COGITATIO

Article

Under Control? Or Border (as) Conflict: Reflections on the European Border Regime

Sabine Hess [1,*] and Bernd Kasparek [2]

[1] Institute for Cultural Anthropology/European Ethnology, University of Göttingen, 37073 Göttingen, Germany;
E-Mail: shess@uni-goettingen.de
[2] bordermonitoring.eu, 81671 Munich, Germany; E-Mail: bk@bordermonitoring.eu

* Corresponding author

Abstract

The migrations of 2015 have led to a temporary destabilization of the European border and migration regime. In this contribution, we trace the process of destabilization to its various origins, which we locate around the year 2011, and offer a preliminary assessment of the attempts at re-stabilization. We employ the notion of "border (as) conflict" to emphasize that crisis and exception lies at the very core of the European border and migration regime and its four main dimensions of externalization, techno-scientific borders, an internal mobility regime for asylum seekers, and humanitarization.

1. Disputed Borders

In one of the most bizarre turns of the ongoing Brexit negotiations, the British Overseas Territory Gibraltar and its future status has become a bone of contention. The Spanish government is using the Brexit process to renew its claim to the 6.7-square kilometer territory, and indeed the dispute heated up quickly, with alleged violations of territorial waters by the Spanish Navy (MacAskill & Jones, 2017), analogies to the Falklands War (Asthana, 2017), and (deliberate) chaos at the border crossings (Agence France-Presse, 2017). Similarly, the issue of Northern Ireland and the possible re-imposition of a "hard border"[1] towards the Republic of Ireland in the wake of the Brexit is troubling the EU. These territorial disputes remind us

that despite the purported stability of the nation-state system, the issue of bordering, of ordering territory, is still fraught with fragility and contention.

These Westphalian border disputes, which William Walters (2002) described in his seminal work "the denaturalization of the border" as typical aspects of the "geographical border," are characterized by a high degree of symmetry, usually with two nation-state entities facing off over disputed territory. In this article, however, we want to focus on a different challenge to borders, namely that posed by the movements of migration. This challenge is inherently different in character. For one, the asymmetry and number of actors could not be starker. For the other, the center of the challenge is not possession or control over bounded territory, but rather access

---

[1] The term "hard border" has been used by various newspaper and media outlets to refer to the probable future configuration of the Irish–UK border, e.g. O'Hagan (2017) in The Guardian, or Anonymous (2017) in The Telegraph. The Cambridge Advanced Learner's Dictionary & Thesaurus (n.d.) defines a hard border as "a border between countries that is strongly controlled and protected by officials, police, or soldiers, rather than one where people are allowed to pass through easily with few controls." Whether there is a co-semantic with the term "hard Brexit" can only be speculated, but the choice of the term certainly points to the normality of invisible borders in the EU context, even if both the Republic of Ireland and the UK are not part of the Schengen Area.

to territory—it is the "biopolitical border" that is at stake here (Walters, 2002). The issue at core is not the bordering of territory, but the ordering of populations, and their different hierarchical positioning. To this end, the border disputes of contemporary migration are already an indicator of a post-Westphalian global order.[2]

However, both phenomena share the fragility, the instability, the constant need of re-production of the border through patches, "quick fixes" (Sciortino, 2004) and border work on a daily basis. This has become blatantly obvious through the "long Summer of Migration" of 2015 (Kasparek & Speer, 2015), and the temporary collapse of the European border regime and its fragile re-stabilization since. The classical description of the events of the 2015 and 2016 as a "refugee crisis" is misleading in several respects. For one, it was at its very core a crisis of the border regime, while for the other, its assumed temporality—the crisis as a strictly limited period of time with a beginning and an end leading to a phase of stabilization—is not empirically tenable.[3]

In contrast, we argue that the border, and especially the European border regime, is structurally ridden by moments of crisis as its order is constantly contested by the movements of migration, and that this contested and inherently unstable relationship between the border and migration has to be put into the center of any analysis of contemporary border theory. In order to underline this perspective, we will approach both the period before the summer 2015 as well as its aftermath from the notion of border conflict, i.e., through a perspective on the past and present struggles and contestations in the context of migration control at the borders of Europe. To this end, we want to analyze in this article: a) which processes and dynamics led to the so-called 'refugee crisis' of 2015; and b) the multidimensional, hybrid, and at times contradictory re-stabilization attempts that demonstrate that the crisis of the border regime is not solved by drawing on our recent research project in the Aegean region and along the Balkan route.[4] Even though the scope of this article prevents us from presenting our ethnographic material in more detail, we nevertheless find the ethnographic approach, meaning observing dynamics *in situ* and *in actu*, indispensable for arriving at the conclusions we present later.

2. From Border Work to Border Conflict

It is a common denominator of border studies to emphasize the transformation of the border from a demarcation line surrounding national territory to a ubiquitous, techno-social, de-territorialized apparatus or regime producing geographically stretched border spaces described as "border zones," "borderlands," or "borderscapes." At the same time, these concepts include the idea of mobile, fluid, selective, and differentiated border situations. In this context, Balibar argues in favor of describing borders as "overdetermined, polysemic (that is to say that borders never exist in the same way for individuals belonging to different social groups) and heterogeneous" (cited in Salter, 2011, p. 67). There is thus also talk of "mobile borders" (Kuster & Tsianos, 2013, p. 3) or "networked borders" (Rumford, 2006, p. 153; Walters, 2004).

This shift not only induced a geographical refocusing away from the level of the (nation) state, but also a methodological reorientation with a focus on bordering processes and practices, on *doing border*, "rather than [on] the border per se" (Newman, 2006, p. 144; van Houtum & van Naerssen, 2002, p. 126). The border is now being conceptualized as an effect of a multiplicity of agents and practices, as becomes clear in the concept of "border work" (Rumford, 2008). The concept of border work in particular draws attention to the everyday micropractices of a wide range of actors. Following this perspective, "to border" is to be understood as a performative act. Drawing on Judith Butler's notion of performativity, Marc Salter points to the fact that also "sovereignty, like gender, has no essence, and must continually be articulated and rearticulated in terms of 'stylized repetition of acts' of sovereignty" (Salter, 2011, p. 66).

All these recent practice-oriented conceptualizations indeed understand the border as an effect of a multitude of actors and practices—human and non-human alike. However, many of these constructivist approaches still ignore the constitutive power of migration, or once again conceptualize migrants as structurally powerless and as 'victims.' The dominant focus of border studies, especially those following the classical securitization approach looking at the function of the border as a barrier or filter—to exclude people—also seem mostly to lead to an epistemological exclusion of the agency of migrants.

By contrast, in their recently published volume *Border as Method*, Sandro Mezzadra and Brett Neilson (2013) define borders as "social institutions, which are marked by tensions between practices of border reinforcement and border crossing" (Mezzadra & Neilson, 2013, p. 3). Here, they employ the notion of border struggles indicating the decisive role migration plays in co-constituting the border.

This has many aspects in common with our approach we labeled "ethnographic border regime analysis" as a methodology to theorize the border from the perspective of the autonomy of migration (Transit Migration

---

[2] Walters points to the fact that the different border typologies cannot be seen as historical clear-cut periods, but rather overlap to some extent and in different degrees. For the colonial context, the border-drawing projects by the imperial powers were replete with the biopolitical rationality of ordering populations, whereas one could say that it was the age of decolonization and the formation of post-colonial nation states that brought about the "geographical border."

[3] For an extended discussion of the various crises and notions of crisis especially in relation to Europe and recent events, please refer to New Keywords Collective (2016).

[4] In the context of a research project entitled "Transit Migration II: De- and restabilisations of the European border regime" (http://transitmigration-2.org), funded by the Fritz Thyssen Foundation, we carried out fieldwork in different countries of the Balkans, Greece, and Turkey from April to September 2016.

Forschungsgruppe, 2007). This approach allows to look at the border regime[5] as a space of conflict and contestation between the various actors trying to govern the border and the movements of migration—without minimizing the border regime's brutality. These conceptualizations represent a methodological and theoretical attempt not only to think about the relationship between migration movements and control regimes in a different way than in the classical sociological way of object-structure, but also to conceive of migration differently than has previously been the dominant practice in the cultural and social sciences—namely, not thinking about it in the sense of a "deviation" from the paradigm of the sedentary way of life in the modern nation state, or as a functionalist variable of economic processes and rationalities. Instead, this theoretical and methodological approach represents an attempt to conceptualize migration both historically and also structurally as an act of "flight" and as "imperceptible" forms of resistance, in the sense of withdrawal and escape from miserable, exploitative conditions of existence (Papadopoulos, Stephenson, & Tsianos, 2008). Yann Moulier-Boutang (2006) described this aspect as the "autonomy of migration." This draws attention to migration as a co-constitutive factor of the border, with the forces of the movements of migration challenging and reshaping the border every single day.

This perspective of putting migration central to the analytical endeavor points to the intrinsic structural fragility of the border regime. Crisis in this respect is not reducible to a temporary anomaly or emergency situation, but instead must be seen as a central structural condition for borders.

3. The EU as a New Border Laboratory, or Crisis as Permanent Condition

The European Union can be regarded as a paradigmatic laboratory of the border transformations described above. With the Schengen agreement of 1985, the European project had heralded the creation of a continental border regime, with the newly created notion of an "external border" as the pivotal mechanism and space for migration control. The process resulted in the creation of an "area of freedom, security and justice" through the Treaty of Amsterdam and the parallel construction of the European border regime as a fluid, multi-scalar assemblage involving European Union agencies such as Frontex (the European border and coast guard agency), bodies of European law (like the Common European Asylum System. CEAS), processes of standardizations and harmonizations especially in the field of border management (called "Integrated Border Management"), a grow-

ing military-industrial-academic complex largely funded by the EU (Lemberg-Pedersen, 2013), alongside more traditional national apparatuses of migration control that had evolved since the 1970s and a flexible involvement of IGOs (international and intergovernmental organizations, such as the UNHCR or the IOM).

If there is one central rationale at the core of the European border regime, it is driven by what Lahav and Guiraudon (2000) have called the fundamental "control dilemma". Culminating in the creation of the EU internal market, this dilemma refers to the question how to reconcile a neoliberal economic paradigm of a—preferably global—free circulation of goods, services, and capital with a continued biopolitical will to control the movements of people.

In regards to the border regime, the main practical answer to the control dilemma was, according to Lahav and Guiraudon (2000), to move border controls "away from the border and outside the states," leading to the described new spacialisation and geographical expansion of the border. In addition, there existed a techno-scientific vision of a 'smart,' invisible yet selective border that itself is able to distinguish between *bona fide* travelers and unwanted migrants (Commission of the European Communities, 2008). To this end, broadly speaking four paradigms were enacted within the European border regime. First, to the outside, a paradigm of "remote control" and externalization (Bialasiewicz, 2012; Hess & Tsianos, 2007; Lavenex, 2004; Zolberg, 2006). Second, as already indicated, a paradigm of a fortified, yet smart external border through technology, digitalization and biometrization (Broeders, 2007; Dijstelbloem & Meijer, 2011; Kuster & Tsianos, 2013).

While these two dimensions have been extensively studied by border studies, there is also a third one, namely an internal regime steeped in the institution of asylum and put into practice through the Dublin/Eurodac regulations, aiming at the immobilization of migrant populations within the European territory (Borri & Fontanari, 2016; Kasparek, 2016a; Picozza, 2017; Schuster, 2011). Finally, fourth, especially in recent years, we can observe an increasing humanitarization of the border (Cuttitta 2014; Pallister-Wilkins, 2015; Walters 2011). This has accelerated in the context of the growing number of shipwrecks and subsequent deaths in the Mediterranean in recent years. However, the humanitarian discourse dates further back, to a white paper by former British Prime Minister Anthony Blair from the year 2002, entitled "Secure Border, Safe Haven" (Home Office, 2002) that strongly appealed to a humanitarian discourse and ethics.[6] However, only in 2013 and in light of two major disasters resulting in nearly 500 deaths off the coast of Lampedusa did hu-

---

[5] We employ the concept of "regime" in a Foucauldian sense to indicate the multiple levels and dimensions at play constituting the "border" as a dynamic and somehow contingent apparatus based on laws and regulations, institutions, technical devices, moral beliefs and representations, discourses, actors, and practices (Kasparek & Hess, 2014; Transit Migration Forschungsgruppe, 2007).

[6] Also in the context of the first Transit Migration research project in the early 2000s, we could infer processes that we called "NGOisation" and a "governmentalization of politics," pointing to the fact that the expansion of the border regime not only functioned by means of "security"-actors, but particularly operated via specific appeal to and articulation of humanitarian positions, such as in the field of anti-trafficking policies and in the context of asylum (Hess & Karakayali, 2007).

manitarianism become an apparatus (i.e., a Foucauldian *dispositif*) in its own right.

This fourfold architecture of the European border regime broke down in summer and autumn 2015, temporarily collapsing when confronted by a new characteristic—that of increased arrivals of migrants. In the end, this challenged not only the European Union's border and migration regime, but the EU and the European project as a whole.

4. An Announced Crisis

The advent of a quantitatively and qualitatively new level of migration to Europe in the summer of 2015 caught the European governments by surprise.[7] Despite indications dating back to 2011 that warned of such a rise in numbers, European and nation-state institutions did not respond in time, e.g. regarding an adequate emergency response along the Balkan route or reception facilities. Since the beginning of the Arab Spring in early 2011, the parameters of a pan-European regulation of its borders have shifted quite drastically. External events accelerated by the ongoing Syrian civil war and mass refugee-migration movements in the direct neighborhood of Europe, as well as internal EU and European developments (especially in the legal systems of the EU), have led to severe fragility of the border regime and have undermined several of the above outlined paradigms.[8] In the following, we briefly outline three main external and internal processes leading up to the developments in 2015.

4.1. The Arab Spring and the Breakdown of Externalization

The ongoing crisis of the European border regime cannot be understood without analyzing it in a double relationship with the social and democratic uprisings that started in North Africa 2011. While the uprisings had already strongly destabilized the Euro-Mediterranean border regime as established in the years before 2011, their more long-term consequence was destabilization of the European Union itself.

Prior to the Arab Spring, the European border regime stretching towards Africa was built heavily on the externalization paradigm. Through diverse processes such as the Barcelona Process, initiated as far back as 1995, or the Rabat process of 2006 and the Mediterranean Transit Migration Dialogue, dating back to 2007, many North and West African countries were to some degree involved in the European Union's migration and border management project. Its different components were usually driven by EU Member States, with the backing and support of Brussels.

The Spanish government was more or less in charge of dealing with the western Mediterranean transit routes and rather successfully included transit countries like Morocco and even further south, Senegal and Mauretania, in its migration control policies (Domínguez-Mujica, Díaz-Hernández, & Parreno-Castellano, 2014).[9] In the central Mediterranean, the central driver, Italy, faced stronger obstacles than Spain. Throughout the first decade of the 21st century, Italy had sought an agreement with Libya, in which the latter would stop the departure of migrants towards the former, and would readmit migrants from there. Under the 2008 Italian–Libyan friendship treaty, a secret protocol created the conditions for the externalization of migration control. Soon after it entered into effect in May 2009, Italy commenced pushback operations towards Libya outside of Italian territorial waters (Bialasiewicz, 2012; Heimeshoff, Hess, Kron, Schwenken, & Trzeciak, 2014).

Immediately after the successful initial uprising in Tunisia, the Tunisian interim government canceled its cooperation with Italy, and no longer continued preventing migrants' vessels from departing from its coast. In the following months, around 30,000 Tunisians arrived in Italy (Cuttitta, 2016). This new quality of migration as well as the ensuing conflicts within the Schengen system were already indicative of the instability to come, even though both aspects were rather short-lived at that time. Subsequently, the Schengen border law was amended in 2013, granting a provision that in times of the arrival of large migrations, internal border controls could be reinstated for a certain period.

With the outbreak of the Libyan civil war in February 2011 and the subsequent NATO intervention, Italian–Libyan cooperation also ended. By the end of 2011, the externalized border regime in the Mediterranean had significant gaps. The number of migrants crossing the Mediterranean by boat started to rise sharply, and has continued to do so ever since, despite ongoing efforts and attempts by the EU and Member States to reestablish cooperation with the different northern African regimes, such as the military-led government of Egypt, or Libya (Heller & Pezzani, 2016).

A legal development dating back to 2009 created further obstacles to the return to the previous status quo.

---

[7] This can for example be evidenced by the annual risk analysis (ARA) of the European border agency Frontex. The agency is tasked with forecasting irregular migration at Europe's borders through a specialized risk analysis model. However, the ARA for 2015, published in April 2015, does not predict a considerable rise in detections of irregular entries compared 2014, with 280.000 irregular entries detected, and continues to assume that the Central Mediterranean route between Libya Italy will remain the main entry route to the EU (Frontex, 2015).

[8] In addition to these external and internal political dynamics, there is also a societal dynamic to be addressed that led—in most western European countries—to a normalization of the acceptance of the fact that they were countries of immigration, while post-migrational cultural and societal dynamics became more mainstream. This holds especially true for Germany. After years of ardent denial of being a country of immigration, Germany over the past few years officially turned to a new paradigm of a proclaimed "culture of welcoming" (Hamann & Karakayali, 2016).

[9] As early as the late 1990s, the Spanish government succeeded in integrating Morocco into its migration management project, even if events such as in Ceuta and Melilla in October 2005, when hundreds of migrants managed to scale the fences and enter Spanish territory, constituted bumps in the road. With the active support and financing of the newly created European border agency Frontex, Spain also managed to inhibit migratory movements towards the Canary Islands.

After the commencement of the Italian pushback practice towards Libya, a group of migrants subjected to the operations sued the Italian state which became famous as *Hirsi et al. vs. Italy* (ECHR, 2012) at the European Court of Human Rights. Since Libya could not be considered a "Safe Third Country" for refugees, the Court ruled that the Italian pushback operations constituted a violation of the Geneva Convention's *non-refoulement* principle. This specific case had deep implications for the practices of the European migration and border regime. While not an unsurpassable obstacle to externalization, the ECHR's verdict created a legal limit to such measures.

4.2. The Crisis of Dublin

With externalization and 'remote control' increasingly failing in the eastern and central Mediterranean, the EU's internal system for mobility control of asylum seekers and refugees came under increased pressure. As a complement to externalization, the creation of the Common European Asylum System, after the Treaty of Amsterdam, established an internal mobility regime (Kasparek, 2016a) for third-country nationals without residency permits or visas, with the Dublin and the Eurodac regulations as central components. The Dublin system deals with the question which European state has the obligation to process an asylum application. It is explicitly not a quota system, but instead assigns this responsibility according to different criteria, the country of first entry being the most prominent. In practice, this meant that the Member States situated on the EU's external border were obliged to process the majority of applications. The implementation of these rules was predicated on the Eurodac database, in which the fingerprints of all apprehended migrants were stored.

Member States situated on the external border such as Greece, Italy, Malta, and Cyprus had begun arguing around 2008 that this mechanism was to their disadvantage and lobbied for intra-European reallocation of asylum seekers.[10] These attempts were largely unsuccessful. The revision of Dublin in 2013 (Dublin III) and the proposed Dublin IV regulation do not depart from the "country of first entry" rule. The political conflict around Dublin thus moved to the area of implementation. The EU Member States most affected all started to move towards a lax fingerprint registration practice, thus beginning to undermine the effectiveness of the Dublin system.

Dublin also constituted a large problem for refugees and migrants. Many migrants start their journey knowing where they want to go, due to transnational networks of information and social relations that make certain places in Europe more desirable as end destinations. In this way, many migrants ignore the Dublin rule and start so-called "secondary movements" towards other destinations (Borri & Fontanari, 2016). This not only started to clog the Dublin bureaucracy, but had a spillover effect into the national and European judiciaries; migrants, threatened with intra-European deportation, petitioned for protection, citing the deteriorating asylum standards in the Southern EU Member States as an argument for their case.

An earlier judgement by the European Court of Human Rights in 2011, *MSS vs. Belgium and Greece* (ECHR, 2011), had marked the preliminary apogee of the breakdown of the Dublin system. Citing the virtual non-existence of an asylum system, and the resulting appalling living conditions for asylum seekers in Greece, the court found both Greece and Belgium (which had sought to deport the plaintiff) to be guilty of human rights violations. This judgement not only effectively excluded Greece from the Dublin system, but also destroyed the fiction of a homogeneous asylum system in the European Union. In 2012, the European Court of Justice followed suit and reinforced this consequence. More and more EU Member States came under scrutiny (Kasparek & Speer, 2013), while the reform of the CEAS in 2013 did nothing to rectify this situation.

4.3. Lampedusa and the Humanitarization of the Border

While the discussions on the Dublin crisis and the legal interpretations of the applicability of international law extra-territorially were largely confined to experts, the volatility of the European migration and border regime was brought into sharp focus with back-to-back tragedies that occurred in October 2013 in Lampedusa. Within the space of a few days, two shipwrecks resulted in the deaths of nearly 500 people. While these were not the first, nor the last, they captured the attention of the European public in an unprecedented manner. The legitimacy of restrictive border controls was severely called into question not only by a liberal public but by prominent members of the European Commission, such as Home Affairs Commissioner Cecilia Malmström, and the President of the Commission, José Manuel Barroso (Kasparek, 2015; Ticktin, 2015).

However, while on the EU level there was a decisive discursive shift towards a humanitarian rationale that prioritized the saving of lives at sea, in the immediate aftermath no decisive policy shift was discernible.[11] The Ital-

---

[10] See, for example, the paper "Combating illegal immigration in the Mediterranean" by the Cyprus, Greek, Italian and Maltese Delegations circulated at the informal meeting of the JHA Ministers held in Prague on 15 January 2009. In the paper, the so-called "Quadro Group" (Group of Four) reaffirmed the general direction of the European migration and border policies, only then to stress that "[a]s a matter of principle Cyprus, Greece, Italy and Malta prefer a more formalized approach to intra-EU reallocation in the longer term which may also include asylum seekers, although at present the utmost priority is to start implementing intra-EU reallocation under existing arrangements as early as possible" (Council of the European Union, 2009, p. 7).

[11] Only five days after the first shipwreck, the European Council initiated a "Task Force Mediterranean" that, under the leadership of Cecilia Malmström, worked on a reform program, e.g. envisioning humanitarian visas and other humanitarian, legal channels to facilitate entry into the EU. However, as a team of journalists could show, this reform paper never reached the public due to strong criticisms, especially by the German Minister of Interior (Gebauer et al., 2015).

ian government's decision to initiate the Mare Nostrum operation proved to be more decisive, as, for the first time, a national government reframed its border policies, putting the saving of lives before the securing of borders (Cuttitta, 2014). However, the increased arrival of migrants placed more stress on the Dublin system and registration practices in Italy slowed down severely. European Union pressure to replace Mare Nostrum with a mission to police the borders led to its substitution with Frontex's Operation Triton, which again reprioritized secure borders over the lives of humans. This turn, however, was itself short-lived as another tragedy struck in April 2015. Costing nearly 800 people their lives at sea, the disaster put the humanitarian rationale squarely back on the table and underlined once more that the EU border regime needed to take a decisive step if it wanted to stay on top of developments. This was felt by the Commission, which released a portion of its upcoming "European Agenda on Migration" beforehand as the so-called "Ten-Point Plan" (European Commission, 2015b) stressing the necessity to reinforce Frontex operations in the Mediterranean, urging a deployment of a navy mission (EUNAVFOR Med) against smugglers and already hinting at improved cooperation of EU agencies.

5. Re-stabilization? Dimensions of a Post-2015 Border Regime

In the last section, we argued that by 2015, the European border regime was straining under different types of pressures, i.e., new movements of migration, external and internal developments, and political and legal processes. The collapse of 2015 was inevitable. In this section, we will show that from the perspective of the notion of border (as) conflict, this dynamic did not come to an end. In fact, Giuseppe Sciortino's description of the main characteristic of the border regime as being structurally "a result of continuous repair work through practices" (Sciortino, 2004) was never as to-the-point as in the year 2015 and onwards.

In May 2015, the Commission presented its central policy document, the European Agenda on Migration (EAM) (European Commission, 2015a), which attempted to address the obvious shortcomings of the previous years and relaunch a dynamic of Europeanization of migration and border policies that had been lost. However, even this move turned out to be at least one step behind developments, since the arrivals on the Aegean islands, and the number of people organizing their transit from Greece, through the Balkans, and towards Central and Western Europe, were already rising sharply, culminating in the temporary collapse of the European border regime in September 2015. The movements and following reactions by the diverse actors overwhelmed the European Agenda and its policy rationales almost overnight. For the answer to the structural crisis of the European border regime, the Commission had given in the EAM was more Europe, more centralized competencies, and more harmonization.

This is most evident in a strategic proposal labeled the "hotspot approach" (European Commission, 2015a, p. 6). In this approach, the Commission posited the deployment of the European Asylum Support Office (EASO), Frontex, Eurojust, and Europol to the hotspots of migration, namely parts of the border perceived as especially under migratory pressure, in order to "swiftly identify, register and fingerprinting incoming migrants" (European Commission, 2015a, p. 6). After registration and identification, migrants were to be separated into appropriate channels. Redistribution (relocation) within the EU for some, access to the national asylum system for others, special care for those found to be vulnerable, and deportation for the rest (and possibly most).

Even though the hotspot approach first of all pledged support to the EU Member States most affected by migration, it was clearly designed to address the crisis of the Dublin regulation, by means of close supervision of the procedures by EU agencies. This intervention of European agencies at the borders of Europe heralded a new mode of Europeanization, as it aims at transferring central competences towards Brussels, but the EAM confines this transfer to scenarios of crisis and exception and does not necessarily aim at normalizing this transfer (Kasparek, 2016b). On the other hand, genealogically, the hotspot approach also draws on the idea of the externalized "Transit Processing Centres" proposed in 2003 by the UK's Prime Minister, Anthony Blair (Blair, 2003). While the latter were supposed to be situated outside the EU's territory, the problem-ridden externalization process as described above prompted a geographical shift inwards, towards the very border of the EU (Antonakaki, Kasparek, & Maniatis, 2016; Kuster & Tsianos, 2016).

Since March 2016, we have been confronted across the board with multidimensional re-bordering efforts by the EU and its agencies, as well as by different European states; this has resulted in highly regionalized, ambivalent, and hybrid securitarian-humanitarian regimes. These occasionally frenzied efforts were often aided by a notion of a 'state of emergency,' especially along the Balkan route (Fassin, 2012; Kasparek, 2016b). The accompanying notions of exception have determined the re-stabilization of the EU border regime up to today. This makes it possible to systematically undermine the standards of international and European law without serious challenges. Indeed, in various instances, we have observed carefully designed policy elements, which we call "anti-litigation devices," in the wake of the drastic consequences the rulings of the ECHR had had for the European border regime. The design of the Hungarian "transit zones" as the only border crossing points for fleeing migrants is a striking case. They are an elementary part of the border fence towards Serbia, and allow for the fiction that the border has not been closed for those seeking international protection, but rather that their admission numbers are merely limited due to administrative reasons: each of the two transit zones arbitrarily opens its

gate for approximately 15 asylum seekers to enter Hungary every day on a highly arbitrary basis (Beznec, Speer, & Stojić Mitrović, 2016). The resumption of Dublin deportations to Greece in March 2017 follows a similar logic, where specially assigned EASO officers in Greece are to guarantee that the human rights of the Dublin returnees will not be violated in a manner which could lead to new condemnations by the ECHR.

The main event structuring the current status was the entering into force of what is called the EU–Turkey deal in March 2016, pushed primarily by the Commission and the German government and drawing on the paradigm of externalization. In short, Turkey agreed to stop irregular border crossings towards the Greek Aegean islands, and to allow for the readmission of all migrants that had arrived on these islands after the signing of the deal due to Turkey being labeled both a "safe third country" as well as a prospective "country of first asylum" for Syrians. In return, the EU offered substantial financial assistance to improve the situation for Syrian refugees in Turkey, as well as the resettlement to the EU of one Syrian refugee for every Syrian deported to Turkey from Greece, the so-called 1:1 procedure (Heck & Hess, 2016).

The actual implementation of the deal, however, has not been that straightforward. Returns to Turkey, and resettlement to the EU, have so far been slow.[12] The only element that seems to be working is a sharp decline in border crossings, which may in part also be attributed to the deterring effect of being stuck on a Greek island. The deal, in conjunction with the hotspot system set up on the islands, has led to massive respatialisation following the "excision" of the islands from the European and Greek asylum system. Also here akin to the Pacific solution (Devetak, 2004), the islands are used as spatially suitable sites for a creative exclusion of migrants from rights, similar to what Alison Mountz (2011) has described as an "enforcement archipelago." In combination with the deal, the hotspot system has been turned into a machine for the denial of asylum. As we learned from interviews with officials from both EASO and the Hellenic Asylum Service in Chios during our fieldwork, both agencies understand that it is their task to prove, in each individual case, that the person that has arrived on the island and has made an asylum application is a) inadmissible in the Greek asylum system and b) can be readmitted to Turkey. Here again, we detect an anti-litigation device: Since most asylum applications are deemed inadmissible after an individual assessment of the case, the ban on collective expulsions from the Geneva Convention is circumvented.

But this systematic disenfranchisement and undermining of the right of asylum finds its continuation in Turkey due to several dynamics and contradictory legal provisions that not only burden Turkey with the task of being the watchdog for the European Union and turn it more and more into a country of highly precarious immigration; as our field research has also shown that the

effects of the deal led to a virtual collapse of the more-or-less UNHCR-based asylum system at Turkey itself. Although Turkey is labeled as a "first country of asylum" by the EU-Turkey deal, it still applies a geographical limitation to the 1951 Geneva Convention, which means it only accepts European citizens as "convention refugees." All non-Europeans have to apply to the UNHCR in order to receive refugee status and becoming eligible for resettlement, which in many cases lasts up to six or even more years (Soykan, 2012). According to one lawyer we met, more than 250,000 recognized refugees are currently waiting in Turkey to be resettled. However, Syrian refugees are excluded from these status altogether. They have no right to seek asylum; instead they have been granted a "temporary protection status" by the Turkish government that puts them in an extremely precarious legal and social condition (Baban, Ilcan, & Rygiel, 2016). However, in 2013, UNHCR also suspended asylum applications from Afghans, citing a backlog of cases. According to our conversation partners, due to the tremendous increase of asylum seekers, the UNHCR might consider suspending the applications of all nationalities and restrict the resettlement to vulnerable cases.

Domestically, the deal gave the AKP government the power to use the Syrian presence as a biopolitical card to play in the context of its internal conflicts, which are heavily coded in ethnic and religious ways (Heck, Hess, & Genç, submitted). This shows clearly that the externalization policy has had a boomerang effect and has produced uncontrollable dependencies for the European Union.

6. Conclusion

The dynamics of the European border regime which we have paradigmatically described in this paper remain conflicted. It is not yet possible to argue conclusively which direction the development of the European border regime, and thus the European project as a whole, will take. Nevertheless, we will formulate tentative conclusions.

The first is concerned with what we have called the gravitational center of the European border regime. If the EAM was designed to firmly place the Commission in this center, that particular attempt has been thwarted by the subsequent developments of the Summer of Migration. While the efforts of the Commission to maintain their various initiatives, such as the relocation mechanism and the hotspot approach, can only be described as diligent, the initiative yet again lies with the Council these days, which has not been able to find a consensus on the central problems of 2015—the crisis of Dublin and a "fair distribution" scheme.

The second concerns fragmentation. This obviously applies to a geographical and geopolitical context. Both outside as well as inside the EU, the influence of the EU has decreased, and new regional centers of powers with

---

[12] As of June 9, 2017, 20,869 people have been relocated within the EU, and 22,504 have been relocated from Turkey to the EU (European Commission, 2017).

divergent interests are emerging, be it the countries of the Visegrad Group or post-coup Turkey. Also on the level of rights, the analysis of fragmentation applies as well. It is not only the Brexit process that has underlined that the vision of European citizenship, i.e., a homogeneous landscape of post-national rights throughout the EU, has failed. This is especially true for those that have from the start been excluded from EU citizenship. Most dramatic, this fragmentation of rights applies to the fringes of Europe, precisely to the Aegean islands, where a population has been systematically rendered "deportable" (De Genova & Peutz, 2010), even if the actual mass deportations have not yet happened. While the bodies could not be kept external to the EU, their exteriority is re-produced in the hotspot centers, where deportation to Turkey under the terms of the deal serves as a deterrence.

In this, the fence constructions and severely deterring laws criminalizing border crossing via the northern Balkan EU states like Hungary and Croatia seem to have effectively blocked the Balkan route and—similarly to the deal's effects on the Greek Islands—are transforming Serbia into a buffer zone and waiting room without any proper asylum or migration system in place. Moreover, the EU–Turkey deal has entered into its second year and seems to be a more durable and institutionalized policy than many commentators thought in the beginning. However, the number of crossings in the Central Mediterranean continue to stay at a high level, showing that the struggles of migration are not coming to an end. Instead, the most recent attempts by Italian prosecutors to criminalize the civil society rescue missions clearly show that the conflicts on the very meaning of border crossing and the permeability of the border still continue. Bordering territory and ordering populations has always been imbued with violence and resistance, while the space of the border knows no single monopoly of power.

Acknowledgments

Conflict of Interests

The authors declare no conflict of interests.

References

Agence France-Presse. (2017, April 6). Spain accused of causing Gibraltar traffic jams amid Brexit tensions. *The Guardian: World News*. Retrieved from https://www.theguardian.com/world/2017/apr/06/spain-gibraltar-traffic-jams–brexit-tensions

Anonymous. (2017). No return to hard border in Ireland after Brexit, EU chief negotiator says. *The Telegraph*. Retrieved from http://www.telegraph.co.uk/news/2017/05/11/no-return-hard-border-ireland-brexit-eu-chief-negotiator-says

Antonakaki, M., Kasparek, B., & Maniatis, G. (2016, November 29). Counting, channelling, and detaining: The hotspot center Vial in Chios, Greece. Retrieved from http://societyandspace.org/2016/11/29/counting-channelling-and-detaining-the-hotspot-center-vial-in-chios-greece

Asthana, A. (2017, April 2). Theresa May would go to war to protect Gibraltar, Michael Howard says. *The Guardian: Politics*. Retrieved from https://www.theguardian.com/politics/2017/apr/02/britain-and-teu-worse-off-without-brexit-deal-says-michael-fallon

Baban, F., Ilcan, S., & Rygiel, K. (2016). Syrian refugees in Turkey: Pathways to precarity, differential inclusion, and negotiated citizenship rights. *Journal of Ethnic and Migration Studies*, 1–17. Retrieved from http://www.tandfonline.com/doi/abs/10.1080/1369183X.2016.1192996

Beznec, B., Speer, M., & Stojić Mitrović, M. (2016). *Governing the Balkan Route: Macedonia, Serbia and the European border regime* (Research paper series of Rosa Luxemburg Stiftung Southeast Europe No. 5). Belgrade: Rosa Luxemburg Stiftung.

Bialasiewicz, L. (2012). Off-shoring and out-sourcing the borders of EUrope: Libya and EU border work in the Mediterranean. *Geopolitics*, *17*(4), 843–866. Retrieved from http://www.tandfonline.com/doi/abs/10.1080/14650045.2012.660579

Blair, A. (2003, October). New international approaches to asylum processing and protection.

Borri, G., & Fontanari, E. (2016). Lampedusa in Berlin: (Im)Mobilität innerhalb des europäischen Grenzregimes. *Peripherie*, *35*, 138–139. Retrieved from http://www.budrich-journals.de/index.php/peripherie/article/view/22409

Broeders, D. (2007). The new digital borders of Europe. EU databases and the surveillance of irregular migrants. *International Sociology*, *22*(1), 71–92.

Cambridge Advanced Learner's Dictionary & Thesaurus (n.d.). Hard border. Retrieved from http://dictionary.cambridge.org/dictionary/english/hard-border

Commission of the European Communities. (2008). *Preparing the next steps in border management in the European Union* (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions No. COM(2008) 69 final). Brussels: Commission of the European Communities.

Council of the European Union. (2009). *Combating illegal immigration in the Mediterranean*. 5689/09. January 23, 2009. Brussels: Council of the European Union.

Cuttitta, P. (2014). *From the Cap Anamur to Mare Nostrum. Humanitarianism and migration controls at the EU's maritime borders*. CLEER Working Papers.

Cuttitta, P. (2016). The migration borderscape of South East Tunisia: Memories from a North African 'triple frontier'. *Border Criminologies Blog*. Retrieved from https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/migration

De Genova, N., & Peutz, N. M. (Eds.). (2010). *The deportation regime: Sovereignty, space, and the freedom of movement*. Durham, NC: Duke University Press.

Devetak, R. (2004). In fear of refugees: The politics of border protection in Australia. *The International Journal of Human Rights*, *8*(1), 101–109. Retrieved from http://www.tandfonline.com/doi/full/10.1080/1364298042000212565

Dijstelbloem, H., & Meijer, A. (Eds.). (2011). *Migration and the new technological borders of Europe*. London: Palgrave Macmillan UK. Retrieved from http://link.springer.com/10.1057/9780230299382

Domínguez-Mujica, J., Díaz-Hernández, R., & Parreno-Castellano, J. (2014). The Canary Islands 'maritime wall'. Migration pressure, security measures and economic crisis in the Mid-Atlantic. *Borders, Fences and Walls: State of Insecurity*, 27–50.

ECHR. (2011). M.S.S. v. Belgium and Greece, No. 30696/09. European Court of Human Rights.

ECHR. (2012). Hirsi Jamaa and Others v. Italy, No. 27765/09. European Court of Human Rights.

European Commission. (2015a). *A European agenda on migration* (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions No. COM(2015) 240 final). Brussels: European Commission.

European Commission. (2015b). *Joint Foreign and Home Affairs Council: Ten point action plan on migration* (Press Release No. IP/15/4813). Retrieved from http://europa.eu/rapid/press-release_IP-15-4813_en.htm

European Commission. (2017). *Relocation and resettlement 13 June 2017*. Retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170613_factsheet_relocation_and_resettlement_en.pdf

Fassin, D. (2012). *Humanitarian reason: A moral history of the present*. University of California Press.

Frontex. (2015). *Annual risk analysis 2015*. Warsaw: Frontex.

Gebauer, M., Knaup, H., Müller, P., Popp, M., Schindler, J., & Schult, C. (2015). Angekündigte Katastrophe. *Spiegel*.

Hamann, U., & Karakayali, S. (2016). Practicing Willkommenskultur: Migration and solidarity in Germany. *Intersections. East European Journal of Society and Politics*, *2*(4). Retrieved from http://intersections.tk.mta.hu/index.php/intersections/article/view/296

Heck, G., & Hess, S. (2016). *European restabilization of the border regime. A report from the contested borders in the Aegean region*. Retrieved from http://transitmigration-2.org/wp-content/uploads/2016/09/txt_-European-Restabilization-Attempts.pdf

Heck, G., Hess, S., & Genç, F. (submitted). The multilayered border regime in Turkey: Contested regionalization, deceleration and legal precarization. *Journal of Borderlands Studies*.

Heimeshoff, L.-M., Hess, S., Kron, S., Schwenken, H., & Trzeciak, M. (2014). *Grenzregime II: Migration—Kontrolle—Wissen. Transnationale Perspektiven* (1st ed.). Berlin: Assoziation A.

Heller, C., & Pezzani, L. (2016). Ebbing and flowing: The EU's shifting practices of (non-)assistance and bordering in a time of crisis. *Near Futures Online*.

Hess, S., & Karakayali, S. (2007). New Governance oder die imperiale Kunst des Regierens. Asyldiskurs und Menschenrechtsdispositiv im neuen EU-Migrationsmanagement. In *Turbulente Ränder*. Bielefeld: transcript. Retrieved from http://www.academia.edu/download/46169894/Turbulente_Rander_Hess-karakayali.pdf

Hess, S., & Tsianos, V. (2007). Europeanizing transnationalism! Provincializing Europe!–Konturen eines neuen Grenzregimes. In *Turbulente Ränder* (pp. 23–38).

Home Office. (2002). *Secure borders, safe haven. Integration with diversity in modern Britain* (No. CM 5387). London: Home Office.

Kasparek, B. (2015). Was war Mare Nostrum? Dokumentation einer Debatte um die italienische Marineoperation. movements. *Journal für kritische Migrations- und Grenzregimeforschung*, *1*(1). Retrieved from http://movements-journal.org/issues/01.grenzregime/11.kasparek–mare-nostrum-debatte.html

Kasparek, B. (2016a). Complementing Schengen: The Dublin System and the European border and migration regime. In H. Bauder & C. Matheis (Eds.), *Migration policy and practice* (pp. 59–78). New York: Palgrave Macmillan US.

Kasparek, B. (2016b). Routes, corridors, and spaces of exception: Governing migration and Europe. *Near Futures Online*. Retrieved from http://nearfuturesonline.org/routes-corridors-and-spaces-of-exception-governing-migration-and-europe

Kasparek, B., & Hess, S. (2014). Border regime. *Cultural Studies*, *29*(1), 55–87.

Kasparek, B., & Speer, M. (2013). At the nexus of academia and activism: Bordermonitoring.eu. *Postcolonial Studies*, *16*(3), 259–268.

Kasparek, B., & Speer, M. (2015). Of Hope. Hungary and the long Summer of Migration. Retrieved from http://bordermonitoring.eu/ungarn/2015/09/of-hope-en

Kuster, B., & Tsianos, V. S. (2013). Erase them! Eurodac and digital deportability. *Eipcp. Europäisches Institut Für Progressive Kulturpolitik*. Retrieved from http://eipcp.net/transversal/0313/kuster-tsianos/en

Kuster, B., & Tsianos, V. S. (2016). *Hotspot Lesbos*.

Lahav, G., & Guiraudon, V. (2000). Comparative perspec-

tives on border control: Away from the border and outside the state. In *The Wall Around the West. State Borders and Immigration Controls in North America and Europe* (pp. 55–77).

Lavenex, S. (2004). EU external governance in 'wider Europe'. *Journal of European Public Policy*, *11*(4), 680–700. Retrieved from http://www.tandfonline.com/doi/abs/10.1080/1350176042000248098

Lemberg-Pedersen, M. (2013). Private security companies and the European borderscapes. In *The migration industry and the commercialization of international migration* (pp. 152–172).

MacAskill, E., & Jones, S. (2017, April 4). Foreign Office defends navy for ordering Spanish warship out of Gibraltar waters. *The Guardian: World News*. Retrieved from https://www.theguardian.com/world/2017/apr/04/fco-defends-navy-ordering-spanish-boat-out-of-gibraltar-waters

Mezzadra, S., & Neilson, B. (2013). *Border as method, or, the multiplication of labor*. Duke University Press.

Moulier-Boutang, Y. (2006). Europa, Autonomie der Migration, Biopolitik. In M. Pieper, T. Atzert, S. Karakayali, & V. Tsianos (Eds.), *Empire und die biopolitische Wende. Die internationale Diskussion im Anschluss an Hardt und Negri* (pp. 169–180). Frankfurt: Campus.

Mountz, A. (2011). The enforcement archipelago: Detention, haunting, and asylum on islands. *Political Geography*, *30*(3), 118–128.

New Keywords Collective. (2016). Europe/Crisis: New keywords of "the Crisis" in and of "Europe". Retrieved from http://nearfuturesonline.org/europecrisis-new-keywords-of-crisis-in-and-of-europe

Newman, D. (2006). The lines that continue to separate us: Borders in our 'borderless' world. *Progress in Human Geography*, *30*(2), 143–161.

O'Hagan, S. (2017). Will Brexit reopen old wounds with a new hard border in Northern Ireland? *The Guardian*. Retrieved from https://www.theguardian.com/uk-news/2017/apr/23/northern-ireland-brexit-border-old-wounds-troubles

Pallister-Wilkins, P. (2015). The humanitarian politics of European border policing: Frontex and border police in Evros. *International Political Sociology*, *9*(1), 53–69.

Papadopoulos, D., Stephenson, N., & Tsianos, V. (2008). *Escape routes: Control and subversion in the twenty-first century*. London: Pluto.

Picozza, F. (2017). Dublin on the move. *Movements. Journal für kritische Migrations- und Grenzregimeforschung*, *3*(1). Retrieved from http://movements-journal.org/issues/04.bewegungen/05.picozza-dublin-on-the-move.pdf

Rumford, C. (2006). Theorizing borders. *European Journal of Social Theory*, *9*(2), 155–169.

Rumford, C. (2008). Introduction: Citizens and border-work in Europe. *Space and Polity*, *12*(1), 1–12.

Salter, M. (2011). Places everyone! Studying the performativity of the border. *Political Geography*, *30*(2), 66–67.

Schuster, L. (2011). Dublin II and Eurodac: Examining the (un)intended(?) consequences. *Gender, Place & Culture: A Journal of Feminist Geography*, *18*(3), 401–416.

Sciortino, G. (2004). Between phantoms and necessary evils. Some critical points in the study of irregular migrations to Western Europe. *IMIS-Beiträge*, *24*, 17–43.

Soykan, C. (2012). The new draft law on foreigners and international protection in Turkey. *Oxford Monitor of Forced Migration*, *2*(2), 38–47. Retrieved from http://oxmofm.com/wp-content/uploads/2012/11/Cavidan-FINAL.pdf

Ticktin, M. (2015). The problem with humanitarian borders. *Publicseminar.org*. Retrieved from http://www.publicseminar.org/2015/09/the-problem-with-humanitarian-borders

Transit Migration Forschungsgruppe. (2007). *Turbulente Ränder: Neue Perspektiven auf Migration an den Grenzen Europas*. Bielefeld: transcript.

van Houtum, H., & van Naerssen, T. (2002). Bordering, ordering and othering. *Tijdschrift Voor Economische En Sociale Geografie*, *93*(2), 125–136.

Walters, W. (2002). Mapping Schengenland: Denaturalizing the border. *Environment and Planning D: Society and Space*, *20*(5), 561–580.

Walters, W. (2004). The frontiers of the European Union. A Geostrategic Perspective. *Geopolitics*, *9*(3), 674–698.

Walters, W. (2011). Foucault and frontiers: Notes on the birth of the humanitarian border. In *Governmentality: Current Issues and Future Challenges* (pp. 138–164). Retrieved from http://www.academia.edu/download/25286013/FoucaultandFrontiers.pdf

Zolberg, A. R. (2006). Managing a world on the move. *Population and Development Review*, *32*(S1), 222–253. Retrieved from http://onlinelibrary.wiley.com/doi/10.1111/j.1728-4457.2006.tb00009.x/full

About the Authors

Sabine Hess is Professor at the Institute for Cultural Anthropology/European Ethnology, Göttingen. Her main areas of research and teaching are migration and border regime studies, anthropology of globalization and transnationalism, anthropology of policy with a focus on EU integration, gender studies and anthropological methodologies. She coordinates the interdisciplinary "Laboratory on migration and border regime studies" at the University of Göttingen and is co-founder of the interdisciplinary European-wide "Network for Critical Migration- and Border-Regime Research" (kritnet) and member of the German wide "Rat für Migration" (Council for migration).

Bernd Kasparek is a mathematician and cultural anthropologist with a focus on border and migration studies and Europeanisation processes. He is a founding member of the Network for Critical Migration and Border Regime Research, member of the editorial board of the journal Movements, and member of the board of the research association bordermonitoring.eu.