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Migration in a New Europe: People, Borders and Trajectories

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Chapter 6

**(B)ordering and othering migrants
by the European Union**

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International migration as a field of biopolitics for the European Union

Migration is often a result of societal pressure at the local level. People migrate because they are searching for better prospects, higher income or status for themselves and their relatives, for shelter from persecution or because they are fleeing from political, social and ecological catastrophes. When they leave their region of origin, most travel to nearby regions or neighbouring states. In 2005 according to UN statistics, there were approximately 190 million people (3 per cent of the world population) who were not living in the country of birth. The majority of them live in the geographical proximity of their region of origin while only few have the opportunity to travel longer, intercontinental distances. Rich societies themselves trigger such longer-distance refugee and migration movements, by attracting labour – seasonal or otherwise – to work in a number of sectors such as industry, craft, building industry, agriculture, hotels, private households and the tourist and sex industry. Europe and North America in particular are attractive regions of destination for migrants, as well as the Gulf states, Australia and a number of Asian countries. Significant influences of the destination and duration of travel are specific historical (often colonial) relations with the countries of origin and the concomitant political and social practices of states and world regions. Hence, migration processes have to be seen as a complex web in which a number of actors with different motives and interests are engaged at different levels, for example where migrants are concerned as individuals, families, groups or networks. At a political level, actors are engaged in origin as well as destination countries. Current debates on migration in destination countries not only contain a general development or political dimension, whereby important questions arise as to the entry criteria and purposes. Another dimension is the security dimension in which migration is seen to pose dangers and threats to the welfare and wellbeing of the society. As a result, migration has become a key issue in border police measures. In this chapter, the genealogy of the close connection between migration and internal security in the context of European asylum and migration policies which have contributed to increasingly worrying humanitarian crises will be scrutinised and evaluated. To this end, the concept of the development of concrete security and police measures as well as the development of a common EU asylum and migration policy will be analysed, which include processes of (b)ordering and othering (Van Houtum and Van Naerssen 2002). Stemming from this analysis, in the latter part of this chapter, critical tensions of the current EU immigration policy are discussed.

The development of politics of security at the EU external borders

Over the years, the external border of what sometimes has been labelled Fortress Europe has become less permeable, in the sense that entry into the EU has become highly selective, regulated and secured. Such selective securitisation at the outer borders has gone hand in hand with the improvement and further relaxation of more open internal borders of the 'fortress'. With the opening of the (internal) borders on 1 January 1993, compensation for the loss of control and the security deficit in the territory of the EU became a priority. Mobile and flexible control had to replace the diminished control at the internal borders. We will now look at what we consider to be significant steps in this securitisation in the immigration politics at the EU external borders.

The EU Council in Tampere of 1999

A major step in the development of the securitisation and communautarisation of the EU migration policy was the EU Council in Tampere. Here, notably asylum and migration issues were on the agenda. At an informal meeting in Berlin in early 1999, a high commission¹ focusing on asylum and migration was founded and based on the work of this commission a concomitant communiqué was released in Tampere. In this communiqué, the goals of a common EU asylum and migration policy were set. In a press release in early 1999, Otto Schily, the former German Minister of the Interior (*Bundesministerium des Innern*, BMI), described the priorities of the high commission as follows: 'The high commission has the task to construct a common integrated concept to deal with asylum and migration problems. Special attention will be paid to the fundamental causes of migration movements. In action plans, further measures for stronger cooperation in the EU with the countries of origin will be drawn up. Among these measures are political, developmental, economic and humanitarian cooperation, as well as conflict prevention and cooperation in terms of the combat against illegal migration and organised crime' (translated from German by the authors). The decision for drawing up action plans with the respective countries of origin is one of the core issues of the EU asylum and migration policy. Dr Cornelia Sonntag-Wolgast, a parliamentary secretary of state in BMI, emphasised this issue in a speech held at a conference to discuss the smuggling of refugees on 23 September 1999 in Brussels. In her reference to the upcoming Tampere conference she emphasised:

The EU council that will take place in October in Tampere will bring up questions that I consider important in this respect:

- to intensify the work of the European police authorities
- new initiatives to combat crime
- a common asylum policy and
- to create a European territory of justice.

During the German EU presidency, it was one of the goals of the EU to come up with a common integrated concept for tackling asylum and migration problems. We have to analyse the causes of migration and investigate the circumstances when people are tempted to migrate – prevention in the country of origin must go hand in hand with

tackling human trafficking. Human trafficking must be dealt with consistently. More and more people fall into the hands of illegal trafficking organisations. Therefore, the co-operation with Eastern European authorities on a European-wide scale is important. On the national level, we have responded to these problems by strengthening border protection in order to secure the outer borders after the opening up of Europe (translated from BMI 1999).

From the preceding, clearly the protection of the borders is being legitimised and framed by a discourse on human rights and measures to stop illegal human trafficking. At the 1999 informal council meeting for EU interior and justice ministers in Turku, Finland, France and Germany issued a joint communiqué concerning asylum and migration and a joint approach to combat 'asylum and migration' problems was proposed. In the context of a further communitarisation of police and legal affairs, EUROPOL has played an important role. EUROPOL started its work in mid-1999 and it is engaged in building up a European enforcement agency. Its goal is to increase the efficiency and co-operation among participating states in the context of cross-border crime and illegal trafficking.

At the EU Council meeting in Tampere, participants agreed to a common asylum and migration policy (European Council 1999). The work of the high commission 'Asylum and Migration' was appreciated and its mandate was extended to include the drawing up of further action plans. In these action plans, a common approach was developed for states which were sources of 'illegal' migration as well as the transit states. In addition, the provision of migration alternatives in the corresponding countries themselves (within-state migration alternatives) or in the neighbouring regions (regionalisation) was regulated. This had huge consequences for the refugees, since their asylum requests from now on could be rejected by reference to the regional migration alternatives.

The White Paper of the European Commission and the Schengen agreement

The initiatives for a common asylum and migration policy in the EU formulated in Tampere however did not come out of the blue. The first signals for such a common policy actually go back to the first Schengen agreement and the White Paper to the European Council of the European Commission in 1985. The Schengen agreement had two specific goals: the reduction of common border controls of goods between the participating states and the abolishment of internal controls of persons, irrespective of their origin. The participating countries were Germany, France, Belgium, the Netherlands, and Luxemburg. The Schengen agreement stated that:

In regard to the movement of persons, the parties shall endeavour to abolish the controls at the common frontiers and transfer them to their external frontiers. To that end, they shall endeavour to harmonise in advance, where necessary, the laws and administrative provisions concerning the prohibitions and restrictions which form the basis for the controls and to take complementary measures to safeguard security and combat illegal immigration by nationals of states that are not members of the European Communities (*Art. 17 Schengen agreement 1985*).

Although the Schengen agreement was initially not part of the *acquis communautaire* of the European Community, it was incorporated into the Treaty of Amsterdam in 1997. In the same year, the European Commission issued its White Paper on the internal market programme. This paper also foresaw a common market without internal borders, focusing on the abolishment of (internal) border controls and the harmonisation of rules. In this context, before its meeting in 1999 the European Council was directed to devise a system for identification (including fingerprinting) which led to the setting up of Eurodac, the EU's datasource of fingerprints of asylum-seekers and 'illegal' immigrants. In doing so, clearly a prominent step towards the biopolitical control of migrants and securing of the EU borders – or what some see as the Big Brotherisation of the fortress – was taken.

Building concentric circles of security

Another major step in the securing of the borders for immigration was done in 1998, when Manfred Matzka, section head of the Austrian Ministry of Domestic Policy introduced an approach towards migration and refugee politics in Europe which has left its mark since then. The core of Matzka's proposal was the building of so-called concentric circles of security (FR 4.9.98). These circles were meant to become the security zones of the European Union, with each circle being attributed a different political challenge. In Matzka's view this was the most appropriate response to problems of European migration and refugee politics. The inner-most circle comprised the Schengen countries that were surrounded by a circle of countries that wished to join the European Union, notably located in Eastern and southern Europe. The third and outer circle, including countries such as Russia, Belarus, Ukraine, Turkey and the North African states, were promised greater economic co-operation on the condition of co-operation in the areas of transit control and the fight against illegal migration. The fourth and last circle, containing the most important origin countries of refugees and migrants to the European Union, would be supported with development programmes if their emigration politics accorded and co-ordinated with the immigration guidelines and politics of the European Union. Over time, Matzka's concentric circles had to be shifted, since most of the Eastern European countries became EU member states in 2004 and 2007. However the core of Schengen members remained the same. And the ring of countries enjoying greater co-operation has shifted towards the 'new' EU outer borders: Russia, Belarus, the Ukraine and Moldavia in the east and the Mediterranean countries on the African shores in the south. Closer to co-operation with those countries has been articulated in the recently launched so-called 'European Neighbourhood Policy' (ENP) (cf. KOM 2004/373 final).

The Barcelona process of 1995 was in fact the first formal ground layer of this rings and neighbourhood concept. The Barcelona process was the counterpart of the EU eastern enlargement, but without prospects for entry into the EU. The goal was to eradicate poverty and create a space of common well-being with what the EU has labelled the 'Ring of friends'. In this ENP country-specific action plans have been elaborated. In a common declaration, the following specific goals were introduced: the fight against illegal migration, agreements on taking back illegal migrants, border control systems, co-operation in migration issues and exchange of information and statistical information with regard to migration flows. Moreover, in its strategy paper on the European Neigh-

bourhood Policy of 2004 the EU Commission identifies 'border management' as one of its core goals:

Border management is likely to be a priority in most Action Plans as it is only by working together that the EU and its neighbours can manage common borders more efficiently in order to facilitate legitimate movements. The Action Plans should thus include measures to improve the efficiency of border management, such as support for the creation and training of corps of professional non-military border guards and measures to make travel documents more secure. The goal should be to facilitate movement of persons, whilst maintaining or improving a high level of security. (...) Action Plan priorities could furthermore include co-operation on migration, asylum, visa policies, measures to combat terrorism, organised crime, trafficking in drugs and arms, money laundering and financial and economic crime. (KOM 2004/373, p.16f.)

The Hague Program

Another important event in the securitisation of immigration of the EU was The *Hague Program* (HP) of 2004, which was an continuation and extension of the European Council of Tampere (1999). In the introduction it was stated that:

The European Council welcomes the results that were achieved in the first five-year program. A foundation was constructed for a common asylum- and migration policy, the harmonisation of border control systems was prepared, the co-operation between police authorities was improved and reciprocal recognition of decisions in the field of justice co-operation was further prepared. (HP, p.9).

With respect to the issue of immigration, unanimous voting still counted, so different states could still largely allow their national interests to prevail over the Tampere priorities. The Tampere process was thus seen as a 'policy of small steps'. In the Treaty of Nice (1 February 2003) however, it was decided to abolish unanimous voting in the field of asylum policy and a system of qualified majority voting was creating. The reform of the EU that was decided in the Nice treaty was accompanied by an eastward expansion, namely the admission of East European states on 1 May 2004. The securitisation of the external borders and the preoccupation with internal security in the *Hague Program* can not be seen separately from this EU eastern enlargement, which in a second round also included Romania and Bulgaria in January 2007. The new goals for interior and justice affairs must also be seen in the context of the terror attacks of September 11, 2001 in New York and March 11, 2004 in Madrid. These events have made internal security and the fight against terrorism perhaps to one of the top issues in the (popular) political debates of our time.

According to the *Hague Program*, further measures have to be taken to harmonise interior and justice affairs. Important goals are the 'regulation of migration movements'

and the 'control of the external borders of the Union', in addition to a common asylum policy. These goals are embedded in the intention to 'reinforce the space of freedom, security and justice'. The Council ordered the EU commission to draw up an action plan based on the *Hague Program* 'intended to translate the goals and priorities of the program into concrete measures' (HP, p.11). As priorities for the space of freedom, security and justice were determined by the creation of an integrated border system, the communitarisation of visa policies, the promotion of a common policy for containing migration and the development of a common EU asylum policy, in addition to the introduction of police and customs measures. In the fight against terrorism and certain forms of crime, the possibility of using electronic data systems, such as the Visa Information System, will be explored (cf. KOM 2004/401).

In the second phase, that started on 1 May 2004, a 'common asylum system and common status have to be introduced, for people who need asylum or protection' (HP, p.14). At the European level, new structures have to be built, that 'include asylum officials in participating states and that will render easier co-operation' (HP, p.15). This must not only facilitate the introduction of a common approach but also the common collection of information on countries of origin. Reciprocal support must relieve pressure on asylum systems and admission capacities (HP, p.15). These structures must be encapsulated in a European support agency, after a common asylum policy has been introduced. A European refugee fund will be created for the period 2005-2010. The core concern of the *Hague Program* is the setting up of a common asylum system of the EU in 2010, in which the measures of the EU in the field of asylum have to be streamlined.

An important part of the European asylum policy concerns minimum norms in the recognition of refugees. Besides concrete measures and proposals for harmonisation of asylum systems in the EU, there are criteria regarding 'safe third countries' or countries of origin (FAZ 24.10.2004). A secure third state is determined by two factors: (1) on his or her flight, the refugee must have resided there and (2) this state has signed the Geneva Refugee Convention and has a statutory asylum system. 'This prerequisite of a statutory asylum system has as a consequence that this state now has the responsibility instead of the EU for the rejected refugees and migration' (FAZ 24.10.2004). In this way, the bordering of migrants is placed outside of the EU.

The bordering of asylum seekers outside of the EU is also based on another proposal. Increasingly there are thoughts of setting up 'refugee camps' in Africa in view of the high number of refugees that attempt to enter the EU by ship from Northern Africa. This measure should be a 'complementary measure' so as to 'relieve' the EU states from handling the asylum requests. France and Sweden are however against this proposal, because they fear that 'mafia structures' would be created. Morocco and Algeria have already rejected the idea of creating refugee camps. The former EU commissioner Vitorino argued in this context that Europe does not want to roll off the asylum burden onto third countries, but that it wants to share the 'burden' with respective countries. There is a distinct tendency towards 'regionalisation', and concrete measures which aim to 'regionalise' the refugee problem have already been taken. The Netherlands and the EU commission are financing an initiative of the commissioners of refugees of the United Nations in the form of a 'pilot project' in five North African countries (Libya, Tunisia, Algeria, Morocco and Mauritania) that aims to train local personnel for the control of immigration and to implement statutory asylum systems in the respective countries. (cf. FAZ 1.10.2004).²

Although on the one hand asylum seekers should be deterred from entering the EU, on the other hand migration policies focusing on other target groups to facilitate entry into the EU should be adjusted. In this regard the European Council underlines the importance of migration movements for high-skilled labour (HP, p.15), with the participating states exercising full control over the entry of labour migrants. At the same time, states must counteract the shadow economy as a pull factor for illegal migration. For the integration of third-country nationals, equal opportunities must be created and obstacles to social integration have to be abolished.

Asylum and migration policy are designated as international affairs in the *Hague Program*. Third countries must be supported by the EU in order to improve the regulation of migration flows and to create border control capacities. In the countries of origin, these activities must be connected to measures of development co-operation and humanitarian support. The transit countries and transit-regions play an important role in the asylum and migration policy of the EU, especially in the south and the east. The co-operation must be intensified and the creation of capacities has to be supported, in order to contain migration via these countries and to provide shelter for the refugees (HP, p.17).

The *Hague Program* also strives to improve the return and taking-back policy. The importance of this policy is underlined by the decision to appoint a special envoy. Agreements 'force' the participants to take back refugees and migrants that are illegally residing in the EU. The EU has already made agreements with Macao, Hong Kong and Sri Lanka. Negotiations are underway with Russia, Pakistan, Morocco and Ukraine and further negotiations are planned with Turkey, Albania, Algeria and China (KOM 2003/812, p.7).

Frontex

The EU strives for an integrated border control system at the external borders. For the coordination and reinforcements of border control measures, on 1 May 2005 the European border control agency was created – 'Frontex'. Besides EUROPOL, Frontex is the second European security authority (Schily 2004, p.16). This new agency has to fulfil the following tasks: carrying out risk analysis; co-ordination of operational co-operation between member states in the field of management of external borders; assistance to member states in the training of national border guards, including the establishment of common training standards; following up the development of research relevant for the control and surveillance of external borders; assistance to member states in circumstances that require increased technical and operational assistance at external borders; providing member states with the necessary support in organising joint repatriation operations (including identifying best practices on the acquisition of travel documents and the removal of illegal third-country nationals).³ Further steps to improve the border control system such as the use of biometric information and measurements have already been taken to strengthen the existing information systems – the Schengen Information System (SIS) which will be improved and extended in SIS II, the Visa Information System (VIS) and the already mentioned Eurodac. In 2005 the Commission was ordered to report on the 'inter-operability' of the three systems. Based on its findings the efficiency and inter-operability of these EU information sys-

tems with regard to the 'fight against illegal migration and the border control systems need to be improved' (HP, p.20). Also the visa policy must be developed as a common system. The goal is to 'render legal travelling easier and illegal migration more difficult' (HP, p.20).

Othering through the communitarisation policy of the EU

Since the Treaty of Amsterdam, all persons from third countries that want to enter the EU – immigrants, asylum seekers and visa applicants – have been put in a single category. Despite the qualitative differences in their motives to enter the EU, they are increasingly being viewed as a homogeneous group. This development typifies the EU security discourse of the last decade or so. The geopolitical developments of the past decade and especially post-September 11 events have led to a huge concern over the internal security. In this context and under a dominant discourse and perspective of a desire for 'security', all persons from third countries are seen as a potential threat.

Combining immigrants, asylum seekers and visa applicants into one group could be seen as a form of 'non-EU' stratification or 'othering'. Most illustrative here is that the European Commission has compiled two lists: one list of states whose nationals do not require a visa and another list of countries whose citizens require a visa to enter the EU. On the so-called 'black' (sic!) list, there are 134 states (including Taiwan and Palestine) (out of a total of approximately 195 states on this planet). The group of countries is extremely large and heterogeneous at first glance; but the most striking features are that, with the exception of Brunei, all Muslim and most of the poor states are on that list. All African states are listed, as well as most of the Caribbean and the less prosperous states in Latin America and Asia (Regulation no. 539/2001 of the Council OJ 2001 L81).

The development of 'frontiers' of EU-civilisation

A striking example of the implications of the current EU's border policy is a particular border that has received a lot of attention in the media, namely the border between the Spanish enclaves Ceuta and Melilla and the state of Morocco. In recent years, the enclaves have been fortified with barbed wire, spotlights and closed circuit television. It is a joint Spanish-EU project and it has been described by some commentators as 'military' (Walters 2002, p.568). In 1995, US\$ 29 million were spent on this project (Tunander 1997, p.40). For the period of 2004-2006, the EU will spend ?140 million on the fortification of its external borders (European Council of Thessaloniki 2003). The Southern border with the Maghreb countries and the Middle East signifies a 'Muslim Other' that is perhaps grounded in the perception of the Ottoman Empire as Europe's historical 'Other', added to which is the contemporary media construction of a terrorist universe in the Muslim world (Tunander 1997). With regard to the eastern border with Russia the debate in the EU focuses on the perceived Russian unfamiliarity with values as democracy and human rights (Tunander 1997). It seems that after retreat of the communists from the political arena in Europe, the EU has now created new barbaric and constitutive others, new *folk devils*, in the form of Muslims. In this context, the external

borders of the EU are increasingly being considered as *frontiers*. A frontier is a place of confrontation between a (social) system and its environment (Langer 1999, p.28). On the other side of the external border of the EU, one's 'own' civilisation comes to an end and other civilisations start. In the same way as state borders have co-constructed national identities, the new external borders of the EU are now used to construct an EU identity as opposed to the folk devils of this era.

Conclusion: the humanitarian costs of 'a space of freedom, security and justice'

The EU is increasingly creating formidable security-obsessed state-like borders around its entity. Yet, it is unclear as to whether the EU is indeed to be understood as one single state and what the humanitarian and global costs are of this policy. The new borders – and therefore the limits – of the EU as a (federal) state are not clear, but the boundaries that are believed to help create the identity of the EU as a region are becoming more and more visible. The borders that define the 'Other' and keep 'them' at a distance are becoming all the more distinct and visible. Strategies such as the introduction of the Euro, the EU flag, the EU passport, the 'discovery' of the external borders, the invention of the frontier of civilisation and the transfer of sovereignty by member states in general all (must) help to create a sense of belonging in this 'space of freedom, security and justice', that the EU wishes to be. The (military) fortifications of the borders of the EU with the Maghreb and the Middle East, the rhetoric of 'othering' and the concrete exclusion of asylum seekers and immigrants also play an important role in reinforcing the idea of an own, unique EU identity. The idea is that an EU identity alongside the existing spatial identities can help fine-tune the internal market programme and contribute to this desired 'space of freedom, security and justice'. The communitarisation of the immigration and asylum policy is an important goal in this respect for the EU. Without this communitarisation process, the vision of a perfectly functioning internal market remains a mirage in the horizon. Despite the increasing effort to help foster an EU identity, it is by no means clear what this EU identity is, according to the EU, except that it is apparently not 'barbaric' or 'Muslim' or 'poor', categorisations that are attributed to the Other.

The security-obsessed politics of immigration is increasingly seen as a war, in the same vein as today's war on terror and drugs. As a result of the restrictive migration policy in the EU that can be characterised as a 'no entry' policy, new forms of crime have arisen, for example the trafficking that is organised by illegal trafficking networks.⁴ The ongoing measures for 'securing the borders' do not only have desired but also opposite effects: the more difficult it is to cross the border, the more migrants need support. Migration support becomes a service that is financially attractive to offer and one that is supplied at higher costs.⁵

Increasingly, largely because of higher security measures in border and immigration policies, immigration has become a severe humanitarian problem (Van Houtum and Pijpers 2007). At the European external borders we see humanitarian catastrophes everyday, and not only in the Mediterranean Sea, but also on the continent. Recent figures estimate that 6,000 refugees and migrants died while trying to reach the Canary Islands from West Africa in 2006: one out of six migrants that head for the islands.

To conclude, the argument that we have brought forward here is that immigrants and asylum seekers are most likely to become victims of process of politics of security and well-being of the EU. The EU is increasingly bordering and ordering a domain on the global map where at least the members enjoy freedom, security, and justice, but at increasingly higher humanitarian costs for the excluded others. They, the excluded Others, are thereby increasingly being made scapegoats in an attempt to foster social and economic integration in the EU, a process which is accompanied by a distinct process of 'othering'. The EU is taking a slippery and increasingly arbitrary route to define itself in this era of its development.

Notes

1. 'Hochrangige Gruppe'.
2. The cost of this 'pilot project' is ?1 million, 80 per cent of which is from the EU budget (FAZ 1.10.2004). In light of the EU's attempts to regionalise the refugee problem, the creation of functioning asylum system is of huge importance, since it would mean that the North African states would have their own asylum systems and in the logic of the 'safe third states' it will be increasingly difficult for refugees to find their way to Europe.
3. Cf. Frontex: www.frontex.europa.eu/origin_and_tasks/tasks/ (25.01.2007).
4. It is interesting to note that human illegal trafficking was regarded positively in the period before 1989 when people fled from socialist states, in particular the German Democratic Republic. Nowadays this practice is no longer applauded.
5. According to statistics from 1998, migrants and refugees paid the following rates (in US\$ and per person) for their passage: China-Europe (10,000-15,000), China-USA (30,000), Pakistan/India-USA (25,000), Bulgaria-Europe (4000), Turkey-Greece (1,400), Kurdish regions-Germany (3,000), North Africa-Spain (2,000-3,500) (Abou Chabaké 2000, p.140).

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Abstract

The EU expansion of 2004 to the East and Southeast has transferred the geographical coordinates of this security concept to the east, this concept is still valid. Migration and

asylum politics are essential to the security concept of the EU. Asylum and migration are seen and treated as *de facto* problems for the internal security. This focus has strengthened since the opening of the internal EU borders for capital, goods and persons. According to the 'Hague program' (2004), further measures have to be taken for the harmonisation in the field of interior- and justice affairs. Important goals are the 'regulation of migration movements' and the 'control of the external borders of the Union', next to a common asylum policy. Immigrants, asylum-seekers and individuals from poorer regions that wish to come to the EU, have become part of a construction of the 'Other' on behalf of creating a feeling of security and imagining an own identity. The European Union commences a restrictive common immigration and asylum-policy in order to exclude the 'Other', a process which goes to the heart of the EU integration process.