EUROPE’S SOUTHERN GATEKEEPERS:
THE EXTERNAL DIMENSION OF THE EU’S
IMMIGRATION AND ASYLUM POLICY

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<th>Abbr.</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AFSJ</td>
<td>Area of Freedom, Security and Justice</td>
</tr>
<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<tr>
<td>CEPOL</td>
<td>European Police College</td>
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<tr>
<td>COSI</td>
<td>Internal Security Committee</td>
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<tr>
<td>CREATE</td>
<td>Central Record of Available Technical Equipment</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>EASO</td>
<td>European Asylum Support Office</td>
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<td>EEAS</td>
<td>European External Action Service</td>
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<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<td>ENPI</td>
<td>European Neighbourhood and Partnership Instrument</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>ESS</td>
<td>European Security Strategy</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUROSUR</td>
<td>European External Border Surveillance System</td>
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<tr>
<td>FRONTEX</td>
<td>European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union</td>
</tr>
<tr>
<td>ICMPD</td>
<td>International Centre for Migration Policy Development</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organisation for Migration</td>
</tr>
<tr>
<td>JHA</td>
<td>Justice and Home Affairs</td>
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<tr>
<td>SCIFA</td>
<td>Strategic Committee on Immigration, Frontiers and Asylum</td>
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<tr>
<td>SIS</td>
<td>Schengen Information System</td>
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<td>UfM</td>
<td>Union for the Mediterranean</td>
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INTRODUCTION

**Topic**

The present paper aims to provide an overview of the main security challenges faced by the European Union (EU) Member States located in the North Mediterranean region, with a specific focus on the issue of illegal migration which takes the form of boat crossings and illegal entry into the EU territory through the Mediterranean Sea.

Although interest in illegal immigration has been growing since the 1990s, it has become a security threat in recent years by connecting it, also through political discourse, with risks such as trafficking and smuggling in human beings and/or drugs. In addition, after 9/11 and the terrorist attacks in Madrid (2003) and London (2005), migration – especially that coming through the Mediterranean – was viewed as a possible danger linked to Islamist terrorist activities. Also, illegal migration and the subsequent tightening of EU borders have led to the concern about the human costs of illegal migration and to ways of addressing this complication.

**Specific problem**

The specific problem this paper addresses is the EU’s so-called “JHA-Relex policy”, i.e. the external dimension of the EU’s migration and asylum policy expressed through the Justice and Home Affairs (JHA) elements introduced in the European Neighborhood Policy (ENP) and the subsequent tensions and ambiguities which ensue. More specifically, it focuses on the manner in which JHA instruments have been combined with ENP policies towards 3rd countries to address the problem of illegal migration although there is no specific mention of this competence in the Treaties. This paper shall not focus on the problem of asylum specifically since this would require an entire paper in itself, but will adopt a more general view of illegal immigration which includes those who engage in unlawful entry attempts in order to request international protection. Moreover, the EU is in the process of developing an immigration policy which contains the issue of asylum since it constitutes a very important aspect of the illegal migration phenomenon.

**Relevance**

Pastore (2007) pointed out that since the 1970s there has been a “structural decoupling of migration policies and foreign policies” inside the EU in such a way that immigration
policies were restricted to the national level and were a matter of strict executive sovereignty. As will be evidenced in the present paper, immigration policies and foreign policies have been on a path of convergence under the EU umbrella since the 1990s, in contrast to earlier tendencies. Therefore, the theoretical importance of the present analysis is that it addresses a (relatively) new and significant policy field at the EU level. With the expanding importance given by the EU institutions to both the Area of Freedom, Security and Justice (AFSJ) and to its international outreach through the Common Foreign and Security Policy (CFSP), it is necessary that the logic, objectives and present results of two policy fields regarding the issue of illegal migration are better examined so as to provide not only a critical analysis, but also policy recommendations.

The practical importance of the topic stems from the fact that trans-border security risks have become a policy priority on the EU’s agenda, a fact made clear by the ongoing discussions and establishment of various bodies and instruments – such as Eurojust, Europol, FRONTEX, the European External Border Surveillance System (Eurosur), the European Police College (CEPOL), the Internal Security Committee (COSI), The Lisbon Drugs Observatory, the European Asylum Support Office (EASO) etc. – aimed at tackling illegal migration, asylum problems, organized crime, border surveillance, terrorism and other cross-border threats and which are “crucial in the fight against cross-border crime”\(^1\).

In the context of the adoption of the Stockholm Program, the European Council affirmed in December 2009 that “the external dimension (of the EU’s policy in the area of freedom, security and justice) is crucial to the successful implementation of this program and should in particular be fully coherent with all other aspects of EU foreign policy” to the extent that “priorities in external relations should inform and guide the prioritization of the work of relevant EU agencies”\(^2\), such as those mentioned above. In addition, the Lisbon Treaty will, theoretically, enable the EU to act in a more coherent and coordinated manner concerning issues pertaining to JHA and CFSP and, to this end, the same Council urged the new High Representative, the European External Action Service (EEAS) and the Commission to “ensure better coherence between traditional external policy instruments and internal instruments with significant external dimensions, such as freedom, security and justice”\(^3\). Therefore, the practical importance

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\(^1\) Speech by Danish Minister of Justice Hirsch Ballin on “The EU area of freedom, security and justice in the wider world: implementing the external dimension of the Stockholm Programme”, Asser Institute, The Hague, February 5, 2010.


\(^3\) Ibid: 74.
of the present paper is twofold: 1) the reinforcement of the JHA’s external dimension has become of central importance for the EU’s internal security strategy and its external action policy and 2) in view of the fact that the abovementioned agencies will play an essential role in tackling trans-border risks, they have been entrusted with more responsibility and financial support. Hence, analyzing agencies, such as FRONTEX, which are expected to expand institutionally and operationally and therefore improve the results of their activities in handling the EU’s internal and external security can only enhance one’s understanding and critical viewpoint on how the EU is planning to handle the issue of transnational security risks after the adoption of the Lisbon Treaty.

Research design

Research question

This paper seeks to answer the following question: Has the development of the external dimension of the EU’s immigration and asylum policy, together with its externalization tendency, financial incentives and capacity-building bodies, managed to address the migratory problem in the Mediterranean basin?

Research methods

The research design chosen for the present paper is based on the case study method which deals primarily with a thorough investigation of a particular entity, be it a country, political system or regime, institution, event of phenomenon. It is based upon three crucial elements, namely: 1) a specific subject; 2) a delimited geographic space and 3) a particular period of time. The present paper includes all these characteristics: 1) the subject refers to the issue of illegal immigration which takes the form of illegal boat crossings; 2) the geographic space is the Mediterranean and (3) the chosen timeframe starts from the late 1990s, i.e. since the EU engaged in earnest in developing the external dimension of its immigration and asylum policy, up to the present moment. This paper offers five such case studies, namely the EU Member States which are located in the Mediterranean region, thus being the most affected by the aforementioned problem.

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**Case selection**

The cases selected for the present study were the North Mediterranean EU countries are confronted with “disproportionate influxes of immigrants”\(^6\), i.e. Italy, Spain, Greece, Cyprus and Malta, as well as France. The reason for which the Mediterranean region was chosen as a unit of analysis stems from the fact that these states represent the front-line and, therefore, are directly exposed to the phenomenon of illegal boat crossings and the security and humanitarian problems that follow from this situation. Also, as the Mediterranean governments themselves pointed out, “security in the Mediterranean region is directly linked to the security of the European Union as a whole”\(^7\). Hence, it is necessary to have a more in-depth view of the problems with which these countries are confronted with and to engage in a critical analysis of the Community as well as the bilateral methods through which these issues are tackled and, in the end, propose some room for improvement.

**Data sources**

The present paper engages in qualitative research by focusing on document analysis since the collection and examination of data, such as official documents produced by, in this case, supranational institutions or private organizations and think tanks, mass media and virtual outputs represent the basis for coming up with a robust and detailed presentation of the phenomenon under study.

The primary data sources used in this research are the relevant official documents issued by the supranational institutions – resolutions, directives, programs, Commission action plans and evaluations, European Council Summits, Council Conclusions, official reports, agreements with 3rd parties, public statements, parliamentary opinions – regarding the efforts to organize the external dimension of a European-level approach to immigration starting with the year 2000 up to 2010. In addition, we examined policy papers and critical analyses of these EU policy initiatives produced by a large number of think tanks and organizations which deal with the specific problems associated with immigration and asylum, such as, among others, the Central European Forum for Migration and Population Research, the Centre for European Policy Studies, Centro Studi di Politica Internazionale, Instituto di Affari Internazionali, the Consortium for Applied Research on International

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Migration, the Migration Policy Institute and the International Centre for Migration Policy Development. Moreover, scholarly articles and books that deal with the issue of migratory flows in general and with the issue of illegal immigration in the Mediterranean in particular have been consulted in order to draw an adequate picture of the complexity of this phenomenon. Lastly, online newspaper articles were used in order to gather information on the most recent political developments and to examine the opinion of different actors involved in the case under study.

**Structure**

The structure of this paper presents itself in the following manner: the introduction is followed by the first chapter which contains the theoretical framework by defining the basic concepts used throughout the present paper, i.e. illegal migration, securitization and externalization of immigration control. These notions are addressed by drawing upon the main contributors to the literature, such as Buzan, Waever and de Wilde (1998), Den Boer (1993), Huysmans (2000), Boswell (2003), Lavenex (2004), Lutterbeck (2006), Pastore (2007), Debenedetti (2006), Rijpma and Cremona (2007), Papadopulos (2007), Carrera (2009) etc. The second chapter deals with the securitization of migratory movements towards the EC and the subsequent efforts to develop a harmonized approach from early, intergovernmental efforts to tackle this issue until the Amsterdam Treaty when the immigration and asylum policy became a Community competence. The third chapter is dedicated to the development of the external dimension of the EU’s immigration and asylum policy starting with the Tampere (1999), continuing with The Hague (2004) and ending with the Stockholm Program (2010). The fourth chapter discusses the prevailing security challenges in the Mediterranean and the situation facing the Southern Mediterranean EU states as principal receivers of immigrants. Also, we analyze the presence of FRONTEX – the most important Community body charged with securing the external borders – by pointing out its main weaknesses, but also providing several recommendations for the improvement of the EU’s policy as a whole. The conclusion reiterates the research question, synthesizes the findings and gives a systematic answer to the issue at hand.
CHAPTER 1: THEORETICAL FRAMEWORK

1.1. A definition of illegal migration

Before focusing on the particularities of illegal immigration in the European Union context, it is necessary to offer a definition of the concept at hand. Illegal immigration has several meanings depending on what aspect one chooses to focus on. This section presents a number of interpretations and viewpoints on how this phenomenon should be defined and the variety of classifications encountered points to its multidimensional character.

The minimal definition would characterize a person as being an illegal immigrant when he/she is present on the territory of a state without being in possession of an official authorization. However, as pointed out above, this concept encompasses more aspects than simply not having the necessary paperwork. In addition, there are several terms being used to describe this issue, such as “irregular”, “clandestine” or “illegal”. In this sense, it has been suggested that the term “illegal immigration” be used to describe illegal border crossings only, while “irregular immigration” would be a wider concept which includes “illegal entries, legal entries with subsequent illegal residence (visa overstayers, etc.) as well as ‘apparently legal entries’ (i.e. entries within a legal entry scheme achieved through deception such as ‘sham marriages’, ‘bogus students’, etc.)”\(^8\).

In the EU, the term illegal immigration has been linked to the following situations\(^9\):
1) overstaying after the expiration of one’s visa/ residence permit; 2) entering EU territory by bypassing official border outposts; 3) entering EU territory through fraud such as unsubstantiated asylum requests\(^10\); 4) entering with counterfeit identity documents/visas; 5) entering with the assistance of human smuggling networks. The European Commission’s definition of illegal immigration comprises three categories\(^11\). Firstly, there are “third country nationals who enter the territory of a Member State illegally by land, sea and air

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\(^10\) This particular type of immigration was also underlined by the European Commission at the beginning of the 1990s. The association between illegal immigration and bogus asylum seekers is based on the idea that one can make a clear distinction between immigrants seeking employment opportunities and genuine refugees. It has been argued that at the level of political discourse the outcome of the link between an asylum request and a potential “malicious intent” was that such demands were treated with increased suspicion and therefore endangered the true asylum seekers. Source: Ibid, 100.

[...] by using false or forged documents or with the help of organized criminal networks of smugglers and traffickers”. Secondly, there are those “who enter legally with a valid visa or under a visa-free regime, but ‘overstay’”. Thirdly, there are “unsuccessful asylum seekers who do not leave after a final negative decision”.

The aspect of illegal immigration on which the present paper shall focus on is the one identified by the Commission’s definition as the unauthorized border crossing by sea with the assistance of smugglers and traffickers.

**1.2. Securitization theory**

The Copenhagen School developed a new and broader analytical framework for security studies by accentuating the fact that the notion of security is far more complex than the traditional, realist politico-military approach (security complex theory), which was obsolete and incapable of dealing with the multidimensional character of 21st century security threats. Consequently, there was a need to develop a more comprehensive approach to these challenges. In this sense, Buzan, Waever and de Wilde (1998) proposed an upgraded conceptual toolbox in order to examine their changing character in five sectors: military, political, economic, environmental and societal.

In addition, they introduced a constructivist approach to international security via the concept of “securitization”. The purpose of securitization is to reach a “precise understanding of who securitizes, on what issues (threats), for whom (referent objects), why, with what results, and, not least, under what conditions (i.e. what explains when securitization is successful)”

Along the same lines, Waever (1996) had argued that security discourse consists in pushing a certain issue “into the spotlight” and thus security becomes “a self-referential practice, not a question of measuring the seriousness of various threats and deciding when they ‘really’ are dangerous to some object… It is self-referential because it is in this practice that the issue becomes a security issue”.

**1.2.1. The securitization of international immigration in the EU**

Regarding the general interconnection between international migration and international security, Anioł (1992) pointed out that migration can acquire three different characters: 1) it can be “forced” because of human rights violations, ethnic conflicts, inter- and intrastate war; 2) it can in itself become a threat to international security if it acquires a massive and

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uncontrollable nature; 3) it can lead to other security challenges in the form of social unrest in the receiving countries due to xenophobia, racism or the rise of extremist movements. In addition, one can also classify the manner in which migratory movements affect international and internal security by looking at the aspects or values which can come under threat.

Regarding the securitization of migration in the EU, scholars such as Den Boer (1993), Lodge (1993), Bigo (1994), Buzan et al. (1998), Huysmans (2000), Lutterbeck (2006), Collinson (2007) and Pastore (2007) argue that the incremental measures taken by the Member States in the realm of JHA were justified by connecting them to the phenomenon of cross-border crime and its potential for destabilizing internal security. From the Rome Treaty up to the early 1990s when immigration became a Union competence, the importance given to this phenomenon in domestic as well as European policy debates increased by placing migration flows at the centre of a security discourse prompting a security-related policy response. An illustration of this fact is the 1990 “Convention implementing the Schengen Agreement of 14 June 1985” which ties security risks to illegal immigration and the need for external border controls.

Den Boer (1993) rightly underlined the context in which these developments occurred, namely the post-Cold War environment where the international system was characterized by a multipolar power distribution which engendered two important changes at the EC level. Firstly, there was a “substantive transformation” whereby the emphasis moved from the dangers posed by Communism to those caused by waves of uncontrollable immigration. Secondly, the demilitarization process led to a “strategic transformation” whereby “‘soft’ security objectives”, i.e. external border control, demanded increased

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15 In this sense, Kicinger (2004) listed the following: 1) social order because of weak integration and increased intolerance; 2) demographic balance; 3) cultural homogeneity; 4) the national welfare system; 5) internal order because of increased crime levels, trafficking in drugs, arms and human beings and terrorism. Source: Ibid: 2-3.
16 Huysmans defined security policy as a bureaucratic tool that “conserves or transforms political integration and criteria of membership through the identification of existential threats. […] The community defines what it considers to be the good life through the reification of figures of societal danger such as the criminal, the mentally abnormal and the invading enemy”. Source: Jef Huysmans, “The European Union and the Securitization of Migration”, Journal of Common Market Studies, vol. 38, no. 5, (December 2000): 757.
participation of trans-national police forces. Papadopulos argued that the gradual securitization and externalization of EU immigration policy “does not only aim at introducing some technical and managerial innovations, but also it represents a new way of imagining and ordering the European space by (re)drawing maps of security threats and constructing regions of insecurity…” By applying the securitization concepts, Lutterbeck (2006) pointed out that there are two “referent objects” in the Mediterranean: 1) illegal immigration seen as a threat to the welfare systems of European states and 2) illegal immigration seen as “‘human security’ or safety of the would-be migrants”, whereby the main objective is not to prevent migration at all costs, but to “prevent the loss of life, protect the migrants against the human smugglers and ensure the rights of genuine refugees”. However, illegal migration is also seen as a threat in itself since it is placed on a par with money-laundering, human, arms and drug trafficking as well as terrorism. In this sense, Collinson (2007) argued that “migration was perceived and treated as a threat and immigration and border policies became securitized, as depicted widely in the image of a ‘Fortress Europe’.”

1.3. Externalization of immigration control

The issue of externalization of EU migration policies is very important because it entails a considerable amount of criticism against the Community’s attempts to establish a comprehensive migration and asylum policy. At the EU level this tendency is labeled as the “external dimension” of immigration policy, but several scholars are more inclined to talk about an “externalization” or “extra-territorialisation” (Bigo, 2001; Boswell, 2003; Lavenex, 2004; Debenedetti, 2006; Rijpma and Cremona, 2007; Doukouré and Oger, 2007; Papadopulos, 2007; Carrera 2009).

Externalization is defined as “the reproduction of European internal migration policy at the external level, which entails burden sharing in the policing of European borders with bordering countries, and the setting up of migration management policies in the countries of origin, and especially illegal migration, following European interests” resulting in a shift of focus from development and collaboration on the issue of legal

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migration and the human rights aspect to securing external borders\textsuperscript{22}. Also, it implies an asymmetrical or active-passive dynamic between the states involved in the sense that those on the receiving side have a direct say in the policy-making process while the other(s) adapt their domestic policies to suit the objectives and norms of the former\textsuperscript{23}.

Debenedetti (2006) offered a very good explanation as to the differences between the notions of “external dimension” and “externalization”. The former has the more neutral meaning of being active in all policy areas touching upon the management of external borders, while the latter consists of several security-related facts\textsuperscript{24} which has as an effect the so-called “remote-control” policy or extra-territorialisation\textsuperscript{25} of responsibility. In addition, Lavenex (2004) considers that the externalization phenomenon could be seen as a new model of governance whereby the EU acquis extends beyond EU frontiers to impact the legislative structure and the external policies of 3\textsuperscript{rd} countries\textsuperscript{26}. Papadopulos (2007) argued that it entailed a (re)determination of the EU’s borders along the lines of an “AFSJ” and pointed to the existence of three strategies which underpin the externalization policy: 1) “remote control” whereby border controls are entrusted to 3\textsuperscript{rd} and/or border countries; 2) “remote protection” stressing the extra-territorial dimension of refugee protection and 3) capacity-building efforts in origin and transit states\textsuperscript{27}. At the normative level, the externalization policy can be split into two approaches, each entailing a different outlook on migration\textsuperscript{28}. The first is characterized as restrictive and reactive in nature since it focuses on the security aspects and the need to control,....

\textsuperscript{22} Ounia Doukoure, Helen Oger, “The EC External Migration Policy: The Case of the MENA Countries, Cooperation project on the social integration of immigrants, migration and the movement of persons, European University Institute, Robert Schuman Centre for Advanced Studies (2007): 2.

\textsuperscript{23} Gemma Aubarell et al., “New Directions…, 12.

\textsuperscript{24} Sara Debenedetti identified five such facts: 1) aspects of the internal approach that have international implications (the creation of domestic and external migrant camps); 2) insistence on external borders and the fight against illegal immigration (border control, patrols, physical barriers etc); 3) the expulsion of illegal immigrants, readmission agreements, joint transport); 4) proposals for the administration of asylum requests outside EU territory; 5) tackling “root causes” and connecting migration to development. Source: Sara Debenedetti, “Externalisation of European asylum and migration policies”, Florence School on Euro-Mediterranean Migration and Development, Robert Schuman Centre for Advanced Studies (2006): 1-2.

\textsuperscript{25} Extra-territorialisation is defined as: “the way in which the EU and its Member States attempt not only to prevent non-Community nationals from leaving their countries of origin, but also to ensure that if they manage to do so, they remain as close as possible to their country of origin [...] It furthermore covers measures that ensure that if individuals do manage to enter EU territory they will be repatriated or removed to ‘safe third countries’”. Source: Jorrit Rijpma, Marise Cremona, “The Extra-Territorialisation of EU Migration Policies and the Rule of Law”, EUI Working Papers, Robert Schuman Centre for Advanced Studies (2007): 12.


thereby being labeled as “remote control”. A criticism relating to this particular approach is that the ENP evaluation reports consist in pinpointing the problems of democracy and rule of law in the Mediterranean partner countries, while not taking a harsher stance and engaging in collaboration with authoritarian regimes since it aims at securing cooperation in migration management. The result of this strategy would be a pay-off between the long-term goal of promoting “security through democracy” and the short-term one which emphasizes the need for 3rd countries to counteract risks threatening the EU. The second, dubbed “root cause approach”, stresses the sources of migration and therefore the need for socio-economic development as the key to manage and prevent outflows of people. In relation to this, Boswell (2003) underlines that the problem stems from the fact that the EU has been using both approaches and that it is essential to decide which one will predominate especially because they differ so much in policies and outcomes. Wolff (2006) argued that the supranational institutions have to provide political guidelines to mitigate this predicament, otherwise “tensions will arise between the EU’s long term strategy of eliminating the root causes of security threats by promoting democracy and the rule of law, and the short-term requirements of cooperating with autocratic regimes in the fight against terrorism and illegal immigration”.

From a more recent perspective, Aubarell et al. state that the latter approach exists more at the declaratory level while the former is actually employed in everyday practice. Also, they propose a third one called the “managerial approach” which is more flexible and in tune with the labor market since it is based on the projected demographic and economic necessities of the EU in general and the European Mediterranean countries in particular – an aspect which entails concentrating on maximizing the economic and social benefits and opportunities offered by legal labor migration. This particular attitude towards migration, i.e. from “more development for less migration” to “better migration for development”, is especially important in the Mediterranean context in the sense that new, more flexible strategies have emerged that promise to bring out the positive aspects related to mobility and development cooperation so as to avoid zero-sum games. In this sense, the Global Approach to Migration adopted in 2005 is an illustration of this changing frame of mind. It is an action plan aimed at constructing a comprehensive and coherent approach based on

31 Gemma Aubarell et al., “New Directions…, 17.
32 Ibid, 18.
three principles: solidarity between Member States, partnership with 3rd countries and the protection of migrants. It focused on promoting the development agenda in Africa through the ENP and EUROMED frameworks, as well as stressing the importance of developing a common EU policy – which includes both internal and external dimensions – on legal migration. Consequently, it draws attention to the economic potential offered by regular migration and states that a system of labor mobility could be established so as to benefit all the actors involved\(^33\).

### Table 1: Summary of the three approaches of EU externalization policy\(^34\)

<table>
<thead>
<tr>
<th>Remote control</th>
<th>Managerial</th>
<th>Root cause</th>
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<tr>
<td>Security-based</td>
<td>Labour market necessities</td>
<td>Development-based</td>
</tr>
<tr>
<td>Reactive (control)</td>
<td>Management (development)</td>
<td>Proactive (prevention)</td>
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<tr>
<td>Policy as restriction</td>
<td>Policy focusing on co-development through labor migration</td>
<td>Policy as innovation</td>
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It has been indicated by several scholars that the ENP includes all the externalization dimensions such as: 1) initiatives taken at the European level which call for the non-members’ cooperation and influences their legislative and operational setup (visa policies, FRONTEX); 2) voluntary adoption by 3rd countries of Union norms via international agreements (immigration liaison offices, return policy); 3) association agreements which stipulate the need to align to the EU *acquis*\(^35\).

In an attempt to categorize the actual activities undertaken by the EU via its externalization policy, Aubarell *et al.* proposed the division between diplomatic initiatives/practices, external institution-building and concrete policies. The first refers to bilateral or multilateral reunions aiming at limiting illegal immigration mainly through readmission agreements. The second indicates the practice of establishing (temporary) institutions – such as FRONTEX – aiming at putting into practice the agreed upon policies. The third simply denotes the concrete policies enacted in this field.

\(^{33}\) The Commission Communication on the implementation of the Global Approach states that: “[t]he potential offered by new forms of migration, in particular circular migration, should be further explored […] Once certain conditions have been met, such as cooperation on illegal migration and effective mechanisms for readmission, the objective could be to agree Mobility Packages with a number of interested third countries which would enable their citizens to have better access to the EU”. Source: European Commission, *The Global Approach to Migration one year on: Towards a comprehensive European migration policy*, COM (2006) 735 final, November 30, 2006, 7, [http://www.statewatch.org/news/2006/dec/eu-com-735-2006-migration.pdf](http://www.statewatch.org/news/2006/dec/eu-com-735-2006-migration.pdf) (accessed September 15, 2010).

\(^{34}\) Taken and completed with the “managerial approach” from Gemma Aubarell *et al.*, “New Directions…, 15.

Table 2: Conceptualization of the practices and specific activities comprised by the EU’s externalization policy\textsuperscript{36}

<table>
<thead>
<tr>
<th>Diplomatic practices</th>
<th>External institutions</th>
<th>Concrete policies</th>
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<tr>
<td>Bilateral and multilateral reunions</td>
<td>Camps and asylum processing centers</td>
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<td>Readmission agreements</td>
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<td>Border control agencies (FRONTEX)</td>
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\textsuperscript{36} Table present in Gemma Aubarell et al., “New Directions…, 16.
CHAPTER 2: THE SECURITIZATION OF (ILLEGAL) IMMIGRATION AND THE EUROPEAN RESPONSE

2.1. Early efforts to manage illegal immigration in the EU

At the general EU level, migration policies in the 1950s and 1960s were lenient and the status of immigrants was not a crucial issue especially because of the economic boom manifested in a high demand for labor. The most important development regarding immigration in that period was Council Decision 1612/68 which clearly stated in the Preamble that freedom of movement and employment is available only to Member States’ nationals.

This political indifference changed in the 1970s due to a worsening economic climate and the need to shield the national labor market. The result was that this permissive policy was reversed and recruitment was restricted. In the context of the 3rd enlargement, the fall of the Bretton Woods system and the oil crisis, the 1973 Paris European Council Summit also brought to the fore the need for a common immigration policy. However, while at the supranational level efforts were being made to increase cooperation, at the national level there occurred a “parallel process of unilateral closure” reinforced by the fact that immigration policies were considered as a domain réservé to be tackled by the member states’ interior ministers. Regarding this latter issue, Bade (2003) pointed out that “the past history of European migration policies relating to non-European in-migration began as security policies agreed by the ministries of interior of European countries, largely bypassing the EP”. In addition, as was discussed in the previous section, there occurred a gradual “securitization” of this phenomenon which insisted on its potential to undermine public order. Monica den Boer (1995) pinpointed three arguments identifying (illegal) immigration as an internal security threat: 1) immigration as a part of cross-border criminal activities; 2) immigration as a burden on the states’ welfare systems and 3)

37 It stated that the right to free movement entails the “abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Community in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health”. Source: Council Regulation 1612/68 on freedom of movement for workers within the Community, October 15, 1968, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31968R1612&model=guichett (accessed August 20, 2010).
immigration prompting social unrest via increased racial intolerance\textsuperscript{40}. In time, especially in the 1980s, it became clearer that the unilateral/do-it-yourself-regulation approach is inefficient since new exporting countries emerged – particularly from the “Third World”/former colonies – and immigration grew acquiring various forms such as illegal entries, family reunification and asylum requests.

In addition to these aspects, a crucially important factor which greatly contributed to the establishment of a common immigration policy was the 1986 Single European Act introducing December 31\textsuperscript{st}, 1992 as deadline for the completion of the internal market – a principle enshrined in the 1957 Rome Treaty\textsuperscript{41} – which meant the abolishment of internal borders so as to allow for the free movement of goods, persons, services and capital.

Den Boer (1995) pointed out that the downside of this particular political development at EU level was the so-called “internal security gap” at the Member States level since the fear was that people involved in criminal activities, illegal migrants and asylum seekers would take advantage of these liberties. Consequently, the Member States commenced cooperating purely at the intergovernmental level by setting up various \textit{ad hoc} working groups which were “of a reactive rather than of a pro-active nature, and to a certain extent hypothesized the relation between ‘open borders’ and ‘(illegal) migration’ on the one hand and ‘migration’ and ‘crisis’ on the other”\textsuperscript{42}. Furthermore, one needs to keep in mind the fact that these informal structures or associations were outside the EC institutional framework and were not subject to judiciary or parliamentary control, be it national or European and were thus unaccountable and undemocratic\textsuperscript{43}.

An example\textsuperscript{44} of such entities would be the 1986 Ad Hoc Working Group on Immigration which drafted the External Borders Convention and the Dublin Asylum Convention, the latter evolving into the Dublin Convention of 1990 which established the

\textsuperscript{40} Monica den Boer, “Moving between bogus and bona fide: the policing of inclusion and exclusion in Europe”, \textit{Migration and European Integration: The dynamics of inclusion and exclusion}, eds. Robert Miles, Dietrich Thranhardt, (London, Pinter Publishers Ltd., 1995), 98.
\textsuperscript{41} What needs to be emphasized regarding this aspect, however, is the fact that the Rome Treaty imposed a dualism in immigration policies because “[w]hereas the migration of the EEC nationals within the EEC was regulated by Community law, the migration of third country nationals remained within states’ exclusive competences”. Source: Anna Kicinger, Katarzyna Saczuk, “Migration policy in the European perspective – development and future trends, \textit{CEFMR Working Paper}, 1, October 2004: 10.
\textsuperscript{42} Monica den Boer, “Moving between…, 92.
\textsuperscript{43} Monica den Boer cites Wolfgang Wessels (1990) in stating that “intergovernmental agreements are subject neither to standard EU legislative procedures, nor to an effective democratic and legislative control by EU institutions […] there is a lack of continuity between intergovernmental agreements and the social policy framework of the Union aiming at the integration of members of immigrant communities into European societies […] the workings of intergovernmental structures are often of a nature which do not permit public scrutiny of the proceedings, thereby increasing anonymous decision-making and undermining transparency and public accountability”. Source: Ibid, 93.
\textsuperscript{44} Other examples of such groups are the Pompidou Group, CELAD, the Group of Coordinators, the Bern Club and the Police Working Group on Terrorism.
principle\textsuperscript{45} according to which the asylum request is to be dealt with by the first EU country in which he/she enters so as to suppress the practices of “asylum shopping” and that of “refugees in orbit”\textsuperscript{46}.

Another such body – which was considered “symptomatic of the construction of an internal security continuum”\textsuperscript{47} – was the Trevi group\textsuperscript{48} which was established in 1976 to counteract terrorism, ease the exchange of information and coordinate police aspects in the EC. In time, its remit was extended to deal with illegal migration, border control, drugs trafficking and other serious trans-national crimes and this expansion of competences was considered to have had as a result a direct association between drugs, terrorism and illegitimacy to the phenomenon of migration and asylum requests from 3\textsuperscript{rd} country nationals\textsuperscript{49}. After the Maastricht Treaty came into force in 1993, this body was absorbed into the so-called “Co-ordinating Committee” which had the task of giving opinions and preparing the Council’s discussions on issues of “common interest” listed in Article K.1 dealing with cooperation in the JHA field\textsuperscript{50}. As it can be seen, illegal immigration remained in the same serious international crimes category and was incorporated in the constitutional framework of the EU.

\textsuperscript{45} What is important to point out regarding this intergovernmental agreement is the fact that the abovementioned principle is disputed nowadays by the countries which are exposed to the highest number of immigrants, namely those located at the external EU border in the Mediterranean. In response to their pleas, in 2007 the Commission called for the establishment of “corrective burden sharing mechanisms that are complementary to the Dublin system” which would mean in practice “[e]xtending the provisions of the Long-term Residents Directive to beneficiaries of international protection” and this is “expected to alleviate the burden on certain Member States by allowing those persons, under certain conditions, to move to another Member State”. Source: European Commission,\textit{ Green Paper on the future Common European Asylum System, \textbf{COM} (2007) 301 final, June 6, 2007: 11, http://ec.europa.eu/justice_home/news/intro/doc/com_2007_301_en.pdf} (accessed August 27, 2010).

\textsuperscript{46} “Refugees in orbit” refers to the practice of dispatching asylum seekers between the Member States so as to determine which one of them is to deal with the case. Source: Anna Kicinger, Katarzyna Saczuk, “Migration policy in the European perspective…”, 11.

\textsuperscript{47} Bingo and Leveau (1992) cited in Monica den Boer, “Moving between…”, 96.

\textsuperscript{48} The Trevi Group was created by the European Council of Ministers as a response to Interpol’s structural inefficiencies and through its activities, it is considered Europol’s predecessor. It has been noted that it was a political body acting as “the European ‘think-tank’ about EC internal security issues”. It consisted of four working groups out of which Trevi III dealt with, among others, the management of internal and external borders. Source: Monica den Boer, \textit{Police Cooperation…}, 3.

\textsuperscript{49} An illustration of the fact that there was a political tug-of-war between the European institutions and some of these bodies was the accusation made by the Committee on Racism and Xenophobia within the European Parliament that the Trevi Group had made an “unacceptable amalgam” between serious crimes and migrants and/or refugees. Source: Monica den Boer, “Moving between…”, 97.

\textsuperscript{50} The issues mentioned above were asylum policy, the control of external borders, immigration policy towards 3\textsuperscript{rd} country citizens (conditions of entry, movement and residence, as well as combating unauthorized immigration, residence and employment) and police cooperation in tackling terrorist threats and other serious international crimes in anticipation of Europol’s establishment. Source: The Treaty on the European Union, Title VI: Provisions on Cooperation in the Fields of Justice and Home Affairs, Official Journal C 191, July 29, 1992, \textit{http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html} (accessed August 31, 2010).
The protracted coagulation of a unified, European-level approach in the period of intergovernmental collaboration was blamed precisely on these state-to-state strategies and in this sense den Boer argued that “[t]he absence of a coherent and long-term strategy towards a European system of immigration control has resulted in an inefficient functional overlap, legal-interpretative discrepancies and perceived inconsistencies in legal precedents and global conventions”\(^{51}\). On a more positive note, Huysmans argued that within these political and bureaucratic entities “trans-national and intergovernmental policy networks developed which were interested in a cooperative regulation of migration” and, therefore, they “pre-structured the development of migration policy in the EU”\(^{52}\), especially regarding its constitutional framework.

2.2. The European approach to illegal immigration

Before tackling in detail the advancement of a common immigration and asylum policy at EU level, it is necessary to keep in mind the distinction between its internal and external aspects. Geddes (2009) looks at this separation and points out that the former refers to the rules established within the Union regarding immigrants coming from 3\(^{rd}\) countries, such as provisions concerning entry, stay and status, rules covering the administration of irregular migration and asylum requests as well as return policy. In contrast, the external dimension focuses on building dialogue and partnerships with the relevant non-EU countries so as to deal with immigration in a manner which benefits both sides, i.e. by addressing its root causes – identified primarily as human poverty – via the promotion of social and economic development in the sending country. Concerning the external dimension, the author makes a good point by drawing attention to the fact that it shed light on the so-called “cross-pillar issues” which have blurred the internal-external security distinction, “[t]he implication [being] that the location of responsibility for migration within national and EU political systems also becomes more complex”\(^{53}\) in the sense that it pushes different DGs to cooperate among each other in order to have a multilateral approach to the issue at hand (see section 3.5.).

As was outlined in the preceding section, a common policy was not a priority on the member states’ agenda, but the issue rose to the fore through incremental institutionalization. More precisely, there has been an evolution in the development of a common immigration policy in the EU, from the lack of collaboration in the 1970s to

\(^{51}\) Monica den Boer, “Moving between…., 93.
\(^{52}\) Jef Huysmans, “The European Union…., 755.
\(^{53}\) Andrew Geddes, “Migration as Foreign Policy?”, SIEPS, April 2009: 23.
intergovernmental cooperation\textsuperscript{54} in the 1980s to making immigration control a Community competence while also giving it an external dimension in the late 1990s\textsuperscript{55}. In this sense, it is necessary to remember that the 1994 Commission Communication on Immigration and Asylum Policies stressed that together with a sound management and integration strategy in relation to cross-border movement into the EU, it is required to establish a foreign dimension consisting in the establishment of cooperation with the countries of origin\textsuperscript{56}.

Kicinger and Saczuk (2004) posit that there have been two major contributing factors to the piecemeal development of a supranational immigration policy. By adopting a neo-functionalist perspective on this process, the authors argue that the first important reason consists in the external challenges, such as human trafficking, asylum crises, increased illegal migration and economic migration demands. These made it evident that the tools and structures in place were not sufficient to enable the Member States to deal with these problems unilaterally and the Member States’ reaction to the above challenges took the form of “[e]fforts to make the legislation in European countries more cohesive, joint actions and finally the transfer of states’ competences in the area of migration to the community level…”\textsuperscript{57}. In relation to this argument, we can state that the cooperation and institutionalization process could be explained by the neo-functionalist perspective according to which this progression occurred at the “low politics” level and did not imply increased supranationalism from the very beginning, but a strengthened problem-solving bureaucratic and political framework of collaborative actions aimed at improving the effectiveness of a joint approach towards immigration coming from outside the Union.

The second factor underlined by the authors is the same as the one mentioned in the previous section, namely the process of European integration aiming at an “ever closer union” via the completion of the internal market which meant freedom of movement within the Union via the elimination of internal border checks – a side effect of which was pinpointed as being an increase of the security risks posed by cross-border crime. Hence,\textsuperscript{54} This strictly intergovernmental cooperation also reflects the importance given to national sovereignty over border control since the Member States “failed to create mutual trust about transferring responsibility for the guarding of external borders by law enforcement authorities other than their own”. Source: Monica den Boer, “Moving between…”, 94.
\textsuperscript{55} As Pastore points out, it is only in the mid-1990s that we can see “an increasing awareness of the practical limits and shortcomings of a unilateral approach to migration controls [which] pushed European states and institutions to set up, first bilaterally and then at supranational level, channels of dialogue and cooperate with the main states of origin and transit of migration flows”. Source: Ferruccio Pastore, “Europe, Migration and Development…”, 2.
\textsuperscript{57} Anna Kicinger, Katarzyna Saczuk, “Migration policy in the European perspective…”, 9.
the establishment of the internal market prompted stronger willingness among the Member States to cooperate in counteracting such threats.

Concerning this particular progress at the EC level, Monica Den Boer points out the fact that politicians and the media of the time inflated the fear that “the borderless internal market will be ‘swamped’ by asylum-seekers and illegal immigrants unless emergency measures are introduced”\(^{58}\). Jef Huysmans addresses this fact in a similar manner, but also adopts the neo-functionalist concept of “spillover”\(^{59}\) by arguing that “the linking of internal and external borders of the European Community has played an important role in the production of a spillover of the socio-economic project of the internal market into an internal security project […] To make the issues of border control a security question, however, the internal market had to be connected to an internal security *problematique*\(^{60}\). In other words, the evolution towards a common policy involved the securitization of migration in general and especially in the context of having an internal market with no internal frontiers as to the movement of people, services, capital and, potentially, criminal activities\(^{61}\).

As already highlighted above, the most important steps in the development of an EU migration and asylum policy were the following: 1) the 1985 and 1990 Schengen agreements; 2) the 1993 Maastricht Treaty, which included migration in the Third Pillar and 3) the 1997 Amsterdam Treaty which moved these issues under the First Pillar thereby “communitarizing” the regulation of visa policy, border controls and illegal immigration as such. An initiative which had a considerable impact on the rules governing the EU’s external borders was the 1985 Schengen agreement, entering into force in 1995, which established an area of free movement among the contracting parties. Regarding this instance of closer cooperation, Kicinger and Saczuk (2004), in addition to the scholars mentioned above, indicate that the Member States’ reaction, influenced also by the

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58 Monica den Boer, “Moving between…”, 94.
59 According to neo-functionalism, spillover refers to the fact that cooperation in one functional (non-controversial) area demands and necessitates integration in other (politically sensitive) spheres. It is not in a state of equilibrium since – due to the fact that various state elements are interconnected – it creates new tensions and demands from trans-national economic and social actors for solutions in other areas, thus through a snowball effect it creates an incentive for further cooperation. For a more detailed look at the neo-functionalist theory, see David Mutimer, “Theories of Political Integration”, Soldatos, P., Minchelmann, H.J. (eds.), *European Integration: Theories and Approaches*, (University Press of America, 1995): 13-42.
60 Jef Huysmans, “The European Union…”, 760.
61 An additional factor that has been outlined by scholars such as Philip Rudge (1989) and Ryszard Cholewinski (2003) is that this securitization process has also resulted in placing less emphasis on the human rights dimension and more on controlling the flow of migrants, be they economic or asylum-seekers. Rudge is quoted as saying that “decision-making in the area of asylum is moving away from the traditional human rights and humanitarian field of policy-making. It is increasingly the subject of fora dealing with terrorism, drug-trafficking and policing on the one hand and with economic streamlining on the other”. Source: Idem.
mainstream political attitude at the time, was to adopt counterbalancing security-related policies. In this sense, the Schengen Convention, which was incorporated into EU law, consists in reinforcing external border control via police-border cooperation, information exchange, surveillance and cross-border pursuit and, to these ends, the Schengen Information System (SIS) was established and enhanced collaboration in matters pertaining to visas, asylum, customs and judicial issues was encouraged. Advancing a more positive view on this intergovernmental accord, Geddes (2003) stated that it did not represent merely a medium through which national interests were satisfied, but it greatly contributed to establishing an institutional network which “indicated deeper integrative intent among a core group of member states” and, most importantly, it revealed the political readiness of several pioneer Member States to accept flexible forms of cooperation and integration.

The Maastricht Treaty, signed in 1992 and entering into force in 1993, constitutes another important development since it is through this legal document that cooperation in the domain of justice and home affairs – together with the issues of immigration, visa and asylum – was institutionalized via the establishment of the so-called “third pillar”. By referring to the securitization dynamic, several scholars such as Bulmer (1992), Den Boer (1993) and Huysmans (2000) indicate the formation of a “security continuum” with is defined as “an institutionalized mode of policy-making that allows the transfer of the security connotations of terrorism, drugs traffic and money-laundering to the area of migration”.

However, one must note that the speed and degree of agreeing on a common policy were still sensitive to Member States’ sovereignty concerns and this third pillar remained intergovernmental in character and functioning. This translated into a “diversity of legislation and practice” where the activities included mainly consultations and information exchange. Most importantly, what needs to be kept in mind is the fact that the decision making process was under the unanimity rule. Also, the involvement of integrationist bodies such as the Commission and the Court of Justice was kept at a minimum and, as a result, the policy tools produced were mainly non-binding Council resolutions and recommendations. In line with these observations, Geddes (2003) pointed out that the issues related to migration in the third pillar, i.e. the control of external borders,

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63 Andrew Geddes, The Politics of migration ..., 132.
64 Jef Huysmans, “The European Union…”, 760.
immigration policy, asylum policies, conditions of entry, movement and residence of 3rd country nationals, combating unauthorized immigration, residence and work and visa policy, were of “common interest”, but not common policies.\textsuperscript{66}

The third cornerstone in the development of a common immigration policy at the EU level is the Amsterdam Treaty which was signed in 1997 and entered into force in 1999. This legal act introduced a new objective for the Union, namely the establishment of “an area of freedom, security and justice in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (Article 2 TEU). Consequently, immigration, asylum, border controls and judicial cooperation in civil matters were transferred from the third to the first pillar, i.e. they became a Community competence (Article 61 TEU).\textsuperscript{67} This would have meant giving the Commission the exclusive right of initiative, introducing QMV in the decision making process, as well as the right of judicial review by the Court of Justice. Protocol no. 2 attached to the Treaty integrated the Schengen acquis – which was considered as “enhancing European integration and […] enabling [it] to develop more rapidly into an area of freedom, security and justice” – into the Community institutional framework while granting the UK, Ireland and Denmark an opt-out from participating in these fields.\textsuperscript{68} Despite all the advancements expected from these revisions in the field of JHA, there were a series of problems connected with their implementation. The changes set to take place were not put into practice immediately because a transitional period of five years was introduced (Articles 62 and 63 TEU) whereby the Member States were given time until May 1\textsuperscript{st}, 2004 to adapt to the new legal and practical situation. After this time span, the decision-making rules in most areas under Title IV TEC were changed to that of co-decision with the European Parliament (EP) and QMV in the Council. Nevertheless, it has been indicated that there was an inequality between the EP’s powers when it came the conclusion of agreements with other states or


\textsuperscript{67} The aspects which were left under the third pillar (Title VI TEU) were police and judicial cooperation in criminal matters.

\textsuperscript{68} However, the Protocol does provide that if these states consider in the future that it is in their interest to be a part of these polices, then they are allowed to accept some or all of the provisions pertaining to the JHA dimension. Source: Consolidated version of the Treaty on the European Union and of the Treaty Establishing the European Community, \texttt{http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF} (accessed September 9, 2010).
international organizations because the Council was obliged only to consult the EP according to Article 300 (3) TEC\textsuperscript{69}.

Furthermore, Kicinger and Saczuk drew attention to the fact that the “cohort” of legal documents which was attached to the Treaty resulted in a “labyrinth of legal norms and provisions in the field of migration”\textsuperscript{70}, an aspect which was expected to cause complications when it came to collaboration in this particular field.

\textsuperscript{69} In contrast, regarding measures which need to be adopted internally in the area of asylum (Article 63(1) TEC), the European Parliament is on an equal footing with the Council via the co-decision procedure. Source: Jörg Monar, “The EU as an International Actor in the Domain of Justice and Home Affairs”, European Foreign Affairs Review, 9, 2004: 404.

CHAPTER 3: THE EXTERNAL DIMENSION OF IMMIGRATION CONTROL

The present chapter aims at providing a detailed look at how the external dimension of the policies belonging to the Justice and Home Affairs field came about and grew into a multidimensional policy area. More precisely, it shall examine the legal and practical steps the EU undertook so as to acquire the capacity to act at the international level in matters pertaining to the control of migratory flows coming from 3rd countries.

3.1. The Treaty of Amsterdam and the Tampere workplan

First and foremost, we must point out that the EU’s ability to act internationally in matters pertaining to the JHA field became possible after the Treaty of Amsterdam came into force because of the simple fact that these policies came under a supranational authority which was legally permitted to be conclude agreements with 3rd parties. However, it is important to keep in mind that in the legal text itself there was no mention of such an external competence, but thanks to the integrationist efforts undertaken by the Court of Justice in the first pillar – which, through its case law, established that the EC may engage in foreign policy aspects if this is necessary for the attainment of the Treaty’s objectives – the Commission could rely in practice on the implied (external) powers doctrine which legitimized its ability to engage in bilateral relations. Likewise, the Treaty did not make an explicit reference as to the exclusive character of this external competence, but again one could point to the letter of the existing case law whereby internal Community action can take a pre-emptive form so as to achieve the aforementioned aims. The result was very well outlined by Monar (2004) who indicated that “in order not to endanger the principle of supremacy of EC legislation in the fields of asylum, immigration, border controls and judicial cooperation in civil matters, the matters covered by this legislation will necessarily

71 For a full list of EU measures on asylum, external borders, visas and immigration adopted from 1999, see Andrew Geddes, “Migration as Foreign Policy…., 28.
72 Regarding this interpretation of Community competences, Jörg Monar argues that “[w]hile the substantive requirements of the ‘necessity test’ remain one of the most controversial elements of the ‘implied powers doctrine’, there can be little doubt that the effet utile argument that lies at the heart of the implied powers doctrine also applies to these JHA fields […] Arguably external action thus justified extends to the negotiation and conclusion of agreements with third countries or international organizations on the basis of Article 300 TEC, but also to the maintaining of appropriate relations with the UN, the Council of Europe, the OECD and other international organizations in accordance with Articles 302-304 TEC”. Source: Jörg Monar, “The EU as an International Actor…”, 398.
entail a pre-emptive effect also on external action by Member States on these matters and an exclusive competence of the Community”\textsuperscript{73}.

An extremely important event in the development of the external dimension of migration policy was the Special European Council on Justice and Home Affairs in October 1999 in Tampere. It is within this meeting that EU competencies were strengthened by clearly emphasizing the need for a common EU asylum and migration policy as well as stronger external action as being of paramount importance for the achievement of the Union’s policy aim of creating an AFSJ. In this sense, the summit report stated that “[t]he European Council underlines that all competencies and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice. JHA concerns must be integrated in the definition and implementation of other Union policies and activities”\textsuperscript{74}. The Council laid down four policy directions which were to be followed in order to establish a common immigration and asylum approach: 1) partnership with the countries of origin; 2) a common asylum system; 3) fair treatment of 3\textsuperscript{rd} country nationals and 4) the management of migration flows.

Recognizing the multidimensional character of the migration issue, the Council underlined that there is a need for a comprehensive approach which includes “addressing political, human rights and development issues in countries and regions of origin and transit”\textsuperscript{75} and, to this end, the document required that the Community as well as the Member States assure a greater coherency between the internal and external policies pertaining to this field. Therefore, this policy element sought to establish a framework in the form of closer partnerships by adding a different approach to the one focusing purely on tightening controls with a willingness to tackle the root causes of this phenomenon, to develop and ensure human rights and to promote co-development in 3\textsuperscript{rd} countries.

An important development in this sense was the creation of the High Level Working Group on Migration and Asylum in 1998 – a body which brought together civil servants from different policy areas such as interior, foreign affairs, trade and development in order to begin work on the aforementioned external dimension. This group was an

\textsuperscript{73} Ibid: 399.
\textsuperscript{75} The argument continued by stating that “[t]his requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children”. Source: Ibid: 3.
example of “how migration management became a ‘cross-pillar’ issue within the EU”\textsuperscript{76}, i.e. by gathering different departments under the same roof to “cook” a coherent policy. It did so by writing Action Plans aiming at fostering partnerships and readmission agreements as well as managing migration flows through the aforementioned multidimensional approach. The result of its work was condemned as “reflecting EU priorities about migration control, readmission and return rather than the pursuit of partnerships based on real dialogue”\textsuperscript{77}.

Another good illustration of this guideline is the 2000 Cotonou Agreement between the EU and 77 countries from the African, Caribbean and Pacific regions, characterized as the “most comprehensive partnership agreement between developing countries and the EU”\textsuperscript{78}. This agreement also included a notion close to that of circular migration whereby the exchange of professionals between EU and ACP states was encouraged so as to improve the “transfer of know-how and increase national and regional capabilities” (Article 79)\textsuperscript{79}. In line with this objective, the AENEAS program was established from 2004 until 2008, but its purpose, however, was to provide multiannual financial and technical assistance to 3\textsuperscript{rd} countries in the areas of migration and asylum and, thus, building the administrative capacity of especially those states which were preparing or putting into practice readmission agreements with the Union (Article 1)\textsuperscript{80}. What is important to emphasize in relation to this program is its issue linkage aspect in the sense that the financial resources were to be allocated to those countries which were involved in setting up or implementing a readmission agreement with the Community. Therefore, as Geddes (2009) pointed out, “this linkage is central to the external dimension of EU migration and asylum policy” and, to this end, “[i]n all its agreements with non-member states the EU seeks a standard readmission clause”\textsuperscript{81}.

\footnotesize
\begin{itemize}
  \item Andrew Geddes, “Migration as Foreign Policy…, 36.
  \item Ibid: 37.
  \item It sought to set up a partnership with a view “to reduce and eventually eradicate poverty by promoting sustainable development, capacity building, and integration in the world economy […] These objectives […] shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development” (Article 1). Source: European Commission, Development and relations with African, Caribbean and Pacific States, The Cotonou Agreement, http://ec.europa.eu/development/geographical/cotonouintro_en.cfm (accessed September 11, 2010).
  \item Andrew Geddes, “Migration as Foreign Policy…, 32.
\end{itemize}
The fourth element underlined by the Tampere Council meeting was the management of migratory flows and the Council stated that there is a need to promote information campaigns on legal immigration and to combat the practices of trafficking in human beings and the economic exploitation of migrants. To this end, the Council urged the Member States to improve the collaboration and technical assistance regarding their border control services in the form of “exchange program and technology transfer, especially on maritime borders”, but also to include as soon as possible the EU candidate countries in these activities since they had to accept and implement the Schengen acquis.

This Council summit was followed by two Commission communications, the first in 2000 which recommended a common approach to migration management and the second in 2001 which pointed to the possibility of using the open method of cooperation in order to develop a common immigration policy which would give member states guidelines to follow in national action plans. Regarding specifically the issue of illegal migration, both focus on the same priority areas. Also in 2001 and based on the Commission’s communication, the Laeken European Council called for an action plan for preventing and combating illegal immigration and trafficking in human beings on the Union’s territory which would also devote attention to the human rights aspects and to the reception capacities in some Member States.

The following important legislative step was the 2002 Commission action plan setting up a harmonized border management framework including a risk-assessment system, sea border control, joint operations and even the training of a European border guard corps. It pointed out that the first and the third pillars are intertwined to such an extent and that the Schengen acquis is not applicable in all cases.

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84 The priority areas were the following: intensifying cooperation with countries of origin and transit to improve gaps in their border control, develop a migration early warning system, the transposition of the Schengen acquis by applicant countries, a harmonized visa policy based on new technologies and of an anti-organized crime approach, border control, combating trafficking in human beings and illegal employment. In this sense, the Commission encouraged more overall cooperation between member states in sharing information and in harmonizing the readmission and return policies. Source: Commission Communication on a common policy on illegal immigration (2001), http://europa.eu/legislation_summaries/other/l33191_en.htm (accessed September 12, 2010); Proposal for a comprehensive plan to combat illegal migration and trafficking of human beings (2002), http://europa.eu/legislation_summaries/other/l33191b_en.htm (accessed September 12, 2010).
85 Its aim was to define a common and integrated approach by providing measures to be taken in areas such as visa policy, information exchange, readmission and return policy, border management, pre-frontier measures and penalties. Source: European Commission, Comprehensive plan to combat illegal immigration and trafficking of human beings, 2002/C 142/23, February 28, 2002, http://europa.eu/legislation_summaries/other/l33191b_en.htm (accessed September 13, 2010).
extent that there is a need to develop an overall strategy which would coordinate the actions taken within each of these two fields in order to fulfill the objective of the Amsterdam Treaty, i.e. the creation of the AFSJ\textsuperscript{86}. What also needs to be pointed out is that the new coordination and cooperation mechanism, the so-called “External Border Practitioners Common Unit”, was entrusted the multidisciplinary task of administering operational projects, improve the effective implementation of Union law and delimit the common approach by coordinating national policies\textsuperscript{87}. The practical consequence of this development was the commencement of joint maritime operations\textsuperscript{88} at the Union level between some of the Member States following the approval reached in the Council via the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)\textsuperscript{89}.

3.2. European Council Summit in Seville

The Seville European Council meeting is another important event since it sought to delineate specifically the external dimension of EU policies on combating illegal migration in a post-September 11 context. The main aspects the officials focused on were policies aimed at combating illegal migration and the question of a gradual introduction of coordinated and integrated management of external borders. Also, the need to include immigration policy in the Community’s relations with 3\textsuperscript{rd} countries was again emphasized.

However, a new and controversial aspect was established: all future agreements with the countries of origin and transit would include a mandatory clause on readmission of illegal immigrants and in the event of a lack of willingness to cooperate, the Council could, via unanimity, adopt sanctioning measures through external policy instruments, i.e. cooperation agreements, but which would not hinder the development cooperation policies. This measure was criticized because it initially provided for economic sanctions to be applied against reluctant and, most probably, poor 3\textsuperscript{rd} states. Another perceived drawback

\textsuperscript{86} In the introduction the following is stated: “the essential mechanisms of this acquis relating to the crossing of external borders by persons were incorporated into Title IV EC Treaty; other provisions on compensatory measures in security matters were incorporated into Title VI TEU. The first pillar security measures, such as the strengthening of common external border checks and the third pillar measures, such as police and judicial cooperation in the area of freedom of movement, are complementary and must progress together”. Source: European Commission, \textit{Towards integrated management of the external borders of the member states in the European Union}, COM(2002) 233 final, May 7, 2002, 2-3 \url{http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0233:FIN:EN:PDF} (accessed September 11, 2010).

\textsuperscript{87} Ibid: 13-15.

\textsuperscript{88} Examples of such operations include Ulysses, Rio IV, Pegasus, Triton, Orca and Neptune.

\textsuperscript{89} SCIFA was established as a Council working group following the changes made by the Amsterdam Treaty whereby it was charged with preparing the work on asylum and immigration (first pillar issues after 1999) for the Permanent Representatives Committee. Its counterpart, the Article 36 Committee (CATS), was responsible with the area of police and judicial cooperation (third pillar issues). Source: Europa Glossary, Article 36 Committee, \url{http://europa.eu/scadplus/glossary/coordinating_committee_en.htm} (accessed September 11, 2010).
of this summit was the fact that an integrated European border police body was rejected due to sovereignty considerations, but, in return, the idea of establishing a network of national border police liaison offices was accepted with a view to support intergovernmental cooperation in this field\(^90\).

In 2003, the European Council adopted the European Security Strategy (ESS) which delineates the new security environment, the EU’s strategic objectives and the subsequent policy implications. The document identifies the following key dangers for the EU: 1) terrorist movements; 2) proliferation of WMD; 3) regional conflicts (worldwide and in the EU’s vicinity); 4) state failure; 5) organized crime (cross-border trafficking in drugs, human beings, illegal migrants, weapons)\(^91\). Regarding the Mediterranean, the ESS includes this region in the objective aiming at enhancing security in the European neighborhood and states that it faces “serious problems of economic stagnation, social unrest and unresolved conflicts”, thereby necessitating increased multilateral engagement “through more effective economic, security and cultural cooperation”, including with the Arab World, via the Barcelona Process\(^92\). The 2008 progress report recognizes specifically that illegal migration is a “complex challenge” to the Mediterranean in addition to political instability. In addition, it pointed out that the Union of the Mediterranean (UfM) offered political impetus for cooperation with 3rd countries on several issues, including managing migration flows\(^93\). Regarding its overall emphasis, the ESS has been criticized by scholars such as Biscop (2004) that it failed to have a coherent structure and that it has focused disproportionately on terrorism and WMD, under the influence of the US Security Strategy in the aftermath of 9/11\(^94\). Consequently, another challenge which is more likely to materialize has not received the merited attention at the time, i.e. the growing gap between the rich and the poor identified as a root cause of State failure, organized crime, illegal immigration, poverty, etc – the latter being mere symptoms.


\(^92\) Ibid, 8.


\(^94\) Biscop pointed out that “[s]uch a threat-based approach carries the risk of focusing too much on defence”, which is “not necessarily the most effective way of dealing with threats, to the detriment of prevention”. Source: Sven Biscop, “The European Security Strategy – Implementing a Distinctive Approach to Security”, *Securite & Strategie*, no. 82, (Royal Defence College, IRSD-KHID, March 2004): 17.
3.3. The Hague Program

The Hague Program was designed in 2004 as a five-year action plan (2005-2010) in continuation to the Tampere Agenda and whose objective was the formation of a solid European asylum and immigration policy. It focused on ten priority areas among which those referring specifically to migration were the following: the establishment of a balanced approach to legal and illegal migration, developing an integrated management of the Union’s external borders, establishing a common asylum system and maximizing the positive impact of immigration. In addition, the states agreed to ease the decision-making process by using QMV and co-decision in areas pertaining to the establishment of a harmonized migration, border control and asylum policy, but leaving out the issue of legal migration. The Program stated that a significant development was the creation of the Border Management Agency charged with harmonizing and supporting Member States’ activities in surveillance and controlling the frontiers. The assessment of FRONTEX’s tasks, achievements and deficiencies will be tackled in more detail in the following chapter. Another noteworthy aspect of the Hague Program was that it announced the financial instruments supporting its implementation from 2007 to 2013. Migration management is under the principles of shared responsibility, solidarity and burden sharing and will receive 60% of the allocated funds which amounts to a 250% increase until 2013.

Regarding migration management, it centered on combating all forms of illegal immigration in several policy areas, such as human trafficking and smuggling, border security, and partnership with 3rd countries, especially in the sense of integrating by 2005 the migration topic as well as readmission agreements into the Country and Regional Strategy Papers. Therefore, it is obvious that the issue of cooperation in tackling people’s movement has been firmly included into the external relations dimension of EU action. Notwithstanding the insistence on security considerations, the Council Presidency

95 The other priority areas were strengthening fundamental rights and citizenship, anti-terrorist policies, balancing privacy and security while sharing information, developing a strategic concept on tackling organised crime, designing a genuine European area of justice.


Conclusions drew attention to the fact that economic and social growth aspects were also on the agenda and stated the need to develop understandings with the countries of origin even further by tackling underdevelopment and poverty\textsuperscript{98}. Regarding countries of transit, emphasis was placed on capacity building in controlling migratory movements and in developing national asylum systems. In addition, in order to implement the Union’s assistance, it indicated the establishment from 2007 of the European Neighborhood and Partnership Instrument (ENPI), a financial mechanism consisting in 11.1 billion Euro for the 2007-2013 period\textsuperscript{99}.

It was through this document that the focus shifted from tackling such issues through the CFSP framework (Association Agreements for the Mediterranean countries) towards an “externalization of migration”, i.e. the burden of controlling the migratory flows is transferred to 3\textsuperscript{rd} countries\textsuperscript{100}. Consequently, within the migration policy aspect, the ENP action plans put more emphasis on border control, counteracting illegal migration and terrorist threats as well as building up a solid national asylum system. The main resulting tension is that the managerial and operational approach is preferred over the one focusing on integration policies and a framework for legal immigration\textsuperscript{101}.

### 3.4. European Pact on Immigration and Asylum

In 2008, in anticipation of the French Presidency, the French president, Nicolas Sarkozy, insisted on the central role that migration was going to have in the debate. Therefore, the European Pact on Immigration and Asylum was forwarded and later criticized for its

\textsuperscript{98} In the Presidency Conclusions it was indicated that: “[p]olicies which link migration, development cooperation and humanitarian assistance should be coherent and be developed in partnership and dialogue with countries and regions of origin. The European Council […] invites the Council to develop these policies, with particular emphasis on root causes, push factors and poverty alleviation and urges the Commission to present concrete and carefully worked out proposals by the spring of 2005”. Source: Council of the European Union, Presidency Conclusions of the Brussels European Council, \textit{The Hague Programme: Strengthening Freedom, Security and Justice in the European Union}, 14292/1/04, 4-5 November, 2004, 21, \url{http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/82534.pdf} (accessed September 14, 2010).

\textsuperscript{99} Since 2007, the ENPI replaced MEDA and TACIS as the principal financial instrument through which assistance is distributed to the EU’s immediate neighbors, i.e. Eastern Europe, Southern Caucasus and Southern Mediterranean states. Source: EC Development Cooperation for ENPI countries, \url{http://www.enpi-programming.eu/wcm/en/what-is-enpi-programming/general-introduction.html} (accessed September 18, 2010).

\textsuperscript{100} In line with this argument, in the Council Presidency Conclusions, more specifically in the section dealing with the external dimension of asylum and migration and partnership with third countries, it is stated that: “the EU should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return”. Source: Council of the European Union, \textit{The Hague Programme}…, 20.

\textsuperscript{101} Ounia Doukoure, Helen Oger, “The EC External Migration Policy…”, 6.
strong intergovernmental and French character\textsuperscript{102}. Carrera and Guild point out that the Pact did not come up with anything new policies, but that these proposals actually reflect its nationalist character because they greatly resemble French legislation and policies on immigration and integration. Its intergovernmental character was the most dangerous and it stems from the prioritization of national competences over supranational ones in this area\textsuperscript{103}. The consequence would be giving precedence to national, not European interests. Having the same impression, Collett (2009) states that this political document “sent a clear message which seems to question the commitment of European governments to pool some of their powers within common institutions and accept a Community approach in this area”\textsuperscript{104}.

The Immigration Pact came with proposals for each issue it addressed, such as: the need to engender comprehensive partnerships with 3\textsuperscript{rd} countries; the establishment of a legal migration framework in conjunction with the Member States’ needs (what is called “selective migration”); control “illegal”, not irregular, immigration by ensuring return and to make border controls more effective. However, it emphasized that the Member States must “give fuller consideration to the difficulties of those member states subjected to disproportionate influxes of immigrants”\textsuperscript{105} and consequently offer more support to develop the interoperable capacity of border control via financial solidarity, resource pooling and burden-sharing. Regarding FRONTEX in particular, it stressed that it should “receive the resources to fulfill its mission of coordinating the control of the external border of the EU”\textsuperscript{106}. As a background note, prior to the Pact, the 2008 Commission Communication stated that a common immigration policy is a fundamental priority for the EU and as a response to the Mediterranean states’ lobby, the others were encouraged to develop the operational dimension and capacity of FRONTEX, especially in the field of border assistance missions in 3\textsuperscript{rd} countries\textsuperscript{107}. The 2009 Annual Report on Immigration and


\textsuperscript{103} One of the more intriguing aspects of the Pact was its insistence that the entry conditions and quotas of legal migrants are an “exclusive competence” of the Member States, especially because Article 63 EC indicates the existence of shared competence in these area and even more so after the adoption of the Lisbon Treaty. Source: Sergio Carrera, Elspeth Guild, “The French Presidency’s …, 5.


\textsuperscript{105} Idem.

\textsuperscript{106} Idem.

Asylum stated that major achievements were the Return and Employer Sanctions Directives aimed at curtailing illegal employment and stay in the EU. Broad support for more harmonization via FRONTEX activities was displayed by the members at the level of public discourse and the Commission emphasized that there is a need to “mobilize all available resources to ensure more effective border control and to give FRONTEX the resources to fulfill its mission”.108

3.5. The Stockholm Program

The Stockholm Program was designed as a continuation of The Hague Program and the Immigration Pact for the period 2010-2014. In this sense, it lists the five priorities specified in 2008109 and it simply emphasizes the need for promoting mobility and legal migration, optimizing the connection between migration and development, consolidating cooperation with 3rd countries (Africa, Eastern and South East Europe, as well as Asia and Latin America) and combating all forms of illegal migration.

Regarding illegal migration, the European Council reiterated the importance of developing an integrated border management system in parallel to ensuring a sound collaboration with countries of origin and transit, especially in implementing, but also monitoring the return of immigrants to countries of transit or origin. Most importantly for the Mediterranean states, it was stressed that those states having to deal with disproportionate migratory pressures should be given assistance from the Commission, FRONTEX and the other Member States, albeit on a voluntary basis, so as to successfully implement the abovementioned return policy. Also, the Member States were encouraged to cooperate in organizing joint return flights and in establishing a network of liaison offices in 3rd countries. The 2010 Commission action plan stressed that the EU will implement the solidarity clause and that there is a need for more effective law enforcement collaboration and that “EU agencies and bodies such as FRONTEX, Europol, Eurojust as well as OLAF,

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109 The five commitments were the following: the need to not only organise legal immigration programmes that respects the priorities, necessities and reception capacities settled by each Member State, but also to support integration; to control illegal immigration by ensuring that readmission agreements are respected; to make border controls more effective; to improve the problems related to asylum requests and, therefore, construct “a Europe of asylum”; to consolidate partnership agreements so as to strengthen the link between migration and development. Source: Council of the European Union, The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 17024/09, December 2, 2009, 60, http://register.consilium.europa.eu/pdf/en/09/st17/st17024.en09.pdf (accessed September 15, 2010).
have a crucial role to play. They must cooperate better and be given the powers and resources necessary to achieve their goals…"\textsuperscript{110}.

This Program has also received its fair share of criticism in the sense that it lacks detailed ideas or proposals since it reiterates the principles and goals of previous programs without actually adding more substance. Several scholars, such as Collett (2009) and Augenendt and Parkes (2009), lament the predominantly intergovernmental underpinning transmitted from the Immigration Pact, as well as the subsequent Commission action plan, which point to the difficulty of gathering enough political momentum to advance European and not national interests\textsuperscript{111}.

Yet another "red flag” is the adoption of the Lisbon Treaty which inflated hopes that immigration policy will be more effectively formulated and implemented. It has been argued that the combination between Stockholm and Lisbon actually will make decision-making more intricate and conflict prone. The main reason would be the inter-institutional tensions engendered by Lisbon, more specifically to the increased role given to both the European and national legislatures. This fact can lead to incomplete examination of proposals and the emergence of new frontlines than the ones already existing within the Council (for instance, regarding burden-sharing in receiving asylum seekers), but also between the EP and the Council (regarding the EP’s new prerogative over criminal justice and police cooperation) and the Council and the Commission\textsuperscript{112}. Consequently, Augenendt and Parkes conclude that it is most probable that the JHA Council will actually be the organism which sets the agenda and deigns the respective policies.

Collett is more ominous in warning that the obstacles which hampered the efficient implementation of the Hague Program could manifest themselves in the present case as well. She pointed to three integration barriers: institutional, administrative and the securitization issue. The institutional problems took the form of tensions between the


\textsuperscript{111} Collett argues the following: "[t]he principles and policy guidelines set by the EU Immigration Pact have become the guiding foundations for the Stockholm Programme […] which suggests that immigration and asylum policy at European level will be limited in scope. Indeed, the pact itself focuses upon “inviting” and “encouraging” governments to pursue certain policy approaches, such as selected migration […] it is difficult to avoid the sense that [the Commission] has been neither active enough nor resilient enough in pushing forward the European agenda.” Source: Elizabeth Collett, “Beyond Stockholm…, 17.

Council (intergovernmental) and the Commission (integrationist). However, the author underlines the fact that the latter appeared to have been overly receptive to Member States’ concerns by not hammering through harmonization measures, but the outcome of all this was that decision-making, policy design and implementation as well as transparency suffered. The picture gets even more complex with Lisbon, seeing that in new policy areas such as legal migration, consent must be obtained also from the EP.

The administrative obstacles consist in the aforementioned issue linkage phenomenon which entails the necessity to foster closer consultation and collaboration within the Commission between several policy areas – such as Employment and Social Affairs, External Relations, Development, Education and Culture, Trade and Economic and Financial Affairs – and Justice and Home Affairs. In contrast to Geddes’s positive outlook on this phenomenon, the problem envisaged by Collett is that policy coherence and decision-making efficiency suffer\textsuperscript{113} as a result of administrative intricacy and potential “turf wars”\textsuperscript{114}.

Finally, the third type of difficulty refers to the securitization of migration and what impact this had on straining the immigrants’ fundamental rights. Regarding this aspect, the author noted that Barroso’s recent decision to divide the JLS portfolio between a Commissioner for Fundamental Rights and Civil Liberties and one for Migration and Security reflects the willingness to tackle this problem more thoroughly.

In the end, Collett argues that the Stockholm Program actually hinders the development of a European immigration policy since it mirrors the limits of EU “expansion” in the immigration and asylum realm seeing that the latter has already designed the major and politically accepted legislative acts\textsuperscript{115}.

\textsuperscript{113} Elizabeth Collett, “Beyond Stockholm…, 15.
\textsuperscript{114} Turf wars can occur since “bureaucrats are likely to dispute over territory (and thus over the allocation of resources), if their functions are unclear, perceived to overlap or are in competition with one another”. Source: Hylke Dijkstra, “Commission versus Council Secretariat: An Analysis of Bureaucratic Rivalry in European Foreign Policy”, \textit{European Foreign Affairs Review}, no. 14, (2009): 433.
\textsuperscript{115} Elizabeth Collett, “Beyond Stockholm…, 24.
CHAPTER 4: MIGRATION IN THE MEDITERRANEAN AND THE ROLE OF FRONTEX

The present chapter will describe the attempts of the Mediterranean EU countries to deal with the issue of illegal border crossings by sea. As could have been expected, migration policy has become increasingly important at the national level of both the Mediterranean and the neighboring countries by taking the form of bilateral agreements or regional geopolitical associations between receiving countries and those of origin and transit. Therefore, it is fair to state that these states have prioritized the immigration issue by delineating, in parallel to the European approach, a national external dimension within their migration policies. Scholars such as Baldwin-Edwards (1991) have pointed out that national immigration policies have not been able to curb migration flows and that the existence of a large informal economy and high demographic pressures coming from the immediate neighborhood have made it particularly difficult to manage such a task in the Mediterranean. Also, Union membership of Cyprus and Malta led to the creation of two new passageways for immigrants to gain access to EU territory. In early 2009, Italy, Spain, Greece and Malta engaged in a more pro-active approach in the JHA Council meeting by presenting a paper whose objective was to bring European attention to these regional problems as well as pushing for the other members to respect the solidarity principle which prescribes burden-sharing regarding the processing of immigrants in general and asylum requests in particular.

4.1. The new security challenges in the Mediterranean

In the Mediterranean, the main cause of concern has been the migratory flows of undocumented people which could constitute or degenerate into one of the aforementioned security risks. In order to have an idea of the magnitude of this phenomenon, the International Centre for Migration Policy Development (ICMPD) statistics show that every year about 100,000-120,000 people cross the Mediterranean. The International Organisation for Migration (IOM) estimates that in 2008 alone, 36,000 people crossed from North Africa to Italy (in contrast to 17,000 in 2007) and 9,181 in Spain. The main migratory directions are from North and Sub-Saharan Africa towards mainly Italy, Spain.

and Malta and less towards France and Greece. Also, new paths from the South-East (Pakistan and Bangladesh) affect mostly Italy and Spain and to a lesser extent Cyprus, Greece and Malta. A third path is used by the Albanians crossing over to Italy and Greece\textsuperscript{118}. At present, a large number of immigrants – estimated at one or two million – are amassed in Libya, since its shores had not been subject to harsh controls, in order to cross over towards Italy and Malta\textsuperscript{119}.

4.2. France

Geddes shows in the chapter reserved to France that the immigration debate in this country primarily used to focus on nationality and citizenship\textsuperscript{120}. The French private sector encouraged labor immigration after the Second World War, but this policy was not under the supervision of state bodies. The 1950s and 1960s triggered the nationality and immigration debate and starting from the 1970s, the authorities chose the naturalization route in dealing with these “illegal” settlers. However, because of the economic downturn, similarly to the rest of Europe, immigration of all forms (except asylum seekers, high skilled foreigners and EC nationals) was restricted. The policy limiting entries into France continued into the 1990s, this time legitimizing it through the European efforts at the time to tackle the immigration and asylum issue. In France, the annual rate of change regarding the number of migrants from 2005-2010 was 0.6%, while the migrant population barely rose from 10.6% in 2005 to 10.7% in 2010\textsuperscript{121}. A reason for this situation would be the above mentioned importance the French governments attach to citizenship and their naturalization efforts.

A noteworthy pro-active moment on this particular issue was President Sarkozy’s proposal for a “Mediterranean Union” – which had more of a Mediterranean than a European outlook –, later named UfM after the European Council decided to merge the acquis and institutional framework of the Euro-Mediterranean Partnership, previously known as the Barcelona Process, with this new non-communitarian structure. The UfM is an international organization based on intergovernmental relations among the EU-27, the Commission and the 3\textsuperscript{rd} countries around the Mediterranean (except Libya who has observer status), including those which are located in the Western Balkans. Although the Commission also participates in its workings, the UfM’s decision-making process is based

\begin{footnotesize}
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\item[\textsuperscript{118}] Idem.
\item[\textsuperscript{119}] Eric L’Helgoualc’h, “How Gadaffi blackmails Europe”, Rue89, June 15, 2010.
\item[\textsuperscript{120}] Andrew Geddes, \textit{The Politics of migration…}, 52-77.
\item[\textsuperscript{121}] United Nations, Department of Economic and Social Affairs, Population Division (2009), \textit{Trends in International Migrant Stock: The 2008 Revision} (United Nations database, POP/DB/MIG/Stock/Rev.2008), http://esa.un.org/migration/p2k0data.asp (accessed September 17, 2010).
\end{itemize}
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on consensus; however, it also offers its members the possibility to form circles of structured cooperation around a particular issue. This French-led project had positive as well as negative responses. The positive one argued that “[g]overnments will gain importance […] the new organization is expected to permit a more institutionalized and balanced synergy between EU and non-EU members than was the case with the EMP. This would give Euro-Mediterranean relations greater political substance”122. However, experts pointed out that “[t]his initiative did not only successfully play in the hands of those that claim that the EU is unable to speak with one voice, but what is more, it jeopardized […] the foundations of Euro-Mediterranean cooperation in their current form, which remain – in spite of many pitfalls and problems of the last thirteen years – collective region-building, and hence the creation of a common and democratic Euro-Mediterranean space”123.

Regarding the aforementioned Immigration Pact, Carrera and Guild (2008) highlight the opportunist character of France’s insistence on this document as a way to legitimize its controversial national policies. The authors state that “[t]he French understanding of the nature and scope of Europeanization processes over issues related to human mobility and diversity weakens the EU political project of progressively building a common immigration policy”124. The controversy surrounding President Sarkozy’s handling of the immigrant situation in France continues in 2010 with his recent internal security and immigration policy – which will be under parliamentary debate in September 2010 – against “foreign born” citizens who break the law125. Also, an example of France upholding its intergovernmental stance is the support given to the practice of returning immigrants coming from Libya through the controversial Italian-Libyan cooperation agreement concluded in 2008 (see section 4.3).

4.3. Italy

In the 1980s, the Italian approach to migration was focused more on legalizing and regularizing migrants than on control, whereas the 1990s saw a more restricted environment, but irregular migration continued since “trade unions and pro-migrant NGOs

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123 ***. Competition and Complementarity: National and EU Policies vis-à-vis the Southern Mediterranean, EuroMeSCo joint research workshop with the Polish Institute for Public Affairs (IPA), Warsaw, March 31-April 1, 2008.
helped shape the law”\textsuperscript{126}. The Italian migration management system became more organized once it was aligned to EU requirements regarding border control, entry and visa requirements. The intensification of border controls from 1998 has led to a change in migration routes from the Otranto Straits to the more dangerous path to Sicily\textsuperscript{127}. The annual rate of change in the migrant stock from 2005-2010 is 7.5\% and the migrant population rose from 5.2\% in 2005 to 7.4\% in 2010\textsuperscript{128}.

It has been argued that Italy is more inclined to a more bilateral and reactive Mediterranean policy, rather than a pro-active and European one, a fact proven by Italy’s “rapprochement” with Iran and Libya in the 1990s\textsuperscript{129}. Italy under the Berlusconi government managed to conclude a “Treaty on Friendship, Partnership and Cooperation” with Libya which entailed capacity-building and cooperation between border guards in curbing the flow of illegal immigration to Europe. Although an agreement on joint patrols was convened upon in 2007, it was secured only in 2008 when its implementation was signed after Italy recognized its crimes during the colonial period in Libya in addition to paying five billion dollars in repatriation\textsuperscript{130}. Therefore, the actual implementation started in January 2009. Reports state that as a result, in the number of boats intercepted heading for Italy dropped from 37 000 in 2008 to 9 500 in 2009, but this agreement is heavily criticized by the UN, the Council of Europe and human rights organizations which deplore the fact that it engages in an illegal “refoulement”, i.e. turning back – in this case – boats which may contain individuals who are entitled to international protection under the Geneva Convention\textsuperscript{131} to Libya, a country whose receiving centers are not equipped to deal with a large amount of people and whose human rights protection records are poor\textsuperscript{132}.

In September 2009, as a result of the Italian government’s pressure, new requirements for distribution criteria were discussed in the form of a proposal having in mind a voluntary “Common Resettlement Program”. The Mediterranean states considered that they are unassisted in carrying the migration and especially the asylum burden and, therefore, proposed the establishment of a transfer system for asylum seekers whereby they do not remain in the first EU state they reach, but that the request is transferred to another

\textsuperscript{127} Only in 2003, more then 400 people died trying to cross from Libya to Italy. Source: Derek Lutterbeck, “Policing Migration in the Mediterranean”, \textit{Mediterranean Politics}, vol. 11, no.1, March 2006: 76.
\textsuperscript{128} United Nations, \textit{Trends in International…}
\textsuperscript{129} Stefania Panebianco stated that “despite Italy being a strong supporter of the EMP, it does not have a proper regional Mediterranean policy”. Source: ???, \textit{Competition and Complementarity}…
\textsuperscript{130} ???, “Italy-Libya: Schengen mission to focus on illegal immigration”, \textit{Adnkronos}, May 25, 2009.
\textsuperscript{132} Eric L’Helgoualc’h, “How Gadaffi blackmails…”

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Member State which could offer better conditions\textsuperscript{133}. Despite this display of mutual support between the Mediterranean states, cooperation between them is sometimes strained by sovereignty reflexes. An example would be Malta’s refusal to allow Italian rescue missions – as a result of Maltese incapability to cope – on Maltese waters\textsuperscript{134}.

4.4. Greece

Greece is characterized by “high levels of economic informality and irregular migration with stringent control legislation”, as well as public rejection of migrants\textsuperscript{135}. Due to its geography and the extreme difficulty to patrol the whole border, it is one of the main countries targeted by human smugglers. Therefore, the Greek governments implemented highly restrictive policies, such as the controversial 2000 immigration law which restricted migrants’ and their children access to health and education and actually amplified irregularity because it increased the dependence on the inefficient national bureaucracy. The outcome in Greece has been that the main problem which continues to attract immigrants, i.e. the informal economy, still persists. The annual rate of change in the number of migrants from 2005-2010 is 3%, while the migrant population rose from 8.8% in 2005 to 10% in 2010\textsuperscript{136}. However, one might expect that following the dire economic situation, the immigration flow will steadily decrease.

4.5. Spain

Spain was more successful in regularizing illegal migration via an active policy of job search, quota system and diminution of the informal economic sector. Similarly to Italy, tightening border and entry controls led to a diversion of flows from Gibraltar to the Canary Islands resulting in a higher death toll. The annual rate of change in the number of migrants from 2005-2010 is 6.5%, while the percentage of migrants in the population grew from 10.7% in 2005 to 14.1% in 2010\textsuperscript{137}.

Spain rose to the forefront and was one of the “motors” advocating the need for a European dimension through the Barcelona Process and in supporting cooperation with 3rd countries, particularly Morocco (from 2003), but also Mauritania, Cape Verde Islands and

\textsuperscript{133} The principle of non-refoulement is present in Article 33 of the Geneva Convention and provides that no state shall expel or return “refugees and asylum seekers to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion”. Source: Ibid, 6.

\textsuperscript{134} As a side note, according to the Ministry of Interior, 36 900 illegal immigrants arrived in Italy in 2008, i.e. a rise of 76% from 2007. Source: ***, “Tragedy triggers plans for new EU immigration policy”, Euractiv, August 24, 2009.

\textsuperscript{135} Andrew Geddes, The Politics of migration..., 160.

\textsuperscript{136} United Nations, Trends in International...

\textsuperscript{137} Idem.
Senegal through the Hera operation. However, experts have noted that after the establishment of the UfM, Spain’s “proactive engagement has been gradually replaced since 2005 by a reactive approach that seems to give priority to the ENP and the UM” because “Zapatero’s government put a strong emphasis on good relations with France, hoping that Germany, worried about potentially unilateral initiatives and French hegemonic aspirations, would defend the EMP”\textsuperscript{138}.

In terms of Spain’s participation in border control, joint maritime and even land (from 2009) patrols are taking place between the Spanish border guards and those of the aforementioned countries\textsuperscript{139}. Strengthened political and border patrol cooperation with Morocco has resulted, according to recent studies, in a decrease of the immigrant number from 32 000 (2006) to 12 478 (2007) and 9 181 (2008)\textsuperscript{140}.

4.6. Cyprus

The Aliens and Immigration Unit was created since the establishment of the Republic of Cyprus in 1960 and is responsible of implementing national immigration law by conducting border checks as well as internal, home inquiries on foreign residents. Also, Cyprus disposes of a Port and Marine Police charged with border and territorial waters surveillance with the dual aim of combating cross-border crime, but also to engage in search and rescue missions\textsuperscript{141}.

The annual rate of change in the migrant stock from 2005 to 2010 in Cyprus was estimated at 5.7% and the percentage of the local population grew from 13.9% in 2005 to 17.5% in 2010\textsuperscript{142}.

4.7. Malta

The situation in Malta is particularly difficult because since 2002 it had to deal in a short period of time with an increased influx of illegal migrants – 11 500 arrivals until 2008 – coming mainly through Libya\textsuperscript{143}. In the period 2005-2010, the annual rate of change in the number of migrants has risen by 5.6% and from 2.9 to 3.8% as a percentage of the local

\textsuperscript{138} ***, Competition and Complementarity...
\textsuperscript{140} Antonio Carbas, Migration in...
\textsuperscript{142} United Nations, Trends in International...
\textsuperscript{143} Stephen Calleya, Derek Lutterbeck, “Managing the Challenges…”, 1.
population\textsuperscript{144}. Nevertheless, in 2009 statistics showed that the immigration flows more than halved in comparison to 2008 and that until April 2010, no boats reached Malta and Lampedusa as a result of joint patrols between Italy and Libya\textsuperscript{145}.

An important aspect of the Maltese situation is the fact that it is one of the main countries having to deal with political asylum requests which amounts to a considerable burden especially in the context of the Dublin Convention and the “first-come-first-responsibility” requirement. Consequently, Malta has been pushing for the burden sharing concept which was emphasized in the Pact on Immigration and Asylum, but the problem is the fact that it is voluntary and therefore there has been a limited response from other member states\textsuperscript{146}.

\textbf{4.8. Faults of FRONTEX}

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was established through Council Regulation No. 2007/2004 in October 2004. Since its founding, it has been the main Community instrument through which to manage migration flows in the Mediterranean and it is considered as an important institution for capacity-building in this area. The Agency’s creation was in line with the EC Treaty objective of generating an area of freedom, security and justice, more specifically with Articles 62(2) and 66 which state that measures can be taken to establish standards and procedures to be followed by Member States in carrying out external border checks and the Council’s task in adopting the necessary implementing measures. It enjoys legal personality and its principal activities were transmitted from those of the abovementioned External Border Practitioners Common Unit. The assigned competences include coordinating the operational collaboration between Member States on border security, carrying out risk analysis (identifying threats and balance the existing priorities and resources so as to act in the most efficient manner in safeguarding member states’ security), developing common training standards for national border guards and officials, support Member States when there is a need for increased technical and operational assistance and assist them in organising joint return operations using, of need be, Community resources\textsuperscript{147}.

\textsuperscript{144}United Nations, \textit{Trends in International…}
\textsuperscript{145}Ivan Camilleri, “Frontex patrols stopped as Malta quits”, \textit{Times of Malta}, April 28, 2010.
\textsuperscript{146}Stephen Calleya, Derek Lutterbeck, “Managing the Challenges…””, 3-6.
\textsuperscript{147}For a complete picture of the agency’s establishment and tasks, see Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, October 26, 2004, \url{http://eur-}
The main problematic aspects which have been identified by scholars with respect to the Agency’s existence relate mainly to its competences and accountability. One of the most evident and important deficiency comes from the fact that FRONTEX is in charge of coordinating operations and joint patrols, but the final implementation rests with the Member States themselves\textsuperscript{148}, which may not have the same risk perception or the political will and technical capabilities to fully participate. This, in turn, leads to the risk of seeing FRONTEX’s credibility decrease in time as its results do not match its ambitions. Carrera points out that what is important to keep in mind is that the Agency was established as a first pillar body, but has been functioning on an intergovernmental and, thus, a Member States’-dependent basis which only narrowed its room for maneuver\textsuperscript{149}. Nevertheless, procedural deadlocks can be avoided since decision-making is under the majority rule (Article 24, Council Regulation 2007/2004).

The fact that the Agency is reliant on the Member States to cater financial, human and technical resources leads to an inconsistency in the sense that: “[a]lthough responsibility for the control and surveillance of external borders lies with the Member States, FRONTEX is coming under severe pressure to do more […] it can only act with Member States’ approval and yet it is being seen as a universal panacea for illegal migration”\textsuperscript{150}. Put it differently, there is a major difference between public discourse supporting the expansion of competences and the actual disposition to sustain its independence and operational capacities in the sense that Member States have been slow in providing the Agency with the needed resources or in their readiness to participate in joint surveillance operations. In 2008, Franco Frattini, EU Commissioner for Freedom, Security and Justice declared that FRONTEX was not effective because of the “unwillingness of the EU member states to loan FRONTEX the items they had pledged such as ships and helicopters, including personnel”, plus the ability of smugglers to get secret operational information\textsuperscript{151}.

The downside of granting it more responsibility, however, is that this would also constitute a serious problem in the sense of an over-bureaucratization which can

\textsuperscript{148} Collett points out that this is the reason why in 2008 the Nautilus Operation was delayed, more specifically because there were clashes between Malta and Italy regarding jurisdiction.


\textsuperscript{150} Elizabeth Collett, “Beyond Stockholm…, 27.

indubitably hamper scope of action and ultimately decision-making and operational efficiency. Also, it would be in contradiction with the initial idea of keeping the Agency’s structure as simple and as small as possible. Jorry (2007) gave as a warning the example of Europol, a body which suffers under the weight of a rigid, overly hierarchical and bureaucratic structure.\(^{152}\)

Regarding the issue of accountability, FRONTEX is seen as a problematic case from a legal, as well as democratic standpoint not only by analysts, but also by the EP. This is the case because there are no instruments neither for monitoring the proportionality of its operational strategies and cross-border missions or for evaluating the quality and reliability of its risk-analyses.\(^{153}\) In addition, in the legal basis there are no clear rules on how operations should be planned and concluded resulting in the problem that “the Agency is in no position to ensure that operations are launched and carried out in line with the overall objectives of the Agency and of the overall border management of the Union. This is foremost a legal problem […] the division of tasks and responsibilities between the Agency and the Member States must be clear to ensure legal certainty and transparency.”\(^{154}\) In order to improve democratic accountability, the EP has called upon the Agency to provide it with information and evaluation reports of its activity, a fact which gained in importance and complexity with the revisions introduced by the Lisbon Treaty, which, as pointed out above, increases the role of both the European and national parliaments.\(^{155}\) FRONTEX’s financial situation falls under the same problem category since the massive increase of the budget\(^{156}\) without a subsequent independent qualitative


evaluation of its results has influenced scholars such as Carrera to argue that this would be at odds with the principles of proportionality and effectiveness. Furthermore, this state of affairs led the same author to pose the following question: “[I]s the attention to the EU’s external sea borders and joint maritime operations justified when looking at the number of entries that take place in comparison with those reported through airports and land border-crossings?” and have the following doubt in light of FRONTEX’s 2009 report: “[o]nly 4% of the refusals [of entry] took place during joint maritime operations, which again leads to questions of the proportionality of the enormous budget allocated to these activities”¹⁵⁷.

Additional shortcomings come in the form of having to deal with 3rd states which are not willing to cooperate, thus making joint operations all the more sensitive and difficult to implement. Until recently, this was the situation with Libya which had not been willing to enter into joint sea patrols because of sovereignty issues. Furthermore, another perceived fault is that the sea patrol missions between Sicily, Malta and Libya were considered as having ineffective results since their start in 2006 because the Agency did not have a mandate to turn back the boats¹⁵⁸.

In addition, the above-mentioned burden sharing problem related to asylum requests has contributed to tensions between FRONTEX participants regarding joint border management activities. Conflicts have occurred between Malta and Italy in 2009, when the latter accused Malta of having redirected 40 000 refugees to Italy in 2008¹⁵⁹. The most recent dispute concerned Malta’s withdrawal as host state from the 9 million Euro Chronos operation planned in April 2010, the main objection being that the new 2010 FRONTEX guidelines require that immigrants be brought to the state hosting the operation and not to the closest port¹⁶⁰. An additional motive for Malta was that there would be no need for patrols in the current year seeing that Italian-Libyan joint patrols were successful in curbing migration flows. However, Maltese officials stated that if they will be confronted with increased flows, they would ask FRONTEX for assistance¹⁶¹. In July 2010, Italy and Malta called for a re-evaluation of FRONTEX’s role in the region but arguing that it would be better suited for repatriation operations and not sea patrols. Italy especially fears that

¹⁵⁸ Informationsstelle Militarisierung, Frontex – Widersprüche...
¹⁵⁹ Idem.
¹⁶¹ Ivan Camilleri, “Frontex patrols stopped as Malta quits”, Times of Malta, April 28, 2010.
Community operations would destabilize its recent agreement with Libya, while Malta clings to the abovementioned criticism of the new guidelines\(^{162}\).

### 4.9. Proposed solutions and recommendations

In order to remedy these deficiencies, the Commission brought forward a proposal to revise the initial Council regulation regarding FRONTEX\(^{163}\). The ideas refer to firstly establishing joint support teams comprised of national border guards that would be ready to deploy in an emergency situation and to oblige Member States to pool technical equipment in CRATE\(^{164}\). Secondly, the Agency should be able to evaluate the members’ activity in the field of border control. Thirdly, it makes possible the development of a European curriculum for national border guards including the issue of fundamental rights and international protection. The fourth provision is most important regarding joint operations since it would require drafting beforehand operational plans containing detailed risk evaluations, intended course of action, financial resources etc. Also, this idea includes enabling FRONTEX itself to initiate common actions and their collaborative execution by the Member States.

Expert proposals cover ground from trust building to devolving responsibility from DG JLS to other bodies. Jorry emphasizes the need for FRONTEX to gain the Member States’ trust. She proposes this can be achieved by carrying out smaller joint operations and thus engaging in more face-to-face contacts, a practice which will help legitimize its activities and eventually increase confidence between the parties involved\(^{165}\).

Regarding the recent scandals relating to the fact that some Member States did not respect the non-refoulement principle, Nascimbene points out that it must be made clear that they can be held responsible and thus having an infringement procedure brought against them by the Commission for violating the European Convention on Human Rights\(^{166}\).

Cabras considers that development and state-building policies, in the implementation of which NATO could play an important role, are most likely to contribute to a decrease in illegal migratory flows and that they should be better connected to

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\(^{162}\) ***, Frontex remit should be repatriation, *Current Affairs*, July 8, 2010.


\(^{164}\) CREATE stands for the Central Record of Available Technical Equipment comprising all the military equipment coming from those Member States willing to contribute and which is at the disposal of the Community.


\(^{166}\) Bruno Nascimbene, “Control of illegal immigration…, 5.
immigration policy at the European level. Also, he argues that the practice of joint patrolling the borders of the relevant 3rd countries is a better strategy, especially now that cooperation agreements are in place with several North African countries.

Collett comes with the most far-reaching proposals since she advocates separating the different facets of immigration policy by transferring them to other departments within the Commission in light of the fact that this policy field “has become the ‘elephant in the room’ and increasingly difficult to fit within the JLS portfolio”\(^{167}\). More specifically, she considers that the policy goals contained in the Global Approach to Migration package – insisted on fostering closer cooperation with the countries of origin and transit – should be relocated to the External Relations DG (RELEX) which could further combine them with the portfolios of DG Trade (TRADE) and DG Development (DEV), while issues pertaining to legal immigration and integration policies should be included into the competencies of DG Employment, Social Affairs and Inclusion (EMPL).

CONCLUSION

The present paper has dealt with the phenomenon of illegal immigration in the Mediterranean basin and the way in which the European states responded institutionally and practically at both the European and national levels. More specifically, it has examined the efforts to coalesce an external dimension to the Community-level immigration and asylum policy which began in earnest in the late 1990s.

The question posed in the introductory chapter referred to whether the development of this foreign policy component has managed to adequately tackle the security challenges posed by illegal border crossings in the Mediterranean region seeing that it is criticized of transferring border control and migration management responsibility onto the neighboring countries while offering them financial incentives for on the spot migration management.

The answer which can be distilled by analyzing the numerous initiatives and institutions set up by the EU in order to deal with this issue – in the present case, FRONTEX – is that this external dimension presents a number of deficiencies, principally related to trust, burden-sharing and the need to take responsibility, which only hinder the coagulation of a coherent and consistent approach not only in dealing with the immigrants and asylum seekers themselves, but also in the manner in which the EU engages the countries of origin and transit. As Aubarell et al. have argued, migration policies in the Euro-Mediterranean area are characterized by overlapping bi- and multilateral strategies which “despite prioritizing the issue of migration, do not offer a homogeneous framework to find solutions to this shared problem” because initiatives at the Euro-Mediterranean level have not been able to build up an integrated approach, while, simultaneously, national policies on both shores have been developed in areas such as foreign affairs, development cooperation and border control168. To reiterate, the principal methods used in dealing with the problems posed by this phenomenon in the Mediterranean consist in bilateral, as well as Community agreements between the receiving and non-member countries focused not only on smoothening the readmission of illegal immigrants, but also on developing joint control of sea and land borders. Also, the EU, through external policy instruments such as the ENP, encourages and financially supports the construction of robust migration controls in the countries of origin and transit.

It is important to remember that the abovementioned externalization tendency is not one-dimensional and focused on the security and control aspects of migration, an approach

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168 Gemma Aubarell et al., “New Directions…, 8.
which would entail placing great pressure on the partner states to transform themselves in gatekeepers charged with averting the spillover of security threats onto EU territory\textsuperscript{169}. The other outlook on the migration issue refers to tackling the root causes of migratory movements by promoting socio-economic development in the countries of origin and transit. As examined in section 1.3 of the present paper, an important problem of the JHA aspect of the ENP is that it creates tensions as to the need to consolidate cooperation with 3rd states while at the same time pressuring them to address the economic and political push factors by enhancing democracy and rule of law.

We consider that the so-called “managerial approach” is the best strategy out of the existing ones in order to address in a mutually beneficial and systematic manner the migration phenomenon. It constitutes a better response since it is in tune with the future demographic and labor market requirements of the EU in general and thereby seeks to capture the social and economic benefits of regular labor migration. This course of action would entail, of course, a harmonized policy on legal immigration consisting in entry and exit requirements, quotas, documents required etc. The Lisbon Treaty offers the possibility to construct such a policy provided that the Member States show more willingness in relaxing their intergovernmental stance regarding this sensitive issue. However, as indicated above, the fact that national preferences from the Immigration Pact are visible in the Stockholm Program is an indication that such policy developments may be at best strained and at worst blocked.

A limitation of the present paper is the fact that it examined only the European Mediterranean states and the pressures and problems with which they are being confronted with in dealing with migratory flows. In order to have a comprehensive insight of the situation in the Mediterranean, it is important to see how EU policies are perceived and understood by the non-member countries. A future research path could investigate the existence of the aforementioned turf conflicts between all the DGs involved in the formulation and implementation of the European immigration and asylum policy since it would offer insight on how do these departments collaborate as well as clash over competencies and resources inside the Commission.

\textsuperscript{169} Nicole Wichmann, “The Intersection…, 3.
Primary resources


**Literature**


***, *Competition and Complementarity: National and EU Policies vis-à-vis the Southern Mediterranean*, EuroMeSco joint research workshop with the Polish Institute for Public Affairs (IPA), Warsaw, March 31-April 1, 2008.


***, “Frontex remit should be repatriation”, *Current Affairs*, July 8, 2010.

Internet Resources

Central European Forum for Migration and Population Research (CEFMR)
http://www.cefmr.pan.pl/

Centre for European Policy Studies
http://www.ceps.eu/

Centre for European Reform
http://www.cer.org.uk/

Centre for Applied Policy Research
http://www.cap-lmu.de/english/index.php

Centro Studi di Politica Internazionale – The Mediterranean
http://www.cespi.it/MEDITERRANEO.html

Clingendael European Studies Programme
http://www.clingendael.nl/cesp/

Consortium for Applied Research on International Migration
http://www.carim.org/

Council of the European Union

Europa: The official website of the European Union
http://europa.eu

European Commission, Justice and Home Affairs
http://ec.europa.eu/justice_home/fsj/immigration/illegal/fsj_immigration_illegal_en.htm#part_2

European Centre for International Affairs
http://www.european-centre.org/

European Policy Centre
http://www.epc.eu/

European Institute of Public Administration
http://www.eipa.eu/

EuroMeSCo

EU – Consent: Constructing Europe Network
http://www.eu-consent.net/DEFAULT.ASP

FRONTEX
http://www.frontex.europa.eu/
FORNET: A network of research and teaching on European Foreign Policy
http://www.fornet.info/CFSPforum.html

German Marshall Fund of the United States
http://www.gmfus.org/

Global Europe: Monitoring the European Union’s foreign relations
http://www.globeurope.com/

Instituto Affari Internazionali – The Mediterranean and the Middle East
http://www.iai.it/sections_en/ricerca/mediterraneo/med_e_mo_index.asp

Institute of International and European Affairs
http://www.iiea.com/home

International Centre for Migration Policy Development
http://www.icmpd.org/

International Security Information Service, Europe
http://www.isis-europe.org/

Migration Policy Institute
http://www.migrationpolicy.org/

Swedish Institute for European Policy Studies
http://www.sieps.se/en/

United Nations Population Division
http://esa.un.org/migration/
An Eides statt versichere ich, dass die Arbeit

Europe’s Southern gatekeepers: The External Dimension of the EU’s Immigration and Asylum Policy


I declare by oath that the thesis,

Europe’s Southern gatekeepers: The External Dimension of the EU’s Immigration and Asylum Policy

has been prepared by me alone and only with permitted means of help, that it has not been submitted to any other institution for evaluation, and that it has not been published either in whole or in part. All instances in the thesis – including tables, charts, graphs, etc. – where other works have been quoted verbatim, paraphrased or consulted, have been clearly indicated as references.

Bonn, September 28th, 2010, ………………