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Europeanization, Securitization and the Management of Migration”

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„If a border exists, there is always someone who wants to cross it to get to the other side [...]. For some, the crossing of the border is an option, while for others it is an existential issue. It is often the latter, those that must find a way across the border if they are to survive, who find it the hardest to cross, if only because they are deemed undesirable by the border gatekeepers who maintain control over entry and exit.“

David Newman, 2006

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List of Acronyms

AU	African Union
BMeiA	Bundesministerium für europäische und internationale Angelegenheiten (Austrian Federal Ministry for European and International Affairs)
CIRAM	Common Integrated Risk Analysis Model
CRATE	Centralized Record of Available Technical Equipment
CRSR	United Nations Convention Relating to the Status of Refugees
EBGT	European Border Guard Teams
ECHR	European Convention on Human Rights
EC	European Community
ECSC	European Coal and Steel Community
EEC	European Economic Community
EMP	Euro-Mediterranean Partnership
ENP	European Neighbourhood Policy
EP	European Parliament
EPN	European Patrol Networks
EU	European Union
EURATOM	European Atomic Energy Community
Europol	European Police Office
FRAN	Frontex Risk Analysis Network
GMP	Global Mediterranean Policy
HLWG	High Level Working Group on Asylum and Migration
IBM	Integrated Border Management
ICMPD	International Centre for Migration Policy Development
ILO	International Labor Organization
INTERPOL	International Criminal Police Organization (also ICPO)
IOM	International Organization for Migration
JO	Joint Operation
OAU	Organization of African Unity
RABIT	Rapid Border Intervention Teams
RAU	Risk Analysis Unit
SEA	Single European Act
SCIFA	Strategic Committee for Immigration, Frontiers and Asylum
SIS	Schengen Information System
TMC	Third Mediterranean Country
UfM	Union for the Mediterranean
UN	United Nations
UN/ ECE	United Nations Economic Commission for Europe
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime

1 Introduction

This diploma thesis deals with the migration and asylum policies of the European Union, particularly with regard to the management and securitization of these policy fields. A special focus will lie on the European border agency Frontex and its function in the securitizing processes as well as in the management of migration. As an example of analysis I will take a look at the so-called Arab Spring and the role played by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, abbreviated Frontex.

As a result of the Second World War, the international community became aware of the need for international refugee protection. A United Nations organization for the protection of refugees, the United Nations High Commissioner for Refugees (UNHCR) was established and subsequently a juridical definition of refugees. Thus, the Refugee Convention was the legal basis for the development of the European asylum systems. The post-1945 decades saw continuous Europeanization in many political fields, and therefore also in migration and asylum policies. Besides the Europeanization of these policy fields, the public and political discourse on refugees also underwent changes over the last decades. During the Cold War the discourse was often led in a victimizing way. People fleeing communist Eastern Europe were regarded as political refugees and people smugglers as escape helpers. With the end of the Cold War this discourse changed, and so did the practices. Terms such as “economic refugee” and “bogus asylum seeker” emerged and a continuous discursive criminalization of refugees could be observed.

At the same time, internal migration and the freedom of movement within the European Union were being promoted. Through the Schengen Agreement internal border controls were systematically abolished in order to enable the freedom of movement within the Schengen area. Moreover, the recruitment of labor which can fill *gaps* in member states' labor markets, is still being continuously promoted.

These developments paved the way for the creation of a European agency, which protects the external borders of the European Union. Frontex was founded in 2004 and took up its work a year later. Frontex not only fits into the logic of securitizing migration policies, but is also an active player in the promotion of securitization.

Irregular migration is construed as a threat to the inner security of the European Union, as it is being connected to drug and human trafficking, international organized crime and terrorism. In addition to further securitization, the agency also pushes for the militarization of migration policies.

With the self-immolation of a Tunisian vegetable seller in December 2010, the so-called Arab Spring found its starting point. Tensions, unrest and dissatisfaction with the political systems of the Arab states existed among the population before this incident. Nevertheless, the video of the self-immolation that was spread over the Internet and on TV channels created a sense of transnational solidarity and sparked revolutionary movements all over the Arab world. The Arab uprising received a great deal of attention in the European media and was observed with great interest. Besides the attention given to the revolutionary and democratic processes in the Arab World, the uprisings also brought publicity to the European border agency Frontex. The media was depicting a storm of refugees from Tunisia and Libya on the small Italian island Lampedusa. They reported on drowning and dying refugees in the Mediterranean Sea and overwhelmed Italian border guards. Consequently, the European Union assisted Italy financially and Frontex launched a Joint Operation at the Italian coastal borders. These portrayed dramatic images and the consequences of the Frontex operation were never really investigated further by the mainstream media. Also, the amount of academic work in this field is rather scarce, since the events took place very recently. Due to this level of uncertainty regarding Frontex' involvement, this thesis aims at a scientific analysis of the role of Frontex in the events of the Arab upheaval. The research question is as follows:

RQ: Which role did Frontex play in the Arab Spring in terms of the refugee movements which followed the revolution(s)?

To answer this very broad question, three hypotheses have been postulated:

H1: Frontex advanced the securitization and militarization process of European migration policies during the Arab uprising.

H2: Frontex is continuously gaining competencies and is evolving into THE European border guard.

H3: The revolutionary demands for freedom of movement were not met after the transition took place.

In order to verify or falsify these hypotheses the structure of the thesis will be presented as follows:

The first chapter provides a theoretical basis for understanding the main conflict issues with respect to the research question, namely defining the external borderline of Europe. This chapter frames the whole thesis, as it explains what borders are and what ideas stand behind the concept of borders. Central to the theories is the fact that borders emerge from a process of bordering. The chapter explains how borders are established, which processes take place and by whom borders are created. Furthermore, an insight as to why borders are created and which functions they fulfill will be given. In whose interest are borders *done* and which effects do they have on the people? This theoretical chapter is vital for the further understanding of the point of conflict, namely external EU borders, which want to be crossed by some and protected by others.

The following chapters contextualize Frontex and European asylum policy. First of all, the history of post-Second World War refugee movements will be presented. The questions of who fled from which countries and why shall be answered. The developments of refugee movements and which groups constituted those movements are central for explaining the changes in discourse on refugees. Furthermore, the historical and contextualizing chapter depicts the development of the European migration politics. The Europeanization of migration politics is not a new phenomenon, rather a continuous development since the establishment of the European Economic Community. In addition to policies, concrete measures towards the Europeanization of migration have been implemented. The development of the movements of people to the European Community and the development of the politics relate directly to each other, as the chapter will show.

Also vital for an understanding of the topic are legal documents relevant to the field of migration, asylum and border control. Which laws exist on the international and European level and what do they regulate? The legal definition of a refugee, which serves as the basis for any asylum law, will be put forward and explained. Alternative, non-European definitions, will be presented briefly in order to show, that

the definition by the UNHCR is not the only possible way of understanding and defining refugees. European directives that regulate certain aspects of national asylum laws will be elucidated. Finally, the chapter will conclude with the regulation that created Frontex, and newer regulations, which have amended the original one.

Various public discourses on refugees and asylum seekers exist within the European Union. Chapter five will present nine different ways of framing the asylum discourse. Of course, many other readings of the topic exist; however, the frames given are among the most common ones. The frames and a general shift of the mainstream discourse will be linked with the earlier chapter describing the historical developments of refugee movements and European policies. This will help to explain the process of securitization, militarization and restriction. Moreover, the “management of migration” paradigm will be conceptualized.

The following chapters concentrate on Frontex. While chapter six is a more introductory chapter to the border agency, the subsequent chapter analyzes Frontex’ role in the Arab Spring. Chapter six explains the structure, origin, tasks and responsibilities of Frontex. Whether or not Frontex, generally, has an influence on migratory movements will also be analyzed in this chapter. Justifications for the need for Frontex, as well as criticism of the agency, will also be presented.

I will look at the role Frontex played during the Arab Spring in chapter seven. Before analyzing the events and the role of Frontex, it is necessary to examine the developments in the so-called Arab world that led to the rebellion and the events that took place during the revolution. European agreements with third countries, defined as countries which do not belong to the EU or the Schengen area, are crucial for the management of migration. Therefore it is necessary to take a look at these agreements and how Europe cooperates with third countries bordering the Mediterranean. Two examples of third-country partnerships demonstrate how such cooperation is implemented. Egypt serves as a *good* example, having a number of working agreements with the EU and being part of various cooperation organizations; while Libya is a *bad* example, which has, up to now, not signed any official agreements with the EU and is not an associate partner of any of the EU neighbor and partnership institutions (the European Mediterranean Partnership, the European Neighbourhood Policy and the Union for the Mediterranean).

The Frontex operation, that took place during the Arab Spring in Italy, on the island Lampedusa and throughout the Mediterranean was called Hermes. Why was Hermes implemented and how? The background and practices need to be understood. Who fled, where did they come from and why did they flee? I will describe and explain the different players, their reactions and the situation, which gave rise to the events that occurred on Lampedusa. This chapter will answer the research question and verify or falsify the hypotheses. Could freedom of movement be reached through the revolution? Did Frontex further securitize migration and is Frontex becoming the European border guard?

Finally, different patterns of arguments framing the situation on Lampedusa and Frontex' role in the Arab Spring will be discussed. In addition to arguments emphasizing the necessity of Operation Hermes, a critical perspective on the practices will be outlined.

I will conclude with a look at the further development of Frontex and whether the agency itself changed as a result of the Arab Spring and also whether migration policies in the Arab world will change due to the transition. A final outlook on the Europeanization, restriction, militarization, securitization and management of migration will be given.

2 Border Theories

The following chapter provides a theoretical understanding of the object of analysis. This thesis is concerned with presenting and analyzing issues related to the external borders of the European Union, as well as the protection and management of these borders. The theoretical chapter not only explains borders as such, but also provides a theoretical framework and position for the thesis. For the analysis of the EU borders, constructivist theories are most applicable. Constructivist scholars and border theorists, such as Anssi Paasi and David Newman, regard borders as socially constructed and bordering as a process. They question categories of bordering and regard it as a mechanism of in- and exclusion. Consequently borders are expressions of power relations.

The EU borders are constantly changing due to enlargement processes and the abolishment of internal borders. The borders reveal the power relations between Europe and states of the so-called global South. The control of borders and the management of migration, carried out by various actors, such as Frontex, for example, represent the mechanisms of in- and exclusion through borders.

Finally, it needs to be said, that this thesis will only deal with borders between nation states, so to say the Westphalian order of states (cf. Gross 1948: 20ff.). Of course borders exist everywhere in our daily lives; they are omnipresent and cannot be limited to nation states. However, as this thesis is examining the governance of a border regime, the European Union, the theoretical part will be limited to borders in the sense of frontiers between states. I am using the term “border regime” based on the understanding of Guiseppe Sciortino, who defines a regime as a framework of different practices, concepts, discourses and actors, which do not follow a strict plan, but rather react to different (or similar) situations in a different way (2004: 32f.). The dynamic nature of migration continuously creates new *problems*, which make the continuous search for new solutions a necessity (Karakayali/ Tsianos 2007: 14). A border regime is able to respond to this dynamic, as it does not possess any given order (ibid.). This definition of a border regime regards gaps, obscurity and ambivalence as a part of the regime (Sciortino 2004: 33). Crucial for a regime is the discourse, which interprets the movement of migrants (ibid.). Based on the

interpretation through the discourse measurements are taken, no matter if the problem depicted by the discourse is *real* or not (ibid.).

2.1 The Process of Bordering

Postmodern and constructivist scholars agree that borders do not constitute fixed lines that are generally given or defined by *naturally* given categories, which were traditionally regarded as aspects of a nation state. Such categories, which were assumed to define nations, are, for example, a common language, culture, religion, ethnicity and *identity*. The EU does not possess a common language and is not said to share a common culture, however, the thing Europeans consider themselves to have in common are shared values. Borders cannot be considered as fixed or absolute, but as processes of social and political construction, borders are not independent from space and time (Van Houtum/ Van Naerssen 2002: 126). Since the term *border* implicitly refers to a fixed and static phenomenon, the term *bordering* is introduced by scholars to underline the discursiveness of borders (ibid.). Borders are created to include some, while others are excluded (Newman 2003: 15). The nature of borders is highly ambivalent, as people included in a state are constructed as a homogenous *nation*, while people excluded from a state by a border are constructed as the *others*, who are different (Van Houtum/ Van Naerssen 2002: 126). Borders are therefore creating a different *them* in order to construct a homogenous identity of *us* (ibid.).

In order to institutionalize these differences, *narratives* or *stories* must play a significant role (Paasi 2007: 75f.). Narratives are a set of shared experiences, history and memories that provide people with a common identity (ibid.). Therefore a *nation* shares a common story or narrative, which constitutes its identity as a demarcation from the *other nation*. The production and reproduction of narratives are not only social, but political processes (ibid.).

The question of who creates territorial borders is a more controversial one. While some scholars argue that borders are created through a top-down process, others claim that borders are constructed through a bottom-up process. According to Newman borders were created “by the power elites of the time, just as it was implemented during the era of decolonization, and just as it is today by those groups which determine the values and codes which enable some to be members, while

others have to remain outside” (2003: 18). In comparison Van Houtum and Van Naerssen argue that “in democratic societies borders are not ‘made from above’” (2002: 126). As mentioned above, borders and the identity they create are generally reconstructed by the people living in a certain territory being in- or excluded through the making of a border. The process of making a territorial boundary into a part of a collective’s identity is regarded as a discursive and a daily practice (Newman 2011: 35f.). Although national identities are still of importance to the identities of the people living in Europe, on a higher level a collective identity constituting people as “European” can be observed.

While one can generally agree that borders are discursive and are continuously socially constructed and reconstructed by the people and elites living within or outside the border, the assumption that borders are initially created by a political elite seems more applicable for an analysis of the European Union. The Westphalian System, which can be considered as the basic idea behind the present order of states, was a top-down rather than a bottom-up process (cf. Gross 1948: 20ff.). Therefore the assumption that borders are created as a top-down process will be considered as appropriate in the present case.

Furthermore the power elites creating borders commonly believe and are commonly believed to act in the collective interest of the group of people being included by the process (Newman 2011: 35f.). These elites are understood as representatives of the included people and ought to protect them from the constructed undesirable *other* (ibid.). While borders can be created by these elites they can also be abolished by the same or, in case of a change in government, new power elites (ibid.). Hence, the construction or closing as well as the deconstruction or opening of borders can be recognized as a top-down process.

Moreover, the process of bordering is not necessarily an act of one power elite representing one group of people. It can be a negotiated process between two elites, each representing one of the groups of people on each side of the border (ibid.). Besides the bilateral agreement on borders there is of course the possibility of imposition of borders by the stronger power over the other (ibid.). As Newman argues the former can be considered as better, however does not necessarily have to be more effective than the latter (ibid.)

2.2 Borders as Institutions: Mechanisms of In- and Exclusion

As already mentioned in chapter 2.1 borders are politically and socially constructed by elites and unconsciously or consciously reconstructed by the groups of people being in- or excluded by the borders. They separate two groups of people and, as a consequence, create differences between these groups, which then serve as justification for separating in the first place. Borders are institutions, which serve to protect the *inside* from what is perceived as the *undesirable outside* (Newman 2011: 35f.). The undesirable influences and flows, from which one group believes they need protection from, could be military, economic, social and/or political in nature. As an example, the free flow of goods or an invasion of foreign troops is regarded as such a threat (ibid.). In the case of the thesis at hand, the unrestricted and uncontrolled movement of migrants (ibid.) is perceived as the undesirable, against which the *inside* needs to be protected. Moreover, the idea of a dangerous threat from the outside, as well as socialization, helps to guarantee the constructed identity of a *nation* and is therefore “an integral part of foreign policy” and the military discourse (Paasi 1998: 85). Before one can understand why borders are regarded as institutions, a definition of social and political institutions needs to be presented.

According to the cultural anthropologist Bronislaw Malinowski institutions are constituted of four elements, the charter, the personnel, norms and a material apparatus (1960: 52ff.). The charter of an institution is the constitution or idea of an institution (ibid.). Moreover, it is a set of values, which organizes the daily life of people included, or sets the conditions for a person wanting to enter an institution (ibid.). The main idea is determined and acknowledged by the members of the institution (ibid.). In case of frontiers between nation states this could be the commonly shared idea, that borders are fixed, static and necessary to protect *us* from the *other* and cannot be overcome in the sense that they are abolished.

Secondly the personnel of an institution are a certain group of people, which play a certain role within the institution (ibid.). The personnel are organized through the principles of authority, the division of workforce and the distribution of rights and duties (ibid.). With regard to borders, each group plays its role in constructing and reconstructing the borders in a discursive way in order to maintain borders and the idea that stands behind them.

Additionally, institutions need to provide a set of rules and norms (ibid.). The rules within institutions are “skills, habits, legal norms and ethical commands rules” and are either accepted by or imposed on the members of an institution (ibid). Such rules and norms would be laws and restrictions on crossing a border, so to say visa laws, which regulate under which conditions and for which period of time someone may cross a border.

Finally the material apparatus of an institution are the material aspects, which are part of the institutions, such as space and objects (ibid.). According to Malinowski no institution is floating in the air without any concrete material reality (ibid.). These aspects can often function as symbols for institutions. Borderlines become materialistic and so are citizenships, border posts and so on.

Two other main elements of an institution are, on the one side, the actions which members undertake and, on the other side, the functions, which are the result of all the actions undertaken (ibid.). While the actions are real, the rules might vary from reality (ibid.). This means the rules, which usually do not reflect the reality, are carried out through the actions of the members of an institution. The functions, as already mentioned, reflect the result of the personnel's actions, but not necessarily the aim. In regards to EU asylum politics, one could regard the minimum standards for the reception of asylum seekers as a “rule”, the interpretation and execution of this rule as the “action” and the different results from the execution of the laws as the “functions”.

Institutions supposedly provide order, stability and security and create a common reality and social identity (Gukenbiehl 2008: 150ff.). Since institutions are responsible for ordering certain aspects of life, they are therefore making the world less complex for the group of people, which are a part of the institution (ibid.). In addition institutions provide (inter)actions with a sense of purpose and are being perceived as factual and objective realities (ibid.). However, they limit personal freedom and restrict alternative possibilities of action at the same time (ibid.). To guarantee the continuity of institutions, sanctions can be imposed on people not following the norms of an institution (ibid.).

According to the institutional theory of Malinowski, borders can be regarded as institutions. As shown above, each of the four main elements of institutions are

applicable to borders. Borders, as institutions, aim to protect the inside from the outside threat. Such a threat could be people, goods, arms, drugs and/or information (Newman 2003: 14). An important aspect of the border institution is its permeability (ibid.). They are not created to completely isolate people and there are always people crossing the border, no matter how heavily sealed they are (ibid.). Furthermore borders are, just like institutions, self-sustaining as they are created and recreated by the individuals living on both sides and are difficult to change (ibid.). Borders also have major effects on other institutions of the state they neighbor, such as education, the media and ceremonies (Paasi 1998: 76).

2.3 Borders as an Expression of Power and Management of Borders

“Boundaries are expressions of power relations”, since they are means of in- and exclusion (Paasi 1998: 82ff.). While the included *us* holds a certain power in relation to the excluded *them*, the elites of a state, be they political, economic or military, are interested in maintaining the power they possess over the *us* within a certain territory (ibid.).

As mentioned in chapter 2.1 borders are socially and politically constructed (Newman 2011: 35f.) and are in the case of the European Union, originally created from above through a top-down process. They are therefore created by elites, who possess the power to do so through their representation in a collective or other power structure (ibid.). These power elites, directly or indirectly, profit from the demarcation, maintenance and abolishment of borders (Newman 2003: 22). For example third countries (and their power elites) cooperating with the EU in the field of border control sometimes profit from financial flows or other forms of concessions.

The management of borders, just as the demarcation, is carried out and defined by the elites of one or more states (Paasi 1998: 82ff.). They decide under which terms goods, people or other flows may cross a border and therefore manage it (ibid.). The external borders of the European Union are managed through the member states, national policy makers and member states' border guards, EU institutions that are involved in the policy-making process and EU agencies carrying out the policies, such as Frontex, for example. Bilateral border management does not necessarily have to be symmetrical (ibid.) as for example trade cooperation between African and European states shows. Regarding the EU and African states, not only is the

negotiation process asymmetrical, but also the outcome. While EU citizens can travel easily to most African states and can easily obtain visas at embassies or borders, and in some cases do not even need visas, the migration for African citizens to Europe is hard to achieve.

More restrictive border management tries to minimize the movement of goods, people, information etc. into the country and region the border seeks to *protect*, whereas a more liberal border management opens its borders more widely. While a border can never be completely sealed it also is never completely open. With regard to the European Union, Paasi uses the term “selective openness” to describe the complexities of EU borders (Paasi 2011: 12). Borders within the EU and the Schengen Area have been opened and controls have been reduced. The new openness within the EU relates to labor migration and freedom of movement for EU citizens. Also citizens from non-EU states such as the US, Australia, Taiwan etc. are favored in comparison to people from most low-income countries (BMeiA 2012). This means while the borders are becoming more open for some people, they are becoming more restrictive for others at the same time. The same logic applies for goods, services and other forms of international flows.

3 Historical Developments of Refugee Movements and Policies

A historical depiction of refugee movements over the last centuries is vital to understanding the shift in discourse on refugees that will be presented later on in the thesis.

Migration and escape movements have always been a part of human history. Throughout history, forced displacement, as well as flight, existed ever since humans organized themselves within governed communities, fought wars, struggled for power, and destroyed and conquered empires and territories (Nuscheler 2004: 29ff.). Starting from the 16th century with the so-called colonial era, many Europeans emigrated and moved to countries and regions which are nowadays known as South Africa, North America, Algeria, Namibia, Australia, Zimbabwe, New Zealand and others (ibid.). Between 1820 and 1930 as many as 40 million Europeans migrated to the United States to seek better economic conditions (ibid.) The first large refugee movement in Europe took place in the first half of the 20th century due to the extension of nationalism and the breakup of the major empires (ibid.). Minorities were forced to move back to their *home countries* and borders were drawn, where none previously existed (ibid.). Throughout the past five hundred years, Europe has been a continent of emigration rather than immigration (ibid.). It was only after World War II, that Europe became a destination for migrants and refugees from *the East* and *the South*¹ (ibid.).

This thesis, however, is concentrating on the policies and the development of the European Union with regard to migration and flight. Therefore it concentrates on developments after 1945. Nevertheless, with this short introduction, it should be made clear that migration and refugee movements are not only a phenomenon of the

¹ Note: I am aware of the critical conception of *the West* and *the North* in contrast to *the East* and *the South*. However, for the present chapter a clear distinction is needed. I am referring to the Western Bloc during the Cold War with the expression *the West*, while I consider the former communist states in Europe as *the East*. I regard countries of economically poorer status, such as African, Latin American and South East Asian countries as *the South* in contrast to the so-called industrialized countries of *the North*.

21st or late 20th century, just as the generalization that migration only happened from East to West and South to North has been proven false.

3.1 Escape Movements to and within Europe after 1945

3.1.1 *Internal Refugees*

Postwar migration in Europe resulted, to a great extent, directly from the Second World War itself (Fassmann/ Münz 1994: 521ff.). A large number of migrants² in Europe between 1945 and 1950 were ethnic Germans who were either forced to leave their country of residence (e.g. German speaking minorities in Poland, former Czechoslovakia etc.) or were able to return back to Germany or Austria from exile (ibid.). Also a significant number of people living in Germany at that time were, to some extent, involuntarily repatriated to their countries of origin in Eastern Europe (ibid.).

During the Cold War the number of people fleeing from Eastern European countries and the USSR decreased significantly (ibid.). Particularly in moments of political crisis, such as the Hungarian Uprising in 1956, the Prague Spring in 1968 and the implementation of martial law in Poland in 1981, a temporary increase in people fleeing to Western Europe can be observed (ibid.). Until the late 1950s, the states of the Warsaw Pact tried to hinder people from immigrating to the Western European countries (Volf 1995: 425f.). The ban on leaving the countries of the Soviet Bloc was executed by closing the borders and implementing strict controls on border crossings (ibid.). The borders were wired and land mines and walls served to prevent people

² My understanding of a “migrant” is a person who moves from one place to another for a longer period of time (therefore not only for a vacation). From my point of view the term “migrant” does not imply why a person migrates. Migration can be voluntary and involuntary, regular or irregular (meaning without the necessary documents) and internal and external. I also understand “refugees” as a subcategory of migrants. Throughout the thesis the term “refugee” will be used for any person who is fleeing his or her country for various reasons (persecution, war, environmental disasters, poverty etc.) I will not follow the strict legal definition of the UNHCR convention on refugees, but rather a comparatively loose understanding of the term “refugee” will apply. This vague interpretation of the term “refugee” leaves room for people, who consider themselves as fleeing, but are not defined as refugees under European law. Furthermore, the thesis does not raise the claim to be juridical but rather social-scientific.

from crossing them (ibid.). During the Cold War, refugee and migration movements were East-West dominated and produced an image of a *superior* system in the Western European countries (ibid.). According to the Austrian political scientist, Patrik-Paul Volf, perception influenced the understanding of the *East* and the *West* significantly until the 1990s (ibid.).

On October 23, 1956 Hungarian students and civilians started demonstrations and sought to revolt against the Soviet regime (UNHCR 2006a). The revolt was brought to an end only a few days later on November 4, when Soviet groups put an end to the rebellions in Hungary (ibid.). After the suppression of the uprising, many people fled to Western European countries to seek asylum. Most of to 200,000 Hungarian refugees fled to Austria and former Yugoslavia, which were mainly used as transit states to other Western European states, the US or Australia (ibid.). In 1956 and 1957 Hungarian people fleeing from the Soviet occupation were collectively granted asylum by the Western European states, without investigating people's personal persecution, as foreseen by the Refugee Convention (Nemes 1999). Also, the fleeing Hungarians were at that time not included in the definition of a refugee, as the Convention regarded only people fleeing from events that occurred before 1951 as refugees (UNHCR 2006a). Still the Hungarian refugees were widely accepted by the civil society as well as the governments in the West.

The so-called Prague Spring led to another large number of people fleeing Eastern European countries to seek asylum in the West. In 1968 and 1969 about 160,000 Czechs and Slovaks left their home countries due to suppression of the Prague Spring by the troops of the Warsaw Pact (Volf 1995: 418; Fassmann/ Münz 1992: 9).

The last huge movement of refugees fleeing to Western Europe during the Cold War were the Polish leaving their countries due to the in 1980 imposed martial law and the suppression of the solidarity “Solidarność” movement in Poland (Fassmann/ Münz 1992: 9f.). About 150,000 Polish escaped to Austria, avoiding those events in the years 1980 and 1981, and they either applied for asylum or used Austria as a transit country to other European states (ibid.).

Most people escaping in the three main refugee movements of the Cold War fled to Austria (Volf 1995: 418). However, a great number – especially of the Czechs, Slovaks and Polish – did not stay in Austria, but instead fled to other Western

European countries (ibid). During the time of the Iron Curtain, Austria mainly served as a transit country for refugees. While most of the migrants of the Soviet Bloc were widely accepted as refugees in the Western European countries, Yugoslav migrants were often deported or excluded from asylum or assistance (Volf 1995: 427f.). They were not regarded as refugees in the sense of the Geneva Convention on Refugees and for the first time the term “*economic refugee*” was applied describing Yugoslav refugees in the 1950s (ibid.).

In the late 1980s and the 1990s the asylum policies and practices of the Western European countries continuously became more restrictive. For example, in Austria in 1987, 19.2% of applicants were granted asylum, while only a year later a mere 6.8% of asylum applications were decided positively (Volf 1995: 432f.). This drop in positive decision results from an increasingly stricter interpretation of the Refugee Convention. The rising strictness of European asylum policies and practices, which can be observed nowadays in EU policies, originates from the fall of the Iron Curtain (ibid.).

After the collapse of Yugoslavia and during the Yugoslavian Wars many people from former Yugoslavia fled to Western European countries. When the wars in Croatia and Bosnia-Herzegovina broke out in 1991 and 1992 many people, mainly Bosnians, but also Croatians, Serbs, Montenegrins, Slovenes and Macedonians, fled to Western Europe or were internally displaced (UN/ECE 1993: 2f.). Bosnian refugees were not generally granted asylum, as was common practice before with the refugees from the former Soviet Union. Most of the Bosnian asylum seekers received so-called “temporary protection” in the Western European states instead of full recognition as refugees (Tretter 2000: 15; Koser/ Black 1999: 522f.). Bosnian refugees did often not meet the strict criteria of the Geneva Convention on Refugees, because most were not regarded as fleeing from personal persecution, but rather from the civil war in Bosnia-Herzegovina and therefore from general violence (Koser/ Black 1999: 526). Of course, most people, who were granted refugee status before, were probably not personally persecuted, however, their individual reasons for flight were not investigated at that time. Due to the general attention within the receiving states to the situation in Bosnia, it was not possible for European states to deport the asylum seekers (ibid.). Therefore the temporary protection status was considered as a

solution to the dilemma between not being able to deport and not wanting to grant asylum (ibid.).

In the war years around 500,000 Bosnians fled to Western Europe, mostly to Germany (60%), Austria, the Netherlands and Sweden (all together 30%) (ibid.). The numbers of inter-European refugees rose again when the Kosovo crisis broke out in 1998. According to the UNHCR (United Nations High Commissioner for Refugees) as many as 795,000³ people fled the Kosovo region due to the crisis, however, most of them fled to neighboring countries (quoted by Demokratiezentrum [n.d]). The largest groups of continental European asylum seekers in 2011 were Serbs (13,980) and Kosovars (9,870), and – when considered as European – Russians (18,330) and Turks (6,455) (Eurostat 2012).

3.1.2 International Refugees

As previously mentioned, throughout the colonial era, Europeans migrated to countries in the South rather than the other way round (Nuscheler 2004: 61). Even now, migration from the so-called *South*, which is often understood as the *poor* area of the world, to the *North* cannot be regarded as a general trend (ibid.). On the contrary, a South-to-South migration can often be observed. Many people seek refuge within their region of origin in Asia or Africa (ibid.). As previously mentioned, this thesis concentrates on the EU27 and will therefore take a closer look at refugees (in this chapter international, non-European refugees) applying for asylum in the EU states.

The Geneva Convention on Refugees from 1951, which provides a juridical definition of people who are entitled to refugee status and is the legal basis for EU asylum law, did not consider non-Europeans as refugees (Ballinger 2012: 366f.). According to the convention only people who fled as a result of the Second World War, “as a result of events occurring before 1 January 1951”, were treated as refugees (ibid.). This

³ Note: The given number could not be found in the resources of the UNHCR and is therefore not verified. The preciseness of the number cannot be guaranteed, but as there are no other sources regarded as a possible guiding value.

narrow definition was broadened with the Protocol of 1967 and the Convention now defines refugees independent from time and geography (ibid.).⁴

The first non-European asylum seekers came to Europe in the late 1960s (UNHCR 2001: 169ff.). However, they only began to arrive in Europe in larger numbers during the 1970s (UNHCR 2000: 156f.). Many of those arriving in the 1970s were from Latin American countries such as Chile, Uruguay and Argentina and Asian countries such as Laos, Cambodia and Vietnam (ibid.). These people fled as a result of military coups in Latin America and the Indochina War (ibid.). In the 1980s, asylum seekers from other Latin American and Asian countries, as well as from Africa and the Middle East, started arriving in Europe (ibid.). The biggest groups of international asylum applicants in Europe in the 1980s were from Iran, Sri Lanka, Pakistan, Vietnam, Ghana, India, Afghanistan, Cambodia, Ethiopia, Congo, Iraq, Lebanon, Chile, Angola and Laos (UNHCR 2001: 20ff.).

With the higher number of international asylum applicants, the refugee discourse also saw the beginning of a shift towards a more restrictive one which regarded *economic refugees* (UNHCR 2000: 157.) as a threat to asylum law and the European welfare state.

In the first half of the 1990s Europe saw a sharp increase of internal asylum seekers from Eastern Europe, while the numbers of international refugees also increased continuously. With over one million applicants, Europeans were still by far the largest group of asylum seekers from 1990 to 1994 (UNHCR 2001: 82ff.). Eastern Europeans were followed by Asian, African and finally Latin American refugees (ibid.). Somalis and Afghanis represented a growing group of refugees throughout the 1990s (ibid.). In the second half of the 1990s Asians already represented the largest group followed by Europeans and Africans (ibid.).

Until 2011, non-Europeans already exceeded European asylum seekers by far. Most applicants in the 2000s came from Afghanistan, Russia, Pakistan, Iraq, Serbia, Somalia, Iran, Nigeria, Kosovo, Bangladesh and more recently also from Syria (Eurostat 2012).

⁴ The Geneva Convention Relating to the Status of Refugees with its additional New York Protocol and the exact juridical definition of refugees will be explained in chapter 4.

The given statistical data appears important, since the *invasion of the poor*, who are supposed to use the asylum system as a channel for migration, is a widely spread perception of people seeking asylum within the European Union. The data showed that, only recently, did the group of non-European asylum seekers begin to increase, while, until recently, most refugees were originally from Europe. Furthermore the statistics show that – in contrary to what is often assumed – Sub-Saharan Africans have never and still do not constitute the largest number of people seeking refuge in Europe. Moreover it can be observed that political crises (e.g. Somalia, Afghanistan and Syria most recently) have an effect on refugee movements worldwide.

3.2 Europeanization of Asylum Policies

3.2.1 National Asylum Policies until 1990

After World War II the United Nations High Commissioner for Refugees (UNHCR) was founded in 1950 by the United Nations General Assembly (UNHCR n.d.). The UNHCR was originally created as a three-year mandate to help Europeans who were displaced and fled their country of origin due to the Second World War (ibid.). The United Nations Convention relating to the Status of Refugees, usually called the Geneva Convention on Refugees, was implemented in 1951 and is still until now the main legal basis for granting asylum (ibid.). In the 1950s, as a result of the crisis in Hungary and the large numbers of refugees fleeing the country, the refugee definition was expanded with the New York Protocol of 1967 (UNHCR n.d.; Nuscheler 2004: 187). While the convention of 1951 limited refugees to people who fled within Europe as a result of World War II, the additional protocol dropped the narrow definition and is therefore applicable for refugees worldwide (Nuscheler 2004: 187). It is important to mention, however, that the convention only guarantees the right to seek asylum, not the right to be granted asylum (ibid.).

Up to now, the convention was signed by every EU member state and at the same time it is part of the EU community law, which means it is obligatory for all member states regardless of whether or not they have signed it. (Lachmayer/ Bauer 2008: 453f.).

The foundation of the European Union was created in 1951 with the Treaty establishing the European Coal and Steel Community (ECSC) (Streinz 2008: 9). As

the name suggests the treaty's main goal was to create a supranational organ for common coal and steel production and distribution. The treaty was drafted and signed by France, Germany, Italy, Belgium, Netherlands and Luxembourg (ibid.). A common migration and/or asylum policy was not yet foreseen as a part of the community.

With the Treaty establishing the European Economic Community (EEC), also referred to as the Treaty of Rome, regulating migration was mentioned for the first time as a common strategy. According to part three of the treaty, free movement of workers within the member states should be reached by the end of the transition period (ECSC 1957: 51f; Art. 48ff. EEC Treaty). The free movement of workers should be guaranteed by abolishing any discrimination of workers regarding their nationality and should therefore ensure equal access to the member states' labor markets (ibid.). Furthermore, restrictions on the permanent establishment of citizens of member states should be removed (ibid.). The freedom of movement of workers as well as the freedom of establishment were two main innovations of the EEC treaty concerning migration (ibid.). However, migration of third-country nationals or non-EEC citizens was not mentioned in the treaty (ibid.).

Before asylum policies became a concern of the European Community, the Council of Europe already put the coordination of the European national policies on their agenda. In 1953 the Council passed a resolution, which suggested cooperation between national states in order to solve the refugee *problem* (Lavenex 2001: 76ff.). Although the Council of Europe did not incorporate any refugee law, they still regarded it as their duty to improve the humanitarian standards of the national legislation in accordance with the European Convention on Human Rights (ECHR) (ibid.). Particularly article 3 of the ECHR was being promoted by the Council of Europe (ibid.). Article three forbids torture or inhumane or degrading treatment or punishment and was, and is still, nowadays vital to the concept of non-refoulement⁵ (ibid.). In 1981, a paper supporting the concept of "first country of asylum" was drafted by the Parliamentary Assembly of the Council (ibid.). The draft was actually never implemented; nevertheless, it was still of great importance regarding the EU conventions of Schengen and Dublin (ibid.), which will be explained later on in the

⁵ The non-refoulement principle will be explained more detailed in chapter four.

thesis. In 1973 Great Britain, Ireland and Denmark joined the European Community⁶, followed by Greece in 1981 (EC) (Ucakar/ Gschiegl 2010: 191).

Already in 1975 the first EC cooperation in the field of inner security and combat of terrorism was launched with the TREVI cooperation (Brübach 1997: 6ff.). In the years following the agreement, different TREVI working groups were installed (ibid.). These working groups concentrated on the combat of terrorism, information exchange on police training, equipment and terrorism and the combat of drug trafficking (ibid.). Finally, the last TREVI working group, formed in 1992, drafted an action program that concentrated on the combat of terrorism, drug trafficking, organized crime, *illegal* immigration, methods of the police and cooperation in the field of training (ibid.). The achievement of these goals was planned through the exchange of experts, liaison officers in third countries, police cooperation at external borders, the creation of a shared database and the installment of means of communication (ibid.). Hence, with the TREVI cooperation, police cooperation and cooperation in the field of inner security between the member states was implemented for the first time in practice (ibid.).

Belgium, the Netherlands, Luxembourg, Germany and France decided the Schengen Agreement in 1985 (Foerster 1996: 19f.). In regard to internal migration, the agreement aims toward continued reduction of border controls between the contracting states (ibid.). The goals were to harmonize the visa requirements, simplify border crossings for Schengen nationals, facilitate cooperation between executives and exchange information between national police departments (ibid.: 26f.). In light of the current situation within the EU and at the external borders of the EU article 17 is of relevance:

“With regard to the movement of persons, the Parties shall endeavour to abolish checks at common borders and transfer them to their external borders. To that end they shall endeavour first to harmonise, where necessary, the laws, regulations and administrative provisions concerning the prohibitions and restrictions on which the checks are based and to take complementary measures

⁶ With the Merger Treaty of 1967 the European Economic Community (EEC), the European Atomic Energy Community (EURATOM) and the European Coal and Steel Community (ECSC) merged to the European Community (EC) (Ucakar/ Gschiegl 2010: 191).

to safeguard internal security and prevent illegal immigration by nationals of States that are not members of the European Communities.” (Art. 17 Schengen I)

The Schengen Agreement was not EC law; countries, which were not part of the EC, were allowed to join the agreement (Nuscheler 2004: 178).

One year later, in 1986, Spain and Portugal joined the EC (Ucakar/ Gschiegl 2010: 191). In the same year, the Single European Act (SEA) was signed by all twelve member states and consequently adopted (ibid.). The SEA amended the Treaty of Rome in order to strengthen European integration. The most important changes were the strengthening of EU institutions, such as the Commission, and the creation of a common internal market (Streinz 2008: 15).

3.2.2 Cross-National Cooperation until 1999

With Schengen II, the supranational cooperation between European states entered a new dimension of intensive collaboration. Until the mid 1980s refugee concerns were framed by organizations such as the UNHCR and the Council of Europe. However with the first and second Schengen agreements, the policies shifted to bi- and multilateral cooperation (Lavenex 2001: 83).

The second Schengen Agreement, Schengen II or the Schengen Convention implementing the Schengen Agreement, was a treaty between the founding states of Schengen I to put the first agreement into practice and was signed in 1990 (Nuscheler 2004: 178). The main provisions of the convention were focusing on free movement within the Schengen area, the harmonization of visa requirements and residence permits of third country nationals, the liability of airline and other transport carriers, the penalization of people smugglers and the responsibility for asylum procedures (Foerster 1996: 29ff.). Furthermore, the cooperation between the national police departments and the Schengen Information System (SIS) were central reforms through Schengen II (ibid.).

The border controls between Schengen states were removed for citizens of the Schengen zone, as well as for third country nationals entitled to stay within the Schengen area by a visa or a residence permit and for third country nationals, who are not obliged to hold a visa (Art. 2, par. 1; Art. 19ff. Schengen II). The carriers (e.g. airlines) of third country nationals, who do not hold a visa or are not entitled to enter

the Schengen area are held responsible and are therefore compelled to transport the person back at the carrier's cost (Art. 26 Schengen II). Moreover carriers, which transport people without any travel documents can be penalized (ibid.). According to Art. 29 par. 3 only one Schengen state can be responsible for an asylum procedure (Schengen II). This is either the state, which issued a visa for the asylum seeker, or the state, which the asylum seeker first entered (Art. 30ff. Schengen II). The Council of Europe's idea of "first country of asylum", which was mentioned before in the thesis, was being applied in the Schengen Agreement. With regard to aliens, the Schengen Information System collects data on people who are refused entry or have been deported (Art. 96 Schengen II). The SIS is a database, which can be accessed online by border posts, police and customs officials as well as aliens' departments (Foerster 1996: 33). Finally, the Schengen II Agreement also aims to harmonize the expulsion and deportation of foreigners (Art. 23 Schengen II; Foerster 1996: 30). By 2011, all EU member states were part of the Schengen area except for Great Britain, Ireland, Romania, Bulgaria and Cyprus (European Commission 2012a). Iceland, Norway and Switzerland are Schengen members, even though they are not members of the EU (ibid.).

The Dublin Convention was signed in the same year as the Schengen II Agreement, in 1990, by all EC states, but only came into force in 1997 (Nuscheler 2004: 178; Badar 2004: 165). Just like Schengen II, the Dublin Convention, also called Dublin I, supported the idea of the "first country of asylum". The arguments for this concept were, on the one side, to hinder *asylum tourism*, which means travelling to different European states to seek asylum, if the application in the first country was not decided positively and, on the other side, to prevent people from being pushed from one state to another (Nuscheler 2004: 178.). Just like the Schengen II Agreement, the Dublin Convention offers clear conditions regarding state responsibility for asylum procedure (ibid.). However, while the Schengen Agreement emerged from cross-national cooperation between European states, the Dublin Convention is an official EC (or later EU) document. The Dublin Convention, or Dublin I, was highly criticized, as people were afraid it would put an extra burden on states located with external EU borders (for example Germany at that time) (Badar 2004: 166). Moreover, it was regarded as doubtful that the community would act as if it was one state, as people could only apply for asylum in a single member country. The standards for and the

chances of being granted asylum were not the same in each country (ibid.). According to the Egyptian judge Mohamed Elewa Bader, the Dublin Convention aims towards reducing the asylum seekers within the EC (ibid.).

In 1992 the Treaty of Maastricht, or Treaty on European Union, was signed and thus the European Union was created (Borchardt 2010: 47f). The treaty established the three pillars of the EU: the first one being the economic and financial union, secondly the common foreign and security policy and finally the cooperation of justice and home affairs (ibid.). Another important reform resulting from the EU Treaty was the introduction of a Union citizenship, which granted citizens of EU member states additional rights throughout the whole EU (Streinz 2008: 18). According to the Maastricht Treaty, asylum policy, immigration and the control and governing of external borders are matters of common interest amongst the EU member states (Art. K.1 Treaty on European Union). Regarding immigration, the conditions of entry, movement, residence, family reunion and access to employment of third country nationals should be regulated by the EU (Art. K.1 par. 3 ibid.). Likewise the EU ought to combat unauthorized migration cooperatively (ibid.), however a common asylum policy was not yet in place. Art. K.3 provided the Council of the European Union with the right to decide common measures regarding Art. K.1, which was made use of in 1995 when the Council decided minimum standards for asylum procedures and a common interpretation of the Geneva Convention on Refugees (Nuscheler 2004: 179).

In 1995 Austria, Finland and Sweden joined the European Union (Ucakar/ Gschiegl 2010: 191).

3.2.3 The Treaty of Amsterdam 1999: Asylum Policy as a Responsibility of the EU

With the Treaty of Amsterdam, it can be argued, that asylum and migration policy finally underwent a process of communitarization and these policy fields can therefore be regarded as part of common EU law. Nevertheless, national legislation is still of great importance and still highly influences EU asylum law. While the EU gained competencies in the field of migration, asylum and border control, national parliaments still maintain a large sphere of influence.

In 1997 the Treaty of Amsterdam was signed and subsequently came into force in 1999 (Nuscheler 2004: 180). With the Amsterdam Treaty asylum policy became part of the first pillar of the EU⁷ and hence became part of the EU common law (ibid.). The European Parliament possessed an understanding of asylum policies that were strongly oriented towards humanitarian norms, while national parliaments were guided by more restrictive asylum and aliens' laws (ibid.). According to Title IV the Council of the European Union has to decide common measurements for areas such as border control at external European borders, granting of asylum and immigration to the EU (Nuscheler 2004: 180; Title IV Treaty of Amsterdam). Furthermore the Schengen Agreement was incorporated in the EU law with the additional Schengen Protocol, the Protocol integrating the Schengen acquis into the framework of the European Union (Tomei 2001: 59). Nevertheless, some EU member states – the United Kingdom, Ireland, Cyprus, Romania and Bulgaria, are still not or not yet members of the Schengen Area (European Commission 2012a).

Before the Treaty of Amsterdam came into force the “High Level Working Group on Asylum and Migration” (HLWG) was established by the Council of the EU in 1998 (Nuscheler 2004: 180) and an action plan was drafted by the working group. It mainly concentrated on the prevention of migration by providing development assistance to refugees' and migrants' countries of origin (ibid.).

A year later in 1999, the year when the Amsterdam Treaty came into force, the Tampere Program was drafted by the European Council (ibid.). The main suggestions of the Tampere Program were to establish a European-wide uniform asylum procedure and to continue to homogenize national asylum laws (ibid.). Furthermore, a tighter cooperation between the countries of origin and the management of migration was proposed (Tampere Program Art. IV). The latter includes the combat of irregular (*illegal*) migration and human trafficking (ibid.). Following the suggestions of the European Council a directive to harmonize the “minimum standards for the reception of asylum seekers” was passed in 2003 (Nuescheler 2004: 180f.; Council Directive 2003/9/EC). The directive set minimum standards for all EU member states with regard to the legal status of asylum seekers and their right of residence within the territory or a certain area of the territory of the

⁷ Before, with the Treaty of Maastricht it had been a part of the third pillar.

country where they are seeking asylum during their asylum procedure (Council Directive 2003/9/EC Art. 6f.). Moreover, asylum seekers are entitled to adequate housing, food, clothes (or vouchers and allowances to self-organize housing, food and clothes) and health care (ibid.: Art. 13ff.). Additionally, the family life of the people seeking asylum has to be protected (ibid.: Art. 8ff.). Minors, unaccompanied minors, victims of torture and violence, disabled people, elderly people, pregnant women and single parents with minor children have to be treated in a special way (ibid.: Art. 17ff.). According to Nuscheler the directive did not manage to harmonize areas such as the access to the labor market, the freedom of movement and vocational training (2004: 181).

The Council Regulation, which is often referred to as the Dublin II Regulation (in reference to the Dublin I Convention) was passed in 2003. The main provisions of the Dublin I Convention can also be found in the Dublin II Regulation. Applying for asylum in more than one state shall be hindered and the state responsible for the application shall be determined through the regulation (Dublin II Regulation).

In 2004 Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Czech Republic, Hungary and Cyprus joined the European Union (Ucakar/ Gschiegl 2010: 191).

The succeeding program of the Tampere Program was The Hague Program. It constitutes another big step towards the Europeanization of asylum policies and was decided in 2005. Alongside the harmonization of asylum policies, the security of the EU and its member states was of great concern, according to the program. The fight against *illegal* migration, human trafficking and terrorism and hence the cooperation with third countries, transit countries and countries of origin were central suggestions of the program (Art. 1.4ff. Hague Program). Migration ought to be managed through stricter border controls, through collecting biometric data and through databases such as EURODAC (ibid.). In addition The Hague Program aimed towards the externalization of asylum procedures (Art. 1.6ff Hague Program).

As suggested by the Tampere Program, the minimum standards of asylum procedures were determined in the 2005 directive “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (Council Directive 2005/85/EC).

Following the Tampere Program, the next five-year plan for the cooperation in the field of justice and home affairs was the Stockholm Program from 2009 (Karawane für die Rechte der Flüchtlinge und MigrantInnen 2009: 2). It follows the same logic as its predecessors, The Hague Program and the Tampere Program (ibid.).

3.3 Post War Refugee Movements and Policies

When comparing the development of migration and refugee movements within and to Europe with the development of EEC, EC and EU law, parallels can be found.

After WW II only people fleeing as a result of the World War were regarded as refugees and most of the people migrating within Europe did so because of the war. During the Cold War, three events led to larger refugee movements, even though the Warsaw Pact countries generally tried to hinder people from migrating. The crisis of Hungary, the first major post-1945 movement of emigration, led to the questioning of the definition of refugees by the Geneva Convention on Refugees of 1951. As a result an additional protocol was passed a year later, expanding the definition on refugees independent of time and space.

While Hungarian, Czech and Polish refugees were generally granted asylum during the Cold War, Yugoslav refugees during and after the Cold War were rarely recognized as refugees. This differentiation can be understood as a result of the political tensions between the East and West Bloc.

With regard to asylum policies, the Cold War era was shaped by multilateral organizations such as the UNHCR and the Council of Europe, which understood escape movements as humanitarian issues. The idea of “first country of asylum”, which is central in every asylum procedure within the EU nowadays, was established during that time by the Council of Europe.

When the numbers of international refugees began to increase in the 1980s the cooperation between European states also began to evolve. The Schengen I Agreement, being the first multilateral agreement of its kind, was decided in the 1980s. At the same time, the discourse on refugees and migrants saw a shift towards refugees being regarded as a threat to the inner stability and welfare of receiving countries.

By the time former Yugoslavia collapsed and the wars in Croatia and Bosnia broke out in 1991 and 1992, the Schengen II Convention and the Dublin I Convention were already passed, but not yet in force. They marked a new era of intensified national cooperation and also the beginning of a continuous restriction, securitization and militarization process. Many Bosnian refugees were only granted a temporary status in their country of asylum. The Cold War era practice of liberally granting asylum had therefore come to an end. Furthermore, the origin of selective openness of EU borders can be observed with Schengen I and II and Dublin I. While borders within the EU were continuously abolished, the strength of the external borders was intensified.

The concept of *economic refugees* gained popularity in the 1990s, which also showed in the policy shift towards preventive measurements to combat *push factors* such as poverty. The High Level Working Group on Asylum and Migration therefore regarded development assistance as a measure to prevent people from migrating to Europe.

When the Kosovo crisis was at its peak, the Treaty of Amsterdam came into force. Through the treaty, asylum and migration policies, as well as border control, could be regarded as EU responsibilities, even though individual national states still possess autonomy in legislation and practice to a large extent.

Throughout the 1990s the number of non-European refugees increased significantly. By the turn of the millennium, the number of international, non-EU refugees had already exceeded the number of internal refugees. This development was accompanied by directives, programs and measures by the EU, on one hand, to secure and protect the borders, manage migration and refugee flows and, on the other hand, to create minimum standards for asylum procedures and the living conditions of asylum seekers in the EU⁸.

⁸ It needs to be said, however, that these standards are not at all met by all the EU member states.

4 Legal Backgrounds

In order to understand the policies and practices it is important to take a look at the legal backgrounds of these. The following chapter will present the most relevant international sources of law as well as relevant sources of EU law.

4.1 The Geneva Convention on Refugees and the European Convention on Human Rights

On July 28, 1951, the Geneva Convention relating to the Status of Refugees (Geneva Convention on Refugees) was adopted by the General Assembly of the United Nations (Nuscheler 2004: 187). At present, the convention is still the legal basis for refugee protection in the European Union (ibid.). The convention was mainly drafted as a reaction to the situation of refugees in post-war Europe and sought to protect people who fled their countries of origin as a result of the Second World War (ibid.). Therefore the definition of a refugee according to the convention was as follows.

“[T]he term “refugee” shall apply to any person who:

[...] As a result of events occurring before 1 January 1951 and 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.” (Art. 1 par. B(2) Geneva Convention on Refugees)

The exclusion of people who fled due to events that occurred after January 1, 1951 was later suspended with an additional protocol, the so-called New York Protocol, in 1967 (Nuscheler 2004: 187). The 1967 Protocol Relating to the Status of Refugees can be regarded as a result of the large numbers of refugees from Hungary fleeing to Western Europe in the 1950s, as well as other refugees fleeing from Eastern to Western Europe, who were originally not defined as refugees (UNHCR 2006a). Due to the high numbers of people fleeing for reasons other than WW II, the additional protocol abolished the temporal restriction (Art. 1 par. 2 Protocol Relating to the

Status of Refugees). The rest of the convention, however, did not change in any essential way (Nuscheler 2004: 187).

A refugee is therefore, according to the convention and its additional protocol, a person who possesses a well-founded fear of being persecuted, due to his or her *race*, religion, nationality and/or political or social affiliation. Furthermore the person has to be outside of his or her country of nationality, or in case of a stateless person the country of the person's usual residence. A refugee must be either unable or unwilling to make use of the state's protection. This means either the country itself is persecuting the person seeking refuge as a consequence of any of the reasons named in the convention, or the state is unable to protect the person from his or her persecutor. In the case of a stateless person he or she must be unwilling or unable to return to his or her country of usual residence for the same reasons as a person, who cannot enjoy his or her country's protection.

Well-founded fear is therefore the sole basis on which a juridical decision can be taken, even though it is very difficult to prove (Nuscheler 2004: 188f.). A generally unstable situation in the country of origin is not enough to be granted asylum; the asylum seeker has to substantiate his or her personal persecution (ibid.). This constitutes a burden of proof for the applicant of asylum (ibid.). In addition, allegations of *asylum fraud*, that will be discussed in Chapter 5, create general suspicion of asylum seekers not being actual *political* refugees and therefore increases the already existing burden of proof (ibid.). Another definitional problem of the Refugee Convention is the understanding of *persecution*, as it is not defined more closely (ibid.). Does persecution only mean a threat to the life of a person or is a grave violation of the human rights of an applicant for asylum a sufficient threat? (ibid.).

In addition to establishing the definition of a refugee, the Geneva Convention on Refugees also determines the rights of refugees in the contracting states. Such rights include the right not to be discriminated against (Art. 3 Geneva Convention on Refugees), the right to be treated equally to other aliens (Art. 7.), the property rights (Art. 13f.), the access to courts (Art. 16) and education (Art. 22) and the right to labor and social security (Art. 22ff.). Rights and duties of applicants for refugee status are not determined in the convention, nor is the asylum procedure regulated by it.

Furthermore the convention does not provide anyone with a *right to asylum*, rather it defines the legal status of people who have already been granted refugee status, as the name implies (Nuscheler 2004: 187).

Moreover contracting states are obliged to adhere to the principle of *non-refoulement* (ibid.), which is as follows:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Art. 33 par. 1 Geneva Convention on Refugees)

All EU member states have ratified the convention (UNHCR 2006b) and with the “status directive” the Geneva Convention on Refugees was incorporated in EU Asylum law in 2004 (Council Directive 2004/83/EC).

The second main document, which is relevant for refugee protection in the European Union and in Europe, is the European Convention on Human Rights (ECHR) by the Council of Europe (Schumacher/ Peyrl/ Neugschwendtner 2012: 210). Mainly Article 2 (Right to life), 3 (Prohibition of torture), 5 (Right to liberty and security), 8 (Right to respect for private and family life) and 14 (Prohibition of discrimination) are of relevance with regard to asylum seekers in Europe (ECHR). Art. 2 and 3 ECHR are important regarding the so-called subsidiary protection status, which does not allow people to be expelled or deported, if they would be facing a violation of their right to life (e.g. through death penalty) or the prohibition of torture (Putzer 2009: 453). Such a subsidiary protection, which is normed by the directive on refugee status, can be granted to a person, who does not qualify for a refugee status, but still cannot be expelled or deported due to a possible violation of Art. 2 and 3 ECHR (Art. 2 par. e; Art. 15 Council Directive 2004/83/EC). However, subsidiary protection does not have to be renewed if the prior threat to the person in case of a return to his or her home country no longer exists (Art. 16). Art. 8 ECHR can be of relevance to aliens as an expulsion or deportation might violate their right to respect for private and family life and is therefore not enforceable (Feik 2009: 184ff.). Furthermore Art. 8 ECHR allows aliens to bring their families to their country of asylum or enjoy subsidiary protection (ibid.).

Conclusively it needs to be said, that the two main legal documents of international law concerning asylum and refugee law are the Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights.

4.1.1 Alternative Terminologies and Definitions of “Refugees”

The UNHCR Refugee Convention is of course only one possible definition of refugees. The definition is drafted in and for Europe after the Second World War. Even with the additional protocol it still remains highly influenced by the history of Europe, as the amendment can be regarded as a reaction to the different events in Europe during the Cold War that lead to larger groups of people fleeing to Western Europe. Even though the convention is now universal in a sense that it does not imply any geographical or temporal restrictions, it is still Eurocentric in its history and origin.

The two following alternative definitions have a similar understanding of refugees, but also widen the strict determination of the UNHCR convention’s definition. They do not have any legal implications for Europe and the EU, however, a short presentation of them still seems vital to me in order to examine other possible ways of defining refugees. The Cartagena Declaration on Refugees, which was adopted by the Colloquium on the International Protection on Refugees in Central America, Mexico and Panama in 1984 represents a possible non-European refugee declaration.

“Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” (Art. 3 par. 3 Cartagena Declaration on Refugees)

The Cartagena Declaration therefore expands the definition of the UNHCR convention. According to the declaration, also people who flee from generally violent conditions, not only from personal persecution, as foreseen by the UNHCR convention, can be considered refugees. Furthermore foreign aggression, internal conflicts and massive violations of human rights can be regarded as a cause for people leaving their country of origin and being granted asylum. In addition a

seriously disturbed public order is also a criteria for fleeing. The declaration neither emphasizes personal persecution nor affiliation with a certain group (religious, nationality, social group, political belief and “race”). In light of the specific historical, social and political contexts of the region, the extended definition can be easily comprehended.

The second non-European refugee definition I would like to present is the Convention Governing the Specific Aspects of Refugee Problems in Africa, or the Organization of African Unity (OAU)⁹ Refugee Convention. In addition to the acceptance of the Geneva Convention on Refugees the OAU Refugee Convention defines refugees as follows:

“The term “refugee” shall also [note: in addition to the Geneva Refugee Convention’s definition] apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” (Art. 1 par. 2 OAU Refugee Convention)

While this convention does not accept generalized violence as a reason for granting asylum, as the Cartagena Declaration does, it does stress foreign aggression as well as foreign occupation and domination as a reason for a person to flee his or her country of origin. With regard to Africa’s history, the emphasis on external and foreign threats appears very reasonable.

Using the two cited refugee definitions as examples, it can be seen that the UNHCR convention is only one possible way of defining refugees and has to be understood within a European context. However, as the Cartagena Declaration and the OAU Refugee Convention do not have any legal effect on the EU and Europe, they will not be treated later on in the thesis.

⁹ The former Organization of African Unity is the predecessor organization of the African Union (AU).

4.2 EU Legal Sources Concerning Asylum and Aliens' Law

Apart from the already mentioned Schengen Agreement and Convention and Dublin Convention, of which the first one was originally a multilateral treaty before it was incorporated into EU law, there are a number of other legal documents concerning asylum seekers in the EU. These shall be presented briefly in the following chapter.

With the *Council Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention* the Eurodac database system was created in 2000 (Schumacher/ Peyrl/ Neugschwendtner 2012: 211f.). Eurodac was initiated in order to effectively implement the Dublin I Convention (ibid.), which means to determine which member state is responsible for the asylum application and procedure of an asylum seeker according to the logic of “first country of asylum”. The database collects data on asylum applicants in all member states including their fingerprint (ibid.). With the comparison of fingerprints of asylum applicants it can be determined which state is responsible for the asylum application.

A year later the *Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof* was adopted (ibid.). This directive aimed towards the creation of minimum standards for the granting of a temporary protection outside the asylum system (ibid.). It should provide third country nationals with the right to stay for a limited duration in case of a *mass influx* of displaced persons without burdening the asylum system. The minimum standards for the maintenance, care and supply of asylum seekers were determined with the *Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers* in 2003 (ibid.). The “reception conditions directive” was already closely examined in chapter 3 of this thesis. Finally, the definition of refugees and the subsidiary protection status was harmonized within the EU through the *Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* in 2004 (ibid.). A year later, in 2005, the creation of a harmonized and common asylum procedure

was reached through the “asylum procedure directive” *Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status* (ibid.). This directive allows a quicker asylum procedure and simplifies the expulsion of people from certain countries of origin, which are considered as safe (ibid.).

The process of harmonization is a continuously evolving one. The directive on refugee status has already been renewed with a new directive¹⁰, which will come into force in 2013 (ibid.). Furthermore, the amendment of the following legal documents is being discussed and proposals have already been made: reception conditions directive, Dublin II Regulation, Eurodac Directive and asylum procedure directive (ibid.). According to the Austrian asylum lawyers and jurists Schumacher, Peyrl and Neugschwendtner these proposals could improve the situation of asylum seekers, however, the reaction of many member states brings them to the conclusion that there is little hope for the improvements to be implemented (ibid.: 213). Instead, they believe that the restrictions on entering of the EU will likely be tightened through the strengthening of Frontex (ibid.).

The EU therefore regulates the conditions for the reception of asylum seekers and which social and labor rights and obligations they have in the receiving country, the conditions under which an asylum seeker is granted a refugee or subsidiary protection status and asylum procedures. It is important to note that all of these directives only provide the member states with minimum standards, which are sometimes criticized as being too low. At the same time it is often alleged that some member states do not even adhere to the already low minimum standards (Klepp 2011: 55f.). Finally, the EU regulates, who is responsible for an application and determines the responsible state with the fingerprint database Eurodac.

¹⁰ *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.*

4.3 EU Legal Documents concerning Frontex

With the so-called Frontex Regulation the *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, called Frontex¹¹, was created on October, 26 2004 (Klepp 2011: 59). With the establishment of the agency Frontex, European border management and control was institutionalized (ibid.).

While the regulation respects the sovereignty of the member states in the control of their external borders and emphasizes that said power should remain in the hands of the respective states, the regulation regards Frontex as an agency for improving and integrating EU border management (Art. 1. par. 1f. Council Regulation (EC) No 2007/2004). The agency is responsible for six main tasks. It ought to coordinate member states cooperation, assist training of border guards and establish common standards of training, conduct risk analyses, promote research on technical support for the management of the external borders, assist member states in cases where increased support is needed and finally support member states in Joint Operations (JO) to return illegalized aliens (Art. 2 par. 1). The individual tasks of the agency will be further described later on in the thesis. Apart from these tasks, the regulation also determines the structure and the finances of the agency (Chapter III, IV). The Maastricht Treaty established the basis for the creation of Frontex in 2004 (Art. K1 par. 2).

The Regulation (EC) No 863/2007 amended the Frontex Regulation and created the possibility of Rapid Border Intervention Teams. Rapid Border Intervention Teams (RABIT) are teams composed of border guards and experts from EU member states (Art. 4 Regulation (EC) No 863/2007). The teams can be requested by a member state, which is facing large numbers of third-country nationals wanting to cross their borders irregularly (Art. 1 par. 1). RABITs assist the concerned state with the control of their borders for a limited period of time (ibid). Frontex therefore creates a pool of such border guards and experts from the entire European Union and whenever a member state requests rapid intervention, it can be decided whether a team should

¹¹ Frontex is the abbreviation of the French name “frontières extérieures”, which means external borders.

be employed or not. Members of the teams are allowed to carry weapons with ammunition and use force in accordance with the requesting or hosting state's laws (Art. 6 par. 6). Furthermore personnel of the pool should be trained specially according to the task they have to fulfill as Frontex guards (Art. 7 par. 2).

Finally, the Frontex Regulation was amended for the last time by the Regulation (EU) No 1168/2011. This regulation led to the strengthening of the agency. Just like the Regulation 863/2007 it put an emphasis on the protection of international law and refugee rights and also mentions the Geneva Convention on Refugees, the EU Charter of Fundamental Rights as well as the principle of non-refoulement (Art. 1 par. 2 Regulation (EU) No 1168/2011). Also the rescue of people at sea is mentioned for the first time in the amending regulation (Art. 2 par. d(a)). In addition respecting the non-refoulement principle, the agency should also take into consideration "[t]he special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons" (Art. 1a). Besides, a code of conduct for the members is to be developed by Frontex (Art. 2a). While it seems that these amendments strengthened the protection of human rights and refugees, the reality of the situation is a bit different. The following chapters will concentrate on the practices of Frontex.

The regulation did not only aim towards the upholding of fundamental rights, but it also strengthened the agency itself. For the first time, with the 2011 regulation and the creation of European Border Guard Teams (EBGT), Frontex was allowed to work independently of its host country and employ its own equipment (Art. 3 par. 1; Art. 2 par. e(a)). Moreover the cooperation with third countries is foreseen by the regulation. Cooperation with authorities' of third countries shall facilitate the deportation of illegalized third country nationals through the providing of necessary travel documents (Art. 9 par. 2). In addition Frontex can place officers in a third country to establish networks and facilitate the border management of these countries, also a funding of third countries' border management through the agency is possible (Art. 14). Other more specific tasks of and provisions for the agency will be presented later on.

5 Refugees as a Security Threat

The following chapter illustrates the development of the public discourse¹² from a “victimizing discourse” to a “criminalizing discourse”. The depiction of the discourse on refugees and migrants is important for understanding and analyzing the process of securitization, that will be explained later on in the chapter. Before the mainstream discourse will be presented, an introduction to different ways of categorizing refugees will be outlined. Even though I will later on talk about the discourse on refugees, there are many that follow different logics.

5.1 Framing the Refugee and Asylum Discourse

Generally the discourse on asylum seekers and refugees can be categorized in eight different frames according to Gruber (2010: 74ff.).

First of all there is the “security frame”. It constructs asylum seekers and refugees as a threat to the social, economic and inner security of a state (ibid.). According to the security frame asylum seekers and refugees as well as illegalized migrants can be regarded as “*criminals*”, “*drug dealers*” and “*violent*”, while, on the other side, escape agents can be considered as “*criminal people smugglers*”, “*human traffickers*” and so on (ibid.). The security frame justifies the extension of borders (in this case the external borders of the EU) and the strengthening of border control, as well as restrictions and faster asylum procedures. Furthermore, the frame allows asylum seekers to be isolated within the country their receiving country and deportations to be carried out more quickly and with less resistance (ibid.). The securitizing frame is used by EU institutions, Frontex, member states, the IOM, international organizations and others.

Secondly, it is argued, that migrants are using the asylum system to receive a legal status in a country where they would wish to live due to a better standard of living or the hope of better economic chances (ibid.). This reasoning can be considered as the “asylum abuse frame” or the “genuineness frame” (Gruber 2010: 74; Nickels 2007:

¹² The „public discourse“ is led by the mainstream media, politicians of the government, the opposition and the majority of society. Of course, there is not only one discourse, but many at the same time. Still, general trends in mainstream discourse can be observed.

52). As this frame claims, there needs to be a differentiation between *real* or *genuine* refugees and *fake* or *bogus* refugees (ibid.). The “*bogus refugees*” are often considered as “*economic refugees*” who are exploiting the welfare state of the receiving countries (ibid.). Often undocumented and illegal entry to a state is associated with this argumentation (ibid.). Sometimes “*economic refugees*” are understood to be in contact with criminal circles, as they entered “*illegally*”¹³ with the help of *criminal* people smugglers (Nickels 2007: 52). This frame provides actors with reasons for a more restrictive asylum policy and practice (Gruber 2010: 74). A stricter interpretation of laws such as the Dublin II Regulation, faster asylum procedures and prompt expulsion and, consequently, deportations follow the logic of the asylum abuse and genuineness frame (ibid.). This discourse is led, for example, by the mainstream media, conservative or right wing parties, member states and the UNHCR.

The “burden frame” argues that aliens seeking asylum are an additional burden for the welfare state of the receiving country (ibid.). The state and the citizens of the receiving country are financially, economically and socially strained by the asylum seekers and refugees and it is therefore necessary to share the *burden* of asylum applications within the EU, strictly implement the Dublin II Regulation and provide the countries of origin with development assistance (ibid.). Among others, member states facing such a *burden* are relying heavily on this pattern of argument.

A frame, which is generally used by all parties, cleavages and political spectrums, is the “instrumentalization frame” (ibid.). It is being brought forward that the debates on refugees and asylum applicants are used by the opponent for ideological reasons (ibid.). The discourse is being used to promote other topics and it should therefore be objectivized again (ibid.). This frame sometimes also claims that a problem, in this case the “*refugee problem*”, is being constructed in order to gain votes or to enforce a new policy (ibid.).

¹³ The criminalization of refugees due to their *illegal* entry stands in contradiction to international law. According to the Geneva Convention on Refugees a state cannot penalize a refugee for entering its territory *illegally* (Art. 31 par. 1). Also the *illegal* presence of a refugee within the territory cannot be penalized (ibid.).

Also the “administrative frame” is being employed by the whole political spectrum (ibid.). This frame considers the administrative sector to be overcharged by the number of applicants (ibid.). Single persons are not being criticized, but at the same time there is a demand for improvement of the personnel and financial resources of the administrative sector (ibid.). It cannot be said that this frame calls for more restrictive or more liberal policies, however, the inefficiency of the legal structure is criticized (ibid.). Also the so-called “*asylum shopping*” and “*burden sharing*” are mentioned in the logic of this frame (Nickels 2007: 52). The first one is understood as the movement to another country once a decision in an asylum procedure has been decided negatively. Continuous application for asylum in different EU states is referred to as “*asylum shopping*”. The notion of “*burden sharing*” means that an equal distribution of asylum seekers and of the *burden* of receiving asylum seekers ought to be shared between the member states, in order to take pressure off smaller or border states (ibid.). A consequence of this frame would be the harmonization of asylum policies on the EU level (ibid.) as well as the implementation of Dublin II.

While the frames mentioned above were arguing for either a more restrictive or relatively neutral policy, the “human and fundamental rights frame” or the “human dignity frame” are utilized predominately by the left wing of the political spectrum. According to the logic of these frames, the practices in the field of asylum violates international norms and human rights standards (Gruber 2010: 76). Refugees as well as asylum seekers are in need of a protection in order to preserve their dignity (Nickels 2007:49). Therefore it needs to be assured that international treaties are implemented and their implementation is monitored (Gruber 2010: 76). For example the deportation of asylum seekers, according to the Dublin II Regulation, to the *safe* third country Greece was strongly criticized by human rights organizations such as Amnesty International (2011: 34). Moreover, the access to the labor market for asylum seekers during their asylum procedure is understood as a measurement to guarantee the dignity of the concerned persons (Nickels 2007: 52). Mostly NGOs, Human Rights Organizations and Refugee Rights advocates, civil society initiatives, the UNHCR and left wing parties place the asylum discourse within these frames.

The “solidarity frame” is the most left-leaning of the frames presented so far. It not only demands human rights standards be observed, but also insists on improvements far more than the laws oblige the state to do (Gruber 2010: 77). The

insufficient juridical counseling, the restrictions on mobility, the accommodation and other concerns for asylum seekers are denounced following the logic of the solidarity frame (ibid.). Hence, it can be said, that this frame not only requests adherence to laws and international norms, but also criticizes the existing conditions and asks for improvement and amendment. The above mentioned human dignity frame can also be put on the same level as the solidarity frame. Mainly civil society organizations and networks as well as NGOs follow this logic of argumentation.

The eighth frame named by Gruber, the “integration frame” regards the lack of integration measures for refugees and asylum seekers in economic, educational, political and social spheres as the main problem for aliens in a country (ibid.). The empowerment of refugees ought to be reached by integrating them fully in the receiving society, the labor market, the educational sector and the welfare state. Also, this frame is favored by non-state actors.

Finally a ninth frame that is not identified by Gruber, but is nonetheless relevant, is the “return home frame” (Nickels 2007: 52f.). According to this frame, asylum seekers, refugees [and people with a subsidiary protection status] should return home, as soon as the situation in the country of origin stabilizes (ibid.). The frame implies, that refugees should not be allowed to stay for an unlimited period (ibid.). Also, if they do not want to return home voluntarily, forcible deportations should be allowed (ibid.).

These nine frames shall provide this chapter and the thesis with a general understanding of the different lines of logic in use in refugee discourse. The following subchapters will show a general shift of the mainstream discourse from post-WWII to the present.

5.1.1 Political Refugees during the Cold War

Immediately after WW II most refugees from Europe, who fled as a result of the war itself, did not stay in Europe, but were resettled in the US (Koser/ Black 1999: 524f.). In the 1960s the composition of refugees in Europe began to change. Most of them fled as a result of the Cold War (ibid.). Just as the reasons for flight and the practices of the European receiving states regarding refugees began to shift, so did the discourse on refugees (ibid.). During the Cold War, refugees from the communist

Eastern Bloc were widely accepted as political refugees and most of them stayed in Europe (ibid). The acceptance of people fleeing from communist states, and therefore opposing those states, was in concordance with the Western ideological strategy to promote and spread capitalism (ibid.). Furthermore, the need for economic recovery after the war meant the labor markets of the West were in need of extra labor forces and refugees from the Eastern Bloc could fill these gaps (ibid.). In addition, the refugee movement during this time was a one-way movement from the East to the West and therefore supported the concept of a *superior* capitalist system (Volf 1995: 426). Since refugees from the former Soviet Union were regarded as support for the ideological and political beliefs of the West and portrayed the communist system as inferior, they were widely politically and socially accepted. Also, the thriving economy in the West was in need of labor force, which also bolstered the acceptance of Soviet refugees. Similarly, when the first larger groups of non-European refugees from socialist and Moscow-loyal Vietnam arrived in Europe in the 1970s, they were generally widely granted asylum, however policies were already becoming more restrictive (Koser/ Black 1995: 524).

A prime example of the shift in the public discourse is the development of the public opinion and the discourse about Romanian refugees in Austria. In and before 1989 Romanians were described as poor and suffering from disease and violence (Matouschek/ Wodak/ Januschek 1995: 59). At the time of the transition, the media in Austria was widely sympathizing with the *suffering* population in Romania (ibid: 140). The “pitiful discourse” of the early transitional years soon changed to a “patronizing discourse”, which was characterized by non-Romanian *experts* stating their opinion on what was best for Romania (ibid: 59f.). Already in 1990, the discourse shifted to a third stadium, the “discourse of justification”, which sought to legitimize the negative attitude towards and the exclusion of Romanian refugees (ibid.). They were already described as *economic refugees, lazy, criminals and social parasites* (ibid.).

5.1.2 Bogus Asylum Seekers, Economic Refugees, Drug Dealers, Criminals and Illegal Migrants?

While refugees from all Soviet countries were generously granted asylum during the Cold War, refugees from Yugoslavia were often denied refugee status in Western Europe after Tito’s breach with the Soviet Union (Volf 1995: 426ff.). Already in the

1950s, the term “*economic refugee*” was used in reference to refugees from Yugoslavia (ibid.). Yugoslav asylum applicants were alleged to be seeking better economic conditions rather than protection from political prosecution.

Notably in the 1980s, when refugees from all over the world sought asylum in Europe, the generous granting of asylum came to an end (Koser/ Black 1995: 525). In contrast to so-called quota refugees, the movement of the *new* refugees was perceived as irregular, since the receiving countries were not able to control it (Koser/ Black 1995: 525; Widgren 1989: 601.). Besides the irregularity of the movement, the policy makers of European countries were afraid of a mass movement from South-to-North as well as of an *influx of the poor* (Koser/ Black 1995: 525). The dichotomous concept of *bogus* and *genuine* refugees was another reason for the continued policy restriction (ibid.).

The understanding of people seeking asylum shifted from political to economic, and finally, to *bogus* refugees (Bauböck/ Perchinig 2006: 729) or, as Nickels puts it, refugees in the current discourse tend to be categorized in two types, political and genuine or economic and *bogus* (2007:41). Moreover, he argues, that asylum seekers are often put on the same level as *bogus* refugees, who *abuse* the asylum system (ibid.). *Economic* refugees seek asylum in order to improve their personal or families’ economic situation, they therefore also *abuse* the asylum system, as they don’t have any other legal possibilities to enter a country. Likewise, economic refugees *use* the asylum system in order to receive access to the welfare state and are therefore *exploiting* the social state in the receiving countries (Matouschek 2001:125). Other negative expressions in the general use of language as well as in media reports are “*illegal*” immigrants, “*wave*” of refugees, “*influx*” of migrants, “*flood*” of refugees and “*storm*” of refugees (ibid.: 128). Furthermore, Europe, its welfare state and its labor market are perceived as a boat with a limited number of *seats*. Consequently Europe is described as a “*full boat*”, meaning that all the *seats* are taken by citizens and migrants and no *seat* is left for newly arriving *passengers* (ibid.: 128). These terms implement the necessity of protection from refugees, as they would otherwise *storm* Europe and constitute a huge *threat*. After the end of the Cold War, the higher numbers of Eastern Europe asylum seekers were continuously associated with negative images such as *criminals*, *drug dealers*, *members of mafia*

organizations, illicit workers, [terrorists] and therefore posed a threat to the security of the receiving country (ibid.).

A study of three Austrian mainstream newspapers in 1968 and 1991 by Andrea Fasching shows the shift of the discourse about refugees in the media. While the media coverage presented a mostly positive (ca. 43%) and neutral (ca. 53%) image of refugees in 1968, the discourse was more often led in a negative way (ca. 22%) in 1991¹⁴ (1994: 86).

The feeling of insecurity and the anxiety amongst citizens of receiving states, which was brought about through the criminalization of refugees and asylum seekers, offers a legitimization for restrictive policies and security measures. Such security measures include technological and security upgrades (e.g. video surveillance, electronic eavesdropping operations and computer surveillance), risk prevention (e.g. collection of personal data) and risk minimization (e.g. denial of asylum) (Dimmel 2006: 638).

5.2 Europeanization, Securitization, Management, Militarization and Restriction

It cannot be said whether the shift of the discourse resulted in a shift of policy or the other way round. The focus on *bogus, economic* and *criminal* refugees as a threat to the EU and the restriction and securitization of policies and practices might be both the cause and the effect at the same time and have come about hand in hand due to historical developments. While the discourse legitimizes the policies, the policies might also be policy makers' response to the discourse. Nevertheless, a connection between discourse and policy can be drawn.

The history chapter showed how migration, asylum, border and security policies of the EU member states and other non-EU European states, such as the Schengen-associated state Switzerland, underwent and still are undergoing a process of harmonization and therefore Europeanization. This Europeanization, however, should not hide the fact that national actors are still of great relevance in the field.

¹⁴ In 1991 ca. 35 per cent of the reports in the media were using positive images, while ca. 44 per cent were reporting in a neutral way (Fasching 1994: 86).

While minimum standards and common visa policies have been developed, the reality still shows a great disparity between policy and practice in some states. While the EU aims towards common policies in the field of migration, a lot of the responsibility is left to the individual nation states.

5.2.1 Securitization

As shown above, migration, especially irregular and unmanaged migration is being increasingly perceived as a threat to the security of a state. The Copenhagen School describes this process and refers to it as securitization. The constructivist theories of the Copenhagen School are mainly founded and influenced by the three professors of international relations Barry Buzan, Ole Wæver and Jaap de Wilde.

(International) Security threats can be of military, political, economic, societal and environmental nature and the object of the threat does not necessarily have to be a state (Buzan/ Wæver/ de Wilde 1998: 21ff.). A threat can also be located in more than one of these spheres (ibid.). Generally speaking there are three forms by which a state can deal with a public issue. The first form would be if the state does not treat the issue at all, nor lead a discourse about it, it is therefore *nonpoliticized* (ibid.). An issue that is part of public policy, the state does choose to deal with and political decisions are taken in regard of the issue is a *politicized* issue (ibid.). This means the issue is understood to be of concern for the society and should therefore be governed. Finally, a *securitized* issue is one that seems to be of such high relevance to the state due to a general threat, that emergency measures have to be taken by the state (ibid.). Such measures can exceed general norms, as the threat legitimizes “actions outside the normal bounds of political procedure” (ibid.).

Some issues are being politicized or securitized in some states and not in others (ibid.). While religion is politicized in Iran and Saudi Arabia, it is not in France or the United States (ibid.). Also, in Iran and in the former Soviet Union, culture is and was politicized, while it is not in the United Kingdom or the Netherlands (ibid.).

The process of securitization means the process of identifying an issue as a threat (ibid.). This does not necessarily have to reflect an actual threat, but the merely presenting an issue as a threat can be sufficient to identify it as a threat (ibid.). Such identification of a security threat can then lead to the abolishment or repression of

laws and rules that are otherwise considered as *normal* and therefore granted (ibid.). This process of identifying a threat, arguing its priority and, as a result, breaking standards is considered as *securitization* (ibid.). It is important to note, that neither the mere breaking of rules, nor the sole existence of a threat constitute securitization, rather it is the justification for breaking from the norm by the determination of a threat, be it actual or constructed (ibid.). For example in a democratic state it is vital to identify something as a threat to legitimize the use of secret services, which exclude the public from their decisions and information, even though they are agencies of a democratic state (ibid.).

Securitization is reached through actors who *securitize* (ibid.). Such actors are usually political and securitize in a rhetorical manner (ibid.). However, the securitization by a political actor or elite is not enough to identify something as a threat, the target audience – in the case of the state as the actor, the citizens of the state – have to accept the presentation of an issue as a threat (ibid.). The securitizer constructs a threat, which the public has to accept in order for it to become reality (ibid.). Generally three types of actors can be identified in this process. First of all, there is the “referent object”, which is the object of the threat and is understood as protectable (ibid.). A state, a government, a territory and/or society could be the referent object (ibid.). Secondly the “securitizing actors” declare the referent object as threatened and finally the “functional actors” play a major role in the field, but are neither threatened themselves, nor constitute a threat nor identify the threat (ibid.). The securitizing actors can be political leaders, advocacy groups, bureaucracies, governments and lobbying groups (ibid.).

A security threat does not have to be actual or *real* to become real (ibid.). It is often not possible nor is it important to determine whether a threat is *real* (ibid.). The securitization process can be occasionally, if it is recurrent, institutionalized (ibid.).

The different actors in the process of securitization, the securitizer and the audience, face each other in an asymmetric way (ibid.). Nevertheless, the audience has to accept the speech-act of the securitizer. It cannot be guaranteed, that the securitizing act is successful, just because the securitizer holds more power (ibid.).

In the shift of the discourse about refugees cited above, a securitizing-act of the migration policy field can be detected. While large numbers of people fleeing were

generally granted asylum during the Cold War, the subsequent transitional period brought a sudden change in the perception of refugees as a threat to the receiving states' security. This threat concerned the political, economic and societal sphere.

In the societal sector, migration is constituted as a threat to the identity of the receiving *nation* (Buzan/ Wæver/ de Wilde 1998: 121; Buzan/ Wæver 2003: 359). Migrants arriving in a state change the composition of a state's *nation* and therefore change the identity of the state and endanger the welfare state of the receiving EU state (ibid.). Also illegal[ized] migration, which is sometimes referred to as being connected with terrorism, international organized crime and drug and human trafficking, is observed as a major threat to the security of the European states or the EU (Buzan/ Wæver 2003: 359).

5.2.2 Management, Militarization and Restriction

The above-mentioned identification of migration as a threat to the receiving states has led to the creation of certain policies, which otherwise probably would not have existed. Concrete EU policies are legitimized through the constitution of a threat, and hence the act of securitization is performed (Buzan/ Wæver 2003: 359).

The management of borders and migration is a logical consequence of the securitization of migration. While border controls within the EU and the Schengen area have been continuously abolished, the external borders have (as a consequence) been strengthened over the last decades (Buzan/ Wæver 2003: 359; Ackleson 2011: 251). The establishment of the Schengen area and the Schengen Agreement and Convention, the Schengen Information System, the creation of the border agency Frontex, the Dublin Regulation and Convention and other measures taken by the EU and European states facilitate the management of the external borders of the EU and immigration to the EU (Ackleson 2011: 251). Frontex, as one of the main agencies of the migration management paradigm of the EU, coordinates border controls and patrols of member states, shares information and intelligence researched by the agency itself and evaluates the risk potential at certain borders (ibid.).

Managing migration also implies not only controlling borders, but also allowing people to migrate (Menz 2009: 1f). Therefore, it is not only a matter of the restriction

of borders, but at the same time also the “selective openness” of borders. While EU or Schengen citizens can move freely within the Schengen and/or EU area, non-EU citizens were, and still are, actively recruited to migrate to the EU (ibid.). Immigrants from third countries are required according to the needs at the member states’ labor market, therefore so-called key workers are desired (ibid.). While some countries prefer the immigration of high-skilled labor force, other countries seek out workers in the gastronomy, financial, health care, agricultural and/or technological sector (ibid.). Consequently, migration is regulated in two ways, the closing of the borders for some and the open recruitment of others.

When looking at asylum policies and practices, as described in the chapters above, it is plausible to talk about restriction. While asylum seekers during the Cold War were generally granted asylum, individual persecution has to be proven nowadays. Even though the basis for refugee law in Europe, the Geneva Convention on Refugees, has not changed since 1967, the practice of generously granting asylum has diminished radically since 1989.

The control of external borders and the management of migration movement of third-country nationals within the European Union are increasingly militarized. The militarization of the borders is mainly carried out by the agency Frontex (Kasperek 2008a: 4). The agency acts based on a very militaristic logic. Frontex cooperates with agencies such as Europol, the EU Satellite Center and armies of member states (ibid.). It constitutes migration as a threat that Europe needs to be protected from and protection can be reached through armament and technology (ibid.).

The management, restriction and militarization of migration and refugee movements follow the logic of the securitization of migration and, much like Europeanization, are incorporated in the *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* Frontex.

6 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union: FRONTEX (Fr.: Frontières Extérieures)

This chapter will give a short introduction to the border agency Frontex. Before analyzing the role of Frontex during the Arab revolution, it is necessary to take a look at the tasks, methodologies, competences and structures of Frontex. Also, the first part of this chapter will establish a connection between the historical developments of refugee movements, the shift in discourse and consequently the securitization of migration and the establishment of Frontex. This chapter provides a more generalized overview over Frontex before analyzing the agency's involvement in the Arab Spring.

6.1 The Origin and Context of Frontex

During the Cold War, most refugees came from the Eastern Bloc and left their countries of origin due to the circumstances under the communist regimes or short-term crises. Most were widely granted asylum in their receiving states, as the refugees fleeing communist regimes supported the idea of superior West. In the 1990s, the number of irregular migrants began to increase (Kasperek 2012: 113f.). The discourse on migrants and, in particular, refugees saw a shift from a victimizing to a criminalizing discourse. Besides the shift in discourse, the Schengen Agreement and Convention were passed in 1985 and 1990, which were a first step toward abolishing the internal borders of Europe. In addition, the Europeanization of the fields migration and asylum and border control was continuously advancing in the years before Frontex was established.

As a reaction, the restriction of migration of non-EC citizens and the strengthening of external borders was accelerated by members of the Schengen Area and the EC. A complete ban of irregular migration could not be implemented (ibid.). Since the EU and its member states realized that migration is not governable and cannot be controlled completely, the management of migration became a necessary measure (ibid.). In 2002, the European Commission drafted a proposal in order to create a

common corps of border guards (European Commission COM(2002) 233 final), which was, however, not accepted by the member states (Kasperek 2012: 114). In the Commission's paper, migration is regarded as a threat and borders therefore need to be protected in order to guarantee the safety of the nation states and the citizens of the states (European Commission COM(2002) 233 final). The problems, which the EU was facing according to the proposal, were terrorism, human trafficking, drug trafficking, organized crime and *illegal* migration (ibid.). Through the strengthening of the external border control these threats ought to be combatted (ibid.).

In order to deal with this constituted threat, many forums were created (Pollak/ Slominski 2009: 908). One of the most famous forums dealing with the topic of migration and security was the Strategic Committee for Immigration, Frontiers and Asylum (SCIFA) (ibid.). This committee created the External Border Practitioners Common Unit, whose task was to coordinate border management operations and the national ad-hoc centers (Frontex 2012a). There were six ad-hoc centers in total, which were nationally based and worked in order to coordinate certain fields and train personnel (frontexwatch 2010). The ad-hoc centers were the following: the Risk Analysis Centre in Helsinki, the Centre for Land Borders in Berlin, the Air Borders Centre in Rome, the Western Sea Borders Centre in Madrid, the Ad-hoc Training Centre in Traiskirchen (Austria), the Centre of Excellence in Dover (United Kingdom) and finally the Eastern Sea Borders Centre in Piraeus (Greece) (Frontex 2012a).

Both, SCIFA and the reformed Committee SCIFA+, did not seem to manage the borders in a way which was satisfying to the EU and its member states (Pollak/ Slominski 2009: 908). This led to the decision, that a permanent agency should be established to fulfill this task (ibid.). Consequently the Council created the border agency Frontex in October 2004 (ibid.). The SCIFA with its ad-hoc centers can therefore be regarded as the predecessors of Frontex.

6.2 Tasks, Missions and Competences

According to the Frontex regulation, which established the agency, Frontex has mainly six tasks, which shall be described in detail in this chapter.

6.2.1 Joint Operations, Pilot Projects and Rapid Interventions

First of all, the main task of Frontex is the coordination of Joint Operations and pilot projects at external borders (Art. 3 Council Regulation (EC) No 2007/2004). On the one hand, this task implies the coordination (and beforehand the evaluation and approval) and organization of Joint Operations and pilot projects by member states, and, on the other hand, the privilege of the agency to conduct operations and projects independently, but still in accordance with member states (Art. 3 par. 1f.). The agency can provide operations and projects with equipment (Art. 3 par. 1) and co-finance them (Art. 3 par. 4). The results of operations and projects have to be evaluated by the agency (Art. 3 par. 3). Before starting an operation or project, a detailed operational plan has to be drafted (Art. 3a Regulation (EU) No 1168/2011). Also, with the current regulation concerning Frontex, European Border Guard Teams can be installed in a host country (Art. 3b). Joint Operations are usually implemented in five steps.

First of all, a proposal for the operation has to be made either by a member state or on the basis of Risk Analysis Reports by Frontex itself (Geißler 2009: 9).

As a second step, any operation has to be prepared by working groups in cooperation with the host country, meaning the country where the operation will take place (Geißler 2009: 9; Frontex 2012b). In meetings with the host country, the total number and profiles¹⁵ of the required officers are determined, and, consequently, member states, as well as Schengen states, are requested to send the needed officers (Frontex 2012b). In addition, the necessary equipment is also requested from the Schengen and EU member states¹⁶ (ibid.).

The third step is the drafting of an operational plan by working groups in consultation with the administrative board, which then has to be approved by the executive director (Geißler 2009: 9). Such a plan includes an exact timetable, a list of the staff

¹⁵ Officers with a certain profile are, for example, experts on false documents and surveillance or dog handlers and so on (Frontex 2012b).

¹⁶ Special equipment are, for example, helicopters and planes, thermo-vision equipment or heart-beat detectors (ibid.).

and equipment available as well as the goals and the approach of the operation (ibid.).

The fourth step is the implementation of the operation. The working group and a project manager are made responsible for the implementation of the plan (ibid.) and border guards from Schengen and member states, as well as equipment, are stationed in order to implement the operation (Frontex 2012b).

Finally, when the operation is concluded, the operation and its results are evaluated and analyzed, and a final report, which should provide insight on future operations, is presented (Geißler 2009: 9).

Operations can either take place at land, sea or air borders. Operations at land borders specialize in the identification of false documents, the detection of people smuggling and the patrol of so-called green borders (Geißler 2009: 10). The borders between Ukraine and Slovakia, Greece and Turkey and Albania and the borders of the Spanish exclave Ceuta and Melilla are of particular interest to Frontex (ibid.). Third countries are encouraged to take part in operations to control land borders (ibid.). From 2008 to 2011, 27 operations on land took place (Frontex 2012c).

Airports that have connecting flights to at least one third country are considered as air borders and, therefore, require special protection (Geißler 2009: 10). Airports in Paris, London, Amsterdam, Frankfurt, Milan and Madrid are considered as air borders (ibid.). Most irregular migrants crossing air borders, according to Frontex, are coming either from Latin-America, Nigeria or China (ibid.). According to Frontex, many irregular migrants crossing air borders do this legally with valid documents and visas, since it is almost impossible to enter a country illegally at an air border. However, they then *overstay* when their visas are expired (Frontex 2012b). In addition, so Frontex claims, many people use false documents in order to cross air borders, as undetected crossings at these types of borders are not possible (ibid.). From 2008 to 2010, Frontex implemented 21 JOs at air borders (Frontex 2012c).

The most prominent border controls by Frontex are probably at the sea borders in the Mediterranean Sea and the Atlantic Ocean (Geißler 2009: 11f.). Regarding the sea borders of Europe, risk analyses are considered as very important instruments in the prevention of people crossing the borders irregularly (ibid.). Irregular migrants

crossing the oceans are, according to Frontex, mostly from Morocco, Egypt, Eritrea and Sub-Saharan African countries and their border crossings mostly take place from West Africa to the Canary Islands or North Africa, especially Libya, to Malta or Italy (ibid.). Cooperation with third countries, especially transit countries, seems to be vital for the control of sea borders for Frontex (ibid.). The agency also conducts interviews with irregular migrants for the purpose of identifying common migratory routes (ibid.). From 2008 to 2011, Frontex conducted 13 operations at sea borders (Frontex 2012c).

The so-called RABIT (Rapid Border Interventions Team) Regulation of 2007 created a new type of operation for Frontex (Regulation (EC) No. 863/2007). These teams are regarded as emergency teams that help member states for a short period of time in case of a sudden increase in migratory *pressure* on its borders, which the member state is not able to control itself (Geißler 2009: 12f.). Also, member states are now obliged to assist other member states in such an emergency case by providing staff and equipment (ibid.). According to the RABIT Regulation, border guards of Rapid Border Intervention Teams are allowed to carry weapons, which they had not been allowed to do before (ibid.).

Finally, Frontex implements pilot projects, which aim to test new methods and improve them, as well as testing and improving cooperation with third-countries (Geißler 2009: 12).

6.2.2 Risk Analysis and Research

One of the central tasks of Frontex is risk analysis, as all of their operations rely on it. The risk analyses performed by Frontex can be both general or purpose-built, meaning they either analyze a general risk or they concentrate on a specific region and its movement of migrants (Art. 4 Regulation (EU) No 1168/2011). For this purpose a common integrated risk analysis model (CIRAM) was developed (ibid.). CIRAM is a model of gaining information from different actors about cross-border criminality and other *risks* and *threats* to the EU stemming from irregular migration (Frontex 2012d). Afterwards, this information is distributed to partners, member states, authorities, border controls etc. (ibid.). Most of these documents are not available to the public, as Frontex understands itself as a point of intersection between secret services and police authorities (Kasperek 2008b: 7). A Risk Analysis

Unit (RAU) with twelve members, as well as the Frontex Risk Analysis Network (FRAN) composed of experts from member states, author the risk analysis (ibid.). Other cooperation partners for risk analysis are UNHCR, IOM (International Organization for Migration), UNODC (United Nations Office on Drugs and Crime), ICMPD (International Centre for Migration Policy Development), INTERPOL and Europol (Frontex 2012d).

According to Frontex, its risk analyses are not only used for operations, but also in the policy making process of member states and the EU (ibid.).

According to Art. 6 of the amending regulation, the agency shall carry out research on technical equipment, which can help to improve the control, as well as the surveillance, of external borders (Regulation (EU) No 1168/2011).

6.2.3 *Deportation or “Return” of Aliens*

According to Article 9 of the Frontex Regulation, the agency can assist member states in the return of illegalized migrants to their country of origin. This article has changed slightly through the amending regulation from 2011.

Previously, the agency should only “provide the necessary assistance” (Art. 9 par. 1 Council Regulation (EC) No 2007/2004). Now it can assist in, coordinate and organize return operations and is allowed to charter airports for such means (Art. 9 par. 1 Regulation (EU) No 1168/2011). Furthermore, Frontex can now finance and co-finance such operations, while before it could only use the financial means of the EC or the EU (Art. 9 par. 1). Another big change in the deportation of refugees is the newly introduced Code of Conduct, which shall guarantee fundamental rights and human dignity, as well as a simplified operation (Art. 9 par. 1a). Finally, the cooperation with third countries for the purpose of acquisition of travel documents and the return of illegalized migrants is made possible by the amendatory regulation (Art. 9 par. 2).

At the time of writing Frontex had already conducted 24 return operations in 2012, most of them going to Kosovo, Nigeria, Serbia, Georgia, Armenia and the Ukraine (Frontex 2012c).

6.2.4 Training and Information Exchange

Finally, the training of border guards is another essential task of Frontex (Art. 5 Regulation (EU) No 1168/2011). The European Border Guard Teams (EBGT) shall be trained regularly, while any staff member of the agency ought to receive training before starting their work (ibid.). For the purpose of training, a common core curriculum is developed by the agency, which member states also have to integrate into their regular curricula for national border guards (ibid.). The exchange of personnel is also of importance to Frontex, as police officers can acquire new competencies and learn new methods from experts from other countries (ibid.). Training of border guards concentrates on border control, surveillance and return operations (ibid.). During training, additional focus is given to identification of false documents, norms for return operations, identification of stolen cars and language courses (Kasperek 2008: 8b).

6.3 Cooperation with National Authorities, EU Partners, International Organizations and Third Countries

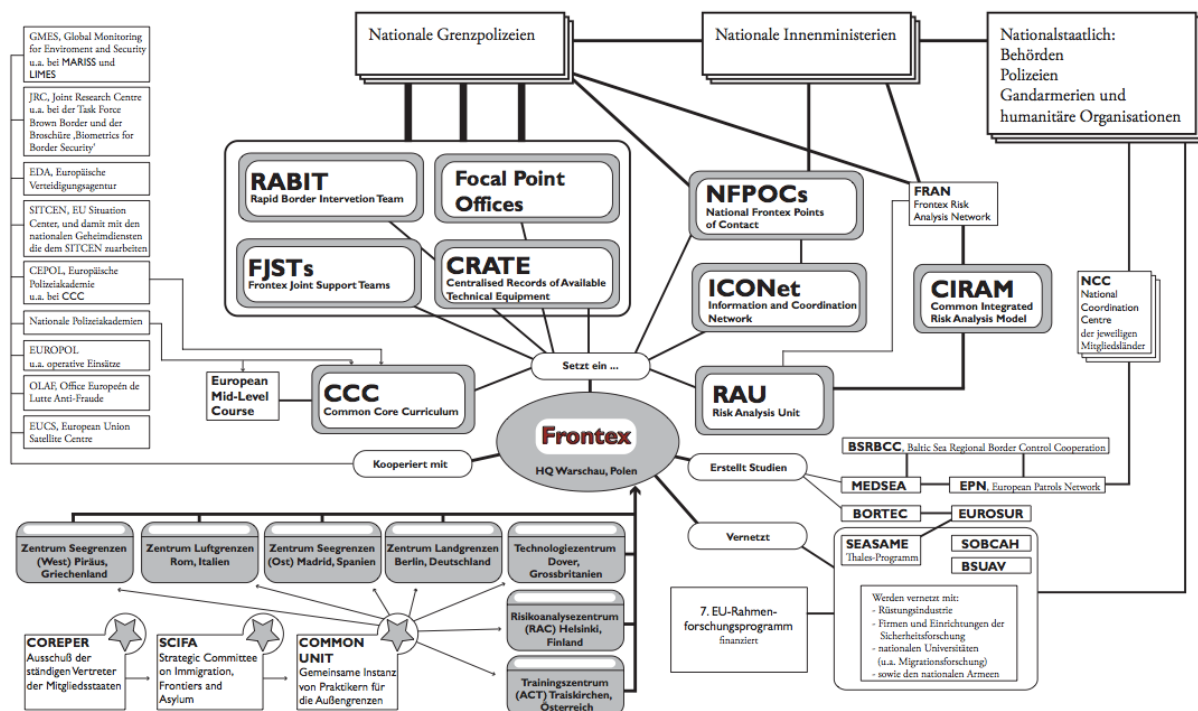
Frontex cooperates with 34 national European police departments, two of which are not part of the European Union, namely Switzerland and Norway¹⁷ (Frontex 2012e). Other national actors in cooperation with Frontex are national ministries of member states, such as ministries of the interior, justice, foreign affairs and refugees; federal, national and border police authorities; armed forces and navies, as well as border and coast guards (Frontex 2010: 94).

Besides the national authorities of EU and Schengen member states, Frontex also works closely in cooperation with EU agencies and institutions. Such agencies include the European Police College, the Community Fisheries Control Agency, the European Defence Agency, Europol, the EU Satellite Center and the European Asylum Support Office (Frontex 2012e). Furthermore, on the EU level, Frontex has to report to committees of the European Parliament and working groups and

¹⁷ The higher numbers of police departments in relation to the number of member states can be explained by the fact that some member states have more than one police department cooperating with Frontex (Italy, Greece, Spain and Sweden).

committees of the Council on a regular basis (ibid.) The Commission is present within Frontex with two representatives on the management board (ibid.).

International organizations constitute the third pillar of partnerships. Besides the above-mentioned partners in the risk analysis sector, the International Labor Organization (ILO), the Organization for Security and Cooperation in Europe (OSCE) and others also work with Frontex. (ibid.). On the level of training, the agency holds partnerships with 17 Partnership Academies of EU member states (Frontex 2012f). The following chart¹⁸ depicts the structure, network and cooperation within Frontex:



(Fischer-Lescano/ Tohidipur 2008: 26f.)

What is central for this thesis is Frontex' cooperation with third countries, meaning countries which are part of neither the EU nor the Schengen area. As of June 2012, states that cooperate with Frontex on an operational level (e.g. Joint Operations, return operations, pilot projects) and/or on the field of information exchange, risk analysis, training and research and development were Russia, Ukraine, Croatia, Moldova, Georgia, Macedonia, Serbia, Albania, Bosnia and Herzegovina, the United States, Montenegro, Belarus, Canada, Cape Verde, Nigeria, Armenia and Turkey

¹⁸ Unfortunately, a graph in English was not available. However, most of the names and titles remain the same in German and in English.

(Frontex 2012e). Furthermore, according to the agency's website, they are currently negotiating cooperation with Libya, Morocco, Senegal, Mauritania, Egypt, Brazil, Tunisia and Azerbaijan (Frontex 2012e). In addition to state authorities, Frontex also works closely together with third-country organizations such as the CIS Border Troop Commanders Council and the MARRI Regional Centre in the Western Balkans (ibid.).

Article 14 of the amending Frontex Regulation (Regulation (EU) No 1168/2011) extended Frontex possibilities in the cooperation with third countries. According to paragraph 1, the agency may cooperate with third countries “within the framework of the external relations policy of the Union” (ibid.), such as the European Neighbourhood Policy (ENP).

Much of the cooperation between Frontex and/or the EU and third countries emerged from former bilateral agreements. The collaboration between Italy and Libya in the field of migration and border control can be regarded as an example of such developments. In the late 1990s, Italy began its cooperation with Libya, in which migration already played a role (Klepp 2011: 140f.). Even though there were still sanctions imposed on Libya by the EU, Italy and Libya signed their first working agreement in 2000 in order to combat terrorism, human trafficking and irregular migration (ibid.). When sanctions on Libya were lifted in 2004, Italy decided upon new agreements with the North African state (ibid.). These arrangements included the deportation of illegalized migrants, detention centers for migrants, technical equipment for the improvement of border control and the training of Libyan border guards (ibid.). However, the concrete arrangements remain a secret until now (ibid.).

In 2005, a report from an EU delegation to Libya criticized the humanitarian situation of asylum seekers and refugees in Libya, but still recommended cooperation in the field of migration and border control with Libya (ibid.: 144f.). Finally in 2007, the negotiations between Libya and the EU were officially taken up (ibid.). Still, formal cooperation between the two partners is low, but intensification is aimed for (ibid.). The example of Libya shows, as it also happened with other non-European states, how agreements were first adopted on the national level before the EU took up negotiations.

As a counterexample, a tight cooperation with Nigeria has already been taken up and a Frontex Working Arrangement was signed in January 2012 (Frontex 2012g). The cooperation between Frontex and Nigeria, according to Frontex, ought to concentrate on possible JOs and pilot projects, capacity building in the form of training, research and development, risk analysis and, finally, information exchange and communication (ibid.). When looking at completed operations, Nigeria mainly took part in joint return operations to Nigeria by accepting deported Nigerian citizens, who were illegalized in the EU (Frontex 2012c).

Cooperation between North African Countries, Frontex, the EU (through the ENP) and EU member states shall be looked at closer in chapter 7.

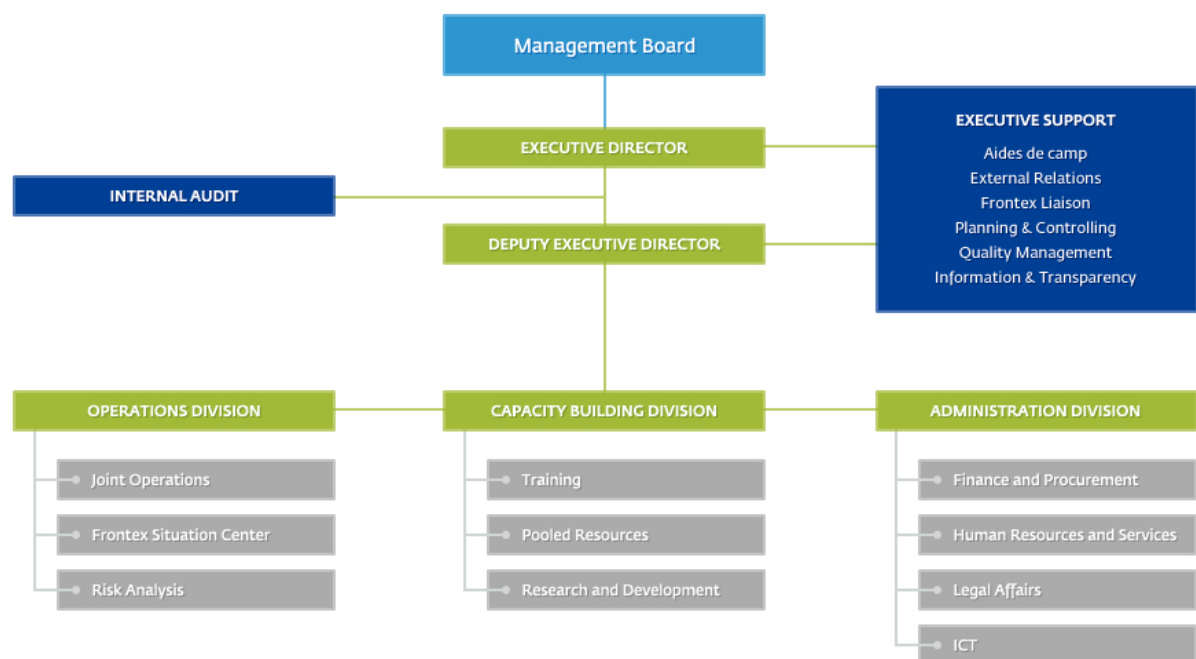
6.4 Resources, Financing and Structure of Frontex

The budget of Frontex is regulated by article 29 of the Frontex Regulation (Council Regulation (EC) No 2007/2004), which was not amended by the amendatory regulation of 2011. The European Union and the members of the Schengen Agreement contribute to the budget of the agency (Art. 29 par. 1). Frontex can also ask for payment if they provide specific services and member states may contribute to the budget on a voluntary basis (ibid.). The budget is spent on human resources, the infrastructure, administrative costs and on operations or expenses connected to operations (Art. 29 par. 2). Furthermore, the Commission, the European Parliament (EP) and the Council as well as states of the Schengen area may offer input on the financial plan (Art. 29 par. 5f.). Before adopting a financial plan, the Commission and the EP, who possess the budgetary authority, have to decide upon the subsidies granted (Art. 29 par. 6). Moreover, the agency is provided with an autonomous budget, which ought to ensure its autonomy from other institutions (Preamble par. 16).

The Frontex budget has been growing continuously since its creation. While the agency possessed a budget of a bit more than €6 million in 2005, it has already reached almost €20 million a year later (Frontex 2010: 10). By 2007, the budget had doubled from the previous year, and a year later, it already exceeded €70 million (ibid.). After peaking at over €88 million in 2009, the budget decreased slightly in the following year with a little less than €88 million (ibid.). The estimated number for 2011 amounts to around €86 million and about €85 million for 2012 (Frontex 2011a;

Frontex 2012h). The comparatively low budget in the agency's founding year could only cover costs of staff and meetings of the management board. However, in the following year, training, Joint Operations, risk analysis and research were introduced and the budget had to be raised significantly (Pollak/ Slominski 2009: 909).

The management board is the highest body of Frontex (Kasperek 2008b: 7). Two representatives of the Commission and one representative from each EU member or Schengen state, often the highest ranked officer of the national border police, are members of the board (ibid.). The board appoints the executive director and the Commission holds the right of nomination for the executive director (ibid.). The management board determines the working plan, which the executive director proposes, and decides upon the budget and staff (ibid.). The executive director may decide autonomously and is not dependent on individual governments (ibid.).



(Frontex 2012i)

By the end of 2005, having commenced work on October 3, 2005, Frontex had 43 staff members, 15 of which were auxiliary agents, 27 were seconded national experts (SNEs) and one was a temporary agent (Pollak/ Slominski 2009: 909f.). With the high number of SNEs, Frontex was highly dependent on the member states, and consequently they aspired to recruit employees themselves (ibid.). The numbers in staff members increased from 79 to 131 in 2007 (ibid.). By 2008, the number of

human resources had already risen to 164, with notably fewer national delegates, and more Frontex staff members (ibid.).

According to the founding regulation, Frontex has to keep a database in which all the available equipment of member states can be accessed and distributed in case of the need for surveillance and border control (Art. 7 Council Regulation (EC) No 2007/2004). The equipment can be accessed through the database CRATE (Centralized Record of Available Technical Equipment) (Kasperek 2008: 8). Under the first regulation, equipment could be provided on a voluntary basis, whereas the newest regulation amending the founding regulation obliges member states to now provide equipment (Art. 7 par. 3 Regulation (EU) No 1168/2011). Also, Frontex can now buy, co-own or lease its own equipment under the new regulation (Art. 7 par. 1).

6.5 “Protection” of the External EU Borders through Frontex

6.5.1 *Justification and Necessity*

As mentioned above, various concerns led to the establishment of a common EU agency to coordinate the control of the external EU borders. In a communication from the Commission to the Council and the EP, terrorism, *illegal* migration, human and drug trafficking and organized crime posed threats to the inner security of the Union (European Commission COM(2002) 233 final). The external borders are regarded as a “weak link” in the combat of these *threats* (ibid.). Therefore, a harmonized, coordinated and organized border control was, and is still, regarded as necessary to protect the EU from these mentioned threats (ibid.). Furthermore a harmonized border control would, according to the Commission, lead to increased efficiency, a better allocation of resources and create synergies (ibid.). Regarding the free movement of goods and people, improved control of the external borders was, and is, considered essential (ibid.). Moreover, the EU was facing a further enlargement in 2004 and the existing member states were afraid that the new member states, which became Schengen member states after a transition period, might not be prepared to manage the challenge at their newly formed external EU borders (ibid.). Consequently, the (financial) burden has to be shared and a coordinated and harmonized border control could help spread the costs more evenly (ibid.). The border control also seeks to strengthen confidence in the Union, in each member

state, the sense of community and promote a European identity among the citizens of the EU¹⁹ (ibid.). All these mentioned risks and threats to the inner stability, security, identity, community and confidence could be overcome through the creation of Integrated Border Management (IBM), a corpus that coordinates and harmonizes European external border control (ibid.). Finally, it needs to be said, that the Commission emphasizes the national sovereignty of each member state (ibid.). That is why each state is still responsible for its own borders, regardless of coordination with and assistance from an EU agency (ibid.).

(Irregular) migration was, and is still, being referred to as a *burden* for member states and constitutes a *threat* and a *pressure* to the external borders of the EU (European Commission COM(2002) 233 final; Regulation (EU) No 1168/2011). Besides being perceived as putting the inner stability and security of the EU at risk, weak border control supposedly also posed a threat to public policy, health and international relations (Regulation (EU) No 1168/2011).

While previously, Frontex and arguments justifying Frontex tended to securitize migration or resulted from a securitizing act, the amending Frontex Regulation also focuses on human, refugees and fundamental rights issues. This development can be regarded as a reaction to the broad criticism of human rights practices by Frontex, which is presented below. With the amending regulation

“[t]he Agency shall fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union [...]; the relevant international law, including the Convention Relating to the Status of Refugees [...]; obligations related to access to international protection, in particular the principle of non-refoulement; and fundamental rights, and taking into account the reports of the Consultative Forum referred to in Article 26a of this Regulation.” (Art. 1 par. 2 Regulation (EU) No 1168/2011)

Furthermore, Frontex has to conduct “rescue at sea”, when needed, and has to take “humanitarian emergencies” into account during their operations (Art. 2 par. 1 (da)). According to Frontex, their practice, namely the stricter control and surveillance of the sea borders, aims towards fulfilling these obligations (Frontex 2012j). In the logic

¹⁹ Cf. Border Theories in this thesis.

of Frontex, operations they coordinate help to save lives by stopping the unsafe boats by which they try to cross the seas and by combatting human smuggling and trafficking (ibid.).

6.5.2 A Critical Perspective

Human rights and refugee NGOs, initiatives by civil society, scholars, critical networks and other interest groups strongly criticize the practices of Frontex as well as the existence of the agency in general.

The German newspaper TAZ started a campaign with a manifesto for a Europe of Humanity and Solidarity (Manifest für ein Europa der Humanität und Solidarität), which was signed by civil society organizations such as medico international, Pro Asyl, Amnesty International, Brot für die Welt, borderline-europe, Komitee für Grundrechte und Demokratie, Karawane für die Rechte der Flüchtlinge und Migranten, MIGREUROP, BUKO - Bundeskoordination Internationalismus, Afrique Europe Interact and Netzwerk MiRA (Gottschlich/ am Orde 2011: 204ff.). In this manifesto, they criticize the high death tolls on the Mediterranean, which they regard as a result of the interception of refugees and the criminalization of people trying to rescue refugees at sea and are subsequently charged with people smuggling (ibid.). They generally fault the human rights situation at the high seas, as well as in the refugee camps in Northern Africa, to which some refugees are being forcibly returned (ibid.). Moreover, people seeking asylum often do not receive any access to the European asylum system, as they are often intercepted before arriving at the EU borders (ibid.).

The NGOs allege that the EU is cooperating with Northern African countries and other transit countries, as well as countries of origin, in order to prevent people from leaving their territories or crossing EU borders (ibid.). Such cooperation is often reached through the linkage of development aid and the fulfillment of the EU's demands (ibid.). Furthermore, the human rights advocates claim that the EU is influencing the third countries interior policies and preventing migrants from using their right of freedom of departure and movement (ibid.).

Another critical point mentioned in the manifest and which is often brought forward by NGOs, is that the EU is causing people to leave their home countries due to the

exploitation of their land and economy (ibid.). At the same time, they believe that development assistance should not be an instrument of externalization of border protection, but rather an improved quality of life should be established all over the world through sustainable development (ibid.).

Increased possibilities for legal migration to the EU are therefore asked for (ibid.). The Dublin II Regulation serves as a further point of criticism of the EU Asylum policy with regard to human rights (ibid.). Finally, the advocates call for a universalization of the European values of freedom, security and justice (ibid.).

Another central point of criticism constitutes the violation of the right to *non-refoulement*, which Frontex is accused of ignoring by intercepting migrants en route to transit countries or their countries of origin by sea without granting access to a fair asylum procedure. Frontex is also accused of disregarding the prohibition of sending refugees back to a country where they might face serious violations of human rights (Klepp 2012: 201).

The deportation of illegalized migrants, the creation of a system of European Apartheid, the production of biased, one-sided knowledge, brutal actions against refugees, such as torture, and the creation of a Fortress Europe are other common criticisms launched at Frontex (Kasperek 2011: 141ff.; noborder 2012; Kasperek 2012: 118f.).

Other networks such as the noborder movement, boats4people and the Karawane für die Rechte der Flüchtlinge und MigrantInnen call for the abolition of the agency. Critical academic groups are for example Netzwerk Kritische Migrations- und Grenzregimeforschung, Transit Migration Forschungsgruppe and Netzwerk MiRa.

As mentioned earlier, the securitization process allows otherwise illegitimate practices that can be norm-breaking or *extraordinary*. Frontex is criticized for breaking accepted rules by not adhering to human rights standards. Also the interception and criminalization of refugees and those trying to save them on the high seas is considered as a break from the norm. According to civil society organizations, the high death tolls of refugees on the high seas can be blamed on Frontex and are *extraordinary*, and therefore impossible under *normal* conditions. Cooperation with third countries and the influence on their domestic politics, as well as cooperation

with dictatorial regimes are understood as norm-breaking. Finally, according to NGOs, Frontex violates rules by not adhering to the *non-refoulement* principle; by deporting, torturing and acting brutally against migrants; and through the externalization of border control.

6.5.3 Frontex' Influence on Migration Movements

Generally speaking, it is difficult to tell which impact the agency really has on migration movements to Europe. However, based on the *success* of Frontex operations, it can be determined whether an operation resulted in a decrease in the numbers of migrants using a certain migration route or not. Also, statistics on the number of migrants using different migration routes can provide some information.

There are seven main migration routes recognized by Frontex (Frontex 2012k: 14). These are namely the "Central Mediterranean Route", the "Eastern Mediterranean Route", the "Western Mediterranean Route", the "Circular Route from Albania to Greece", the "Western Balkan Route", the "Eastern Borders Route" and the "Western African Route" (ibid.). Depending on the route, migrants travel by sea, air or land (ibid.). The numbers of detections of irregular migrants in 2011 has increased significantly on the Mediterranean routes and slightly on the Western African Route and Eastern Balkan Route, while they have decreased on the Circular route from Albania to Greece and the Eastern Borders Route (ibid.).

The sharp increase of detections of irregular migrants on the Central Mediterranean Route can be connected to the uprisings in the Arab world in 2011. Large numbers of refugees using the route came from Tunisia, while others came from sub-Saharan African countries such as Nigeria (ibid.).

The detections on the Western African Route increased only slightly to 340 persons, while the number was brought to an all time low of 196 a year before (compared to 2,244 in 2009) (ibid.). This can be regarded as a *success* of the Operation Hera, which was put in place in order to control this migration route (Kasperek 2012: 117). By comparison, another operation, called Nautilus, was less successful in minimizing the number of arriving irregular migrants. Cooperation with third countries greatly impacts the success of an operation, which Frontex strongly emphasizes (ibid.).

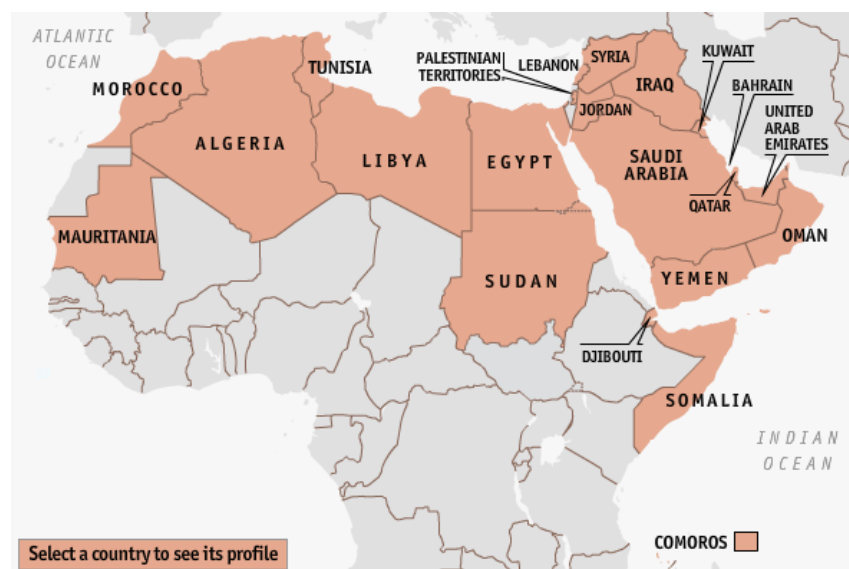
Some of the Frontex operations show an impact on migratory routes; however, often migrants tend to use other routes once one route is controlled more strictly (Kasperek 2012: 119). Many migrants do not give up on trying to cross the borders, despite the fact that it might be more difficult or they might have to try several times (ibid.). Even though Frontex can influence some migration movements, this shows that a complete isolation from migration movements to Europe is not possible (ibid.). Migration might be somehow managed and governed, but not ended altogether.

7 Example of Analysis: Frontex during the Arab Spring 2011

7.1 Historical Developments

7.1.1 Events that led to the Rebellion

First of all, a definition for the “Arab world” needs to be determined. There is no general or universal definition of the area called the “Arab world” and it does not constitute a homogenous region with a homogenous group of *Arabs* living in the region. The Arab world is often, however, identified as the countries belonging to the Arab League (Seib 2005: 604). I have chosen this definition for my thesis, as it seems the most neutral to me. Currently the Arab League has 21 member states, which are Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Tunisia, United Arab Emirates and Yemen (League of the Arab States 2012). After the uprising, Syria’s reaction to the opposing parties led to its suspension from the Arab League (League of Arab States 2012). Nevertheless, I will consider Syria as a part of the Arab world.



(The Economist 2011)²⁰

²⁰The map contains 22 member states of the Arab League, as it does not take the suspended state of Syria into consideration.

According to the German political scientist Volker Perthes, the Arab Revolution of 2011 was not a surprising and sudden event that could not be foreseen, as it is often depicted in the media (Perthes 2011: 13f.). Large protests had previously taken place and, since 2000, protests in Arab states became more transnational (Rosiny 2011: 2). Also it cannot be said, that the different political systems of the so-called Arab world are homogenous, rather they vary greatly in their kind (Perthes 2011: 15ff.). While the states lying around the Persian Gulf are mostly conservative monarchies, monarchies such as Jordan and Morocco are more politically and socially liberal (ibid.). At the same time Syria and, before the upheaval, also Libya and Tunisia are or were dictatorial reigned republics (ibid.). Egypt, Algeria and Yemen are or were pluralistic, however, autocratic political systems. Finally, Iraq possesses a formal democracy, while Lebanon and Palestine are weak, but formal democracies (ibid.).

Not only was the political system from state to state very heterogeneous, also the economic situation of each state varied greatly from the others (ibid.). The GDP per capita differs greatly from poorer countries such as Yemen and Sudan to wealthier countries such as Morocco, Syria and Egypt to even wealthier states such as Libya, Saudi Arabia and finally to states that are among the wealthiest worldwide, the United Arab Emirates and Qatar (ibid.).

What the Arab states do have in common is a large poverty gap between the richest and the poorest in the country and a low level political participation (ibid.). Corruption and large numbers of people living under the poverty level are also problems that the member states of the League of Arab States have in common (ibid.). With the exception of partially free Kuwait, Lebanon and Morocco, all the other states have been ranked very negatively by the US American organization "Freedom House" with regard to their political freedom (ibid.). Political opposition only rarely has a right to existence and free democratic elections on a national level are virtually non-existent (ibid.).

The desire for more political participation and democracy has been, according to Perthes, continuously growing and people have been protesting for some time in order to achieve their demands (ibid.). However, as many of the regimes were not dependent on their citizens or the income taxes they paid due to large profits from oil

exports, the population had either little influence or was being subsidized by its respective government (ibid.).

While the repressive system of the Arab states remained non-democratic, the population of the states continuously underwent a process of liberalization and pluralization (ibid.). In the understanding of Perthes, the new media like satellite TV and the Internet, with its so-called social media, as well as a new generation of young people have played a vital role in the Arab uprising in 2011 and 2012 (ibid.).

The incident that is often referred to as the starting point of the Arab Spring happened on December 17, 2010 in Tunisia (Rosiny 2011: 2). In the city Sidi Bouzid a vegetable seller called Mohamed Bouazizi lost his stall to confiscation as the authorities were claiming he did not have a license to sell vegetables (ibid.). When his complaint to the authorities was ignored the vegetable seller decided to undertake the drastic measure of burning himself in public in front of the authorities' building (ibid.).

After images were spread over the Internet and the TV channel Al-Jazeera, many solidarity movements began to form all over Tunisia and in neighboring countries (ibid.). The social composition of these protests was very heterogeneous. People of all ages, genders and religions, as well as secular people took part in the demonstrations (ibid.). The first results of the upheaval, which had become not just a movement of solidarity with Mohamed Bouazizi, but a social and political movement demanding democracy and freedom, could be seen two months after the incident in Sidi Bouzid. On January 14, 2011 Zine el-Abidin Ben Ali, the president of Tunisia, and on February 11, 2011 Hosni Mubarak, the president of Egypt, were overthrown (ibid.). After the protests in Libya escalated to a civil war, the former president Muammar al-Gaddafi was overthrown in August 2011 and killed two months later (BBC 2012).

In January and February 2011 protests in other Arab countries were taken up as well (Algeria, Jordan, Oman, Yemen, Iraq (and Iraqi Kurdistan), Saudi-Arabia, Kuwait, Morocco, Mauritania and Lebanon) (Rosiny 2011: 2ff.). Finally protests reached Palestine and Syria in March 2011 (ibid.). While Tunisia, Egypt and Libya were seeing new institutional beginnings, Morocco, Jordan and Kuwait tried to stabilize their systems through slight reforms; Saudi Arabia and Bahrain tried to prevent the

situation from escalating through gifts (ibid.). While writing this thesis, the civil war in Syria, resulting from the protests in March 2011, was still ongoing even though ceasefire agreements had been made (Die Zeit 2012).

The wide transnationalism, the uprising against one's own regime, broad solidarity, spontaneity, a notable absence of wide-spread violence, mobilization of people from all classes and the general absence of leadership made the Arab revolution a new phenomena in the political world of the Arab states (ibid.).

In Egypt, Tunisia and Libya, where transitions took place, elections were held in 2011 or in 2012.

7.1.2 Euro-Mediterranean Cooperation before the Uprising

Beginning with the treaty creating the European Economic Community, the Treaty of Rome, the association with non-European countries was planned. According to Part four of the Treaty such associations should be mostly of economic nature and promote free trade (Art. 131ff. Treaty of Rome). Territories regarded as associate partners were colonial territories of French West Africa (e.g. the former Upper Volta (Burkina Faso), Senegal, Ivory Coast etc.) and French Equatorial Africa (e.g. Chad, Gabon, former Oubangui-Chari (Central African Republic) etc.) (Annex IV Treaty of Rome). Other associated territories and countries were Saint-Pierre and Miquelon, Madagascar, former French Somaliland (Djibouti), Togo, former Belgian Congo (Democratic Republic of the Congo), former Ruanda-Urundi (Rwanda and Burundi), former Trust Territory of Somalia under Italian administration (Somalia), Netherlands New Guinea (West Papua) and other territories and countries with a colonial history with any of the founding states (Annex IV Treaty of Rome).

Furthermore a Declaration of Intent on the Association of the Kingdom of Libya with the European Economic Community was passed with the Treaty of Rome (Art. 4 Final Act, Treaty of Rome). A Declaration of Intent on the Association of the Franc-Zone was passed as well (Art. 3 Final Act, Treaty of Rome). At the time the Treaty of Rome was passed, Tunisia and Morocco were independent member states of the Franc-Zone (Die Zeit 1959). The Euro-Mediterranean cooperation between the EU and Tunisia, Morocco and Libya thus dates back to the beginning of the European Economic Community itself. Generally the beginning of the Euro-Mediterranean

partnership was rather uncoordinated and relied mostly on bilateral, rather than communitarian, agreements (Jünemann 1999: 37f.). A global concept of the EU was non-existent at that time (ibid.).

In 1972 the European Council decided upon a Global Mediterranean Policy (GMP), which aimed towards tighter cooperation with Mediterranean countries such as Morocco, Tunisia, Egypt, Syria, Lebanon, Algeria, Jordan (even though Jordan does not lie directly at the Mediterranean Sea) and other non-Arabic countries bordering the Mediterranean (Schumacher 1998: 1f.). The idea behind a global policy was to help bring the bilateral agreements to a multilateral level.

At the beginning of the 1990s, the Renovated Mediterranean Policy was agreed upon by the EC (ibid.). With the transformation processes of the late 1980s, the Mediterranean area was destabilized and the perceived threat from the *East* became a threat from the *South* (Jünemann 1999: 42). The new policy, therefore, intended to protect Europe from this *threat* and to help stabilize the region (ibid.).

Finally with the Conference in Barcelona, the Euro-Mediterranean Partnership (EMP) was declared in 1995 (Schumacher 1998: 1f.). Especially the Northern African states were considered as important partners, since they constitute a link to Africa and to the Arab world (ibid.).

In the Barcelona Declaration, migration was already mentioned as a field of cooperation between the EU and the Mediterranean third countries (Algeria, Egypt, Jordan, Lebanon, Morocco, Syria, Tunisia, Palestinian Authority and other non-Arabic Mediterranean states) (Barcelona Declaration 1995). Migration was already identified as a problem relating to the *migration pressure* and training of officers of the third countries in the Mediterranean was regarded as a possible form of cooperation in this field (ibid.). Furthermore, the signing states strove for a tight cooperation to combat *illegal* migration. According to the Barcelona Treaty, bilateral agreements concerning the return of illegalized migrants help combat irregular migration (ibid.). Terrorism, drug trafficking, international organized crime and international corruption are other problems associated with irregular migration and have to be combatted through tight cooperation between the contracting states (ibid.). On these accounts, regular meetings were held by the members of the Euro-Mediterranean Partnership in order to improve the situation and find new solutions to

problems resulting from irregular migration (ibid.). Additionally, *illegal* migration needs to be combatted through a strengthened cooperation between the police, the justice, customs and the administrative sector (ibid.).

The EMP aimed towards tighter cooperation between the EU and the Third Mediterranean Countries (TMC) in order to guarantee stability and security in the region through more extensive multilateral cooperation (ibid.). At the same time, bilateral cooperation should not be abolished, but rather strengthened (ibid.). Before 1995, the cooperation between the EU and third countries had been mostly of a bilateral nature.

In 2004, the European Neighbourhood Policy (ENP) was established (Zorob 2007: 2). The creation of the ENP is linked to the enlargement of the EU through the inclusion of ten Eastern European countries in 2004 (ibid.). The ENP established cooperation with neighboring countries of the EU in Eastern Europe and the Third Mediterranean Countries (TMC) of the EMP (ibid.). Another reason for the establishment of the ENP was to create possibilities of cooperation with third countries, which do not have any prospects of membership in the EU (ibid.). Action plans for each associated third country, which are valid for either three or five years and are negotiated bilaterally between the third countries and EU member states, provide cooperation with a framework (ibid.). Country reports, published by the Commission, serve as a basis for the action plans (ibid.). Former agreements and associations, such as the association agreements of the EMP, are not replaced through ENP papers (ibid.).

Algeria, Israel, the Occupied Palestinian Territory, Armenia, Jordan, Syria, Azerbaijan, Lebanon, Tunisia, Belarus, Libya, Ukraine, Egypt, Moldova, Georgia and Morocco are considered as the 16 European neighbors effected by the ENP (European Commission 2010a). Contracted relations on the EU level could not yet been installed with Belarus, Libya and Syria. The following table shows the main agreements in force with TMCs.

Country	Association Agreements	Partnership and Cooperation Agreements	Action Plans or Equivalent Documents	Comments/ Plans for the future

Algeria	2005			discussions on action plan started 2012;
Egypt	2004		2007 – 2012 (extended: 2013)	Negotiations start when new government in place;
Israel	2000		2005 – 2008 (extended: 2012)	
Jordan	2002		2012	Replaces old action plan from 2005
Lebanon	2006		2007 – 2012	Negotiations on new plan launched;
Libya				
Morocco	2000		2005 – 2010 (extended)	Negotiations on new plan ongoing;
Occupied Palestinian Territory	1997 (interim association)		2005 – 2011 (extended)	Work on new plan in initial phase;
Syria				Negotiations on association completed in 2004, never formally signed;
Tunisia	1998		2005 – 2010 (extended)	New plan is being developed;

(Source: European Commission/ High Representative of the European Union for Foreign Affairs and Security Policy 2012: 24f.)

Action plans usually include six main areas, which are the political dialogue and reforms; social and economic reforms and development; trade, market and law reforms; cooperation in the field of justice and interior; traffic, energy and information, science and technology, research and development; and finally direct contacts to the citizens (Zorob 2007: 3). Migration is part of the fourth area of cooperation, justice

and interior, and is considered as a very important area of cooperation for the EU (ibid.). The focus of cooperation with regard to migration is crucial to combatting irregular migration (ibid.: 6).

In 2008, a third European neighbor institution was launched with the Union for the Mediterranean (UfM), subsequent to a proposal by the former French president Nicolas Sarkozy, which he brought forward during his presidential election campaign (Balfour 2009: 99ff.). While Sarkozy originally wanted to create a Mediterranean Union, the final outcome and impact of the project was reduced during the negotiations with other EU member states (ibid.). The UfM is often understood as a re-launch of the EMP. What changed mainly through the UfM was the number of member states. The EMP's members were included in the UfM as well as Monaco, Croatia, Bosnia and Herzegovina, and Montenegro (ibid.). In addition the Arab League became a partner of the UfM, although Israel was first against the accession of the Arab League (ibid.). Libya did not join the UfM (ibid.). Moreover, the principle of co-ownership instead of partnership was introduced, which seeks to maintain equality between the countries of the Southern and the Northern shores of the Mediterranean Sea (ibid.). Nevertheless, relations are still considered to be very asymmetric (ibid.). A Secretariat and a Co-Presidency was established (ibid.). The UfM is not considered to be very groundbreaking, but is seen rather as a continuation of already existing politics regarding the EU's neighboring states (ibid.). It remains highly depend on bilateral cooperation and not much change is expected to result from the new institution (ibid.)

7.1.3 Two Examples of Third Country Cooperation: Egypt and Libya

While, as mentioned in Chapter 6 and 7, Libya has still not formally adopted any agreements with the EU or Frontex or within the ENP (or the UfM), Egypt signed association agreements in 2004 and adopted the action plan in 2007.

According to the action plan, Egypt should take up cooperation with Frontex in order to manage its borders (European Commission 2007: 28ff.). Training and technical cooperation are foreseen by the action plan (ibid.). The control and surveillance of entry points should be strengthened (ibid.), as Egypt serves as a transit country. At the same time, exit points have to be more strictly controlled (ibid.), which should prevent people from leaving Egypt in order to migrate to the EU. Such enforcement

of the border surveillance and control should be reached through training and technical cooperation (ibid.).

Furthermore, the control of *illegal* migration and the return of illegalized migrants would be a field of cooperation according to the action plan (ibid.). The return of illegalized migrants can be simplified through easier access to travel documents and readmission agreements (ibid.). The combat of *illegal* migration shall not only be realized through training and technical support, but also through the exchange of information (ibid.).

The externalization of migration and asylum procedures can be regarded as a further goal of the action plan, as it foresees assistance in the field of migration and asylum for Egypt (ibid.). In addition, information on best practices for asylum procedures shall be exchanged (ibid.). A concession by the EU is likely the facilitation of legal entry for Egyptian labor migrants (seasonal workers) (ibid.). Also, Egyptians willing to migrate shall be informed about employment possibilities, as well as risks stemming from people smuggling and trafficking (ibid.). The flow of remittances should be made easier (ibid.).

Besides migration and asylum, fields of cooperation in the chapter “Migration, social integration, justice and security” of the action plan are the combating of organized crime, drug trafficking, terrorism, financial and economic crime, as well as cyber crime (ibid.).

In 2012, Frontex was already negotiating with Egypt in order to adopt a working arrangement for further tighter cooperation (Frontex 2012e). However, its outcome was not yet clear at the time of writing. In 2012, the EU had not yet succeeded in adopting concrete agreements regarding border and migration management (European Commission 2012b: 13; European Commission 2010b: 44). Egypt had so far not agreed to negotiate on this topic with the EU (ibid.). Nevertheless, readmission agreements between Italy and Egypt have been in force since 1998 (Klepp 2011: 159). Italy finances return flights for Sri Lankan migrants from Egypt back to Sri Lanka and grants Egyptian labor migrants easier access to Italy, regulated by quotas (ibid.).

Libya has been a destination for labor migrants ever since oil was found in the country in the 1960s (Klepp 2011: 134ff.) Until the 1990s, most migrants came from other Arab countries; however, beginning with the sanctions decided by the UN, Libya opened its labor market for migrants from all over Africa (ibid.). The open labor migration came to an end in 2000, when xenophobic riots broke out and 500 labor migrants were killed (ibid.). Libya's migration policy became continuously more restrictive and has hence become less attractive for labor migrants (ibid.). Consequently, an increasing number of migrants began using Libya as a transit country in order to arrive in Europe (ibid.). Migratory routes through Libya arrive in Spain, on the Canary Islands or in Italy (ibid.). Libya has become the most important African transit country for reaching Europe (ibid.).

In the 1990s, Italy began its cooperation with Libya in order to manage migration movements from Libya to Italy (ibid.). The first agreement on the combat of *illegal* migration, terrorism and organized crime between the two states was signed in the year 2000 (ibid.). Italy played a major role in improving the external relations between Libya and the international community and in 2003 and 2004, sanctions on Libya were abandoned (ibid.). At the same time, Libya and Italy agreed on new arrangements (ibid.). Italy financed measures such as return flights to Libya, detention camps for refugees and migrants in Libya, technical support for the border surveillance and training of Libyan guards (ibid.). In 2004, Italy deported large numbers of migrants and refugees from the Italian island Lampedusa directly to Libya without providing them with the possibility of applying for asylum or taking the non-refoulement principle into account (ibid.). After this practice was strongly criticized by various actors, such as NGOs and members of the European Parliament, and a new Italian government was elected, the deportation of migrants to Libya without further investigation was abandoned (ibid.). However, already in 2007, a new agreement had been signed allowing Italian border guards to patrol Libyan waters in order to prevent migrants from leaving Libyan territory (ibid.). Italy had to pay \$5 billion indemnity for its colonial rule over Libya within the following 25 years (Kasperek 2012: 117). This indemnity is understood rather as a price Italy has to pay for the agreements with Libya instead of as a compensation for the Italian colonialism (ibid.).

All these agreements are not publicly accessible, but are held secret (ibid.). The agreements are usually not incorporated in official documents, but rather agreements made between security experts at informal meetings (ibid.).

These two examples show how migration control and management is continuously externalized. The borders of Europe are being displaced and the management of migration already happens in third countries such as Egypt and Libya. Even though Libya does not have any official agreements with the EU, the ENP, the EMP or Frontex, it is still the most important partner of the EU in the externalization of border control. The EU-Libya cooperation relies on the bilateral agreements between Italy and Libya. At the same time, Egypt is an official associate partner of the ENP and has agreed on action plans and is in the process of implementing these. Still, bilateral agreements with Italy are vital in the field of migration management. It can be said, even though Europe has a global approach and aims towards harmonizing and multilateralizing the agreements with third countries, bilateral agreements remain of great importance for the cooperation between the EU and third countries.

7.2 EPN-Hermes Extension 2011: “Combatting the Biblical Exodus”

When the so-called Arab Spring broke out at the beginning of 2011 the number of people migrating to Europe via the Mediterranean Sea increased sharply (Frontex 2012k: 15). Before 2011, the number of people using the Central Mediterranean Route in order to arrive in Europe was continuously decreasing (ibid.). This was probably partly a result of the bilateral cooperation between Northern African transit states, such as Libya, and EU member states, such as Italy. Most of the migrants fleeing as a result of the Arab Spring fled to Italy and the Italian island Lampedusa (Campesi 2011: 1). The majority of the 30,000 migrants, who arrived in Italy between January and May 2011, came from Tunisia; only few of them fled Libya (ibid.). The uprisings in the Northern African countries and the on-going transformation process opened the Southern Mediterranean borders for migrants (Kopp 2011). The regimes lost their capability and/or desire to strictly control their Mediterranean borders and prevent transit migrants and their own citizens from crossing the Mediterranean in order to reach Europe (ibid.).

Consequently, border management by the Italian authorities underwent a further securitization process. The Interior Minister of Italy, Roberto Maroni, referred to the

arrival of migrants from Northern Africa as a “biblical exodus” (ibid.). Years before the Arab uprising, the Italian government had advanced the securitization process of the migration policies and practices. The authorities had made use of terms such as “influx” and “attack on the Italian coasts” even before the upheaval took place in the Arab world (ibid.).

On February 15, 2011, Italy requested a Frontex operation at its borders on the islands Lampedusa, Lisona and Lampione (Frontex 2011b). Italy asked for assistance in the surveillance of the borders as well as the carrying out of risk analysis through Frontex (ibid.). On February 20, the Joint Operation EPN-Hermes Extension 2011 was launched (ibid.). First of all, the risk analysis carried out by debriefing and screening experts helped gather the necessary information for the JO (ibid.). In addition to conducting a risk analysis, return operations were organized by Frontex (ibid.). The risk analysis had to be renewed and updated regularly (ibid.). The constituted *threat* of organized crime was combatted by the cooperation with Europol (ibid.). While the JO EPN-Hermes 2011 started in February 2011, the situation for refugees on Lampedusa was worsening (Kopp 2011).

The naval means and maritime crews were provided by Italy, which also led the operation (Frontex 2011c). Experts assisting Italy in the operation came from the Schengen countries Austria, Belgium, France, Germany, Malta, the Netherlands, Portugal, Romania, Sweden, Switzerland, Spain and within Italy itself (ibid.). The Italian border guards received aerial assets from France, Germany, the Netherlands, Malta and Spain (ibid.). Additionally, Italy provided aerial means themselves (ibid.). The maritime means were mainly used for the “detecting and preventing [...] illegitimate border crossings” while the aerial means assisted in the surveillance and control of the borders and the search and rescue of migrants (ibid.).

The borders that were in fact *protected* from *illegal* entry were mainly the borders of Lampedusa and Sicily, but generally all Italian borders were targets of the intensified border control (ibid.). Experts extracted information on the networks of people smugglers the migrants used and on their nationality (ibid.). The operation was first indented to last until March 2011 (ibid.), but was extended several times (Carrera/ Den Hertog/ Parkin 2012: 5). According to one document from Frontex the operation

was concluded on March 3, 2012 (2012c). The budget spent on the operation by that time amounted to over €12 million (ibid.).

According to another document by Frontex, the second FRAN (Frontex Risk Analysis Network) Quarterly of 2012, the operation was extended until October 31, 2012 (Frontex 2012l: 26). No Frontex document that was more up to date could be found. Also, newspaper articles at the time of writing did not give any information on whether the operation still continued. Nevertheless, I am assuming that JO Hermes is still ongoing, as there were no reports of its conclusion and no evaluation of the operation's results. Moreover, at the time of writing, some reports were found on the rescue of migrants in the Mediterranean by Maltese and Italian border guards (The Times of Malta 2012; 20 Minuten Online 2012; La Repubblica 2012; Nachrichten.at 2012; Schweizer Fernsehen 2012; Kleine Zeitung 2012; Tagesschau 2012 et al.). Likewise, reports claimed that large numbers of migrants were still arriving on Italian and Maltese coasts (ibid.). Therefore, the continuous implementation of Operation Hermes is assumed, however, cannot be confirmed.

Hermes was highly criticized by NGOs and other organizations such as the UNHCR, as large numbers of migrants drowned and died at sea (Carrera/ Den Hertog/ Parkin 2012: 5). It was criticized that the operation laid its focus only on the prevention of border crossings, but did not fulfill its task of searching for and rescuing migrants at sea (ibid.). According to the UNHCR, 2011 was the deadliest year for migrants attempting to cross the Mediterranean Sea²¹ (UNHCR 2012). It is estimated that 1,500 died on the Mediterranean Sea while the Joint Operation Hermes had been ongoing (ibid.). Other sources report about migrant boats that were not rescued by European border guards when sighted on the sea, but instead "left-to-die" without any water, food, fuel or means of communication (Heller/ Pezzani/ Studio 2012: 17ff.). In 2011, 58,000 migrants arrived in Europe crossing the Mediterranean²² (UNHCR 2012). However, most refugees remained within the region, as almost

²¹ Statistics about the death tolls on the Mediterranean have been taken up in 2006 (UNHCR 2012).

²² Most of the migrants, around 56,000, arrived in Italy, while around 1,500 reached Malta and another 1,000 were received by Greece. 28,000 of the people coming to Europe by crossing the Mediterranean in 2011 were from Tunisia. Most of them arrived during the first half of 2011 (UNHCR 2012).

700,000 people fled to neighboring countries instead of to the EU (Heller/ Pezzani/ Studio 2012: 15).

While the central Mediterranean migrant route was controlled and patrolled by the Joint Operation Hermes 2011, the Joint Operation Poseidon Sea was extended to Crete (Koenig 2011: 15). JO Poseidon Land was installed to control the borders between Turkey and Greece, while Poseidon Sea should prevent people from crossing the sea borders to Greece and Crete (ibid.). Migrants crossing the Mediterranean on this route at the time of the Arab revolution were mainly from Libya, but also from other Arab countries (ibid.).

When the revolt began in Libya and civil war broke out due to the oppression of the movement by the Gaddafi regime, many transit migrants and labor migrants from Sub-Saharan Africa fled either to neighboring countries or to their countries of origin (Heller/ Pezzani/ Studio 2012: 15). Many did not manage to flee Libya to neighboring countries and others were not able to return to their home countries currently at war, such as Sudan, Somalia, Eritrea and Iraq (ibid.). As a result of the increased number of violent attacks on third country nationals and Sub-Saharan migrants by Gaddafi forces, as well as by rebels, many tried to flee to Europe as a last resort (ibid.). In addition, according to reports, Gaddafi tried to use the *influx* of migrants from Libya to Europe as a mean of exerting pressure on Europe (Reuters 2011). According to the cited report, Gaddafi troupes also forced third country nationals on boats to Europe for the purpose of increasing the migratory *pressure* on the EU (ibid.). Many non-Libyan migrants were either forced on the boats by Libyan forces or assisted by them (Heller/ Pezzani/ Studio 2012: 16). Most of them did not have to pay anything or they paid very little and were searched by soldiers before leaving, so that they would not take water, food, mobile phones or money with them (ibid.).

During the first months of the Arab Spring, the primary reception country, Italy, asked for solidarity among the other EU states regarding the *influx* of migrants to Italy (Rickey 2015: 4f.). Italy asked for financial assistance, assistance from Frontex, assistance in the organization of deportation flights and a sharing of *burden* between the EU member states regarding the reception of asylum seekers (ibid.). As the member states of the EU did not provide Italy with the desired solidarity, Italy let migrants cross the borders to other EU states, mainly France, and later granted them

a temporary status so that they could legally travel to other EU states (ibid.). However, France was not willing to accept the migrants with the temporary status documents issued by Italy, as the Commission said they were not allowed to decide upon their validity. Hence, France began controlling the borders to Italy more strictly (ibid.) and began supporting Italy in their border patrols and their “push-back”²³ patrols (ibid.). Other EU countries, such as Austria, Germany and Belgium, did also not accept the travel documents issued by Italy and some member states sought an amendment of the Schengen agreement (ibid.).

As it can be seen, the bilateral cooperation is of great importance in order to manage immigration to the EU the way it is wished for by the EU. The externalized border controls in Arab countries such as Libya and Tunisia prevented people from leaving these countries and arriving in Europe to a large extent. Of course, a complete isolation from migrants is not possible, even through bilateral cooperation. Nevertheless, the number of migrants can be decreased and their migratory routes might shift to another route. As the example of the Arab Spring showed, migrants were, to a great extent, not using the central Mediterranean route any more before the uprising broke out. When the upheaval began, border controls in the Arab countries were loosened and the bilateral agreements fell. Consequently, more people managed to leave these countries in order to reach Europe. At the same time, many third country nationals in Libya were forced to migrate to the EU or did not see any other possibilities of fleeing the civil war. It was not only Egyptians, Tunisians and Libyans, who fled to the EU during the Arab revolution, but also many migrants from sub-Saharan countries that had been *stuck* in the transit countries or working as labor migrants, as well as people from other Arab countries.

Since bilateral agreements play such a major role in the management of migration, a closer look will be taken at these agreements in the following chapter.

²³ The “push-back” method is understood as the prevention of boat landings on one’s coasts through the pushing back of boats to the country where they came from.

7.3 Freedom of Movement through a Democratic Revolution?

During the uprising and the rebellion in the Arab countries, the border controls implemented by the regimes was loosened and many people managed to cross the Mediterranean borders of Egypt, Tunisia and Libya (Kopp 2011). Simultaneously(concurrently?), Libyan authorities forced third country nationals to cross the Mediterranean. When the dictators of these countries were overthrown, the bilateral agreements with Egypt, Tunisia and Libya fell as well (Carrera/ Den Hertog/ Parkin 2012: 5f.). As soon as the transitional governments came into force, members of the European Union were again aiming towards the re-implementation of the bilateral agreements (ibid.).

The agreements had to be renewed, as the former agreements were often not formalized and had not passed any parliaments. Often bilateral agreements, such as the ones between Italy and Tunisia, are made in the form of letter exchanges and memoranda (Cassarino 2007: 185ff.). Agreements are sometimes incorporated in a framework of cooperation and are based on mutual assistance, such as police cooperation and other arrangements (ibid.). Even though the expression “readmission agreements” is used, often the agreements are rather a form of cooperation in the readmission of third country nationals (ibid.). Most of the time, these informal arrangements are not publically accessible, since they are not formal and official, and are therefore hard to trace (but not impossible) (ibid.). In 2007, EU member states obtained in total 24 readmission agreements from Algeria, Libya, Mauritania, Morocco and Tunisia. Eight of these were formal readmission agreements, five were memoranda of understanding, another five were based on the exchange of letters and six were police cooperation agreements, meaning that only eight out of twenty four were formal agreements (ibid.).²⁴

Italy pressured Tunisia to sign a new agreement on April 5, 2011 and promised Tunisia to grant €200 million of aid money, ten boats to patrol the Tunisian coast and 100 off-road vehicles in return (Carrera/ Den Hertog/ Parkin 2012: 5f.; Campesi 2011:

²⁴ The latest number of agreements linked to readmission could not be found out, however, the actual total is irrelevant, rather the proportion of informal agreements to formal ones is significant.

12). Before the agreement was signed, a long bargaining process had taken place. Italy first proposed the idea of patrolling the borders of Tunisia, as the country declared as a failed state by Italy, was understood as not being able to control their borders anymore (Campesi 2011: 12). Following the rejection of this proposal, Italy offered €2,000 for each returned migrant and threatened Tunisia with naval blockings and forced mass deportations (ibid.). Tunisia, on the other side did not, want any police cooperation and only agreed on small numbers of migrants returned to their country, as they were afraid of possible repatriated opponents (ibid.). Finally, a “memorandum of understanding” was reached, which included the cooperation of the police and the readmission of *illegal* migrants (ibid.). The readmission agreement signed by both countries not only obliges Tunisia to accept of returned migrants, but also to prevent border crossings to Europe (Carrera/ Den Hertog/ Parkin 2012: 6).

On June 17, 2011, Italy managed to agree on a further readmission agreement with Libya and on April 3, 2012, Italy reached an agreement with Libya concerning areas such as border surveillance, voluntary return and repatriation (ibid.). The agreements reached with Tunisia and Libya led to a sharp decrease of migrants arriving from Tunisia in Europe and the return of over 13,000 migrants to these countries (ibid.).

Even though the revolutionary population in the countries of the Arab uprising was demanding a democratic freedom that includes the freedom of movement, many of the former restrictive agreements have been taken up again (Kopp 2011).

Following the bilateral agreements between Italy and Tunisia, the president of the Commission Manuel Barroso visited Tunisia in April 2011 for the purpose of signing agreements with the EU (Carrera/ Den Hertog/ Parkin 2012: 6). In return for agreements to combat *illegal* migration, the EU offered Tunisia €400 million to assist Tunisia with its democratic transition process (ibid.). Despite contradicting the revolutionary demands, the Tunisian authorities gave in to the EU's pressure and decided to take the financial incentive (ibid.).

The main goal of the Joint EU-Tunisia operation project proposed by the Commission in June 2011 was to combat irregular migration through cooperation (European Commission COM(2011) 292 final) The Tunisian border control should be strengthened through capacity building and people smuggling and trafficking should be combated and the return of illegalized migrants facilitated (ibid.). Furthermore,

assistance in the reintegration of these returned migrants has to be provided (ibid.). Legal access to migrate to the EU should be made possible, while asylum should be granted to people in need of refuge and the EU states affected most by the problem of *illegal* migration assisted (ibid.).

As mentioned above, in the first months of the Arab Spring, Italy granted temporary protection status for migrants arriving in Italy from the Northern African countries, so that they could continue their travels to other Schengen countries and lift the *burden* on Italy by using it only as a transit country (Carrera/ Den Hertog/ Parkin 2012: 6f). Since a number of member states were not happy with the practices of the Italian authorities, the establishment of border controls between single Schengen member states in emergency cases was asked for (ibid.). Italy and France called on the European Council to include this possibility and argued it would help to manage the external borders of the Schengen area (ibid.). Although within the EU it was regarded as doubtful that the migrants arriving following the Arab Spring posed a threat to the inner security of France, the Commission adopted the proposal to amend the Schengen agreement by Italy and France (ibid.).

These developments show, according to the researchers Carrera, Den Hertog and Parkin, an “emergency-driven decision-making process that characterized the EU’s immediate response to the migration flows from the Southern Mediterranean in the first half of 2011” (ibid.). Furthermore, according to the authors, the actions of the EU and its member states displayed a lack of solidarity towards the newly emerging *democratic* countries of the Arab Spring (ibid.). Solidarity for migrants and refugees within the Arab States through humanitarian assistance and aid money was granted, however, when it came to solidarity with the population of these states in Europe, EU isolation from migrants and refugees was the preferred strategy (ibid.).

7.4 Interests, Justification and Critique

7.4.1 The Lampedusa “Crisis” and the Threat to the Italian Inner Security

According to the scholar Guiseppe Campesi, the so-called Arab Spring resulted in a manufactured crisis on the Italian island Lampedusa and provides a perfect example for a securitization process according to the Copenhagen School (Campesi 2011: 1ff.). He argues that the European border regime has seen three such events before,

namely in 2001, 2004 and 2005, when terrorists attacked the Western world (ibid.). Additionally, the process of enlarging the EU is constituted as a similar threat and pushes the securitization process forward (ibid.).

The emergency that posed a threat to the EU was identified by Italy (ibid.). The rhetorical act by Italy, or the securitization speech by the securitization actor, followed a clear logic and oriented its rhetoric towards the different audiences of the securitization acts (ibid.). When addressing the EU and its member states, Italy referred to the high numbers of migrants arriving on Lampedusa as a “humanitarian emergency” (ibid.), knowing that this rhetoric could create an emergency scenario for the EU. The goal of this speech act was, on the one hand, to receive extra funds from the EU, which would otherwise not have been granted, and on the other hand, to achieve solidarity and consensus with the other member states allowing usually non-legitimate practices to be carried out (ibid.). Terms used by the Italian authorities, when addressing the EU, were “biblical exodus” and “epochal” *influx* (ibid.). It can be seen that Italy was clearly following the logic of a securitization process. Migration from Tunisia and Northern Africa was not only politicized and made a public agenda, as it had been before, but discursively displayed as a security threat. The *Lampedusa crisis* was constituted as a threat to the identity and inner stability of the EU and therefore sought to legitimize otherwise illegitimate practices, such as granting a temporary status so migrants could continue their journey to other Schengen countries (ibid.).

The framing of the migration movement to Lampedusa during the Arab revolution as a security threat did not succeed completely with regard to the EU institutions (ibid.). The EU as well as the UNHCR did not share the Italy’s authorities’ views and regarded the migration movements to Lampedusa as a normal movement of *mixed migrants*²⁵, meaning some of the migrants were refugees, whereas others were *economic migrants* (ibid.). Nevertheless, the EU and the UNHCR did not deny that the numbers of *mixed migrants* had increased (ibid.).

²⁵ With the term “mixed migrants” the UNHCR, the EU and other actors understand a movement of people who are partly refugees and partly *economic migrants*.

On the subnational level, the Italian governments were following a different strategy. The authorities compared the arrival of large numbers of migrants on Lampedusa with an environmental crisis such as an earthquake (ibid.). It was claimed that first-aid principles and quick-response intervention were the first necessary actions (ibid.). Conscious about the feelings of the Italian population, the authorities referred to natural disasters that the Italians themselves had experienced, such as the Abruzzi earthquake (ibid.). Instead of using terms such as “humanitarian emergency”, the Italian authorities spoke of a “humanitarian catastrophe” (ibid.). Although this time the audiences of the speech act were subnational actors, such as local governments and the population itself, the securitization process followed a similar logic. A “catastrophe” was being constructed in order to allow policies and practices that would not have been possible under *normal* circumstances (ibid.).

While the supranational institutions claimed that the arrival of migrants on Lampedusa did not pose such an immense threat to the inner security of the EU and Italy, the subnational actors believed that the government was not sufficiently emphasizing the dramatic threat to inner security and stability (ibid.). The blocking of newly arriving ships, forced mass returns and general administrative detentions for all migrants arriving were discussed on the national level (ibid.). The people arriving on Lampedusa were regarded as *bogus asylum seekers* and an attempt to hinder the building of new reception centers was made (ibid.). The governor of the Veneto region argued, that the situation was completely normalized in Tunisia and that “[t]hose who get here wearing brand-name sneakers and Western-looking jackets and holding mobile phones in their hands cannot be considered eligible for international protection” (ibid.). The governor accused the migrants of being solely young, single men without families, who have enough money and are completely healthy (ibid.).

Italy’s securitization speech followed two different patterns of arguments on the national and on the supranational level respectively. While the situation on Lampedusa was rather framed as a humanitarian issue on the EU level, it was at the same time framed as a disaster on the subnational level. The EU and the UNHCR, on the other side, framed the arrival of migrants on Lampedusa as *ordinary mixed migration*. Despite the difference in understanding, Italy managed to carry out the securitization process on the national level.

Detention camps and reception camps operating outside the boundaries of Italian law or possessing a legal uncertainty were installed (ibid.). Members of the parliament were not granted any access to these camps and the internment of the migrants was not ordered by a court, which is usually necessary for the deprivation of freedom in Italy (ibid.). Also the civil-society did not have access to these camps (ibid.). On the bilateral level, negotiations between Italy and Tunisia, who are unequal partners, were held, according to which all newly arrived migrants were considered as *illegal* and could therefore be deported to Tunisia (ibid.). Simultaneously, following the humanitarian crisis logic, temporary protection for Tunisians, who arrived prior to the agreement, was granted (ibid.). This caused discontent among the other member states, as they framed the *Lampedusa crisis* as ordinary and therefore without a need for any special measures (ibid.).

Another result of the securitization process can be observed with the deportation of migrants after April 8, 2011, following the agreement between Tunisia and Italy. Migrants were deported from Lampedusa, even though they had been there for several weeks and had already been sent to temporary camps (ibid.). The Italian law forbids deportation of migrants, who have crossed the borders some weeks before and who have had access to such camps without any juridical order (ibid.). Consequently, Lampedusa and other camps became a sort of extritorial area (ibid.). Arrival on Lampedusa or the further transportation to a temporary camp was deemed insufficient to constitute crossing the Italian borders (ibid.).

On the other side, the securitization process was not completely successful on the EU level. The previously mentioned directive 2001/55/CE allows the granting of a temporary protection status in the case of an emergency and consequently *burden sharing* through distribution of refugees between member states (ibid.). The enforcement of this directive has to be carried out through the European Council following a proposal by the European Commission (ibid.). The framing of the situation as a humanitarian crisis certainly aimed to achieve the implementation of this directive (ibid.). While financial support and assistance for the control of the borders were provided by the member states through Frontex, the *sharing of burdens* through the granting of a temporary protection status was not agreed upon by the member states (ibid.). Migrants from Tunisia were not regarded as refugees, but as *illegal*, *bogus*, *economic* and *criminal* migrants by the member states and did therefore not

possess any right to temporary protection status (ibid.). When Italy began issuing temporary protection status, Italy's neighbors, especially France, began controlling their frontiers bordering Italy more strictly (ibid.).

The Joint Operation Hermes 2011 coordinated by Frontex also reflects the EU's perception of the *crisis* as an ordinary *influx* of migrants (ibid.). Frontex emphasized that the operation was a regular European Patrol Network Joint Operation and was not implemented in the manner of a rapid-intervention (ibid.).

In conclusion, it can be said that the securitization of the Lampedusa *crisis* was only partly successful. While the securitization speech was welcomed and accepted by national actors, they could not understand the humanitarian framing of the crisis at the same time. On the EU level the securitization process was rather unsuccessful. The EU institutions insisted on the normality of the migration movement. Although they admitted the increased numbers of migrants arriving on Lampedusa, they still denied the humanitarian dimension of the situation. Moreover, the people arriving in Lampedusa were not considered as being entitled to refugee status, which also contradicted the humanitarian framing. As a result, Italy implemented practices that were either judicially unclear or illegal. At the same time, the granting of temporary protecting status caused neighboring countries to control their Schengen borders with Italy. The Frontex Joint Operation was considered a normal operation that was not reacting to any emergency and EU member states called upon Italy to reinforce its border control.

7.4.2 EPN-Hermes 2011 from a Critical Perspective

While the Italian government's arguments framing the situation on Lampedusa were either following humanitarian or securitization logic, the German and Austrian media employed? different interpretative patterns²⁶.

²⁶ This part of the thesis does not raise the claim of a complete depiction of the European newspapers and the discourse led about the situation on Lampedusa at that time. German and Austrian newspapers were chosen as the object of analysis because of my personal background and the linguistic advantages I have as a native German speaker. Furthermore, only the newspapers addressing the largest audience, the mainstream newspapers, are looked at. The brief presentation of the mainstream newspapers in these countries shall give

On February 20, 2011 when the Frontex operation Hermes was launched the three main Austrian wide newspapers²⁷ “Kronen Zeitung”, “der Standard” and “die Presse” published the following (identical) reports on their online editions. The arrival of Tunisians on the island Lampedusa is described as a “wave of refugees” and a “mass exodus”, while Lampedusa is referred to as the “gate to Europe for many desperate people from Africa” even before the “crisis” had started (Der Standard 2011; Die Presse 2011; Kronen Zeitung 2011). The implementation of the Joint Operation by Frontex is understood as an act of solidarity by the EU member states (ibid.).

The largest German daily newspaper, “Bild”, did not have any online reports on the day the mission was launched, however, reported about Lampedusa three days before, on February 17, 2011. The headline of the article poses the question of whether Europe has to expect the “largest refugee wave of all times” (Bild 2011). According to the newspaper, the only destination the refugees from Tunisia, Egypt, Yemen and Bahrain know is Europe (ibid). The refugees migrate through Italy and Greece, however, most of them want to arrive in the “promised land Germany” (ibid.). Furthermore the newspaper describes how refugees are dying on the Mediterranean and how they are “vegetating” in the camps on the Italian island Lampedusa (ibid.). In the following part of the article the state of emergency because of expected 80,000 asylum seekers²⁸ on Lampedusa is mentioned (ibid.). Moreover, the “wave” of

a short introduction to the discourse led by the masses around February 20, 2011, and does not present the whole spectrum of the discourse throughout a longer period of time.

²⁷ According to the Austrian “Media-Analyse” the four most read Austrian newspapers, that are published Austrian wide and are not for free are “Kronen Zeitung”, “Kurier”, “der Standard” and “die Presse” (2012). Other newspapers such as “Heute” and “Österreich” have a far wider reach, however, as they are for free and can therefore not be compared to the other four newspapers, they will be ignored. Furthermore local and regional newspapers such as “Kleine Zeitung” and “Tiroler Tageszeitung” are read by more people than, for example, the national newspaper “die Presse”. Since they are only regional and are not available throughout Austria they will also be ignored. The “Kurier”, being the second largest newspaper in Austria, will also not be included in the analysis, as their online edition did not possess any reports from February 20, 2011.

²⁸ Literally the author refers to asylum seekers as “Asylanten”, which has a negative connotation and is considered a politically incorrect German expression for asylum seekers. An English translation could not be found.

refugees could only be stopped when the situation in their countries of origin stabilizes, even though the EU is patrolling the coasts (ibid.). In the final part of the article the author explains the Dublin Regulation and that everyone has a right to apply for asylum (ibid.). Conclusively, the interior minister of Bavaria is cited, who says that Tunisians do not have any chance to be granted asylum, since their asylum applications are groundless (ibid.).

The second largest newspaper in Germany, the “Süddeutsche Zeitung”, presents a more broader picture. Different actors on the EU level as well as on the national level in Italy and Germany are cited in the article. German politicians of the Greens and the NGO Amnesty International, who frame the arrival of Tunisian refugees as a humanitarian agenda criticize the actions of the EU, Germany and Italy (Süddeutsche Zeitung 2011). At the same time, right wing politicians were interviewed for the article and demanded sanctions for Italy, as they allowed refugees to travel to other states and therefore ignored the Dublin Regulation (ibid.). Additionally, the article called for Frontex to be strengthened (ibid.). The article concludes with arguments following the development and migration nexus, saying that through tighter economic cooperation with the Arab countries, the incentives for migrating to Europe decrease (ibid.). In the headline, the newspaper refers to the movement of persons to Lampedusa as a “storm of refugees” and speaks in the article itself about a “flow of refugees” in contrast to the other cited newspapers, which choose the term “wave of refugees” (ibid.).

It can be seen that the Austrian and German mainstream media usually follow a similar framing logic. Although the term is never explicitly used, the articles construct the image of a threat to Europe. The last article presents a more differentiated picture through the citation of left wing as well as right wing parties, actors of EU institutions and an NGO. Nevertheless, the author presents a similar picture of a threat to the EU, but offers different strategies for solving the *problem*.

Frontex and the JO EPN-Hermes 2011 has been widely criticized by civil society organizations and networks, scholars and NGOs.

First of all, it is being said, that Frontex generally violates the non-refoulement principle described earlier in the thesis. Frontex is accused of forcibly returning refugees and migrants to countries where they might be tortured, killed, treated

inhumanely or exposed to other serious violations of their human rights (Amnesty International 2012: 2ff.; Kopp 2011; Richey 2012; Carrera/ Den Hertog/ Parkin 2012: 6; et al.). This is an often mentioned practice during Frontex operations and was probably also carried out during the Hermes 2011 operation (ibid.). Related to the non-refoulement principle, Frontex is often accused of a “push-back” practice, which means the blocking of boats and prevention of boat landings on European shores (Amnesty International 2012: 10ff.; Richey 2012: 2ff;). Also during the Arab Spring such practices were reportedly carried out by Italian border guards (Richey 2012: 6; Pro Asyl 2011a).

Moreover, the insufficient rescue of migrants at sea by European border guards is another often criticized aspect. As a result, many people are reported to die on their journey from the Southern Mediterranean shores to Europe. According to the UNHCR, large numbers of people trying to cross the Mediterranean Sea died during the Arab Spring (2012). Rescue calls were not responded to; people in distress were sighted , but not rescued; and boats were “left to die”, reports claim (Amnesty International 2012: 12; Heller/ Pezzani/ Studio 2012: 17ff.).

Other aspects often criticized are readmission agreements and other forms of cooperation with third countries in general. According to Amnesty International, Libya, for example, has never signed the Geneva Convention on Refugees; still Italy cooperated tightly with the country (2012: 5ff.). Torture, ill treatment and serious human rights violations are practices facing refugee and migrants in Libya (ibid.). Even though the situation worsened during the Arab Spring (ibid.), Italy decided upon new agreements with Libya (Carrera/ Den Hertog/ Parkin 2012: 6). Libya is only one example of countries, which violate human rights, ,but still have agreements with the EU or its member states (see chapter 7.3.). Furthermore, the newly signed agreements are said to be highly asymmetrical and are not the result of the negotiations between equal partners (Carrera/ Den Hertog/ Parkin 2012: 13f.).

Finally, with regard to the securitization process promoted through Italy and the cited media reports, the construction of a migration crisis constitutes a central point of criticism by many actors. The NGO Pro Asyl claims, that the state of emergency due to the arrival of migrants on Lampedusa in 2011 is being fabricated and does not reflect the reality (2011b). The NGO criticizes that in 2008 around 38,000 migrants

arrived in Italy (ibid.). The situation in 2008 was managed without any major problems (ibid.). The people arriving as a consequence of the Arab Spring, however, were left on Lampedusa, manufacturing a perceived emergency on the tiny island (ibid.). At the same time, the Italian authorities were creating a scenario of threat and thus producing great anxiety among the Italian population (Pro Asyl 2011c).

The criticized aspects of the operation Hermes, in particular, underline the norm-breaking through the operation EPN-Hermes 2011. As explained in the theoretical chapter, the process of securitization leads to and legitimizes the breaking of rules. The final part of chapter six outlined how Frontex is generally criticized for its norm breaking. Similarly, during the Joint Operation Hermes the various actors were criticized for not adhering to the *non-refoulement* principle, human rights standards and rescue-at-sea obligations. Furthermore, the highly criticized newly negotiated agreements with third-countries that do not respect human rights or refugee law can be understood as rule-breaking. Even though Frontex probably did not foster the securitization of the situation on Lampedusa, practices carried out within the frame of the JO Hermes 2011 can be considered as partly norm-breaking. They are therefore a result of the general securitization of migration as well as of the securitization through the Italian government during that time.

7.5 Outlook on Frontex' role after the Stabilization in Northern Africa

In February 2011, the Frontex Joint Operation EPN-Hermes 2011 was launched in order to assist Italian border guards with the surveillance and control of the Italian coast. This operation was extended several times and, according to the most recent document from Frontex, and was last extended until the end of October 2012. However, as I explained earlier in the thesis, I am assuming that the operation is still ongoing. Nevertheless, the numbers of migrants arriving at the Italian coastal borders have decreased again in 2012 (Frontex 2012l: 17). The operation was implemented for the purpose of assisting Italy with the increased numbers of people arriving on its coast as a consequence of the uprisings in the Arab world. Neither the EU nor Frontex regarded the operation as an emergency operation. These actors framed this as an ordinary and routine operation, which was carried out regularly, despite the fact that Italy tried to frame the situation as a state of emergency. Did the events of the Arab Spring have any effect on Frontex and how the agency will evolve in the future?

The reaction to the Arab spring was not extraordinary; no RABIT intervention was implemented. Similarly, the numbers of border crossings at the border between Greece and Turkey increased as a consequence of the Arab spring. From April to June 2012 the numbers of detected Syrian nationals at this border increased by 639 percent (Frontex 2012l: 12ff.). Syrian migrants, therefore, composed the third largest group of people trying to enter the EU over the Turkish border with Greece (ibid.)²⁹. The Turkish-Greek external EU border is controlled by the permanent Frontex operation Poseidon (ibid.).

On the basis of the analyzed literature, Frontex documents and other sources, it cannot be said that the Arab revolution had any major effects on the agency. The operation Hermes followed the same logic as previous operations. Also, the revolutionary demand for freedom of movement by the protestors in the Arab world did not seem to have any effect on the practices of Frontex or the newly signed readmission agreements between EU member states and third countries.

What is changing, however, are the responsibilities and possibilities Frontex possesses. With the earlier mentioned 2011 regulation amending the Frontex regulation No 1168/2011, Frontex received more responsibilities and was strengthened. European Border Guard Teams were created, while before Frontex had to rely on member states providing border guards. Frontex can now operate independently in the host state of an operation and procure and lease its own equipment. Before the amending regulation, member states voluntarily provided equipment and personnel, but now they are now obliged to do so according to agreements negotiated every year. Besides the strengthening of the agency, it also received more competencies in the field of cooperation with third countries. Finally, human rights aspects, as well as the protection of refugees according to the Geneva Convention on Refugees, became a consideration of Frontex through the regulation.

Even though Frontex was strengthened with the new regulation, the main competence in the actual control and surveillance of the EU borders remains with the member states. The examples of the Lampedusa *crisis* and the bilateral agreements

²⁹ 15 percent of all detected migrants were from Syria, 20 percent from Bangladesh and 31 from Afghanistan (Frontex 2012l: 20).

between member states and third countries show that nation states still play a major role, whereas Frontex coordinates operations and assists member states with their border surveillance.

Conclusively it can be said, that Frontex is continuously receiving more competences, the attention paid to human rights aspects is increasing and the Arab Spring did not have any major effects on the agency. Frontex will not take the role of a border guard in the near future; the responsibility will remain with the nation states.

8 Outlook

8.1 Harmonization and Europeanization of Migration Policies and Governance

As shown in the historical chapter, the policy fields of migration and asylum are continuously being Europeanized, which means the EU understands these fields as one of their responsibilities. The EU passed three directives in order to harmonize the asylum laws of the different member states. First of all, a directive on the minimum standards of reception for asylum seekers was passed (Council Directive 2003/9/EC). Following this directive, the EU decided upon a directive setting minimum standards for the qualification as a refugees, the “status directive” (Council Directive 2004/83/EC). Finally, with a third directive, minimum standards for asylum procedures were created (Council Directive 2005/85/EC). As the title of these directives already implies, they are only setting minimum standards, which are often criticized for being too low.

With the implementation of the Dublin Regulation, the EU appeared as if it was a state rather than a union of states. The introduction of the Dublin system and the idea of “first country of asylum” implied, that across the EU asylum seekers had the same rights. Otherwise, it could not be justified to allow asylum seekers only one asylum application in one EU member state, which they cannot choose, but is simply the one they enter first. At the same time, it is often criticized that even though minimum standards on the reception of asylum seekers exist, the status of refugees is too low and the asylum procedures are not being correctly observed by all member states (Pro Asyl 2012: 6ff.). After the European Court for Human Rights prohibited the deportation of an asylum seeker from Belgium to Greece, his first country of asylum, in 2011, many EU member states have abstained from deporting people to Greece (ibid.). This verdict by the European Court for Human Rights challenged the Dublin system, as well as the idea that all member states uphold the minimum standards set by the EU (ibid.).

Another area of harmonization constitutes the free movement of citizens of the Union and the abolishment of border controls between member states. Following the development of the Schengen area, a stricter control and surveillance of the external

borders emerged. The intensified control of the external borders for the purpose of managing migration from third countries was implemented on the one hand, through an agency coordinating border patrols and controls of member states, Frontex; on the other hand, through the cooperation with third countries. Frontex has gained competences since its establishment in 2004, however, the main responsibility for border control remains with the nation states. Frontex understands itself as a coordinating agency. Similarly, EU institutions such as the European Neighbourhood Policy, the European Mediterranean Partnership and the Union for the Mediterranean as well as Frontex are constantly negotiating agreements with third countries, which help externalize migration control. However, as the thesis shows, EU member states are far more successful in such negotiations and the EU relies on bilateral agreements in the field of cooperation with third country nationals.

Conclusively, it can be said, that migration policies and practices underwent a process of harmonization and Europeanization, however, this process is fragmented. While efforts have been made in the direction of Europeanized migration politics, the member states still play a crucial role in this field of politics. It is doubtful that migration will be entirely harmonized in the near future. Current developments, such as the discussions on reclosing Schengen borders in certain cases and the questioning of the Dublin system, suggest a hypothesis that the harmonization process might well stagnate or even regress.

8.2 Securitization and Militarization of EU Migration Policies: A Joint Border Control

With the shift of the migration and asylum discourse from a “pitiful discourse” to the paradigm of migration as a security threat, the foundation for the border agency Frontex was laid. *Illegal* migration, terrorism, human and drug trafficking, international organized crime and human smuggling are understood as serious threats to the security of the EU and the Schengen Area, which can be combatted through stricter control and surveillance of borders. In order to make these measures as efficient as possible, the creation of an EU agency, which coordinates the border control of member states and supports them in situations of *emergency*, was a logical consequence for policy-makers on the EU level.

In many EU member states border control is carried out by the military (Kasperek 2008a: 4). Just like the member states, Frontex understands migration as a security issue and looks at it from a military perspective (ibid.). Frontex understands irregular migration as a threat that can and has to be averted by carrying out risk analysis and armament, as well as through the use technology (ibid.). Frontex' focus lies on the prevention of irregular migration and does not question or try to understand the causes of this kind of migration (ibid.). According to Kasperek, the agency's task of research and development underlines this continuous militarization of border practices through Frontex. Some aims of this research are the implementation of new methods of border surveillance; a complete border control network that does not leave any gaps; and the enforcement of biometric control at borders (ibid.). In some of the research, ministers of interior and ministers of defense are involved (ibid.). Furthermore Frontex cooperates with institutions such as Europol, Olaf, Joint Situation Centre (SitCen), Global Monitoring for Environment and Security (GMES) and the EU Satellite Centre (ibid.). All of these EU institutions, some of them working for the interior and some for the exterior, have the security of the EU atop their agenda (ibid.). Furthermore, with the amending Frontex regulation, Frontex is instructed to develop a European border surveillance system (Art. 2 par. 1(i) Regulation (EU) No 1168/2011). EUROSUR will be created in order to implement a European wide border surveillance system, which shall reduce undetected entry of irregular migrants (European Commission COM(2008) 68 final). Moreover, less people shall die at sea through the implementation of EUROSUR and, finally, organized crime shall be combatted (ibid.).

The localization of Frontex in between these institutions, the way Frontex works and the claim the agency puts forward indicate the militarization of migration policies and practices with and through Frontex. As mentioned above, it cannot yet be said that Europe is heading towards joint border control, since the implementation of border control generally still remains with the member states. Frontex operations are more often implemented bilaterally, rather than European wide (Kasperek 2008a: 6).

Conclusively it can be said, that the securitization actor in the field of migration to the EU is difficult to tackle. In the example of the Lampedusa *crisis*, Italy, as a member state, clearly tried to securitize the events. Whereas EU actors framed the situation as ordinary (Campesi 2011: 17). The EU securitization process of migration involves

different actors, each reacting individually to different events and is very complex. A recurring logic and process cannot be pinned down, however, the current developments point in the direction of a continued and increased securitization rather than de-securitization.

8.3 Continuing Development to a more Restrictive Legislation?

Although control of external EU borders is being strengthened and measures are implemented in order to make control and surveillance more efficient, it cannot be said that the general trend is toward more restrictive legislation. While the minimum standards set through the three mentioned directives might improve the situation in some EU countries, they could also lower the standards in other countries, which had higher standards before. Therefore it is difficult to say whether legislation is becoming more restrictive or not. Generally, as the historical chapter showed, the interpretation of the Geneva Convention Relating to the Status of Refugees has become stricter. Asylum seekers now have to substantiate their individual persecution, whereas before flight from a communist country was often enough to be granted asylum.

At the same time refugees were criminalized, possibilities of immigrating legally to the EU were created. Member states are trying to generate incentives for desired migrants, who could fill gaps in the labor market or possess special skills and qualifications. In Austria, for example, a new law creating incentives for labor migrants came into force in 2011 (Schumacher/ Peyrl/ Neugschwendtner 2012: 77ff.). With the passing of this law, Austria followed the “EU Blue Card Directive” (ibid.). These possibilities of legal migration, however, are often limited to a certain period of time, for example, seasonal workers in the agricultural or tourism sector (ibid.). Moreover, citizens of the European Union enjoy freedom of movement and an almost unrestricted right to establishment within the EU. Citizens of certain states, such as for example the US, can also migrate more easily to the EU than citizens of other countries can.

A new directive on the status of refugees and people eligible for subsidiary protection has already been passed and will come into force in 2013 (Directive 2011/95/EU). In addition, the Commission has already brought forward proposals for the amendment of the directive on the reception of refugees (COM(2011) 320 final), the directive on the asylum procedure “ (COM(2011) 319 final) and the Dublin Regulation

(COM(2008) 820). According to the jurists Schumacher, Peyrl and Neugschwendtner some of the proposals by the commission would, in fact, improve the situation of asylum seekers with regard to access to the labor market and social security, however, it is often the member states that block the *progressive* proposals by the EU (2012: 213). The authors criticize that instead of improving the situation of asylum seekers, refugees and people entitled to subsidiary protection or providing easier access to the asylum system in Europe, the strengthening of Frontex is encouraged (ibid.).

Just like in the other fields mentioned in this chapter a clear prediction of how EU legislation might evolve cannot be given. While a general trend towards a more restrictive interpretation of international law can be observed over the last decades, the legislation has seen improvements of the situation for refugees in some states and worsening for others. The directives only provide minimum standards, and even though they provide these standards, some of the member states do not observe these the way they are foreseen. At the same time, some areas of migration have been loosened and migration has been made possible for desired migrants. It is difficult to say whether the EU generally is following a trend of restriction without taking a look at the individual member states. What can be said, however, without taking into account a possible restriction or loosening, is that the EU and its member states are trying to control and manage migration. The EU has followed this paradigm for the last couple of years and no paradigm change can be seen for the near future.

9 Conclusion

As shown in the theoretical chapter, borders are neither fixed nor natural, rather they are created through a top-down process by an elite. They are constantly constructed and reconstructed by the people living outside or inside the territory the borders demarcate. In order to justify borders, a construction of a different and, most importantly, dangerous *other* is necessary. This process is carried out constantly through the media, the people, the elites and general public discourse. Borders protect the inside from the outside *threat*. Consequently, borders themselves already constitute a form of securitization. In the case of the external borders of the European Union, irregular migrants that pose the threat of terrorism, organized crime and drug and human trafficking constitute the *other*, who has to be kept out and excluded. Otherwise the security, order and stability of the EU would be at threat.

Borders not only protect the order of a state, but also create an identity. While Europe is not considered to possess a common language, culture, ethnicity or religion, borders manage to create a European identity with a shared history and narrative and, most of all, shared values. The EU identifies itself as democratic and an area of freedom, security and justice. Even though national identities still remain important for EU citizens, a collective European identity, in contrast to the non-European countries, can be observed. The external borders are thus part of the collective's identity. According to political actors of the EU, the demarcation of borders serves to protect the included as well as the excluded. While the included are sheltered from the threat the outside *other* poses, the excluded are protected from people traffickers and a death on the Mediterranean. While borders make life *inside* less complex and provide stability and order, they also limit the personal freedom and restrict alternative possibilities of action.

Borders of the EU are reconstructed by a top-down as well as bottom-up process, however, I believe that the original creation and demarcation is an almost exclusively top-down process. The EU and EU member states cooperate with third countries and set rules for the crossing of these borders. Readmission agreements are an effective tool of border management, which the EU and/ or member states negotiate upon with third countries in an asymmetrical process. The elites that decide upon borders profit from the demarcation. Elites of cooperating countries in Northern Africa for, example,

profited through financial flows and other concessions, while the elites in the EU countries profited indirectly through the economization of migration, which means the ability to choose which migrant is useful to the economy and which one is not and to allow migration (or not) based on this distinction. Despite these efforts to protect European citizens from the *other*, borders can never be sealed completely, as they are permeable by nature. This is another reason why the EU tries to manage migration rather than restrict it.

Events that cause people to migrate or flee have always existed. People have always migrated ever since humanity has existed. Nevertheless, this thesis concentrates mainly on the refugee movements after 1945. European refugee movements after the Second World War can be categorized in three eras. First of all, most people fled as a consequence of the war itself. Secondly, the Cold War and three events in Hungary, former Czechoslovakia and Poland, caused a second group of refugees who fled within Europe. Finally, starting with the 1960s and 1970s mixed and irregular groups of refugees began arriving in Europe. The third group was composed of European refugees from former Yugoslavia and other non-Soviet countries, as well as international refugees. The Refugee Convention by the UNHCR was originally drafted for the refugees fleeing after the Second World War. However, the Cold War refugees were also widely accepted as political refugees and granted asylum. The third type, however, was facing continuous restrictions and stricter interpretations of the convention.

Not only the movement of people, but also migration politics after WW II can be categorized in three main eras. After the Geneva Convention Relating to the Status of Refugees had been passed, European migration policies were mainly a national competence. Bilateral cooperation was partially implemented before, however, in the 1990s a new era of cooperation in this field began. Until the Treaty of Amsterdam was passed in 1999, the field was shaped through cross-national cooperation. The Treaty of Amsterdam then made migration and asylum policies a core competence of the European Union. Despite the gain in competences and various directives aiming towards the harmonization of migration policies that have been passed, the main responsibility remains with the nation states.

The public discourse frames refugees in nine different main frames. Apart from these nine frames a general trend can be observed over the last decades. The people who fled communist countries were opposing Western Europe's enemy. Their flight supported the idea of a superior West and a capitalist system. Furthermore, the labor markets of the rebuilding Western European countries were in need of labor forces. These refugees were welcomed as *political refugees*, whereas first Yugoslavian refugees and later others, were considered as *economic refugees*. The refugees fleeing after the fall of the Iron Curtain were often perceived as irregular and not controllable. The politics continuously constituted these refugees as a threat and, at the same time, migration politics were economized. Managed migration and the possibility of choosing whom to accept were strived for.

The securitization can thus be regarded as a result of the shift in discourse. While Soviet refugees were regarded as political, Yugoslav and international refugees are and were regarded as *bogus*, *criminal* and *economic*. The constitution of refugees as a threat, hence, the securitization of refugees, justifies subsequent measures as necessary, which otherwise would probably not have been possible. As a result Frontex was created, borders were managed, militarized and irregular migration was restricted.

Frontex is not only the result of securitization, but also fosters securitization itself. It has, since its creation, continuously been strengthened in its structure, the number of employed staff, its funding and finally also in the amount of rights and responsibilities it's been granted. The European Union holds little influence on the operational field of Frontex. The European Commission and the European Parliament have to approve the budget, as they are the institutions granting the annual funds. Also, the Commission and the member states are represented in the management board, which appoints the executive director, decides upon the staff and the budget and determines the working plans proposed by the executive director. Other than that, the agency can operate autonomously. Frontex coordinates Joint Operations, pilot projects, return operations and carries out risk analysis, however, it does not carry out its own operations. The influence the agency has on migratory movements can be observed with the number of detected irregular migrants annually on the different routes Frontex identified. It cannot be said, whether Frontex has had an effect on reducing numbers, however, a shift from one route to another can certainly be noted.

The critical voices from civil society organizations, networks and initiatives have surely had some impact on the amending regulation that now includes human rights standards, refugee rights and rescue-at-sea obligations. Furthermore, the criticism reveals the norm-breaking by Frontex, as securitization legitimizes otherwise unacceptable practices.

Even though unrest had been existent long before in the Arab world, the Arab Spring, was a new phenomenon. It was a young movement, carried by new media and the possibilities these offered. Furthermore, it was a peaceful, transnational and very heterogeneous movement, including people from all beliefs, ages, classes and genders. Politically and economically the Arab states did not have much in common, except for their lack of public political participation, a large poverty gap and a corrupt system. Other movements worldwide, for example, the Occupy Wallstreet movement, used the Arab Spring an example (Rosiny 2011: 6).

Agreements with third countries, which are either transit countries or countries of origin (or both) have been crucial for the management of migration. These agreements include the readmission of illegalized migrants and the measurements to prevent migrants from leaving the third countries in order to migrate to Europe. Detention camps for refugees and migrants have been installed and campaigns on the risks of travelling irregularly have been launched in third countries. Furthermore, the EU and/or member states provide technical assistance and funds for the purpose of improving the third country's border control and surveillance, even at borders that do not border the Mediterranean or the EU. The EU's approach to cooperation with third countries underwent a long development. For the first time with the Treaty of Rome, third country cooperation was aimed for. The subsequent Global Mediterranean Policy was followed by a Renovated Mediterranean Policy and, finally, was installed with the Barcelona Declaration the European Mediterranean Partnership. This was incorporated into the new European Neighbourhood Policy and, most recently, into the Union for the Mediterranean. So far all these institutions and approaches, however, were not able to realize agreements the same way nation states have been able to.

The examples of Egypt, an official EU partner with various agreements on the EU level, and Libya, not officially associated with the EU, show the continued importance

of bilateral agreements. While the EU has so far not been able to negotiate any official agreements with Libya, Italy holds a number of agreements with the Northern African country. Libya has become the most important partner of the EU in the control of transit migration to Europe, even though the EU does not hold any agreements, on the basis of these bilateral agreements with Italy. The cooperation with third countries and the forward displacement of border controls have resulted in an externalization of asylum and migration policies. Most of these agreements are not official, have never been decided in any democratic parliament and are not publicly accessible.

When the Arab Spring *broke out* the cooperating regimes were either not able or not willing to control their borders with the Mediterranean anymore. Transit migrants and citizens used the weak or lacking border control to set off for Europe. Other transit migrants, for example, in Libya, were forced on boats by Libyan authorities in order to put pressure on Europe. Also, in Libya, some Sub-Saharan migrants reported of violent attacks by Gaddafi forces and rebels. Most of these fled to neighboring countries or their countries of origin. Those who did not manage to flee to a neighboring country or came from countries currently at war, fled to Europe as a last resort. Italy managed to restore or negotiate new agreements with the respective transitional governments in Tunisia and Libya.

Italy, as the main receiving country, followed different strategies on different levels in the framing of these arrivals. On the EU level, Italy referred to the situation on Lampedusa as a “humanitarian emergency”, an “epochal” *influx* and a “biblical exodus”, trying to create an image of an humanitarian emergency. With this speech act, Italy tried to justify its practices of granting refugees a temporary protection status, so they could travel to other EU member states. In addition, Italy asked for funds, a Frontex operation and a sharing of the *burden* through the distribution of migrants throughout Europe. On the national level, Italy framed the situation as a “humanitarian catastrophe” and referenced the earthquake of Abruzzi. The speech act with national actors and the population as the audience tried to create images of a natural disaster. This framing allowed the authorities to create detention and reception camps outside the boundaries of the Italian law. Furthermore, bilateral negotiations with the transitional governments were again being taken up and after these agreements were settled, migrants were again deported.

While the EU granted funds and a Frontex operation, the EU framed the situation on Lampedusa as ordinary. The Frontex operation was implemented in the form of a normal regular operation, rather than a RABIT operation. Some neighboring member states started controlling their borders with Italy and did not want to acknowledge the temporary protection status granted by Italy. The arriving refugees were considered only partly as refugees, while others were understood as *economic refugees*. On the national level, however, actors felt that Italy was not sufficiently emphasizing the security risk posed by the *influx* of migrants. Concurrently with the *ordinary* Joint Operation Hermes, Frontex had the operation Poseidon implemented at the Greek-Turkish border.

European newspapers depicted the arrival of refugees on Lampedusa as a *storm*, an *influx*, a *wave*, a *flow* and a *mass exodus*. The people arriving were considered as *bogus* and *economic* refugees “vegetating” on the Italian island. At the same time, civil society organizations criticized Operation Hermes and Italy’s practices as human rights violations. Again, the practices carried out in the context of Hermes 2011 reveal the legitimization of otherwise illegitimate actions.

Consequently, it can be said, that despite the increased numbers of people arriving on Lampedusa, Frontex framed the situation as ordinary. Therefore, Frontex did not foster the securitization of migration during the Arab Spring. Nevertheless, it can be regarded as a securitizing and militarizing actor through its practices and the production of knowledge through its risk analysis. The first hypothesis cannot be completely verified, Frontex’ role during the Arab Spring was not the one of a securitizing actor. Since the implementation of Hermes followed a normal procedure and not the one used in the case of an emergency situation, the Arab revolution did not have an effect on Frontex. Frontex changed continuously and was strengthened, but this development did not result from the Arab Spring. However, the strengthening of Frontex has its limits. Although the agency has received more competences and responsibilities (and now has to take human rights into account) the member states still possess the main responsibility for the control of the external borders. It is not foreseeable, that Frontex will become the European border guard in the near future. Therefore the second hypothesis can only be partly confirmed.

Finally, it can be said, that the third hypothesis can actually be verified. Italy successfully negotiated new agreements with the transitional governments of Libya and Tunisia. Also, the EU managed to agree upon new arrangements with Tunisia. Migrants have already been deported back to these countries and the number of arrivals decreased after the agreements had been decided upon. Up to now the revolutionary demand for a freedom of movement has not been met. Future developments cannot be predicted, but, at the moment, a development in a different direction cannot be foreseen.

In conclusion, a general outlook on the future developments of EU migration and asylum policies with regard to Europeanization can be given. The EU only obliges its member states to uphold the minimum standards for the status and reception of asylum seekers and refugees, and asylum procedures. These minimum standards are not entirely observed by all member states. This has led to the questioning of the Dublin system. Asylum policies are only partially harmonized and a lot of the responsibilities remain with the member states. It is doubtful, that a complete Europeanization will take place in the near future.

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11 Annexes

11.1 German Abstract

Während des Kalten Krieges wurden Flüchtlinge aus den ehemaligen sowjetischen Staaten in Westeuropa zum größten Teil als politische Verfolgte und Opfer des Kommunismus wahrgenommen. Viele der Geflüchteten wurden daher aufgenommen und als Flüchtlinge anerkannt. Die juristische Definition eines Flüchtlings nach der Genfer Flüchtlingskonvention wurde relativ weitläufig ausgelegt und die individuelle Prüfung von Fluchtgründen seltener verfolgt. Mit der Ankunft erster nicht-sowjetischer Flüchtlinge und schließlich mit dem Ende des Kalten Krieges 1989 wandelte sich der Diskurs und Flüchtlinge wurden in Westeuropa zunehmend kriminalisiert. Begrifflichkeiten wie „Wirtschaftsflüchtling“ und „Scheinasylant“ tauchten auf, während gleichzeitig irreguläre Migration mit organisierter Kriminalität, Drogen- und Menschenhandel sowie Terrorismus in Verbindung gebracht wurde. Irreguläre Migration wurde vermehrt als Sicherheitsbedrohung wahrgenommen.

Zur selben Zeit wurde die Migrations- und vor allem Asylpolitik zunehmend europäisiert, also homogenisiert und zu einem Politikbereich und zu einer Kompetenz der Europäischen Gemeinschaft gemacht. Während die innereuropäischen Grenzkontrollen stetig abgebaut werden, die Arbeitsmigration und Freizügigkeit der BürgerInnen der Europäischen Union beziehungsweise des Schengen Raums gefördert werden, werden die außereuropäischen Grenzkontrollen gestärkt. Dies ist nicht zuletzt auf die Versicherheitlichung von (irregulärer) Migration zurückzuführen. Die Europäische Union und die Mitgliedsstaaten folgen dem Paradigma des Migrationsmanagements und versuchen Migration nach ökonomischer Verwertbarkeit zu „steuern“.

Diese Entwicklungen, die Versicherheitlichung und die Europäisierung von Migrations-Policies, ermöglichten die Schaffung einer europäischen Grenzschutzagentur, der Agentur Frontex. Die Europäische Agentur für die operative Zusammenarbeit an den Außengrenzen, kurz Frontex, tritt vor allem als koordinierende Akteurin der Grenzkontrolle und -Überwachung auf.

Die jüngsten Entwicklungen in der sogenannten arabischen Welt im Jahr 2011 und 2012 rückten Frontex wieder in den Fokus der Medien. Zahlreiche Menschen verließen die nordafrikanischen Staaten in Folge der arabischen Revolution. Einige davon, aber bei weitem nicht die Mehrzahl, versuchten nach Europa zu gelangen. Italien war, der italienischen Regierung zufolge, überfordert mit der Situation auf der Insel Lampedusa sowie an der eigenen Mittelmeerküste. Daher forderten sie Unterstützung von der Europäischen Union, Frontex und den Mitgliedsstaaten. Die medialen Berichte stellten die Ankunft von nordafrikanischen, und durch Nordafrika gereisten, Flüchtlingen als einen Ansturm und eine Katastrophe dar. Noch im Februar 2011 startete Frontex die Operation Hermes zur Unterstützung der italienischen GrenzbeamtInnen an den italienisch-europäischen Außengrenzen.

Die Diplomarbeit geht der Frage nach, welche Rolle Frontex während des Arabischen Frühlings im Hinblick auf die, durch die Revolution ausgelösten, Flüchtlingsbewegungen spielte. Diese Analyse soll Antworten zu der Frage liefern, ob Frontex während des Arabischen Frühlings als Versicherheitlichungsakteur auftrat. Ebenso ist zu klären, ob die revolutionären Forderungen nach Bewegungsfreiheit erfüllt werden konnten. Nicht zuletzt setzt sich die Diplomarbeit mit der Frage auseinander, ob Frontex generell, sowie durch die Geschehnisse des Arabischen Frühlings, an Kompetenzen gewinnt und sich zu DER europäischen Grenzschutzagentur entwickelt.

11.2 English Abstract

During the Cold War refugees from the former Soviet Union were widely regarded as politically persecuted and victims of communism. Many of those who fled these countries were therefore accepted and granted a refugee status. The juridical refugee definition of the Geneva Convention on Refugees was interpreted in broad terms and individual reasons for flight were rarely investigated. When the first non-Soviet refugees arrived in Western Europe and with the end of the Cold War in 1989 the public and political discourse increasingly criminalized refugees. Terms such as “economic refugee” and “bogus asylum seekers” appeared. At the same time, irregular migration was associated with organized crime, terrorism and drug and human trafficking. Irregular migration was increasingly regarded as a security threat.

Simultaneously migration and particularly asylum policies were continuously Europeanized. They were homogenized and became a policy field and a competence of the European Community. While inner-European border controls are being dismantled and labor migration as well as the freedom of movement of citizens of the European Union and the Schengen area are being promoted, the external European borders are being strengthened. These developments can be considered as a result of the securitization of (irregular) migration. The European Union and its member states follow the migration management paradigm - they try to “regulate” migration according to economic exploitability.

These developments, the securitization and the Europeanization of migration policies paved the way for the establishment of the European border agency Frontex. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, short Frontex, mainly coordinates the border control and surveillance of the member states.

The most recent developments in the so-called Arab World in 2011 and 2012, the Arab Spring, brought Frontex back to the center of attention of the media. Large numbers of people left the Northern African states subsequently to the revolution. Some of these, however not nearly the majority, tried to reach Europe. The Italian government constituted itself as overwhelmed with the situation on the island Lampedusa and the Italian Mediterranean coast. They demanded support from the other member states and the European Union. The media depicted the arrival of Northern African refugees, and refugees who had travelled through Northern Africa in Italy as a onslaught and as a catastrophe. In February 2011 Frontex launched its operation Hermes in order to support the Italian border guards at the Italian-European external borders.

The diploma thesis takes a look at the role Frontex played during the Arab Spring in regard of the refugee movements subsequently to the revolution. The analysis shall answer the question of whether or not Frontex acted as a securitization actor during the Arab Spring. Likewise, the compliance of the revolutionary demands for freedom of movement has to be clarified. Finally, the diploma thesis treats the question whether Frontex is generally, or in the sequel of the events of the Arab Spring, gaining competences and evolving to THE European border agency.

11.3 Curriculum Vitae

Name Antonia Sydney WACHTER

Geboren 1987 in Sydney, Australien

Ausbildung

2006 Matura, Bundesgymnasium Lustenau

2008 – 2011 Bachelorstudium Politikwissenschaft, Universität Wien

2008 – 2013 Individuelles Diplomstudium Internationale Entwicklung,
Universität Wien

2011 Auslandssemester an der Université de Ouagadougou
 (Burkina Faso)

Seit 2012 Masterstudium Politikwissenschaft, Universität Wien

Praktische Erfahrungen

2008	Englisch und Informatik Lehrerin beim EZA Projekt Esmabama in Machanga und Barada (Mosambik)
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2010	Praktikantin beim Verein Deserteurs- und Flüchtlingsberatung in Wien
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2010 – 2011 Englischdozentin bei der Humboldt Maturaschule in Wien

2011 – 2012	Praktikantin beim Dachverband der burkinischen HandwerkerInnen (FENABF – Fédération Nationale des Artisans du Burkina Faso) in Ouagadougou (Burkina Faso)
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2011 – 2012	Deutschassistentin am französischen Gymnasium Lycée Français Saint Exupery in Ouagadougou (Burkina Faso)
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Seit 2010	Ehrenamtliche Mitarbeiterin im Verein Deserteurs- und Flüchtlingsberatung in Wien (Rechtsberatung im Asyl- und fremdenrechtlichen Verfahren, Sozialberatung)
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Sonstiges

2003 Australien Aufenthalt als Austauschschülerin

2009 Französisch Sprachkurs in Montpellier, Frankreich

Seit 2006 Amnesty International Österreich Aktivistin

Sprachen

Deutsch, Englisch, Portugiesisch, Französisch, Latein