ACUNS Annual Meeting, LUISS University, Rome, July 14th, 2018

Mitigating Hospitality with Law Enforcement: The European Union's Securitization of the 'Refugee Crisis' with Special Focus on the Mediterranean Area
Philippe Ch.-A. GUILLOT
Professor of International Relations
French Air Force Academy
philippe.guillot@ecole-air.fr

<u>WORK IN PROGRESS</u>

<u>Do not quote without authorization</u>

Rescue ships *Aquarius* and *Life-Line* recently suffered from denial of access to ports by some EU member states' governments who accused NGOs of migrant smuggling.   This hot topic epitomizes the securitization of the migration crisis (also refered as 'refugee crisis'[1]) in Europe.

Faced by an increasing migration influx to Europe (especially after the Arab Spring), the EU was led to deploy several of its agencies in some members countries – notably Greece and Italy – or on high seas, and to create a maritime police operation officially named EUNAVFOR MED, but commonly called *Sophia* after the name of a baby girl born on August 24th, 2015 on board the German frigate *Schleswig-Holstein*, a rescue ship of the EUNAVFOR MED who was herself nicknamed *Sophia* in honour of Princess Sophia von Schleswig-Holstein (1866-1952)

. The relevant agencies are mainly FRONTEX (formerly European Agency for the operational management of external borders ; since October 16th, 2016, the

---

[1] See : Hugo Brady, "*Mare Europaeum ?* Tackling Mediterranean migration", *European Union Institute for Security Studies Brief Issue*, No 25, September 2014, pp. 2-3.

European Border and Coast Guard Agency[2]), but also the European Police Office (EUROPOL) and, in a more humanitarian manner, the European Asylum Support Office (EASO) which assists national authorities to determine if asylum seekers are eligible to a relocalisation in a EU member state or if they should be sent back to their home country or to a safe third country[3].

Created by EU Council Regulation 2007/2004/CE of October 26th, 2004, FRONTEX is entrusted to coordinate joint operations of border control, whether these operations are launched by member states or initiated by the Agency itself with the consent of the interested state(s). These operations are manned by member states and rely on material resources of these member states, and border control fully remains a member state's prerogative. Thus, "FRONTEX is a *sui generis* phenomenon amongst [EU] agencies. First, FRONTEX's task of coordinating work for which Member States are responsible used to be [EU] Council work. Furthermore, rather than operating within a policy field where competencies clearly belong to the [EU], the agency has to negotiate its role within an area where some competences belong to the [EU] and others to Member States[4]". As far as member states are concerned, FRONTEX members are not all the UE member states – eventough, the United Kingdom and the Republic of Ireland sit in its board – but members of the 'Schengen Area', including participating non-EU states – namely Iceland, Norway, Switzerland and Liechtenstein.

---

[2] See : Philippe De Bruycker, "The European Border and Coast Guard : A New Model Built on an Old Logic", *European Papers*, vol. I, 2016, pp. 559-569.

[3] See : Roderick Parles, "Migration to Europe : the Number Game", *European Union Institute for Security Studies Brief Issues*, No 18, juin 2016, p. 1.

[4] Helena Marghareta Ekelund, *The Agencification of Europe : Explaining the Establishment of European Community Agencies*, thesis, University of Nottingham, 2010, p. 179 <htt://eprints.nottingham.ac.uk/11269/1/PhD_thesis_Helena_Ekelund.pdf>.

Originally established by a treaty (Convention of July 26th, 1995) to coordinate actions of national law enforcement agencies within the European Community internal market – and the consecutive disappearance of internal borders –, EUROPOL is since January 1st, 2010 a full range EU agency with an extended mandate : combattingon transnational organized crime – illicit drugs trafficking, human trafficking, sexual exploitation of children, forgery, and money laundering – and transnational terrorism. EUROPOL supports EU member states law enforcement agencies by facilitating exchange of information and intelligence, by providing operational analysis, by writing reports and surveys, and by offering a technical support to operations and enquiries led under the responsibility of a member state. In February 2012, EUROPOL set up the European Migrant Smuggling Centre (EMSC) in charge of strategic analysis, facilitation of exchange of information, strategic and operational support to dismantling of illicit immigration networks.

EASO was created by EU Council Regulation 439/2010/UE to provide an operational support to EU member states or Schengen Area member states (EU +) within the asylum field by sharing and merging information and data, analyses and assessments. EASO assists also the EU + member states in capacity building, and special quality control tools. EASO also coordinates relocalisation measures decided by the EU.[5]

These EU agencies concieve the so-called 'migration crisis' as a threat, and consequently implement security measures to deal with it. In other words, it can be said that there is a **securitization** of the migration flows. The concept of securitization

---

[5] <https://www.easo.europa.eu> [July 7th, 2018].

has been coined by Barry Buzan[6] and the Copenhagen school. They stress the importance of societal security, i.e. social cohesion is a major security factor in developed societies where immigration and rise of poverty are new challenges[7]. Given that the world is a social construct, they think that it is not possible to assess if a threat is a 'real' one or not. Thus, security studies have to focus on the processes by which a socially constructed issue become recognised as a threat to security. As a matter of fact, securitization succeeds when an actor's dramatizing rethoric about an issue presented as an existential threat is accepted by his/her audience (government, public opinion, etc.), and when emergency measures are taken.[8] Contrary to the Copenhagen, critical studies put the emphasis not on 'speech acts', but on securitization practices[9] or securitization instruments[10].

It is true that securitization does not rely only on discourse, but also requires implementating tools. In the case of the 'migration crisis', the EU discourse refer to

---

[6] His major book is *People, States and Fear : An Agenda for International Security Studies in the Post-Cold War Era*, 3rd edition (1st ed. 1981), Hertfordshire, Harvester Wheatsheaf, 2008. See. : Marianne Stone, *Security According to Buzan : A Comprehensive Security Analysis*, Groupe d'Études et d'Expertise "Sécurité & Technologies", *Security Discussions Papers*, No 1, 2009 ; P. Schouten, "Barry Buzan on International Society, Securitization, and an English School Map of the World", *Theory Talks*, No 35, 2009, <http://www.theory-talks.org/2009/12/theory-talks-35.html>.

[7] See : Jean-François Guilhaudis & Louis Balmond, *Relations internationales contemporaines*, 4th edition, Paris, LexisNexis, 2017, p. 1012.

[8] See : Barry Buzan, Ole Wæver & Jaap De Wilde, *Security : A New Framework for Analysis*, Boulder, Lynne Rienner, 1998, p. 25 ; to go further : Ole Wæver, "Securitization and Desecuritazion", in Ronnie D. Lipschutz (ed.), *On Security*, New York, Columbia University Press, 1995, pp. 46-86 ; Rita Taureck, "Securitization Theory and Securitization Studies", *Journal of International Relations and Development*, vol. IX, 2006, pp. 53-61 ; Holger Stritzel, "Towards a Theory of Securitization : Copenhagen School and Beyond", *European Journal of International Relations*, vol. XIII, 2007, pp. 171-201 ; Matt McDonald, "Securitization and the Construction of Security", *European Journal of International Relations*, vol. XIV, 2008, pp. 568-587.

[9] See : Didier Bigo, "Europe passoire et Europe forteresse : La sécuritisation/ humanitarisation de l'immigration", in Andrea Rea (ed.), *Immigration et racisme en Europe*, Brussels, Complexe, 1998, pp. 203-241.

[10] See : Thierry Balzacq, "The Three Faces of Securitization : Political Agency, Audience and Context", *European Journal of International Relations*, vol. XI, 2005, pp. 171-201 ; "The Policy Tools of Securitization : Information Exchange, E.U. Foreign and Interior Policies", *Journal of Common Market Studies*, vol. XLVII, 2008, pp. 75-101.

humanitarian values, but the EU practice is highly criticized by pro-migration lobbies and humanitarian NGOs[11], and also by some as academics[12].

Hypocrisy or schizophrenia ? The European Commission and the European Parliament may be said to be driven by humanitarian motives, but the EU Council and the agencies are more concerned with security. Given that these agencies – as well as national experts – tend to present the migration crisis as a security issue, the EU policy in this matter gives prevalence to security measures and law enforcement over hospitality. Sarah Léonard studied practices of FRONTEX, not only in issues which are largely percieved as security questions – illicit traffics or terrorism – but also in the fields of asylum or migration[13]. Antoine Mégie even speaks of   'colonisation' of migration issues by law enforcement agencies[14] and Virginie Giraudon notes "a 'Schengenisation' of discourses on immigration, a takeover of these issues by justice and home affairs departments, and willingness to turn 'combatting illegal immigration' into a transversal stake[15]". To quote Agathe Piquet : "As soon as a stake is securitized, actors would be able to manage this 'new threat' in what is for them the most suitable manner, which led to a hardening of external borders' control, and to negative

---

[11] See : Elisabeth Spiegel, *Frontex – Legitimate Agent for Border Security or Ruthless Deportation Agency ? An Analysis of the Activities of the European Union's Border Agency with a Special Focus on Legitimacy and Controllability of its Operations*, dissertation, Twente University, 2010, pp. 16-18 ; Amnesty International, *The Human Cost of Fortress Europe. Human Rights Violations against Migrants and Refugees at Europe's Borders*, London, 2014 and the website of the inter-associatons Frontexit Campaign <http://www.frontexit.org>.

[12] See : Efthymios Papastavridis, "Fortress Europe and Frontex : Within or Without International Law ?", *Nordic Journal of International Law*, vol. LXXIX, 2010, pp. 75-111 ; Paul Chiron, *Les politiques migratoires européennes, à la frontière du droit*, Paris, IRIS, Observatoire des Questions Humanitaires, June 2017.

[13] "EU border security and migration into the European Union : FRONTEX and securitisation through practices", *European Security*, vol. XIX, 2010, pp. 236-238.

[14] See : *Eurojust et le mandat d'arrêt européen, l'européanisation du pouvoir judiciaire*, thesis, Institut d'Études Politiques ('Sciences Po.'), Paris, 2007, p. 119.

[15] "Les effets de l'européanisation des politiques d'immigration et d'asile", *Politique européenne*, No 31, 2010, p. 19 [my translation].

consequences for migrants and asylum seekers, notably as far as fundamental rights are concerned[16]."

On this last point, it has to be stressed that migrants are not all illegal aliens, but some of them are protected by Geneva Convention of July 28th, 1951 on refugee status – which was universalized by the New York Protocol of January 31st, 1967 – and some others are eligible to a subsidiary protection[17]. Notwithstanding the 13th June, 2008 Agreement between FRONTEX and the UNHCR, theAgency is accused of infringment of article 33 of the Geneva Convention (principle of *non-refoulement*)[18].

However, as Australian scholars explain : "The arrival of boat migrants is considered to be a threat to the destination State […] The threat might be cast as a result of the unknown background of the individuals, who may be perceived to be potential criminals or   terrorists. But the threat may be perceived more broadly as somehow jeopardizing the existing lifestyles, economy or cultures of the destination State.[19]"

To combat this threat, the EU first send specialized agencies 'on the front' [I], but was finally obliged to get the military in [II], and to act upstream [III].

I.   – EU Agencies on the front of the migration crisis

---

[16] "Europol et la 'sécuritisation' des migrations irrégulières", *Migrations Société*, No 165, 2016, p. 135 [note omited].

[17] See : Joan Fitzpatrick, "Temporary Protection of Refugees: Elements of a Formalized Regime", *American Journal of International Law*, 2000, pp. 292-293 ; Lars Bay Larsen, "Assessing the 'risk' in cases involving persons fleeing armed conflicts and other situations of violence", in Matthew Happold & Maria Pichou (eds.), *La protection des personnes fuyant un conflit armé et d'autres situations de violence*, Brussels, Larcier, 2016, pp. 41-49.

[18] See : M. Ruskyte, *The European Union Agency's FRONTEX mandate and operations in the framework of transparency and human rights*, dissertation, Tilburg University, 2014, pp.48-51.

[19] Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein & Brian Opeskin, "Securitization of Search and Rescue at Sea : the Response to Boat Migration in the Mediterranean and Offshore Australia", *International & Comparative Law Quarterly*, vol. LXVII, 2018, p. 330 [notes omitted].

FRONTEX and EUROPOL concluded in March 2008 a strategic cooperation agreement on exchange of information, which was replaced in December 2015 by a new agreement which deals also with exchange of personal data. More generally, interagencies cooperation in the field of migration starts in the Mediterranean Sea [1], then continues on the ground, especially in hotspots in Greece and Italy [2]. Cooperation with other EU agencies or even with international organizations is leading to a militarization of the Area of Freedom, Security and Justice [3].

1. On the Seas

FRONTEX is running the *European Patrols Network*, and has launched several extraterritorial maritime patrols (in high sea or in third states' territorial waters), but their legality was debatted[20]. Hermes Operation – dispatched at the Italian government request to intercept people sailing away from Tunisia during 2011 Jasmine Revolution – and Hera II Operation – launched to prevent migrations in territorial waters of Senegal, Mauritania, Capo-Verde and Spain (Canary Island), with the consent of riparian states – are said to be success stories[21], but Jason and Nautilus Operations – which were suppposed to deter migrants to quit Libya – failed because *Jamahiriya* denied access to its territorial waters to European ships, and refused to readmitt on its territory migrants intercepted on high sea[22].

---

[20] See : Leonhard den Hertog, "Fundamental Rights and the Extra-Territorialisation of E.U. Border Policy : a contradiction in terms ?", in Didier Bigo, Sergio Carrera & Espen Guild (eds.), *Foreigners, Refugees or Minorities ? Rethinking People in the Context of Border Controls and Visas*, Ashgate, Farnham, 2013, pp. 205-226.
[21] For a critical asseessment of these operations. : Nina Perkowski, *A normative assessment of the aims and practices of the European border management agency Frontex*, Oxford, Refugee Studies Centre Working Paper, No 81, April 2012, pp. 21-30.
[22] See : Melanie Fink, "Frontex Working Arrangements : Legitimacy and Human Rights Concerns Regarding 'Technical Relationships' ", *Merkourios – Uterecht Journal of International and European Law*, vol. XXVIIII, No 75, 2012, p. 22.

In March 2015, Joint Operational Team Mare – experts from 12 member states with support from FRONTEX and INTERPOL – has been set up by EMCS to identify and track criminal networks involved in human trafficking in the Mediterranean Sea.

Presently, FRONTEX is running two main operations : Poseidon in the Aegean Sea and Themis in Central Mediterranean Sea. Poseidon Operation comprises Poseidon Land which is deploying border guards in Greece and Bulgaria since 2010, and Poseidon Sea which is deploying about 15 vessels and a couple of aircrafts along Greek coasts since 2015 – it took over from FRONTEX Rapid Border Intervention Teams (Rabit Operation) which was patrolling Greek waters since October 2010. Poseidon Operation provides assistance to Greece and Bulgaria in border control, search and rescue, 'screening' (identification and recording) of intercepted persons[23], and return or readmission of illegal migrants. Themis Operation replaces Operation Triton[24] since February 1st, 2018 and has an ehanced law enforcement focus[25] with the aims of cracking down on criminal activities (human traffic but also illicit drug smuggling), and of collecting intelligence to stop terrorists and foreign fighters from entering the EU). Its geographical scope extends to the limits of territorial waters of Algeria, Tunisia, Libya, Egypt, Turkey and Albania[26].

---

[23] On this contentious issue : Fédération internationale des droits de l'Homme (FIDH) / Migreurop / Euro-Mediterranean Human Rights Network (EMHRN), *FRONTEX between Greece and Turkey : At the Border of Denial*, May 2014, pp. 34-40 [originally available on <https://www.frontexit.org>, but only French, Greek and Turkish versions are now available (July 7th, 2018)].

[24] Launched on November 1st, 20014, Triton replaced the Italian operation Mare Nostrum which had a search and rescue mandate ; Triton consisted of a half dozen of vessels (from Italy, Norway or Iceland) and some aircrafts (notably from Luxemburg) to patrol Italian and Malteses coasts up to 138 miles south of Sicily ; see : André Dumoulin & Nicolas Gros-Verheyde, *La politique européenne de sécurité et de défense commune*, Paris / Le Dévoluy, B2 / Éditions du Villard, 2017, p. 216.

[25] <https://www.dw.com/en/frontex-launches-new-eu-border-control-mission-operation-themis/a-42417610> [June 29th, 2018].

[26] < https://www.bruxelles2.eu/2018/02/01/lagence-frontex-est-elle-democratique/> [July 7th, 2018].

The European Maritime Safety (EMSA) provides FRONTEX and the European Fisheries Control Agency (EFCA) information collected by satellites, aircrafts, and vessels.

A Joint Maritime Inter-agencies Team (JMIT) – liaison officers of FRONTEX and EFCA and national authorities of coast-guards – has been set up in operational centres to coordinate multipurpose operations.

All these maritime operations – as well as EUNAVFOR MED – do save lifes of shipwrecked or migrants in distress, although search-and-rescue (SAR) activities are not *expressis verbis* in their mandate (it does not have to because it is a legal obligation under international law).   However, "Border control and SAR activity have (operationally) merged, with the former gaining (practical) pre-eminence over the latter[27]".

2. On the Ground : in the Hot Spots

The hot spot concept first appeared in a feasability survey on an European border guards system[28]. It aims at identifying and registring migrants – notably recording their fingerprints in the EURODAC database – in order to determine which EU member state is responsible for processing the asylum request pursuant to EU Regulation 604/2013 (a.k.a. Dublin III), but also to detect fraudsters and potential wrongdoers. EU Regional Task Forces (EURTF) have been set up with members of EUROPOL, EASO, FRONTEX, EUROJUST, the Fundamental Rights Agency (FRA)

---

[27] Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein & Brian Opeskin, *op. cit.*, p. 323.
[28] Unisys, *Study on the feasibility of the creation of a European System of Border Guards to control the external borders of the Union*, ESBG, June 2014 <ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/docs/20141016_home_esbg_frp_001_esbg_final_report_3_00-en_pdf.> [June 28th, 2018].

and relevant national authorities (mostly at the local level) to coordinate activities of the various intervening bodies given that there is no hierarchy between EU agencies[29]. Of course, national authorities have the last word.

EUROPOL agents provide analytical and scientific support to the hotspots which consequently look more like EUROPOL offices in member states than reception centers for asylum seekers. Thus, there is a risk of confusion between illegal migrants – targeted by FRONTEX – and transnational criminal organizations involved in human trafficking which are at the heart of EUROPOL's mission. This interconnexion between police and border control increase the securitization process of migration which turns migrants into risk factors[30].

EASO essentially assists Greek and Italian authorities to register migrants, to sort out persons eligible to a refugee status, to asylum, or to subsidiary protection – who should be relocalized – and illegal migrants who should be sent back home or to a safe third country. EASO signed cooperation agreements with FRONTEX on September 26th, 2012, with FRA on June 11th, 2013, with the UNHCR on December 13th, 2013 and with the European Agency for the operational management of a large-scale IT systems in the area of freedom, security and justice (EU-LISA)[31] on November 4th, 2014. EASO tends to take an important part in individual decision-making processes (inadmissibility and in merit examination of claims), thus in the exclusion of

---

[29] In Pireas, EURTF includes representatives from FRONTEX, EASO, EUROPOL, EUROJUST and FRA, as well as of Hellenic Coast-Guards ; EURTF in Catana includes a representative of the European Commission, members of FRONTEX, EUROPOL, EUROJUST, and EASO as well as members of *Guardia di Finanza*, *Guardia Costiera* and *Polizia di Stato*.
[29] See : Agathe Piquet, *op. cit.*, pp. 146-147.
[31] See : Filip Pynckels, « How to achieve rational data integration on the European level », *in* Constance Chevallier-Govers (dir.), *L'échange des données dans l'Espace de liberté, de sécurité et de justice de l'Union européenne*, Paris, Mare & Martin, 2017, pp. 259-264.

refugee status for illicit migrants. Therefore, question in terms of accountability and liability for the Agency are raised[32].

FRONTEX leading role seems to contradict the multi-actors approach underlying the hotspot concept, and demonstrates the focus on border control rather than on proterction of persons[33]. FRONTEX is continuously asking for more means, despite an increasing budget (especially after each migration peak or each mediatized shipwreck)[34].

2. Militarizing the Area of Freedom, Security and Justice

EU's securitization of migration implies some forms of milirarization – or to quote Sarah Léonard a 'semi-militarisation' – which is characterized by :

- the similarity of FRONTEX maritime operations with naval operations directed against usual security challenges – piracy, drug trafficking, or even armed attack – ;
- the military or 'quasi-military' status of some personnel dispatched to FRONTEX by some member states – *Guardia Civil*, *Guardia di Finanza* – ;
- the sophistication of these operations notably with respect to the intelligence gathered prior the operations, by the number of states involved – including the participation of some states of origin and transit through various agreements ;
- the existence of the Central Record of Available Technical Equipment (CRATE) – i.e., items of surveillance and control equipment (from cameras to vessels and aircrafts) that member states are willing to put temporay at the disposal of other ones – ;
- the length of the operations.[35]

---

[32] See : *The Implementation of the hotspots in Italy and Greece. A Study*, Amsterdam, Dutch Council for Refugees, 2016, p. 51.
[33] See : Maarten Den Heijer, Jorrit Rijpma & Thomas Spijkerboer, "Coercion, Prohibition, and Great Expectations : The Continuing Failure of the Common European Asylum System", *Common Market Law Review*, vol. LIII, 2016, p. 628.
[34] See : Sergio Carrera & Leonhard den Hertog, *A European Border and Coast Guard : What's in a name ?*, Brussels, CEPS Papers in Liberty and Security in Europe, No 88, March 2016, p. 12.
[35] Sarah Léonard, *op. cit.*, p. 240.

It is significant that FRONTEX use the concept of intelligence – not included in Regulation 2007/2004 – which is traditionally referred to threats to national security, rather than more neutral concepts such as 'data' or 'information'[36].

FRONTEX implements the surveillance system EUROSUR[37] - with the noteworthy assistance of the EU Satellite Centre (SATCEN)[38] –, which enables the Agency not only to watch over the maritime approaches, but also to detect crafts of fortune and to take part in SAR operations.

II. – Getting the Military in

Given that FRONTEX vessels are not armed enough to resist a robust attack from smugglers, the EU created a naval force on the model which had been successfull against pirates in the Red Sea and Indian Ocean [1]. As the North Atlantic Alliance is also present in the Mediterranean, NATO naval operations were also embarked to combat human trafficking [2].

1. Operation EUNAVFOR MED-Sophia

Operation EUNAVFOR MED is a measure of the Common Security and Defence Policy (CSDP). It has been established by EU Council's decision 2015/778/CSDP of May 18th, 2015 "as an emergency answer, in a period when the EU was threatened by a phenomenon towards which it was far away to set a

---

[36] *Ibidem*, p. 242.
[37] European Border Surveillance System, multipurpose system comprising all Schengen member states and Bulgaria, Romania and Croatia to watch over EU southern borders (Mediterranean Sea and Black Sea) by different sources of information (satellites, aircrafts, vessles),
[38] Created by EU Council joint action 2001/555/CFSP of July 20th, 2001 and located on the Spanish Airbase of Torrejón de Ardoz, SATCEN is in charge of providing fast and reliable analysis of satellite data to face current security challenges.

comprehensive strategy and in front of which the EU Member States were deeply divided.[39]"

EUVNAVFORMED "with a potential openly coercitive mandate which, if implemented, would lead the EU to engage in 'peace enforcement'-type activities[40]. EUNAVFOR MED is the first CSDP operation to link internal security with external security[41]. It was launched in order to disrupt the 'business model of human smuggling and trafficking networks'

Initialy planned to conduct three sequential phases, *Sophia* only really fulfills the first one (i.e. gathering information on the human smuggling or trafficking networks), and performs partly the second phase (i.e. boarding, search, seizure and diversion of vessels used for human smuggling) because it does it only on the high seas[42]. *Sophia* is precluded to act within Lybian territorial waters because it had neither an authorization of the UN Security Council (due to Russian and Chinese oppositions), nor the consent of Libyan authorities. The third phase would allow *Sophia* to take 'all necessary measures against a vessel and related assets' in the territory of Libya, but for the same reasons (lack of authorization or consent), this part of the mandate is now an impossible task. Therefore, the relevance of the operation is considerably reduced, for "no one is quite sure how criminal activity can be investigated from several hundred miles away"[43]. Moreover, Operation Sophia "is a military task force and cannot carry

---

[39] Gian Lorenzo Zichi, "A European Fleet to address the Migration Challenge in the Mediterranean ? The EUNAVFORMED/Sophia between Lights and Shadows", *Athens Journal of Mediterranean Studies*, vol. IV, 2018, p. 150..

[40] Thierry Tardy, "Operation Sophia. Tackling the refigee crisis with military means", *European Union Institute for Security Studies Brief Issues*, No 30, September 2015, p. 1.

[41] See : Anne Bakker & Dick Zandee, "At the Gate. Civil and military protection of Europe's borders", *Clingendael Policy Brief*, February 2017, p. 5.

[42] See : Thierry Tardy, *op. cit.,* pp. 1-2.

[43] Peter Roberts, "Militarising the EU Migration Plan : A Flawed Approach", July 7th, 2015, <https://rusi.org/publication/newsbrief/militarising-eu-migration-plan-flawed-approach-0> [June 29th 2018].

out investigations on the smuggling of migrants[44]". In other tems, Sophia seems

doomed to fail[45]

On June 20th, 2016, the European Council added to Sophia's mandate, on the

one hand, training of Libyan coast-guards and military seamen to increase their

capacities to dismantle networks of smuggling and human trafficking, and to carry out

search and rescue acytivities, and on the other hand, supporting the implementation

of the embargo on arms on the high seas off the coasts of Libya imposed by United

Nations Security Council's resolution 2292 (2016).

On July 25th, 2017, the EU Council prorogated Operation Sophia until

Decembre 31st, 2018, and mofified its mandate so that it is able to perform

surveillance activities and gathering of informations on illicit exportations of Libyan oil,

pursuant to Security Council resolutions 2146 (2014) and 2362 (2017).

Despite that FRONTEX and the European External Action Service exchange

information for a decade, it seems that there is a competition between the AFSJ

agencies and the CSDP missions for personnel, equipment and relations to third

countries. Moreover, the cooperation between FRONTEX and EUNAVFOR MED

could be sometimes a difficult one, due to different perceptions civilians and militaries

have, for instance, in their relations with NGOs. Operation Sophia has a conciliatory

approach to civil society, inherited from counter-insurrection operations, but FRONTEX

does not like that some NGOs enter Libyan territorial waters to ferry migrants from

---

[44] Matilde Ventrella, "The impact of Operation Sophia on the exercise of criminal jurisdiction against migrant smugglers and human traffickers", *Questions of International Law*, vol. XXX, 2016, p. 10.
[45] See : Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein & Brian Opeskin, *op. cit.*, p. 335 ; Jill Goldenziel <http://nanationalinterest.org/feature/europes-migrant-policing-initiative-has-nothing-to-do-migration-14390> [June 28th, 2018].

Europe, because from a home affairs perspective, it is smuggling and therefore liable to criminal penalty[46].

2. NATO naval Operations

NATO Operation Active Endeavour was launched following the September 11th, 2001 attempts on the basis of article 5 of the North Atlantic treaty. Its tasks were to securized commercial routes in the Mediterranean Sea, and to combat terrorism. Thus, it had no mandate to collect information on migrants trafficking, however, it was *de facto* the bulk of its mission[47]. Information was given by Active Endeavour to FRONTEX and to Operation Sophia. Yet, neither the High Representative of the EU for foreign affairs and security policy, nor the NATO Command wished to publicize correspondence between Sophia and Active Endeavour, even if in fact they encouraged interactions and technical cooperation betwwen the two operations[48].

In July 2015, NATO authorized *Active Endeavour* to perform seven different tasks :

   - supporting situational awareness ;
   - maintaining freedom of navigation ;
   - conducting interdiction operations ;
   - combatting the proliferation of weapons of mass destruction ;
   - protecting Allied critical infrastructure ;
   - supporting counter-terrorim operations ;
   - and contributing to maritime security capacity building[49].

---

[46] See : Roderick Parkes, "Managing Migration Abroad. Why, where, what and how ?", *European Union Institute for Security Studies Brief Issues*, No 31, November 2016, p. 4.

[47] See: Catherine Schneider, " La lutte contre les passeurs et leurs réseaux criminels dans le cadre des politiques extérieures de l'Union : une 'pescarisation' inattendue", in Josiane Auvret-Finck & Anne-Sophie Millet-Devalle (eds.), *Crise des réfugiés, crise de l'Union européenne ?*, Paris, Pédone, 2017, p. 298.

[48] See : J. Pueyo & Y. Fromion, *Rapport d'information déposé par la Commission des Affaires européennes sur l'opération PSDC « SOPHIA » en Méditerranée centrale*, Paris, Assemblée nationale, No 3563, March 9th,s 2016, p. 26.

[49] See : Madeleine Moon, *NATO and the Future Role of Naval Power*, NATO Parliamentary Assembly, Defence and Security Committee, 162 DSCFC 16 F rev. 1 fin, November 19th, 2016, p. 11, § 62.

On February 8th, 2016, NATO decided to deploy ships to the Aegean Sea to provide monitoring and surveillance support to Turkey, Greece and FRONTEX in order to disrupt migration flows, and particularly the criminal networks profiting from human trafficking. Eight warships from NATO's Standing Maritime Group 2 are taking part in this mission[50].

According to Dutch scholars : "The deployment of NATO in order to 'conduct reconnaissance, monitoring and surveillance of the illegal crossing in the Aegean' also shows EU's lack of operational effectiveness"[51], however, they seem to forgot that one advantage of NATO over the EU is that Turkey is a member of the Atlantic alliance. Even if Turkey may be sometimes an akward member due to persistent geopolitical rivalry with Greece and Cyprus that impede rapprochement of NATO and the EU on some items [52], it is a partner the EU cannot ignore, notably for the cooperation in the prevention of illegal migration[53]. Furthermore, NATO warships may operate in Turkish territorial waters contrary to EU naval operations which must remain on high seas.Consequently, NATO warships are able to deter migrants vessels to enter Greek territorial waters, and when NATO warships rescue shipwrecked, they send them back to Turkey.[54]

In October 2016, at the Italian Government's request, Operation Sea Guardian was launched in a zone covering Centrall Mediterranean Sea up to the Libyan territorial waters, but could also be deployed somewhere else if need be. Sea Guardian's

---

[50] *Ibidem*, pp. 12-13, §§ 65-72.
[51] Marteen Den Heijer, Jorrit Rijpma & Thomas Spijkerboer, *op. cit.*, 2016, pp. 624-625.
[52] See : Gilbert Le Bris & Philippe Vittel, *Rapport d'information sur l'évolution du rôle de l'OTAN*, Paris, Assemblée nationale, No 3472, February 3rd, 2016, p. 80.
[53] See: Bayram Balci & Juliette Tolay, *La Turquie face aux réfugiés syriens. Entre engagement humanitaire et instrumentalisation politique*, Paris, *Les Études du CERI Sciences Po*, No 225, December 2016, pp. 30-34.
[54] Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein & Brian Opeskin, *op. cit.*, p. 335.

mandate includes contribution to situational awareness in Mediterranean ; combatting terrorism and proliferation of weapons of mass-destruction ; protecting critical infrastructure ; and participation in constitution of maritime security capacities. As Admiral Johnstone said before the House of Lords, NATO has no mandate to seize trafficant ships, to arrest traffickers, and to divert migrants' boats[55].

Information sharing has revealed itself not an easy task because EU and NATO have neither the same classifications, nor the same operating modes[56]. Moreover, the cooperation between the two organisations is relatively weak, for NATO is not really motivated to play an important role in containig migration – even if the Alliance has adopted, at the 2004 Istanbul Summit, a global policy against human trafficking[57] – when Russian and Chinese warships are increasingly present in the Mediterranean Sea.[58]

III.   – Upstream actions

FRONTEX and Operation Sophia are training Libyan Coast Guards. Moreover FRONTEX is deploying teams of experts to countries of origin or of transit of migrants in order to assist national authorities to impede illegal immigration.

Networks of cooperation built by FRONTEX and EUROPOL with third countries' law enforcement agencies or security services to combat human smuggling and human trafficking are constitutive of a kind of 'security diplomacy' on which the

---

[55] House of Lords, European Union Committee, *Operation Sophia, the EU's naval mission in the Mediterrranean : an impossible challenge*, HL Paper 144, London, May 13th, 2016, p. 25, § 87, <https://publications.parliament.uk/pa/ld201516/ldselect/ldeucom/144/144.pdf> [June 29th, 2018].
[56]   <https://www.bruxelles2.eu/2017/02/14/les-navires-de-sea-guardian-font-ils-des-des-ronds-dans-leau/> [June 29th, juin 2018].
[57] *Istanbul Summit Communiqué Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council*, June 28th, 2014, § 30.
[58]See : Roderick. Parkes, "The internal-external nexus : Re-bordering Europe", *European Union Institute for Security Studies Brief Issues*, No 28, October 2016, p. 4.

European Parliament or the European Court of Justice exert few control. At the same time, external relations competences granted to FRONTEX may be seen as a shit from EU Council's intergovernental cooperation towards a more supranational approach of an agency.[59]

That is certainly why some EU member states tend to intervene unilateraly (but with the – sometimes tacit - support of the EU, notably Italy in Libya and France in Sahel), within the EU or within regional fora to complement this security diplomacy which could be sumarized as "exchanging funds and assets for pull-backs and border-enforcement capacity of transit countries with cooperation in the containment of flows and the fight against unauthorized migration[60]".

It has even be proposed to 'externalize' the hotspots to countries of origin or transit, but as a young utch scholar put it : "Why would a country such as Tunisia or Albania volunteer to be some sort of vassal state to the EU, hosting large numbers of asylum-seekers for a temporary, but indefinite period of time ?[61]"

---

[59]See : Melanie Fink, *op. cit.*, p. 24.
[60] Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein & Brian Opeskin, *op. cit.*, pp. 343-345.
[61] Willemijn Tiekstra, "The Future of the European Migration System : unlikely partners ?", *Clingendael Strategic Alert*, July 2018, p. 4 ;