

Between the devil and the deep blue sea:

An inquiry into the European Union's border control operations in the Mediterranean Sea

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Executive summary

The research sought to assess the impact of Operations Triton, Poseidon and Sophia on migrants seeking asylum in the EU, in terms of the risks associated with their journey and the prospect of finding asylum in the EU. It focussed on the period between 1 January 2015 and 14 September 2016, in which the abovementioned operations were either initiated or significantly scaled up.

The findings were gathered through desk research, relying on data mainly from the UNHCR, the IOM, Eurostat, Europol, Frontex, the European Commission, Human Rights Watch and Amnesty International. A structured interview with a Frontex press officer was conducted to complement the desk research with detailed qualitative insights.

The research found that the abovementioned operations improved the chances of migrants being rescued at sea but also pressured or incentivised smugglers to:

- ✚ use less seaworthy vessels and cram more people onto them,
- ✚ reduce the amount of fuel and food on board,
- ✚ instruct migrants to operate the boats instead of doing so themselves,
- ✚ take alternative and possibly more dangerous routes,
- ✚ initiate multiple simultaneous departures and departures in bad weather conditions,
- ✚ charge higher fees, and
- ✚ threaten border guards at gun point.

All of this contributed to making the journey riskier *per se*, keeping the maritime death rate high in spite of more migrants being rescued, and increasing the prevalence of exploitation and abuse.

However, it also found that migrants that did risk the crossing and were intercepted at sea by Frontex operatives were sure to be disembarked in the EU, had better chances of being properly registered, and were granted access to the asylum procedure if they so wished. The expanded operations may thus have contributed to the notable increase in granted asylum applications in Greece and across the EU, improving the prospects of asylum-seekers, notwithstanding the increased risk of death, exploitation and abuse along the way.

In the concluding remarks, it was recommended that the EU find ways to continue granting access to the asylum procedure while preventing asylum-seekers from having to risk the crossing, and without exposing them to abuse and exploitation. This must include addressing the push and pull factors that actuate irregular migration flows to the EU, improving the humanitarian conditions in key transit countries, facilitating regular entry and stay, and bringing maritime border control operations within the remit of parliamentary scrutiny and judicial review at EU level.

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The wide world is all about you: you can fence yourselves in, but you cannot forever fence it out.

- J. R. R. Tolkien, *The Fellowship of the Ring*

What men, what monsters, what inhuman race,
What laws, what barb'rous customs of the place,
Shut up a desart shore to drowning men,
And drive us to the cruel seas again?

- Virgil, *Aeneid*, J. Dryden's translation

Introduction

There were over 65 million forcibly displaced persons globally by the end of 2015, including 16 million refugees. Not since the Second World War did so many people have to escape their homes in fear of violence or persecution. As one of the most prosper and secure regions in the world, Europe attracted large numbers of migrants and refugees in search of a better future: over 1 million of them reportedly entered the EU in 2015.

The unprecedented influx of migrants and refugees has left behind a trail of human casualties along the way. The number of migrants who have died or gone missing in the Mediterranean since the start of the so-called European migrant crisis is counted in the thousands, and violence, sexual abuse, and exploitation are common features of the journey to Europe.

In response to the humanitarian crisis unfolding in the Mediterranean region, the European Union developed new and expanded previous initiatives to enforce its borders, disrupt smuggling and trafficking networks, and save lives at sea, including Frontex Operations Poseidon and Triton, and EUNAVFOR Med Operation Sophia.

This research sought to assess the impact of these operations on migrants seeking asylum in the EU, in terms of the risks associated with their journey and the prospect of finding asylum in the EU. It focussed in particular on the period between 1 January 2015 and 14 September 2016, in which the abovementioned operations were either initiated or significantly scaled up.

The research thus addresses the following central research question:

How have Frontex Operation Poseidon, Frontex Operation Triton and EUNAVFOR Med Operation Sophia affected migrants seeking asylum in the EU in terms of the risks associated with their journey and their asylum prospects, between 1 January 2015 and 14 September 2016?

The research was split into two main parts. The first part consisted in an inquiry into the journey to the EU, examining the latest trends and exploring the risks inherent in the crossing of the Mediterranean. It considered the following subquestions:

- ✚ How many migrants and refugees arrived in Europe in the examined period?
- ✚ What were the major source countries and destination countries?
- ✚ What were the recognition rates for asylum claims across the EU?
- ✚ Which routes were most commonly used?
- ✚ How many migrants died or went missing in the Mediterranean?
- ✚ How did the respective fatality rates of the different routes compare?

- ✚ How many migrants resorted to the services of smugglers?
- ✚ What evolution was there in smuggling fees?
- ✚ How many migrants were trafficked or exploited?

The second part was a detailed analysis of the pertinent operations, looking at how these might have shaped the migratory dynamics in the Mediterranean region. As such, it deals with the following subquestions:

- ✚ What was the organisational background of the operations?
- ✚ What was their territorial scope?
- ✚ What were their objectives?
- ✚ With what means and in what ways were the objectives pursued?
- ✚ To what extent were the objectives achieved?
- ✚ How many more migrants gained access to the asylum procedure as a result?
- ✚ How were migrants treated by the operatives?
- ✚ How did smugglers and traffickers in the pertinent region respond to the operations?

The results set forth in the respective sections were subsequently juxtaposed to reach an illation attempting to answer the central research question conclusively. Before collecting the data and discussing the findings though, the most important literature relevant to the topic was reviewed, in order to outline a theoretic framework within which to conduct the research.

Literature review

Migration

Before all else, it might be helpful to explore what is meant by the term “migration”. The Oxford Dictionary defines “migration” as “Movement of people to a new area or country in order to find work or better living conditions” (“Migration”, 2016). While certainly a good place to start, this definition is as unnuanced as it is general.

Everett S. Lee (1966) defined migration broadly as “a permanent or semipermanent change of residence” regardless of place, distance, voluntariness, and purpose (p. 49). Lee does not specify what is meant by “permanent” or “semipermanent”. Moreover, he does not make the distinction between migration within a country (which is typically referred to as “internal mobility”) and migration between countries, which is the subject of this research. The latter type is typically called “international migration”.

Boswell & Geddes (2011) define an international migrant as someone living outside their country of origin either regularly or irregularly for a period of 12 months or more. From it follows a workable definition of international migration: the movement of persons across one or more national borders, resulting in expatriation for a period of over 12 months. It is opportune to note here that “migration” refers to both a phenomenon and a process (Brettell & Hollifield, 2015).

There are three types of countries concerned by the process of international migration:

1. The country of origin, from which the journey of an international migrant starts;
2. The destination country, to which the journey of an international migrant leads or is supposed to lead; and
3. The transit country, which refers to any country along the journey, between the country of origin and the destination country.

These concepts are relative and fluid, being contingent upon the development of the intentions of the migrant (Triandafyllidou & Maroukis, 2012). For example, a destination country can turn out to be just a transit country if the migrant decides to journey on after arrival. Conversely, a transit country can turn out to be the migrant’s destination country if journeying on is somehow no longer possible or desired.

International migration is actuated by the tension between dialectic push and pull factors (Lee, 1966). Push factors can be understood as conditions or occurrences in a country of origin which trigger in its residents the desire, need or possibility to emigrate therefrom. They include, among

others, poverty, drought, hunger, unemployment, war, natural disaster, undesirable or inhospitable climate, disease, exploitation, persecution, and violence.

Conversely, pull factors can be understood as conditions or occurrences in a destination country which trigger in non-residents the desire, need or possibility to immigrate thereto. Pull factors include, among others, peace, security, safety, stability, opportunity, asylum, desirable climate, prospective employment, welfare, and prosperity.

Irregular migration

Some forms of migration are said to be “irregular”. When conceptualising irregular migration, one invariably ends up speaking about states, countries, nations, and borders. As such, it might be useful to explore the significance of these terms first.

The state can be understood as an entity that claims exclusive entitlement to supreme authority within a particular territory and over a certain population (Garner, 2012; McGrew, 2014; Lawson, 2012; Dixon, 2013). A territory governed by a state is typically referred to as a country, whereas its population is referred to as a nation.

By defining the more or less permanent population from which it draws its legitimacy and outlining the territory it claims authority over, the state simultaneously defines the people and territory it does not derive legitimacy from or claim authority over. As such, the state is essentially an exclusionary construct. A state’s ability to define its national identity, preserve the social order and enforce its territorial integrity is central to its *raison d’être* and legitimacy, making migration management and border control sensitive policy fields (Buonanno & Nugent, 2013; Monar, 2011).

Contemporary states thus regulate and restrict international migration and develop border bureaucracies (Boswell & Geddes, 2011; Triandafyllidou & Maroukis, 2012; Mountz, 2010). Foreign nationals wishing to enter and reside in a certain country must fulfil a number of conditions before being authorised to do so and must adhere to a set of rules (Boswell & Geddes, 2011). This regulation of migration creates a dichotomy opposing a regular way of migrating to an irregular way of migrating. By defining what constitutes regular entry and residence, a state simultaneously defines what constitutes irregular entry and residence. The tougher the admissions policy, the wider the definition of irregular migration.

An irregular migrant, then, is a migrant who has crossed a border in contravention of the rules governing entry, or who has violated his conditions of stay. There are many ways for a migrant to have an irregular status. For example, a migrant can have an irregular status if they entered without a valid visa or travel document, if they overstayed their visa, if they failed to exit the country when

their residence permit expired or after their asylum claim was denied, if they worked without work permit or with an expired work permit, or if they worked in the informal sector (Boswell & Geddes, 2011).

Irregular migration is sometimes referred to as illegal migration, clandestine migration or undocumented migration. According to Boswell & Geddes (2011), Triandafyllidou & Maroukis (2012), Crépeau (2015), and De Haas (2008), framing irregular migration as illegal, clandestine or undocumented may be prejudicial as it implies wrongdoing. More often than not, they argue, irregular migrants are productive members of society who entered the country regularly, without resorting to the services of smugglers and in possession of all necessary documentation, but who, at some point in the migration process, have, without malevolence, fallen foul of a set of administrative rules governing their immigration status.

While the notion of illegal migration might indeed be misleading and contribute to giving irregular migrants a bad reputation, clandestine migration and undocumented migration are in fact not wholly inaccurate depictions of the irregular migration phenomenon in the European Union today. Indeed, according to Europol (2016a), around 90% of all entries into the EU in 2015 were facilitated by smugglers. Entry into the EU is therefore predominantly clandestine, and the majority of immigrants are presumably not in possession of all the necessary documentation for regular entry and stay.

Migrant smuggling and human trafficking

As mentioned above, the irregular entry of migrants is often facilitated by smugglers or traffickers. In the literature on irregular migration, the concepts of migrant smuggling and trafficking in human beings are entangled. Salt & Stein (1997) and Kyle & Koslowski (2011) do not draw a clear line between the two phenomena to which these terms refer, while Tamura (2007) argues that they are so closely related that it is difficult to speak of one without speaking of the other. According to Gallagher & David (2014), the international community also confused the two concepts when it first came together to address the issue of what was then referred to by some as the “trafficking of aliens” (p. 44). Triandafyllidou & Maroukis (2012) and Boswell & Geddes (2011), however, claim that it is important to make the distinction between the two, as they refer to two distinct phenomena with different motivations, dynamics and requiring different policy approaches. This was also the conclusion of the international community when it finally adopted the United Nations Convention against Transnational Organised Crime with separate Protocols for migrant smuggling and trafficking in human beings, which oblige states-party to respectively criminalise both offenses (Gallagher & David, 2014).

The authoritative definition of migrant smuggling is outlined in Article 3 of the Migrant Smuggling Protocol, according to which migrant smuggling is:

“procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000, Art. 3(a)).

As such, not all illegal transportation of people across a national border constitutes a smuggling offense; there must be an accumulation of illegal profits as a result of the transportation (Leman & Janssens, 2015). Aiding migrants to cross a border for humane reasons, for example, even if receiving some form of compensation, is not smuggling if no illegal profits are derived from it.

At sea, not only does the rescue of persons in distress and consequent disembarkation not fall under the above definition of smuggling, but several international treaties (including the 1982 United Nations Convention on the Law of the Sea, the 1974 International Convention for the Safety of Life at Sea, and the 1979 International Convention on Maritime Search and Rescue) explicitly oblige seafarers to render assistance to persons in distress (UNHCR, n.d.). However, Basaran (2014) argues that seafarers in the Mediterranean purposefully ignore calls of distress from migrants at sea to “avoid costly investigations, detention or possible prosecution” called for by increasingly securitized border control regimes in the EU (p. 367). A similar illation was made by François Crépeau, United Nations Special Rapporteur on the Human Rights of Migrants, in a 2013 report titled “Regional Study: Management of the External Borders of the European Union and its Impact on the Human Rights of Migrants”:

“Known difficulties in disembarking migrants, the high costs associated with such intervention, and the lack of cooperation by States with private entities seeking to provide such humanitarian assistance, as well as the potential repercussions for private individuals, has resulted in the reluctance of private vessels to take responsibility for boats in distress, thus compounding the risk of death at sea” (p. 12).

Leman & Janssens (2015) also emphasise that criminalisation under the Protocol definition does not cover the irregular entry of the smuggled migrant. In other words, resorting to the services of a smuggler to cross a border illegally is not a criminal offence. However, this does not preclude states from criminalising irregular entry *per se*.

Similarly, the authoritative definition of trafficking in human beings is outlined in Article 3 of the Human Trafficking Protocol. According to this article, trafficking in human beings is defined as the

“recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” whereby exploitation includes prostitution, forced labour, slavery, servitude or the removal of organs (Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000, Art. 3(a)).

As such, contrary to migrant smuggling, there needs not be a border crossing for an offense to constitute trafficking in human beings; a person can be trafficked within their own country (Aronowitz et al., 2010). As Leman & Janssens (2015) point out, however, most cases of trafficking in human beings involve one or more border crossings.

Migrant smuggling and trafficking in human beings differ not so much in the acts committed by the traffickers (i.e. transportation and accommodation), but in the means and purpose of these acts (Triandafyllidou & Maroukis, 2012). In order for the transportation and accommodation of an irregular migrant for profit to constitute human trafficking, there needs to be an element of coercion and exploitation (Gallagher & David, 2014). Without coercion and exploitation, it is ‘just’ migrant smuggling.

Victims of trafficking are coerced, pressured or deceived into associating with their traffickers, have no agency in their journey, and are exploited by their traffickers. While smuggled migrants are vulnerable and often exposed to inhumane or degrading treatment and otherwise distressing conditions, they are not properly speaking victims (Boswell & Geddes, 2011; Triandafyllidou & Maroukis, 2012). They enter into association with smugglers voluntarily, remain more or less in control of their journey, and in principle terminate relations with their smugglers once they have arrived at their destination.

However, according to Morrison (n.d.) it is not always helpful to see the smuggled migrant as complicit in the smuggling offense. He states:

“Migrants often face few choices when fleeing persecution or leaving socio-economic insecurity. [...] Little consideration is given to the fact that many migrants enter into [association with smugglers] to defend their own human rights and in the absence of any legal alternatives” (p. 3).

While the distinction between smuggling and trafficking is important, it remains difficult to completely untangle them. Triandafyllidou & Maroukis (2012) found that smuggled migrants often find themselves having to work temporarily for their smugglers to help finance their journey. In such cases, migrant smuggling can easily degenerate into trafficking in human beings if the

vulnerable migrant is exploited (Cameron & Newman, 2008; Kyle & Koslowski, 2011; Quayson & Arhin, 2012).

That said, Leman & Janssens (2015) found a confluence of trafficking in human beings and migrant smuggling in only 10 of the 134 Belgian prosecution cases relating to either or both offenses. As such, most cases either related strictly to trafficking in human beings or strictly to migrant smuggling. The authors also found that the entrepreneurs involved in trafficking are different from those involved in smuggling, and both are different still from those involved in a mixture of trafficking and smuggling.

Triandafyllidou & Maroukis (2012), Boswell & Geddes (2011) and De Haas (2008) found that trafficking networks are generally more organised, more ruthless and more profitable than smuggling networks, the latter being loosely connected, polycentric networks composed of mostly independent local agents. Triandafyllidou & Maroukis (2012) also found that more organised smugglers are usually crueller and less trustworthy. According to Tamura (2007), policies that reduce the number of active smugglers in a given region inevitably lead to increased chances of abuse and exploitation by pushing 'simple' smugglers out of business.

Heckmann (2007) notes how law enforcement authorities and migrant smuggling networks are in a constant dynamic of action-reaction. Indeed, migrant smuggling networks are highly creative and adaptable, perpetually coming up with new routes and developing new modus operandi in response not only to the efforts of law enforcement but also to changing migration patterns (Triandafyllidou & Maroukis, 2012).

According to Morrison & Crosland (2000), De Haas (2008), and Castles (2004a; 2004b), the shoring up of border enforcement in the EU and the crack down on migrant smuggling and trafficking has failed to curb irregular migration and instead has led to the sophistication and professionalisation of smuggling and trafficking operations. Spijkerboer (2007) adds that the number of fatalities has increased as a result of tougher border control, as it forces migrants and their smugglers to take more risks to circumvent border patrols. Triandafyllidou & Maroukis (2012) concur, finding that the tougher a road is to 'open' for a smuggler, the riskier the journey, the higher the smuggling fee, and the more ruthless the smuggling practices.

Triandafyllidou & Maroukis (2012), Spijkerboer (2007), Castles (2004a; 2004b), Morrison & Crosland (2000), De Haas (2008) and Tamura (2007) thus all concur that stricter border control and tougher crack down on migrant smuggling networks does not discourage irregular migration but leads to migrants incurring greater costs, assuming greater risks, and exposing themselves to more

abuse in their attempts to enter. According to Triandafyllidou & Maroukis (2012), migrants are very unlikely to return home once they have started their journey. For forced migrants (the concept of which will be discussed in the next section), returning home is impossible for all intents and purposes, whereas economic migrants usually experience tremendous pressure from their family or community to emigrate to Europe, and have often sold all their property or put themselves into debt to finance their journey. Hopkins (2005) further qualifies the potency of this finding, as her research indicates that trafficked women will continue to “cooperate” with traffickers if it makes them more money than they could make in their home country.

Efforts to dismantle smuggling networks and curb irregular migration are thus bound to fail if they are not complemented by policies to deal with the push and pull factors driving the wider migration phenomenon, including the considerable demand for cheap labour in the destination countries and the lack of opportunity in the countries of origin (Sandell, 2005; De Haas, 2008; Castles, 2004a).

Migrants in need of international protection

Certain migrants are forced to flee their country of origin because their home state is no longer willing or able to offer them protection and allow them to fully exercise their rights. These forced migrants are suitably called refugees, as their journey is centred around seeking refuge abroad. The international community recognises a moral and legal obligation of states to grant refugees protection when their own state does not - an obligation codified in the 1951 Convention Relating to the Status of Refugees. This protection is referred to as asylum.

Refugeehood

The granting of asylum to a migrant is contingent upon the recognition of the migrant as a refugee, the definitional criteria for which are found in Art. 1 of the abovementioned Refugee Convention. According to this article, a refugee is:

“any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Convention Relating to the Status of Refugees, 1951, Art.1 (A)(2)).

The definition specifies the link between migration and *refugeehood*, as a person must be outside their home country to qualify as a refugee. Persons who flee violence or persecution without

effectuating a border crossing are referred to as internally displaced persons (IDPs). Refugees and IDPs collectively are referred to as forcibly displaced persons.

According to Oudejans (2011), the Convention definition is quite narrow, as victims of general or indiscriminate violence or catastrophe are not obvious candidates for *refugeehood*. In the EU, certain persons who are not obvious candidates for refugee status under the Convention can still find international protection under a regime of so-called subsidiary protection. Any person who has fled their home country and for whom returning is not an option for fear of serious harm, and who does not qualify for refugee status, is entitled to subsidiary protection. While more people qualify for protection under the subsidiary protection regime than the Convention, Battjes (2007) posits that subsidiary protection is less extensive than asylum. This leads some academics to conclude that subsidiary protection forms a threat to asylum insofar as it might be applied to Convention refugees (Fitzpatrick, 2000; Goodwin-Gill & McAdams, 2007). In other words, there is some concern that diluted and temporary forms of protection are poised not to complement but to replace asylum.

The term refugee is closely linked to the term asylum-seeker, and they are often wrongly used interchangeably. An asylum-seeker is a migrant who seeks to have his refugee status evaluated in order to receive asylum (UNHCR, 2016a). An asylum-seeker is thus not necessarily a refugee. If it is found that an asylum-seeker falls under the Convention definition of refugee, the Convention places an obligation on states-party to grant that migrant asylum.

The Convention contains a number of exclusion clauses under Art.1(f), allowing states to bar certain persons from accessing the asylum procedure. Persons who have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or acts contrary to the purposes and principles of the United Nations can be excluded from the procedure this way. According to the UNHCR Standing Committee (1997), serious non-political crimes include rape, homicide, armed robbery, and arson, whereas the clause on the purposes and principles of the UN “reflects the notion that persecutors themselves should not be protected as refugees” (para. 20).

The UNCHR Standing Committee (1997) also noted that these clauses could be misused by states to exclude deserving cases, and posited that in situations of mass influx of refugees, when it becomes impossible to individually assess all cases, preserving life and ensuring assistance takes precedence over concerns of persons undeserving of asylum lodging applications. The Committee specifies that “[r]efugee status may be withdrawn if facts justifying an individual's exclusion subsequently come to light” (para. 22).

Asylum

What exactly asylum is or should be is subject to debate, but at a minimum it is international protection from persecution. The central notion of asylum is *non-refoulement*, or the obligation of the host state not to repatriate the refugee or otherwise expose them to the persecution they are seeking refuge from. As such, *non-refoulement* includes a prohibition on expulsion to a third country in which the asylum-seeker's life or well-being are at risk, or where their rights are likely to be violated. The Convention also prohibits the penalisation of irregular entry of an asylum-seeker, as refugees cannot be expected to satisfy immigration formalities before fleeing to safety (Hathaway, 2005). The prohibition on repatriation, expulsion and penalisation of irregular entry are codified in Arts. 31, 32 and 33 of the Convention.

Asylum is more than just *non-refoulement* and the Convention grants refugees a set of rights approximately equivalent to the rights granted to the host state's own nationals, including, for example, the right to freedom of religion, the right to work, the right to education, and free access to the courts of law (Arts. 4, 16, 17, 18, 19, 22). Insofar as the host state offers refugees the protection that their home state could or would not, and grants them rights that are equivalent to those it grants to its own nationals, it takes on the social-contractual role of the migrant's home state, leading some academics to assert asylum is an approximation of citizenship (Boswell & Geddes, 2011).

The equation of asylum to citizenship aligns well with Oudejans' (2011) conception of asylum. According to her, the refugee is in essence someone who has lost their home for all intents and purposes, making them *de facto* stateless. It follows, she argues, that asylum then becomes a question of giving refugees the right to claim a new home state. In essence, asylum is an arrangement which allows people who have lost their place in the world to carve out a new place for themselves and their families. It is as much about protection as it is about the *place* of protection.

Oudejans (2011) notes that this stands in stark contrast with how asylum is typically viewed. She argues that refugees are invariably seen as persons who belong somewhere else, who can therefore not claim entitlement in the host state, and should instead be helped in the region of the country of persecution. Harell-Bond (2002) adds that refugee protection is viewed as an act of charity rather than a moral and legal obligation. This conception of asylum is reflected in public policy also, as, according to Hathaway (2005), states only really pay heed to the principle of *non-refoulement* but are reticent to grant refugees the full set of rights they are entitled to because they are unwilling to see refugees as permanent residents.

Oudejans (2011) argues that, while asylum ought to include the refugee in the national fabric and create a renewed sense of belonging, more often than not refugees are prevented from returning to normality and often find themselves suspended in between places, belonging neither “here” nor “there”. This state of suspension is exemplified by the refugee camp, which allows states to host and assist refugees while keeping them segregated and preventing them from settling.

Suspicion of abuse

According to Noll (1999), asylum policy and immigration policy meet when a negative decision on an asylum-seeker’s claim is reached. Whereas an asylum-seeker is not to be considered an irregular migrant regardless of the regularity of their entry, once their asylum claim is rejected they lose that privilege and return proceedings can be initiated. Rejected asylum applicants can be returned either to their country of origin or to a safe third country. Noll emphasises that if the return policy is ineffective, the asylum system is bound to be dysfunctional as well, as migrants would make bogus asylum claims to circumvent border control and migration management policies and then never be returned after their claim was found without grounds.

Since states have persistently found it difficult to enforce returns, the concern of abuse is shifted to the start –not end– of the procedure, with measures being adopted to prevent the illegal entry of asylum-seekers and externalise asylum procedures (Boswell & Geddes, 2011, Mitsilegas, 2015, Oudejans, 2011). This approach is viewed by many academics as an affront to the rights of refugees and the principle of *non-refoulement*. According to Moreno Lax (2008), the prohibition on expulsion formulated in the Refugee Convention extends to rejection at the borders, the latter being equivalent to expulsion. Similarly, Borelli & Stanford (2014) argue that push-back operations at sea, whereby migrant vessels are diverted back to the country from which they departed, raise serious issues from the perspective of international human rights and refugee law. Gammeltoft-Hansen & Gammeltoft-Hansen (2008) and Noll et al. (2002) add that lodging an asylum claim needs to take place on the territory of the asylum state, as it provides immediate physical security, and enhances legal protection of the asylum-seeker in terms of the right to due process, the right to appeal, and the right to meaningful legal assistance.

The suspicion of abuse that underpins asylum policy leads Brochmann & Hammar (1999) and Kostakopoulou & Thomas (2004) to conclude that asylum policy is, in practice, not about human rights, but has instead fallen under the remit of immigration control, as it is incriminated for irregular migration. Morrison & Crosland (2000) go a step further and posit that the EU’s overzealous attempts to curb irregular migration is an existential risk to the right to asylum in Europe.

Trends in migration and asylum policy in the EU

Securitisation and criminalisation

Migration policy is increasingly underpinned with a security logic (Boswel & Geddes, 2011). In public discourse, emphasis is put on the concern that lax borders will inevitably lead to an influx of criminals and terrorists, in response to which states consolidate their mandate in immigration matters, affirm their sovereignty, and implement draconian measures of control to the detriment of migrants (Triandafyllidou & Maroukis, 2012; Mitsilegas, 2015; Mitsilegas, 2007; 2011; Bigo, 2001; Huysmans, 2006; Tirman, 2004; Givens et al., 2008, Crépeau, 2015). Carling & Hernández-Carretero (2011) provide some nuance to this view, arguing that certainly some consideration is given to the rights of migrants in developing migration policies, but, more often than not, they are outweighed or diluted by security concerns.

Within the securitisation framework, migrants are considered *mala fide a priori* and thus states increasingly resort to criminal law in migration management, using criminal law tools (i.e. surveillance and detention) as well as substantive criminal law (i.e. criminalising certain migration-related offences, such as irregular entry) to get a grip on migratory inflows and prevent undesirable entries (Mitsilegas, 2015; Morrison & Crosland, 2000). Conversely, states apply migration-related penalties (i.e. expulsion) to castigate migrants who have committed a criminal offence (Legomsky, 2007). As such, there is a convergence of migration policy and criminal law, leading some authors to speak of a phenomenon of *crimmigration* (Stumpf, 2006).

Large quantities of intelligence on the migration phenomenon and personal data of migrants are collected, compiled and shared, including sensitive personal data such as biometrics, and migrants are frequently detained, either during the asylum process or to enforce a return order (Triandafyllidou & Maroukis, 2012; Mitsilegas, 2015; Broeders, 2007; Oudejans, 2011). While the restriction on their liberty is of a different nature than the restriction on the liberty of criminals, and their place and conditions of detention ought to reflect that difference, migrants are often detained in penal institutions together with EU criminals and under deplorable conditions (Van Kalmthout, 2006; 2007; Amnesty International, 2016a; Human Rights Watch, 2016).

Criminal law in certain Member States prescribes custodial sentences for migrants who have entered the country in contravention of the rules governing entry, epitomising the criminalisation of migrants by effectively defining irregular migrants as criminals (Mitsilegas, 2015).

Externalisation

The EU and its Member States have externalised migration management to the extent where it has become a strategic priority in the EU's external relations (Triandafyllidou & Maroukis, 2012). Indeed, cooperation with third states has become central to successful migration management in the EU.

Agreements are made with key transit countries and countries of origin, committing them to provide migration management support to the EU and its Member States in exchange for economic assistance or other benefits, including the relaxation of visa requirements for their nationals.

Mainly five aspects to the externalisation and cooperation with third states in the field of migration management have been identified (Balzacq, 2008; Boswell, 2003; Boswell & Geddes, 2011; Carling & Hernández-Carretero, 2011; De Haas, 2008; Trauner & Kruse, 2008; Triandafyllidou & Maroukis, 2012; Mitsilegas, 2015). Firstly, the EU and its Member States conduct border controls extraterritorially, either on the high seas or in the territory of third states, in coordination or conducted jointly with the latter's border authorities. Secondly, the capacity of third states to host refugees and manage migration flows is developed. Thirdly, third states are required to cooperate on the readmission of their own nationals and sometimes of other third country nationals. Fourthly, the push factors in countries of origin are reduced through trade and development aid. Fifthly, refugee relocation schemes are developed.

According to Mitsilegas (2015), Oudejans (2011), Triandafyllidou & Maroukis (2012), Moreno Lax (2008), Gammeltoft-Hansen & Gammeltoft-Hansen (2008), and Noll et al. (2002), externalising migration and asylum policy leaves gaps in the rule of law and undermines the human rights of migrants, and notably the right to seek asylum and the right not to be exposed to inhuman or degrading treatment.

Policy failure

A recurring theme in the literature on migration policy is the notion of policy failure. According to this notion, states have repeatedly demonstrated their inability to achieve their stated migration policy objectives (Boswell & Geddes, 2011). Real immigration levels persistently exceed target levels, temporary worker programmes frequently result in overstay or permanent settlement, policies to curb smuggling and trafficking have inadvertently led to more irregular migration, borders remain porous, and states are unable to enforce return orders (Cornelius et al., 1994; Brettell & Hollifield, 2015; Castles, 2004a; Castles, 2004b; Ruhs, 2002; Martin, 2003; Bhagwati, 1998; Boswell & Geddes, 2011; Triandafyllidou & Maroukis, 2012).

Boswell and Geddes (2011) find the notion of policy failure unhelpful as it does not account for the complex dynamics of the policy process and the various interests and intentions of all policy actors. They argue that the attainment or not of a stated objective of a policy is not the sole determinant for its success or failure. For example, a head of government may take a tough stance on irregular migration in public discourse to please their constituents, but tolerate irregular migration in practice to achieve a compromise with a particular party in the coalition government, or to assuage the concerns of a certain sector of the economy that is experiencing labour shortages. In such a case, unmitigated allegations of policy failure conceal the actual forces at play.

According to Hollifield (1992) and Guiraudon (2000), the executive generally has a restrictive and *securitarian* approach to migration, whereas the judiciary generally places limits on the executive's draconian policies and safeguards the rights of migrants. Boswell & Geddes (2011) would argue that looking at the interplay between these and other stakeholders in the policy process is key to understanding migration policy and its effectiveness.

Methodology

The first part of the research consisted in an inquiry into the journey to the EU, examining the latest trends and exploring the risks inherent in the crossing of the Mediterranean. The pertinent data were retrieved through desk research, notably using the UNHCR's resources on refugee flows, the IOM's detailed records on dead and missing migrants in the Mediterranean, EU-wide asylum statistics compiled by Eurostat, and intelligence on migrant smuggling and human trafficking collected by Europol and Frontex. Frontex' annual and quarterly risk analysis reports and the IOM's flow monitoring surveys were particularly insightful.

There are important limitations to the data collected as per above. Indeed, differing definitions and methodologies across institutions complicate the aggregation and comparison of data on migration. Furthermore, data on irregular migration and deaths at sea are estimates since they are unregistered events. Finally, considering the seasonality of migration, analyses over time are only strictly valid when comparing data for equivalent periods. All limitations considered, significant claims could be made about the findings nonetheless.

The second part of the research was an analysis of the EU's maritime operations in the Mediterranean, relying on official EU sources, including Frontex and European Commission documents, in dialogue with reports published by reputable non-governmental organisations which keep close tabs on the developments of the crisis in the Mediterranean, such as Human Rights Watch and Amnesty International.

To complement the desk research with detailed qualitative insights into the workings and achievements of Operation Poseidon and Triton, a structured formal interview with a Frontex press officer was conducted. Similarly, EUNAVFOR Med representatives were invited to participate in the research as well, but declined. For security reasons, access to the most incisive and pertinent information relating to the EU's operations in the Mediterranean is restricted. In the absence of a detail-rich interview, EUNAVFOR Med's six-monthly report provided some useful observations. Notwithstanding its lacunarity, the data available on Operation Sophia was sufficient for a tentative evaluation of the effects of the operation.

Findings

Irregular migration and refugee flows to the EU

The European migrant crisis

According to the Office of the United Nations High Commissioner for Refugees (UNHCR, 2016b), there were over 65 million forcibly displaced persons globally by the end of 2015, over 16 million of which were refugees under the UNHCR's mandate. Of these forcibly displaced persons, an estimated 12.4 million people were newly displaced in 2015, with around 1.8 million newly displaced refugees. Not since the Second World War have so many people had to escape their homes in fear of violence or persecution.

More than half of the world's refugees come from just three countries: Syria (4.9 million), Afghanistan (2.7 million), and Somalia (1.1 million) (UNHCR, 2016b). Other major source countries include South Sudan, Sudan, the Democratic Republic of Congo, Central African Republic, Myanmar, Eritrea, and Colombia.

The vast majority of refugees (an estimated 86%) are hosted in developing regions, mostly in countries neighbouring the source countries (UNHCR, 2016b). Major refugee-hosting countries in 2015 were Turkey (2.5 million), Pakistan (1.6 million), Lebanon (1.1 million) and Iran (1 million), followed by Ethiopia, Jordan, Kenya, Uganda, the Democratic Republic of Congo, and Chad. Lebanon hosted by far the most refugees in relation to its population, with around 183 refugees per 1000 inhabitants.

As one of the most prosper and secure regions in the world, Europe also attracted large numbers of refugees and migrants in search of a better future. The historically high number of forcibly displaced persons globally was reflected in the number of new arrivals and asylum applications in the European Union.

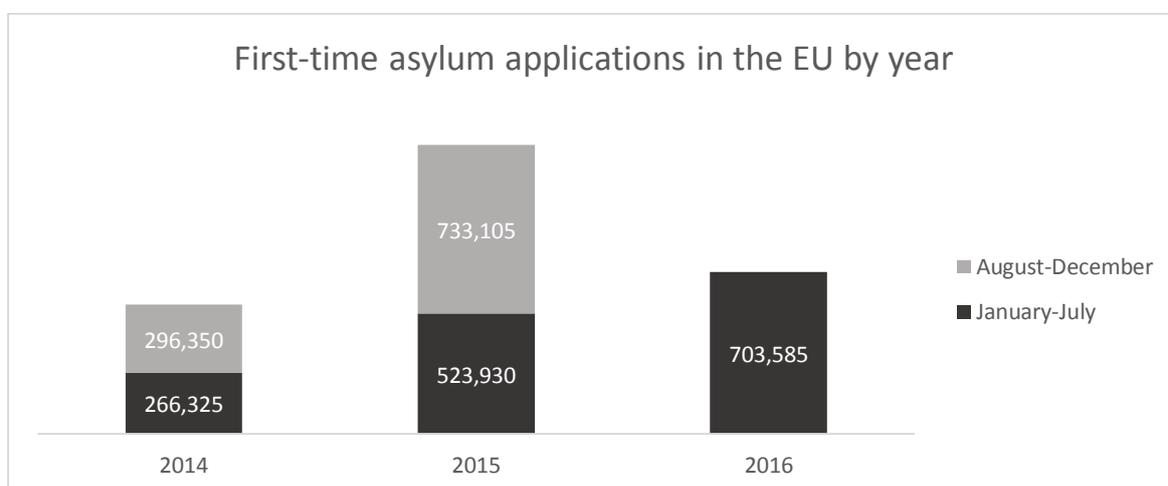
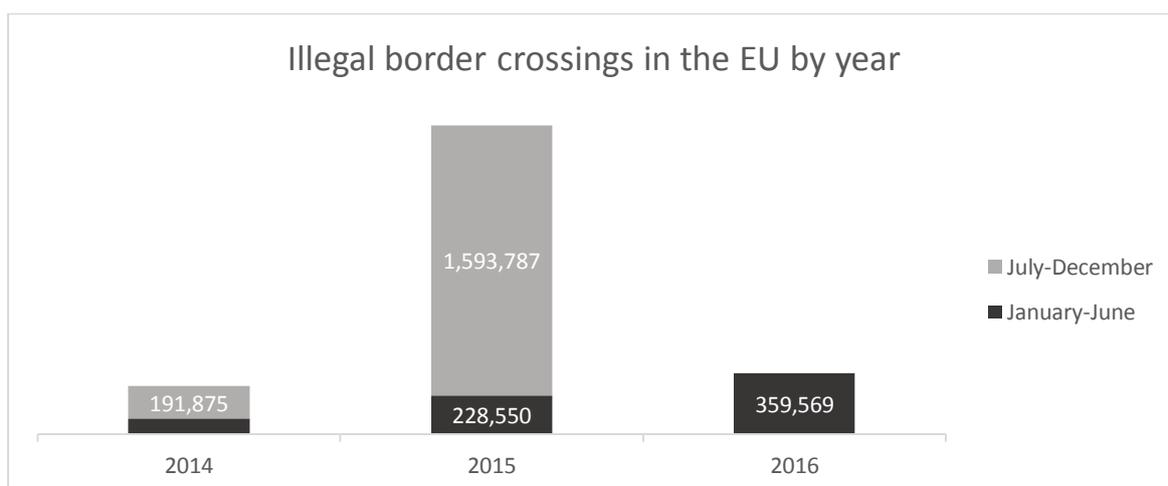
According to Frontex (2016a), over 1 million irregular migrants arrived in the EU in 2015, effectuating over 1.8 million reported illegal border crossings into the EU (more than 6 times as many as in 2014, itself a record-setting year). There were 360,000 reported illegal border crossings into the EU in the first half of 2016, up from 229,000 in the first half of 2015 (Frontex, 2016b). After entry, many irregular migrants go on to lodge an asylum application in an EU Member State.

Eurostat (2016a) estimates there were around 1.26 million first-time asylum applicants in the EU in 2015, more than double the amount of 2014 (563,000). There were a reported 704,000 first-time asylum-applicants in the EU in the first seven months of 2016, up from 524,000 in the first seven

months of 2015 (Eurostat, 2016b). As the data indicates, the number of irregular migrants entering the EU and the number of unique asylum applications in the EU have steeply increased over the past three years.

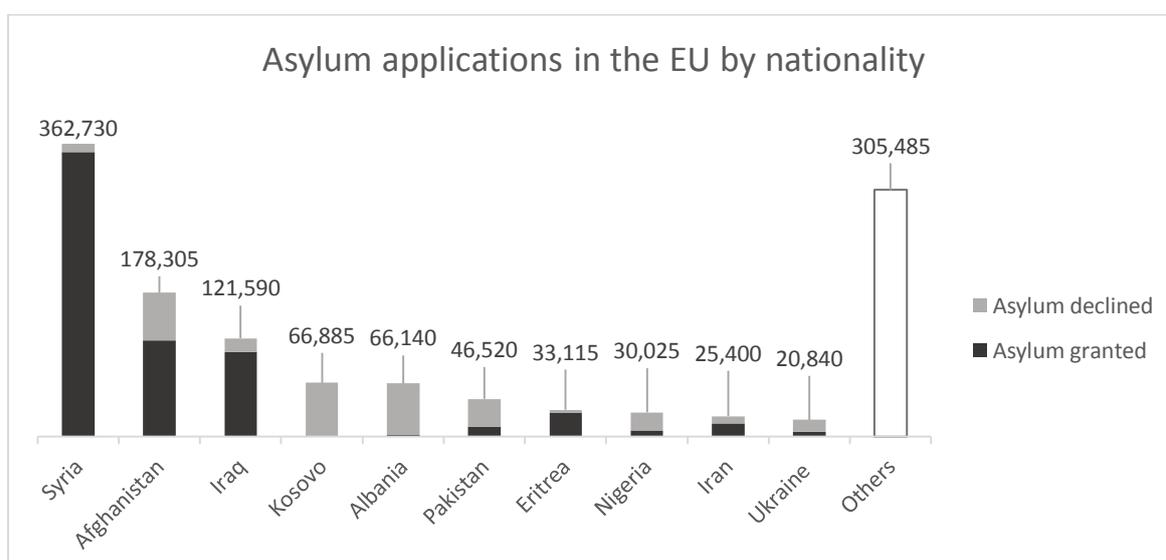
Almost all irregular entries in the EU in 2015 occurred at the Mediterranean maritime border, with the two most prominent countries of first entry being Greece (885,000 entries) and Italy (154,000 entries) (Frontex, 2016a). The International Organization for Migration (IOM, 2016a) reported 165,000 entries in Greece and 129,000 in Italy in the first 9 months of 2016.

In the face of such unprecedented migratory pressures, Greece’s infrastructure was stretched to and beyond its limits, and the conditions of reception in asylum centres on the Greek islands rapidly deteriorated as migrants kept coming in (Amnesty International, 2016a; Human Rights Watch, 2016). The vast majority of migrants arriving in Greece effectuated secondary movements from Greece through the Western Balkan route to their destination countries in Northern and Western Europe (Frontex, 2016a). As the migratory pressure pervaded the EU, many Schengen states reintroduced internal border controls.



Trends and routes

The most common countries of origin of first-time asylum applicants in the EU in 2015 were Syria (363,000), Afghanistan (178,000), Iraq (122,000), Kosovo (67,000), and Albania (66,000), followed by Pakistan, Eritrea, Nigeria, Iran, and Ukraine (Eurostat, 2016a). The number of Iraqi asylum applicants was over eightfold that of the previous year (15,000 in 2014), an increase presumably caused by the proclamation of the worldwide caliphate by the Islamic State of Iraq and the Levant and the horrific violence perpetrated by its members in the northwest of Iraq. Likewise, Syria, Afghanistan, Iran, and Eritrea are all the setting of armed conflicts, ethnic and sectarian violence, systematic human rights violations or discriminatory persecution. As such, recognition rates across the EU for Iraqis (86%), Syrians (97%), Afghans (67%), Iranians (65%), and Eritreans (90%) are relatively high (Eurostat, 2016c). Considering the relative safety of their countries of origin despite a quite recent history of conflict, Kosovars and Albanians migrate for economic reasons in most cases. The recognition rate of applicants from either Balkan country is consequently extremely low: 2% for Kosovars and 3% for Albanians. Flows from Pakistan, Nigeria and Ukraine are more mixed, composed of some genuine refugees but mostly economic migrants, with recognition rates at 27% for Pakistanis, 25% for Nigerians and 30% for Ukrainians.



The EU-wide average recognition rate of asylum claims on first instance was 52% in 2015, up from 45% in 2014 (Eurostat, 2016c; Eurostat, 2015). Latvia (13%), Hungary (15%), and Poland (18%) had the lowest recognition rates in 2015, whereas Bulgaria (91%), Malta (84%), and Denmark (81%) had the highest. The recognition rate in Greece shot up from 15% in 2014 to 42% in 2015, or 20 percentage points over the EU-wide average increase. The recognition rate in Italy decreased from 59% to 42%.

The five countries who received the most first-time asylum applicants in the EU in 2015 were Germany (442,000), Hungary (174,000), Sweden (156,000), Austria (86,000) and Italy (83,000) (Eurostat, 2016a). Germany and Sweden are preferred destination countries for asylum-seekers because of the high acceptance rates, generous entitlements, and better (perceived) employment opportunities (UNHCR, 2015). Hungary and Italy receive such high numbers of asylum applications because they are typically the country of first entry into the Schengen block (excluding non-contiguous Schengen states, such as Malta and Greece) for many irregular migrants, who lodge formal asylum applications to circumvent standard border control procedures and facilitate unobstructed onward travel to their destination country. Austria witnessed a particularly stark increase in first-time applicants (up from 28,000 in 2014), due in part because of the reintroduction of border controls in Germany (Frontex, 2016a).

Irregular migrants entering the EU typically pass through the Eastern Mediterranean route from Turkey to Greece, or through the Central Mediterranean route from Libya to Italy (Frontex, 2016a). These two routes are the most common avenues for irregular entry into the EU.

Migratory flows along the Eastern Mediterranean route most commonly originate in the Middle-East and South Asia. The three most common nationalities of migrants travelling along this route in 2015 were Syrian, Afghan, and Iraqi (Frontex, 2016a). The number of illegal border crossings into the EU along the Eastern Mediterranean route increased enormously, from 51,000 in 2014 to 885,000 in 2015; that corresponds to an increase of 1642%. Correspondingly, this turned Greece in the primary locus of the migrant crisis. The numbers for the first 6 months of 2016 remain abnormally high but the trend is downwards (Frontex, 2016b).

The situation on the Central Mediterranean route is quite different. The number of illegal border crossing into the EU on this route actually decreased slightly, from 171,000 in 2014 to 154,000 in 2015 (Frontex, 2016a). Frontex explains that this is due in part because less Syrians decided to use this route, and instead took the Eastern Mediterranean route. The trend in the first half of 2016 is slightly upward (Frontex, 2016b). Migrants taking the Central Mediterranean route are mostly from Sub-Saharan Africa, with the three most represented countries of origin in 2015 being Eritrea, Nigeria, and Somalia.

The risks of crossing the Mediterranean

The journey across the Mediterranean is potentially fatal. The IOM (2016b) reports that 3,279 migrants died or went missing at sea in the Mediterranean in 2014. That number increased to 3,777 in 2015, and reached 3,548 after the first 9 months of 2016. That said, all routes are not equally fatal.

In 2014, 3,186 migrants died or went missing along the Central Mediterranean route, compared to just 34 on the Eastern Mediterranean route (IOM, 2016b). Adjusting for the rate at which both routes are used (Frontex, 2015a), that corresponds to 1.87% of all migrants using the Central Mediterranean route, and 0.07% of all migrants using the Eastern Mediterranean route. The corresponding fatality rates for 2015 are almost identical, at 1.86% and 0.09%, respectively.

In the first 9 months of 2016, respectively 3,073 and 413 migrants died or went missing along the Central Mediterranean and Eastern Mediterranean routes (IOM, 2016b). Proportionally, that corresponds to 1.86% and 0.32% of migrants. In comparison to the fatality rates for the corresponding periods of 2014 and 2015 (Frontex, 2014a; 2014b; 2014c; 2015b; 2015c; 2015d), that tallies to a decrease of 0.29 percentage points on the Central Mediterranean route, and an increase of 0.26 percentage points on the Eastern Mediterranean route. As such, the fatality rates have been remarkably stable between 2014 and 2016, with the Central Mediterranean route consistently and significantly more fatal than the Eastern Mediterranean route.

Period	Route	Migrant journeys	Migrant casualties	Death rate
Q1-3 2014	Eastern Mediterranean	35,301	21	0.06%
	Central Mediterranean	139,066	2996	2.15%
Q1-3 2015	Eastern Mediterranean	401,364	280	0.07%
	Central Mediterranean	132,176	2697	2.04%
Q1-3 2016	Eastern Mediterranean	129,126	413	0.32%
	Central Mediterranean	165,409	3073	1.86%

An important factor in the relative unsafety of any given journey across the Mediterranean is the smuggling operation which organises it. The unprecedented number of migrants seeking refuge in the EU combined with the lack of possibilities for legal entry have resulted in the flourishing of the smuggling industry throughout Africa, the Middle-East, and South Asia, and in the Mediterranean region. Europol (2016a) reports that 90% of all irregular migrants in the EU in 2015 made use of the services of a smuggler at some point along their journey, whereas the proceeds of migrant smuggling activities are estimated to have reached between 3 and 6 billion EUR in that same year.

In its *2016 Risk Analysis* report, Frontex (2016a) reports that “detections of facilitators rose from 10,234 in 2014 to 12,023 in 2015” (p. 30). The report also expounds how smugglers are becoming more and more aggressive in their pursuit of profit. They force migrants onto overcrowded boats with limited supplies of fuel and food to cut costs, and threaten border guards with fire arms to recover vessels used for their operations. In their *Migrants in the Mediterranean* report,

commissioned by the European Parliament, Cogolati, Verlinden & Schmitt (2015) add to Frontex' findings that, to avoid being apprehended, smugglers rarely conduct the journey across the Mediterranean personally, and instead require that migrants operate the boats themselves. The authors found that this often leads migrants to get lost at sea, run out of fuel, or experience engine problems. Both the Frontex report and the European Parliament report indicate that smuggling operations are inherently dangerous for migrants, and have become significantly more dangerous recently.

The *2016 Risk Analysis* report also notes that there is a heightened risk of human trafficking "in connection with payments demanded from the migrants by their facilitators" (Frontex, 2016a, p. 30). According to Europol (2016b), smuggling fees tripled between 2015 and 2016, and the proportion of migrants who were forced to work to pay their smugglers rose from 0.2% to 5%. Additionally, Europol (2016a) expects smaller smuggling networks to be gradually taken over by larger criminal networks, and forced criminality and labour exploitation to increase accordingly.

In the *Human Trafficking and Other Exploitative Practices Prevalence Indication Survey*, the IOM further demonstrated that exploitative practices are prevalent in the Mediterranean region. For the purposes of the survey, 4,392 migrants were interviewed in the former Yugoslav Republic of Macedonia, Greece, Hungary, Serbia and Italy between May and September 2016 (IOM, 2016c).

72% of the survey's respondents that had travelled through the Central Mediterranean route answered "yes" to "at least one of the trafficking and other exploitative practices indicators included in the survey based on their own direct experience" (IOM, 2016c, p. 3). The most commonly reported direct experiences of exploitative practices were of migrants being held against their will (51%), migrants who had worked without receiving the expected remuneration (47%), and migrants who were forced to work (47%). Some 4% of respondents reported to know of or to have experienced offers of cash in exchange for blood, organs or body parts.

On the Eastern Mediterranean route, 13% of respondents reported to have directly experienced at least one of the indicated exploitative practices, whereby 8% had been held against their will, 4% had worked without receiving the expected remuneration, and 1% had been forced to work (IOM, 2016c). 1% reported to know of or to have experienced offers of cash in exchange for blood, organs or body parts.

In a precursor survey conducted by the IOM between December 2015 and March 2016, in which 2,385 migrants on the Eastern Mediterranean route were interviewed, only 7.2% of respondents reported to have directly experienced at least one of the exploitative practices (IOM, 2016d).

Insofar as the precursor survey and official survey are reliably *intercomparable*, they point to a considerable increase in reported experiences of trafficking along the Eastern Mediterranean route. It should be underscored, though, that the incongruent temporal frames of the two surveys make it difficult to make any significant claims about this increase. Indeed, it might simply point to a seasonal difference in the prevalence of exploitative practices. Additionally, no such precursor survey was conducted on the Central Mediterranean route.

In any case, the *Human Trafficking and Other Exploitative Practices Prevalence Indication Survey* evidences that exploitative practices are quite common experiences for migrants journeying to the EU. It also shows that migrants who take the Central Mediterranean route are reportedly five times more likely to be exploited than migrants who enter the EU through the Eastern Mediterranean route. As such, taking the Central Mediterranean route has been shown to be significantly riskier, both in terms of deadly incidents and in terms of exploitative practices.

EU operations in the Mediterranean Sea

Frontex and the human rights of migrants

Frontex is the short name for the *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, and was established by Council Regulation (EC) 2007/2004 (Frontex, 2016c).

Frontex' mission is "to promote, coordinate and develop European border management in line with the EU fundamental rights charter" (Frontex, 2016d, para. 1). Its tasks include monitoring irregular migration, creating and managing asset pools to support border management, providing technical assistance to Member States and third countries, coordinating joint return actions, and –most relevantly to this research– organising and coordinating joint border control operations.

Properly speaking, Frontex is not a border control agency on par with national border control agencies; it merely serves as a venue or platform for cooperation and coordination between the latter. In light of that, Frontex operations do not replace national border control operations nor does Frontex exert supranational control over the operations conducted under its auspices (European Commission, n.d.). Instead, control over the operations that are set up within the Frontex framework is assumed by an International Coordination Centre (ICC), headed by the border guard authorities of the host country and including representatives of the border guard authorities of participating Member States and a Frontex Coordination Officer. As such, the structure of operational control is quite complex and ambiguous.

According to Mitsilegas (2015), this complexity and ambiguity raises jurisdictional questions and serious concerns of accountability and gaps in the rule of law, exposing migrants that come in contact with Frontex operatives to arbitrary and potentially unfair treatment without avenues for effective remedy, in contravention of European and international law. This ambiguity is amplified when Frontex operations are conducted on the high seas, on the territory of third states, or in conjunction with border authorities of third states.

A 2009 Human Rights Watch report on push-back operations in the Mediterranean gave substance to these concerns. According to this report, 5,969 migrants were diverted back to the West African coast under the auspices of Frontex in 2008, which the EU agency had sought to justify by deflecting responsibility for these push-backs onto the Mauritanian and Senegalese officials aboard the Frontex' vessels involved (Human Rights Watch, 2009). In 2009, Frontex was involved in a push-back operation in the Central Mediterranean as well, when a German helicopter operating as part of Operation Nautilus IV coordinated the interception and return to Tripoli of a vessel carrying 75 migrants by the Italian coast guard. Push-back operations conducted by the Italian authorities in the Central Mediterranean were not uncommon, but Frontex' had until then not been manifestly involved. According to Human Rights Watch, these operations constituted a violation of the principle of *non-refoulement*.

On 21 June 2011, the Parliamentary Assembly of the Council of Europe also expressed its concerns about Frontex' human rights record in the context of operations conducted under its auspices, noting that "although [Frontex] plays an ever increasing [*sic*] role in interception at sea, there are inadequate guarantees of respect for human rights and obligations arising under international and European Union law, in the context of the joint operations it co-ordinates" (Parliamentary Assembly of the Council of Europe, 2011, point 5.4.).

In response to the concerns exemplarily expressed by Human Rights Watch and the Council of Europe, Frontex' legal framework was amended later in 2011, when Regulation (EU) No 1168/2011 was enacted. The amended Frontex Regulation included provisions aimed at safeguarding the right to seek international protection in line with the principle of *non-refoulement*, and protecting the most vulnerable, including children, victims of trafficking, and persons in need of medical assistance. In the new Frontex Regulation, it is explicitly stated that Frontex shall fulfil its tasks in full compliance with the Charter of Fundamental Rights of the European Union as well as the Convention Relating to the Status of Refugees (amended Article 1(2)). More substantial is the insertion of article 26, establishing an agential Fundamental Rights Strategy. It notably creates a Consultative Forum to assist the Executive Director and Management Board in fundamental rights

matters, as well as a Fundamental Rights Officer. The new Regulation also calls for the drawing up of a Code of Conduct which applies to all Frontex operatives, and operational plans that outline tasks and responsibilities and consider the applicable legal regimes (new Article 2a and new Article 3a(1)). The new Article 3 also calls for the suspension or termination of joint operations in case the Executive Director considers there have been serious or persistent fundamental rights violations. The European Parliament played a particularly important role in securing human rights safeguard in the new Regulation. According to Spengeman (2013), “[t]he European Parliament has arguably been the most prominent democratic voice in the scrutiny of Frontex” (p. 8).

Shortly after the enactment of Regulation (EU) No 1168/2011, the European Ombudsman initiated “an own initiative inquiry into the progress being made by Frontex in meeting its obligations under the Charter and the 2011 Regulation” (European Ombudsman, 2013, para.4). It concluded that Frontex was making “reasonable progress” but there was still “no mechanism in place by which it could deal with individual incidents of breaches of fundamental rights alleged to have occurred in the course of its work” (para. 5). The Ombudsman recommended that Frontex set up such a mechanism, which Frontex refused on the grounds that individual incidents are the responsibility of the Member States on whose territory it occurred. As such, the new Frontex Regulation did little to assuage the concerns exemplified in Mitsilegas (2015) on accountability and gaps in the rule of law in the context of Frontex operations.

In the same year, the European Court of Human Rights put further constraints on border control operations in the Mediterranean, in consonance with the 2009 Human Rights Watch report, the 2011 Council of Europe conclusion, and the 2012 European Ombudsman inquiry. In the 2012 *Hirsi Jamaa v Italy* judgement, the Court held that Italy had violated the European Convention on Human Rights and its 4th Protocol, and notably the prohibition on the collective expulsion of aliens, the right to an effective remedy, and the prohibition of inhuman or degrading treatment, by conducting push-back operations and thus circumventing its *non-refoulement* duties (*Hirsi Jamaa and Others v. Italy*, 2012).

While Italy reportedly stopped conducting push-back operations on the Central Mediterranean after this episode, similar concerns started arising on the Eastern Mediterranean, more or less coincidentally. The German advocacy group Pro Asyl published a report in November 2013 in which it expounded the findings drawn from 90 personal interviews with migrants who had been subject to interception and return at the Greek-Turkish border. The report affirmed that the Greek authorities systematically carried out push-back operations, not only on the high seas but in Greek territorial waters as well, and, in so doing, failed to afford the migrants an opportunity to request

international protection or challenge their expulsion (Pro Asyl, 2013). Many of the interviewees reported that they had been subjected or had witnessed other migrants being subjected to cruel, inhumane or degrading treatment at the hands of the Greek border guards. Many were deprived of food and water, did not receive needed medical attention, had their personal belonging confiscated or thrown into the sea, were threatened at gunpoint, or were left drifting at sea. Pro Asyl counted 9 cases where the severity of the reported ill-treatment could amount to torture. By extrapolating from the eye witness accounts from the interviewed migrants, Pro Asyl estimated that some 2000 migrants were allegedly pushed back during these operations, most of which were Syrians and thus presumably genuine refugees. While no evidence was presented that Frontex assets were involved in these operations, the Pro Asyl report recommended that Frontex withdraw its support of the Greek border authorities nonetheless.

In July 2013, Amnesty International released a similar report, based on 80 interviews with refugees and migrants who had recently crossed, or attempted to cross, the border between Greece and Turkey, conducted between March and June 2013. The findings of Amnesty International were congruent with those of Pro Asyl: illegal push-back operations along the Greek-Turkish border were frequent, and many migrants reported that they had been beaten or denied access to water, while some alleged the Greek border guards had punctured their boats (Amnesty International, 2013). In January 2014, nine children and three women died in what was alleged to be another illegal push-back operation conducted by the Greek coast guard (Pro Asyl, 2014).

In April 2014, Amnesty International released a follow-up report, based on 67 interviews conducted with migrants and refugees in Greece, Bulgaria and Turkey, between July 2013 and March 2014. The follow-up investigation found there had been no improvement of the humanitarian situation on the Greek-Turkish border (Amnesty International, 2014). Push-back operations were still commonplace, and migrants were still subjected to cruel, inhuman or degrading treatment. However, Amnesty International specified that there was no evidence that Frontex assets had been used in these push-back operations, and that Frontex claimed it had initiated investigations into the sustained allegations of fundamental rights violations perpetrated by Greek border guards. That said, Frontex was unwilling or unable to share the outcome of these investigations, which, according to Amnesty International, points to a serious issue of transparency. Moreover, Amnesty International reports that Frontex vessels deployed in Greece did not bear any Frontex insignia or have guest officers aboard, making it impossible for migrants to differentiate them from Greek coastguard vessels. Ultimately, Amnesty International made the same recommendation as Pro Asyl, namely that the Executive Director of Frontex make use of Article 3 of the 2011 Frontex Regulation and suspend or terminate support of the Greek border authorities.

In 2012, the Court of Justice of the European Union struck down Council Decision 2010/252/EU regarding maritime operations coordinated by Frontex, in the judgement of a case brought before it by the European Parliament. The Court held that the subject matter of Council Decision 2010/252/EU fell under the ordinary legislative procedure, and that the European Parliament had been unjustly denied co-legislative powers (C-355/10, 2012). The Court's judgement triggered fresh negotiations on new legislation governing Frontex maritime operations.

The EU legislature finally enacted Regulation (EU) 656/2014 in May 2014, presumably cognisant of the persistent allegations of fundamental rights violations in the Mediterranean. The Regulation contains detailed rules on interception at sea, search and rescue, and disembarkation in the context of Frontex-coordinated operations. It specifies that migrants intercepted in EU territorial waters shall be disembarked in the nearest coastal Member State, emphasises the assessment of the human rights situation in third countries when considering disembarkation of migrants intercepted on the high seas, obliges Frontex operatives to afford migrants the medical and procedural assistance necessary to ensure conformity with the Charter and Refugee Convention, and requires that the agency's management submit annual reports to the European Parliament on the implementation of the Regulation. By consolidating fundamental rights safeguards in the agency's legal basis, codifying the *non-refoulement* duties of Frontex operatives, and enhancing Frontex' accountability to the European Parliament, Regulation (EU) 656/2014 goes a long way towards addressing the concerns that were expressed with regards to Frontex' human rights record. That said, it should be noted that the Regulation continues to allow for the interception of migrant vessels on the high seas and subsequent return to the country from which they are assumed to have departed, procedural safeguards considered. As such, Frontex operatives continue to have the option to deny access to EU territory of migrants and asylum-seekers.

Operation Poseidon and Operation Triton

At the time of writing, Frontex' two most extensive operations are Operation Poseidon and Operation Triton. Operation Poseidon is concerned with migratory flows on the Eastern Mediterranean route. It is composed of Poseidon Land (focusing on terrestrial border crossings) and Poseidon Sea (focusing on maritime border crossings). It was first launched in 2006 with a budget of 255,000 EUR and seven participating countries, making it one of Frontex' first border control operations (Frontex, 2016e). Poseidon Sea is controlled by the Greek border authorities.

Poseidon's equivalent in the Central Mediterranean is Operation Triton. It was initiated in 2014 to replace Operation Mare Nostrum, a border control operation conducted by the Italian authorities

which had run into financing troubles. Triton's initial budget was 9.3 million EUR (Frontex, 2016e). Hosted in Italy, it is under the command of the Italian border authorities.

In 2015, faced with the unprecedented irregular migration pressures and maritime morality rates outlined in previous chapters, the European Union and its Member States decided to strengthen and expand both operations. Poseidon Sea was replaced with Poseidon Rapid Intervention, its budget was more than tripled (from 6.6 million EUR in 2014 to 20 million EUR in 2015), and an additional 293 guest officers and 15 vessels were deployed to the Greek islands (Frontex, 2015e). By August 2016, the number of guest officers had risen to 667, and 19 vessels, 1 aircraft and 2 helicopters were deployed in the context of Operation Poseidon (European Commission, 2016a).

Operation Triton's budget was more than quadrupled (from 9.3 million EUR in 2014 to 37.4 million EUR in 2015). An additional 2 vessels, 1 aircraft, and 1 helicopter, as well as additional guest officers, were deployed, and its operational area was extended (Frontex, 2015f). By August 2016, a total of 523 guest officers, 9 vessels, 3 aircrafts and 2 helicopters were deployed in the context of Operation Triton (European Commission, 2016a).

In a personal interview conducted for the purposes of this research, a Frontex press officer expounded the variety of ways in which the Frontex-deployed guest officers assist the Greek and Italian border authorities. Surveillance officers perform border surveillance to detect irregular border crossings, instances of illegal fishing, or maritime pollution. During such border control operations, Frontex-deployed vessels operate under the command of the respective International Coordination Centre (ICC) and an officer from the host country is present aboard every vessel and aircraft at all times.

Surveillance officers also conduct search-and-rescue (SAR) operations upon request of the respective national Maritime Rescue Coordination Centre (MRCC). Whenever the MRCC receives notice of the presence of persons in distress in its SAR area, it orders the closest and most capable vessels to assist in rescuing them. In many cases this includes Frontex-deployed vessels, but also national military or border guard vessels. It is important to note that the most suitable vessel at any given time could be a private commercial vessel, or any other type of vessel, and they may be co-opted to participate in the rescue action as well. For example, Médecins Sans Frontières, in partnership with SOS Méditerranée, deployed 3 vessels in the Mediterranean to assist in SAR operations and had rescued 11,365 people by 30 August 2016 (Médecins Sans Frontières, 2016).

When Frontex-deployed vessels are contacted by the MRCC and redirected to a SAR operation, the MRCC takes over command from the ICC. Once Frontex assets reach people in distress, they first

provide immediate medical assistance and give them food and water. Once a rescue operation is completed, migrants are disembarked and handed over to the national authorities for identification and registration.

Frontex-deployed registration officers help with fingerprinting and registering incoming migrants, and referring those in need of international protection to the relevant national authority. Asylum claims are the exclusive responsibility of the host state, but Frontex-deployed officers must ensure that persons in need of international protection have access to the asylum procedure. The Frontex Code of Conduct prescribes that all officers deployed by Frontex refer migrants seeking asylum to the national authorities and provide them with relevant information.

Finally, Frontex-deployed debriefing officers and interpreters conduct interviews with migrants to collect intelligence about smuggling and trafficking networks. This information is shared with the host country's authorities and with Europol.

According to the UNHCR (2015), the EU's decision to enhance the presence of Frontex in the Mediterranean neatly coincided with a steep drop in the number of deaths at sea in the following two months. Frontex rightfully underscores that "search-and-rescue operations were crucial in saving the lives of an unprecedented number of migrants" under the auspices of Frontex in 2015 (2016a, p. 20). The European Commission (2016b) specifies that Triton and Poseidon operatives participated in the rescue of more than 250,000 people migrants in distress at sea in 2015. Similarly, the European Commission (2016a) reports that, in the first 8 months of 2016, 37,479 migrants were rescued in the context of Operation Poseidon, with 38,750 rescued migrants in the context of Operation Triton.

The European Commission (2016b) also reports that Frontex-deployed assets helped with the apprehension of over 900 suspected smugglers, and boosted the proportion of migrants who were adequately registered from 8% in September 2015 to 78% in January 2016 in Greece, and from 36% to 87% over the same period in Italy.

That said, the bigger picture is more bleak. After the initial drop in fatal incidents following the expansion of the programmes, death tolls rose back to "normal" levels between July 2015 and July 2016 (IOM, 2016b). Actually, as evidenced in previous sections, the average proportional death rates of both the Central and Eastern Mediterranean routes changed only marginally between 2014 and 2016.

Frontex (2016a) admits that search-and-rescue operations actually incentivised smugglers to make attempted crossings riskier. Factoring in the increased probability of the migrants being rescued at

sea, smugglers reduced the amount of fuel and food provided to migrants attempting the crossing, to cut expenses. To further maximise profits, smugglers increasingly overcrowded vessels, initiated more simultaneous departures, and initiated departures in poor weather conditions. Meanwhile, recruiters were advertising safer journeys in light of the increased border control presence. In this way, the scaling up Frontex' operations at sea boosted demand for facilitation, increased profit rates, and made the planned journey riskier *per se* (without factoring in the chance of being rescued, that is).

Frontex (2016a) also notes that, in the Aegean Sea, "smugglers have spread activities to a larger number of islands, stretching surveillance capacities" (p. 42). Europol (2016a) expects a further diversification of routes into the EU to take place, as smugglers adapt to law enforcement initiatives and migratory flows. Smugglers thus continue to evade border control to the detriment of the safety of the journey, in spite of the significant scaling up of Frontex operations in the area.

More disturbing is the continued risk border guards themselves pose to migrants. Anecdotal allegations of border authorities conducting push-back operations and cracking down on migrants persist. For example, in August 2015, a crew of Turkish fishermen released footage of the intentional sinking of a migrant boat by what is alleged to be a Greek border guard team (Squires, Samuel & Holehouse, 2015). That said, such reports are few and far between and there is no evidence that Frontex was involved in any such actions. In fact, in its 2015 annual report to the European Parliament, Frontex affirms that all migrants intercepted at sea under its auspices in the previous operational year were disembarked in Greece for Operation Poseidon, and in Italy for Operation Triton (Frontex, 2015g).

EUNAVFOR Med Operation Sophia

The EU Naval Force Mediterranean (EUNAVFOR Med) is a military task force initiated by the European Council on 22 June 2015, under the EU's Common Security and Defence Policy (European Commission, 2016a). It is commonly referred to as Operation Sophia, named after a baby girl born at sea whose mother had just been rescued by the crew of a German frigate that was part of the EUNAVFOR Med task force.

EUNAVFOR Med was set up to disrupt smuggling and trafficking operations in the Central Mediterranean by identifying, capturing and disposing of "assets used or suspected of being used by migrant smugglers or traffickers" (European Commission, 2016a, p. 3).

The operation was designed in four phases (European Commission, 2016a):

1. Gathering intelligence on the smuggling and trafficking phenomenon in the region.
2. Mobilizing the operation's assets to search, board, seize and divert smugglers' vessels on the high seas.
3. Extend the territorial scope of phase 2 to include Libyan territorial waters.
4. Move onshore and operate in Libyan territory.

Phase 1 was launched in July 2015 and has since been concluded (European Council, 2016). Operation Sophia moved to phase 2 in October 2015, and it is still in this phase, as both the internationally recognized Libyan government and the rebel administration have opposed foreign military intervention in Libyan territory (Human Rights Watch, 2015). On 20 June 2016, the European Council extended the mandate of Operation Sophia by another year, until 27 July 2017, and added two additional tasks to it, namely training the Libyan coastguard and navy, and contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya (European Council, 2016). At the time of writing, 25 Member States contributed a total of 1,771 members of personnel, 7 vessels, 4 helicopters, and 3 aircrafts (European External Action Service, 2016).

The formation of Operation Sophia has raised concerns about the human rights of migrants, similar to those expressed regarding Frontex maritime operations. Cogolati, Verlinden & Schmitt (2015) highlight several of these concerns in their 2015 report titled *Migrants in the Mediterranean: Protecting Human Rights*. In absence of detailed and legally binding procedural safeguards and clear provisions on the use of force, migrants that come in contact with EUNAVFOR Med operatives are vulnerable to arbitrary and potentially dangerous treatment, jeopardising their right to life, the prohibition on inhuman and degrading treatment, and the principle of *non-refoulement*. Moreover, Operation Sophia has no internal complaints mechanism for migrants who esteem their rights were encroached upon, nor does it report to the European Parliament for scrutiny of its operations. To compound these concerns, the authors also note that the Court of Justice of the European Union has only very limited jurisdiction over Common Security and Defence Policy matters.

That said, according to the European Commission (2016a), Operation Sophia rescued 26,428 migrants over the course of 183 rescue operations, allowed for the removal of 303 vessels used or susceptible of being used by smugglers, and enabled the Italian authorities to arrest 89 smugglers and traffickers. While this seems like a strictly positive development *prima facie*, both the European Council on Refugees and Exiles and Human Rights Watch worry that the military presence on the Central Mediterranean would lead to more deaths, as migrants and their smugglers would be

pushed to take even more risks to effectuate a successful journey (European Council on Refugees and Exiles, 2015; Human Rights Watch, 2015). These concerns are borne out by the evidence presented below.

The quality of the vessels used by smuggling networks has suffered as a result of Operation Sophia's accomplishments. Between June and December 2015, inflatable boats accounted for 2 out of 3 vessels used by smugglers in the Central Mediterranean (Credendino, 2016). A Frontex press officer, interviewed for the purposes of this research, disclosed that, in recent months, poor quality rubber boats accounted for 4 out of 5 vessels – a notable increase. Operation Sophia has contributed to making it more difficult for smugglers to acquire and retain wooden boats, which can carry more people and are more resilient to bad weather. The increased scarcity of high-quality, high-profitability vessels is pushing smugglers to use unseaworthy boats onto which they cram ever more migrants.

This scarcity has also made smugglers more violent towards border guards. Frontex (2016a) reports that there was an increase in violent incidents at sea in 2015, involving smugglers threatening border guards at gun point to recuperate quality vessels after having intercepted, and to avoid apprehension. In a few of these incidents, shots were fired. Smugglers also threatened and beat migrants who were unwilling to board overcrowded, unseaworthy vessels, which is due to have happened more often as wooden boats became more scarce.

On the other hand, Operation Sophia's presence in international waters has curtailed the ability of smugglers to abuse migrants at sea. According to Admiral Credendino (2016), it was not uncommon for rival smugglers to intercept each other's vessels at sea and extort the migrants on board, with sometimes fatal consequences. Since the initiation of phase 2 of Operation Sophia, such occurrences are no longer observed in international waters off the coast of Libya.

Finally, Human Rights Watch (2015) warned that Operation Sophia risks trapping migrants in Libya, which is not a State Party to the Refugee Convention and where they are commonly subjected to abuse. The New York-based human rights organisation documented "torture—including whippings, beatings, and electric shocks—as well as overcrowding, dire sanitation conditions, and lack of access to medical care in migrant detention centers in Libya in mid-2014 and May 2015" (Human Rights Watch, 2015, para. 14). Similarly, Amnesty International (2016b) conducted interviews with 90 migrants in Sicily and Puglia in May 2016 and found that migrants in Libya were commonly beaten, shot, sexually abused, electrocuted, exploited, extorted, sold to smugglers, left drifting at sea, denied food, water and medical treatment, detained and deported without due process, and denied access to their families, to legal counsel, and to a court of law. Some of the migrants who

spoke to Human Rights Watch (2015) posited that they had not initially intended to travel to Europe and would not have risked the passage across the Mediterranean had it not been for the horrific situation in Libya. Cooperating with the Libyan coastguard to prevent departures, and pushing the perimeters of Operation Sophia further towards Libyan territory could potentially exacerbate the situation, making it more difficult for migrants to escape abuse in the North African country.

Discussion

The data show that, between 2014 and 2016, the number of irregular border crossings, instances of facilitation, and first-time asylum applications in the EU continuously increased, and the death toll in the Mediterranean (primary avenue for irregular entry into the EU) shot up accordingly.

Between April and June 2015, in response to the escalating crisis, the EU significantly scaled up its presence in the Mediterranean by expanding Operations Poseidon and Triton and initiating Operation Sophia. The goal of these operations was to enforce the external borders, prevent the further loss of life at sea, and disrupt smuggling and trafficking networks.

While the scaling up these operations improved the chances of migrants being rescued at sea, the evidence suggests that it most likely pressured or incentivised smugglers to:

- ✚ use less seaworthy vessels and cram more people onto them as wooden boats became more scarce,
- ✚ reduce the amount of fuel and food on board to cut costs,
- ✚ instruct migrants to operate the boats instead of doing so themselves to avoid apprehension,
- ✚ take alternative and possibly more dangerous routes to circumvent border control,
- ✚ initiate multiple simultaneous departures and departures in bad weather conditions,
- ✚ charge higher fees as routes became tougher to open, making it more difficult for migrants to afford safer modes of transport and exposing them to increased labour exploitation, and
- ✚ threaten border guards at gun point to avoid apprehension and recuperate vessels.

All of this contributed to making the journey riskier *per se*, keeping the maritime death rate high in spite of more migrants being rescued, and increasing the prevalence of exploitation and abuse. These findings align with those of Heckmann (2007), Triandafyllidou & Maroukis (2012), Spijkerboer (2007), Castles (2004a; 2004b), Morrison & Crosland (2000), De Haas (2008) and Tamura (2007), who also found that stricter border control and tougher crack down on migrant smuggling networks leads to migrants incurring greater costs, assuming greater risks, and exposing themselves to more abuse in their attempts to enter.

Moreover, Operation Sophia risks trapping migrants in Libya which would further aggravate the situation, subjecting migrants to still more suffering and misery. This exemplifies the concerns of Moreno Lax (2008), Gammeltoft-Hansen & Gammeltoft-Hansen (2008), and Noll et al. (2002), who feared that externalising migration policy would expose migrants to more inhumane and degrading treatment by preventing them from reaching the EU.

While the expansion of the operations failed to prevent further loss of life at sea or reduce the prevalence of exploitation and abuse, it did allow the respective authorities to properly register a larger proportion of migrants. Moreover, the increased participation of Frontex-deployed assets may have forced or encouraged the Greek authorities to desist in pushing back migrants at sea. The available evidence suggests that, with the help of Frontex, almost all migrants intercepted in the Mediterranean were disembarked in the EU and granted access to the asylum procedure if they so wished.

Moreover, the scaling up of the EU's presence in the Mediterranean coincided with a notable increase in the proportion of successful asylum applications in Greece and across the EU. While Italy granted asylum to proportionately less migrants, it is important to note that less Syrians and other obvious refugee candidates used the Central Mediterranean route in 2015.

Finally, it is worth noting that the European Parliament and the Court of Justice of the European Union (as well as the European Court of Human Rights, which is not an EU body) played essential roles in safeguarding the human rights of migrants in the Mediterranean, often in opposition to individual Member States and the Council. This finding aligns with Hollifield (1992) and Guiraudon (2000), who posited that the executive generally has a restrictive and *securitarian* approach to migration, whereas the judiciary places limits on the executive's draconian policies.

Conclusion

In consonance with previous literature, this research found that the expansion of the EU's operations in the Mediterranean led to migrants incurring greater costs, taking or being forced to take greater risks, and being subjected to more abuse and exploitation in their attempts to make the crossing.

However, it also found that migrants that did risk the crossing and were intercepted at sea by Frontex operatives were sure to be disembarked in the EU, had better chances of being properly registered, and were granted access to the asylum procedure if they so wished. The expanded operations may thus have contributed to the notable increase in granted asylum applications in Greece and across the EU, improving the prospects of asylum-seekers, notwithstanding the increased risk of death, exploitation and abuse along the way.

The EU must find ways to continue granting access to the asylum procedure while preventing asylum-seekers from having to risk the crossing, and without exposing them to abuse and exploitation. This must include addressing the push and pull factors that actuate irregular migration flows to the EU. As such, fostering growth, peace, security and respect for human rights in countries of origin must be a strategic priority in the pursuit of the EU's migration and asylum policy goals.

It must also include concrete and emphatic efforts to improve the humanitarian conditions in key transit countries, and most importantly in Libya. Any cooperation with the North African state must be founded on provisions aimed at preventing the egregious treatment migrants are being subjected to on its territory.

Furthermore, the EU and its Member States must consider taking steps towards facilitating regular entry and stay, to prevent migrants from resorting to the services of smugglers and exposing themselves to the risks of the irregular journey across the Mediterranean.

With such complementary measures, the EU's maritime operations might succeed in preventing further loss of life at sea, improving the registration capacity at the external borders, and dismantling smuggling networks, without the unintended negative consequences.

That said, all EU maritime operations must be brought within the remit of parliamentary scrutiny and judicial review at EU level, to ensure that border guards themselves do not pose a threat to migrants. In the first place, this means that the European Parliament and Court of Justice of the European Union must be granted oversight of Operation Sophia and its activities, to ensure that EUNAVFOR Med operatives treat migrants in accordance with the Charter and Refugee Convention.

To conclude, it should be noted that, considering the opacity of the examined operations and the incompleteness of the data, the findings of this research may be subject to review when all or more of the relevant information comes to light, or is published or declassified.

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Appendices

Student Ethics Form

European Studies Student Ethics Form

Your name: Stijn Renneboog

Supervisor: Ms M. Peeters

Instructions/checklist

Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- a. Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- b. Complete sections 1 and, if you are using human subjects, section 2, of this form, and sign it.
- c. Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.
- d. Append this signed form as an appendix to your dissertation.

Section 1. Project Outline (to be completed by student)

(i) Title of Project:

Between the devil and the deep blue sea: An inquiry into the European Union's border control operations in the Mediterranean Sea

(ii) Aims of project:

In response to the humanitarian crisis unfolding in the Mediterranean, the European Union developed new and expanded previous initiatives to enforce its borders, disrupt migrant smuggling networks, and save lives at sea, including Frontex' Operations Poseidon and Triton, and EUNAVFOR Med Operation Sophia. This research seeks to assess the impact of these operations on migrants seeking asylum in the EU, in terms of the risks associated with their journey and the prospect of finding asylum in the EU. It focusses in particular on the period between 1 January 2015 and 14 September 2016, in which the abovementioned operations were either initiated or significantly scaled up.

- (iii) Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer 'NO' to this question.)**

YES / NO

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

Participants will be required to answer a structured set of questions prepared in advance

(ii) What sort of people will the participants be and how will they be recruited?

The participants will be representatives of Frontex and EUNAVFOR Med. They will be recruited by sending an interview request to their respective professional email addresses.

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires; **Pictures**; **Sounds**; **Words**; **Other**.

A structured set of questions about the working and achievements of the relevant operations.

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

The participants are interviewed in their public capacity, as press officers or spokespersons. No private information will be stored.

Student's signature:  **date:** 15-12-2016

Supervisor's signature (if satisfied with the proposed procedures): .

 **date:** 15-12-2016

Informed Consent Form

Informed Consent Form

1) Research Project Title:

EU Operations in the Mediterranean: Enforcing the Union's External Borders and Preventing the Loss of Life at Sea

2) Project Description (1 paragraph):

In response to the humanitarian crisis unfolding in the Mediterranean, the European Union developed new and expanded previous initiatives to enforce its borders, disrupt migrant smuggling networks, and save lives at sea, including Frontex' Operations Poseidon and Triton, and EUNAVFOR Med Operation Sophia. This research seeks to assess the impact of these operations on migrants seeking asylum in the EU, in terms of the risks associated with their journey and the prospect of finding asylum in the EU. It focusses in particular on the period between 1 January 2015 and 14 September 2016, in which the abovementioned operations were either initiated or significantly scaled up.

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

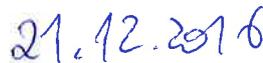
I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____



Date: _____



Transcript of interview with Frontex press officer

21 December 2016

Q: *According to the Frontex website, Operation Triton's aim in operational year 2015 was to "implement coordinated operational activities at the external sea borders of the Central Mediterranean region in order to control irregular migration flows towards the territory of the Member States of the European Union and to tackle cross-border crime" (Frontex, 2016a). Operation Poseidon's aim is expressed in similar terms, albeit on the Eastern Mediterranean.*

Could you shed some light on how this aim is pursued?

A: Please note that the responsibility for the management of the external borders remains primarily with the Member States. Frontex, the European Border and Coast Guard Agency, supports border control at land, air and sea borders by reinforcing, assessing and coordinating actions of member states at the external borders of the European Union. The agency coordinates the deployment of technical equipment (vessels, helicopters and boats) and specialised border guards to those EU countries which face an increased migratory pressure.

Joint Operation Triton and Joint Operation Poseidon are the agency's two best known maritime operations taking place in the Central Mediterranean (Triton) and Eastern Mediterranean (Poseidon Sea). They focus on supporting Italy and Greece in dealing with migratory pressure.

As a part of this effort, the agency deploys hundreds of border guard officers, along with vessels, vehicles and aircraft to assist both Member States. Previously, Frontex relied on EU Member States and Schengen Associated Countries to provide the guest officers and the equipment, which at times had been difficult to secure. The European Border and Coast Guard Agency – which was launched on October 6 and is based on the foundations laid by Frontex – will now be able to count on a pool of at least 1 500 officers who can be quickly deployed to deal with emergencies at Europe's frontiers.

Q: *What specifically do Triton/Poseidon operatives do, on a day-to-day basis?*

A: Frontex deploys officers with different profiles. In Greece, for example, the agency currently deploys 669 officers, including fingerprinting and registration officers, debriefing experts, screening experts, interpreters, border surveillance officers, to name just a few.

Debriefing officers collect intelligence about people smuggling networks operating in African countries on the smuggling routes. The agency shares this information with the Italian authorities and Europol.

Border surveillance officers on board vessels perform border surveillance and conduct search and rescue operations upon request of the respective national MRCC.

Fingerprinting and registration officers help the Greek and Italian authorities with registering the incoming migrants, as well as referring those in need of international protection to the relevant national authority.

Q: *How does Operation Triton/Poseidon contribute to tackling cross-border crime?*

A: Both operations are becoming increasingly multipurpose, covering a number of aspects of cross border crime including smuggling of illegal substances, weapons, detection, forged documents and many others. They also cover several aspects of the coast guard function such as search and rescue, detection of illegal fishing and maritime pollution. As mentioned above, debriefing officers deployed by Frontex have an especially central role in collecting intelligence about people smuggling networks.

Q: *In an undated factsheet published by the European Commission, the following is said about Operation Triton's command structure: "All vessels, helicopters and aircraft provided by Frontex operate under the coordination of the International Coordination Centre (ICC), a coordination structure composed of Italian authorities, the Coordinating Officer of Frontex and representatives of border guard authorities of participating Member States".*

Could you outline the command structures, decision-making procedures, accountability mechanisms, and cooperation dynamics of Operation Triton in more detail, with reference to the relevant institutional actors (Italian authorities, Member States, Council, EP, CJEU, FRA, EASO, etc)?

A: It should be noted that all the deployed officers (guest officers or GOs) work under the command and control of the authorities of the country hosting the operation. In practice this means that an officer from the host country is always present aboard every vessel, aircraft or patrol car deployed by Frontex.

Please also note that all officers deployed by Frontex are bound by the Frontex Code of Conduct. The Frontex Code of Conduct, which was drafted in close cooperation with UNHCR and the EU Fundamental Rights Agency. This document includes a number of specific provisions on the respect of fundamental rights, such as the right to international protection and obligation to respect vulnerable groups. The code also lays out a set of standards that all persons involved in a joint operation coordinated by Frontex must follow. Any suspected violation of the provisions of the Frontex Code of Conduct must immediately be reported to Frontex. All persons participating in

activities coordinated by Frontex are briefed prior to their engagement about their obligation to report any possible violations of the Frontex Code of Conduct and fundamental rights, and the possible sanctions taken by the Frontex Executive Director in case of the involvement of Frontex staff member.

It should also be noted that the European Parliament was co-legislator (with the Council) of the European Border and Coast Guard Regulation. Article 7 of the European Border and Coast Guard Regulation provides that the Agency shall be accountable to the European Parliament and to the Council in accordance with that Regulation.

With regard to EASO, Frontex cooperates closely with EASO as well as other EU agencies in the context of “hotspot approach” which was tabled by the Commission as part of the European Agenda for Migration. As part of this approach, five EU agencies were mandated by the European Commission to develop a coordinated support package: Frontex, EASO, Europol, Eurojust and euLISA.

Q: *Are the command structures, decision-making procedures, accountability mechanisms, and cooperation dynamics of Operation Poseidon the same as those for Operation Triton, aside from the different host state?*

A: Generally, yes.

Q: *The Commission also reports that 38,750 migrants were rescued by Operation Triton between January and August 2016. A similar number is reported for Operation Poseidon.*

Is there reliable monthly data available on the number of migrants that were rescued by Triton/Poseidon operatives over the past two years?

A: Between January and November 2016, assets deployed by Frontex to Operation Triton were involved in the rescue of 48 405 people. For the same period, vessels deployed by Frontex to Operation Poseidon were involved in the rescue of 40 413 people.

In 2015, Frontex-deployed assets participated in the rescue of more than 151 000 migrants in distress at sea.

Q: *In what situations do Triton operatives rescue migrants? Must there be a distress call? Are there proactive search-and-rescue actions? Are search-and-rescue actions limited to within certain maritime boundaries?*

A: International law obliges all captains of vessels to provide assistance to any persons found in distress at sea. Search and rescue is also a specific objective of the operational plan of every Frontex joint maritime operation. For this reason, vessels deployed by Frontex to an operational area are always ready to provide support to the national authorities in SAR operations.

It is important to stress that all SAR operations are coordinated by the national Maritime Rescue Coordination Centres (MRCC). The MRCC orders those vessels which are either the closest to the incident or the most capable ones (due to the specialised training of the crew, or the vessels specifications, etc.) to assist in the rescue. These may include national commercial or military vessels, vessels deployed by Frontex, private boats and other.

During a standard border control operation, Frontex-deployed vessels operate under the command of the International Coordination Centre (ICC), but when contacted by the Maritime Rescue Coordination Centre and redirected to a SAR operation, it is the MRCC that takes command.

Q: *What happens after the migrants have been rescued? What treatment do they receive? Where are they disembarked? How is the location of disembarkation determined? What is the procedure post-disembarkation?*

A: Once Frontex assets reach people in distress, they first provide immediate medical assistance and give them food and water. Once a rescue operation is completed, migrants are disembarked and handed over to the national authorities for identification and registration. In Italy and Greece, Frontex officers assist in registration and identification of the large numbers of arrivals in hotspots.

Q: *How do Triton operatives deal with migrants who have expressed a desire to lodge an asylum claim?*

A: Frontex is not involved in processing asylum claims. However, officers deployed by Frontex have to ensure access to asylum procedures of persons in need of international protection. According to the EU asylum acquis reflected in the Frontex Code of Conduct, all officers deployed by Frontex are obliged to refer the migrants seeking asylum to the national authorities and provide relevant information. Processing of asylum claims remains the exclusive responsibility of the national authorities of the individual member states of the European Union.

Q: *Could you discuss the abovementioned questions for Operation Poseidon as well, with reference notably to the recent EU-Turkey "Refugee Deal"?*

A: Procedures for search and rescue operations, and referral of persons in need of international protection to the relevant national authorities for processing asylum claims, are the same for Operation Poseidon.

With regard to the EU-Turkey Statement, Frontex assists the Greek authorities with the readmission of migrants to Turkey. It has to be stressed that it is the Greek authorities, who are in charge of the entire readmission process. All persons to be readmitted have to have gone through an individual decision-making process in full accordance with EU- and international law. When this process is completed, Frontex supports the Greek authorities by providing transportation and escort officers supporting the Greek officers to accompany the transport. The decision who is to be readmitted can only be made by the Greek authorities. Frontex is not involved in this process and Frontex cannot and does not enter into the merit of return decisions issued by the individual EU Member States.

Q: *In a 2015 interview, Fabrice Leggeri, the director of Frontex, said that stepping up search-and-rescue operations encourages migrants to risk the passage and fuels the smuggling business. This concern is also expressed in Frontex' 2016 Risk Analysis report.*

In your evaluation, has Operation Triton/Poseidon incentivised migrants to attempt the crossing? How problematic is this? What can be done about it?

A: In recent months, we have seen an increased number of arrivals on the Central Mediterranean route. So far this year, the number of migrants detected in this region has risen by 20% compared to a year ago. Many different groups and institutions have contributed to their rescue, including Frontex, Italian authorities, NGOs, EUNAVFOR Med Sophia, and commercial vessels. These search and rescue operations are difficult, especially at this time of the year, and require cooperation from all of those involved.

Helping combat people smuggling is one of Frontex's most important goals and our agency works very closely with the Italian authorities, as well as Europol in this area. We do this in large part by collect and sharing information about the smuggling networks.

Q: *In 2015, the decision was made to quadruple Operation Triton's budget and expand its operational area. Operation Poseidon underwent a similar expansion. The situational picture on the Central and Eastern Mediterranean has probably changed since then, and it is reasonable to expect that the enhancement of Operations Triton and Poseidon itself accounts for some of that change.*

Retrospectively, what effect do you reckon the enhancement of Operation Triton/Poseidon has had on the migration phenomenon in the Central/Eastern Mediterranean and on the smuggling business in the respective regions?

A: It should be noted that all operations coordinated by Frontex are intelligence-driven. They are based on a detailed risk analysis of the situation at the external borders, migratory trends, situation in the countries of origin and transit, methods used by people-smuggling networks, strengths and vulnerabilities of border control at the specific points of the external EU borders.

As mentioned above, it is important to stress that there are many organisations currently operating in both the Aegean and the Central Mediterranean, in addition to the relevant national authorities of Member States (coast guards, police etc.). Given the number of actors currently present in both the Aegean and the Central Mediterranean, it is not possible to say whether operations coordinated by Frontex have had an impact on migration towards Europe.

Q: *Have there been changes in modus operandi of smugglers on either route?*

A: On our website, we provide background information on smuggling routes to Italy and Greece. In terms of changing modus operandi, the agency has observed notable developments on the Central Mediterranean route this year. Putting the lives of migrants in grave danger, people smugglers have been forcing them onto even more overcrowded boats. In recent months, poor quality rubber boats accounted for four out of every five vessels used by people smugglers in the Central Mediterranean. The number of people the criminal gangs are cramming into the unseaworthy rubber boats increased by nearly a third.

Q: *On the whole, has Operation Triton/Poseidon made the journey across the Central/Eastern Mediterranean safer?*

A: Search and rescue remains a priority for the agency. Between January and November 2016, Frontex assets have assisted with the rescue of 88 818 migrants.