

MIGRATION MANAGEMENT AT THE OUTPOSTS OF THE EUROPEAN UNION

The Case of Italy's and Greece's Borders

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Management of irregular migration is a priority at the European and national levels, particularly for countries functioning as external borders to the European Union, like Greece and Italy. Both have been on the receiving end of irregular arrivals of migrants and asylum seekers – Italy through its maritime border and especially the island of Lampedusa, and Greece through both sea and land borders with Turkey. This article examines the role of southern Member States of the European Union as focal points of externalised migration control but also as the 'outposts' where EU policies and mechanisms emerge as a response to the influx. Beginning with a discussion on the notion of externalisation, we explore its different manifestations in the European Union and, utilising the concepts of fencing and gatekeeping, we discuss the strategies adopted on migration and asylum control by Italy and Greece, particularly following the recent Arab Spring. The article concludes with a critical reflection on externalisation and its broader implications in relation to international law, human rights and the evolving geopolitical context.

The Challenge of Migration at the European Union's Southern Sea Borders

In 2011, the world witnessed historical change in Northern Africa. The Arab Spring was met with optimism by many for a brighter political and social future in the region, but was treated with discomfort by European Union (EU) Member States on the receiving end of irregular arrivals.¹ The influx of approximately 40,000 irregular migrants and asylum seekers, originally from Tunisia and progressively also from Libya to Italy, prompted the deployment of Frontex² and, at a political level, resurfaced the discussion around an enhanced border-management system at the external borders of the EU.³

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¹ Triandafyllidou and Ambrosini (2011); Nascimbene and di Pascale (2011).

² The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established by the European Council Regulation (EC) 2007/2004 (26.10.2004, OJ L 349/25.11.2004). Frontex coordinates operational cooperation between Member States in the field of

Immigration control has been an issue of priority in the EU since the mid-1990s.⁴ The Barcelona Process of 1995 (known as the Euro-Mediterranean Partnership) was founded on the pillars of political stability, cooperation and security dialogue in the Mediterranean and neighbouring countries. Immigration, especially irregular migration, was from the beginning integrated in the security dialogue, and continued to be a key issue – particularly during the enlargement process and in what later on became the European Neighbourhood Policy (ENP) to the East and more recently to the South of the EU towards the Maghreb. However, it is worth noting that irregular migration became fully embedded in the security discourse after 2001. Following the 9/11 attacks, the new security discourse that emerged put strong emphasis on the control of irregular (and often low-skill) migrants.⁵ In a changing landscape of human security (9/11, Madrid train bombings 2004, London bombings 2005), the European Commission's Communication on the 'Global Approach to Migration'⁶ placed the pillar of Justice and Home Affairs as the central priority in the external relations of the EU, achieved through the establishment of a partnership with third countries; in the field of immigration particularly, this would be achieved through border controls, travel document security and readmission agreements,⁷ to name but a few. This theme continues to be reiterated in all Communications of the Global Approach to Migration.⁸

The focus thus shifted to the external borders of the European Union, and the policies that emerged were largely a response to the incoming flow of irregular migrants and asylum seekers received at the outposts of the Union, notably Spain, Italy, Malta and Greece. Italy and Greece are of particular interest in the context of the securitisation of migration and externalisation of border management due to the policies they adopted (or

management of external borders; assists Member States in the training of national border guards; carries out risk analyses; follows up the development of research relevant for the control and surveillance of external borders; assists Member States in circumstances requiring increased technical and operational assistance at external borders; and provides Member States with the necessary support in organising joint return operations. For more, see www.frontex.europa.eu.

³ Nascimbene and di Pascale (2011), pp 343–4.

⁴ Cassarino (2013).

⁵ Jordan et al (2003).

⁶ The European Commission's Global Approach to Migration first introduced in the 2005 Communication (see <http://register.consilium.europa.eu/pdf/en/05/st15/st15744.en05.pdf,7/7/2013>) bridges the management of legal migration and asylum with concerns about security and the fight against irregular migration. It mandates the cooperation with third countries in terms of migration and asylum management but also emphasises overall cooperation and development goals as integral to the EU's migration and asylum policies. This 'Global Approach' has become the blueprint and main framework for EU policy development in the field since then.

⁷ Cassarino (2010, 2013).

⁸ European Commission (2005).

attempted to adopt) regarding border control, migration and asylum management.

The geopolitical changes brought on by the ‘Arab Spring’ in the region led to the emergence of new migration flows, generated by the regional crises. Economic migrants from Asian countries residing in Maghreb and Gulf states, particularly Libya, became forced migrants and/or asylum seekers seeking refuge to neighbouring countries and Europe. These mixed migration flows of forced migrants, refugees, people in need of humanitarian assistance and economic migrants were received as a unified flow and brought two issues to the fore: first, the effectiveness (or not) of institutional responses and mechanisms of border controls already in place, and second the implications in terms of human rights and international law. In response to the arrival of 25,000 Tunisians in Lampedusa, the EU sought to expand its securitisation concept to include new measures and tools of identifying irregular migrants, preventing entry (European External Border Surveillance System – EUROSUR)⁹ and ensuring forced return.

This article focuses on the cases of Italy and Greece, and the externalisation of European asylum and migration policies. It begins by expounding on the notion of externalisation of border control, arguing that externalisation involves two levels: a first level of delegating irregular migration and asylum management to peripheral EU Member States; and a second level that involves the delegation of such controls to third countries. We look at the measures and policies implemented in Italy and Greece respectively, with a particular focus in the period 2010–12.¹⁰ We aim to show how these two levels of externalisation, the ‘internal’ and the ‘external’ facets, revolve around a complex web of policies and mechanisms that ensure unwanted irregular migrants and asylum seekers do not reach the ‘inner’ countries to the west and north of the EU. However, these policies do not warrant burden-sharing, as it is claimed they do – particularly with regard to asylum management. Despite the official discourse, the externalisation of EU migration and asylum policies tends to prioritise effectiveness and results over other policy considerations, such as respect for fundamental rights and the right of access to asylum for all, irrespective of country of origin. The discussion around externalisation of migration and asylum policies is particularly pertinent today in the European context, in light of the adopted Common European Asylum System (CEAS) and the new multi-annual framework program for migration and asylum that will replace the Stockholm program in 2014.

⁹ EUROSUR was first proposed in 2008. Frontex describes it as a ‘system of systems’ that will enable all Member States to access the same information of the situation at the EU’s external borders and ensure the safety of immigrants, through early detection of vessels at sea. However the report commissioned by the Heinrich Boll Foundation (2012) is highly critical of the technology, questioning its application and whether it can ultimately succeed. EUROSUR was expected to be operational by December 2013.

¹⁰ Though we include, where possible, data from 2013, the main focus of the article are the policies that were implemented in the period 2010–12 in Italy and Greece.

Externalising migration and asylum

The externalisation of migration and asylum policies is not a recent initiative. It appeared as early as 1999 in the Tampere Council conclusions and was reiterated in the Seville Council Conclusions in 2002, which stated that future cooperation agreements with third countries should include a clause on 'joint management of migration flows and compulsory readmission in the event of illegal immigration'¹¹. Externalisation of migration and asylum controls can develop along two lines, as a 'fencing' or a 'gate-keeping' strategy: gate-keeping strategies aim at restricting practical legal access to a nation and its institutions, while fencing measures actively target illegal migrants in order to arrest and then expel them. Typically, gate-keeping involves paper controls of people who seek to enter a country or who come voluntarily forward, while fencing involves detecting persons in hiding and trying to deter/stop those who seek to enter without appropriate authorisation.¹² Thus, we argue that we have two levels of externalization utilizing strategies of fencing or gate-keeping, for the management of irregular migration and asylum. These two types of irregular migration and asylum control policies further interact with the two levels of externalization: notably delegating migration and asylum controls to the peripheral countries of the EU at its southern and eastern external borders (first level), and also shifting the burden further outwards, delegating the responsibility for migration and asylum management to third countries (second level) (see Table 1).

In the externalisation of policies for the management of irregular migration the focus at the first level makes peripheral Member States responsible for controlling irregular migration and asylum seeking flows so as to protect inner states (geographically remote from the EU external borders) from unwanted entries. This takes place through the re-activation of internal border checks within the Schengen area (as regards migration) and the deployment of Frontex's forces at the EU's external borders. In terms of the former, examples are the controls that routinely take place in the Greek ports of Igoumenitsa and Patras, and in the Italian port of Ancona to prevent irregular migrants from crossing from Greece to Italy, as well as the temporary re-activation of border controls between Italy and France at the south-eastern border of France at Ventimiglia in April 2011, following the Arab spring influx of Tunisian irregular migrants to Italy.

As regards the further externalisation taking place through deployment of FRONTEX forces and EU technologies and mechanisms (VIS, SIS, EUROSUR¹³) the main aim is to identify the 'undesirable' population prior to and/or at entry at the EU's external border (examples are Greek Turkish land or sea border, the Spanish Moroccan sea border or the Libya Italy sea border).

¹¹ Lavenex (2006), p 342.

¹² For a detailed analysis of 'gatekeeping' and 'gate-fencing' policies see Triandafyllidou and Ambrosini (2011).

¹³ VIS – Visa Information System, SIS – Schengen Information System, EUROSUR see p 4 above, see also Triandafyllidou and Ilies (2010).

Table 1: Dimensions of migration control regimes

| | Gatekeeping | Fencing |
|--------------------------------------|--|---|
| Externalisation towards other EU MS | <ul style="list-style-type: none"> • Visa procedures • Carrier sanctions • Paper controls at ports of entry (land border or sea border or airports) • Procedures to deal with asylum at the border or within the country's territory • Labour market checks and controls of access to welfare and other services • Cooperation with countries of origin and transit to prevent irregular migration | <ul style="list-style-type: none"> • Border controls outside ports of entry, at land or sea • cooperation with transit or origin countries for expulsion and readmission procedures • Internal controls at public places • Detention, expulsion, removal and other procedures to enforce return |
| Externalisation (to third countries) | <ul style="list-style-type: none"> • Visa procedures • Carrier sanctions • Paper controls at ports of entry (land border or sea border or airports) • Cooperation with countries of origin farther away to prevent irregular migration | <ul style="list-style-type: none"> • border controls outside ports of entry, at land or sea • cooperation with origin countries for expulsion and readmission procedures • Detention, expulsion, removal and other procedures to enforce return |

Source: Compiled by the authors.

Frontex is the agency responsible for the security and control of the external borders of the European Union. Originally designed for consultation, training and risk analysis, the agency has evolved significantly with operational control, a budget that started with 6.2 million euro in 2005 to reach 87.9 million Euro in 2010, and with increased role in the management of borders. With its main modus operandi being prevention, detection and deterrence through land, sea and air operations across Europe (Operation Hera in the Canary Islands, Hermes in Italy, Poseidon in Greece), Frontex is currently the main agent in the context of externalised border control, further showcased through its presence in Greece where, in the period 2011–12, it has undertaken its biggest land border operation in the region of Evros, at the Greek–Turkish land border.

The second level of externalisation of irregular migration – notably the delegation of migration management to third countries – is achieved mainly through partnership and readmission agreements (signed bilaterally between Member States or by the EU and third countries). It particularly develops in

the context of the European Neighborhood Policy (ENP). The ENP to the east includes Ukraine, Belarus and Moldova, and further east Georgia and Azerbaijan, and to the south the region between Morocco and Syria. The ENP does not involve a membership perspective, but rather aims to provide a comprehensive framework for managing economic, political, security and social issues. With regard to migration and border control in particular, the policy involves everything but institution-building, and it is essentially based on the idea that a 'good neighbour makes good fences'. Partnerships with countries of origin figured prominently in the Hague (2004) and Stockholm (2008) home affairs programs concerning migration and asylum management, and remain the primary tool for the second level of the wider externalisation policy framework. Readmission agreements are an essential part of these partnership agreements, as they enable the peripheral EU Member States to return illegally entering/staying third-country nationals to their countries of origin or transit.

In contrast, externalisation of asylum towards peripheral Member States (the first level) is based on the Dublin II Regulation of 2003¹⁴ and the 'first safe country' principle is applied when examining asylum claims. The regulation foresees that asylum seekers should submit their asylum claims at the first safe country they reach, notably the first EU country they enter. This presumption of safety is fundamental to the establishment of the Common European Asylum System (CEAS). Safety is assumed to exist within the EU along with uniform treatment of asylum seekers, through the transposition in national legislation of the three EU asylum directives.¹⁵ Thus, when an asylum seeker lodges an asylum claim in the Netherlands, and it is found that they entered from the Greek-Turkish border, the asylum seeker is returned to Greece, as Greece is the first safe country they entered, and hence the country responsible for processing the claim.

The presumption of safety and of a level playing field in asylum processing within the EU was challenged by the European Court of Human Rights (ECtHR) in the *MSS v Belgium and Greece*,¹⁶ where the court argued against the idea that there is 'per se a sufficient basis for intra-EU transfers of asylum seekers'.¹⁷ The court found that the dysfunctions of the Greek asylum system, and the inhuman and degrading conditions of detention in the country, violated Articles 3 and 13 of the European Convention for Human Rights and deprived the asylum seeker of his right to an effective

¹⁴ The Dublin II Regulation entails a series of criteria for allocating responsibility for examination of asylum claims that apply in the order listed in the Regulation.

¹⁵ Reception Conditions Directive, Asylum Procedures Directive, Qualification Directive. All three form the minimum standards for reception, processing and interpretation of asylum seekers in the EU, essentially striving for uniform treatment across all Member States. All three, along with the Dublin II Regulation, have been recast and will be in effect by 21 July 2015.

¹⁶ ECtHR (GC), *MSS v Belgium and Greece*, Appl. No. 30696/09, 21 Jan. 2011.

¹⁷ Moreno-Lax (2011), p 29.

remedy. This resulted in a suspension of transfers of asylum seekers to Greece from other Member States.¹⁸

With regard to the second level of the externalisation, it is also based on the Dublin II Regulation, particularly Article 3 §2, which foresees the return of asylum seekers to safe third countries. The implementation of this provision depends largely on the existence of readmission agreements enabling the return of asylum seekers under the 'safe third country' rule. This rule has been criticised for effectively denying access 'to substantive status determination procedure'¹⁹ by cultivating the idea that protection should be sought elsewhere: to the country of origin and/or transit deemed safe for return²⁰.

In this complex web of externalising irregular migration and asylum-management policies, it is worth noting that partnership agreements and development policies can support capacity-building in the countries of origin and reduce immigration; however, they often entail unrealistic expectations by posing excessive demands on countries of origin and/or transit,²¹ or entailing actions that restrict not only entry to a country but, even more alarmingly, exit from one (as happened in the case of the Italy–Libya agreements in the 2009–11 period, see further discussion below).

EU Border Management and Southern Member States

From Spain to Greece, the southern Member States of the European Union are focal points of migration control not only because they represent one of the external borders of the EU, but largely because policies and mechanisms emerge as a response to the influx they receive. Nowhere, however, was this more apparent than in the case of Italy during the Arab Spring and Greece in the period 2010–12. Both countries were at the receiving end of irregular migrants and, in their own ways, both assisted in shaping and testing EU mechanisms and policies aiming at regulating irregular migration, not only in terms of arrival but also residence. These two countries therefore constitute particularly appropriate cases through which to examine the mechanisms and dynamics of the EU policy of externalising irregular migration and asylum management.

Italy and Libya

Italy has been on the receiving end of irregular arrivals and asylum seekers since the mid-1990s, and in the last decade particularly from mixed migrant flows from Northern Africa (Libya, Algeria, Tunisia, Morocco and Egypt) and sub-Saharan Africa. The closest landfall to Tunisia, and by extension the

¹⁸ See Triandafyllidou and Dimitriadi (2011).

¹⁹ Lavenex (1999), p 76.

²⁰ European Council on Refugees and Exiles (2009), 'Comments from the European Council of Refugees and Exiles on the European Commission proposal to recast the Dublin Regulation', www.ecre.org/component/downloads/downloads/112.html, 5/2/2013.

²¹ Triandafyllidou (2009).

main gateway to Italy and Europe, is the small island of Lampedusa. The 'revival' of the Italian corridor was largely due to the cut-off of the Spanish enclaves of Ceuta and Melilla in 2005, which redirected irregular migrants from Northern Africa, and particularly from Libya, towards Lampedusa.

Until the early 2000s, Italy's migration management focused on patrols across the coast of Lampedusa and Sicily. Boats intercepted close to the Italian and/or Maltese coast were allowed to disembark in Lampedusa, where immigrants received first-aid treatment and were held in detention pending identification. This process, similar to that in Greece, frequently resulted in the release of the migrants accompanied by an expulsion order. The immigrant would then disappear in the country, or in many cases travel to other EU countries and join the ranks of irregular migrant workers in Europe.²² The main problem was thus to ensure the boats did not approach the Italian coastline, rendering disembarkation impossible. This was achieved through the externalisation of border control to Libya.

The development of cooperation with Libya is remarkable if one considers the years of isolation following the Lockerbie bombings of 1988 and the exceptionally poor human rights record the country held. The Italian–Libyan cooperation was born primarily out of a desire to prevent arrivals from the point of departure, 'inspired' by similar partnerships established between other EU Member States (e.g. Spain with Morocco). Between 2000 and 2005, the two countries signed agreements to fight, among other things, illegal migration, through training, and the exchange of police officers and equipment. The partnership was based on two pillars: preventing entry to Italian waters; and the return of irregular migrants to Libya as a point of transit and/or origin. The first part would be achieved through parallel patrols, from the Italian side to prevent entry but also from the Libyan side to prevent exit. For the latter part, and following the lift of the embargo, Italy provided Libya with military equipment for border surveillance.²³ Return was also an important pillar of the partnership, though no formal readmission agreement had been negotiated. Rather, it had been verbally agreed that Italian authorities would return to Libyan vessels with irregular migrants apprehended at sea. From August 2003 to December 2004, 5688 people were returned to their countries of origin in over 50 charter flights financed partly by Italy. The largest return took place in the first week of October 2004, with the return of 1153 irregular migrants and asylum seekers to Libya.²⁴ Despite the harsh tactics of the Berlusconi government, until 2008, irregular migrants continued to arrive to Italy from sub-Saharan Africa (see Table 2).

²² Triandafyllidou and Maroukis (2012).

²³ Hamood (2008).

²⁴ Andrijasevic (2009), p154.

Table 2: Migrants apprehended at sea borders, Italy 2001–12

| Year | Sicily | Sardinia | All Italy |
|------|------------------------------|----------|-----------|
| 2001 | 5,504 | – | 20,143 |
| 2002 | 18,225 | – | 23,719 |
| 2003 | 14,017 | – | 14,331 |
| 2004 | 13,594 | – | 13,635 |
| 2005 | 22,824 | 16 | 22,939 |
| 2006 | 21,400 | 182 | 22,016 |
| 2007 | 16,585 | 1,548 | 20,165 |
| 2008 | 34,540 | 1,621 | 36,951 |
| 2009 | 8,282 | 484 | 9,573 |
| 2010 | 107 | 318 | 4,406 |
| 2011 | 50,483* | n/a | 62,692 |
| 2012 | 15,900 (Sicily and Sardinia) | | |

Source: Data for 1999–2008 – UNODC (2010), Table 1, p 11. Data for 2009–11 – Caritas Migrantes, Dossier Statistico, Roma (2012), p 131.

*Data here refer to Lampedusa only.

Table 2 clearly shows the dramatic drop in the number of intercepted migrants at sea after 2008. Indeed, in response to the continuous arrivals, on 6 May 2009, Italy began unilaterally interdicting boat immigrants and returning them summarily to Libya,²⁵ a policy soon followed by joint naval patrols in Libyan waters, codified in the Treaty of Friendship, Partnership and Cooperation between the Italian Republic and Great Socialist People's Libyan Arab Jamahiriya signed in August 2008.²⁶ Italy's harsh tactic was largely a response to the influx of 2008 (see Table 2). In exchange, Libya was guaranteed US\$5 billion in compensation for the Italian colonial rule to be divided in a 25-year period for infrastructure, development aid and border control. The then Minister of the Interior, Roberto Maroni, stated that 'Italy

²⁵ Human Rights Watch (2009); United Nations High Commissioner for Refugees (UNHCR) Press Release 'UNHCR deeply concerned over returns from Italy to Libya', <http://www.unhcr.org/4a02d4546.html>, 20/202013.

²⁶ Treaty of Friendship, www.programmaitegra.it/modules/dms/file_retrieve.php?function=view&obj_id=2083 (in Italian), 11/2/2013.

was investing to secure Europe's borders and the EU should take note²⁷ and pursue similar strategies with other states on the receiving end of irregular migrants, like Greece.

The heart of the Italian–Libyan agreement was deterrence of irregular migration from Africa, an effort soon joined by the EU, which offered to assist Libya with the control of its vast southern border in the Sahara desert. The creation of a satellite control system of Libyan land borders, developed by Italian companies with Italian and EU funds, meant the fencing off of the land border, but also an extension of border management beyond the prescribed boundaries of the EU. Combined with the blocking of the sea route, immigrants would inevitably become trapped in Libya or on its periphery. Although the Italian–Libyan partnership does not appear at first glance to focus on preventing exit from the country (a fundamental right), in reality it poses physical barriers and obstacles to those who attempt it. By creating parallel ‘fences’, both on the Italian side but also on the Libyan waters, migrant vessels effectively became cut off, with no space available to move. Exit from Libya thus became as difficult and dangerous as attempted entry to Italy.

Returns and partnership agreements were combined with European assistance in the form of Frontex. Its main operation until 2008, Operation Hera, had focused on north-west Africa, primarily Mauritania and Senegal, to reduce arrivals to the Canary Islands. In 2009, however, Frontex began to assist in the return operations in the Libyan–Italian waters, under Operation Nautilus IV, which was considered to be successful not only in reducing the number of arrivals but also minimising loss of human life. Though Frontex did not directly return immigrants to Libya, it began to assist the Italian authorities in the interdiction and return of vessels from Libyan waters. EU involvement extended further, through the signing of a cooperation agenda in 2010 with the Libyan authorities seeking to improve Libya's border-management capabilities. More importantly, an official readmission agreement was being negotiated between the EU and Libya for readmission of third-country nationals who entered the EU after transiting through Libya, despite growing concerns by humanitarian organisations following refugee statements that they felt threatened and trapped in Libya.²⁸ Libya is to this day not a signatory party to the 1951 UN Convention Relating to the Status of Refugees (known as the 1951 Geneva Convention) and has no official asylum seeker-processing system.

All the aforementioned measures resulted in a radical reduction in number of arrivals in Lampedusa and Sicily. Even more importantly, this was achieved outside of Italian jurisdiction, since both interdictions and returns took place under either joint patrol and/or in Libyan territorial waters. However, as the

²⁷ Ivan Camilleri (May 15, 2009) ‘Frontex mission will not send migrants back to Libya’, *The Times*, <http://www.timesofmalta.com/articles/view/20090515/local/frontex-mission-will-not-send-migrants-back-to-libya.256917>, 17/2/2013.

²⁸ Klepp (2010).

European Court of Human Rights (ECtHR) pointed out in its criticism of Italy,²⁹ this did not absolve Italy of either its responsibility or its violation of international and European laws, for – among other things – knowingly returning the migrants to a country where they could be exposed to ill-treatment and repatriation amounting to refoulement.

The Arab Spring

The Arab Spring brought a swift change in the region that encompassed North Africa. Already in 2010 the detention facility in Lampedusa had closed, and arrivals were at a minimum. The social revolt in Tunisia changed the landscape, with what Italian Interior Minister Roberto Maroni described as a ‘biblical exodus’³⁰ of mixed migrant flows. Both the International Organisation for Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR) reported that migrants were trying to escape the recent political upheaval in Tunisia while others were fleeing poverty. An estimated total of 25,000³¹ Tunisian inundated the island of Lampedusa in the first two months of 2011. An additional 20,000 sub-Saharan Africans would arrive in the coming months in Lampedusa, fleeing the war in Libya during the spring and summer of 2011.

In response originally to the arrivals from Tunisia, on 20 February 2011, Frontex launched Joint Operation Hermes Extension, hosted by Italy and patrolling mainly off the island of Lampedusa. The Frontex operation was further complemented by the repatriation agreement of 6 April 2011. Furthermore, Italy attempted a dual externalisation policy with mixed results; towards Tunisia on the one hand, but also within the EU, towards France. On 5 April 2011, Italy and Tunisia signed a partnership agreement that came into effect for all new arrivals from 6 April. The agreement included a provision for the 25,000 who had arrived prior to the signature date; Tunisians would be issued with six-month temporary permits, enabling them to travel within Schengen. The Tunisian government had refused the immediate return of its nationals, so the six-month permit was a compromise for Italy.

Given the long-standing history between Tunisia and France, there seemed to be an expectation that Tunisians would travel to France,³² thus absolving Italy of the responsibility of finding a durable solution. This was confirmed through various statements of French officials, like the deputy mayor of Nice, who declared that: ‘It is a little too easy for Italy to be generous with the territory of others.’³³ The Franco-Italian rift that followed was a result largely of Italy’s effort to ‘externalise’ the migration management to neighbouring France. Though many succeeded in crossing

²⁹ ECtHR (GC), *Hirsi et al vs Italy*, Appl. No 27765/09, 23 February 2012.

³⁰ Spiegel (2011); see also Triandafyllidou and Ambrossini (2011).

³¹ Up to 6 April, 390 boats had arrived in Italy, with a total of 25,867 undocumented migrants and asylum seekers, mainly Tunisian. In total, up to 6 April 2011, only 10 boats had arrived from Libya: Monzini (2011).

³² Frontex (2011a).

³³ Elranger (2011).

the border to France,³⁴ the move again raised the issue of internal border controls, and it was a politically unsustainable strategy in the long term.

The second level of externalisation, directed towards Tunisia, was successful. Tunisia had committed to accelerate return procedures for newly arriving Tunisians (no fingerprinting and documentation) and in an unprecedented move, Tunisian officials were invited in Lampedusa to simplify the process of return. This created a situation whereby Lampedusa was under Italian jurisdiction, yet the management of return was handed over to a third country. Police surveillance and border patrols along the Tunisian coast were combined with regular repatriation of Tunisian nationals, thereby externalising migration and asylum to the border of Italy and beyond. This combined policy was deemed successful since, according to Frontex, approximately 1696 Tunisians were repatriated between 5 April and 23 August 2011.³⁵

The developments in Italy are not only important in demonstrating the various facets of externalisation that operate simultaneously at both levels (externalising towards peripheral EU Member States and externalising towards third countries); they are also important in terms of the reaction they generated in the EU. In this case, Italy developed both a fencing policy and a gatekeeping strategy towards Libya and Tunisia, which was indeed successful in curbing arrivals. Nonetheless, the Franco-Italian dispute and the fact that Italy was unable to stem the flow from the beginning clearly alarmed Member States. On 24 June 2011, the European Council Conclusions stated that 'a mechanism should be introduced in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons'.³⁶ The aim was to assist a Member State facing heavy pressure at the external borders with technical and financial support, and intervention from Frontex. The Council went a step further to request that the European Border Surveillance System (EUROSUR) be developed and operational by December 2013, in order to ensure enhanced border surveillance and cooperation between Member States. Combined with the 'smart border' proposal introducing an entry/exit system and registered travellers' programme, this is the most extensive border-management proposal submitted in the EU, utilising both gatekeeping and gate-fencing strategies, motivated partly by the irregular arrivals at its external border but also the 'fear' of what could follow (such as a Syrian exodus to Europe).

Greece

In the discussion of European policies of externalisation of migration and border management, one cannot but refer to Greece. Greece's geographical position as well as membership in the EU transformed it since the mid-1990s

³⁴ *Telegraph* (2011).

³⁵ Frontex (2011b).

³⁶ European Council (2011).

to an attractive destination for migrants and asylum seekers. Since 2000, it has increasingly been on the receiving end of irregular arrivals from Asia and Africa, with Afghanis, Pakistanis, Bangladeshis, Iraqis and Somalis among the top ten nationalities in apprehensions. By 2010, almost 90 per cent of all arrests of irregular migrants entering the EU took place in Greece.³⁷ Greece is an interesting case for two reasons. First, while it did not succeed in externalising its border management to the extent Italy did, it has been on the receiving end of the externalisation effect created under Dublin II – that is, as a point of entry, it is responsible for the processing of those returned from other Member States to Greece, under the Regulation. Second, it bought into the first level of externalisation by requesting the involvement of Frontex in the management of its border. Entry points to Greece can be identified in both the maritime and land borders. From 2007–09, the sea border was the main entry point for the majority of arrivals. A shift took place in the period 2010–12 that resulted in a dramatic drop in sea arrivals, followed by an increase at the sea border in late 2012. The latter remains to this day the main point of entry for irregular arrivals.

The Greek–Turkish sea border

The extensive length of the Greek islands' coastline, and their proximity to Turkey, make policing extremely difficult. The points of approach from Turkey into Greece are shifting constantly,³⁸ while arrivals have been registered at almost any possible place along the eastern coast of Greece and most of the islands on the Eastern Aegean Sea (see Table 3). However, it should be noted that apprehensions are not necessarily accurate representations of incoming numbers, and do not only indicate a rise or drop in arrivals but also the enforcement efforts of the authorities that in the case of Greece increased since 2008.

Table 3: Greek–Turkish border apprehensions

| Year | Land border | Sea border | Total apprehensions |
|-------|-------------|------------|---------------------|
| 2008 | 14,461 | 30,149 | 44,610 |
| 2009 | 8,787 | 27,685 | 36,472 |
| 2010 | 47,088 | 6,204 | 52,269 |
| 2011 | 54,974 | 1,030 | 56,004 |
| 2012 | 30,433 | 3,651 | 34,084 |
| 2013* | 827 | 9,400 | 10,227 |

Source: Ministry of Public Order & Citizen Protection (2013)

* until October 2013.

³⁷ Fundamental Rights Agency (2011), p 12.

³⁸ Marouf (2011).

The main groups intercepted are Afghans, Iraqi Kurds, Somalis, Egyptians³⁹ and, more recently, Syrians. Standard practices of interception, both at maritime and land borders, include disembarkation, first-aid and health checks, transfer to police station for identity checks (for those without documents) and detention. Detention in particular is a hot potato in Greece. The country was heavily criticised for its detention facilities on the islands⁴⁰ and for detaining asylum seekers.⁴¹ The initial detention period of six months has now been extended, through the modification of the Presidential Decree 114/2010, enabling the detention of asylum seekers for a maximum of 18 months. This is unlikely to contribute to the efficient processing of asylum claims; it is, however, seen as a deterrent for asylum applications since migrants are informed that upon lodging an application they will be detained longer and are thus discouraged from doing so.

Greece attempted to deal with the maritime arrivals through both fencing and gatekeeping. In relation to the former, the country requested European assistance as early as 2006, when the first Joint Operation (JO) by Frontex took place. JO Poseidon was originally designed for ten days. It has since become permanent, and in 2011 was extended to include also Crete as well as the waters between Italy and Greece. Frontex's presence in Greece solidified through the establishment of the Operational Office in Piraeus initially designed as a pilot regional centre for Cyprus, Greece, Italy and Malta.⁴² The extent to which it can receive the accolade for the dramatic drop in arrivals at sea by 2010 is unclear, however, considering that it has been operating in the Aegean Sea for several years without preventing the increase of irregular migration flows into the country through the Greek–Turkish sea border and the Aegean islands. The sudden shift of arrivals in 2010 to the land border was largely due to a combination of factors, including the de-mining of Evros⁴³.

In terms of gatekeeping, Greece signed the Readmission Protocol with Turkey in 2002. This policy, which is very similar to the externalisation policy pursued by Spain and Italy with neighbouring countries, has yet to be fully implemented. From 2006–13, Greece presented 5686 readmission requests to Turkey, in the context of this Protocol, concerning 122,437 people⁴⁴. Of those, only 12,326 were accepted for readmission but only 3805

³⁹ Triandafyllidou and Maroukis (2012).

⁴⁰ For the situation at Greek detention centres, see ProAsyl (2007), Human Rights Watch (2008), Frontex (2011b).

⁴¹ UNHCR (2012).

⁴² The office was initially to undergo evaluation in 2012 and, if deemed successful, three more operational centres were to open at designated key points in the external borders. Frontex (nd).

⁴³ ProAsyl (2012). The Greek–Turkish land border along the Evros River is a heavily militarised zone that included several insufficiently charted military minefields. The Greek state de-mined the area in line with its international obligations. This de-mining was completed in 2009.

⁴⁴ Data submitted by Ministry of Interior upon request, 23 March 2013.

were effectively returned to Turkey. The reason is the overall reluctance of Turkey to actually implement the Protocol. While the Protocol foresees three readmission locations (the airports of Athens and Istanbul respectively, a crossing point of the Greek Turkish border at the Evros River and the port of Izmir for Turkey and the port of Rhodes for Greece), only the land border readmission locations are actually used. Turkey continues to refuse to use the port of Izmir as a readmission location, noting that it does not have the necessary human and material resources for that.⁴⁵ Furthermore, Turkey negotiated the same geographical limitations to the Protocol, similar to those incorporated into the 1951 Convention: willing to accept only nationals of countries with direct borders to Turkey. This automatically limits significantly the number of potential returnees.

The Greek–Turkish Land Border

By 2010, the sea border was steadily being abandoned for the land border, with apprehensions reaching 47,088 (see Table 3). The overall apprehensions that year (Table 4) peaked at 132,524, and on 24 October 2010, Greece submitted an official request for further assistance. The detention facilities in Evros had reached a critical point, overflowing with irregular migrants detained in what the Fundamental Rights Agency (FRA) described as ‘inhumane conditions’.⁴⁶ In the same report, FRA stated that informal push-backs to Turkey took place at the land border as well as at the Evros River. In response to the Greek request for assistance, *Rabit*⁴⁷ was deployed, for six months, with 200 border guards, to later be replaced by an extended JO Poseidon land operation for the duration of 2011. The geographical scope was also extended to cover the borders between Bulgaria and Turkey.

It is worth noting that Frontex’s border guards were also assigned the task of ‘screeners’ responsible for conducting interviews with migrants documenting their identity and channelling them to the migration or asylum procedure. The European Asylum Support Office (EASO) also introduced its first mission to Greece, offering assistance in the setting up of a functional asylum system. Frontex’s presence in Greece is a good example of both the increased role of the agency in the management of external borders but also of the gradual externalisation of operations to a third party. Frontex provided assistance to Greece for additional capacity building in the field of return, through operation *Attica* that focuses on voluntary returns.

⁴⁵ Triandafyllidou and Maroukis (2012), pp 66, 78.

⁴⁶ Fundamental Rights Agency (2011), pp 18-19.

⁴⁷ Rapid Border Intervention Teams – that is, rapidly deployable border guards.

Table 4: Apprehensions of irregular persons (border areas and islands)

| Year | Total apprehensions |
|------|---------------------|
| 2008 | 146,337 |
| 2009 | 126,145 |
| 2010 | 132,524 |
| 2011 | 99,368 |
| 2012 | 70,227 |
| 2013 | 35,719 |

Source: Ministry of Public Order & Citizen Protection

* Until October 2013.

The effects of this extensive ‘securitisation’ of the Greek-Turkish border however did not become apparent until 2012, a year significant in terms of policies implemented but also the drastic reduction in the number of arrivals in 2013. In response to pressures from the EU but also the continuous arrival of irregular migrants, Greece actively pursued a combination of policies at the border: it tightened border controls through Operation ‘Shield’ (*Aspida*) with the transfer of 1800 border guards in the region of Evros; it concluded the building of a border fence across the 12.5 kilometres used as the main entry point; and it increased passport controls and technologically upgraded the harbours of Patra and Igoumenitsa – main exit points to Italy (thus turning to better ‘fencing’ measures).

In parallel, it pursued an aggressive internal policy of apprehension and detention. Daily police patrols known as ‘sweeps’ (operation *Xenios Zeus*) attempt to identify irregular migrants, who are then detained pending deportation. This ‘criminalisation’ is accompanied by an increase in deportations, and strong promotion of voluntary return programs – often in collaboration with the IOM or through the police (continuation of operation Attica). According to a Frontex official, who requested anonymity, Greece went from having infrequent return flights to countries of origin and/or transit to performing twice-monthly returns.⁴⁸ Simultaneously, the IOM voluntary return program was strengthened and, within a period of two years (2010–12), a total of 4978 asylum seekers had been returned to their country of origin with the support of the European Return Fund.

In a way, securitisation turned inwards, with unclear results. As the Parliamentary Assembly Resolution of 2013⁴⁹ recognised, Greece enhanced border controls and adopted a policy of systematic detention of irregular

⁴⁸ The interviewee refers to return flights operated by Greek police with funding from the European Return Fund. Interviewee requested anonymity. (Interview with Frontex official, recorded in Athens on January 2013)

⁴⁹ Council of European Parliamentary Assembly (2013).

migrants and asylum seekers in order to stem the flow. While these policies reduced the arrivals from the Evros border, they transferred the problem to the Greek islands once again. Simultaneously, the internal 'sweeps' did not yield the expected outcomes, since of the total 65,767 apprehensions, only 4145 (based on data from Ministry of Interior) were found to be undocumented (and hence were arrested for irregular entry and/or residence). The islands of Lesbos, Samos and the Dodecanese are once again on the receiving end of irregular migrants, but are more ill-equipped than before to house migrants since half the detention facilities have been shut down.

We can thus conclude that the externalisation of migration and asylum control policies in the region has focused primarily on fencing strategies realised mainly via the deployment of Frontex. It is important to note that the process of securitisation and externalisation of immigration and asylum issues does not start with Frontex. Rather, the agency was born out of a desire to coordinate operational cooperation amongst Member States in relation to security, but also a desire to restore EU citizens' trust in border control.⁵⁰ Attempts to successfully establish gatekeeping policies such as readmission to Turkey were not successful: in practice, Turkey has resisted this externalisation – so far successfully. Despite the considerable efforts to control the Greek external borders, the problem of irregular migration extends far beyond them.

Concluding Remarks

The Southern European border attracts a large number of immigrants and asylum seekers, mainly as stepping stones to the European continent. Countries like Italy and Greece hold a strategic location and role, largely due to their very membership in the EU. They become the outer posts of European migration-control policies, with a special role in the externalisation of the EU asylum and migration policies; they are simultaneously at the receiving end of externalisation as peripheral EU Member States, and are agents of externalisation as they seek to delegate irregular migration and asylum management to third countries. Frontex's presence in Greece is a case in point, as is Italy's cooperation with Libya, which restarted with the fall of the Gaddafi regime and which Malta now has joined. The adoption of readmission agreements, partnerships and joint border-control operations at maritime and/or land borders is one way of preventing migrants and asylum seekers from reaching European soil. The investment in measures and technologies that will inevitably prevent exit from third countries (such as the EU's funding for surveillance technology in the Sahara desert) is another. As we have demonstrated, externalisation of irregular migration and asylum management occurs at two levels. The first level takes place within the EU: countries farther north and west externalise to the southern border, mainly through the Dublin II regulation and the implementation of the First Safe Country principle. Additionally,

⁵⁰ Rijpma (2010).

externalisation can take place through manipulation of the Schengen area provisions. The second level of externalisation is aimed at third countries, and builds on the first one.

Fundamentally, though, both levels of externalisation raise a series of questions in terms of their application, the potential violation of European and international law (especially indirectly preventing exit from a country), the level of accountability and the risk to human lives. By presenting externalisation through the façade of ‘saving’ human lives, the blame for deaths is shifted to the migrants themselves, who continue to attempt to bypass the strict border controls and Frontex. Since 1998, as many as 13,500 people have died attempting to cross the Mediterranean, with 2011 (the time of the Arab Spring) being the deadliest on record: 1500 are estimated to have drowned.⁵¹ On 26 March 2011, *The Guardian* revealed that a small vessel left Tripoli with 72 people on board. It washed up on Libya’s shores 15 days later with only nine survivors. The continuous failure to respond to and assist the vessels in the area (commercial, NATO, Italian and Maltese Maritime Rescue Coordination Centers, helicopters in the area) is extensively documented in the report launched by the Council of Europe Parliamentary Assembly (PACE) that places responsibility, among others, on ‘the heavy burden placed on frontline States (that) leads to a *problem of saturation and a reluctance to take responsibility*’ (author’s emphasis). On 3 October 2013, over 350 migrants travelling from Libya to Italy died when the boat in which they were travelling caught fire and sank in the Mediterranean. The continuous cataloguing of deaths attempting entry to EU territory raises the question of how far the EU policies can externalise to safeguard the EU borders, and whose human security is in the end protected. Following events in Lampedusa, European policy-makers argued that the EUROSUR technology would contribute in saving migrant lives at sea, despite the fact that the system is structured around prevention and early warning. Yet, through this process of externalisation, humanitarian concerns remain secondary to ‘security’ concerns, as was evident in the latest incident in Lampedusa, where fishermen were said to have been hindered in rescuing people in the water, fearing they would be prosecuted with aiding and abetting illegal immigration (as it has happened in the past).

Immigration has transformed into a security concern, constructed partly due to the nature of arrivals, primarily through the maritime but also the land border, contributing to a feeling of emergency that needs to be dealt with. Small vessels capsizing and/or sinking near shores or within Search and Rescue (SAR) areas, unaccompanied minors, pregnant women – all these form part of the mosaic of arrivals and require a balancing act between border protection and respect of fundamental rights. It is a balance act that is not struck successfully in the European context – particularly since 2009, when individual states like Italy undertook more aggressive policies of deterrence.

Externalisation also directly affects asylum: access to asylum, right to asylum (claim) and recognition are part and parcel of entering a territory

⁵¹ PACE (2013).

unharmful. Protection, however, is more than physical: it is also about recognising the autonomous character of the individual and enabling that person to build a new life. As regards asylum management, the Dublin II Regulation 'externalises' asylum policies on two levels: first, by transferring the responsibility of asylum claims on the points of entry, thereby placing undue burden on the southern Member States of the EU and creating an unequal distribution within the EU; and second, by designating 'safe' third countries enabling the readmission of irregular migrants to countries of transit and origin. Following the decision on *MSS v Belgium and Greece*, discussions began on the proposed Dublin III Regulation. The Recast Regulation (entry into force 21 July 2015) introduces one important safeguard (Article 3), highlighting that Member States should consider the situation in the first country of arrival before returning an asylum applicant to that country. An 'early warning mechanism' is also included in the recast that effectively will warn Member States of a possible large-scale influx of asylum-seekers at a Member State and activate a consultation process. However, due to the way the system is structured, the Dublin Regulation seems to be less about burden-sharing and more about externalisation of responsibilities from the northern to the southern Member States.

It is an inherent contradiction of liberal democratic states that they attempt to restrict entry of unwanted migrants while trying to respect human rights and civil liberties.⁵² The physical barriers erected at borders restrict entry to those pre-deemed as unwanted, but also reduce the opportunity for protection for those in need. Despite the official discourse, the externalisation of EU migration and asylum policies tends to prioritise effectiveness and results, often over other policy considerations such as respect for fundamental rights, particularly the right of access to asylum for all, irrespective of country of origin.

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