



Analysis

“Europe must do more...” Hasn’t it done enough?

20 years of restrictive EU immigration policy have – inevitably - led us to the current situation

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The greatest mistake would be to analyse the current situation and try to resolve it by following the same policy principles and approaches which produced it, as the EU is currently doing, by intensifying and militarising them. The current model has been based on restricting “illegal” or “irregular” immigration as absolute policy goals, by portraying the figure of the irregular and illegal migrant, or “clandestine”, who would be better termed “irregularised” or “illegalised”, as a security threat.

Enacting the principle of freedom of movement within the European Union has resulted in the establishment of a clear distinction between citizens of member states and so-called “third-country nationals” for whom a restrictive immigration regime based on visa requirements for entry is envisaged. This regime applies to a “common list” of 125 countries whose nationals “shall be required to be in possession of a visa when crossing the external borders of the Member States” [art. 1, Council Regulation 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from this requirement]. The 2002 EU Directive defining the facilitation of unauthorised entry, transit and residence clearly states that “One of the objectives of the European Union is the gradual creation of an area of freedom, security and justice, which means, inter alia, that illegal immigration must be combated” (EC 90/2002). This imperative, dating back to the 1980s, developed in the early 1990s and pursued doggedly for two decades in spite of its devastating impact within Europe and beyond its borders, especially since the policy shifted to compelling third countries to introduce restrictive immigration policies regardless of their need for them, is the root cause of the situation that Europe is facing today.

The model that was chosen comprises a network of detention centres or camps established in EU countries, sites in which thousands of people are denied their freedom without the need for a criminal conviction, every year, with a view to deporting them, what the EU calls its returns policy. It downgraded rights drawn up as minimum standards which must apply to any human beings by making them increasingly conditional on “responsibilities” or “duties”, categories which have expanded to include possession of the correct administrative status, for which a growing array of prerequisites are being introduced. In order to enact freedom of movement within the EU for citizens of EU member states and abolish border controls, the EU and its member states have set up structures, agencies, administrative divisions and bodies to deal with immigration which have resulted in spiralling costs, accompanied by violence, human rights violations and harassment of its targets. In effect, they have turned a resource into an intractable problem.

Within Europe, immigration policy has proven a gateway for racism and discrimination and an instrument for the assertion of official power, because it introduces distinctions within a population followed by their classification into hierarchies (Foucault, 1997:227), and legitimates repressive policy initiatives and the deployment of police forces to exclude and target third-country nationals. Its instrumental function goes further, by inevitably giving rise to a permanent population of “illegalised” people against whom subsequent initiatives framed within “security” or “law and order” frameworks become acceptable.

The EU first tried to peddle and later sought to impose similar restrictive policy options on neighbouring countries through economic blackmail and by subordinating development aid to the reaching of readmission agreements, exporting the violence, human rights violations and targeting of foreigners that this outlook entails beyond its borders. It is hard to overestimate the impact of the externalisation of the EU’s migration policy for those who have been monitoring it, from returnees deported to Morocco and Libya being abandoned (often to die) in the desert to arbitrary arrests during immigration raids by police in neighbourhoods where migrant workers dwell in north African countries when negotiations are underway. The landscape has periodically been marked by tragedies, shipwrecks and deaths which highlight the impact of the EU’s policies in this field. Yet, when such deaths are recognised as a problem, the standard response is that the EU needs to “do more” to prevent the loss of life, disregarding its role in the problem arising in the first place.

These days in the late summer of 2015, marked by an influx of migrants and refugees and by countless tragedies, must give rise to a clean break in relation to the issue of migration. The crisis must not be framed as a governance failure resulting from the lack of a European policy on asylum and immigration, because common policies have been drawn up and followed at the national and EU levels, and their primary objectives have been the exclusion of migrants, their criminalisation and periodic restrictions of the right to asylum. Repressive policies have been overdeveloped while human and humanitarian ones have been stifled, which is why the advancement of plans to implement an effective EU asylum system and relocation programme must be welcomed. Yet, this must not mean that the rest of the EU’s restrictive immigration policy must continue according to the existing blueprints, because its detrimental effects are clear for all to see. Recent proposals to draw up a list of “safe countries of origin” are not original and merely signal a further lowering of the EU’s human rights standards by automatically excluding scrutiny of applications from countries which often have questionable human rights records, contrary to the Geneva Convention’s requirement for individual circumstances to be examined.

It is not a problem of governance or effectiveness, but one of absolute, unrealistic and counter-productive policy goals which have been set and followed to date, regardless of their devastating impact on European societies and beyond. Dehumanisation, discrimination and an authoritarian shift are inscribed within this path, as are the tens of thousands of “migration” deaths to date and heightened tensions in neighbouring regions. This is the root cause of the current crisis: the obstinately pursued goal of restricting immigration to the EU as a way of setting up a European state and identity in opposition to third countries and third-country nationals in spite of the impossibility of enacting it without provoking far more serious problems than immigration could have ever produced. This is the thesis which this essay seeks to frame.

Policy developments, deaths and the need for a long-term view

The current outcry over the high number of deaths (estimated at over 2,000 people since the start of the year by the IOM in early August 2015, the figure for 2014 was 3,279) over the last few months in the Mediterranean should not conceal the fact that the problem has been tightly bound to EU immigration policy since its inception. Deaths have been an integral part of the enactment of the EU’s restrictive policy approach for at least 20 years, and the effects of policies in affecting the numbers of people who die and the ways in which they die have been apparent. So much so, that a phenomenon that is accounting for thousands of lives every year can no longer be treated as “unforeseen consequences” or “unwanted side effects”. If the stated goal of EU immigration policy were to kill, dehumanise and violate third-country nationals’ rights, one would have to conclude that it has been very effective.

An entry for June 2000 in the critical chronology of European migration policy produced by Alain Morice in association with Migreurop, notes that “In ten years, the number of deaths at the border increased from a few dozen to several hundred per year”. 2008 was the first year in which the deaths recorded in the Sicilian Channel (by Gabriele del Grande’s Fortress Europe blog) topped one thousand (they were 1,274) and since 2011, the macabre task of counting migration-related deaths has worsened.

In Spain, the figures of confirmed deaths (estimates which, it must be recalled, are only a part of the actual deaths, many of which we will never know about) first ran into the thousands following the “success” of the SIVE (*Sistema Integrado de Vigilancia Exterior*) hi-tech border surveillance infrastructure established as of 2002 to “protect” the southern Spanish border in Andalucía. Migrants changed the routes they embarked upon to reach Europe and began heading towards the Canary Islands from the west African coast, attempting a perilous crossing of the Atlantic Ocean. Estimates by the *Asociación Pro Derechos Humanos de Andalucía* concerning deaths at the southern Spanish borders including the Canary Islands, confirmed a substantial increase in deaths after 2004 (when 500 died) until they stabilised again in 2009 (when 350 died): the figures were 1,900 in 2005, 7,000 in 2006, 3,500 in 2007 and 1,400 in 2008. Yet, the EU’s evaluation of its practices does not focus on these side effects: SIVE enabled the interception of thousands of migrants and arrivals along the west Mediterranean route decreased.

SIVE was a precursor of systems deployed to effectively seal stretches of borderlands from the possibility of breaches occurring, and is identified by Frontex as embodying a best practice whose extension is promoted as part of the EU’s Eurosur programme. Its 2014 report on best practices expresses this clearly:

‘Technology has an important role to play on external land and sea borders, too. The southern Spanish coast, for instance, is already guarded by a high-tech early warning system known as SIVE (Sistema Integrado de Vigilancia Exterior). There are 44 SIVE stations, each equipped with an optronic eye, TVV and ARPA (Automatic Radar Plotting Aid), and all of them are connected to Madrid. Under the umbrella of the EU Eurosur programme, SIVE is now being trialled in Sardinia and Sicily. Very similar technology is also already in use along Finland’s external borders.

Julian Quiles, the Project Manager for Operation Poseidon Sea, is convinced that SIVE represents the future of EU border control, and could be extended to all vulnerable external borders as early as 2017. “It would cost a lot: maybe another €1 billion for the whole of Europe, including training, operation and maintenance. But it saves lives at sea and is highly efficient, and it will be cheaper in the end.”

Edgar Beugels has an even more futuristic vision: he can imagine a time when the external borders are routinely patrolled by RPAs – Remotely Piloted Aircraft:

“RPAs can stay airborne for 24 hours at a time. They have great potential, particularly in the Mediterranean arena. The main issue is the operating cost. For now, it is too much for most civilian authorities to bear. But costs will come down in time.” (p.99)’

This leads to the issue of the mutually reinforcing relationship between EU policy making in this field and big business, but it is beyond the scope of this essay. It has been dealt with extensively in three reports by Ben Hayes (Arming Big Brother, the NeoConOpticon and Eurosur, with Matthias Vermeulen) and ongoing Statewatch coverage of the FP7 research programme by Hayes, Tony Bunyan and Chris Jones, among many others including Claire Rodier’s “Xénophobie business”.

Pushing immigration policies beyond the EU’s borders

The problem of migrants departing from the west African coast to set across the Atlantic Ocean towards the Canary islands was tackled through operations to patrol the west African coast coordinated by Frontex and the furthering of externalisation of the EU’s immigration policies, from north Africa to Mali, Mauritania and Senegal as the EU border appeared to be slipping southwards. Spain funded a holding centre for would-be migrants in the port city of Nouadhibou run extraterritorially by Spanish personnel to detain migrants caught red-handed or suspected of planning to attempt the crossing towards the Canary islands. This undermined the situation of Malian migrant workers in Mauritania as potentially seeking to enter the EU, and disrupted age-old migration patterns which reflected Mauritania’s needs for labour as a resource-rich country and Malians’ need for employment.

It also recalled developments arising from bilateral cooperation between Italy and Libya in the east and Spain and Morocco in the west, whose devastating impact was consistently disregarded by the EU as it pushed the externalisation of its border policies. Both in Libya and Morocco, migrants returned from the EU have been abandoned in desert borderlands. Both in Libya and Morocco, migrants have been abused, arrested and mistreated in order to play their roles as “buffer states” for the EU’s migration policy. Both in Libya and Morocco, instrumental police operations targeting migrants and refugees have been undertaken in order to influence negotiations with their EU, Spanish and Italian counterparts. In Libya during Khadafi’s rule, these included rounding foreigners up in their neighbourhoods and embarking them on makeshift boats to exert pressure on the EU to

obtain funds. In Morocco, they have included indiscriminate round-ups of migrant workers and refugees to show that it is playing its part, often leading up to negotiations or in response to criticism from European counterparts following newsworthy tragedies.

The EU has been so insistent that immigration is a problem that must be combated and regulated that it has turned a largely beneficial phenomenon into an unmanageable problem, with serious human and societal implications. Its becoming a problem also results from a relentless obsession with limiting and regulating a phenomenon that cannot be managed and framing it as an undisputable policy goal. The first rounds of negotiations with Libya made it obvious that engagement with third countries was not based on dialogue but on a one-sided interpretation of priorities which focused on restrictive immigration policy and the criminalisation of migrants. As a memorandum submitted by Statewatch to the UK Parliament's International Development Select Committee in 2003 expresses clearly, "The EU is not asking developing countries whether domestic immigration and asylum policy is among their priorities, it is coercing them into accepting its demands".

This shines through in a report published in April 2005 on the European Commission's technical mission to Libya from 28 November to 6 December 2004 involving experts from 14 member states, the Commission and Europol, aimed at developing cooperation with Libya on illegal immigration. The mission lamented some underlying conceptual differences on immigration which hindered the Libyan authorities' understanding of EU immigration policy, including their failure to acknowledge the need for a global approach to combating migration and to treat it as organised crime:

"there seems to exist little understanding of the need for a strategic approach, except at the level of a few interlocutors at a high level";

"their reluctance to accept the argument that illegal immigration networks are in fact 'organised crime' syndicates that 'lure migrants to travel across the sea'".

Further concerns included the Libyan authorities' reluctance to establish distinction between asylum seekers and economic migrants, fearing that such a distinction may "*push an important part of the economic illegal migrant population to claim for international protection*" which, in turn, "*would result in problems for processing a large number of unfounded applications*". It is worth noting that the EU's approach has resulted in a concerted attack on asylum through its re-definition in several member states using the pretext of the submission of unfounded applications by "economic" migrants.

The mission initiated dialogue with authorities from Niger with a view to promoting wider regional dialogue and, again, it recorded a substantial clash of visions because the government of Niger's position highlighted the beneficial effects of the migration of Niger nationals into Libya. It described immigration flows as "a source of revenue" and its nationals who migrate as "economic and temporary migrants" who generally "do not intend to go to Europe" but rather, stay in Libya long enough to make some money before returning to their villages. The underlying discord continued on the issue of Niger securing its own borders and the flow of non-nationals through the country. Membership of ECOWAS (Economic Community of West African States) meant most migrants were "authorised to cross the border of Niger without any formalities", and Niger did "not want to be in conflict with its Southern neighbours" due to its need for "access to their port facilities". Yet, most importantly, the flow of migrants was deemed to benefit individuals, both through legal activities

(like selling products to passengers) and illegal activities (corruption, smuggling networks), particularly in view of the poverty and steady trend of population growth in Niger.

With a view to engaging in dialogue with CEN-SAD, an organisation established in 1998 which included 21 African countries including every Libyan neighbour apart from Algeria, the mission noted that “CEN-SAD members seem to have no real policy in that area”. It suggested that the Commission take part in CEN-SAD meetings to “inform the CEN-SAD countries about its policies and possibly assist them in the definition of their own migration policies”. This disregarded CEN-SAD’s aim of “ensuring the free movement of persons, capitals, goods, products and services” between these countries and its objective to “suppress entry and stay visas” between its member countries, which ran in an entirely different direction.

In this context, it is worth noting that freedom of movement in the EU itself was viewed as a way of promoting economic development by creating a larger internal market characterised by a mobile labour force, thus enhancing its competitiveness at a global level. This means that there is a degree of mainstream and official recognition of the positive effects of migration, at least at the macroeconomic level. This brings into play a further element: if some would claim that the EU may enact policies to limit immigration into its territory, does this also extend to exerting pressure on neighbouring countries to introduce policies that work against their development interests? In effect, freedom of movement in the EU is being enacted at the expense of freedom of movement between all those countries from which the EU fears the arrival of migrants. Sadly, the supposed policy shift towards dealing with root causes in the countries of origin, partly in response to NGO work on the tragic effects of EU migration policy, examined these within the framework of the effectiveness of often minimal border controls and immigration regimes which were not very developed and seldom enforced. Its African counterparts’ reaction to the Commission’s technical mission’s preordained blueprint in discussions did not result in further scrutiny of its underlying premises, but rather, it resulted in further pretexts to be explored to impose it and draw countries towards engagement.

In Niger’s case, possible avenues to secure a limited degree of cooperation and understanding on migration included: a) with regards to rebels in the north of Niger and international concern about terrorism; b) Niger may be prepared to help gathering information on flows; c) EU-Niger cooperation, due to the size and characteristics of its border, would involve the provision of equipment for the army, police, customs and other services; d) Niger is interested in “a stronger dialogue” with northern countries, and would benefit from “more formal trading... with the North and indeed with Europe”; e) and it would be prepared to explore the possibility of a technical mission to Niger.

The failure to consider that restricting regional migration would have negative consequences stunting development in some of the countries of origin in which conditions were to be improved to reduce the “push factors” leading people out of their countries to seek a better future, is a feature of the intrinsic problems attached to the externalisation of the EU’s migration policy. Within this framework, even benefits for the Libyan population resulting from governmental social policies were viewed as problematic because they strengthened “pull” factors for migrants: “the ‘distributive’ policy of the Libyan regime towards its own nationals generates a strong demand for foreign workers”. Thus, the EU institutions deemed the relative economic well-being of Libyan nationals to be a problem for EU migration policy, and hence for the EU’s security, because it resulted in migrant workers moving to Libya, some of whom may have sought to travel to Europe.

Institutional racism and discrimination - Ethnic profiling as a tactic and foreign identity as suspicion of crime

In response to pressure from the northern Mediterranean shore for restrictive immigration policies to be adopted by north African states, both Libya and Morocco introduced laws to criminalise immigration, the former through law no. 2/2004 (welcomed in the aforementioned Commission report) and the latter through law no. 02/2003. Legislation is an important step in order to institutionalise hostility to illegalised foreigners and render it operative, with inevitable consequences in terms of racial discrimination. The perception of illegal immigration as a threat resulted in the creation of a new department in the Libyan interior ministry to deal with immigration and naturalisation issues, with operations conducted against traffickers, to detain and deport illegal immigrants, and to inspect companies and analyse data. The new law no. 2/2004 was implemented, introducing stricter penalties for illegal immigrants and people facilitating their stay (at least 1 year imprisonment and/or a €1,160 fine), and led to the creation of a new unit to enforce this law.

For restrictive immigration policy to be enacted, the resources and material means to enforce it must be available, and the EU and its member states engaged in bilateral cooperation recognised this by equipping their counterparts to deploy the policy options they had been “encouraged” to adopt. This included the transfer to Libya of equipment to fight “clandestine” immigration, from vehicles or means to enact controls like boats, vans, jeeps, night-vision equipment or binoculars, up to equipment to save lives such as diving suits or life jackets, or logistical material for anything that may occur (in the Italian-Libyan case, this included 1,000 body bags to carry corpses). Italy also financed three detention centres for foreigners in Libya (in Gharyan, Kufrah and Sebha). Mario Mori, the former director of SISDE (former civilian information service), told the parliamentary committee for oversight of the intelligence services in 2005 about “illegals” who were “*ensnared like dogs, placed in pick-up trucks and released into reception centres in which those guarding them have to place their handkerchiefs over their mouths to enter, as a result of the nauseating odours*”. Moreover, in Sebha, “*the centre is meant to host 100 people, but there are 650, heaped onto each other*”.

This lengthy digression into the past and into Africa, for which I apologise, appears far removed from the current crisis at Europe’s gates, but it necessary to make sense of it, for two orders of reasons. Firstly, because the externalisation of EU migration policies has had dramatic consequences in third countries and countries of origin which were entirely predictable, considering that their implementation within the EU has resulted in the victimisation and criminalisation of a vast number of people who are officially termed “illegal”, sanctioned by legislation. Human rights violations based on discrimination, regardless of whether they result from race, religion, nationality or immigration status, have become standard policy within the EU. Coordinated police operations targeting “illegalised” migrants in transport hubs across Europe are now described in some official documents as a “best practice” within Council-led operations using the framework of the Internal Security Strategy, in spite of the EU’s claimed abhorrence for ethnic profiling. Secondly, because it was nonsensical from the point of view of improving the economic situation and conditions in countries of origin from which would-be migrants left, in view of the EU’s own recognition of the positive effects of immigration. It is as if undermining freedom of movement and disrupting

migration patterns in neighbouring regions became a necessary corollary of enacting freedom of movement within the EU, which was recognised as a positive factor for regional development.

The system is inherently rooted in the discrimination of third-country nationals as the dominant management principle for implementing migration policy in the European Union. Detention centres, deportations, an enormous expansion in immigration policy, authorities, agencies and institutions are surprising developments considering that the policy goal which is being enacted is to abolish border controls within the EU. This is being done through a “comprehensive and integrated approach” whose conceptual endpoint is that of converting countries outside the EU into cages from which it is difficult to escape, except for the very wealthy and/or privileged. The emphasis on strict border controls and readmission agreements with third countries serves to bury the United Nations Declaration of Human Rights’ article 13.2 which states that:

“Everyone has the right to leave any country, including his own, and to return to his country”.

A further concern is that, while ten years ago we were observing the slippage of the EU borders down the coast of Africa, the recent refugee influx has seen them climbing back up, above the countries which are the main recipients of migrants and refugees on the front line at Europe’s borders, as French operations at the border with Italy in Ventimiglia exemplify. In effect, some member states are temporarily suspending the EU’s own provisions for the removal of internal borders in the Schengen Area, which they justify by pointing to the shortcomings other member states are exhibiting in their control of external borders, giving rise to influxes of third-country nationals. The UK’s fortification and externalisation of border controls in France around the Calais region is a further example of how the obstinate attempt to impose strict border controls threatens to break up the EU itself. Recent statements by David Cameron and Theresa May proposing to limit migration for EU nationals in the UK herald the appearance of a new category which may be subjected to abuses, persecuted and undermined in the future because, and this is the point of this project, that is the nature of immigration policy as it is conceived today.

At the national level, this has led to the targeting of migrants as a key function of the police services, shifting their purposes from the prevention, investigation and prosecution of criminal offences and activities to the persecution of groups whose identity as third-country nationals may be equated to suspicion of illegal entry, and hence of criminal activity. Evidence of official instructions to adopt such an approach using management techniques including the setting of targets for activities to counter irregular migration has occasionally resulted in controversy and/or criticism, without altering the substance. Self-reinforcing processes include the publication of crime statistics which highlight the numbers of foreigners who are arrested or detained as evidence of their being a “security” problem, yet these statistics are more indicative of police activity than of actual delinquency (Palidda, 2011). Moreover, one must not overlook the fact that irregular entry is a breach of legislation which can only apply to third-country nationals. Europeans are growing accustomed to manhunts targeting street sellers, to discriminatory “stop-and-search” activities by police forces, arrests, abuses in detention centres and, in effect, such practices are sanctioned by law and encouraged by governments and politicians, which are becoming more adept at wording their documents so as to escape charges of discrimination. This is why the idea of furthering the EU’s migration and asylum policies while respecting human rights increasingly appears an empty promise.

The very presence of illegalised migrants is viewed as a security problem, and there are tens of thousands of them in many EU countries, certifying the failure of an approach which has been adopted for at least two decades. Even hardline governments in Spain and Italy had to recognise this situation, enacting pragmatic regularisation procedures to enable their countries to benefit from migrants' labour and relieving the pressure on police forces in a mission in which they were inevitably destined to fail. The French presidency of the Council of the European Union in 2008 tried to shut down that route through the European Pact on Immigration and Asylum, in which the Council, "to reaffirm its determination to control illegal immigration" agreed "to use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian and economic reasons". The Pact also called for negotiations to reach readmission agreements with third countries to be pursued at both a bilateral and Community level within the framework of efforts "to control illegal migration" through the Global Approach to Migration, a policy which continues within the framework of the Global Approach to Migration and Mobility. Frontex was to play an important role in coordinating the control of external borders, coping with crises and undertaking necessary operations when requested by member states.

Frontex's outlook and joint operations

At the EU level, the Frontex agency for the management of external borders was established in 2004 and became operative in October 2005. Its mission includes setting up and coordinating joint operations at the EU's external borders, training border guards, risk analysis, research, providing a rapid response capability, assisting member states in organising joint return operations and developing information systems and an information sharing environment. Activities like "gathering information" and preparing "risk analysis" or "threat assessment" reports are relatively harmless, on the surface. The means through which they are being implemented show that this is not the case. Studying this agency's interaction with the European Council and member states within the framework of "operational cooperation on internal security", a number of concerns emerge. Joint operations coordinated by the rotating six-month Council presidencies in cooperation with Frontex, involving voluntary participation by individual member states, have been embedded in multiannual "policy cycles" whose goals and *modi operandi* raise multiple issues, including the principle of non-discrimination in the context of activities to counter "irregular" migration.

On 10 July 2014, the Italian Presidency of the Council of the European Union circulated a proposal to the member states' delegations outlining plans for a two-week Joint Operation named "*Mos Maiorum*" to be carried out from 13 to 26 October 2014. The operation's declared purpose was to weaken "the capacity of organized crime groups to facilitate illegal immigration to the EU", focusing on "illegal border crossing". Its further goals included collecting

"information, for intelligence and investigation purposes, regarding the main routes followed by migrants to enter in the common area and the modus operandi used by crime networks to smuggle people towards the EU territory, focusing also on the secondary movements".

The operation's "objectives" were listed as follows:

- "- apprehend irregular migrants and gather relevant information for intelligence and investigative purposes;
- identify, prosecute and disrupt organized crime groups;

- give a clear and updated situation picture concerning the operational area, modus operandi, main trends and possible rapid changes in these aspects;
- consolidate joint measures to achieve an impact on illegal immigration (border checks and border surveillance activities);
- carry out (based on the outcome of risk analysis), control along the main routes of illegal immigration on the main routes followed by illegal migrant networks (within the Schengen Area and at the external borders);
- collect and analyze information related also to the so called secondary movement.”

This sanitised language described the goals of an operation consisting in inviting all member state and Schengen Associated Countries’ (SAC) law enforcement agencies and border authorities to target foreigners in strategic locations across the EU. It is indicative of the distance between the EU’s declared principles (including human rights and non-discrimination) and the policies and practices enacted to counter “illegal immigration”.

The fact that it has become a standard operative procedure is highlighted by the Italian presidency’s reference to this operation as “a tradition well-established by previous EU Presidency Member States (MSs), on the basis of best practices”, whose purpose is to develop “intelligence-led policing” in the context of “important criminal threats” which include “illegal immigration”. Moreover, while the Commission denied any involvement, its comments on operation *Demeter* (organised by Poland) and on operation *Balder*, which was to follow it during the Danish six-month presidency are telling with regards to developments leading to *Mos Maiorum*:

“The conclusions from these operations display a need for continuously trying to improve the monitoring and analysis of migration flows within the Schengen area. This could be done i.a. by biannually carrying out DEMETER-style operations and regularly exchanging information at the European Union level. The Commission welcomes the coordination by the Danish presidency of Operation Balder from 16 to 22 April 2012” (pp. 4-5).

As “technical” cooperation involving interior/home affairs ministries and law enforcement agencies, within the framework of the Internal Security Strategy directed by COSI, the standing committee on internal security, such operations are subject to limited scrutiny. Both *Mos Maiorum* and the role of Frontex will be the subject of further essays in this series, yet a few preliminary comments are relevant.

Firstly, if the police forces from the EU member states are tasked to conduct round-ups of “irregular” immigrants for a fortnight, two times a year, which means a month per year devoted to targeting foreigners from outside the EU (the defining feature for an offence that only applies to them), it becomes a defining feature of the European Union. If the purpose of doing so is to generate data in order for Frontex to be able to conduct its risk assessments and statistical reports for the purpose of drawing up strategies to fight “irregular” immigration, its degree of involvement is considerable in spite of its marginal role in the operation itself. It lies in the rationale for its functioning and development, which justifies violating migrants’ right not to be discriminated on a massive scale.

Secondly, if the current crisis (which will be addressed next) is presented as evidence of the lack of an adequate EU policy on asylum and immigration, and is treated as an engine for its development

without addressing its underlying premises and their role in generating the crisis, the situation can only worsen. One path that is proposed is a reinforced operational role for Frontex, including operative centres in “hotspots” in Greece and Italy. Yet, their objectives follow the established pattern by focusing on guaranteeing identification, registration, fingerprinting examination of migrants’ need for international protection and, when applicable, their return to their countries of origin. The applicability of these procedures, and of the entire Dublin regulation framework was questioned in practice when Italy stopped implementing it systematically when it launched its *Mare Nostrum* operation, which switched the emphasis from stopping and intercepting “illegal” migration flows to saving lives, using Navy resources. It was a positive development in terms of its humanitarian outlook and the enormous number of migrants who were reportedly rescued (156,362 in 2014 until it was replaced by the Frontex-led *Triton* operation in October 2014), yet it furthered the militarisation of the sea and migration policy. Moreover, using military resources guarantees high costs.

The present crisis

The Italian coalition government led by Enrico Letta deployed operation *Mare Nostrum* following the umpteenth shipwreck off the coast of Lampedusa in which 359 migrants died on 3 October 2013, whereby rescuing migrants became the priority. It represented a break with past policy by framing the operation in terms of enabling the rescue of migrants and refugees beyond member states’ territorial waters, rather than primarily concentrating on stopping “irregular” migration at their limit. Would-be asylum seekers did not have their fingerprints automatically taken upon arrival, a practice required by the Dublin Convention and the Eurodac Convention that regulates the database established for this purpose, in order for the first EU country they enter to assume responsibility for processing asylum claims. This resulted in criticism from Germany, among others, where the Bavarian interior minister Joachim Hermann accused Italy of “deliberately ignoring standard refugee procedures such as fingerprinting in order to let them seek asylum in other countries” in August 2014.

Italy received considerable criticism from European partners, to the point that the Justice and Home Affairs Council held in October 2014 focused on the “systematic identification of migrants and asylum seekers” including “fingerprinting [with] the use of a proportionate degree of coercion”, even on “vulnerable persons, such as minors or pregnant women”. This was viewed as a means of upholding the Dublin Regulation system and feeding the Eurodac database through which fingerprint matches are sought for the purpose of returning refugees to the country where they first entered the EU, putting frontline states under unsustainable pressure.

On 25 September 2014, the Italian interior ministry issued a circular noting that “some Member States complained, with increasing insistence, for the failure of photo-signalling many migrants who, once arrived in Italy, continued their journey to the northern European countries”. It explained that while “objective difficulties” resulting from the large influx of arrivals and breadth of life saving operations had prevented Italy from complying with its identification tasks, it would implement new procedures to ensure compliance. These included providing the people who arrive information in multi-language flyers notifying them that

“BIOMETRIC DETAILS WILL BE OBTAINED BY THE POLICE AUTHORITIES AND CONSIST IN TAKING FACE PICTURES AND HANDS FINGERPRINTS.

THE REFUSAL EITHER OF PROVIDING PERSONAL DETAILS OR UNDERGOING BIOMETRIC DETAILS IS A CRIME AND RESULTS IN JUDICIAL CHARGES.

THE POLICE AUTHORITIES WILL ANYWAY OBTAIN PICTURES AND FINGERPRINTS, EVEN WITH THE USE OF FORCE, IF NECESSARY.”

Reports of ill-treatment upon arrival predictably ensued, including cases which were the object of a question in the European Parliament about “unlawful use of force” being used on migrants, including children, in a first aid and reception centre in Pozzallo (Sicily) for the purpose of identifying and fingerprinting them. A year on, when Germany, one of the countries which had complained about Italy’s failure to comply with the requirements of the Dublin system, faced the arrival of substantial numbers of migrants, mostly asylum seekers, it suspended the application of the Dublin system for Syrian refugees. On 21 August 2015, Germany’s Federal Office for Migration and Refugees suspended compulsory checks testing whether asylum seekers first entered the EU in another member state and whether they should be returned to that country, in a move that Commission welcomed as an “act of European solidarity” towards Greece and Italy. Proposals for the relocation of Syrian refugees across the EU, a shift in which Germany is playing an important role, are to be welcomed as a positive development. Yet, the failure to reassess key elements of the EU’s immigration and asylum policies in the light of the damage they have caused is troubling, with a view to the future, in Europe and beyond.

Operation *Mare Nostrum* came in for a second order of criticism from its EU partners, bodies and institutions, including Frontex. When discussions were underway to replace *Mare Nostrum* with the Frontex-led operation *Triton* some important insights into the rationale behind the activities and analysis provided by Frontex as one of its key tasks came to the surface. In fact, drawing on its prescribed function of analysing threats to the control of Europe’s external borders as an absolute policy goal, it agreed with comments made by political authorities including the UK’s prime minister to suggest that saving lives was a “pull factor”.

“It is very likely that with the disappearance of the naval assets in the area considerably fewer migrants would risk departing in bad weather and the prices of the sea-trips would rise due to the fact that more fuel and food/water would be needed for a longer trip”.

This argument was a mantra repeated in subsequent documents, including the Frontex “analytical contribution” by its Risk Analysis Unit attached to Italy’s final report on the results of operation *Mos Maiorum* dated 22 January 2015:

“The presence of the assets of the operation Mare Nostrum, patrolling closer to the Libyan coast with the aim of preventing the loss of migrants’ lives, has been exploited by facilitation networks in Libya, who have been able to push an increasing number of migrants to depart in unseaworthy vessels, with the expectation of being rescued soon after departure”. (p. 37)

While this reading was conceivable, it was far from demonstrated. In an audition before the Italian Senate’s human rights commission on 24 September 2014, admiral Giuseppe De Giorgi explained that, in its first ten months, operation *Mare Nostrum* had rescued 141,891 migrants, led to the arrest of 298 people smugglers and confiscated four “mother ships”, as Italian authorities describe ships used to tow vessels that are not seaworthy laden with migrants. De Giorgi denied the operation had contributed to an increase in the number of migrants attempting the sea crossing, using a graph to illustrate his claims. He explained that the rise in arrivals occurred in the second

half of 2013 and prior to the deployment of the Italian navy in operation *Mare Nostrum*. Its causes included factors ranging from desertification, genocide and widespread violence to lifelong national service (in Eritrea), the worsening situation in east Africa, the explosion of the conflict in Syria and Libya no longer controlling its borders as a result of ongoing violence. De Giorgi claimed there was no evidence to support the “pull factor” thesis in the available data, especially as smuggling organisations were also targeted, resulting in an initial decrease in the number of refugees taking to the sea, and added that such claims were not even “plausible”.

The cited document, issued on 28 August 2014 by the Operations Division of the Joint Operations Unit of Frontex, detailing the concept for operation *Triton*, which replaced *Mare Nostrum* on 1 November 2014, recognised that “*the withdrawal of naval assets from the area, if not properly planned and announced well in advance, would likely result in a higher number of fatalities*”. Yet, it was the chosen course of action, in spite of a report published on 29 September 2014 by the International Organization for Migrations (IOM) documenting 3,072 deaths in the Mediterranean in 2014. On 29 August, the legal-academic NGO *Associazione di Studi Giuridici sull’Immigrazione* (ASGI) lauded Italy’s “courageous attempt to change course” through operation *Mare Nostrum*, and bemoaned its announced conclusion as “an unacceptable political and ethical step backwards for European democratic conscience”.

Detention centres and readmission agreements: the EU’s returns policy

This interpretative key, rooted in its mission and *modus operandi*, turned to the issue of migration into Greece, inevitably calling for an expansion in the Greek detention estate for foreigners, another policy which has consistently received criticism from for violating basic human rights for two decades:

“One of the main ‘**pull factors**’, which attracts migrants **towards the Greek islands**, is the lack of detention capacity and the fact that after a few days in detention they are released and given an expulsion order **permitting, de facto, their stay** on Greek territory **for 30 days**.” [emphasis in the original]

Since their creation, detention centres have been an important site for the degradation of human rights standards within the EU. They will be the subject of an essay in this series, so I won’t dwell on them for long, but a number of features which are common to at least four member states’ detention regimes should be addressed, to highlight that the problem is not the way in which the policy is being implemented by different authorities, but the policy option itself. Its rationale clashes intrinsically with the international human rights framework. As Costello has highlighted (2012:257-258):

“The right to liberty is ubiquitous in human rights instruments, in essence protecting all individuals from arbitrary arrest and detention. It should go without saying that deprivations of liberty require the strongest possible justification. Yet, in practice, immigration detention is increasingly routine, even automatic, across Europe”.

Detention conditions which do not comply with statutory regulations, deaths, fires, mistreatment, violence and the swift removal of witnesses through deportation, protests including suicides and self-harm, and the detention of people who were not detainable by law, including children and vulnerable persons, have been the subject of many reports over the last two decades. Deaths resulting from inadequate medical care must also be attributed to this system, in view of the fact

that detainees do not have the option of turning to doctors of their choice. This happens within four countries which are longstanding EU member states (France, Italy, Spain and England – as part of the UK), in western Europe, so it should not be necessary to state the obvious, namely, that externalising such policies promotes human rights violations and worsens conditions beyond the EU's borders.

Again, portraying the lack of detention centres as a “pull factor” is a matter of conjecture which fits well into a preordained institutional interpretative framework which this crisis must help to unravel, in order to stop European asylum and immigration policies causing damage within and outside the EU's borders. This interpretative framework views the tragedies and influxes that occur as a reflection of imperfect implementation of the EU's policies, and their proper implementation is needed in order to resolve the situation. Knowingly choosing policy options which cost lives means being conscious of one's acts, in this case as it was when Italy provided body bags to Libya to help it implement its immigration controls in the example cited above. In 2003, Nieves García Benito of the *Asociación Pro Derechos Humanos de Andalucía*, as a European who lived on the frontline of the EU's borders in Tarifa, from where you can see Morocco across the Strait of Gibraltar on clear days, described her thoughts upon first seeing dead migrants arrive on the shore in 1989, and then growing accustomed to it. She touched upon the root cause of over 20 years of migration-related deaths, visa requirements and restrictive immigration legislation as a form of systematic exclusion, and the fact that people cannot board a ferry to cross the Strait (and could equally apply to boarding aeroplanes, coaches and trains from further afield).

“What is happening in the Strait of Gibraltar?”

:As a result of the Spanish Ley de Extranjería 4/2000, whose origins lie in the 1990 Schengen European Treaty, the large majority of sub-Saharan and Moroccan citizens who apply for entry visas to Europe have their applications denied. With a visa, they would cross the Strait in a ferry, which would result in the problem of the corpses disappearing. As the law precludes this possibility, the citizens, who are pushed to migrate by the economic conditions in their country, and are aware of economic circumstances in Europe, where there is wealth, and consequently employment, see themselves obliged to make contact with groups who own other means of transport - dinghies or zodiacs - with the aggravating circumstances that it is more expensive and dangerous for their own lives. This illegal crossing of the Strait entails exorbitant benefits to those who control it, as a result of the abundant and urgent demand (for their services). The average number of persons on a zodiac is 55. The cost of the trip is around 1,500 euros. This means of transport has been in use since 1989...

On 2 November 1989, eighteen dead bodies appeared on Los Lances beach in Tarifa. Since then, until 2 January 2003 when seven drowned persons appeared, the number of deaths has been impossible to count. The interior ministry has given a figure of eight hundred proven deaths. The Andalusian Defensor del Pueblo (Ombudsman), taking into account the real nature of the Strait - with currents, 100-km/h winds, cetaceans, cargo ships, petrol tankers, bodies appearing on the northern coast of Morocco - claims that the deaths during these fourteen years could be over two thousand.

Living on the beaches of the northern shore, there are hundreds of us Europeans - fishermen, workers, officials, doctors, windsurfers, tourists - who know all about the constant appearance of dead bodies, from what we have experienced with our own senses. The media have been informing all of Europe about these events for the last fourteen years. When citizens from this shore have taken care of shipwrecked persons they have

been called charitable, and have even received official awards; when the Guardia Civil take the dead bodies out of the way, they are told that they are undertaking humanitarian tasks; when professional photographers have shot certain images - rather horrifying - they have repeatedly been awarded prizes.

If I may, as a citizen living on the beach front and who has seen more than one dead body, as a result of my nature, as a human being, I wish never to see any more corpses on our beaches. However, since that 2 November of 1989 this wish has not been fulfilled. The situation seems unchanging and is reaffirmed by events, on a daily basis.”

In the 21st century, for a large part of the planet's population, travelling to Europe using technical developments devised by humans including aircraft, motor vehicles and boats in safe conditions has become an unattainable wish. The externalisation of the EU's migration policies means that it is also becoming more difficult for people to travel between countries which are beyond the EU's external borders. This creates closed national systems, which are an important factor in amplifying power relations and pressure, a phenomenon which is apparent even in the relatively “advanced” EU, on the basis of its own standards, as is the criminalisation of substantial population groups.

This brings us to the start of the current crisis, the uprisings of the so-called “Arab Spring” in north Africa. Migrants fleeing unrest in north Africa began arriving in Italy in late 2010 and, in 2011, at least 2,352 people died. Between January and August 2011, Italy attempted to deal with the arrival of 51,811 people on its shores. A popular uprising ousted Tunisian president Ben Ali, who had been in power since 1987, on 14 January 2011. In Egypt, president Hosni Mubarak, who had been in power since 1981, was forced to resign on 11 February 2011 handing power over to the Supreme Council of the Armed Forces. The UN Security Council approved Resolution 1973 on 18 March 2011 and a NATO-led coalition intervened to impose a “no-fly zone” over Libya, supposedly to protect its population. Some countries (France in particular) armed and trained rebel forces in what developed into a civil war during which coronel Moammar Khadafi was ousted and killed. Italy had good diplomatic relations with the three regimes prior to the crisis, signing readmission agreements and treaties that resulted in fast-track returns of migrants. These were widely condemned for enabling collective refoulements and stripping their nationals, or people who had travelled to Italy through these countries, of the chance to apply for asylum.

As the conflicts subsided, there was a rush to confirm the agreements stipulated with previous regimes, as member states and EU institutions attempted to ensure that whatever regimes came to power in Tunisia, Libya and Egypt would respect agreements to stem ‘illegal’ migration. There was a remarkable lack of soul-searching about the signing of readmission agreements which effectively replaced scrutiny of asylum applications and access to relevant procedures with fast-track returns and exclusion from the right to seek asylum. These agreements are based on the assumption that “genuine” refugees do not arrive from countries with which EU governments have good relations, including the signing of such agreements. Yet, they included countries in which human rights violations were rife, resulting in many political prisoners. In pre-revolutionary Egypt and Tunisia, nationals were returned almost routinely, sometimes when they were at risk of being persecuted. In the wake of the “Arab Spring,” the signing of agreements and their effects in terms of human rights violations (the refoulement of scores of people including non-nationals, sometimes within 24 or 48 hours of their arrival; centres to detain foreigners in inhumane conditions; serial repatriations of asylum seekers and a general fostering of racism against non-nationals in north Africa) should have had an impact on discussions in the bodies of an EU wishing to present itself as a beacon for human rights.

The Italian government pressed to reinstate readmission agreements with the new regimes as soon as possible. On 5 April 2011 a Cooperation Agreement was stipulated between the Italian and Tunisian interior ministries to enable the “direct repatriation” of Tunisian nationals through a “fast-track procedure.” Italy’s eagerness to seal and enact this kind of agreement was evident on 17 June 2011, when it reached an agreement with the Libyan National Transitional Council after recognising it as the country’s legitimate authority, despite a civil war which is still ongoing. The NTC prime minister and foreign affairs minister Mahmud Jibril stressed “the NTC’s commitment to respecting Libya’s previous agreements with a country that is an historic friend like Italy.” The agreement includes “shared management” of migration flows and the “repatriation of migrants in an irregular situation.” ASGI (*Associazione di Studi Giuridici sull’Immigrazione*) criticised the agreement on 30 June, noting, among other concerns, that its text was not disclosed to the public and that it was struck with a body that was not in control of the whole country. The fact that Libya has not signed the 1951 Geneva Convention on refugees is deemed further evidence that the country cannot be considered a “safe haven.” To conclude, the ASGI statement notes that “it is necessary to recall that the entire Libyan territory is subject to military operations and is certainly not a safe area for people’s life, security and safety.”

In a hearing in the *Camera dei Deputati* (the lower house of parliament) on 12 April 2011, Roberto Maroni, who was then interior minister, noted that the bilateral agreement with Egypt worked better than the one with Tunisia. This was because “the agreement with Egypt allows us to immediately repatriate all the Egyptian citizens who arrive in Italy within 24 hours, with very fast bureaucratic and consular formalities”. Instead, the 1998 agreement with Tunisia, which Tunisia has always interpreted “restrictively, envisages the possibility of repatriating only three or four Tunisian citizens per day”. This leads us back to the issue of “best practices”, Frontex and the EU institutions.

In its concept note for Operation Triton issued in August 2014, the “most important factors that have influenced migratory patterns” included two positive entries, referring to the above agreements. Firstly, “The current readmission agreement between Italy and Tunisia, whereby up to 100 migrants can be repatriated per week” and, secondly, “The effective readmission agreement in place between Italy and Egypt, where Egyptian nationals are repatriated within 48 hours”. Considering that Egypt has undergone considerable turmoil, with its penultimate elected president Mohammed Morsi sentenced to death, political policing carried out within the framework of antiterrorism and widespread “disappearances” reported, the assumption that Egyptians are not refugees is a human rights problem. It also results in an added problem which the Frontex concept note acknowledges, namely, that “In order to avoid repatriation, some Egyptian migrants swap nationalities and claim to be Syrian”.

On 1 June 2015, Commissioner Dimitris Avramopoulos wrote to the EU’s ministers in preparation for the JHA Council on 25 and 26 June 2015, stressing that “one of the incentives for irregular migration” is that the “EU’s system to return irregular migrants” is “not sufficiently fast or effective”. The “relatively low rate of return of irregular migrants” and rejected asylum applicants (39%) “undermines the credibility of our efforts to reduce irregular migration”. Its key points are listed in sections entitled: “enforcing return in full respect of fundamental rights”, “cooperation with third countries on readmission”, “enhanced use of IT-systems to enforce return” and “communication and awareness raising”.

The text is a clear indication of the underlying problems in the EU’s approach to migration policy, which means that although the tensions between Member States, the Council and the Commission

are important, the solution cannot be found by furthering, intensifying and militarising the common policies which have been adopted to date. On the priority to enforce returns, it highlights that member states must issue return decisions to irregular migrants, recalls the availability of coercive measures (detention), views identification and fingerprinting as “crucial” and encourages adoption of a “Hotspot” approach involving Frontex to help “frontline” states to identify migrants and obtain the necessary documents for readmission. It encourages the use of long terms in detention because “prospects of removal should not be undermined by premature ending of detention”, using the Returns Directive instrumentally as enabling “detention for up to six months (18 months in the case of non-cooperation)”, and disregarding that member states have their own limits set in legislation and that the directive sought to shorten them. It also calls for use of the Return Directive’s article 18, an emergency clause that allows “more flexibility regarding the conditions of closed detention of irregular migrants” by temporarily derogating from the Directive’s “detention-related requirements”. More systematic use of “Joint Returns Operations organised/coordinated by Frontex” by member states is advocated, noting that the Commission will propose that Frontex’s role in this field (deportations) be reinforced by amending its legislative basis. References are made to “full respect of fundamental rights and the principle of non-refoulement”, in an instructive document that photographs the Commission’s intention to undermine both principles, which will be the subject of the next essay in this series. The section on “cooperation with third countries on readmission” encourages use of the Cotonou Agreement’s article 13 (return and readmission of country’s own nationals without further formalities), argues that “the EU should integrate systematically readmission issues in its bilateral dialogues” and should “increase its leverage” and find “additional clout”. This is a veiled admission that third countries are being coerced into adopting policies for the benefit of the EU’s own migration policy and perceived interests at an institutional level.

Full speed ahead: irrational rationalities

Insistence in following predetermined policy approaches which are degrading Europe for the purpose of preventing “illegalised” migration are leading the situation to deteriorate further, but EU institutions and those in member states appear unable to escape a logic that drives an expansion in policies and practices which are damaging, and often unlawful. The new frontier in European migration policy involves an intensifying effort to further policies which have caused untold damage within and beyond the EU’s borders.

This includes efforts to intensify joint efforts to enact “returns” and exert pressure on third countries to readmit their own nationals or migrants who have passed through their countries, expanding the network of detention centres at home and abroad, intensifying activities targeting third-country nationals who are present in the EU’s territory and envisaging a greater role for Frontex. The growth of Frontex in terms of funding, personnel and competencies, including the possibility of it initiating joint returns operations and the setting up of operational centres in areas defined as “hotspots” (in Sicily, Greece and Hungary), are one aspect of the expansion of a policy field which is causing damage beyond its scope. This approach inevitably undermines values, frameworks and principles including non-discrimination, the rule of law and human rights. “Cooperation” with third countries will be stepped up by forcing them to accept unilateral measures such as the planned EU *laissez-passer* standard document for expelling third-country nationals and the enforcement of article 13 of the 2000 Cotonou Agreement with African, Caribbean and Pacific countries (ACP) which requires that they accept readmission “without further formalities”. Over 800m euros have been earmarked for return activities by member states for the 2014-2020 period, and “Frontex

should be allocated adequate resources to enable it to scale up substantially its support on return”, as detailed in the “Draft Council conclusions on the future of the EU return policy” issued following the meeting of permanent representatives committee on 30 September 2015.

Thus, rather than engaging in critical evaluation of its policies and their effects, the EU has decided to fast-track its plans and ignore the role they have played in creating the current crisis. The “organised crime” syndicates against which security operations are supposedly enacted were a result of EU immigration policy, once they stifled attempts by people to move legally into the EU. Yet, there is a lack of consideration of the fact that such networks would disappear if the market they exploit did not exist. This would require the existence of ordinary transport services and a visa policy which offers populations a reasonable likelihood of obtaining a visa which does not depend on membership of a privileged and wealthy elite or on international connections. An alternative approach involving the dogged harassment of foreigners in the EU by law enforcement agencies to find “irregular migrants” among them has been preferred, regardless of its side effects in terms of the growing opportunities for abuses to be enacted against them.

The same applies to the deaths of tens of thousands of people which hi-tech border surveillance programmes such as Eurosur are supposedly working to prevent. National and international legal and human rights frameworks are being dismantled by excluding categories of people who have been dehumanised for the sake of immigration control, from the right to liberty to the principle of non-discrimination. This has led authorities including the Council of Europe’s human rights commissioner Nils Muižnieks to have to reiterate some basic principles on 20 August 2015:

“Those who think that irregular migrants have no rights because they have no papers are wrong. Everyone is a holder of human rights regardless of their status. It is easy to understand that the prohibition of torture protects all people but we should also be aware of the fact that basic social rights are also universal, because their enjoyment constitutes a prerequisite for human dignity. Therefore, member states of the Council of Europe should stand by their obligations to protect the basic social rights of everyone under their jurisdiction, and this includes irregular migrants.”

Increasing resources and human effort are being deployed towards destructive ends, whether it is to create “a hostile environment for irregular migrants” (Home Secretary Theresa May) or to provide immigration control technology, equipment and training to third countries to prevent their people from leaving, or sometimes fleeing from authoritarian regimes. This reinforces their repressive capabilities through funding, training and equipment provided to state authorities in third countries to enact an “immigration policy” whose effects, which cannot be deemed “unwanted consequences”, strengthen their repressive capabilities and promote racism, particularly against foreigners. Human rights violations and disregarding the principle of *non-refoulement* are central aspects of the EU’s chosen policy path, yet the first point of draft Council conclusions referred to above reads as follows:

“The Council reaffirms that a coherent, credible and effective policy with regard to the return of illegally staying third-country nationals, which fully respects human rights and the dignity of the persons concerned as well as the principle of non-refoulement, is an essential part of a comprehensive EU migration policy.”

This claim is astounding, considering the document’s contents regarding intensified returns, readmission agreements, cooperation with third countries and heightened surveillance practices.

These include an emphasis on identification and on improved use of EU information systems including the Schengen Information System, the Visa Information System and Eurodac, a heightened emphasis on “information gathering”, and the furthering of Smart Borders legislation to enhance return activities “by creating a record of all cross-border movements of third-country nationals”.

Developments reported by Chris Jones in October 2015 regarding the Khartoum Process, which he describes as “beefing up borders in East Africa”, show that the same approach identified in the above discussion is being promoted regarding the so-called “Horn of Africa Migration Route”. Ongoing discussions involving the EU Commission, African Union and ministers of 38 countries, including EU member states as well as Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Tunisia (Norway and Switzerland are observers), aim to develop cooperation to improve migration management, fight trafficking in human beings and the smuggling of migrants. This form of cooperation with countries which produce substantial flows of asylum seekers clearly shows that the external dimension of the EU asylum and immigration policy is largely about preventing potential refugees from leaving their countries. The article cites a comment by the *Association Européenne pour la défense des Droits de l'Homme* (AEDH) on this issue:

“AEDH notes the continuity with which the EU, obsessed by the protection of its borders requests the assistance of third countries to this end! Indeed, the Khartoum Process is a further step in the policy of externalisation of the management of migratory flows: despite the declarations of intention on the respect of the fundamental rights of migrants, the aim is to arrange the material conditions to avoid that they come to Europe, especially by establishing asylum processing centres. It is also about facilitating the return of ‘undesirable’ migrants.”

Conclusion

This leads us back to the title of this essay and to the need for a new observatory on security and immigration policies in the EU and its member states of which this essay is a preliminary step. The key proposition is that EU immigration policy is not a solution but a problem, for a number of reasons, and that the current crisis is not a result of imperfections in the way it has been implemented but, rather, what has been done to enact it to date is a root cause of the crisis and of wider systemic problems which have become structural. This is why it is important to provide historical context, particularly as the development of EU policies are well documented (and Statewatch has been monitoring available documentation for over two decades) and the relevant documentation shows successive policy options being adopted to counter the problems caused by previous initiatives. Immigration policy has been used as a means to intensify coercive state power over society and individuals by enabling the exclusion of significant population groups from basic human rights. Undermining the situation of “irregular” migrants has led to measures involving wholesale identification, surveillance, control, exclusion and punishment practices which target far wider constituencies, including “regular” migrants who may be suspected of illegal entry and activists or members of the public who may oppose them.

In order to prevent practices such as “asylum shopping”, whereby would-be applicants are tempted to seek entry into countries offering the best conditions, or to prevent EU and third-country migrants from moving to countries where conditions (the social security system or health provision)

are most attractive, these are being degraded, including for countries' own citizens. The draft Council conclusions document referred to above goes so far as to state that

“The Council welcomes the Commission’s intention to monitor and assess through the European Migration Network whether disparities among voluntary return and reintegration programmes of the Member States could lead to return shopping.”

Thus, the new potential threat which has been identified is that migrants who are set to be deported may abuse the system to be deported to one country rather than another...

Moreover, the expansion of public security efforts to counter “illegalised” immigration are developing within the framework of the EU’s “Internal Security Strategy” to enact coordinated joint police operations to target foreigners in over 20 countries at a time which fit the definition of “ethnic profiling”, regardless of claims in official documents that they respect human rights. Frontex risk analysis reports play an important role in pushing this expansion of a policy field, that of immigration controls, whose ultimate goal is to “ensure the absence of internal border controls for persons” in the EU’s area of freedom, security and justice. Yet, the second proposition in the same point (Title V, art. 67.2) of the Lisbon Treaty indicating that it “shall frame a common policy on asylum, integration and external border control, based on solidarity between member states, which is fair towards third-country nationals”, and its implementation in practice, makes a mockery of the first.

Germany and its chancellor deserve praise for their leadership in calling for adequate relocation programmes and a working common European asylum system, leading the way with regards to the reception of Syrian refugees. Yet, its plans do not signal a much-needed shift in direction, due to the emphasis placed on intensified return operations, adoption of a list of safe countries, fighting organised crime syndicates (also militarily, through the EUNAVFOR military crisis management operation) and exerting greater pressure on third countries to accept new readmission agreements. The current crisis has highlighted existing shortcomings, including an imbalance in the adoption of repressive security measures, as opposed to measures to ensure human rights compliance, such as a functioning asylum system. This has contributed to establishing a clear dichotomy between “refugees” and “economic migrants” for the purpose of excluding and criminalising the latter. In turn, by promoting third country regimes’ repressive capabilities and their control of borders, this has also contributed to turning what were once migrants into refugees, as conditions in their home countries worsen.

In order to enact its returns policy, longstanding principles including the right to freedom have been discarded to enable an expansion in states’ custodial facilities to detain people who are not found guilty of a criminal offence, initially for third-country nationals. Yet, as if to prove the expansive dynamics of punitive practices linked to immigration policy, an increasing emphasis on the situation of EU nationals is gaining ground. The idea of strictly enforcing rules such as the six-month limit during which EU nationals may reside in another EU state without being employed is resulting in EU nationals being detained in centres which have become a powerful symbol of the EU’s human rights violations. The figures in France for 2014, included in the fifth report on detention centres by the associations *ASSFAM*, *Forum Réfugiés - Cosi*, *France terre d’asile*, *La Cimade* and *Ordre de Malta France*, indicate that detention increasingly affects EU nationals. There were 1,713 returns in 2014 to EU member states of their own nationals following detention, with Romanians the most affected national group. The overall number of EU citizens who were expelled is higher, as not all

of them underwent prior detention. Interior ministry statistics from January 2015 cited in the report indicate that 3,332 EU nationals were expelled in 2014. The overall figure for the detention of EU nationals in 2014 was 2,101, and the breakdown was as follows: Romanians: 1,742; Bulgarians: 109; Lithuanians: 48; Poles: 44; Portuguese: 23; Spaniards: 22; Italians: 19; Dutch: 18; Croatians: 16; Latvians: 10; others: 50.

Moreover, the implementation of measures to combat irregular immigration into the EU has led to sequences of population groups who are either targeted or compelled to participate in border control enforcement, from carriers to employers and landlords who must check third-country nationals' possession of the required documents. University staff in the UK are being pressured by the UK Border Agency and Home Office to monitor their overseas students. At the same time, people who may abhor discriminatory policies and practices are being forced to witness aggressive and discriminatory policing on their streets. They are liable to punishment if they oppose such practices (as is true, for example, when passengers on aeroplanes disrupt deportations involving ill-treatment) and are increasingly likely to experience the expulsion or detention of loved ones or friends who fall foul of the immigration policy regime. At the same time, opposing overt human rights violations may turn into a criminal offence such as "obstructing the law", or "assisting illegal immigration" and, remarkably, organisations such as the "No Borders" activist network sometimes feature in documents including Europol's European Union Terrorism Situation and Trends (TESAT) reports. For instance, the 2012 TESAT report (p. 29, in the section on left-wing and anarchist terrorism, subsection on terrorist and violent extremist activities) states that:

"The number of incidents related to the so-called 'No Border' campaign is relatively high in comparison to other ideological themes of left-wing/anarchist activism in the Netherlands. Also, in France, a number of incidents were motivated by the expulsion of asylum seekers. Besides the traditional meetings and protest demonstrations, a number of violent incidents, such as arson attacks, clashes with police and criminal damage, occurred in 2011. A significant incident in the Netherlands was a home visit - a tactic frequently used by violent animal rights extremists - damaging the house of the CEO of a construction company. Companies involved in the construction of detention centres for asylum seekers or prisons are preferred targets of anarchist extremists."

These expansive dynamics, alongside a refusal to acknowledge the problems caused by immigration policy, suggest that the only means of tackling this issue with any positive prospects is to stabilise it and analyse its shortcomings and failures, with a view to scaling it down. This may be done by treating immigration policy, rather than the "illegal entry" of third-country nationals which may prove beneficial in the medium/long term, as a "risk factor" or "security threat" which is leading towards authoritarian state power, undermining important and long-established principles which the EU recognises as cornerstones of its project, even as it dismantles them.

[This Analysis was written between October 2015 and February 2016]

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Part 1

20 years of restrictive EU immigration policy have – inevitably – led us to the current situation

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