is largely, if not entirely, differentiated from regular migration by the fact that irregular migrants lack the proper documentation required by the laws of the host country to take up residence in that State. Recognizing that the lack of necessary documentation is essentially what places migrants into a category of irregularity, this paper therefore employs the terms ‘undocumented’ and ‘irregular’ migrant interchangeably.

Finally, with particular reference to the African immigration experience in Spain, the Spanish terms *cayuco* and *patera* are used in reference to the small, rickety boats employed by migrants attempting to reach Spanish shores from the African continent. While *cayuco* technically refers to larger, open boats that increasingly carry as many as 150 people, *patera* refers to the smaller, enclosed boats more commonly used in the late 1990s/early 2000s, which generally fit no more than twenty people. Nonetheless, in popular discourse, and for the purposes of this paper, the two terms will be used interchangeably. Similarly, the Spanish term *cayuqueros* is used interchangeably with “boat people” in reference to the migrants who have entered Spanish territory in this way.

## Theories of learning

Haunting images of men, women and children crammed into small boats in a desperate attempt to reach Europe have become a near daily feature in both Spanish and broader European media, typically set off against the challenges that local communities are struggling with in coming to terms with an immigration “that was neither desired nor anticipated” (Zapata 2004). In this context, it seems quite natural in many ways that immigration policy would evolve as a nearly direct consequence of what many would consider a “focusing event”. In fact, the question of how public policies develop and change has intrigued analysts, political scientists and philosophers alike for decades, with scholars including Hugh Hecló, Paul Sabatier, Peter Hall, Colin Bennet and Michael Howlett, among others, making considerable contributions to the field during the 1970s and 1980s, when theoretical studies on public policy formation were particularly prolific. Some ten years have now passed since the last major advance was made in public policy theory and yet, the example of the Spanish government’s reaction to the *cayuqueros* and subsequent influence on greater European policy making suggests that the contributions made by these earlier theorists remain both salient and highly relevant.

While some have argued a state-centric approach that posits policy as “a *vector diagram*, in which a series of pressures are brought to bear upon the State, which then moves in the direction it is pushed by the strongest societal forces” (Krasner 1978), others have contended that the State’s structure and policy decisions are significantly impacted by a variety of forms of institutional learning vis-à-vis previously adopted policies, “policy legacies”, lesson-drawing, and societal developments (Hecló 1974; Hall 1993). Still others have suggested that policy change is derived, not from policy learning, but rather from the exceptional influence of a conglomeration of public attitudes and opinions, or what John Kingdon has termed the “national mood” (Kingdon 1984, Cornelius 2004).

Hugh Hecló, often considered to be among the most distinguished policy theorists, was among the first to suggest that policy making is more than a mere form of power exercise, noting that it is also “a *form of collective puzzlement on society’s behalf*”, through which social and political learning is expressed. Unlike Kingdon, Hecló does not attribute much influence to external factors such as focusing events, elections, organized interests or socioeconomic development; rather, he contends that policy learning occurs nearly exclusively on an *internal* level, where “a substantial autonomy of the state from societal pressures in its formulation of policy goals” is enjoyed (Hall 1993). Indeed, while acknowledging that other sources of

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<sup>1</sup> “Economic migrant” is understood as someone who has left his or her country of origin for economic reasons rather than having done so under threats of persecution, as an asylum seeker would do.

political learning do exist, he argues that policy learning is primarily derived from experiences — both positive and negative — with prior policies. To cite a well-known section of his work:

*Policy makers may not exactly salivate at the sound of the usual bell, but there is something of a conditioned reflex in a great deal of their behaviour. Once implemented, a technique such as social insurance has tended to be readopted, to be considered the “natural” policy response for other types of income risk... The incrementalism pervasive in policy making is one manifestation of the more general tendency to respond by analogizing. Typically, steps taken with regard to a new situation are small (compared to the almost infinite variety of possible responses) because the new situation is responded to like something already known, or some element of it... The inheritance of income maintenance policies has served as a path through the immense complexity facing social policy makers and has facilitated the creation of subsequent responses (Helco 1974: 315).*

Whether looking at a State's own prior domestic policies or at models used by other governments, Hecló therefore suggests that authorities will nearly always prefer to make incremental changes based upon what has or has not proven successful in the past. Placed within the context of immigration policy making and change in Spain, Hecló's premise is of marked interest when we consider both the regional pressures placed upon Spanish authorities by other EU countries demanding more restrictive migration controls, and the administration's lack of prior policy experience with migration.

More recently, Bennett and Howlett (1992) have suggested a three-tiered framework of government learning, lesson-drawing and social learning that both recognizes the complexity of the concept of learning within a political framework, and operationalizes learning theories. In their view, organizational change, including structural and decision making processes, occurs when state officials learn process-related lessons that later translate into what they have termed “government learning”. “Lesson-drawing” is suggested to occur when policy networks learn how to use specific programs and legal and media instruments to effect programmatic changes in policy. And finally, they contend that “social learning” can be used to describe situations whereby policy communities have adopted new ideas which directly result in paradigm shifts in public policy.

Taking a slightly different perspective, others, including John Kingdon (1995), Thomas Birkland (1998), Franck Bamgartner and Bryan Jones (1998), have emphasized the importance of “focusing events” in inspiring change in public policy. Generally defined as “an event that is sudden, relatively uncommon, able to be reasonably defined as harmful or revealing the possibility of potentially greater future harms, demonstrating harms that are concentrated in a particular geographical area or community of interest and that is known to policy makers and the public simultaneously”, focusing events generally gain great public attention and often lead interest groups, government leaders, the media and civil society to “search for solutions in the wake of apparent policy failure” (Birkland 1998: 54). This concept is particularly intriguing as we consider the influence that the arrivals of African boat people have had on both Spanish public policy and broader European approaches to immigration. A phenomenon that has received extensive media attention, it seems pertinent to consider as well the hypothesis set forth by Bamgartner and Jones that “greater attention to a problem usually leads to more negative assessments of current policy, thereby creating pressure on the dominant policy community monopoly to open up policy making and accept change ... This increased, more negative attention thereby expands attention to issues and can lead to more claims of policy failure and a more active search for solutions, leading to a greater likelihood of policy change” (Bamgartner and Jones 1998: 55).

## **Cayuqueros: providing valuable lessons ... and paying the price**

National and international media have heavily publicized images of steady arrivals of boats carrying young, determined migrants and asylum seekers with powerful headlines such as, “*They were on the verge of dying and they asked for water, please*” (El País 2007). Only recently, however, has attention begun to be paid to what NGOs working with the *cayuqueros* upon arrival have been saying all along: the demographics of boat-based migration are complicated, involving a diverse mix of unaccompanied minors, pregnant women and women with young children, economic migrants, asylum seekers, trafficked and smuggled persons and people who have been made victims of violence and trauma during the course of the crossing. This diversity poses enormous challenges for border officials and social workers who attend to migrants immediately upon their arrival, and accounts of *cayuqueros* who have not received proper medical or psycho-social attention, been unable to submit asylum claims or

returned to dangerous situations in their country of origin or transit are not difficult to come by<sup>2</sup>.

Similarly, and specific to the case of Spain, comparatively little attention has been given to what happens to the migrants after their immediate arrival, including what some may call a 'glitch' in legislation that obligates Spanish authorities to facilitate migrants' entrance onto mainland Spain – despite having issued those migrants expulsion orders. As dictated by current Spanish immigration law, irregular migrants may be detained for a maximum of forty days, during or after which expulsion orders may be issued on the basis of illegal entry into Spanish territory<sup>3</sup>. In the event that the individual's identity and national origin can be confirmed within the maximum forty day detention period and a repatriation agreement exists either with his or her country of origin or departure, the migrant is forcibly returned<sup>4</sup>. Nonetheless, the majority<sup>5</sup> of migrants who receive expulsion orders cannot be returned, due to the fact that they either lack documentation from their country of origin, or their country of origin or transit has not signed a repatriation agreement with Spain and will not accept them back. Reaching the maximum detention period and without resolution for return, the migrants are simply "put on the street. They leave the police station with their expulsion order and that's it" (Human Rights Watch 2002).

It may be worth noting that not all scholars are convinced that this 'glitch' was entirely unforeseen. For some, including scholar Kitty Calavita, the legislation was deliberately designed to help fill gaps in the domestic labour market without openly embracing immigration. The law, she claims, "was designed so that irregular migrants would no longer be considered 'deportable', but rather that they would be permanent members of society, thereby creating a group of workers that are systematically denied the basic rights

*promised by a liberal, democratic society as punishment for their irregular situation. In this way, irregular immigrants find themselves in a legal limbo, an ambiguous status that perfectly reflects the contradictions of their role in the political economy"* (Calavita 2002). Whatever the case, non-governmental organizations (NGOs), Spanish society, the Spanish government – and the migrants themselves – are living out the consequences, and for them, the migrants' release from the detention centers following their arrival to Spanish territory is far from "being it", as previously suggested in the Human Rights Watch report.

Paradoxically, having an expulsion order enables *cayuqueros* to go to mainland Spain, where NGOs including the Spanish Red Cross, Spanish Commission for Refugee Aid (CEAR), ACCEM, Karibu and others have been heavily committed to attempting to fill gaps between current Spanish law and practical realities by providing essential social, health and legal services. Further observed by Human Rights Watch in 2002,

*While there is nothing legally incorrect about the issuance of expulsion orders against migrants who cannot be returned to their countries of origin, the policy has humanitarian consequences that raise serious concern. Significantly, an expulsion order gives migrants no right to work and, upon its issuance, they may never regularize their status in Spain or in any other Schengen country. The authorities' approach to expulsion ... simply sweeps large numbers of migrants into permanently illegal existence.*

This practice has been implemented nearly exclusively with irregular migrants who have entered Spain via boat and, while many undocumented migrants happily observe that the system provides a means of getting to Europe no matter what the conditions may be thereafter, others claim that the system has "trapped" them on the peninsula where, compounding the challenges of being the subject of an expulsion order, the lack of a passport eliminates nearly all possibilities of return travel to Africa<sup>6</sup>.

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<sup>2</sup> To provide but a few examples, the Spanish NGO Comisión Española de Ayuda al Refugiado (CEAR) has documented that 70% of the *cayuqueros* attended to by the NGO in Barcelona in 2006 did not have medical certificates for mandatory general check-ups that should have been carried out upon their arrival to the Canary Islands. CEAR has further documented the case of a 24 year-old migrant from Mali who had to have both feet amputated in Barcelona as a result of not receiving medical attention upon arrival, and reports that as many as one out of every eighteen of the "economic migrants" they serve have clear cases for asylum that should have been detected in initial evaluations in the Canary Islands (CEAR 2007). Similarly, Amnesty International has documented numerous cases of individuals who were not only rejected on legitimate claims to asylum, but also wrongly identified and returned to countries other than their own (Amnesty International 2005).

<sup>3</sup> Ley Orgánica 4/2000, Art 141.7

<sup>4</sup> The exception to this would be in the case of those who have presented an asylum claim, in which case international refugee law would require the claim to be investigated in order to determine its validity prior to returning the individual to his or her country of origin.

<sup>5</sup> While these numbers have likely to have increased in 2007 with the increase in bi-lateral agreements between Spain and migrant countries of origin, it is estimated that only about one quarter of all *cayuquero* expulsion orders are actually carried out (Carling 2007).

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<sup>6</sup> It should be noted that a number of institutions and organizations, including the Spanish Ministry of Exterior and the International Organization for Migration, have attempted to offer voluntary return programs for undocumented migrants wishing to return to their home countries. These programs, however, have generally had limited success, both because of lack of interest in return on the part of migrants and because of the relative difficulty in fulfilling basic criteria for return as established by the programs, including the provision of proof of residence in Spain for a minimum of six months, and obtaining a series of required paperwork, including letter from the Embassy or Consulate of the migrant's country of origin and from a Spanish NGO indicating that the migrant is in a state of social vulnerability.

This strategy has had important socio-political repercussions across multiple sectors of Spanish society. While NGOs have quickly been deferred to as primary agents of social support, migrants have been swept into a whirlwind of misinformation, arbitrary treatment and precarious living situations, Spanish citizens challenged to adapt to rapidly changing demographics and racial diversity; and *potential* migrants presented with the question of whether their migration journey may actually be, as a matter of policy, *facilitated* upon reaching the Canary Islands. Perhaps most importantly, however, the experiences of each of these populations are ultimately being reflected back to the Spanish government, where they are having a profound learning effect on the evolution of the country's approach to contemporary migration challenges.

### *Ushered into limbo?*

While NGOs work to provide support services to immigrants in the receiving communities, *cayuqueros* themselves are faced with the equally difficult task of sorting through a trail of misinformation, understanding their rights, seeking health care and finding housing, food and work. These are inevitably challenges confronting virtually any new immigrant and yet, in the case of the *cayuqueros*, having their travel to mainland Spain facilitated despite having been issued expulsion orders in the Canary Islands has made the challenges of integration exceptionally acute. Moreover, the practice has directly contributed to generating an environment of misinformation and false hopes, both in Spain and in the migrants' countries of origin.

For many migrants, the decision to leave home is one that they consider to be "well researched", having discussed it extensively with friends and relatives who have already made the trip, received advice from local religious leaders and done on-line reading (Schapendonk et. al. 2007). As one Senegalese immigrant emphasized, however, rarely do those who have left for Europe give honest accounts, neither of the journey nor of their current living situations, when calling home. "*I had a good job in Senegal*", recalls S.N.:

*Everyone always called home talking about how easy it is to make money in Europe. My parents, my aunts and uncles, my cousins – everyone pooled their money to be able to pay for my trip in the cayuco so I could go and send money back to them. I even sold my car. Now I see that was all a lie, but of course, I do the same thing. I can't call home and tell them that I have been living on the*

*street, can't find a job and that I am hated here because I am African. They would be so ashamed. So I tell them that I am doing very well and send home as much money as I can as 'evidence' – even if it means I don't have enough money to eat more than once a day (Ryan 2007).*

The migrants' tendency to misrepresent both the voyage and living conditions in Europe – together with the government's practice of transporting *cayuqueros* holding expulsion orders to mainland Spain – has been aggressively exploited by smugglers and others organizing the departures of the rickety fishing boats. To cite just one example, a well known Senegalese travel agency offers several travel packages to Europe, including the "Delivery Pack" for expectant Senegalese women to give birth to their children in France and the "D-Day Cayuco Voyage" for Senegalese men. Alleging in its *Guide to Going to Europe* that "*the massive disembarkments in the Canaries are a good solution for young Senegalese men who envision a brighter future*", and instructing potential migrants not to carry any passport or identifying papers, the agency's website highlights Spain's legislative loophole for migrants who cannot be returned to their country of origin, suggesting that they will be well received and quickly ushered to the mainland, where residency will be easily acquired<sup>7</sup>.

A number of NGOs, including Human Rights Watch, CEAR and Andalucía Acoge, have repeatedly indicated that such channels of information and the "nearly automatic" issuance of expulsion orders have ultimately created false expectations and confusion among *cayuqueros* who frequently believe that the expulsion orders are, in fact, work permits. According to field interviews held with migrants detained in internment centres:

*Not a single migrant with whom Human Rights Watch spoke demonstrated any understanding of the effect an expulsion order had on his or her legal status in Spain. Rather, they uniformly explained that the police were sending them a carte blanche to the mainland so they could work. Many of the undocumented migrants said they had applied for "work papers" and that they knew they would be getting them soon, because that is what the police had told them. Other migrants*

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<sup>7</sup> The website states that "Tenerife is the most beautiful and best island for tourism, with many beaches suitable for your disembarkment – complete with showers, restrooms, chaise lounges, etc ... Not being identifiable is the key to your success! If the fascist European police do not know your nationality, they cannot deport you ... after a short stay in a shelter (you will eat better than in Senegal, be given free clothing and shelter and will even be able to make telephone calls) you will probably be given a FREE plane ticket to Europe, then you've won residency or eventually even citizenship!"

*said they had applied for “expulsion”, but explained that this meant they could go to the peninsula (Human Rights Watch 2002).*

This lack of clarity has been further exacerbated by claims by *cayuqueros* that official paperwork and printed information given to them is presented only in Spanish — a language few understand upon arrival. Nonetheless, while it may be true that there is, as one social worker described, “a great sense of disappointment” when migrants realize that their coveted “work paper” is actually an expulsion order, the disillusionment is perhaps far greater as they discover the grave new challenges facing them in their day-to-day lives.

Not least of these challenges is the constant reminder that one is undocumented — a handicap that not only instills a poignant fear of detection and expulsion, but which some scholars have also suggested carries the added consequence of “criminalizing” irregular migrants by converting them into easily exploitable workers and targets of social discrimination (Calavita 2002). One migrant, given shelter in a local area hostel during his first days in mainland Spain by a local NGO, recalled how he and his colleagues were “terrified” to leave the hostel during the day, as encouraged by their social worker, because they were constantly afraid that “*every car passed, every helicopter that flew overhead, was the police coming to get us. Even now, I live in constant anxiety; it seems as though I have a sign on my forehead that says ‘I’m a sin papeles [undocumented]*”. Indeed, similar reports by other migrants who had been detained give certain credence to these fears as well.

*I was selling purses and wallets on the street when I was caught by the police. They asked for my papers and I showed them my expulsion order from Tenerife. I knew they couldn’t actually deport me since I had those papers so I wasn’t afraid, but then they pushed me and said they were confiscating them. I didn’t have any copies of the papers. A week later, I was stopped again by the police when I was selling my purses. This time, of course, I had no papers to show so they arrested me and put me in the police car. We drove for a long time – maybe 45 minutes – and when we were in the middle of nowhere, they stopped the car in the middle of the road, pulled me onto the ground and beat me severely. Then they left, leaving me on the side of the road (Ryan 2007).*

Particularly in light of reports by reputable human rights watch-dog organizations such as Barcelona-based SOS Racismo that have documented scores of similar cases of racial discrimination and abuses suffered

specifically by *cayuqueros* in recent years, migrants’ anxiety of being detected appears well-founded. Unable to access the “legal” labour market, *cayuqueros* are frequently marginalized and relegated to work on the black market, often selling goods on the street and beaches or working in the construction, agriculture or fishing sectors.

As social worker Fadua Sahbi has observed, however, the *cayuqueros*’ exceptional vulnerability is not only exploited in the work force, but also in other areas, including housing, where “earlier generation” immigrants take advantage of their longer establishment in Spain. Directing efforts to place newly-arrived boat people in homes with their own family or friends in Spain, Sahbi explains that she was “baffled” by the fact that Gambian migrants were “immediately” taken in, while it often took up to two weeks to find friends or family members who had the capacity to take in new arrivals of other nationalities. Subsequent investigations by NGOs including CEAR and the Catalanian Association for Senegalese Residents revealed that debt bondage is particularly prevalent within the Gambian immigrant circles, where newcomers are more frequently offered a place to stay “free of charge”, only to have rent, plus interest and often food costs, demanded of them months later. Unable to pay or find dependable work, many feel that they are left with no choice other than to turn to the drug trade, as illustrated in this field journal excerpt:

*We lost another one today. M.D. called this afternoon... He wouldn’t stop thanking me “for the kindness I had shown him” and said that he would “never forget it”. When I asked how he was and what he was doing, he said “Alhamdulillah [thanks be to God]. I’m fine, Alhamdulillah. I’m in Marbella now, in the business<sup>8</sup>. You know, I never wanted to be in the business, all I wanted was to come to Europe, work hard to make some honest money. But I owe too much now and have no way to pay it back... I’ve got no choice but the business now. I pray for you every day – I pray that you keep doing the good work I’ll never be able to do (Ryan 2007).*

Accounts such as these highlight but a few of the challenges faced by migrants who have been sent to mainland Spain without documentation allowing for their legal, work or residence situation to be regularized. While some do succeed in acquiring work and decent housing (often by acquiring false papers), many continue to struggle with the persistent sense of vulnerability and uncertainty, hoping that the Spanish

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<sup>8</sup> “The business”, as mentioned by this migrant, refers to the illegal drug trade.

government may initiate an extraordinary regularization process that might improve their situation.

## Lessons learned: Spanish approaches to immigration evolve

As Javier Moreno, Secretary General of the Socialist Party (PSOE) in Europe, so vividly described when he stated that Spain is “still wearing diapers when it comes to immigration issues”, the country is frequently considered a latecomer to immigration - particularly when compared to other long established states of immigration such as the United States, Canada or Australia. Frequently highlighted in Spain’s immigration debates, the country was in fact one of *emigration* as recently as thirty years ago when the Spanish were faced with a struggling economy and the socio-political consequences of Francisco Franco’s repressive forty-year dictatorship. Nonetheless, the successful establishment of a democratic government in 1975, followed by vastly improved economic opportunities, admission to the European Union in 1986, alarmingly low birth rates and an ageing native population unable to fulfil current labour needs have contributed to making Spain an attractive country of destination, particularly for young migrants from many African countries, where economic disparities are sharp and job opportunities frequently difficult to find<sup>9</sup>.

As has been made evident by the country’s experience receiving *cayuqueros* and other immigrants, the transition to a desirable country of immigration has not been without its challenges – particularly in the face of domestic and regional EU pressures and in the absence of prior national immigration policies upon which to build. Initiating extraordinary regularization processes for undocumented immigrants in 1991, 1996, 2000 and 2001, actively pursuing bilateral repatriation agreements, heavily promoting cooperative development programs in migrant countries of origin and establishing its own Integrated System of Exterior Vigilance (SIVE), the Spanish government has nonetheless demonstrated both interest in developing immigration policy mechanisms, and innovation in attempting to effectively adapt policies to its own domestic realities. Proud of this dynamism, Spanish authorities, including Deputy Director of Immigration

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<sup>9</sup> In 2004, for instance, Donatella Guibilaro reported that “Spain’s per capita is now nine times higher than Morocco’s. Fifty-five percent of Morocco’s population is under twenty-five years of age and labour force growth is outpacing economic growth. It has been estimated that to absorb new entrants to the labour force during the 1995 – 2010 period, Morocco, Algeria and Tunisia together would have to create about ten million new jobs”. (Guibilaro 2004).

Carlos Guervós Maillo, are quick to point out this relatively unique characteristic of Spanish policy.

*We know that other European Union member states have much more experience than we, have lived these phenomena with much greater anticipation and have already seen the immigration numbers that Spain has experienced in the last decade. Nonetheless, Spain has not limited itself to the use of models that have been applied before in other member states, considering always that those models, applied in other times, are not readily applicable to this point in time; they do not readily work to make predictions or forecasts.*

This analysis of the effectiveness and applicability of immigration policy models used in other contexts is, according to Hecló’s theory, demonstrative of policy learning in and of itself, and yet, as we will see in the following analysis, contemporary Spanish immigration legislation, as well as approaches to immigration more broadly, have also been shaped by the lessons learned from the country’s own socio-political experience receiving *cayuqueros*, just as Guervós suggested.

## Changing immigration legislation

Immigration policy in Spain dates back to July 1985, when the *Law on the Rights and Liberties of Foreigners in Spain 7/1985*<sup>10</sup> was passed as the country’s first legislation on immigration. Particularly striking given the low percentage of foreign-born residents at the time, this first move to place national immigration policy within a defined legal framework was marked by its aim to establish a restrictive stance towards immigration. When compared to the relatively more liberal policies of other European states such as Germany or France at the time<sup>11</sup>, the very fact that Spanish authorities chose to pursue restrictive policies from the beginning establishes the country as a somewhat “unusual” case and may suggest either the degree of uncertainty that was felt as the country transitioned from one of emigration to one of immigration and/or the pressure that was felt to develop policies in harmony with those of longer-established immigration receiving countries within the European Union who already maintained largely restrictive policies (Ruiz 2003; Ryan 2005). In many ways, the conservatism of Spain’s first immigration law may also be attributed to Hecló’s theory on policy learning in the sense that policy makers seem to have adapted other existing models of migration policy to fit their own perceived or anticipated needs.

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<sup>10</sup> Ley sobre derechos y libertades de los extranjeros en España

<sup>11</sup> At the time, Spain registered just 0,6 percent of its population as foreign born, while Germany and France registered 8,2 and 6,4 percent, respectively.

Whereas immigration to Spain was negligible and boat-based immigration to the Canary Islands non-existent at the time the 1985 law was first written, however, numbers have steadily increased since then and the government has attempted to adapt legislation accordingly. The year 2000, deemed the “year of immigration” by Niessen et al, proved to be a major turning point, as the Spanish parliament approved *Organic Law 4/2000: On the Rights and Liberties of Foreigners in Spain and their Social Integration*. Having emerged as an initiative to approach the question from a more integrationist perspective, the 4/2000 law was notably more comprehensive than its 7/1985 predecessor, and was initially considered to be “open-minded” and strongly oriented towards improving the social and political status of foreigners in Spain (Navarro 2000; Ortega Perez 2003; Ryan 2005). Nonetheless, lack of consensus between political parties, as well as the changing demographics of immigration flows themselves, resulted in the law being reformed along more conservative lines less than one year after its original approval, and again in 2003.

Citing as justification for amending the 8/2000 version a “better understanding of the migration phenomenon”, the “need to incorporate international agreements made by Spain and the “considerable increase in the number of foreign residents living in Spain”, Organic Law 14/2003 became effective 21 November 2003 and continues to stand as the authoritative law on the rights of foreign citizens within Spanish territory to date. In addition to guaranteeing a significant number of important rights for *regular* migrants “according to the same conditions as Spanish citizens”, it also establishes the rights of *irregular* migrants, including procedures for processing, detaining, fining and returning migrants who arrive undocumented. Of particular interest within the context of irregular African boat migration, the law states that persons who are arrested on the basis of illegal entry or residence can be detained for a maximum of three days, after which they may either be expelled if their national origin is known, or placed in an internment centre for a maximum of forty days. As previously indicated, individuals whose national origin cannot be determined or whose country of origin does not take him or her back during this time must be released, often carrying the expulsion order as his or her sole form of ‘documentation’.

In 2006, however, the number of *cayuqueros* arriving to the Canary Islands reached nearly 30,000 and the impact of the Spanish experience with irregular boat-based immigration and non-executable expulsion orders on a legislative level became unmistakably clear. Making a strong case both for Bamgartner and Jones’ theory on focusing events and Bennet and

Howlett’s lesson-drawing framework, the conservative People’s Party (PP) and the local government Canaries Coalition drafted the first *Organic Law on Measures for the Fight Against Clandestine Immigration*, which was approved in the Senate by a close vote in September 2007. For the Sevilla-based NGO Association Pro-Human Rights of Andalucía (APDHA) and other immigrant-rights groups, the approval of the draft is particularly alarming. While one NGO stated that “*all the alarms are going off ... this could get out of our hands*” (Galparsoro 2007), another remarked that the Senate-approved law was published in the Official Bulletin of Congress “*almost as clandestinely as the immigration against which they say they are fighting*” and “*proposes significant modifications in immigration and nationality legislation that are cause of serious concern*” (ADPHA 2007). Indeed, specifically citing “recent experience” with “incessant arrivals of immigrants”, “migratory avalanches” and the “uncontrolled entry of immigrants” as evidence of the need for a law on clandestine immigration, the proposed law makes implicit reference to the drama of irregular immigrants with non-executable expulsion orders<sup>12</sup> and will, if approved by Congress in the coming months, both complement and make substantive, highly conservative changes to the current 14/2000 law<sup>13</sup>. Regardless of whether the proposed law is ultimately brought into force, the initiative — and the unequivocal reasoning behind it — clearly suggest the extent to which the arrival of *cayuqueros* is influencing contemporary Spanish society and politics over and above the numbers and circumstances of other immigrants entering the country.

### ***Developing maritime surveillance and interception: SIVE & FRONTEX***

It should go without saying that legislation is but one part of the immigration policy puzzle, with much also being dependent upon the success of methods used to *implement* official policies, including the monitoring and defence of external borders. With some five thousand kilometres of coastline, monitoring the borders is no small task for Spain and yet, in 1999 the Popular Party government approved the implementation of the

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<sup>12</sup> “The practical application of the 4/2000 law ... has given rise to paradoxical situations that serve as incentive to violate Spanish laws by choosing to enter Spain irregularly”.

<sup>13</sup> Among the proposed changes, the proposed law would: extend the current forty day maximum detention period to seventy; extend from the current three year re-entry ban to six; eliminate the already slim possibility for persons who have been in “irregular legal status” to regularize their situation; establish annual quotas for migrant workers that may be contracted in the country of origin; extend the current one year minimum marriage time to three for foreigners wishing to acquire Spanish nationality via his or her spouse and eliminate the right of foreigners to register with the city hall, thereby also eliminating their right to public health care.

Integrated System for Exterior Vigilance (SIVE<sup>14</sup>) throughout the southern maritime zones, specifically citing the need to prevent drug trafficking and irregular immigration. A complex system of fixed and mobile detection devices including radar sensors, infrared cameras and communication networks, SIVE is operated by the Spanish Civil Guard and has been designed to allow authorities to detect incoming vessels as early as possible, allowing for the coordination of appropriate interception units such as boats, helicopters and cars.

From its very inception, the SIVE system has illustrated the influence of broader European regional pressures and Spain's efforts to fulfil its role as an external border State of the Schengen zone. While the Civil Guard has indicated that "SIVE presents a challenge not only for our country, but also for the security of Europe given our geographical position as the southern border of the continent", former Spanish Prime Minister of the Interior Jaime Mayor Oreja has been quoted as saying that "Spain must live up to the standards demanded by the European Union", even despite the strikingly high operational costs of the system<sup>15</sup>. Interesting to note, however, the Spanish government has not only been keen on suggesting the security aspects of the system for Spain and Europe more broadly, but the humanitarian dimension, insisting that one of the SIVE's primary functions is to detect, intercept and provide humanitarian assistance to migrants who might not otherwise make it to shore. "The SIVE", claims the Spanish Civil Guard Website, "not only discourages mafias involved in this kind of trafficking, but also saves many human lives".

Assertions that the SIVE system serves humanitarian purposes has been controversial, however, and many analysts suggest that the surveillance has redirected migrants towards longer, more dangerous and less patrolled areas, thereby contributing to, rather than reducing, the number of migrant deaths and disappearances at sea (Carling 2007). While this may be true, studies have shown that the SIVE has, in fact, contributed to saving many migrant lives. One such study, published by the NGO Doctors Without Borders, remarked that "all fatal accidents [in Fuerteaventura, Spain] occurred with pateras that were not detected by the SIVE". Their recommendation, from a humanitarian perspective, was to "strengthen the SIVE, although with a stronger emphasis on search and rescue functions" (Carling 2007).

While the SIVE system is not without its faults<sup>16</sup>, it has nonetheless been applauded by the European Union for being "a prime example of a custom-built system that has proved itself effective" (CE<sup>17</sup> 2003) and specifically cited as a point of reference for the more recently established European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – also known as "Frontex". Established in 2004, Frontex is yet a new initiative, intended to coordinate operations between EU Member States in the field of external border management; assist in the training of national border guards, including the establishment of common training standards; carry out risk analyses; follow-up the development of research relevant for the control and surveillance of external borders; assist EU Member States in circumstances requiring increased technical and operation assistance at external borders; and provide support in organizing joint return operations (CE 2003). Promoting a pan-European model of integrated border security, Frontex acknowledges that it "takes its inspiration from the practices already in place in Member States", including the heavily cited Spanish SIVE system.

The Spanish experience in surveying maritime borders and performing sea interceptions has provided valuable lessons for Frontex and, like the SIVE, the organization has been established largely under the pretext of prevention of illegal immigration and human and drug trafficking. In addition to observing that maritime border officials must receive improved, more specialized training, Frontex officials have also learned from SIVE successes and failures that, a) surveillance must be maintained on migration routes that have been "neutralized", even if it is no longer as intense as it initially was; b) that effective maritime surveillance is best organized on land, rather than the costly alternative of deploying naval resources on the high seas and c) the success of surveillance and interception efforts is largely dependent upon bilateral agreements with migrant countries of origin (CE 2003). Moreover, while Frontex' establishment may in large part be attributed to the European Union's increased recognition that irregular immigration is a broader regional dilemma, it may also be credited to a great extent to the Spanish government's own lobbying for

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<sup>14</sup> Sistema Integrado de Vigilancia Exterior

<sup>15</sup> With an estimated overall operating cost of 150€ million over the course of the first five years of implementation, analyst Jorgen Carling calculates that the system costs roughly 1.800€ for each migrant eventually intercepted.

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<sup>16</sup> Despite the Spanish governments emphasis on the SIVE's utility in preventing irregular immigration, Civil Guard staff working with SIVE are primarily equipped and trained for costal surveillance and the fight against drug smuggling rather than for humanitarian interceptions at sea. This has proven particularly problematic and Carling has emphasized that "many of the recent large drowning accidents have happened right before the eyes of the Civil Guard, who have only been able to rescue a few of the migrants once they have fallen into the water". Further underscoring the lack of proper training and increased staffing, Carling has reported that "...during a period of several drowning accidents, nearly a third of the staff were on sick leave, many with depression and other work-related illnesses".

<sup>17</sup> Council of Europe

assistance in stemming the humanitarian “crisis” of arriving *cayuqueros* that seemed to be threatening to overwhelm the resources of national police and local aid workers (Pingree 2006).

### *Promoting multilateral approaches to immigration*

If the *cayuqueros* can be said to be helping Spain – and ultimately the European Union – to refine approaches to the maritime surveillance and interception component of immigration policy, it must also be said that Spain has learned the value of placing increased emphasis on the promotion of multilateral approaches to immigration and cooperative development programs with migrant sending countries. Until the arrivals of the boat people began increasing in the early 2000s, multilateralism in the context of immigration was not considered a priority area and Spanish cooperative development programs were not explicitly linked to migration, instead focusing on poverty reduction and the promotion of Spanish cultural and scientific cooperation in a range of developing countries (Spanish Agency for Cooperative Development 2007). In the face of increasing flows of *cayuqueros* from Africa, however, multilateral approaches have become increasingly valued and the Spanish Ministry of External Affairs and Cooperation (MAES), among other government branches, has concentrated more attention and resources to strategically selected African countries and related European Union programs.

Potentially among the most comprehensively developed external affairs strategies among European Member States, Spain has developed an annual two-year cooperative development plan, entitled the “Africa Plan”, with the express objectives of participating in the development of a European Union Strategy for Africa, regulating migratory flows and combating human trafficking, among other goals. The direct influence of the *cayuqueros* in the development and design of the Africa Plan and its promotion of cooperative approaches to “putting migratory flows in order” could not be more clear, suggesting once again the important lessons that Spanish officials and civil society have drawn from their experience in attempting to develop strategies for the reception, return and integration of the African boat people.

*What distinguishes immigration originating from Sub-Saharan Africa is not so much its volume ... but rather the circumstances, often tragic, which surround their entrance into Spanish territory. The Spanish government uses this as the basic term of reference when determining the objectives of exterior activity directed towards Africa and attempts to adopt migration approaches with Sub-Saharan*

*Africa that embody a global focus, keeping in mind the causes of immigration, the positive effects that a regular and organized immigration can have both for countries of origin and for Spain as a country of destination and the circumstances that produce irregular immigration, with devastating effects for countries of origin, transit and destination (MAES 2006: 35).*

While the Plan Africa is by no means the first to identify the potential benefits of collaborative partnerships between migrant sending and receiving countries, it is largely differentiated by its articulation of a concrete, operational strategy for achieving identified outcomes. Enumerating a number of “priority countries” – including Cameroon, Cape Verde, Côte d’Ivoire, the Gambia, Ghana, Guinea Bissau, Guinea-Conakry, Mali, Nigeria and Senegal – the Plan again suggests the extent to which *cayuqueros* are affecting the development of new approaches to immigration, outlining specific steps that will be taken towards obtaining information on the routes and means of human smugglers; increasing support to regional and local authorities receiving immigrants; establishing specific budgetary lines for cooperation in the migratory field and strengthening Spain’s regional institutional presence in the West African region.

As part of this effort to develop more effective multilateral approaches to preventing irregular immigration and human trafficking, the Spanish government has also taken steps with migrant sending countries, the European Union and organizations such as the International Organization for Migration (IOM) to launch information campaigns aimed at improving the accuracy of information potential migrants receive in their countries of origin. Recognizing, as analysts have, that “the so-called modern migration encouraging factors are mainly linked to modern means of communication, of which TV and the Internet are the most important” (Schapendonk, et. al. 2007:2), the Spanish government, in collaboration with Senegal, the European Union and the IOM, launched a one million dollar TV campaign in Senegal in September 2007 with the express aim of illustrating the risks of immigration via *cayuco* and deterring potential irregular migrants from pursuing irregular means of travel. While the effectiveness of the campaign has not been fully evaluated, the initiative itself demonstrates yet another tenet of the Spanish government’s evolving approach to innovative immigration solutions.

## *Providing leadership in international and European migration agendas*

The lessons Spain has learned from the *cayuqueros* in terms of immigration legislation, border control and surveillance and multi-lateral approaches have been extremely valuable in helping both Spanish authorities and civil society actors gradually adapt and improve responses to the challenges posed by irregular migration. Perhaps more importantly, however, Spain has demonstrated both a will and capacity to share these lessons with the greater European and international context, where undocumented boat-based immigration is proving to be a particularly salient issue. While nearly 42,000 *cayuqueros* were reported to have reached<sup>18</sup> Spanish territory during the two year period of 2006-2007, another 53,800 were reported to have reached Europe via other routes to the Italy, Greece and Malta during the same period (UNHCR). These irregular *cayuco* arrivals to European Member States<sup>19</sup>, coupled with staggering statistics of similar migration to other nearby regions<sup>20</sup> and persistent media coverage of both *cayuco* arrivals and politically charged incidents where sea rescues were not performed due to disagreements over government responsibility, have brought the complexities of rescue at sea, humanitarian assistance to boat people upon arrival and the management of irregular immigration to the forefront of regional European and broader international migration agendas.

Having learned from first-hand experience that migrants will not stop coming until improved socio-economic opportunities can be found at home, Spain has been active in promoting, not only greater burden sharing and a unified European approach to receiving and managing *cayuco* arrivals, but also the increased engagement of the European and international communities in cooperative development schemes in

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<sup>18</sup> Important to note, these statistics account only for migrants who survived the dangerous crossings. While UNHCR statistics suggest that nearly 2,000 migrants have died or disappeared in crossings to the Canary Islands in 2006, the numbers are difficult to calculate and many human rights groups contend that actual numbers are significantly higher.

<sup>19</sup> Indeed the structure of the European Union plays a key role in this debate. First adopted by five EU Member States in 1985, with nearly all other EU Members signing in subsequent years, the Schengen Agreement abolished checks at internal borders between the signatory states and created a single external European border where immigration checks for the entirety of the region are carried out according to standardized procedures. Consequently, Spain, Italy, Malta and Greece have become the southernmost external border of the European Union, leading many more northern States to fear that weak immigration controls in the southern States will open the door for irregular migrants to move northwards into other regions of Europe, where controls are no longer performed.

<sup>20</sup> A hot spot particularly for Somali asylum seekers and Ethiopians fleeing mounting violence, UNHCR has reported that as many as 56,000 *cayuqueros* have reached Yemeni shores over the two year period of 2006-2007, with rough estimates indicating that well over 1,000 migrants died or disappeared during the crossing.

migrant countries of origin – a component many consider to be central, and in some ways, unique, to Spain's own developing domestic immigration agenda. Moreover, Spain's hope for a broader, regional approach to these challenges is evident in national strategic plans, and government representatives have become actively involved in advocating for more dynamic solutions to what is viewed as an important Afro-European dilemma. Explicitly emphasizing the importance of multilateral partnerships and approaches between migrant sending and receiving countries and their respective regions, the Africa Plan asserts that:

*One of Spain's primary objectives is to influence the progressive evolution of European [immigration and development] politics, contributing the added value that comes from its position neighboring the African continent, its institutional and diplomatic presence, and the positive relations ... maintained with Africa... From a multilateral point of view, Spanish authorities aim to inspire the development of an effective European Union immigration policy and encourage African organizations... to become more involved in the search for global solutions to the immigration question.*

In a concerted effort to realize this objective, Spain has advocated for and co-organized a number of conferences focused on the development of effective multi-lateral partnerships along migratory routes between the African and European continents, including the Euro-African Ministerial Conference on Migration and Development, co-organized by Spain, Morocco, France and the European Commission, and held in Rabat, Morocco in July 2006. By no means the first conference on migration and/or migration-related development, the International Organization for Migration (IOM) nonetheless suggested that the event “marked the start of a real engagement of all partners that have, and indeed should have, an interest in addressing the dramatic situation which has arisen from uncontrolled migration movements between the African and European continents”. Moreover, the event marked a significant change in approaches to migration questions, with many asserting that it was the first time that countries of origin, transit and destination for Western and Central Africa gathered to construct partnerships intended to tackle all of aspects of migration within the contexts of shared responsibility and migration and development.

The Rabat conference was also considered by European Commission Vice-President Franco Frattini to be illustrative of the “comprehensive, work-in-progress” approach to migration management by the European Union. Anxious about the potential

implications of ineffectively controlled irregular migration for Member States, compelled by Europe's demographic need for immigrant workers, concerned by the humanitarian circumstances of boat-based migration and encouraged by select Member States to act, the European Union is becoming increasingly involved in these issues. Notably, a number of recent Council of Europe resolutions have established irregular migration on Europe's southern shores as a priority area of multi-lateral concern, including resolution 1521 adopted in 2006, which explicitly states that, "*while countries such as Spain, Italy, Malta, Greece, Cyprus and Turkey are at the front and bear the brunt of these visible arrivals, the problem remains a European one ... it involves all European countries...it also involves the Council of Europe, the European Union and other international and national organizations*" (CE 1521).

Despite such statements, however, the European Union and Member States have not consistently demonstrated collaborative responses, as was made painfully clear in May 2007 when twenty-seven West African migrants were left clinging to a tuna net towed by a Maltese tugboat for three days while European states debated over who should be responsible for their rescue and reception (Popham 2006). Incidents such as this have hit close to home for Spain, and Spanish representatives have heavily advocated to bring the urgency of irregular immigration to the forefront of political debates. Emphasizing the pivotal role played by Spain on these issues, European Parliament Deputy Anna Terrón suggests that

*Immigration has been another of our achievements in the EU... and palpable proof that advances can be made in new, complex and sensitive areas. Without doubt, it has been the policy that has most been developed in these years, in large part thanks to the driving awareness-raising role of Spain. We have been through a precarious period with a shaky policy, to another, quite different period that has translated into commitment and firm policy direction both in the highest levels of the Union itself and in our external relations with migrant countries of origin and transit, with whom we have opened a new era of relations ... (MAES 2007).*

Considering again the May 2007 tuna net incident in the Mediterranean, both Terrón's suggestion of increased commitment to migration and European Commission Directorate General for Justice, Liberty and Security Angela Martini's recent insistence that "*what happens to these people [cayuceros] is at the heart of the interests of the European Union and European Commission*", suggests that perhaps Europe

too, is beginning to drawing some important lessons from the African boat people.

It should be noted, however, that Europe – and the European Union in particular – are not the sole beneficiaries of the migration policy lessons offered by the *cayuceros*. Prominent international organizations such as the United Nations High Commissioner for Refugees (UNHCR) are as well, as was made evident at the extraordinary "High Commissioner's Dialogue on Protection Challenges", held in December 2007 with a particular focus on mixed migration in sea-crossing situations. UNHCR is mandated by the United Nations to lead and coordinate international action for the worldwide protection of the rights and well-being of *refugees* and, despite its historic response to boat people in Asia, the organization has largely been a side-line observer in *cayucero* situations such as those experienced in the Canary Islands<sup>21</sup>, where the individuals involved are broadly economic migrants rather than asylum seekers<sup>22</sup>. As UNHCR, government officials, Red Cross staff and volunteers and other NGO partners have noted in the arrivals of *cayuceros* in Spain and elsewhere, however, asylum seekers are frequently intermixed with other economic migrants on the boats, thereby flagging protection in mixed migration situations as an issue of great concern both to UNHCR itself and to its Member States. Moreover, several NGOs, including the International Catholic Migration Commission, have further insisted that UNHCR become more involved in "filling the gap" for extremely vulnerable migrants who have been made victims of violence or torture during the course of the crossing and have special protection needs that are not currently being addressed (Ryan 2007).

Convened to discuss these very issues, the High Commissioner's Dialogue marked an important turning point with respect to the way in which boat-based migration is being addressed by UNHCR and States, with Spain and NGOs including the Spanish Red Cross actively advocating for the international community to "*take into consideration the experience of States who receive these boat people ... by doing this, we all learn more effectively and more quickly without repeating the same mistakes*" (Bassols 2007). While it is unlikely, and arguably undesirable, that UNHCR will become

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<sup>21</sup> That said, UNHCR generally does become involved on an individual basis if or when an individual presents an asylum claim to government officials, Red Cross or NGO partners upon arrival.

<sup>22</sup> Two prominent exceptions to this include Lampedusa, Italy, where UNHCR has been working alongside the Italian Red Cross and the IOM, and the case of Yemen, where UNHCR is working, together with the Spanish branch of the NGO Doctors without Borders, to provide protection and carry out refugee status determination evaluations with the nearly 30,000 largely Somali and Ethiopian *cayuceros* who have survived the ocean crossing from Somalia. In Yemen, however, many of these migrants (nearly all Somalis) are given refugee status, thus justifying UNHCR's presence and involvement.

involved in non-protection related migration work, the Dialogue illustrated the significant degree of influence that *cayuqueros* are having on approaches to international migration, with High Commissioner António Guterres emphasizing the desire to promote measures that will save the lives of people who are in distress on the high seas, “crack down on” human traffickers and smugglers and ensure the protection of victims of smuggling crimes. Leading an institution traditionally centered more emphatically on “pure” refugee issues, Guterres nonetheless further noted that:

*The refugee concept has changed over the fifty years... and while I am not seeking an expansion of my Office's mandate, nor want UNHCR to assume responsibility for activities that are more properly done by other organizations ... I do believe in the universality and indivisibility of human rights. By creating a global environment in which migrant rights are respected, we will also be creating an environment in which UNHCR can more effectively exercise its mandate for refugee protection and solutions (Guterres 2007).*

While UNHCR's refugee protection work has always intersected with economic migration to some extent, Guterres' statement – and indeed the entire conference itself – further suggests that the *cayuqueros* are having a historic impact on the way in which approaches to contemporary migration are contemplated.

## Synthesis

As the *cayuqueros* have illustrated, immigration poses serious challenges for public policy makers as they attempt to maintain a sense of order, efficiency and fairness in managing incoming migration. Indeed, as analyst Marilyn Hoskin contends,

*Immigration has all the characteristics of traditional political issues, which democratic societies confront, debate and attempt to resolve. It evokes normative questions of obligation ... it requires that economic factors of supply and demand be evaluated ... and it involves an enormous human resource in the millions of immigrants who seek to join those who have already taken up residence and work in host societies. Perhaps most fundamentally, it opens up debate over what kind of society members want – how diverse, how competitive, how open to change” (Hoskins 1991:119).*

The arrival of African boat people, first to the Canary Islands, and later to other locations along the southern

border of Europe and to Yemen, has inevitably brought this debate to the forefront of national, regional and international policy agendas. With relatively little experience as an immigration country, these questions have been particularly salient in Spain, where government officials, as well as civil society, have been obligated to react to questions of migration management much more quickly than they might otherwise have done, and with the urgency that Spanish citizens, the international community and the humanitarian situation itself have demanded.

The men, women and children who have survived the journey to European territory under desperate conditions in questionably seaworthy boats have suffered tremendously. While some have fled persecution in search of safe refuge, others have left their families and friends in search of greater economic opportunities, most believing inaccurate information suggesting easily acquired paperwork, good living conditions and ample job opportunities. Few have considered the risk of becoming victim to violence or trauma during the crossing or being exploited upon reaching Europe. In particular, gaps in Spain's Organic Law on the Rights and Liberties of Foreigners in Spain and their Social Integration ultimately leaves *cayuqueros* in limbo, trapping them in a state of administrative illegality, social invisibility and overall vulnerability by bringing great numbers of them to the Spanish peninsula while still holding expulsion orders. As a result of this “induced vulnerability”, it has been argued that *cayuqueros* have struggled with labour insecurity, racism, anxiety of detection and general exploitation to a degree they might not otherwise experience if they held appropriate work and residence paperwork or had the means (passport, for example, as well as monetary) of returning to their home country.

Notwithstanding these hardships, it would seem, at the very least, that Spanish policy makers and civil society are learning valuable lessons from their experience with the *cayuqueros* that are also applicable to other regions including Italy, Greece, Malta and Yemen, where similar migration flows are arising. The design of Spain's national legislation, with its current inability to resolve the legal status of migrants who are necessarily brought to the mainland, for instance, has been a point of significant contention. While the legal weakness itself has not yet been resolved, the experience has nonetheless brought Spain to recognize the value of comprehensive, coherent legislation, as well as the importance of promoting bi-lateral agreements with migrant countries of origin.

Moreover, the *cayuqueros* have served as inspiration for Spanish policy makers to seek innovative migration policy models appropriate for the realities of the migration at hand: for better or worse, the development

of the SIVE maritime border control and surveillance system, in conjunction with other policy strategies such as the Africa Plan, have been provided as two such examples. Perhaps most noticeably setting Spain's approaches apart from other European models, the arrivals of the *cayuqueros* and the SIVE system's attempts to intercept the boats as early as possible have brought Spain to recognize that immigration policies have very real humanitarian consequences. In the face of shipwrecks, disappearances, drownings, and migrant survivors who arrive seriously dehydrated or famished, psychologically traumatized or injured, Spanish policy makers and civil society actors have learned, among other things, that border controls and surveillance can not only protect national territory, but also save human lives.

The efficiency of border controls can be significantly influenced by what actors on the *other* side of the border are doing, however, and Spain's search for solutions to prevent migrants from making the dangerous journey have brought policy makers to recognize the paramount importance of multi-lateral approaches to managing migration. Spain's strategic Africa Plan is a unique and direct result of this lesson, enumerating a number of priority West African countries with whom concrete, operational strategies can be developed with the end goal of increasing support to regional and local authorities working with migrants, preventing the proliferation of human trafficking and jointly addressing the root causes of migration. As part of these collaborative partnerships, Spain has also learned to develop and promote information campaigns with migrant sending countries such as Senegal, in an effort to use the most frequently used means of communication to improve the accuracy of information potential migrants receive.

As boat-based migration increasingly affects other regions in southern Europe and Yemen, however, the lessons learned by policy makers and civil society in Spain are proving particularly useful in the development of broader European and international approaches to migration as well. Helped by Spain's advocacy work, the European Union has come to acknowledge boat-based migration as an issue of regional concern and shared responsibility, contributing to the development of a shared European policy on migration and resulting in the establishment of the European border surveillance organization, Frontex. Having learned from Spain's experience with SIVE, Frontex too, acknowledges its potential to serve a certain humanitarian purpose in saving the lives of migrants at sea and is expressly committed to helping to provide training for border guards of EU Member States.

Finally, Spain's experiences have demonstrated to UNHCR and the broader international community the

demographic complexities of boat-based migration. Involving a complex mix of unaccompanied minors, pregnant women and women with young children, economic migrants, asylum seekers, trafficked and smuggled persons and individuals who have been made victims of violence and trauma during the course of the crossing, the *cayuqueros* have taught that contemporary migration can no longer be regarded in black and white terms of "migrant versus refugee". Rather, mixed-migration flows must be approached in a collaborative way by organizations that have the complementary competencies to most appropriately address the unique humanitarian and protection needs of all those involved.

## Concluding thoughts

Indeed, learning is rarely easy, and it should be emphasized that many of the lessons learned from the *cayuqueros* have been born of particularly tragic events, such as the May 2007 tuna net incident or from policies such as Spain's "legal limbo" expulsion orders, which carry significant political and social consequences. While it was not the intention of this paper to analyze established theories on public policy formation such as those developed by Hecló, Bennet and Howlett, Kingdon, Birkland Bagmartner and Jones, the lessons drawn from the *cayuquero* experience and the resulting changes in policy approaches on national, regional and international levels have nonetheless suggested the applicability of these theories in explaining recent migration policy formulation.

If it is true that policy change cannot be attributed to learning without a complete understanding of all the complexity of understanding and information that forms the bases of policy decisions (Bennet 1992), it can certainly be argued that the uncommon, "sudden", geographically concentrated and negatively depicted arrivals of the African boat people have served as an influential "focusing event" for effecting change. The clear paradigm shift in public policy on the national Spanish level, as well as regional European and international levels, together with evidence that policy officials have operationalized lessons learned and effected programmatic changes, further suggest that Bennet and Howlett's three-tiered framework of government learning, lesson-drawing and social learning is highly applicable to case studies on migration policy. In further support of earlier theories, the way in which approaches to boat-based migration have changed and develop over recent years greatly reinforces Hecló's suggestion that policy learning is largely derived from both positive and negative experiences with prior policies. This paper has suggested, however, that policy learning has taken

place parallel to equally influential external influences, namely, the role of *cayuquero* arrivals as an important – and influential – “focusing event”.

It perhaps bears mentioning, however, that this paper has not addressed potential gaps between actual policies and the degree to which such policies are actually carried out in local communities. An important point, particularly considering that local communities are often the first affected by policy decisions, this remains an area for further research as applied to the case of Spain, in particular. Similarly, migration policy in Europe more broadly, with all the added complexities of European Union expectations and requirements for Member States, would greatly benefit from further analytical studies, particularly as irregular boat-based immigration becomes increasingly influential in shaping the evolution of approaches taken, not only in the region itself, but also by authoritative international organizations such as the United Nations High Commissioner for Refugees. While each continue to hold markedly distinct perspectives and national

priorities, European Union Member States have nonetheless become increasingly accustomed to working together multi-laterally since the Union's establishment. Potentially an interesting dynamic, it remains to be seen whether *this* experience will provide an added advantage in fostering multi-lateral solutions to migration and migration-related development should the European Union assume Spain's same emphasis on collaborative partnerships with migrant countries of origin.

Learning from experience is difficult, not least for the men and women risking their lives to reach Europe with no aspirations to teach lessons on effective migration policy. And yet, the lessons learned from contemporary migration situations such as the African boat people have every potential to serve as useful catalysts for the development and implementation of coherent, applicable and collaborative approaches to policies that satisfy the distinct needs of migrant sending and receiving countries, and of the very migrants themselves. ■

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