

**ON MIGRATION AND SECURITY: EUROPE MANAGING
MIGRATION FROM SUB-SAHARAN AFRICA**

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Abstract

The last years showed considerable debates about migration from Africa to Europe. New border zones have been established, an externalisation of migration management had been introduced. Among the key stakeholders are not only the southern member states of the European Union, but the Union itself. Council and Commission engage in establishing a “global approach to migration”. More than member states, EU bodies base their discourse on values, not deterrence only. This article explores activities of member states and the European Union, describing the different zones of engagement from Bamako (Mali) to the Mediterranean. Taking the EU agency Frontex as a central example, the article poses the question if the EU engagement leads to more security for migrants and migration management¹.

Keywords: deportation, human rights, Frontex, return, security, Mali

Resumo

Nos últimos anos têm surgido numerosos debates sobre a migração de África para a Europa. Estabeleceram-se novas zonas de fronteiras e introduziu-se uma gestão externa da migração. Entre os principais intervenientes no processo contam-se não só os Estados da União Europeia mas a própria UE. O Conselho e a Comissão da UE empenham-se na definição de uma “abordagem global da migração”. Mais do que os Estados membros, os organismos da UE baseiam os seus discursos em valores e não apenas na prevenção. Este artigo analisa as acções dos Estados membros e da União Europeia, descrevendo os seus diferentes envolvimentos em regiões que vão de Bamako (Mali) ao Mediterrâneo. Tomando como exemplo principal a agência Frontex da UE, o artigo avalia se o envolvimento da União Europeia conduz ou não a uma maior segurança dos migrantes e da própria gestão da migração.

Palavras-chave: deportação, direitos humanos, Frontex, retorno, segurança, Mali

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Talking about migration means talking about dreams, discourses, representations, debates; it means talking about routes, tracks through the desert and routes over the sea, cities where migrants gather, shortcuts and circumventions of patrols; it means talking about different actors: migrants, border guards, politicians and organisations occupying the spaces between nation states; it means talking about economy, money spent for border controls and influencing local politicians, money for boat fares, for cheap hostels, false passports, money earned in transit countries and gathered for just another trip over the Mediterranean, and the dreams to earn more money, and eventually make migration a success. And as migration is not always a success, talking about the failure of migration should be included, too. Talking about migration also could imply the question about who is talking about migration, when it started, how it developed, and with which consequences. And, as every talk asks for an audience, we should ask which stories about migration are listened to, and where. To be heard is the precondition for stories to unfold their power and change reality.

Irregular migration to Europe is a field where estimations often prevail over numbers, and invisible practices are echoed in tales, announcements, notes, and hearsay governs over seen or written evidence. Anthropologists, standing at the margins of the desert or the Mediterranean Sea, await migrants and border guards and listen to highly contradictory stories, trying to make sense of what is told about detention and abuse, rescue and drowning. Human rights and international law become fluid in these inaccessible border zones, and become objected to local negotiation and application. Thus it is perhaps the ethnographic way of listening and observing, of gathering stories, gossip and piecemeal information in these places on the margins which leads to the acknowledgement that anthropology might be a good way to do research in and about border zones (e.g. Tsianos & Hess, 2010).

Migration feeds migration stops migration

Yanfolila is a small town in the south of Mali. The region has a relatively rich agriculture, and about 70.000 persons inhabit the *cercle*, many of them in small villages, but increasingly especially the younger population lives in the town of Yanfolila, going to school, looking for jobs, doing petty trade. Some go abroad; the Ivory Coast is the country where the young people go to work on farms, make their experiences and earn money so they can build a house of their own after they return and marry. It must have been in the mid-nineties that the first young men went to Europe. Not that this is true: In a country like Mali, where about a

quarter of the population (14 million according to the census of 2008) is outside its national borders (Merabet & Gendreau, 2006) there always have been people somewhere in Europe, too. The region of Kayes, in the west of Mali, knows a long history of migration to France (see Manchuelle, 1997). But in Yanfolila, there was no tradition of going to Europe, and the people I talked to referred to those who in the nineties sent messages that they were doing well, some of them had already come back as successful migrants, having earned much more money than it was ever possible in Ivory Coast. It were these stories that attracted more of those young men, but probably not only these stories, but also the growing political difficulties in Ivory Coast, where the public opinion was heated against the migrants from Mali or Burkina Faso, soon turning into open aggression and resulting in about at least 50.000 refugees arriving in Mali (Irin News, 2003). Also, the young men did not come from all towns and villages: around Yanfolila, there are villages where many men went north and others where people stayed. It is not possible to trace back the reasons for these decisions, as they are neither linked to the economic status nor to education, but rather seem to be linked to the way stories about migration are told and effected opinions and decision making in the complex social structures of Malian households. What can be stated is that it were not the very poor who went. Not the absolute lack of food or goods was triggering migration, rather the expectations of earning good money, of making a leap forward economically, and of making a special experience, and being able to tell about it after return. As in Kayes, also in southern Mali the notion of *aventure*, adventure, is closely related to migration, though in Yanfolila stories about migration to Europe were about Spain, not France.

So, starting in the end of the nineties and then slightly accelerating between 2002 and 2006, some of the young men headed north, took the bus to Bamako, Mali's capital, then passed Mauritania, and went up the coast to Morocco. The *Estrecho* between Morocco and Spain by then was already heavily controlled by Spanish ships and warning systems², and the Spanish enclaves Ceuta and Melilla were about to become the main destination for many Sub-Saharan migrants. Most of the people from Yanfolila started with few money only, and mostly made the way to Morocco on their own, sparing the money for *coxers*, migrant smugglers that offered assistance in transport and in circumventing border patrols. But there on the shore, or just outside the Spanish enclaves, the easy way ended for most of the young men from Yanfolila. They had to hide from Moroccan police, they had to invest into boat owners offering the transfer to Spain, and most

² On the situation at Spanish sea borders and the working of the electronic surveillance system SIVE see e.g. Carling (2007); Deutsche Welle (2007).

of them had to try it several times. So they called their families back home to send money for the fare, and got it. Repeatedly they invested into transfers, and while some arrived in Spain, some disappeared and probably drowned, and some did not succeed even after several attempts. They spent two, three or more years in Morocco, often more than once caught by Moroccan police and deported to the Algerian border, then making their way back to the West. Mohamed³ was deported four times to the border town of Oujdah, and four times made his way back to Tangier or Rabat by foot, travelling mostly by night. Some were successful in entering Ceuta or Melilla, overcoming the fences, Moroccan police and the Spanish *Guardia Civil*. Some were not, and finally were deported back to Bamako. This was in 2005, and in autumn 2005 the pictures of Sub-Saharan Africans trying to overcome the fences of Ceuta and Melilla nourished the European news stories that told of millions of poor Africans on the way to Europe.

Migration as a matter of security

The notion of security, attributed to a complex topic as migration, has a number of connotations. First of all, security is linked to the reasons for migration. Be it civil wars or natural disasters, forced migration happens because the living conditions degrade and do not allow a secure life in the home region of a migrant⁴. Refugees exist because of a lack of security. In a slightly more comprehensive way, a security gap may exist also for migrants who leave their home because life is becoming increasingly difficult and precarious. A family that sends one or more of its sons to other countries does so to secure the living of the family by income diversification, or to secure a certain standard of living. This perhaps is less an absolute but a relative form of experiencing a lack of security⁵.

Then, as migration itself might be a risk, the notion of security can be applied to the ways migrants take, how they embark on their "journey", which may expose them to many dangers, as well as to the conditions they find in the country of destination. A higher number of migrants live under irregular living and working conditions, with higher risks to suffer from exploitation, to risk accidents and illnesses, and finally risking deportation, too.

³ Mohamed is the son of a trader in the town of Yanfolila, whom I first met there in 2008.

⁴ See the list of forced migration categories from the International Association for the Study of Forced Migration (IASFM) (www.forcedmigration.org).

⁵ A note on migration and protection. In this article, the term "migrant" denominates persons migrating without addressing the reasons why. The distinction between labour migrants and refugees is a much debated issue and relates to the different questions of security. The notion of "mixed flows" indicates the difficulties of dealing with migration before a protection status is determined. If persons are in need of protection becomes a crucial question when it comes to the control of entry to potential receiving countries, as asylum seekers should have access, while access for labour migrants may be denied.

Finally, when it comes to security related to migration, the overwhelming context is not risks of migration, but the danger that is attributed to migrants themselves (the security of migrants within this context is addressed as “human security”⁶). This talk about security is to talk about ways to secure potential destination countries against the threat of irregular, or better, unauthorised migration (Carling, 2007, 5f). The nexus of security and human security, of defending the sea borders against the threat of an “invasion” and the need to rescue shipwrecked or stranded migrants dominates in often contradictory ways the discourse on European migration management. Especially because the intensity of political discourse is not matched by immigration numbers (e.g. de Haas, 2007), it might be better not to call it a security discourse, but rather a discourse of securitization. Securitization denominates a speech act by which a security threat is established in public discourse, even if there is no or few evidence (Buzan, Waever & de Wile, 1998).

On the African continent and in particular in West Africa calling migration irregular or illegal is a relatively new way of addressing migration. Although it has entered the discourse in Europe already in the mid-nineties, and became the key wording of European discourses addressing migration across the Mediterranean since about 2000, in West Africa the notion of irregular or illegal migration was not widely known. The ECOWAS (Economic Community of West African States) member states agreed on free movement of citizens within the zone, and additional bilateral treaties, e.g. between Mali and Mauritania, underlined the mutual rights of free circulation of persons between these states. It was only gradually that irregular migration was addressed, initially mostly by organisations like IOM or bodies of the United Nations. Migration within West Africa was as normal as it was legal. An early attempt to introduce the notion of irregular migration in a wider scale in West Africa was made by a project that wanted to inform about the risks of unauthorised migration to Europe. An Italian NGO, *Comitato Internazionale per lo Sviluppo dei Popoli*, CISP, financed by the European Commission and cooperating with the International Organisation for Migration, IOM, in 2004 started a campaign, together with associations in six African states to distribute posters and leaflets, introduce discussions and radio spots on the issue. As Mamadou Diakité, the president of the organisation AIDE Mali, and implementing partner in Mali, told me in 2006, warning Malians about irregular migration to Europe was a difficult task. People felt offended, as they took it as their right to go everywhere, and the campaign seemed to be mostly in vain. It was only after autumn 2005, when the incidents at the fences of Melilla and Ceuta as well as the num-

⁶ See e.g. Koser (2005).

bers of drowned migrants in the Mediterranean became widely discussed also in Mali, that people came to understand better the campaign and its aims, and he was no longer seen as an agent of European interests only.

The europeanization of migration management

Europe itself is entering the field of migration from Sub-Saharan Africa quite late. Throughout the nineties, European efforts to control and reduce migration from third countries remained mostly national. Single EU member states tried to enhance controls, and, in case third countries were involved, mostly bilateral cooperation agreements were established⁷.

France has long established relationships with its former colonies, but it was only in 2005 that the Spanish government decided upon a “Plan Africa” and established embassies in West African capitals like Bamako. And it was only in October 2008, as a result of the adoption of the “*Global approach to migration: Priority actions focusing on Africa and the Mediterranean*” in 2005 (see EU, 2005a), and conferences at Rabat and Tripoli between European and African States in 2006, that the EU established the CIGEM, *Centre d’Information et de Gestion des Migrations*, as a pilot project at Bamako. The CIGEM was introduced in the beginning as some sort of job centre, also acting according to the needs of cheap labour supply for European labour markets. The idea of the EU Commission of a job centre for Europe in Bamako was quickly rejected by member states, because most of them saw immigration and labour market as strictly national realms. In the press pack for the inauguration of the CIGEM in October 2008 was stated: “*Pour l’instant, il n’est pas prévu que le centre aide de manière directe les migrants à trouver un emploi en Europe.*” (CIGEM, 2008, p. 16). CIGEM’s main tasks were reduced to inform interested persons on legal ways to apply for entrance to Europe and on the risks of irregular migration, as well as to introduce a dialogue with the Malian governmental structures on migration policy and migration law. Furthermore, some minor schemes for vocational trainings were set up, but, as the responsible counsellor of the European Delegation at Bamako, Roland Johansson, told me already in April 2008, a target group for these measures was difficult to establish, as it would comprise a good part of the Malian population. CIGEM also financed projects of ten local associations that assisted return migrants, and for 2011 an-

⁷ The internal cooperation, namely the Schengen agreement, and the harmonisation of asylum issues through a number of directives, preceded the europeanization of migration policies outside the “area of freedom, security and justice”, as the enlarged Schengen space is officially called (cf. EU Commission: Free Movement).

other 10 projects shall be executed on information about the risks of irregular migration⁸.

Already in 2006, a network of so called Immigration Liaison Officers (ILO) was established in West Africa by European member states along identified main routes of migration, reporting regularly on irregular migration towards Europe (EU 2005a, p. 10). Furthermore, Spain finances the equipment (cars, computers) and installation of 17 posts for migration control, partly under the control of the DGME, the *Délégation Générale des Maliens en Extérieure*, partly managed by the *Police Frontières* (of which ten control posts were in place by December 2010).

But, as far as it can be determined, all these measures are but small efforts without substantial effects. The level of investment into the migration sector remains low, and, despite the praising discourse on migration and development, there are hardly any links established between official development assistance and migration. The French program of co-development, which mostly is assistance to “voluntary” return to Mali, had been frozen when Mali did not sign into an agreement on readmission. Even the probably most important task, the international assistance for the Malian governmental structure to formulate a comprehensive approach towards migration is, according to the 2010 head of the IOM (International Organisation for Migration) office in Bamako, Alexander Kapirovsy, exhausting itself by repeating the same issues over and over again in countless working groups⁹.

Thus, European migration management at Bamako is far from being effective. This is true not only for the national efforts undertaken by France and Spain, but as well for the European Union to enhance its capacities in migration management. The pilot project of a labour recruitment centre, initially meant as a step as well innovative as progressive, was blocked by member states and the CIGEM was reduced to a mere information point¹⁰. The low practical relevance of migration management – in contrast to the importance the topic is given in political debates – is mirrored as well by the poor financing. Only one percent of the overall budget of about 560 million Euros development assistance to Mali shall be invested into migration related issues from the 10th European Development Fund, FED, according to the EU-Mali development accord 2008-2013 (Mali - European Union, 2007). So, despite all rhetoric, not migration and development, but the de-

⁸ CIGEM, 2010, p. 3. For a detailed analysis of the CIGEM in the context of European migration management see Böwing & Janicki (2010).

⁹ Interview 18.11.2010, IOM office Bamako.

¹⁰ The only organised job recruitment which took place – the Canary Islands hired 26 temporary workers in Mali in 2010 – was organised in cooperation not with the CIGEM, but with a local office of the International Labour Organisation ILO at Bamako.

terrence and return of migrants by means of force are constitutive for European migration management. In this respect, cooperation between the European Union, single member states, and Maghreb states have proved to be effective. The Maghreb countries agreed to serve as a *cordon sanitaire* preventing Sub-Saharan migrants to pass their territory, and to cooperate closely with European forces. It has been reported that the Spanish *Guardia Civil* not only holds a control post at Nouadhibou, Mauritania, but also patrols, together with Mauritanian security forces, the beaches and coastal towns. Mauritania arrests migrants from Mali and other countries despite bilateral contracts on free movement, keeps them in a detention camp financed by Spain, and finally deports them back to a place close to Nioro on the border to Mali¹¹.

There are few stories on these practices; one has to trace the stories of single migrants telling their struggle against the joint efforts of security forces to prevent migration, and to rely on the few reports available. The big story about migration and European migration control is told more in the north, and it is a story about the sea, the Mediterranean, more than a story about the desert. And, though single European member states, especially Italy and Spain, are strongly engaged in this story, it is the European agency Frontex which is at centre stage.

The Mediterranean Sea, a battlefield?

In the late 1990s media started reporting stories about tourists stumbling across dead, black bodies on the hotel beaches in southern Spain¹². Western vocabulary was enhanced by words like *patera* or *cayuco*, those small boats that migrants use to cross the *Estrecho*, the narrow strip of water between Moroccan and Spanish coasts.

Over the years the topic expanded, stretched out for other coasts, as Spanish authorities started to guard and fortify their maritime borders. Migrants switched to other routes, choosing Malta and the Italian island of Lampedusa, then the Spanish enclaves Ceuta and Melilla, little towns on the North African coast, at the same time the Greek islands some kilometres off the Turkish coast, and the Canary Islands. The overarching narrative remains everywhere the same. It consists of small, often wrecked boats, overloaded with migrants, some of them starving, dying of thirst or drowned, on the one hand. On the other hand the

¹¹ See Lamazou (2008); APHDA & AME (2009).

¹² Estimations differ, but according to Fortress Europe 10.925 migrants that died in the Mediterranean from 1988 to 2008 have been officially registered. http://fortresseurope.blogspot.com/2006/02/immigrants-dead-at-frontiers-of-europe_16.html

narrative deals with migration as a threat of illegal intruders, condemning transport as human trafficking, against which an increasingly sophisticated combination of measures was put into place to prevent migrants to arrive at European borders. Vessels, airplanes and helicopters search with radar and even satellite support for immigrant boats, metal and electronic fences rise to the sky, keeping off the intruders. Over the past years, especially Italy and Spain, but also other European nations and the EU itself tried to integrate northern African states into the deterrence and defence against migrants. Morocco, Libya, Mauritania and Algeria meanwhile stop and arrest Sub-Saharan migrants, and frequently deport them back, though often only to their southern borders, which means plain desert. Furthermore, Mauritania, Libya or Senegal allow European forces to operate within their sovereign waters, which serves to effectively turn migrant boats back to African shores right after they started their journey. Once the boats arrive in international waters, the European marines face a dilemma. First, they are not allowed to turn migrants boats back by force, and secondly, often the persons on the boats have to be rescued from drowning, and, according to international sea law, have to be brought to the nearest (often European) safe harbour. Once within European territory, migrants have the right to apply for asylum, which hinders their immediate deportation. Deportation is complicated, too, because only few migrants can display documents, so the country of origin often is difficult to establish and even more difficult to prove. So the return of unwanted migrants close to the African shores where they embark is the central aim of European migration management, and thus of Frontex.

What is Frontex?

Frontex (deriving from the French "*Frontières extérieures*") is the short name for "European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", which has been established on the ground of the Council Regulation (EC) n° 2007/2004 of 26 October 2004. Since 2005, the agency with headquarters in Warsaw has been executing a broad set of activities, among them the coordination of different projects to secure the borders between Europe's southern borders and Africa.

The role of Frontex is, as it is said officially, supportive, and coordinative.

Frontex provides for coordination of operational cooperation between Member States in the field of management of external borders. We strengthen border security by ensuring the coordination of Member States' actions in the implementation of Community measures relating to the management of the external borders. To

fulfil this task Frontex is seeking to introduce system solutions allowing better allocation of Member States' resources (Frontex Website .../tasks)¹³.

In fact, Frontex is not confined to a purely assisting role. Instead, it extends the efforts of EU member states to control borders and increasingly grows into the role of a separate, and increasingly powerful, player. Furthermore, Frontex enjoys a high degree of independence. The aim of Frontex as an European agency is, like that of all the other agencies, to strengthen European policies in a certain sector. The agencies are, seen from this angle, not only assisting single member states, but also supporting the Commission's activities, rendering them more efficient. Thus efficiency is the central criteria when agencies like Frontex are evaluated¹⁴.

Frontex is led by the Finnish General Ilkka Laitinen as a managing director, who has been chosen and is controlled by a management board consisting of delegates from member states and the Commission. Frontex activities and budget have been continuously on a rise. The budget developed from 20 million Euros in 2006 and 42 million in 2007 to about 92 million Euros in 2010 (Frontex, 2011, p. 20). Activities rose accordingly, as the figure below shows.

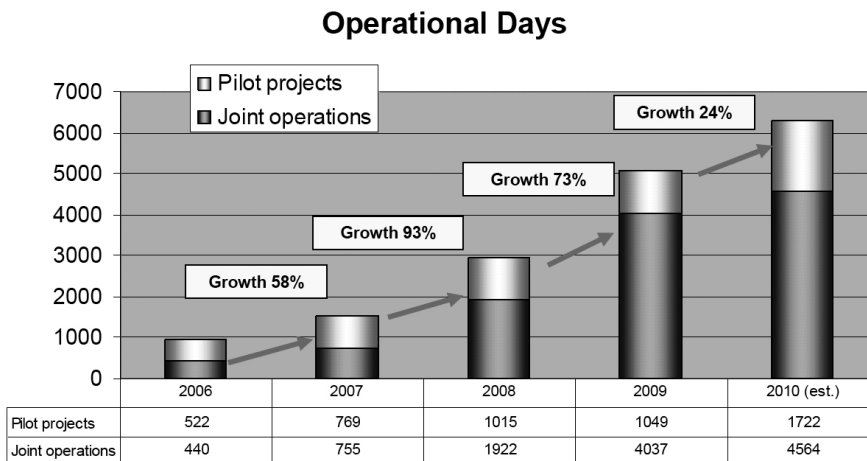


Figure 1: Frontex operational days (Source: Frontex Working Plan 2010)

¹³ http://www.frontex.europa.eu/origin_and_tasks/tasks/; see also IMI (2008; 2009).

¹⁴ See e.g. the internal EU evaluation (EU Commission, 2008) and the COWI report (COWI a/s, 2009), Wagner (2009), furthermore Marischka (2008), Fischer-Lescano & Tohidipur (2008); on EU agencies, Tohidipur (2009).

Activities comprise so called pilot projects and joint operations¹⁵. Sea patrols along the African shores are joint operations. They are run under the responsibility of one member state involved, and are coordinated by Frontex. In the definition of the aims and scope of these operations Frontex relies on data compiled by its risk analysis centre. One of the main tasks of Frontex is the technical preparation of operations, especially asking member states to contribute to the allocation of materials and personnel. For this purpose, Frontex established a data base (CRATE), where all materials allocated are listed. Apart from the joint projects, Frontex is experimenting with operations of rapid border intervention teams (RABIT. Cf. EU – (EC) n° 863/2007). Up to now, these teams did not become active except in so called trainings, as they are allowed to intervene only on demand of a member state, which did not occur yet, and their activities are limited to urgent and exceptional situations (EU, 2007, preliminary note 7).

Areas of operation

Besides Eastern European land borders the Mediterranean and the West African shores are and will be the main areas for Frontex operations. In recent years, Frontex sea operations concentrated on the sea between Canary Islands and the African coast, the Strait of Gibraltar, the sea between Libya, Tunisia, Malta and the southern Italian islands, and the Greek Turkish border, focusing on Greek islands just offshore the Turkish coast. Meanwhile, Frontex is seeking to establish an “European Patrols Network (EPN) that will cover the whole sea territory between Southern Europe and Africa (see figure below).

Not astonishingly, Frontex operates in exactly the areas where distances between African and European territory are lowest and thus most attempts to cross the sea are to be expected. As the image shows, the major operational fields did not change in 2010, but the extension of operational areas has been enlarged. Within these areas, Frontex staff cooperates closely with the forces of national border guards and marines, assisting with personnel and equipment from different EU member states. While a member state acts as leading operator of a joint project, Frontex does the coordination, organising material and staff. The equipment entails vessels, helicopters, airplanes and other materials (see Frontex action plan 2010). Increasingly Frontex aims at using satellites and drones for surveillance of operation areas (Monroy, 2010).

¹⁵ Frontex has a broad array of activities. See for more details on Frontex activities, that comprise among others data collection, risk analysis, training programs, joint deportation flights, etc., Marischka (2008), Fischer-Lescano & Tohidipur (2008).



Figure 2: Sea border operations (Source: Frontex Working Plan 2010)

Though already equipped with extensive material and practical range, this situation does not fit to the ambitious aims of Frontex. In spring 2010 Cecilia Malström, EU commissioner for home affairs, presented a new draft regulation which has since been under discussion (EU Commission, 2010). This new legal framework would enhance the possibilities of Frontex to take initiatives on its own, would stabilise its grip on staff and material, and would extend its competences far into third countries (Monroy, 2010).

Migration and risk analysis

A task that is underlined in Frontex self-presentations is the field of risk analyses:

At the heart of all activities of the Agency is **carrying out risk analysis**. Frontex assess threats, looking at vulnerabilities, and weighing consequences (Frontex webpage .../tasks, bold in original).

The Frontex risk analyses are not public. But if we consider Frontex activities as relying on these analyses, then the central risk is irregular immigration into the European territory, and the main scope of Frontex projects is to defend borders

against irregular migrants. This is in line with the attention politicians and media gave to immigration, especially from Sub-Saharan Africa, in the past decade. This importance is mirrored by different EU papers, communications and declarations, e.g. the Presidency conclusions on the Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean (EU, 2005a).

While media and politicians are attracted by the scenario of huge waves of poor immigrants intruding Europe from Sub-Saharan Africa, a closer look reveals that this picture is not really true. It is not irregular entrance crossing land- or sea-borders illegally that counts for the numbers of migrants without legal stay in Europe. Rather, persons enter legally the territory and then overstay their limited residence permits that make the biggest amount of irregulars within Europe.

Seen in total numbers, immigration from Sub-Saharan Africa is almost negligible. Neither Spain nor Italy receives high numbers of Sub-Saharan immigrants. Hein de Haas examined this “Myth of Invasion” in detail (de Haas, 2007), and Andrijasevic (2009) states that, analysing Italian migration policy, the cooperation with Libya allows for Italy not to take its share of refugees, which would be below the European average anyway. Klepp states that in 2008, according to estimations of Caritas, only about 10% of the irregular migrants in Italy arrived by sea (Klepp, 2010, p. 3)¹⁶.

It is not the agency Frontex which will be the first one to establish a realistic regard on immigration from the South, rather, it should be the European political organs, the commission, the parliament, the council. As long as these institutions hold up the myth of invasion from Sub-Saharan Africa, Frontex will be eager to act within the realms of this perspective, to enhance its competences and close the last gaps for immigrants, analysing tracks and traces of migrants and smugglers. For the migrants themselves this means a growing insecurity, as the closing of the easiest routes means that the longer, more dangerous and risky ways need to be chosen.

Mediterranean ping-pong

To address what is at stake in Frontex activities it may be useful to take a closer look on one of the operation fields, e.g. the sea within the political and geographical triangle Sicilia / Lampedusa, Malta, and Libya¹⁷. I will focus on this particular

¹⁶ This reflex is neither new nor unique. Michael Pugh states the same misinterpretation for Australia: “The government dramatically inflated the issue as a threat to the Australian homeland and to sovereign control over Australia’s borders. Although the number of people arriving by boat increased from 179 in 1998 to about 3,700 in 2001, this should be set alongside the 50,000 people a year who overstay their visas” (Pugh, 2004, 52f.)

¹⁷ In the light of what is called the “Arab Spring” and especially the war in Libya the future situation regarding migration from Sub-Saharan Africa might be open. Until now, the harsh European position regarding migrants from Sub-Saharan Africa who fled Libya is not indicating any fundamental changes. Figures on migrants in Libya refer to the situation before the civil war in 2011.

region because the activities unfolding in the different regions are comparable, and any other region, e.g. the space between Mauritania and the Canary Islands, or the Greek-Turkish borders¹⁸, could have been chosen.

Libya was, with some 600.000 legal and estimated 1.2 million irregular migrants, at the same time relying heavily on migrant work and developing as a major transit country for refugees and migrants from the Horn of Africa, West- and Central Africa (Andrijasevic, 2009; Klepp, 2010). The Libyan coast is covered by many small harbour towns, a situation that makes it difficult to control out-migration on boats.

With an increasing immigration to Italy via Libya, the Italian government took up measures to come to an agreement with Libya, something that was eased by the release of Western restrictions on Libya in September 2003¹⁹. But already in the 1990s Italy negotiated with Libya and in 2003 and 2004 more than 4.000 migrants were deported from Italy to Libya, without having the opportunity to seek refugee protection in Italy²⁰. Long before Frontex entered the scene, Italy provided Libya with equipment to prevent irregular migration, financed prisons for irregular migrants, and provided Libya with assistance to deport immigrants to countries of origin (Klepp 2010: 4).

All this happened clearly against international and European law, as Libya did not sign the Geneva Convention on Refugees and does not have a protection system for asylum seekers. According to many reports, among them the mission reports of the European Union from 2004 and of Frontex from 2007, irregular immigrants to Libya are detained in more than twenty detention centres, some of them financed via Italy by the European Union, and migrants are kept under unacceptable conditions²¹.

While Italy as a major EU country can cope with the influx of irregular migrants from Africa, the situation of Malta is more difficult. The small island state with a population of only 400.000 living on 316 square kilometres is not prepared to host thousands of immigrants. The arrival numbers of migrants and refugees, about 13.000 from 2002 to 2008 (Dethloff, 2009, p. 37), are a heavy load for Malta, which was seen by the other European states as well, but proclaimed solidarity

¹⁸ For the Greek-Turkish border, see e.g. the report of the German NGO Pro Asyl on border guard practices (Pro Asyl, 2007).

¹⁹ Bundesministerium für Finanzen, Bundesrepublik Deutschland. http://www.zoll.de/b0_zoll_und_steuern/f0_aussenwirtschaft/a0_unternehmen/d0_embargo/a0_land/c0_libyen/index.html

²⁰ According to the UNHCR, in 2008 about 75% of the immigrants arriving via the sea borders to Italy filed an asylum claim, and approximately 50% of the claimants got a protection status (UNHCR, 2009).

²¹ EU Commission (2005b); Frontex (2009b); see as well Human Rights Watch (2009), Andrijasevic (2009), Pro Asyl (2010), among others. According to the Italian NGO Everyonegroup at least some detention centres for migrants in Libya still seem to be in place (Everyonegroup, 2011).

regarding asylum and immigration between member states remained low²². The reception conditions are far below European standards, as well as the asylum procedure.

Italy and Malta try hard to guard their coastal seas against irregular migrants, and the two states meanwhile look back on a record of constant conflict on who is responsible for migrants detected in national or international waters. Malta frequently denies its responsibility to receive or save immigrants whose boats have been detected in the sea, arguing that boats are closer to Lampedusa and the closest harbour is an Italian one. Italy often reacts in the same way, and also Libya has not been eager to accept migrants that are returned by European forces.

As a most popular example for these attitudes we can recall the incident of May 2007, when 27 shipwrecked migrants from Ghana, Cameroon, Nigeria, Niger, Togo and Burkina Faso stayed over three days on the margin of a net for tuna-breeding on open sea. The net was pulled by a Maltese ship, whose crew did not allow the migrants to come on board and not even supplied them with water and food. Malta and Libya both denied reception to the migrants, and finally, after three days of negotiation and a certain media pressure, Italy agreed to take over the migrants. An Italian cruiser brought them to Lampedusa, and all of them got a temporary protection status on humanitarian reasons. Only two weeks later Spain agreed to take over a group of migrants whose reception had been rejected by Malta²³.

Though Italy apparently dealt out with Libya common sea patrols also on Libyan territory, the central problem of the situation described above is the following: International law prescribes that shipwrecked persons have to be rescued and then brought to the closest harbour nearby. That means that the state to which this closest harbour belongs will have to take over responsibility for the migrants, process asylum claims, etc. All Mediterranean states are reluctant to do this, and therefore endanger the transit and finally even the rescue of migrants²⁴.

²² E.g. in 2006 Germany took over 20, in 2009 11 refugees from Malta.

²³ That this is an ongoing practice shows the example of 114 refugees debarked from Libya and on 14 July taken over by the Spanish frigate "Almirante Juan de Borbón", acting within the NATO mission Unified Protector. Malta and Italy denied access, and after several days it was Tunisia, not an European member state, that eventually accepted to take over the refugees (Jakob, 2011).

²⁴ An aspect that is not within the scope of this article, but is of major relevance for the situation in the Mediterranean is the deterrence of private fishermen to rescue shipwrecked migrants. Against numerous private ships, their captains and owners cases were filed because they rescued shipwrecked and tried to bring them to a European harbour. While fully in line with international sea law, the captains had to face trials, the ships have been blocked for years, procedures that reduced the safety of migrants because private ships became reluctant to help shipwrecked minding the consequences (see Gleitze, 2008; Weinzierl & Lisson, 2007, pp. 18ff.; Klepp, 2011, pp. 261-287).

Why was Nautilus 2008 a failure?

Frontex entered the scene in 2006, conducting two operations, namely “Migration flow to Malta”, which was the assistance of Maltese authorities with experts to identify the country of origin of arrived migrants, and “Nautilus”, a joint sea operation with Spanish, Italian and Greek vessels and French and German planes and helicopters. Nautilus 2006 lasted only ten days in October, and was repeated in 2007 for four weeks in June and July. The operation was deemed to be successful, though the Frontex director mainly addressed the smooth cooperation between the joint forces²⁵.

In 2008, according to a Frontex press communication, Nautilus was postponed because of differences between cooperating member states:

The mission was on hold due to the difference of opinion concerning the responsibility of migrants saved at sea. After discussions rules regarding the disembarkation of persons rescued at sea during the operation will remain the same as in last year’s operation. Migrants saved in the Libyan Search and Rescue Area (SAR) will be taken to Libya, when not possible to closest safe haven²⁶.

Nautilus 2008 was stopped in October 2008 after only five weeks, and already in September 20th Frontex director Laitinen declared that the mission had failed. Laitinen stated that the Frontex operations did not lead to less, but to more migrants trying to cross the Mediterranean within the operational field of Frontex, because the probability to be rescued by maritime forces was higher²⁷. The central problem and reason for the failure of Nautilus however was not the rising number of migrants trying to cross the Mediterranean, but the lack of cooperation of Libya. While Spain had established agreements with Senegal and Mauritania, and migrant boats were intercepted within coastal areas already or were sent back to the coast²⁸, a similar cooperation was not possible with Libya. And, as Libya was not willing to take over migrants intercepted by Frontex, they all had to be rescued and transferred to Italy or Malta. While Frontex statistics show for Hera 2008 (in the sea between Canary Islands and West Africa) almost 6.000 migrants “diverted back/deterred”, there is not a single one for Nautilus²⁹.

²⁵ http://www.frontex.europa.eu/examples_of_accomplished_operati/art6.html

²⁶ http://www.frontex.europa.eu/newsroom/news_releases/art36.html

²⁷ See Johnson (2008), frontexwatch (2008).

²⁸ See den Hertog, 2011, p. 3.

²⁹ <http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvdW4vZGVmYXVsdF9ha3R1YWxub3NjaS8zMS80MC8x/statisticsI7.2.2009.doc>

Talking about: diversion

If we follow information of the German journalist Roman Herzog, these statistics do not tell the whole truth. On a conference at Syracuse, Sicilia, called “Refugee Universe”³⁰, Italian armed forces reported for 2007 a number of 1.586 ships sent back, 116 ships accompanied back, and a total number of migrants deterred at sea of 42.000 (Herzog, 2009, p. 7)³¹.

Colonnello TST Francesco Saverio Manozzi, executive head of the responsible *Guardia di Finanza* head quarters at Rome³², in an interview accuses Frontex forces of other nations, especially Germans, to follow a hard line in diverting migrants on the sea. On formal meetings, he stated, he had been confronted with operation plans and written orders regarding the deterrence of migrants declaring to go on the migrants’ boats and take patrol and food away and thus force them to turn back or proceed under this conditions (*ibid.*). This practice was not directly denied by Frontex director Laitinen.

If there are any means to turn those people back legally to their departure harbours, they will be applied. The different states diverge in interpreting international law and some are more decisive sending migrants back (Herzog, 2009, p. 9, my translation).

It is a fairly open question in how far these practices are legal. It is also to be questioned in how far the “diversion” of migrants to states like Libya³³ is legal according to the Geneva Convention on Refugees and the entailed *non-refoulement* imperative. Human rights organisations and UNHCR criticised these practices repeatedly, and Andrijasevic states

... that the implementation of detention and repatriation programs in Libya, especially when considered together with the expulsions from Lampedusa, do not actually relocate the asylum procedures outside the EU external borders but rather deprive asylum-seekers of the possibility of accessing the asylum determination procedure (2009, p. 166).

Every diversion is, seen from the Frontex perspective, in first instance live saving. Asked by Herzog, Ilkka Laitinen states:

³⁰ See <http://www.cissong.org/it/press/news/182>

³¹ The same seems to be true for Malta, where government officials tell about 700 diverted migrants within *Nautilus II*, second phase, while commanders operating within Frontex activities deny it (Klepp, 2010, p. 16).

³² *Capo centrale operativa del Comando Centrale della Guardia di Finanza.*

³³ Or e.g. Mauritania. On detention practices for intercepted migrants at Mauritania see e.g. Amnesty International (2008), APDHA & AME (2009).

I know that there are cases in international seas, where we try in first instance to save lives by guaranteeing the safe way back to the harbours of departure. We make sure that life vests are on board, and that there is enough food, drinking water and fuel to return in safety. We describe the best way to solve the problem (Herzog, 2009, p. 9, my translation).

Diversion thus becomes a humanitarian act. Asylum questions and the threat of chain deportations are not tackled neither are the situations for migrants in prison camps in Libya or Mauritania. So for instance Hera 2009 is a full success story:

Thanks to the permanent implementation of the Joint Operation Hera 2009 and to better co-operation of the involved African countries, there was a notable reduction in the number of migrants arrived to Canary Islands (rounded 2,280 /9,200), as well as those apprehended in the place of departure. Optimized aerial and maritime surveillance close to the territory of Senegal and Mauritania, connected with Police co-operation and information campaigns, led into a drastic decrease of migrants and contributed to the saving of human lives. Despite these clear successes, participation of more MS would greatly increase effectiveness and outcomes (Frontex, 2011, p. 43).

In a study for the German Institute for Human Rights, Weinzierl and Lisson tackle with the difficulties of obligations within the different maritime operational zones. While within the territorial sea and the contiguous zone the Asylum Procedures Directive has to be applied and all asylum applications are to be examined, the directive has no application in the remaining high sea and foreign territorial sea. But even there, protection issues arise for Frontex or EU member state forces because of the applicability of the Schengen Borders Code.

The provisions of the Schengen Borders Code with which human rights obligations at border controls are concerned are not differentiated according to where the border controls take place. Therefore the obligations of Member States under EU law, arising from the Schengen Borders Code, to protect the rights of refugees and persons seeking international protection, especially with regard to non-refoulement, also extend to border controls conducted on high seas and the territorial sea of third states (Weinzierl & Lisson, 2007, p. 57).

The authors are unequivocal in the conclusion that the international law of the sea obliges government ships that carry out rescues to bring the shipwrecked to a safe place, and the notion of safe place includes the *non-refoulement*. This implies

that the handing over of migrants and refugees to Libyan forces or the sending back of intercepted migrants to Libya is illegal.

Duties also exist with regard to mixed groups of migrants who are not on a state ship, but are encountered in the course of border and migration controls, or actions of rescue at sea. It is recognised that, as a rule, boats contain not exclusively, but also persons in need of international protection. In light of this fact, grounds always exist to assume that the escorting or towing back of a boat to states outside the EU could result in grave violations of human rights. Thus it is incompatible with human rights for state ships engaged in border protection or rescue at sea to force migrant ships with migrants to sail to third countries (Weinzierl & Lisson, 2007, p. 70).

As until now neither member states nor Frontex have the competence not even for an accelerated border procedure for refugee status determination, intercepted or rescued migrants have to be brought to EU territory to guarantee protection.

Law enforcement – against Frontex?

Until today no case is taken against Frontex activities. This is, for a number of reasons, not astonishing. First, for potential claimants access to European territory is denied, and e.g. in Libya they are confronted with other problems than filing a claim against Frontex. Secondly, it is not at all clear at which court such an action could be taken. Joint Frontex operations act under the leadership of one member state, having staff from different nation states on ships of again different nationality, operating in open seas or territorial waters. Not only from the perspective of a shipwrecked migrant, it is difficult to decide who is to blame and at which court.

Frontex itself denies all responsibility, as it only coordinates, and the participating member states are responsible and obliged to operate legally (Kasperek, 2009). Asked by Roman Herzog, *Colonello Manzotti* from the Italian *Guardia Finanza* finished the interview with the words: “There are no direct informations about what happens at sea, and there never will be some” (Herzog, 2009, p. 8).

As long as there is no claimant and no court, Frontex can continue with its activities without risking a case. Nevertheless, Weinzierl and Lisson urge the EU to close serious legal gaps concerning the protection of migrants and refugees within a European defence against irregular migration that is increasingly operating outside the European borders:

Although EU law regulates border protection and refugee law and the EU border management strategy foresees pre-border migration controls, EU law does not regulate this obligation. Rather it even or explicitly or implicitly permits for actions in violation of EU fundamental and human rights. The duty to regulate in this regard, arising from EU fundamental rights, lies at the feet of the EU legislature (Weinzierl & Lisson, 2007, p. 78).

None of the problems conceived are originally Frontex problems. Frontex is, at least until the present, subordinated to national leading agents, and Frontex is perhaps extending the possibilities of single nation states, combining more forces not only from neighbouring countries, but from the European Union in general. But the problems we see, regarding human rights abuses and a more than doubtful treatment of the right to asylum, are present as well and in almost the same degree on the level of the nation states. Furthermore, Frontex until now relies not only on the willingness of member states to allocate materials and staff, but also on agreements member states concluded with third countries. Frontex acts on the basis of Italian-Libyan cooperation, and on Spanish bilateral contracts with countries in West Africa, namely Morocco, Mauritania and Senegal. At the moment, we can see Frontex as some sort of additional value added to the capacities of nation states to fight irregular migration. But Frontex is the transposition of activities of EU member states on the European level.

Frontex is not a messenger of European values and fundamental rights. Rather, the status as an EU agency gives Frontex all means to keep secret and blur its activities, its plans, and its experiences, and Frontex can be seen as a strong symbol for a constructional fault in the European migration system. While Frontex reaches out for establishing migration control in third countries, the human rights seem to be left behind on European territory (see Klepp, 2010, pp. 8ff)³⁴.

Coming back to Bamako

Far from the Mediterranean shores, in the capital of Mali, Bamako, the organisation ARACEM³⁵ resides in a building close to the central bus station. Three men from the Democratic Republic of Congo and from Cameroon, themselves forcefully returned in the early 2000s, manage this rescue point for migrants that have been deported via the Algerian Border, and dropped at a small village in plain

³⁴ Klepp (2011) just published a book on migration issues and Mediterranean sea borders, covering the developments of the past decade and discussing them from a legal anthropological perspective.

³⁵ *Association des Refoulés d'Afrique Centrale au Mali*.

desert called Tinzawaten. Every two weeks a transport, executed by the Mali Red Cross, gathers up to sixty returnees and brings them to Gao, from where the returnees then arrive at Bamako. ARACEM meets them at the bus station, offers shelter, food and medication for some days. Then the returnees have to leave the house for new deportees. The work of ARACEM, medical treatments and in single cases special care is financed by European NGOs³⁶. According to the statistics of ARACEM one out of twenty persons dies on the journey back between Tinzawaten and Bamako. Several are in need of medical treatment; some are seriously disturbed and need mental health assistance. The stories these migrants tell are full of despair, broken dreams, they are about not knowing where to go and not knowing how to gather the money to get back home or to head north once again.

The young men of Yanfolila, after they arrived after deportation, stayed only few days in Bamako, gathered money for the bus ticket from local relatives and then made their way back to Yanfolila or to the village. The reception on their return was twofold. On the one hand, the pictures and stories about migrants drowning or being shot on the fences, or dying in the Sahara had arrived in Yanfolila, too. Many people knew what the returnees had endured and listened to the stories they had to tell. The young returnees formed an association based on the experiences of their return, and acted as facilitators in a government campaign informing about the risks of irregular migration, and thus earned a certain reputation. On the other hand, they had returned with empty hands, had nothing to bring back as their adventures, and nothing can be worse. Migration in Mali is linked to upward mobility, within the family, within the village. A migrant, and a migrant from Europe even more so, is expected to bring back money, which adds to his mother's status within the family, and to the status of his family in the neighbourhood. A return after successful migration is seen as passage to the status of a real adult and responsible member of the family. The migrant who fails is nothing. He is regarded as a youngster, and is object of jokes and sneering. The stories of adventures helped, but could not outweigh the shame and the debts. Most of the migrants' families were heavily indebted because they spent a fortune on migration. In some cases, this was not mentioned any more, in others, especially in households where the father had more than one wife, the migrant has to repay all these expenses, a debt that lasts as a heavy burden on his future. The returnees reintegrated, but despite their age on a lower level than before their departure. And some were lost: not only those who drowned in the sea or

³⁶ Cimade, *Médecins du Monde*, and *Medico International*.

died in the desert, but also those who were too ashamed to return to the family, stay in transit, or stay at Bamako, cut off from their families and social ties.

All this is discussed in the small villages and in the town of Yanfolila, and in the same way the stories about rich migrants (and the new houses that were built with migrants' money) nourished new migration, the stories of failed migrants and their fate deter other young men to head for Europe, though there will be always some who will find their ways.

This is the preliminary end of a journey which started long ago, an effect of European migration management far outside the European borders. Having often a relative insecurity as a point of departure, this is transformed through migration into an almost absolute lack of security. While the return of the young men from Yanfolila was eased by the public discourse on what they had to endure on their journey, today countless failed migrants gather in Bamako, often in situations close to social death, rejected by their families or feeling too ashamed to return with empty hands. This growing number of failed migrants, the money spent and spoiled on migration, probably does neither enter into Frontex risk analyses nor the consciousness of European policy makers when talking about the benefits of migration and development. Even at Bamako, the fate of failed migrants is rarely a topic of public discourse. Few self-organisations of returnees struggle to influence the public opinion and political arena, but talking about failure is not popular in Mali, and many failed migrants rather hide than gather.

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