The EU Border Management Strategy
FRONTEX and the Challenges of
Irregular Immigration in the Canary Islands

Sergio Carrera

Abstract

The EU is developing a border management strategy aiming at an "integrated and global response" to the challenges posed by the phenomenon of irregular immigration through the common external borders. "The Southern maritime borders" constitute one of the main targets addressed by this strategy. On November 2006, the European Commission published a communication calling for the reinforced management of the EU's Southern maritime borders and for the maximisation of the capacities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – FRONTEX. This paper provides some reflections about these current policy approaches by looking at the nature, scope and practical implications of the implementation of the Integrated Border Management strategy and its relationship with a common EU immigration policy. After assessing the latest policy developments in these areas, we raise a number of questions about some of the functions and capacities carried out by FRONTEX, and present a series of vulnerabilities characterising the joint operations coordinated by this Community body taking the example of the operations HERA I, II and III in the Canary Islands (Spain).

Contents

THE EU BORDER MANAGEMENT STRATEGY
FRONTEX AND THE CHALLENGES OF IRREGULAR IMMIGRATION IN THE CANARY ISLANDS
SERGIO CARRERA[*]

Introduction

The EU is developing a border management strategy which aims at an "integrated and global response" to the challenges emerging from irregular immigration through the common external borders. The Southern maritime borders constitute one of the fundamental targets being addressed by this strategy. On November 2006, the European Commission published a communication calling for the reinforced management of the EU's Southern maritime borders and for the maximisation of the capacities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – FRONTEX. Under the auspices of the Finnish Presidency, the Council agreed on a common definition of what 'Integrated Border Management' (IBM) means in the EU. The prioritisation of borders has been coupled with the emergence of a 'global approach to migration', which aims to ensure a multifaceted response covering all the dimensions relevant to migration, with particular attention to irregular mobility by third-country nationals coming from Africa. The EU policy seems to be based on two distinct but closely interrelated and complementary approaches: on the one hand, an integrated approach to the management of common territorial borders, and on the other hand a global policy covering migration.

In this paper we offer some reflections and raise a number of questions about these approaches by looking at the nature, scope and practical implications of the implementation of the IBM model and its relationship with a common immigration policy at European level.

Section 1 provides a brief assessment of the latest EU policy developments which have consolidated a close partnership between an integrated management of common European external borders and a global rationale inspiring the European policy on immigration. As we will argue, one of the dominant premises behind this apparently renewed political discourse on a 'global and integrated approach' is the enhancement of security at the EU external territorial border through an increased use of coercive measures and surveillance technology, as well as the deployment of an improved system of coordinated actions under the umbrella of FRONTEX.

Section 2 assesses FRONTEX as the main institutional instrument responsible for making the EU border management agenda work on the ground. The enhancement of its competences and capacities is conceived at official level as a fundamental condition for the achievement of an 'Area of Freedom, Security and Justice', and for the EU border management strategy to materialise. In fact, while the setting up of this Community body may be considered as a historical step toward the Europeanisation of the field of 'borders security', specific aspects

inherent in some of its features raise a number of concerns. This is particularly the case when looking at some of its characteristics: first, its depoliticised role and the competence to carry out 'coordinating intelligence-driven operations' based on risk analysis and threat assessments; second, the compatibility between its legal basis and the whole array of areas where it intervenes; and third, the elaboration of feasibility studies which intend to develop the so-called 'second generation of IBM'. A majority of these functions and capacities suffer from a high level of secrecy, as well as a lack of transparency and democratic accountability, which need to be addressed as a matter of urgency before developing its competences and operational tools further.

Finally, section 3 presents a series of vulnerabilities characterising the 'Joint Operations' coordinated by FRONTEX. We take the particular example of the operations HERA I and II in the Canary Islands (Spain), which have so far represented the longest-running coordinated actions by FRONTEX, and which have been recently prolonged under the framework of HERA III. The operational cooperation coordinated by FRONTEX finds its legal basis on an 'external dimension' involving a process of externalisation or 'extra-territorialisation' of the EU border as a consequence of an IBM concept expanding the control beyond the EU towards the maritime territories of African countries. The externalisation of border management also implies a curbing of the mobility of third-country nationals without, at times, establishing their legal status. We will look at the actual implications that this institutionalised practice of pre-border control are having in terms of human rights and European Community law.

1.   The EU's Integrated and Global Strategy on Borders and Migration

This section offers a concise overview of the latest policy developments at EU level which have created a close interrelationship between the common policy on borders and the policy on immigration. It sets the policy scenario of European cooperation in these two areas by looking at what the priorities are. As we will argue, the strategy that the EU seems to be pursuing consists of a reinforcement of the security rationale at common EU external territorial borders – through the development of a discursive nexus between an integrated approach on borders (IBM) – and a global approach on migration. The role of FRONTEX in implementing this nexus in the national arena is presented as a key step in EU policy strategy. However, what are the exact nature and functions of the sort of security as utilised by both approaches? And how is this nexus elaborated and justified at EU official level?

One of the key priorities that the German Presidency of the EU has identified in its programme is "*a more effective protection of external borders*" in order to tackle "*illegal immigration and human trafficking*".[1] This prioritisation is not at all new, but actually follows the pattern carefully set out by the previous Finnish Presidency, which paid close attention to the development of the EU's integrated management system for external borders and the so-called 'EU Border Management Strategy'.[2] The Finnish made considerable effort to consolidate the concept of Integrated Border Management. While this term had previously been used at official

---

[1] German Federal Government, "*Europe – succeeding together*", Presidency Programme, 1 January to 30 June 2007. See also Informal Meeting of Justice and Home Affairs Ministers, Dresden, "Initiative concerning the European migration policy", 14-16 January 2007. Both retrievable from http://www.eu2007.de/en and "*Federal Ministry of Interior and FRONTEX pursue common goal: Strengthening border management agency FRONTEX to fight illegal immigration at EU's external borders*", German Presidency, Press Releases, 22.02.2007.

[2] Informal JHA Ministerial Meeting Tampere, 20-22 September 2006, *Development of the EU's Integrated Management System for External Borders: Border Management Strategy*, 7 September 2006, Finland's EU Presidency.

level as a pre-defined concept,[3] in reality it has a rather short history and implies a wide range of different functionalities and meanings.[4] There was therefore a need to fill in this terminological gap, and at the Conclusions of 4-5 December 2006 the JHA Council agreed the following dimensions as constituting the conceptual framework of IBM:[5]

1. Border control (checks and surveillance) including risk analysis and crime intelligence;[6]

2. Detecting and investigating "cross-border crime" in cooperation with all the relevant law enforcement authorities;

3. The four-tier/filter access control model, which as stipulated in the EU Schengen Catalogue of 2002 includes[7] measures in third countries of origin or transit, cooperation with neighbouring countries, measures on border control at the external borders and control measures within the common area of free movement;

4. Inter-agency cooperation in border management including border guards, customs and police, national security and other relevant authorities; and

5. Coordination and coherence at the national and transnational level.

The guiding principles inspiring these five dimensions seem to be that 'border management' of the common Schengen regime external border must be 'integrated' and must cover all border-related threats that the EU is supposed to be facing.[8] The way in which this definition sees the achievement of these two goals as plausible is through the strengthening of a common "area of policing" which uses coercive border control and surveillance as the main tools.[9] In the same vein, coordination and inter-agency cooperation are also conceived as essential items. It is also striking to see how, along with an increasing operational and inter-agency coordination, risk

---

[3] Commission Communication: *Towards Integrated Management of the External Borders of the Member States of the European Union*, COM(2002) 233 final, Brussels, 7.5.2002. Council of the European Union, *Plan for the Management of the External Borders of the Member States of the European Union*, Document No. 10019/02, FRONT 58, 14 June 2002. See also Council of the European Union, *European Management Concept of Border Control*, 14570/01, Brussels, 27 November 2001.

[4] P. Hobbing (2006), Integrated Border Management at the EU Level, in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe's Future*, Ashgate: Hampshire, pp. 155-182. For a concise study on its evolution see L. Corrado (2006), Negotiating the EU External Border?, in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe's Future*, Ashgate: Hampshire, pp. 183-204.

[5] Council of the European Union, Justice and Home Affairs, 2768th Council Meeting, Brussels, 4-5 December 2006, Press Release, 15801/06.

[6] The definition of "border control" is provided by the Art. 2.9. of the Schengen Borders Code which provides that "*border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance*". Art. 2.11 defines "border surveillance" as "*the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks*". See Council Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), EC/562/2006, 15 March 2006, OJ L 105/1, 13.4.2006.

[7] Council of the European Union, EU Schengen Catalogue, General Secretariat DG H, External borders control, removal and readmission: Recommendations and Best Practices, February 2002.

[8] *A Secure Europe in a Better World, European Security Strategy*, Brussels, 12 December 2003.

[9] Council of the European Union, Integrated Border Management: Strategy deliberations, Presidency, the Strategic Committee on Immigration, Frontiers and Asylum: Mixed Committee EU/Iceland-Norway-Switzerland, 13926/3/06, Brussels, 21 November 2006.

analysis and threat assessments are now treated as two constitutive aspects of EU border management strategy. This conceptualisation also implies an improved exchange of information between law enforcement security agencies and the use of modern technologies as pivotal to the accomplishment of overall EU strategy. Therefore, this kind of innovative management of the EU's external borders relies on the development of a series of operational mechanisms which are rooted in the management of risk and threat, on the exchange of information and on the use of technology as the most efficient 'solution' to guarantee a secured European border.

In addition, the JHA Council meeting of December 2006 recognised the following three components as part of the IBM: 1) A common corpus of legislation; 2) Operational cooperation between Member States, including cooperation as coordinated by FRONTEX; and 3) The principle of solidarity. In fact, the current phase of the EU borders management strategy, which has at times been called the "First Generation of the EU IBM",[10] has already achieved the two first points in the last couple of years: the adoption of the Schengen Borders Code,[11] which has codified,[12] restructured and further developed the *acquis* on internal and external borders, and the setting up of the FRONTEX as a common institutional mechanism for the operational coordination at EU level.[13] As regards the Schengen Borders Code, it has represented the first legislative output resulting from the application of the co-decision procedure (Art. 251 EC Treaty) in the field of borders.[14] Its final output has demonstrated how the involvement of the European Parliament in the decision-making process is not only necessary for democratic control, but also efficient and positive. The positive connotations have consisted of the inclusion of a wider set of guarantees and rights in the event of refusal of entry onto EU territory. In particular, Art. 13 of the Code now stipulates that the persons whose entry has been refused will

---

[10] For an analysis of the core elements of the Union's emerging integrated external border management see J. Monar (2006), 'The External Shield of the Area of Freedom, Security and Justice: Progress and Deficits of the Integrated Management of External EU Borders", in J. de Zwaan and F. A. N. J. Goudappel (eds), *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme*, T.M.C. Asser Press, The Hague, pp. 73-90. See also Pastore, F. (2004), 'Visas, Borders, Immigration: Formation, Structure, and Current Evolution of the EU Entry Control System', in N. Walker (ed), *Europe's Area of Freedom, Security and Justice*, Oxford University Press: New York, pp. 89-142.

[11] Council Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), EC/562/2006, 15 March 2006, OJ L 105/1, 13.4.2006. For an analysis of the Schengen Borders Code see also E. Guild (2006), "Danger – Borders under Construction: Assessing the First Five Years of Border Policy in an Area of Freedom, Security and Justice, in J. de Zwaan and F. A. N. J. Goudappel (eds), *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme*, T.M.C. Asser Press, The Hague, pp. 62-67.

[12] The Code substitutes the provisions regarding external borders as included in the Schengen Convention, the Common Border Manual, the Executive Committee Decision on external border control in airports, Council Regulation 790/2001, the Council Decision on border crossing sings as well as the Council Regulation on stamping of documents. See S. Peers (2006), *EU Justice and Home Affairs Law*, Oxford University Press: Oxford, p. 145.

[13] Council Regulation EC/2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 26 October 2004, OJ L 349/1, 25.11.2004. See Balzacq, T. and S. Carrera (2005), *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, Centre for European Policy Studies (CEPS), Brussels.

[14] European Council, Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Art. 251 of that Treaty, OJ L 396/45, 31.12.2004.

need to receive a standard form stating in writing the precise reasons for refusal and they will be also offered a right of appeal.[15]

In our view, both steps (the substantial and the institutional) appear to give predominance to the understanding of the border as territory and as a dividing line clearly demarcating the inside from the outside. In particular, Art. 2 of the Schengen Borders Code provides a harmonised definition of what 'the border' is according to European Community law. In particular, this provision establishes that external borders are conceived as "*the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders*". This kind of border aims to secure and police the limits of the common Schengen territory. In addition, one of its most important objectives is to send a clear message to "the outside" about a common European security identity substantiated in an Area of Freedom, Security and Justice. In fact, while some authors have rightly identified the changing and dynamic nature of the borders in Europe from territoriality towards a hugely disperse and complex web of non-physical lines which move every time a person exercises mobility,[16] actual policy strategies at EU level still present the strengthening of the principle of territoriality, and its securitization, as one of the more important European responses and values for dealing with the dilemmas posed by globalisation and modernity.

A large body of literature now advocates that the traditional Weberian conceptualisation of borders as lines clearly defining the boundaries of the state and its sovereignty is no longer valid.[17] Indeed, the actual common borders regime, and the European policy on border security, appears to be primarily focused on the development of non-tangible, technology-based and dispersed borders centred on the need to track and 'manage' the individual through the use of new technologies (i.e. biometrics) and Europe-wide data bases.[18] However, while the European borders regime currently promotes a de-linking with territoriality, it still bases its legitimacy and identity very strongly on the further reinvigoration of the idea of European borders as legal institutions and a territorial demarcation of Europe and what remains 'European', from the rest of 'the other world'.[19] Moreover, it is interesting to see how the "Southern maritime borders",

---

[15] Art. 13 of the Code states: "3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national".

[16] E. Guild (2003), "The Border Abroad – Visas and Border Controls", in K. Groenendijk, E. Guild and P. Minderhoud (eds), *In Search of Europe's Borders*, Kluwer Law International: The Hague, 2003, pp. 87-104. E. Guild (2001), *Moving the Borders of Europe*, inaugural lecture delivered at the official ceremony of the assumption of the professorship of the CPO Wisselleerstoel at the University of Nijmegen, 30 May. J. Crowley (2003), "Locating Europe", in K. Groenendijk, E. Guild and P. Minderhoud (eds), *In Search of Europe's Borders*, Kluwer Law International: The Hague, pp. 27-44.

[17] M. Weber (1964), *The Theory of Social and Economic Organization*, Free Press: New York.

[18] D. Bigo, S. Carrera, E. Guild and R. Walker (2007), *The Changing Landscape of European Liberty and Security: Mid-Term Report on the Results of the CHALLENGE Project*, CHALLENGE Paper No. 4, February 2007, pp. 7-9.

[19] M. Anderson (1996), *Frontiers, Territory and State Formation in the Modern World*, Cambridge: Policy Press. While assessing the nature of "the frontier", Anderson differentiates between frontiers as institutions and as processes. As to frontiers as institutions, he explains how, since the French revolution, frontiers have defined, in a legal sense, the sovereign state. They have also delimited the national identity of the individuals linked with issues related to citizenship and nationality. In this way, frontiers are considered as institutions when they are mostly related to juridical questions and encapsulated in piece of law. Further, he argues that frontiers are not a defined institution creating a clearly conceptualized inside and outside, but they are rather the result of differentiation. For an understanding of the real functions and

and particularly those of the Mediterranean Sea,[20] are used as the commonly constructed source from which the threat (i.e. irregular immigration) comes and against which all the security means need to be made operational, effective and proactive.

In the same vein, the phenomenon of irregular immigration, especially coming from the Southern European borders, represents the target against which "the EU border" and its multilayered components as framed by the IBM have been conceived.[21] In fact, one of the more important objectives of EU border management is the building of a common immigration policy which "manages comprehensively" and "fights against" the sort of mobility negatively qualified as "illegal". This is the sort of mobility that is at stake because of its non-compliance with the rigid legal rules of the common Schengen regime.[22] It is somehow surprising to see how the EU still continues to use the term "illegal immigration" and verbs like "fight against" and "combat" when dealing with the phenomenon of irregular immigration. The negative implications inherent in the use of this terminology have often been qualified as ascribing to the person involved a status which implies suspicion and criminality.[23]

Following this logic, the European Commission presented a Communication on *"Reinforcing the Management of the EU's Southern Maritime Borders"* on November 2006 which presented a series of policy recommendations destined to improve the "European model for integrated border management" in this particular geographical area of Europe.[24] The approach proposed by the Commission focused on fostering operational measures to deal with irregular immigration and reinforce "control and surveillance" of the external maritime border. Furthermore, as regards the control of maritime borders, the Commission emphasised that it was necessary to adopt a two-pronged approach: 1) operational measures *"to fight illegal immigration"* and the strengthening of the control and surveillance of the external maritime border; and 2) the external dimension consisting of building on the existing relations and cooperation with third countries.

---

justifications of the borders to be understood, Anderson claims that there is a need to approach them as processes.

[20] On how the Mediterranean social space has been reshaped by the new borders created by Europe, and the role of hegemonic discourses producing an "imaginary community" presented as culturally and socially incompatible from those coming from Africa see L. Sárez-Navaz (1997), 'Political Economy of the Mediterranean Rebordering: New Ethnicities, New Citizenships', *Standford Electronic Humanities Review*, Vol. 5.2.

[21] See the Commission Communication on "Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals", COM(2006) 402 final, Brussels, 19.7.2006, where "secure borders" and "an integrated management of the external borders" are considered as a key policy priority for "a comprehensive EU approach to combat illegal immigration".

[22] Bigo, D. and E. Guild (eds) (2005), *Controlling Frontiers: Free Movement into and within Europe*, London: Ashgate. See also D. Bigo and E. Guild (2003), *La Mise à L'Écart des Étrangers: La Logique du Visa Schengen*, Cultures & Conflits, L'Harmattan: Paris.

[23] E. Guild (2004), "Who is an Irregular Immigrant", in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), Irregular Migration and Human Rights: Theoretical, European and International Perspectives, Leiden: Martinus Nihjoff, pp. 3-28. See also T. Balzacq and S. Carrera, "The Hague Programme: The Long Road to Freedom, Security and Justice", in T. Balzacq and S. Carrera (eds), *Security versus Freedom: A Challenge for Europe's Future*, Aldershot: Ashgate Publishing (2006). PICUM's Comments on the Communication from the Commission on "Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals COM(2006) 402 final, February 2007, retrievable from www.picum.org See also Solidar, "Irregular migrants have rights: Solidar Position on the European Commission Communication on illegal immigration: a rights-based approach to the question of irregular migration" (www.solidar.org).

[24] Commission Communication, *Reinforcing the Management of the European Union's Southern Maritime Borders*, COM(2006) 733 final, Brussels, 30.11.2006.

The Communication was centred on the first of the approaches, and hence identified the maximisation of the operational capacity of FRONTEX and the development of new tools for the implementation of the so-called "Second Generation of IBM" as the pillars of the European model for controlling maritime borders. As we will see in Section 2.4 below, the Second Generation of IBM includes the establishment of a Coastal Patrol Network in the Mediterranean Sea and a European Surveillance System for Borders based on the use of technologies.

In the view of the European Commission:[25] "*operational activities designed to fight illegal immigration need to be read in the wider context of the comprehensive approach to migration*". Border management is therefore an integral part of the EU's policy on irregular immigration. In light of this, in November 2006 the Commission published another Communication on "*The Global Approach to Migration one year on*". The main objective of this communication is to pave the way for the accomplishment of a "comprehensive European migration policy". It offered an overview of EU policy actions mainly centred on Africa and the Mediterranean region.[26] The Communication restated the importance of an "*integrated management of the maritime borders*", and their reinforcement, in "*the fight against illegal migration*".

In fact, the call to ensure a global response covering all the dimensions relevant to migration had been already adopted at the European Council meeting of December 2005.[27] The Council defined at that meeting the Global Approach to Migration as aiming to reduce "*illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration*". The last sentence on building "*capacity to better manage migration*" consists of increasing operational cooperation between member states in the field of border management under the umbrella of FRONTEX's coordination. Once more we can see how "the Global Approach" primarily focuses on "*priority actions focusing on Africa and the Mediterranean*".[28] It reinforces the call for an integrated perspective for initiatives such as "*on the migratory roots and safety at sea, which concern both the Mediterranean and certain African countries*". In particular, the Council endorsed concrete actions intending to increase cooperation between Member States.[29]

In fact, both the integrated and the global approaches constitute an innovative discursive and political strategy at EU level whose real purpose is to present in a more 'fashionable' manner the vision according to which "more security measures in the common Southern maritime external borders" are the more plausible 'solution' to the challenges and dilemmas that Europe is currently facing in the areas of borders and mobility. Moreover, this is sold at official level as

---

[25] See the concluding remarks of the Commission Communication COM(2006) 733 final, Brussels, 30.11.2006.

[26] Commission Communication, "The Global Approach to Migration one year on: Towards a Comprehensive European Migration Policy", COM(2006) 735 final, Brussels, 30.11.2006.

[27] Brussels European Council Conclusions, Presidency Conclusions, 15 and 16 December 2005, Council of the European Union, 15914/01/05, 30 December 2005.

[28] Council of the European Union, Presidency, *Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean*, 15744/05, 13 December 2005, Brussels. S. Carrera (2007), *Building a Common Policy on Labour Migration: Towards a Comprehensive and Global Approach in the EU?*, CEPS Working Document No. 256, February 2007, Centre for European Policy Studies: CEPS, Brussels.

[29] The Council called "*FRONTEX to: implement border management measures in the Mediterranean region, in particular, joint operations and pilot projects, as early as possible in 2006; present a Risk Analysis report of Africa by May 2006; launch a feasibility study on reinforcing monitoring and surveillance of the southern maritime border of the EU, namely in the Mediterranean Sea, and on a Mediterranean Coastal Patrols Network involving EU Member States and North African countries, as early as possible in 2006; Explore the technical feasibility of establishing a surveillance system covering the whole southern maritime border of the EU and the Mediterranean Sea by the end of 2006*".

the pivotal ingredient of a so-called "comprehensive policy on irregular immigration". The latest Annual Policy Strategy for 2008 published by the European Commission on February 2007 (*provisional version*) reinforces this tendency by stating that the Commission has so far demonstrated its capacity on "*measures to support the Member States in managing the external borders of the EU and tackling migration*".[30] It is surprising to see that the objective is to tackle not only the kind of mobility defined as irregular, but more generally "*migration*". Further, the Annual Policy Strategy continues by saying that "*the EU needs to prevent illegal migration, counter human trafficking and protect its external borders...[T]he Commission will also work further on the external dimension through a combined migration and development agenda, especially from Africa*".

The IBM Model and the current EU policy on irregular immigration legitimise the practice and promotion of a paradigm of control and surveillance, and whose implementation through systems like operational cooperation, risk analysis and exchange of information opens a series of concerns regarding the principle of legality, transparency and accountability as well as the compliance with human rights and European Community law on borders. In this EU Model, FRONTEX is presented as 'the' institutional actor in charge of putting the integrated and global paradigm into practice. The focus of this institution on the "*reinforcement of the management of the southern maritime external borders*" has been clear ever since the launch of its activities in October 2005 through joint maritime operations, risk analysis and feasibility studies. As we will show in the next section, the three competences attributed to FRONTEX suffer from a number of vulnerabilities related to their own nature, scope and impact.

2. FRONTEX: A Depoliticised and Intelligence-based Body?

FRONTEX is the Community body aiming at making operational the EU border management strategy.[31] It was established by the Council Regulation (EC) 2007/2004 of 26th October 2004,[32] and its headquarters were opened on 3 October 2005 in Warsaw.[33] The roots and general competences of FRONTEX have been analysed elsewhere.[34] This section provides some critical reflections about the nature, legal basis and some specific tasks of the Agency such as those related to joint operations and pilot projects as well as the elaboration of risk analysis. FRONTEX is an intelligence-based and depoliticised body of the Community. Its main role is to coordinate risk analysis based joint operations which are *systematically managed and cost-*

---

[30] Commission Communication, *Annual Policy Strategy for 2008*, COM(2007) 65, Brussels, 21.2.2007.

[31] http://www.frontex.europa.eu/

[32] 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, 26 October 2004, O.J. L 349/1, 25.11.2004.

[33] Council Decision designating the seat of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, (EC) 358/2005, of 14 April 2005, OJ L 114/4 May 2005.

[34] H. Jorry (2007), *Construction of a European Institutional Model for the Management of Operational Cooperation at the EU External Borders: Does the FRONTEX Agency take a decisive step forward?*, CHALLENGE Research Paper No. 6, March 2007. See also J. Donoghue, J. Ryan and A. Vent, *Report on FRONTEX: The European Union's New Border Security Agency,* Institute for European Affairs, October 2006, retrievable from www.iiea.com Monar, J. (2005), 'The European Union's "Integrated Management" of External Borders', in: J. De Bardeleben (ed.), *Soft or Hard Borders: Managing the Divide in an Enlarged Europe,* Aldershot, Ashgate.

effective.[35] It also intends to be a key player in the consolidation, practical implementation and gradual expansion of the EU Integrated Border Management System. Yet, there are a series of questions which still remain open as regards its actual functions and competences, and the way in which they are implemented.

2.1 A depoliticised body in a highly political spectacle

FRONTEX is supposed to be a depoliticised Community body. However, the following three factors prevent its immunity: First, its capacity is overly dependent on the actual level of cooperation from the member states; second, its activities are "emergency driven" and a by-product of political pressures and strategies exercised by particular member states; and third, the European Commission exercises significant influence over the Agency.

2.1.1 The principle of dependence on member states solidarity

FRONTEX competences over coordination are guided by a principle of dependence on member states' solidarity. This high degree of dependence is, however, intertwined with the very existence of its competence to coordinate joint operations at the external borders of Europe. In fact, the Council Regulation 2007/2004 starts by saying that: "*the responsibility for the control and surveillance of external border lies with the Member States*". The Agency will exclusively facilitate "*the application of existing and future Community measures relating to the management of the external borders by ensuring the coordination of the Member States' actions in the implementation of those measures*". Also, Art. 1.2. of the same Regulation reads as follows "*while…the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render (the former)…by ensuring the coordination of the Member States' actions in the implementation of those measures*".

The main reason substantiating this "national predominance" is clearly linked with the question of sovereignty. In whose sovereignty lies the last say over the field of borders? Since the very establishment of FRONTEX, careful attention was paid to constantly refer to "*the external borders of the Member States*" in order to stress as clearly as possible that the competence over the area of "borders" remains at the heart of the sovereignty of the State. This is even evident when looking at the very name given to the agency which includes "the European Agency for the Management of Operational Cooperation *at the External Borders of the Member States of the European Union*" (emphasis added). Therefore, even though the field of borders has experienced a progressive and dynamic communitarisation process since the adoption of the Schengen Agreement 1985,[36] member states are still practising a strategy of resistance when it comes to shifting any further power to the supranational level in this field. In fact, FRONTEX can only act upon request from the member states or, in agreement with the member state(s) concerned it can also launch its own initiatives for joint operations and pilot projects, but always in cooperation with other member states. How does this really work in practice?

---

[35] Report on Activities of FRONTEX, Between 1 January and 30 June 2006, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[36] The original Schengen Agreement was signed on 14 June 1985 by Germany, France and the Benelux countries. J. Apap and S. Carrera (2003), 'Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?', *Alternatives: Global, Local, Political*, Vol. 29, No. 4, Aug.-Oct. 2004, pp. 399-416. E. Guild and C. Harlow (eds.) (2001), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Hart Publishing, pp. 65-94.

According to the Rules of Procedure for taking decisions related to operational tasks of FRONTEX,[37] the decision-making process consists of four different phases: 1) Launching an operational activity (Risk Analysis); 2) Preparation of operational initiative; 3) Preparation of operation plan and implementation; and 4) Evaluation and follow up. The process therefore starts with a risk analysis or on the initiative of a member state.[38] As stipulated in Art. 4 of the Decision on Rules of Procedure, the launching of an operational activity may be based on a Risk Analysis Report elaborated by the Head of Risk Analysis Unit (RAU).[39] In those cases where a member state starts the procedure and proposes the elaboration of a Risk Analysis upon which an operational activity will be carried out, the Head of Risk Analysis Unit will be also responsible for carrying that out. The RAU is one of the main drivers of the operational work carried out by FRONTEX, as it is the Unit in charge of carrying out the risk analysis and threat assessments upon which the latter will be substantiated and developed. Also, as we will see in Section 2.2, RAU is also in charge of developing and applying the new version of the Common Integrated Risk Analysis Model (CIRAM).

The Director of the respective operational Unit (coordination and return operations, land borders, sea borders or airports) will be responsible for elaborating the operational initiative,[40] which will be endorsed to the Tasking and Coordinating Group.[41] According to Art. 6 of the Rules of Procedure, the operational plan should include "*general description of the preparations, schedule, way of action, technical means and manpower available, detailed budget for the operation, implementation costs, risks connected with implementation, etc*". This is the phase where the actual involvement of the member states in terms of cooperation, coordination and financial participation is taken into account, and where the principle of dependence on member states' 'solidarity' comes sharply into play. Member states are not under any legal obligation to collaborate in any of the joint operations launched by FRONTEX by granting technical equipment for control and surveillance of the external borders. Notwithstanding this, their 'solidarity' is key to the success of any joint operation as FRONTEX has no technical means of its own. This means that the role of the Agency becomes deeply politicised in the highly political environment of the EU at 27. A diverse political context where some member states are more or less keen to offer their resources depending on who is the member state in need of 'help'. FRONTEX needs to find a way to navigate safely in this high sea of tensions and diplomatic sensibilities as a fundamental condition for its operations to take place.

In order to facilitate the improvement of this fundamental weakness that is at present inherent in the implementation of FRONTEX tasks, the Justice and Home Affairs Council meeting of 15 February 2007 gave priority to the discussion over the implementation of Art. 7 of the Council

---

[37] Decision of the Management Board of 24 March 2006, Rules of Procedure for Taking Decisions related to the Operational Tasks of Frontex, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

[38] This is based on Art. 3 of the Regulation 2007/2004 which provides that "*The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States. The Agency may itself, and in agreement with the member State(s) concerned, launch initiatives for joint operations and pilot projects in cooperation with Member States*".

[39] According to Art. 4.1 "*The Head of Risk Analysis should discuss the merits and demerits of the proposed operation with the Members of Operational Tasking and Coordinating Group at regular meetings*".

[40] Art. 5 of the Rules of Procedure.

[41] It worth mentioning here how the Agency is facing serious struggles to find staff see "Border Agency in Warsaw struggles to find staff", *Financial Times*, 21 January 2007.

Regulation 2007/2004,[42] which offers the possibility for the establishment of a centralised register of technical equipment (the so-called 'toolbox'), which could be put at the disposal of another member state, and called for the member states which have not yet done so to contribute to it.[43] While the adoption of this proposal would represent a substantial step towards the maximization of FRONTEX capabilities, it remains unclear how 'the toolbox' is going to circumvent the fact that some member states are hesitant about the actual level of participation towards the consolidation of the principle of solidarity in an enlarged common European territory.

Further, the FRONTEX mandate would be significantly enhanced with the adoption of the Proposal for a Regulation establishing Rapid Border Intervention Teams,[44] which, according to Art. 12 of that measure, would allow the deployment of these teams in cases of emergency or in situations of *"particular pressure, especially the arrivals at points of the external borders of large numbers of third country nationals trying to enter illegally in the European Union"*.[45] However, it would still very much depend on member states' 'solidarity' as the teams would be composed mainly of national border guards,[46] and the member states would be under no obligation to donate staff in order to fulfil these functions. As the proposal says *"it is up to each Member State to decide whether it wants to participate actively in the Rapid Intervention Teams or not by making officers available for the establishment of these teams"*. Further, some issues concerning the tasks that the proposal grants to the Teams still remain unclear.[47] It appears that the German Presidency aims at obtaining an early agreement over this initiative at the Council with a view to reaching an agreement with the European Parliament under the co-decision procedure by April 2007.[48]

---

[42] Art. 7 reads as follows: *"The Agency shall set up and keep centralised records of technical equipment for control and surveillance of external borders belonging to Member States, which they, on a voluntary basis and upon request from another Member State, are willing to put at the disposal of that Member State for a temporary period following a needs and risks analysis carried out by the Agency"*.

[43] Council of the European Union, Justice and Home Affairs Council Meeting 2781st, Brussels, 15 February 2007, Press Release, 5922/07, Presse 16.

[44] Proposal for a Regulation establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism COM(2006) 401, final, Brussels, 19.7.2006. See Standing Committee of Experts on International Immigration, Refugee and Criminal Law, Comment on Proposal for a Regulation establishing a Mechanism for the Creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (COM(2006) 401, 24 October 2006.

[45] See Article 12 which would add a paragraph (g) to the Council Regulation 2007/2004 providing the following *"deploy Rapid Border Intervention Teams to Member States requesting assistance when faced with situations of particular pressure, especially the arrivals at points of the external borders of large numbers of third country nationals trying to enter illegally in the European Union"*.

[46] Article 4.1 stipulates that *"Members of the teams shall remain officers of the national border guards of their Member States and shall continue to be paid by them. While deployed as members of the teams they shall, however, only take instructions from the host Member State in accordance with the operational plan agreed between the Agency and that Member State"*. Article 5.1 reads as follows *"During the deployment of the Rapid Border Intervention Team(s), command over the team(s) shall be held by the host Member State in accordance with the operational plan"*.

[47] See Article 6. For a listing of the tasks see Article 7 (border checks) and Article 8 (surveillance) of the proposal.

[48] Council of the European Union, Justice and Home Affairs Council Meeting 2781st, Brussels, 15 February 2007, 5922/07, Presse 16.

2.1.2 The emergency-driven nature of FRONTEX activities

Ever since its establishment there has been a constant political demand from particular member states for an 'urgent and rapid action' by the Agency to deal with the various challenges inherent to holding common external borders of the EU. One of the most relevant effects of these demands has been that FRONTEX activities are, in most cases, 'emergency driven' and a by-product of political pressures exercised especially by those member states holding the 'EU common external border'. As the case of the Canary Islands in Spain has demonstrated, the political dimension and debate at the national arena do play a prominent role in FRONTEX actions. Spain's influence in the operational agenda of the Agency has been of an unusual nature. The Spanish Government has managed to push forward its national agenda and its constructed political spectacle to the European level.[49] In fact, since the emergence of "the migratory and humanitarian crisis" over the phenomenon of irregular immigration in the Canary Islands by March-April 2006,[50] the Spanish authorities consistently used a discourse of blaming the EU, and particularly FRONTEX, for the dilemmas produced by the phenomenon of irregular immigration. In fact, Spain coupled the use of Art. 8 of the Council Regulation 2007/2004, which foresees the possibility for a member state to call for support to FRONTEX when confronted with circumstances requiring increased technical assistance, with an attempt to raise awareness of the exceptionality characterising the case of the Canary Islands and the need for a rapid and immediate action coming from the EU. The clearest manifestation of the diplomatic strategy used by the Spanish authorities was the *tour d'Europe* of the Vice-President of the Spanish Government, María Teresa Fernández de la Vega, in August 2006, which consisted of a series of high level meetings in Brussels with the president of the European Commission, three other key commissioners and with the Finnish Presidency of that time.[51]

The situation in the Canary Islands was presented at the official level as "*an unprecedented humanitarian crisis in the whole Europe*" and as "*a massive invasion of illegal immigrants*" and for which an "urgent European solution" was needed.[52] As Table 1 below shows, statistical data provided by the Government of the Canary Islands says that during 2006 there were 603 *pateras* (small flat-bottomed boats) arriving in the Canary Islands and a total of 31,863 irregular immigrants. Comparing this with 2005, the total number of *pateras* was of 214 and the number of irregular immigrants was 4,790. While it is true that during 2006 there was a substantial increase in numbers of both *pateras* and irregular immigration, the overall situation has been over-dramatised by the media and misused according to certain political interests at the national

---

[49] M. Edelman (1988), *Constructing the Political Spectacle*, The University of Chicago Press: Chicago and London. M. Edelman (1964), *The Symbolic Uses of Politics*, University of Illinois Press, Urbana and Chicago: Illini Books.

[50] See Press Office of the Spanish Ministry of Interior where a chronology is offered on key news and where it offers an overview on the construction of the crisis took specially place since March-April 2006. See http://www.mir.es/DGRIS/Cronologia/2006/04/

[51] See "EU Promises Help with Migrants", BBC News, 30 August 2006, retrievable from http://news.bbc.co.uk/; "La UE pone en marcha 15 medidas para ayudar a España en el control de la inmigración ilegal en Canarias", Notas de Prensa, La Moncloa, www.la-moncloa.es; See also "España hará una 'ofensiva' diplomática para que la UE se implique en el control de la inmigración ilegal", Diario El Mundo, 30 Agosto 2006, retriavable from www.elmundo.es; "De la Vega cree necesario doblar los medios para controlar la inmigración illegal", Diario El Mundo, 30 Agosto 2006; "Bruselas pedirá más medios a los países de la UE para reforzar el control de las fronteras", Diario el Mundo, 30 Agosto 2006.

[52] Speech of President of the Government of the Canary Islands (Adan Martin Menis) in the European Parliament Joint Parliamentary Meeting "*From Tampere to The Hague: Moving Forward? Progress and Shortcomings in the Area of Freedom, Security and Justice*", 2 and 3 October 2006.

arena.[53] Further, while nobody would deny the humanitarian and dramatic nature of this kind of human mobility by sea, according to the interviews held while conducting this paper, it appears that these actual statistical figures are not significantly high when comparing them with the main channels of irregular immigration in the EU, which are not the ones taking place at the maritime borders, but those via international airports.[54]

Table 1. Comparative data on immigrant arrivals in the Canary Islands, 2003-06

	2003	**2004**	**2005**	**2006**
Pateras	580	274	214	603
Irregular immigration	9,388	8,426	4,790	31,863

Source: Government of the Canary Islands.

It is striking to see how the fierce struggles that were taking place in the Spanish political arena between the government, the opposition (*Partido Popular*) and the Canary Islands Government about the context, response and implications of the constant inflow of irregular immigrants translated themselves into a "call for the EU" to act.[55] FRONTEX was presented as the solution to the constructed spectacle which was qualified as 'a European problem'. The EU was used as the perfect scapegoat for a highly politicised and 'mediatised' state of affairs over the field of immigration in Spain. The pressures by the Spanish authorities led to the launching of the joint operations HERA I, HERA II and now HERA III, which are analysed in detail in section 3 of this paper. The fact that the two first joint operations were launched without it being completely clear what was really needed there shows how at that time it was more important to find a 'rapid solution' to the political pressures, than dealt with the actual situation taking place in the Canary Islands.[56] FRONTEX became 'the institutional response' to the constructed emergency situation in Spain.

2.1.3 The Role of the European Commission

The European Commission also exercises an important degree of influence over FRONTEX. It guides the agency on the state of affairs in Council and informal bilateral relations with member states' representatives. This is also evident when looking at the composition of the Management Board of FRONTEX,[57] which meets every two months and has two important Commission representatives among its usual members. This political link between the European Commission and FRONTEX is difficult to define, and while it may be true that the Commission always

---

[53] On the role of the media in the area of immigration see S. Cabezas de Alcalá and J. Velilla Jiménez (2005), *Imagen Mediática y Opinión Pública sobre la Inmigración en España y Catalunya*, Observatorio del Sistema Penal y los Derechos Humanos, Universitat de Barcelona.

[54] For the prioritisation that FRONTEX is currently giving to tackling irregular immigration by air from South America see "*Federal Ministry of Interior and FRONTEX pursue common goal: Strengthening border management agency FRONTEX to fight illegal immigration at EU's external borders*", German Presidency, Press Releases, 22.02.2007.

[55] On the coverage by the Spanish media of these political struggles in the national arena see "*El Gobierno de Canarias pide al Estado que le facilite más información sobre inmigración irregular",* Diario el Mundo, 22 Marzo 2006, retrievable from www.elmundo.es; "El Presidente Canario pide "solidaridad" al Gobierno para distribuir a los inmigrantes por la Península", Diario El País, 14 Marzo 2006, retriavable from www.elpais.es; See also "El PP culpa al Gobierno de la avalancha de inmigrantes", Diario El País, 20 Marzo del 2006, retriavable from www.elpais.es

[56] "*CE quiere conocer necesidades de España antes de pedir más medios*", Representación Permanente de España ante la Unión Europea, Sala de Prensa, Bruselas, 29 de Agosto 2006.

[57] On the Management Board see Arts. 20, 21 and 22 of the Council Regulation 2007/2004.

keeps in mind the independence of the agency, it seems clear that its influence over the actual activities of the agency is rather substantial.

2.2 FRONTEX as an intelligence-based Body: The management of 'risks' and 'threats'

FRONTEX carries out coordinating intelligence-driven operations based on risk analyses and threat assessments which focus on border surveillance facing irregular immigration.[58] The threat against which the 'integrated border management and surveillance' works is in fact human beings who are in the process of moving towards EU territory without respecting the legal framework institutionalised by the Schengen borders regime. Because of the non-compliance with these common rules they fall into the juridical label of "illegality". As we have seen above, the current conceptualisation of 'Integrated Border Management' presents risk analysis and crime intelligence as two of its most important features. FRONTEX uses these mechanisms as the pivotal basis for coordinating joint operations.

The risk analyses are completely secret and are therefore not declassified to the public. According to the Decision of the Management Board of 21 September 2006,[59] "*in order to safeguard the ability to carry out its tasks, special attention should be paid to the specific requirements of FRONTEX as a specialized body tasked with improving the integrated management of the external borders of the Member States of the EU. Therefore, full account of the sensitive nature of tasks carried out by FRONTEX, in particular in relation to operations at borders and border related data should be taken*". Risk Analyses describe, among other issues, the roots, routes, modus operandi, patterns of irregular movements, conditions of the countries of transit, statistics of irregular flows and displacement, etc. The official justification that is currently given for their secrecy is that these analyses contain very sensitive information based on sources provided by authorities of the member states in the countries of origin and transit. If made public the source of information could be discovered and put at risk. In addition to this complete lack of transparency, the reports also suffer from a lack of democratic accountability. The European Parliament is completely left out of the ex ante and ex post process, and its involvement in the budgetary allocation to FRONTEX is certainly not sufficient to circumvent this democratic deficit.[60] This is somehow surprising taking into account that Joint Operations coordinated by FRONTEX are mainly and foremost based on risk analysis. By applying the secrecy rule the very source legitimising the operation can not be at all contested, reviewed and in the end made democratically accountable.

---

[58] Art. 2 of the Council Regulation 2007/2004 stipulates that "*The Agency shall perform the following tasks: (c) carry out risk analysis*". Furthermore, Art. 4 of the same Regulation titled "Risk Analysis" says that "*The Agency shall develop and apply a common integrated risk analysis model. It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission. The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5*".

[59] Decision of the Management Board laying down practical arrangement regarding public access to the documents of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), 21 September 2006.

[60] Art. 29.6 of the Council Regulation EC No. 2007/2004 provides that "*the estimate (of the revenue and expenditure of the Agency) shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European Union*". Art. 29.8 continues by saying that "*the budgetary authority shall authorize the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency*".

The Risk Analysis Unit (RAU) at FRONTEX is the one in charge of carrying out the risk analysis reports. RAU is composed of a mixture of experienced border guard officials and experts with customs background, and it has already delivered a series of Risk Analyses. Among others we may underline the following:[61] on Ceuta and Melilla (November 2005), Mauritania (March 2006), Libya which was part of the wider Tailored Risk Analysis Identifying Threats and Risks of Illegal Migration from the African Continent of May 2006, etc. FRONTEX has also contributed to Europol's OCTA (Organised Crime Threat Assessment).[62]

The RAU uses the revised "Common Integrated Risk Analysis Model" (CIRAM) which was originally requested by the Seville European Council meeting in 2002.[63] In particular, point 32 of the Council Conclusions called for a common risk analysis model for the achievement of a common integrated risk assessment "*to combat primarily illegal immigration*".[64] The goal was the attainment of "systematic evaluation of border control".[65] The proposal was agreed by the Common Unit or SCIFA+ (Strategic Committee on Immigration, Frontiers and Asylum with the participation of the Heads of border control services) in Elsinore on 22 July 2002. The CIRAM was prepared under the auspices of Finland,[66] and it was finally adopted on 28 January 2003.[67] CIRAM was designed as a tool to be used mainly at strategic level, and that would enable the collection, analysis and distribution of border security related information to meet the needs of SCIFA+. In 28 January 2003, the SCIFA+ decided to set up a Risk Analysis Centre (RAC) in Helsinki (Finland) at the Frontier Guard Headquarters. Col. Ilkka Laitinen, who is now the Executive Director of FRONTEX,[68] was at that time appointed as the director of the centre.[69] The RAC started working on 1 April 2003. It produced two periodical risk analyses a year covering all the external borders, and tailored risk analyses were made in accordance with tasks given by SCIFA+ by using CIRAM.[70]

The CIRAM, based on a six-field matrix, brings together the aspects of crime intelligence (threat assessment) and risk assessment, the latter focusing on the weaknesses of border

---

[61] Council of the European Union, FRONTEX Work Programmes 2005 and 2006, 6941/06, Brussels, 11 July 2006. See also Report on Activities of FRONTEX between 1 January and 30 June 2006, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Progress Report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice, Council of the European Union, Brussels, 20 November 2006.

[62] Europol, EU Organized Crime Threat Assessment 2006, retrievable from http://www.europol.eu.int

[63] See Seville European Council Presidency Conclusions, 21 and 22 June 2002.

[64] See point 32 which said "*...before June 2003: preparation of a common risk analysis model, in order to achieve common integrated risk assessment*".

[65] Council of the European Union, Presidency, Strategic Committee on Immigration, Frontiers and Asylum, Initiation of a common integrated risk analysis envisaged by the Plan for the management of the external borders of the Member States of the European Union, 10921/02, Brussels, 11 July 2002.

[66] The team in charge of its elaboration was composed of experts from nine Member States (Denmark, Spain, Belgium, Sweden, France, Germany, the United Kingdom and the Netherlands) chaired by Finland, and it also involved representatives from Norway, the European Commission and Europol.

[67] Council of the European Union, Finnish Delegation, Strategic Committee on Immigration, Frontiers and Asylum, Common Integrated Risk Analysis Model (CIRAM), 6100/03, Brussels, 5 February 2003.

[68] http://view.frontex.europa.eu/newsroom/executive_profiles/

[69] Council of the European Union, Finnish Delegation, Strategic Committee on Immigration, Frontiers and Asylum, Common Integrated Risk Analysis Model (CIRAM), 6100/03, Brussels, 5 February 2003.

[70] Council of the European Union, Finnish Delegation, Strategic Committee on Immigration, Frontiers and Asylum, Risk Analysis Centre, 7396/03, Brussels, 13 March 2003.

management systems at the external borders of the European Union.[71] Further, the 'end-products' of CIRAM are problem-oriented risk analyses according to which a decision could be made on joint operational measures.[72] As stated in a Council Report on "the Common Integrated Risk Analysis" of May 2003,[73] CIRAM "*dualistically deals with the threats and risks*" and "*Member States are obliged to undergo a risk assessment of their national border security system*". "Risk assessment" is defined in footnote 2 of this Report as "*about the vulnerabilities of society and the external border security system itself (four tiers, covering third countries, neighbouring countries, border management and the area of free movement). Yet the information gained in operational border management is an essential contribution to this kind of input*".[74] In fact, CIRAM uses a 'comparable methodology' to put this into practice: an operational risk analysis consisting of: risk analysis formula with national contributions in the assessment of "risks".[75] An example of "Risk Analysis Formula" used in CIRAM includes questions addressed to the member states such as what are the main routes and methods of irregular immigration, description of the situation in airports, seaports, etc.[76] This is in addition to other sources such as information from EU institutions, liaison officers and other public sources.

CIRAM was subject to a Pilot Project carried out by FRONTEX which intended to revise it and align it with the tasks of FRONTEX.[77] The pilot project aimed, among other things, at granting FRONTEX direct access to the information gathered in the framework of the member states' Immigration Liaison Officers in third countries and to facilitate exchange of information through its access to ICONet. The Immigration Liaison Officers, created by Council Regulation 377/2004,[78] consist of the establishment of a representative of one of the member States, posted abroad by the immigration service "*or other competent authorities in order to establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating of illegal immigration*".[79] Among the competences allocated to the

---

[71] Council of the European Union, Finish Delegation, Strategic Committee Integrated Risk Analysis Model (CIRAM), 5622/03, Brussels, 23 January 2003.

[72] Council of the European Union, Finnish Delegation, Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee, *Report – Common Integrated Risk Assessment*, 8831/03, Brussels, 7 May 2003.

[73] Council of the European Union, *Report – Common Integrated Risk Assessment*, 8831/03, Brussels, 7 May 2003.

[74] It also said that the basic goal of CIRAM was "*to provide information for relevant authorities to allow appropriate measures to be taken, jointly or otherwise, to tackle identified threats and risks and to improve the scrutiny of performance in the area of border management*".

[75] Council of the European Union, the General Secretariat, Strategic Committee on Immigration, Frontiers and Asylum, *Annex 6 of CIRAM*, 11476/03, Brussels, 16 July 2003.

[76] Council of the European Union, General Secretariat, Risk Analysis on EU External Borders, 15500/03, Brussels, 2 December 2003.

[77] "FRONTEX: Risk Analysis", in http://www.frontex.europa.eu See also Council of the European Union, FRONTEX Work Programmes 2005 and 2006, 6941/06, Brussels, 11 July 2006. See also Report on Activities of FRONTEX between 1 January and 30 June 2006, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[78] Council Regulation (EC) No. 377/2004, on the creation of an immigration liaison officers network, 19 February 2004, OJ L 64/1, 2.3.2004. See also Council of the European Union, Report on the activities of Immigration Liaison Officers (ILO) networks – Follow up, 8041/06, Brussels, 10 April 2006. Council of the European Union, Report on the activities of the Immigration Liaison Officer (ILO) networks – follow up, 13523/06, Brussels, 6 October 2006.

[79] Art. 1 of the Regulation 377/2004.

immigration liaison officers, Art. 2 of the Council Regulation 377/2004 provides that they shall collect information for "*use either at the operation level, or at a strategic level, or both*" about a wide list of items including flows of irregular immigrants, routes followed by these flows and the modus operandi.[80] On the other hand, ICONet is the web-based Information and Coordination Network for the exchange of information on irregular immigration between the Member States' Migration Management Services. It was established by Council Decision 2005/267/Ec on March 2005,[81] and foresees information exchange including, among other elements, an early warning system on irregular immigration and information about the use of visas, borders and travel documents.

2.3 FRONTEX Legal Basis

The formal legal basis of FRONTEX can be found in Articles 62.2.a and 66 of Title IV of the EC Treaty on "Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons".[82] Therefore, FRONTEX is an "EC First Pillar institution". However, when looking at the actual tasks currently undertaken by the Agency, they do not seem to be clearly defined from a legal point of view.

An example which substantiates this lack of legal certainty in some of FRONTEX capacities is its involvement in the Community return policy. Art. 9.1. of the Council Regulation 2007/2004 states that "*the Agency shall provide the necessary assistance for organising joint return operations of Member States*".[83] However, even though the Agency has already contributed to some return operations carried out by the Member States, until now the precise tasks that FRONTEX is supposed to be carrying out are not specified anywhere and a precise list has not been yet agreed by the Council.[84] This leads to a high degree of juridical uncertainty regarding its activities in a field as sensitive as the return of irregular immigrants where the protection of the individual and the rule of law are so critical.

Moreover, looking at the FRONTEX Work Programmes for 2005 and 2006, it is said that: "*focus will be on fighting irregular migration and trafficking of human beings and on supporting the activities against international terrorism by means of border control*".[85] "Trafficking of human beings" and "activities against international terrorism" are in fact part of

---

[80] Art. 2.2.

[81] Council Decision establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services, 2005/267/EC, 16 March 2005, OJ L 83/48, 1 April 2005.

[82] Art. 62.2 EC Treaty states that the Council shall adopt "*measures on the crossing of the external borders of the Member States which shall establish: (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders; (b) rules on visas for intended stays of no more than three months*". Further, Art. 66 stipulates that "*The Council,…, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this Title, as well a between those departments and the Commission*".

[83] 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, 26 October 2004, O.J. L 349/1, 25.11.2004. Art. 9.2. also says that "*The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals*".

[84] Council of the European Union, Assistance to Member States when organising joint return operations provided by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), 17028/06, Brussels, 20 December 2006.

[85] Frontex Work-programmes 2005 and 2006, Council of the European Union, 6941/06, Brussels, 11 July 2006.

the Title VI of the TEU on "Provisions on Police and Judicial Cooperation in Criminal Matters", or the so-called EU Third Pillar. FRONTEX also plays an important role in "the external dimension". The principle guiding this "dimension of international cooperation" is the "*gradual development of targeted at and sustainable partnership*" facilitating "operational cooperation" between the Member States and third countries.[86] FRONTEX has had informal contacts with Algeria, Egypt, Lebanon and Morocco.

Finally, FRONTEX also cooperates with other institutional actors involved in the field of security at European and international levels, such as Europol,[87] – the European Anti-Fraud Office (OLAF), the Police Chief's Task Force and Interpol as well as other actors at Community level responsible for customs, veterinary and other controls at the external border. Other important counterparts currently are the International Border Police Conference (Slofok Process) and the EU Situation Centre (SitCen) as well as regional cooperative structures, like the Baltic Sea Region Border Control Cooperation (BSRBCC)[88]. However, it appears that the cooperation between these agencies remains at a preliminary stage. As regards Europol and OLAF, executive and working level contacts have been already developed. There is also a lack of transparency as regards the nature of this sort of inter-institutional cooperation and the legal framework which applies to it. This is of special importance when taking into account that in most of these cases cooperation translates into the exchange of data on individuals whose purpose, use and level of protection applicable to this sensitive information may vary greatly from one institutional actor to another.[89]

2.4 Feasibility Studies: Towards the Second Generation of IBM

Another competence of FRONTEX is the carrying out of Feasibility Studies intending to develop the so-called "Second Generation of IBM" through a number of pilot projects. The agency has already elaborated one named MEDSEA which studies the possibility of setting up a Coastal Patrol Network in the Mediterranean Sea. It has finalised another named BORTEC which deals with the establishment of a European surveillance system for borders based on the use of technology. In this regard the Annual Policy Strategy for 2008 published by the European Commission on February 2007 states that "*in 2008 the External Borders Agency will be further developed and Member States will be supported in tackling illegal immigration through a European surveillance system*".[90] By looking at the little information that is publicly available about these two Feasibility Studies we will be able to ascertain the shape and nature of the next likely generation of IBM.

The Feasibility Study on Mediterranean Coastal Patrol Network (MEDSEA) aims at structuring cooperation and coordination among the member states in the control, surveillance and

---

[86] Frontex Work-programmes 2005 and 2006, Council of the European Union, 6941/06, Brussels, 11 July 2006.

[87] Art. 13 of FRONTEX Regulations state that "*The Agency may cooperate with Europol and the international organizations competent in matters covered by this Regulation (…)*". FRONTEX has prepared a first draft of cooperation agreement with Europol, which has submitted to the latter on 23 January 2006. The negotiations are ongoing. *Report on activities on FRONTEX (1 January 2006– 30 June 2006).*

[88] FRONTEX Programme of Work 2006. Council of the European Union, Partial Declassification of Doc. 6941/06 RESTREINT UE. Brussels, 11 July 2006.

[89] See for instance Opinion of the European Data Protection Supervisor on the Proposal for a Council Framework Decision on the exchange of information under the principle of availability (COM (2005) 490, final), 2006/C 116/04, OJ C116/8, 17.5.2006.

[90] Commission Communication, Annual Policy Strategy for 2008, COM(2007) 65, Brussels, 21.2.2007.

monitoring of the Mediterranean Sea and the Canary Islands. It also studies the ways in which the communication of intelligence and an effective access to maritime monitoring information can be facilitated.[91] It considers the maritime area as including coastline, the territorial waters of neighbouring countries and the high seas, and includes the study of the situation in the following countries: Cyprus, France, Greece, Italy, Malta, Portugal, Slovenia and Spain. According to this Feasibility Study, the more important issue for the network would be *"to detect and intercept persons arriving to the Member States' territory thus ensuring the saving of lives at sea, additionally to have an overview of the flows of persons entering or leaving the area"*.[92] MEDSEA was only partially declassified to the public at the end of November 2006.[93]

How would the European coastal patrol network work on the ground? There would be a National Coordination Centre (NCC) in each relevant Member State which would comprise the sea border network of national authorities in a series of different "operational areas" (OA).[94] The NCCs would work through an exchange of information and would be linked in a network to FRONTEX at EU level. FRONTEX would provide the communication system that would connect all the NCCs. This network would develop the exchange of information among a wide set of national authorities ("Operational Entities" – OEs) which usually have to monitor the positioning, activities, cargo and passengers of boats, and which would include border guard services, but also police forces, search and rescue, naval forces, customs, fisheries inspections, maritime safety authorities and port authorities. It is expected that FRONTEX will follow up the establishment of the Network by, for instance, creating a communication system (intranet), common standards and requirements for compatible equipment, common evaluating and reporting systems, initiation/support of pilot projects and joint operations fostering the setting up of the network, etc.

The second Technical Feasibility Study on Surveillance of Southern Maritime Borders of EU has received the name of BORTEC.[95] It explores the technical feasibility of establishing a surveillance system based on "modern technology" covering the entire EU southern maritime borders. "*Such system would use modern technology with the aim of saving lives at sea and tackling illegal immigration*".[96] It addresses the ways in which the already existing technological tools can be "integrated" and how the exchange of information may be further improved. For instance, the study addresses the way in which already existing satellite-based technologies such as the European Satellite System of ESA (European Space Agency) and GALILEO (the Global Navigation Satellite System) could be used for 'border surveillance'.[97] It appears that ESA has already been used in operations like HERA II, and that this system seems

---

[91] The study was made by a "core team" consisting of national experts representing France, Greece, Italy and Spain, and one expert from FRONTEX headquarters. This team was assisted by a Support Group which contained representatives from 14 member states plus the European Commission and the Joint Research Centre.

[92] Council of the European Union, *Frontex Feasibility Study on Mediterranean Coastal Patrol Network – MEDSEA*, 12049/06, Brussels, 20 November 2006.

[93] The document was sent to the Council on 20 July 2006.

[94] A similar system already exists in the so-called "Baltic Sea Region Border Control Cooperation" (BSRBCC) established in Helsinki in June 1997 by the following countries: Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russia and Sweden.

[95] Frontex Work-programmes 2005 and 2006, Council of the European Union, 6941/06, Brussels, 11 July 2006.

[96] Report on Activities of FRONTEX, Between 1 January and 30 June 2006, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

[97] http://www.esa.int/esaNA/galileo.html

to offer a highly accurate identification of "the target". The final version of BORTEC was expected to be presented by FRONTEX on December 2006. It has been elaborated by a Support Group consisting of Member States and the Commission who have discussed the results achieved by a Core Team work. It appears that this Feasibility Study was received by the European Commission in the beginning of 2007 and that it will be eventually presented to the Council. The BORTEC Feasibility Study remains completely secret.

3. Vulnerabilities inherent to FRONTEX joint operations: The case of the Canary Islands

Art. 2.1 of the Council Regulation 2007/2004 provides that one of the main tasks of FRONTEX is "*to coordinate operation cooperation between Member States in the field of management of external borders*".[98] This section presents a series of weaknesses characterising the way in which this task currently materialises in practice.[99] We take the particular example of the joint operations HERA I and II, and its current successor HERA III in the Canary Islands (Spain). Spain has more than once made use of the mechanism contained in Art. 8 of the FRONTEX Council Regulation 2007/2004 according to which FRONTEX can provide support to member states which are in circumstances requiring increased technical and operational assistance at external borders.[100] Until the end of 2006, operational assistance to Spain consisted of two main modules: expert assistance (HERA I) and joint operation at sea (HERA II), which are analysed in detail below.

3.1 HERA I

This was based on a request from Spain on 24 May 2006. It started on 17 July 2006 and lasted until 31 October 2006. The first phase of the operation consisted of the consignment of nine experts from France (2), Portugal (3), Italy (2) and Germany (2) who gave support to the Spanish National Police Brigade with the identification of irregular immigrants who arrived to the Canary Islands without papers. There was also an expert from FRONTEX, as well as representatives from Senegal, Mauritania and Gambia.[101] The operation was originally expected to last until 17 August, but FRONTEX decided to extend it twice. A second group of experts from the UK, Portugal and Germany joined later on in the tasks, and a third group of experts composed of experts coming from the Netherlands (2), France (2), Italy (2), Portugal (4) and Norway (1) started on 19 September 2006.[102] According to information provided by FRONTEX, a total number of 18,987 irregular immigrants landed in the Canary Islands during

---

[98] Art. 3 titled "Joint Operations and Pilot Projects at External Borders" says in its paragraph 1 that "*The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States*".

[99] For examples of operations, see http://www.frontex.europa.eu/examples_of_accomplished_operati/

[100] See also Art. 2.1 of the Council Regulation 2007/2004 which states that "*The Agency shall perform the following tasks: (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders*".

[101] According to a Press Release of the Spanish Ministry of Interior, the concrete distribution of the first group of experts was the following: two experts from Italy and two from France in Tenerife, one from Germany and another one from Portugal in Gran Canaria, and two experts from Portugal and one from Germany in Fuerteventura. See "La Operación Europea de control de la inmigración illegal en el Atlántico se pone en marcha tras cerrar Frontex todos los trámites administrativos", Nota de Prensa, Ministerio de Interior, Madrid, 10/08/2006.

[102] "Canary Islands – HERA", FRONTEX Examples of Accomplished Operations

the course of this operation as of 10 December 2006. Only in 100 cases could the country of origin be determined.[103]

3.2 HERA II

Spain delivered a second request for assistance on 28 June 2006 which eventually became HERA II.[104] This joint operation started on 11 August 2006.[105] It was originally planned to end by 15 October 2006, but after a visit of Ilkka Laitinen to the Canary Islands on 13 October 2006, it was prolonged until 15 December 2006, which saw its definitive ending.[106] Up to now it has been the longest-running joint operation ever coordinated by FRONTEX.

HERA II consisted of facilitating technical equipment for border surveillance. The aim was to reinforce the control of the zone between the occidental African coast and the coast of the Canary Islands. This operation sought to dissuade the *cayucos* (small, open wooden boats) transporting irregular immigrants to set off from the African coasts.[107] However, if the boats were already found at sea, the goal pursued was to intercept them in the territorial waters of the third country and then the authorities of the sending country would deal with the actual handling of the immigrants and their subsequent return to their territory.[108] According to a Press Release from the European Commission "*When a target is seen, they get in touch with the other FRONTEX means deployed and FRONTEX local coordination centre in Santa Cruz de Tenerife and prepare the interception. Normally the Senegalese boats escort the migrants inshore, start the legal procedure and try to arrest the people that were paid for organising the journey*".[109] Only if the vessels were intercepted outside the 24-mile zone, would they be escorted to the territory of the Canary Islands and be offered the possibility to lodge an asylum claim.[110]

Therefore, HERA II involved a process of externalisation of EU border control and of prevention of "irregular immigration". These processes of externalisation and prevention (coercive measures for the apprehension and detection of boats) find their legal basis in the conclusion of bilateral agreements between the EU member state and the third countries in Africa. They are therefore rooted in strong bilateral relations. In fact, before any joint operation on surveillance and patrolling coordinated by FRONTEX can take place, it is the main responsibility of the country concerned, in this case Spain, to first conclude a bilateral agreement with the third countries concerned, which here were mainly Mauritania and Senegal.

---

[103] "*Longest FRONTEX Coordinated Operation – HERA, the Canary Islands*", FRONTEX, Press Releases, 19-12-2006.

[104] Report on Activities of Frontex (between 1 January and 30 June 2006).

[105] "Examples of FRONTEX Activities", FRONTEX Briefing Note, Warsaw, 18 October 2006.

[106] "*HERA II Operation to be Prolongued*", FRONTEX News Releases, 13 October 2006, available at http://frontex.europa.eu

[107] R. Parkers (2006), *Joint Patrols at the EU's Southern Border: Security and Development in the Control of African Migration*, SWP Comments 21, German Institute for International and Security Affairs, August 2006.

[108] See International Maritime Organization (IMO) and the United Nations High Commissioner for Refugees UNHCR (2007), Rescue at Sea: A Guide to Principles and Practice as Applied to Migrants and Refugees, retrievable from http://www.imo.org/includes/blastDataOnly.asp/data_id%3D15282/UNHCRIMOleafletpersonsrescuedatsea.pdf

[109] European Commission, DG Communication, News, *EU Immigration: Frontex Operation*, 12/09/2006.

[110] Standing Committee of Experts on International Immigration, Refugee and Criminal Law, Comment on Proposal for a Regulation establishing a Mechanism for the Creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (COM(2006) 401, 24 October 2006.

The highly politicised nature of the objectives included in these bilateral agreements back in the countries of origin has justified that both agreements remain highly secret and not open to the public. While it may be true that the sensitivities involved and the effects in the countries of origin need to be duly taken into account, the secrecy embracing these accords prevents the principles of democratic scrutiny and transparency from coming into play at the national and European levels.

At the practical level the member states that contributed in HERA II were Italy, Portugal and Spain. It appears that Finland had also offered an airplane from their coast guard but it was rejected by the Spanish authorities because of the negative impact that this could have on tourism in the Canary Islands.[111] Italy cooperated with a 54 metres craft from their coast guard and an airplane of their Finance's Guard, and Portugal contributed with a craft.[112] This technical equipment was completed by two Spanish crafts, called "Río Duero" and "Petrel", which were already working on the zone for border control purposes. The Spanish Government also offered two helicopters, one from the *Guardia Civil* (Civil Guard) and another from the Spanish National Police Brigade (*Cuerpo Nacional de Policía*), both of them in charge of air surveillance and giving support to the maritime operations located in Mauritania, Senegal and Cape Verde. Furthermore, Spain donated four patrol boats to the Mauritanian Security Force to help with the improvement of the surveillance of their coasts.[113] Surprisingly, while the actual implementation of the operation was kept under complete secrecy, on 10 September 2006 the BBC published a very precise explanation on how HERA II worked in practice and even facilitated a map providing the precise location of FRONTEX deployment (ships, aircrafts and helicopters) in front of the coasts of Mauritania, Senegal, Cape Verde and Gambia.[114]

The joint surveillance operation started late since the formal request was made by Spain in June 2006. Among others, the reasons which justified the latter were the following: first, it appears that there were some difficulties in the conclusion of the bilateral agreement between Spain and Senegal. Senegal was far more demanding than Mauritania as regards the list of items to be included in the agreement ("development aid", technical means for border control, etc). Only by 8 September 2006 did the Italian and Spanish boats and aircrafts commence the patrolling of the Senegalese coast.[115] A second reason why HERA II started later than originally expected was because of the competition inside Spain between the security agencies themselves, especially between the Guardia Civil and the military regarding the use of vessels.

---

[111] http://www.gobiernodecanarias.org/turismo/index.jsp

[112] Information found in www.lukor.com, Thursday 11th August 2006.

[113] The "ATR-42" Italian aircraft together with "Diciotti" oversaw patrol Italian vessel, 2 Guardia Civil Patrol boats, one Spanish Policy helicopter and 3 Senegalese boats were covering the area. 23 Spanish Guardia Civil officials were working there. The Italian aircraft crew (3 pilots, 3 system operators and 3 technical staff) flow from 3 to 5 hours a day to cover an area of around 1200 sea miles. The Italian vessel (500 tons, 50 metres long, consuming 1500 litres per hour) had on board a crew of 30 marines and commanders. At least one Senegalese official must be on board as only they have the authority to stop and return the Cayucos inside Senegalese territorial waters. European Commission, DG Communication, News, *EU Immigration: Frontex Operation*, 12/09/2006.

[114] http://news.bbc.co.uk/2/hi/europe/5331896.stm the article also provided very interesting interviews with officials from the Guardia Civil offering very detailed information concerning practicalities linked with HERA II.

[115] "*Rubalcaba acuerda con las autoridades de Senegal realizar patrullas conjuntas para controlar la inmigración irregular que sale de sus costas*" (Rubalcaba agrees with the Senegalese authorities to carry out joint patrols of irregular immigration leaving from the coasts), Ministerio del Interior Español, Nota de Prensa, Madrid, 22/08/2006.

According to the FRONTEX Rules of Procedure applicable to operational tasks, the overall procedure will finalise with an Evaluation Report which will assess the results achieved, and which should deal with the shortcomings and problems which became apparent during the operation. The evaluation Report of HERA II has not been made public. In terms of efficiency the intervention of FRONTEX in the Canary Islands has been already qualified as very successful and helpful in decreasing the arrivals of immigrants to the Islands and in reinforcing the control on the southern maritime border. FRONTEX has declared that during this operation "*more than 3,500 migrants*" were stopped and that "*during the course of HERA II the flow of irregular migration has decreased drastically*".[116] However, it is also true that when looking at the actual statistics of the number of *pateras* and immigrants who entered in the Canary Islands during 2006, we can see how the number of arrivals during the months of August and September (which actually corresponds with the main period of FRONTEX intervention) do not seem to have decreased in comparison with previous phases. On the contrary, as Table 2 demonstrates, August and September were the two months with a higher "mobility" of irregular immigrants during the whole year: 6,000 arrivals in August and 7,700 in September. The effectiveness of the joint operation is also open to debate when comparing the total numbers gathered during October and November with the period where "the migratory crisis" was raised in Spain on March 2006.

Table 2. Monthly data on arrival of pateras and immigration in the Canary Islands in 2006

	Pateras	**Immigration**
January	19	706
February	32	1,083
March	51	2,063
April	18	688
May	78	4,974
June	34	1,455
July	38	2,531
August	86	5,997
September	112	7,736
October	50	1,644
November	52	1,393
December	31	1,478
TOTAL	**603**	**31,863**

Source: Government of the Canary Islands.

---

[116] "*Longest FRONTEX Coordinated Operation – HERA, the Canary Islands*", FRONTEX, Press Releases, 19-12-2006.

Table 3. Information by country of origin (as of 27/11/2006)

	Adults	Minors	Babies	Pregnant Women
Mali	1,965	74		1
Guinea	71			
G. Bissau	459	4		
G. Conakry	385	6		
Mauritania	111	3		
Gambia	1,391	16		
C. Marfil	756	7		
Morocco	1,069	272		
Sub-Saharan Africa	20,000	621	3	4
Senegal	1,379	26		
Others	601	9	11	2
Unknown	964	60		
	29,158	**1,112**	**14**	**7**

Source: Government of the Canary Islands.

After the ending of HERA II, border control in the Canary Islands has been carried out by Spanish means with the participation of Mauritanian and Senegalese authorities. In fact, independently of FRONTEX intervention, there already existed a series of bilateral projects and agreements between Spain and these African countries on 'border operational management', such as the projects "ATLANTIS", or the one named "SEA HORSE".[117] It was only in mid February 2007, when the materialisation of the successor to the two previous operations in Spain, HERA III, was official announced.[118] HERA III brings the two dimensions covered by the previous operations under the same umbrella, i.e. expert assistance and joint operations at sea. As regards the first part, experts from Germany, Italy, Luxembourg and Portugal were sent to the Canary Islands to help in the identification procedures. As to the operational side, in addition to the Spanish means, the operation numbers the collaboration from Italy, France and Luxembourg, and has the goal "*to stop migrants from leaving the shores on the long sea journey*".[119]

---

[117] For more information about these projects see "*Proyectos para el Control de la Inmigración Irregular*", Oficina de Relaciones Informativas y Sociales, Dirección General de la Guardia Civil. See also "El Ministro Alonso presenta el proyecto europeo "Sea Horse" de lucha contra la inmigración ilegal", 01/03/2006, Guardia Civil, Nota de Prensa, http://www.guardiacivil.es/prensa/notas/noticia.jsp?idnoticia=1889.

[118] "Seis Países Europeos participan en la nueva fase del operativo FRONTEX para controlar la inmigración ilegal en la costa atlántica africana", Ministerio de Interior Español, Nota de Prensa, 15 Febrero 2007, Madrid. See also "La Unión Europea refuerza los medios para el Control de las Fronteras", Diario El País, 16 February 2007, www.elpais.es

[119] "A Sequel of Operation HERA just starting", FRONTEX News Releases, 15/02/2007.

3.3 Implications of the External Dimension of IBM

The joint operations coordinated by FRONTEX involve a strong external dimension which consists of an extra-territorialisation of control[120] and an over-prevention of mobility by third country nationals outside the common European territory. We have explained above that any joint operation needs to be legally founded on bilateral agreements with third countries allowing for the expansion of surveillance and coercive control to the African coasts. In fact, the External dimension[121] represents one of the key ingredients in the "four-tier border control" and it is now considered at official level as one of the most important prerequisites for an efficient IBM.[122] Within the context of FRONTEX this dimension consists of partnerships allowing for a "*functional cooperation with partner countries in terms of identification of their nationals, readmission of own nationals and readmission of third country nationals*".[123] However, what are the perverse effects of the external dimension and the practice of the processes of extra-territorialisation and of preventive control in the areas of borders and migration? Moving border management outside the EU implies two negative effects:

1. It may lead to human rights considerations in relation to the respect of the principle of *non-refoulement* and the Geneva Convention on the status of refugees of 1951.

2. Pre-border surveillance prevents the applicability of the Community governance and of the regime of protection provided by the border of the European Community.

As regards the first of the implications, HERA II mainly conducted border control outside EU common territory. The management of the border expands into the maritime territory of third countries in Africa. The process of prevention which underlines this kind of border presupposes a practice of labelling an individual as an 'irregular immigrant' even before s/he leaves the country and enters EU territory. This preventive action ignores the fact that the targeted individual may not be in fact an 'illegal' but a potential asylum seeker or refugee. The process of externalisation implies the prevention of the "would-be irregular immigrant" or "would-be asylum seeker" from reaching the EU border and thereby from moving into any of these juridical categories. As a general rule, nobody should fall within the category of irregularity before physically entering EU territory. The presupposition of 'illegality' and the preventive border makes difficult a full respect of human rights and the facilitation of due access to a determination procedure and a case-by-case assessment for refugee status as stipulated by the

---

[120] J. J. Rijpma and M. Cremona (2007), *The Extra-Territorialisation of EU Migration Policies and the Rule of Law*, EUI Working Papers, Law 2007/01, European University Institute, Italy.

[121] S. Lavanex (1999), Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe, CEU Press, Budapest, 29-38 & 73-102. S. Lavanex (2004), 'EU External Governance in "Wider Europe", Journal of European Public Policy No. 11, pp. 680-700. S. Lavanex (2006), 'Shifting Up and Out: The Foreign Policy of European Immigration Control, West European Politics 29:2 (2006), pp. 329-350

[122] See Commission Communication on a Strategy on the External Dimension of the Area of Freedom, Security and Justice, COM(2005) 491, 12.10.2005. Council of the European Union, Strategy for the External Dimension of the Area of Freedom, Security and Justice, Doc. 14366/3/05 JAI 417 RELEX 628, December 2005. See also Council of the European Union, *Progress Report on the Implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice*, 15363/06, Brussels, 20 November 2006.

[123] Council of the European Union, *Integrated Border Management: Strategy Deliberations*, the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee EU/Iceland-Norway-Switzerland, 13926/3/06, Brussels, 21 November 2006.

1951 Geneva Convention relating to the Status of Refugees.[124] It makes it increasingly difficult to distinguish between those persons in need of international protection from all the rest. Asylum-seekers are caught up in this undifferentiated irregular mobility.[125] It also makes impossible the application of the rule of law.[126] States' obligations towards refugees are engaged by the exercise of state jurisdiction, including when exercised outside the territory of that state.[127] Policies and practices not having as a premise this principle are simply unacceptable as they constitute a violation of international and European refugee law.[128] As UNHCR has pointed out on "Conclusion on Protection Safeguards in Interception Measures":[129]

> All intercepted persons should be treated at all times, in a humane manner respectful of their human rights. State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and protect the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Concerning the second critical effect, joint operations intend to prevent the entrance in EU's maritime territory and therefore the border checks do not fall within the realm of Community governance nor under the scope of European Community law. The protection and guarantees thereby provided do not apply. "The moving of border to the outside" implies that the principles and mechanisms characterising the group of liberal democracies comprising the EU are left behind. By externalising the border, the actual consequences and effects of the joint operations coordinated by FRONTEX are framed outside the well-established democratic checks and balances inherent to the European Community. In addition to a worrying lack of transparency about the precise conditions and effects of return and/or readmission of third country nationals, and the treatment that they receive in these countries, another negative effect is that the multifaceted protection conferred by Community governance is left aside. Further, this policy does not only move 'the border' outside the EU and destroy the territorial link that would create States' obligations, it also delegates 'the responsibility' over the third country nationals to the hands of a third state.

---

[124] On how the refugee protection obligations of European countries have been affected by increasing integration and enlargement of the EU see E. Guild (2006), 'The Europeanization of Europe's Asylum Policy', *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December 2006, pp. 630-651.

[125] A. Betts (2006), 'Towards Mediterranean Solution? Implications for the Region of Origin', *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December 2006, pp. 652-676.

[126] See: Federación de Asociaciones de SOS Racismo del Estado Español (2006), Informe Frontera Sur, 1995-2006: 10 años de violación de los derechos humanos, retrievable from: www.sosracismo.org; Amnesty International (2006), "Addressing Irregular Migration with full respect of Human Rights", Letter by Dick Oosting and Frank Johansson, 2 October 2006; Amnesty International (2005), 'Immigration Cooperation with Libya: The Human Rights perspective, 12 April 2005.

[127] On how the notion of extraterritorial human rights has been developed with the long-established case-law of international human rights monitoring bodies, and particularly the European Court of Human Rights, on the lawfulness of transferring the responsibility to another state see M. T. Gil-Bazo (2006), 'The Practice of Mediterranean States', *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December 2006, pp. 571-600.

[128] As highlighted by UN Parliamentary Assembly: "*the issue can not only be looked at from a migration management angle as there are significant humanitarian and human rights concerns in relation to the arrival, stay and possible return of irregular migrants and asylum seekers*". See Parliamentary Assembly, Mass Arrival of Irregular Migrants on Europe's Southern Shores, Resolution 1521 (2006).

[129] UNHCR Executive Committee, *Conclusion on Protection Safeguards in Interception Measures*, NO. 97 (LIV) – 2003. See also UNHCR Executive Committee Conclusions, Detention of Refugees and Asylum-Seekers, NO. 44 (XXXVII) – 1986.

The external dimension needs to be guided by the principles of freedom, security and justice upon with the Union is built. This should be the premise for the latter to exist. Because of the externalisation of border control, the joint operations coordinated by FRONTEX are therefore not considered as 'EU border control'. The Schengen Borders Code, and the guarantees presented therein, do not apply. As the Standing Committee of experts on international migration, refugee and criminal law has proposed[130] there needs to be a Community framework laying down individual rights of migrants subject to these "new kind of control conducted in the phase of pre-arrival" which fall outside the scope of the Schengen Borders Code and its Art. 13.3 which says that "*Persons refused entry shall have the right to appeal*". Further, point 2 of the same provision provides that every decision refusing entry needs to be substantiated and in written form. The rule of law provided by the regulatory setting which has been constructed so far inside the European Community should be the guiding rationale in every aspect related to the external dimension inherent to the current concept and implementation of IBM.

Conclusions

The development and strengthening of the EU border management strategy has been framed at official level as a key policy priority in the European agenda. This paper has addressed some of the implications and weaknesses inherent to its nature, scope and practical implementation. It has first assessed the latest EU policy developments which have institutionalised a close interrelationship between an integrated management of the common European external borders (IBM) and a global approach to migration. The EU's Southern Maritime Borders, and the sort of irregular mobility by third country nationals emanating from this constructed area, represent the main item targeted by the 'EU integrated and global approach'. We have argued that the discursive nexus between the IBM and the Global Approach to migration legitimises and reinforces the practice of security as coercion in the EU external territorial border. These policy strategies still call for the strengthening of the principle of territoriality, and its increased securitisation through operational cooperation, risk analysis, exchange of information and the use of modern technologies, as the more plausible response for tackling the 'threats' that the EU is supposed to be facing, which broadly embrace the phenomenon of irregular immigration.

In the field of 'borders', the EU has so far managed to construct the First Generation of IBM. This includes a common codification of the *acquis* on internal and external borders (the Schengen Borders Code), the creation of FRONTEX and a commonly agreed definition of what IBM means at European level. The EU model of border management presents FRONTEX as the main institutional actor in charge of putting the integrated and global paradigm into practice. While the establishment of this Community body constitutes a significant step forward in the Europeanisation of the field of borders, this paper has offered a series of critical questions which still remain open concerning its nature, legal basis and some of its specific tasks with special emphasis on the ones related to joint operations, pilot projects and the elaboration of risk analysis.

FRONTEX is an overly-politicised body whose compliance with the principle of legality may be open to debate. In general terms, the tasks carried out by the agency need to strictly comply with the principle of legality. The agency remains vulnerable in its current form because of the predominance of the principle of dependence on member states' solidarity, and its sensibility towards emergency-driven situations as politically constructed in the national arena. Moreover,

---

[130] Standing Committee of Experts on International Immigration, Refugee and Criminal Law, Comment on Proposal for a Regulation establishing a Mechanism for the Creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (COM(2006) 401, 24 October 2006.

FRONTEX carries out "coordinating intelligence-driven operations" based on risk analysis and threat assessment. The features characterising risk analysis and crime intelligence, and especially the secrecy rule, lead to a lack of transparency and democratic accountability of the operations themselves. For the sake of democracy, rule of law and the principle of proportionality, the source legitimising and founding FRONTEX operations need to be subject to a comprehensive assessment, review and accountability which would greatly benefit from a more direct involvement of the European Parliament. The principles of openness and transparency should also apply to the pilot projects and feasibility studies intending to develop the Second Generation of IBM.

Furthermore, one of the main tasks of FRONTEX is to coordinate operational cooperation between the member states in the management of the external borders. This paper has taken as a case study the situation in the Canary Islands (Spain) and the joint operations there (HERA I and II), which at present constitute the longest-running operations coordinated by FRONTEX. We have studied the implications that the practices fostered by these operations have in terms of human rights and European Community law. HERA is rooted in a very strong 'external dimension' consisting of an extra-territorialisation of control and a prevention of mobility by third country nationals from outside the common European territory. The pre-border surveillance activities open a number of human rights considerations concerning, in particular, the respect of the guarantees included in the 1951 Geneva Convention related to the Status of Refugees. The external dimension prevents the distinction between those persons in need of international protection from all 'the Others' who may fall within irregularity. On the other hand, the qualification of this kind of 'border management' as not falling within the context of 'EU border control' implies that the protection offered by the common EC legal framework in the field of borders, and specifically the guarantees provided by the Schengen Borders Code, does not apply.

The EU needs a strong Community legal framework to protect those third country nationals subject to this new form of border management. Before moving onwards in the processes of European integration in the field of borders (towards a Second Generation of IBM), there is an urgent need to address the vulnerabilities that have been raised in this paper as regards the substantial and institutional mechanisms of the EU model of border management. This is necessary in order to guarantee a solid legal basis which offers protection for the rule of law, as well as transparency and democratic accountability in an Area of Freedom, Security and Justice.

Bibliography

Anderson, M. (2000), *Border Regimes and Security in an Enlarged European Community: Implications of the Entry into Force of the Amsterdam Treaty*, EUI Working Paper RSC No. 2000/8.

Anderson, M. (1996), *Frontiers, Territory and State Formation in the Modern World*, Cambridge: Polity Press.

Anderson, M. and J. Apap (2002), *Police and Justice Cooperation and the New European Borders*, The Hague: Kluwer Law International.

Anderson, M. and E. Bort (2001), *The Frontiers of the European Union*, Hampshire/New York: Palgrave.

Apap, J. (ed.) (2004), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar, UK.

Apap, J. and S. Carrera (2003), "Maintaining Security within Borders: Towards a Permanent State of Emergency in the EU?", *Alternatives: Global, Local, Political*, Vol. 29, No. 4, August-October 2004, pp. 399-416.

Balzacq, T. and S. Carrera (2006), "The Hague Programme: The Long Road to Freedom, Security and Justice", in T. Balzacq and S. Carrera (eds), *Security versus Freedom: A Challenge for Europe's Future*, Aldershot: Ashgate Publishing.

Balzacq, T. and S. Carrera (2005), *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, Centre for European Policy Studies, Brussels.

Betts, A. (2006), "Towards a Mediterranean Solution? Implications for the Region of Origin", *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December, pp. 652-676.

Bigo, D. and E. Guild (eds) (2005), *Controlling Frontiers*, Hants/Burlington: Ashgate.

Bigo, D. and E. Guild (2005), "Policing at a Distance: Schengen Visa Policies", in D. Bigo and E. Guild (eds), *Controlling Frontiers*, Hants/Burlington: Ashgate, pp. 233-263.

Bigo, D. and E. Guild (2003), *La Mise à L'Écart des Étrangers: La Logique du Visa Schengen*, Cultures & Conflits, Paris: L'Harmattan.

Bigo, D., S. Carrera, E. Guild and R. Walker (2007), *The Changing Landscape of European Liberty and Security: Mid-Term Report on the Results of the CHALLENGE Project*, CHALLENGE Paper No. 4, Centre for European Policy Studies, Brussels, February, pp. 7-9.

Cabezas de Alcalá, S. and J. Velilla Jiménez (2005), Imagen Mediática y Opinión Pública sobre la Inmigración en España y Cataluña, Observatorio del Sistema Penal y los Derechos Humanos, Universitat de Barcelona.

Callovi, G. (2005), "Border Controls, Visa Policy and Biometrics", in *The Hague Programme: Strengthening Freedom, Security and Justice in the EU*, EPC Working Paper No. 15, European Policy Centre, Brussels.

Callovi, G. (2004), *Securing External Frontiers in a Union of 25*, Migration Policy Institute, Policy Brief No. 5, September.

Carrera, S. (2007), *Building a Common Policy on Labour Migration: Towards a Comprehensive and Global Approach in the EU?,* CEPS Working Document No. 256, Centre for European Policy Studies, Brussels, February.

Carrera, S. (2005), "What does free movement mean in theory and practice in an enlarged EU?", *European Law Journal*, Vol. 11, No. 6, November, pp. 699-721.

Corrado, L. (2006), "Negotiating the EU External Border?", in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe's Future*, Hampshire: Ashgate, pp. 183-204.

Crowley, J. (2003), "Locating Europe", in K. Groenendijk, E. Guild and P. Minderhoud (eds), *In Search of Europe's Borders*, The Hague: Kluwer Law International, pp. 27-44.

Den Boer, M. and L. Corrado (1999), "For the Record or Off the Record: Comments About the Incorporation of Schengen into the EU", *European Journal of Migration and Law*, 1:397–418.

Donoghue, J., J. Ryan and A. Vent (2006), *Report on FRONTEX: The European Union's New Border Security Agency, Institute for European Affairs*, October (retrievable from www.iiea.com).

Edelman, M. (1988), *Constructing the Political Spectacle*, Chicago and London: The University of Chicago Press.

Edelman, M. (1964), *The Symbolic Uses of Politics*, University of Illinois Press, Urbana and Chicago: Illini Books.

Federación de Asociaciones de SOS Racismo del Estado Español (2006), "Informe Frontera Sur, 1995-2006: 10 años de violación de los derechos humanos" (retrievable from www.sosracismo.org).

Garlick, M. (2006), "The EU Discussions on Extraterritorial Processing: Solution or Conundrum?", *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December, pp. 601-629.

Gil-Bazo, M.T. (2006), "The Practice of Mediterranean States", *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December, pp. 571-600.

Groenendijk, K., E. Guild, and P. Minderhoud (eds) (2003), *In Search of Europe's Borders*, Volume 5 of Immigration and Asylum Law and Policy in Europe, The Hague/London/New York: Kluwer Law International.

Geddes, A. (2005), "Europe's Border Relationships and International Migration Relations", *Journal of Common Market Studies*, Vol. 43, No. 4, pp. 787-806.

Guild, E. (2006), "The Europeanization of Europe's Asylum Policy", *International Journal of Refugee Law*, Vol. 18, No. 3/4, September/December, pp. 630-651.

Guild, E. and P. Minderhoud (eds) (2006), *Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings*, Martinus Nijhoff Publishers.

Guild, E. (2006), "Danger – Borders under Construction: Assessing the First Five Years of Border Policy in an Area of Freedom, Security and Justice", in J. de Zwaan and F.A.N.J. Goudappel (eds), *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme*, The Hague: T.M.C. Asser Press, pp. 62-67.

Guild, E. (2004), "Who is an Irregular Immigrant", in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff, pp. 3-28.

Guild, E. (2003), "The Border Abroad – Visas and Border Controls", in K. Groenendijk, E. Guild and P. Minderhoud (eds), *In Search of Europe's Borders*, The Hague: Kluwer Law International, pp. 87-104.

Guild, E. and C. Harlow (eds) (2001), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Hart Publishing, pp. 65-94.

Guild, E. (2001), "Moving the Borders of Europe", inaugural lecture delivered at the official ceremony of the assumption of the professorship of the CPO Wisselleerstoel at the University of Nijmegen, 30 May.

Hobbing, P. (2006), "Integrated Border Management at the EU Level", in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe's Future*, Hampshire: Ashgate, pp. 155-182.

Hobbing, P. (2003), "Management of External EU Borders: Enlargement and the European Border Guard Issue", DCAF Conference Paper (retrieved from www.dcaf.ch/border/bs genevaconf 030313Hobbing.pdf).

House of Lords Select Committee on the European Union (2003), "Proposals for a European Border Guard", 29th report, 2002-2003 (http://www.publications.parliament.uk/pa/ld200203/ldselect/ldeucom/133/13301.htm).

Jorry, H. (2007), *The Construction of a European Institutional Model for the Management of Operational Cooperation at the EU External Borders: Does the FRONTEX Agency take a decisive step forward?,* CHALLENGE Research Paper No. 6, Centre for European Policy Studies, Brussels, March.

Lavanex, S. (1999), *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, CEU Press, Budapest, pp. 29-38 and pp. 73-102.

Lavanex, S. (2004), "EU External Governance in 'Wider Europe'", *Journal of European Public Policy*, No. 11, pp. 680-700.

Lavanex, S. (2006), "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics* 29:2, pp. 329-350.

Monar, J. (2006), "The External Shield of the Area of Freedom, Security and Justice: Progress and Deficits of the Integrated Management of External EU Borders", in J. de Zwaan and F.A.N.J. Goudappel (eds), *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme*, The Hague: T.M.C. Asser Press, pp. 73-90.

Monar, J. (2005), "The European Union's 'Integrated Management' of External Borders", in J. De Bardeleben (ed.), *Soft or Hard Borders: Managing the Divide in an Enlarged Europe*, Aldershot: Ashgate.

Monar, J. (2003), "The project of a European Border Guard: Potential, Models and Challenges", Conference Paper for the Seminar on Managing International and Inter-Agency Cooperation at the Border, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 13-15 March, 15p.

Parkers, R. (2006), *Joint Patrols at the EU's Southern Border: Security and Development in the Control of African Migration*, SWP Comments 21, German Institute for International and Security Affairs, August.

Pastore, F. (2004), "Visas, Borders, Immigration: Formation, Structure and Current Evolution of the EU Entry Control System", in N. Walker (ed.), *Europe's Area of Freedom, Security and Justice*, Oxford: Oxford University Press, pp. 89-142.

Peers, S. (2006), *EU Justice and Home Affairs Law*, Oxford: Oxford University Press, p. 145.

PICUM's Comments on the Communication from the Commission on "Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals, COM(2006) 402 final, February 2007 (retrievable from www.picum.org).

Rijpma, J.J. and M. Cremona (2007), *The Extra-Territorialisation of EU Migration Policies and the Rule of Law*, EUI Working Papers, Law 2007/01, European University Institute, Italy.

Sárez-Navaz, L. (1997), "Political Economy of the Mediterranean Rebordering: New Ethnicities, New Citizenships", *Standford Electronic Humanities Review*, Vol. 5.2.

Solidar, "Irregular migrants have rights: Solidar Position on the European Commission Communication on illegal immigration: A rights-based approach to the question of irregular migration" (www.solidar.org).

Standing Committee of Experts on International Immigration, Refugee and Criminal Law (2006), Comment on Proposal for a Regulation establishing a Mechanism for the Creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (COM(2006) 401, 24 October.

Walker, N. (ed.) (2004), *Europe's Area of Freedom, Security and Justice*, Volume XIII/2 of The Collected Courses of the Academy of European Law, chapter 3, Oxford: Oxford University Press, pp. 89-142.

Weber, M. (1964), *The Theory of Social and Economic Organization*, New York: Free Press.

Annex 1
Interviews conducted between October 2006 and January 2007

Ilkka Laitinnen, Frontex Executive Director

Kristian Bartholin, European Commission, DG JLS

Eugenio Burgos, Permanent Representation of Spain to the EU

Jean Lambert, MEP

Erwin Buyssens, Council of the EU, DG H Justice and Home Affairs

Marc Richir, European Commission, DG External Relations

Manuel Medina, MEP

Gérard Deprez, MEP

Madeline Garlick, UNHCR Brussels