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Border Management in Transformation Transnational Threats and Security Policies of European States

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Border Management in Transformation

Transnational Threats and Security Policies of European States

Johann Wagner

A thesis submitted in partial fulfilment of the requirements of
Sheffield Hallam University
for the degree of Doctor of Philosophy

March 2019

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1. I have not been enrolled for another award of the University, or other academic or professional organisation, whilst undertaking my research degree.
2. None of the material contained in the thesis has been used in any other submission for an academic award.
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5. I hereby certify that all translation work from German into English has been guaranteed by me.
6. The word count of the thesis is 139,000.

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Problems can never be solved with the same way of thinking through, which they came into being.

Albert Einstein

Acknowledgements

Usually, someone decides to do a doctorate after the successful completion of their studies at a young age. Only then does the professional career begin, in order to implement the corresponding academic skills in everyday professional life. Not so in my case; since I was not able to study at a young age, I chose a rather unusual way to realise this project. In 2001, I graduated from the University for Applied Sciences for Police Services in Public Administration Law and Police Management in Bavaria and consolidated this experience by obtaining a Masters degree (with distinction) in strategic security management at the University for Applied Sciences Vienna (WN), Austria in 2013.

Since 1998, I have been responsible for the successful implementation of various security sector reform projects, financed by the EU, OSCE or UN. In addition, I was tasked to provide expertise in the reform of state ministries and their public administration systems, border police and border guard services, criminal justice systems and law enforcement authorities, as well as Mediterranean coast guard services within these project frameworks. Further, I helped state authorities by reviewing and analysing laws and administrative regulations, national strategies and action plans in relevant areas, as well as elaborating on technical specifications for procurement. Moreover, I developed a number of comprehensive risk analysis assessments for the EU in South Eastern European countries and Turkey, and served as a senior expert for the UNODC in Afghanistan, Central Asia and Middle East, as well as for the UNOCT in countries of the Horn of Africa, Sahel and Maghreb region. With more than 35 years of professional experience and proven expertise in strategic security management, public administration law, police management, change management and security sector reform processes, I thought it would be great to start this project. During this process, however, I also realised that the project needed more than just a doctoral student and his supervisor. This PhD project was supported by many people, without whom I would not have been able to make it a success.

First of all, I would like to express my special appreciation to my Director of Studies, Professor Babak Akhgar, who is a wonderful person with extraordinary characteristics and who has been a tremendous mentor for me. He has a rare combination of high professional competence, coupled with human warmth and thoughtfulness, but also humour and empathy. Babak, I would like to thank you

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As anyone can imagine, a PhD project is a long and unfortunately often discouraging process. The longer it takes, the bigger the doubt will be that it will ever reach completion. This PhD was an amazing experience, which helped me continue to mature as a human being.

Johann Wagner

Abstract

In the 21st century, along with the process of globalisation, a constantly evolving security environment creates new dimensions of threats and challenges to security and stability of a trans-national nature. This seeks for comprehensive, multidimensional, collective and well-coordinated responses. The United Nations, European Union, Commonwealth of Independent States, Organisation for Security and Co-operation in Europe and other international organisations are able to really contribute in developing cooperative and coordinated responses to these threats by relying on its broad membership and profound expertise and experience.

This work looked into the processes of changes and renewals of border control and border management standards in relation to strategic security management during the past 25 years after the fall of the Iron Curtain, and the immense challenges in nation-building in Eastern and South-Eastern Europe. The abolition of border controls within the *Schengen* area and simultaneous introduction of necessary compensatory measures was an additional topic. In this work it has been possible to create a comprehensive synopsis of the extent to which the EU and international organisations were able to use their influence in the modernisation and/or creation of state law enforcement agencies for ensuring effective border control, border surveillance and border management in line with the EU *acquis communautaire* and standards.

A modern, cost-benefit-oriented and effective border management should ensure both open borders as well as maximum security. At the same time, potential transnational threats must be clearly identified and cross-border organised crime combated consistently without compromise. Hence, cross-cooperation and information exchange are very important elements of the EU's integrated border management concept, which facilitates the coordination and cooperation between all relevant authorities and organisations in the fields of border control and border surveillance in achieving the jointly defined objectives in terms of open but at the same time secure borders. This applies within the respective border law enforcement agencies (intra-agency cooperation), as well as between other involved governmental departments and agencies of a country (inter-agency cooperation) and also across borders in a bilateral and multi-lateral context (international cooperation).

The process to develop a new awareness of the dimensions of these major challenges is to clarify which standards and processes the international community

needs to develop in order to combat the complexity of these potential threats effectively.

The dissertation project aims to give an in-depth update on the extent to which innovative integrated border management models were developed, as well as demonstrating how the implementation of new “control filters” in non-EU countries has increased the quality of border controls and security.

Part 1

Section 1 – Introduction	20
Chapter 1: Thematic Introduction	20
Section 2 – Methods	37
Chapter 2: Methodical structure of the work	37
Section 3 - Analytical or theoretical framework	61
Chapter 3: Transnational Threats	61
Chapter 4: Transnational Organised Crime	113
Chapter 5: Migration in the context of EU border management	145
Chapter 6: Summary of the analytical framework	188
Section 4 –Empirical analysis	192
Chapter 7: Border management in Europe	194
Chapter 8: Coordinated Border Management	218
Chapter 9: EU agencies with regard to integrated border control within the framework of the created compensatory measures	233
Chapter 10: Frontex - The EU Border Management and Coast Guard Agency	249
Chapter 11: International police cooperation	263
Section 5 –Good practices as recommendations for action	285
Chapter 12: Crisis intervention and management	285
Chapter 13: Supranational organisations in the context of IBM	296
Chapter 14: Extraterritoriality and border control	321
Chapter 15: Border management in transformation	344
Section 6 – Concluding remarks	364
Chapter 16: Conclusions from the thesis	365

Part 2

List of acronyms	387
References	390
Legal documents	416
Annexes	422

Part 1	
Section 1 – Introduction	20
Chapter 1: Thematic Introduction	20
1.1. Introduction of the subject area	20
1.2. Subject of research	24
1.3. Integrated Border Management – an initial assessment	27
1.4. Central thesis of the work	30
1.5. Structure of the work	31
Section 2 – Methods	37
Chapter 2: Methodical structure of the work	37
2.1. General methodological approach	37
2.2. Data collection	40
2.2.1. Dataset 1: Legislation and official documents	40
2.2.2. Dataset 2: Secondary Data	45
2.2.3. Dataset 3: Case studies	46
2.2.4. Dataset 4: Qualitative interviews of experts	52
2.2.5. Additional insights: Accumulative reflection of comprehensive assessments developed in the overall area of BSM and its relation to TNT and TOC	55
2.3. Data analysis	58
Section 3 - Analytical or theoretical framework	61
Chapter 3: Transnational Threats	61
3.1. Security in retrospective consideration	61
3.2. Security as a central concept of value	62
3.3. Areas of transnational threats	69
3.4. Diseases as transnational threats	72
3.5. The fall of the Iron Curtain and its impact on border regimes	75
3.5.1. The dissolution of the Soviet Union	76
3.5.2. The disintegration of Yugoslavia	78
3.5.3. Ukraine - a torn state	82
3.6. Transnational threats from fragile and failed states	85
3.6.1. Fragile and failed states	85
3.6.2. Afghanistan	89
3.6.3. Iraq	92
3.6.4. Arab Spring - the break-up follows chaos and anarchy	95
3.6.5. Syria	97

3.6.6. Libya	99
3.6.7. <i>Daesh</i> (Islamic State)	99
3.6.8. Weapon arsenals without adequate control	102
3.6.9. Radicalisation as a transnational threat	104
3.7. Preliminary conclusion	107
Chapter 4: Transnational Organised Crime (OC)	113
4.1. Organised forms of crime	113
4.2. Is organised crime the same as <i>Mafia</i> ?	115
4.3. What is organised crime?	118
4.4. Classic areas of organised crime	122
4.4.1. Relevant offence fields and legal foundations	123
4.4.2. Ethnic OC groups and their offence fields	124
4.5. OC definitions of international organisations	125
4.5.1. United Nations	125
4.5.2. Council of Europe	126
4.5.3. European Union	128
4.5.4. EUROPOL	130
4.5.5. INTERPOL	131
4.6. OC Definitions in comparison	132
4.7. Interface problems in the fight against OK within the Member States of the European Union (EU MS)	136
4.8. Preliminary conclusion	142
Chapter 5: Migration in the context of EU border management	145
5.1. Migration and its causes	145
5.2. Reasons for irregular migration	145
5.3. Rising migration pressure as a result of events in the context of destabilisation	151
5.4. Important legal requirements with regard to migration and border control and legal border crossing	154
5.4.1. Legal requirements for legal entry according to the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory	154
5.4.2. Border protection, border police control and border crossing	155
5.4.3. Measures to terminate a residence title	157
5.4.4. Safe country of origin - safe third country	158
5.4.5. The Dublin Regulation	159
5.5. Definitions	160

5.6. Irregular migration as a form of cross-border OC or even transnational threat	164
5.6.1. Irregular migration	164
5.6.2. Trafficking in human beings (THB)	166
5.6.3. People smuggling	167
5.6.4. Differentiation	169
5.6.5. Smuggling of people	171
5.6.6. Escape aid	175
5.7. „The Boat is Full“	176
5.8. <i>Mare Nostrum</i> and <i>Triton</i>	178
5.9. Preliminary conclusion	182
Chapter 6: Summary of the analytical framework	188
Section 4 –Empirical analysis	192
Chapter 7: Border management in Europe	194
7.1. Function of the boundary	194
7.2. Border management versus mobility	196
7.3. Border management as an integral approach	201
7.4. Design of European Security Policy - the <i>Eltville</i> Recommendations	203
7.5. Border control and border management in Europe	204
7.6. EU MS are allowed to close borders	210
7.7. Preliminary conclusion	214
Chapter 8: Coordinated Border Management	218
8.1. Integrated Border Management (IBM)	218
8.2. State authorities involved in border management	221
8.3. Border Guard equal to Border Police?	222
8.4. Control of goods traffic	225
8.5. Veterinary and phytosanitary services	226
8.6. Other stakeholders	226
8.7. Compensatory measures by eliminating stationary border control	228
Chapter 9: EU agencies with regard to integrated border control within the framework of the created compensatory measures	233
9.1. The Europeans Union's Judicial Cooperation Unit – Eurojust	233
9.2. European Dactyloscopy – Eurodac	234
9.3. European Border Surveillance System – EUROSUR	236
9.4. European Union Agency for Fundamental Rights – FRA	239
9.5. <i>Collège Européen de Police</i> – CEPOL	240
9.6. European Police Office – EUROPOL	241

9.7. Preliminary conclusion	246
Chapter 10: Frontex - The EU Border Management and Coast Guard Agency	249
10.1. Introduction	249
10.2. The relevancy of Frontex	251
10.3. Mandate and tasks of Frontex	252
10.3.1. Joint operations	252
10.3.2. Risk analysis	253
10.3.3. Training	254
10.3.4. Research	255
10.3.5. Rapid interventions	256
10.3.6. Support for EU MS in joint repatriations	258
10.3.7. Information exchange and systems	258
10.4. Preliminary conclusion	259
Chapter 11: International police cooperation	263
11.1. The Stability Pact	263
11.2. Southeast European Cooperation Initiative –SECI	265
Southeast European Law Enforcement Centre – SELEC	
11.3. International Law Enforcement Coordination Units – ILECU	268
11.4. Border Police Liaison Officers	270
11.5. International police missions	271
11.6. <i>Prüm</i> Decision – Facilitation of cross-border cooperation	273
11.7. Joint centres	275
11.8. Central European Police Academy – CEPA	277
11.9. Common training standards and equipment	278
11.10. Cross-border police cooperation	280
11.11. Preliminary conclusion	281
Section 5 –Good practices as recommendations for action	285
Chapter 12: Crisis intervention and management	285
12.1. The Stability Pact for South-East Europe	285
12.2. The role of the OSCE within the <i>Ohrid</i> Border Process	287
12.3. Preliminary Conclusion	290
Chapter 13: Supranational organisations in the context of IBM	296
13.1. Organisation for Security and Co-operation in Europe (OSCE)	296
13.1.1. OSCE – Border Security and Management Concept (BSMC)	298
13.1.2. OSCE – National Focal Point Network (NFP)	302
13.1.3. OSCE – Border Management Staff College (BMSC)	304

13.2. United Nations	305
13.3. INTERPOL Border Management Programme	309
13.4. United Nations High Commissioner for Refugees (UNHCR)	312
13.5. International Organisation for Migration (IOM)	313
13.6. International Centre for Migration Policy Development (ICMPD)	315
13.7. Geneva Centre for the Democratic Control of Armed Forces (DCAF)	316
13.8. Preliminary conclusion	318
Chapter 14: Extraterritoriality and border control	321
14.1. State – State borders	321
14.2. Boundary and border area	322
14.3. Spatial relocation of the boundary (remote control)	325
14.4. Instruments for the relocation of border checks	331
14.5. Advanced Passenger Information (API)	333
Personal Name Record (PNR)	
14.6. Preliminary conclusion	341
Chapter 15: Border management in transformation	344
15.1. Dimensions of boundaries – three plus one	344
15.1.1. Land boundaries	344
15.1.2. Water boundaries	350
15.1.3. Air boundaries	351
15.1.4. Cyber Space as a fourth dimension	353
15.2. Factors of influence regarding the transformation process	355
15.3. Common Foreign and Security Policy (CFSP) of the EU	358
15.4. EU assistance programs	360
15.5. Phenomenon mass influx of refugees	361
15.6. Lack of enforceability of binding EU legislation	362
Section 6 – Concluding remarks	364
Chapter 16: Conclusions from the thesis	365
16.1. Recapitulation of research methods	365
16.1.1. Review of feasible <i>versus</i> desirable research methods	365
16.1.2. Strengths and limitations of research methods	366
16.1.2.1. Strengths of the research work	366
16.1.2.2. Limitations and shortcomings of the research work	368
16.2. Key findings of the research work	370
16.3. Results achieved and contributions to knowledge gain in alignment with the research work	372
16.4. Policy recommendations as a result of the research work	374

16.4.1. IBM	375
16.4.2. Visa regime	376
16.4.3. Asylum and migration	377
16.4.4. Internal security	377
16.5. Questions left unanswered	378
16.6. Future research	381
16.7. Closing remarks	383

Part 2

List of acronyms	387
References	390
Legal documents	416
Annexes	
Annex 1 – Criminal offenses related to OC	422
Annex 2 – Delict areas of transnational threats	424
Annex 3 – Comparison of OC and transnational threats	425
Annex 4 – Definitions of diseases as a transnational threat	427
Annex 5 – OC definitions	428
Annex 6 – Irregular migration along „Frontex Routes“	432
Annex 7 – IBM definitions	435
Annex 8 – Ethnically dominated OC groups	438
Annex 9 – Five-Phases Air Traveller Cycle	439
Annex 10 – General indicators regarding the detection of OC-relevant issues	440
Annex 11 – List of senior experts relevant to BSM, TNT, TOC and migration	442
Annex 12 – Interview structure used in discussions with senior BSM experts	444
Annex 12 a – Transcription of an interview	447
Annex 13 – Approval of reports through UN, EU, EC, and OSCE	453
Annex 14 – Confirmation from the University Passau, Germany	455

Directory of Tables

Tables

Table 2.2.4.1.	Senior experts identified for semi-structured interviewees	53
Table 3.3.1	Abstract comparison of OC and transnational threats	71
Table 4.6.1	Comparison of the OC definitions with EU institutions and international organisations (own presentation)	134
Table 4.6.2	Comparison of OC definitions of EU MS (own presentation)	135
Table 4.7.1	EU Programs (own presentation)	137
Table 5.6.4.1	Differentiation THB and people smuggling (own presentation)	170
Table 5.6.4.2	Agreements and protocols against THB (own representation)	170
Table 5.8.1	'Mare Nostrum' and 'Triton' (own presentation)	180
Table 5.8.2.	'Mare Nostrum', 'Triton' and 'Sophia' (own presentation)	182
Table 8.1.1	Own presentation	218
Table 8.1.2	Omission of border control	219
Table 13.8.1	Supranational organisations and IBM	320
Table 15.1.1.2	First-time asylum applications in 2014 and 2015 main countries of origin	347

Directory of Figures

Figures

Figure 1.2.1	Open and secure borders (own representation)	27
Figure 3.2.1	The Hierarchy of Needs from Maslow	64
Figure 3.2.2	Dimension of the 'extended' differentiation of the concept of security	65
Figure 3.2.3	Own complementary presentation	66
Figure 3.2.4	Bright – Dark Field Research	67
Figure 3.5.2.1	War refugees from ex-Yugoslavia until 1995	79
Figure 3.5.2.2	Statistic of refugees in Germany	80
Figure 3.6.1.1	Fragile States Venn Diagram	87
Figure 3.6.1.2	Own presentation	88
Figure 3.6.4.1	Countries affected by the 'Arab Spring'	96
Figure 3.7.1	Own presentation	109
Figure 5.2.1	UNHCR Global Trends in 2015	146
Figure 5.2.2	The top-ten countries of origin (own presentation)	148
Figure 5.2.3	Asylum figures in a yearly comparison	149
Figure 5.3.1	Major refugee-hosting countries 2014–2015	153
Figure 5.3.2.	Major source countries of refugees 2014–2015	153
Figure 5.6.5.1	Frontex Annual Risk Analysis Report 2014	174
Figure 5.6.5.2	Frontex statistic irregular migrants 2015	174
Figure 7.2.1	International tourist arrivals in 2015 (own presentation)	197
Figure 7.5.1	Frontex migratory routes	206
Figure 7.5.2	Frontex statistic irregular migrants from 2007-2014	206
Figure 7.5.3	Map with Spanish autonomous cities Ceuta and Melilla	208
Figure 14.2.1	Various models of border control (own illustration)	324
Figure 14.5.1	Air Travel Cycle new	340
Figure 15.1.1	Countries of origin in 2015	346

Part 1

1. Section – Introduction

Chapter 1: Thematic Introduction

1.1. Introduction of the subject area

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.¹

State borders define a national territory. Sovereign nationhood is also defined in relation to the understanding of a modern and secure state, whether a state is able to effectively control crossings of its borders, and also being able to oversee and manage it. The access of persons, goods and services should be controlled and regulated, based on a consistent application of the principle of legality and the implementation of effective control mechanisms to enforce the domestic jurisdiction. Therefore, a state's legal capacities have a direct relationship to territory, personnel, training, equipment, technology, collaboration, both within the state institutions, as well as on national and international levels.

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.²

The exercise of sovereign state authority is in principle determined by its own state territory and is generally based on the jurisdiction of this territory that is ideally formulated and regulated through appropriate legal provisions and the implementing regulations. They serve as tools for the competent law enforcement authorities to enforce the state monopoly in accordance with the rule of law. According to Sauerland, a state is referred to as a state of law, in which political power is only performed within the legal framework.³ In doing so, the recognition of sovereign acting is tied to a legitimate legal form and content requirements that serve to protect a person in his individual liberties against encroachments of the state. Although the idea of a legally bound state can be traced back to the beginning of modern times, the liberal-bourgeois societies in the early 19th century

¹ Treaty on European Union. Article 2 TEU. ABL 2008, C 115/13 of 9th May 2008.

² Treaty on European Union. Article 3 Par. 2 TEU. ABL 2008, C 115/13 of 9th May 2008.

³ Sauerland, Dirk / Springer Gabler publishing house (ed.), Gabler *Wirtschaftslexikon*; keyword: rule of law. Available from: <http://wirtschaftslexikon.gabler.de/Archiv/7186/rechtsstaatlichkeit-v9.html> (Accessed on 27th September 2016).

have also developed such characteristics of the rule of law as a recognised constitution.

According to Gärtner, a national monopoly on legitimate use of force exists to control a territory, if a state possesses an effective and functioning public administration system, with which it can control its resources and national law enforcement agencies (e.g., army and police) for the pacification of local conflicts as well as for disarmament of private acts of violence.⁴ The sociologist Max Weber characterised the expression of the national monopoly on legitimate use of force already in 1919, according to which all practice of force is incumbent upon the state alone and must be regarded as the basis of a functioning constitutional state.⁵ That applies, of course, also regarding an effective safeguard and control of international borders for each sovereign state, recognised from the community of states.

Therefore, Member States' competent border officials have to apply relevant standards in alignment with the "Practical Handbook for Border Guards" (*Schengen Handbook*) when carrying out the border control of persons.

'Border control' is the activity carried out at a border in response exclusively to an intention to cross or the act of crossing the border, regardless of any other consideration, consisting of border checks and border surveillance.

'Border surveillance' is the surveillance of borders between border crossing points and the surveillance of border crossing points outside their fixed opening hours, in order to prevent persons from circumventing border checks.⁶

However, initially these sets of rules often appear sufficient regarding the prevention and prosecution of transnational criminality and transnational threat scenarios. Offenders purposefully seek out gaps and weak points within the range of border surveillance and border controls, to increase their chances at profit maximisation under simultaneous minimisation of appropriate own risks. Other serious threat scenarios, such as for example, natural catastrophes, maximum credible accidents (MCA) regarding sensitive infrastructure, epidemic diseases, epidemics, and panzootics can affect neighbour states or even whole regions regardless of the existence of international borders.

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall

⁴ Gaertner, Heinz (2005): *Internationale Sicherheit*. P.48.

⁵ Ibid.

⁶ Commission Recommendation 06/XI/2006 C (2006) 5186 final establishing a common "Practical Handbook for Border Guards (*Schengen Handbook*)" 'Border surveillance' (Definition no. 11) [...]. 'Border control' (Definition no. 13) [...]. Pg.10.

contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.⁷

In general terms, effective and efficient protection and control of external borders cause exceptional challenges against a state. This applies in particular to political, security related, socio-economically, environmentally and cultural aspects. Self-evidently, the protection and control of borders in conformity with the guarantee of public safety and order and rule of law coupled with effective control mechanisms are inevitable as well as the use of most modern technical infrastructure.

According to the annual report of the United Nations World Travel Organisation (UNWTO) in 2015, more than 1.184 million people were travelling to other countries.⁸ This marks the sixth consecutive year of above-average growth with international arrivals increasing by 4% or more every year since the post-crisis year of 2010.⁹ Some 50 million more tourists (overnight visitors) travelled to international destinations around the world in 2015 than in 2014. According to reports of the United Nations (UN), there is an ascending trend, in that more than 232 million people are living outside of their country of origin (UN, New York, 2013, p.1). The mass of the travellers consists mainly of tourists, business travellers, students and education travellers, refugees, migrants motivated to get gainful employment, asylum-seekers, refugees, as well as irregular migrants, who are for the respective country of destination either accepted or less welcome.

Mobility in cross-border areas has emerged as a major issue in both domestic and international viewing. It is the responsibility of the target country in issuing an entry permit as a precondition for the legal entry of a person on its territory, provided that such a person is not a national of the country. The design of border control and surveillance may contribute decisively as mobility can be steered and restricted individually, and options for entry control can be applied differently.

It seems as if the long-standing territorial and stationary border controls in relation to the rapidly rising numbers of travellers and its differentiators is no longer considered sufficient in changing globalisation. It is recognised that every

⁷ Treaty on European Union – Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01). Article 3 (5).

⁸ UNWTO Annual Report (2015): United Nations World Travel Organisation. P.14, 15. Available from: http://cf.cdn.unwto.org/sites/all/files/pdf/annual_report_2015_lr.pdf (Accessed on 11th August 2016).

⁹ Ibid.

government should use its abilities to act in accordance with the available resources and their priorities formulated to combat cross-border crime efficiently and effectively. Nevertheless, there remains a primary consideration for close cooperation and mutual support of the respective state law enforcement agencies in the fight against transnational threats (TNT) and organised crime (OC), both nationally and internationally. Borders are unique, not equal in their nature and have individual characters. These are divided into three categories; in the areas of land, water and air. Thus, it requires very individual and specific solutions and models to create open, and yet at the same time, secure borders. However, it would be a misinterpretation to believe that only the physical crossing of borders must be associated to transnational crime. Our societies are under a huge influence in their economic, social and cultural lives in view of the rapid development of electronic networks.

Therefore, in the 21st century a large part of a state's duty of care is to be addressed in order to avert transnational threats and possible vulnerabilities of the public safety and order through attacks on the Internet. The opportunities for committing criminal offences and serious crimes, data theft and misuse of data, sabotage and espionage provide offenders with extensive anonymity, and their criminal acts usually remain unsanctioned. Cybercrime is understood as the perpetration of criminal acts, including attempting to commit criminal acts through the Internet, or those that happen with the support of Internet technologies.¹⁰ Taking this into consideration, it is important to reflect whether border security and border management should be perceived in a fourth dimension and a framework for a virtual border management should be developed. This in turn requires an intensive, well-coordinated and trustful cooperation between states to prevent potential threats such as terrorism and violent extremism, foreign terrorist fighters (FTF), all forms of radicalisation, OC, drugs and arms smuggling, irregular immigration, trafficking in human beings (THB) and people smuggling, and other

¹⁰ Federal Criminal Police Office (*Bundeskriminalamt - BKA*) definition cybercrime: Cybercrime covers the offenses that are directed against the Internet, data networks, information technology systems or their data (cybercrime in the strict sense) or that are committed by means of this information technology. Currently widespread manifestations of cybercrime are characterised by the infection and manipulation of computer systems with malware, e.g. in order
a) to access and misuse personal data and access rights of the user (identity theft)
b) encrypted data / files of the user by means of so-called ransomware to extort "ransom",
c) to be able to "remotely control" them, interconnect them in so-called botnets and use them for further criminal acts. Available from:
https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/Internetkriminalitaet/internetkriminalitaet_node.html
(Accessed on 8th October 2019).

forms of crime in a cross-border context in order to successfully combat it, in accordance with the principles of prevention before repression.

Basically, most European countries are committed to implement international conventions in alignment with their national constitutions. This applies, amongst others, for the areas in effectively combating cross-border crime with a particular focus on OC, countering terrorism and FTF, violent extremism, radicalisation of religious groups, asylum abuse and irregular migration, THB and migrant smuggling, the overall area related to refugees with respect to monitoring of human rights and by necessity, good international police cooperation. Furthermore, developed standards and tested procedures, which by recognised agencies of the European Union (EU), such as EUROPOL, Eurojust, FRONTEX and other agencies, as well as international organisations, such as IATA, ICAO, INTERPOL, IOM, OSCE, UNHCR, UNODC, UNCTED, UNOCT, UNCTITF, UNCCT, WCO and others are accepted and applied in alignment with the rule of law in order to achieve sustainability.¹¹

1.2. Subject of research

The state borders of some EU Member States and their eastern neighbours were exposed to some revolutionary changes during the last 25 years. The fall of the Iron Curtain, the German reunification, the formation of new states in South Eastern Europe, a progressive process of European integration of east adjoining states, coupled with an interaction of progressive globalisation, generated a legitimate hope for the further development of a policy of open, and at the same, time secure borders.

In the context of European integration, common standards have been developed and implemented through multifaceted efforts to strengthen border management, border control and border security in these countries. In the process of harmonisation of national identities and interests within the framework of the

11

IATA – International Air Transportation Association
ICAO – International Civil Aviation Organisation
INTERPOL – International Criminal Police Organization (ICPO)
IOM – International Organisation for Migration
OSCE – Organisation for Security and Co-operation in Europe
UNHCR – United Nations High Commissioner for Refugees
UNODC – United Nations Office on Drugs and Crime
UNCTED – United Nations Counter-Terrorism Executive Directorate
UNOCT – United Nations Office of Counter-Terrorism
UNCTITF – United Nations Counter-Terrorism Implementation Task Force
UNCCT – United Nations Counter-Terrorism Centre
WCO – World Customs Organisation

Schengen stationary border, although controls were abolished the boundaries were not dissolved as territorial frontiers with neighbouring states.

In reviewing the formation of the *Schengen* area, Gehler (2009) even expressed his assumption that a development of *Entgrenzung* (i.e., *antonym* to dissolve boundaries) took place, in a way losing the natural sense of national borders in connection to the dissolution of stationary border controls. However, the events of the recent past of never-ending streams of refugees mainly across the Mediterranean Sea and the Balkan routes show that there was no dissolution of boundaries within the *Schengen* States.

The opposite seems to be the case, as can be seen by the example of Hungary. On 19th of August 1989, Hungary, at this time a member of the former Warsaw Pact, was the first country, which cut off the fence and some 25 years later it was the first EU MS, which built border fences with its eastern and south-eastern neighbours in June 2015.

Also, it became very clear that various national border authorities of EU MS and the eastern non-EU neighbouring countries along the refugee routes are unable to carry out effective border security and control in line with currently valid legal agreements and EU standards due to overload and insufficient capacities, or simply for not implementing relevant legislation.

The current state of research in terms of successfully averting transnational threats and effectively combating cross border OC, as well as newly identified challenges in the creation of modern border management systems, while ensuring common standards for border security and control, provides insights in respect of the following areas:

- The upheavals of state border guards and border police systems in the course of the past 25 years.
- The creation of the *Schengen* area, while simultaneously developing compensatory measures consistent with the principle of free movement.
- The establishment of the EU Frontex agency, tasked with border management and border control, as well as advanced systems for border surveillance.
- Models of extraterritorial border control.
- Irregular migration with respect to modern border management.

The research of this work goes beyond these areas and focuses on aspects of how the objectives of open, and at the same time, secure borders in accordance with the EU *acquis communautaire* (herein later mentioned as EU *acquis*) can be reached in a simultaneous development of models of modern border administrations in line with the implementation of national laws.¹²

The set out of objectives in Article 67 TFEU¹³ make clear here that "the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States". Further, it has to be ensured that no control of person(s) should take place at internal borders according to the *Schengen Borders Code*.

'Internal borders' are: a) the common land borders of MS, including river and lake borders; b) the airports of the MS for internal flights; c) sea, river and lake ports of the MS for regular ferry boat connections.¹⁴

In addition, the EU ensures a common policy in the areas of asylum, immigration and control standards at external borders with third countries. The EU also works on further developing appropriate measures for the prevention and repression of cross-border crime and enhancing effective cooperation between the state authorities of police services and the judiciary, as well as other relevant state institutions to strive to attain maximum security.

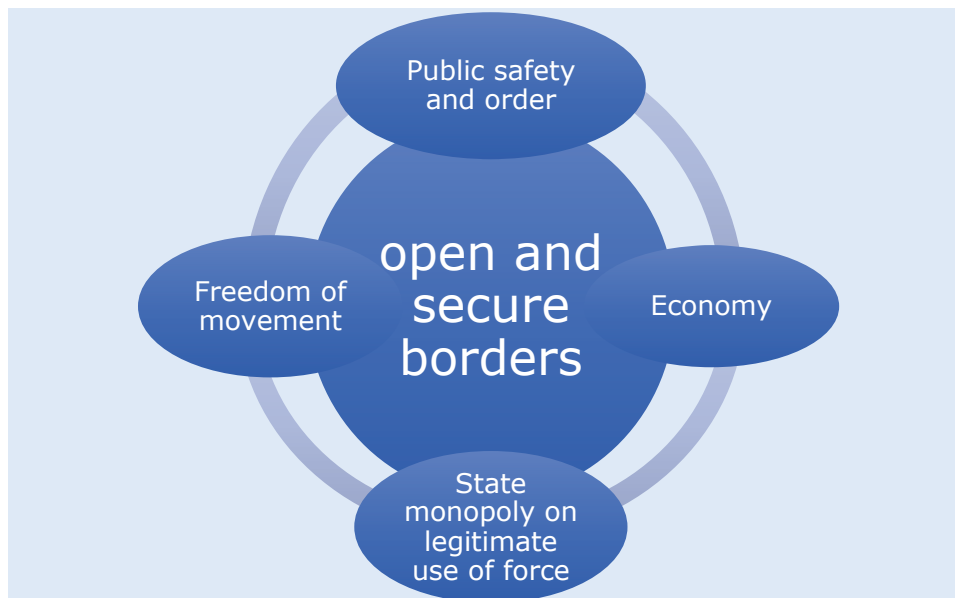
Consequently, the individual areas of interests of the economy and industry on the one hand and the right of free movement on the other are not necessarily contrary to the principles of public security and order and the constitutional enforcement of the monopoly on legitimate use of force. To a greater degree, it can be perceived as an opportunity, as these areas can complement each other.

¹² Federal Agency for Civic Education (*Bundeszentrale für politische Bildung – BPB*) (2009): *Acquis Communautaire* (frz. common vested rights) encompasses all rights and obligations that are binding on all EU MS. This includes both the EU Treaty and the EC Treaty (primary law), on the other hand, the regulations, directives, decisions and recommendations of the EU institutions (EC, the EU and EP Council) were adopted and still be (secondary legislation), and the decisions of the European Court of Justice (ECJ). Available from: <http://www.bpb.de/nachschlagen/lexika/pocket-europa/16627/acquis-communautaire>. (Accessed on 16th August 2016).

¹³ Treaty on the Functioning of the European Union – Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01). Art. 67.

¹⁴ Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15th March 2006 [...] (*Schengen Borders Code*). Art. No. 1 Definitions: 'Internal borders' [...].

Figure 1.2.1. – Open and secure borders (own representation)



1.3. Integrated Border Management – an initial assessment

During the last two and a half decades, the world has dramatically changed and in some areas those changes are ongoing. The collapse of the Soviet Union, wars in South-eastern Europe, the attacks on the World Trade Centre in New York on 11th of September 2001 and the subsequent fight against global terrorism, the radicalisation in parts of Islam, the Middle East conflict, but also the current crisis in the Eastern Ukraine, and the lasting largest influx of refugees after the Second World War are major challenges regarding the protection against threats on the one hand and the adherence of security and peace on the other hand.¹⁵

The establishment of the EU, the creation of the *Schengen* area and the related challenges in terms of ensuring the principle of free movement, all affected in some way the coexistence between European countries and the resulting and necessary interactions.¹⁶

Thereby, the interstate boundaries transform to places and spaces where this interaction literally incarnates physical traits. In recent years, many of these “old” borders have disappeared, and just within the *Schengen* area border buildings and border facilities were formally symbolically demolished for the sake of freedom of

¹⁵ Note from the author: The research focuses here primarily on Europe, Central Asia, North Africa, and the Middle East.

¹⁶ Directive 2004/38 / EC of the European Parliament and of the Council of 29th April 2004 on the right of EU citizens and their family members to move freely within the territory of the Member States and reside amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221 / EEC, 68/360 / EEC, 72/194 / EEC, 73/148 / EEC, No 75/34 / EEC 75/35 / EEC, 90/364 / EEC, 90/365 / EEC and 93/96 / EEC.
Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l33152&from=EN>.
(Accessed on 17th August 2016).

movement. But there were also new boundaries created by the establishment of 25 new countries, such as in south-eastern Europe after the collapse of the former Yugoslavia and the dissolution of the former Soviet Union. All these measures require new approaches in the fields of effective communication, trustful cooperation, consideration of cultural aspects, as well as the compatibility of complex administrative and organisational structures, so that people can move freely and without unnecessary delays. At the same time these open borders should remain impermeable regarding crime, and here in particular cross-border OC, terrorism and FTF, and extremism.

What seems to be impossible at first should be ensured through the instrument of integrated border management (IBM) in order to effectively deal with these new challenges and thereby generate the benefits of globalisation and free trade.

The principle of IBM can be summarised as: National and international coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and integrated border management systems, in order to reach the objective of open, but well controlled and secure borders.¹⁷

This must also be seen in close interaction with the additional implementation of EU-funded projects that are in the narrower and broader context of peace and security, such as the establishment of EU standards and recognised procedures in EU neighbouring countries in the fields of asylum, migration, sustainable integration and reintegration of persons who are returned to their respective countries of origin. More than ten years ago, both the EU MS as well as international organisations such as the Organisation for Security and Co-operation in Europe (OSCE) recognised the urgent need to develop holistic concepts for the implementation of common standards in Europe regarding border surveillance and border control. The involvement and responsibility of the OSCE in the area of crisis intervention and crisis management within the *Ohrid Border Process* (see chapter 12) gained valuable lessons, which led to the development of the OSCE Border Security and Management Concept, whilst relevant EU documents were only partially developed in the same period.¹⁸ These concepts and documents are used in most European countries, in Central Asia, the Caucasus and Turkey.

The following concepts and documents are mentioned in a non-exhaustive list:

¹⁷ IBM Guidelines for Western Balkans (2007): "The principle of IBM [...]." P. 18. Available from: http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/publications/ibm_guidelines_en.pdf (Accessed on 23rd October 2015).

¹⁸ OSCE Border Security and Management Concept BSMC (2005), MC.DOC/2/05 (2005).

- EU *Schengen* Agreement¹⁹
- EU *Schengen* Agreement on the rules governing the movement of persons across borders²⁰
- EU *Schengen* Practical Handbook for Border Guards²¹
- EU *Schengen* Catalogue 1 – External borders control, Removal and readmission²²
- EU *Schengen* Catalogue 2 – *Schengen* Information System²³
- EU *Schengen* Catalogue 3 – Issuing of visa²⁴
- EU *Schengen* Catalogue 4 – Police co-operation²⁵
- EU Integrated Border Management Guidelines²⁶
- OSCE Border Security and Management Concept²⁷
- Police Cooperation Convention for Southeast Europe²⁸
- Stepping up of cross-border cooperation²⁹ (*'Prüm Treaty'*), Council Decision 2008/615/JHA, 2008)

Potential discord with regards to common approaches and methods, such as from the EU and the OSCE, as well as the lack of uniform developments of concepts, strategies and action plans correlate, despite common intersections, with diverse views and priorities of states regarding their territorial limitations and their own geopolitical security and power interests. Hence, different mandates of respective organisations in comparison with the EU have to be taken into account.

¹⁹ Treaty on European Union. Article 2 TEU. ABI 2008, C 115/13 of 9th May 2008. (Hereinafter referred to as "the *Schengen* Agreement") between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic concerning the gradual abolition of checks at the common borders of 19th June 1990 *Schengen* Implementing Conventions Updated version (status: 31st March 2006).

²⁰ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9th March 2016 on a Union Code on the rules governing the movement of persons across borders (*Schengen* Borders Code).

²¹ Commission Recommendation of 06/XI/2006 establishing a common "Practical Handbook for Border Guards (*Schengen* Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons.

²² EU *Schengen* Catalogue 1 (2002): External borders control, Removal and readmission – recommendations and best practices.

²³ EU *Schengen* Catalogue 2 (2002): *Schengen* Information System Sirene – recommendations and best practices.

²⁴ EU *Schengen* Catalogue 3 (2003): Issuing of visa – recommendations and best practices.

²⁵ EU *Schengen* Catalogue 4 (2003): Police Co-operation – recommendations and best practices.

²⁶ IBM Guidelines for Western Balkans (2007): "The principle of IBM [...]." Available from: http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/publications/ibm_guidelines_en.pdf (Accessed on 23rd October 2015).

²⁷ OSCE Border Security and Management Concept BSMC (2005), MC.DOC/2/05 (2005).

²⁸ Police Cooperation Convention for Southeast Europe, also „Vienna Convention“ (2006).

²⁹ Council Decision 2008/615/JHA of 23rd June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (*'Prüm Decision'*).

1.4. Central thesis of the work

Considering the current state of research and on the basis of previous existing concepts, national strategies and action plans, as well as relevant EU documents regarding integrated border management, the following thesis is situated accordingly:

A modern, cost-benefit-oriented and effective border management is to ensure both open borders as well as greatest possible safety and peace and ensuring free travel and free trade, and services - the most important conditions for economic growth while fighting poverty. In parallel, possible dangers caused by transnational threats and transnational OC must be clearly identified and systematically combated in a trusting partnership.

Cross-border cooperation and information exchange is an important element within the overall concept of IBM, which helps to ensure close coordination and cooperation between all relevant authorities and organisations in the areas of border control and surveillance in achieving the jointly defined objectives in terms of open but secure borders. One of the main goals of IBM to open, yet secure borders must therefore be a significant increase of cooperation between all actors involved, both at national and international levels. This applies within the respective border authorities (i.e., intra-agency cooperation), as well as between other involved government departments and agencies of a country (i.e., inter-agency cooperation) and also across borders in a bilateral and multi-lateral context (i.e., international cooperation).

Consequently, two crucial questions derive from the research project and the postulated hypothesis:

- What kind of transnational threats and forms of cross-border crime should be repelled and fought through the system of integrated border management?
- Which instruments and mechanisms should be improved, or developed, in order to ensure modern, effective, and efficient models of integrated border management?

This finding process should identify possible new transnational threats and describe newly established forms of complex transnational organised crime (TOC). The process of creating a better understanding of the dimensions of the major challenges helps to identify, which standards and processes the international community needs to develop, in order to effectively combat the complexity of

these potential threats. On the basis of current assessments of the general and specific situations³⁰, sustainable border management, stable border security and effective border control can only be achieved in an integrated approach, as it combines and involves all ministries and law enforcement agencies both at national and international levels.

Open but safe borders are desirable and very necessary. In return, travellers and even entire societies should expect to incur higher costs through increased security measures, even if this leads to more personal restrictions. This is in addition to investments made by the authorities in order to maintain the current state of modern integrated border management.

1.5. Structure of the work

In the first part, the present work is divided into six sections and 16 chapters. In the second part, all annexes, the tables and figures, list of abbreviations, references, and a list of used legal documents are cited.

The first section introduces the work, addresses the central thesis, and explains the structure. Section two debates on the methodology of the work and explains the set out of mixed working methods, which were applied in implementing the research work regarding the qualitative and quantitative analysis of the content, since the findings of the present work are based on various sources, by means of which the work was elaborated.

Reference is given to the aspect of an accumulative reflection of relevant strategies and action plans, assessments and analytical documents of international organisations in law enforcement and criminal justice related areas to avert transnational threats and counter transnational organised crime as part of primary analytical studies. Another singularity presented the method of open interviews of heads of German and Austrian law enforcement authorities, as well as heads of departments within international organisations (IO's) with thematic relations to border management, border security and border control in averting transnational threats and combating transboundary OC.

The third chapter addresses the terminology of transnational threats in detail, which was established in this context only during the last 10 to 15 years. As in the following chapter the different areas of TNT are listed, analysed and evaluated in

³⁰ Note of the author: The police jargon distinguishes between a general and special situation assessment. While the general assessment plans all daily service operations, a special assessment is carried out in case of sudden danger, for example cross-border crisis management.

a non-exhaustive nature in order to achieve a better understanding of the object of study. Subsequently, the descriptions of transnational organised crime are compared with the forms of TNT and analysed towards similarities and discrepancies. The analysis should generate sensitivity in the determination of TOC and TNT, but also extend the understanding, that national security strategies encompass far more than just the prevention of threats.

The areas of the TNT are complex and range from the maximum credible accidents (MCA), natural disasters, impact of political upheavals, criminal activities, displacement effects due to invasions, and radicalisation towards diseases to humans and animals. To date, a generally accepted definition is lacking with respect to the description of TNT and thus a precise linguistic interpretation of these threatening scenarios. Because of the topicality, with which experts and politicians exchange their views in the prevention of TNT in the international context, this work offers opportunities to specify these TNT areas in their descriptions in greater detail.

In the framework of chapter 4, the work analyses and evaluates various fields of organised forms of crime, gang crime, mafia groups and TOC in order to achieve an overview of the object of study. A historical retrospective was undertaken to illustrate that organised types of crime have developed independently in different cultural, linguistic, territorial and social levels.

It is pointed out here that there exists no singular Mafia per se, but there are criminal groups who commit serious crime in a clear, structured, and organised manner and apply methods of division of labour in various continents and countries. In comparing the respective definitions of OC, both of selected EU MS, EU agencies, the United States (FBI), as well as IO's for matches, variations and unique features are analysed.³¹ Through this comparison ideally a clearer understanding of the delimitation of respective areas should be achieved and result in using definitions in the area of TOC to a more consistent application of each appropriate definition, and thus more precise linguistic interpretation in this regard.

³¹ Federal Bureau of Investigation – FBI. "Mission – As an intelligence-driven and a threat-focused national security organization with both intelligence and law enforcement responsibilities, the mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners." Available from: <https://www.fbi.gov/>. (Accessed on 22nd August 2016).

It has been repeatedly demonstrated in the past that experts and politicians in dialogue within an international context were using supposedly identical terms and expressions regarding combating and curbing TOC, yet different levels of understanding. In addition, reference is made in this fourth chapter on interface problems that have been identified both within the EU but also to other European countries because of different legal systems, legal cultures, or even public administration structures.

In the fifth chapter, from a wide range of possible cross-border organised crime forms and TNT and their described phenomena, the viewing angle is channelled and concentrated on the area of migration. This seemed logical and expedient due to the largest influx of refugees since the Second World War. It should be illustrated, the considerable degree to which migration can be influenced through a constant interaction of political, economic, cultural, social and security related issues. Therefore, definitions are listed in this chapter in a non-exhaustive manner, which should contribute to a more precise interaction and differentiated view of migration considered as a possible transnational threat. In an extra contemplation the distinctions are examined between trafficking in human beings and people smuggling, the phenomenology of immigrant smuggling analysed, and the peculiarities of aiding escapes discussed.

In a synopsis of the initial elaborations, the differences and similarities are described in chapter six, respectively the communalities and also unique characteristics of subject areas are reflected upon. In this analytical discourse of quite large areas of organised forms of crime and TNT, as well as irregular migration, it was an endeavour to analyse comprehensively relevant literature and information by taking into account political debates and at the same time to collect scientifically based facts. One of the key results is to develop a better understanding and a more precise language.

In the fourth section of the empirical analysis of the work several areas of border management are disclosed, compared and described in Europe in the seventh chapter. In this section, both the increased mobility and enormous growth in the numbers of border crossings recorded on the one hand, and the demand for open yet secure borders on the other hand are scrutinised and analysed.

For the first time ideas are taken following the statements, whereby new and innovative approaches are needed to meet the increased expectations regarding an effective and efficient border management, border control and border

surveillance. The trend is: From the boundary line towards the border area, from static to mobile control, from the national to extraterritorial border control.

Here, possible nexus at national levels are debated in terms of public safety and order towards a holistic EU security policy in relation to potential threats by irregular migration into the EU countries. In a supportive manner these legal aspects of the EU legal framework region will be highlighted.

These ascertained cases led not least to the development of the integrated border management model, which will be discussed in chapter eight. It is necessary to note that border officials of the Commonwealth of Independent States (CIS) reject the term IBM and prefer the expression of cooperative, coordinated and/or comprehensive border management.³²

By implementing the IBM guidelines, the reduction of waiting times at border crossing points (BCPs) by optimising the border clearance of travellers and goods is of first priority. Additionally, the awareness and professional behaviour of border control officers should be strengthened through a consequent implementation of IBM regulations. The mentioned aspects are not inconsistent but should lead to a comprehensive understanding of modern border management, both with regards to proximity to its citizens and service assurance. In general, IBM promotes the rights of travellers, as well as raising awareness in the areas of monitoring and profiling and conveys knowledge in the area of migration management.³³ IBM promotes the free movement of goods and the interests of the private sector, thereby increasing the public revenue. All in all, modern border management promotes the respect of human rights, improves mobility, facilitates free movement of goods, increases quality standards in the private sector, and raises tax revenues for the state, and to enhance public safety and order. In addition, IBM will help to meet the UN Millennium Development Goals.³⁴

³² Commonwealth of Independent States (CIS) was created in December 1991. In the adopted Declaration the participants of the Commonwealth declared their interaction on the basis of sovereign equality. At present the CIS unites: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. Available from: <http://www.cisstat.com/eng/cis.htm> (Accessed on 23rd August 2016).

³³ Note of the author: The term *profiling* is not equivalent to the definition of the operational case analysis (German: *Operative Fallanalyse* - OFA), which according to Hoffmann and Musolff (2000, Case Analysis and Criminal Profile, p.18): „[...] the criminal profile an extensive description outlines of a yet unidentified offender, which is derived from the reconstruction and interpretation of his actions and behaviour [...].” Moreover, profiling is the first and quick assessment of the person in the context of the travel group, travel agents and travel route, and their personal belongings and relevant questions during the border control. Occasionally, the term screening is used instead of profiling.

³⁴ UNDP (2015): United Nations Development Programme Millenniums Goals. Available from: http://www.undp.org/content/undp/en/home/sdgoverview/mdg_goals.html. (Accessed on 28th September 2016).

Following the described compensatory measures developed due to the elimination of stationary border controls within the *Schengen* area, further EU agencies and their specific programs are presented in the ninth chapter, which have a direct relation to the creation of the *Schengen* area and to protect the EU's external borders. Within the framework of compensatory measures created by the EU, the border agency Frontex is **the** EU agency with a mandate to protect the EU's external borders. Its importance, mandate and the diversity of the tasks are described in the tenth chapter of this work. It should be emphasised that Frontex is neither a Border Guard nor a Border Police service without any political formation competences but has clearly demarcated power to conduct and accomplish BSM related operations. Frontex is primarily responsible to support EU MS in the preservation of effective protection of external borders of the EU and to enhance the prevention of threats to others' lives, and fighting cross-border OC, TNT and irregular migration.

In the context of an assessment of the national level towards the EU level and proceeding to third countries, chapter 11 is devoted to the possibilities and potential instruments of police cooperation at an international level, both within the EU and with third countries. In this area initiatives and models are presented that have been developed and established during the past 25 years. The elaborations will introduce inputs to the genesis for a better understanding of why international police cooperation is so important, where interface problems are lying, and potentials for expansion exist. Many BSM related instruments have been developed and stand ready for utilisation. However, these circumstances are often unknown, and malfunctioning communication facilitates the ineffective application of these tools. It is the complexity of a high-tech world, the speed of exchange of information, and the vast range of implemented international police projects on the one hand, and highly mobile and flexible organisational structures of transnational active OC groups on the other hand, which can be hardly compensated for.

In the further course of the work a successful model is described in section five, chapter 12, in the area of international cooperation in relation to crisis and intervention management. The example of the *Ohrid Border Process* (OBP) initiative aims to show, how external support helped to overcome serious inter-state crisis and simultaneously promoted international cooperation particularly in the areas of border management, border security, border control and exchange of

information and how concerted actions and interventions led to success. The OBP initiative is a very good example of what lessons can be drawn from such initiatives and which workflow processes have been proven in post-conflict regions, according to lessons learned and best practices developed.

For the sake of completeness not only are EU agencies introduced in relation to modern border management in the EU and its neighbouring third countries, but also other important actors to combat TNT that are presented and described in chapter 13 of the work. First and foremost, the wide-ranging activities of the OSCE are presented that have developed the OSCE Border Security and Management Concept (BSMC) in 2005, which is considered as an outstanding document in the overall area of BSM. The BSMC was developed and approved by its 57 participating States, but without legal binding character. Moreover, the OSCE has also established a common centre of excellence for education and training in the areas of BSM, border control and surveillance in 2009. This centre is based in Dushanbe in Tajikistan and other organisations such as ICMPD, INTERPOL, IOM, UNCTED, UNOCT, UNHCR, UNODC, WCO and others are partners for cooperation in relevant BSM areas.

Existing instruments in combination with interesting aspects of innovative BSM models are presented in chapter 14 as new forms of border control. It's about the physical relocation of control activities from a national territory into other sovereign territories that are directly related to border police management - the extraterritorial border management and their upstream controls.

In the sixth and last section of the work in chapter 16, a final examination will discuss and introduce findings with regards to the dimensions and the enormous challenges and interventions in the areas of a modern border management, border security, border control and border surveillance. Security and freedom in relation to open and at the same time secure borders are finally compared and the author's perspectives will be introduced in terms of very necessary recommendations.

Section 2 – Methods

The dissertation constitutes an in-depth analysis as to which border security and management (BSM) mechanisms and procedures effectively enhance border control and border surveillance standards in Europe. Furthermore, it contributes to an ongoing academically-driven policy debate regarding the identification, emergence and development of possible new indicators towards the sustainable development and establishment of joint strategic approaches of the community of states in averting transnational threats and combating new dimensions of transnational organised crime, as well as their possible barriers and limitations. The methodological approach adopted in pursuit of these objectives includes a number of triangulating components, which are set out in detail, following a preliminary justification of the overall methodological rationale.

Chapter 2: Methodical structure of the work

2.1. General methodological approach

To answer the questions formulated in chapter 1.4. of the work, the method of mixed research was chosen in terms of scientific research.³⁵ This multi-method approach primarily focused on qualitative data that were gathered from various sources such as legislation, conventions, official documents, national BSM strategies and action plans, statistics, interviews, accumulative reflections of unclassified reports approved by international organisations, as well as multiple groups of participants for technical discussions. On the basis of these findings from qualitative data (see dataset 1 and 4), a number of subsequent studies were undertaken into specific topics, namely characteristics of TNT and TOC and their similarities and discrepancies, and intersecting sets of definitions. The quantitative data (see dataset 2 and 3) was used to help in the interpretation of the findings in the qualitative phase (see dataset 1 and 4). Thus, the project used a multi-method approach with a combination of qualitative and quantitative methods. Amongst others, qualitative methods were applied in the preparation of comparisons of definitions and their individual and common characteristics, document analysis, as well as review of semi-structured interviews and technical discussions. Quantitative methods were, amongst others, analyses of official statistics, determination of openly accessible documents for review and accumulative reflection, as well as identification of relevant actors in the area of BSM. The overall

³⁵ Cresswell, John / Plano Clark, Vicky (2009): Research design. Qualitative, quantitative, and mixed methods approaches (3rd ed). Thousand Oaks: Sage

data collection was not based on a strict course determined before the commencement of the project, but followed a more flexible strategy of partly pre-determined and partly emergent topics.

According to Creswell and Plano Clark this approach enables a greater degree of understanding to be formulated than if a single approach were adopted to specific studies. They also put forward a collection of core characteristics, which highlight key elements within mixed methods research. They state that researchers collect and analyse both qualitative and quantitative data in a sequential and/or simultaneous, and rigorous manner, which integrates the two forms of data. The way in which this data is combined will depend upon the nature of the inquiry and the philosophical outlook of the person conducting the research. Burke Johnson defines this method as: "... the type of research in which a researcher or team of researchers combine elements of qualitative and quantitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the broad purposes of breadth and depth of understanding and corroboration."³⁶

In terms of quantitative analyses, a continuous, comprehensive and widespread collection of relevant data and statistical information in the areas of BSM, TNT, TOC and migration-related issues and associated analysis, both from EU MS ministries and their relevant departments, as well as from international organisations, was important throughout the entire research project to get a comprehensive overview of statistical data. Case studies were applied as comparative examples and methods in conjunction with the research questions, its propositions and units of analysis, a determination of how the data are linked to the propositions and criteria to interpret the findings.³⁷ The case studies provided important quantitative details for the comparison of definitions and descriptions and their specific characteristics in relation to potential communalities or distinctions in the areas of TNT, TOC, OC, as well as the weaknesses of state's law enforcement agencies. Furthermore, case studies unfold quantifiable data after the reinstallation of stationary border checks during a determined period of time and provided important facts about international organisations and their particular engagement in the overall area of BSM and IBM.

³⁶ Johnson, Burke R. / Onwuegbuzie, Anthony J. / Turner, Lisa A. (2007): *Toward a Definition of Mixed Methods Research*, P.123.

³⁷ Yin, Robert K. (1994): *Case study research: Design and methods* (2nd ed.). Newbury Park, CA: Sage Publications. A case study is an empirical inquiry that (i) investigates a contemporary phenomenon within its real-life context, especially when (ii) the boundaries between phenomenon and context are not clearly evident.

As a method of research, further a series of semi-structured interviews were held. This allowed interviewees to exchange their views and bring up new ideas through technical discussions with a purposive sample of senior experts from BSM law enforcement agencies to gain in-depth knowledge from their views on how to effectively prevent TNT, effectively fight TOC and combat irregular migration and other forms of cross-border crime in particular. A general framework for the semi-structured interviews was developed and specific topics were thought about well and grouped in advance for addressing questions in various ways for different participants (see Annex 12 for the interview guideline). Between 2014 and 2017, the author held 15 interviews in total with heads of special law enforcement departments to combat TOC, border police services and immigration services, both from EU MS and non-EU countries, as well as experts from IO's in the fight against TOC and THB, and people smuggling. An indicative interview together with a sample transcript with one of the actual encounters is attached as a specimen in the course of most relevant questions addressed (see Annex 12 and 12a).

In addition, the method of an accumulative reflection was applied for research and review of documents developed from competent ministries and their departments from EU MS and non-EU countries, as well as international organisations. In particular, during the period of 2014 and 2017 the diversity of the documents reviewed included national strategies and action plans, assessments and risk analysis in the area of BSM, both at operational and managerial levels, to identify the number of good practices developed based on lessons learned in security-related areas to avert TNT and counter TOC. However, that also included important BSM-related documents, which have been developed long before 2014, for example the EU *Schengen* catalogues 1 to 4, Handbook on Border Control and OSCE Border Security and Management Concept. Among other things, important BSM-related documents and international conventions were reviewed that have been developed by the UN, EU, EU Commission and the OSCE. A total of 27 documents, such as assessments, risk analysis reports, national BSM strategies and action plans were reviewed and analysed if they are in line for example with EU legislation and official documents (dataset 1 and 4) and secondary data (dataset 2 and 3). This mixed method was considered as the best approach to answer the research questions from chapter 1.4 as applied triangulation of various methods and perspectives to cross-validate and confirm relevant findings of in-depth analysis and case studies, and gain relevant information to conduct the

research and to compare the relevant practices. The advantage was seen by using different methods to overcome a weakness in using one method (e.g., the application of semi-structured interviews with senior law enforcement experts as a general method) with the strength of another method (e.g., the exact quantitative analysis of statistical data gained during the reinstalled border control during the G7 summit, see chapter 7).

The general methodological approach of this project can be summarised as follows:

- Mixed-method approach employing qualitative and quantitative methods
- Contrasting juxtaposition of relevant definitions and descriptions in the fields of TNT and TOC
- Exploratory case studies taking into consideration the reciprocity of gained data from dataset 1 and dataset 2
- Semi-structured interviews of and technical discussions with senior experts in the fields of BSM, TNT, TOC and migration management
- Accumulative reflection of official documents and reports approved by international organisations
- Primarily parallel combination of methods during the data collection

2.2. Data collection

2.2.1. Dataset 1: Legislation and official documents

Qualitative data (see dataset 1 and 4) were collected and analysed and the specific topics compared such as the formal criteria describing TNT and TOC and their similarities and discrepancies, and intersecting sets of definitions. During the course of the research process, legal documents and administrative provisions were systematically analysed in accordance with the respective legal facts, jurisprudence and instruments in the area of border management, border security, border control and border surveillance, and reflected upon.³⁸ The compilations of the reviewed documents, which were included in the content analysis, do not claim to be complete. On the contrary, it was the proviso to use official documents in a comprehensive manner in order to analyse as many mechanisms and instruments as possible with regards to modern border security and management, border surveillance and border control, and to examine their effective functioning together with identifying gaps. A comprehensive and continuous review of relevant literature was an integral part of the research work throughout the entire duration of the project starting from 2014 until 2017. In total, more than 100 documents

³⁸ Ibid. P.29.

were selected by the author for review and analysis, described in the continuous text and explicitly cited in the corresponding footnotes, as well as listed in detail in the references.

In a brief synopsis, most relevant reviewed and analysed national legal documents were the German Constitution, Criminal Code, Code of Criminal Procedure, Residence Act, Asylum Procedures, various Police Acts, and other relevant laws in relation to prevent TNT and combat TOC and irregular migration. Furthermore, international conventions and regulations from the UN, OSCE, EU including *Schengen* documents, were reviewed, analysed and cited accordingly. The criteria for selection was that documents were published from organisations dealing with BSM-related issues in the cross-border context (i.e., supranational organisations, EU agencies, OSCE, UN agencies, other IO's), published in the period from 2005 to 2017 to ensure that considerations and discussions are up to date. All viewed documents had a direct reference to BSM in general and TNT, TOC and migration management in particular. In addition, more documents were identified based on own expertise, knowledge gaining and expert judgements (i.e., subject matters experts) during the semi-structured interviews of and consultations with other experts in these fields for collating the most relevant documents (i.e., those most influential and most often viewed for decision making on an European level) in the areas of TNT, TOC, BSM and migration management. Documents were excluded that dealt purely with national BSM-related legislation and lacked cross-border references. Documents were disregarded that were published by political parties and organisations known to carry a political agenda. The document language was either English or German and available in hard copy, open sources (online) and unclassified.

The advantage of an extensive document analysis was seen in the easy accessibility to BSM-related records from EU MS, non-EU countries and international organisations (i.e., EU agencies, UN agencies, OSCE and others). A single document analysis by studying the accessible documents on the basis of border-political processes was considered as insufficient in a possible reduction to exclusively formal processes.

With his background of legal education³⁹ and the suggestions gained through consultations with other experts, the author applied the following in the methodical

³⁹ Note from the author: The author holds a Bachelor Degree in public administration law, law enforcement and criminal investigation, police management and leadership and a Master Degree (with distinction) in Strategic Security Management.

elaboration of the monograph to:

- identify, select and analyse relevant sources of legislation (six documents)⁴⁰,
- identify and select most important international conventions (four documents)⁴¹,
- identify, select and analyse relevant EU treaties and regulations (eight documents)⁴²,
- study security strategies of the EU, individual EU MS, as well as international organisations (fifteen documents)⁴³,

⁴⁰ Note from the author:

See the Federal Ministry of Justice and Consumer Protection.

- a) German Constitution of 23rd May 1949 (*BGBI.* p.1), as last amended by the Act of 11th July 2012 (Federal Law Gazette I, p.1478).
- b) German Criminal Code (*StGB*) as a reference book in its current version (current law: 2nd May 2013).
- c) German Code of Criminal Procedure (*StPO*), as amended by the notice of 7th April 1987 (Law Gazette I, 1074, 1319), which was last amended by Article 2 (3) of the Law of 21st January 2015 (Federal Law Gazette I, p.10) has been amended.
- d) Residence Act in the version of the notice of 25th February 2008 (Federal Law Gazette I p.162), which has been amended by Article 1 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439).
- e) Asylum Procedures Act as amended by the notice of 2nd September 2008 (Federal Law Gazette I, p.1798), which has been amended by Article 2 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439).
- f) Act on the Tasks and Powers of the Bavarian State Police, as amended by the notice of 14th September 1990 (last modified amendment of 22nd July 2014).

Available from: <http://www.gesetze-im-internet.de/> (Accessed on 19th October 2016).

⁴¹ Note of the author:

See International Conventions:

- a) United Nations General Assembly in Paris on 10th December 1948. General Assembly resolution 217 A. Universal Declaration of Human Rights (UDHR). Available from: <http://www.un.org/en/universal-declaration-human-rights/> (Accessed on 19th October 2016).
- b) OSCE BSMC (2005), MC.DOC / 2/05 (2005). Available from: <http://www.osce.org/mc/17452> (Accessed on 19th October 2016).
- c) Convention on Police Cooperation in South-Eastern Europe (2006) also 'Vienna Convention'. Available from: <http://www.pccseesecretariat.si/index.php?page=documentspcc&item=35> (Accessed on 19th October 2016).
- d) UNHCR (1951): Agreement on the Status of Refugees of 28th July 1951. Available from: <http://www.unhcr.org/4ca34be29.pdf> (Accessed on 19th October 2016).

⁴² Note from the author:

See EU documents relevant to border control, border surveillance and information exchange.

- a) 'Prüm Treaty' (2005): Simplified cross-border cooperation.
- b) *Schengen acquis* referred to in Article 1 (2) of Council Decision 1999/435 / EC of 20 May 1999.
- c) Convention implementing *Schengen* (1985).
- d) The *Schengen* border code (2006).
- e) *Schengen* Catalogues 1-4.

⁴³ Note of the author:

See Strategies:

- a) European Commission (2012): The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.
- b) European Union (2016): Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy.
- c) Federal Ministry of the Interior Austria: The Austrian Security Strategy 2013 and 2016.
- d) Federal Ministry of the Interior Germany: The German Cybercrime Security Strategy in 2011 and 2016.
- e) ICMPD (2016): Strategy to combat THB.
- f) IOM (2016): Strategy to combat THB.
- g) OSCE (2003): The Maastricht Ministerial Council's OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century.
- h) European Security Strategy (2009): Chapter I - Global Challenges and Threats.
- i) European Security Strategy EU Council (2010): A secure Europe in a better world.
- j) Official Journal of the European Union (2000): Acts adopted pursuant to Title VI of the Treaty on European Union, 2000 / C 124/01. The prevention and control of organised crime: an European Union strategy for the beginning of the new millennium.

- narrative review of relevant annual reports of German federal authorities and international organisations (see below) from 2006 to 2017 with regards to TNT, TOC, asylum systems and migration, as well as their relevance to public security and order, review relevant political editorial, compare openly accessible EU MS strategies and concepts as well as documents of international organisations, as well as articles and essays of specialist journals (80 documents)⁴⁴.

In addition to the subject-relevant and up-to-date literature, important German legislation, such as the Constitution, Criminal Code (*Strafgesetzbuch - StGB*), Code of Criminal Procedure (*Strafprozessordnung - StPO*), Residence Act and Asylum Procedures Act and their corresponding implementing regulations, the Federal Police Act, Law on the Tasks and Powers of the Bavarian State Police, as well as other important legislation were studied carefully and taken into account (24 documents⁴⁵), since this legislation is crucial for all assessments to be undertaken

k) European Commission (2014): Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions. Enlargement Strategy and Main Challenges 2014–15.

l) OSCE (2005): OSCE SEC.GAL/99/05 9th May 2005: 2005 ANNUAL SECURITY REVIEW CONFERENCE BACKGROUND DOCUMENT. Efforts and activities in line with the OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century.

m) United Nations Global Counter-Terrorism Strategy. UN Resolution adopted by the General Assembly on 8th September 2006 without reference to a Main Committee (A/60/L.62)] 60/288.

⁴⁴ Note from the author:

Not all 80 documents will be listed here. Therefore, an extract of reviewed annual reports from German federal authorities and international organisations are listed, such as:

- a) Amnesty International (2014): Annual Report 2014. Universal Declaration of Human Rights - Article 5 "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." [...].
- b) BAMF (2016): Migration, Integration, Asylum Political Developments in Germany 2015 Annual Policy Report by the German National Contact Point for the European Migration Network (EMN).
- c) DCAF (2017): Annual Report by the Director (2003): Point 3.2. Border Security Activities.
- d) Deutsche Hochschule der Polizei (2012): Annual Report 2012 [...].
- e) Eurojust (2016): Annual report 2015. ISBN 978-92-9490-074-6.
- f) Federal Criminal Police Office (2015): Annual Report 2013.
- g) Frontex (2014): Annual Risk Analysis Report 2014.
- h) [...] other documents are listed in the references.

⁴⁵ Note from the author:

German laws reviewed were:

- a) Asylum Procedures Act as amended by the notice of 2nd September 2008 (Federal Law Gazette I, p.1798), which has been amended by Article 2 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439).
- b) Act on the Tasks and Powers of the Bavarian State Police, as amended by the notice of 14th September 1990 (last modified amendment of 22nd July 2014).
- c) Act on the Federal Criminal Police Office (*Bundeskriminalamtgesetz - BKAG*) from 31st August 2015 (BGBl. I p.1474).
- d) Federal Constitutional Court (2012): *Urteil des Bundesverfassungsgerichts zum Asylbewerberleistungsgesetz* ECLI: EN: BVerfG: 2012: Is20120718.1bvI001010
- e) Federal Police Act of 19th October 1994 (Federal Law Gazette I, p.2978, 2979), last amended by Article 1 of the Law of 21st June 2005
- f) German Constitution of 23rd May 1949 (BGBl. p.1), as last amended by the Act of 11th July 2012 (Federal Law Gazette I, p.1478).
- g) German Criminal Code (*StGB*) as a reference book in its current version (current law: 2nd May 2013).
- h) German Code of Criminal Procedure (*StPO*), as amended by the notice of 7th April 1987 (Law Gazette I, 1074, 1319), which was last amended by Article 2 (3) of the Law of 21st January 2015 (Federal Law Gazette I, p.10) has been amended.
- i) German Customs Administration Act (*ZollvG*): "Customs Administration Act of 21st December 1992 (Federal Law Gazette I, p.2125, 1993, p.2493), most recently amended by Article 6 of the Act of 21st July 2012 (Federal Law Gazette I p.1566)". Part I Entry of goods traffic. Section 1 Tasks of Customs Administration.

in the overall area of border security, management, control and surveillance, as well as for inter-agency cooperation, cross-border cooperation and information exchange in accordance with the principles of rule of law and democratic jurisdiction. Educated as a German civil servant in public administration law, police management and leadership, the author quoted the German legislation as a solid example to discuss the relevant phases for a legal assessment in a competent manner as well as splitting up the individual steps of border crossing in alignment with German legislation, as well as the EU *acquis* and *Schengen* border control standards.

A further important area for this work was the analyses of politically oriented documents in order to not only pursue legal assessments, but also to take into consideration aspects of interculturality, society, economy, policies and contemporary events. Therefore, a continuous narrative review was carried out towards leading articles from national competent authorities and institutions as well as international organisations, which were regarded as leading institutions by a vast majority of subject matter experts, namely the Federal Centre for Political Education (*Bundeszentrale für Politische Bildung - BPB*); monthly, biannual and annual reports of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge - BAMF*); the Federal Police, Federal Criminal Police Office (*Bundeskriminalamt - BKA*); the State Offices for Criminal Investigations (*Landeskriminalämter - LKA*); International Centre for Migration Policy Development (ICMPD); International Crisis Group (ICG); International Organisation for Migration (IOM); Organisation for Security and Co-operation in Europe (OSCE); United Nations Refugee Agency (UNHCR); various United Nations departments to counter terrorism, such as United Nations Office of Counter-Terrorism (UNOCT), United Nations Counter-Terrorism Implementation Task Force (CTITF), United Nations Counter-Terrorism Centre (UNCCT) and United Nations

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- j) Law on the Federal Police (*BPolG*) § 2 Border Protection. *BPolG* of 19th October 1994 (Federal Law Gazette I, p.2978, 2979), most recently amended by Article 4 of the Article of 20th June 2013 (Federal Law Gazette I, p.1602). Last amended by Article 4 G v. 20.6.2013 I 1602.
 - k) Passport Act (*PassG*) of 19th April 1986 (Federal Law Gazette Part I p. 537), as last amended by Article 8 of the Act of 25th July 2013 (Federal Law Gazette Part I p.2749
 - l) Police Organisation Act (*Polizeiorganisationsgesetz - POG*) in the amended version, as published in the Bavarian Law Gazette (*BayRS 2012-2-1-I*), which was last amended by Article 10b (1) of the Act of 23rd June 2015 (GVB page 178).
 - m) Residence Act in the version of the notice of 25th February 2008 (Federal Law Gazette I p.162), which has been amended by Article 1 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439).
 - n) 11 by-laws for the implementation of the afore mentioned laws.

Office for Drugs and Crime Control (UNODC) at the international level (60 documents in total).

Additional analyses were focused on central EU documents related to border management, control and surveillance, as well as on cross-border cooperation and information exchange between the respective specialised EU agencies and national authorities of the EU MS, which were listed under point 1.3. (11 documents). Furthermore, the EU Treaty of Lisbon, the Charter of Fundamental Rights of the EU, the UN Charter on Human Rights, as well as important international conventions such as the Geneva Convention for Refugees, the Palermo Convention related to TOC and THB, as well as the Vienna Convention on cross-border police cooperation have been consulted and studied carefully in order to determine to what extent gaps exist and how they can be harmonised with other relevant important documents (see point 4.5.1.; six documents in total). The analyses of the aforementioned relevant documents and scientific literature (more than 100 documents and articles) were completed in March 2017; the last access to open sources was in April 2017.

2.2.2. Dataset 2: Secondary Data

Quantitative data (see dataset 2 and 3) were collected, reviewed and analysed for the interpretation of the findings of qualitative data (see dataset 1 and 4). The results of the analyses helped to understand why different descriptions and definitions of TNT and TOC lead to ineffectiveness and are counterproductive. Simultaneously to all data gained under point 2.2.1. secondary data were gathered that provided complementary information, which were necessary to corroborate the implementation of security-related activities in the overall area of BSM based on statistical data for the completion of an overall assessment. In the further course, qualitative (dataset 1 and 4) and quantitative secondary data (dataset 2 and 3) were collected in a sequential and/or simultaneous manner and compiled predominantly from periodical reports (i.e., annual, bi-annual, quarterly, monthly) and ad-hoc reports from competent EU agencies, as well as international organisations, which are acknowledged as leading institutions by a vast majority of subject matter experts, namely the European Commission, EU and its specialised agencies Eurojust, EUROPOL, Eurostat, Eurosur and Frontex, IATA, ICAO, ICMPD, ICG, INTERPOL, IOM, OSCE, UNHCR, various United Nations departments to counter terrorism and FTF, such as UNCTITF, UNCCT, UNOCT, UNODC, as well as WCO, WHO and WTO at the international level. Further data

were collected from national EU MS ministries and their departments, as well as law enforcement agencies involved in BSM-related issues as mentioned before, for example, in the areas of combating TOC, refugee flows, irregular migration and asylum, citable events of the TOC, as well as outstanding phenomena of the TNT-related scenarios throughout the entire duration of the research project (for example see point 7.6.). During the period from 2014 to 2017, a total of 35 documents were reviewed and analysed as secondary data that provided important complementary information. This was considered as necessary to corroborate the implementation of security-related activities in the overall area of BSM based on statistical data for the completion of an overall assessment.

Furthermore, in a continuous manner online articles from BBC, DPA, The Economist, New York Times, n-tv, Reuters, German and Austrian on-line news platforms were analysed during 2014 and 2017. This was considered as important in terms of getting updated on the current day's events, for example related to the mass influx of refugees coming from Greece, through FYROM, Serbia, Hungary, Austria to Germany starting from 2015, waves of refugees and irregular migrants coming from countries in the Middle East and North Africa, erratic increase of asylum seekers from South Eastern European countries, citable events related to TOC, as well as outstanding phenomena of the transnational threat scenarios reported by news agencies (for example see point 5.6.5.). All secondary data were collected through freely accessible sources and unclassified documents of these aforementioned EU authorities and IO's. Finally, 15 additional assessments and risk analysis reports from the EU, European Commission, OSCE, UN, UNODC, UNOCT, UNCCT, universities and other international organisations were reviewed to identify quantitative and qualitative data for the period from early 2000 to 2017. These assessments and risk analyses were reviewed for secondary data and complementary information and considered as important to corroborate the implementation of BSM-related activities based on numbers and figures for the completion of an overall assessment.

2.2.3. Dataset 3: Case studies

Case studies were chosen as important approach to collect quantity data for in-depth studies to achieve an up-close and detailed examination of significant aspects of those phenomena relevant to contextual conditions in relation to BSM-related issues. As a result of this, the case studies will provide a better understanding of the complexity of the chosen BSM-related topics with regards to

their characteristics, descriptions and definitions, their varieties and communalities, particularly focusing on the areas of TNT and TOC, since there were either no definitions developed or adopted so far. Furthermore, the case studies elaborated on new challenges identified within the framework of datasets one and two. The subsequent case studies were selected within the overall research work as an empirical inquiry that investigates the phenomena within the real-life BSM context. In particular, the selection of these cases aimed to emphasise the few similarities of characteristics of existing definitions in the areas of BSM in general and TNT and TOC in particular and underline eventual reasons for malfunctioning communication and interface problems in the area of inter-agency cooperation, both at national and international level. Furthermore, it was important to illustrate the comprising implications of failing, failed and collapsed states and the resulting effects on BSM systems of the EU and non-EU countries. On another note, it was interesting to comprehend the huge number of crimes detected after reintroducing stationary border controls during G7 summit in 2015. Finally, other case studies provide a better understanding of the engagement of international organisations in the overall area of BSM and new models to be developed in terms of information exchange and cross-border cooperation. The following multiple case studies included quantitative evidence, relies on multiple sources of evidence and benefits from theoretical propositions, and was seen as a research approach, placed between concrete data talking methods and methodological paradigms.

1st case study – Comparative analysis of TNT and TOC

EU MS's law enforcement agencies and IO's define TNT and TOC in various ways and no all-in-one definition is available so far. Consequently, the project analysed descriptions and definitions and their relevant characteristics of the EU and its specialised agencies (i.e., Frontex, EUROPOL, Eurodac, Eurojust), EU MS, non-EU countries, the UN and its specialised agencies (i.e., INTERPOL, IOM, UNHCR, UNODC, UNOCT), as well as IO's (i.e., OSCE). The study examined basic statements, individual characteristics, common features and distinctions on how to achieve conformity and identify common overlaps between existing definitions and descriptions, as well as presenting, in detail, special distinguishing characteristics. The number of analysed definitions, descriptions and data are described in chapter 4, point 4.6. Therefore, 44 different characteristics were compared and examined related to distinctions and communalities in the areas of TOC and TNT and confronted in Annex 3. Furthermore, a number of most relevant

OC definitions of EU MS, non-EU countries and international organisations were listed for comparison in Annex 5.

2nd case study – Comparative analysis of OC definitions

On the basis of the 1st case study, findings of the analysed characteristics, descriptions and definitions of what is TOC with regard to communalities, distinctions and special distinguishing characteristics, were then reflected in the 2nd study case. The examination provided a more detailed overview and clear distinction of what are the organised forms of crime, what is gang criminality and cross-border organised crime, organised crime groups are heterogenic phenomena, ethnic groups and their OC fields and the meaning of the term *Mafia*. The research work explored common areas as well as identified specific characteristics (see point 4.1., 4.2. and 4.3.). Therefore, OC definitions of EU institutions, international organisations and EU MS were compared on the basis of 10, respectively 11 different characteristics related to communalities and distinctions and checked for consistency in table 4.6.1. and table 4.6.2. Details on the case materials and analysis are described in chapter 4.

3rd case study – Analysis of fragile, failed and collapsed states

The rise and fall of national states are not new. The national states analysed in the 3rd case study failed because they were exposed to shocks of violence, mostly from inside as well as from outside, and can no longer deliver good governance and public safety and order to their inhabitants. These governments lost legitimacy and the very nature of the particular nation-state itself becomes illegitimate in the perception of a growing plurality of its citizens. In a time of increasing TNT, TOC and terrorism, the nature of and response to the dynamics of nation-state failure have become central to BSM-related strategy and policy debates. How best to strengthen existing BSM systems and infrastructure, both in EU MS and non-EU countries, as well as weak states and prevent state failure are among the urgent questions of this work. Failed and/or collapsed states in combination with the proliferation and prevalence of organised crime groups in the fields of THB and people smuggling and other related cross-border crime generate serious and harmful implications for other states. Examples of failing, failed and collapsed states in Middle East and North Africa and the ramifications towards Europe were examined more closely (see point 3.6.). Further information on the examination of analytical data is provided in chapter 3.

4th case study – Analysis of reinstalled border controls in the *Schengen* area

The 4th case study can be seen as a good example of why secondary data was required parallel to the data gained under point 2.2.1. The results of these analyses provided facts in the context of the implementation of BSM-related control activities and the statistical data of investigated crime. As an example, on the basis of Article 2 of the *Schengen* Agreement stationary border controls were re-established between Germany and their neighbouring states during the G7 summit in the period from 28th May to 8th June 2015.⁴⁶ As a result of this, the Federal Police reported that more than 200,000 people were checked and nearly 9,000 offences were detected, such as against the Residence Act, Asylum Procedures Act, Narcotics Act, forgery of documents and visa, as well as search hits from the national manhunt as well as EUROPOL and INTERPOL databases (e.g., reinstalled border control during the G7 summit, see chapter 7). In the context of the undertaken border controls, other criminal offences were also identified and reported in accordance with the relevant legal requirements. This case study illustrates clearly that the package of developed compensatory measures (see chapter 9) cannot entirely replace stationary border checks. All collected and analysed data can be seen under point 7.6.

5th case study – Analysis of IO's and their engagement in IBM-related issues

International organisations and their particular engagements in the areas of BSM and migration management, the prevention of TNT and the fight against TOC were analysed. Certain organisations were selected because of their specific mandate, duration of involvement in current interstate crises, as well as orientation in the development of new approaches to current phenomena in BSM-related issues and irregular migration. Supranational organisations and their intergovernmental cooperation in the context of BSM, IBM, migration management and relevant efforts to prevent TNT and fight against TOC describe forms of collaboration, information exchange and their interconnections with involved states.⁴⁷ In chapter 13, formalities of cooperation between these supranational organisations and governmental entities based on agreements and regulations were examined, whereby the states retain their full sovereignty and make their decisions according

⁴⁶ Bavarian government (2015): Notification of the Bavarian State Government on the organisation and holding of the G7 summit in Garmisch-Partenkirchen at Ellmau Castle in the period from 7th to 8th June 2015. Available from: <http://www.bayern.de/staatsregierung/g7-gipfel-2015> (Accessed on 20th December 2016).

⁴⁷ Thiemeyer, Guido (1999): *Supranationalität als Novum in der Geschichte der internationalen Politik der fünfziger Jahre*. P.5–21.

to the consensus principle while maintaining their veto rights.⁴⁸ Table 13.8.1. provides an overview of international organisations, their thematic engagement and target groups, as well as duration of involvement in countries and regions.

6th case study – Review of the Stability Pact

The Stability Pact was established in 1999 at the initiative of the EU with the aim of establishing and reinforcing peace and security in South-Eastern Europe and involved countries and international organisations as partners. The international community introduced the Stability Pact for South-East Europe as a comprehensive initiative to prevent inter-state conflicts and TNT. Within this framework, the *Ohrid* Border Process initiative was implemented as a model for successful intervention and crisis management through external target-oriented promotion of regional cooperation in the area of BSM that specifically focused on strengthening inter-agency cooperation, border surveillance, border control and information exchange. During his assignment as senior border adviser within the OSCE from 2005 to 2009, the author was the nominated expert representing the OSCE's borders unit in the Working Table III. All information and data were collected in an unclassified manner (see point 12.1.) and all materials reviewed in connection to case study 5 and their analysis are described in chapter 12.

7th case study – Review and analysis of the OSCCP

Based on the findings of the 6th case study on the subject of the *Ohrid* Border Process further analyses were undertaken in the context of the OSCCP (Organisation for Security and Co-operation in Europe for South-East Europe Cross-Border Co-operation Program), where the OSCE developed a successful model and relevant standards in the area of BSM (i.e., border management in integrated, coordinated, cooperative, or comprehensive manner) and cross-border crisis intervention management. The OSCCP was implemented in cooperation of several international organisations and relevant governmental authorities in South-East Europe and the author was involved as the OSCE focal point. All collected information and data were gained in open accessible sources, which are not classified and described in point 12.2. of the work.

⁴⁸ Große Hüttmann, Martin / Wehling, Hans-Georg (ed.) (2013): *Das Europalexikon*. 2. Updated edition Bonn: Dietz 2013.

8th case study – Advanced passenger information

In September 2006, UN Member States unanimously adopted a new UN Global Counter-Terrorism Strategy⁴⁹ that contains practical recommendations in four key areas:

- tackling the conditions conducive to the spread of terrorism,
- preventing and combating terrorism,
- building countries' capacities to prevent and combat terrorism and strengthening the role of the United Nations system in that regard, and
- ensuring respect for human rights for all and the rule of law while countering terrorism.

For this reason, the UNCTITF working group was tasked to develop a paper that focuses on two specific aspects in the overall area of BSM designed to combat terrorism and cross-border organised crime, namely preventing the movement of terrorists and dangerous criminals in the air travel environment. A pictorial representation of the process chart is attached as Annex 9. The paper also made observations on how such measures can be conducted in compliance with international human rights and refugee law. Although the management of international travel includes other environments (e.g., land and sea border crossings) and objectives other than preventing travel of terrorist and dangerous criminals (e.g., preventing THB and people smuggling, counterfeit travel documents and visa, combating drug smuggling etc.), such considerations were outside the scope of this paper. Similarly, although it is essential to overall BSM-related issues, regulating the movement of goods is outside the scope of this paper and, given its substantial differences from the regulation of international travel, requires separate treatment. The intention of this paper was to identify standard and advanced practices that can be applied globally, the implementation of any individual practice must be tailored to a Member State's particular operational, information technology, and legal environment. This UNCTITF paper was not developed to discuss implementation details, such as how to resolve potential name matches, how to perform risk analysis, or the methods to be used for primary and secondary questioning. Therefore, the author considered the further development of this initiative as absolutely essential and the result is presented under point 14.5. of the thesis.

⁴⁹ United Nations General Assembly, 8 September 2006. Available from: [A/RES/60/288 \(The United Nations Global Counter-Terrorism Strategy\)](#) (Accessed on 1st March 2017).

2.2.4. Dataset 4: Semi-structured interviews of experts

The method of interviewing senior experts was considered as an efficient and concentrated method of gathering qualitative data and relevant first-hand information in the overall area of BSM, its commonalities and/or problems identified, both at national and international level, as well as gaps and needs and recommendations to be developed for harmonisation. Hence, the author elaborated an interview framework that focused on seven main areas and their specific subitems (see Annex 12) for the conduct of semi-structured interviews and the exchange of views through discussions, namely:

- transnational threats,
- transnational organised crime,
- migration, including irregular migration, THB and people smuggling,
- inter-agency cooperation, both at national and cross-border levels,
- cross-border cooperation and information exchange,
- training and further education measures, as well as
- identified interface problems.

From 2014 until 2017, altogether 15 semi-structured interviews were conducted with senior experts in the same scope of technical topics to be discussed on previously defined subjects. The conduct of semi-structured expert interviews served for an effective quality data gathering process, since the identified senior experts were seen as key persons for gaining practical insider knowledge and were interviewed as competent representatives for a wider circle of key experts. All topics that were reviewed with the respective heads of the BSM law enforcement authorities and departments of international organisations, in connection with the subjects of the examinations in the present work, are closely related to the areas of responsibilities of the respective agencies or organisations. "Experts are people who have a special knowledge of social issues, and expert interviews are a way to tap into that knowledge" according to Glaeser and Laudel.⁵⁰

The interview partners were identified as well-known senior experts and professionals working for EU MS law enforcement authorities, EU agencies (e.g., EUBAM, Frontex), UN agencies (e.g., CTITF working group, INTERPOL, IOM, UNODC, UNOCT), as well as international organisations (e.g., OSCE, WCO) and

⁵⁰ Glaeser, Jochen / Laudel Grit (2010): *Experteninterviews und qualitative Inhaltsanalyse als Instrumente rekonstruierender Untersuchungen*. P.10.

then selected as competent interlocutors for the semi-structured interviews in the aforementioned areas.

Table 2.2.4.1. – Senior experts identified for semi-structured interviewees

Interlocutor	Institution
Experts no 1	Heads of department - Specialised Criminal Investigation Department, law enforcement from Germany and Austria
Expert no 2	Head of Federal Police, Germany - Section Border Control, law enforcement for Germany-Austria
Expert no 3	Federal Bureau of Investigation - Head of department combating cross-border organised crime, law enforcement; Austria
Expert no 4	World Customs Organisation - Head of department, working group UNCTITF, UN agency; Belgium
Expert no 5	UN Office on Drugs and Crime - Head of department, UN agency; UNOV Austria
Expert no 6	UN International Organisation for Migration - Several heads of departments responsible for different regions, UN agency
Experts no 7	IATA and ICAO - Heads of departments and senior management; Canada
Experts no 8	OSCE Secretariat; Heads of Transnational Threats Department, Borders Unit, Special Police Matters Unit, Action against Terrorism Unit; Austria
Experts no 9	INTERPOL - Heads of departments responsible for different thematic areas, UN agency; France
Experts no 10	FRONTEX - Deputy director and heads of departments responsible for different thematic areas, EU border agency; Poland
Experts no 11	EUBAM - Director and heads of departments responsible for different thematic areas, EU BSM program; Ukraine and Moldova
Expert no 12	ICMPD - Head of BSM programme, IO; Austria
Experts no 13	CTITF working group - Representatives from different BSM agencies and IO's; Worldwide
Experts no 14	League of the Arab States - Director of the Secretariat and senior management staff, regional organisation of 22 Arab member states; Tunisia
Experts no 15	World Border Security Conference - Heads of national border law enforcement agencies, international BSM senior advisers; Worldwide

A comprehensive anonymised list of interviewed senior experts, their professional background, former and/or current assignment and organisation they work for is attached to this work as Annex 11, as well as a specimen of an indicative interview schedule and a sample transcript as Annexes 12 and 12a.

Main areas and specific subitems for discussions identified were determined and questions developed for the exchange of opinions and experiences shared at senior expert level. These semi-structured interviews were carried out in parallel with other ongoing research work, partly informing and being informed by the

document analyses and case studies in a concurrent triangulation logic (e.g., in terms of themes given attention to during the interviews and the document/case analyses and in the expert selection). Semi-structured interviews with senior law enforcement experts were conducted in order to determine the most relevant elements within the overall areas of BSM and how to avert TNT and combat TOC and irregular migration. In particular, heads of public administration and law enforcement authorities and their senior advisers of EU MS and non-EU countries were interviewed and kindly requested to openly share their experiences in identified problem areas and risks related to the aforementioned areas.

The semi-structured interviews were conducted personally in German or English language either by appointment or during international events such as international conferences, workshops, meetings and expert seminars. Written notes were taken during the interviews and the results of the interviews were then transcribed and most relevant topics addressed for validation and further analysis. Due to the sensitivity of the examined problem areas, it was not possible to develop a uniform questionnaire in order to go through all the questions addressed with the respective experts in the same way. The interviewed persons would have responded minimally due to restrictions of Civil Service Law provisions or were not allowed to give any information for reasons of confidentiality. For this reason, the technique of a semi-structured interview was applied in the sense of a trust-building measure in the discrete handling of sensitive information and that main issues will emerge from the interviewee, rather than being imposed by the structure of the interview. The semi-structured interviews served to scrutinise senior expert's attitudes, perceptions and assumptions, as well as critical thinking. The semi-structured interviews offered the flexibility to adapt questioning according to the responses of interviewees, to clarify questions or answers, or to probe answers more deeply with supplementary questions as appropriated, to explore issues that emerge from the respondents.

All information provided by the interviewees in the seven main areas and their specific subitems as described before were then grouped, compared and analysed in terms on similarities, deviations, amendments and considered in the corresponding conclusions (thematic analysis).

Most findings of the research work were confirmed through shared views from, as well as experiences exchanged with these senior experts and new insights and findings were incorporated subsequent into the work in

- chapter three – TNT: see table 3.3.1, point 3.6.9.⁵¹
- chapter four – TOC: see points 4.3., 4.4., 4.7.⁵²
- chapter five – migration: see points 5.2., 5.3., 5.4., 5.6.⁵³
- chapter seven – Border management: see points 7.2., 7.3., 7.4., 7.5.⁵⁴
- chapter eight – IBM: see points 8.3., 8.7.⁵⁵
- chapter nine – EU agencies: see points 9.3., 9.4., 9.5., 9.6.⁵⁶
- chapter ten – Frontex: see point 10.3.⁵⁷
- chapter 11 – Int. police cooperation: see points 11.3., 11.7., 11.9.⁵⁸
- chapter 13 – Supranational organisations: see table 13.8.1.⁵⁹
- chapter 14 – Extraterritoriality: see point 14.5.⁶⁰

2.2.5. Additional insights: Accumulative reflection of comprehensive assessments developed in the overall area of BSM and its relation to TNT and TOC

In the course of the last decade, the author developed a large number of comprehensive assessments and risk analyses in the overall area of BSM and migration management, as well as how to avert TNT and effectively combat TOC. During the same period, a further number of landmark monitoring and evaluation reports were prepared by experts working for competent EU and UN agencies, the OSCE and other international organisations. Hence, the method of accumulating reflection of assessments, risk analyses, monitoring and evaluation reports was applied as an approach of field research within the social sciences. These accumulative reviews and reflections provided additional detailed insights into actions, behaviour or the effects on the behaviour of individuals or a group of individuals. A characteristic of this method was on the one hand the personal involvement as an expert and researcher in the development of such comprehensive assessments and risk analyses as an object of review. On the other hand, the evaluation of these reports developed by other experts provided the opportunity to gain additional insights or to confirm own research results. Such

⁵¹ See Annex 11: Experts no 1-15

⁵² See Annex 11: Experts no 1-15

⁵³ See Annex 11: Experts no 2, 6, 10, 12, 13, 15

⁵⁴ See Annex 11: Experts no 1-15

⁵⁵ See Annex 11: Experts no 1-15

⁵⁶ See Annex 11: Experts no 10, 11, 15

⁵⁷ See Annex 11: Experts no 10,15

⁵⁸ See Annex 11: Experts no 1-5, 9-11, 15

⁵⁹ See Annex 11: Experts no 7, 8, 12, 14, 15

⁶⁰ See Annex 11: Experts no 1-15

accumulating reflection involved various methods, such as regular exchange of reports and relevant information, constructive feedback, development of BSM-related reports between 2014 and 2017 for approval through boards of UN and EU agencies (i.e., monthly, quarterly, annual), collective discussions at inter-ministerial and inter-departmental level, as well as self-analysis. The method of accumulating reflection refers to qualitative research (e.g., achieved benchmarks) as well as quantitative dimensions (e.g., number of activities) and is reflected in this research project, such as by achievements measured in processes of good practices developed, curriculum development, assessments developed and approved by involved authorities, both at national and international levels, as well as successful project implementation. The method is predestined to discover discrepancies as well as commonalities over extended periods of time in the implementation of a range of projects.

Set out in an example, from 2005 to 2009 the author was the responsible OSCE official within the *Ohrid* Border Process initiative (see chapter 12). Therefore, relevant reports, formally approved by all 57 participating States during this period, were reviewed and analysed and served as a model for accumulative reflection. The *Ohrid* Border Process initiative was a very successful intervention and crisis management through external target-oriented promotion of regional cooperation in the area of BSM that specifically focused on strengthening inter-agency cooperation, border surveillance, border control and information exchange. Since early 2000, the author has worked in the areas of law enforcement and criminal justice, international police cooperation, border police management and public administration law for international organisations such as the UN, OSCE, EU, and European Commission. All analyses, reviews and studies carried out in this work focused in general on the overall area of BSM and migration management as well as on how to avert TNT, fight against TOC, combat terrorism and FTF's, decrease irregular migration, tackle THB and people smuggling, and investigate other forms of cross-border crime.⁶¹ During this interval the author was involved

⁶¹ Note from the author: Since 1998, the author has worked for the UN, UNOCT, CTITF, UNCCT, UNODC, OSCE, EU and European Commission, as well as other international organisations in the capacity as a project manager and team leader, senior adviser in the areas of public administration and police management, organiser and chair of conferences and regional workshops, compiler of comprehensive risk analyses and project descriptions, as well as analyst. To this end, intensive territorial experience has been gained in South Eastern Europe (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia - FYROM, Kosovo, Montenegro, Serbia), Eastern Europe (Moldova, Ukraine, Belarus), Caucasus (Georgia and Azerbaijan), Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Turkmenistan), Afghanistan, Turkey and the Middle East. Since April 2015 the author is working as the Principal Border Adviser of the UN Office on Counter-Terrorism in New York (UNCCT-CTITF). In this role he gained extensive regional experience in the countries of the Horn of Africa and Sahel region, as well as the Maghreb states.

in the fields of security sector reforms, change management, rule of law, good governance, institution and capacity building, monitoring and evaluation, risk analysis, as well as specific requirements of contracting authorities. Through the method of accumulative reflection of previous assessments, relevant findings and statistical data were analysed and incorporated into this work. Hence, preliminary considerations on the content as well as weaknesses and strengths of a possible common European security strategy are based on the reflection of the implementation of externally financed projects in the areas of justice and home affairs.

In particular, for the period from 2014 to 2017, the author has focused his analyses on the research results and was continuously monitoring and assessing relevant processes in the areas of security sector reforms and change management and its correlations. During this time-span the author has held regular consultations and technical discussions with ministers of the interior mainly in non-EU countries, ministerial officials, both from EU MS and non-EU MS, senior officials from the European Commission, heads of departments of law enforcement agencies and immigration services to combat cross-border organised crime and irregular migration, such as police cooperation centres and dragnet control departments in EU *Schengen* border areas. The new identified challenges and findings of these consultations and technical discussions were collected, analysed and reported in official reports as mentioned before, which then were approved by competent decision makers of the relevant EU and UN agencies accordingly.

Through the implementation of these projects and the subsequent accumulative reflection of these assessments, the author could find a continuing process of a European integration of eastern and south-eastern neighbouring countries into the EU, coupled with the interaction of a progressive globalisation. These efforts were a legitimate approach for the standardisation of mechanisms of open, but at the same time secure borders, as well as the institutionalisation of common standards in the area of BSM in these countries, in order to strengthen integrated border management, stationary border control and comprehensive border security, as well as cross-border cooperation and information exchange.

The author's reflection in the context of the research work vis-à-vis all sighted material and the semi-structured interviews undertaken, is that national and international coordination and cooperation among all relevant authorities and agencies of EU MS and non-EU countries involved in BSM-related issues, is to

establish effective, efficient and coordinated border security, border control and management at the external EU borders , in order to reach the objective of open, but well controlled and secure borders.

2.3. Data analysis

In the realisation of the PhD project, quantitative and qualitative content analyses were combined and the findings of the present work are based on various frameworks of data collection. Following Mayring's working principles on analysing the content regarding qualitative indicators, the empirical material was suitable for a qualitative as well as quantitative content analyses for the description of currently used data frameworks, definitions, indicators, instruments developed and mechanisms in place in the areas of border management, border security and border control (for example see tables 3.3.1., 4.6.1., 4.6.2., 5.2.2. etc.).⁶² The method of quality-oriented content analysis was appropriate for the analyses of identified documents aiming at "[...] the analysis of material that comes from some kind of communication".⁶³ This working method takes into consideration the detailed analyses of relevant identified BSM-related documents. It was designed to analyse fixed communication and to proceed in a systematic, rule-based and theory-based manner, thus allowing conclusions to be drawn about certain aspects of communication. According to the Mayring summary, explication or structuring is a basic method of quality-oriented content analysis.⁶⁴ The studies of cases were assessed as an excellent field of application of their rather open, rather discreet, more interpretive methodology to find answers for the formulated research questions.⁶⁵ The identified documents were examined by means of quality-oriented in-depth content analyses in order to compare the findings with the outcome of technical discussions and the exchange of views with senior experts in the overall area of BSM relevant to rule of law, inter-agency cooperation, law enforcement and criminal justice. These sighted documents were unclassified and didn't require special access for evaluation and no primary data from other organisations were used. For example, the main areas of organised crime listed in Section 100a subsection 2 of the Code of Criminal Procedure served as an initial position for interviews with experts as top-to-down approach.⁶⁶ New

⁶² Mayring, Philipp (2015): *Qualitative Inhaltsanalyse: Grundlagen und Techniken*. P.17.

⁶³ Mayring, Philipp (2015): *Qualitative Inhaltsanalyse: Grundlagen und Techniken*. P.11, 17

⁶⁴ Ibid. P.64.

⁶⁵ Ibid. P.23.

⁶⁶ Code of Criminal Procedure in the version published on 7th April 1987 (Federal Law Gazette [Bundesgesetzblatt] Part I p.1074, 1319), as most recently amended by Article 3 of the Act of 23rd April 2014

information gained during these interviews, such as interface problems, lack of jurisdiction rules, different hierarchies in EU MS law enforcement agencies served then as an added value as bottom-up process.

The areas of TNT are complex and range from the maximum credible accidents, natural disasters, impact of political upheavals, fight against TOC and other forms of cross-border criminal activities, displacement effects due to invasions, violent extremism and radicalisation towards diseases to humans and animals. To date, a generally accepted definition is lacking with respect to the description of TNT and thus a precise linguistic interpretation of these threatening scenarios. Because of the topicality with which experts and politicians exchange their views in the prevention of TNT in the international context, this work offers opportunities to specify these TNT-related areas in their descriptions in greater detail. Therefore, different areas of TNT were listed, analysed and evaluated in a non-exhaustive nature in order to achieve a better understanding of the object of study (see Annexes 2 and 12).

During the past years it has been observed and personally experienced, repeatedly, that experts and politicians in dialogue within an international context were using supposedly identical terms and expressions regarding combating and curbing TOC, yet different levels of understanding. Hence, the descriptions of cross-border organised crime were compared with specified forms of TNT and analysed towards similarities and discrepancies (see table 3.3.1). This analysis should generate greater sensitivity in the determination of what is cross-border organised crime and what are transnational threats, but also extend the understanding that national security strategies encompass far more than just the prevention of threats (see Annex 3).

Finally, 11 main areas of serious crime were split up into 32 sub-items in line with the register of criminal offences listed in Section 100a subsection 2 of the Code of Criminal Procedure, which are regarded as characteristic in the area of OC (see Annex 1).⁶⁷ Main areas were pursuant to the Criminal Code, Fiscal Code, Pharmaceutical Products Act, Asylum Procedure Act, Residence Act, Foreign Trade and Payments Act, Narcotics Act, Precursors Control Act, War Weapons Control Act, Code of Crimes against International Law and Weapons Act. These 32 sub-

(Federal Law Gazette Part I p.410)

⁶⁷ Code of Criminal Procedure in the version published on 7th April 1987 (Federal Law Gazette [*Bundesgesetzblatt*] Part I p.1074, 1319), as most recently amended by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410)

items were then compared with the 26 individual sub-items of TNT and examined and compared regarding similarities, common intersections and overlaps.⁶⁸ A comprehensive overview of this analysis is attached as Annex 3. Applications of quantitative analysis methods (i.e., overall framework of TNT) to the qualitative content analysis (i.e., most relevant TOC) were undertaken, such as frequency comparisons or scale formation and correlation determination between transnational threats and cross-border organised crime, *inter-alia*, based on analysis of relevant statistics.⁶⁹

In conclusion, the sighted material was extensively examined and assessed to ascertain to what extent the involved states and their relevant investigation and enforcement authorities have problems in the implementation of the EU standards to enhance effective border security, management and control. In accordance with this work, from 2015 to 2016 the author developed the paper on 'Good Practices in the Area of BSM and the Context of Counterterrorism and Stemming the Flow of FTF' that was adopted at the Seventh Ministerial Plenary Meeting in New York in September 2016. These good practices are intended to inform and guide governments as they develop policies, strategies, programs and approaches for enhancing effective BSM, cross-border cooperation, and border surveillance in the context to counter terrorism, FTF and transnational organised crime. They can also be used to shape bilateral or multilateral technical or other capacity-building assistance provide in these areas. The presentation and subsequent reception of this paper confirms that the results from the thesis provide valid and practically relevant insights in the eyes of the relevant communities and hold up under scrutiny from experts in the field.

⁶⁸ Mayring, Philipp (2015): *Qualitative Inhaltsanalyse: Grundlagen und Techniken*. P.62.

⁶⁹ Note from the author: EUROSTAT, criminal statistics from Germany, and here in particular the Free State of Bavaria.

Section 3 – Analytical framework

Chapter 3: Transnational Threats

Due to the complexity of transnational threats the author held a series of technical discussions with senior experts focusing specifically on identified challenges in the areas of crime prevention, law enforcement and criminal justice, migration, crisis and intervention management, inter-agency and international cooperation and the exchange of relevant information in the period of 2014 to 2017.

Hence, chapter 3 focuses predominantly on the following areas, which were considered as most relevant for data gathering, the analyses of communalities and differences, as well as for the exchange of views and technical discussions, namely:

- Cross-border organised crime
- Internal and inter-state destabilisation conflicts
- Cross-country and continental diseases (pandemic, panzootic)
- Mass expulsion, irregular migration and illegal immigration
- Trafficking in human beings and people smuggling
- Organised production, distribution and trading of counterfeit documents
- Smuggling of goods
- Significant deterioration of socioeconomic circumstances in a regional context
- Terrorism, Foreign-Terrorist Fighters and violent extremism
- Illicit cultivation, production and trafficking of narcotic drugs
- Other forms of serious transnational crime

A detailed list has been attached as Annex 2, which provides a comprehensive overview of all areas identified in the field of transnational threats.

3.1. Security in retrospective consideration

“Do as you would be done by” – or in other words, treat others as you would like them to treat you.⁷⁰

Sayings or proverbs of this kind have been in evidence since about the 7th century B.C. in religious and philosophical writings. They developed partly independently, partly in parallel, in the respective societies in different regions of this world. They tried in simple terms to explain the principles of reciprocities in the social behaviour of the individual with the opposite, and thus with the respective social forms and vice versa.

⁷⁰ Luther Bible (1984): The Book of Tobias 4:16.

Nevertheless, a substantial norm for correct or wrong behaviour was missing in these rules and thus posed the risk of individual interpretation. The purpose of these stimuli was to create a generally valid and transparent behaviour and understanding within groups and societies, and thus create a sense of subjective security. This should have promoted fair behaviour, taking into account the interests and wishes of the opposite in a climate of equality and sensible security. This appealed to the common sense of the individual to rethink the advantages and disadvantages of his own actions in relation to the possible reactions of the opposite. The respect and inviolability of human dignity was addressed indirectly here. As a possible consequence, the application of this recommendation requires the change of perspective. It recommends that the person concerned should empathise with the opponent in a positive interpretation of moral action and ethical self-responsibility with the possibility of correcting his actions.

Kant⁷¹ also dealt in the field of moral philosophy in his critique of pure reason with the question of how the knowledge of a human can be put into practice. Kant's question was specifically: "How is an enduring peace between states possible?"⁷² Kant concluded that decisions must be guided by reason and aspire for justice. He stated that it is the duty of humanity to strive for an enduring peace between the nations. Further, each nation need political progress to create peace according to his opinion in order to bring about political improvements in that nation. However, Kant explicitly rejects all kind of intervention by force and his practical philosophy upholds the absolute prohibition of political intervention. He recognised that peace is not a matter of self-evidence, and that the rule of law is key to ensuring security and order. Kant stated: "The right of the people must be held sacred, it may still cost so much sacrifice of the ruling power."⁷³ The answers to these questions and theses played a significant role in the drafting of the UN Charter as a treaty to safeguard and maintain peace.

3.2. Security as a central concept of value

At the time of the Cold War⁷⁴ the terms peace and security⁷⁵ were considered to

⁷¹ Note from the author: Kant, Immanuel (*22nd of April 1724, †12th of February 1804). The German philosopher of the Enlightenment, and the author of the *Age of Peace* (1795), is one of the best-known works of the German philosopher.

⁷² Klemme, Heiner (ed.) (2004): *Immanuel Kant*. P.100.

⁷³ Kant, Immanuel (1795): *Perpetual Peace*. AA VIII Treatises after 1781. P.380.

⁷⁴ Gaertner, Heinz (2005): *International Security*. "The 'Cold War' describes the relationship between the West and East in the decades following the end of the Second World War. The situation at that time could neither be described as a 'hot war' nor a 'stable peace'. The cause of dissonances was the rivalry of two supervisors and their ideological polarities." P.69.

⁷⁵ UNDP Human Development Report (1994): In line with this, the United Nations Development Program

be almost inseparable in the respective lines of arguments regarding strategy debates and political programs⁷⁶. After that, security has developed into the central concept of modern societies.⁷⁷ But what does the term 'security' mean? Wolfers⁷⁸ and Schirmer⁷⁹ describe in a process of elimination that security is the absence of uncertainty, which subsumes possible threats to the achieved economic, cultural and moral values. In a broader sense, this also includes the ability to ward off threats. Buzan describes security as the ability of the state and society to maintain independence and functional integrity.⁸⁰

Uhl describes Buzan's approach in a new edition of security discussion in three areas: the traditionalistic school of thought focussing on the military sector, the expanded school of thought, the security paradigm in other respects, e.g., environment and development policy, as well as the Critical Security Studies (CSS), which question the concept of security in its essence and tries to achieve a new conceptualisation.⁸¹ Deiseroth characterises security in relation to international law as a state capacity to effectively counteract external threats to existence, sovereignty and territorial integrity.⁸² Finally, Andren presents security as an inner freedom to be able to make political decisions even under the constraint of the external aggressor.⁸³

The concept of security goes beyond the one-dimensional approach of averting a danger and can be perceived and explained in many ways. Clearly separable from the perspective of a state are the internal and external security, while the legal science speaks mainly of public security and order through the instruments of the respective intervention rights to prevent threats.⁸⁴ In contributing to internal security, criminology tries to identify new phenomena of crime in the investigation

(UNDP) also assumes a comprehensive concept of security and identifies seven components or values of 'human security': political security, economic security, social security, individual security, food security, health security and environmental security. Available from: http://www.un.org/humansecurity/sites/www.un.org.humansecurity/files/human_security_in_theory_and_practice_english.pdf (Accessed on 20th October 2016).

⁷⁶ Daase, Christopher (2010): *Sicherheitskultur im Wandel*, Working Paper 1.

⁷⁷ Gaertner, Heinz (2005): *Internationale Sicherheit*. The term security goes back to the Latin word 'securus' and means 'without worry' ('se' without and 'cura' concern). P.125.

⁷⁸ Wolfers (1952) / Gärtner, Heinz (ed.) (2005): *Internationale Sicherheit*. P.483.

⁷⁹ Schirmer, Werner (2008): *Bedrohungskommunikation*. A socio-theoretical study on security and uncertainty. P.69.

⁸⁰ Buzan (1991) / Gaertner, Heinz (ed.) (2005): *Internationale Sicherheit*. P.18-19.

⁸¹ Uhl, Bärbel (2014): *Die Sicherheit der Menschenrechte*. P.60.

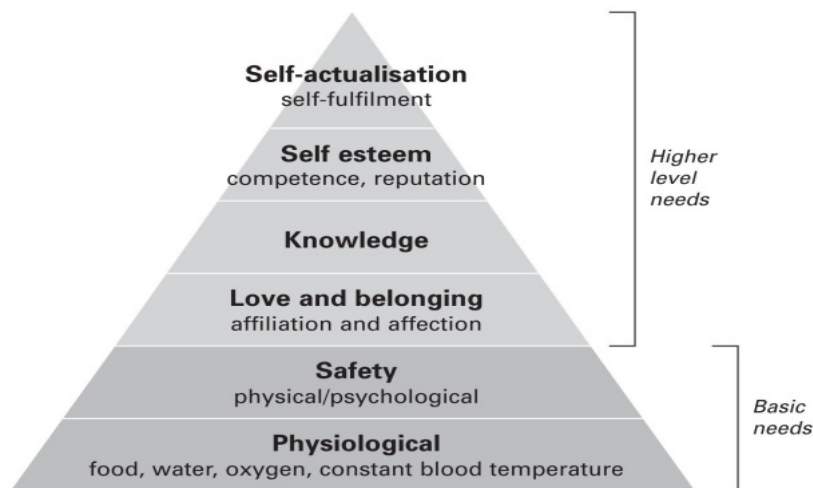
⁸² Deiseroth, Dieter / Gaertner, Heinz (ed.) (2005): *Internationale Sicherheit*. P.110.

⁸³ Andren (1984) / Gaertner, Heinz (ed.) (2005): *Internationale Sicherheit*. P.11.

⁸⁴ Gaertner, Heinz (2005): *Internationale Sicherheit*. 'Internal security' is the maintenance of the protection of the current state and legal order as well as of the life and liberty of the people of the state. 'External security' is the ability of the state to defend, prevent, curb or end external violence. P.125.

of light and dark fields, while sociology investigates the respective influences on the sense of security of the societies. The historical study analyses the security-relevant aspects of the interdependences between society, security and possible threats over longer periods of time. Another viewpoint attempts to explain security in terms of comprehension levels of a collective or individual security requirement, while a collective claim to security includes the individual need, but not *vice versa*. Maslow developed a five-stage model of the hierarchy of needs and describes human motivation accordingly.⁸⁵ The security area is ranked in the second level after the fulfilment of the basic and subsistence needs and before the level of social needs.

Figure 3.2.1: The Hierarchy of Needs from Maslow



Source: Maslow, Abraham H. (*1908, †1970)

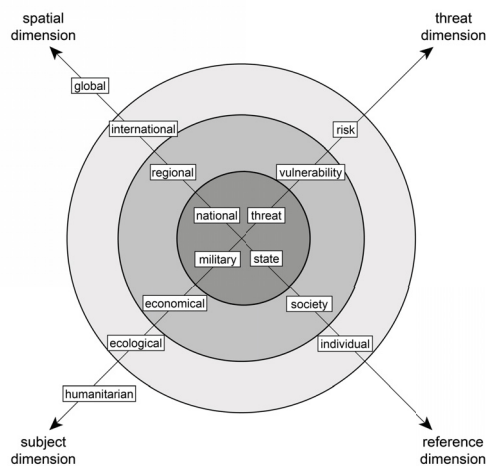
Maslow thus places the area of security as an essential part of public life and the cornerstone of natural and social systems. This makes security a very important part of a constitutional and democratic governmental mandate and is a driver in the defence of prospective threat potentials, both in the national and transnational context. Thereby, this constitutive mandate is not limited only to averting criminality, but also to all other dangers such as pandemics (see also point 3.6.1) and the impacts of natural disasters. At least since the attacks on the World Trade Center in New York on 11th September 2001, the terminology 'security' has been omnipresent and conceptually manifested in all continents and societies.⁸⁶ Security

⁸⁵ Maslow, Abraham H. (1943): *A Theory of Human Motivation in Psychological Review*; (1954) *Motivation and Personality*; *Farther Reaches of Human Nature* (posthumous 1971). Maslow (*1908, †1970) was an American psychologist and developer of Maslow's pyramid, a development model of human needs.

⁸⁶ Note from the author: BPB (2013): 9/11 and the political consequences. On 11th September 2001 al-Qaeda terrorists had kidnapped four passenger airplanes and steered them to destinations in the United States of America. The first two aircraft brought the Twin Towers of the World Trade Center in New York to a collapse, the third aircraft steered the terrorists into the Pentagon near Washington D.C. The fourth machine crashed a little later in Pennsylvania. Their goal was the White House. In total, more than 3,000 people died in the attacks, twice as many were injured. Available from: <http://www.bpb.de/politik/hintergrund-aktuell/168712/9->

has become the central term of values for Western democratic societies. Nevertheless, security remains a conceptually vague factor and is not easy to define and is often linked with public security and order. The difficulty of creating a universally valid definition lies, among other things, in elaborating an equally valid description, which is recognised and accepted as such, seemingly an 'all-in-one' term. It is always popular to bring the term security into connection with political statements. For example, in Germany some local politicians like to pride themselves on having created the 'safest federal state' by taking arguments and basic data of the police criminal statistics (*PKS*) as a basis.⁸⁷ Daase debates in his reflections that four dimensions must be taken into consideration in relation to the 'extended' differentiation of the concept of security.⁸⁸ He thereby contradicts the understanding of the 'narrow' term of security, which focused predominantly on military threats. Specifically, it is the (1) subject dimension, (2) spatial dimension, (3) risk dimension and (4) reference dimension, which in his opinion are naturally connected in a certain way. For this purpose, Daase has created a chart to visualise the extended security concept.

Figure 3.2.2.: Dimension of the 'extended' differentiation of the concept of security



Source: Daase⁸⁹

[11-und-die-politischen-folgen](#) (Accessed on 21st October 2016).

⁸⁷ Note from the author: Federal Criminal Police Office (2015): Criminal Police Statistics (*PKS – Polizeiliche Kriminalstatistik*) for the Federal Republic of Germany is prepared by the Federal Criminal Police Office (*BKA*). It appears in book form once a year in the second half of the year. Most of the copies will be given to police and judicial authorities, but e.g., also universities. The *PKS* contains the unlawful (criminal) acts known to the police, including the attempts, the number of suspects detected, and a number of further details on cases, victims or suspects. Not included in the *PKS* are administrative offenses, state protection and traffic offences. In the *PKS* for the Federal Republic of Germany, the country data supplied by the 16 State Offices for Criminal Investigation (*LKA*) are tabular and graphically prepared and commented on. Available from:

http://www.bka.de/nr_205932/DE/DasBKA/Aufgaben/Zentralstellen/PKS/pks_node.html?nnn=true (Accessed on 21st October 2016).

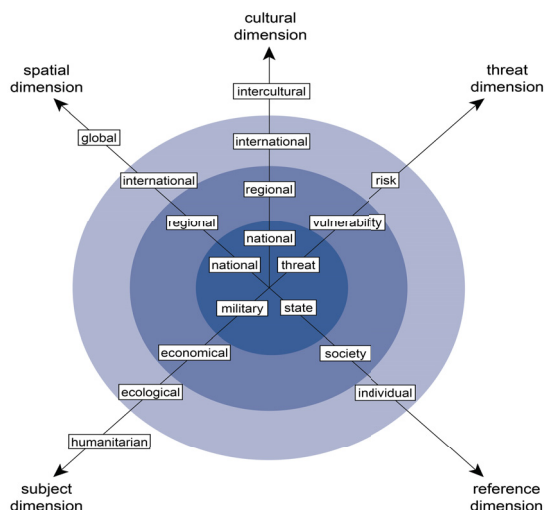
⁸⁸ Daase, Christopher (2010): *Sicherheitskultur im Wandel*, Working Paper 1. P.3.

⁸⁹ Ibid.

While referring to the temporal sections, Daase divides the subject dimension into the military (1950s and 1960s), economic (1970s), ecological (1980s) and humanitarian (associated with the end of the Cold War) aspects.⁹⁰ In the reference dimension, he explains that security pertains to the state, society and individual. The spatial (space) dimension refers to the territorial state, the region, international government systems and global security. In the fourth level of his explanatory approach, he refers to the dimensions of threat, vulnerability and the perceived risks that must be overcome in terms of security-related technologies and strategies. Further to Huntington's comments in his book "Clash of Civilisations and the Remaking of the World Order", on countries with torn cultures and the effects therein, it is understandable that the 'culture' component may have been highlighted as a compelling dimension in the assessment of danger.⁹¹

Huntington posed the thesis that the world politics of the 21st century will no longer be determined solely by conflicts of ideological or economical nature, but also that conflicts between peoples and ethnic groups will also break out due to different cultural affinities, and thus the factor of culture in the context of international interactions will become significantly more important. To this extent, it seems only logical that the factor of culture should also be taken into account and the interactions with the other four dimensions should be considered in addition to the four dimensions of culture enumerated by Daase.

Figure 3.2.3.: Own complementary presentation⁹²



⁹⁰ Ibid.

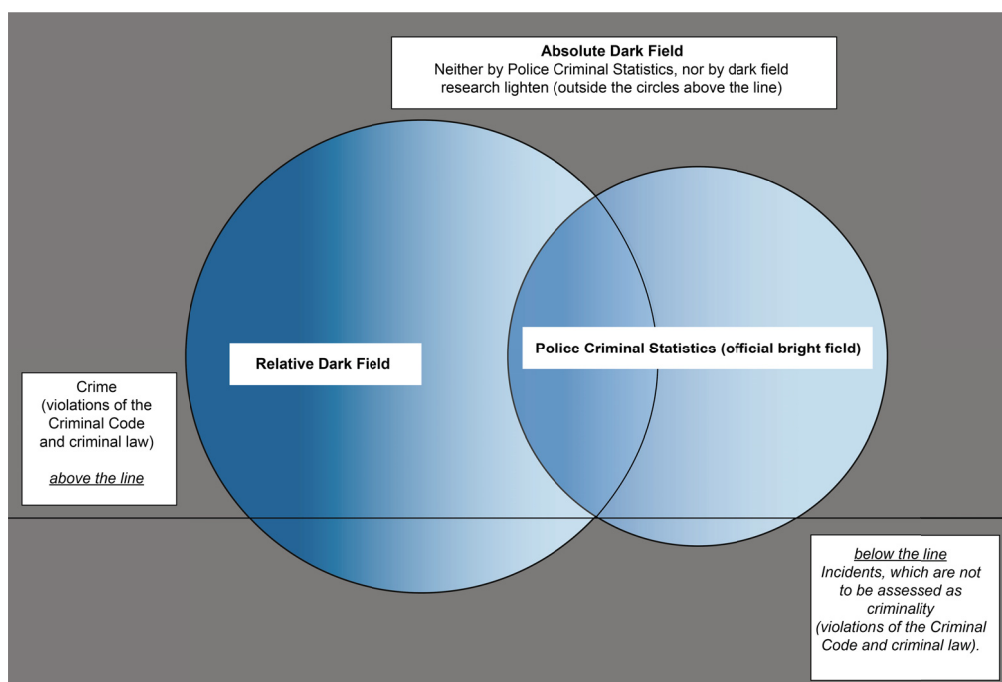
⁹¹ Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of the World Order*. It is a hypothesis that people's cultural and religious identities will be the primary source of conflict in the post-Cold War world.

⁹² Daase, Christopher (2010): *Sicherheitskultur im Wandel*, Working Paper 1. (Picture supplemented by own representation). P.3.

Taking into account the constitutionally guaranteed fundamental rights of a democratic society, a possible approach to enhance security to a maximum can only be by continuously identifying all kinds of insecurities and consequently reducing, or preferably, neutralising them. Wolfers' description of security as an absence of threats and thus uncertainty finds an actual application.⁹³

It is necessary to distinguish between the real insecurities that are identified as hazards and risks in the bright field, and potential uncertainties, which are possible hazards and risks in the dark field and ensure that equal attention is given to both.⁹⁴

Figure 3.2.4.: Bright – Dark Field Research



Source: Federal Criminal Police Office⁹⁵

⁹³ Wolfers (1952) / Gaertner, Heinz (ed.) (2005): *Internationale Sicherheit*. P.483. Schirmer, Werner (2008): *Bedrohungskommunikation*. A socio-theoretical study on security and uncertainty. P.69.

⁹⁴ Note from the author: Federal Criminal Police Office (2016): The aim of dark field research is to gain insights into the overall volume of certain criminal offences, including the so-called (relative) dark field, thus the criminal offences that are not known to the police. While police criminal statistics refer to the 'Hellfeld', that is to say the officially registered events (thus only a small section of crime), researchers in the dark field are trying to provide a more comprehensive picture of the scope and structure of crime. For this purpose, the survey of randomly selected persons with regard to their experiences as victims (victim surveys) or perpetrators (offenders' inquiries) of criminal offences, if they have done so, is used. The experiences with crime identified in the surveys allow (statistical) conclusions to be drawn on the crime rate among the population.

⁹⁵ Federal Criminal Police Office (2003): *Criminal Police Statistics (Polizeiliche Kriminal Statistik - PKS)* for the Federal Republic of Germany. P.8.

Based on his studies Daase made the following statement:

Whoever possesses the interpretational sovereignty of security, has the power to determine, which type of risks (dangers) shall be perceived, which relevant areas are of priority and what kind of appropriate strategies should be developed accordingly.⁹⁶

Currently, there is no uniform definition of the term 'security'. In fact, the description of 'what is security' is subject to a permanent transformation with changing focus on prompt problem areas and their intended solution processes. Over the past decades, the concept of 'security' has been subject to a new approach and reinterpretation; it has become a central if not *the* central concept of value(s) of democratic societies.

Security has been stipulated as a key term in the argumentation of political leaders, both in the national and international context, regardless of the political orientation of the respective party affiliation and their respective interests. Clearly, security is still directly connected with the aversion of danger and criminal prosecution. High security is often required in order to achieve the lowest possible crime clearance rate. This emphasises the rate of prevention and law enforcement, with a clear preference for prevention. Therefore, security has to be seen as an individual as well as a collective need and goes beyond the dimension of a national claim to the requirement of common security strategies of community of states and alliance partners.

It remains to be noted that the concept of security is subject to constant development, which is directly related to time and subject matter. In its interpretation the term is strongly influenced by political interests, but also new threats such as the terrorist groups *Al Qaeda* or the Islamic State (IS - see point 3.6.7) characterise the process of a more and more specific interpretation of the term.⁹⁷ The name *al-Qaeda* (eng. "the basis") was used for the first time towards the end of the Afghan war in 1988. A prominent Saudi Arabian volunteer, named Osama Bin Laden (1957-2011) was planning to capture those Arab young men who had participated in the struggle against the Soviet Union in a new organisation of this name. As an international terrorist organisation responsible for the 9/11 attacks in New York and Washington, *al-Qaeda* emerged only in the mid-1990s,

⁹⁶ Daase, Chtistopher (1993): *Regionalisierung der Sicherheitspolitik*.

⁹⁷ Steinberg, Guido (2011): *Al Qaida*. Available from: <http://www.bpb.de/politik/extremismus/islamismus/36374/al-qaida?p=all> (Accessed on 21st October 2016).

when bin Laden and his followers joined the Egyptian jihad organisation under today's *al-Qaida* leader Aiman az-Zawahiri (born 1951).

It is precisely the latest threat scenarios caused by Ebola (see chapter 3.4.) that shows that the conceptual extension of the understanding level must be devised with regard to threat and security in new and ever larger dimensions. These threats go beyond national or even regional approaches; they must be considered on a global and intercultural level as well. A rapidly proceeding globalisation with new and more dangerous phenomena and their inherent risks are forcing societies to become more aware of increasingly complex transnational threats.

To date, there is no single definition to describe transnational threats. However, it can be said that, in the context of security policy interests in the national, regional, global and intercultural context, their strategies and concepts are scenarios with potentially far-reaching and cross-border hazards for life or limb or considerable material assets.

Therefore, in cooperation with the relevant ministries and their competent departments, the political leadership must elaborate on ideas and means in relation to the reciprocal effects of organised forms of crime and transnational threats with the societal demands of maximum security and freedom of movement with regard to open and secure boundaries.

3.3. Areas of transnational threats

The respective developed security strategies of EU MS as well as non-EU states describe transnational threats in different types and numbers.⁹⁸ On the one hand, the classical areas of cross-border OC are reflected and also listed in section 100a StPO (FRG Code of Criminal Procedure⁹⁹; see also Annex 1); on the other hand, there are additional threats that only appear regionally and/or are temporally limited (e.g., pandemics, panzootic, natural catastrophes).

The European Security Strategy, for example, divides transnational threats (here in alphabetical order) into the following areas:¹⁰⁰

⁹⁸ See

a) European Security Strategy (2009): Chapter I - Global Challenges and Threats. P.11-15.

b) Federal Ministry of the Interior Vienna - Austrian Security Strategy (2013): Point 3.2 Security policy at national level. P.7-8.

c) Federal Ministry of the Interior Berlin - German Cybercrime Security Strategy (2011): p.3, 6-12.

⁹⁹ Code of Criminal Procedure of the FRG (*StPO – Strafprozessordnung*) in the version of the notice of 7th of April 1987 (Federal Law Gazette I, p.1074, p.1319), as last amended by Law of January 21, 2015 (Federal Law Gazette I p.10) with effect from 27.01.2015. § 100 a - Serious offenses within the meaning of para. 2 no. 1 to 11 are [...]. <http://dejure.org/gesetze/StPO/100a.html> (Accessed on 21st October 2016).

¹⁰⁰ European Security Strategy EU Council (2010): A secure Europe in a better world. P.11-20

- Accumulation and uncontrolled distribution of small and light weapons, desertion and landmines
- Climate change (global warming)
- Security on the Internet (cybercrime)
- Safety of the power supply
- Terrorism and OC
- Dissemination of weapons of mass destruction

In part 2 of the work, a detailed list has been attached as Annex 2, which provides a comprehensive overview of transnational threats and can be subsumed under the aforementioned areas.

The individual areas of offences within the OC framework and the phenomena of transnational threats have been contrasted in order to work out the consensus, common intersections, differences, as well as individual attitudes.

Table 3.3.1.: Abstract comparison of OC and transnational threats¹⁰¹

No	Transnational threats areas and OC related crimes	OC national – international	Transnational Threats
1	Revenue code	X	
2	Medicines act (Counterfeit drugs)	X	X
3	The Residence Act and the Asylum Procedure Act (Trafficking of human beings – THB and people smuggling)	X	X
4	Foreign Trade Ordinance (Nuclear criminality)	X	X
5	Narcotics law Illicit cultivation, manufacture and trade of narcotics	X	X
6	Cross-border OC		X
7	Commodities Control Act	X	
8	Cyber Crime	X	X
9	Global warming		X
10	Corruption (Granting and acceptance of benefits)	X	X
11	Pandemic, Panzootic		X
12	Secure energy supply		X
13	Criminal Code ¹⁰²	X	X
14	Terrorism ¹⁰³	X	X
15	Proliferation of weapons of mass destruction	X	X
16	International Criminal Code		X
17	Weapons Act (gun control law); Military Weapons Control Act; Accumulation and uncontrolled dispensing of small arms and light weapons; Landmines	X	X

¹⁰¹ Note from the author: The complete tabular comparison is attached as Annex 1.

¹⁰² Note from the author: Granting and acceptance of benefits - The table under the heading "Criminal Code" (no 13) did not include a single list of relevant offences, which can be assigned to the OC as well as to the domain of transnational threats, for the sake of extensive presentation.

However, the following serious offenses of § 100 a *StPO* (FRG Code of Criminal Procedure) can be attributed to both the OC and the transnational threats: preparation of offensive warfare, high treason and endangering the democratic legal state as well as the responsibility of the state and the threat to external security; Offences against national defence; Counterfeiting (e.g., money, tokens); Offences against sexual self-determination; 22nd Dissemination, acquisition and possession of children's and youth pornography; Murder and manslaughter; Money laundering and disguising of unlawfully acquired assets; Fraud and computer fraud; Homicidal criminal offenses in the cases of §§ 306 to 306c, 307 (1) to (3), § 308 (1) to (3), § 309 (1) to (4), § 310 (1), §§ 313, 314, 315 (3), 315 b (3), as well as § 316a and 316c.

¹⁰³ Traffickers and Terrorists (2013): Drugs and violent jihad in Mali and the wider Sahel, Foreign and Commonwealth Office, p.6. Available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256619/Oct_2013_Traffickers_and_Terrorists.pdf (Accessed on 22nd October 2016).

Evaluation of the results from the table

A total of 11 serious crimes, which are relatable to the area of cross-border OC, were contrasted and compared with six areas of transnational threats.¹⁰⁴ In ten areas, offences could be attributed both to cross-border OC as well as to transnational threats (see table 3.3.1.). Of interest is the fact that cross-border OC can be perceived as a transnational threat, but not *vice versa* (see no 6 of table 3.3.1.). In Annex 3, a total of 44 individual items from the fields of cross-border OC and transnational threats were contrasted and compared in a much more detailed form.

Transnational threats can also arise as destabilising factors in the formation of negative tendencies in an intercultural dimension with immediate negative influences and impacts on society, public security and order, business and the environment, cultures, as well as religions.¹⁰⁵ For this reason security is to be understood not only as an overall and state-wide responsibility, but also considered in relation to individual human security, as well as in a supra-regional context coupled with cross-border cooperation. The instrument of comprehensive cooperation supports institution and capacity-building measures and helps to strengthen competence forms, economic performances and social developments in states. In order to avert the described transnational threats, robust and resilient alliances are needed between democratic governments and their civil societies to prevent possible weaknesses in traditional security policies and to ensure maximum security, both for the individual and the state.

3.4. Diseases as transnational threats

Over the course of a historical retrospection, it is noted that pandemics repeatedly led to devastating consequences transnationally. For example, the plague in the middle ages decimated the population level in Europe by at least one third.¹⁰⁶ But even in the 20th century, in a period when health care was much more advanced, the three major influenza pandemics led to widespread deaths in Europe and Asia. Between 1918 and 1920, the Spanish flu raged in Europe and claimed up to 40 million lives worldwide, twice as many people as were victims in the First World

¹⁰⁴ Note from the author: Individual serious crimes of the OC were pooled, or additional terms specified in the area of transnational threats.

¹⁰⁵ Wagner, Johann / Jäger, Thomas (ed.) (2015): *Handbuch Sicherheitsgefahren*. P.333-341.

¹⁰⁶ Uni-protokolle.de (2016): The plague as 'black death' and medieval plague epidemics reached Europe in 1345. Available from: <http://www.uni-protokolle.de/Lexikon/Pest.html> (Accessed on 24th October 2016). Christian-Albrechts-University of Kiel (2007): *Unizeit* no 44 - Plague, lingering illness, turning point. The plague in the 14th century is regarded as the worst disease in human history. Between 1347 and 1351, more than 20 million people died in Europe. In these four years, about 20 to 30 percent of the European population has died. Available from: <http://www.uni-kiel.de/unizeit/index.php?bid=440501> (Accessed on 24th October 2016).

War.¹⁰⁷ The Spanish flu was triggered by a particular virulent offspring of the influenza virus (subtype A/H1N1) and variants of this virus were the trigger for the 'Russian flu' in 1977 and 1978, as well as the 'swine flu' in 2009.¹⁰⁸ These pandemics are responsible for the elaboration and further development of relevant national and interregional action plans by the United Nations World Health Organisation (WHO), as well as other early warning systems from the European Union and regional initiatives. Corresponding definitions were developed in Part 2 of Annex 4 of the thesis.

Since the establishment of the UN Security Council, this body has been dealing only twice with diseases that have been perceived as a transnational threat and thus a threat to world peace:

- On 17th July 2000, the Security Council adopted at its 4172nd meeting the Resolution 1308 (2000): "The responsibility of the Security Council for the protection of world peace and international security: HIV/AIDS and international peacekeeping operations."¹⁰⁹
- On 19th September 2014, at an emergency meeting the UN declared the outbreak of *Ebola* as an epidemic and as "threat to peace and security."¹¹⁰

Consequently, the UN Security Council considered the highly contagious disease *Ebola* as an epidemic and its rapid spread as a transnational threat and consequently a threat to world peace.¹¹¹

¹⁰⁷ Steinberg, Guido (2002): Free University Berlin "Plague and war in the year of grace". The Spanish flu of 1918/19 in Arabia and Syria. The Spanish flu of 1918/19 demanded up to 40 million deaths worldwide. The First World War and the pandemic were at that time the provisional climax of a first wave of globalisation that had been triggered by the revolutions of transport in the 19th century and allowed all kinds of microorganisms to spread worldwide. [...]. Available from: http://www.fu-berlin.de/presse/publikationen/fundiert/archiv/2002_01/02_01_steinberg/index.html (Accessed on 24th October 2016).

¹⁰⁸ Note from the author: The 'Russian flu' broke out in North China in 1977 and spread worldwide until 1978. It cost about the lives of 700.00 people - exclusively infants, children and young adults under 23 years of age. The reason: the virus is the same as that of the Spanish flu - subtype A/H1N1. The name 'swine flu' is actually wrong: In the currently rampant flu wave has never been an infection of pigs on humans took place. The name comes from the fact that this influenza virus of subtype H1N1 shares a few genomic sequences with a viral type, which also affects pigs. It has its origin in Mexico; the number of the dead has not yet been clarified. Available from: http://tropeninstitut.de/schweinegrippe/Tropeninstitut_Neue_Grippe.pdf (Accessed on 24th October 2016).

¹⁰⁹ UN Security Council Resolution 1308 (2000) on the Responsibility of the Security Council in the Maintenance of International Peace and Security: HIV/AIDS and International Peacekeeping Operations. Available from: http://www.unaids.org/sites/default/files/sub_landing/files/20000717_un_seresolution_1308_en.pdf (Accessed on 24th October 2016).

¹¹⁰ UNMEER – United Nations Mission for Ebola Emergency Response. Available from: <http://www.unric.org/de/uno-schlagzeilen/27371-un-erklaeren-ebola-ausbruch-zur-bedrohung-von-frieden-und-sicherheit> (Accessed on 24th October 2016).

¹¹¹ Note from the author: The *Ebola* fever is a serious contagious disease caused by viruses. The virus bears the name of the river *Ebola* in today's Democratic Republic of the Congo. There and in Sudan were the first break out in 1976. There are different types of *Ebola* viruses; depending on the type, infection leads to death in 25 to 90 percent of cases. Available from: <http://www.unric.org/de/uno-schlagzeilen/27371-un-erklaeren-ebola-ausbruch-zur-bedrohung-von-frieden-und-sicherheit> (Accessed on 24th October 2016).

To this end, an international UN mission for Ebola Emergency Response (UNMEER) has been proposed, which had five main objectives:

- Stop the onset of the disease
- Intensive and professional treatment of the infected persons
- Ensure a basic provision of supplies
- Restore and ensure stability
- Prevention of the spread of the disease

The UN Secretary-General Ban emphasised that the success of the mission will be decisively dependent on the support of the international community. The WHO had recorded 28,646 Ebola infections and 11,323 deaths by the beginning of March 2016.¹¹² Towards the end of 2014, according to their calculations, the WHO assumed a growth of the contagion of 1,000 new infections per week.¹¹³ As a consequence, this had to lead to increased security precautions around the world, particularly at airports with international flights arriving from the African continent in general, and affected countries in particular.¹¹⁴ This had a direct impact on measures to prevent dangers to life and limb, as well as restrictions on free movement and entry into EU MS. The extended framework of possible measures to counter these transnational threats ranged from the use of thermal imaging cameras by measuring increased body temperature of travellers before border control, enhanced controls on arriving travellers with compulsory health checks on entry, quarantine, up to the rejection of persons.¹¹⁵ The practice of rigorous measures with regard to the rejection of infected persons because of the threat to national public security and order for the purpose of health protection is not only controversial in terms of humanitarian reasons. It also represents an enormous security risk for other persons since the person will be moved back to the country of departure or transit, resulting again in contact with other persons.

¹¹² WHO Ebola response roadmap - Situation report. Available from: <http://apps.who.int/ebola/current-situation/ebola-situation-report-30-march-2016> (Accessed on 24th October 2016).

¹¹³ Ohliger, Rainer (2014): Ebola epidemic affects free movement and immigration (as of November 2014). Available from: <http://www.bpb.de/gesellschaft/migration/newsletter/195088/ebola-und-freizuegigkeit> (Accessed on 25th October 2016).

¹¹⁴ Note from the author: In particular, the countries of Sierra Leone, Guinea and Liberia were affected.

¹¹⁵ German Residence Act in the version of the notice of 25th February 2008 (Federal Law Gazette I p.162), which has been amended by Article 1 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439). § 15 Residence Act – Rejection.

3.5. The fall of the Iron Curtain and its impact on border regimes

Winston Churchill used the term 'Iron Curtain' in a speech at Westminster College, Fulton, Missouri, USA on 5th of March 1946.¹¹⁶ He explained to the auditorium that an iron curtain had descended in Europe from the Baltic Sea to the Mediterranean Sea. As a consequence, he noted that a separating line from north to south had divided Europe into two parts, and that important European capitals such as Berlin, Budapest, Prague and Warsaw were now behind this Iron Curtain and subject to the influence of the Soviet Union. Churchill further argued that this is not only a physical separation line in the middle of Europe but also divides the world. Soon after, all borders with the Western European countries were closed and a profound change began in the border regimes of the Central and Eastern European countries. The Iron Curtain was not only an ideological separation line, but also characterised by ingenious and perfidious border fortifications and miles and miles of restricted border zones, spring guns, strips with anti-personal mines, dog patrol guide wires, strict observation facilities, and special communication and reporting systems. In August 1989, Hungary became the first Eastern bloc country to open its borders westward, and thousands of people took advantage of this opportunity to enter the West. On 9th November 1989, the Berlin Wall was opened and then the Iron Curtain fell between East and West Europe.

Looking back over the past 25 years, two historical events have had a profound and lasting influence on the reforms and renewals of border management, border surveillance and border control with new perceptions on transnational threats in Europe; this was, on the one hand, the dissolution of the Soviet Union and, on the other, the breakdown of former Yugoslavia. Both events facilitated a destabilisation of large parts of Europe and changed the security policy situation and its reevaluation in a very sustainable way. Within this period, and especially during the last decade, there have also been a number of conflicts in the Middle East, Central Asia and Afghanistan, and the spheres of influence of northern Africa. This still has a serious impact on European security policy in general, and on the border regime of the EU MS and its neighbouring countries in particular. These conflicts were usually preceded by protests, as reactions to the failure of the public administration and the spreading corruption in these countries, where poverty, high unemployment, the disregard for human rights and the lack of democratic

¹¹⁶ Stoeber, Bernd (2007): The Cold War. History of a radical age 1947-1991, Munich 2007. Available from: <http://www.bpb.de/nachschlagen/lexika/176814/eiserner-vorhang> (Accessed on 25th October 2016).

freedoms have become the norm. The reactions of the respective societies varied. While the ruling power elites were exchanged relatively quickly in Egypt, Yemen and Tunisia, the rebellion in Algeria has been suppressed. In Syria, a bloody civil war broke out, which continues to this day, and cost hundreds of thousands of lives and severely injured people in the civilian population. Millions of people were expelled and had to leave their home country (see further explanations under point 3.6.5.).

3.5.1. The dissolution of the Soviet Union

On 26th December 1991 the dissolution of the Soviet Union was formally adopted by the Declaration No. 142-H of the Supreme Soviet of the Soviet Union.¹¹⁷ As a result, all 15 former Soviet republics were recognised as sovereign and independent states. The dissolution of the Soviet Union as the world's largest communist system also marked the provisional end of the Cold War between the superpowers. In the succession, the Commonwealth of Independent States (CIS) was established on the basis of the Almaty/Kazakhstan Declaration and the Protocol to the Minsk-Belarus Agreement on 8th December 1991.¹¹⁸ The former Soviet republics Russia, Ukraine and Belarus were the founding members. After this, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan (since 2005 only more associated member) and Uzbekistan joined; Georgia joined the CIS only in 1993. The CIS is based in Minsk, Belarus and is an intergovernmental organisation with the objective of creating a common economic and security area and border regimes. As a result of these revolutionary events and the accompanying liberalisation, nationalist movements and ethnic disputes arose both within and between the respective former Soviet sub-republics. One reason for this is that some of these states, which are now sovereign and recognised by the international state community, continue to be unable to reach common and mutually recognised frontiers.

This is usually the case when there is access to natural resources in the border regions and two, or even more states simultaneously apply territorial claims.

¹¹⁷ Schubert, Klaus / Klein, Martina (2016): *Das Politiklexikon*. Commonwealth of Independent States - CIS. Short description for the Union of Soviet Socialist Republics, founded after the end of the Russian Empire (1917) in December 1922 (Unions Treaty, First Constitution 1924), which was the political centre of the Eastern bloc and real socialism until its final disintegration in 1991 the territory of the Commonwealth of Independent States (CIS) as well as Estonia, Latvia and Lithuania. The Supreme Soviet was the highest legislature of the former Soviet Union. Available from: <http://www.bpb.de/nachschlagen/lexika/politiklexikon/18213/sowjetunion-udssr> (Accessed on 25th October 2016).

¹¹⁸ Bos, Ellen / Schmidt, S. (ed.) (2007): The CIS countries. Handbook on German Foreign Policy, p.455-467. Available from: <http://www.bpb.de/nachschlagen/lexika/177006/gemeinschaft-unabhaengiger-staaten-gus> (Accessed on 25th October 2016).

Unresolved demarcations regarding the establishment of international borders between sovereign states have high-risk potentials for transnational threat scenarios.¹¹⁹ These problems can be observed mainly between the five Central Asian states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. However, the recent past also shows that the Russian Federation will no longer recognise the territorial integrity, as well as the international border with Ukraine, as the Russian Federation has committed itself, for example, to the UN Charter, and the OSCE concept for securing and control of international borders.

With regard to international legal frameworks and treaties, the Russian Federation was established as the legal successor of the former Soviet Union, and thus inherited the permanent seat in the UN Security Council. In addition, the Russian Federation took over the entire inventory of all nuclear weapons of the former Soviet Union. The respective developments of the former republics were very mixed after the dissolution of the Soviet Union and only the Baltic States¹²⁰ were able to establish democracies and develop border regimes in accordance with EU standards. While Armenia, Georgia, Moldova and Ukraine have established structures that are similar to democratic systems in certain areas, authoritarian systems have established themselves in the countries of Azerbaijan, Belarus and Central Asia.¹²¹

Many of the former Soviet states maintained a close link with the Russian Federation and formed multilateral organisations, such as the Eurasian Economic Union or free trade zones, to facilitate economic and security cooperation and to provide Russia with far-reaching influence.¹²² Numerous Russian border experts

¹¹⁹ Note from the author: As an example of the unexplained borderline between sovereign states, the area around the *Ferghana* valley in Central Asia is chosen, which is a densely populated valley between the *Tianshan* and the *Alai* mountains in Central Asia. More than ten million people, 20% of the population of Central Asia, live in the only 300 km long and up to 110 km wide valley. This is generally considered as the cultural centre of Central Asia. The valley extends to the territory of Uzbekistan, Tajikistan and Kyrgyzstan, and since the disintegration of the Soviet Union many negotiations have been held regarding a mutually recognised border crossing. But the states could not agree on the membership of the controversial border sections. The *Ferghana* river valley is called 'boiling bowl' because of its dense population and the lack of resources. Again and again there are bloody incidents at the Kyrgyz-Uzbek and Tajik-Uzbek borders. The status of the 345-kilometer-long Uzbek-Kyrgyz border is unclear. In addition, the tensions in the Uzbek enclaves *Soch* and *Schachimardan* in Kyrgyzstan and the Kyrgyz enclave *Barak* in Uzbekistan intensify. The border is also not adequately secured. This is also an important factor in the instability because drugs, weapons and goods are smuggled uncontrolled through the *Ferghana* valley. The tough negotiations on the division of the border usually end with no result. The head of the Kyrgyz security committee, Shamil Atakhanov, said: "The status of hundreds of kilometres of border remains unclear." Available from: <http://de.sputniknews.com/politik/20120323/263145236.html> (Accessed on 25th October 2016).

¹²⁰ BPB (2013): EU accession of Estonia, Latvia, and Lithuania on 01.05.2004. Available from: <http://www.bpb.de/nachschlagen/lexika/177176/osterweiterung-der-eu> (Accessed on 25th October 2016).

¹²¹ Note from the author: The countries of Central Asia are Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

¹²² On 1st of January 2015, President Putin and his colleague Alexander Lukashenko (Belarus) and Nursultan Nazarbayev (Kazakhstan) decided to establish the Eurasian Economic Union in Astana, which provides for a free

from the national security service FSB¹²³ are stationed in these countries and have significant influence and control potential on the border regimes of the neighbouring countries in Central Asia, the Caucasus, Belarus, Moldova, in particular *Transnistria* and Eastern Ukraine.¹²⁴ The FSB is the successor organisation of the former Soviet secret service KGB¹²⁵ with the restriction of perception on domestic tasks. The tasks of the FSB are mainly state security, domestic enlightenments and border regimes.

3.5.2. The disintegration of Yugoslavia

The disintegration of Yugoslavia was the result of a series of political upheavals in the 1980s and conflicts in the early 1990s.¹²⁶ The territory of the former SFR of Yugoslavia was situated in a region with a long history of ethnic conflicts and was a conglomerate of six regional republics and two autonomous provinces separated by ethnic dividing lines. In the early 1990s the country was divided into several independent countries: the six Republics of Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia¹²⁷ (politically also correct as FYROM; now Republic of North Macedonia¹²⁸), Montenegro, Serbia and Slovenia, and two autonomous regions within Serbia, Vojvodina and Kosovo.

Nationality was the first priority for the majority of the population until Yugoslavia's disintegration started, according to Sundhaussen's assessment.¹²⁹ As a result, the population of Yugoslavia defined their affiliation as being part of the European population, and only thirdly, the membership of the respective republic or the respective autonomous region. Sundhaussen concluded that non-ethnic tensions between the respective population groups were the main cause of the dissolution.

exchange of goods, services, capital and labour. Armenian President Sersj Sargsyan and Kyrgyz President Almasbek Atambayev, who are seeking accession, attended the meeting. Available from: <http://www.bpb.de/internationales/europa/russland/186545/chronik-22-mai-5-juni-2013> (Accessed on 25th October 2016).

¹²³ Note from the author: *Federalnaja sluschba besopasnosti Rossijskoi Federazii* (FSB) means 'Federal Service for Security of the Russian Federation'.

¹²⁴ Federal Foreign Office Berlin (2015): The breakaway part of Transnistria (self-proclaimed "Pridnestrovian Moldavian Republic") is outside the control of the Moldovan government. Available from: <https://www.auswaertiges-amt.de/DE/Laenderinformationen/00-SiHi/MoldauSicherheit.html> (Accessed on 25th October 2016).

¹²⁵ Note from the author: KGB – Russian: *Communitet gossudarstvennoi besopasnosti pri Sowjete Ministrow SSSR*.

¹²⁶ Note from the author: Yugoslavia is also referred to as the Socialist Federal Republic of Yugoslavia, or as SFR Yugoslavia, or simply SFRJ.

¹²⁷ Note from the author: The official name of the United Nations is the former Yugoslav Republic of Macedonia. Available from: <http://www.un.org/apps/news/story.asp?NewsID=43078#.WBXB43eX-Rs> (Accessed on 30th October 2016).

¹²⁸ Note from the author: Since June 2018 the official name is now Republic of North Macedonia following the signature of the historic agreement reached with Greece (also known as the 'Prespa agreement').

¹²⁹ Sundhaussen, Holm (2008): *Der Zerfall Jugoslawiens und seine Folgen* (The disintegration of Yugoslavia and its consequences). Available from: <http://www.bpb.de/apuz/31042/der-zerfall-jugoslawiens-und-dessen-folgen?p=all> (Accessed on 30th October 2016).

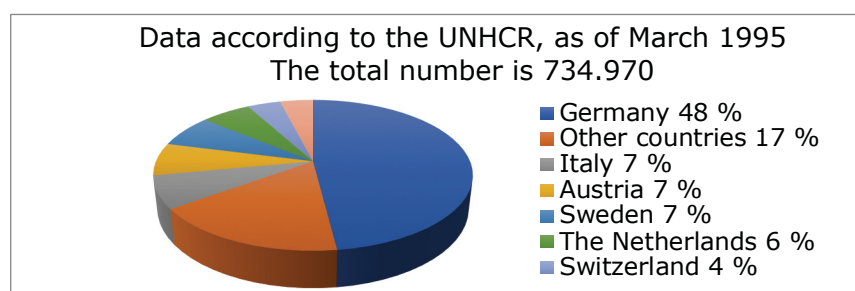
However, the disintegration of a degenerate state is often the result of repeated crises that eventually saps the capacity of the state and leads to dismantlement. Towards the end of the 1980s, the overall morale changed and the political turnaround in Serbia began. On 24th April 1987, Slobodan Milošević visited the capital of the autonomous region of Kosovo.¹³⁰ At an address in Pristina, to people mainly of Serbian ethnicity, an old man approached Milošević lamenting the fact that he had suffered a beating at the hands of the Kosovo Albanians.

Thereupon Milošević made the statement, which was directed especially to the Serbs living in Kosovo: "No one is allowed to beat you!"

This single sentence made Milošević immediately very popular and gained prominence far beyond the borders of Yugoslavia, and from then on he took advantage of this as the new 'leader' to implement his nationalist views and consolidate his position and power.¹³¹ In the 1990s, a series of wars took place on the Yugoslavian state territory, which were called the 'Yugoslavian Wars' (or Balkan wars), and resulted in the disintegration of Yugoslavia. In particular, it was the short war in Slovenia in 1991 (duration 10 days), the war in Croatia from 1991 to 1995, the war in Bosnia and Herzegovina from 1992 to 1995, the war in the autonomous region of Kosovo in 1999, as well as the Albanian insurrection in North Macedonia in 2001 (see Chapter 12).

In 1997, the European Forum on migration studies concluded a research on measurable figures on war refugees from the former Yugoslavia. For this purpose, the figures from UNHCR estimates were used up to 1995.

Figure 3.5.2.1.: War refugees from ex-Yugoslavia until 1995



Source: European Forum for Migration Studies¹³²

¹³⁰ Note from the author: Milošević became the head of the Communist Party in Serbia in May 1986.

¹³¹ Sundhaussen, Holm (2008): *Der Zerfall Jugoslawiens und seine Folgen* (The disintegration of Yugoslavia and its consequences). At the 8th Plenary Session of the Communist Party Serbia on 23rd and 24th September 1987, Milošević and his supporters were able to eliminate their opponents in the party, and Milošević took over the post of the President of the Republic of Serbia on 14th December. Available from: <http://www.bpb.de/apuz/31042/der-zerfall-jugoslawiens-und-dessen-folgen?p=all> (Accessed on 30th October 2016).

¹³² European forum for migration studies (1997): War refugees from the former Yugoslavia to target country (estimate of the UNHCR, as of March 1995). Available from: http://www.efms.uni-bamberg.de/ds27_2_d.htm (Accessed on 30th October 2016).

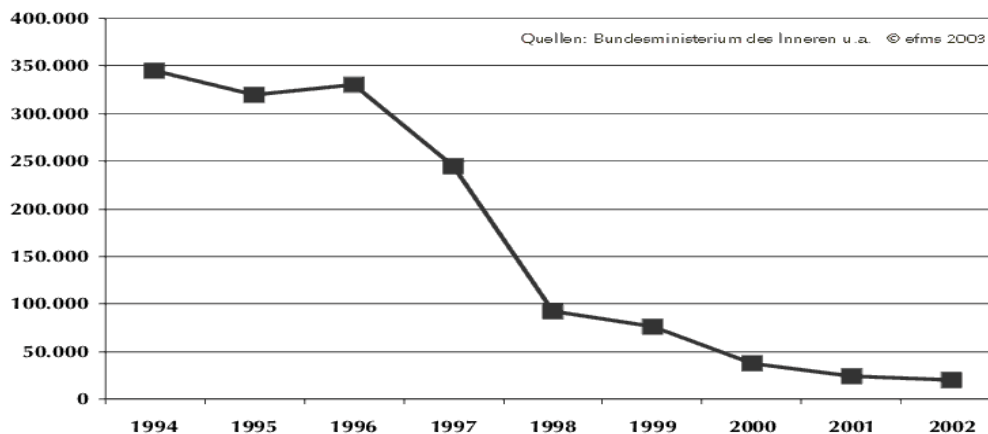
According to this study Germany had accommodated in absolute terms most of the civil war refugees from the territories of the former Yugoslavia. These were a total of approximately 350,000 people. However, if population numbers are compared in relation with the numbers of the accommodated war refugees, it is shown that smaller countries have received proportionally more people.

Examples of the number of refugees in relation to population:

- Austria 6 refugees per 1,000 inhabitants
- Sweden, about 5.5 refugees per 1,000 inhabitants
- Switzerland about 4.6 refugees per 1,000 inhabitants
- Germany about 4.3 per 1,000 inhabitants

Other smaller European countries, such as Austria, the Netherlands, Sweden and Switzerland had offered protection to more refugees than France and Great Britain together (22,300). The first four states granted a total of 177,500 people a temporary stay. In the meantime, most of the civil war refugees from Germany have largely returned to their home countries. The remaining 20,000 refugees from Bosnia-Herzegovina are consistently hardship cases where a return for humanitarian reasons is excluded.

Figure 3.5.2.2.: Statistic of refugees in Germany



Source: Federal Ministry of Interior, Germany¹³³

With regards to the autonomous region of Kosovo, there are two significant armed conflicts, which took place in the following periods: (a) from January 1998 to March 1999, and (b) from March 1999 to June 1999. The first war was a domestic conflict between the Liberation Army of Kosovo and the army and special state police of the Republic of Serbia.¹³⁴ On 24th March 1999, NATO launched air strikes on

¹³³ Ibid.

¹³⁴ Note from the author: UCK (Albanian: *Ushtria Çlirimtare e Kosovës*) was a paramilitary unit that saw itself as the Liberation Army of Kosovo. The means of the UCK was the armed conflict with the objective of achieving

targets in Yugoslavia, or at least what was left of it. Appropriate negotiations between responsible Kosovo Albanians and Serbs had failed and the spiral of violence continued to escalate. These interventions took place without a legitimate UN mandate and lasted a total of 78 days, during which time the disputes between Serbs and Kosovo Albanians continued.

The figures as a result of this argument were devastating. It is estimated that some 10,000 Kosovo Albanians were killed and more than one million people had to flee or were displaced with an estimated population of about two million people. The NATO air strikes against the aggressors from the Federal Republic of Yugoslavia in March 1999 dramatically aggravated the situation for the Albanian descendants in the province of Kosovo. According to a report by Amnesty International, based on UNHCR estimates, almost 400,000 people fled directly to the neighbouring regions to seek shelter and protection from Milošević's bloodhounds.¹³⁵ At this time hundreds of thousands more were waiting for the right moment to escape. According to unofficial estimates, a total of 500,000 people fled to North Macedonia, which completely overexerted this small country and created a huge risk to public security and order.

As a result of these dramatic upheavals and enormous risks to regional security, the *Ohrid* Conference was convened in May 2003, involving five Western Balkan countries, the EU, NATO, the Stability Pact, and the OSCE, which is discussed in more in detail under point 12.1.

In June 1999 the war ended and a peace plan was worked out and Kosovo was placed under international administration on the basis of UN Resolution 1244 (1999). The Interim Administration Mission in Kosovo (UNMIK) ensured the civilian component, while the Kosovo Force (KFOR) is still responsible for ensuring peace. In February 2008, the then 27 EU MS decided to set up the European Union Rule of Law Mission in Kosovo (EULEX Kosovo), which started its activity in December of the same year.¹³⁶ EULEX operates under the general conditions of the UN Security Council mandate 1244 (1999).

independence. Available from: <http://www.bpb.de/politik/hintergrund-aktuell/68855/drei-jahre-kosovo-16-02-2011>. (Accessed on 1st November 2016).

¹³⁵ Amnesty International (1999): Protection of Refugees from Kosovo (1999). Available from: <https://www.amnesty.de/umleitung/1999/eur65/001> (Accessed on 1st November 2016).

¹³⁶ European Union Rule of Law Mission in Kosovo - EULEX (2008 to present). Available from: http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/index_en.htm (Accessed on 11th November 2016).

EULEX Kosovo shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent and multi-ethnic justice system and a multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.¹³⁷

3.5.3. Ukraine - a torn state

"The Ukraine, or rather the Eastern Ukraine, will return in five or ten or fifteen years. To hell with the West Ukraine!"¹³⁸

More than 20 years ago, an unknown Russian general made this statement at the beginning of the 1990s, and surprisingly it reflects the current situation in Russia, the most important state of the former Soviet Union. It would seem as though history is repeating itself.

Until 1991 Ukraine was under the control of Moscow and has always been seen as a divided country. Huntington uses the term of a 'torn country' and justifies his observation by the fact that there are two different cultures within the Ukrainian population. In his book he described that a cultural break line proceeded between the western and the eastern part, exactly through the heart of the country, and continues as before. He further pointed out that Western Ukraine was alternately a part of Poland, then Lithuania, as well as the Austro-Hungarian Empire.¹³⁹ The territory of Eastern Ukraine, on the other hand, always turned to Russia, which is still expressed in language, religion, customs and traditions. Since the declaration of the independence of Ukraine from the former Soviet Union more than two decades ago, clear East *versus* West results have always marked the Ukrainian presidential elections in the 26 electoral districts of Ukraine. In all 13 western electoral districts, clear results were always recognised for the quasi-western candidate and in exactly the same number of districts with clear results for the eastern candidate.

On 13th July 1994, Brzezinski¹⁴⁰ commented on the presidential election of 1994 with the candidates Kravchuk (West) and Kuchma (East) in an article in the New York Times, saying: "[...] the election result clearly illustrates the split between

¹³⁷ COUNCIL JOINT ACTION 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo. Available from: http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf (Accessed on 1st November 2016).

¹³⁸ Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of World Order*. P.267, 559. Cited by Ola Tunander, "New European Dividing Lines?" In Vlater, Angell (eds.): *Norway Facing a Changing Europe: Perspectives and Options 1992*. P.55.

¹³⁹ Ibid. p.264.

¹⁴⁰ Note from the author: Brzeziński, Zbigniew is a Polish-American political scientist. Together with Henry Kissinger and Samuel P. Huntington, he is one of the leading American globalists. Brzeziński was a security adviser to US President Jimmy Carter (1977-1981).

Europeanised Slavs in the West Ukraine and the Russian-Slavic vision of what Ukraine should be. This is not an ethnic polarisation, these are different cultures."¹⁴¹

Back then, as now, there were more or less the same important areas of concern in forming the future relations between Ukraine and Russia: the separation of the Crimea and the immediate clarification of questions concerning the Black Sea Fleet, the rights of the Russians in the eastern part of Ukraine, the economic relations of Ukraine with Russia and simultaneously with the West.¹⁴² One further concern relates to the conflict parties and the international community in the current situation of a war conflict between Russia and the Ukraine, in that no further negotiations are required in relation to the nuclear weapons arsenal of the former Soviet Union based on the territory of the Ukraine. The question of the status of the Crimean Peninsula is probably no longer a matter of debate after a referendum on independence was held on 16th March 2014.¹⁴³ The result was announced with 96.77% of the eligible voters supporting unification of the Crimea to Russia on the basis of democratic electoral principles, at least according to the opinion of the Russian Foreign Minister Lavrov, and immediately recognised by the Russian side, thus establishing a fact.

Currently, several scenarios are possible with regards to how a future Ukraine might look.

- Ukraine is divided into two parts; the eastern regions will join Russia and the country will be torn apart. What will happen with the western part of Ukraine remains unclear at first. In the long run, however, there could be a possibility of joining the EU.
- Ukraine remains together, granting the eastern part an autonomous status to be further defined that weakens the centralist influence of the government in Kiev, which in turn would be equal to a division.
- Ukraine follows the idea of the Austrian Minister for Foreign Affairs¹⁴⁴ and

¹⁴¹ Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of World Order*. P.266.

¹⁴² Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of World Order*. H. distinguishes in his theses the great contemporary cultural circles as follows: The Sinian, Japanese, Hindu, Islamic, South American and even Western cultural circle. H. describes the term 'West' in a general sense, which was once called the Christian Occident. Thus, the West is the only cultural circle that is designated with a cardinal direction and not with the name of a particular nation or religion. P.57-60.

¹⁴³ Ibid. In May 1992, the Crimea parliament voted for independence from Ukraine. This was later revoked. The Russian parliament voted to annul the cession of the Crimea to the Ukraine in 1954. P.267.

¹⁴⁴ Federal Ministry for Europe, Integration and Foreign Affairs (2013): Minister Kurz: "In the short term, there are two priorities: peace and arms rest as well as humanitarian aid for all those affected in the east of Ukraine." 37th Federal Parliamentary Conference ÖVP (2013). Available from: <http://www.oevp.at/team/kurz/Langfristige-Loesung-fuer-Ukraine.psp> (Accessed on 1st November 2016).

declares itself as a neutral state similar to the status of the Republic of Austria after the Second World War.

What the 'Ukraine crisis' will mean to Europe in the context of transnational threats will show in the way, whether one will speak here only of a crisis, or of martial means to the realisation and achievement of political aims.

"The war is a mere continuation of the policy by other means." Following Clausewitz's testimony, warfare is thus not only a political act (or even only action) but also a political instrument.¹⁴⁵ He stated, that war is a mere continuation of policy "with other means" or sometimes "with the intervention of other means". The originally intended purpose for the implementation of politically motivated actions is to be achieved by other means. While diplomacy is characterised primarily by non-violence, dialogue and consultation, the distinctive features of war are the means of violence. Apparently his explanations remain relevant today, with the discrepancy that current conflicts are involving all sorts of asymmetric threats, such as terrorism, TOC, illicit trafficking of drugs, SALW etc. In the past, today and in the future, It seems, that Clausewitz' theory retains its validity from history, in the present time and in the future.

Clearly, Putin's view of a New Russia stands in stark contradiction to that of the West regarding the Ukrainian situation. Putin has expressed unequivocally that Russia is claiming to influence the western and south-western neighbouring countries. This influence is likely to take place both in terms of a territorial claim, with a direct impact on border regimes, economic cooperation combined with the creation of free-trade zones, and on the political level. The occupation of the Crimean peninsula, as well as the covert and partly open support of separatists in the Eastern Ukrainian territories through Russia, has obviously surprised the West.¹⁴⁶ Although the West was already experiencing similar experiences from the Georgia War in 2008 and had to learn painful lessons, it was difficult for the West to react adequately.¹⁴⁷ Suddenly, a large number of new rhetorical explanations

¹⁴⁵ Clausewitz, Carl (2016): *Vom Kriege: hinterlassenes Werk, München et al., 2003, Erstes Buch: Über die Natur des Krieges. 1. Kapitel, Punkt 24.* Available from: <http://www.clausewitz.com/readings/VomKriege1832/Book1.htm#2> (Accessed on 1st November 2016).

¹⁴⁶ Note from the author: The peninsula of Crimea is according to the prevailing opinion international state territory of Ukraine.

¹⁴⁷ BPB (2013): *The War in Georgia – On 8th of August 2008, during the night Georgian troops marched into Tskhinvali, the capital of South Ossetia.* The government in Tbilisi wanted to regain control of the province, which since independence of Georgia in 1991 has been striving for its own statehood. Russia announced retaliation and replied with a military offensive on the defence of South Ossetia - on the grounds of protecting its citizens in the Georgian province. The Russian Foreign Ministry said that Georgia's intervention in the neighbouring Republic had broken the 2006 peace agreement between the two countries. The conflict also spread to the Georgian province of Abkhazia, which also strived for state independence. Available from:

were made, such as 'enemy intrusion' (US President Barak Obama, who used the term 'incursion'), 'hybrid warfare' (NATO), 'nonlinear war' (Russian chief of general staff Waleri Gerassimov), or just aggression or invasion. In spite of the compulsive behaviour after rhetorical simplification, however, it remains with the fact of martial killing. The fact remains that the warlike conflict in the Ukrainian state has created a highly explosive transnational threat scenario, the possible consequences of which are, as yet, beyond comprehension and management at the present time.

3.6. Transnational threats from fragile and failed states

3.6.1. Fragile and failed states

Jellinek¹⁴⁸ defines the characteristics of a state as a social entity, whose constituent features according to the 'three-element doctrine' characterises a territory surrounded by boundaries – state territory, a group of people based on it – constitutive people, as well as a state power¹⁴⁹ ruling in this area that is still valid for the recognition¹⁵⁰ as a state under international law¹⁵¹.

Only if all three characteristics are present at the same time can it be recognised as a state.

Currently there is no uniform international definition for the description of fragile states. According to an achieved result of the G-7 summit in Germany in June 2015 and a corresponding declaration from the German Federal Ministry for Economic Cooperation and Development, as well as on the basis of international conferences, networks, working groups and other documents developed over the past years, relevant indicators and principles have been established for effective international

<http://www.bpb.de/politik/hintergrund-aktuell/166356/kaukasuskrieg-08-08-2013> (Accessed on 2nd November 2016).

¹⁴⁸ Encyclopaedia of Legal Philosophy (2015): Georg Jellinek (*16th June 1851 in Leipzig, †12th January 1911 in Heidelberg) was a German constitutional lawyer of Austrian origin. Available from:

<http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/102-jellinek> (Accessed on 2nd November 2016).

¹⁴⁹ Jellinek, Georg (1900): *Allgemeine Staatslehre*. Verhältnis Staat – Staatsgrenzen. P.394.

Benz, Arthur (2008): *Der moderne Staat*. P.54.

Stern, Klaus (1984): *The Constitutional Law of the Federal Republic of Germany*, Volume I, §§ 1, 2.

¹⁵⁰ Montevideo Convention on the Rights and Duties of States (1933): Art. 1 The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. Available from: <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897> (Accessed on 3rd November 2016).

¹⁵¹ Schubert, Klaus / Klein, Martina (2011): *BPB – Das Politiklexikon*. 5th updated edition. Bonn: Dietz 2011: International law is a collective term for all legal norms that govern the relationship between the (independent) states and the relations between the individual states and the international organisations. In contrast to national legislation, the international law cannot be enforced by a central authority but is dependent on the recognition of the respective states. International law is the result of treaties (i.e., agreements, conventions, pacts, etc.) dealing with the recognition of foreign territories, the restriction of military action, diplomatic exchange and traffic, mediation of disputes, questions of international trade, etc. Of central importance are the constitution of the United Nations (United Nations Charter) of 1945, the UN Declaration of Human Rights, the Conventions and Agreements of the Council of Europe. "

engagement in fragile states.¹⁵² This took place within the framework of the EU, the Organisation for Economic Cooperation and Development (OECD), or the World Bank. In general, governments are classified as fragile, in which governments are not able or willing to guarantee the basic governmental functions in the areas of public security and order, the rule of law, basic social services and legitimacy. In these fragile states the respective authorities and executive bodies are very weak, or even threatened with disintegration and dissolution, in the exertion of their primary tasks. Moreover, in a fragile state, the population suffers from great poverty, political arbitrariness, nepotism, strong corruption and violence due to a lack of state welfare and the rule of law. As a consequence, these fragile states represent both a regional and international security risk and therefore a transnational threat. Where state structures are lacking, public administration fails, and rule of law does not apply, thus room for cross-border OC groups and terrorism are created. The German Federal Ministry for Economic Cooperation and Development identifies the group of fragile countries on the basis of an annual assessment of governance (*Governance Guide*¹⁵³).

A state is classified as a failed state¹⁵⁴, if the fundamental tasks and functions of the public administration, including the state enforcement authorities such as police and border control authorities, can no longer be guaranteed. A failed state then either has no complete control over its entire national territory, or the reigning government is so limited in its possibilities that it is ostensibly incapable of acting. In both cases, this formally existing state will no longer be able to fulfil its central tasks with regard to legitimate exercise of power, border regimes, guaranteeing public security and order, together with welfare assurances for the state population, as will also be demonstrated by the following examples. A definite determination, when a state is to be considered failed, however, is difficult to formulate as a fact. This is why the term of the failing state is often used, which is a process that still endures today. This type of state shows considerable deficits in the fulfilment of the primary tasks, which (but not yet) led to a complete failure or collapse of the state.

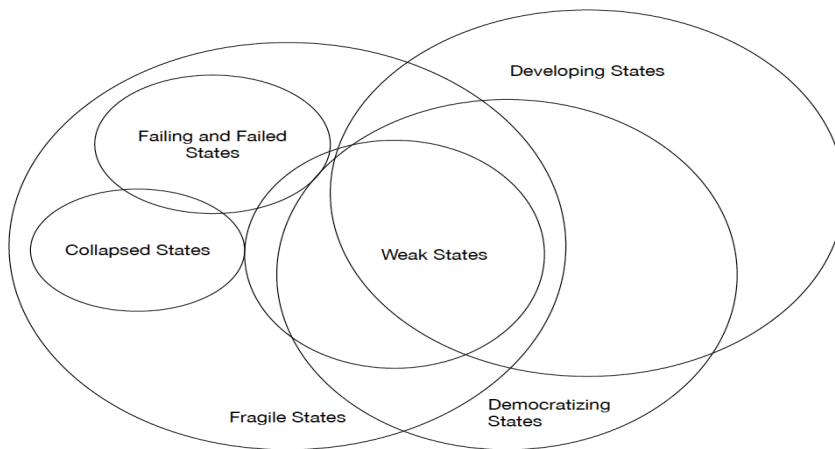
¹⁵² Federal Ministry for Economic Cooperation and Development (2015): Fragile statehood - a challenge for development policy. Available from: http://www.bmz.de/de/was_wir_machen/themen/frieden/fragilestaaten/index.html?PHPSESSID=2937c8698b46f7415ad94fc2c27ab3cd (Accessed on 3rd November 2016).

¹⁵³ United Nations (2015): Global Issues – Governance. Available from: <http://www.un.org/en/globalissues/governance/> (Accessed on 3rd November 2016).

¹⁵⁴ Wissen.de (2015): Definition 'Failed State'. Available from: <http://www.wissen.de/lexikon/failed-state> (Accessed on 3rd November 2016).

The 'failed state index' is intended to provide an assessment of the extent to which the affected states are to be classified at which stage they are located.¹⁵⁵

Figure 3.6.1.1.: Fragile States Venn Diagram



Source: Failed states and fragile states¹⁵⁶

Carmen and Samy¹⁵⁷ describe these weak, failing, failed states as regard the above diagram as

[...] states that have typically fallen into complete collapse brought on by 'man-made' calamity, such as civil war or a mismanaged economy, sometimes exacerbated by environmental degradation or natural disasters. These states are, despite international efforts, utterly incapable of managing their political and economic space.

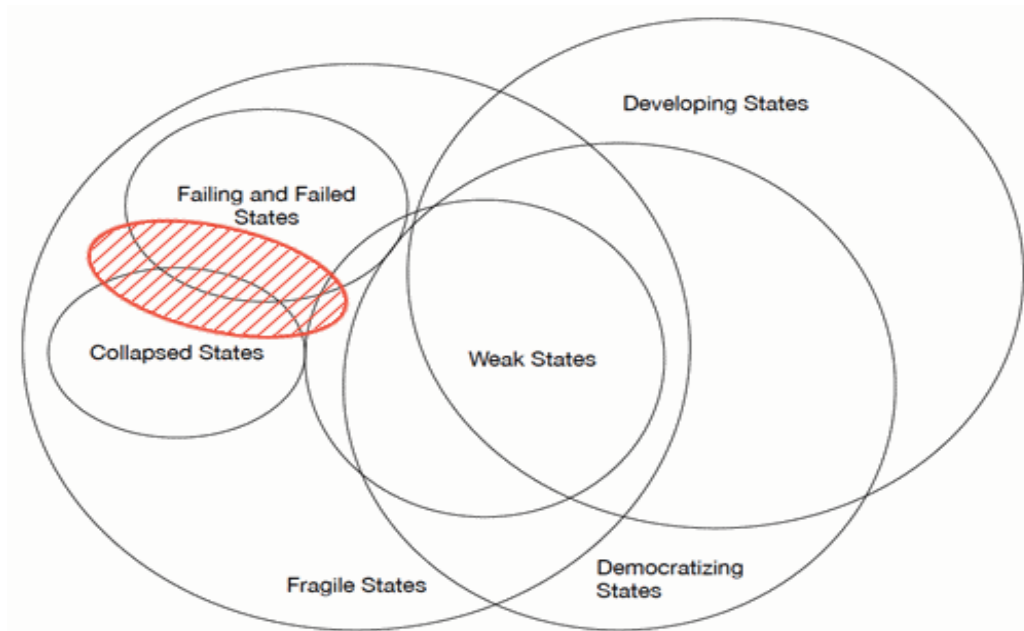
Often, the reasons for the disintegration processes of states are found in the context of diminishing support for post-colonial societies in transition, as well as tensions between different population groups through unresolved or arbitrary border demarcation, as well as unrest due to economic, religiously motivated or political crises. Clear features of this phenomenon are for example often changing and unstable political leadership from democratic and authoritarian regimes, which are associated with the establishment of hostile and armed groups, including separate shadow economies. This is the ideal breeding ground for the transitional forms and simultaneous phases of illegitimate state structures, which are exploited by unauthorised groups through the absence of rule of law and public administration.

¹⁵⁵ Failed State Index (2015): Available from: <http://fsi.fundforpeace.org/rankings-2015> (Accessed on 3rd November 2016).

¹⁵⁶ Carment, David / Samy, Yiagadeesen / Trauschweizer, Ingo / Miner, Steven M. (ed.) (2014): failed states and fragile states. P.4.

¹⁵⁷ Ibid.

Figure 3.6.1.2.: Own presentation



The past experience shows that failed states or failing states can only be positively influenced by massive foreign intervention of the UN, EU, NATO, or OSCE, *inter alia*, in the areas of politics, economy, security, and this includes the border regime, and the military.

This confirms the principles of the classical organisational theory, according to which invalid organisational forms are inert, do not want to change, or can only be changed by external influences.¹⁵⁸ Failed states or failing states are considered to be a source of transnational threats as they offer safe areas of retreat for their operations to the members of the cross-border OC, terrorism and foreign terrorist fighters (FTF). As a consequence of the increasing number of weak, failing, failed, and collapsed states, the UN peacekeeping forces have undertaken more peacekeeping missions over the past 20 years than during the whole period before the founding of the UN in 1945.¹⁵⁹ A peacekeeping mission of the UN troops is the use of military forces by the UN and is clearly delimited to monitoring missions (see OSCE Observer Mission in the East Ukraine¹⁶⁰).

¹⁵⁸ Heimerl, Peter (1992): *Strategische Organisationsentwicklung* – Content and methodical concepts for learning in and from organisations.

¹⁵⁹ United Nations. List of Peacekeeping Operations 1945–2013. Available from: <http://www.un.org/en/peacekeeping/documents/operationslist.pdf> (Accessed on 3rd November 2016).

¹⁶⁰ Organisation for Security and Co-operation in Europe - OSCE (2014): Special Monitoring Mission to Ukraine. Available from: <http://www.osce.org/ukraine-smm> and <http://www.osce.org/ukraine-smm/116879?download=true> (Accessed on 3rd November 2016).

3.6.2. Afghanistan

Since 1964 King Zahir Shah ruled the country in the form of a constitutional monarchy, when a wave of political unrest started in the 1970s.¹⁶¹ At the end of 1979, the Soviet Union forces invaded Afghanistan and instituted governments in the direction of Moscow with the aim to influence all political processes according to their will. It was the Afghani religious leaders who formed the resistance and proclaimed the 'holy war'; their fighters called themselves *Mudschaheddin* and recruited mainly from the Afghan-Pakistani border areas.¹⁶² Appropriate support has been provided to these several tens of thousands troops from the United States (the CIA played an important role), Pakistan and Saudi Arabia. Afghanistan thus became the battleground of the Cold War between the super powers and was seen as a proxy war between the global powers. Despite technical and personnel superiority, the Soviet troops failed to take the crucial blow. The so-called Geneva Agreement between Afghanistan, the USA, the Soviet Union and Pakistan then concluded the end of this war in April 1988. On 15th February 1989, Soviet troops officially left the country.¹⁶³ Afterwards, however, the supervisors continued to play a decisive role and supported the respective conflict parties, which led to a renewed civil war in the early 1990s. During this time, the *Taliban* came on stage as key actors and seized power and declared the 'Islamic Emirate of Afghanistan' in 1996.¹⁶⁴ A US-led military operation against the terrorist organisation *Al-Qaeda* ended the Taliban rule in 2001.¹⁶⁵ Since 2003, the international protection group for Afghanistan (ISAF) is to ensure security under the leadership of NATO.¹⁶⁶ The ISAF was drawn into a guerrilla war, and the concept of asymmetric warfare was

¹⁶¹ BPB (2014): 1989: The Soviet withdrawal from Afghanistan. Available from: <http://www.bpb.de/politik/hintergrund-aktuell/178868/1989-sowjetischer-abzug-aus-afghanistan> (Accessed on 4th November 2016).

¹⁶² Elger, Ralf (2001): „Mudschaheddin, who exercise the 'holy war'". Available from: <http://www.bpb.de/nachschlagen/lexika/islam-lexikon/21527/mudschahidin> (Accessed on 4th November 2016).

¹⁶³ BPB (2014): 1989: The Soviet withdrawal from Afghanistan. Available from: <http://www.bpb.de/politik/hintergrund-aktuell/178868/1989-sowjetischer-abzug-aus-afghanistan> (Accessed on 4th November 2016).

¹⁶⁴ GlobalSecurity (2016): Al-Qaeda (The Basis) is a globally operating terrorist network, founded by Osama bin Laden in 1988. The terrorist organisation is responsible for the terrorist attacks on the World Trade Centre in New York on 11th of September 2001. Available from: <http://www.globalsecurity.org/military/world/para/al-qaida.htm> (Accessed on 4th November 2016).

¹⁶⁵ Klausning, Axel (2001): *Entstehung und Ende des Taliban Regimes*. "In general, the term Taliban means nothing more than a student, because in Arabic is called Talib student. [...]. A student who is educated in the sunitic legal faith in a *Madrassa*, which is a conservative Islamic school, is called in Arabic *Talib* (student). [...] Many such *Madrassa* are located not only in Afghanistan but also in Pakistan, such as in Quetta, Peshawar, or Karachi."

¹⁶⁶ NATO (2009): International Security Assistance Force (ISAF) Mandate - ISAF has a peace-enforcement mandate under Chapter VII of the UN Charter and nine UN Security Council Resolutions Nr. 1386, 1413, 1444, 1510, 1563, 1623, 1707, 1776 und 1833 relate to ISAF. These are not so-called 'UN blue helmet missions', but rather peacekeeping missions under the responsibility of the participating States. Available from: <http://www.nato.int/isaf/topics/mandate/> (Accessed on 4th November 2016).

transposed into the consciousness of the Western world.¹⁶⁷ Barnett explains in his study that areas of security policies and international order are confronted with a paradigm shift.¹⁶⁸ He describes in his way that new forms of warfare are reduced to one single rule, namely that there are no more rules - a radical intellectual approach!

These new forms of asymmetric warfare do not want to recognise either territorial or moral boundaries, which is a major dilemma for the legally based Western world. This is confirmed by the heinous atrocities perpetrated by the terrorist group IS. The henchman of IS craving international attention through the execution of these atrocities in order to spread fear and terror.

Among other things, the following lessons can be drawn from the case of Afghanistan. In 2014, Afghan farmers cultivated the highest opium poppy production ever according to the annual report of the United Nations Office on Combating Drugs and Crime (UNODC).¹⁶⁹

Due to a 7 per cent increase from 209,000 ha in 2013 to 224,000 ha in 2014, opium cultivation in Afghanistan is now at its highest level since estimates became available, although the increase was actually greater from 2012 (154,000 ha) to 2013 (36 per cent). The 63 per cent reduction in poppy eradication in Afghanistan, from 7,348 ha in 2013 to 2,692 ha in 2014, may be a contributing factor.¹⁷⁰ In 2005 during the presentation of a comprehensive assessment report it was observed how the so-called Central Poppy Eradication Force (CPEF) in Afghanistan was established under pressure from ISAF one year before.¹⁷¹ At that time, the opium cultivation area amounted to approx. 130,000 ha. Deputy Minister of the Interior, General *Daud Daud*¹⁷², dedicated a 700-strong force for the destruction of areas under cultivation. At that time, it was intended to strengthen this unit by a total of 2,300 men by 2005.

¹⁶⁷ Gaertner, Heinz (2005): *Internationale Sicherheit*. Asymmetric wars are characterised by the great inequality between the counterparties. A war party is so subdued that it cannot openly engage in the armed struggle with conventional means. P.79.

¹⁶⁸ Barnett, Roger W. (2003): *Asymmetrical Warfare*. Today's Challenge to U.S. Military Power.

¹⁶⁹ United Nations Office on Drugs and Crime (2015): World Drug Report, p.41. Available from: https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf (Accessed on 6th November 2016).

¹⁷⁰ Ibid.

¹⁷¹ Wagner, Johann (2005): Strengthening of Counter Narcotic Law Enforcement Capacities in Afghanistan Phase 1, AD/AFG/02/G38. Elaboration of a comprehensive assessment of the Afghan Law Enforcement Agencies in Countering Organised Crime and Drugs in relation to porous border security and management.

¹⁷² Note from the author: General Mohammed *Daud Daud* was the chief policeman of Northern Afghanistan and commander of the 303 Pamir Corps elite unit and enjoyed the highest reputation as the most effective and central opponent of the Taliban. He was one of the proponents and supporters of democratic state formation. On 28th of November 2011, General Daud Daud was killed in a targeted bombing act by the Taliban. Available from: <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8543955/General-Daud-Daud-and-at-least-two-German-soldiers-killed-by-suicide-bomb.html> (Accessed on 6th November 2016).

Based on division of labour, CPEF's operational activities consisted in the fact that the US army provided relevant intelligence information for British soldiers, who prepared the deployments, and the US Army allocated helicopters and pilots for the transport of CPEF staff members. Afghanistan's contribution was to provide a workforce, which was a strategic consideration because Afghan men were therefore ultimately responsible for the eradication of the fields and thus the livelihoods of Afghan farmers and not foreign soldiers. After about 10 per cent of the cultivation area was eradicated by the CPEF, the warlords¹⁷³ launched an unmistakable message to the leadership of the ISAF, demanding the cessation of the CPEF's activities, otherwise "they would find bombs in front of their doors."¹⁷⁴ The activities of CPEF were then withdrawn.

After the withdrawal of the German armed forces from the northern Afghan province of *Badachschan* in 2011, the cultivation area was increased by 25 per cent to a total of 2,374 ha, while in the same time period the numbers of destroyed corresponding cultivation areas decreased.¹⁷⁵ In 2013, a total of 143 persons were killed, 41 more than in 2012.

According to the UNODC annual report from 2015,

[...] the global potential opium production also continued to increase in 2014, reaching 7,554 tons, its second-highest level since the late 1930s. Opium production in Afghanistan accounted for an estimated 85 per cent of that total (6,400 tons) and, at 410 tons of heroin of export purity, 77 per cent of global heroin production (estimated at 526 tons).¹⁷⁶ The remaining 116 tons (heroin of unknown purity) were produced in the rest of the world, but because the conversion ratios were updated in 2014, potential heroin production in 2014 is not comparable with production in previous years.

There is a close relationship between the *Taliban* and other organised criminal groups and the cultivation of opium and drug production. Only through the illegal production and the illicit trafficking of narcotics and the genesis of criminal profits would it be possible to purchase large quantities of weapons and ensure the recruitment of thousands of *Taliban* warriors in the war against the Western

¹⁷³ Washington Post (2015): The Warlords of Afghanistan. Available from: <http://www.washingtonpost.com/apps/g/page/world/the-warlords-of-afghanistan/967/> (Accessed on 7th November 2016).

¹⁷⁴ Wagner, Johann (2005): Strengthening of Counter Narcotic Law Enforcement Capacities in Afghanistan Phase 1, AD/AFG/02/G38. Elaboration of a comprehensive assessment of the Afghan Law Enforcement Agencies in Countering Organised Crime and Drugs in relation to porous border security and management.

¹⁷⁵ Spiegel Online (2013): UN Report - *Afghanistan produziert so viel Opium wie nie*. Available from: <http://www.spiegel.de/politik/ausland/uno-bericht-afghanistan-produziert-so-viel-opium-wie-nie-a-933268.html> (Accessed on 7th November 2016).

¹⁷⁶ United Nations Office on Drugs and Crime (2015): Afghanistan Opium Survey 2014 - UNODC updated the conversion ratio from opium to heroin in 2014 and estimated export quality heroin to have a purity of 52 per cent. The updated conversion ratio is 9.6 kg of opium for the production of 1 kg of export quality heroin (52 per cent purity). For details, see: Cultivation and Production, p.35.

alliance. Afghanistan has not yet recovered through these decades of political instability and the effects of these threats and is at least a failing state.

The main cause for Afghan nationals to leave the country is a permanent threat that is characterised by terrorist attacks, extremist clashes, tribal wars and minority social oppression. A further accelerating influence on the disintegration of Afghanistan is seen by the cross-border OC, domestically dominant criminal structures, strengthened by lacking or non-existent rule of law and corruption, especially among the parliamentarians and representatives of the state administration. Moreover, the majority of the Afghan population does not see any prospects for building a subsistence minimum through honest work. All these are the boosters that explain the rapidly rising numbers of asylum applications in EU MS. According to the German Federal Office for Migration and Refugees (*Bundesamt für Migration and Flüchtlinge*, hereinafter mentioned as BAMF), Afghan citizens were the fourth-ranked country with 31,382 initial asylum applications in 2015, after 2014 with 9,115 initial applications, 7,735 in 2013 and 7,498 initial applications in 2012.¹⁷⁷

3.6.3. Iraq

On 1st May 2003, the statement '*Mission accomplished*' was read on a banner with the basic colours of the American national flag stretched across the bridge of the US aircraft carrier Abraham Lincoln.

On 20th March 2003, an alliance, led by the US, together with the so-called coalition of the willing, began with the bombing of selected targets in Baghdad and consequently the war against Iraq.¹⁷⁸ The UN Security Council denied the mandatory mandate.¹⁷⁹ As a matter of fact, from the point of view of international law, this was a war of assault, which was not covered by a corresponding Security Council mandate.

A brief review¹⁸⁰ of the relevant statutory provisions in the constitution of the

¹⁷⁷ Bundesamt für Migration und Flüchtlinge - BAMF (2016): *Das Bundesamt in Zahlen 2015*. P.19. Available from: https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2015.pdf?__blob=publicationFile (Accessed on 7th November 2016).

¹⁷⁸ Frankfurter Allgemeine Zeitung (FAZ) of 18th March 2003: Invasion comes in any case / 30 states in the "Coalition of the Willing". According to Powell, Ethiopia, Afghanistan, Albania, Azerbaijan, Australia, Bulgaria, Denmark, El Salvador, Eritrea, Estonia, Georgia, Great Britain, Italy, Japan (after a conflict), Colombia, Korea, Latvia, Lithuania, Macedonia, Nicaragua, the Netherlands, the Philippines, Poland, Romania, Slovakia, Spain, the Czech Republic, Turkey, Hungary and Uzbekistan. Available from: <http://www.n-tv.de/politik/Bush-erklart-Ende-der-Kaempfe-article109987.html> (Accessed on 7th November 2016).

¹⁷⁹ Paech, Norman (2003): *Die Rolle der UNO und des Sicherheitsrates im Irakkonflikt*. Available from: <http://www.bpb.de/apuz/27583/die-rolle-der-uno-und-des-sicherheitsrates-im-irakkonflikt?p=all> (Accessed on 7th November 2016).

¹⁸⁰ Regional Centre for Political Education Baden-Württemberg (2016). Available from: http://www.lpb-bw.de/irak_konflikt.html (Accessed on 7th November 2016).

Federal Republic of Germany and in international law in accordance with the UN Charter, Chapter VII, seems to be necessary.

Article 26

[Securing international peace]

(1) Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be made a criminal offence.

(2) Weapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government. Details shall be regulated by a federal law.

In more detail, the provisions of the UN Charter, Chapter VII.

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

For reasons of completeness, the following exception from the UN Charter on the prohibition of war must be cited at this point.

Article 2

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles. [...]

(4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

[...]

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Thus, Article 2 (IV) and 51 of the UN Charter were considered in this act as compulsory measures against the invasion of Iraq in order to ward off a threat to

world peace and to guarantee international peace. This would have required a majority in the Security Council, and none of the five permanent members could have exercised their right of veto. Just 6 weeks after the invasion, a grand victory against global terrorism was proclaimed and should have been understood as one of several responses to the WTC attack in New York on 11th September 2001. Bush stated: "The main fighting operations in Iraq are over. In the battle for Iraq, the US and our allies have won."¹⁸¹

At the same time, however, Bush declined to proclaim a comprehensive victory and a definitive end to the war. Rather, he tried to explain the importance of initiating the necessary approaches and efforts to democratise Iraq. Bush's statements were certainly rhetorical and intimated that huge financial and human support would be needed accordingly. Finally, Bush also had to point out that the search for the weapons of mass destruction would continue with high pressure, which was suspected in the country.

Bush continued: "The liberation of Iraq is a decisive advance in the fight against terror. [...] and one thing is also certain: No terrorist network will receive weapons of mass destruction from the Iraqi regime, because this regime is no longer there."¹⁸²

The most important question to clarify or explain was, therefore, whether the Iraqi regime was in possession of weapons of mass destruction during the planning of and time of the invasion. Rather, it seemed as a vague statement by the US, along with the coalition of the willing to justify to the rest of the world the invasion of Iraq and the overthrow of the regime. After all, the argument maintained that the world had been freed from a rogue and was a better place for it; but better how?¹⁸³ The reasons that were then introduced have long since been repressed. Nevertheless, it is worthwhile making a brief review of the speech of the former US Secretary of State Colin L. Powell, who delivered his speech against Iraq before the Security Council, under the direction of former Federal Foreign Minister Joschka Fischer on 5th February 2003.¹⁸⁴ After finishing as US Secretary of State, Colin L.

¹⁸¹ *Frankfurter Allgemeine Zeitung (FAZ)* of 18th of March 2003: Invasion comes in any case / 30 states in the "Coalition of the Willing". Available from: <http://www.n-tv.de/politik/Bush-erklaert-Ende-der-Kaempfe-article109987.html> (Accessed on 7th November 2016).

¹⁸² Ibid.

¹⁸³ Miles, Donna (2004): U.S. Department of Defence – Despite Not Finding WMDs, Rumsfeld says world safer without Saddam. Available from: <http://archive.defense.gov/news/newsarticle.aspx?id=25149> (Accessed on 8th November 2016).

¹⁸⁴ *AG Friedensforschung*. "Iraq does not fulfil its disarmament commitments". Speech by the US Secretary of State Colin L. Powell before the UN Security Council. Available from: <http://www.ag-friedensforschung.de/regionen/Irak/powell3.html> and <https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030205-1.html> (Accessed on 8th November 2016).

Powell deeply regretted his appearance in the UN Security Council in the run-up to the Iraq war in a TV interview with ABC.¹⁸⁵ In this interview, he expressed that he felt terrible because of the presented arguments for the invasion of Iraq, and described his behaviour as a stain on his political career. In February 2003, in his speech Powell informed the United Nations General Assembly about the alleged existence of weapons of mass destruction and the possible resulting threat scenarios by the regime of this rogue state.¹⁸⁶ Powell further stated in this interview that, despite intensively studying the files for several days, he had succumbed to a false report. In other words, the intelligence reports were partly invented and falsified. Iraq is regarded as a 'failed state' and large parts of the country were occupied by the IS, rendering it equivalent to a 'collapsed state'.

3.6.4. Arab Spring - the break-up follows chaos and anarchy

On 17th of December 2010, the vegetable merchant *Mohamed Bouazizi* protested in *Sidi Bouzid* against the arbitrariness of state authorities and the accompanying humiliations and protective charges of the everyday police force in Tunisia.¹⁸⁷ He wanted to make a sign of this oppression and burned himself. The act of this desperate man taking his own life triggered a wave of countrywide protests and mass disturbances, also called the 'Jasmine Revolution', which took hold of the entire country within a few weeks in the form of a domino effect.¹⁸⁸ In the months that followed, this wave swept over almost all North African states and even the Middle East.

¹⁸⁵ *Frankfurter Allgemeine Zeitung (FAZ)* of 9th of September 2005: Powell: "The stain of my career". Available from: <http://www.faz.net/aktuell/politik/europaeische-union/irak-krieg-powell-schandfleck-meiner-karriere-1255325.html> (Accessed on 8th November 2016).

¹⁸⁶ Note from the author: At the beginning of the millennium, three fatal terms were defined by the Bush administration: 'Rogue State', 'Axis of Evil' and 'Outpost of Tyranny'. These three terms were supposed to create sentiment against the states that declared the US an enemy. Interesting from today's point of view are the definitions, which were then estimated by the American politicians.

- 'Rogue State' means a state, which is aggressive towards other countries, undermines the stability of entire regions, and at the same time denies international negotiations.

- 'Outpost of tyranny' means countries whose governments disregard human rights.

- 'Axis of Evil' means countries that are upgrading together to threaten world peace.

¹⁸⁷ Schmid, Thomas (2011): An enigmatic suicide that changed the world. Available from: <http://www.welt.de/politik/ausland/article13772200/Ein-raetselhafter-Selbstmord-der-die-Welt-veraenderte.html> (Accessed on 8th November 2016).

¹⁸⁸ Note from the author: Since 17th December 2010, the revolution in Tunisia in 2010 and 2011 marks the revolutionary political events and is also called 'Jasmine Revolution' outside Tunisia. As a further term, this revolution is also called 'Arab Spring'.

Figure 3.6.4.1.: Countries affected by the ‚Arab Spring‘



Source: World Affairs Council Education Program¹⁸⁹

The term of an 'Arab Spring' does not really correspond to the terrible proportions of these spirals of violence, which are equated with chaos and anarchy.¹⁹⁰ Rather, a concept of an 'Arab Rebellion' or 'Arab Revolution' would be more appropriate to get an introductory idea of the situation. It was precisely this domino effect that caused one state after another to be dragged into this force. This made it impossible to agree on a uniform assessment of the situation with a view to a common approach and the development of a joint strategic security management between the relevant partner states of the EU and NATO. The efforts of the EU under the former Head of the European External Action Service (EEAS), Mrs. Catherine Ashton, aiming for a strong and uniform EU foreign policy was still in its infancy. Thus, the course of the transnational 'Arab Spring' increased the conflagration in Northern Africa and amplified the impression of an uncoordinated EU foreign policy, which put the European Common Foreign and Security Policy (CFSP) at that time in place in disrepute.

¹⁸⁹ Summer Institute (2011): Assessing the Arab Spring. Available from: <https://wacsfschools.wordpress.com/tag/arab-spring/> (Accessed on 8th November 2016).

¹⁹⁰ BPB (2016): Dossier "Arab Spring": What began in Tunisia in December 2010 soon spread like a land fury across many countries in North Africa and the Middle East. Protests, uprisings and rebellions shook the autocratic systems of the region. In Egypt and Tunisia, the rebels chased the rulers out of office. Libya fell into a civil war, the course of which decisively influenced the intervention of NATO. Syria is in a stalemate situation, the costly clashes between government and opposition continue. In other countries such as Morocco and Jordan, the regimes have responded to the social protests, stabilising their status quo at least in the short term. The 'Arab Spring' is a historic turn-around in the region, with far-reaching political, economic and geo-strategic implications. Available from: <http://www.bpb.de/internationales/afrika/arabischer-fruehling> (Accessed on 8th November 2016).

In addition, some EU MS officials had sought closer cooperation with political leaders of these countries for purely national economic interests and thereby lost credibility in the aspiration of the implementation of the EU CFSP towards the Mediterranean countries in the fight against international terrorism. A 'Union for the Mediterranean Sea' should have been the framework for an original EU initiative in a jointly oriented cooperation.

A reorientation of the EU's common approach and scope of action was necessary within the framework of the European Neighbourhood Policy (ENP), which aims at providing the appropriate support for the development of constitutional democracy.¹⁹¹ These considerations, however, only had justification insofar as no Islamic parties came into power.

3.6.5. Syria

In 2013, Seibring already outlined in her summary of the Syrian conflict the great dimensions of death, danger to life and limb, escape and expulsion.¹⁹² This conflict, which began with peaceful demonstrations in the country with the desire for reforms, was suppressed with extremely violent reactions from the Bashar al-Assad regime, which ultimately resulted in bloody struggles between the insurgents and government groups. According to an estimate of the UNHCR from 2016, approximately 13.5 million people are currently affected by displacement and escape, with an estimated population of around 22 million people.¹⁹³ This figure consists of approximately 4.8 million refugees who left Syria and the 8.7 million inhabitants who were expelled internally, so-called internally displaced persons (IDP).¹⁹⁴ According to the UN, about 220,000 people were killed during this war from 2011 to the beginning of 2015, while other estimates give figures of up to 500,000 fatalities.¹⁹⁵ The UN described this crisis as the worst catastrophe since the genocide in Rwanda in the 1990s. As a result of this long-standing civil war, the international community as well as the religious environment are divided.

¹⁹¹ European Neighbourhood Policy (ENP). Available from: <https://eeas.europa.eu/topics/european-neighbourhood-policy-enp> (Accessed on 8th November 2016).

¹⁹² Seibring, Anne (2013): *Aus Politik und Zeitgeschichte* (APuZ 8/2013). Syria. iBooks. P.2.

¹⁹³ UNHCR (2016): Syria emergency. Available from: <http://www.unhcr.org/syria-emergency.html> (Accessed on 8th November 2016).

¹⁹⁴ UNHCR (2016): The figure of 4.8 million refugees comprises as follows as of October 2016: 2.753.696 Syrian refugees in Turkey, 225.445 in Iraq, 655.833 in Jordan, 117.350 in Egypt, 1,017,433 in Lebanon, and 24,055 elsewhere in North Africa. Not included, are more than 270,000 asylum applications by Syrians in Europe, and thousands of others resettled from the region elsewhere. Available from: http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.266241551.1846280902.1477469555 (Accessed on 8th November 2016).

¹⁹⁵ *Zeit-Online* (2016): Syria - Twice as many dead as previously assumed. Available from: <http://www.zeit.de/gesellschaft/zeitgeschehen/2016-02/syrien-krieg-bilanz-bericht-tote-bevoelkerung-verletzte> (Accessed on 8th November 2016).

Kinan and Jaeger considerations are as follows:

We are already speculating about future scenarios in the country. It is feared that the state will be destroyed and a sustainable power vacuum (similar to Somalia); The splitting up into militant territories ('Lebanonisation') or new state units ('Balkanisation'); the increasing regional influence of Islamists; An uncontrolled break-up of existing alliance systems with changes in strategic balance; A new pro-war in the sense of the Cold War; An overrun of the unrest on neighbouring countries, and an uncontrolled spread of B and C weapons.¹⁹⁶

According to Muriel Asseburg, three different scenarios are currently possible: Scenario one, a transition between the government and the opposition, which is negotiated and ordered through neutral mediation, to be called the 'Yemenite solution', but unlikely.¹⁹⁷ The conflicting parties are acting as if in a zero-sum game and are therefore not prepared to negotiate with the other party. Thus, the support of the international community is needed, where the conflicting parties would be pushed to resolve their differences with intensive mediation and under massive pressure.

More likely is the second scenario, which would mean a continuation of the combat operations and a fragile consolidation of the fragmentation of the country. According to Asseburg, external supporters combined with both the al-Assad regime and the opposition in relation with the Syrian conflict, pursue far-reaching, sometimes even existential consequences for their own strategic position. They therefore make considerable efforts to avoid the end of the civil war, which is disadvantageous in their view and the Syrian conflict parties can therefore expect a continuous influx of money and weapons. This makes a rapid military decision unlikely according to Asseburg. Only through a concerted military intervention on the part of the international community, would it decisively change the course of the war.

The third scenario, the overthrow of the al-Assad regime, appears rather unlikely in the short to medium term - at least as long as the rebels do not receive much stronger external support in the form of heavy weapons. However, this is not to be expected, mainly because of the concern of Western governments in the domination of IS in the region and an increasing number of Jihadist fighters.

In general, Syria is considered as a failing state and by the occupation of large parts of the country by the IS, to some extent is regarded already as a collapsed

¹⁹⁶ Jaeger, Kinan / Tophofen, Rolf (2015): *Aus Politik und Zeitgeschichte* (APuZ 8/2013). The Syrian conflict: international actors, interests, conflict lines. Extract from: APuZ 8/2013. "Syria." IBooks. P.23-30.

¹⁹⁷ Asseburg, Muriel (2015): *Auszug aus Politik und Zeitgeschehen* (APuZ 8/2013). "Syria: civilian protest, insurrection, civil war and future prospects". IBooks. P.11-17.

state. Syria, or rather, a major part of Syria's territory, is currently the region with the highest potential of transnational threats, both for adjacent neighbours, as well as EU MS, the Russian Federation and North America.

3.6.6. Libya

Libya, the second largest country in northern Africa, has developed into the largest territory of chaos and anarchy since the fall of the Gaddafi regime and the collapse of state institutions in 2011. Within three years, Libya sunk in a second civil war in 2014, and according to Lacher, two opposing alliances dominate the country.¹⁹⁸ While in the capital Tripoli the government around *Umar al-Hassi* is supported by a part of the parliamentarians of the 2012 general congress, another part of the House of Representatives elected in June 2014 in the city of *Tobruk* in the east of the country, assists the internationally recognised Government under Prime Minister *Abdallah Thinni* in *al-Baida*. Both alliances imposed their claim to power and each have a general staff and armed forces. Both parties are trying to gain control over the still remaining apparatus of state and, above all, the central bank and oil exports. Jihadists have expanded and strengthened their influence in many cities and have close relations with the IS in Syria, Iraq and other North African states. In addition to the IS, it is above all the OC groups the great profiteers, who used the favour for themselves. The OC smuggling gangs developed their criminal core model of THB and people smuggling to an extent equivalent to the industrialisation of organised crime. These OC smuggling gangs have already passed through more than one million people through Libya and sent across the life-threatening routes across the Mediterranean Sea to EU territory. In Libya, all public administration and state control have collapsed, there is no longer a legal state, and international police cooperation is currently not possible. Libya is de facto classified as collapsed state.

3.6.7. Daesh (Islamic State)

ISIS - Islamic State in Iraq and Syria, or only IS - Islamic State, or, more recently, *Daesh*, to deny the Islamic State the desired recognition.¹⁹⁹ These combinations of letters stand for extreme violence, the like of which has never been seen before to such an extent and has only one goal, namely to spread fear and terror. Three

¹⁹⁸ Lacher, Wolfram (2016): *Dossier Innerstaatliche Kontrolle – Libya*. Available from: <http://www.bpb.de/internationales/weltweit/innerstaatliche-konflikte/54649/libyen> (Accessed on 9th November 2016).

¹⁹⁹ Note from the author: *Daesh* - five letters, which stand for "*Al-Dawla al-Islamija fil-Iraq wa al-Sham*" that is the "The Islamic State in Iraq and the Levant". Al-Sham or the Levant describes the area in the eastern Mediterranean, Syria, Lebanon, Palestine, Israel and Jordan.

abbreviations, which put a radical Islamic group into the public focus of international perception, as was no longer the case since the attacks on the World Trade Center on 9th September 2001.²⁰⁰ Towards the beginning of 2014, the IS group suddenly moved into the consciousness of the West, which now dominated and controlled large parts of Iraq and Syria, and its leader *Abu Bakr al-Baghdadi* declared himself the caliph of all Muslims. The Islamic scholar *Said* investigated the origins of the IS retrospectively with regard to the emergence of violent Islamism in Syria, even back to the beginning of the 1960s.²⁰¹ *Said* tries, among other things, to explain politicisation in the cultural sphere and says: "The jihad song culture that was created at the time was an important element of mobilisation and continues to live as such until today."

Furthermore, he also examines the cause-effect relationship of the second Syrian jihad in the context of the Iraq war and focuses his research on the conflict-laden relationship with the *al-Nusra* front as an inner-jihadist competition. This led to a peculiar situation: "In the same territory, not one, but two militias were operating, who were initially claiming to belong to the core of al-Qaida [...]"²⁰² In his investigations and explanations, *Said* specifically focussed on the rampaging violence of the IS fighters in the enforcement of their ideology. The IS group found its origin at the beginning of the 21st century, changing its name several times according to Steinberg.²⁰³ The founder of the IS was the Jordanian terrorist *Abu Musab Az-Zargawi*, whose original ideas still characterises the ideology of the IS as an organisation *Tauhid*, which means as much as a commitment to the unity of God.

According to current knowledge, the IS 's army is mainly composed of well-trained former Iraqi military, Islamic extremists and jihadists, mainly coming from Jordan, Palestine and Syria, mercenaries, and other serious criminal offenders. It was estimated that the IS army encompassed up to 40,000 fighters at its peak. For persons coming from outside of the conflict zone, the concept of foreign terrorist

²⁰⁰ BPB (2013). *9/11 und die politischen Folgen*. Available from: <http://www.bpb.de/politik/hintergrund-aktuell/168712/9-11-und-die-politischen-folgen> (Accessed on 9th November 2016).

²⁰¹ Said, Behnam T. (2014): *Islamischer Staat*. IS militia, al-Qaeda and the German brigades. P.31.

²⁰² Ibid. P.81.

²⁰³ Steinberg, Guido (2014): *Der Islamische Staat im Irak und Syrien (ISIS)*. Available from: <http://www.bpb.de/politik/extremismus/islamismus/190499/der-islamische-staat-im-irak-und-syrien-isis> (Accessed on 9th November 2016).

fighters²⁰⁴ (FTF) was determined as formulated in the UN Security Resolution 2178 (2014) as follows:²⁰⁵

[...] individuals who travel to a state other than their states of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.

At first sight, the strategy of the IS may seem simple, and is primarily reduced to extremely brutal actions in order to generate maximum attention. The attacks are supposed to have as many victims as possible under their declared opponents, the disbelievers, and the cruel deeds sent worldwide, and testimony to the absolute determination of IS. Nevertheless, the leadership of the *Daesh* is not exclusively concerned with spreading fear and fright. These primarily serve as instruments for the implementation of ideological objectives for the acquisition of political space and humanitarian, territorial and economic resources. In this development, the leadership of the IS now claims to be a separate caliphate in the region, which would include areas in today's Iraq, Syria and Turkey. The fact that the IS has developed so much can be attributed to two reasons: support from the population and money. Compared to other terrorist networks, the IS has immense financial foundations.

The terrorist network initially committed innumerable abductions and initially generated a large proportion of its income through payments of ransom. But also other criminal activities such as the establishment of cross-border operating OC structures in the areas of illicit trafficking of drugs, looting of cultural goods, dealing with stolen goods, smuggling of small arms and light weapons (SALW), trafficking in human beings and people smuggling, organ trafficking and other classic areas of international OC are also used to generate financial resources.

The IS henchmen have even learned how to use the international art market and Internet trading.²⁰⁶ By occupying large parts of Syria and Iraq, the IS also has access to the oil and gas industry there. This allows the IS to make regular and substantial revenues through the sale of oil and gas and collection of taxes and

²⁰⁴ UN Counter Terrorism Committee (UNCTC): Guided by Security Council resolutions 1373 (2001) and 1624 (2005), the CTC works to bolster the ability of United Nations Member States to prevent terrorist acts both within their borders and across regions. It was established in the wake of the 11 September terrorist attacks in the United States. Available from: <http://www.un.org/en/sc/ctc> (Accessed on 9th November 2016).

²⁰⁵ UN Security Council Resolution S/RES/2178 (2014).

²⁰⁶ Horsten, Christina / Lehr, Deborah *art Kunstmagazin* (Hg.) (2015): *Illegaler Kunsthandel – Ausgeplündert, Abverkauft*. The extremists of the terrorist Islamic state (IS) destroy much that contradicts their radical ideology - also unique ancient oriental cultural objects and art treasures. Large pieces are smashed, smaller ones transported and sold. The IS uses OC networks, the Internet and auction houses, as the expert Deborah explains. Available from: http://www.art-magazin.de/kunstmarkt/81006/illegaler_kunsthandel_interview (Accessed on 10th November 2016).

customs duties. In addition, the budget of the IS is also fed by donations of wealthy supporters from the Gulf States. However, the IS is no longer dependent on the mood of potential donors from the Gulf States, since it acquired a vast financial income in addition to high-quality weapon systems of the Iraqi army during the conquest of the northern Iraqi capital of Mosul.²⁰⁷ According to unconfirmed reports, IS perpetrators appropriated about 320 million Euros in the attack on the central bank of Mosul. Thus, the IS is likely to be the world's richest terrorist group.

The international community, under the guidance of NATO and the US forces, is trying to form a strong alliance to join forces to undermine the IS's army and to avert this transnational threat. Steinberg points to the fact that only in the next few years will it become apparent whether the IS will be able to determine its ideology in this region and how it will continue.²⁰⁸ In comparison to other terrorist networks, wherever the IS emerged, they immediately started to establish their own public administrative structures and created schools, which is a worrying fact. These are the beginnings of the establishment of pseudo-state structures and are intended to give legitimacy to the highly criminal activities and are therefore to be regarded as extremely dangerous.

3.6.8. Weapon arsenals without adequate control

Where do terrorist groups get their weapons?

When the Libyan regime was overthrown it was observed that military and other troops loyal to the government regimental groups escaped and military facilities, arms and ammunition depots were not adequately guarded. These arsenals were immediately plundered and weapons and ammunition landed on a large scale, partly with armed militia and criminal gangs, in Libya or were smuggled out of the country and sold to the IS. Within the last few years, the IS has improved its military strength both quantitatively and qualitatively. In the period between 2011 and 2013, the IS got supplies of arms from different countries, which have joined together as a group of 'Friends of Syria', to overthrow the Syrian president al-Assad.²⁰⁹ On the basis of a long-term investigation the New York Times reported, that the IS received extensive supplies of weapons from Qatar, Saudi Arabia,

²⁰⁷ Blaschke, Björn (2014): IS in Iraq and Syria - The richest terrorist group in the world. Available from: <http://www.tagesschau.de/ausland/hintergrund-isis-102.html> (Accessed on 10th November 2016).

²⁰⁸ Steinberg, Guido (2014): *Der Islamische Staat im Irak und Syrien (ISIS)*. Available from: <http://www.bpb.de/politik/extremismus/islamismus/190499/der-islamische-staat-im-irak-und-syrien-isis> (Accessed on 10th November 2016).

²⁰⁹ Leukefeld, Karin (2014): *Woher kommt ISIS? AG-Friedensforschung*. Available from: <http://www.ag-friedensforschung.de/regionen/Irak1/is-herkunft.html> (Accessed on 10th November 2016).

Jordan and Croatia, which were handled by 160 airfreight flights over Turkey (Ankara-Esenboga Airport) and organised by the C.I.A..²¹⁰ Griffiths stated as an expert in the observation of illicit transports by the Stockholm International Peace Research Institute: "A conservative estimate of the payload of these flights would be 3,500 tons of military equipment."²¹¹

Conflict Armament Research²¹², a British organisation, reported that large quantities of US-manufactured weapons were found, including long-range weapons with the label "US government-owned" that were likely to arrive in Syria via Saudi Arabia and Qatar after IS fighters were forced to leave their positions. During this period plundering also took place of weapons stores of the 'Free Syrian Army' at Azaz and the military bases in *Rakka*, *Hasakeh* and *Deir Ezzor* (East Syria). In addition, in 2014 the IS captured large amounts of US weapons during the assault on *Mossul*.²¹³ It is assumed that over the past 10 years, the US has provided weapons to the Iraqi armed forces for about 25 billion US dollars, such as by supplying helicopters, tanks, artillery guards and armoured vehicles.²¹⁴ This support was supposed to enable the Iraqi military to keep Islamic terrorists under control in the partnership struggle against terrorism. The IS captured some of these weapons and military equipment in the military conquests in northern Iraq and Syria. Thus, the IS managed a decisive step from a guerrilla group to the first beginnings of a modern army - the era of self-made military vehicles seemed to be overcome. In addition, the IS also captured tanks of Russian construction from the Iraqi military and received anti-tank missiles from Saudi Arabia and also has air defence missiles. As the most well financed terrorist group in the world, the IS can at any time acquire the desired weapons on the international market.

²¹⁰ New York Times (2013): Arms Airlift to Syria Rebels Expands, With Aid From C.I.A. Available from: <http://www.nytimes.com/2013/03/25/world/middleeast/arms-airlift-to-syrian-rebels-expands-with-cia-aid.html? r=0> (Accessed on 10th November 2016).

²¹¹ Ibid.

²¹² Conflict Armament Research (2014): Islamic State Weapons in Iraq and Syria Analysis of weapons and ammunition captured from Islamic State forces in Iraq and Syria. P.7-12. Available from: http://conflictarm.com/wp-content/uploads/2014/09/Dispatch_IS_Iraq_Syria_Weapons.pdf (Accessed on 10th November 2016).

²¹³ Leukefeld, Karin (2014): *Woher kommt ISIS? AG-Friedensforschung*. Available from: <http://www.ag-friedensforschung.de/regionen/Irak1/is-herkunft.html> (Accessed on 10th November 2016).

²¹⁴ Spiegel-Online (2014): Terrorist group in Iraq - Shattered Weapons Increase Impact of the Jihadists. Available from: <http://www.spiegel.de/politik/ausland/irak-terrorgruppe-isis-besitzt-humvees-haubitzen-und-hubschrauber-a-975701.html> (Accessed on 10th November 2016).

3.6.9. Radicalisation as a transnational threat

"Islam is an important part of promoting peace", such was the wording of the historic speech of US President Obama, presented to the Islamic world at the Cairo University on 4th of June 2009.²¹⁵

The speech was understood to be extensive and, according to the analysts, touched on all the important issues and problems that US foreign policy was dealing with at this time. On the one hand, critics attested to Obama that he has addressed all the important aspects and, on the other hand, has remained non-committal. The latter, in turn, gave the speaker approval and applause from all sides, as it was obviously Obama's intention to find new ways of interaction with the Arab world and Islam. However, there are legitimate doubts as to whether this was the decisive achievement in order to be awarded the Nobel Peace Prize shortly afterwards.

During his 2008 election, Obama promised the American people to remedy many things that seemed to him to be unsavoury during the time of his predecessor, Bush. Surely it would have been courageous and at the same time humane to implement the announced dissolution of the detention camp *Guantanamo Bay*. '*Guantanamo*' stands for serious human rights violations, for a product in a paranoid U.S. after 9/11 and counteracts the American way of life in the land of unlimited possibilities. '*Guantanamo*', the synonym for state arbitrariness in the right-wing area, was established in 2002 as a tool in the fight against terrorism. Prisoners in bright orange overalls, tied to their hands and legs, crouching on their knees and crawling in the open air, 'water boarding' as a process approved by the presidential authorities to carry out "extended interrogation methods" - in the legal context it is about torture, hunger strike and innumerable suicide attempts.²¹⁶ A total of nearly 800 people have passed through the camp; using the term 'prisoner' would be wrong, since a prisoner enjoys constitutionally guaranteed rights through the criminal code of procedure. However, a precise description of the language of criminal prosecutions, as for example the accused, the person concerned, or the

²¹⁵ AG Friedensforschung (2009): Remarks by the President on a new beginning, Cairo University, Cairo, Egypt. Available from: <http://www.ag-friedensforschung.de/regionen/USA/obama-rede-kaire-engl.html> <http://www.ag-friedensforschung.de/regionen/USA/obama-rede-kaire.html> (Accessed on 11th November 2016).

²¹⁶ Amnesty International (2014): Annual Report 2014. Universal Declaration of Human Rights - Article 5 "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Torture is understood to mean any act in which a person deliberately inflicts great pain or suffering on someone else, for example, to obtain information or confessions to punish, intimidate or compel someone. The perpetrators are either themselves state servants or their actions are at least approved in some form by state authorities. P.4-6. Bruha, Thomas / Tams, Christian J. (2006): *Folter und Völkerrecht*. Aus Politik und Zeitgeschehen (APUZ 26/2006). Available from: <http://www.bpb.de/apuz/29569/folter-und-voelkerrecht?p=all> (Accessed on 11th November 2016).

person in custody, does not exist in order to give these people a status, which does not grant human rights. In 2009, Obama assured that one of his first official acts would be the closure of this inhumane camp. To this day, the U.S. Congress opposes a closure through blockades and so it is not surprising that the shipments of the occupants in their countries of origin and/or residence slowed down. As a kind of desperate act, therefore, the initiative of the U.S. officials was to approach the Vatican for help to end this gruesome legacy of the Bush Administration once and for all.²¹⁷ By way of illustration, of the total of nearly 800 occupants, only ten were sent for indictment. In other words, only about 1.25% of all occupants had a criminal case brought against them, if at all. The recently published report on the machinations of the CIA and other unidentified U.S. institutions shows the extent of arbitrariness and cruelty.²¹⁸

'*Guantanamo*' - a synonym for the disregard of human rights and ignorance of rule of law. Other slogans such as *Abu Ghraib*, the infamous prison in Iraq, which gained notoriety in 2004, by the maltreatment of prisoners by U.S. soldiers.²¹⁹ Or even the military prison *Bagram* in Kabul Afghanistan, which was integrated in the U.S. military base *Bagram*, where similar offences were committed.²²⁰

If the Western world wants to bring the benefits and principles of democracy, human dignity, human rights, the rule of law, freedom and equality in a convincing manner to other cultures, it must also be credible in its actions. The keyword here is authenticity. The attitude of the West in doing things according to the proverb 'preaching water while drinking wine'²²¹ was quickly understood. Initial amazement or even confusion aroused anger and grief, which was provoking reactionary behaviour. The spiral of violence began to move and seems currently

²¹⁷ *Spiegel Online Portal Politik* (2014): Guantanamo closure: US ask Vatican for help. Available from: <http://www.spiegel.de/politik/ausland/guantanamo-usa-bitten-vatikan-um-hilfe-a-1008644.html> (Accessed on 11th November 2016).

²¹⁸ Feinstein, Dianne (2014): Chairman of the Senate Select Committee on Intelligence – Committee Study of the Central Intelligence Agency's Detention and Interrogation Program. Available from: <http://www.intelligence.senate.gov/study2014/sscistudy1.pdf> (Accessed on 11th November 2016).

²¹⁹ Amnesty International Journal (June 2009): Abu Ghraib and no end. The Abu Ghraib torture scandal describes the torture methods during the occupation of Iraq by the United States. In a worldwide scandal, it was revealed how Iraqi detainees of the Abu Ghraib prison were being tortured, raped and often tortured to death. The scandal was revealed by the publication of photos and videos by the press. Available from: <http://www.amnesty.de/journal/2009/juni/abu-ghraib-und-kein-ende> (Accessed on 11th November 2016).

²²⁰ Werkhäuser, Nina DW (2009): Guantanamo closes, Bagram remains. The military prison Bagram was the primary detention camp of the US armed forces in Afghanistan and was within the Bagram Air Base and was at the same time headquarters of the USA armed forces. In all, around 600 actual or suspected terrorists were imprisoned and interrogated as enemy fighters - without ever being accused of a crime. Available from: <http://www.dw.de/guantanamo-schließt-bagram-bleibt/a-4179196> (Accessed on 11th November 2016).

²²¹ Note from the author: The proverb is going back to the poem "Germany - A Winter's Tale" by Heinrich Heine (1844), in which he criticizes the church, which preaches to people to come to terms with their poverty.

far from having reached the end.

For quite some time, the IS had fought with some frightening success for the establishment of a caliphate in the territory of Iraq and Syria and wanted to extend the territorial claims also to south-eastern Turkey. There are radical Islamists who dominate the news every day. Huntington noted this early in the early 1990s when he said: "Islam's borders are bloody and so are its innards."²²²

For most people within the EU, these events had been far away, until recently - both individual and collective human mechanism for repression worked. It turned out to be a fatal fallacy. Rather, radicalised Islamism has arrived in the middle of our societies and is trying to expand further. This is achieved, among other things, very successfully with the help of social networks, as well as existing structures of Islamic associations and conspiratorial networks around mosques as an opportunity for the assembly. Many young people and especially young men are obviously dreaming of a just fight, without actually knowing for whom they are fighting and fail to see that things cannot be simply viewed as black and white. But usually disillusionment occurs very quickly and those who have joined the armed struggle soon realise the reality.

State border control authorities have considerable problems in the recognition and identification of potential participants and supporters of terrorist networks. It is to stem the flow of the so-called foreign terrorist fighters (FTF) on their way into conflict areas, who want to join a radicalised Islamism and have finished with Western values. State law enforcement services, and here in particular border services, have to undertake all relevant measures in terms of criminal prosecution to recognise and apprehend FTF's back on their way to their countries of origin and/or residence. At present, there is complete uncertainty as to how our societies will deal with these people, who are returning as completely traumatised and very difficult to reintegrate them into our cultures.

In order to elaborate helpful proposals on how to escape this dilemma, one must understand why these young people want to radicalise themselves. Radicalisation is a process that takes time and influence, often accompanied by alienation, uprooting, discrimination and disregard. Religion can very well be a safe haven in order to give this 'worthless' new respect, perhaps even a new identity, within Western societies. In principle, these are actually well-known phenomena and

²²² Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of World Order*. P.420.

could show parallels in other contexts regarding the recent German history. The problem solving needs to be looked for in a holistic context, that is, a concerted approach of all relevant actors of our Western civilisation and culture and not just in law enforcement.

3.7. Preliminary conclusion

At the beginning of the 21st century many European countries are confronted with very complex threats and security-relevant challenges. The turmoil, partly associated with chaos and anarchy, in the described hot spots in Central Asia, the Middle East, North Africa and Eastern Europe cause serious risks and endangerments to many EU MS and other countries and their border services and public security and can further affect transnational threat potentials. The EU, with its specialised agencies, Frontex and EUROPOL, all EU MS and the overwhelming majority of all non-EU countries, as well as the UN and its relevant units to counter terrorism, FTF and cross-border OC, the World Health Organisation (WHO), the World Customs Organisation (WCO), International Organisation for Migration (IOM), NATO, INTERPOL and the OSCE, including other unspecified organisations, see consistently the following fields as the core areas of transnational threats:

- Accumulation and uncontrolled distribution of small arms and light weapons (SALW), anti-personal mines and landmines
- Drug smuggling
- Global warming through climate change
- Trafficking of human beings (THB) and people smuggling
- Irregular migration
- Pandemics and zoonotics
- Internet Security (Cybercrime)
- Safety infrastructure and power supply
- Terrorism, FTF and cross-border OC
- Dissemination of weapons of mass destruction

In addition to existing national security strategies²²³ of individual EU MS, the EU, with its European Security Strategy²²⁴, in line with the EU CFSP, means that it is

²²³ Note from the author: The EU MS security strategies of Germany and Austria are listed here as examples.

a) Federal Ministry of the Interior Vienna - Austrian Security Strategy (2016): Available from: http://www.innensicher.at/files/IS_2016%20Lang_Kernteil_DRUCKFERTIG_2015%2012%2004.pdf (Accessed on 11th November 2016).

b) Federal Ministry of the Interior Berlin - German Cybercrime Security Strategy (2016): Available from: https://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Informationsgesellschaft/cyber-sicherheitsstrategie-2016.pdf?__blob=publicationFile (Accessed on 11th November 2016).

²²⁴ European Union (2016): Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy. Available from:

intended to manifest a common mind-set and approach in these aforementioned defined areas. The EU therefore takes the necessary responsibility and promotes the commonalities of all 28 EU MS to ward off transnational dangers from the listed threat areas. This common position is also passed on to those countries, which have expressed interest in becoming a member of the EU and are being promoted as part of the Instrument for Pre-Accession Assistance (IPA) program.²²⁵ Similar levels of close cooperation are also being sought with those countries, which are supported by the European Neighbourhood Program (ENP). Both framework programs set as the top priority the management, protection, monitoring and control of borders, both external borders and the Schengen external borders.²²⁶ The EU, an anchor of stability and conciliation, democracy and prosperity, not least through the eastward enlargement, has successively taken more responsibility in the endeavour for peaceful resolution and management of crises and conflicts. Examples of relevant EU programs are in South-East Europe (EUPM²²⁷ in Bosnia and Herzegovina, EULEX²²⁸ Mission in Kosovo, PAMECA²²⁹ in Albania), Eastern Europe (EUBAM²³⁰ in Ukraine and Moldova), Central Asia (BOMCA²³¹ in all five Central Asian countries), Afghanistan (EU Police Mission²³² in Afghanistan), Caucasus-Georgia (EU Monitoring Mission²³³ in Georgia), and Palestine (Eupol

https://eeas.europa.eu/top_stories/pdf/eugs_review_web.pdf (Accessed on 11th November 2016).

²²⁵ European Commission (2016): IPA – Instrument for Pre-Accession Assistance. Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11th of March 2014 establishing an Instrument for Pre-accession Assistance (IPA II). Available from:

http://ec.europa.eu/enlargement/instruments/overview/index_en.htm (Accessed on 11th November 2016).

²²⁶ European Union External Action Service (2016): European Neighbourhood Policy (ENP). Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24th of October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument. Available from: https://eeas.europa.eu/topics/european-neighbourhood-policy-enp/330/european-neighbourhood-policy-enp_en (Accessed on 11th November 2016).

²²⁷ European Union (2015): EU Police Mission – EUPM (2003–2012). Available from: http://www.eeas.europa.eu/csdp/missions-and-operations/eupm-bih/index_en.htm (Accessed on 11th November 2016).

²²⁸ European Union Rule of Law Mission in Kosovo - EULEX (2008 to present). Available from: http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/index_en.htm (Accessed on 11th November 2016).

²²⁹ Police Assistance Mission of the European Commission to Albania - PAMECA IV (2002 to present): Consolidation of Law Enforcement Capacities in Albania. Available from: <http://pameca.org/al/> (Accessed on 11th November 2016).

²³⁰ European Union Border Assistance Mission to Moldova and Ukraine - EUBAM (2005 to present): Available from: <http://www.eubam.org/> (Accessed on 11th November 2016).

²³¹ BOMCA – Border Management Programme in Central Asia (2003–2017): Available from: <https://www.bomca-eu.org/en/> (Accessed on 11th November 2016).

²³² European Union Police Mission in Afghanistan – EUPOL (2007 to present): Available from: <http://www.eupol-afg.eu/> (Accessed on 11th November 2016).

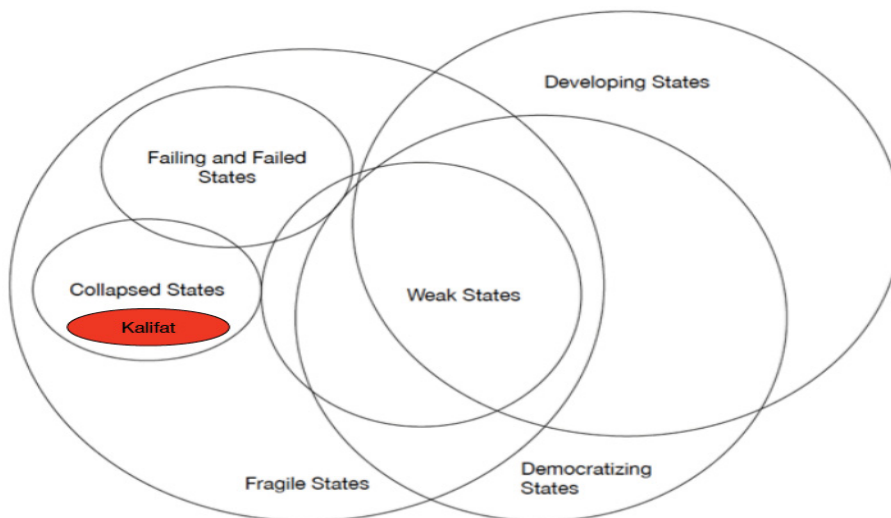
²³³ European Union Monitoring Mission in Georgia – EUMM-Georgia (2008–2014): Available from: <https://eumm.eu> (Accessed on 11th November 2016).

Copps²³⁴). However, the EU is also committed to the containment and prevention of epidemics (Ebola in West Africa), in natural disasters such as Indonesia (tsunami²³⁵ disaster) and to ensure further supportive measures in other parts of the world in the fight against terrorism and FTF, violent extremism and cross-border OC. There, where there are no or only very small forms of common attitudes and approaches of the community of states, the breakpoints and interface problems are becoming quickly visible.

The crises described above are responsible for the failure of states (fragile, failing, failed states²³⁶) that, in turn, jeopardise peace in the affected regions and security within the EU. In the examples of Iraq and Syria (see point 3.6.3 and 3.6.5.), it is currently possible to see how 'failing states' have been turned into 'collapsed states' in some territorial areas, and the IS is still going further by calling a caliphate and a state project.²³⁷

Researchers are arguing about how to describe the IS: Perthes, head of the Foreign Policy Think Tank, Science and Policy proposes a "jihadist state formation project". The American terrorist researcher Brian Fishman has designated the IS as a "governmental amoeba", a "state mosaic" that is constantly changing its shape.

Figure 3.7.1.: Own presentation



²³⁴ European Union Police Mission in the Palestinian Territories - EUPOL COPPS (2005 to present): Available from: <http://eupolcopps.eu/> (Accessed on 11th November 2016).

²³⁵ Spiegel-Online (2014): *Tsunami 2004 – Die Jahrtausendkatastrophe*. Available from: <http://www.spiegel.de/panorama/gesellschaft/tsunami-2004-in-suedost-asien-die-grosse-flut-a-1006392.html> (Accessed on 11th November 2016).

²³⁶ Herdegen, Matthias / Thürer, Daniel / Hohloch, Gerhard (1996): *Der Wegfall effektiver Staatsgewalt: The Failed State*. P.49–84.

²³⁷ Chandler, Adam (2014): What is an Islamic Caliphate and why did ISIS make one? A caliphate is an Islamic state. It's led by a caliph, who is a political and religious leader who is a successor (caliph) to the Islamic prophet Muhammad. His power and authority is absolute. Available from: <http://www.theatlantic.com/international/archive/2014/06/what-is-an-islamic-caliphate-and-why-did-isis-make-one/373693/> (Accessed on 11th November 2016).

"This was a huge mistake. Saddam Hussein was brutal - to just eliminate him was wrong. The same goes for Gaddafi and Libya, which today is a failed state. The great historical lesson is that it was a strategically unbelievably bad decision to invade Iraq [...],"

said Michael Flynn, Ex-US Intelligence Chief on developments in the Middle East and Libya.²³⁸

The consequences of this are new and hitherto unknown phenomena in the areas of terrorism, violent extremism, forms of radicalisation and transnational OC, which until recently were not considered as possible. With regards to cross-border OC and accompanying smuggling of millions of people coupled with the effects of irregular migration, the following chapters will explicitly address these issues. Societies are faced with these developments even within individual EU MS with disrespect, but also rage and unsorted action, as the phenomenon of the movement PEGIDA shows.²³⁹ Populists and agitators are trying to use the uncertainty of the population in the implementation of their own political agenda, which can have potential for attacking the free liberal democratic order of the Federal Republic of Germany by strengthening neo-nationalist and other radical groups. The EU and its MS will have to face these phenomena and new challenges through their watchful democracies.

The EU needs to improve its instruments and mechanisms in the field of border security and management to avert the aforementioned transnational threats in mutual coordination of all EU MS, and thus elaborate effective contributions to create security and peace for the people of Europe and beyond. It is also necessary to combat existing poverty, reduce inequality, promote democratisation processes and respect human rights without restriction. The EU is currently doing this by implementing large-scale project frameworks to ensure sustainability and democratic governance in the beneficiary countries through long-term commitment. Nevertheless, the responsible persons in the EU control centres must consider the extent to which future events can be influenced and shaped more strategically and become success-oriented. The motto must be: a proactive

²³⁸ Flynn, Michael (2015): Ex-US intelligence officer on the IS said: "We were stupid". Flynn served in the US Army for more than 30 years, most recently as head of the military secret service DIA. Prior to that, he served as deputy intelligence coordinator for the US government. From 2004 to 2007 he was stationed in Afghanistan and Iraq, as a commander of the US special forces, he hunted the top terrorist *Abu Musab al-Sarkawi*, one of the predecessors of today's leader of the Islamic state, *Abu Bakr al-Baghdadi*. Available from: <http://www.spiegel.de/politik/ausland/ex-us-geheimdienstchef-mike-flynn-ueber-den-is-wir-waren-zu-dumma-1065038.html> (Accessed on 11th November 2016).

²³⁹ The Guardian (2015): 'Like a poison': how anti-immigrant Pegida is dividing. Pegida stands for Patriotic Europeans Against the Islamisation of the West (*PEGIDA – Patriotische Europäer gegen die Islamisierung des Abendlandes*). Available from: <https://www.theguardian.com/world/2015/oct/27/pegida-germany-anti-immigrant-group-polarising-dresden> (Accessed on 11th November 2016).

participation of as many involved parties as possible, rather than conflict resolution and reactive crisis management.

Sustainability in the areas of conflict resolution and crisis management will only succeed if all relevant actors are involved who want to be heard and want to contribute to it. Disregard or even exclusion means only a delay of urgently needed solutions. The importance for the full implementation and realisation of the international conventions by the UN, the EU and the OSCE by the countries has already been pointed out (see point 1.1.). Apart from all the important formulated elements of these conventions, it must be clearly understood that respect for sovereignty, the independence of the countries and their territorial integrity, as well as a peaceful settlement of disputes between states, are considered absolutely non-negotiable. In particular, territorial integrity requires the utmost sensitivity, since, after the disintegration of the Soviet Union and the dissolution of former Yugoslavia, boundary lines between these states have not (yet) been clearly defined in many cases and therefore different territorial aspirations are proclaimed. This often leads to armed conflicts between state border guards in the countries concerned, often with a fatal outcome. The EU and its agencies have achieved great success in the last decade through their programs (such as PHARE²⁴⁰, CARDS²⁴¹, IPA²⁴², ENP²⁴³) in the fields of democratisation, institution and capacity building, border management, and good governance. It is self-evident that it is not enough to rest on what has been achieved, but to exploit the potential to continue to guarantee security and peace in common beliefs and efforts. Using the examples described, it is illustrated that transnational OC is promoted in the crisis

²⁴⁰ European Parliament (1998): The PHARE Programme and the enlargement of the European Union. The term 'PHARE' - Poland and Hungary Assistance for the Restructuring of the Economy - initially described as the international efforts to provide economic support to the emerging Polish and Hungarian democracies - is the EU's main financial instrument for accession of the Central and Eastern European countries. It was launched as a specific EC programme, initiated by Council Regulation No. 3906/89. Its funding is used to channel technical, economic and infrastructural expertise and assistance to recipient states. The aim is to help these countries achieve market economies based on free enterprise and private initiative. Available from: http://www.europarl.europa.eu/enlargement/briefings/33a1_en.htm (Accessed on 11th November 2016).

²⁴¹ European Union (2007): Community Assistance for Reconstruction, Development and Stabilisation - CARDS Programme (2000–2006). Council Regulation (EC) No 2666/2000 of 5th December 2000 on aid to Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia and repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 2906/89 and No 1360/90 and of Decisions 97/256 / EC and 1999/311 / EC (see amending acts). Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:r18002&from=DE> (Accessed on 11th November 2016).

²⁴² European Commission (2016): IPA – Instrument for Pre-Accession Assistance. Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11th March 2014 establishing an Instrument for Pre-accession Assistance (IPA II). Available from: http://ec.europa.eu/enlargement/instruments/overview/index_en.htm (Accessed on 11th November 2016).

²⁴³ European Neighbourhood Policy (ENP). Available from: <https://eeas.europa.eu/topics/european-neighbourhood-policy-enp> (Accessed on 8th November 2016).

areas and triggered the greatest wave of irregular migration after the Second World War.

At present it is uncertain whether the developed mechanisms of INTERPOL, EUROPOL, Frontex and the EU border regimes are sufficient to counter the great potential of transnational threats, which was triggered by the IS and is amplified by transnational OC groups in the Middle East and North Africa, by the massive trafficking in human beings and people smuggling. Through a newly reconsidered and significantly improved effective control system of both the internal and external borders of the EU, foreign terrorist fighters must be identified and prevented from leaving their countries of origin or residence on their journey to conflict zones such as Syria, respectively they must be arrested on their return journey and be brought to justice on the basis of criminal prosecution.

The call for more security, safe borders and reintroduction of stationary border controls becomes louder. However, the principle of free movement is opposed. In many cases, Frontex is asked to protect the EU MS from these transnational threats but does not have a sufficient mandate.

Chapter 4: Transnational Organised Crime (TOC)

4.1. Organised forms of crime

Organised forms of crime are to be found in nearly all countries around the world, and from the criminals' point of view are extremely lucrative industries with an estimated turnover of about one trillion US dollars annually. According to the economic reports from 2012, the southern Italian syndicates alone generated sales of approximately 140 billion Euros and that despite the negative effects of economic and financial crises.²⁴⁴

The OC groups and individual criminals operating in the EU are highly diverse. They range from large 'traditional' OC groups to smaller groups and loose networks supported by individual criminals, who are hired and collaborate on an ad hoc basis. Approximately more than 5,000 OC groups operating on an international level are currently under investigation in the EU. This figure does not necessarily reflect an overall increase in TOC activities in the EU compared to 2013, when EUROPOL reported on the activities of 3,600 internationally operating OC groups in the EU. This increase is primarily a reflection of a much-improved intelligence picture. The increase also points to the emergence of smaller criminal networks, especially in criminal markets that are highly dependent on the internet as part of their *modi operandi* or business model. Overall, the number of TOC groups operating internationally highlights the substantial scope and potential impact of serious and organised crime on the EU.²⁴⁵

The progressing globalisation of economic and financial systems, rapid developments in communications and cyberspace²⁴⁶, as well as the dynamic political and economic integration processes in Europe, accompanied by a multitude of crises and the greatest wave of irregular migration since the Second World War, will inevitably affect the interior and exterior security situation. No other profession has such a good international network of organised structures in the area of cross-border criminality. In addition to the global systems of economy and finance, another field has developed, namely organised forms of crime. These organisms sometimes have more economic power than a state that has to abide by such structures reluctantly, which is at least a natural defensive attitude of the normal population. The countries of origin of organised forms of crime are usually

²⁴⁴ ntv.de, Rubrik Wirtschaft (2012): *Organisierte Kriminalität boomt* – Mafia is the largest bank in Italy. Available from: <http://www.n-tv.de/wirtschaft/Mafia-ist-groesste-Bank-Italiens-article5179561.html> (Accessed on 15th November 2016).

²⁴⁵ Europol (2017): EU Serious and Organised Crime Threat Assessment – Crime in the age of technology, p.14.

²⁴⁶ Springer Gabler Verlag (2016): *Gabler Wirtschaftslexikon*, Cyberspace, online in Internet: "Cyberspace (also called virtual space) is a non-real world that can only be used by a computer. In the real sense Cyberspace refers to a computer-generated three-dimensional world, also called Virtual Reality." Available from: <http://wirtschaftslexikon.gabler.de/Archiv/75127/cyberspace-v9.html> (Accessed on 25th November 2016).

characterised by a weak political system and very often coupled with an inadequately developed and functioning legal system in which the rule of law is only partially implemented or not at all.

The theme of the transnational threats emanating from fragile, fallen and collapsed states was discussed under point 3.6. in this work. As a result, legal, social and society norms are pushed back and replaced by violence and the right of the strongest, coupled with an unrestrained pursuit of profit and power. Crime structures adapt almost without any problems to the economic and social framework conditions of the respective country. The combined absence of rule of law and non-enforcement of monopoly of power by a state, together with the ability of criminal groups to completely isolate themselves from society, provide the perfect breeding ground for infiltration into a society and thus guarantees the success of their criminal actions.²⁴⁷ These developments initially have a local origin and can develop rapidly in the country and then in the cross-border context. For this reason, it can be unequivocally ascertained that organised forms of crime appear not only in the national context but are also operating predominantly across borders.²⁴⁸ On the one hand, the steady increase in cross-border passenger and freight traffic allows only selective controls. On the other hand, the elimination of stationary border controls within the *Schengen* area promotes these developments and minimises the risk of discovery. Corresponding numbers of cases within the continually increasing cross-border passenger and goods transport system are documented in the Eurostat passenger transport statistics.²⁴⁹

Much faster than most states with their law enforcement and investigative authorities, these criminal structures are able to take advantage of the speed at which the international market operates and all kinds of technical advances of state-of-the-art communication technologies. These criminal groups often form complex business-oriented alliances and linkages, strengthened by agreements that serve to influence the decision-making processes in politics, society and the

²⁴⁷ Emperor, Günther (1996): *Kriminologie*. In order to record the organised crime, the BKA has developed a comprehensive system of indicators, which clearly highlights the description elements of the planning, preparation and implementation of the criminal acts as well as the exploitation of the prey. The following indicators point to the forms of organised crime: [...] a long-term consolidation of a plurality of persons as a profit-oriented solidarity of interests, with a high degree of exchangeability of their members and systematic foreclosure to the outside [...]. P.410.

Schwind, Hans Dieter (2010): *Kriminologie – A practice-oriented introduction with practical examples*. [...] the total foreclosure to the outside (silence against law enforcement authorities) [...]. P.624.

²⁴⁸ Soine, Michael / Gehl, Günter (Hg.) (2006): *Europa im Griff der organisierten Kriminalität?* P.9.

²⁴⁹ Eurostat (2016): Passenger transport statistics provide information on a range of passenger transport modes, such as road, rail, air and maritime transport. Available from: http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger_transport_statistics (Accessed on 15th November 2016).

economy in a transnational manner. Other significant characteristics of these criminal structures are their fundamental rejection of state monopolies, intimidation and scaremongering of dissenters, as well as a hierarchical system coupled with conditioned behaviour of the members, based on their own code of conduct with the possibility of sanctioning in cases of non-compliance. In its entirety, three recurring causes are observed: poverty, regulation²⁵⁰ and greed.²⁵¹ "We want to be tough on crime, but equally tough on its causes",²⁵² according to Blair, it would certainly be possible to find ways of relieving and developing positive changes in order to combat poverty and normative constraints. However, the endeavour to change the characteristic trait of greed is a whole different concept and one that is far more difficult to achieve.

The detection and investigation, structural analysis and consequent combating of transnational OC (herein later mentioned as TOC) groups present huge challenges for national law enforcement agencies and intelligence services, which ideally should cooperate closely. This phenomenon must be combated by all available means according to the rule of law, in order to continue to guarantee the free democratic constitution in Germany and the democracies of the other EU MS.²⁵³

4.2. Is organised crime the same as Mafia?

Organised forms of crime are often equated with the expression *Mafia*; but this is inappropriate. The colloquially manifested concept of *Mafia* cannot be equated with OC and is not correct in this respect, since OC is, from a holistic viewpoint, a heterogeneous and not a monolithic structure.²⁵⁴ Rather, the respective OC groups have resulted independently in different countries with their respective forms of governance, in different epochs, cultures and structures with different names and

²⁵⁰ Note from the author: In this case, regulation should be understood as an instrument for overseeing and at the same time suppressing the society by means of normative constraints.

²⁵¹ Southwell, David (2007): *Die Geschichte des Organisierten Verbrechens*. P.9.

²⁵² Ibid.

Blair, Tony (1995): Leader's speech, Brighton 1995. Available from: <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=201> (Accessed on 25th November 2016).

²⁵³ Thurich, Eckart (2011): *pocket politik. Demokratie in Deutschland* (Revised edition Bonn: Federal Centre for Civic Education 2011). Free and Democratic Order – the designation for the highest fundamental values of democracy in Germany. In the German constitution, the term liberal democratic order is used twice [Art. 18, Art. 21 (2) GG]. This refers to the democratic order in Germany, in which democratic principles [Art. 20 GG] and uppermost values are inviolable. Above all, this includes the dignity of the individual [Art. 1 GG]. In the German democracy, freedom and equality prevail over the law. A dictatorship is excluded. In regular general elections, the people themselves determine who should rule. It has the choice between competing parties. Those who receive the majority of the votes then govern - but only for a certain period of time, as democracy is only temporary rule. A party that was once at the helm must also be able to be voted out again. Available from: <http://www.bpb.de/nachschlagen/lexika/pocket-politik/16414/freiheitliche-demokratische-grundordnung> (Accessed on 15th November 2016).

²⁵⁴ Soine, Michael / Gehl, Günter (Hg.) (2006): *Europa im Griff der organisierten Kriminalität?* P.13.

traditions.²⁵⁵ However, no other coalition of an OC group is more famous than that of the Italian *Mafia*, although this term does not exist in a real sense.²⁵⁶ Technically speaking, *Mafia* stands for the emergence of criminal groups in Sicily, which continue to commit serious crimes in organised forms and procedures. However, in order to understand the origins of the *Mafia*, one must know and understand the cultural, sociological and political developments of Sicily.²⁵⁷ A possible historical explanation can be derived from the long-standing foreign domination by the dynasty of the Bourbons, according to which nationalist groups in the south of Italy wrote the saying: "*M.a.F.I.a. - Morte alla Francia, Italia anela!*" ("The death of France is longing for Italy")²⁵⁸, or comparatively "*M.a.F.I.a. - Morte Ai Francesi, Invasori, Assassini!*" ("Death to the French, Invaders, Murderers!")²⁵⁹. Further references are also found in the Sicilian dialectic. Here, *Mafia* is equated with boldness or boastfulness, but the word presumably derives from the Arabic word '*mahyah*', which has roughly the same meaning.²⁶⁰

Mafia-like structures are viewed from the outside as strictly isolated and familial constructs and are bound both territorially and thematically. Southwell describes the myth '*Mafia*' as a consolidated part of Italian culture, such that the general viewer gets the impression that this is part of the national cultural heritage.²⁶¹ Organised forms of crime emerged independently of one another in terms of time and territory, and they developed individually in different cultures and political systems. In all of these developments similar or even identical patterns can be observed, such as a clear hierarchy, a strong seclusion to the outside, a code for

²⁵⁵ Southwell, David (2007): *Die Geschichte des Organisierten Verbrechens*. P.8.

²⁵⁶ Ibid.

²⁵⁷ Ibid. Retrospective Summary.

"Over long periods of time, self-proclaimed and non-state-legitimate structures exerted power relations on society, almost as in the exertion of the state's power monopoly. In the 19th century, large landowners took over this role and equipped their workers with weapons in order to protect their interests, so as to violently counteract the misery and the competing rebellion. These armed men very quickly learned how to take advantage of the power given to them in order to extort their sacrifices and make financial profit from them. The decisive step towards the *Mafia* was carried out until the second half of the 19th century, since the Italian central government, which was then responsible, was unable to enforce an effective state control over Sicily. Consequently, the landowners and their armed subordinates gained ever-growing influence and control in the region, society and structures such as church, government and newspaper publishers. This is how the organisation of the *Mafia* originated, as part of this development process, just as it is known to a large extent today. Nevertheless, a clear definition of the term *Mafia* cannot be derived so easily, since there are a number of different descriptions available."

²⁵⁸ Bossert, Oliver (2006): *Cosa Nostra – Die Geschichte der Mafia*. Available from:

http://www.krimlex.de/artikel.php?BUCHSTABE=M&KL_ID=118 (Accessed on 15th November 2016).

²⁵⁹ Runciman, Stevenson (1976): *Universal Encyclopaedia - Revolt of the citizens of Palermo against the rule of Karl I of Naples-Sicily (from the house of Anjou), which on Easter Monday broke out into Vespers in 1282 and spread throughout Sicily*. Available from:

http://universal_lexikon.deacademic.com/301913/Sizilianische_Vesper (Accessed on 15th November 2016).

²⁶⁰ Schüler-Wahrig (2008): *Foreign words dictionary, related words*. P.228.

²⁶¹ Southwell, David (2007): *Die Geschichte des Organisierten Verbrechens*. P.12.

their members, a strong potential for violence, operating within an indeterminate time period, no cooperation with state authorities, as well as greed and profit striving coupled with the re-investment of criminally generated profits. There were, for example, organised forms of criminality in the former Soviet Union, which, were little known at all, due to the partitioning of the Communist system. These criminals, called 'thieves in the law', organised themselves in syndicates and were active almost in all criminal areas, which promised financial profit.²⁶² After the fall of the Iron Curtain and the dissolution of the former Soviet Union, the almost limitless possibilities of expansion were immediately recognised, and there was nothing to hinder an extension to the West and the extension of the thematic areas. The 'thieves in the law' have always enjoyed great respect in the Russian-speaking population, and they are forbidden to cooperate with government authorities, found a family or even carry out a regular job.

As a second example, the *Yakuza* is said to be a group of criminals and criminal family clans in Japan.²⁶³ They are among the oldest and most established criminal organisations in the world.²⁶⁴ The influence of this TOC group extends to all areas of Japanese politics, in commerce, industry, banks, media, all social classes, not least based on the binding compliance and practice of old rituals.

Further examples of powerful and influential TOC groups are:

- *La Cosa Nostra* USA, *Medellin* cartel in North, Central and South America
- Chinese *Mafia* - *Triads* in Asia
- Albanian *Mafia*, Russian *Mafia*, and others in Europe

The political developments and the dramatic changes that have taken place during the last 20 years have led to the emergence of new, internationally-operating structures, such as the successor states of the former Soviet Union, South East Europe and North Africa, as shown by Libya's example.²⁶⁵

²⁶² Southwell, David (2007): *Die Geschichte des Organisierten Verbrechens*. Thieves in law – Russian: воры в законе – wory w zakone. P.146.

²⁶³ Southwell, David (2007): *Die Geschichte des Organisierten Verbrechens*. "Ya-Ku-Za" is originally a dialectical term for the number combination 8-9-3, a series of numbers from a Japanese card game, which is the epitome of worthlessness. Thus, it is to be understood that the *Yakuza* proudly consider themselves as the 'worthless' of the society and take out people who have been expelled from the Japanese society. Characteristic for the *Yakuza* are extensive tattoos, as well as often missing fingertips, which *Yakuza* members have to separate themselves in case of misconduct. The more fingers are missing, the more wrongs were internally condemned. P.90.

²⁶⁴ Ibid p.92.

²⁶⁵ Gehl, Günter (2006): *Europa im Griff der Organisierten Kriminalität?* Examples are the Sicilian *Mafia*, the Neapolitan *Camorra*, the *Ndrangheta*, the American *Cosa Nostra*, the Chinese triads such as *Kung Lock*, *Wo Hop To*, *Sun Yee On*, 14K. P.9.

4.3. What is organised crime?

Actions described in today's juridical understanding as, organised forms of criminal machinations, can be traced back to human history by means of their patterns. People have always agreed to pursue their goals through the use of force or other unlawful procedures. Jäger points out that the description of OC was decisively influenced by different developments of the individual societies, as well as a differentiated legal, economic and sociological view from the respective political systems.²⁶⁶ As a result, today a variety of OC definitions have been developed, sometimes brief and concise, but conversely sometimes very detailed and extensive. An immediate and comprehensive response to a possible questionnaire, asking ultimately, what is organised crime, appears initially to be relatively simple, but becomes more difficult and complex on closer inspection. The term of organised crime, or simply called OC, is very comprehensive and complex and difficult to grasp in a uniform definition. This is in the sense that the Member States have not been able to reach an agreement on an EU-wide or globally unified definition of this concept and is used accordingly. The reasons for the different developments are that OC structures have developed over long periods of time in different political and legal systems with special regional and cultural influences.²⁶⁷ This, at the same time, is an explanation for why the individual countries have different characteristics in the descriptions of OC compared to the definitions of international organisations. A first attempt by experts to put organised forms of criminality into words goes back in Germany to 1968. In the journal "Criminalistics", a specialised magazine for criminal science and practice, the detective superintendent Mätzler²⁶⁸ had asked the question: "Nip things in the bud - but how?"²⁶⁹ On the basis of his statements related to the example of combating French criminals who were active at this time in Germany, Mätzler noted that there would be no organised criminality in its literal meaning in Germany. In 1973, Kerner published a study commissioned by the Council of Europe to analyse the relevant aspects of OC and the possibility of professional crimes in

²⁶⁶ Jäger, Thomas (2013): *Transnationale Organisierte Kriminalität*. Available from: <http://www.bpb.de/apuz/168912/transnationale-organisierte-kriminalitaet?p=all> (Accessed on 15th November 2016).

²⁶⁷ Ibid.

²⁶⁸ Mätzler, Armin (1968): *Wehret den Anfängen – aber wie?* A chapter of organised criminality in the Federal Republic of Germany, *Criminalistics* 1968. P.405.

²⁶⁹ Luczak, Anna (2004): *Organisierte Kriminalität im internationalen Kontext*. P.188.

Europe at that time.²⁷⁰ Kerner's work focused mainly on the specific situation in Germany and the Netherlands. He concluded that there were great differences to the conventional levels of understanding with regard to OC (compared to the Sicilian-Italian *Mafia* and the American *Cosa Nostra*) both in qualitative and quantitative terms. Kerner described for the first time the notion of a general European 'criminal industry' with simultaneous negation of OC.²⁷¹ Kerner used this new term to describe a criminality form that was largely commercial and widely used, and also pointed out that this 'criminal industry' had reached new dimensions and the actors involved had developed new work practices. In the following years, these discussions were pushed forward mainly by officials from the Federal Criminal Police Office (herein later mentioned as *BKA*) and the association of German Criminal Officers. One of the first results of this discussion process, a special documentation on the 'development of modern strategies to combat organised crime' was published in 1975.²⁷² From this period onwards, it became clear that these organised forms of crime constituted an urgent threat to the internal security of the Federal Republic of Germany if appropriate countermeasures were not immediately taken. In the following years, both the intensity of the discussions held and the number of new discussants increased. In 1988, a first attempt at an empirical investigation carried out by the detectives Rebscher and Vahlenkamp, produced an up-to-date picture of the current situation with recognisable trends of development in the area of OC in Germany.²⁷³ On the basis of their investigations and skilful interviews, the two experts came to the conclusion that the phenomenon 'organised crime' from the USA could scarcely be compared with OC in Germany. Two basic structural forms were presented as a major result of this work:

- networks of offenders and/or groups of criminals with the aim of establishing purpose-based alliances
- independent groups of offenders

In the 1990s, further empirical studies followed, of which the results were mainly based on the interviews of experts, and progressively a consensus was built that

²⁷⁰ Kerner, Hans-Jürgen (1973): *Professionelles und organisiertes Verbrechen. Versuch einer Bestandsaufnahme und Bericht über neuere Entwicklungstendenzen in der Bundesrepublik Deutschland und in den Niederlanden.*

²⁷¹ Luczak, Anna (2004): *Organisierte Kriminalität im internationalen Kontext.* P.188.

²⁷² Jansen, Hans-Peter / Bund Deutscher Kriminalbeamter (Hg) (1975): *Zentrale Ermittlungsdienststellen als organisatorische Voraussetzung für die wirksame Bekämpfung krimineller Gruppen.* P.71-83.

²⁷³ Luczak, Anna (2004): *Organisierte Kriminalität im internationalen Kontext.* P.190.

the state and society as a whole are at risk. In these discourses, the aspects of TOC and a Europe with permeable borders were then successively linked. A process of consciousness development began, that the existing border controls and their mechanisms were classified as inadequate, but on the other hand would offer a considerable potential for security-related issues. This was, so to speak, the starting point that stationary and mobile border controls were recognised as strategically important elements in combating cross-border crime. Almost automatically, the key words such as *Mafia*, drug trafficking, protection racket, weapon smuggling, trafficking in human beings and prostitution, but also rocker gangs and bet syndicates are associated with TOC. These are, however, only sub-areas of TOC and their various appearances and do not explain the fundamental individual characteristics therein. This impression is strengthened by a broad social acceptance of the terms, such as '*Russian Mafia*' or '*drug Mafia*'.

This makes it difficult for the impartial viewer to identify a clearly defined and recognisable phenomenon of this type of crime. Thus, the term 'organised crime' has to be described only in its characteristic elements and components, in order to prevent the risk of misinterpretation.

In three basic statements, von Lampe describes the nature of OC as follows:

1. Organised crime, such as the official German definition, is essentially the planned commission of criminal offences.
2. According to a different view, criminal acts are not primarily organised, just the people committing them.
3. According to a third view, the central moment of organised crime is the exertion of power, either by criminals alone or in an alliance of criminals and social elites.²⁷⁴

According to the first point and the general and specific features of the German definition of the conceptuality of OC, the criminal area of gang crime also shows similar, or even the same, facts and characteristic features.²⁷⁵ These include, amongst others, the description of a group of offenders, the proceedings of division of labour and planning. However, regarding OC the element of co-operation has no time boundaries, whereas in the case of gang crime, it is aligned to a specific period of time and thus limited. It is irrelevant if the period for the commissioning of criminal offences were not clearly defined.

The term 'gang' presupposes the amalgamation of at least three persons, who have joined with the intention, to commit in the future and uncertain duration an unspecified number of serious crimes of the type of offence referred to in

²⁷⁴ Von Lampe, Klaus (2013): *Was ist organisierte Kriminalität?* From politics and contemporary history 63rd year, 38-39 / 2013. P.3.

²⁷⁵ Article 129 of the Criminal Code (StGB) - Formation of criminal associations. Section 7 - Offenses against public order. Available from: <http://dejure.org/gesetze/StGB/129.html> (Accessed on 15th November 2016).

the criminal code. A particular 'strong individual commitment to the gang' or 'taking actions in an overarching interest' is not necessary.²⁷⁶

Regarding Lampe's second point, criminals are organised in a group to commit crimes. Thus, the term OC is intended to explain the form that criminal organisations take, in that they are groups with defined and recognisable structures. The Federal Bureau of Investigation (FBI) defines OC as

[...] any group having some manner of a formalised structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole.²⁷⁷

In his third point, Lampe describes power as the central element of organised crime. The exertion of power is ensured here on the one hand by threat of force or by the effective exercise of violence by individual criminals, or also by mutual interaction between individuals of social elites. In the first case Lampe speaks of illegal governance, respectively extra-legal governance.²⁷⁸ It is about special manifestations in social classes, which cannot be regulated by state authorities in its competence to apply the monopoly of power, because the appropriate capacities for combating these criminal structures are not sufficient. This is highlighted by the fight against the drug cartels in Mexico, production of opium and heroin in Afghanistan, or irregular migration from North Africa, mainly organised in the northern part of Libya. Another option would be that a state has little interest in regulating the legal grievances, whether for traditional reasons such as parts of society deliberately isolating themselves and rejecting the rule of law, or for reasons of considerations in terms of investments and returns (cost matrix).²⁷⁹

In other constellations, TOC structures are finding an ideal breeding ground or shelter because the respective national legislation is not in alignment with the EU's neighbouring countries. For example, TOC groups use Switzerland as an international hub for cigarette smuggling to the detriment of EU MS. As a *modus*

²⁷⁶ Bundesgerichtshof (2001): *BGH GSSt 1/00, Beschluss v. 22.03.2001, HRRS-Datenbank, Rn. X.* (Federal Supreme Court (2001): *BGH GSSt 1/00, Decision of 22nd March 2001, HRRS-Data Base, Rn. X.*)

²⁷⁷ Federal Bureau of Investigation (2016): Definition „organised crime“. Available from: <http://www.fbi.gov/about-us/investigate/organizedcrime/glossary> (Accessed on 16th November 2016).

²⁷⁸ Von Lampe, Klaus (2013): *Was ist organisierte Kriminalität?* From politics and contemporary history 63rd year, 38-39 / 2013.

²⁷⁹ Isak, Redi (2011): *Der Kanun in Albanien – Gewohnheitsrecht im modernen Staat?* Diploma thesis submitted at the University of Vienna: *The Kanun in Albania - Habitual Law in the Modern State?* P.37-39. Available from: <http://www.design.kyushu-u.ac.jp/~hoken/Kazuhiko/2011DerKanun.pdf> (Accessed on 16th November 2016).

operandi, cigarettes under customs control are illegally removed from the transit procedure and subsequently smuggled into the EU MS declared as empty packaging. In 2013, the EC notes in its reports that the illegal tobacco trade is classified as a global threat and the EU is losing more than 10 billion Euros annually due to non-paid taxes and duties.²⁸⁰ As a consequence, the illegal cigarette trade is associated exclusively with OC groups. Despite the generation of billions of Euros of criminal profits, Switzerland plays down the role of international cigarette smuggling.²⁸¹ For example, the EU and Switzerland have been discussing for years the enforcement of relevant EU MS judicial assistance agreements and the conduct of requested extraditions of criminals living in Switzerland, which are attributed to TOC in the field of international cigarette smuggling.

4.4. Classic areas of TOC

The German definition in line with the joint guidelines of the Ministers of Justice and Home Affairs of the states on the cooperation in the prosecution of TOC (1990) is:

Organised crime is the planned commissioning of criminal offenses through striving for profit and power, which are individually or in their entirety of considerable importance, if more than two parties work on a longer or indefinite duration

- a) using commercial or business-like structures,
- b) by use of force or other means of intimidation, or
- c) influencing policy, media, public administration, the judiciary or the economy.²⁸²

In the first part the definition describes the general characteristics and in the second part (a-c) the special characteristics of TOC. Thus, the investigative proceedings in the field of TOC are based on specific perpetrator characteristics and are not offence-oriented. Furthermore, the definition does not include offences

²⁸⁰ EUR-Lex (2013): Communication from the Commission to the Council and European Parliament. Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products - A comprehensive EU Strategy. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013DC0324> (Accessed on 16th November 2016).

²⁸¹ Meinrado, Robbiani (2000): Inquiry to the Swiss National Council regarding international cigarette smuggling in connection with OC. Rationale: "[...] It is true, on the other hand, that the smuggling of cigarettes in Switzerland does not meet any conditions for legal aid in criminal matters. This is, however, always granted if the foreign procedure concerns a treaty, which would be qualified as a tax fraud in fiscal matters in Switzerland (Article 3 (3), second sentence, of the Federal Law on International Acts in Criminal Matters, IRSG, SR 351.1). Article 24 (1) of the Regulation on international legal assistance in criminal matters (IRSV, SR 351.11) defines the tax fraud as the tax fraud as defined in Article 14 (2) of the Federal Law on Administrative Criminal Law (VStrR, SR 313.0). The fraudulent withdrawal of duties using falsified or false documents fulfils the facts of the tax fraud, for which legal assistance may be granted. In the case of large cigarette smuggling attributable to organised crime, the Customs Administration has always been able to provide legal assistance. [...]" Available from: <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20003441> (Accessed on 16th November 2016).

²⁸² Justiz Online (2016): *Gemeinsame Richtlinien der Justizminister/-senatoren und der Innenminister/-senatoren der Länder über die Zusammenarbeit bei der Verfolgung der Organisierten Kriminalität*. Available from: <http://www.jyv.nrw.de/anzeigeText.jsp?daten=510&daten2=Vor> https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1204 (Accessed on 16th November 2016).

attributable to terrorism.

For differentiation: gang crime *versus* organised crime according to the German Criminal Code, Section 129 – Forming Criminal Organisations:

(1) Whosoever forms an organisation the aims or activities of which are directed at the commission of offences or whosoever participates in such an organisation as a member, recruits members or supporters for it or supports it, shall be liable to imprisonment not exceeding five years or a fine. [...].²⁸³

TOC uses almost every criminal field offered to them that promises high profit margins, which are listed as criminal offences in the German Code of Criminal Procedure (herein later referred to as *StPO*) in section 100a.²⁸⁴ A list of relevant areas of crime, the relevant legal bases and offences of the classic areas of TOC are attached in Annex 1. For this reason, criminal areas of TOC are limited here, whose predominant commission can be attributed to certain ethnic groups.

4.4.1. Relevant offence fields and legal foundations

The portfolio of serious offences, which can be attributed to OC, are classified into areas of crime and refer to section 100a *StPO*, which are listed in alphabetical order.

The following legal bases are relevant for the following areas of crime:

- Asylum Procedures Act - smuggling of human beings
- Commodities control act - environmental crime
- Criminal code – e.g., crimes against property, violent crimes
- Foreign trade legislation - smuggling related to economic sanctions
- General fiscal law – avoidance of taxation and customs offences
- International Criminal Code
- Medicines law – crime of counterfeiting
- Military weapons control act – illicit trafficking of military weapons
- Narcotics law – illicit trafficking of drugs and drug smuggling
- Residence Act - trafficking in human beings and people smuggling
- Weapons law - illicit trafficking of small arms and light weapons (SALW), arms smuggling

²⁸³ German Criminal Code Article 129 – Forming Criminal Organisations. Section 7 - Offences against public policy.

Available from: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1204 (Accessed on 16th November 2016).

²⁸⁴ German Code of Criminal Procedure (*StPO*), as amended by the notice of 7 April 1987 (Law Gazette I, 1074, 1319), which was last amended by Article 2 (3) of the Law of 21 January 2015 (Federal Law Gazette I, p.10) has been amended. The translation includes the amendment(s) to the Act by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410). Available from: https://www.gesetze-im-internet.de/englisch_stpo (Accessed on 16th November 2016).

4.4.2. Ethnic OC groups and their offence fields

The *BKA* assesses the capacities of TOC groups based on the number and weighting factors of relevant indicators from the list of 'general indicators for the detection of OC-relevant issues'.²⁸⁵ The *BKA* conducts evaluations of the actual phases after preparation and planning of the respective crimes. Both the duration of the investigation and the use of the resources used play a decisive role in determining the indicators. The *BKA* clearly points out that a low potential of a TOC group does not necessarily indicate a small degree of organisation and professionalism.

The crimes to be prosecuted under German jurisdiction in section 100a *StPO* are often committed by certain ethnic groups by tradition and not infrequently because of a division of the classical areas with other TOC groups. According to the *BKA*, the nationality of the persons responsible for the assignment, who have the leadership function in the TOC groups, is decisive.²⁸⁶ These leaders need not necessarily represent the ethnic majority within a group. According to the *BKA* national situation report of 2014, the following ethnic OC groups are mainly concerned with the following areas of crime and are given here as exemplary and not exhaustive:²⁸⁷

- German-dominated OC groups
Illicit trafficking of narcotics and drugs smuggling, criminality in connection with economy, avoidance of taxation and customs offences, property criminality, money laundering, violent criminality, environmental criminality, counterfeit criminality, pimping, people smuggling, corruption, arms trafficking and smuggling, cybercrime
- Turkish-dominated OC groups
Illicit trafficking of narcotics and drugs smuggling, violent criminality, criminality in connection with economy, pimping, THB and people smuggling, avoidance of taxation and customs offences, property criminality, cybercrime, counterfeit criminality
- Polish-dominated OC groups
Property criminality, avoidance of taxation and customs offences, illicit

²⁸⁵ *Bundeskriminalamt-BKA* German Federal Criminal Office (2015): Organised crime. National Situation Report 2014, p.11-17. Available from:

<https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/OrganisierteKriminalitaet/organisierteKriminalitaetBundeslagebild2014.html> (Accessed on 16th November 2016).

Note from the author: The 'General Indicators for Detecting OC-Relevant Issues' are listed in Annex 10.

²⁸⁶ *Ibid.*

²⁸⁷ *BKA* (2015): *Organisierte Kriminalität*. National overview of the situation in 2014, p.13-17.

Note from the author: The frequency of the number of cases recorded in the *PKS* is determined by the frequency of the respective offence fields.

trafficking of narcotics and drugs smuggling, counterfeiting

- Italian dominated OC groups

Illicit trafficking of narcotics and drugs smuggling, money laundering, avoidance of taxation and customs offences, counterfeit criminality, arms trafficking and smuggling, criminality of property, criminality in connection with economy

- Serbian dominated OC groups

Property criminality, criminality in connection with economy, illicit trafficking of narcotics and drugs smuggling, THB and people smuggling, violent criminality

Other ethnically dominated TOC groups are listed under Annex 8.

The respective different forms of OC are multifaceted and diverse. Their ideas are clearly structured and hierarchically organised and strengthened by ethnic and cultural solidarity, language and dialectics, habits and customs, as well as social and family ties. In addition, there are interrelationships between criminals of different intellectual ability, whose work-sharing interactions are determined by the implementation of the respective criminal interests. Such phenomena have recently been observed in the areas of THB and people smuggling by operating crime gangs in Libya to the EU MS and Syria to Turkey, respectively Cyprus and Greece, organised by purely purposive interests.

4.5. OC Definitions in comparison

4.5.1. United Nations

The UN Convention against transnational organised crime (UNTOC²⁸⁸), also known as the 'Palermo Convention', can be regarded as the most important concept in the global fight against TOC.²⁸⁹ The convention is a legally-binding instrument for those states, which have ratified the convention, thereby implementing appropriate measures in the fight against TOC. This includes the renewal and the formulation of new criminal offences in order to tackle TOC structures, as well as the adoption of a new and all-encompassing framework for mutual legal

²⁸⁸ United Nations Convention against transnational organised crime and the protocols thereto (2004): Adopted by the UN General Assembly Resolution 55/25 on 15 November 2000 - United Nations Office on Drugs and Crime (UNODC). Available from:

https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf (Accessed on 16th November 2016).

²⁸⁹ Ibid.

Note from the author: The Palermo Convention was submitted for signature by the Member States at the political conference in Palermo, Italy from 12th to 15th December 2000 and entered into force on 29th September 2003.

assistance, extradition, cooperation in cross-border criminal investigation and prosecution, as well as professional cooperation in training.

Although the convention does not directly define the term of OC, the transcription leads to a universal understanding that criminality becomes OC when it contains a transnational aspect. The convention applies to crimes of all kinds, corruption, money laundering and the interference of the judiciary, as long as it is cross-border and involves a criminal group.²⁹⁰

Article 2. Use of terms

For the purposes of this Convention:

- (a) 'Organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) [...].²⁹¹

Article 3. Scope of application

- 1. [...]
- 2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
 - (a) It is committed in more than one State;
 - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
 - (c) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or
 - (d) It is committed in one State but has substantial effects in another State.

4.5.2. Council of Europe

As a result of the second summit of 1997, the Council of Europe has included the area of TOC in the agenda in which the European Heads of State and Government commissioned the Council of Europe to take appropriate measures against TOC, corruption and money laundering.²⁹² One of the results of the summit was the

²⁹⁰ Ibid.

²⁹¹ Note from the author:

German Criminal Code, Section 12 - Felonies and misdemeanours

(1) Felonies are unlawful acts punishable by a minimum sentence of one year's imprisonment.

(2) Misdemeanours are unlawful acts punishable by a lesser minimum term of imprisonment or by fine.

(3) Aggravations or mitigations provided for under the provisions of the General Part, or under especially serious or less serious cases in the Special Part, shall be irrelevant to this classification.

²⁹² Note from the author: The Council of Europe is the leading organisation for human rights in Europe, with a total of 47 member states, 28 of which are also members of the European Union. All 47 member states of the Council of Europe have signed the European Convention on Human Rights as a treaty for the protection of human rights, democracy and the rule of law.

creation of an expert committee, which prepared a series of annual reports related to TOC for the years 1996 to 2005. The annual situation reports are largely based on the analysis of the responses from questionnaires sent to the member states of the Council of Europe. The Council of Europe is of the opinion that the understanding of TOC is an ambiguous term, which lacks clarity and is generally perceived somewhat indistinctly, but is primarily aimed at generating financial or other material advantages.

The Council of Europe, in its guidelines on combating TOC, has a similar definition to that of UNTOC, but without reference to the commission of crimes in the transnational context:²⁹³

For the purpose of this recommendation:

'Organised crime group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit.

'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty.²⁹⁴

In order to facilitate the acquisition of easier and more understandable answers to the questions addressed, the Council of Europe has asked its Member States' officials to take account of the following criteria in order to define organised crime.

Compulsory criteria:²⁹⁵

- Cooperation of three or more persons
- For a longer or undetermined time
- Suspected or accused of committing serious crimes
- With the aim of gaining criminal profit or power

Optional criteria:

- Certain task or role assignment for each participant
- Internal code on discipline and control
- Use of force or other means suitable for intimidation
- Active influence on politics, public administration, law enforcement, media, judiciary or economy through corruption or other means

²⁹³ Council of Europe (2001): Recommendation (2001) 11 of the Committee of the Ministers to the member states concerning guiding principles in the fight against organised crime (adopted by the Committee of Ministers on 19th September 2001 at 756th meeting of the Ministers' Deputies).

²⁹⁴ Note from the author: German Criminal Code, Section 12 - Felonies and misdemeanours

²⁹⁵ Council of Europe (2006): A Council of Europe report detailing trends in organised crime in 2005 is now open to the public.

The report provides facts and figures on organised criminal activities in Europe, ranging from drug trafficking, to trafficking in human beings, cybercrime and money laundering. P.21.

- Application of commercial or business-like structures
- Participation in money laundering
- Active at international level

At the same time, at least two of the optional criteria had to be specified for the mandatory criteria in order to define the qualification features of TOC. Here, very large conformities can be found with the German definition of OC.

4.5.3. European Union

Since the mid-1990s, the EU has committed itself to fighting TOC in a concentrated way. The Treaty of Amsterdam (1997), by which the Member States agreed on closer cooperation in the fields of justice and home affairs, significantly improved the range and scope of coordinated actions against TOC. The decisions made during the special meeting of the Council of Europe in Tampere in October 1999 under the EU Council Presidency of Finland, characterise Europe's efforts to fight TOC as a primary priority in the creation of an area of freedom, security and justice (AFSJ).²⁹⁶ However, whilst the Finnish EU Presidency and the Tampere decisions remain intact, the 1997 action plan was revised and updated as the new EU Millennium Strategy in the field of prevention and fight against TOC. In addition, EU institutions such as EUROPOL and Eurojust have agreed to strengthen effective cooperation in the fight against TOC.²⁹⁷ Furthermore, the EU has developed a series of specific programs, such as CARDS (Community Assistance for Reconstruction, Development and Stabilisation), to promote and strengthen regional cooperation between police and legal institutions in the EU's neighbouring countries with a view to their involvement in the EU process of stabilisation and association with the EU.²⁹⁸

Furthermore, the EU Commission financed a series of programs designed to fight TOC through improved cooperation between the judiciary, the police and customs as well as to strengthen the cooperation of the relevant law enforcement

²⁹⁶ Treaty on the Functioning of the European Union – Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01). Article 67. The creation of the area of freedom, security and justice (AFSJ) is based on the Tampere (1999-04), Hague (2004-09) and Stockholm (2010-14) programmes. It derives from Title V of the Treaty on the Functioning of the European Union, which regulates the "Area of freedom, security and justice".

²⁹⁷ Official Journal of the European Union (2000): Acts adopted pursuant to Title VI of the Treaty on European Union, 2000 / C 124/01. The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium.

²⁹⁸ Council Regulation (EC) No 2666/2000 of 5th December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC.

authorities in the fight against trafficking in human beings and sexual abuse against children.

The following programs should be mentioned here:

- FALCONE Program²⁹⁹
- Hippocrates³⁰⁰
- Grotius³⁰¹
- OISIN³⁰²
- STOP³⁰³

The EU MS agreed in the Tampere European Council on the creation of the AFSJ³⁰⁴ and, as a mandatory objective of this initiative, focussed specifically on the prevention and combating of TOC. In an all-in-one package, AGIS³⁰⁵ replaced the aforementioned programs for the period from 2003 to 2007.

The EU's effort to define the concept of TOC is reflected in Article 1 of the Joint Action of 21st December 1998, adopted by the Council on the basis of Article K.3 of the Treaty on European Union and concerns the criminality of participation in a criminal offence association in the EU MS.³⁰⁶

²⁹⁹ Council Joint Action 98/245/JHA of 19 March 1998 establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme 1998-2002) [Official Journal L 99, 31.03.1998]. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:I33044> (Accessed on 18th November 2016).

³⁰⁰ Hippocrates (2001-2002): EU prevention program. Available from: http://www.forum-kriminalpraevention.de/zeitschrift/archiv/Philipp_Hippokrates.html (Accessed on 18th November 2016).

³⁰¹ Grotius (1996-2000): Joint action 96/636/JHA of 28 October 1996, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on a programme of incentives and exchanges for legal practitioners [Official Journal L 287 of 08.11.1996]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:I14014> (Accessed on 18th November 2016).

³⁰² OISIN I (1997-2000) und OISIN II (2001-2002): Joint Action 97/12/JHA of 20 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing a common programme for the exchange and training of, and co-operation between, law enforcement authorities (Oisin) [Official Journal L 7, 10.01.1997]. Objective to prevent, detect and combat terrorism and crime by improving co-operation between law enforcement authorities in order to provide greater insight into and understanding of the legal systems and law enforcement practices in other Member States as well as upgrading the skills of those working in law enforcement. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:I33066> (Accessed on 18th November 2016).

³⁰³ STOP I (1996-2000) and STOP II (2001-2002): Joint action 96/700/JHA, of 29 November 1996, adopted by the Council pursuant to Article K.3 of the Treaty on European Union, establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children [Official Journal L 322, 12.12.1996]. Incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP). Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:I33015> (Accessed on 18th November 2016).

³⁰⁴ Note from the author: The creation of the area of freedom, security and justice (AFSJ) is based on the Tampere (1999-04), Hague (2004-09) and Stockholm (2010-14) programmes. It derives from Title V of the Treaty on the Functioning of the European Union, which regulates the "Area of freedom, security and justice".

³⁰⁵ AGIS ((2002): Council Decision 2002/630/JHA of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS) [Official Journal L 203 of 01.08.2002]. Objective is to establish a single framework programme for the co-financing of projects presented by promoters in the Member States and candidate countries in the areas of justice and home affairs, thereby enabling a coordinated multidisciplinary approach to the various activities relating to the creation of the area of freedom, security and justice as well as preventing and fighting organised crime in the European Union. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:I33177> (Accessed on 18th November 2016).

³⁰⁶ European Parliament (2013): Directive 2013/40 / EU of the European Parliament and of the Council of 12 August 2013 on attacks on information systems and the replacement of Council Framework Decision 2005/222 / JHA, P.1-2. Available from: <http://db.eurocrim.org/db/en/doc/1938.pdf> (Accessed on 18th November 2016).

Accordingly, the EU definition describes OC as follows:

A criminal organisation means a structured association, established over a period of time, of two or more persons, acting in a concerted manner with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.³⁰⁷

Another interesting aspect is the EU's fight against TOC in South-East Europe. In 2004, on the initiative of the European Council (Justice and Home Affairs) the ad-hoc group "Friends of the Presidency" was established with the mandate to find out how the EU's responsible actors can enhance the effectiveness in the fight against TOC in cooperation with the Western Balkans authorities.³⁰⁸ This group consisted of experts from law enforcement authorities from eight EU MS and was supported by representatives of EUROPOL and the European Commission.

In September 2004, the final assessment report was submitted, which highlighted three essential characteristics:

1. There is no comprehensive EU strategy in the fight against TOC in the Western Balkan countries.
2. The EU's approach in fighting TOC needs improved coordination.
3. The institutional capacities of the Western Balkans show significant and worrying weaknesses.

4.5.4. EUROPOL

Headquartered in The Hague in The Netherlands, EUROPOL is the central institution in the area of criminal analysis and facilitating relevant information between the 28 EU MS in their fight against TOC, terrorism and FTF.³⁰⁹ Its portfolio of tasks comprises the collection, analysis and provision and/or forwarding of information on TNT and cross-border crimes to the respective responsible authorities. In November 2002, EUROPOL's core competence areas were expanded. Thus, officials from EUROPOL may participate in joint investigation teams and/or EU MS to initiate appropriate investigations.

³⁰⁷ European Union (2005): Proposal for a Council Framework Decision on the fight against organised crime, COM/2005/0006 final - CNS 2005/0003. Article 1 (Definitions) The first paragraph of Article 1 partly takes over the definition of "criminal organisation" from the first paragraph of Article 1 of Joint Action 98/733/JHA.

³⁰⁸ European Council (2006): Friends of the Presidency. Report by the Friends of the Presidency on concrete measures to be taken to effectively enhance the fight against organised crime originating from the Western Balkans of 13th October 2004.

³⁰⁹ EUROPOL (2016): Council Decision of 6th April 2009 establishing the European Police Office (EUROPOL) (2009/371/JHA). The establishment of a European Police Office (EUROPOL) was agreed in the Treaty on European Union of 7 February 1992 and regulated in the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (EUROPOL Convention).

EUROPOL largely refers to the documents of the EU and the Council of Europe regarding the description of TOC. EUROPOL uses Recommendation No. 11 of 2001 of the Council of Europe on the definition of OC and the respective criteria for describing mandatory criteria and optional criteria.³¹⁰

For the purpose of this recommendation:

‘Organised crime group’ shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit.

‘Serious crime’ shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty.³¹¹

‘Law enforcement agency’ shall mean any public agency entrusted with the investigation and/or prosecution of criminal offences in accordance with its legal mandate.

4.5.5. INTERPOL

Founded in 1923, the International Criminal Police Organisation (IKPO-INTERPOL) is the oldest multilateral cooperation framework for cross-border police cooperation and the largest international police organisation.³¹² According to the UN, it is the second largest intergovernmental organisation in the world, with 190 member states and a budget of Euros 79.8 million for 2015.³¹³ The goal set by INTERPOL is to continuously improve international police cooperation and to support and demand all state institutions, whose mission is the prevention and repression of international OC. During the 58th Annual General Meeting, INTERPOL adopted the following definition of OC:

Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.³¹⁴

³¹⁰ Council of Europe (2001): Recommendation (2001) 11 of the Committee of the Ministers to the member states concerning guiding principles in the fight against organised crime (adopted by the Committee of Ministers on 19th September 2001 at 756th meeting of the Ministers’ Deputies).

³¹¹ Note from the author: German Criminal Code, Section 12 - Felonies and misdemeanours

³¹² INTERPOL (2016): ICPO-INTERPOL – International Criminal Police Organisation enables police in 190 member countries to work together to fight international crime. Available from: <https://www.interpol.int/en> (Accessed on 19th November 2016).

³¹³ INTERPOL (2016): Breakdown of funding 2015. For the year 2015, INTERPOL’s consolidated budget income amounted to EUR 79.8 million, excluding in-kind contributions. This comprises (a) regular budget – member country statutory contributions: EUR 52.8 million, (b) regular budget – other contributions: EUR 3.5 million, (c) trust fund and special account contributions: EUR 23.5 million. Available from: <https://www.interpol.int/About-INTERPOL/Funding> (Accessed on 19th November 2016).

³¹⁴ Nesbitt, Paul / Von Lampe, Klaus (ed.) (1993): Head of Organised Crime Group, cit. in Bresler, Fenton, INTERPOL, London. P.319.

In a further comparison the description by Von Lampe:

Organised crime, therefore, is seen as a specific type of criminal activity characterised, for example, by a certain level of sophistication, continuity and rationality in contrast to sporadic and impulsive criminal behaviour.³¹⁵

4.6. OC definitions in comparison

Through the application of a quantitative and qualitative content analysis the OC definitions of the respective EU institutions, the USA, international organisations as well as various EU MS were compared both to the number and to the extent of the corresponding qualification characteristics.³¹⁶ This detailed comparison of the individual features for the description of the criminological phenomena of OC shows that there is broad accordance at least in some areas. On the other hand, it could be observed that corresponding qualification characteristics occur only in isolated cases and thus represent a kind of unique feature.

For example, there is no provision for the threat of punishment of a minimum of four years imprisonment or more in the German criminal code. In addition, a single offender or a maximum of two offenders (see qualification feature more than two or, in other words, at least three offenders) can commit a criminal offence punishable by imprisonment for life imprisonment and still fail to meet the criteria of OC. An example of this would be murder, or jointly committed murder for immaterial reasons, such as jealousy, revenge, or other base motives.³¹⁷

In this respect, the threat of punishment of at least four years or more cannot be regarded as an appropriate qualification characteristic in the area of the OC but is only a legal consequence of the general part of German criminal code. On the one hand, it is surprising that only INTERPOL, the USA and Italy have included the qualification feature of corruption in *expressis verbis* in their respective definitions of OC. However, if one considers the German definition of OC with a certain ability to interpret, where it is said specifically:

"Organised crime is [...] (a) [...], (b) [...], (c) influencing policy, media, public administration, the judiciary or the economy", then it immediately becomes clear that this description is much more encompassing and subsumes the component of

³¹⁵ Von Lampe, Klaus (2008): Organised Crime in Europe: Conceptions and Realities. Associated Professor at the John Jay College of Criminal Justice in New York. Published in: Policing: A Journal of Policy and Practice, 2(1). P.2.

³¹⁶ Mayring, Philipp (2015): *Qualitative Inhaltsanalyse*. 12th revised edition. P.20-32.

³¹⁷ Note from the author: The menaced minimum sentence for murder according to Article 211 of the German Criminal Code is life-long. In practice, after 15 years of imprisonment, the offender is released from custody as long as no other reasons (for example, the safeguarding of security) are opposed. [...] for intangible reasons is thus an additional exclusion criterion of the OC since all other definitions show the profit striving as a qualification feature.

corruption. In addition to the violent component, the granting of benefits and the acceptance of benefits are the most suitable means to influence deliberately and discreet decision-making processes, such as to justice and politicians. For this reason, an additional section was introduced into both tables, in which corruption and influence were combined and thus a stronger weighting was observed.³¹⁸

³¹⁸ Note from the author: Influence is the capacity or power of persons or things to be a compelling force on or produce effects on the actions, behaviour, opinions, etc., of others.

Table 4.6.1: Comparison of the OC definitions with EU institutions and IO's

	FRG	EU	Council of Europe	Euro pol	INTER POL	UN	USA	Accordance
Structured group* of three or more persons	√	√	√	√	√	√	√	100 %
Criminal profit making	√	√	√	√	√	√	√	100 %
Violence and intimidation	√		√	√	√	√	√	85,7 %
Corporate structure	√	√	√	√		√	√	85,7 %
Temporal component	√	√	√	√		√		71,5 %
Division of labour	√	√	√	√		√		71,5 %
Threat of punishment of at least four years		√	√	√		√		57,1 %
Influence through corruption**	√	√			√		√	57,1 %
Influence on politics, society and media	√	√					√	42,8 %
Corruption					√		√	28,6 %
<p>* Compared to earlier distinctions, sociology defines a group of between three and about twenty-five members; a constellation of two persons is called a dyad.</p> <p>** The rubrics 'corruption' and 'influence on politics, society and the media' were summarised, as the latter includes corruption.</p>								

Furthermore, it is unclear why the aspect of re-investing criminal profits into the economic cycle is not explicitly defined as a qualification feature (with the exception of the Italian definition, see Table 4.6.2.). It fulfils all facts of Section 261 of the German Criminal Code (herein later mentioned as *StGB*) in terms of money laundering and hiding unlawfully obtained financial benefits and can be regarded as a classical approach in the area of OC. The re-investment of criminal profits are planned in detail for completion of further criminal activities and crime becomes organised and industrialised. Taking into account the economic aspects of risk and return, these criminal gains are once again invested in unlawful schemes to drive further profit maximisation.

Table 4.6.2.: Comparison of OC definitions of EU MS (own presentation)³¹⁹

	EU	FRG	UK	Italy	Croatia	Belgium	Ireland	Accordance
Structured group* of three or more persons	√	√	√	√	√	√	√	100 %
Criminal profit making	√	√	√	√	√	√	√	100 %
Corporate structure	√	√	√	√	√	√	√	100 %
Influence through corruption**	√	√		√	√	√		71,5 %
Violence and intimidation	√	√			√	√		57,1 %
Temporal component	√	√		√		√		57,1 %
Division of labour	√	√			√	√		57,1 %
Influence on politics, society and media	√	√			√	√		57,1 %
Threat of punishment of at least four years	√							14,3 %
Corruption				√				14,3 %
Money laundry Re-investment of criminal profit				√				14,3 %
<p>* Compared to earlier distinctions, sociology defines a group of between three and about twenty-five members; a constellation of two persons is called a dyad. ** The rubrics 'corruption' and 'influence on politics, society and the media' were summarised, as the latter includes corruption.</p>								

³¹⁹ Annex 3: Official OC definitions of EU MS.

4.7. Interface problems in the fight against OC within the Member States of the European Union (EU MS)

The dynamic processes of globalisation are also reflected in a world of TOC in the creation of new multinational organisational structures, network-like interrelationships in the international context and steady expanding operating areas. TOC groups have long overcome ethnic, linguistic, cultural, political and economic barriers for the sake of their own well-being and a simultaneous continuous profit maximisation. The complex criminal activities are characterised by a high degree of conspiracy and maximum possible foreclosure in order to escape the pressure of law enforcement authorities and public perception at national and international levels.

In the continuation of the Tampere³²⁰ and Hague³²¹ Program and its formulated objectives, the Stockholm³²² Program aims to further strengthen security-related challenges identified in the EU, particularly in the areas of freedom, security and justice. The future measures will focus on the interests and needs of the citizens. One of the top priorities here was the fight against TOC in the areas of trafficking in human beings and people smuggling. In the wider context, combating irregular migration and strengthening cooperation with third countries, including the preparation of readmission agreements and the reintegration of returned persons, is at the top of the list of identified priorities. In the practical implementation of the politically expressed intentions of the EU MS, however, there are the pitfalls and obstacles.

³²⁰ European Parliament (1999): Tampere Programme from 1999 to 2004. Available from: http://www.europarl.europa.eu/summits/tam_en.htm (Accessed on 22nd November 2016).

³²¹ European Council (2004): The Hague Programme from 2005 to 2009. The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union. Available from: http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf (Accessed on 22nd November 2016).

³²² European Council (2010): The Stockholm Programme from 2010 to 2014. The European Council has defined in the Stockholm Programme – an open and secure Europe serving and protecting the citizens, according to article 68 TFEU, the strategic guidelines for legislative and operational planning within the area of Freedom, Security and Justice for the period 2010-2014. Available from: <http://www.statewatch.org/news/2010/jun/eu-jha-council-jun-10-stockholm-programme-action-plan-conclusions.pdf> (Accessed on 22nd November 2016).

Table 4.7.1. – EU Programs (own presentation)

<p>The Tampere Programme³²³ 1999–2004</p> <p>On 15th and 16th October 1999 the European Council held a special meeting in Tampere on the creation of an area of freedom, security and justice in the European Union. The main agreements are as follows:</p> <ul style="list-style-type: none">– Freedom of movement, employment, freedom of establishment for all those legally residing in the EU.– Development of a common EU asylum and immigration policy.– Recognition and protection of fundamental rights and human rights for all people legally living in the EU.– Strengthening cooperation between border guards and customs services in the fight against TOC, irregular migration, as well as all other illicit transnational activities.
<p>The Hague Programme³²⁴ 2005–2009</p> <p>On 4th and 5th November 2004 the European Council endorsed the Hague multiannual programme for strengthening the area of freedom, security and justice. The Hague Program specifically aimed to improve the ability of the EU and its MS to do the following:</p> <ul style="list-style-type: none">– Combat irregular migration and THB and strengthening cooperation with third countries, including readmission agreements and the reintegration of returned persons.– Develop an integrated border management at the EU external borders and development of effective visa policy.– Create a common asylum policy, including the development of common procedures and status for refugees.– Promote the integration of migrants, including the development of an EU framework for integration.– Guarantee fundamental rights, procedural safeguards, and access to justice.– Fight organised crime and repress the threat of terrorism.
<p>The Stockholm Programme³²⁵ 2010–2014</p> <p>On 10th to 11th December 2009 the Stockholm Programme was presented to the European Council, which focused on a comprehensive set of measures relating to the Common European Asylum System, legal migration, border management, visa and readmission, as well as on <i>Schengen</i>.</p> <p>The main agreements are as follows:</p> <ul style="list-style-type: none">– Strengthening border control to prevent illegal border crossings and cross-border crime.– Promotion of cross-border cooperation, supported by the <i>Schengen</i> Information System (SIS II) and the Visa Information System (VIS II).– Development of a common migration policy based on the needs of the common labour market and considerations of the negative effects of an outflow of qualified workers from the countries of origin, including their sustainable and successful integration.– Establishment of the EU Common European Asylum System (CEAS) by 2012.

³²³ European Parliament (1999): Tampere Programme from 1999 to 2004. Available from: http://www.europarl.europa.eu/summits/tam_en.htm (Accessed on 22nd November 2016).

³²⁴ European Council (2004): The Hague Programme from 2005 to 2009. Available from: http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf (Accessed on 22nd November 2016).

³²⁵ European Council (2010): The Stockholm Programme from 2010 to 2014. Available from: <http://www.statewatch.org/news/2010/jun/eu-jha-council-jun-10-stockholm-programme-action-plan-conclusions.pdf> (Accessed on 22nd November 2016).

In principle, differences were identified in the day-to-day business between the particular national legal systems, which can be seen as major obstacles in terms of a common understanding of a legal application of criminal procedural measures and workflow procedures within the specific judicial systems of the respective EU MS and non-EU MS. Thus, obvious responsibilities and competences of decision-makers within investigation authorities, law enforcement agencies and public prosecutor departments, who at first glance hold equal positions with similar competences, can be quite different in EU MS. Hence, a comparative analysis of national officials in the respective EU MS, i.e., officials in seemingly equal positions and with similar tasks and responsibilities, would immediately reveal that these seemingly equal groups of persons are not endowed with identical competences. International cooperation between police services and judiciary systems can be difficult and even incompatible, because of structural, legal and cultural differences between the relevant countries involved. Amongst others, structural differences were identified between the EU MS in frameworks of political-administrative conditions based on different organisational structures of the police and the judiciary. For example, in comparing the German and French systems, German regional police services are autonomously responsible for police investigations, whereas in France the competence for police investigations is regulated at a central level.³²⁶

Further asymmetries also exist at other institutional levels and their actors, for example on the basis of functional differences in the conduct of preliminary investigations due to different legal bases. Further differences were found in the legally regulated measures of interception of telecommunications³²⁷, as well as the

³²⁶ Note from the author: Germany has 16 regional police services (*Länderpolizeien*), federal police and additionally the *BKA* as an independent police authority.

³²⁷ Code of Criminal Procedure in the version published on 7 April 1987 (Federal Law Gazette [*Bundesgesetzblatt*] Part I p. 1074, 1319), as most recently amended by Article 3 of the Act of 23 April 2014 (Federal Law Gazette Part I p. 410)

Section 100a - Conditions Regarding Interception of Telecommunications

(1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing a criminal offence; and
2. the offence is one of particular gravity in the individual case as well; and
3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success. [...].

Available from: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p0483 (Accessed on 24th November 2016).

use of undercover investigators³²⁸, and non-publicly investigating police officers³²⁹.

Corresponding friction losses and difficulties in terms of efficient and target-oriented communication between the investigating authorities and public prosecutors of the respective EU MS are obvious. Therefore, it does not seem surprising that successful cooperation between officials from different EU MS and non-EU states is often simply based on personal contacts and relationships, which also works.

Core tasks of EUROPOL are the analysis of information, the rapid, secure and comprehensive exchange of information, as well as a coordinating role in the implementation of cross-border police operations. Nonetheless, there is an urgent need for more widespread approaches to direct, secure and target-oriented communication and the secure exchange of information between the respective actors of the law enforcement authorities of the respective EU MS in the early stages of the investigation of serious crimes.

In 2002, Eurojust was established, which was the right approach to ensure the facilitation and improvement of cooperation and coordination of activities between

³²⁸ Ibid.

Section 110a - Undercover Investigators

(1) Undercover investigators may be used to clear up criminal offences where there are sufficient factual indications showing that a criminal offence of substantial significance has been committed

1. in the sphere of illegal trade in drugs or weapons, of counterfeiting money or official stamps;
2. in the sphere of national security (sections 74a and 120 of the Courts Constitution Act);
3. on a commercial or habitual basis; or
4. by a member of a gang or in some other organized way.

Undercover investigators may also be used to clear up felonies where certain facts substantiate the risk of a repetition. Their use shall only be admissible where other means of clearing up the serious criminal offence would offer no prospect of success or be much more difficult. Undercover investigators may also be used to clear up felonies where the special significance of the offence makes the operation necessary and other measures offer no prospect of success.

(2) Undercover investigators shall be officials in the police force who carry out investigations using a changed and lasting identity (legend) which is conferred on them. They may take part in legal transactions using their legend.

(3) Where it is indispensable for building up or maintaining a legend, relevant documents may be drawn up, altered and used.

Available from: https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p0483 (Accessed on 24th November 2016).

³²⁹ Heinrich, Bernd / Reinbacher, Tobias (2010): Conceptual distinctions between police officers and investigators working in the underground:

1. Undercover investigators (*Verdeckter Ermittler – VE*) shall be officials in the police force who carry out investigations using a changed and lasting identity (legend), which is conferred on them. Code of Criminal Procedure, Section 110a - Undercover Investigators.
2. Non-public investigating police officers (*Nicht öffentlich ermittelnde Polizeibeamte - NOEP*): Police officers, who, without permanently appearing under a legend, are investigating in a concealed manner and slip briefly into another role, e.g., fictitious purchase of drugs.
3. Confidential informants (*V-Leute = Vertrauenspersonen*): Individuals who are willing to keep the law enforcement agencies confidential in the course of the investigation of criminal offenses, and whose identity is kept secret in principle.
4. Informers (*Informanten*): Individuals who are willing to provide information to the law enforcement authorities in individual cases against a guarantee of confidentiality.

Available from: http://heinrich.rewi.hu-berlin.de/doc/strpr/21_verdeckte_ermittler.pdf (Accessed on 24th November 2016).

national law enforcement and judicial authorities in the investigation and prosecution of serious TOC in the EU. However, the intention and implementation must be put to a test because it seems to be insufficient, given the ratio of the composition of personnel within Eurojust to the number of TOC cases to be investigated. For detailed information on Eurojust please refer to section 9.1. for further details.

Another interesting aspect in effectively fighting TOC in the EU is the skimming off of excess profits.³³⁰ In principle, it is a promising instrument for freezing the acquired assets of OC groups, which they have achieved through unlawful action. According to German legislation, there are various sanctions for unlawful conduct in which the perpetrator has acquired an unlawful advantage. These criminal proceeding measures to skim off excess profits are used to deprive an unlawful advantage, which has been obtained by a perpetrator or a group of offenders through the commitment of criminal or administrative offences. The possibilities for skimming off excess profits can also be applied to advantages, which have been beneficial to a third party (such as a company, family members, clan members). The process of skimming off excess profits is to be used as a tool in order to hit OC groups where it hurts the most - their assets. In general, this requires new, innovative approaches to the formulation of a moderate reversal of the burden of proof in order to strengthen the fight against TOC and, in particular, against money laundering.³³¹ At the present time, seized cash and other assets must be passed back to the last owner if the investigating authority has insufficient evidence for an initial suspicion of a criminal offence. It will be particularly difficult under German law to carry out the relevant investigations and proof of crime if the predicate offence, which is the source of criminal profit, has taken place abroad.³³²

³³⁰ Schmidt, Wilhelm (2006): *Gewinnabschöpfung im Straf- und Bußgeldverfahren*. Available from: <http://www.transparency.de/index.php?id=1311&type=98> (Accessed on 24th November 2016).

³³¹ Duhaime's law dictionary (2016): Burden of proof definition. A rule of evidence that imposes on a participant in a court case the initial obligation to prove a certain thing or the contrary will be assumed by the court. For example, in a criminal law matters, the prosecution has the burden of proving the accused's guilt because innocence is presumed. Available from: <http://www.duhaime.org/LegalDictionary/B/BurdenofProof.aspx> (Accessed on 24th November 2016).

³³² Criminal Code in the version promulgated on 13th November 1998, Federal Law Gazette [*Bundesgesetzblatt*] I p.3322, last amended by Article 1 of the Law of 24th September 2013, Federal Law Gazette I p.3671 and with the text of Article 6(18) of the Law of 10 October 2013, Federal Law Gazette I p.3799.

Section 3 - Offences committed on the territory of the Federal Republic of Germany

German criminal law shall apply to acts committed on German territory.

Section 7 - Offences committed abroad—other cases

- (1) German criminal law shall apply to offences committed abroad against a German, if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal jurisdiction.
- (2) German criminal law shall apply to other offences committed abroad if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal law jurisdiction, and if the offender:
 1. was German at the time of the offence or became German after the commission; or

Through the observance of formal rules in the enforcement of international legal assistance, time delays arise, which allow the perpetrators to disappear again with the funds released in the meantime. Against this backdrop, the demand for a reversal of the burden of proof and an expected development of the fact that more criminal acquired financial means from abroad could be stored in Germany, is given a new dimension.

A look at the legal system of, in particular, EU MS is worthwhile in order to consider new approaches. For example, in the Netherlands there is a criminal offence similar to the German Criminal Code section 261 (money laundering).³³³ In contrast to the statutory application in Germany, the Dutch judiciary does not have to prove that a particular asset originated from a criminal offence. Rather, the investigating authority analyses the financial conditions of the suspect with the actual proportionalities of income and assets. If there are corresponding features of money laundering and after the methods of elimination have been carried out no other possibilities are available, the facts concerning these assets are brought to justice.³³⁴ Only from this moment on the burden of proof lies on the shoulders of the accused. This means it must be made very clear to the perpetrators from the outset that, if necessary, they must provide proof of the honest acquisition of the assets and not the criminal investigation authority must prove the criminal profit. Without any doubt, this is a very interesting approach to ensure that legal procedures are in alignment with the rule of law. This initiative, initially limited to the area of money laundering, could be particularly helpful and efficient in the fight against TOC groups for the enforcement of measures of skimming off of excess profit.

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2. was a foreigner at the time of the offence, is discovered in Germany and, although the Extradition Act would permit extradition for such an offence, is not extradited because a request for extradition within a reasonable period of time is not made, is rejected, or the extradition is not feasible.

³³³ Ibid.

Section 261 - Money laundering; hiding unlawfully obtained financial benefits

(1) Whosoever hides an object which is a proceed of an unlawful act listed in the 2nd sentence below, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its confiscation, its deprivation or its being officially secured shall be liable to imprisonment from three months to five years. Unlawful acts within the meaning of the 1st sentence shall be [...].

³³⁴ International Compliance Association – ICA (2016): Money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source.

Money laundering offences have similar characteristics globally. There are two key elements to a money laundering offence:

1. The necessary act of laundering itself i.e., the provision of financial services; and
2. A requisite degree of knowledge or suspicion (either subjective or objective) relating to the source of the funds or the conduct of a client.

Available from: <https://www.int-comp.org/careers/a-career-in-aml/what-is-money-laundering/> (Accessed on 24th November 2016).

4.8. Preliminary conclusion

TOC comprises a huge potential of threats to national border and customs services and other relevant law enforcement agencies involved in border security and management, both of EU MS and non-EU countries with regard to their defined needs in terms of national security and public order. According to the BPB glossary, TOC has been used since the 1980s as an internationally accepted term for complex and rational forms of crime that operates across national boundaries.³³⁵ This excludes all relevant offences, which are related to terrorism and the phenomenon of FTF. The most important areas of TOC are all serious offences with regard to section 100a *StPO*, or their corresponding relevant offences, which were elaborated on in detail under point 4.4.

In December 2006, during the 14th OSCE Ministerial Council meeting in Brussels, extensive measures were taken in the fight against TOC.³³⁶ At the beginning of 2006, however, it was recognised that the defined activities were unlikely to be achieved when appointed officials from OSCE participating States started to discuss the complexity of TOC.³³⁷ Despite intense expert discussions carried out during the course of meetings, initially the assigned 'experts' faced enormous difficulties to find a level of common understanding for the description of OC. The reason was simple: the 'experts' followed the respective national definitions, sometimes paired with a basic understanding of the definitions of INTERPOL and EUROPOL. Since there was no common international definition available, this led to the misunderstandings of the participating OC experts and led to fundamental misunderstandings.

The comparison of the aforementioned OC descriptions illustrates that a simple and absolutely certain implementation of the definitions for the description of OC is complicated and difficult to manage. Both the content and the scope of the definitions of the respective EU MS and international organisations are very different. While the UN expresses itself with a one-sentence definition, other EU MS institutions or international organisations need almost a full page. A summary of the examined OC definitions is attached as Annex 5. On the one hand, in the analysis of the respective definitions, it turned out that the multiple use of the

³³⁵ BPB (2012): Glossary – Organised (transnational) Crime. Available from: <http://www.bpb.de/politik/grundfragen/deutsche-verhaeltnisse-eine-sozialkunde/138404/glossar?p=129>. (Accessed on 24th November 2016).

³³⁶ OSCE Decision No. 5/06 Organized Crime. MC.DEC/5/06 OSCE (2006).

³³⁷ Note from the author: From 2005 to 2009, the author was the Senior Border Adviser in the OSCE Secretariat and present in all relevant meetings as the leading OSCE expert.

conjunction 'or' promotes the inclusion of many different forms of criminal offences, instead of facilitating a clear and simple understanding of what OC is. On the other hand, the linking of the individual qualification characteristics with the conjunction 'and' is also not uncomplicated since it invariably raises the question of how many of these criminal offences must at least be listed in order to affirm OC as defined. Von Lampe is questioning the degree to which criminal offences can be organised rather than how organised the actual criminal offenders are in order to cover a specific portfolio of scene-type crimes.³³⁸ A description of the OC should then usually refer to a criminal organisation, that is to say a group with formal structures, as in the definition of the FBI. A distinction between forms of organised crime and non-organised crime is therefore likely to be drawn between complex associations of criminals on the one hand and individually acting perpetrators on the other.

A further aspect of the description of TOC is to include the increasing co-operation of OC groups at an international level, which can take place either in accordance with long-term agreements or through specific project-related agreements. This can result either in an occasional collaboration as well as in a longer cooperation between OC groups based on labour division agreements, involving different nationalities, ethnic groupings and different languages. Behrens and Brombacher³³⁹ assess TOC as one of the biggest threats to security in the 21st century and map out two dominant types for a better understanding of OC that relate to structural or procedural aspects of OC as a quest for profit. In this way, they strengthen the thesis of Von Lampes that OC as a structure refers to the organised commissioning of criminal offences and not to the organisational forms of the members of the respective OC groupings.

Without any doubt, the implementation of the European Arrest Warrant (EAW) can be assessed as a major achievement in the fight against TOC.³⁴⁰ As a result of the framework decision from 2002, this option increases the effectiveness of international police cooperation in the implementation of criminal proceedings and

³³⁸ Von Lampe, Klaus (2013): „Was ist organisierte Kriminalität?“ Aus Politik und Zeitgeschichte 63. Jahrgang, 38–39/2013, p.3.

³³⁹ Behrens, Timo / Brombacher, Daniel / Jäger, Thomas (Hg.) (2015): *Handbuch Sicherheitsgefahren. Transnationale Organisierte Kriminalität*, p.135–145.

³⁴⁰ European Commission (2016): The European Arrest Warrant (EAW), is applied throughout the EU since 1st January 2004. It replaced lengthy extradition procedures within the EU's territorial jurisdiction. It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention. Available from: http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm (Accessed on 25th November 2016).

has been established as an EU-wide instrument for the enforcement of national arrest warrant of an EU MS. The EAW implies faster and simpler surrender procedures and an end to political involvement and EU countries can no longer refuse to surrender, to another EU MS, their own citizens who have committed a serious crime or are suspected of having committed such a crime in another EU MS, on the grounds that they are nationals. A high level of mutual trust and cooperation between EU MS made simplifying and improving the surrendering procedure possible.

The purpose of the EAW, specifically in the area of TOC expanded possibilities, is to apprehend the 'back-men' and elude them from their OC structures and national protection area and bring them to justice. The country requested for extradition may in principle not check the legality of the arrest warrant. The main problem was the extradition of one's own nationals to another state for the purpose of criminal prosecution and/or execution of sentence.

The EU MS and their neighbouring countries are increasingly exposed to a large number of very serious threats in which TOC groups are engaged predominantly in trafficking in human beings and people smuggling, illicit trafficking of SALW and drugs, child pornography, money laundering and tax evasion, just to mention a few of the most important areas. Additional threats have arisen through terrorism and its radicalised foreign terrorist fighters, as well as violent extremism.

EUROPOL has a particular role to play in coordinating the work of the national police services of all EU MS in the areas of TOC and other specific transnational threats and ensuring an all-encompassing information exchange. EUROPOL is the leading EU police agency in the fight against TOC defined as a transnational threat. Frontex, on the other hand, needs to be strengthened in its competences in order to work more effectively against TOC groups in the areas of irregular migration, trafficking in human beings and people smuggling, and thus other closely related offences, such as the production and distribution of false documents and here in particular counterfeit travel and identity documents.

Chapter 5: Migration in the context of EU border management

5.1. Migration and its causes

In the second half of the 20th century, in most of the EU MS great changes were observed in the field of migration in general and significant disproportions of immigration and emigration in particular.³⁴¹ In the course of the last two decades, steady immigration has been predominantly the driver of a necessary population growth in Germany. As a consequence of this statistically verifiable size, it can be initially concluded that without this immigration, both from EU MS and non-EU MS, a decline in the population of the working age could already have been observed in Germany. Similar phenomena are also observed in other EU MS. On the basis of demographic facts³⁴², immigration can somehow compensate some certain areas in societal development, such as the inflow of immigrants into the labour market, but it will not yet bring about the necessary reversal of an aging process in the population of most EU MS.³⁴³ Rather, a common EU migration policy must also be designed to meet certain parameters of this migration policy in order to make immigration attractive, taking into account language competency, education, professional experience, mobility, age and other socially and sociologically relevant criteria.

By following a more structured approach to achieve the targeted recruitment of skilled workers from non-EU MS, the aim was to promote sustainable integration of immigrants and combat irregular migration through preventing undeclared work and illegal employment of migrants without the statutory work permit. The latter is also intended to support the efforts of effective border controls in the fight against trafficking in human beings and people smuggling.

5.2. Reasons for irregular migration

Mobility in connection with the crossing of nationally defined territories is usually restricted by the states' legal right for border control. For some years now, the crossing of borders in the form of irregular migration and flight is realised as mass phenomena.

³⁴¹ Statista (2016): Number of immigrants on Germany from 1991 to 2015. Available from: <https://de.statista.com/statistik/daten/studie/28347/umfrage/zuwanderung-nach-deutschland/> (Accessed on 26th November 2016).

³⁴² Eurostat – *Europa in Zahlen* (2008). P.62.

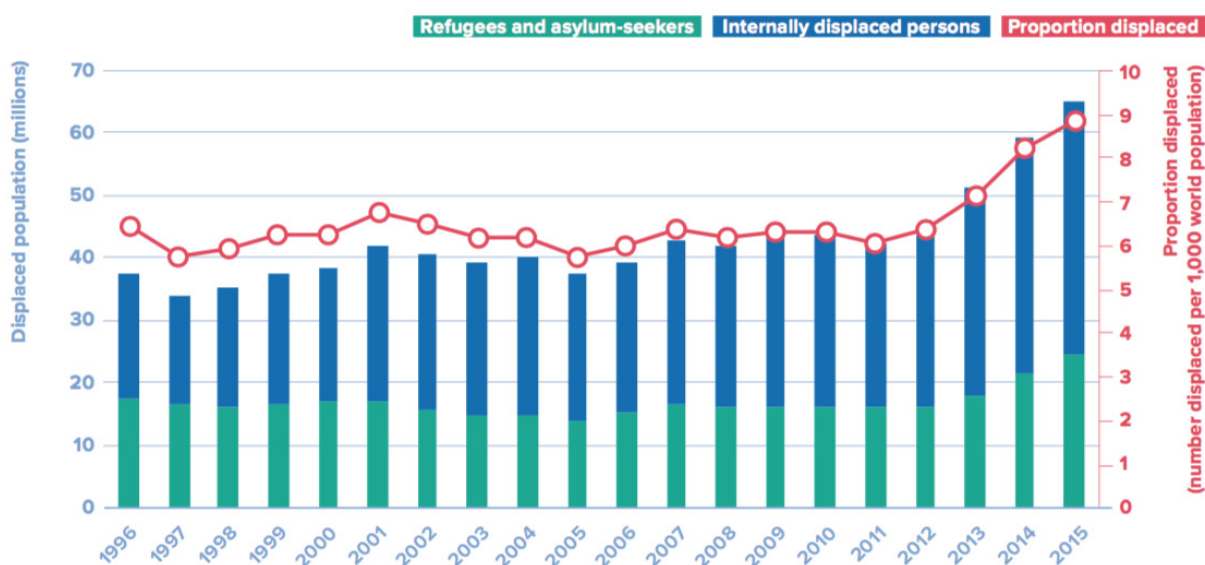
³⁴³ Bundesverband der Deutschen Arbeitgeberverbände (2016): BDA initiative "career in Germany – young skilled workers for Germany". Available from: http://www.arbeitgeber.de/www/arbeitgeber.nsf/id/en_career-in-germany (Accessed on 26th November 2016).

According to UNHCR, over the past year, the number of people displaced by conflict and persecution has continued to increase, reaching 65.3 million.³⁴⁴ Of this number, 12.4 million were newly displaced. New emergencies, ongoing conflict and protracted crises in many parts of the world uprooted civilians, sometimes multiple times, and generated new waves of displacement of a complexity rarely seen before. Although host countries generally maintained open borders, demonstrating tremendous generosity towards those in need, they also bore significant political and socio-economic consequences. This is the highest number ever recorded by UNHCR, and it is growing rapidly, as the published statistical UNHCR Annual Report shows.

Compared to this a year ago there were 51.2 million people and ten years ago 37.5 million people. The increase from 2013 to 2014 was the highest ever in the course of a year.

Figure 5.2.1.: UNHCR Global Trends in 2015

Fig.1 Trend of global displacement & proportion displaced | 1996 - 2015 (end-year)



Source: UNHCR Global Trends in 2015³⁴⁵

³⁴⁴ United Nations – New York (2016): UNHCR Report of the United Nations High Commissioner for Refugees. Covering the period 1st July, 2015 - 30th June 2016. This includes 21.3 million refugees (16.1 under UNHCR’s mandate and 5.2 million Palestinian refugees registered by the United Nations Relief and Works Agency), 40.8 million internally displaced persons and 3.2 million asylum-seekers, p.1. Available from: <http://www.unhcr.org/excom/unhcrannual/5808d8b37/report-united-nations-high-commissioner-refugees.html> (Accessed on 26th November 2016).

³⁴⁵ UNHCR (2016): Global Trends in 2015, p.6. Available from: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> (Accessed on 26th November 2016).

“We are facing the biggest refugee and displacement crisis of our time. Above all, this is not just a crisis of numbers; it is also a crisis of solidarity,” said Ban Ki Moon, United Nations Secretary General.³⁴⁶

The numbers are based on data collected by governments, NGO’s and UNHCR. The conflict in the Syrian Arab Republic, which entered its fifth year in 2015, garnered significant worldwide attention because of the large refugee flows and humanitarian needs it generated.³⁴⁷ Yet other unresolved crises and conflicts, as well as new ones that arose during the year, also contributed to the increase in global forced displacement. These included new or reignited conflicts in Burundi, Iraq, Libya, Niger and Nigeria, together with older or unresolved crises in Afghanistan, the Central African Republic, the Democratic Republic of the Congo, South Sudan and Yemen. As a consequence, 2015 saw 1.8 million new refugees, compared to 1.2 million in 2014. Yet while the number of people newly displaced within their own country due to conflict and violence in 2015 remained high at 8.6 million, it was less than the record 11 million recorded the previous year. At the same time, however, the EU MS are also experiencing a rush of people coming from South-Eastern European countries with an increasing tendency to submit their asylum applications. However, considering the overall circumstances in the Western Balkans region, the living conditions cannot be compared with the situations of the refugees, for example from Afghanistan, Iraq, Syria or Eritrea and Somalia. For this reason, these people from South-Eastern Europe, who seek asylum protection in Germany, are predominantly assuming that their motivations are of a purely economic nature and are not covered by the original notion for protection of Article 16 a in the Basic Law.³⁴⁸

Absolute figures were submitted to the Federal Office for Migration and Refugees (*BAMF*) in the last 3 years, such that:

- in the reporting period 2015, a total of 441,899 asylum applications were submitted³⁴⁹

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438). Politically persecuted persons enjoy asylum and asylum law has constitutional status in Germany and according to Article 16a of the Basic Law (*GG*) of the Federal Republic of Germany enjoy political persecution asylum.

³⁴⁹ *Bundesamt für Migration und Flüchtlinge* (2015): *BAMF - Current figures on asylum*, December edition 2015, p.8. Available from: http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-dezember-2015.pdf?__blob=publicationFile (Accessed on 26th November 2016).

- in the reporting period 2014, a total of 173,072 asylum applications were submitted (increase of 57.9 per cent prior to 2013)³⁵⁰
- in the reporting period 2013, a total of 109,580 asylum applications were submitted.

In relation to follow-up applications, i.e., after the first application was rejected, in 2014 prior to the previous year (17,443 follow-up applications) the subsequent applications increased by 70.6 per cent to 29,762. Thus, a total of 202,834 asylum applications have been received by the *BAMF* in 2014. Compared to the previous year with 127,023 asylum applications, this represents a significant increase of 59.7 per cent.

Figure 5.2.2.: The top-ten countries of origin (own presentation)

Asylum applications filed with the <i>BAMF</i> in a 2-year comparison					
The 10 most affected countries of origin		2014	2015	Compared to the previous year	
1	Syrian Arab Republic	39.332	158.657	+ 303,4 %	↑
2	Albania	7.865	53.805	+ 584,1 %	↑
3	Kosovo	6.908	33.427	+ 383,9 %	↑
4	Afghanistan	9.115	31.382	+ 244,3 %	↑
5	Iraq	5.345	29.784	+ 457,2 %	↑
6	Serbia	17.172	16.700	- 2,7 %	→
7	Unsettled	3.421	11.721	+ 242,6 %	↑
8	Eritrea	13.198	10.876	- 17,6 %	↓
9	former Yugoslav Republic of Macedonia	5.614	9.083	+ 61,8 %	↑
10	Pakistan	3.968	8.199	+ 106,6 %	↑
Total		173.072	441.899	+ 155,3 %	↑

Source: *BAMF* 2016³⁵¹

In a register of the first 10 countries with the biggest number of submitted asylum applications, Syria takes first place with a share of 35.9 per cent for the period from January to December 2015; The reasons for this are understandable. More than a quarter of all initial applicants, namely 120,882 persons, were registered in the six Balkan countries (Albania: 53,805, Kosovo: 33,427, Serbia: 16,700,

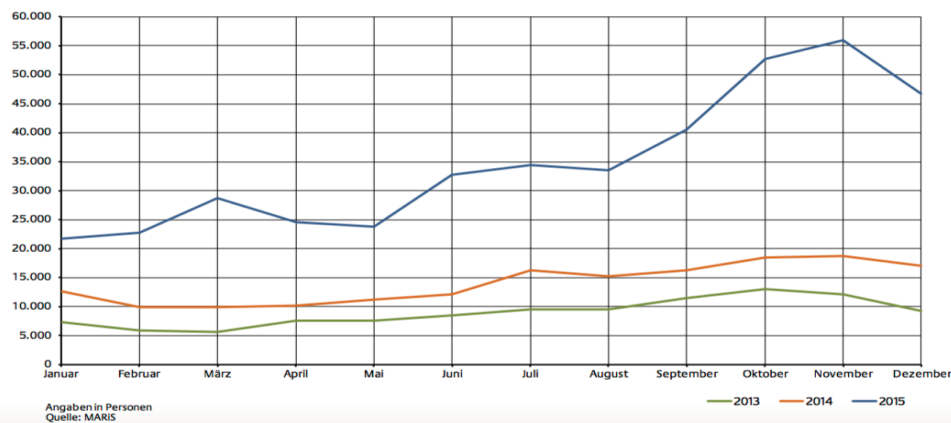
³⁵⁰ Ibid.

³⁵¹ Ibid.

FYROM: 9,083, Bosnia and Herzegovina: 4,634, Montenegro: 3,233). This means that these South-eastern European countries from the Western Balkans region account for 27.4 per cent of all asylum applications in the calculated top-ten country list. This creates uncertainties and anxieties and it seems as if the policy would be at a loss. It is assumed that it will only be a matter of time until the systems of EU MS experiencing a particularly heavy burden will collapse.

Figure 5.2.3.: Asylum figures in a yearly comparison

Development of asylum application figures from 2013 to 2015



Source: MARIS³⁵²

Irregular migration is caused to a considerable extent through the reciprocity of economic, political, social and security-relevant factors in the countries of origin, and directly affects border security and management-related issues of the transit and target countries along the respective migration routes. Thus in 1885 Ravenstein articulated a first approach to the development of a migration theory in a lecture before the Royal Statistical Society on domestic migration and its related implications in the United Kingdom.³⁵³ He explained, on the basis of his observations and statistical evaluations that migration does not proceed without a rule. Since this lecture, an attempt has been made to grasp the reasons and dimensions of migration with the help of calculation models. The push-pull paradigm³⁵⁴ has achieved an immense reputation, which can influence both the

³⁵² Ibid.

³⁵³ Corbett, John (2011): CSISS – Centre for Spatially Integrated Social Science. The Laws of Migration 1985. Ernst Georg Ravenstein (also Ernest George Ravenstein *1834; †1913) was a cartographer and demographer, has been a pioneer and initiator of migration research since this lecture. Available from: <http://escholarship.org/uc/item/3018p230> (Accessed on 26th November 2016).

³⁵⁴ Haug, Sonja (2000): *Klassische und neuere Theorien der Migration*. An individualist interpretation of the push-pull paradigm of the macro economy derives from Lee [...]. Factors in the region of origin (push), factors in the target area (pull), intervening obstacles and personal factors are used in his 'theory of migration'. [...] p.8. Available from: http://edoc.vifapol.de/opus/volltexte/2014/5124/pdf/wp_30.pdf (Accessed on 26th November 2016).

country of origin and the destination country by the so-called push and pull factors³⁵⁵.

Lee, Nuschler and Seifert all describe factors such as economic prosperity, medical and social care, political stability and the rule of law with correlated stable public security and order in the EU as pull factors that exert a high degree of attractiveness on potential immigrants and thus show a strong suction effect. Push factors, on the other hand, describe circumstances that originate in the country of origin and cause a migration pressure, such as war and persecution, instable political conditions (fragile, failing, failed states), climate change, mass unemployment, environmental degradation and adverse living conditions caused by environmental disasters. Luft argues that potential target countries of international migration deliberately, or unconsciously, give political and social signals that are perceived and interpreted either by immigrant volunteers themselves, or by intermediary organisations such as OC groups and people smugglers.³⁵⁶

Furthermore, Luft continued that potential host countries may intensify, or even create their own legal norms with regard to national border controls by means of recruitment measures or a subsequent legalisation of immigrants originally deemed to be illegal. In this context, the instruction of the German Federal Government of 25th August 2015 regarding the suspension of the Dublin III regulation is to be mentioned, according to which refugees, largely with unknown nationalities and non-verifiable identities were allowed access to the Federal territory.³⁵⁷ Putzke, therefore, is of the opinion that Chancellor Angela Merkel has, herself, committed a criminal offence when, at the beginning of September 2015, she agreed with Austria to accept large numbers of refugees in Germany,

³⁵⁵ Seifert, Wolfgang (2012): *Begriffliche Vorklärungen zum Thema ‚Push- und Pull-Faktoren‘*. Available from: <http://www.bpb.de/politik/grundfragen/deutsche-verhaeltnisse-eine-sozialkunde/138008/begriffliche-vorklaerungen> (Accessed on 26th November 2016).

Lee, Everett S. / Széll, György (Hg.) (1972): *Eine Theorie der Wanderung, Regionale Mobilität*, p.115-129.

Nuscheler, Franz (2004): *Internationale Migration*. Flight and asylum, p.101 ff.

Migrationsgeschichte und Einwanderungspolitik in Österreich und im europäischen Kontext. Available from: <http://www.demokratiezentrum.org/bildung/lernmodule/migration.html> (Accessed on 26th November 2016).

Note from the author: For more information on push and pull factors, see point 4.4.

³⁵⁶ Luft, Stefan (2008): *Internationale Migration – Between brain drain, development aid and control experiments*, p.7.

³⁵⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26th June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible'). The Regulation replaces the Dublin II Regulation and is also referred to as the Dublin III Regulation. It entered into force on 19th July 2013 and is directly applicable from 1st January 2014 to Article 49 thereof.

circumventing the *Schengen* border regime.³⁵⁸ As a result, it could be observed that, quite unexpectedly, a wave of refugees broke through into Germany, largely facilitated by people smugglers.

5.3. Rising migration pressure as a result of events in the context of destabilisation

A rapidly advancing globalisation combined with a steady increase in travel, financial flows, goods traffic and the exchange of services, leads to a concurrent and paradox demand for open and secure borders, which is of course an enormous challenge for border services.³⁵⁹ However, a steadily growing global economy and dynamic mobility also include security risks with regard to border control and border surveillance, and the relevant government enforcement authorities should be able to respond appropriately and as promptly as possible to identified challenges. In addition, there is a massive increase in the number of international migrants³⁶⁰ and refugees³⁶¹, triggered, *inter alia*, by the wars in Syria and Libya, but also by a dramatic increase in flight and expulsion on the African continent.

"Today there are dangerous peace deficits. Humanitarian aid can have a soothing effect, but political solutions are crucial. Without this, the alarming extent of conflicts and the associated suffering of millions of people persists behind the statistics. [...] It is frightening to observe that those go unpunished who triggered conflicts. At the same time, the international community seems unable to work together to end wars, as well as to create and secure peace", noted former UN Refugee Commissioner António Guterres.³⁶² In his opinion, he points to the highest ever recorded number of people on the run since the UNHCR began chronicling these data.

The enormous challenges in elaborating effective solutions in the field of strategic and operational security management need to be managed by the respective responsible ministries in general, as well as relevant state enforcement authorities such as border guards, border police, customs services and immigration authorities

³⁵⁸ Putzke, Holm (2015): Prof. Putzke, University Passau – *Ist Angela Merkel eine Schleuserin?* A criminal assessment. Available from: <http://www.jura.uni-passau.de/putzke/aktuelles/> (Accessed on 27th November 2016).

³⁵⁹ Eurostat (2016): Passenger transport statistics [...]. Available from: http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger_transport_statistics (Accessed on 27th November 2016).

³⁶⁰ UNHCR (2016): Global Trends in 2015. Available from: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> (Accessed on 27th November 2016).

³⁶¹ Ibid.

³⁶² Ibid.

in particular (see further explanations under chapter 8). These solutions must be developed in the strategic, operational and tactical areas and implemented with a particular focus on irregular migration, especially in the fight against trafficking in human beings and people smuggling. According to a UN study, in 2013 more than 230 million people lived outside their country of birth or origin (compared to 1990 - 120 million, and 2012 - 215 million people).³⁶³ More than 700 million people are travelling within their respective countries as domestic migrants. These figures are expected to rise significantly over the next decades due to demographic developments (population growth in developing countries), very likely climate and, therefore, ecological and economic changes due to global warming, as well as the emergence of further crises with fatal destabilisation effects.

According to UNHCR, around 17 million people were fleeing globally at the end of 2013.³⁶⁴ This was primarily due to the conflicts and wars in Afghanistan, Iraq and Syria. Approximately 5 million refugees were placed under the mandate of the UN Relief and Works Agency for Palestine (UNRWA), while nearly 12 million refugees were placed under the mandate of UNHCR.³⁶⁵ Compared with 2012, statistical surveys show that the number of refugees under UNHCR's mandate increased by 11 per cent. Refugees often try to find shelter in the border regions of neighbouring countries (see civil war in Syria³⁶⁶). The number of 17 million refugees from 2013 appears initially to be at variance with the 65.3 million people³⁶⁷ previously mentioned. International law draws a clear dividing line between people who are

³⁶³ World bank (2014): Migration and Remittances. Available from: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20648762~pagePK:64257043~piPK:437376~theSitePK:4607,00.html> (Accessed on 30th November 2016).

³⁶⁴ Statistisches Bundesamt (2014): *Hauptzielländer von Flüchtlingen 2013*. Available from: <https://www.destatis.de/DE/ZahlenFakten/ImFokus/Internationales/FluechtlingeZiellaender.html> (Accessed on 30th November 2016).

³⁶⁵ Ibid.

UN Relief and Works Agency for Palestine in the Near East (2016): UNRWA provides assistance and protection for some 5 million Palestine refugees. Available from: <http://www.unrwa.org> (Accessed on 30th November 2016).

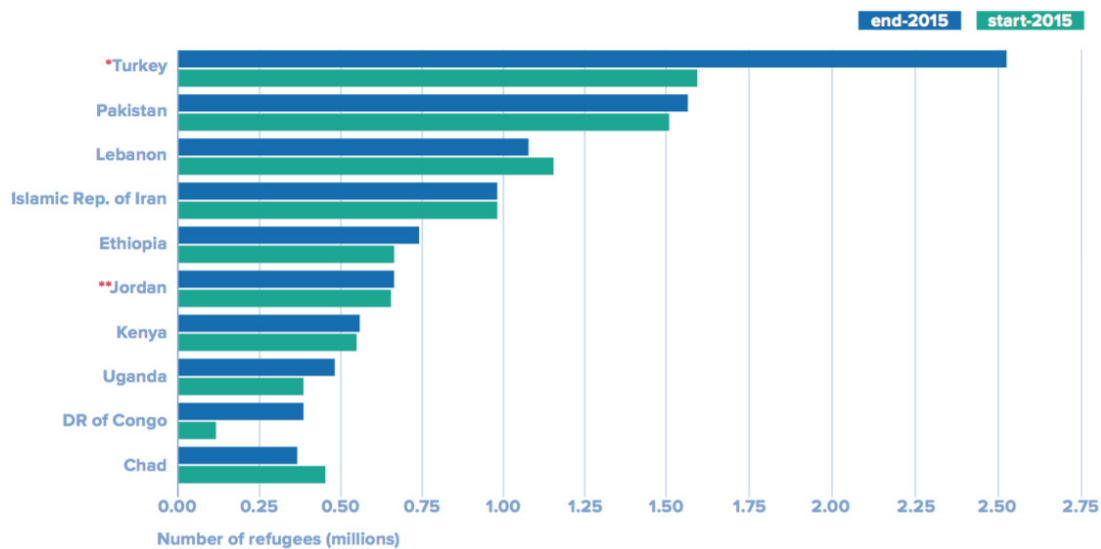
Note from the author: UNHCR distinguishes between migrants and refugees. The definition 'refugee' is given in point 4.4.

³⁶⁶ UNHCR (2016): Syria Regional Refugee Response. The civil war in Syria is the largest humanitarian crisis of our time: over 12 million Syrians are on the run. 4,8 million Syrian refugees are looking for protection in the neighbouring countries of Jordan, Lebanon, Turkey and Iraq. Available from: http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.2076081.1846280902.1477469555 (Accessed on 30th November 2016).

³⁶⁷ United Nations – New York (2016): UNHCR Report of the United Nations High Commissioner for Refugees. Covering the period 1st July, 2015-30th June, 2016. This includes 21.3 million refugees (16.1 under UNHCR's mandate and 5.2 million Palestinian refugees registered by the United Nations Relief and Works Agency), 40.8 million internally displaced persons and 3.2 million asylum-seekers, p.1. Available from: <http://www.unhcr.org/excom/unhcrannual/5808d8b37/report-united-nations-high-commissioner-refugees.html> (Accessed on 26th November 2016).

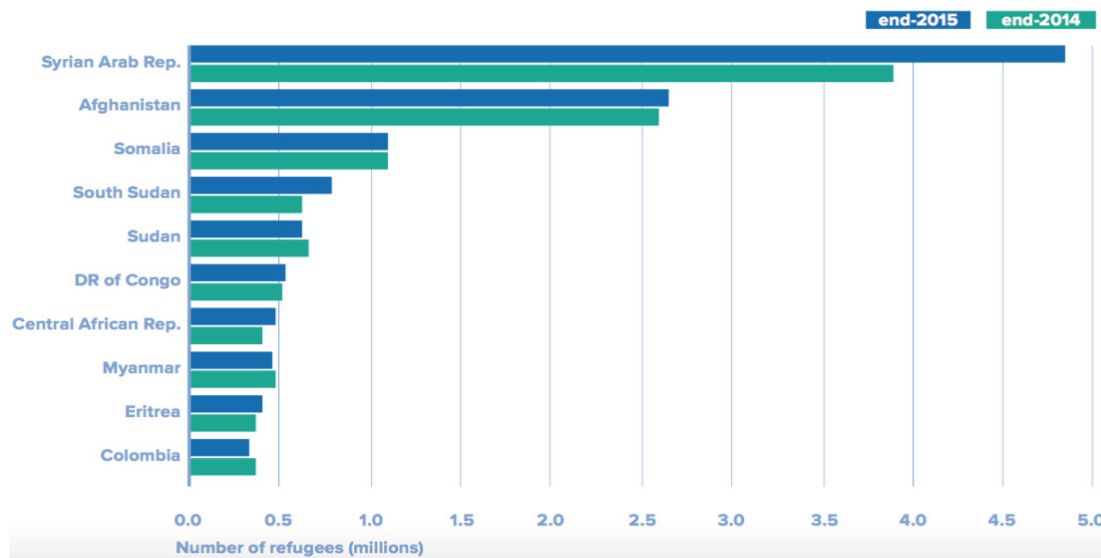
forced to flee (refugees) and people who leave their country on their own initiative (migrants).³⁶⁸ See further explanations under point 5.4. definitions.

Figure 5.3.1.: Major refugee hosting countries 2014–2015



Source: UNHCR³⁶⁹

Figure 5.3.2.: Major source countries of refugees 2014–2015



Source: UNHCR³⁷⁰

³⁶⁸ United Nations Convention and Protocol relating to the status of Refugees. Resolution 2198 (XXI) adopted by the United Nations General Assembly. Article 1 – Definition of the term ‘Refugee’. Further explanations will be provided under point 4.4. of the work.

³⁶⁹ UNHCR (2016): Global Trends in 2015, p.15, 16. Available from: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-qlobal-trends-2015.html> (Accessed on 30th November 2016).

³⁷⁰ Ibid

Example of a refugee wave triggered by the war in Kosovo 1999

On the night of 24th March 1999, the Kosovo crisis escalated dramatically with the opening of intense air strikes against the Federal Republic of Yugoslavia led by NATO. These air raids lasted several weeks due to the Serbian refusal to accept the terms of the international peace agreement of *Rambouillet*.³⁷¹ As a serious consequence of this dispute, the most massive expulsion of people since the end of the Second World War was triggered with about 700,000 internally displaced persons and more than 600,000 refugees outside of Kosovo.³⁷²

5.4. Important legal requirements with regard to migration and border control and legal border crossing

5.4.1. Legal requirements for legal entry according to the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory

Section 3 - Passport obligation³⁷³

(1) Foreigners may only enter or stay in the federal territory if they are in possession of a recognised and valid passport or passport substitute unless they are exempt from the passport obligation by virtue of a statutory instrument. For the purpose of residence in the federal territory, possession of a substitute identity document shall also suffice in order to meet the passport obligation (Section 48 (2)).

(2) In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from the passport obligation before the foreigner enters the federal territory for the purpose of crossing the border, and for a subsequent stay of up to six months.

Section 14 - Unlawful entry; exceptional visa

(1) The entry of a foreigner³⁷⁴ into the federal territory shall be unlawful if

³⁷¹ United Nations (2014): Peacemaker. Interim Agreement for Peace and Self-Government in Kosovo (*Rambouillet Accords*). Available from: <http://peacemaker.un.org/kosovo-rambouilletagreement99> (Accessed on 30th November 2016).

³⁷² UNHCR (2016): Magazine Refugees (Volume 3, No 116, 1999): Kosovo: One last chance – The race against winter yet another exodus, p.2, 4 to 13. Available from: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=3c6914bc5&query=kosovo%20refugees%201999> (Accessed on 30th November 2016).

³⁷³ Residence Act in the version promulgated on 25 February, 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556).

³⁷⁴ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438). Politically persecuted persons enjoy asylum and asylum law has constitutional status in Germany and according to Article 16a of the Basic Law (GG) of the Federal Republic of Germany enjoy political persecution asylum.

Article 116 - Definition of "German" – Restoration of citizenship

(1) Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31st December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.

(2) Former German citizens who between 30th January 1933 and 8th May 1945 were deprived of their citizenship on political, racial or religious grounds, and their descendants, shall on application have their citizenship restored. They shall be deemed never to have been deprived of their citizenship if they have established their domicile in Germany after 8th May 1945 and have not expressed a contrary intention.

he or she

1. does not possess a required passport or passport substitute in accordance with Section 3 (1),
 2. does not possess the residence title required in accordance with Section 4,
 - 2a. does possess the necessary visa pursuant to Section 4 upon entry, but obtained it by threat, bribery or collusion or by furnishing incorrect or incomplete information, for which reason it is revoked or annulled retrospectively, or
 3. is not permitted to enter the federal territory in accordance with Section 11 (1) unless he or she possesses a temporary entry permit in accordance with Section 11 (2).
- (2) The authorities charged with policing cross-border traffic may issue exceptional visa and passport substitute documents.

Section 50 - Requirement to leave the federal territory

- (1) A foreigner shall be obliged to leave the federal territory if he or she does not possess or no longer possesses the necessary residence title and a right of residence does not exist or no longer exists under the EEC/Turkey Association Agreement.
- (2) The foreigner shall be required to leave the federal territory without delay or, if a period has been allowed for departure, by the end of this period.
- (3) [...].

5.4.2. Border protection, border police control and border crossing

Section 2 - Border Protection³⁷⁵

- (1) The Federal Police is responsible for the border police protection of the national territory (border guards) unless a country perceives the agreement of the responsibilities of the federal border police forces with their own individual service.
- (2) includes the Border
1. the policing of borders,
 2. police control of cross-border traffic, including
 - a) the monitoring of border crossing documents and the authorisation to cross the border,
 - b) Investigation of the border,
 - c) the prevention of threats,
 3. in the border area to a depth of 30 kilometres and from the seaward limit of up to a depth of 50 kilometres, the prevention of threats that affect the security of the border.

The Federal Ministry of the Interior is authorised to extend to securing the borders the designated area in sentence 1 No. 3 of the seaward boundary of by ordinance, with the consent of the *Bundesrat* where the border control in the German coastal zone requires. The ordinance of the course of the back boundary line of the border area is extended to describe exactly. From the seaward limit of this line must not exceed a depth of 80 kilometres.

- (3) The agreement referred to in paragraph 1 shall be produced in a written agreement between the Federal Ministry of the Interior and the State concerned, which shall be announced in the Federal Gazette. In the cooperation agreement between the federal police and the police of the country is regulated.

³⁷⁵ Federal Police Act of 19th October 1994 (Federal Law Gazette I, page 2978, 2979), last amended by Article 1 of the Law of 21st June, 2005 (Federal Law Gazette I, p.1818).

(4) If the police duties of a country referred to in paragraph 1, in agreement with the federal government with its own forces true, the implementation of tasks governed by the law applicable to the country's police.

The task of 'border protection' along with 'border control' will be carried out not only directly at the national border and adjacent border areas, but also on the national territory at airports and seaports, as well as railway systems in each case with international traffic. With a focus on the external borders, the Federal Police are fulfilling specific tasks to secure borders, particularly to prevent unauthorised entry of foreigners, to combat cross-border crime in the area of smuggling of irregular migrants and other related crime areas such as trafficking in human beings, international vehicle crime, smuggling of weapons and narcotics, as well as counterfeit travel documents.

Two variants of the border policing control are possible:

- Alternative 1 as a physical check carried out by an officer of a state border control authority
- Alternative 2 as an automated control³⁷⁶ (smart border package³⁷⁷)

In alternative 1, the control officer decides whether or not the person should be controlled. If the officer carries out an identity check, it may be performed in various aspects, for example checking personal data against national and international search databases (e.g., the serial number of a travel document), a comparison of the travelling person with the photograph on the travel document, data on registered body size and colour of eyes, and check of the passport for the reconciliation of the legend of the traveller.³⁷⁸ For this purpose, the person in question can be asked appropriate questions, regarding their movements between countries.

In alternative 2, all holders of electronic passports from the EU, the European Economic Area and Switzerland can use EasyPASS to enter and leave the *Schengen* area.³⁷⁹ The electronic passport (e-passport) of the person is scanned and at the

³⁷⁶ Federal Police (2016): What is EasyPASS? The border control system at a glance. Available from: http://www.easypass.de/EasyPass/EN/What_is_EasyPASS/functions/Video/easypass_imagefilm.html (Accessed on 30th November 2016).

³⁷⁷ EU Directorate-General for Internal Policies (2013): The Commission's legislative proposals on Smart Borders: their feasibility and costs, p.7. Available from: <http://www.europarl.europa.eu/studies> (Accessed on 30th November 2016).

³⁷⁸ Note from the author: This depends on the access rights of the respective control authorities to national and international search databases and watch lists; For example, the German search database *INPOL* (information system of the police) at EU level, *SIS* (*Schengen* Information System), INTERPOL SLTD Database (Stolen and Lost Travel Documents).

³⁷⁹ Federal Police (2016): Who can use EasyPASS? The border control system at a glance. Available from: http://www.easypass.de/EasyPass/EN/What_is_EasyPASS/functions/Video/easypass_imagefilm.html (Accessed on 30th November 2016).

same time a camera double-checks the person with regard to facial recognition. In alternative 1, a person decides whether entry or exit is permitted, whereas in alternative 2 a machine makes this distinction.

The border control shall be deemed completed if:

- Alternative 1, the documents are handed over again or the civil servant waives a check through words or signs (e.g., wave through) and permits the entry or exit
- Alternative 2, the opening mechanism of the border barrier opens automatically after the control has been carried out without complaint

5.4.3. Measures to terminate a residence title

The possible necessity for interventions to terminate a residence title occurs when, for example, a foreigner is illegally residing in Germany or his criminal behaviour is the reason for compulsory measures. Even if a foreigner is not leaving the country after the expiry of the permitted stay, measures for terminating his/her stay may be the result. There are different possibilities to terminate the sojourn of a foreigner according to the Residence Act.

According to Section 51 of Residence Act, the legal stay ends in Germany under the following conditions:

Section 51 - Termination of lawful residence; continued validity of
restrictions

(1) The residence title shall expire in the following cases:

- i. upon expiry of its period of validity,
- ii. upon the occurrence of an invalidating condition,
- iii. upon withdrawal of the residence title,
- iv. upon revocation of the residence title,
- v. upon expulsion of the foreigner,
- 5a. upon announcement of a deportation order pursuant to Section 58a,
- vi. if the foreigner leaves the federal territory for a reason, which is not of a temporary nature,
- vii. if the foreigner leaves the federal territory and fails to re-enter the federal territory within six months or within a longer period set by the foreigner's authority,
- viii. if a foreigner files an application for asylum following the granting of a residence title pursuant to Sections 22, 23 or 25 (3) to (5);

a visa issued for several entries or with a period of validity in excess of three months shall not expire in accordance with numbers 6 and 7 above.

(2) [...].

First, the requirement to leave the federal territory shall be cited according to Section 50 of the Residence Act when an initial request is rejected, the residence title has expired, or is retrospectively restricted. When a foreigner is expelled, a distinction must be made between a mandatory expulsion according to Section 53, regular expulsion according to Section 54 and discretionary expulsion according to

Section 55. The nature of the expulsion is determined by the special circumstances and legal examination of the individual case. Special protection against expulsion is granted to persons who meet the requirements of Section 56 Residence Act.³⁸⁰ In an attempt to enter the German territory illegally, the Federal Police, the State Police or the Immigration Office can issue a repatriation decree. This implicates a ban on entry and residence according to Section 11 of the Residence Act. The deportation is required if a voluntary departure cannot be ensured (ban on entry and residence according to Section 11). A deportation is prohibited if a feature of the list of Section 60 is fulfilled.³⁸¹

The loss of freedom of movement under European Community law occurs if the person concerned does not have the general freedom of movement according to Section 5 (5) Freedom of Movement Act/EU³⁸² or for reasons of public security and order according to Section 6 (1)³⁸³, which is equivalent to expulsion and results in a ban on entry and residence.

5.4.4. Safe country of origin - safe third country

The concept of a 'safe country of origin' is used in migration management to define countries, which, based on their stable democratic system and compliance with international human-rights treaties, are presumed safe to live in.³⁸⁴ Based on this presumption, the recast asylum procedures directive applicable since 21st July 2015 permits the use of an accelerated procedure, without prejudice to the final decision, when the applicant is from a 'safe country of origin'. The concept of 'safe country of origin' should not be confused with the notion of 'safe third country'.

³⁸⁰ Residence Act in the version promulgated on 25th February 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556).

³⁸¹ Ibid.

Section 60 – Temporary suspension of deportation.

³⁸² Freedom of Movement Act/EU of 30 July 2004 (Federal Law Gazette I p.1950, 1986), last amended by Article 6 of the Act of 21st December 2015 (Federal Law Gazette I p.2557).

Section 5 - Residence cards, certificates confirming the right of permanent residence

[...] (5) EU citizens shall be provided with a certificate confirming their right of permanent residence forthwith, upon due application. Their dependants who are not EU citizens and who are entitled to permanent residence shall be provided with a permanent residence card within six months of filing a corresponding application. [...].

³⁸³ Ibid.

Section 6 - Loss of the entitlement to entry and residence

(1) Without prejudice to Section 2 (7) and Section 5 (4), loss of the entitlement pursuant to Section 2 (1) can only be determined and the certificate confirming the right of residence under Community law and the EU residence permit withdrawn for reasons of public order, security or health (Article 45 (3), Article 52 (1) of the Treaty on the Functioning of the European Union). Entry may also be refused on the grounds stated in the first sentence. Loss of the entitlement on grounds of public health can only be declared in the cases of illnesses with epidemic potential as defined by the International Health Regulations of the World Health Organisation or other infectious diseases or contagious parasitic diseases provided they are the subject of protection provisions in the federal territory, and if the illness concerned arises within the first three months after entering the federal territory. [...].

³⁸⁴ European Parliament (2015): Safe countries of origin - proposed common EU list, p.2.

<http://www.europarl.europa.eu/EPRS/EPRS-Briefing-569008-Safe-countries-of-origin-FINAL.pdf>
(Accessed on 1st December 2016).

The first applies to a country whose own citizens are not persecuted, whereas the latter refers to a transit country considered safe for providing international protection. All 28 EU MS are considered safe countries of origin. According to the *BAMF*, the countries of Bosnia and Herzegovina, North Macedonia and Serbia are also classified as 'safe countries of origin' in a non-exhaustive list.³⁸⁵ According to clear constitutional guidelines, 'safe third countries' are EU MS as well as other European countries, which ensure compliance with the Geneva Convention on Refugees and the Convention on Human Rights; these are Norway and Switzerland.³⁸⁶ From a practical standpoint, this means: if people are coming from a 'safe third country' and wanting to apply for asylum, they will not be recognised as asylum seekers. For those people, the *BAMF* orders their deportation and they are legally put back into the state, from which they have entered.

5.4.5. The Dublin Regulation

The 'Dublin Regulation' establishes the Member State responsible for the administrative proceedings of the asylum application.³⁸⁷ The third version of the 'Dublin Regulation' has been in force since 1st January 2014. It constitutes a further development on the Dublin Convention from 1997. The criteria for establishing

³⁸⁵ BAMF (2015): *Glossar*. Available from:

<http://www.bamf.de/DE/Service/Left/Glossary/function/glossar.html?nn=1363008&lv2=1364198&lv3=1504416> (Accessed on 1st December 2016).

Asylum Act in the version promulgated on 2nd September 2008 (Federal Law Gazette I, p.1798), last amended by Article 2 of the Act of 11th March 2016 (Federal Law Gazette I, p.394).

Section 29a - Safe country of origin; report; authority to issue statutory instruments

(1) The asylum application of any foreigner from a country within the meaning of Article 16a (3), first sentence of the Basic Law (safe country of origin) shall be rejected as manifestly unfounded, unless the facts or evidence produced by the foreigner give reason to believe that he faces political persecution within the meaning of Section 3 (1) or serious harm as defined in Section 4 (1) in his country of origin in spite of the general situation there.

(2) In addition to the Member States of the European Union, safe countries of origin are those listed in Annex II. [...].

³⁸⁶ Ibid.

Section 26a - Safe third countries

(1) Any foreigner who has entered the federal territory from a third country within the meaning of Article 16a (1), first sentence of the Basic Law (safe third country) cannot invoke Article 16a (1) of the Basic Law. He shall not be granted asylum. The first sentence above shall not apply if

1. the foreigner held a residence title for the Federal Republic of Germany at the time he entered the safe third country,
2. the Federal Republic of Germany is responsible for processing an asylum application based on European Community law or an international treaty with the safe third country, or if
3. the foreigner has not been refused entry or removed on account of an order pursuant to Section 18 (4) no. 2.

(2) In addition to the Member States of the European Union, safe third countries are those listed in Annex I.

(3) The Federal Government shall resolve by statutory instrument without the consent of the *Bundesrat* that a country listed in Annex I is no longer deemed a safe third country if changes in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (2), first sentence of the Basic Law have ceased to exist. The instrument shall expire no later than six months after it entered into force.

³⁸⁷ Regulation (EC) No 343/2003 - Dublin Regulation. The "Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national" was substituted by the new Dublin III Regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26th June 2013) with effect from 1st January 2014. Member States in which this Regulation constitutes directly applicable law are all the Member States of the EU, as well as Norway, Iceland, Switzerland and Liechtenstein.

responsibility are determined, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly, or regularly. It is used to establish which European country is responsible for examining an asylum application (e.g., based on EURODAC guidelines).³⁸⁸ The purpose of the 'Dublin Regulation' is for the content of each asylum application, which is lodged in the Dublin area to be examined only on the merits of one state. This area includes the Member States of the European Union, Norway, Iceland, Switzerland and Liechtenstein. If protection has already been granted under the law on asylum in one Dublin state, no further examination of the asylum application is possible in Germany. If a Member State establishes that asylum proceedings are to be processed or completed in another Member State, it files a 'transfer request' with the state in question. If the latter consents to the transfer, the Federal Office issues a notice ordering it. It also informs the person concerned and asks them whether there may be any reasons against the transfer. The person concerned can file a court action against this decision and can put forward an emergency motion. It is not permissible for them to be transferred to the Member State until the ruling has been handed down in the emergency court proceedings. If the transfer is not carried out within six months, responsibility for the proceedings is transferred to the Member State, which has requested the transfer. If the individual is in detention, the transfer period may be extended to a maximum of one year. It can be extended to 18 months at most if the person concerned is not traceable.

5.5. Definitions

The following definitions are intended to cover the most important topics within the area of migration and are listed in a non-exhaustive alphabetical order.³⁸⁹

Asylum seeker

In the global context, a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments.

In the EU context, a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken.

Climate refugee

The notion of a climate refugee or climate-change related migration is still

³⁸⁸ Note from the author: EURODAC is further discussed in detail under point 9.2.

³⁸⁹ European Commission (2016): Migration and Home Affairs. Definitions. Available from: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm (Accessed on 2nd December 2016).

new and therefore largely undefined.³⁹⁰ There is as yet no legal basis for people who are forced to flee from the effects of global warming, for example by recurring droughts that have destroyed their livelihoods, or the rise in sea level will make their home region uninhabitable in the foreseeable future. Apart from individual cases, these people have no chance of being recognised as a refugee.

Deportation, alternate removal

The act of a state in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.

Displaced person

In the EU context, a third-country national or stateless person who has had to leave their country or region of origin, or has been evacuated, particularly in response to an appeal by international organisations, and is unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Art. 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

1. a person who has fled areas of armed conflict or endemic violence;
2. a person at serious risk of, or who has been the victim of, systematic or generalised violations of their human rights.

Economic migration

Migration that focuses mainly for economic reasons or in order to seek material improvements to livelihood.

Forced migrant

A person subject to a migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g., movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine or development projects).

Forced migration

A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g., movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine or development projects).

Internal migration

Internal migration (also domestic migration) means the movement of a person on the national territory without exceeding the national borders.³⁹¹ As a classic example, the Chinese migrant workers can be cited here. With a total population of approximately 1.367 billion inhabitants, some 300 million Chinese people from rural areas are on the move.³⁹² They are looking for temporary employment in the emerging areas of the Cathay. Without these nameless and faceless migrant workers the Chinese economic upswing would

³⁹⁰ Federal Ministry for Economic Cooperation and Development (2016): *Klimamigranten*. Available from: http://www.bmz.de/de/themen/Sonderinitiative-Fluchtursachen-bekaempfen-Fluechtlinge-reintegrieren/hintergrund/definition_fluechtling/index.jsp (Accessed on 2nd December 2016).

³⁹¹ Haase, Marianne / Jugl, Jan C. (2008): *Binnenmigration in der EU – Definition*. BPB Grundlagendossier Migration. Available from: <http://www.bpb.de/gesellschaft/migration/dossier-migration/56576/binnenmigration> (Accessed on 2nd December 2016).

³⁹² Statista (2016): China: Population from 2004 until 2014. Available from: <http://de.statista.com/statistik/daten/studie/19323/umfrage/gesamtbevoelkerung-in-china/> (Accessed on 2nd December 2016).

21China (2014): Migrants. Available from: <http://www.21china.de/kultur/3-buecher-ueber-chinas-wanderarbeiter/> (Accessed on 2nd December 2016).

not have been possible.

International protection, alternate refugee status, or subsidiary protection

In the global context, the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries.

In the EU context, protection that encompasses refugee status and subsidiary protection status.

Irregular entry

In the global context, crossing borders without complying with the necessary requirements for legal entry into the receiving State. In the *Schengen* context, the entry of a third-country national into a *Schengen* Member State who does not satisfy Art. 5 of the *Schengen* Borders Code.

Irregular migration, alternate clandestine migration, illegal migration

Movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries. (See further details under point 5.4.1.).

Migrant

In the global context, a person who is outside the territory of the State of which they are nationals or citizens and who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate.

Overstayer

In the global context, a person who remains in a country beyond the period for which entry was granted.

In the EU context, a person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit.³⁹³ Therefore, the person stays illegal on the Federal territory according to Section 4 and 14 of the Residence Act.

Push- and pull factors

These are factors, which initiate and influence the decision to migrate, either by attracting them to another country (pull factors) or by impelling or stimulating emigration (push factors).³⁹⁴

Push-factors are the condition(s) or circumstance(s) in a country of origin that impel or stimulate emigration. As recognised by the project European Reintegration Networking, this can be for a specific or a variety of reasons, e.g., declining economic opportunities or political instability may stimulate emigration.

Pull-factors are the condition(s) or circumstance(s) that attract a migrant to another country. As recognised by the project European Reintegration Networking, this can be for a specific or a variety of reasons, e.g., expanding economic opportunities and potential for advancement in the country of

³⁹³ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March, 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen* Borders Code) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

„Visa“ means an authorisation issued by a Member State or a decision taken by such State, which is required with a view to entry for an intended stay in that Member State or in several Member States, or for transit through the territory of that Member State or several Member States.

³⁹⁴ Seifert, Wolfgang (2012): *Push- und Pull-Faktoren*. <http://www.bpb.de/politik/grundfragen/deutsche-verhaeltnisse-eine-sozialkunde/138008/begriffliche-vorklaerungen> (Accessed on 2nd December 2016).

Lee, Everett S. / Széll, György (Hg.) (1972): *Eine Theorie der Wanderung, Regionale Mobilität*, p.115-129.
Nuscheler, Franz (2004): *Internationale Migration. Flucht und Asyl*, p.101.

destination.

Refugee

In the global context, either a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned before, is unable or, owing to such fear, unwilling to return to it.

In the EU context, either a third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU does not apply.

Stateless person

Person, who is not considered as a national by any state under the operation of its law.

Third-country national

Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the *Schengen Borders Code*.

Trafficking in human beings – People smuggling

Trafficking in human beings (THB)

Article 3 - Use of terms

For the purposes of this Protocol:

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) 'Child' shall mean any person under eighteen years of age.³⁹⁵

People smuggling, alternate smuggling of migrants

Smuggling of migrants is the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into a (UN) member State of which the person is not a national or a permanent resident.

³⁹⁵ United Nations (2000): Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, p.2.

Note from the author: A detailed description and delineation between human trafficking and human smuggling is given in section from 5.6.2. to 5.6.4.

Well-founded fear of persecution

The fear of persecution experienced by an applicant for international protection that is considered both genuine and objectively justifiable (e.g., because the person concerned has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, and there is no good reason to consider that such persecution or serious harm will not be repeated).

In the BAMF annual report of 2011, migration is described as follows:

Migration is referred to when a person relocates the centre of his/her vital interests; of international migration if this happens across national borders.

This entails immigration as well as emigration. However, the relation between migration and the freedom of establishment of EU nationals within the EU is not clear. Does it remain by definition as migration, or is it then domestic migration because the person moves within the EU territory? Is the EU territory to be seen as one legal area?

One of the four basic principles of the EU is the free movement of workers, according to which every citizen of an EU MS can settle in another EU MS of his or her choice, live there and be able to take up a job.³⁹⁶ According to the *Eurobarometer* evaluation from Spring 2012, EU citizens regard the free movement as the second most important achievement of the EU.³⁹⁷ Only the preservation of peace between the Member States has been assessed even more positively.

5.6. Irregular migration as a form of cross-border OC or even transnational threat

5.6.1. Irregular Migration

Three different areas are categorised in the area of irregular migration by Neske: 'clandestine', 'legendary' and 'semi-irregular' migration.³⁹⁸

³⁹⁶ European Parliament and Council Directive 2004/38/EC of 29th April, 2004 is about the right of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA member states.

³⁹⁷ European Commission (2015): European Commission upholds free movement of people. Available from: http://europa.eu/rapid/press-release_MEMO-13-1041_en.htm (Accessed on 2nd December 2016).

³⁹⁸ Neske, Matthias (2009): „Irreguläre Migration – Herausforderung und Lösungsversuche“. Available from: http://webcache.googleusercontent.com/search?q=cache:DVn1GohQhW4J:www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Sonstige/nuernberger-tage-asyl-2009-neske.pdf%3F__blob%3DpublicationFile+&cd=1&hl=de&ct=clnk&ql=de (Accessed on 2nd December 2016).

He explains 'clandestine migration' as a procedure by which foreigners³⁹⁹ enter Germany without the necessary conditions according to Section 3 of the Residence Act, or even without any documents.⁴⁰⁰

Secondly, 'legendary migration' is the *modus operandi* of unauthorised entry and residence in Germany by means of counterfeit or falsified identity documents⁴⁰¹, or by misuse of identity documents⁴⁰².

As a third area, Neske describes the 'semi-irregular migration', which precedes a legal form of migration and proceeds then in an illegal form of migration. This form of irregular migration is referred to as an 'overstayer' in the international context (see also point 5.5.). These foreigners travel legally into the federal territory and only then in the further course violate the legal provisions of the Residence Act. Usually the scope of the legally permissible length of stay is exceeded or violations against legally defined restrictions of the residence permit are committed, such as against the prohibition of employment, danger to public safety and order. On the other hand, residence permits become void by the expiration of its validity, the occurrence of a condition for dissolution, withdrawal or revocation, and expulsion.

³⁹⁹ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438). Politically persecuted persons enjoy asylum and asylum law has constitutional status in Germany and according to Article 16a of the Basic Law (GG) of the Federal Republic of Germany enjoy political persecution asylum.

Article 116 - Definition of "German" – Restoration of citizenship

(1) Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31st December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.

⁴⁰⁰ Residence Act in the version promulgated on 25th February 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556).

Section 3 - Passport obligation

(1) Foreigners may only enter or stay in the federal territory if they are in possession of a recognised and valid passport or passport substitute unless they are exempt from the passport obligation by virtue of a statutory instrument. For the purpose of residence in the federal territory, possession of a substitute identity document shall also suffice in order to meet the passport obligation (Section 48 (2)).

(2) In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from the passport obligation before the foreigner enters the federal territory for the purpose of crossing the border, and for a subsequent stay of up to six months.

⁴⁰¹ Criminal Code in the version promulgated on 13th November 1998, Federal Law Gazette [Bundesgesetzblatt] I p.3322, last amended by Article 1 of the Law of 24th September 2013, Federal Law Gazette I p.3671 and with the text of Article 6(18) of the Law of 10th October 2013, Federal Law Gazette I p.3799.

Section 267 - Forgery

(1) Whosoever for the purpose of deception in legal commerce produces a counterfeit document, falsifies a genuine document or uses a counterfeit or a falsified document, shall be liable to imprisonment not exceeding five years or a fine. [...]

⁴⁰² Ibid.

Section 281 - Misuse of identity documents

(1) Whosoever for the purpose of deception in legal commerce uses an identity document, which was issued to another, or whosoever for the purpose of deception in legal commerce supplies to another an identity document that was not issued to that person, shall be liable to imprisonment not exceeding one year or a fine. The attempt shall be punishable.

(2) Certificates and other documents which are used as identity documents in commerce shall be equivalent to identity documents.

In such cases the person is obliged to leave the country. 'Semi-irregular migration' is the most common form of irregular migration in EU MS.

The number of people who live illegally in the EU is estimated by the EC to be several million, the majority being overstayers. In 2015, the EU MS reported 701,625 detections of illegal stay, which represents a significant increase compared to the previous year.⁴⁰³ In 2014, a total of 444,780 persons were discovered by the EU MS enforcement authorities and 383,507 persons were overstayers, equivalent to 86 per cent of all illegal immigrants.⁴⁰⁴

According to the current practice, in Germany irregular migration is tackled on the one hand through preventive precautions within the administrative regulations for the issuance of visas, and on the other hand by the averting of danger with regard to compensatory measures for the entry control from neighbouring *Schengen* states.⁴⁰⁵ Furthermore, irregular migration is supplemented by measures of return promotion and compulsory enforcement of the obligation to leave the country by means of extraditions and deportations. In the event that persons are illegally residing in the Federal territory, which cannot be deported, individual solutions are required.

5.6.2. Trafficking in human beings (THB)

In many countries, trafficking in human beings is mainly associated with prostitution. Under false pretences, the victims are lured into the respective target countries, and are then exploited and sexually abused. In contrast to people smuggling, the transfer of a person across a border and thus an unauthorised entry into another country is not necessary with regard to THB. The fact of exploitation must be fulfilled and, for this reason, a physical border crossing is not necessary (see the differentiation of people smuggling and THB under Table 5.6.4.1.). Among the manifestations of THB, there are a great number of ways in which people can be exploited, such as forced labour, bonded labour, slavery, child labour, forced begging (especially through disabled and crippled people), various forms of sexual exploitation, including child abuse, organ trafficking, and many other abominable forms of crime. Thus, THB can be understood as a topic in which offenders use

⁴⁰³ Frontex (2016): Annual Risk Analysis Report 2015, p.30.

⁴⁰⁴ Frontex (2015): Annual Risk Analysis Report 2014, p.29-30.

⁴⁰⁵ Federal Foreign Office (2016): *Schengen* Member States are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, The Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland. Available from: <http://www.auswaertiges-amt.de/DE/Infoservice/FAQ/VisumFuerD/17-Schengenstaaten.html?nn=350374> (Accessed on 2nd December 2016).

diverse and perfidious means against people to restrict and systematically exploit them against their will and with compulsion.

THB is a profoundly despicable criminal act and is, among other things, a crime against the fundamental rights of human dignity, free self-determination, physical integrity, and the right to individual self-determination of personal data.⁴⁰⁶ Crossing a border is not necessary. However, of crucial significance is the offender's intention to exploit and deceive in line with the concealment of the real intentions and the potentially fatal effects of the actions for the victim.

Together with the UN, the EU⁴⁰⁷, OSCE⁴⁰⁸, IOM⁴⁰⁹ and ICMPD⁴¹⁰, as well as numerous NGOs are engaged in the fight against THB.

5.6.3. People smuggling

It is evident that irregular migrants cannot bring their unlawful status to the attention of national law enforcement authorities. Therefore, because of this, people smuggling cannot really be successfully investigated as there are few cases to be answered. Rather, there are only rough estimates, which are to a greater degree based on the collection of informal data than on a verifiable methodological approach. For example, the statements made by asylum seekers during police interrogations can only be used to a limited extent in case they confirm having been carried out by professional people smugglers. However, these testimonies must also be judged with reservation since the people smugglers urgently instruct their 'clients' not to make any statements in the presence of the respective law enforcement authorities in order to keep the upper hand and maintain control of the situation.⁴¹¹

Crimes related to the smuggling of immigrants are primarily control-related offences and the clearance of these offences correlates significantly with the

⁴⁰⁶ United Nations Convention against transnational organised crime and the protocols thereto (2004): Adopted by the UN General Assembly Resolution 55/25 on 15th November 2000 - United Nations Office on Drugs and Crime (UNODC).

⁴⁰⁷ European Commission (2012): The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. Available from: https://ec.europa.eu/anti-trafficking/eu-policy/new-european-strategy-2012-2016_en (Accessed on 4th December 2016).

⁴⁰⁸ OSCE (2013): Decision No. 1107 Addendum to the OSCE Action Plan to combat THB. Combating Trafficking and Exploitation (2013): Human Rights, Social Justice and the Rule of Law. Available from: <http://www.osce.org/secretariat/109731> (Accessed on 4th December 2016).

⁴⁰⁹ IOM (2016): Strategy to combat THB. Available from: <http://eea.iom.int/index.php/what-we-do/counter-trafficking-of-human-beings-thb> (Accessed on 4th December 2016).

⁴¹⁰ ICMPD (2016): Strategy to combat THB. Available from: <http://www.icmpd.org/Trafficking-in-Human-Beings.1565.0.html> (Accessed on 4th December 2016).

⁴¹¹ Note from the author: The people smugglers intimidate and threaten the persons on the one hand with reprisals against family members remaining in the country of origin with threats, violence and defamation, on the other hand with persecution in their target countries in case of a possible cooperation with state law enforcement authorities.

intensity and extent of relevant measures to combat these offences.⁴¹² Only in exceptional situations, do smuggled persons report to the police and/or the prosecutor's office, since these people are not only victims, but also criminal offenders in the meaning of the relevant legal and criminal procedural conditions. Certain conclusions can be drawn, at most, in the analysis of numbers of relevant cases (rising/falling) of the police criminal statistic in respect of the violations against Section 96 and 97 of the Residence Act.⁴¹³

The smuggling of human beings and related criminal activities include only those criminal behaviours, which are regulated in the general part of the code of law and thus in the immaterial part of the criminal law in possible forms of participation for the unauthorised entry and residence in the Federal territory according to Section 96 and 97 of the Residence Act. According to this, foreigners are only allowed to enter the Federal territory or to stay in it if they have a recognised and valid passport.

Therefore, the state of affairs in terms of smuggling of foreigners into the territory of a state is fulfilled, if the smuggler receives a pecuniary advantage or the promise of a pecuniary advantage in return for acts in such a manner repeatedly or for the benefit of several foreigners⁴¹⁴ for illegal services. It has an aggravating effect if anyone who acts for gain, acts as a member of a gang, which has come together for the purpose of committing such offences on a continuing basis, carries a firearm, carries another type of weapon in order to use said weapon or subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of sustaining severe damage to their health. In this case, the offence of

⁴¹² *Rechtslexikon* (2007): The term of 'control-related offences' is used, whose commission is not noticed until the law enforcement authorities make appropriate inquiries. There is no victim in the case of control-related offences, which reports the offence on its own initiative to law enforcement agencies; example corruption. Available from: <http://www.lexexakt.de/glossar/kontrolldelikt.php> (Accessed on 6th December 2016).

⁴¹³ Residence Act in the version promulgated on 25th February 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556), Section 96 - Smuggling of foreigners into the federal territory and Section 97 - Smuggling of foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs.

⁴¹⁴ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438). Politically persecuted persons enjoy asylum and asylum law has constitutional status in Germany and according to Article 16a of the Basic Law (GG) of the Federal Republic of Germany enjoy political persecution asylum.

Article 116 - Definition of 'German' – Restoration of citizenship

(1) Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31st December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.

(2) Former German citizens who between 30th January 1933 and 8th May 1945 were deprived of their citizenship on political, racial or religious grounds, and their descendants, shall on application have their citizenship restored. They shall be deemed never to have been deprived of their citizenship if they have established their domicile in Germany after 8th May 1945 and have not expressed a contrary intention.

smuggling of foreigners includes not only the aid, and thus support for an illegal border crossing from a non-EU MS into an EU MS, but also within the 28 EU MS or *Schengen* area.⁴¹⁵

On the other hand, all criminal offences related to the unauthorised entry and residence of foreigners, such as the use of counterfeit or falsified identity documents, abuse of genuine travel documents and smuggling of drugs and weapons, can be subsumed accordingly.

5.6.4. Differentiation

An unambiguous and clear distinction between THB and people smuggling is not always possible, since these two areas can also merge to some extent. Sometimes there are overlaps, or there are shifting positions between THB and people smuggling. Thus, initially, a person can be transported illegally across a border with the support of smugglers and the smuggling of the foreigner is concluded when the borders were crossed successfully and the service agreement between the smuggler and the person is fulfilled. In the case of smuggling across several country borders, this person can be handed over to another group of smugglers, who initially pretend to organise the next section of the trip and ensure the next illegal crossing of the border. In reality, however, these smugglers have only the intention of exploiting this individual and the person is exploited by the facts described in Article 3 of the Palermo Protocol, by selling the person and/or putting in interdependence.⁴¹⁶

⁴¹⁵ *Migrationsrecht* (2016): *Einschleusung von Ausländern* (smuggling of foreigners). Available from: <http://www.migrationsrecht.net/kommentar-aufenthaltsgesetz-aufenthg-gesetz-aufenthalt-erwerbstaetigkeit-aufenthaltserlaubnis-niederlassungserlaubnis-aufenthg/kommentierung-einschleusung-von-auslaendern.html> (Accessed on 6th December 2016).

⁴¹⁶ United Nations (2000): Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime.

Article 3 - Use of terms

For the purposes of this Protocol:

- a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) 'Child' shall mean any person under eighteen years of age.

Table 5.6.4.1.: Differentiation THB and people smuggling (own presentation)

Person	THB ⁴¹⁷	People smuggling ⁴¹⁸
Consent	Consent of the person concerned does not matter.	Affected person agrees.
Border crossing	Border crossing is not a prerequisite; If so, it can be legally executed.	Border crossing to another country takes place against legal regulations and thus illegal.
Financial or material aspect	Exploitation of the individual is the core and takes place over longer periods of time.	Service against payment; Business partnership ends after illegal border crossing.
Relation with the other	Pretending false criteria lures victim.	Affected person is more likely to be seen as a ,contract partner'.
Timeline	THB begins only after arrival at the destination.	Smuggling is concluded with crossing the border to the destination country.

Source: UNODC⁴¹⁹

Table 5.6.4.2.: Agreements and protocols against THB (own representation)

International agreements against THB		
UN Convention against Transnational Organized Crime (2000) ⁴²⁰		
Protocol to prevent, suppress and punish in trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime.	Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organised crime.	Protocol for the Prohibition of the Illicit Manufacturing of Firearms, Parts, Components and Ammunition thereof, and against illicit trafficking thereof.

However, the international agreement against THB is not a legally binding document for the protection of human rights, but rather focuses on increased international police cooperation in the fight against TOC with a specific view of THB.⁴²¹ As a result, the main interests are less targeted towards appropriate

⁴¹⁷ Ibid.

⁴¹⁸ D'Amato, Gianni / Gerber, Brigitta / Kamm, Martina (2005): Swiss Forum for Migration and Population Studies – Smuggling of persons and irregular migration in Switzerland. "In the definition adopted by the United Nations in 2000, human smuggling refers to the facilitation of the illegal entry of migrants with the intention of enriching themselves or of drawing other material benefits from this illegal activity." P.7.

⁴¹⁹ United Nations Office on Drugs and Crime (2015): How Is Human Trafficking Different From Migrant Smuggling? URL: http://www.unodc.org/unodc/en/human-trafficking/faqs.html#How_is_human_trafficking_different_to_migrant_smuggling (Accessed on 6th December 2016).

⁴²⁰ United Nations (2000): Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime.

⁴²¹ *Menschenhandel heute* (2014): What is THB? Available from: <https://menschenhandelheute.net/was-ist-menschenhandel/> (Accessed on 7th December 2016).

measures in the area of victim protection, but rather on improvements in the identification and investigation of THB related offences.

5.6.5. Smuggling of people

39 humans crowded in a van by people smugglers

On Saturday, the police stopped a van in the district [...] in which 39 people were found. There were also 16 children aged 3 to 15 years in the vehicle. As the police reported [...] none of them had identification papers. According to preliminary findings, the Kosovo group was [...].⁴²²

Austrian forwarding contractor has been brought to court for [...]. The allegation: smuggling of foreigners for gain and as [...] gang, which has come together for the purpose of committing such offences on a continuing basis in 4,099 cases; threatened maximum penalty: ten years imprisonment. According to the indictment [...] the management employed Eastern and South-Eastern Europeans through their Austrian firms and were endowed with employment contracts from their Luxembourg branch office. As a consequence, a considerable economic advantage was achieved because no social security contributions were made with regard to the special construct of contracting drivers.⁴²³

58 dead in port lorry – bodies were found in a lorry at Dover Docks

The bodies of 58 people have been found in the back of a lorry at the English port of Dover. The driver [...] has been arrested. The 54 men and four women [...] illegal immigrants and reports suggest they are of Chinese origin. Two survivors, both men, have been taken to hospital.⁴²⁴

Austria releases 71 bodies found in truck for burial

The 71 badly decomposed bodies found in the back of an abandoned truck in Austria last month [...]. The discovery of the remains, presumed to be those of refugees who had to rely on people-smugglers to help them cross the border between Austria and Hungary, caused widespread shock and drew attention to the conditions in which many have fled conflict and poverty in the Middle East, Africa and elsewhere. [...].⁴²⁵

Such and similar articles could be arranged in an almost endless series and concatenation.⁴²⁶ All these articles, both nationally as well as internationally, have a common denominator: the human factor is degraded to the economic commodity and converted as a source of income for criminal profit structures. For many smugglers, it appears to be quite unimportant how possible risks are in unequal relation to the calculated profit expectation. The smuggling fee is paid in advance

⁴²² dpa (2014): 39 people in a van, smuggler of immigrants arrested. Available from: http://www.pnp.de/region_und_lokal/landkreis_deggendorf/deggendorf/1485092_Schleuser-pfercht-39-Menschen-in-Kleintransporter.html (Accessed on 6th December 2016).

⁴²³ News (2006): *Ausbeutung von Fremden*. Available from: <http://www.news.at/a/ausbeutung-fremden-fraechter-karl-kralowetz-16-monaten-haft-138518> (Accessed on 8th December 2016).

⁴²⁴ BBC News (2000): Available from: http://news.bbc.co.uk/2/hi/uk_news/796791.stm. (Accessed on 8th December 2016).

⁴²⁵ Reuters (2015): Austria releases 71 bodies found in truck for burial. Available from: <http://www.reuters.com/article/us-europe-migrants-austria-bodies-idUSKCN0RB1Q420150911> (Accessed on 8th December 2016).

⁴²⁶ Note from the author: Articles published in print media are not well-founded sources for scientific research. Nevertheless, breaking news and background reports sometimes provided information to take this as an opportunity to conduct further research in the immediate context for examinations in the context of the thesis.

and the compensation is not dependent on the expected achievement of a successful shipment across the border. To this extent, it is better to understand that the smugglers, apart from their high-level criminal energy and their extremely brutal methods, do not want to show any empathy in the exertion of their misanthropic business model. Otherwise it cannot be understood that in the cases of smuggling, there is always a high risk for dramatic scenes and a danger to life and limb of the smuggled people, and a possible demise of the persons is accepted. Criminals consider this as possible collateral damage, which must be included in the calculation and ultimately only to the detriment of the smuggled people, who have already paid the money for the smuggling.

Recent developments of large-scale bulk smuggling are even beyond the described accepted circumstances with regard to possible fatalities of the individuals. Consciously, the smugglers risk the lives of these migrants, in order to force the potential rescuers to act and in doing so they even reduce their own risk of discovery. As already discussed, the smugglers send the freight ships on course to the coast of an EU MS, after these criminals have already left the bridges of the large freight ships and ensured their own safekeeping.

While the above-mentioned examples with the smuggled persons from Kosovo, China and Syria can clearly be attributed to the criminality of people smuggling, the example with the Austrian forwarding contractor shows connecting elements between human smuggling and THB (decisive criterion of exploitation); see section 5.5.4.

According to the Residence Act, the unauthorised entry or unauthorised residence of a foreigner shall be punishable by penalty of imprisonment.⁴²⁷ In addition, it is also punishable, if anyone gives help to foreigners for unauthorised stay and residence, acts for gain, acts as a member of a gang, which has come together for the purpose of committing such offences on a continuing basis, carries a firearm or another type of weapon in order to use said weapon, or subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of sustaining severe damage to their health. Exceptions here are explicitly aid services, if these are for humanitarian reasons. This regulation does not apply in all EU MS and has so far been interpreted and handled differently. For example, in

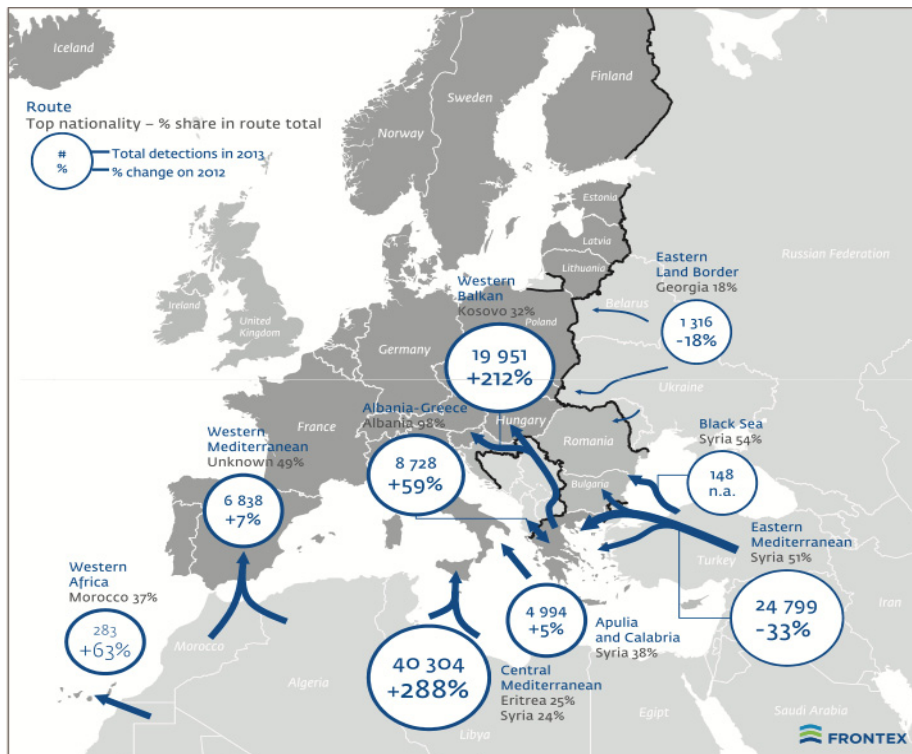
⁴²⁷ Residence Act in the version promulgated on 25th February, 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6 September 2013 (Federal Law Gazette I p.3556); Chapter 2 – Section 3 to 42 - Entry into and residence in the federal territory.

recent years professional fishermen, both from northern Africa and Italy, have repeatedly been the subject of prosecution in Italy. These fishermen, both with EU and non-EU citizenship, took refugees in the international waters of the sea and brought them to the closest possible destination, mostly Italian islands. Quite often, they were taken into pre-trial imprisonment and investigations on the suspicion of smuggling of migrants into an EU MS were initiated.

A decision was made in the European Parliament as a result of the aforementioned large-scale bulk smuggling case with the Austrian freight carrier, where all drivers were exploited under false pretences in the form of false self-employment and the criminals were convicted by a final court judgement.⁴²⁸ Among other things, it was acknowledged that this case was seen as a new *modus operandi* in connection with exploitation and slavery in road transport. It was also noted that this was not an individual case but was increasingly observed at the European level. Irregular migration into the EU area in general, as well as the phenomenon of smuggling of migrants to Germany in particular, correlates among other factors with the economic and security situation in the respective countries of origin as well as in the target country. A reciprocity is created by unstable political and/or economic conditions in the respective countries of origin, as well as in transit to the target countries. The current assessment of the global situation is expected to lead to a further increase of irregular migration in the future. In many cases, the commercial services of criminal smuggling networks are used for unauthorised entry and residence into the EU territory.

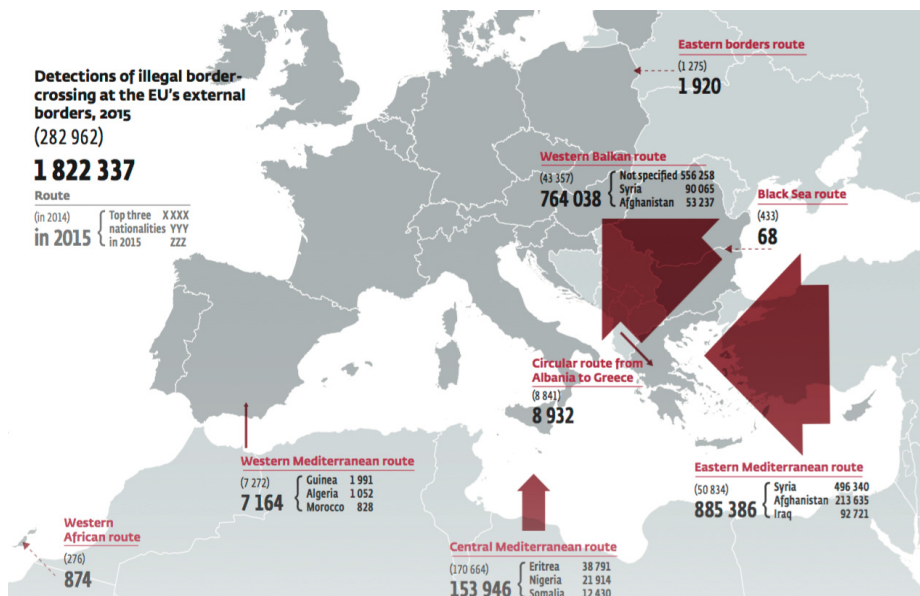
⁴²⁸ European Parliament (2002): Joint Motion for a Resolution (RC-B5-0046/2002) pursuant to Rule 37(4) of the Rules of Procedure by by Bartho Pronk, Astrid Lulling, Mathieu J.H. Grosch and Konstantinos Hatzidakis, on behalf of the PPE-DE Group, on the situation of lorry drivers in Luxembourg. Available from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P5-RC-2002-0046+0+DOC+XML+V0//EN> (Accessed on 8th December 2016).

Figure 5.6.5.1.: Frontex Annual Risk Analysis Report 2014



Source: Frontex⁴²⁹

Figure 5.6.5.2.: Frontex statistic irregular migrants 2015



Source: Frontex⁴³⁰

⁴²⁹ Frontex (2015): Annual Risk Analysis Report 2014. In 2013, most detections of illegal border-crossing were reported on the Central Mediterranean and Eastern Mediterranean routes; detections of illegal border-crossing in 2013 with percentage change on 2012 by route and top nationality detected, p.33. Available from: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf (Accessed on 8th December 2016).

⁴³⁰ Frontex (2016): Annual Risk Analysis Report for 2016. Detections of illegal border-crossing at the EU's external borders, p.16. Available from: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2016.pdf (Accessed on 8th December 2016).

5.6.6. Escape aid

In the context of the aforementioned chapters, providing aid to escape should be understood as assistance for a person to leave a country.⁴³¹ In the case of the escape aid, the essential elements of smuggling a person are fulfilled. If only material interest is important in the people smuggling criminality, the motive of an escape agent can also be for political, humanitarian, ideological or purely personal reasons. Thus, escape aid differs in a deeper way of looking at the crime of smuggling, although in fact it is identical, namely, the movement of a person across border circumventing legal norms. However, this legal assessment does not apply to the transfer of people from the former German Democratic Republic to the Federal Republic of Germany. The FRG had at no time recognised the GDR as a sovereign state, and also implied the political leadership that their citizens were denied the fundamental rights to free movement and settlement. These circumstances led Veigel to smuggle some 650 persons from the GDR into the West between 1961 and 1970.⁴³² He was repeatedly in acute mortal danger. Veigel helped these people in overcoming inner state barriers with counterfeit identity documents and was also actively involved in tunnel excavations from West to East Berlin, in order to help people to escape to freedom. He carried approximately 200 people alone in his legendary Cadillac DeVille Coupe, built in 1957, which after reconstruction provided a cavity in the front part of the car and made it possible to smuggle a person over one of the most strictly controlled stop checks of the 20th century. The conversion of the car cost a total of 50,000 Deutschmark and was thus ten times higher than the purchase price. Therefore, Veigel was forced to accept money to help cover these costs, and thus a sum of five to eight thousand German Marks had to be paid for each trip. After the fall of the wall, Veigel was able to gain insight into the records of the *Stasi*, the Ministry for State Security of the former GDR, and thus learned that the *Stasi* had already sought his capture with several arrest warrants. In 2012, Veigel and 14 other escape agents were awarded with the Federal Cross of Merit for their activities.

Veigel said at the ceremony: "I dedicate this award to those escapees who have been killed or arrested."

⁴³¹ Note from the author: Escape aid can also be understood as helping somebody to escape from a prison.

⁴³² Purschke, Thomas / Die Welt (2013): *Flucht aus der DDR – Als ein Cadillac Besitzer die Stasi narrete*. Available from: <http://www.welt.de/motor/article121675741/Als-ein-Cadillac-Besitzer-die-Stasi-narrte.html>. (Accessed on 8th December 2016).

Veigel, Burkhard (2014): *Fluchthilfe durch die Berliner Mauer von 1961 bis 1972*. Available from: <http://www.fluchthilfe.de/de> (Accessed on 8th December 2016).

5.7. 'The Boat is Full'

'The boat is full' - no other slogan could illustrate more plausibly the terrible situations and tragedies that occurred in the Mediterranean Sea and which still continue to this day.⁴³³ Names like 'Blue Sky', 'Ezadeen', or 'Carolyn Assense', are synonyms for a new, hitherto unknown dimension of despicable criminal machinations that accept and even provoke the death of thousands of people. In the meantime, the misery of refugees is increasing more and more to new and outrageous dimensions. The business with the 'boat people' is becoming increasingly brutal and brings about the concept of the industrialisation of TOC against humanity.⁴³⁴ They are veteran ships that have already passed their best days and are making their last journeys sailing under flags of convenience in the non-transparent world of international shipping.⁴³⁵

Around the turn of the year 2015, three large ships, which were used for transporting cattle, with hundreds of refugees on board, including pregnant women and many children, were left to fend for themselves on the rough sea by the smugglers.⁴³⁶ In the case of the 'Ezadeen', the smugglers had adjusted the automatic ship control system heading to the Italian coast and had then left the ship. About 80 nautical miles off the coast, the fuel was running low, which consequently led to a stoppage of the engines and power failure; the ship was pilotless and unable to manoeuvre.

The ship threatened to fall on the rocks of the Italian coast and sink, which could very well have meant the death of hundreds of people. In the end almost all the refugees of the aforementioned examples were saved because, on the one hand,

⁴³³ Note from the author:

Steiger, von Eduard (1942): On 30th August 1942, the Swiss Federal Councillor Steiger gave a speech at a Christian brass music festival in Hürlikon. Under the banner of "Your Master Jesus," he tried to justify the disputed refugee policy during the Second World War. He said: "Whoever has to command a heavily occupied small rescue boat, ... thousands of victims of a ship disaster are crying for salvation, must be hard when he cannot take it all in. Yet he is still human when he warns at times of false hopes and at least tries to save those who have already been taken." From: "Target Switzerland - The Geneva Border in the Second World War" by Claude Torracinta and Bernard Romy, SF / DRS 2002 (3sat, 2nd September, 2002).

Häsler, Alfred (1980): "The boat is full" is the filming of a novel by the Swiss writer Häsler by director Imhoof from 1980. In 1942, six persons succeeded in escaping from Nazi-Germany to neutral Switzerland. Shortly thereafter, the then government decides to tighten up the conditions for the reception of refugees and their legal recognition and thus protection against deportation, and in this case even to certain death. Despite the support of the local population to grant the refugee refugees respect for the human dignity, those people of the group who were subjected to racist persecution during the Nazi regime were sent back by the Swiss authorities and handed over to their slaughterers. In contrast, the 'politically persecuted' of this group were allowed to remain in Switzerland.

⁴³⁴ Kleinschmidt, Julia (2013): *Die Aufnahme der ersten 'boat people' in die Bundesrepublik*. Available from: <http://www.bpb.de/geschichte/zeitgeschichte/deutschlandarchiv/170611/die-aufnahme-der-ersten-boat-people-in-die-bundesrepublik> (Accessed on 8th December 2016).

⁴³⁵ Bachstein, Andrea (2015): *Flüchtlingseend im Mittelmeer – Wie das Boatpeople Business immer brutaler wird*. Available from: <http://www.sueddeutsche.de/panorama/fluechtlingseend-im-mittelmeer-wie-das-boatpeople-business-immer-brutaler-wird-1.2289139> (Accessed on 8th December 2016).

⁴³⁶ Note from the author: Stand 5th January 2015.

happy circumstances contributed to this, and on the other hand rescue campaigns from the 'Triton' operation (see point 5.8) from the Frontex program were successful. Nevertheless, in the overall assessment of the situation, a new and hitherto unknown degree of atrocity was recognised, brought about by the smugglers.

Having so far used stacked fishing boats from *Lampedusa*, North Africa and other ports of the Mediterranean Sea, all of which appeared to be highly unseaworthy, the people smuggler gangs started pursuing new strategic approaches.⁴³⁷ Corresponding assessments showed that the Turkish port of Mersin played a central role as a new centre of organised people smuggling.⁴³⁸ According to unconfirmed estimates, at this time there were up to 700,000 refugees awaiting transport. The smuggling not only continues unabatedly along the different routes of the Mediterranean Sea, the smugglers also push new *modi operandi* in new dimensions of cruelty, which have not been considered possible until now. Above all, the nature of the means of transport and the accompanying dimensions of transport facilities have changed. The abandoned freight ships leave the harbours at night, in order to be loaded with their human cargo in the vicinity of the coast. Small boats put the refugees on the waiting ship under the cover of darkness, trying to escape the control of the harbour master or coast guard.

In the operation 'Mare Nostrum' (see point 5.8), Italy's coast guard saved about 170,000 'boat people' mainly from inflatable boats, which could withstand only a few hours on the rough sea, as reported by Admiral Binelli Mantelli, Marine Commander.⁴³⁹ The smugglers left the refugees to their fate on these potentially fatal passages and instructed the people in the use of a satellite telephone with a stored emergency number connected with the vague hope that a 'Mare Nostrum' ship would have mercy on the refugees.

As a result of this new approach by smugglers in terms of profit maximisation, it is safely assumed that these TOC groups are oriented to the market laws according to the premise of supply and demand and simply want to think and act in larger dimensions. The slogan is: from an inflatable boat to a cargo ship, from the

⁴³⁷ Note from the author: *Lampedusa* is the largest Italian island of the group of the Pelican Islands in the Mediterranean between Tunisia and Sicily. The island belongs to the municipality of *Lampedusa e Linosa* in the Italian province of Agrigento.

⁴³⁸ FAZ (2015): *Menschenschmuggel nach Europa*. Available from: <http://www.faz.net/aktuell/politik/ausland/europa/tuerkei/ein-zentrum-des-menschenschmuggels-liegt-in-der-tuerkei-13374531.html> (Accessed on 8th December 2016).

⁴³⁹ Binelli Mantelli, Luigi, Chief of Defence–Italy. Available from: http://www.nato.int/cps/el/natohq/who_is_who_99236.htm (Accessed on 8th December 2016).

conventional and occasional people smuggling business to a profitable multimillion-dollar business and thus to the systematic industrialisation of OC powered by a multiplication of the smuggling fees.⁴⁴⁰ In the case of fishing boats and inflatable dinghies, refugees were asked for the fee of USD 1,000. Now, the smugglers ask for the payment of up to USD 9,000 per person, on the grounds that freighters provide more security and therefore people have to pay a higher price, as reported by refugees in the initial interviews.

However, not only have the ship categories and transport capacities changed, but also the routes (see figures 5.6.5.1 and 5.6.5.2). It is true that Libya remains as a 'failed state' and thus, without any state order, remains one of the greatest starting points for irregular migrants. What was new is that ships from Turkish, Syrian and even Greek and Cypriot ports were starting to bring people illegally into the territory of the EU. This demonstrates that TOC groups have taken over this business, and this is not only rated as a cross-border OC, but also as a big transnational threat.

'*The boat is full*' becomes synonymous both for the overcrowded vessels as well as the partly hysterical societal reactions of EU countries that groan under the often only subjective burden of the refugee influx. While a few EU MS received some hundreds of thousands of refugees, the neighbouring border areas around Syria accommodate millions of refugees.

5.8. 'Mare Nostrum' and 'Triton'

The operation 'Mare Nostrum' was considered a successful sea rescue.⁴⁴¹ From autumn 2013 onwards, almost every week it was possible to read reports of how marines of the Italian navy took irregular migrants from the Mediterranean Sea on their ships and thus saved them from certain death. The opportunity for the implementation of this unique marine operation was, however, a more than sad inducement and one of the biggest refugee disasters on 3rd October 2013. In front of the Italian Mediterranean island of *Lampedusa*, many people lost their lives, including many children. Many white children's coffins had to be lined up, and Pope Francis spoke of disgrace, as he stood on the very spot. Ironically, it was Italy that

⁴⁴⁰ Die Welt (2015): *Das Facebook Reisebüro für verzweifelte Flüchtlinge*. Available from: <http://www.welt.de/politik/ausland/article136045953/Das-Facebook-Reisebuero-fuer-verzweifelte-Fluechtlinge.html> (Accessed on 8th December 2016).

⁴⁴¹ Ministeria dell Difensa – Mare Nostrum Operation (2013): Operation Mare Nostrum (OMN) was established by the Italian Government last 18th October 2013 to tackle the dramatic increase of migratory flows during the second half of the year and consequent tragic ship wreckages off the island of *Lampedusa*. Available from: <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx> (Accessed on 8th December 2016).

was always standing for a merciless rejection of 'boat people' and suddenly it started the biggest rescue operation in European history. Within a year, the Italian helpers saved more than 150,000 people from the Mediterranean Sea, which certainly led the much-scolded EU walls-up policy to absurdity (key word 'Fortress Europe').

'Mare Nostrum' stands first and foremost for a major accomplishment of the Italian government and navy, which ensured the patrolling and surveillance of the Italian waters and the international sea, both by sea and air. However, the government in Rome ended the mission not only because it consumed about 10 million Euros every month, but also because the rescue of the migrants is a European task and responsibility. To this end, Interior Minister Alfano stated: "The sea belongs to all of us, and it goes beyond a national mind-set. Our goal, my goal is that 'Mare Nostrum', which has been from the very beginning established temporary, will be handed over to Frontex."⁴⁴²

Leading Italian politicians were very pleased with this role. On the one hand, the other EU MS could be shown that one was aware of its humanitarian responsibility and consequently had fulfilled this role. On the other hand, one could argue with a certain justification that one felt left alone by the other EU MS in coping with the refugee attack. To this end, the Dublin III regulation hated by Italy was called into question, and the simplest measures were taken such that the arriving refugees were simply not registered and thus did not arrive in Italy from a legal point of view. Sea rescue was also discontinued by the Italian Government for financial reasons and was replaced by the EU initiative 'Triton'.⁴⁴³ In contrast to 'Mare Nostrum', 'Triton' was much smaller in terms of technical equipment and staff, but with the expectation of being similarly effective and successful.

⁴⁴² The Guardian (2014): Italy: end of ongoing sea rescue mission 'puts thousands at risk'. Available from: <https://www.theguardian.com/world/2014/oct/31/italy-sea-mission-thousands-risk> (Accessed on 8th December 2016).

⁴⁴³ Frontex Joint Operation 'Triton' (2014): Frontex has finalised all preparations for the launch of Joint Operation *Triton* on 1st November 2014. With a monthly budget of EUR 2,9 million the agency will coordinate the deployment of three open sea patrol vessels, two coastal patrol vessels, two coastal patrol boats, two aircraft, and one helicopter in the Central Mediterranean. Available from: <http://frontex.europa.eu/news/frontex-launches-joint-operation-triton-JSYpL7>. (Accessed on 11th December 2016).

Table 5.8.1.: 'Mare Nostrum' and 'Triton' (own presentation)

	'Mare Nostrum' ⁴⁴⁴	'Triton' ⁴⁴⁵
Initiator	Italy	EU Frontex
Vessels	32	7
Submarines	2	–
Airplanes	Upon need	4
Helicopters	Upon need	1
Drones	2	–
Staff	900	65
Costs per month in Mio. €	9	3

Just by looking at the hard facts, it becomes clear that 'Triton' and 'Mare Nostrum' are not comparative since 'Triton' did not provide the same framework capacities as the Italian navy has done. Frontex, the EU border agency, therefore immediately made clear that 'Triton' could only be seen as a supplement to further rescue programs. However, to what extent other rescue programs would look, is yet to be determined.

A spokeswoman from Frontex stated: "The role of Frontex is not to replace the border controls of Italy or any other EU MS. We only provide additional technical equipment or personnel for these particularly vulnerable countries."⁴⁴⁶

According to a postulation from the Federal Minister of the Interior De Maizière, 'Mare Nostrum' was to be replaced by a new mission, which will serve predominantly to the orderly repatriation of refugees. This was the result of a notification from De Maizière to the responsible EU Internal Affairs Commissioner Malmström, in which it was said: "Europe should use the instruments it has created, that is through Frontex-coordinated operations. We are calling for a 'Frontex plus' operation in which 'Hermes' and 'Aeneas' operations are to be consolidated and strengthened under this action plan."⁴⁴⁷

⁴⁴⁴ Ministeria della Difesa (2013): Operation 'Mare Nostrum' was launched by the Italian Government on 18th October 2013. Available from: <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx> (Accessed on 11th December 2016).

⁴⁴⁵ European Commission (2014): Frontex Joint Operation 'Triton' – Concerted efforts to manage migration in the Central Mediterranean. As from 1st November 2014, the Frontex coordinated joint operation 'Triton' started its activity in the Central Mediterranean in support of the Italian efforts. Available from: http://europa.eu/rapid/press-release_MEMO-14-566_en.htm (Accessed on 11th December 2016).

⁴⁴⁶ Cooper, Izabella (2014): Frontex Spokesperson. Available from: <http://www.euractiv.de/sections/eu-aussenpolitik/asyl-auffanglager-afrika-mehr-schutz-fuer-fluechtlinge-oder> (Accessed on 11th December 2016).

⁴⁴⁷ European Commission (2014): Frontex Joint Operation 'Triton' – Concerted efforts to manage migration in the Central Mediterranean. As from 1st November 2014, the Frontex coordinated joint operation 'Triton' started its activity in the Central Mediterranean in support of the Italian efforts. Available from: http://europa.eu/rapid/press-release_MEMO-14-566_en.htm (Accessed on 11th December 2016).

Further the latter said: "We need to improve the implementation of our common return policy [...] within the EU with third countries. The work of identity verification of irregular migrants would, together with the repatriation policy, also be an integral part of 'Frontex plus' operations."

On 25th April 2015, *The Economist* reported that the EU's policy on maritime refugees has gone disastrously wrong. Its management on people who are attempting to enter the EU across the respective Mediterranean routes is disastrous and calls it a *Nightmare Nostrum* in allusion to 'Mare Nostrum'.⁴⁴⁸

Since 7th October 2015, the European Union Naval Force – Mediterranean Operation Sophia (EUNAVFOR MED operation Sophia) moved to phase 2 International Waters, which entails boarding, search, seizure and diversion, on the high seas, of vessels suspected of being used for people smuggling or THB was agreed by the EU Ambassadors within the Security Committee on 28th September. The 'Sophia' operation is but one element of a broader EU comprehensive response to the migration issue, which seeks to address not only its physical component, but also its root causes as well including conflict, poverty, climate change and persecution.

On 20th June 2016, the Council extended the 'Sophia' operation mandate reinforcing it until 27th July 2017 by adding two supporting tasks:

- Training of the Libyan coastguards and navy
- Contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya

EUNAVFOR MED operation Sophia is designed around 4 phases:

- The first consists of the deployment of forces to build a comprehensive understanding of smuggling activity and methods, and this phase is now complete.
- Phase two foresees the boarding, search, seizure and diversion of smugglers' vessels on the high seas under the conditions provided for by applicable international law. This activity will be extended into Territorial Waters upon the release of any applicable United Nation Security Council Resolution (UNSCR) and the concerned coastal State consent.
- The third phase expands this activity further; up to and including taking operational measures against vessels and related assets suspected of being used for human smuggling or trafficking inside the coastal state's territory. Once again, this is subject to the necessary legal framework established by UNSCR and following coastal state consent.
- Finally, the fourth and last phase will consist of withdrawal of forces and completion of the operation.

⁴⁴⁸ The Economist (2015): Europe's boat people, p.11. Available also from: <http://www.economist.com/news/leaders/21649465-eus-policy-maritime-refugees-has-gone-disastrously-wrong-europes-boat-people> (Accessed on 11th December 2016).

Table 5.8.2.: 'Mare Nostrum', 'Triton' and 'Sophia' (own presentation)

	'Mare Nostrum'	'Triton'	'Sophia' ⁴⁴⁹
Initiator	Italy	EU Frontex	EU EEAS
Vessels	32	7	8
Submarines	2	–	–
Airplanes	Upon need	4	3
Helicopters	Upon need	1	4
Drones	2	–	–
Staff	900	65	Unknown
Costs per month in Mio. €	9	3	Contribution from 25 EU MS

5.9. Preliminary conclusion

- At the beginning of the 21st century, the world is facing a significant number of wars, conflicts and crises. Various terrorist regimes exploit these circumstances of the destabilisation of entire regions, using hitherto unknown waves of extreme violence.
- During the respective phases of the destabilisation of states (from failing to collapsed states) many millions of people lost their existential livelihoods, had to experience inexplicable suffering and were expelled. This triggered the largest refugee wave after the Second World War.
- The refugee streams in large sections of populations from crisis areas in the Middle East, North Africa, Eastern Europe and Central Asia remain unabated.
- TOC networks managing the refugee flows to Europe in new hitherto unknown dimensions and industrialising the crime of migrant smuggling and other related criminal offences to a lucrative billions business by using the most modern communication networks such as Facebook.⁴⁵⁰
- The current models applied by the EU, individual EU MS, and international organisations in terms of successful intervention and crisis management will

⁴⁴⁹ European Union (2016): European Union Naval Force – Mediterranean Operation Sophia (EUNAVFOR MED operation Sophia). Legal documents available from: https://eeas.europa.eu/csdp-missions-operations/eunavfor-med/12353/background-documents-and-legal-basis-eunavfor-med-operation-sophia_en (Accessed on 11th December 2016).

⁴⁵⁰ Die Welt (2015): The Facebook travel agency for desperate refugees. "Salam Aleikum! A trip from Mersin to Italy on a large ship (84 meters). It is provided for all needs: from food to drink to milk for children. Cost: 4500 dollars - if the number of travellers is not less than 50 people. The journey begins in five days." Available from: https://article.wn.com/view/2015/01/05/Das_FacebookReiseburo_fur_verzweifelte_Fluchtlinge_q/ (Accessed on 11th December 2016).

not change very much if no holistic methods of resolution will be developed and implemented.

- The systems of border security and management, border protection and surveillance, as well as models of border control currently applied by EU MS and neighbouring non-EU countries will face significant and sustainable changes.

People were expelled and escaped from their homelands to save themselves from civil wars, massacres, persecution, violence and oppression or simply to escape the sheer poverty. Europe is experiencing a surge of the desperate as a result of the sometimes dramatic upheavals and scenarios as discussed in Chapter 3.

A situation, which was not really unusual for the circumstances at that time, was caused by Tunisian officials, by way of illegal money collecting, towards Mohamed Bouazizi, a vegetable merchant, which triggered first the 'Jasmine Revolution' and finally in a domino effect the 'Arab Spring', as described in section 3.6.4. On the other hand, constellations based on material deficiencies can also cause dramatic and fatal dynamics. Schattenberg assumes that the dissolution of the former Soviet Union was not only caused by ideological but also economic factors.⁴⁵¹

As a matter of fact, the failure of the communist plan economy only became apparent when the population could only be provided with the most necessary basic foodstuffs, while the political leadership lay in abundance. Compared to the dissolution of the former Soviet Union, however, the recent crises were significantly marked by a technical revolution in digitalisation. As a continuation of the 'Jasmine Revolution' huge criticism of the government was communicated through short messages via smart phones to organise massive protests and revolts against the rulers, which dramatically accelerated the processes of the 'Arab Spring'. As a direct result of these crises and unrest, a total of 276,000 irregular migrants came to the EU in 2014, an increase of 138 per cent compared to the year of 2013, and the influx of irregular migrants into the EU was even more dramatic in 2015.⁴⁵²

"The answer [to the current challenges] is definitely not Fortress Europe," said Avramopoulos. "History has proven that fortresses built for the protection from

⁴⁵¹ Schattenberg, Susanne (2011): *Das Ende der Sowjetunion in der Historiographie*. Available from: <http://www.bpb.de/apuz/59630/das-ende-der-sowjetunion-in-der-historiographie?p=all> (Accessed on 11th December 2016).

⁴⁵² FAZ (2015): *Zustrom von Migranten* – Number of illegal immigrants increased by 138 per cent. Available from: <http://www.faz.net/aktuell/politik/europaeische-union/zahl-illegaler-einwanderer-um-138-prozent-gestiegen-13368879.html> (Accessed on 11th December 2016).

external threats ended up enslaving those they were built to protect".⁴⁵³ With this statement, the then designated EU interior commissar surprised his critics at the mandatory hearing in the Internal Committee of the EU Parliament. He pleaded for the opening of legal immigration channels to the EU and noted that the 'fortress Europe' is not a solution. He also noted that human rights are the top priority. At the same time, Avramopoulos wants to see more transfer of responsibility and competence to the EU border agency Frontex and the respective decision-makers are to create a "true European border system" at both national and EU levels. Frontex should ideally be further developed into an EU agency that is designed to protect and control EU external borders while protecting human rights and taking into account humanitarian obligations. He asked the EU parliamentarians for assistance in the realisation of this new idea with the creation of a European border surveillance team, which supports the national border guards in monitoring the EU's external borders.

"*Schengen* is one of the greatest achievements of European integration," Avramopoulos said. "External borders must be policed effectively without creating a 'Fortress Europe'," he repeated.⁴⁵⁴

The assumption is that the statements of the EU Commissioner should meet the demands of the traditional EU parliamentarians.

"We expect from the designated Commissioner Avramopoulos to strengthen relevant EU agencies such as Frontex and the European Asylum Support Office (EASO) in terms of financial and human resources. A comprehensive migration strategy must be developed for the coming years. This calls for correct implementation of the current asylum law by all EU MS, but also a more balanced burden-sharing approach in the area of migration within the EU. We are ready to work with the new Commissioner to develop such a strategic approach," said Monika Hohlmeier, Member of the European Parliament.⁴⁵⁵

In his role as EU Commissioner, Avramopoulos therefore called for improved coordinated methods and actions in the fight against TOC and improved surveillance of EU external borders and national borders of the EU MS. Turkey plays an important role in tackling the problem of irregular migration and

453 Euractiv.de (2014): Immigration Commissioner denounces 'Fortress Europe' at hearing. Available from: <https://www.euractiv.com/section/justice-home-affairs/news/immigration-commissioner-denounces-fortress-europe-at-hearing/> (Accessed on 11th December 2016).

454 Ibid.

455 Ibid.

combating the industrialisation of people smuggling. In 2014, more than 207,000 irregular migrants came to the EU via the Mediterranean Sea.

As a special feature, it was noted that a total of twelve major people smuggling incidences were carried out with large freight ships since September 2014.⁴⁵⁶ With these yet unknown large transport units, the TOC actors have set new standards and one can speak of the industrialisation of OC. Avramopoulos' plea was almost helpless, when he stated that the influx of irregular migrants would continue to increase if the EU does not take necessary coordinated actions and improve cross-border cooperation, given the fact of the large number of conflicts in Europe, the Middle East and Northern Africa. The Commissioner for Internal Affairs was particularly surprised by the fact that the Union must primarily fight against people smugglers by exchanging collected data more quickly and more extensively between EU MS. So in theory, with the improved exchange of relevant data and a clearer and more open communication system in operation between them, then this problem should be resolved forthwith. However, this is an abundantly naive assumption given the brutality shown by the people smugglers, and the lengths they will go to in order to quench their immeasurable thirst for more profit.

As a matter of fact, however, Turkey must be decisively involved in combating the highly professional OC groups. For example, the Turkish port of Mersin in the southeast of Turkey has developed into a centre of TOC in the area of people smuggling and the Turkish police have done very little or nothing to tackle these TOC gangs. It is also necessary to take account of Italy's former Prime Minister, Matteo Renzi, who asked the EU to face the Libyan problem as most of the refugees from Libya are crossing the Mediterranean Sea.⁴⁵⁷ Ever since Muammar al-Gaddafi was overthrown in the fall of 2011, there is anarchy and chaos in the country. The state order has almost collapsed with the result that criminal organisations are in charge now.

As described in section 5.4.5., the Dublin III Regulation provides the legal basis for establishing the criteria and mechanism for determining the EU MS responsible for examining an asylum application lodged in one of the EU MS by a third country national or a stateless person. This mechanism is known as the Dublin procedure and applies to 32 countries, which include the EU MS, Iceland, Norway, Liechtenstein and Switzerland, which are referred to as the Dublin countries. Thus,

⁴⁵⁶ Note from the author: Stand 31st January 2015.

⁴⁵⁷ Arens, Marianne (2015): *Italien drängt auf Militärintervention in Libyen*. Available from: <https://www.wsws.org/de/articles/2015/03/03/ital-m03.html> (Accessed on 11th December 2016).

the legislative framework of the EU seems to have met with legal responsibility and obligations to carry out the procedure in theory, but only seemingly.

- If EU MS officials do not register incoming asylum applicants (e.g., to fingerprint and photograph individuals in line with EURODAC guidelines) and do not initiate the legally prescribed measures to identify this person, both within the context of nationally prescribed criminal procedures and Dublin III procedural requirements, the consequence is that the EU MS concerned is withdrawing from responsibility.
- Further, it was also observed that EU MS officials took care of arriving refugees only in the context of humanitarian primary care. Then they encouraged the arrivals to continue their journey and officials from competent national authorities refrained from the conduct of due process.
- Subsequently, EU MS have actively engaged through coordinated actions to onward transport the incoming refugees to an adjacent EU MS.

The spokespersons of the Italian authorities complain regularly that they cannot manage the influx of refugees, as they would be completely overburdened both in terms of shortage of staff and lack of reception capacities.⁴⁵⁸ However, this should not be considered as a pseudo-justification for withdrawing from its legal obligations in the initiation of legal procedures, as well as from the contractual agreements of the EU. On their arrival in Germany, refugees declared during initial interviews that officials from the responsible Italian asylum authorities did not register the refugees, but simply put them into trains and sent them onward to another EU MS. So simple, it would seem, to undermine the Dublin procedure.

However, this scenario can be further considered. While the Austrian border authorities were still trying very hard to prevent the influx of irregular migrants from Italy, they soon reached the limits of their resilience.⁴⁵⁹ As a result, the intensity of entry control from Italy as it was initially performed could no longer be maintained, which meant that the numbers of detected irregular migrants were noticeably diminishing. The irregular migrants were then taken up somewhat later after crossing the border into Germany. The proof of the thesis is provided: Irregular migration is a control-related offence.

⁴⁵⁸ Pauly, Marcel (2014): *Der Verteilungskampf*. Available from: <http://www.spiegel.de/politik/deutschland/asylbewerber-in-europa-wie-eine-gerechte-verteilung-aussehen-koennte-a-997386.html> (Accessed on 11th December 2016).

⁴⁵⁹ Federal Ministry of Interior Austria (2015): Statistics Asylum 2014 and 2015. Available from: http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/start.aspx (Accessed on 11th December 2016).

Another phenomenon related to irregular migration was observed after the abolition of the visa requirement for North Macedonia and Serbia on 19th December, 2009 and Bosnia and Herzegovina as of 15th December, 2010, whereupon the number of asylum applications submitted by persons from these countries to Germany increased dramatically. The asylum applications submitted by these people who are seeking shelter in Germany because of the general political situation in their countries and the legal presumption that political persecution, inhuman or degrading punishment or treatment would take place, are presumably mistaken. After taking stock of the situation, the Federal Government "has formed an overall judgment on the conditions relevant to persecution in the respective state, based on the legal situation, the application of the law and the general political conditions", and is determined to classify these countries as safe countries of origin.⁴⁶⁰ The Federal Office confirms this assessment for Migration and Refugees (*BAMF*) and in a non-exhaustive list Bosnia and Herzegovina, North Macedonia and Serbia are classified as "safe countries of origin".⁴⁶¹

As already shown in figure 5.2.3. in 2015 (January to November) a total of 109,915 persons with nationalities from Albania, Kosovo, Serbia and North Macedonia have submitted asylum applications to German competent authorities. This corresponds to a share of 28.1 per cent from a total of 392,028 asylum applications, in comparison to 24.9 per cent from a total of 173,072 asylum applications in 2014; subsequent applications were not taken into account here.

Extract from the draft law of the Federal Government (18/1528):

[...] As a result of the many asylum applications, which are mostly not asylum-relevant, the federal, state and municipal authorities are burdened with considerable costs for the implementation of the procedures and for the provision of asylum seekers in Germany. [...].⁴⁶²

⁴⁶⁰ Parliament of the Federal Republic of Germany (2014): *Benennung asylrechtlich sicherer Herkunftsländer*. Available from: <http://www.bundestag.de/dokumente/textarchiv/2014/asylrecht/281460> (Accessed on 11th December 2016).

⁴⁶¹ BAMF (2015): Glossary – Safe countries of origin. Available from: <http://www.bamf.de/DE/Service/Left/Glossary/function/glossar.html?nn=1363008&lv2=1364198&lv3=1504416> (Accessed on 11th December 2016).

⁴⁶² Parliament of the Federal Republic of Germany (2014): *Benennung asylrechtlich sicherer Herkunftsländer*. Available from: <http://www.bundestag.de/dokumente/textarchiv/2014/asylrecht/281460> (Accessed on 11th December 2016).

Chapter 6: Summary of the analytical framework

Parallel to an increasingly rapid globalisation, a growing endeavour is becoming apparent in the fields of security and stability. To date, since the terrorist attacks on the World Trade Centre in New York on 11th September 2011, many Western states are repeating the need for expanded powers in the fight against new threats identified as an insatiable need for greater security. The calls for a 'strong state' became steadily louder and have not diminished to this day. To this end, extreme pressure is placed on the public administrative body to ensure that all potential threats are taken seriously and that every eventuality is covered. Similar to the phenomenon of the reciprocal effects of control-related-offences, this demand for more and more security leads to a dilemma, since the perfection of security-relevant standards automatically generates new discussions about further identified risks.⁴⁶³ As a result, a general sense about what represents danger is getting lost, potentially even being replaced by a subjective sense of security, according to which people believe they live in a world in which they constantly feel under threat and in harm's way. Consequently, a spiral in the desire for more and more security has ensued.

The state as guarantor with the constitutive mandate for the provision and the greatest possible warranty of public security and order is continually driven by the sensitisation of society to create new security frameworks. Consequently, the question arises whether the state is in a position to satisfy this desire for the perfect sense of security. It is self-evident that no state can guarantee a 100 per cent security and yet a state must meet the needs of its society in order to restore the subjective sense of security.

Hence, it would appear a contradictory situation exists, which at first glance seems insoluble.

⁴⁶³ *Rechtslexikon* (2007): The term of 'control-related offences' is used, whose commission is not noticed until the law enforcement authorities make appropriate inquiries. There is no victim in the case of control-related offences, which reports the offence on its own initiative to law enforcement agencies. For example, drug-related crime: the more control, the more criminal offences will be disclosed. Available from: <http://www.lexexakt.de/glossar/kontrolldelikt.php> (Accessed on 6th December 2016).

"The European Security Strategy was adopted in December 2003 and has become a landmark in the development of the EU's foreign and security policy. For the first time, the EU agreed on a joint threat assessment and set clear objectives for advancing its security interests, based on our core values. Nothing describes our aspirations better than the title of the Strategy: 'A Secure Europe in a Better World' - that is the ultimate aim of our actions."

Javier Solana
Secretary-General of the Council of the EU
High Representative for the Common Foreign and Security Policy⁴⁶⁴

Within the framework of an analytical analysis of the broad areas of transnational threats, organised forms of crime, as well as the implications of irregular migration, the objective of the study was not the elaboration of a single universally valid 'main theory'. Rather, it was an effort to develop a comprehensive analytical approach to these main categories, which is based on the findings of both sound scientific as well as political debate surrounding these urgent questions. One of the key results to be achieved through this process is a clearer understanding of the definitions used, as well as the development of a more differentiated language. Sustained stability requires sustainability through long-term commitment.⁴⁶⁵

With the development and implementation of a common European Security Strategy (ESS) and the necessary measures, innovative ways must be taken up to meet new challenges in terms of internal and external security and the need to take responsibility through the course of time. The EU acts as a guarantor of stability and prosperity, but above all for peace with the accompanying need for security. Democracy and prosperity are directly interwoven with the aspects of public security and order. To this end, the EU has created a stable framework with comprehensive measures for a thorough and extensive neighbourhood policy. In the implementation of the security strategy, the EU is increasingly assuming greater responsibilities in the areas of crisis intervention and conflict management. Even more than 25 years after the Cold War, Europe is more than ever challenged by complex transnational threats and enormous challenges in terms of internal and external security. Both in Europe and in other regions of the world there are a large number of centres of conflict with huge potential for additional

⁴⁶⁴ European Union (2009): European Security Strategy – A secure Europe in a better world. The European Council adopted the European Security Strategy (ESS) in December 2003. For the first time, it established principles and set clear objectives for advancing the EU's security interests based on our core values. It is comprehensive in its approach and remains fully relevant.

Solana, J. Secretary-General of the Council / High Representative for the Common Foreign and Security Policy (CFSP). The Office of the High Representative for the CFSP was created by the Amsterdam Treaty (1997/99) (Article 18 (3) TEU, Article 26 TEU, Article 207 (2) EC). Appointed by the Council of the EU, it was exercised over two terms by Javier Solana (1999-2004, 2004-2009). As a High Representative for the CFSP, Mr. Solana was also Secretary General of the Council of the EU, member of the Troika and chairman of ESDP agencies (today: CSDP agencies): 1.) EU Institute for Security Studies, 2.) European Defence Agency, p.3.

⁴⁶⁵ See Annex 6: Definitions in the area of integrated border management.

transnational threats. These sorts of crises are undermining state administrative structures, causing instability, thereby fostering the emergence of fragile⁴⁶⁶ states as well as failed⁴⁶⁷ states, which negatively impact our security standards coupled with increasing new risk potentials. These interventions have contributed decisively to the development of violent extremism to terrorism as well as the phenomenon of foreign terrorist fighters, but also promoted radicalism within the EU MS. The EU and its adjacent neighbours face huge new challenges to avert transnational threats and combat TOC with the help of fully professional border management agencies, modern border guard systems, improved border security and effective border controls. With the successful implementation of the ESS, the EU wants to make a significant contribution to peacekeeping in the world. This is aimed at combating inequality and poverty, protecting human rights, promoting responsible governance and providing support for self-help and addressing crisis interventions, along with conflict management.

During the last 15 to 20 years, the EU has been able to gather extensive experience in the fields of the Common European Security and Defence Policy as an integral part of the CFSP and to develop new methods of practical application according to the principles of best practices developed based on lessons learned (for further explanations see point 12.3.). To this end, the EU has contributed decisively to the stabilisation of crises through deployed missions to consolidate peace (see point 3.7.). Ensuring internal and external security requires not only an ESS, shared protection of vested rights, legally binding frameworks and treaties but also effective implementation, supported by a common political will and reliability in terms of full compliance with these agreements and their consistent implementation.

⁴⁶⁶ Federal Ministry for Economic, Cooperation and Development (2016): G 7 Germany 2015. Charter for the future. Fragile states, in which the principles of good governance are not being practised, pose a risk to regional and global security and undermine international efforts to attain the Millennium Development Goals. Fragile states are those in which state institutions are very weak or at risk of collapse, and whose populations suffer from widespread poverty, violence and arbitrary rule. Women, children and ethnic or religious minorities are especially affected. A state's fragility may also correlate with a lack of legitimacy. Available from: http://www.bmz.de/en/what_we_do/issues/Peace/fragile_states/index.html?follow=adword (Accessed on 6th December 2016).

⁴⁶⁷ Global Policy Forum (2016): Failed states can no longer perform basic functions such as education, security, or governance, usually due to fractious violence or extreme poverty. Within this power vacuum, people fall victim to competing factions and crime, and sometimes the United Nations or neighbouring states intervene to prevent a humanitarian disaster. However, states fail not only because of internal factors. Foreign governments can also knowingly destabilize a state by fuelling ethnic warfare or supporting rebel forces, causing it to collapse. Available from: <https://www.globalpolicy.org/nations-a-states/failed-states.html> (Accessed on 6th December 2016).

A functioning and evolving security policy in the EU, together with third countries involved, must act in a timely and coherent manner and be supported by the people. Organised forms of cross-border crime, transnational threats and irregular migration threaten the fragile construct of an objective and subjective perception of public security and order. Ensuring internal and external security in the endeavour for peace must involve all possible actors in order to achieve sustainable solutions to conflicts. Political leaders have to understand that they are being held criminally responsible for their actions with regard to criminal acts against humanity and the plundering of state assets.⁴⁶⁸ They must realise that there will be no safe hiding place in this world for them, where they would not be traced by the community of states. The political leaders of all countries must understand and respect unconditionally the basic principles of the UN Charter and the principles of the OSCE (as defined in the BSMC, see also point 13.1.1.). Thus, respect for the sovereignty, independence and territorial integrity of states, as well as a strictly peaceful settlement of disputes, are absolutely non-negotiable. Therefore, the EU must take a more responsible position beyond territorial Europe in order to cooperate in a continuous renewal of the complex systems of order.

Without a doubt, the UN is at the forefront of the international community, and all efforts by the EU to identify and deal with security-relevant challenges must be closely coordinated with the UN. In the past 20 years, the EU has made great progress in the development and implementation of security policy strategies and concepts and has made significant contributions to the fight against cross-border crime, transnational threats and irregular migration, as well as important contributions to internal and external security. However, the latest developments regarding irregular migration triggered by the phenomena as described in chapter 3 have shown the great challenges that are at stake here. On the one hand, it is important not to let these humanitarian catastrophes arise at all. On the other hand, it is important to use the learning effects as quickly as possible to the extent to which law enforcement agencies can effectively and sustainably cooperate in a transnational manner in order to combat TOC and the proliferating smuggling criminality. In order to exploit this potential, the EU needs to work more coherently and proactively on MS institutions and to use resources more efficiently.

⁴⁶⁸ International Criminal Court (2016): The Al Bashir Case. The Prosecutor v. Omar Hassan Ahmad Al Bashir ICC-02/05-01/09. The first warrant for arrest for Omar Hassan Ahmad Al Bashir was issued on 4th March, 2009, the second on 12th July, 2010. Available from: <https://www.icc-cpi.int/darfur/albashir> (Accessed on 14th December 2016).

Section 4 – Empirical Analysis

The Treaty of Lisbon⁴⁶⁹ is an international agreement, which amends the two treaties that form the constitutional basis of the EU. The Treaty of Lisbon was signed by the EU MS on 13th December 2007 and entered into force on 1st December 2009. It amends the Maastricht Treaty (1993), known in its updated form as the Treaty on European Union (2007) or TEU, and the Treaty of Rome (1957), known in its updated form as the Treaty on the Functioning of the European Union (2007) or TFEU. The need to review the EU's constitutional framework, particularly in light of the accession of ten new Member States in 2004, was highlighted in a declaration annexed to the Treaty of Nice in 2001. The TEU shows important and central objectives of the EU and fosters an area of freedom, security and justice (AFSJ).

For this purpose, the *quota* is as follows:

Article 3

1. The Union's aim is to promote peace, its values and the wellbeing of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. [...].⁴⁷⁰

This is an in-depth description of the Treaty on the Functioning of the EU (TFEU)⁴⁷¹, in particular the areas of border control, asylum and immigration, judicial cooperation in civil and criminal matters and police cooperation.⁴⁷² The implementation of the AFSJ is of great importance in the EU Treaty of Lisbon, with the respective objectives set out in Article 67 TFEU.

⁴⁶⁹ Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13th December 2007 - Tables of equivalences. Official Journal C 326, 26/10/2012 p.0001-0390.

⁴⁷⁰ Ibid.

Title one – common provisions, Article 1-8.

⁴⁷¹ TFEU (2010): Article 67 – 89.

⁴⁷² Note from the author:

Further statutory provisions in connection with the AFSJ are as following:

- a) Article 6 TEU related to the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms
- b) Article 8 TFEU [...] to eliminate inequalities, and to promote equality, between men and women.
- c) Article 15 (3) TFEU [...] right of access to documents of the Union's institutions, bodies, offices and agencies [...].
- d) Article 16 TFEU [...] right to the protection of personal data concerning them.
- e) Article 18-25 TFEU related to non-discrimination and citizenship.

Article 67

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
4. [...].

The objective is open and secure borders in line with the EU *acquis*, as well as the national legal framework - a truly great challenge.

Chapter 7: Border management in Europe

7.1. Function of the boundary

The borderline - it is the physical and visible distinction between two states (or between integrated groups of states such as the EU), including their respective legal systems. Border crossing points (BCPs) are the points of transfer from one legal system to another, and border control is the process, which confirms that the crossing is in line with the underlying rules and regulations. The same refers to the crossing, i.e., the transfer from one legal system to another, of goods and services. It marks the beginning and the end, and thus the state territory, and is understood as the line that runs between two states and does not create any undefined space under ideal circumstances. In this context, the colloquial term of the 'no man's land' is often used mistakenly, which shall describe an area between two separate official border crossings of two neighbouring states, or the border strip between these states that cannot be entered uncontrolled. In fact, the concept of the 'no man's land' (lat. *terra nullius*) does not withstand to a critical legal assessment, since the area is claimed as a state territory and thus also subject to the sovereign right and state monopoly on use of force of the respective legitimate state.⁴⁷³ Ultimately, the borderline is somewhere between the two official BCPs marking the sovereign territory of these two neighbouring states. Travellers pass through this narrow strip of land after passing the exit BCP but have not yet reached the location of the entry BCP of the neighbouring country. It is similarly related to a buffer zone that was established between two neighbouring countries, but with the intention to create an area of separation between disputing or belligerent forces and reduce the risk of renewed conflict.⁴⁷⁴ The borderline creates the clear demarcation between national territories and avoids the overlapping of neighbouring territories. The borderline defines the spatial integrity and delimitation of two mutually exclusive social orders as an existential formulation of a state area.⁴⁷⁵ This requires a consensual attitude of the neighbouring states and a reciprocal recognition. If this consensus exists, visible

⁴⁷³ Note from the author: There are very few land areas where states do not claim ownership. In international shipping there are international waters, but these are not to be subsumed under the term "no man's land".

⁴⁷⁴ United States Department of Defence (2016): buffer zone - 1. A defined area controlled by a peace operations force from which disputing or belligerent forces have been excluded. [...] Also called area of separation in some United Nations operations. Also called BZ. See also area of separation; line of demarcation; peace operations. 2. A conical volume centred on the lasers line of sight with its apex at the aperture of the laser, within which the beam will be contained with a high degree of certainty. It is determined by the buffer angle. Available from: http://www.militaryfactory.com/dictionary/military-terms-defined.asp?term_id=802 (Accessed on 15th December 2016).

⁴⁷⁵ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.23.

signs can indicate a border and its course.⁴⁷⁶

Description of the expression "border" by Lucien Febvre (1928): The precisely defined '*frontière*': it is nothing else but the outer outline projected onto the earth of a nation fully conscious of its own, which places its honour and its dignity, all its strength and power, in the protection of a homogeneous natural territory to deny virtually any external power, to 'violate their borders'.⁴⁷⁷

Laube concludes that the boundary, or rather the borderline as such, cannot be regarded as protective, since it cannot be defined in its spatial extent. In other words, no state has so far been able to determine in consensus with other countries whether a borderline has a width of 1 mm, 1 metre or even more. Rather, the borderline wants to determine a nation located within a specific territory.

The border - that is the physical barrier that must be overcome for all travelling persons, because here, by means of stationary controls, border crossings can be monitored, persons and their travel documents and other officially issued ID documents can be checked, together with the search of personal things.⁴⁷⁸ The borderline is used to determine whether a person is inside or outside a specified territory, and the borderline is the criterion of decision under which sovereignty the person belongs. This circumstance is of great importance since the legal consequences can be deduced only if it can be clearly stated on which state territory the person is located.⁴⁷⁹

Consequently, the finding is that the original function of the border is the visible marking and determination of the state territory, and a governmental claim to power is derived from it and the exertion of the state monopoly on the use of power is manifested and secured. In this classical view, the logical conclusion is that borders are serving as control points to enter a country through regular entry control.

According to Laube, however, borders are more than a straight indicator of where the state territory or a union area is at an end. They dictate the conduct at the border and determine whom they include and whom they exclude.⁴⁸⁰ The border

⁴⁷⁶ Note from the author: Signs of national borders may be: land marks, boundary posts, fences, walls, barriers, signposts, sensors with optical/acoustic signals, as well as navigation-based location data (GPS).

⁴⁷⁷ Febvre, Lucien (1928): »Frontière« word and meaning (1928), in: DERS.: *Das Gewissen des Historikers*, Berlin 1988, p.27-38.

⁴⁷⁸ Note from the author: Goods and services should be also mentioned for reasons of completeness.

⁴⁷⁹ Note from the author: After the fall of the Iron Curtain more interstate conflict potentials with partly dramatic effects became apparent. The participating States have not been, and are still, unable to establish common and internationally recognised borderlines. This is due in part to the inability, but also to the lack of will of the neighbouring states, since there are usually massive material and economic interests behind them. The lack of mutual recognition of the common frontier(s) leads to uncertain conditions in the constitutional structures of law and jurisdiction. See further explanations under point 13.8.

⁴⁸⁰ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.32.

thus acts as a mechanism for access to membership or to exclude it from the community. A state thereby also regulates which travellers are welcome and those that are not, who can generate value for the society and who can be regarded more as a burden.

Bös goes even further, by stating that borders separate *in* and *out*, but by doing so they structure the contact and control the influence between different social systems. Therefore, borders define not only including and excluding, but also connecting elements; the borders and here in particular, the official BCPs as an important connecting element between two states.⁴⁸¹ Thus, the border is stylised to an instrument of interaction and reciprocity - a first indication of the importance of cross-border cooperation. At this point it is important to analyse, to scrutinise and rethink the classical understanding of the crossing of borders. The fact that a single person has the authority to determine the legal entry or rejection of a person (dependent on statutory requirements) into the country of destination needs further consideration (see further explanations in section 7.5). Additional and also new multiple control forms are being sought in order to meet the ever-increasing number of travellers and migrants with effective and legal means of border control, while simultaneously ensuring human rights. These new forms of border control must be consistent with the interests of security and order within the EU as a whole and its MS in particular. The strategies for the forward displacement of corresponding control mechanisms must be expedient in terms of the effective implementation of the necessary action plans for the prevention of transnational threats. The forward displacement of border control on extraterritorial areas is further analysed in detail in chapter 14.

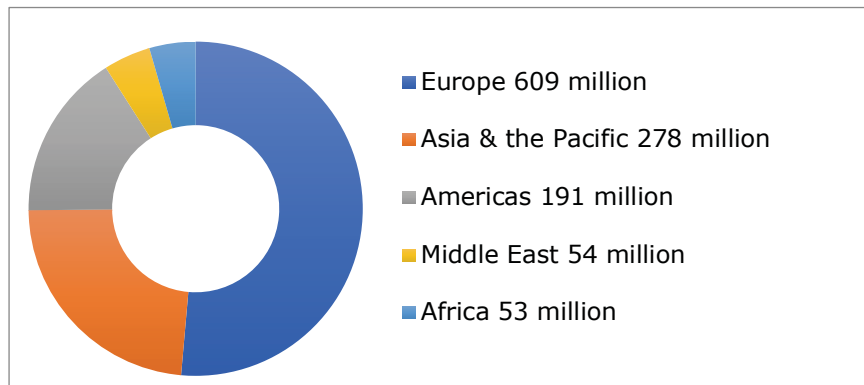
7.2. Border management versus mobility

The steady rise in cross-border mobility has developed unevenly in a global perspective; people from the industrial nations travel more regularly and also over longer distances than the people of the other states.

International tourist arrivals grew by 4.4 per cent in 2015 to reach a total of 1,184 million in 2015, marking the sixth consecutive year of above-average growth with international arrivals increasing by 4 per cent or more every year since the post-crisis year of 2010. Some 50 million more tourists (overnight visitors) travelled to international destinations around the world in 2015 than in 2014.

⁴⁸¹ Bös, Matthias / Preyer, Gerhard (Hg.) (2002): *Borderlines in Time of Globalization*. Available from: <http://www.protosociology.de/Download/P15-Introduction.pdf> (Accessed on 15th December 2016).

Figure 7.2.1. – International tourist arrivals in 2015 (own presentation)



Source: UNWTO Annual Report 2015⁴⁸²

The framework conditions of national border management systems and their control mechanisms are defined and determined by the policies of the respective state. For legal access to the respective state territory, the prerequisites are checked on the basis of national legislation and existing regulations and implemented with the help of appropriate technical equipment. The granting of permission to enter the country of destination is the precondition for legal access to the territory of the country where that person is not a national of the State concerned.⁴⁸³

Many states grant persons from other countries a visa-free entry with a stay of up to three months, beginning with the day of entry, also known as a 'tourist visa'.⁴⁸⁴ Consequently, holders of national passports of the states who do not need a visa⁴⁸⁵ to enter Germany for example cannot stay longer than 90 days⁴⁸⁶ per half-year period in the Federal territory. In addition, they are not allowed to take up an

⁴⁸² UNWTO (2016): Annual Report 2015. 1,184 billion international tourists in 2015. p.15. Available from: http://cf.cdn.unwto.org/sites/all/files/pdf/annual_report_2015_lr.pdf (Accessed on 15th December 2016).

⁴⁸³ Residence Act in the version promulgated on 25th February 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556). Chapter 2 - Entry into and residence in the Federal territory, Section 3-42 Residence Act (Act on the Stay, Employment and the Integration of Foreigners in the Federal Territory) in the version of the notice of 25th February 2008 (Federal Law Gazette I p.162), as last amended by Law of 23rd December 2014 (BGBI 2439) as of 1st January 2015.

⁴⁸⁴ Federal Foreign Office (2016): Visa regulations. EU nationals do not require a visa to enter the Federal Republic of Germany. Non-EU nationals - Generally speaking, all other foreigners require a visa for stays in Germany. A visa is not required for visits of up to 90 days in an 180-day period for nationals of those countries for which the European Community has abolished the visa requirement. Available from: <http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen.html?nn=480902#doc480844bodyText1> (Accessed on 15th December 2016).

⁴⁸⁵ Federal Foreign Office (2016): Overview of visa requirements/exemptions for entry into the Federal Republic of Germany. Persons who do not require a visa to enter Germany (holders of passports from the countries marked "no" on the list) may not remain on German territory for more than 90 days in any six months period. Nor may they take up gainful employment whilst here. Available from: <http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/StaatenlisteVisumpflicht.html?searchArchive=0&searchEngineQueryString=wo+needs+a+visa&searchIssued=0&searchIssuedAfter=27.11.2013> (Accessed on 15th December 2016).

⁴⁸⁶ Ibid.

employment during this period. For the sake of completeness, reference is made here to the free movement of nationals of all EU MS who, of course, do not need permission to enter other EU MS.⁴⁸⁷

At the same time, many countries have reviewed and improved their BSM policies due to a significant increase of travellers with border crossings. Countries are investing in BSM infrastructure to enhance technology standards, particularly focusing on border control and border surveillance, and they coordinate closely in controlling common border areas. These efforts are aimed at open and safeguard borders, and thus under the slogan of open, but secure borders and freedom of movement. At the same time, contrary to this, other countries disprove this trend towards a strong border protection with the aim of full control of passengers and goods traffic as well as cross-border services.

An exemplary presentation was the extensive dismantling of border facilities after the fall of the Iron Curtain, as well as the creation and expansion of the *Schengen* area within the EU along with the dissolution of stationary border controls and border attachments. On the other hand, the EU, in cooperation with other international organisations, has exerted its influence, especially in South-Eastern Europe, by the creation and/or reform of state border law enforcement services of non-EU countries to introduce and ensure professional border controls and border surveillance in accordance with EU standards.⁴⁸⁸

From 1998 to 2014, this has been strictly monitored in countries in South-Eastern Europe through accumulative reflection and evaluation in the implementation of various projects with regard to the structure and reform of border police services and other state institutions involved in BSM, border surveillance and border control. The improvement of these standards significantly increased the quality of the control of cross-border traffic in the EU's Eastern European and South-Eastern European neighbours. New filters were installed by the creation of full professional border services that increased the quality of border control; it is even spoken of as a protective wall at the gates of the EU.

Over the past 15 to 20 years, the ministries responsible for BSM and border surveillance in the EU MS and non-EU countries have gradually moved border control away from the border line (stationary and static controls) into the border

⁴⁸⁷ Freedom of Movement Act/EU of 30th July 2004 (Federal Law Gazette I p.1950, 1986), last amended by Article 6 of the Act of 21st December, 2015 (Federal Law Gazette I p.2557).

⁴⁸⁸ European Commission (2007): Guidelines for Integrated Border Management in the Western Balkans. ICMPD (2015): Working Paper 08. Integrated Border Management and Development.

area (mobile border controls). The borderline represents the connection from one officially determined BCP to the next, for example characterised by fences, border posts, border stones, signposts and other recognisable indications. The border area, on the other hand, is a narrow strip along the borderline and extends into the interior of a country. How wide this border area is, starting from the borderline into the inland can be determined by each state individually, but is described in many cases as 30 kilometres.

In 1998 during the Austrian EU Council Presidency, this basic idea was taken up and a concept of 'concentric circles' was proposed to be developed and implemented.⁴⁸⁹ Following this idea, the *Schengen* states form the core with the highest demands on BSM in line with public security and order. Around this core, neighbours and even more distant states are to be grouped as concentric circles, each of which has to perform as a buffer and thus a protective function for the core. In other words, these countries should maintain a finely graded filter function around the *Schengen* area.

While there are intensive surveillance measures and thorough controls carried out at the *Schengen* external borders, in the centre of the EU border regime, on the other hand, no stationary border controls are to be carried out and freedom of movement is to be granted.⁴⁹⁰ This right to free movement is then enjoyed by all persons, so EU as well as non-EU nationals, if they have legally passed the entry into the *Schengen* area.

In considering this process, it becomes clear that current BSM models including the surveillance and safeguarding of borders are different in comparison to those at the end of the 20th century. On the one hand, the states are challenged to meet these new identified challenges and circumstances coupled with changing perspectives. It is a fact that neither the fundamental dissolution of borders, on the one hand, nor the all-embracing control of borders, on the other hand, can meet all aspects of the change of values in the area of border regimes. Against the backdrop of a growing Europe and an intensification of the international cooperation of a wide range of actors, the principle of close cooperation and coordination of activities between state and non-state partners is the focus of generating new synergy effects.

⁴⁸⁹ Baumann, Mechthild (2014): *Frontex und das Grenzregime der EU*. Available from: <http://www.bpb.de/gesellschaft/migration/kurzdoessiers/179671/frontex-und-das-grenzregime-der-eu> (Accessed on 15th December 2016).

⁴⁹⁰ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*).

So far, a distinction has been made between border 'control' and border 'surveillance'. In the case of the term 'control', reference is made to persons, their identity documents and items carried at an official BCP (land, water, air).⁴⁹¹ It means the activity carried out at a BCP relates exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks.⁴⁹²

In the case of 'surveillance', the necessary activities are directly related to the border area, hence the spatial sections between the official BCPs.⁴⁹³ Border surveillance means patrolling and monitoring borders between BCPs and the surveillance of BCPs outside the fixed opening hours, in order to prevent persons from circumventing border checks. The first priority of the surveillance of border areas is, in general, the averting of danger⁴⁹⁴ and the unauthorised crossing of the border of persons and their belongings, which do not fulfil the legal requirements for the legal crossing of the border, or who want to smuggle goods across the border. The aim of these surveillance measures is to stop and apprehend those persons who bypass BCPs to enter unlawfully.⁴⁹⁵

In addition, however, other BSM-related models of border control and border surveillance must also be considered that will build on new forms of bilateral and multi-lateral cooperation, which should not be confined only to neighbouring countries. This includes, for example, a spatial shifting of border control activities on extraterritorial areas outside their own local and territorial jurisdiction.⁴⁹⁶ If the previous understanding was such that border control is an activity, which has to take place at the edge of a state (keyword: borderline), an assignment of border liaison officers in other countries is necessary for the provision of control activities in terms of prevention and on-site cooperation. It is irrelevant whether this partner state is an adjacent neighbouring country, or that state is located on another continent.

⁴⁹¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council (2006): *Schengen Borders Code*. Article 2 Definitions No 9 – border control.

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.* Article 2 Definitions No 11 – border surveillance, or green border surveillance for land borders.

⁴⁹⁴ Law on the tasks and powers of the Bavarian State Police (*PAG*) as amended by the notice of 14th September 1990.

Article 2 - Tasks of the police

(1) The police have the task of warding off the dangers to public security or order, which are general or in individual cases. [...].

⁴⁹⁵ Law on the Federal Police (*BPolG*) § 2 Border Protection. *BPolG* of 19th October 1994 (Federal Law Gazette I, p.2978, 2979), most recently amended by Article 4 of the Article of 20th June 2013 (Federal Law Gazette I, p.1602). Last amended by Article 4 G v. 20.6.2013 I 1602.

⁴⁹⁶ *Ibid.* Territorial jurisdiction § 58 I *BPolG* in conjunction with § 2 I *BPolZV* regulates the local jurisdiction, that is, which federal police entity is responsible for the relevant tasks in which region or in which federal state.

Solely decisive is the fact of the exertion of sovereign functions on the territory of another state, with a view to maintain national public security and order. This model of remote border control activities already takes place to a certain extent between partner countries, such as the use of border police experts to check travel documents of persons before departure based on bilateral cooperation between two countries.

These experts help to check travel documents of passengers in collaboration with the involved airlines before the persons embark. If, for example, a person is identified with a counterfeit travel document or visa, or found to abuse the travel document, which was originally issued for another person before the aircraft is boarded, this suspect person is denied access and handed over to the national police authorities for further processing. An analogous procedure may be considered in the event of the absence of the necessary visa for the target country, or if there is a danger to the public security and order of the target country. Another example is the forwarding of relevant personal data from travellers to the USA, which already had to be completed and submitted the Electronic System for Travel Authorization (ESTA) program before departure, which the US immigration authorities obligated.⁴⁹⁷

Further detailed information on the use of national law enforcement officers in other countries, as well as the provision of border control on the territory of another state are discussed further in chapters 11 and 14.

7.3. Border management as an integral approach

As a consequence of the scenarios described within the analytical framework, a consensus emerged over the past one to two decades in the European context that potential threats can also be influenced externally by the respective MS and can have a lasting negative impact both within the EU MS as well as the OSCE participating States and their 11 partner countries. Learned lessons and experiences have been discussed in relation to the consequences described in the dissolution of the former Soviet Union, the disputes in the various Yugoslav wars, and the sustainable implications of other crises of conflict as described in chapter 3 (see points 3.5 and 3.6). As a direct result of these conflicts, the UNHCR's surveys showed that in 2015 a new record since World War II was reached, with just under 65.3 million refugees, asylum seekers and internally displaced persons

⁴⁹⁷ U.S. Customs and Border Protection (2016): Official ESTA application. Available from: <https://esta.cbp.dhs.gov/esta/> (Accessed on 15th December 2016).

(see point 5.1). Other transnational threats have been identified over the past two decades, for example, in the cultivation of opium and the production of heroin in Afghanistan. According to the UNODC annual reports, well over 90 per cent of the world's production of opium and heroin came from Afghanistan over the past 15-20 years.⁴⁹⁸ To date, since 9/11 there are also more worrying developments in the area of global terrorism, the flow of foreign-terrorist fighters, as well as the radicalisation of Islamic groups (see chapter 3.6). In addition, the risk of diseases to humans (e.g., Ebola⁴⁹⁹) and animals (e.g., bird flu, or H5N1⁵⁰⁰, swine flu⁵⁰¹) have also been recognised as cross-border hazards, albeit with painful delays. Consequently, this requires multi-dimensional and well-coordinated responses, as well as trustworthy and transparent forms of cooperation between the states concerned and relevant organisations, both in the regional context and on an international level. In addition, the UN, EU and OSCE and their partner countries contribute to the prevention of possible threats from terrorism, FTF and extremism in close cooperation with other international and regional organisations. Examples of contributions from international organisations are ICAO, which, as the world's leading special organisation, is responsible for the implementation of safety standards and security controls at international airports.⁵⁰² Experts from these organisations regularly develop new initiatives and programs, such as identifying misuse of Internet communications platforms for terrorist purposes, and promoting the establishment of public-private partnerships to combat terrorism and violent extremism.⁵⁰³

These organisations are always keen to improve the security standards of travel documents⁵⁰⁴, thus strengthening cooperation in the analysis and investigation of terrorist activities and other serious crimes in the cross-border context. Through

⁴⁹⁸ UNODC – UN Office on Drugs and Crime (2016): World Drug Report 2015. Available from: <https://www.unodc.org/wdr2015/> (Accessed on 15th December 2016).

⁴⁹⁹ WHO (2016): Ebola outbreak. Available from: <http://apps.who.int/ebola> (Accessed on 16th December 2016).

⁵⁰⁰ WHO (2016): Cumulative number of confirmed human cases for avian influenza A(H5N1) reported to WHO, 2003-2015. Available from: http://www.who.int/influenza/human_animal_interface/EN_GIP_201503031cumulativeNumberH5N1cases.pdf (Accessed on 16th December 2016).

⁵⁰¹ WHO (2016): Swine flu illness in the United States and Mexico - update 2. Available from: http://www.who.int/csr/don/2009_04_26/en/ (Accessed on 16th December 2016).

⁵⁰² ICAO (2016): The International Civil Aviation Organization (ICAO) is a UN specialized agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention). Available from: <http://www.icao.int/Pages/default.aspx> (Accessed on 16th December 2016).

⁵⁰³ OSCE (2016): Decision No. 1063 on the OSCE Consolidated Framework for the Fight against Terrorism. Decision No. 1064 on forwarding of draft documents to the Ministerial Council.

⁵⁰⁴ ICAO (2016): ICAO Machine Readable Travel Documents Programme. Available from: <http://www.icao.int/security/mrtd/Pages/default.aspx> (Accessed on 16th December 2016).

various programs⁵⁰⁵, they support the fight against radicalism and violent extremism, which ultimately lead to terrorism, and develop proposals for the protection of public utilities against terrorist attacks. They also promote civilian border services of the respective states in integral approaches to conflict prevention, crisis management and rehabilitation after conflicts, reform processes, democratisation processes for police services and training in the form of assistance for self-help.

7.4. Development of the European Security Policy

– the *Eltville* Recommendations

In May 2007 during the German EU Council Presidency, the then Federal Minister of the Interior, Dr. Schäuble, invited high-ranking representatives from other EU MS for a meeting to discuss a new position determination for the security interests of the EU.⁵⁰⁶ After the expiry of the 'Hague Program', new targets for the future security policy of the EU should be identified and defined from 2010.

In Eltville Schäuble explained in his remarks:

"The free movement of persons and goods as well as Europe's economic strength and democratic stability have made at the same time the EU to a target of irregular migration, cross-border organised crime, international drug trafficking, but also Islamic terrorism, especially in relation to its eastern and southern neighbours. This means that, despite of existing instruments, such as the *Schengen* Information System, the Treaty of Prüm related to cross-border police cooperation, EUROPOL or the common visa requirements, we must think about how we are able to achieve the objectives of existing mechanisms and concepts of the *Schengen* regime and adapt them towards future challenges. This is the first time we have discussed this issue. The theme will be included in the group's final report, which is already available in the second half of 2008 and is intended to serve as a basis for the Commission's proposal for the post-Hague Program."⁵⁰⁷

Thus, the most important areas of the EU's security concerns were mentioned. Since 2004, the objectives and guidelines of the European home affairs are regulated in the 'Hague Program for the Strengthening of Freedom, Security and Justice in the European Union'.⁵⁰⁸ The 'Hague Program' expired at the end of 2009. In a second meeting, it was agreed under the German Presidency that the thematic

⁵⁰⁵ UNCCT (2016): UN Counter-Terrorism Centre aims to catalyse and mobilize counter-terrorism efforts of various UN system entities to assist Member States in implementing the United Nations Global Counter-Terrorism Strategy. Available from: <http://www.un.org/en/terrorism/ctitf/projects.shtml> (Accessed on 16th December 2016).

⁵⁰⁶ Federal Ministry of Interior (2016): Press release of the Federal Ministry of the Interior on the meeting of the Working Group on European Security Policy. Available from: <http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2007/05/eltville.html> (Accessed on 16th December 2016).

⁵⁰⁷ Ibid.

⁵⁰⁸ European Commission (2004): The Hague Programme: ten priorities for the next five years (2005-2010). The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final – Official Journal C 236 of 24th September 2005].

focus should be on the fusion of internal and external security.⁵⁰⁹ The discussions focused on the fight against terrorism and FTF, closer coordination on relevant security issues with non-EU MS, as well as improved coordination of military operations, police and civil protection forces in international operations.

7.5. Border control and border management in Europe

The EU, with its economic radiant power, acts as a magnet for immigrants, both through legal immigration and irregular migration. Most irregular migrants reach the EU by air and try to enter the EU mainly through two alternatives:

- Alternative one is the attempted or actual entry with counterfeited travel documents and visas, or abuse of travel documents regularly issued for another person⁵¹⁰
- Alternative two, the entry with proper travel documents and visas

For the sake of completeness, it is mentioned that there are, of course, other possibilities for unauthorised entry into the EU, such as bypassing the official BCPs and circumventing checks (keyword: 'green or blue border')⁵¹¹ or withdrawal of regular border control (i.e., road, railway and sea).

If the entry control went without any reservations by the competent border control authorities, the person in the described alternatives one or two is allowed to enter the EU territory. If the person under alternative one is discovered due to a counterfeit travel document or visa, or the abuse of a genuine document that was issued for another person, the provisional arrest will be carried out. Furthermore, the person will be fingerprinted and photographed and further criminal procedural measures will be undertaken. Further, the person will be then sent back to the point of departure under the responsibility of the carrier.⁵¹² However, if this person

⁵⁰⁹ Federal Ministry of Interior (2016): Press release of the Federal Ministry of the Interior on the meeting of the Working Group on European Security Policy. Available from: <http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2007/05/elville.html> (Accessed on 16th December 2016).

⁵¹⁰ See also point 4.5.1.

⁵¹¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

The Guidelines for the Integrated Border Management in the Western Balkans (2007):

The 'green' border is the course of the internationally recognised land border between two officially designated border crossing points.

The 'blue' border is defined by the internationally recognised watersides (i.e., rivers, lakes, open sea).

⁵¹² The 'Warsaw Convention' is a multilateral treaty adhered to by the United States in 1934, which establishes a uniform set of substantive and procedural rules governing international air transportation. The 'Warsaw Convention' is the informal title for Convention for the unification of certain rules relating to international transportation by air, concluded at Warsaw, Poland, opened for signature on 12th October 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C.A. app. at 430 (West Supp. 1976) (adhered to by the United States 27th June 1934).

applies for asylum, a corresponding procedure must be initiated in accordance with the Dublin procedure (see point 5.4.5).

It is more difficult under the second alternative because the travellers meet the necessary conditions for a regular entry into the EU. Sometimes, these persons time it just right, so that just before the validity of their residence permit (visa) expires, they go underground and evade regulatory control and thus remain undetected in the EU. These people are called 'overstayers' (see point 5.5. and 10.3.) since they stay beyond their authorised stay.

According to the Commission's notification to the European Parliament and the Council, there is no clear and reliable data on the total number of irregular migration to the EU.⁵¹³ As a consequence, delays at border crossings can be long and information on 'overstayers' is often missing. This is a real problem as 'overstayers' are the main source of irregular migration in the EU. Reliable data on the number of irregular immigrants within the EU is not available, but conservative estimates vary between 1.9 and 3.8 million.⁵¹⁴ In 2010 the then 27 EU MS issued 540,000 orders to leave their territory but only 226,000 were effectively carried out.⁵¹⁵

A total of eight important migratory routes were identified and defined by Frontex:

- Eastern Borders Route
- Eastern Mediterranean Route
- Central Mediterranean Route
- Western African Route
- Western Balkan Route
- South-eastern Mediterranean Route (Calabria)
- Western Mediterranean Route
- Circular Route from Albania to Greece

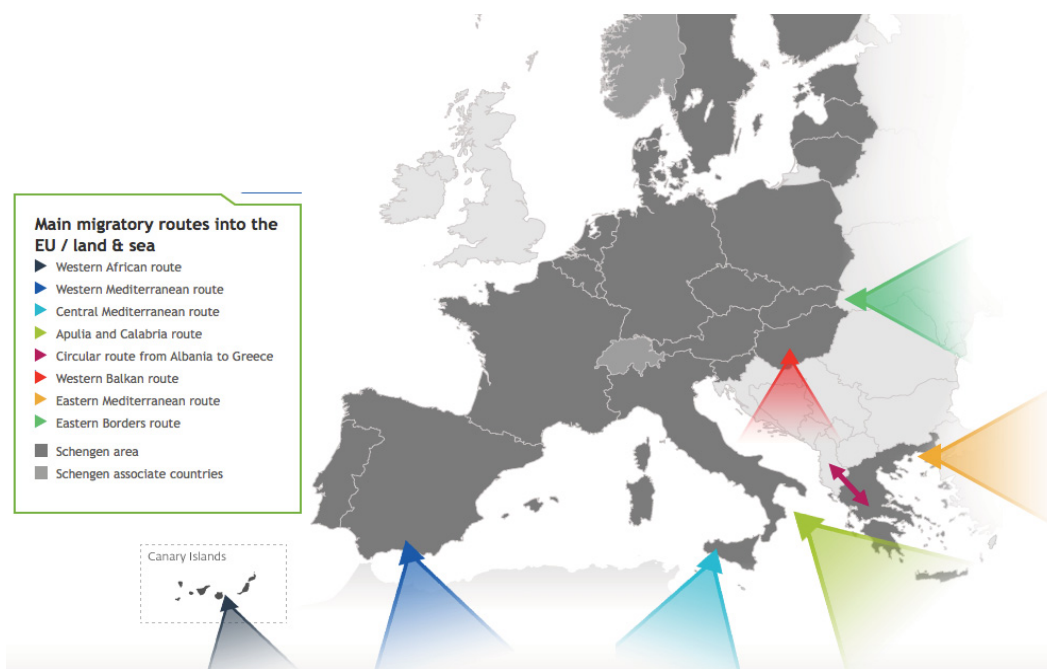
⁵¹³ European Commission (2013): Proposal for a Regulation of the European Parliament and of the Council on an entry / exit system (EES) on the entry and exit of third-country nationals at the external borders of the Member States of the European Union. 2013/0057 (COD) C7-0067/2013.

⁵¹⁴ Ibid. p.1.

ICMPD (2008): Results of the EU study carried out by ICMPD - International Centre for Migration Policy Development. These figures are accumulated totals at the time of the study (2008, EU-27). Available from: <http://clandestino.eliamep.gr> (Accessed on 17th December 2016).

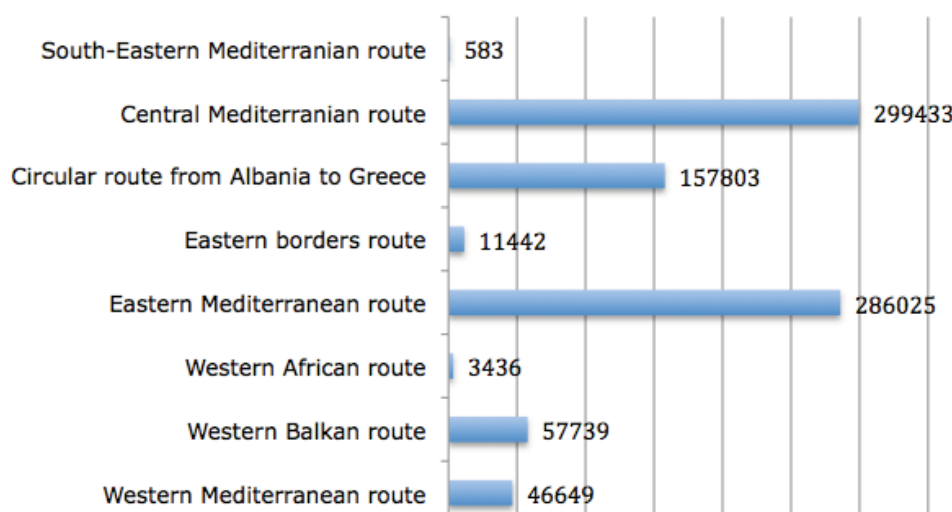
⁵¹⁵ European Commission (2011): Communication from the European Parliament and the Council. Smart borders - options and the way ahead /* COM/2011/0680 final */ SEC (2011) 620, Table 2; Data provided by Eurostat and the European Migration Network (EMN). The reason for the discrepancy of the figures is not only a lack of information on 'overstayers' but also other factors such as the lack of cooperation of certain third countries, humanitarian reasons etc.

Figure 7.5.1. – Frontex migratory routes



Source: Frontex⁵¹⁶

Figure 7.5.2. – Frontex statistic irregular migrants from 2007-2014



Source: Frontex⁵¹⁷ (see also Annex 6)

In addition to irregular migration by air, most of the refugees and asylum seekers are mostly transported by sea to Italy and Malta. Here, Frontex distinguishes between the 'Central Mediterranean Route' and the 'South-Eastern Mediterranean Route' (also called 'Apulia/Calabria Route').

⁵¹⁶ Frontex (2013): Available from: <http://frontex.europa.eu/trends-and-routes/migratory-routes-map> (Accessed on 17th December 2016).

⁵¹⁷ Frontex (2015): Registered numbers of irregular migrants coming across the seven main routes. The figures were collected in the years 2007 to 2014 as follows: 2007 -July to December; 2008 including 2013 from January to December; 2014 from January to October. Available from: <https://infogr.am/fluchtlingrouten> (Accessed on 17th December 2016).

Note from the author: Annex 6 provides further statistical data from 2007 to 2014.

Mainly refugees from Africa and West Africa begin their crossing in Libya via the 'Central Mediterranean Route' to reach Lampedusa or other small islands close to Sicily.⁵¹⁸ Refugees who come mainly from Afghanistan, Pakistan, Iraq, Syria and other crisis areas in the Middle East and Central Asia are trying to reach the EU via the 'South-Eastern Mediterranean Route'.⁵¹⁹ Another sea route is the so-called 'West African Route', which leads from the African mainland to the Canary Islands, which belong to Spain. This route has gradually lost importance in recent years, as the latest data collected by Frontex in the annual report 2015 result.⁵²⁰

Probably, the most famous land route is the 'Western Balkan Route', which leads through the former republics of ex-Yugoslavia, via Hungary, Slovenia or Romania to the further west EU MS. Another migratory track is the 'Eastern Border Route' that runs along the border routes between Belarus, Moldova, Ukraine and Russia. Additionally, there is the 'Circular Route from Albania to Greece', which plays a more isolated role between these two states and less against other EU MS. This route is primarily used by Albanian nationals for the unauthorised entry to Greece for seasonal illegal employment.

For many refugees, however, it is often not necessary to choose the dangerous maritime routes to reach EU territory. For example, they travel from different crisis regions through the countries in the north-east of Africa to Morocco, then reach the Spanish enclaves⁵²¹ of Ceuta and Melilla and thus the EU territory.⁵²² Ceuta, like Melilla and the Canary Islands, were free ports before Spain joined the EU.

⁵¹⁸ Frontex (2015): Central Mediterranean Route 2015 Migratory Routes. Available from: <http://frontex.europa.eu/trends-and-routes/central-mediterranean-route> (Accessed on 17th December 2016).
Frontex (2015): Annual Risk Analysis Report 2015. Available from: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf (Accessed on 17th December 2016).

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

⁵²¹ BBC News (2005): EU outposts turn into fortresses. Available from: <http://news.bbc.co.uk/2/hi/europe/4294426.stm> (Accessed on 17th December 2016).

⁵²² Frontex (2015): Annual Risk Analysis Report 2015. In 2014 there were 7.842 detections of illegal border-crossing in the Western Mediterranean region, which consists of several areas of the southern Spanish coast and the land borders of Ceuta and Melilla. This total shows an increase of 15 per cent compared to the total of 6.838 reported in 2013. P.24.

Figure 7.5.3.: Map with Spanish autonomous cities Ceuta and Melilla



Source: Open Society Foundations⁵²³

Refugees who have reached the shores of EU MS in the Mediterranean Sea have already managed the biggest part of a long and difficult and sometimes even very dangerous trip. Over the past years, more and more refugees have come to Europe via the various Mediterranean routes. These routes are extremely risky and are mostly used by refugees who cannot afford to buy counterfeit travel documents in combination with safe travel arrangements to the EU. Criminals can easily organise perfect smuggling arrangements that cost up to several tens of thousands of Euros that include health care, flight tickets and accommodation, while a crossing from North Africa to the mentioned EU MS can be organised for 1,000 Euros.

The routes on which the refugees are mainly travelling to Europe are constantly changing, as it is evident by collected data from the EU border agency Frontex and the EU police department EUROPOL.⁵²⁴ In the early part of the 21st century, the Canary Islands were primarily the destination, and these routes have shifted eastwards in the Mediterranean Sea over the last few years. Further, irregular immigration is ongoing through Turkey to Greece, but also Cyprus, Malta and Italy, and thus into the EU area. The causes of this flow of refugees are certainly the crises in Iraq and Syria, as well as corresponding crowding-out effects of stricter controls of the Mediterranean routes by Frontex and the use of 'Triton' and 'Sophia operation' (see point 5.8). Only a few years ago, the illegal entry of irregular migrants was carried out for over 90 per cent via land routes.

⁵²³ Open Society Foundations (2015): Why Violence Is Flaring at Europe's Border Crossings. Available from: <https://www.opensocietyfoundations.org/voices/why-violence-flaring-europe-s-border-crossings> (Accessed on 17th December 2016).

⁵²⁴ Frontex (2015): Annual Risk Analysis Report 2015. Available from: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf (Accessed on 17th December 2016).

The EC, in close cooperation with other international organisations and institutions, has implemented numerous BSM-related programs to enhance border control and border surveillance in the EU's eastern and south-eastern neighbouring countries.⁵²⁵ As a result, a number of control filters have been installed in these countries in accordance with EU standards, which makes illegal border crossings increasingly difficult.⁵²⁶ This is also one of the reasons why the flow of irregular migrants has shifted more and more to the Mediterranean Sea since it has minimised the need to cross several land borders to the EU, thus reducing the risk of detection. How many refugees actually cross the Mediterranean Sea route to enter the EU illegally is not really known. However, the terrible reports from Lampedusa/Italy show, how many refugees chose this way and subsequently lost their lives, and how risky such attempts are to get to Europe.

The end of persecution because of none tolerated religious affiliation or hated dissidents in terms of political opinions, the desire to have access to the labour markets in western industrialised countries and the associated hopes for a better livelihood, as well as family reunification are the most common reasons why people leave their homelands and travel on such dangerous journeys.⁵²⁷

Criminals who form gangs play a central role here to bring these people illegally across borders.⁵²⁸ These people-smuggler gangs organise all-inclusive arrangements, starting from transport, provision of counterfeit travel documents, food and accommodation, bribes for border guards, as well as guided tours to cross borders illegally. The conditions under which these smuggling operations are carried out depend very much on the countries of origin, the routes and the financial means of the refugees. It would, however, be fatal to believe that these smugglers would only be active outside of the EU territory. There are also EU citizens who unconditionally capitalise on the emergency situation of irregular migrants, whether they are involved in organising onward travel within the EU, provision of counterfeit ID documents and giving accommodation.⁵²⁹ EU citizens also organise and carry out important activities in the areas of abuse on family reunification, to the organisation of marriages of convenience and false acknowledgement of paternity, as a study by Müller shows.⁵³⁰ Further,

⁵²⁵ Note from the author: See further explanations related to international programs under point 3.7.

⁵²⁶ Note from the author: See further explanations related 'concentric circles' under point 7.1.

⁵²⁷ Note from the author: See further explanations under chapter 5.

⁵²⁸ Note from the author: See further explanations under point 5.6.

⁵²⁹ Frontex (2015): Annual Risk Analysis Report 2015, p.33.

⁵³⁰ Müller, Andreas (2012): *Missbrauch des Rechts auf Familiennachzug – Scheinehen und missbräuchliche*

international connection of people smuggler gangs were identified within the EU as well as to groups in Asia, Africa, Eastern Europe or South-East Europe. Frontex, established by the EU Council in 2004, is the EU agency for operational cooperation at the EU's external borders and is therefore also responsible for the interests of border surveillance in the Mediterranean Sea. In its original task assignment, Frontex coordinates the corresponding border surveillance operations. An ad-hoc pool of approximately up to 600 border police officers from various EU MS is available for this purpose, which can be deployed if appropriate. Further details on Frontex in particular are discussed under chapter 9, as well as other EU agencies in chapter 10.

7.6. EU MS are allowed to close borders

Emergence of the *Schengen* Agreement⁵³¹

In agreement with the implementation of the *Schengen* Agreement of 14th June 1985, the Benelux countries, Germany and France agreed gradually to reduce controls at their common borders.⁵³² The intended reduction in control activities was initially aimed at passenger transport and the facilitation of transport and goods traffic. The objective of this convention was also to ensure that efforts were to lead to a common space in the foreseeable future. On 19th June 1990 the convention on the enforcement of the *Schengen* agreement was signed. In particular, the compensatory measures, which became necessary due to the cut-back of stationary border controls, and which should ensure a common area of security and justice, were formulated.⁵³³ The respective compensatory measures are described in point 8.7. and chapter 9 are discussed further in detail.

Important passages of the *Schengen* agreement

The reform of the *Schengen* agreement provides that in the future an EU MS will be able to reinforce border control if, for example, it is exposed to an onrush of irregular migrants. It remained open, however, on how to define the term 'onrush' and in which numerical categories.

Vaterschaftsanerkennungen. Focus study by the German National Contact Point for the European Migration Network (EMN), p.10.

⁵³¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen* Borders Code) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

⁵³² *Schengen acquis* (Official Journal L 239, 22/09/2000 P. 0013 – 0018): Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

⁵³³ BKA (2016): *Schengen* compensatory measures. Available from: https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/InternationaleFunktion/SchengenerAbkommen/Ausgleichsmaßnahmen/schengenAusgleichsmaßnahmen_node.html (Accessed on 17th December 2016).

Article 1 - For the purposes of this Convention:

[...]

border check: shall mean a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration; [...] ⁵³⁴

At the same time, there should be border controls only in an emergency, whereby the term 'emergency' should be taken very narrowly. The prerequisite for this is that a *Schengen* state is unable to protect its external borders and thus threatens public security and order and thus internal security.

Article 2

1. Internal borders may be crossed at any point without any checks on persons being carried out.

2. However, where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security requires immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof.

3. The abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

4. Checks on goods shall be carried out in accordance with the relevant provisions of this Convention. ⁵³⁵

The EU MS, the European parliament and the EC, which also acts as a monitoring institution, have agreed on this reform of the freedom of travel within the *Schengen* area. A prerequisite for this is a recommendation from the EU Council, which is the assembly of the respective EU MS. Heated discussions arose in relation on how to control and secure the EU's external borders such as the circumstances of the 'Arab Spring' triggered an unprecedented flow of refugees from North Africa into the EU.

Towards the end of 2014 and early 2015, the discussions were then aggravated based on a significant increase of asylum seekers, such as from Kosovo. In January 2015, a total of 3,034 persons originating from Kosovo applied for asylum in Germany. Out of a total of 21,679 applications, this is equivalent to a rate of 14 per cent, which is the second highest rate of asylum applications submitted to the *BAMF* in comparison to Syria ⁵³⁶, followed then by Serbia at 9.4 per cent and

⁵³⁴ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

⁵³⁵ Ibid.

⁵³⁶ *BAMF* (2015): *Aktuelle Zahlen zu Asyl Januar 2015*. P.7.

Albania at 7.4 per cent before Afghanistan, with 5.2 per cent. The former Secretary General of the Christian Social Union party (CSU), Andreas Scheuer, publicly demanded in late 2014: "Kiefersfelden must not become a suburb of Lampedusa."⁵³⁷ He referred to the never-ending stream of refugees who came across the 'Eastern' and 'Central Mediterranean Route' and landed in Italy, then moving through Austria onwards to Germany. Many of these refugees were then taken up in the district of Rosenheim/Germany as a matter regarding the travel route Italy-Austria-Germany. During the regular inspections of these persons carried out by the Federal Police, it turned out that many refugees had sufficient cash and valid train tickets issued in Italy and Germany as the target country. Beyond this, sometimes it was observed that adult refugees who travelled on trains coming from Italy, each carried a 500 Euro banknote with them in serial numbering. The CSU, as the ruling party in Bavaria, then urged the re-establishment of border controls towards Austria during this difficult time of the hitherto unknown phenomenon of the inrush of irregular migrants. According to the above-mentioned significant increase of irregular migrants coming from Kosovo, the CSU claimed in a seven-point program to re-establish border controls towards Austria.⁵³⁸

Under point 1, the following is stated:

Refugees must remain in the EU countries where they arrive. This applicable EU principle is currently being ignored, especially by Italy. There, arriving refugees can travel unhindered through Austria to Bavaria and other parts of Germany. The existing European directives must be strictly adhered to. If this does not happen, there must be additional border controls under the *Schengen* Agreement. We urge the clarification that internal border controls are permitted if another Member State is a breach the contract.

This in turn led to violent protests by the other political parties in the German *Bundestag*.

⁵³⁷ Müller, Peter (2014): *Flüchtlingspolitik – CSU fordert Kontrollen an Grenze zu Österreich*. Available from: <http://www.spiegel.de/politik/deutschland/asyl-csu-macht-vorschlaege-zur-fluechtlingspolitik-und-grenzkontrollen-a-990500.html> (Accessed on 17th December 2016).

⁵³⁸ CSU 7-Point-Immediate Action Program (2015):

1. Refugees must remain in the EU countries where they arrive.
2. Refugees must be distributed more equitably within Europe.
3. We welcome the new EU Commissioner for Migration to implement the CSU's demand for a uniform responsibility for asylum and refugee policy within the EU.
4. In order to combat refugee problems at their places of origin, a special fund for refugee and development policy must be set up in the federal budget.
5. The Western Balkan countries must be included in the list of safe countries of origin.
6. Who is lodged with us and registered, should be able to work after three months.
7. The accommodation of asylum seekers and refugees must be ensured by means of a joint effort and close cooperation between the federal government, the states and municipalities.

Available from:

http://www.csu.de/common/csu/content/csu/hauptnavigation/aktuell/meldungen/PDFs/140915_7-Punkte-Sofortprogramm.pdf (Accessed on 20th December 2016).

In the period from 28th May to 8th June 2015, the border control re-established towards Austria on the basis of Article 2 of the *Schengen* Agreement on the occasion of the G7 summit in Bavaria generated an amazing number of cases.⁵³⁹ According to the press release of the Federal Police, thousands of violations of the Residence Act were detected and several hundred persons were rejected of entry.⁵⁴⁰ In the context of the border controls, other criminal offences were also identified and reported in accordance with the relevant legal requirements.

More than 200,000 people were checked and the following findings were made:⁵⁴¹

- more than 8,600 offences against the Residence Act (mainly illegal entry and stay, people smuggling)
- 20 offences against the Asylum Procedures Act
- 118 offences against the Narcotics Act
- 111 counterfeit travel documents and visa
- more than 430 rejections (entry refusal)
- 679 search hits (persons), thereof 59 arrest warrants

The following police measures (prevention and criminal prosecution) were carried out:

- 37,854 identity verifications
- 3,058 search measures
- 2,110 provisional arrests
- 62 temporary custody

In a nationwide context, the border controls even brought up 10,555 offences against the Residence Act. In addition, there were 1,056 search hits against persons, 135 open arrest warrants were executed and a total of 3,517 provisional arrests.⁵⁴²

⁵³⁹ Bavarian government (2015): Notification of the Bavarian State Government on the organisation and holding of the G 7-GIPFEL summit in Garmisch-Partenkirchen at Ellmau Castle in the period from 7th to 8th June 2015. Available from: <http://www.bayern.de/staatsregierung/g7-gipfel-2015> (Accessed on 20th December 2016).

⁵⁴⁰ Federal Police Headquarters (2015): Review of the Federal Police Office Munich after the G7 summit - 105,000 border controls - numerous disclosures of criminal offences - Federal government air service transports G7 passengers. Available from: <http://www.presseportal.de/blaulicht/pm/117054/3041785> (Accessed on 20th December 2016).

⁵⁴¹ Federal Police Headquarters (2015): Press release G 7 summit: Federal police draws up interim balance. Press release from the Federal Police Board Date from 6th June 2015. http://www.bundespolizei.de/DE/00Aktuelles/ Einzelthemen/G7/News/150605_pm.html?nn=6187530 (Accessed on 8th June 2015).

⁵⁴² Passauer Neue Presse (2015): Home Secretary Herrmann: "We have a serious security problem". Available from: http://www.pnp.de/nachrichten/bayern/1710966_Herrmann-Wir-haben-ein-ernsthaftes-Sicherheitsproblem.html (Accessed on 20th December 2016).

7.7. Preliminary conclusion

Border security and management is enormously complex and is comprised of a variety of actors with different and sometimes even conflicting interests. Borders provide places of political and economic opportunities for states as well as for other stakeholders involved in BSM-related issues. Borders have changed from a primary function as barriers towards a new bridging function. Thus, there is an increasing demand for all border services to enhance effectively and efficiently BSM standards, as criminal activities are weakening a state, threaten consumer health and safety, reduce tax revenue to the state budget, and have a direct impact on public security and order due to the way those activities are conducted or goods are being traded. Together with the senior management of the EU border agency Frontex, the EU and its MS are concentrating in relation to their efforts to open and secure borders towards new, highly complex and technically innovative approaches to modern and efficient border management. Therefore, the priorities in the development and implementation of the

- EU Border Surveillance System EUROSUR⁵⁴³
- EU Entry-Exit System (EES)⁵⁴⁴
- EU Registered Traveller Program (RTP)⁵⁴⁵

were agreed and focus on registering entry and exit data of third country nationals crossing the external borders of the EU MS. This will speed-up, facilitate and reinforce border check procedures for non-EU nationals travelling to the EU. These systems will facilitate the modernisation of external BSM by improving the quality and efficiency of controls and support MS with the increasing numbers of travellers entering and exiting the EU. The legislative proposal is part of the broader 'Smart Borders Package', addressing the role of information systems in enhancing external border management, internal security and the fight against terrorism and FTF, as well as TOC. EUROSUR is the information-exchange framework designed to improve the management of the Union's external borders. It is principally used as an instrument for improved monitoring of the Mediterranean Sea and the control

⁵⁴³ Note from the author: For further details and explanations on the EUROSUR, please refer to point 10.3.

⁵⁴⁴ European Commission (2013): Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011.

⁵⁴⁵ European Commission (2013): Procedure COM(2013) 97 final 2013/0059 (COD). Proposal for a Regulation of the European Parliament and of the Council establishing a Traveller Program (RTP) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union.

of land borders in the east and southeast of the EU. In the further course, all 28 EU MS will provide comprehensive data relevant to current national situations for the aggregation of an overall EU overview of the situation.

In simple terms, it is intended, as in a puzzle, to merge 28 individual parts into one large picture and to re-evaluate this 'EU overview of the situation' and then take the necessary measures. Thus, a further aim of EUROSUR is to help to develop a new view in relation to the 'EU overview of the situation' and strengthening the responsiveness of all EU MS in cooperation with Frontex to prevent irregular migration and to combat cross-border crime.

According to the summary of the study by the *Heinrich Böll* Foundation⁵⁴⁶, this would mean that in practice those EU MS, which borders are along main routes of irregular migration, would classify these areas as high-risk borders and have to monitor them with even greater effort.⁵⁴⁷ In a support capacity, Frontex would assist to monitor these border areas and try to gain relevant information outside the EU territory and to evaluate operations in relevant North African and Turkish port regions.

EUROSUR aims to support EU MS by increasing their situational awareness and reaction capabilities in combating TOC, fighting irregular migration and preventing loss of migrant lives at sea. However, EUROSUR, initially developed as a border surveillance tool of EU external borders, will not be able to replace BSM operations, such as 'Mare Nostrum', 'Triton' or 'Sophia', since the approach is quite different both in terms of emergency response as well as in technical requirements. The share of surveillance and control technology is enormous and will include, such as unmanned flying objects (drones), sensors in inaccessible territories but also on the open sea, as well as extensive satellite systems.⁵⁴⁸ With the new EES, it is intended to get a more precise survey of all entry and exit movements of non-EU nationals in order to counteract the phenomenon of 'overstayers'. To this end, the EU intends to increase the use of most modern technology for intensively evaluating biometric data. Therefore, the EES is aimed at all nationals from non-EU countries that are allowed to stay in the EU for up to 90 days, as well as persons who need a visa to enter the EU.

⁵⁴⁶ Dietrich, Helmut (2014): *Die Flucht vor der Datensammelwut*. Heinrich-Böll-Foundation. Available from: <https://www.boell.de/de/2014/12/17/die-flucht-vor-der-datensammelwut-wie-menschen-den-vorverlagerten-kontrollen-der-festung> (Accessed on 20th December 2016).

⁵⁴⁷ See figure 7.5.1. – Frontex migratory routes.

⁵⁴⁸ Note from the author: See further details and explanations related to 'Mare Nostrum', 'Triton' and 'Sophie' under point 4.7.

At this point, the RTP is also intended to provide support by checking advanced personnel data of non-EU nationals before entering the EU. These persons who were classified as "no security risk for the EU" after this anticipatory check of the data submitted are also preferred and accelerated in the border police entry control. This new type of border control is ensured at specifically set-up 'control gates' in an automated process. Such 'control gates' are already in use at some EU airports.

Here, further developments of these procedures are considered and the concept of 'smart borders', so intelligent boundaries, begins to establish itself. This study examines the technical feasibility and financial soundness of the Commission legislative proposals to establish an EU EES and RTP for the external borders of the Union.⁵⁴⁹ It puts the impact assessment documents accompanying the proposals in comparative perspective with likeminded initiatives in third countries (US-VISIT), at the national level in the EU (UK border checks and e-Borders), and with past European initiatives (SIS II, VIS). It finds that it is not reasonable to consider that the measures envisaged in the 'smart borders' package are technically feasible and financially sound, and formulates recommendations to the European Parliament in this regard.

According to a study by the *Heinrich Böll* Foundation, the costs of EUROSUR and the 'smart border package' could amount to two billion Euros or even more.⁵⁵⁰ These would lead to the collection of biometric data from millions of travellers, as well as the installation of expensive new border control systems in EU MS and Frontex. Further details on these subject areas are discussed in chapter 10.

However, the recent experience of re-establishing border controls at the G7 summit in Bavaria along with the figures of the discovery of criminal offences also underlines the need for these measures. The envisaged maximum level of public safety and order will not be available at zero tariffs and therefore calls for new innovative approaches with the greatest possible support of state-of-the-art technology, as well as a proportionate and appropriate control density provided through competent border law enforcement agencies. Based on the facts of the border controls carried out at this time (see point 7.6), Bavaria's Home Secretary

⁵⁴⁹ European Parliament (2013): The Commission's Legislative Proposals on Smart Borders: Their Feasibility and Costs, p.43, 44.

⁵⁵⁰ *Heinrich Böll* Foundation (2012): *Borderline - The EU's New Border Surveillance Initiatives. Assessing the Costs and Fundamental Rights Implications of EUROSUR and the 'Smart Borders' Proposals*, p.65 to 70.

Herrmann was very disillusioned and wanted to discuss the necessary consequences in a first reaction and noticed: "[...] because what has been disclosed by the Federal Police during the last few days, it throws light on the question - How well does the so-called *Schengen* border code work? - We need to think more clearly about this and what are the potential consequences."⁵⁵¹

The Home Secretary also announced that at the next Conference of the Ministers of the Interior, he will insist on the agenda item to discuss that it seems quite easy to overcome the *Schengen* external borders without meeting the necessary legal requirements for a legal border crossing. He noticed: "Clearly, the control at the external borders does not work." There are primarily concerns with criminals and not with refugees, as the Home Secretary underlined.

Hubert Steiger, head of the Federal Police Directorate of Munich, reaffirmed Herrmann's statements by pointing out, in his analysis, "[...] that, in addition to enforced arrest warrants, an enormous number of criminal offences were detected in the area of the Residence Act (i.e., illegal immigration and people smuggling) that confirms that border controls significantly increases security in border regions beyond the G7 summit."⁵⁵²

Since a reversion to permanent stationary border controls is excluded in line with the *Schengen* Agreement, the Bavarian Ministry of the Interior started to discuss the extent to which these safety gaps can be closed. One possible measure would be a further significant expansion and strengthening of specialised law enforcement agencies in the border areas (see further explanations under point 8.7).

⁵⁵¹ *Bayernkurier* (2015): *Ausbau der Schleierfahndung*. G7-summit and its consequences. Available from: <https://www.bayernkurier.de/inland/2751-ausbau-der-schleierfahndung> (Accessed on 20th December 2016).

⁵⁵² *Ibid.*

Chapter 8: Coordinated Border Management

8.1. Integrated Border Management (IBM)

The safeguarding and surveillance of national borders is becoming increasingly complex and complicated for the responsible heads of state border services. With the increase in potential transnational threats both in quantitative and qualitative dimensions through TOC, terrorism and FTF, as well as through the ongoing flow of refugees and irregular migrants, the management of securing, controlling and surveying borders is becoming more and more difficult. The model of integrated border management is, therefore, without an alternative to counteract the transnational threats described in the third section of this thesis, and to combat terrorism, FTF and transnational operating criminal syndicates. For many years now, the safeguarding, control and surveillance of federal borders is not restricted to the Federal territory itself anymore and most other EU MS follow suit. In order to effectively implement the concept of enhanced border control and border surveillance, the four-pillar model of IBM, which is implemented by the Federal Police in Germany, was developed at EU level and beyond.⁵⁵³

Borowik and Möller describe the four IBM columns as follows:

- 1st pillar - Strategy of forward displacement
- 2nd pillar - Consistent service-oriented security checks at the *Schengen* external borders
- 3rd pillar - Cross-border cooperation with third countries
- 4th pillar - Consistent increase of detection risk within EU MS territory⁵⁵⁴

Table 8.1.1.: Own presentation

Integrated Border Management			
1st Pillar	2nd Pillar	3rd Pillar	4th Pillar
Strategy of forward displacement	Consistent service-oriented security checks at the <i>Schengen</i> external borders	Cross-border cooperation with third countries	Consistent increase of detection risk within EU MS territory

⁵⁵³ The Guidelines for the Integrated Border Management in the Western Balkans (2007): The EC IBM concept for the Western Balkans defines IBM as follows: "IBM covers coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and integrated border management systems, in order to reach the common goal of open, but controlled and secure borders". Executive Summary, p.2.

⁵⁵⁴ Borowik, Thomas/Möller, Stefanie (2012): *Bundespolizei kompakt*. Magazine of the Federal Police, ISSN 2190-6718, 39th edition, p.4-6.

1st pillar - Strategy of forward displacement

This strategy corresponds to the measures of an outplacement of border controls of the national territory.⁵⁵⁵ These include the nomination and posting of support border police officers in foreign countries, border police liaison officers and border police officers as advisers in the areas of travel document and visa checks on the basis of bilateral agreements.⁵⁵⁶ Federal Police officers monitor passengers at the departure airports with regard to certain flight routes to prevent irregular migration and people smuggling, and to facilitate the criminal investigation of offences in the area of counterfeit travel documents and visas. This is done in close co-operation with the national ministries, law enforcement agencies and participating airlines.

2nd pillar - Consistent service-oriented security checks at the *Schengen* external borders

To date, with the abolition of the stationary border controls to Switzerland and Liechtenstein, Germany no longer has *Schengen* external borders and permanent stationary border controls are a thing of the past. The exceptions are the BCPs at the international airports and seaports in Germany. The main challenges to providing effective and efficient IBM are human resource management and technical equipment-related issues as a result of losing the traditional stationary border controls.

Table 8.1.2. – Omission of border control

Country	Date of omission
Belgium, France, Germany, Luxembourg, The Netherlands, Portugal, Spain	26 th March, 1995
Italy	26 th March, 1997
Austria	1 st December, 1997
Greece	26 th March, 2000
Denmark, Finland, Iceland, Norway, Sweden	25 th March, 2001
Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia	21 st December, 2007
Switzerland	12 th December, 2008 (land borders) 29 th March, 2009 (airports)
Liechtenstein	19 th December, 2011

Source: Federal Foreign Office 2013⁵⁵⁷

⁵⁵⁵ Note from the author: Further details will be discussed under chapter 14.

⁵⁵⁶ Note from the author: Further details will be discussed under point 11.4. and chapter 14.

⁵⁵⁷ Federal Foreign Office (2013): *Schengen* Agreement. Available from: http://www.auswaertiges-amt.de/DE/EinreiseUndAufenthalt/Schengen_node.html (Accessed on 22nd December 2016).

Whilst a steady increase of travel activities consequently means shorter average times available for traveller checks at BCPs and especially at airports, at the same time it ensures the guarantee of safety, increases the number of search hits, as well as enables the detection of criminal offences and pursuant criminal prosecution, both in terms of quality and quantity.⁵⁵⁸ Borowik and Möller clearly emphasise the fact of shorter waiting times and simplified controls of EU nationals as a classic example of service-oriented security checks at EU external borders. This requires an effective interaction and cooperation of pre-acquired information from forward displacement border controls, information acquisition, the assessment of situations, as well as risk analyses and the implementation of the necessary measures with regard to averting danger and criminal prosecution.

3rd pillar - Cross-border cooperation with third countries

In order to effectively secure, control and protect the EU's external borders a close and trustworthy cooperation with the government authorities of the neighbouring or third countries concerned is required, in addition to adequately qualified and highly motivated border officers, together with state-of-the-art technical equipment. In close cooperation with the UN and EU agencies, it is necessary to encourage the dialogue between national law enforcement and immigration authorities, international organisations responsible for migration, carriers and other relevant actors from the private sector, aiming to achieve concrete agreements.⁵⁵⁹ In this way, irregular migration in general and THB and people smuggling and their immediate affiliation to TOC are to be combated and confined.

4th pillar - Systematically increasing the risk of discovery in the inland

The removal of stationary controls within the *Schengen* area made travel a much more comfortable experience for people as long as they succeeded in averting relevant dangers and pursuing criminal offences by means of appropriate compensatory measures (see points 8.7 and chapter 9). Therefore, the risk of discovery for wanted criminals, people smugglers and irregular migrants in the *Schengen* area in general and on German territory in particular, must be

⁵⁵⁸ UNWTO (2016): Annual Report 2015. Available from:

http://cf.cdn.unwto.org/sites/all/files/pdf/annual_report_2015_lr.pdf (Accessed on 15th December 2016).

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen* Borders Code) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

'Border checks' (Definition no 12) are the checks carried out at border crossing points, to ensure that persons, their means of transport and the objects in their possession may be authorised to enter or leave the territory of *Schengen* States.

⁵⁵⁹ Note from the author: The UN agencies INTERPOL and ICAO, the EU agencies EUROPOL and Frontex, should be listed here exemplary.

maintained through strategic and tactical pursuit. This calls for close cooperation between the responsible authorities, both between the *Schengen* countries and other EU MS, but also non-EU countries, to fight cross-border crime and irregular migration in joint approaches. Borowik and Möller describe in this regard the model of joint border cooperation centres (BCC) and the way in which nearly 100 federal police officers exchange information with the partner states and coordinate joint operations, patrols and controls.⁵⁶⁰

Security at the BCP and easement of border checks appear at first glance contrasting but can be seen as a supplement when viewed a second time. Countries that have successfully applied IBM have demonstrated how the tools in the areas of risk analysis and risk management improve BSM as a whole, thus enhancing control and efficiency and are, therefore, not mutually exclusive.

8.2. State authorities involved in border management

In most European countries, border guards or border police are primarily responsible for the security and surveillance of state borders and the control of international traffic (persons) and customs (goods).⁵⁶¹ Border police or border guards are usually subordinated to a Ministry of the Interior, while customs services are subject to a Ministry of Finance.⁵⁶² In addition, state veterinary⁵⁶² and phytosanitary⁵⁶³ services carry out appropriate checks at BCPs, which in turn may be assigned to a Ministry of Health or Ministry of Agriculture.

⁵⁶⁰ Federal Ministry of Interior (2014): Security – International Cooperation. Available from: http://www.bmi.bund.de/DE/Themen/Sicherheit/Internationale-Zusammenarbeit/Polizeiliche-Zusammenarbeit/polizeiliche-zusammenarbeit_node.html (Accessed on 28th December 2016).
Note from the author: See further explanations under point 11.7. – Border Cooperation Centres.

⁵⁶¹ European Commission (2014): Report from the Commission to the European Parliament and the Council on the progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap /*COM/2014/0646 final*/ point 3.2.1. border management.

[...] The Commission considers that this requirement is not fulfilled, because the 'National Action Plan for the Implementation of Turkey's Integrated Border Management strategy' has only been implemented in a very limited fashion, and one of its key components has not been implemented at all. This component proposed setting up a single, non-military, specialised border organisation and transferring all the responsibilities and resources for border management to it. These are currently distributed among several different agencies (i.e., the customs, the police, the coastguard, and the land forces). [...].

Wagner, Johann (2008): Comprehensive Risk Analysis of the Turkish Border Management System. 2008 – "Assistance to the EC Delegation in the Field of Integrated Border Management in Turkey, Project TR07/IB/JH/04".

⁵⁶² Federal Ministry of Food and Agriculture (2016): The responsibility for enforcing food law provisions in Germany lies with the federal states (*Länder*). The question of whether a specific product complies with the legal requirements must be evaluated by considering the actual product in its entirety, taking into account its origin, import certificate, composition, intended purpose and presentation. Available from: <http://www.bmel.de/EN/Food/Safe-Food/Texte/GermanImportconditionsforFood.html> (Accessed on 28th December 2016).

⁵⁶³ Ibid.

A responsible involvement in the areas of IBM also takes place in other ways for other ministries or state authorities such as:

- Foreign Office (visa regime)
- Immigration office (alt. immigration service) and civil register
- Ministries of Transport and Building, Tourism
- Home Office (e.g., Federal Criminal Police Office, defence of constitution)
- National intelligence service⁵⁶⁴
- Ministry of Defence (for example in Turkey⁵⁶⁵)
- Coast Guard
- Civil protection, fire brigades and rescue service
- Energy production
- Environment

8.3. Border Guard equal to Border Police?

What may appear to be the same on first impression appear quite different on closer inspection. The primary task of the state border guard service or border police is the protection of the respective state territory with the aim of averting danger at the borders and within defined border areas, which can be instigated by persons or things and threaten the public safety and order.⁵⁶⁶

In addition to the control of the various forms of border traffic (i.e., road vehicles, trains, vessels and aircrafts) and checks of travel documents and other identity documents (i.e., ID cards, driver's licences, other ID documents), both border services also have the task of surveying the so-called 'green' and 'blue' borders. This is to prevent illegal border crossings, people smuggling and smuggling of contraband. Usually, special emissaries for BSM-related issues are appointed, who cooperate closely with heads of competent law enforcement agencies of the respective neighbouring countries and maintain close contact with the neighbouring authorities on the spot in order to discuss for example issues relevant to border demarcation, relevant administrative legal issues, information exchange and cooperation. With regard to the air and water borders, border guards are

⁵⁶⁴ Note from the author: The FSB domestic service in the Russian Federation (formerly the *KGB - Federalnaja sluschba besopasnosti Rossijskoi Federazii*) is significantly involved in border security and border control. Available from: [http://www.uni-protokolle.de/Lexikon/FSB_\(Geheimdienst\).html](http://www.uni-protokolle.de/Lexikon/FSB_(Geheimdienst).html) (Accessed on 28th December 2016).

⁵⁶⁵ Wagner, Johann (2008, 2009): Comprehensive Risk Analysis of the Turkish Border Management System. 2008 - "Assistance to the EC Delegation in the Field of Integrated Border Management in Turkey, Project TR07/IB/JH/04".

2009 - "Technical Assistance for the Preparation of Border Surveillance Area Survey in Turkey - EuropeAid/127552/SER/TR".

⁵⁶⁶ Note from the author: A customs territory is defined as a border area following a (customs) border in which, in addition to the law applicable, special laws and regulations may be applied.

monitoring and controlling cross-border traffic with technical equipment, which is not available to border police services in most countries. For example, large-area maritime borders are surveyed with ocean-going ships and other watercraft, as well as airspace monitored with helicopters, small aircraft and unmanned aerial vehicles.

Through accumulative reflections and ongoing monitoring of BSM-related change management processes, it was noted that above all, border guard services in Eastern European countries have restricted control competences at BCP's, which limit them in their border-policing activities and therefore differ significantly from the competences of border police services in other countries.⁵⁶⁷ In the framework of their original task assignments at BCP's, border guards of such institutions are allowed only to check travel documents and ID cards. After completion of the identity check by border guards, the entry is legally concluded. It is only at this point, with the departure from the BCP territory into the state area that the competent authority can act (for example the traffic police with regard to provisions from the Road Traffic Act). The situation with the border police is different, with special emphasis on the word 'police'. A representative of the border police is entrusted with the performance of all police-related duties at the control points assigned to them, so in effect, the corresponding BCP's and appropriately assigned border areas.⁵⁶⁸ Thus the officials of the German Federal Police, competent for border controls, have the mandatory tasks according to the Code of Criminal Procedure.

Section 163 - Duties of the Police

(1) The authorities and officials in the police force shall investigate criminal offences and shall take all measures that may not be deferred, in order to prevent concealment of facts. To this end they shall be entitled to request, and in exigent circumstances to demand, information from all authorities, as well as to conduct investigations of any kind insofar as there are no other statutory provisions specifically regulating their powers.

(2) The authorities and officials in the police force shall transmit their records to the public prosecution office without delay. Where it appears necessary that

⁵⁶⁷ Wagner, Johann (2012): Comprehensive Assessment and Evaluation of the Ukraine State Border Guard Service. The state border guard of Ukraine has, among other things, no legally regulated competence for the control of motor vehicles, vehicle documents, driving licenses or other special permits. This falls within the respective jurisdiction of other police officers (e.g., traffic police).

⁵⁶⁸ The Act on the Police of Bavaria (*PAG - Gesetz über die Aufgaben und Befugnisse der Bayerischen Staatlichen Polizei*), as amended by the notice of 14th September 1990.

Article 2 - Tasks of the police

- (1) The police have the task of averting dangers to public security or order that are general or in individual cases.
- (2) The protection of private rights is the responsibility of the police under this law only if judicial protection cannot be obtained in time and if, without the help of the police, the enforcement of the right would be hindered or made considerably more difficult.
- (3) The police shall provide enforcement assistance to other authorities and the courts (Articles 50 to 52).
- (4) The police shall also perform the tasks entrusted to it by other legislation.

a judicial investigation be performed promptly, transmission directly to the Local Court shall be possible. [...].⁵⁶⁹

The federal structure of the Federal Republic of Germany gives the 16 states (*Länder*) the authority to maintain their own police forces within their territory, along with the right to pass legislation and exercise police authority. At the same time, the Basic Law provides also federal authority in central areas of law enforcement. Due to this division of authority, Germany has 16 state police forces and two federal law enforcement agencies, one of which is the Federal Police. The Federal Police carry out a wide variety of law enforcement tasks, in particular border protection, railway policing and aviation security, as assigned by Germany's Basic Law and federal law, including the Act on the Federal Police, the Residence Act, the Asylum Procedure Act and the Act on Aviation Security. With its approximately 40,000 staff, including more than 30,000 highly trained law enforcement officers, the Federal Police is an extremely effective police service, which plays an important role in maintaining internal security in the Federal Republic of Germany and Europe.⁵⁷⁰

Section 1 - Tasks and uses

(1) The Federal Police is led by federal authorities. It is one of the Federal Police in the Federal Ministry of the Interior.

(2) The Federal Police is responsible for the tasks assigned to it by this Act or either their 1st November, 1994 have been allocated by another federal law or pursuant to a federal law.

(3) The Federal Police secures its agencies, organisations, units, and other facilities against threats that affect the performance of their duties in their own jurisdiction. The force is limited to the institutions referred to in clause 1 and to the land on which these facilities are located.

(4) The protection of private rights is the responsibility of the Federal Police in the course of their duties only if judicial protection cannot be obtained in time and would promote the right frustrated without help from the federal police or substantially more difficult.

(5) The Federal Police incumbent security tasks include the prevention of offenses under this Act.

(6) If in the performance of duties of the federal police powers of other authorities of the Federation or of the countries affected, the federal police authorities act in consultation with the relevant authorities. If this is not possible because there is imminent danger, the competent authorities shall be informed immediately of the measures taken.

(7) The jurisdiction of the police of the country remains in the unaffected in paragraph 3 and to the designated in §§ 2 to 5 geographic areas of responsibility of the Federal Police.⁵⁷¹

⁵⁶⁹ Code of Criminal Procedure in the version published on 7th April 1987 (Federal Law Gazette [*Bundesgesetzblatt*] Part I p.1074, 1319), as most recently amended by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410)

⁵⁷⁰ Note from the author: This also includes all the measures described for the extra-territorialisation of the border control measures described in point 8.1. and Chapter 14.

⁵⁷¹ Federal Police Act of 19th October 1994 (Federal Law Gazette I, p.2978, 2979), last amended by Article 1 of the Law of 21st June 2005 (Federal Law Gazette I, p.1818).

In comparison to the border guards' overall tasks and responsibilities, the border police officers have a mandatory task to investigate all offences that are in a cross-border context. Thus, a clear distinction between border police and border guards services is evident with regard to a common framework of duties in terms of person checks and the aversion of dangers in the context of public security and order.⁵⁷²

8.4. Control of goods traffic

The traditional question: "Do you have to declare goods?" reflects only a very small part of the overall portfolio of tasks and responsibilities of customs services and can no longer describe the diversity of the task spectrum of this state authority. Rather, the primary responsibilities⁵⁷³ and tasks of a modern customs service are defined, *inter alia*, in the areas of border surveillance with regard to the prevention of smuggling of goods, the control of goods across borders, as well as other customs-related issues. These include the control of the import, export and transit of goods, as well as the resulting income tax⁵⁷⁴ (mainly excise tax), in particular turnover tax on imports. In addition, Customs service counter illicit trafficking in narcotics, smuggling of goods, tax offences⁵⁷⁵, infringements against the Trademark Act⁵⁷⁶, species protection and is involved in coastal protection. In some EU MS, customs also perform tasks in the fight against undeclared work, money laundering and even terrorism. German Customs service officials are working in supranational institutions, such as the EU and its agencies and the World Customs

⁵⁷² Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

'Minimum check' (Definition no 14) is the check to be carried out, as a rule, on persons enjoying the Community right of free movement, in order to verify their identity and nationality for EU/EEA/CH citizens or their identity and family ties with an EU/EEA/CH citizen for their family members who are not EU/EEA/CH citizens themselves. It consists of a rapid and straightforward verification of the travel document, with the aim of checking the validity of it and of detecting the presence of signs of falsification or counterfeiting. This check may involve the consultation, in the relevant databases, of information concerning stolen, misappropriated, lost and invalidated documents.

⁵⁷³ Federal Ministry of Finance (2016): Central Customs Authority - Protection for business, citizens and the environment. The tasks are: tax and duties, combating illegal employment, consumer protection, trademark protection and trademark protection, the fight against smuggling and crime and terrorism, foreign trade monitoring and protection of species.

German Customs Administration Act (*ZollVG*): "Customs Administration Act of 21st December 1992 (Federal Law Gazette I, p.2125, 1993, p.2493), most recently amended by Article 6 of the Act of 21st July, 2012 (Federal Law Gazette I p.1566)". Part I Entry of goods traffic. § 1 Tasks of Customs Administration. Available from: <http://www.gesetze-im-internet.de/bundesrecht/zollvg/gesamt.pdf> (Accessed on 30th December 2016).

⁵⁷⁴ Ibid.

The German Customs services takes about half of the taxes to the federal government every year. In 2014, the figure was almost 129 billion Euros, a figure that says a lot about the importance of the Customs service. [...] The tariffs charged (2014: 4.6 billion Euros) flow into the EU budget. Available from:

http://www.zoll.de/DE/Der-Zoll/Aufgaben/Schutz-fuer-Wirtschaft-Buerger-und-Umwelt/schutz-fuer-wirtschaft-buerger-und-umwelt_node.html (Accessed on 30th December 2016).

⁵⁷⁵ Note from the author: Reduction of value of the transported goods; Refund of VAT by means of fictitious invoices and others.

⁵⁷⁶ Note from the author: Illegal import of counterfeit products into the economic cycle.

Organisation (WCO) in Brussels.⁵⁷⁷ As in the case of the Federal Police, the German Customs service also sends officials to German embassies and post-conflict crises management areas, thereby contributing to a positive image of Germany through their engagement.

8.5. Veterinary and phytosanitary services

National competent authorities, which are responsible for import inspections in the veterinary and phytosanitary sectors, both within the EU and neighbouring countries, have an inevitable control function in the area of cross-border trade of groceries, as well as other animal and plant products.

A standardised and reliable import control of these products at the EU's external borders with regard to steady expanding world markets, rapidly increasing stock turns of cargo and open borders is becoming increasingly important for the consumers of the EU internal market and its neighbouring countries. This requires the highest standards of demands on food safety and this must not be an issue in terms of best price calculations and policies related to competitiveness. In addition, consumers have the right to get adequate and reliable information with regard to the origin and composition of the food. The EU has recognised the need for common quality standards in these sectors and products intended for the internal market must fulfil the minimum requirements to meet conditions guaranteeing animal welfare and environmental aspects.

8.6. Other stakeholders

In addition to the aforementioned Ministries of the Interior and Finance, other ministries and authorities, which play an important role in modern, effective and efficient IBM, should also be mentioned. This includes the ministries as mentioned under point 8.2., as well as other governmental institutions such as civil protection institutions, central foreigners and immigration authorities, intelligence services, criminal investigation department (CID) and crisis intervention agencies.⁵⁷⁸ However, it is not only state authorities and institutions that characterise and further develop modern border management.

A permanent renewal and implementation of modern structures and systems of border management, border control and border surveillance, while at the same time involving the interests of society, economy and associations, requires far

⁵⁷⁷ Federal Ministry of Finance (2016): Central Customs Authority. Available from: http://www.zoll.de/DE/Der-Zoll/International/international_node.html (Accessed on 30th December 2016).

⁵⁷⁸ Note from the author: The names of the ministries were expressed here in a general manner and may have different names in the respective countries.

greater approaches than just the security-relevant positions of the respective ministries and their border authorities. Public Private Partnership (herein later mentioned as PPP) defines a 'long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.⁵⁷⁹ PPP is a cross-disciplinary initiative for the implementation of various workflow processes using approaches, different ways of thinking and methods of different disciplines by involving all key stakeholders.⁵⁸⁰ PPPs typically do not include service contracts or turnkey construction contracts, which are categorised as public procurement projects, or the privatisation of utilities where there is a limited ongoing role for the public sector. An increasing number of countries are enshrining a definition of PPP, each tailoring the definition to their institutional and legal particularities. The implementation of open and at the same time secure borders from the aspect of high frequencies of passenger and goods traffic, while simultaneously requiring shorter waiting and control times, requires a high degree of sound judgement and professional know-how. Those who want to achieve the best goals here, have to understand and master the processes, ask for the respective expertise and put together the respective elements. This is the only effective way to get the necessary overview and to gain competence. Thus, PPP is a very important issue for the UN Economic Commission, the EC, as well as numerous EU MS ministries, all of whom are interested in the development and implementation of modern border management and are responsible for public security and order, while at the same time taking into account the legitimate interests of the free economy and society. These positions are reflected in political initiatives, the EU rules developed and consistent adjustments in national laws. In Germany, the Federal Association of Public Private Partnerships is the largest know-how platform in the implementation of infrastructure projects involving lifecycle models in Germany.⁵⁸¹

⁵⁷⁹ World Bank (2016): What are Public Private Partnerships? Available from: <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> (Accessed on 30th December 2016).

⁵⁸⁰ *Gabler Wirtschaftslexikon* (2016): Public Private Partnerships (PPPs) are forms of collaboration between entities of public bodies, private companies and/or non-profit organisations, which are more processor-oriented over a longer period of time and due to incomplete performance specifications. The two basic types - organisation and contract PPPs are distinguished. In the case of the former, the cooperation is institutionalised within the framework of a common organisation; in the case of the second, a contract forms the basis for cooperation. PPPs are now found in a wide range of tasks. Available from: <http://wirtschaftslexikon.gabler.de/Definition/public-private-partnership.html#definition> (Accessed on 30th December 2016).

⁵⁸¹ *BPPP – Netzwerk Infrastrukturmanagement* (2014): The BPPP was founded in Hamburg on 4th November 2003. The BPPP sees itself against the background of a growing but at the same time very heterogeneous landscape of cooperation projects between state and private sector as a comprehensive private-public

8.7. Compensatory measures by eliminating stationary border control

On 1st January 1995 the so-called 'dragnet controls', which are alternatively controls that are carried out independently of suspicious facts and incidents, were introduced in Bavaria and go hand-in-hand with the implementation of the *Schengen* agreement.⁵⁸² This new type of police search was introduced as a substitute measure for the abolition of stationary border controls within the *Schengen* area to counter transnational threats and the fight against cross-border crime. In 1998, with the abolition of the stationary border controls in Austria, the Bavarian Border Police was dissolved as an independent association and integrated into the Bavarian state police.⁵⁸³ Specialised investigation centres were created within the Bavarian Police and the statutory responsibilities were regulated in Article 4 of the Police Organisation Act (*Polizeiorganisationsgesetz - POG*) with the accession of Austria to the *Schengen* area on 1st April 1998.⁵⁸⁴ The aforementioned 'dragnet controls'⁵⁸⁵ are checks of persons and their carried-on items as well as motor vehicles.⁵⁸⁶ The search is spatially restricted to the border area (up to 30 km inland) and to cross-border traffic routes and to international transport such as railway stations and airports.⁵⁸⁷ The original structure of police stations along the Bavarian-Czech border remained until the abolition of border controls to the Czech Republic on 21st December 2007.

In order to increase the efficiency of new police search instruments, special police units were formed and entrusted with tactical police operation duties, in particular on motorways. In addition to the described 'dragnet controls' as compensatory

discussion and design platform. The BPPP is independent - both of state PPP competence centres, the partnerships of Germany and other private industry associations. Available from:

http://www.bppp.de/bppp.php/cat/2/aid/5/title/Der_Verband (Accessed on 31st December 2016).

⁵⁸² BPB (2012): Dossier Internal Security Glossary Dragnet Control. Available from:

<http://www.bpb.de/politik/innenpolitik/innere-sicherheit/76672/glossar?p=31> (Accessed on 31st December 2016).

Note for the author: For further explanations see point 7.5.

⁵⁸³ Bavarian State Parliament 17/1776, 17. Election period (2014): Written inquiry submitted by the parliamentarian Annette Karl, SPD of 19th March 2014 – Dragnet control at the border to the Czech Republic, p.1 and 2.

⁵⁸⁴ Ibid.

Police Organisation Act (*Polizeiorganisationsgesetz - POG*) in the amended version, as published in the Bavarian Law Gazette (BayRS 2012-2-1-1), which was last amended by Article 10b (1) of the Act of 23rd June 2015 (GVB page 178).

⁵⁸⁵ Lange, Hans-Jürgen (Hg.) (2006): *Innere Sicherheit*, dictionary of internal security, p.283-287.

⁵⁸⁶ Act on the Tasks and Powers of the Bavarian State Police, as amended by the notice of 14th September 1990 (last modified amendment of 22nd July 2014).

Article 13 (1), fifth sentence, of the PAG, which regulates alternatively controls that are carried out independently of suspicious facts and incidents on federal motorways and transit routes: "[...] the police can determine the identity of a person who is in the border area to a depth 30 km as well as on main roads (motorways, European roads and other roads of considerable importance for international traffic) and in public international transport facilities to prevent the unauthorised crossing of the land border or illegal residence and the fight against transnational crime [...].

⁵⁸⁷ Note from the author: Traffic routes with cross-border character are federal motorways and federal roads.

investigation measures, police search operations are also carried out in a so-called 'second search veil' performed by the traffic police investigations, which were established in 2000.⁵⁸⁸ The controls, which are alternatively controls that are carried out independently of suspicious facts and incidents, are executed by state and federal police and were initially meant to be visual inspections and document checks only. In some cases, they are also referred to as non-indication-based, tactical-situation-based or tactical-situation-dependent checks of persons and their carried-on items. Lange contradicts and specifies such measures as 'dragnet checks', since these checks are not restricted only to visual checks of persons including their ID documents, but also matters such as motor and construction vehicles. The vehicles and persons to be checked would be chosen by the police officers based on their experience, as well as considering tactical-situation-based information. In the cases of mobile controls, civilian police vehicles would 'float' in the normal traffic flow on motorways and direct vehicles to the next possible parking area within a control location. On motorways, prepared control points (stationary controls at a parking area) could be set up and vehicles to be checked would be escorted by civilian police vehicles 'floating' in the traffic. For international passenger trains, individual trains would be selected and the inspection officers travel in these trains (rolling control) and carry out the checks whilst the trains are running.

In the description and definition of the developed compensatory measures, particular attention was paid to, among other things, the following areas:

- Harmonisation of the legal prerequisites for the entry and stay of persons without EU citizenship in the *Schengen* area, thus the creation of a unified visa system
- Clarification of relevant issues in the area of asylum, such as, for example, which EU MS is responsible for asylum seekers and under what circumstances, and is obliged to process the asylum procedure in accordance with the law (see 'Dublin procedure' point 5.4.5)
- Concepts and concrete measures to combat the illicit trafficking of drugs
- Cross-border police cooperation
- EU MS cooperation in the field of justice

A very special compensatory measure is the so-called 'hot pursuit'.⁵⁸⁹

⁵⁸⁸ Act on the Tasks and Powers of the Bavarian State Police (*PAG*), as amended by the notice of 14th September 1990 (last modified amendment of 22nd July, 2014), Article 13/I/V.

⁵⁸⁹ *Schengen acquis* as referred to in Article 1(2) of Council Decision 1999/435/EC of 20th May 1999.

Article 41 – Hot pursuit

1. Officers of one of the contracting parties who are pursuing in their country an individual caught in the act of committing or of participating in one of the offences referred to in paragraph 4 shall be authorised to continue pursuit in the territory of another contracting party without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other contracting party by one of the means provided for in Article 44 prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.
The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty. The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the contracting party in whose territory the hot pursuit is to take place. The hot pursuit will cease as soon as the contracting party in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person in order to establish the person's identity or to make an arrest.
2. Hot pursuit shall be carried out in accordance with one of the following procedures, defined by the declaration laid down in paragraph 9.
 - a) The pursuing officers shall not have the right to apprehend the pursued person.
 - b) If no request to cease the hot pursuit is made and if the competent local authorities are unable to intervene quickly enough, the pursuing officers may detain the person pursued until the officers of the contracting party in whose territory the pursuit is taking place, who must be informed immediately, are able to establish the person's identity or make an arrest. [...].

In addition to Article 41 of the *Schengen acquis*⁵⁹⁰, a bilateral treaty between Austria and Germany regulates cross-border police cooperation and criminal investigation matters.⁵⁹¹

The *Schengen* Information System (SIS) is a highly efficient large-scale information system that supports external border control and law enforcement cooperation in the *Schengen* countries.⁵⁹² The SIS enables competent authorities, such as state police, border police or border guards, to enter automated queries related to certain categories of wanted or missing persons and objects (i.e., ID documents, motor vehicles, vessels, banknotes, weapons, antiques) based on the

⁵⁹⁰ *Schengen acquis* – Convention implementing the *Schengen* Agreement of 14th June, 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders Official Journal L 239, 22/09/2000 p.0019–0062.

⁵⁹¹ Treaty between the Republic of Austria and the Federal Republic of Germany on cross-border cooperation in the field of law enforcement and in criminal matters STF: Federal Law Gazette III No. 210/2005 (NR: GP XXII RV 816 AB 877 p.110. BR AB 7295 p.722). Part III - Specific forms of cooperation in criminal matters, Art. 12 – Hot pursuit.

⁵⁹² European Commission (2017): The main purpose of the SIS is to help preserving internal security in the *Schengen* States in the absence of internal border checks. The scope of the SIS is defined in three legal instruments:

- Regulation (EC) No 1987/2006 on border control cooperation
- Council Decision 2007/533/JHA on law enforcement cooperation
- Regulation (EC) No 1986/2006 on cooperation on vehicle registration

Schengen acquis. SIS alerts contain not only information about a particular person and/or object, but also clear instructions on what to do when the person and/or object has been found. Specialised national coordinating bodies⁵⁹³ (SIRENE Bureaux⁵⁹⁴) serve as single points of contact for any supplementary information exchange and coordination of activities related to SIS alerts.⁵⁹⁵ Since 2011, the SIS also offers the technical access to the EU Visa Information System (VIS), in which records can be exchanged related to issued short-term visas. Furthermore, SIS MS are co-operating on the basis of the *Prüm* contract.⁵⁹⁶ The direct cross-linking of SIS and the SIRENE Coordination Centres has significantly improved the operational co-operation of police authorities on the basis of the *Schengen acquis*. In particular, the following articles of the *Schengen acquis* have strengthened the transnational police cooperation:⁵⁹⁷

- Article 39 - [...] assist each other for the purposes of preventing and detecting criminal offences
- Article 40 - [...] authorised to continue their surveillance in the territory of another Contracting Party
- Article 41 - [...] authorised to continue pursuit in the territory of another Contracting Party (‘hot pursuit’)
- Article 46 - [...] communication on the prosecution or prevention of offenses or threats to public order and security of important information

Important personal data are stored in the SIS under the following guidelines⁵⁹⁸:

- Article 95 - Data on persons wanted for arrest for extradition purposes
- Article 96 - Data on aliens for whom an alert has been issued for the purposes of refusing entry

⁵⁹³ EU *Schengen* Catalogue 2 (2002): *Schengen* Information System SIRENE (Supplementary Information Request at the National Entries) – Recommendations and Practices.

⁵⁹⁴ Ibid.

⁵⁹⁵ The *Schengen* Area has 26 MS, 22 of which fully implement the *Schengen Acquis*, and four of them – members of the European Free Trade Association (EFTA), implement *Schengen Acquis* through specific agreements related to the *Schengen* Agreement. *Schengen* MS are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and Liechtenstein. There are 6 more EU MS that have not yet joined *Schengen* area: Ireland, United Kingdom - that still maintain opt-outs and Romania, Bulgaria, Croatia and Cyprus that are required to and are seeking to join.

⁵⁹⁶ European Commission (2017): European Information Exchange Model (EIXM). EIXM took stock of the EU information exchanges landscape and recommended concrete steps on how to increase the efficiency and improve the application of existing cooperation instruments. The main legal instruments covered by EIXM are the so-called *Prüm* Council Decision (2008/615/JHA) and the so-called Swedish Initiative (2006/960/JHA). Available from: https://ec.europa.eu/home-affairs/what-we-do/policies/police-cooperation/information-exchange/eixm_en (Accessed on 2nd January 2017).

Note from the author: See further explanation under chapter 11, point 11.6.

⁵⁹⁷ *Schengen acquis* as referred to in Article 1(2) of Council Decision 1999/435/EC of 20th May 1999.

⁵⁹⁸ Ibid.

- Article 97 - Data on missing persons
- Article 98 - Data on witnesses, persons summoned to appear before the judicial authorities
- Article 99 - Data on persons or vehicles [...] for the purposes of discreet surveillance or of specific checks
- Article 100 - Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings

Chapter 9: EU agencies with regard to integrated border control within the framework of the created compensatory measures

Generally, the EU agencies are juridical separate and independent from the EU institutions, which have been established to perform certain tasks under EU law.⁵⁹⁹

There are more than 40 agencies, in principle divided into four main categories:

- Decentralised agencies
- Executive agencies
- Euratom agencies⁶⁰⁰
- European Institute of Innovation and Technology (EIT)

The decentralised agencies carry out tasks in the areas of technology, science and administration and thus support the EU institutions in the implementation of policy measures. They also foster cooperation between the EU and the governments of the EU MS by pooling expertise and experts available in EU institutions as well as national authorities. The following EU agencies are part of the decentralised agencies and are located in different EU MS.

9.1. The Europeans Union's Judicial Cooperation Unit – Eurojust

Eurojust was established in 2002 to continuously improve the coordination and cooperation between EU MS judicial authorities and non-EU states and their investigators in the prosecution of serious cross-border crime.⁶⁰¹ It is also the task of Eurojust to increase the efficiency of the work of the national law enforcement and investigation authorities in the prosecution of TOC, so that offenders can be quickly and successfully brought to justice and sentenced. The latest chapter in the development of Eurojust is contained in the Lisbon Treaty, namely in Chapter 4, Articles 85 and 86.

Article 85

Eurojust defines its mission to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States [...].

⁵⁹⁹ European Union (2017): Agencies and other EU bodies. Available from: https://europa.eu/european-union/about-eu/agencies_en (Accessed on 2nd January 2017).

⁶⁰⁰ European Commission (2017): Euratom aims to pursue nuclear research and training activities with an emphasis on continually improving nuclear safety, security and radiation protection, notably to contribute to the long-term decarbonisation of the energy system in a safe, efficient and secure way. By contributing to these objectives, the Euratom Programme will reinforce outcomes under the three priorities of Horizon 2020: Excellent science, Industrial leadership and Societal challenges. Available from: <https://ec.europa.eu/programmes/horizon2020/en/h2020-section/euratom> (Accessed on 2nd January 2017).

⁶⁰¹ Council of the European Union (2009): Consolidated version of the Council Decision 2002/187/JHA of 28th February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16th December 2009 on the strengthening of Eurojust.

Article 86

[...] in order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust.

To this end Eurojust wants to be an important partner and expert agency at the judicial level for effective combat against TOC in the EU. Each EU MS can appoint a representative, who is an experienced and qualified expert from the judiciary, a prosecutor or a law enforcement (police) officer with equivalent powers. All experts shall jointly implement Eurojust's mandate to support coordination between national authorities at all stages of investigations and prosecutions. In addition, the experts are concerned with the daily challenges and practical problems, which necessarily result from the differences in the respective legal systems between the individual EU MS. If there exists an appropriate cooperation agreement with a non-EU member country, additional experts from this country may work with Eurojust on a temporary basis. The more recent EU framework legislation allows judges of Eurojust to work as a liaison official in third countries. In 2015, Eurojust handled 2,214 cases, from which 293 cases were with third states. This is an increase of 23 per cent in comparison to 2014 with 1,804 cases. Furthermore, Eurojust organised and held 274 coordination meetings, which focus on combating TOC.⁶⁰² The Eurojust experts will also assist in resolving conflicts of jurisdiction in cases where more than one national authority is responsible for conducting investigations or prosecutions with respect to a particular case. Eurojust maintains close cooperation with other EU institutions such as CEPOL, Europol, Frontex, OLAF and other organisations.

9.2. European Dactyloscopy – Eurodac

The objective of this Council Regulation was to establish a system for comparing fingerprints of asylum seekers and some additional categories of illegal immigrants. The aim is to facilitate the application of the Dublin III Regulation to determine the EU MS responsible for examining an asylum application (see also point 5.4.5).⁶⁰³ The implementation of the EU Regulation No. 604/2013 stipulates

⁶⁰² Eurojust (2016): Annual report 2015. ISBN 978-92-9490-074-6. Eurojust casework in 2010-1424 cases, 2011-1441 cases, 2012-1533 cases and 2013-1576 cases.

⁶⁰³ Council Regulation No 2725/2000 of 11th December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

EU (2013): Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26th June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with 'Eurodac' data by Member States' law enforcement authorities and EUROPOL for law enforcement purposes, and amending Regulation (EU) No

and at the same time provides that the international protection is applied for the purpose of the verification of individuals' identities. Further, it requests the provision of necessary measures of fingerprinting and photographing of irregular migrants. This is only possible if each EU MS is able to ascertain, in a timely manner, whether the individual is a non-EU member country national or a stateless person who is illegally resident in the EU territory and who has already applied for international protection in another EU MS and has been registered for recognition.⁶⁰⁴ The matching of fingerprints is thus an important means for the definitive identification of these persons. Eurodac is a central system, which thus acts as an automated central database for checking fingerprint data and serves for the data transmission between the respective EU MS.

Article 14 - Collection and transmission of fingerprint data

1. Each Member State shall promptly take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.
2. The Member State concerned shall, as soon as possible and no later than 72 hours after the date of apprehension, transmit to the Central System the following data in relation to any third-country national or stateless person, as referred to in paragraph 1, who is not turned back:
 - fingerprint data
 - Member State of origin, place and date of the apprehension
 - sex
 - reference number used by the Member State of origin
 - date on which the fingerprints were taken
 - date on which the data were transmitted to the Central System
 - operator user ID
3. [...].⁶⁰⁵

In order to effectively combat the most serious crimes that include terrorism and violent extremism, it is imperative that the most comprehensive and up-to-date information is available and accessible to the responsible law enforcement

1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

⁶⁰⁴ Commission Recommendation of 06/XI/2006 establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities, when carrying out the border control of persons.

'Stateless person' (Definition No 21) refers to a person who is not considered as a national by any State under the operation of its law.

⁶⁰⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26th June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with 'Eurodac' data by Member States' law enforcement authorities and EUROPOL for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

agencies. The datasets in Eurodac contain relevant information on how to defend, detect and investigate such terrorist attacks in accordance with Council Framework Decision 2002/475/JHA of 13th June 2002 on combating terrorism⁶⁰⁶ and other serious offences.⁶⁰⁷ Eurodac found its starting point in The Hague Program⁶⁰⁸ where it was endorsed to improve and ease access to existing databases of the EU. In the continuation, the Stockholm Program called for a targeted data collection to be in line with the requirements of law enforcement and the development of the information exchange together with the necessary tools and mechanisms.⁶⁰⁹

9.3. European Border Surveillance System – EUROSUR

In February 2008, the EC presented further elements in the overall program of developed BSM-related compensatory measures for a holistic approach to enhance, in particular, border security, border surveillance and border control.⁶¹⁰ In this context, individual electronic modules of this project follow US models, such as biometric data collection in the area of residence entitlements, travel and identity documents, as well as other electronic documents to be prepared and submitted before entry control.⁶¹¹ Eurosur aims at increasing coordination in the area of BSM-related issues within and between EU MS to strengthen border surveillance, prevent and combat serious crime, such as THB, people smuggling

⁶⁰⁶ Official Journal of the European Union L 180 of 29th June 2013, p.2.

⁶⁰⁷ Ibid.

Council Framework Decision 2002/584/JHA of 13th June 2002 on the European arrest warrant and the surrender procedures between MS - Statements made by certain MS on the adoption of the framework decision.

⁶⁰⁸ European Council (2004): The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (2005/C53/01). "Point 1.7.2.- Biometrics and Information System. The European Council requests the Council to examine how to maximise the effectiveness and interoperability of EU information systems in tackling illegal immigration and improving border controls as well as the management of these systems on the basis of a communication by the Commission on the interoperability between the *Schengen* Information System (SIS II), the Visa Information System (VIS) and Eurodac to be released in 2005, taking into account the need to strike the right balance between law enforcement purposes and safe-guarding the fundamental rights of individuals." Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:EN:PDF> (Accessed on 2nd January 2017).

⁶⁰⁹ European Council (2010): The Stockholm Programme – An open and secure Europe serving and protecting citizens [Official Journal C 115 of 4.5.2010]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:j10034&from=DE> (Accessed on 2nd January 2017).

⁶¹⁰ Frontex (2017): European Border Surveillance System (EUROSUR). Available from: <http://frontex.europa.eu/intelligence/Eurosur> (Accessed on 2nd January 2017).

European Commission, MEMO/08/85: New tools for an integrated European Border Management Strategy, Brussels, 13th February 2008; European Commission IP/08/215: A comprehensive vision for an integrated European border management system in the 21st century, Brussels, 13th February 2008.

⁶¹¹ Residence Act in the version promulgated on 25th February 2008 (Federal Law Gazette I p.162), last amended by Article 3 of the Act of 6th September 2013 (Federal Law Gazette I p.3556). Section 9a EU long-term residence permit. Foreigners generally require a residence permit for entry and stay. The residence law provides for a total of five different residence titles: the Residence Permit, the Blue Card EU, the Permission to Stay - EU, the Permanent Residence Permit and the Visa. ESTA – Electronic System for Travel Authorisation. Available from: <http://www.esta-online.org/> (Accessed on 3rd January 2017).

and illicit trafficking of drugs and SALW. Eurosur – an innovative high-tech system for monitoring and controlling the EU's external borders is at present intended to prevent illegal border crossings on the EU's southern and eastern borders, while at the same time providing assistance to combat cross-border crime. The system also aims to assist the protection and saving of lives of migrants trying to reach European shores by sea and thus will help to diminish the unacceptable death toll. At a later stage, the system will be operational for all external borders of the EU i.e., all 28 EU MS.⁶¹² Eurosur was developed by Frontex on behalf of the EC. The system includes an IT platform that provides the EU MS with relevant information on security and control of the external borders on three levels, namely specific incidents, operational information and results of relevant analyses.

By establishing a common framework for secure information exchange and increased inter-agency cooperation between EU MS border agencies and Frontex, Eurosur will:

- Contribute to the management of migration flows by reducing the number of irregular migrants entering the *Schengen* area undetected
- Protect and save lives at the external borders by considerably diminishing the unacceptable death toll of migrants at sea
- Increase the internal security of the EU by preventing serious crime at the external borders of the *Schengen* area

Eurosur is therefore to be understood as a kind of a comprehensive network to monitor the EU external borders if possible, in order to counter irregular migration and specifically, serious forms of cross-border crime. Using satellites and drones should also support this innovative method of area-wide monitoring. Furthermore, data from ship reporting systems, such as the automatic identification system for ships (AIS⁶¹³) and the tracking system for watercraft (VMS⁶¹⁴) shall be carried out.

⁶¹² European Commission (2016): EUROSUR. New tools to save migrants' lives at sea and fight cross-border crime. EC-MEMO/13/578 19/06/2013. Available from: [http://europa.eu/rapid/press-release MEMO-13-578_en.htm](http://europa.eu/rapid/press-release_MEMO-13-578_en.htm) (Accessed on 3rd January 2017).

⁶¹³ Wasser- und Schifffahrtsverwaltung des Bundes – WSV (2011): AIS stands for 'Automatic Identification System' and is an automatic ship identification system. With AIS, ships identify and give their position, course and speed, as well as other data clearly known to others. AIS is designed to prevent collision at sea, the automatic exchange of information between ships, and with land stations, as well as with the coastal traffic centres as a complementary means of maritime traffic safety. AIS thus enhances the safety of life at sea, the safety and efficiency of navigation, and, as a whole, the protection of the maritime environment by improving traffic and ship safety among each other and with the transport centres on the coast. Available from: http://www.wsd-nord.wsv.de/Maritime_Verkehrstechnik/Maritime_Verkehrstechnik/Funknavigaton/AIS/index.html (Accessed on 3rd January 2017).

⁶¹⁴ European Parliament (2014): Draft European Parliament Legislative Resolution on the proposal for a regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa (COM(2011)0750 – C7-0441/2011 – 2011/0365(COD)) Article 9 – National Programs No 2.

Other key components of Eurosur are databases for the detailed recording of fingerprints as well as electronic systems for facial recognition in entry and exit registers. Eurosur should therefore be the instrument for combating the most extensive area of irregular migration, namely the fight against persons who are illegally resident in the EU, the so-called 'overstayers' (see point 5.5). Therefore, Bendel argues that, for *bona fide* travellers, preferential frontier clearance should be given.⁶¹⁵ Thus, specific arrangements could be introduced for the border crossing of *bona fide* travellers, i.e., third-country nationals with a low risk profile, and these persons could be given the status of a 'registered traveller'.⁶¹⁶ *Bona fide* travellers and EU nationals with e-passports could benefit from an automated verification of identity at the BCP via automated gates that would read the biometric data contained in the travel documents or stored in a database and compare them against the biometrics of the traveller. The biometric identifiers used for non-EU member country nationals would be the same as for visa holders (i.e., facial image and fingerprints). To benefit from minimum border checks, EU citizens could, in the run-up to the full introduction of biometric passports, benefit from interim schemes deployed voluntarily by the individual EU MS.

The common approach refers to the development of databases of personal data of non-EU member country nationals, which is increasingly developed through technical assistance and is then to be used for the prevention of crime and minimisation of potential risks. A weak spot, however, is quickly identified: the human being. Each database is only as strong and usable as the human being who creates it. In other words, the individual EU MS have partly deviating tendencies from the mean value in the input of the desired data. The point of criticism is therefore that the officials of individual EU MS do not handle the registration of personal data in the SIS uniformly and in line with the SIS regulations. This will inevitably lead to interface problems in the access to the Visa Information System (VIS), the SIS and Eurodac, as well as other relevant databases.

In principle, Eurosur provides the establishment of so-called National Coordination Centres (NCC) of each EU MS. This is to coordinate all national border control activities and to ensure the exchange of information between the relevant border

⁶¹⁵ Bendel, Petra (2009). *Europäische Migrationspolitik – Bestandsaufnahme und Trends*, p.16. Communication of 13th February 2008 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Preparing the next steps in border management in the European Union [COM (2008) 69 final - Not yet published in the Official Journal]. Specific rules for the border crossing of *bona fide* travellers.

⁶¹⁶ Ibid.

agencies, as well as other relevant government enforcement authorities, in order to establish a uniform structure. It goes without saying that each participating EU MS can decide for itself with whom to share information and when, and thus retain sovereignty over its own data. NCC work according to the 24/7 mode and create the relevant national situational pictures with adequate information, which are then again merged by Frontex into an overall EU situational picture and the common pre-frontier intelligence picture (focused on areas beyond the *Schengen* area and EU borders). The overall EU situational picture then contains all the important information, especially with regard to the areas of irregular migration, cross-border crime as well as any forms of critical crises, and this information will be made available to all EU MS immediately. In the follow-up development, Frontex wants to create a joint assessment of the situation along the frontiers of the EU's external borders, i.e., what is taking place 'at the gates' of the EU. In addition, Frontex also provides services in making the results of ongoing risk analyses available to EU MS border agencies according to the Common Integrated Risk Analysis Model (CIRAM), with a particular focus on the fight of irregular migration and prevention of transnational crime.⁶¹⁷ Eurosur thus characterises the trend from a previously well-established stationary control at the borders to a knowledge-based analysis of potential risks and threats and the targeted implementation of necessary operational and tactical measures. However, it should also be mentioned that Eurosur contains a set of rules, such as fundamental life-saving measures, the principle of the ban on deportation (*non-refoulement*⁶¹⁸), the unconditional respect for human dignity and data protection.

9.4. European Union Agency for Fundamental Rights – FRA

- Article 1 – Human dignity, human rights, legally binding force of basic rights
(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.
(2) [...].⁶¹⁹

The European Union established the EU Agency for Fundamental Rights (herein later mentioned as FRA) to provide independent, evidence-based assistance and expertise on fundamental rights to EU institutions and MS and is an independent

⁶¹⁷ Frontex Guidelines for Risk Analysis Units Structure and tools for the application of CIRAM version 2.0. 2. Frontex: background, mandate and objectives. Further explanations under point 10.3.2.

⁶¹⁸ UNHCR (2016): Sir Elihu Lauterpacht and Daniel Bethlehem. "*Non-refoulement* is a concept which prohibits States from returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion." Available from: <http://www.unhcr.org/419c75ce4.html> (Accessed on 3rd January 2017).

⁶¹⁹ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438).

EU body, funded by the Union's budget. The FRA is one of the EU's decentralised agencies.⁶²⁰ These agencies are set up to provide EU MS and its institutions with the necessary expertise from various fields. The rights of non-EU member country nationals entering or residing in the EU are often disregarded. There is insufficient knowledge of human rights, inadequately trained border officers and in some cases, simply discrimination and xenophobia. The FRA helps to ensure that the fundamental rights of all people in the EU are protected, whether it be those with a nationality of one of the 28 EU MS or non-EU member country nationals. The purpose of the fundamental rights is the establishment of minimum standards to ensure that all people are equally treated with dignity regardless of race, gender, religion, origin, belief, physical and/or mental limitation, age and ethnicity. In addition, the protection of the right to informational self-determination, as well as the right to access to the judiciary should also be respected and protected.⁶²¹ The FRA wants to contribute to the protection of the fundamental rights of all people living in the Union. The FRA collects relevant information on the respective situations of respect for and the granting of fundamental rights in the Union. After evaluating all the information considered, it draws up recommendations, which are supposed to lead to an improvement in the situations considered to be not optimal. In addition, the FRA provides information on fundamental rights based on information requests, which is intended to ensure the fundamental rights of all people living in the EU.

9.5. Collège Européen de Police – CEPOL

In 2005, the European Police College (herein later mentioned as CEPOL) was established by Council Decision 2005/681/JHA⁶²² as an entity of the Union with the aim of training senior police officers of the EU MS law enforcement agencies and facilitating cooperation between national police forces by organising and coordinating training activities with a European policing dimension. CEPOL is based in Bramshill House, in the county of Hampshire in England.⁶²³ Since 1st July 2016,

⁶²⁰ EU Agency for Fundamental Rights (2016): FRA. Available from: <http://fra.europa.eu/en/about-fra/introducing-fra> (Accessed on 3rd January 2017).

⁶²¹ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438).

The right to informational self-determination (*RIS – Recht auf informationelle Selbstbestimmung*) is understood as the right of the individual to determine, in principle, the award and use of his personal data. The *RIS* is not explicitly regulated in the Basic Law. In its census judgment, the Federal Constitutional Court has developed it from the general personality right (Article 2 (1) of the Basic Law, Article 1 (1) of the Basic Law) and provides it as a particular form of general personality law.

⁶²² Council Decision 2005/681/JHA of 20th September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA (OJ L 256, 1.10.2005, p.63).

⁶²³ Ibid.

the date of its new legal mandate⁶²⁴, CEPOL's official name is 'The European Union Agency for Law Enforcement Training'. CEPOL aims to bring police officers together in responsible positions from all over Europe, thereby fostering cooperation between the relevant police authorities in an international context. The main focus of these enterprises is the fight against TOC, preventing dangers to life and limb, preventing criminal offences and maintaining public order and security, as well as important property values. Therefore, CEPOL is to be regarded as less as a faculty for teaching and research and more as a platform for the formation of networks. CEPOL supports national initiatives to organise and hold events, courses, seminars, conferences and meetings in the respective EU MS. For Germany, the German Police University (*Deutsche Hochschule der Polizei*) is represented in Münster-Hiltrup.⁶²⁵ A further CEPOL initiative is cooperation with new accession countries, Norway and Iceland, as well as the Central European Police Academy (CEPA) (see further explanations under point 11.8).⁶²⁶

CEPOL organises up to 100 events each year, with a maximum range of police-related topics, with consistent objectives relevant to emergency response and maintaining public security and order. The founding of CEPOL was followed by a vision of establishing a leading agency for teaching and research, as well as training for all police authorities in Europe. CEPOL currently has an annual budget of approximately € 10.293 million, financed by the EU.⁶²⁷

9.6. European Police Office – EUROPOL

Historical development

The establishment of the European Police Office (EUROPOL) was agreed by the European Council in Maastricht in 1991. On 3rd January 1994, the EUROPOL Drugs Unit (EDU) commenced its operation in The Hague as the predecessor of EUROPOL.⁶²⁸ An international agreement in the form of a convention was required

⁶²⁴ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25th November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA.

⁶²⁵ *Deutsche Hochschule der Polizei* (2015): In January 2013, the German Police University has been accredited by the German Council of Science and Humanities for the period of five years. On 1st March 2016, the German Police University celebrated its 10th anniversary. Available from: <https://www.dhpol.de/en/index.php> (Accessed on 3rd January 2017).

⁶²⁶ CEPA (2015): Central European Police Academy Available from: <https://www.mepa.net/en/cepa/Pages/default.aspx> (Accessed on 3rd January 2017).

⁶²⁷ CEPOL (2016): Statement of revenue and expenditure of the European Police College (CEPOL) for the financial year 2016 (2016/C 113/22). Available from: <https://www.cepol.europa.eu/sites/default/files/budget-2016.pdf> (Accessed on 3rd January 2017).

⁶²⁸ BKA (2017): The European Police Office EUROPOL. Available from: https://www.bka.de/EN/OurTasks/Remit/InternationalFunctions/Europol/europol_node.html (Accessed on 3rd January 2017).

for the binding formation of EUROPOL. Following ratification by all the EU MS, the EUROPOL Convention came into force on 1st October 1998. In 2009, the EUROPOL Council decision was taken by the EU MS Ministers for Justice and Home Affairs and thus the new legal basis of Europol.⁶²⁹

The development of the EU agency Europol took place in several stages.

June 1991	Initiative of Germany's Chancellor Kohl in the European Council
December 1991	Agreement at the EU summit in Maastricht to set up EUROPOL in the form of co-operation at governmental level
January 1994	Setting up of the EUROPOL Drugs Unit (EDU) in The Hague as a forerunner organisation of EUROPOL
July 1995	Signing of the EUROPOL Convention by the 15 EU MS
December 1997	Ratification of the EUROPOL Convention by the German Parliament
October 1998	Europol Convention came into force through which EUROPOL, as an independent authority, became a legal entity
July 1999	EUROPOL commenced activities

Source: BKA

Framework for cooperation

The basis for EUROPOL's cooperation with the EU MS concerned is mainly based on Articles 2 and 3 of the TEU:

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
[...]

EUROPOL is an EU agency and supports all EU MS in their efforts to prevent risks to life or limb as well as important assets, to combat TOC and other forms of cross-border crime, counter terrorism and FTF, as well as fight against all other forms of serious crime if two or more EU MS are affected. The EUROPOL Council Decision covers both the co-operation between the 28 EU MS and the fulfilment of the corresponding tasks for non-EU member countries and major international organisations on the basis of binding cooperation agreements. Up to now, co-

⁶²⁹ Official Journal of the EU (2009): Council Decision (2009/371/JHA) of 6th April 2009 establishing the European Police Office (EUROPOL).

operation agreements have already been entered into force with Iceland, Norway, Estonia, Poland, Hungary, Slovenia, the USA, ICPO-INTERPOL, the European Monitoring Centre for Drugs and Drug Addiction and the European Central Bank. To this end, Europol has set up appropriate liaison offices with representatives from all EU MS and various non-EU member countries, thus ensuring an efficient and timely information exchange (for example by means of situational pictures, findings, requests and replies). Europol is also responsible for the coordination of cross-border operations.⁶³⁰

National Units

The EU MS are required to set up national units in their countries as part of the cooperation with Europol. The national unit for Germany is the Federal Criminal Police Office (*BKA*). In view of external relations, this national unit is the sole liaison between Europol and the central offices of the other EU MS. At national level, the national unit ensures the provision and exchange of information between Europol on the one hand and state police, customs service and border agencies on the other hand. Contact offices were set up for this purpose at the State Criminal Police Offices, Customs Criminal Investigation Office and at the Border Guard Directorate, which ensure co-operation between Europol and the local authorities. The national units basically have the following tasks:

- On their own initiative, supply Europol with information and intelligence which are necessary for the fulfilment of its tasks
- Handle Europol inquiries for information, intelligence and advice, keep information and intelligence updated
- Evaluate information and intelligence for the competent authorities and transmit it onward to them in accordance with national law
- Direct enquiries concerning advice, information, intelligence and analysis to Europol
- Supply information for storage in Europol's automated data collection system
- Ensure compliance with the law in the exchange of information with Europol

Responsibilities

EUROPOL receives and processes all relevant information and facts concerning

⁶³⁰ BKA (2017): The European Police Office EUROPOL. Available from: https://www.bka.de/EN/OurTasks/Remit/InternationalFunctions/Europol/europol_node.html (Accessed on 3rd January 2017).

TOC, terrorism and FTF as well as all relevant forms of serious crime based on the EUROPOL Council decision.⁶³¹ Prerequisites for the utilisation of EUROPOL or of becoming active are the factual indications that a criminal organisational structure exists, involving two or more EU MS being impacted as well as the necessity for joint action on the part of the law enforcement agencies. Furthermore, the agencies of one MS alone may not be able to achieve the objective of the measure or may not be able to achieve it in the same way. Since 1st January 2003, EUROPOL's mandate has encompassed an extremely diversified spectrum of serious forms of international crime to combat

- illicit drug trafficking
- illegal trafficking in radioactive and nuclear substances
- facilitation of illegal immigration (people smuggling)
- vehicle trafficking
- trafficking in human beings (including child pornography)
- terrorism and FTF
- counterfeit currency crime
- including payment card crime

The agency is also responsible for the suppression of capital, property and environmental offences. These include the illegal trafficking in organs, computer crime as well as the illicit trafficking in hormones or endangered animal and plant species. These also incorporate the offences connected with these crime forms and the associated money laundering, although money laundering will be handled as a separate field of activity in future.

The various areas of crime are largely similar to the list in point 4.4., as well as the offenses listed under Annex 1.

Tasks

EUROPOL was conceptualised as a service agency and was tasked with providing support to EU MS law enforcement agencies in their fight against TOC; however, the principle of national sovereignty is maintained. Within the sphere of competence described before, EUROPOL is thus concerned with the exchange of information at police level and the analysis and evaluation of matters relevant to police work, as well as the support of the investigating authorities of the EU MS. A primary task of EUROPOL is the collection of insights and information, their analysis and evaluation, the assessment of the acquired knowledge and their

⁶³¹ Ibid.

possible and logical consequences.⁶³² The EU MS concerned must be informed without delay, in order not least to coordinate further measures and joint procedures. EUROPOL also supports all EU MS in the organisation and implementation of major international events (for example Olympic Games, European and World Championships in Football and Athletics and others). Since 2006, EUROPOL has also been the central body for combating the counterfeiting currency of the common Euro currency.⁶³³ To this end, EUROPOL maintains a financial contribution to the support of the EU MS concerned in combating and preventing counterfeiting of the Euro currency in order to implement necessary measures. EUROPOL does not have any investigative competences and does not fulfil any search tasks.

Data protection

The EUROPOL Convention provides a high data protection standard, which guarantees to ensure the citizen's right to informational self-determination (*RIS* - see point 9.4.), which has been adopted substantially from the German Federal Supreme Court (*BGH*).⁶³⁴ The fundamentals of German Basic Law are taken into consideration to a large extent, in particular, with regard to the rights of the concerned parties, correction, deletion and locking of data, but also where storage and deletion time limits, as well as control entities are concerned. The categories for persons and data correspond to the standard, which has been set in Germany pursuant to the data guidelines and the *BKA* Law. Also, the databases maintained at EUROPOL are designed with a high degree of data protection. For this reason, only secure data from all the EU MS can be directly accessed. In contrast, sensitive data, i.e., information that has not yet been confirmed, is dealt with on a strictly secret basis and cannot be called up online.

⁶³² Ibid.

⁶³³ Federal Foreign Office (2017): International cooperation in the fight against organised crime. [...] EUROPOL has also been acting as a centre for combating counterfeiting since 2006 [...]. Available from: http://www.auswaertiges-amt.de/DE/Aussenpolitik/GlobaleFragen/TerrorismusOK/OK-Drogen/OK_node.html (Accessed on 4th January 2017).

⁶³⁴ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 23rd December 2014 (Federal Law Gazette I p.2438).

The right to informational self-determination (*RIS – Recht auf informationelle Selbstbestimmung*) is understood as the right of the individual to determine, in principle, the award and use of his personal data. The *RIS* is not explicitly regulated in the Basic Law. In its census judgment, the Federal Constitutional Court has developed it from the general personality right (Article 2 (1) of the Basic Law, Article 1 (1) of the Basic Law) and provides it as a particular form of general personality law.

9.7. Preliminary conclusion

Of the current decentralised EU agencies, the following are still to be mentioned:

- EU-LISA - European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice⁶³⁵
- EASO - European Asylum Support Office⁶³⁶
- EASA - European Aviation Safety Agency⁶³⁷
- ECDC - European Centre for Disease Prevention and Control⁶³⁸
- EFSA - European Food Safety Agency⁶³⁹
- EMSA - European Maritime Safety Agency⁶⁴⁰
- EMCDDA - European Monitoring Centre for Drugs and Drug Addiction⁶⁴¹
- EPPO - European and Mediterranean Plant Protection Organisation⁶⁴²

These aforementioned EU agencies are key players in the area of IBM in terms of prevention and emergency response for the EU MS and thus make decisive contributions to the continuity of public security and order. The decisive factor will be a precise and purposeful communication, which provides all relevant facts in a timely manner and facilitates the implementation of operational concepts for combating transnational threats and averting threats to life and limb, and important assets in a coordinated approach of participating EU agencies.

⁶³⁵ EU-LISA (2017): European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. Available from: <http://www.eulisa.europa.eu/Pages/default.aspx> (Accessed on 4th January 2017).

⁶³⁶ EASO (2017): European Asylum Support Office. EASO is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System. Available from: <https://easo.europa.eu> (Accessed on 4th January 2017).

⁶³⁷ EASA (2017): European Aviation Safety Agency. EASA is the European Union Authority in aviation safety. Available from: <https://www.easa.europa.eu/the-agency> (Accessed on 4th January 2017).

⁶³⁸ ECDC (2017): European Centre for Disease Prevention and Control. The European Centre for Disease Prevention and Control (ECDC) was established in 2005. It is an EU agency aimed at strengthening Europe's defences against infectious diseases. Available from: <http://ecdc.europa.eu/en/Pages/home.aspx> (Accessed on 4th January 2017).

⁶³⁹ EFSA (2017): European Food Safety Agency. EFSA is the EU risk assessment body for food and feed safety. It provides independent scientific advice to risk managers. Available from: <http://www.efsa.europa.eu>. (Accessed on 4th January 2017).

⁶⁴⁰ EMSA (2016): European Maritime Safety Agency. EMSA provides technical assistance and support to the European Commission and Member States in the development and implementation of EU legislation on maritime safety, pollution by ships and maritime security. Available from: <http://www.emsa.europa.eu> (Accessed on 4th January 2017).

⁶⁴¹ EMCDDA (2017): European Monitoring Centre for Drugs and Drug Addiction. The EMCDDA exists to provide the EU and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs debate. Today it offers policymakers the data they need for drawing up informed drug laws and strategies. Available from: <http://www.emcdda.europa.eu> (Accessed on 4th January 2017).

⁶⁴² EPPO (2017): European and Mediterranean Plant Protection Organisation. EPPO is an intergovernmental organisation responsible for European cooperation in plant protection in the European and Mediterranean region. Under the International Plant Protection Convention (IPPC), EPPO is the regional plant protection organisation (RPPPO) for Europe. Available from: <http://www.eppo.int> (Accessed on 4th January 2017).

At the same time, however, it is important to note that EU agencies can only be used efficiently and effectively if EU MS also comply with the rules and implement them in accordance with the legal requirements.

- The Eurodac system is useless if statutory measures are not implemented, such as taking fingerprints and photographs of refugees after they arrived at EU MS coasts via the known smuggling routes across the Mediterranean Sea and these irregular migrants are then sent to other EU MS illegally quasi with state support.
- Legal consequences and sanctions must be implicated for the affected EU MS if they do not fulfil the statutory requirements, such as the mandatory conduct of registration measures (i.e., personal data, fingerprints, photographs) of refugees and irregular migrants, notification to relevant EU agencies (i.e., Eurodac) and the consequent implementation of administrative procedures in line with the Asylum Procedure Law.
- Important EUROPOL capacities remain unused if EU MS authorities request insufficient support and cooperation, or do not request any at all. Very few EU MS local politicians have the power of authority towards state law enforcement authorities, and, for personal reasons, do not support, restrict, or even hinder the works and investigations of competent law enforcement agencies.
- The EU must initiate criminal proceedings if individual EU MS EUROPOL liaison offices do not provide relevant information as they consider themselves as a transit country in relation to the various transnational threats (e.g., irregular migration, THB, people smuggling, terrorism and FTF) and act freely according to the *not-in-my-backyard principle* because they are not actually really affected.
- The described opportunities of Eurosur remain unused if the responsible institutions of the respective EU MS cannot or do not want to provide the necessary data.
- The benefits from the formulated regulations and package measures remain unused, although all EU MS accept them and ratify them, but then question them again with the necessary implementations.
- Reliability and trust between the EU MS concerned were disregarded because of the non-fulfilment of agreed tasks and obligations.

- The responsible authorities of the respective EU MS authorities did not deal with each other honestly in these areas.

All EU MS have agreed on the mandatory application of the Dublin procedure and have ratified this law and by-laws. Clear legal regulations describe and determine all necessary working steps and cooperation procedures. However, the Italian and Greek border and immigration authorities did not apply the Dublin procedure that has to be seen as a very negative example of not applying mandatory regulations. Since EU MS do not enforce the Dublin procedure it was observed just how easy it is to shirk responsibility with regards to processing the administrative procedures in terms of registering refugees and asylum seekers. If such a person moves on, the other EU MS has the burden of proof that the individual arrived either in Italy or Greece, but since they did not register the person, they are ultimately not responsible, unless concrete evidence comes to light (for example a legal information form, a train ticket). So, to this end, the 'Dublin Procedure' was cancelled.

Chapter 10: Frontex – The EU Border Management and Coast Guard Agency

10.1. Introduction

In 2018, the common external borders of the 28 EU MS measure around 13,500 km of land borders and 66,000 km (41,000 ml) of coastlines.⁶⁴³ The area of 'air borders' could, where appropriate, be categorised by the number of international airports in all EU MS combined with all international inbound and outbound flights of the EU MS.

In the 1950s, the free movement of Union citizens was agreed as one of the four fundamental freedoms and by the signing of the Treaty of Maastricht on the founding of the EU, further main objectives of the Union were formulated.⁶⁴⁴ A common position focusing on safeguarding and controlling the EU's external borders was not important at that time.⁶⁴⁵ Retrospectively, it is a surprise to reflect today's view of the EU MS on the protection and control of the EU's external borders and the political and social discussions that are taking place at the moment. However, one can positively consider this as a fact that a unified EU border management is a kind of reaction related to the protection of the freedom of movement of Union citizens with regards to protecting the common external borders. Since the mid-1990s efforts have been made here to develop an EU border regime and to develop common standards in the overall area of BSM, as well as border control and border surveillance. During this period, the conditions were developed to secure and control the external borders of the EU more and more effectively.

Through the EU Border Management and Coast Guard Agency Frontex (herein later mentioned as Frontex), the Union is clearly aiming to enhance the safeguarding of the EU's external borders in an integrated approach, which should ensure a high degree of control and a uniform level of monitoring. To this end, the EU MS have broadly delegated relevant competences to the Union to assess the areas of BSM, border control, border surveillance, asylum and migration, including the

⁶⁴³ Frontex (2017): Mission and Tasks. Available from: <http://frontex.europa.eu/about-frontex/mission-and-tasks> (Accessed on 7th January 2017).

⁶⁴⁴ Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7th February 1992, Official Journal of the European Communities C 325/5; 24th December 2002.

⁶⁴⁵ EU (2017): The four fundamental freedoms in the EU: Free movement of goods; freedom of movement for workers; right of establishment and freedom to provide services; and free movement of capital.

EUR-Lex (2017): The Treaty on European Union (TEU), signed in Maastricht on 7th February 1992, entered into force on 1st November, 1993. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:xy0026> (Accessed on 7th January 2017).

competence of developing the necessary legislation and relevant regulations in these areas.⁶⁴⁶ Furthermore, the Union also has the legislative competence with regard to the description of the implementation of border controls, but it is solely up to the respective EU MS to carry out border checks with officers from its own border services.⁶⁴⁷

CHAPTER 2

Policies on Border Checks, Asylum and Immigration⁶⁴⁸

Article 77 (ex Article 62 TEC)

1. The Union shall develop a policy with a view to:
 - a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
 - b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
 - c) the gradual introduction of an integrated management system for external borders.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:
 - a) the common policy on visas and other short-stay residence permits;
 - b) the checks to which persons crossing external borders are subject;
 - c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
 - d) any measure necessary for the gradual establishment of an integrated management system for external borders;
 - e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.
4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

The prevention of possible hazards in the areas of transnational threats in general and the fight against TOC, international terrorism, the phenomenon of the FTF and the prevention of violent extremism are of specific importance. Another particular focus will be on irregular migration. According to UNHCR more than 51 million people⁶⁴⁹ were on the run (see point 5.2.) in 2013 and this number increased to nearly 60 million people⁶⁵⁰ in 2014, which was a growth of about 16 per cent

⁶⁴⁶ Treaty on the Functioning of the European Union – Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01). Article 77-80.

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

⁶⁴⁹ UNHCR (2017): Annual report 2014. Available from: <http://www.unhcr.org/5575a78416.html> (Accessed on 7th January 2017).

⁶⁵⁰ UNHCR (2017): Annual report 2015. Available from: <http://www.unhcr.org/574ed5234.html> (Accessed on 7th January 2017).

compared to the preceding year, reaching nearly 64 million people in 2015.⁶⁵¹ At the same time, the EU border regime should also facilitate and promote cross-border cooperation with non-EU countries, both for the purposes of confidence-building measures, as well as for the prevention and investigation of cross-border crime, such as through strengthening cross-border police cooperation and prosecution (further explanations see chapter 11). In the public's perception, the EU's border regime is usually put on a level with the keyword Frontex. The EU agency Frontex can certainly be seen as a central actor here, but it is far more than initially assumed, which consequently leads to the question of what Frontex is finally.

10.2. The relevancy of Frontex

A general comment first: Frontex is neither the European border police nor border guard service (see point 8.3), because the EU as the super-ordinate organisation is not a state.⁶⁵² In line with this logic, Frontex does not have the powers in the executive branch, nor does it have any political competency or executive powers, or any authority to issue orders towards the respective border police and border authorities of an individual EU MS. As a result, Frontex is an administrative agency, which, according to its arrangement, implements the limited competences of the EU in the area of BSM. Frontex was founded on 1st May 2005 and is based in Warsaw.⁶⁵³ It is the abbreviation for the designation of external borders in French '*frontières extérieures*'; in the English expression, Frontex means the 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union'.⁶⁵⁴ With and through the Frontex border agency, the EU wants to establish and implement the system of IBM (see chapter 8), and to ensure a high and uniform level of safeguarding, controlling and monitoring of EU external borders. In essence, Frontex acts as a service provider and offers expertise and close cooperation in the fields of analysis, coordination, training and logistical support.

⁶⁵¹ UNHCR (2016): Global Trends in 2015, p.6. Available from: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> (Accessed on 7th January 2017).

⁶⁵² Note from the author: The main task of a (border) police is the prevention of criminal offences, but also the consequent prosecution. Therefore, the police, who is the extended arm of the law by representing the state, is entitled to use the power of force to enforce the rule of law. This legal relationship between the EU and its citizens does not exist in this form.

⁶⁵³ The European Border and Coast Guard Agency (Frontex) was established by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14th September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.09. 2016, p.1).

⁶⁵⁴ Ibid.

10.3. Mandate and tasks of Frontex

Open and at the same time secure borders – Frontex is committed that this is, first and foremost, the main priority in its actions and daily activities. The mandate of Frontex and areas of responsibilities are listed accordingly in Article 2 of the Frontex Regulation and further specified in Articles 3 to 9.⁶⁵⁵

Article 2 Main tasks

1. The Agency shall perform the following tasks:
 - a) coordinate operational cooperation between Member States in the field of management of external borders;
 - b) assist Member States on training of national border guards, including the establishment of common training standards;
 - c) carry out risk analysis;
 - d) follow up on the development of research relevant for the control and surveillance of external borders;
 - e) assist Member States in circumstances requiring increased technical and operational assistance at external borders;
 - f) provide Member States with the necessary support in organising joint return operations.
2. Without prejudice to the competencies of the Agency, Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, where such cooperation complements the action of the Agency.
Member States shall refrain from any activity, which could jeopardise the functioning of the Agency or the attainment of its objectives.
Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency.

The individual tasks of Frontex are subdivided into the following sub-areas.⁶⁵⁶

10.3.1. Joint operations

Frontex plans, coordinates, implements and evaluates joint operations with officials from EU MS border services at the EU's external borders (i.e., land, water, air). The evaluation, approval and planning for working procedures of joint operations and pilot projects are the most substantial and important tasks of the EU border agency.⁶⁵⁷ Frontex may also decide to put its technical equipment at the disposal of EU MS participating in the joint operations or pilot projects. Workflow procedures for the organisation of joint operations are regulated in Article 3 of the Council Regulation with regard to the 'rules of procedure for taking decisions on the operational tasks of Frontex'.⁶⁵⁸ The performance of joint

⁶⁵⁵ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

⁶⁵⁶ Frontex (2017): Mission and Tasks. Available from: <http://frontex.europa.eu/about-frontex/mission-and-tasks> (Accessed on 7th January 2017).

⁶⁵⁷ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 3 – Joint operations and pilot projects at external borders.

⁶⁵⁸ Ibid. Article 20 – Powers of the Management Board
Carrera, Sergio (2007): The EU Border Management Strategy. Frontex and the Challenges of Irregular Immigration in the Canary Islands. Centre for European Policy Studies, No 261, 22nd March 2007, p.10 et seqq.

operations is carried out exclusively under the direction of the technical competence and jurisdiction of the responsible leader of the border police or border guards of the respective EU MS authority, in accordance with the national legislation and EU *acquis*; other national authorities can participate voluntarily. Mandatory participations only take place within the framework of so-called RABIT missions.⁶⁵⁹

After performing a joint deployment

[...] the Agency shall evaluate the results of the joint operations and pilot projects and make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).⁶⁶⁰

These results are then made available to all EU MS.

10.3.2. Risk analysis

Article 4 – Risk analysis

The Agency shall develop and apply a common integrated risk analysis model. It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5.⁶⁶¹

Frontex collects and analyses relevant news and information about the respective situational pictures at the EU's external borders.⁶⁶² This information is gathered in relation to events and incidents of prominent importance noticed at official BCPs (i.e., land, water, air), in green and blue border and airspace sections, including other operational measures of both EU MS and non-EU countries and also openly accessible sources including mass media, social networks and scientific research. Risk analyses form the backbone and are the starting point for almost all Frontex activities.⁶⁶³ All these risk analyses are carried out according to the so-called 'Common Integrated Risk Analysis Model' (CIRAM). The CIRAM focuses on the nature and intensity of transnational threats in general and forms of irregular

⁶⁵⁹ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11th July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers OJ L 199, 31st July 2007.

⁶⁶⁰ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 3 – Joint operations and pilot projects at external borders.

⁶⁶¹ Ibid. Article 4 – Risk Analysis

⁶⁶² Note from the author: See further explanations under point 9.3. Eurosur.

⁶⁶³ Krösbacher, Verena (2010): Frontex. The role of the European Border Agency in the external management of the EU. Diploma thesis, University of Innsbruck, Institute for European Law and International Law, Innsbruck.

migration in particular, as well as the strengths and weaknesses of the BSM systems in the respective EU MS.⁶⁶⁴

10.3.3. Training

Frontex is responsible for the development of common standards in the fields of general border policing training and modules for specialised training.

Article 5 – Training

The Agency shall establish and further develop a common core curriculum for border guards' training and provide training at European level for instructors of the national border guards of Member States.

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders and return of third country nationals for officers of the competent national services of Member States.

The Agency may organise training activities in cooperation with Member States on their territory.

This includes the development and continuous updating of a Common Core Curriculum (CCC), which takes into consideration the requirements for a minimum professional level of standards within the EU with regard to border control standards, as well as training modules for senior managers.⁶⁶⁵ The CCC has been revised in cooperation with the Universities of Bologna, Italy and Jyväskylä, Finland and has been made compatible with the European Credit Transfer System (ECTS). "After two years of development under Frontex lead, the Common Core Curriculum is ready for implementation into national training systems in all the EU MS and Schengen associated countries," said Ilkka Laitinen, Executive Director of Frontex. "Principles of integrated border management are the same everywhere in the EU. Training for our officers should be therefore the same in order to enable smooth cooperation during joint operations coordinated by Frontex".

The CCC for EU Border Guard basic training was launched on the basis of the Seville European Council decision of June 2002. The first CCC was ready for implementation in the EU MS and *Schengen* Associated Countries on 15th June 2004. In addition, a Common Mid-Level Curriculum (CMC) was then developed.⁶⁶⁶ The aim of the training activities, prepared and successfully implemented by Frontex together with host countries (Germany, Hungary, Lithuania, Slovenia and Finland), was to provide junior supervisory border guards with in-depth knowledge

⁶⁶⁴ Frontex Guidelines for Risk Analysis Units Structure and tools for the application of CIRAM version 2.0. 2. Frontex: background, mandate and objectives, p.9.

Neal, Andrew W. (2009): Securitization and Risk at the EU border. – In: Journal of common market studies, Vol. 47, No 2, p.348 et seqq.

⁶⁶⁵ Note from the author: See further discussion under Chapter 11 – International Police Cooperation, point 11.9. Common training and equipment.

⁶⁶⁶ Frontex (2007): Common Core Curriculum. Available from: <http://frontex.europa.eu/news/mid-level-courses-2007-60-border-guards-trained-ynRNbM> (Accessed on 7th January 2017).

of command, control and operational structures of other border guard services. Border guards taking part in the course have also had the opportunity to optimise their expertise on border guard cooperation at the external borders of the EU and to examine border control as a common European task. The courses focused on teaching basic border guard tactics, procedures and operational structures in the respective countries rounded out with practical training modules at the external borders. All training activities were held in English, thus facilitating establishment of a common language of European border guard services.

10.3.4. Research

Frontex acts as a platform to support EU MS officials in the areas of BSM, border control and surveillance and connecting research and industry, thereby closing the gaps between the needs of the respective BSM institutions and technological innovation.⁶⁶⁷ Frontex undertakes studies in the areas of biometric data security (i.e., Biopass Study⁶⁶⁸ and Biopass 2), secure cross-border communications (SeBoCom⁶⁶⁹), automated border crossing systems using e-passport in Europe (keyword 'smart borders' see point 7.7.) and new technical equipment.

Also, Frontex is undertaking regular feasibility studies on how to strengthen monitoring and surveillance of the EU's external borders. Specific focus was given by the European Council on the southern maritime border of the EU, namely in the Mediterranean Sea, and on a Mediterranean Coastal Patrols Network involving EU MS and North African countries. Such a task has been fulfilled by the MEDSEA⁶⁷⁰ study, which Frontex delivered in July 2006 that gives the organisational structure and recommendations to exchange information ensuring the coordination of such operational activity in an EU approach. There were two fundamental needs identified on how to achieve the coverage of the entire EU southern maritime

⁶⁶⁷ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 6 – Follow-up to research

⁶⁶⁸ European Commission (2017): BIOPASS Study on Automated Biometric Border Crossing Systems for Registered Passenger at Four European Airports. Available from: <http://publications.jrc.ec.europa.eu/repository/handle/JRC40718> (Accessed on 10th January 2017).

⁶⁶⁹ European Commission (2010): SeBoCom Pre-Study – A preliminary study on Secure Border Communications EUR 23536. Available from: <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/sebocom-pre-study-preliminary-study-secure-border-communications> (Accessed on 10th January 2017).

⁶⁷⁰ European Commission (2006): Communication from the Commission to the Council – Reinforcing the management of the European Union's Southern Maritime Borders (*COM/2006/0733 final*).

In its conclusions of 5th October 2006, the Council invites the Commission "with the cooperation of FRONTEX and taking into account the responsibilities of Member States, the feasibility study on the establishment of a Mediterranean Coastal Patrol Network (MEDSEA) and experience gained in joint operations, to present a Communication to the Council before the end of 2006 identifying those further operational measures that can be taken in the short-term to equip the Union with the necessary capacity to help assist in preventing and managing migration crisis situations".

borders. The first one focuses on the operational cooperation and coordination between authorities and the second one on the coordinative EU approach. These basic needs constitute also the identified challenges, national sovereignty and framework on the one hand and the shared responsibilities to protect the common area of freedom, security and justice on the other hand. In addition, it also entails the task of exploring the technical feasibility of establishing a surveillance system covering the whole southern maritime border of the EU and the Mediterranean Sea. As a result, the European Patrols Network (EPN) project has been established as a permanent regional border security concept that enables the synchronisation of national measures of the EU MS and their integration to joint European activities.⁶⁷¹ It is based on EU MS' existing activities and on strengthening of cooperation and coordination at national and EU levels. On the basis of the EPN, the EU MS should then set up regional headquarters at the southern and south-eastern sea external borders, which would in turn be coordinated by Frontex. The EPN would thus be another important building block for the completion and implementation of Eurosur (see point 9.3). In terms of technical equipment, Frontex carries out a central register of the technical equipment of the EU MS, which they are willing to make available on a voluntary basis and at the request of another EU MS for a temporary period, on the basis of a needs and risk analysis of the Agency.⁶⁷²

As a result, EU MS have the possibility to make their technical equipment available to another EU MS for the prevention of acute or temporary hazards in the cross-border context and thus make an important contribution to the maintenance of public security and order. In carrying out its duties to monitor, safeguard and control the EU's external borders, Frontex may provide technical and operational assistance to the requesting EU MS, and may function organisationally between EU MS in the provision of technical equipment.

10.3.5. Rapid interventions

Article 1 – Subject matter

1. This Regulation establishes a mechanism for the purposes of providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals

⁶⁷¹ Ibid.

The feasibility study entitled 'MEDSEA' presented by FRONTEX on 14th July 2006 as part of the implementation of the Global Approach to Migration points to the need for a permanent Coastal Patrol Network for the southern maritime external borders.

⁶⁷² Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 7 – Management of technical equipment

trying to enter the territory of the Member State illegally, in the form of Rapid Border Intervention Teams (hereinafter referred to as teams). This Regulation also defines the tasks to be performed and powers to be exercised by members of the teams during operations in a Member State other than their own.

2. This Regulation amends Regulation (EC) No 2007/2004 [...].⁶⁷³

Frontex commands a pool of border police officers and border guards in the form of the European Border Guard Team (EBGT), a comprehensive database of specialised personnel, as well as available technical equipment. These teams can be mobilised to become fully operational in case of a crisis situation at the external borders. Firstly, through the Regulation (EC) No 863/2007 joint assignments and pilot projects can be organised according to Art. 3 of the RABIT regulations. EU MS border officers organised as Frontex Joint Support Teams (FJST) then implement operations according to their territorial and functional jurisdiction. Secondly, RABIT teams carry out missions in case of massive influx of illegal immigrants at the request of an EU MS.

The tasks and powers provided by the RABIT program for individual members and teams are regulated accordingly and both "[...] shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 and that are necessary for the realisation of the objectives of that Regulation."⁶⁷⁴ The Agency's staff and the EU MS' experts acting on the territory of another EU MS may "[...] exercise executive powers [...] according to the national law of that Member State."⁶⁷⁵

On 25th October 2010, Greece was the first EU MS that submitted a request for the use of RABIT emergency teams to defend irregular migration at the Greek-Turkish border.⁶⁷⁶

⁶⁷³ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11th July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, OJ L 199, 31st July 2007, p.30–39.

Krösbacher, Verena (2010): Frontex. The role of the European Border Agency in the external management of the EU. Diploma thesis, University of Innsbruck, Institute for European Law and International Law, Innsbruck, p.71 et seqq.

Fischer-Lescano, Andreas/Tohidipur, Timo (2007b): *Europäisches Grenzkontrollregime*. Legal framework of the European Border Agency Frontex. - In: Journal of International Public Law and International Law, vol. 67, H 4, pp.1219-1276.

⁶⁷⁴ Commission Recommendation of 06/XI/2006 establishing a common "Practical Handbook for Border Guards (*Schengen Handbook*)" to be used by Member States' competent authorities when carrying out the border control of persons, p.10.

'Border checks' (Definition no 12) are the checks carried out at border crossing points, to ensure that persons, their means may be authorised to enter or leave the territory of *Schengen* States.

Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

Article 6 – Tasks and powers of the members of the team

⁶⁷⁵ Ibid. Article 10 – Exercise of executive powers

⁶⁷⁶ Ibid.

10.3.6. Support for EU MS in joint repatriations

Article 9 – Return cooperation

1. Subject to the Community return policy, the Agency shall provide the necessary assistance for organising joint return operations of Member States. The Agency may use Community financial means available in the field of return.
2. The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals.⁶⁷⁷

In this context, Frontex supports EU MS in coordinating the repatriation of non-EU country nationals, who do not want to leave the EU voluntarily, despite official request by the immigration office, and develops good practices in these areas based on lessons learned.

At the same time, respect for the fundamental rights and the human dignity of the returnees must be maintained at every stage. In 2007 Frontex has been connected to ICONet, for the purpose of exchanging relevant information with EU MS regarding risk analysis, preparation of joint operations and return.⁶⁷⁸ The ICONet was established by Council Decision 2005/267/EC[4] and has been operational since 2006. It is a secure web-based network for information exchange between the migration management services on irregular immigration, illegal entry and immigration and return of illegal residents. Through ICONet EU MS can announce planned repatriation, which gives other EU MS the opportunity to participate in these return transports. The execution of this charter flight is then the responsibility of the initially organising EU MS authorities.

10.3.7. Information exchange and systems

Frontex provides information about potential new identified risks and develops current situational pictures at the EU's external borders on the basis of risk analysis and so-called 'situational awareness' for border authorities in the EU. Frontex develops and operates information exchange systems that guarantee the exchange of relevant information, including the information and coordination network, through Decision 2005/267/EC and the European Border Control System. In addition, Frontex also works closely with EU MS border services, which are not members of the *Schengen* system, as well as non-EU countries with regard to

⁶⁷⁷ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 9 – Return cooperation

⁶⁷⁸ European Commission (2008): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Report on the evaluation and future development of the FRONTEX Agency {SEC(2008) 148} {SEC(2008) 149} {SEC(2008) 150} (*COM/2008/0067 final*).
Müller, Sebastian (2006): *Die Grundlagen der europäischen Migrationspolitik. Jahrbuch Menschenrechte 2007*, p.251-259.

sources and transit routes of irregular migration in line with the general EU CFSP. Frontex and EUROPOL, along with EASO and Eurojust, have jointly developed the concept of European Regional Task Force (EURTF) – a shared office where the representatives of these agencies work together to coordinate the EU assistance to the national authorities facing massive migratory pressure.⁶⁷⁹ They assist in the identification, registration and return as well as criminal investigations of people-smuggling networks, which take place either in the ports or in specific reception centres. This comprehensive exchange of information is also to be understood in connection with the development and implementation of Eurosur (further explanations under point 9.3).

10.4. Preliminary conclusion

Since 2001, the EU has been following the idea of developing a supranational border police, which was also formulated in the Stockholm Program that is still being pursued as a goal.⁶⁸⁰ In 2012, former Federal Foreign Minister Westerwelle called for the establishment of a new police group, which is to control the external borders of the EU.⁶⁸¹

"The safeguarding of the *Schengen* borders is to be strengthened by an EU border police. In addition, in the medium term a new EU visa regime should be introduced that replace national visas," it said in a report that Westerwelle presented in Warsaw.⁶⁸²

In this context, the EU Border Agency could be viewed as a kind of predecessor to this intended EU supranational border police. Sporadically, Frontex became stigmatised as the EU Agency responsible for the 'expansion of the fortress Europe'.⁶⁸³ Dimitris Avramopoulos, the Greek commissioner for migration and home affairs, in turn, surprised his critics and pleaded for the opening of legal immigration channels, adding that the 'Europe fortress' is not a solution (see also

⁶⁷⁹ Frontex (2017): European Regional Task Force (EURTF) in Catania, Sicily. Available from: <http://frontex.europa.eu/news/eurtf-office-in-catania-inaugurated-fcQoSr> (Accessed on 10th January 2017).

⁶⁸⁰ European Council (2010): The Stockholm Programme – An open and secure Europe serving and protecting citizens [Official Journal C 115 of 4.5.2010]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:j10034> (Accessed on 10th January 2017).

⁶⁸¹ Federal Foreign Office (2012): The '*Zukunftsguppe*' of Foreign Ministers. On the initiative of the former Foreign Minister Westerwelle met some EU foreign ministers to discuss their ideas for the future of Europe. The Foreign Ministers met for the first time in March 2012, the so-called '*Zukunftsguppe*' (equivalent to Future Group Think Tank) - an informal forum for discussion - in an interim report outlining their ideas of the current challenges and the future of Europe. Available from: <http://www.eu-infothek.com/article/die-reflexions-oder-zukunftsguppe-und-ihre-europa-plaene> (Accessed on 10th January 2017).

⁶⁸² Die Welt (2012): Westerwelle calls for unified EU border police. Available from: <http://www.welt.de/politik/article109273544/Westerwelle-fordert-einheitliche-EU-Grenzpolizei.html> (Accessed on 10th January 2017).

⁶⁸³ Möllers, Rosalie (2010): *Wirksamkeit und Effektivität der Europäischen Agentur Frontex*, p.13.

point 5.9).⁶⁸⁴ Avramopoulos added further: "The best way to combat illegal migration is to set up a regular immigration framework and not a 'Fortress Europe'." Tanja Fajon, from the Socialist and Democrats (S&D) group in Parliament, said, "I welcome the commissioner's [...] clear and loud position against 'Fortress Europe'. Socialists and Democrats insist that building high walls around Europe or national states leads to very dangerous isolation," she said after the hearing. On the other hand, Frontex is recognised as an institution with important humanitarian responsibilities and tasks (see also points 5.8 and 10.3.) and here the Frontex initiatives 'Triton' and 'Sophia' are thought to save human lives, which at first glance seems to be inconsistent.

Léonard, on the other hand, makes a positive assessment of the contributions made by Frontex to the securitisation of asylum and migration in the EU. Frontex does so by applying a sociological approach to the study of securitisation processes, which, is particularly well suited to the study of securitisation processes in the EU.⁶⁸⁵ Neal contradicts this and according to his opinion, the primary mandate of Frontex is aimed at the harmonisation of EU MS border management practices.⁶⁸⁶ Therefore, it is intended to prevent the erosion of laws and arbitrariness and strengthen national sovereignty in border surveillance and border control. De Boer concludes that Frontex is the first addressee "[...] for criticising the repressive orientation of European refugee and immigration policies. [...] Critics seem to be convinced that a stronger political control of Frontex could significantly influence the development of border and immigration policies."⁶⁸⁷ Rijpma, on the other hand, analyses Frontex as „[...] an easy target for criticism regarding the way in which the EU's southern maritime borders are controlled. [...] a closer look at the EU Agency's tasks reveals that its powers are limited and that the responsibility for operational activity continues to lie largely with EU MS."⁶⁸⁸

⁶⁸⁴ EurActiv (2014): Immigration Commissioner denounces 'Fortress Europe' at hearing. Available from: <http://www.euractiv.de/sections/europawahlen-2014/eu-innenkommissar-avramopoulos-mehr-frontex-weniger-festung-europa-308839> (Accessed on 11th January 2017).

⁶⁸⁵ Léonard, Sarah (2011): EU border security and migration into the European Union: FRONTEX and securitisation through practices. Available from: <http://www.tandfonline.com/doi/abs/10.1080/09662839.2010.526937> (Accessed on 11th January 2017).

⁶⁸⁶ Neal, Andrew W. (2009): Securitization and Risk at the EU border. – In: Journal of common market studies, Vol 47, No 2. p.333-356.

⁶⁸⁷ De Boer, Katrin (2010): Frontex: *Der falsche Adressat für ein wichtiges Anliegen*. – In: *Kriminologisches Journal*, Jg 42, H 3. p.181-195.

⁶⁸⁸ Rijpma, Jorrit J./Cremona, Marise (2007): The Extra-Territorialisation of EU Migration Policies and the Rule of Law. Available from: http://cadmus.eui.eu/bitstream/handle/1814/6690/LAW_2007_01.pdf?sequence=1. (Accessed on 11th January, 2017).

As a matter of fact, Frontex has no political competencies, but has precisely defined powers of execution and implementation. At the moment, Frontex does not have any of its own police powers, nor does it have the appropriate powers of attorney towards other national border services in the respective EU MS, or in the *Schengen*-associated countries.⁶⁸⁹ A key task of Frontex is undoubtedly the coordination of joint missions of EU MS to control and monitor EU external borders, based on the common rules of the *Schengen* border code.

Frontex ensures this through the provision of technical equipment from EU MS and the secondment of qualified border officers, who are voluntarily subordinated to the local border services in the EU MS concerned. Both the officials and the necessary technical equipment are accessible in specially created databases. The control and surveillance of the affected border sections is carried out according to the legally binding *Schengen* border code. The defence of threats to life or limb, the threat of massive illegal entry of non-EU country nationals, the prevention of cross-border crime, the fight against international terrorism, the FTF and violent extremism are of paramount importance. Strondl sees Frontex rightly in a field of tension, on the one hand from dynamic political objectives and high pressure of expectations, which manifests itself particularly in terms of migratory political crises, and on the other hand from refugee, human or fundamental criticism, as well as criticism of inadequate rule of law and political control.⁶⁹⁰

Most recently, Frontex has launched its new unit for accelerated deportation of rejected asylum seekers. The EU Commission announced in Brussels that an 'intervention team' with up to 690 officers in the medium term for repatriation has now started its work.⁶⁹¹ Frontex could send the experts to support EU MS to organise and coordinate repatriation operations. If necessary, they could also be active in non-EU countries. In 2016, the EU had decided to enlarge Frontex in order to enhance safeguarding EU's external borders. Since December, there exists a pool of up to 1500 border guards, which can be transferred to the EU's external borders within a matter of days. The intervention team for repatriation is now the last building block for the expansion of the agency.

⁶⁸⁹ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 10 – Exercise of executive powers

⁶⁹⁰ Strondl, R. (2011): *Die Europäische Grenzschutzagentur FRONTEX – More opportunities than risks to fundamental rights in European border management?* Master thesis, p.135.

⁶⁹¹ Die Welt (2017): „Interventionsteam“ soll Abschiebungen unterstützen. Available from: <https://www.welt.de/politik/deutschland/article161045704/Interventionsteam-soll-Abschiebungen-unterstuetzen.html> (Accessed on 12th January 2017).

“Faster deportations should de-motivate irregular immigrants coming to Europe”, said EU Migration Commissioner Dimitris Avramopoulos. With the new powers, Frontex is now able to send deportation experts on its own initiative to an EU MS in emergency situations.

According to Frontex, EU MS have so far made commitments to almost 400 of the 690 police officers and specialists for the pool of the intervention team. All officers will undergo a specialised training program provided through Frontex. In 2016, Frontex had coordinated the repatriation of 10,700 refugees, but had not been able to organise deportation flights on its own initiative.

Chapter 11: International police cooperation

It is certainly understandable when states are perceived as passive and slow in comparison to the enormous flexibility of cross-border OC groups. Therefore, the statement by an unknown author from 1992 still appears to be of some significance:

"One can summarise the current situation in a comparison without exaggeration: the international OC travels in a sports car, while the police took the pursuit by bicycle. At the border the police officer must then get off the bicycle to study the national criminal code. Afterwards, he sends out some smoke signals, hoping to get an answer from his foreign colleagues."⁶⁹²

In order to ensure public security and order, the enforcement of the state monopoly on legitimate use of force in accordance with the rule of law should not be restricted to the respective state territory, nor should it solely concentrate on neighbouring governmental authorities responsible for border management, border control and border surveillance. Ergo, a professional and trustworthy cross-border cooperation of police and judiciary is of paramount importance. The following descriptions will provide an insight of various initiatives and developed mechanisms in promoting effective cross-border police cooperation.

11.1. The Stability Pact

In October 2000, based on the EU's initiative and in cooperation with other international organisations as partners, the Stability Pact was established to combat TOC in the Western Balkan countries.⁶⁹³ The project was launched in 1999 as the first comprehensive conflict prevention strategy of the international community, aimed at strengthening the efforts of the countries of South Eastern Europe in fostering peace, democracy, respect for human rights and economic prosperity. Within this project framework, the Stability Pact Initiative to Fight Organised Crime (SPOC) was initiated to serve as an effective tool with regard to major challenges in the fight against TOC and to ensure a positive development in terms of good governance and acknowledged democratisation processes in the countries in South Eastern Europe.⁶⁹⁴ In 2008, the Regional Co-operation Council

⁶⁹² Gehl, Günter (2006): *Europa im Griff der organisierten Kriminalität?* P.85.

⁶⁹³ European Commission (2005): Council Decision on the appointment of the Special Coordinator of the Stability Pact for South-Eastern Europe COM(2005) 595 final.

Stability Pact Initiative to fight Organised Crime – SPOC (2000). Available from: <http://www.stability-pact.org> (Accessed on 15th January 2017).

⁶⁹⁴ Ibid.

Stability Pact Countries – Theme III – The fight against organised crime DT\441998EN.doc PE 302.064. Organised Crime: The Stability Pact Initiative to fight Organised Crime (SPOC) was designed to strengthen regional capacities to combat organised crime, in accordance with internationally recognised standards.

(RCC) replaced the Stability Pact.⁶⁹⁵ Through a regional managed framework of ownership, the RCC focuses on strengthening regional cooperation in South Eastern Europe and supports the European and Euro-Atlantic integration of the ambitious countries. The RCC provides operational capacities to and works under the political guidance of the South-East European Cooperation Partners (SEECP). A very important aspect of the RCC is the strategic orientation to cooperate closely in the areas of Justice and Home Affairs and the EU enlargement process on the basis of the joint work program 2014-2016. The RCC has a particular interest in achieving identifiable and measurable progress in the fight against serious crime and TOC, as well as anti-corruption measures. It provides extensive encouragement to the governments of the South Eastern European countries through supportive measures to revise and harmonise the respective legal frameworks and strengthen institutional capacities in the fight against criminal infiltration.

Corresponding initiatives, as well as organisations and EU agencies, such as EUROPOL, the European Police College⁶⁹⁶ (CEPOL), the Secretariat of the Police Cooperation Convention for South-Eastern Europe⁶⁹⁷ (SEE PCC Secretariat), the South Eastern Police Commander Association⁶⁹⁸ (SEPCA), the South Eastern European Enforcement Centre⁶⁹⁹ (SELEC), the South Eastern European Public Prosecutors Advisory Group⁷⁰⁰ (SEEPAG), and the Western Balkan network for

⁶⁹⁵ Regional Cooperation Council – RCC (2014): The RCC promotes mutual cooperation and European and Euro-Atlantic integration of South East Europe. Available from: <http://www.rcc.int/> (Accessed on 15th January 2017).

⁶⁹⁶ Council Decision of 22nd December 2000 establishing a European Police College [Official Journal L 336 of 30.12.2000].

At its meeting in Tampere on 15th and 16th October 1999, the European Council agreed to establish a network of national police training institutes. The Council Decision establishing the European Police College (CEPOL) follows on from that decision. Its objective is to step up cooperation between national police schools in order to promote a joint approach to the major problems encountered in fighting crime, preventing delinquency and maintaining law and order. This decision has been amended twice: Decision 2004/566/JAI gives CEPOL legal personality, and Decision 2004/567/JAI makes some changes at institutional level.

⁶⁹⁷ Convention on Police Cooperation in South Eastern Europe (2006), also 'Vienna Convention'. Available from: <http://www.pccseesecretariat.si/index.php?page=documentspcc&item=35> (Accessed on 15th January 2017). Article 1 – Scope of the Convention The Contracting Parties shall strengthen their cooperation with respect to fighting threats to public security and/or order as well as with respect to prevention, detection and police investigation of criminal offences. This is done under national law, unless otherwise indicated in this Convention.

⁶⁹⁸ South Eastern Police Commander Association – SEPCA (2002): SEPCA's objectives are to improve police cooperation between members, develop professionalism and facilitate reforms in the police services. Available from: <http://www.sepca-see.eu> (Accessed on 15th January 2017).

⁶⁹⁹ South Eastern Law Enforcement Centre – SELEC (2015): SELEC is to provide support for Member States and enhance coordination in preventing and combating crime, including serious and organised crime, where such crime involves or appears to involve an element of trans-border activity. SELEC is based in Bucharest in Romania. Available from: <http://www.selec.org> (Accessed on 15th January 2017).

⁷⁰⁰ South Eastern European Public Prosecutors Advisory Group – SEEPAG (2009): SEEPAG is an international mechanism of judicial cooperation, formed by the countries of the SEE region with an express intention of facilitating judicial cooperation in significant trans-border crime investigations and cases. This initiative recognises that as trans-border crime transcends national borders; the strategy for combating it must have

public prosecutors, together with the national authorities, provide a broad platform to a possible close and successful regional cooperation.

11.2. Southeast European Cooperation Initiative – SECI⁷⁰¹

Southeast European Law Enforcement Centre – SELEC⁷⁰²

On 26th May 1999, representatives from 12 countries of the South Eastern European region signed the 'Agreement on Cooperation to Prevent and Combat Trans-Border Crime', the so-called 'SECI Agreement', in Bucharest.⁷⁰³ Additional countries have observer status, but without having signed and ratified the agreement.⁷⁰⁴ This observer status⁷⁰⁵ has also been linked to the World Customs Organisation⁷⁰⁶ (WCO), the EU Border Assistance Mission to Moldova and Ukraine⁷⁰⁷ (EUBAM), the UN Office on Drugs and Crime⁷⁰⁸ (UNODC) and the UN Interim Administration Mission in Kosovo⁷⁰⁹ (UNMIK). In 2000, the SECI Centre started its work and each Member State could send two liaison officers to work at the Centre for the purposes of strengthening police and customs cooperation. On 7th October 2011, the SECI Centre was transferred to the SELEC Centre in its operational and strategic orientations.⁷¹⁰

regional as well as national dimension. Available from: <http://www.seepaq.info> (Accessed on 15th January 2017).

⁷⁰¹ Southeast European Cooperative Initiative – SECI (2001): Regional Centre for Combating Trans-border Crime. Available from: <http://www.selec.org/p497/07+April+2011> (Accessed on 16th January 2017).

⁷⁰² Southeast Law Enforcement Centre – SELEC (2016): SELEC is based in Bucharest in Romania. Available from: <http://www.selec.org> (Accessed on 16th January 2017).

⁷⁰³ Ministry of Foreign Affairs of the Republic of Serbia (2012): SECI member states are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Greece, Hungary, Moldova, Montenegro, Romania, Slovenia, Serbia and Turkey. Available from: <http://www.mfa.gov.rs/en/foreign-policy/eu/regional-initiatives/seci> (Accessed on 16th January 2017).

⁷⁰⁴ Note from the author: Countries with observer status are: Belgium, Germany, Georgia, UK with Northern Ireland, Israel, Japan, the Netherlands, Austria, Slovakia, Spain, Czech Republic, and Ukraine.

⁷⁰⁵ South Eastern Law Enforcement Centre – SELEC (2016): International organisations with observer status. Available from: http://www.selec.org/p229/International_Organizations (Accessed on 16th January 2017).

⁷⁰⁶ World Customs Organization – WCO (2015): The WCO, established in 1952 as the Customs Co-operation Council (CCC), is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations. Available from: <http://www.wcoomd.org> (Accessed on 16th January 2017).

⁷⁰⁷ European Union (2017): The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) was launched in 2005. Available from: www.eubam.org (Accessed on 16th January 2017).

⁷⁰⁸ United Nations Office on Drugs and Crime – UNODC (2017): Available from: www.unodc.org (Accessed on 16th January 2017).

⁷⁰⁹ United Nations (2017): United Nations Mission in Kosovo – UNMIK. Available from: www.unmikonline.org and www.un.org/en/peacekeeping/missions/unmik (Accessed on 16th January 2017).

⁷¹⁰ Southeast Law Enforcement Centre – SELEC (2016): SELEC – A STEP FORWARD. On 7th October 2011, the SECI Centre became SELEC, while its operational and strategic capabilities were maintained and transferred to the new SELEC. Available from: <http://www.selec.org/m106/About+SELEC> (Accessed on 16th January 2017).

The SELEC Centre consists in its organisational structure of the Council and the Secretariat.⁷¹¹

The Council is the highest decision-making body of SELEC, consisting in high-level representatives of SELEC Member States, having the authority to act on behalf of their States. Has as its Chairperson and Vice Chairperson high-level officials from the competent authorities of the Member States, assigned for a term of one (1) year by alphabetical rotation among the Member States. Meets at least once a year at the headquarters of the SELEC, in Bucharest, Romania unless otherwise decided. Takes decisions about strategies, financial matters, elections of the SELEC Management, approves applications for memberships and operational partnerships, as well as the conclusion of agreements.

The Secretariat consists of the Director General, Directors and SELEC staff. The Director General is the chief executive officer and legal representative of SELEC. The Director is a citizen of one of the Member States and is elected by the Council following an open and public procedure. The mandate of the Director General is 4 (four) years.

The Directors are elected for a term of 3 (three) years. Each Director is a citizen of one of the Member States and is elected by the Council following an open and public procedure. The Council defines the number, function, and roles of the Directors.

The Staff consist of all persons working under the authority and control of the Director General and Directors.

[...].

The 'Convention of the Southeast European Law Enforcement Centre', also called the 'SELEC Agreement', is the main legal basis with regards to strengthening cross-border cooperation with the aim of averting transnational threats and combating TOC. The Convention also includes relevant regulations in relation to the mandate and organisational structure.⁷¹² For the sake of completeness, the legal agreement between the SELEC Centre and the host country Romania, which regulates the legal status of the Centre and its employees, should be mentioned. The Centre is connected with the INTERPOL situation centre, and sensitive data and information is exchanged only via secure channels, both with Member States as well as international organisations.

Two important work areas are covered by the SELEC Centre:

- the provision and exchange of relevant information
- the creation of task forces or working groups

⁷¹¹ Ibid. Organisational structure. Available from: http://www.selec.org/p150/Organizational_Chart (Accessed on 16th January 2017).

⁷¹² Ibid. Convention of the Southeast European Law Enforcement Centre (2009): Article 1 – Establishment
The Member States hereby establish the Southeast European Law Enforcement Centre (hereinafter referred to as SELEC) to serve as a framework for cooperation among their competent authorities in order to fulfil the objectives of SELEC, p.3. Available from: [http://www.selec.org/p521/Convention+of+the+Southeast+European+Law+Enforcement+Center+\(SELEC\)](http://www.selec.org/p521/Convention+of+the+Southeast+European+Law+Enforcement+Center+(SELEC)). (Accessed on 16th January 2017).

National Focal Points (NFP) act as the single point of contact with each Member State for secure communication with SELEC through the liaison officers of the respective Member State, in requesting for or granting of information. On the second working level, the requirements become considerably more wide-ranging and complex since the SELEC task forces can be active both strategically and operationally, for example in the participation of multinational police operations, cooperation in transnational investigations, development of strategic analyses and training programs.⁷¹³

The following SELEC task forces are organised in the fight against:

- Anti-Drug Trafficking Task Force – Bulgaria⁷¹⁴
- Task Force Mirage on Countering Trafficking in Human Beings and Illegal Migration – Romania⁷¹⁵
- Financial and Computer Crime Task Force⁷¹⁶ is divided into sub-groups
 - Counterfeit Money – North Macedonia
 - Cyber Crime and Credit Card Fraud – Romania
 - Intellectual property – Bulgaria
 - Money Laundering – Moldova
- Anti-Fraud and Anti-Smuggling Task Force – Albania and Croatia⁷¹⁷
- Stolen Vehicles Task Force – Hungary⁷¹⁸
- Anti-Terrorism Task Force⁷¹⁹ is divided into sub-groups
 - Trafficking in Small Arms and Light Weapons (SALW) – Albania
 - Trafficking in Weapons of Mass Destruction – Romania
 - Terrorist Groups – Turkey

⁷¹³ Ibid. SELEC operational activities – task forces. Available from: http://www.selec.org/m115/Operational_Activities (Accessed on 16th January 2017).

⁷¹⁴ Ibid. SELEC – Anti-Drug Trafficking Task Force established in 2000; coordinator is Bulgaria. Available from: http://www.selec.org/p259/Anti_Drugs_Trafficking_Task_Force (Accessed on 16th January 2017).

⁷¹⁵ Ibid. SELEC – Task Force Mirage on Countering Trafficking in Human Beings and Illegal Migration established in 2000; coordinator is Romania. Available from: http://www.selec.org/p280/Task_Force_on_Human_Trafficking_and_Migrant_Smuggling (Accessed on 16th January 2017).

⁷¹⁶ Ibid. SELEC – Financial and Computer Crime Task Force established in 2001; coordinator is FYROM, sub-groups: Credit card fraud (Romania), cyber-crime (Romania), money laundering (Moldova), intellectual property (Bulgaria), counterfeit money (FYROM). Available from: http://www.selec.org/p261/Financial_and_Computer_Crime_Task_Force (Accessed on 16th January 2017).

⁷¹⁷ Ibid. SELEC – Anti-Fraud and Anti-Smuggling Task Force established in 2003; coordinators are Albania and Croatia. Available from: http://www.selec.org/p260/Anti_Fraud_and_Anti_Smuggling_Task_Force (Accessed on 16th January 2017).

⁷¹⁸ Ibid. SELEC – Stolen Vehicle Task Force established in 2002; coordinator is Hungary. Available from: http://www.selec.org/p262/Task_Force_on_Stolen_Vehicles (Accessed on 16th January 2017).

⁷¹⁹ Ibid. SELEC – Anti Terrorism Task Force established in 2003; main coordinator is Turkey, sub-groups: Trafficking in SALW (Albania); Trafficking in weapons of mass destruction (Romania); Terrorist groups (Turkey). Available from: http://www.selec.org/p263/Anti_Terrorism_Task_Force (Accessed on 16th January 2017).

These thematic areas were expedited in order to strengthen the cooperation between the respective public prosecution offices and police enforcement authorities of the Member States in aiming for the development and establishment of standards in line with the EU *acquis*. An evaluation carried out in 2004 showed that good results had been achieved so far. The EU experts prognosticated the huge potential and great opportunities of the SECI program to combat TOC and made the recommendation to expand the capacities accordingly. The core recommendation was to promote the SECI Centre as a regional project and to give the countries that have already been granted with EU membership candidate status and those that are still undergoing the application procedure, appropriate aid and close partnership in the fight against TOC and irregular migration. The EU supports the idea of helping the SELEC Centre (previously SECI) to develop a central institution for the purpose of effective criminal prosecution in the region. However, it is not intended to transfer the SELEC Centre into an EU agency. Finally, it is worth mentioning that the SELEC Centre is experiencing a reevaluation in which cooperation with EUROPOL is intensified and strengthened.

11.3. International Law Enforcement Coordination Units – ILECU

The development and establishment of ILECU in the overall framework of the Austrian engagement in South Eastern Europe in general, and the Western Balkan countries in particular, was assessed as an outstanding initiative.⁷²⁰ The project is aimed at a significant and sustainable improvement of national, international and regional cooperation in the fight against terrorism, FTF and TOC, which contributes to strengthening the rule of law and good governance in South Eastern Europe. Beneficiaries of this project are the International Law Enforcement Coordination Units (ILECUs), which have been established in South Eastern Europe as well as the ILECU that are going to be established in the Republic of Moldova and the Republic of Georgia. "This markedly increased the efficiency in the fight against

⁷²⁰ Criminal Intelligence Service Austria (2017): ILECU – Strengthening the Rule of Law and Good Governance in South East Europe by further Promoting International Law Enforcement Coordination Units, which Combat Transnational Organised Crime. ILECU countries are: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Austria. Available from: <http://bim.lbg.ac.at/en/ilecus-strengthening-rule-law-and-good-governance-south-east-europe-further-promoting-international-law-enforcement-coordination-units-which-combat> (Accessed on 16th January 2017).

Swiss Regional Cooperation Program (2017): Further development of International Law Enforcement Coordination Units (ILECUs) in South Eastern Europe and strengthening of the strategic approach of the Southeast Europe Police Chiefs Association (SEPCA) to combat transnational crime. Available from: http://spcp2012-16.ch/?page_id=275 (Accessed on 16th January 2017).

Bundeskriminalamt – BKA German Federal Criminal Office (2012): Completion of the international police project DET-ILECUs II in Berlin. The ILECU I project, which was initially funded by the EU, is being further developed within the framework of a subcomponent of the following EU project, DET– (Drugs Economic Terrorism) ILECU II under the direction of the Austrian Federal Criminal Police Office are.

organised cross-border crime on the Western Balkans”, says the Director of the Criminal Intelligence Service Austria General Franz Lang. “The procedures of the information exchange and the corresponding judicial and police reactions across borders have been centralised and unified in each country, underwent process control and have been raised to Western standards, some of which have even been exceeded. This translates in an increased legal security for the population of all countries involved”, says Lang. An ILECU is a national coordination unit that incorporates and provides close connection with contact points for example with INTERPOL, EUROPOL, Eurojust, the SELEC, law enforcement liaison officers, the Supplementary Information Request at the National Entry (SIRENE), customs authorities, border police services, Frontex, OLAF and other relevant law enforcement organisations. The operational implementation of ILECU was the responsibility of Austria and Germany. Within the three-year implementation period, 217 project activities were implemented and seven needs assessments, so-called ‘on-the-spot analyses’ were developed.

In cooperation with senior officers from Western Balkan law enforcement agencies, over 1,200 officials were trained in the framework of specialised training courses and workshops. Through regular meetings and the established training platform, the ILECU members were able to connect more closely and to network professionally, which inevitably led to an intensified cooperation between the target countries and their law enforcement agencies. Within the framework of the ILECU network a system has been developed with regard to quality management for standard operational procedures, which is regularly updated by the network and can thus react quickly to changes in the assessment of situations of TOC issues.

Jörg Ziercke, President of the German Federal Criminal Police Office (*BKA*) said: “A trustful cooperation of the national and foreign law enforcement authorities and a regular exchange are crucial elements for fighting international crime. The finalisation of the project has seen an expansion of police cooperation between the Western Balkan countries and EU MS. We would also like to continue with this close and trustful cooperation in future. Communication is the key to success in this context. Compared to other regions in the world, we have achieved a lot in the field of police cooperation in Europe. The framework conditions that were established by policies for this purpose are unique worldwide.”⁷²¹

⁷²¹ *Bundeskriminalamt – BKA German Federal Criminal Office (2012): Completion of the international police*

Austria works on a follow-up programme to the project with the following goals and objectives:

- To ensure the sustainability of the existing ILECUs,
- To include the public prosecutors of the existing countries, and
- To enlarge the network to include Moldavia, Georgia and the Ukraine.

The ILECU infrastructure is an answer to the flexible and anarchic nature of cross-border organised crime and its future perspective is the development of the region towards the European MS, both legally and operationally.⁷²²

11.4. Border Police Liaison Officers

Border Police Support Officers Abroad

The German Federal Police deploys approximately 150 police officers abroad each year (*Grenzpolizeiliche Unterstützungsbeamte Ausland – GUA*).⁷²³ They are involved in deployments by the European Border Agency at Frontex at EU external borders and in the framework of bilateral operations at EU's internal borders. The task of these border police officers abroad is to support the national border police as follows:

- Provision of expertise in the areas of the *Schengen* rules, and
- Support in the fight against irregular migration, as well as in the detection of counterfeit travel documents and international vehicle crime.

Border Police Liaison Officers

Within the framework of safeguarding the EU's external borders with a particular focus on combating irregular migration, the German Federal Police deploys currently 219 liaison officers (*Grenzpolizeiliche Verbindungsbeamte – GVB*) in 20 different countries and with additional accreditation in a further 12 countries.⁷²⁴ The tasks of these specialised border officers are very far-reaching, vary in nature and are described in a non-exhaustive order as follows:

- Obtaining relevant knowledge in the country of deployment and its neighbouring countries
- Exchanging of information with host country investigative authorities

project DET-ILECUs II in Berlin. – Jörg Ziercke President now retired (2004–2014). Available from: https://www.bka.de/DE/Presse/Listenseite_Pressemitteilungen/2012/Presse2012/121212_Abschluss_Projekt-DET-ILECU-II.html (Accessed on 16th January 2017).

⁷²² Ibid.

⁷²³ Federal Police (2017): *Einsatz von Grenzpolizeilichen Unterstützungsbeamten Ausland (GUA)*. Available from: http://www.bundespolizei.de/DE/06Die-Bundespolizei/Aufgaben-Verwendungen/International/international_node.html (Accessed on 16th January 2017).

⁷²⁴ Ibid. *Einsatz von Grenzpolizeilichen Verbindungsbeamten (GVB)*. Available from: <https://www.bundespolizei.de/Web/DE/03Unsere-Aufgaben/04Internationale-Aufgaben/GVB.html> (Accessed on 16th January 2017).

- Elaborating of situational overviews and their analyses
- Conducting risk analyses and combination with possible threats
- Early identification of potential transnational threats
- Reporting
- Participation in events in relation to professional duties

Travel document and visa adviser

Several years ago, some EU MS started innovative approaches and established national expert pools for specially trained border police officers, who are responsible for checking travel documents, visa and other ID documents in the performance of extraterritorial border controls (further details in chapter 14). This is a very special form of expertise provided outside of the national jurisdiction for effective detection of counterfeit or falsified travel documents, visas and other forms of ID papers. These border police experts are usually assigned to bilateral embassies abroad for a period of six months up to several years. Their task is to train and assist responsible consular officials as well as national airline staff in the recognition of counterfeit or falsified travel documents, visa and ID cards. This expertise is indispensable for the review of visa applications where suspicions are roused in connection with the submission of counterfeit or falsified identity documents as well as specifically used for checks at international airports in order to identify persons using counterfeit or falsified travel documents. This enables airport control officials to separate such suspects before boarding the aircraft and any attempt to illegally enter the country of destination is thwarted before departure. The national competent police service will then be officially informed about the attempted deception and thereon in, the further case processing becomes the responsibility of the national investigating authorities.

11.5. International police missions

Since 1989, Germany has seconded police officers in various foreign assignments led by the UN, the Western European Union (WEU), the EU and the OSCE.⁷²⁵ In 1994, the Federal-State Government Working Committee of International Police Missions was set up by the Conference of Ministers of the Interior of the State Governments together with the Federal Government.⁷²⁶ The State Government of North Rhine-Westphalia chairs the Working Committee and meetings are held

⁷²⁵ Berlin.de (2017): *Der Polizeipräsident in Berlin*. Foreign Assignments of the Berlin Police. Available from: <https://www.berlin.de/polizei/verschiedenes/artikel.90455.php> (Accessed on 17th January 2017).

⁷²⁶ Federal Ministry of the Interior (2017): Police missions abroad prevent the reasons why people flee their country. Available from: <http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/EN/2016/09/ceremony-for-police-officers-returning-from-missions-abroad.html> (Accessed on 17th January 2017).

twice a year. Its members include, in addition to the Federal Ministry of the Interior, the *BKA* and the Federal Police, representatives of all Federal-State Governments, the Federal Foreign Office and the Federal Ministry of Finance. The working group is a very important advisory and decision-making body on all issues concerning the preparation, participation and implementation of foreign assignments by German police officers.

"You have every reason to feel proud of yourselves. For each and every one of you – regardless of whether you have been involved in a peacekeeping mission or a bilateral police project – have helped hopefully to restore the security situation in countries plagued by conflict, crises and chaos. You restore safety in shattered societies, laying the foundations for viable developments that are governed by the rule of law," said the Federal Minister of the Interior, Dr. Thomas de Maizière, used on 7th September 2016 in Berlin to highlight the special importance of police operations in global peacekeeping missions. Around 600 police officers that had returned from missions abroad as well as numerous representatives of the world of politics and the media attended the ceremony.

Currently, there are about 150 police officers seconded in different UN missions, EU missions and several bilateral police-related projects.⁷²⁷ For this purpose, a joint office of the Federal Police and State Police services was established, which is responsible for all administrative tasks for the secondment and support of the police officers accordingly.⁷²⁸ Further, the office is responsible for the preparation of the nominated officers and takes care of the post-processing after returning to Germany. In recent years, Germany has been involved intensively and with generous police staffing in peacekeeping missions in Bosnia and Herzegovina, Kosovo and Afghanistan, and from the point of accumulative reflection was leading the relevant processes for the establishment of border police services in these countries. There was a strong commitment to sustainably support these authorities in their efforts to develop skills and capacities and to strengthen their efforts to combat TOC, terrorism, FTF and irregular migration.

These views were reiterated by the Chairman of the Working Committee of International Police Missions, Dieter Wehe, who emphasised in talks with police officers deployed in Afghanistan, Tunisia, Egypt and Mali that combating the

727 Federal Police Headquarters (2017): International Police Missions. Available from: <http://www.bundespolizei.de/Web/DE/03Unsere-Aufgaben/04Internationale-Aufgaben/polizeimissionen.html> (Accessed on 17th January 2017).

728 Ibid.

reasons why people flee, necessitates a holistic, concerted approach by the various government and non-governmental players in crisis-ridden areas. He went on to say that strengthening the police forces in the crisis regions is therefore also a prerequisite for successful development work.⁷²⁹

11.6. Prüm Decision – Facilitation of cross-border cooperation

On 27th May 2005, the contract between the EU MS of Austria, Belgium, Germany, France, Luxembourg, Spain and The Netherlands was signed in *Prüm*, Germany. The Treaty had the objective of further facilitating and improving cross-border cooperation, particularly in the fields of combating international terrorism and violent extremism, TOC and irregular migration.⁷³⁰ The agreement has since been known as the '*Prüm Decision*'.

The decision is to enhance cross-border cooperation between EU MS police services and judicial institutions in the areas of criminal investigation and prosecution matters. In particular, it is geared towards expediting the exchange of relevant information between the state authorities responsible for the prevention of transnational threats and a consequent investigation of crime.

The decision sets out the following provisions with regard to:

- The automated access to DNA profiles, dactyloscopic data and certain national vehicle registration data
- Supply of data in relation to major events
- Supply of information in order to prevent terrorist offences
- Other measures for stepping up cross-border police cooperation

The automated program for the exchange of these important data means a quite remarkable improvement in the quality of criminal investigations conducted by the respective law enforcement authorities of the EU MS. In preventing crimes related to terrorist groups and FTF, EU MS may provide, in individual cases, relevant data to each other via the national contact points, leading to the supposition that criminal offences will be committed. The EU MS providing these data may impose certain binding conditions on the receiving country in relation to data usage. Furthermore, the regulations also include various forms of operational cross-border police cooperation in the event of the need for mutual police assistance in

⁷²⁹ Federal Ministry of the Interior (2017): Police missions abroad prevent the reasons why people flee their country. Available from: <http://www.bmi.bund.de/SharedDocs/Kurzmeldungen/EN/2016/09/ceremony-for-police-officers-returning-from-missions-abroad.html> (Accessed on 17th January 2017).

⁷³⁰ Council Decision 2008/615/JHA of 23rd June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ('*Prüm Decision*').

the case of major accidents and other police forces. EU MS may effectuate joint BSM operations including joint patrolling to prevent cross-border crime and to maintain public order and security on a given EU MS' territory. With regard to major events, disasters and serious accidents in a cross-border dimension, EU MS are to provide mutual assistance to each other. This assistance should consist of information exchanges, coordination of police measures and contribution of material and physical resources. The 'Prüm Decision' contains extensive regulations regarding data protection⁷³¹, which have been specifically developed for all contractual details of the automated data exchange that meet the highest EU standards. EU MS must guarantee that their national laws protect personal data processed according to this decision and only competent authorities may process personal data. Furthermore, these authorities must ensure the accuracy and current relevance of the data. After the aforementioned initiating EU MS have signed the 'Prüm Decision', further EU MS have joined the treaty.⁷³²

Since the 'Prüm Decision' was originally signed in 2005, seven more EU MS have joined the treaty. On 26th August 2008, Council Decision 2008/615/JHA of 23rd June 2008 on the enhancement of cross-border cooperation, particularly in combating terrorism, FTF and TOC (*Prüm* Council Decision) entered into force.⁷³³ This decision incorporates the substance of the 'Prüm Decision' into the legal framework of the EU and therefore applies to all EU MS. In Germany, the Council Decision was implemented in national law through the Act to Implement Council Decision 2008/615/JHA of 23rd June 2008 on the stepping-up of cross-border cooperation, particularly in combating terrorism and cross-border crime.⁷³⁴ The law has been in force since 5th August 2009.

⁷³¹ Council of the EU 6077/10/11 REV 10 (2011): Working Group on Information Exchange and Data Protection (DAPIX). Data protection requirements – Prior to any processing of personal data and to evaluating the implementation of chapter 2 provisions, Member States have to guarantee the level of data protection and comply with all standards and procedures required by Chapter 6 of Council Decision 2008/615/JHA. To this end, they have to fill in the questionnaire set out in document 6661/1/09 REV 1 ADD 1 REV 1 CRIMORG 25 ENFOPOL 39 and send it to [...].

⁷³² Federal Ministry of the Interior (2017): Police cooperation. Available from: http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

Prüm Contract Signature States are Austria, Belgium, Germany, France, Luxembourg, Spain and the Netherlands. The agreement has so far been joined by Finland, Hungary, Norway and Slovenia. The following states have stated their intention to join the *Prüm* Treaty, which are Bulgaria, Greece, Italy, Portugal, Romania and Sweden.

⁷³³ Council Decision 2008/615/JHA of 23rd June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ('*Prüm* Decision').

⁷³⁴ Federal Ministry of the Interior (2017): Police cooperation. Available from: http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

11.7. Joint centres

As discussed under point 1.2 of the work, with the thematised fundamental upheavals, as well as the opening up of internal borders within the *Schengen* area, the States concerned recognised the urgent need for new, innovative and effective forms of cross-border cooperation. This is why Germany maintains close and trustworthy cross-border cooperation with all its neighbours also on the basis of bilateral agreements.⁷³⁵ Particular features of this collaboration are specific police operations that go beyond national borders, such as hot pursuit⁷³⁶, police surveillance⁷³⁷, controlled deliveries⁷³⁸, mutual information exchange, joint police operations and patrols, and cross-border staff support. A particular form of this cross-border cooperation is the so-called 'Joint Police and Customs Centres' that have been established with geographically adjacent states.⁷³⁹

The starting point was the founding of the 'Joint Centre of German-French Police and Customs Cooperation' in 1997, which today is based in Kehl, Germany and is staffed with about 60 officials from both countries.⁷⁴⁰ The Joint Centre offers full

⁷³⁵ Ibid.

⁷³⁶ The *Schengen* acquis - Convention implementing the *Schengen* Agreement of 14th June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders Official Journal L 239, 22/09/2000 p.0019-0062.

Hot Pursuit is the prosecution of an escaping suspect, convicted person or a person who has been caught in the act by police officers across national borders. [...] The pursuit in the Contracting States of the *Schengen* Convention is regulated in Article 40, by which officers of one of the Contracting Parties who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence shall be authorised to continue their surveillance in the territory of another Contracting Party where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Conditions may be attached to the authorisation. Only in the case of a particularly serious offense listed under Article 40 (7), a cross-border surveillance can be carried out without special prior consent. Art. 41 of the *Schengen* Convention regulates that [...] officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in one of the offences referred to in paragraph 4 shall be authorised to continue pursuit in the territory of another Contracting Party without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other Contracting Party by one of the means provided for in Article 44 prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.

⁷³⁷ Ibid.

⁷³⁸ Ibid.

Article 73 (1) The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made in the context of the illicit trafficking in narcotic drugs and psychotropic substances.

United Nations Convention against transnational organised crime and the protocols thereto (2004): Adopted by the UN General Assembly Resolution 55/25 on 15th November 2000 - United Nations Office on Drugs and Crime (UNODC).

Article 2 – Use of terms

'Controlled delivery' shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

⁷³⁹ Federal Ministry of the Interior (2017): Police cooperation. Available from:

http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

⁷⁴⁰ Polizei Baden Württemberg (2017): Joint Centre for Police and Customs Cooperation in Kehl. Available from: https://www.polizei-bw.de/Dienststellen/LKA/Seiten/GZ_Kehl.aspx (Accessed on 17th January 2017).

assistance in all kind of cross-border BSM-related issues on a 24/7 basis.⁷⁴¹ In these Joint Centres, representatives of the police and customs services of partner states literally work together under one roof; as far as possible, the Centres are located near the border.⁷⁴²

Currently there are Joint Centres in Kehl (with France), Luxembourg City (with Luxembourg, Belgium and France), Padborg (with Denmark), Swiecko (with Poland, near Frankfurt on the Oder), and with the Czech Republic (offices in Petrovice and Schwandorf). The Euregional Police Information Cooperation Centre in Heerlen (with Belgium and the Netherlands) is a similar institution. These Joint Centres facilitate cross-border information sharing and assist responsible police and customs services, as well as other law enforcement authorities involved in BSM-related issues in carrying out their operational tasks effectively. This includes assistance in coordinating cross-border operations and locating the relevant contact persons in the neighbouring country and help in overcoming language barriers. Officers at the centres usually speak the language of the neighbouring country and have the same communications equipment. On the basis of new identified problems in the cooperation between the involved law enforcement agencies of the German federal police, Bavarian police and Austrian police, triggered by the massive refugee influx from Austria to Bavaria, the Joint Centre in Passau, Germany was established on 17th November 2015. The German-Austrian Joint Centre is to ensure closer cooperation between the two countries and to help combat TOC and irregular migration more effectively. The Bavarian Minister of the Interior Herrmann: "The establishment of our German-Austrian Joint Centre is an important step in further expanding effective cross-border police cooperation with Austria."⁷⁴³

Despite these partly revolutionary developments, at least as far as the EU level is concerned, international cooperation will continue to take place primarily at a bilateral level. For example, there have been forms of co-operation that have developed in border regions for decades, which in a further continuation was strengthened in the middle of the 1990s with the creation of the so-called 'border

⁷⁴¹ Note from the author: 24/7 stands for 24 hours and 7 days a week, so permanent. A so-called 'three-shift system' consists of morning, afternoon and night shift.

⁷⁴² Federal Ministry of the Interior (2017): Police cooperation. Available from: http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

⁷⁴³ Landespolizeidirektion OÖ (2016): Joint Centre. Available from: <http://www.polizei.gv.at/ooe/start.aspx?nwid=45343776487975345350513D&ctrl=3734335266674D385951343D&nwo=0> (Accessed on 17th January 2017).

cooperation centres' (see also point 8.1). The Joint Centres provide competent and fast assistance in cases of cross-border police investigations on a 24/7 basis.

11.8. Central European Police Academy – CEPA

The Central European Police Academy (CEPA) is an educational institution jointly supported by the EU MS.⁷⁴⁴ The CEPA plans and organises important training and education measures for senior officers from EU MS police services. The priority is the organisation and holding of seminars with a focus on operative planning in combating TOC, irregular migration and other relevant transnational threat potentials and focus on managers of the medium and senior police management level.

CEPA's main objectives and tasks are as follows:⁷⁴⁵

- Exchange, enlargement and consolidation of necessary knowledge in order to achieve cross-border/international police tasks for the police officers concerned.
- Exchange of relevant knowledge about legal and organisational conditions and practical possibilities and different forms of international police cooperation.
- Exchange of relevant knowledge about the social, economic and political background and about police experiences, regarding particularly dangerous manifestations of cross-border, international and transnational crime (especially organised crime and crime using new technology, economic and environment crime).
- The establishment, development and preservation of personal contacts in order to build a confident relationship and to create a future, guarantee for a rapid and non-bureaucratic transmission of information, in the frame of laws and regulations.
- Reduction of problems regarding communication, understanding and prejudice. Language problems make police communication difficult; common special terms for the police are necessary at a certain level.
- CEPA is mainly a place for learning practical police work moreover CEPA performs seriously educational and socialisation skills. Participants will not only learn to think analytically, but also to adopt a critical view of structures, behaviour patterns and procedures in their police work.
- The aim of CEPA is also to strengthen social and communicative competences, and managerial skills.
- European integration is a special task of CEPA. Joint education and training will accelerate the process of finding common European police standards and common organisational and legal measures within Europe.

CEPA is considering itself as a service agency to connect police officials and strengthen them in their efforts in the fight against TOC and transnational threats. Legal basis of CEPA is the joint declaration related to the organisation and its

⁷⁴⁴ Central European Police Academy (2015): Central European Police Academy – CEPA (MEPA, which is the German abbreviation for 'Mitteleuropäische Polizeiakademie'): Austria, Czech Republic, Germany, Hungary, Switzerland, Slovak Republic and Slovenia. Available from: <https://www.mepa.net/en/cepa/Pages/introduction.aspx> (Accessed on 17th January 2017).

⁷⁴⁵ Ibid.

activities, signed on 22nd May 2001.⁷⁴⁶ In addition to the practical benefits in the operational and analytical fields, CEPA aims to accomplish sustainable framework conditions for training and advanced education and through its contributions. This should also promote a common understanding of roles and a professional philosophy, which is a compelling requirement for the establishment of comparable living and security conditions for the internal security of all states of Central Europe.

11.9. Common training standards and equipment

However, effective international police cooperation between EU MS should not be limited to implement joint operational measures only. On the contrary, a strategic approach will also require the adoption of necessary measures for joint police training and teaching aid standards, in particular in the fight against TOC, terrorism, FTF and irregular migration. Training and further education must also consider interdisciplinary components and up-to-date methodological-didactic principles, which should be continuously further developed in a target group-oriented manner.

The competent investigation and enforcement authorities in the states of origin and transit countries in relation to TOC, terrorism and FTF, as well as irregular migration must be put in position and enabled to recognise and successfully combat these phenomena. The prerequisite is to strengthen the cooperation between the EU and its agencies EUROPOL and Frontex, the UN and their relevant departments CTED, CTITF, UNOCT, UNODC, INTERPOL, IOM, the OSCE's Transnational Threats Directorate and other relevant key players. In a concerted approach, mechanisms and tools are to be developed that effectively avert transnational threats in general and combat cross-border crime, international terrorism, FTF and illegal border crossings. The states are, on the one hand, to be equipped with modern technical means, and, on the other hand, to provide current police knowhow so that they can effectively combat cross-border criminality. Not all of these eligible countries have, according to EU standards, comparatively developed structures with regard to free and democratic fundamental order and rule of law. Therefore, this type of police development assistance aims to promote

⁷⁴⁶ Joint Declaration on cooperation within the framework of the Central European Police Academy (2001) between the Federal Ministry of the Interior of the Republic of Austria, Ministry of the Interior of the Czech Republic, Federal Ministry of the Interior of the Federal Republic of Germany, Ministry of the Interior of the Republic of Hungary, Ministry for Home Affairs and Administration of the Republic of Poland, Ministry of the Interior of the Slovak Republic, Ministry of the Interior of the Republic of Slovenia, and Federal Department of Justice and Police of the Swiss Confederation.

the constitutional structures in these beneficiary countries with regard to strengthen public security and order and democratic framework conditions. An important principle in terms of sustainability is to provide expertise and support for capacity and institution building in the areas of education and specialised training to enhance capabilities to fight cross-border crime sustainably. This also supports the idea of developing and implementing strategies to dislocate border control.⁷⁴⁷ In this way, Frontex makes great contributions in developing common standards for training and advanced education in the areas of BSM, border control, border surveillance and border security.⁷⁴⁸ As a result, Frontex wants to ensure a comparability of quality management guidelines in the fields of border guards and border police, customs and other relevant stakeholders involved in BSM-related issues. Frontex will continue to develop compatible training programs and EU-wide training modules that are consistent with the Bologna criteria and Copenhagen processes. Joint curricula and training concepts are developed in close coordination with leading experts from the respective training centres of the EU MS and are constantly being reviewed and harmonised.⁷⁴⁹

These experts come from all EU MS and EU agencies, such as EUROPOL and FRA, as well as interested partner organisations, such as UNHCR, ICMPD and IOM, just to mention but a few. The expertise that is contributed to this endeavour is essential to help research and develop the needs and interests of the development of common EU training concepts and resources. The Common Core Curriculum (CCC) was launched in 2007 and was a first standardised description of the necessary and required skills and knowledge in the area of BSM, border control and border surveillance. The CCC was developed and launched by EU MS experts with the aim of establishing a precise formulation of common objectives and values, as well as best practices in the overall area of BSM. It covers all relevant aspects to combat cross-border crime and necessary actions to be taken in the

⁷⁴⁷ Federal Ministry of the Interior (2017): Police cooperation. Available from:

http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

Note from the author: The so-called forward displacement strategy is based on the action program of the Federal Government for combating drug abuse in 1980 and on the National Narcotic Control Plan of the Federal Government of 1990. Over time, the areas of OC and terrorism were included in the strategy.

⁷⁴⁸ Frontex (2017): Common Training Standards for EU Border Guards Services – Common Core Curriculum (CCR). Available from: <http://frontex.europa.eu/news/common-training-standards-for-the-eu-border-guard-services-1NyLhR> (Accessed on 17th January 2017).

⁷⁴⁹ Federal Ministry for Education and Research (1999): The Bologna process - the European study reform. On 19th June 1999, 30 European countries signed the so-called Bologna Declaration in the Italian university town. They thus laid the foundation for a European university, which now comprises 47 member states - from Iceland to Kazakhstan. The European study reform has led to far-reaching changes in national higher education systems throughout Europe. Available from: <https://www.bmbf.de/de/der-bologna-prozess-die-europaeische-studienreform-1038.html> (Accessed on 17th January 2017).

areas of emergency response, human rights, international law and management and leadership. It is important to emphasise that the CCC is not static and is constantly being reviewed to ensure that it is kept up-to-date and adapted to the latest standards with regards to training and advanced education.

11.10. Cross-border police cooperation

Close cooperation between law enforcement agencies is key and the operational response to the globalisation of crime and the exchange of relevant information is inevitable. INTERPOL provides its members with a secure communication system for the exchange of sensitive police data (see further explanations under point 13.3) and acts as a central network for the bilateral and multilateral exchange of information between MS criminal police services. Most EU MS (except Great Britain and Ireland) have taken a step further with the ratification of the *Schengen acquis*. Through the removal of stationary border control at the EU's internal borders, mandatory mechanisms for cross-border police cooperation have been agreed upon (keyword 'compensatory measures', see point 8.7 and chapter 9). In addition to safeguarding the common external borders and other aspects of cross-border cooperation, the creation of the *Schengen* Information System (SIS) has been agreed in the *Schengen acquis*.⁷⁵⁰ In the SIS, search announcements on sought individuals and stolen objects can be set. Originally initiated as a 'compensatory measure', the SIS mutated into a EU-wide electronic detection system for all EU MS police services.⁷⁵¹

The EU police agency EUROPOL (see point 9.6), initially conceived as a European Federal Police based on the example FBI, supports criminal investigation activities of EU MS police officers. Through EUROPOL's information system, the MS centres set personal data, which are in line with national laws and the EUROPOL Convention.⁷⁵² EUROPOL develops structural analyses and situational pictures to support criminal investigations focusing on core areas of TOC. The grade of performance of EUROPOL is immediately linked to the level of cooperation with the respective EU MS authorities and the provision of relevant data. In 2002, Eurojust

⁷⁵⁰ *Schengen acquis* – Convention implementing the *Schengen* Agreement of 14th June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders Official Journal L 239, 22/09/2000 p.0019-0062. Title IV – The *Schengen* Information System (SIS).

⁷⁵¹ Note from the author: For further details, see point 8.7.

⁷⁵² Council Decision of 6th of April 2009 establishing the European Police Office (EUROPOL) (2009/371/JHA). The establishment of a European Police Office (EUROPOL) was agreed in the Treaty on European Union of 7th February 1992, and regulated in the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (EUROPOL Convention).

(see point 9.1.) was established as the matching judicial counterpart to EUROPOL. Eurojust serves to support the EU MS authorities to coordinate cross-border criminal prosecutions. The EU Border Agency Frontex (see chapter 10) appears to be a parade example of cross-border police cooperation. Frontex collects information, conducts extensive analyses, coordinates cross-border BSM related operations and helps to assess the risks involved in combating cross-border crime and irregular migration.

Despite these great developments at least as far as the collaboration between EU MS is concerned, international cooperation will continue to take place primarily at bilateral levels. Particularly in EU MS border regions, good functioning cooperation structures have been developed over the last decades, which then became consolidated in a further continuation in the middle of the 1990s with the creation of Joint Centres (see point 11.7). The aforementioned initiatives for training of police services in non-EU countries are also important elements with regards to international police cooperation. The aim of the EU is to promote sustainable constitutional structures in the areas of public administration and to strengthen public security and order in non-EU countries that want to improve relations with partners. These support measures are not altruistic and are necessary elements of well-designed strategies related to forward displacement checks, in order to push back the defence line as far as possible to countries of origin and transit countries aiming to avert transnational threats and combating cross-border crime. The key concern of the EU is to improve the professionalism of police services in these strategically important non-EU countries to strengthen cooperation between them. Originally, the strategy of forward displacement checks was developed to combat international drug crime. After the attacks on the World Trade Center, it quickly became clear that this strategy would also be useful in combating TOC, counter-terrorism and FTF.

11.11. Preliminary conclusion

Continuous improvement in police cooperation to prevent transnational threats, risks to life or limb, crime against property of significant value, the fight against terrorism, FTF and violent extremism, cross-border crime and other forms of violent crime are absolutely necessary, both within the EU and non-EU countries. Only in a very few specific cases, will competent criminal investigation and law enforcement agencies be able to act proactively according to their mission - prevention before prosecution. To this end, INTERPOL with its more than 190

member countries makes an important contribution to the provision and exchange of relevant information in general policing and case-related insights. The INTERPOL statutes define a global and secure information exchange and communication system. INTERPOL issues search notes in the fields of wanted persons, vehicles and stolen property and operates important manhunt databases, such as the Stolen and Lost Travel Documents (SLTD) database. At this point, however, it must also be pointed out that a manhunt database can only be supportive if it is sufficiently fed with corresponding data. The same assessment also applies to the 'Prüm Decision' and the accessible data. While the police officers were only able to access national data records until recently, the 'Prüm Decision' provides completely new and, above all, fast opportunities for data inquiry and data collection. In other words, in the past, German police officers were only able to obtain data on vehicle owners for vehicles registered in Germany and not in other EU MS. In order to get relevant data of motor vehicle owners that are registered in other EU MS or non-EU countries, written requests had to be sent through the Federal Motor Transport Authority in Flensburg to the country concerned. Whether information was given or not, was dependent upon a bilateral agreement. On the basis of the 'Prüm Decision' competent EU MS authorities can now obtain data of motor vehicle owners from other EU MS. Here, the recent EU MS are good examples when entering the data sets; the United Kingdom comes in last. Nevertheless, the 'Prüm Decision' represents an enormously important and consistent step forward in improving international police cooperation.

The freedom of movement is one of the key achievements of the EU and must not provide any advantages to those who exploit the norms and values of the majority of EU citizens. It is through access to EU MS national databases and the legal certain exchange⁷⁵³ of hard evidences admissible in criminal proceedings, such as DNA and dactyloscopic traces, that those perpetrators operating transnationally, can be pursued and, if possible, arrested.

Furthermore, other legal framework agreements, such as

- the UN Charter⁷⁵⁴

⁷⁵³ Council of the EU 6077/10/11 REV 10 (2011): Working Group on Information Exchange and Data Protection (DAPIX). Data protection requirements – Prior to any processing of personal data and to evaluating the implementation of chapter 2 provisions, Member States have to guarantee the level of data protection and comply with all standards and procedures required by Chapter 6 of Council Decision 2008/615/JHA.

⁷⁵⁴ The Charter of the United Nations was signed on 26th June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation and came into force on 24th October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

- the Convention on Police Cooperation in South Eastern Europe⁷⁵⁵
- the OSCE Border Security and Management Concept⁷⁵⁶

are very important declarations of intention regarding the agreement on international cooperation in averting transnational threats and combating TOC and other serious crimes. However, the value of such ratified agreements must be seriously questioned if the signatory states want to keep it or not, according to their interpretations for the justification of one's own interests and actions. In all of these agreements, the signatory states recognise the territorial integrity and the sovereignty of the control of its borders in accordance with the principles of the rule of law and mutual respect. However, the current crisis in Ukraine shows a different reality (see point 3.5.3) and allows the conclusion that the countries concerned interpret these agreements at any time to their specific objectives.

Close international police cooperation between the EU MS should not be limited to operational measures only. Rather, a strategic orientation should also consider the necessary measures related to police training as well as technical equipment, in particular in the fight against TOC, terrorism and FTF and illegal border crossings. The responsible law enforcement agencies of countries of origin and transit countries to combat TOC, as well as the countries of origin and for retreat, or regions of recruiting and existing international terrorism and FTF phenomenology, must be enabled to recognise and combat these phenomena successfully. Universities in the areas of studies of police management and public administration in EU MS are well advised to establish international relations to partner institutions and to strengthen international cooperation with the aim of advancing a tight network of European police academies and faculties. The EC has already launched a discussion on a future European Law Enforcement Training Scheme (LETS), as well as a new role and new legal basis for the European Police Academy CEPOL.⁷⁵⁷ The resignation of Poland from the CEPA gave rise to a fundamental review of the objectives and the future strategic orientation of the CEPA.⁷⁵⁸

⁷⁵⁵ Convention on Police Cooperation in South Eastern Europe (2006), also 'Vienna Convention' - Convention 915 of the enclosure XXIV.

⁷⁵⁶ OSCE (2005): Ministerial Council, 'Border Security and Management Concept – Framework for Co-operation by the OSCE Participating States,' 13th Meeting of the Ministerial Council, Ljubljana, December 2005, MC.DOC/2/05.

⁷⁵⁷ European Commission (2013): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the regions establishing a European Law Enforcement Training Scheme, p.2. Available from: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/police-cooperation/europol-cepol/docs/law_enforcement_training_scheme_en.pdf (Accessed on 22nd January 2017).

⁷⁵⁸ DHPol (2012): Annual Report 2012 [...]. As of 1st January 2013, Poland declared its withdrawal from the CEPA network. The reasons for this were, among other things, the lack of German language competence of potential participants and the intensive participation in other international institutions and bodies. [...], p.3 and

The aim should be an even closer co-operation between the EU, the UN and its specialised agencies CTED, CTITF, UNCCT, UNODC, as well as the OSCE and other key actors in order to develop, in a concerted approach, tools and mechanisms to effectively combat TOC, irregular migration, international terrorism and FTF. Those countries that wish to free themselves from this stranglehold should be equipped with the technical means and latest knowhow in the fields of police management and training. As not all the countries concerned have the same governmental structures based on free and democratic order and rule of law, this type of police development work is aimed at promoting the constitutional structures in these beneficiary countries to promote public security and order and to strengthen democratic general conditions. An important principle of education and training assistance is to provide assistance for self-help and thus also sustainability; and measures and projects should be promoted with the aim of enduring fight against cross-border crime and terrorism and FTF. This also supports the idea of implementing forward displacement strategies in order to combat offences not only in EU MS, but in the countries of origin and transit.⁷⁵⁹

102. Available from: https://www.dhpol.de/de/medien/downloads/hochschule/Jahresbericht_2012_final_v2.pdf (Accessed on 22nd January 2017).

⁷⁵⁹ Federal Ministry of the Interior (2017): Police cooperation. Available from: http://www.bmi.bund.de/EN/Topics/Security/International-Cooperation/police-cooperation/police-cooperation_node.html (Accessed on 17th January 2017).

Note from the author: The so-called forward displacement strategy is based on the action program of the Federal Government for combating drug abuse in 1980 and on the National Narcotic Control Plan of the Federal Government of 1990. Over time, the areas of OC and terrorism were included in the strategy.

Section 5 – Good practices as recommendations for action

Chapter 12: Crisis intervention and management

12.1. The Stability Pact for South-East Europe

The *Ohrid* Border Process initiative – a model for successful intervention and crisis management through external target-oriented promotion of regional cooperation in the area of BSM that specifically focused on strengthening inter-agency cooperation, border surveillance, border control and information exchange.

Background information

The Stability Pact for South–Eastern Europe was introduced by the international community as a comprehensive initiative to prevent conflicts and transnational threats.⁷⁶⁰ Designed as a detailed long–term strategy, it complemented the existing crisis intervention policy in South–Eastern Europe.⁷⁶¹ Through the Stability Pact, more than 40 states and organisations have signed a commitment to assist the states concerned in the region, in their efforts to promote peace and increase economic prosperity, develop security systems that respect internationally accepted human rights, the rule of law and democratic principles, fight corruption, apply the good governance principles of transparency and openness and promote participation, inclusivity and accountability in order to achieve stability throughout the region.⁷⁶² The idea originated in the late 1990s from the shocking consequences of the war in Kosovo and its associated transnational threat potentials and grievous effects. The Stability Pact should therefore mainly refer to past experience gained and conclusions drawn in the management of other international crises. As a result, there was consensus that conflict prevention and peace building, and thus the guarantee of public security and order, can only be successful if they are expedited in parallel.

⁷⁶⁰ European Commission (2016): Stability Pact for South–Eastern Europe

The Stability Pact was established in 1999 at the initiative of the European Union with the aim of establishing and reinforcing peace and security in South–Eastern Europe and involved countries and international organisations as partners. The Stability Pact has been superseded by the Regional Co–operation Council in 2008, which now oversees regional cooperation in South–Eastern Europe and supports the European and Euro–Atlantic integration of the region. More than 40 partner countries and organisations have stated in their founding document that the South–East European countries support efforts in the areas of peace, democracy, human rights and economic prosperity to achieve peace and security for the entire region. The integration into the Community of European countries was envisaged as an objective. On 30th July 1999 at the Sarajevo summit the alliance was resolved. Available from: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/stability-pact_en (Accessed on 28th January 2017).

⁷⁶¹ IFSH (2017): OSCE Yearbook 2002 - Institute for Peace Research and Security Policy at the University of Hamburg / IFSH (Ed.). Busek, E. The Stability Pact for South–Eastern Europe: Achievements and Future Challenges, p.199–208.

⁷⁶² IFSH (2017): OSCE Yearbook 1999 - Institute for Peace Research and Security Policy at the University of Hamburg / IFSH (Ed.). Stability Pact for South Eastern Europe Cologne, 10th June, 1999, p.551–561.

Busek's credo was not to wait for the outbreak of another crisis when it was already obvious that problems were brewing, but rather to proactively promote political and economic security and to establish these measures throughout the region. As a result, three key areas were identified:⁷⁶³

- creating a stable safety environment
- building democratic structures and promoting economic reconstruction
- facilitating economic cooperation

There was a consensus that it was necessary and crucial that all three sectors have to be equally successful in enabling sustainable peace and democratisation processes. In this initiative, the EU⁷⁶⁴ played a leading role and was of course the largest donor in the region. The EU has committed itself to South–Eastern European countries to facilitate the perspective of accession and integration. This strategy was encouraged by the hypothesis that a prospect of membership in the EU would exert a boost in the stabilisation effect at a time when the entire region was very unstable. At the same time, the hope was expressed that the determination of the political leadership and the resilience of the population would be strengthened in order to withstand these partly painful and exhaustive reform processes. The Stability Pact operated systematically in two main directions, namely in the implementation of reforms and strengthening regional cooperation and the external (financial) support for these efforts and the prospect of EU membership. The Stability Pact was to be understood as a political declaration of commitment and a framework agreement on international cooperation to develop a common strategy for security, stability and economic growth in the regional context for South–Eastern Europe. Therefore, the Stability Pact was not to be seen as a new international organisation, nor did it have independent financial and implementation structures.

The Stability Pact was chaired by a co-ordinator⁷⁶⁵, whose main task was to analyse the respective relevant national strategies with regards to their differences, gaps and needs, as well as other initiatives of the five Western Balkan

⁷⁶³ IFSH (2017): OSCE Yearbook 2002 - Institute for Peace Research and Security Policy at the University of Hamburg / IFSH (Ed.). Busek, E. The Stability Pact for South–Eastern Europe: Achievements and Future Challenges, p.199–208.

⁷⁶⁴ Ibid.

⁷⁶⁵ European Commission (2016): Stability Pact for South–Eastern Europe. The first coordinator of the Stability Pact was Bodo Hombach (Germany) and operated from 1999 to 2001. Erhard Busek (Austria) then followed in January 2002 until June 2008. Busek is one of the leading experts for South-East Europe. Available from: <http://www.stability-pact.org/whois/busek.asp> (Accessed on 28th January 2017).

countries, and to reconcile them.⁷⁶⁶ This coordinator led the main political instrument of the Stability Pact, the so-called 'regional table'. This in turn was divided into so-called 'working tables' as follows⁷⁶⁷:

- Working Table I: Democratisation and Human Rights

Working Table I covered perhaps the most complex area in the Stability Pact in which results can be achieved only through long-term processes and a strong involvement of the civil society. In the activities of this Working Table a substantial NGO input made a difference on the ground.

- Working Table II: Economic Reconstruction, Co-operation and Development

The overall objective of Working Table II was to stimulate economic growth and employment in South-Eastern Europe through the development and implementation of regional strategies in infrastructure, trade and investment. An important element of this objective was to ensure that economic reforms are underpinned by adequate social policies. Key activity areas of Working Table II comprised: Energy and Infrastructure; Trade, Investment and Employment; Social Cohesion; Housing and Urban Management.

- Working Table III: Security Issues

Working Table III dealt with questions of both internal and external security. The aim was to establish a stable security environment in the region and to promote regional co-operation in fighting organised crime and corruption and on migration issues. It was divided into two sub-tables. The first one dealt with Justice and Home Affairs and the second one with Defence and Security Sector Reform issues.

During the development and alignment of these structures and working methods, the OSCE's best practices developed based on lessons learned served as model in terms of proved methods.

12.2. The role of the OSCE within the *Ohrid* Border Process

The *Ohrid* Border Process (herein later mentioned as OBP) was constituted as an integral part of the core area of the Stability Pact for the management and stabilisation of cross-border movements of travellers and goods, and also dealt

⁷⁶⁶ Note from the author: Albania, Bosnia-Herzegovina, the former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia. The situation of Kosovo was also analysed and assessed separately.

⁷⁶⁷ IFSH (2017): OSCE Yearbook 2002 - Institute for Peace Research and Security Policy at the University of Hamburg / IFSH (Ed.). Busek, E. The Stability Pact for South-Eastern Europe: Achievements and Future Challenges, p.199-208.

with the demilitarisation of borders in the South–Eastern European region.⁷⁶⁸ The OBP was aimed at reforms of national border management systems to strengthen cross-border cooperation and security. It was a joint undertaking of five countries of the Western Balkan region, the EU, the OSCE, the NATO and the Stability Pact to address corresponding sensitive issues concerning transnational threats with regard to border surveillance and border control.⁷⁶⁹ From the aspect of accumulative reflection, it can be confirmed that the OSCE has played a leading role in the implementation of these complex and very demanding undertakings in the coordination of effective cooperation between international organisations and the national institutions of the five Western Balkan countries involved.⁷⁷⁰ A key task of the OSCE within the OBP was the OSCE's SEE Cross-Border Co-operation Program (OSCCP), a specifically designed program to improve and consolidate the cross-border cooperation of the five Western Balkan countries with the support of the international organisations involved.⁷⁷¹ Since 2003, these initiatives have fostered a fruitful cooperation between the five Western Balkan countries and their responsible ministries, and respective competent border agencies in the areas of emergency response in the fight against transnational threats, such as:

- International terrorism, FTF and violent extremism
- TOC
- THB and people smuggling
- Irregular migration
- Smuggling of SALW
- Smuggling of drugs and goods
- Counterfeit travel documents and ID cards
- International vehicle crime

The objective was to harmonise the respective national systems and structures of border guards, border police and customs services, as well as other relevant institutions involved in BSM-related issues and to harmonise them in line with EU standards, as well as to promote regional cooperation and information exchange

⁷⁶⁸ Note from the author: *Ohrid* is a city on the shores of Lake *Ohrid* in the former Yugoslav Republic of Macedonia and is the seat of the municipality of *Ohrid*.

⁷⁶⁹ Salber, Herbert / Ackermann, Alice (2009): *The OSCE's Comprehensive Approach to Border Security and Management*, p.290.

⁷⁷⁰ Note from the author: The author worked as a Senior Border Adviser in the OSCE Secretariat from 2005 to 2009 and worked within his function as the 'OSCE Focal Point of the Stability Pact - Working Table III'.

⁷⁷¹ OSCE (2005): OSCE SEC.GAL/99/05 9th May, 2005: 2005 ANNUAL SECURITY REVIEW CONFERENCE BACKGROUND DOCUMENT. Efforts and activities in line with the OSCE Strategy to Address Threats to Security and Stability in the Twenty–First Century.

OSCE (2005): OSCE SEC.DEL/107/05 26th April 2005: OSCE SEE Cross-Border Co-operation Programme (OSCCP). Available from: <http://www.osce.org/cpc/16811?download=true> (Accessed on 30th January 2017).

to strengthen effective cross-border cooperation.⁷⁷² A further very special challenge was the transfer of deployed military personnel into the respective national border guards and border police services of the five Western Balkan countries as a precondition for the demilitarisation of the surveillance of green and blue borders.⁷⁷³ Until the beginning of the 21st Century, the surveillance and control of the green and blue borders were carried out by officials of the respective national military forces in these countries. As a key requirement within the EU *acquis*⁷⁷⁴ only civilian personnel can be deployed for border surveillance and control measures in accordance with the EU legal framework.⁷⁷⁵ These officers are part of a civilian and therefore, a non-military border guard service, which is under the supervision and direction of the respective Ministry of the Interior. This personnel transfer affected many thousands of employees and initially presented those tasked with the responsibility of facilitating the transfer with an almost insoluble task. The enormous challenges faced were many-fold and related to socially accepted solutions such as the judicial clarification of civil-service-law issues i.e., grades, career, payroll and pension entitlements, the development and implementation of training and education, the regulation of ownership of government properties in border zones, the provision of technical facilities and sufficient transport capacities, personal equipment and other major logistical challenges. In addition, these persons, who served more or less their whole professional lives in the employ of the military, had to be integrated into new structures and become accustomed to a new culture of border guards or border police.

In all Western Balkan countries (including Kosovo) all relevant legislation in the fields of law on foreigners and asylum, border guard or border police acts, the control and security of the borders, migration and refugees, and public

⁷⁷² Salber, Herbert / Ackermann, Alice (2009): The OSCE's Comprehensive Approach to Border Security and Management, p.291.

⁷⁷³ Ibid. p.298.

European Commission (2014): REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap COM(2014) 646 final, p.9 and 10. Available from: <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-646-EN-F1-1.Pdf> (Accessed on 30th January 2017).

⁷⁷⁴ Ibid.

Note from the author: The concept of the EU *acquis* has already been mentioned under point 1.1.

Note from the author: The EU rejects the use of military personnel in the areas of border protection, border control, border security, and requires that these tasks be ensured only by civilian executive forces.

⁷⁷⁵ European Parliament (1999): Tampere Programme from 1999 to 2004. Tampere European Council 15th and 16th October 1999, Presidency Decision. Available from: http://www.europarl.europa.eu/summits/tam_en.htm (Accessed on 4th February 2017).

administration were reviewed and analysed in relation to constitutionality, consistency, completeness and whether or not they were up-to-date.⁷⁷⁶ In a further step, all these statutory bases were then examined with regard to necessary consistency with the EU legal framework, as well as international conventions, in order to achieve successively the greatest possible degree of harmonisation.⁷⁷⁷

In the subsequent years, further measures were taken, which then increasingly concentrated on a more effective fight against TOC (see further explanations in chapter 11). To this end, some constitutions of the Western Balkan countries had to be modified in order to allow the use of special methods of investigation. Furthermore, sufficient legal bases had to be developed and implemented with regard to witness protection programs, as well as training programs for prosecutors and specialised investigators of the respective national investigating authorities. However, there are still many opportunities in terms of developing target-oriented measures in combating TOC and for improved cooperation between these states. Many changes in the legal framework (i.e., Code of Criminal Procedure, Criminal Code, as well as special laws on the protection of witnesses and victims) of the states concerned would still be possible to enable the implementation of the amended constitutions.

12.3. Preliminary Conclusion

'Lessons learned' - during the past 15 years this term has evolved into a catchphrase as well as an indicator for quality control related to successful implementation of external-funded projects from international programs in the area of internal security and justice (EU terminology: Justice and Home Affairs). The OBP in its realisation and successful implementation can definitely serve as an example of the way in which concerted efforts can help to analyse special regional challenges and develop methods of successful resolutions. Still, more or less all South-Eastern European countries involved in the OBP have to deal with difficult budgetary and economic situations.⁷⁷⁸ Furthermore, the EC continuously reminds

⁷⁷⁶ Tetsch, Lambert J. (2008): "Governmental rights for intervention grant a state rights to interfere with the basic rights of citizens. This is done on the basis of the law reservation enshrined in the Basic Law that requires the intervention of an empowerment basis on the basis of a formal law. This means that sovereign measures can be enforced within the framework of the defined legal powers." P.33 et seq.

⁷⁷⁷ Note from the author: Immigration law, asylum law, police acts and relevant rights for intervention of the respective law enforcement agencies, personal statute law, nationality law, as well as the respective by-laws.

⁷⁷⁸ European Commission (2014): Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions. Enlargement Strategy and Main Challenges 2014–15. Available from: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-strategy-paper_en.pdf (Accessed on 4th February 2017).

these countries to demonstrate strong political commitment and enforcement in the fight against cross-border crime, THB and people smuggling, as well as the serious threat of the erosion of the rule of law and possible social degradation through corruption. It is noted that all these countries concerned have made respectable progress in this process of stabilisation and association. However, many areas of relevant reform processes have not advanced as far as it was hoped, in order for concrete changes to have been made and the expected progress and profitability to have been realised. The most important thing, however, was that the political situation in general remained stable, which is due to the process initiated in *Ohrid* in 2001, of establishing a mechanism paramount for the processes of good governance and necessary democratisation processes, taking into account all multi-ethnic influences and thus different interests.

The support and close cooperation of the involved Ex-Yugoslav sub-republics and Albania with the international contract partners had a decisive influence on this.⁷⁷⁹ This was ensured, *inter alia*, by the EU-led military operation 'Concordia' in the former Yugoslav Republic of Macedonia to promote gradual stabilisation and preservation of public security and order.⁷⁸⁰ 'EUPOL Proxima' then seamlessly took over the task of an armed peacekeeping mission and 'Concordia' consequently ended on the same day.⁷⁸¹ 'Proxima' was thus the second EU police mission after the EUPM, which started in Bosnia and Herzegovina on 15th January 2003.⁷⁸² Both programs, 'Concordia' and 'Proxima' also succeeded in convincing the responsible officials in the neighbouring countries as a result of their positive achievements. 'Proxima' supported FYROM in supervising, advising and monitoring the public administration and the development of appropriate police institutions applying to the highest EU standards. Particular attention was paid to the support of the FYROM government in its efforts to fight TOC and to build up rule-of-law

⁷⁷⁹ Note from the author: In early 2000, the former Yugoslav sub-republics were defined in Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia.

⁷⁸⁰ European Union (2003): The EU launched a military operation in the former Yugoslav Republic of Macedonia (FYROM/CONCORDIA) on 31st March 2003. Available from: http://www.eeas.europa.eu/archives/csdp/missions-and-operations/concordia/mission-description/index_en.htm (Accessed on 4th February 2017).

⁷⁸¹ European Union (2003): The EU established an EU Police Mission in the former Yugoslav Republic of Macedonia (FYROM), EUPOL PROXIMA, in line with the objectives of the *Ohrid* Framework Agreement of 2001 and in close partnership with the country's authorities. The Mission, code-named EUPOL PROXIMA, was launched on 15th December 2003 (Council Joint Action 2003/681/CFSP). Available from: http://www.eeas.europa.eu/archives/csdp/missions-and-operations/proxima-fyrom/index_en.htm (Accessed on 4th February 2017).

⁷⁸² European Union (2003): The EU Police Mission (EUPM) in Bosnia and Herzegovina (BiH) started on 1st January 2003. It followed on from the UN's International Police Task Force. EUPM was the first CSDP mission launched by the EU. On 8th December 2009, the Council of the EU has decided to extend the operation until 31st December 2011. Available from: http://eeas.europa.eu/archives/csdp/missions-and-operations/eupm-bih/index_en.htm (Accessed on 4th February 2017).

structures in line with EU standards. The development and consolidation of stability in general, and security and order in particular, required serious efforts by the governments and international partners involved in implementing the relevant framework agreements. These efforts were the basic prerequisite for strengthening the rule of law in the Western Balkan countries, as well as the commitment and sense of responsibility of all the ethnic groups involved. A great deal of commitment has been demonstrated in the area of decentralisation processes and new capacities of public administration have been generated for the benefit of citizens and the general public security and order. Through the secondment of civil servants delegated from relevant EU MS ministries in close cooperation with officials from EC delegations, many major challenges in the respective reform processes have been tackled successfully as planned (see also chapter 15, keyword 'Twinning'). The target ministries of potential accession countries were gradually supported through EU expertise in security sector reform project frameworks. Large-scale and generously-financed EU programs, such as CARDS and PHARE, whose objective was to promote community assistance to the South-Eastern European countries with a view to their integration into the process of stabilisation and association, have sustained this process in the past.

'Best practices developed based on lessons learned...' became a synonym in terms of quality in the development of new ideas for a successful and sustainable implementation of externally-financed programs in all relevant areas of state formation, democratisation processes, rule of law, institution and capacity building, and good governance.

The current economic conditions and identified weaknesses in the functionality of the economy and competitiveness, as well as the determination of property rights, continue to present major challenges for further successful transformation processes in these countries. This is one reason why foreign direct investment is still very low and will only change if the political and institutional stabilities are further improved. This will not only be necessary with regard to further reforms in public administration, but also in the radical implementation of effective measures to combat corruption, which is supported by strong political commitment. This consequently requires tangible and measurable progress in the further development of the principles of the rule of law.

On 1st January 2007, the 'Instrument for Pre-Accession' (IPA) was installed as a new instrument for pre-accession assistance for potential EU accession countries.

IPA replaces a series of EU programmes and financial instruments for candidate countries or potential candidate countries, namely PHARE, PHARE CBC, ISPA, SAPARD, CARDS and the financial instrument for Turkey, and is now the only legal framework for structural funds.⁷⁸³ The IPA 2014-2020 (IPA II) legal framework and financial assistance are under the responsibility of DG Neighbourhood Policy and Enlargement Negotiations, with the exception of cross-border cooperation between EU MS and IPA countries. The framework of this single instrument allows financial support and expertise in the following five components:

- Public administration reforms and transitional assistance in the formation of structures and competences
- Rule of Law, cross-border cooperation with EU MS and other countries eligible under IPA
- Sustainable economy, environmental infrastructure and improvement of competitiveness and reduction of regional disparities
- Development of human resources by strengthening human capital and combating exclusion
- Agriculture and rural development

The most important novelty of IPA II is its strategic focus. Country Strategy Papers are the specific strategic planning documents made for each beneficiary for the 7-year period. These will provide for a stronger ownership by the beneficiaries through integrating their own reform and development agendas. A 'Multi-Country Strategy Paper' will address priorities for regional cooperation or territorial cooperation. IPA II targets reforms within the framework of pre-defined sectors. These sectors cover areas closely linked to the enlargement strategy, such as democracy and governance, rule of law or growth and competitiveness. This sector approach promotes structural reform that will help transform a given sector and bring it up to EU standards. It allows a move towards a more targeted assistance, ensuring efficiency, sustainability and focus on results.

Necessary reforms of the police authorities and the judiciary must be promoted with care and sustainability, so that the fight against cross-border crime, terrorism and FTF can be conducted effectively and efficiently. The introduction of special public prosecutor's offices, as well as subordinate criminal police departments to combat TOC, irregular migration, terrorism and FTF would be an important step in this direction. That includes a modern understanding of the application of risk

⁷⁸³ Note from the author: See further explanations on the respective programs under point 3.7.

analyses, light and dark field research as well as the evaluation of new criminal phenomena. It requires increased financial input in the establishment and support of such structures, which must be supported, above all, by a political will to enforce the state monopoly of power in accordance with the rule of law.

Busek's critical conclusion explained the meaning of the Stability Pact as a tool for building peace between the situation immediately after a military conflict and the ultimate integration of the region into the Euro-Atlantic structure.⁷⁸⁴ The function is based on a coherent understanding of safety, which includes various interdependent components. In his view, any initiative is based on the assumption that a sustainable stabilisation of a crisis region (in this case, the South-Eastern Europe region) can only be achieved through an ever-increasing interaction between countries at the political, legal, economic and social level as well as in terms of security. Busek is of the opinion that it is vital for conflicting states to further strengthen regional co-operation, in which a value-added approach can be achieved through a common approach to problems and challenges of a transnational nature, such as the concerted defence against transnational threats, cross-border crime and terrorism. Busek favours the dialogue and exchange of information, experience and expertise in an increasingly globalised and interdependent world as absolutely indispensable.

The OBP, perceived as a success story, could thus serve as a model for the areas of crisis intervention and crisis management in other regions, such as in the region of Eastern Ukraine and the Russian Federation, the Middle East, Central Asia, and the South Caucasus (see Georgia with the occupied areas of South Ossetia and Abkhazia).⁷⁸⁵ In order to improve cross-border cooperation in the areas of border surveillance, border control and IBM, it is advisable to revert to the experience gained by the OSCCP freely on the basis of "... based on lessons learned and best practices developed".

Germany currently has the G20 presidency and hosted ministerial meetings in Bonn, Germany on 16th and 17th February 2017. The working meetings were held to strengthen international cooperation and were a precursor to the G20 summit

⁷⁸⁴ IFSH (2017): OSCE Yearbook 2002 - Institute for Peace Research and Security Policy at the University of Hamburg / IFSH (Ed.). Busek, E. The Stability Pact for South-Eastern Europe: Achievements and Future Challenges, p.231.

Note from the author: Amongst other things, Dr. Erhard Busek was Austrian Vice Chancellor (1991-1995), entrusted with the direction of the Federal Ministry for Science and Research, Federal Minister for Science and Research (1989-1991).

⁷⁸⁵ NATO (2005): OBP General Documents: NATO Response of Questions about the future of the *Ohrid* Border Management and Security April/May 2005 from the Stability Pact for South Eastern Europe. Available from: <http://www.nato-pa.int/default.asp?SHORTCUT=496> (Accessed on 4th February 2017).

held in Hamburg on 7th and 8th July 2017. The G20 events in Bonn and Hamburg promote the Agenda 2030, which is focusing on conflict prevention and international crisis management. "The UN location of Bonn is the ideal place for our meeting. Peace and conflict prevention, sustainability and climate change, these are all things that Bonn stands for and these are all the big topics for Germany while it has presidency of the G20⁷⁸⁶," Gabriel⁷⁸⁷ said.

⁷⁸⁶ Note from the author: G20 leaders met in Hamburg, Germany, on 7 and 8 July 2017. The theme of the German presidency of the G20 was 'Shaping an interconnected world'.

⁷⁸⁷ Note from the author: Sigmar Hartmut Gabriel (born 12 September 1959) is a German politician who was the Minister for Foreign Affairs from 2017 to 2018 and Vice-Chancellor of Germany from 2013 to 2018.

Chapter 13: Supranational organisations in the context of IBM

13.1. Organization for Security and Co-operation in Europe (OSCE)

The Conference on Security and Co-operation in Europe (CSCE), which was inaugurated in Helsinki on 3rd July 1973, continued in Geneva from 18th September 1973 to 21st July 1975 and was concluded in Helsinki on 1st August 1975, where 35 participating states agreed on a joint final report.⁷⁸⁸ The resolutions resulting from the respective meetings were supported by the political will of the participating countries and interests of the peoples to improve and strengthen their relations. Further, it was intended that these initiatives should lead to peacekeeping, strengthening of security and order, as well as fostering greater justice within, but also between states, and providing the basis for a trustworthy relationship between the states involved, as well as to other countries. For example, in the Final Act of the CSCE of 1st August 1975, the Declaration on the Principles Governing the Participating States set out, amongst others the inviolability of the borders.⁷⁸⁹

III. Inviolability of frontiers

The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.

Furthermore, all participating States committed themselves to respect the territorial integrity of each participating State and the principles of the UN Charter.⁷⁹⁰ This was, so to say, the first attempt at the establishment of the three basic principles of the CSCE and the importance of mutual obligations of the participating States as 'baskets of security' later renamed 'three dimensions'.⁷⁹¹ Ten Guidelines were agreed for the first part, based on questions relating to

⁷⁸⁸ OSCE (2017): Conference on Security and Co-operation in Europe. In 1975, the Final Act was signed by the High Representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia.

⁷⁸⁹ Ibid. p.5.

⁷⁹⁰ Ibid.

United Nations (1945): The Charter of the United Nations was signed on 26th June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation and came into force on 24th October 1945. The Statute of the International Court of Justice is an integral part of the Charter. Visit the UN Dag Hammarskjöld Library's collection of translations of the UN Charter.

⁷⁹¹ OSCE (2017): Conference on Security and Co-operation in Europe; The Final Act in 1975: „The Helsinki Final Act encompasses three main sets of recommendations, which are often referred to as 'baskets'. These three baskets are:

- Questions relating to security in Europe.
- Co-operation in the fields of economics, of science and technology, and of the environment.
- Co-operation in humanitarian and other fields.”

security in Europe, which were declared as the 'Helsinki Decalogue'.⁷⁹² A particular reference should be given to point IV of these guidelines, namely the inviolability of territorial integrity of states.

IV. Territorial integrity of States

The participating States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force. The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognised as legal.

These three dimensions therefore comprise the human, economic-environmental and politico-military elements.⁷⁹³ Only much later would it transpire between the respective participating States and other states, that the thematically specific areas of BSM, border surveillance and border control had a cross-cutting relevance in all three dimensions. In addition to these parameters regarding a comprehensive and strategic security policy for all participating States, as well as strengthening cross-border cooperation, further important agreements in line with the three dimensions were made in the ensuing 30 years.⁷⁹⁴

⁷⁹² Ibid. "The 'Helsinki Decalogue' are as follows:

1. Sovereign equality, respect for the rights inherent in sovereignty.
2. Refraining from the threat or use of force.
3. Inviolability of frontiers.
4. Territorial integrity of States.
5. Peaceful settlement of disputes.
6. Non-intervention in internal affairs.
7. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.
8. Equal rights and self-determination of people.
9. Co-operation among States.
10. Fulfilment in good faith of obligations under international law."

⁷⁹³ OSCE (2017): The OSCE works for stability, peace and democracy for more than a billion people, through political dialogue about shared values and through practical work that contributes to sustainable progress. The OSCE's comprehensive concept of security covers the politico-military; the economic and environmental; and the human dimensions. Available from: <http://www.osce.org/what-we-do> (Accessed on 11th February 2017).

⁷⁹⁴ OSCE (1990): Charter of Paris for a New Europe. Second CSCE Summit of Heads of State or Government, Paris, 19–21 November 1990. Supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe. Available from: <http://www.osce.org/mc/39516> (Accessed on 11th February 2017).

OSCE (1999): Charter for European Security. The Charter was adopted at the 6th OSCE Summit of Heads of State or Government in Istanbul and is part of the Istanbul Document 1999. Available from: <http://www.osce.org/mc/17502> (Accessed on 11th February 2017).

OSCE (2001): The Bucharest Ministerial Council document. Bucharest Ministerial Declaration, Decision on Combating Terrorism, Bucharest Plan of Action for Combating Terrorism, Statements by the Ministerial Council, Decisions and Reports. Available from: <http://www.osce.org/mc/40515> (Accessed on 11th February 2017).

OSCE (2002): The Porto Ministerial Council document. Porto Ministerial Declaration, OSCE Charter on Preventing and Combating Terrorism, Declaration on Trafficking in Human Beings, Statements by the Ministerial Council, Decisions and reports. Available from: <http://www.osce.org/de/mc/40523> (Accessed on 11th February 2017).

OSCE (2003): The Maastricht Ministerial Council's OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century. Strategy adopted at the 11th Meeting of the Ministerial Council, Maastricht, 1–2 December, 2003. Available from: <http://www.osce.org/mc/17504> (Accessed on 11th February 2017).

These agreements aimed at a more detailed analysis of risks and challenges of possible threats to security and the identification of appropriate responses to them. From the OSCE perspective, transnational threats and their security-relevant challenges arise, among other things, due to porous borders in combination with weak or non-existent border guards or border police services. Corruption is an associated amplification factor. At present, OSCE participating States define the following areas as transnational threats:

- Transnational organised crime⁷⁹⁵
- Irregular migration and abuse of asylum
- THB and people smuggling
- Smuggling of SALW
- Terrorist activities and violent extremism
- Illicit trafficking of drugs
- Any other forms of cross-border organised crime, such as corruption and the expansion of criminal networks

Moreover, unresolved conflicts, armed clashes, as well as other forms of instability, can have a decisive impact on BSM with neighbouring countries and their adjoining communities. While the OSCE needs to show consideration to relevant security-related aspects and challenges in BSM-related issues, the organisation should simultaneously ensure all mandatory aspects of free and secure cross-border passenger and freight transport to facilitate and promote economic development and prosperity. This requires a fine sense and well-balanced communication between the concerned (conflict) parties to ensure security on one side and the promotion of the economic and social aspects between the participating States on the other. Decision IX - "The CSCE and Regional and Transfrontier Co-operation" can be seen as one of the first relevant OSCE documents related to BSM, which promotes activities for closer cooperation between governments, as well as at regional and local levels.⁷⁹⁶ Other important documents followed suit.

13.1.1. OSCE Border Security and Management Concept (BSMC)

A decisive step forward, however, was the development of the OSCE Border Security and Management Concept, adopted during the Ministerial Council in Sofia, Bulgaria in 2004 and its final adoption by the Council of Ministers in Ljubljana,

⁷⁹⁵ Notes from the author: The OSCE has not drafted a definition, which describes qualification characteristics of organised crime.

⁷⁹⁶ CSCE Summit (1992): Helsinki Document – The Challenges of Change (1992). Chapter IX, p.33. Available from: <http://www.osce.org/mc/39530> (Accessed on 11th February 2017).

Slovenia in 2005.⁷⁹⁷ The OSCE BSMC presents a milestone in relevant aspects and issues related to BSM, border control and border surveillance within the 57 participating States, 11 Associated States and even beyond. The concept establishes basic principles, as well as political commitments and obligations of the OSCE participating States with regard to border security and border control, cross-border cooperation, prevention of transnational threats and fight against TOC. The BSMC focuses primarily on the challenges of combating THB and people smuggling, the illicit trafficking of drugs and arms (SALW), irregular migration, TOC and terrorist activities. Further resolutions, such as the fight against terrorism and FTF, the illegal trade of prohibited goods of all kinds, as well as other forms of serious transnational crime, were successively developed and adopted by the OSCE participating States. Subsequently, further competences of the OSCE thematic units were defined within the OSCE Secretariat, as well as in the OSCE field operations of the affected participating States.⁷⁹⁸ All these endeavours have focused on one goal, namely the sustained and comprehensive enhancement of border control and border security through improved cooperation between the participating States, with the support of the corresponding departments of the OSCE administration.

The OSCE BSMC is an outstanding conceptual development in terms of improvements in border management, border safeguarding, border control and border surveillance. The BSMC describes frameworks and corresponding measures as contributions of the organisation to the 57 participating States and partner states in accordance with the three dimensions, which at the same time should take account of comprehensive and partnership-based reflections of the respective safety aspects. At the beginning of the 21st Century, the experts of the participating States recognised that the organisation lacked a common fundament and understanding of relevant issues related to BSM, cross-border cooperation, harmonisation of border control standards and information exchange guidelines. Individual predecessors with regard to elaborated descriptions of modern border

⁷⁹⁷ OSCE (2004): Twelfth meeting of the Council of Ministers MC.DOC / 1/04 of 7th December 2004: Decision on the development of an OSCE approach on border security and management (MC.DEC / 2/04), p.18. OSCE, Ministerial Council, "Border Security and Management Concept - Framework for Co-operation by the OSCE Participating States," 13th Meeting of the Ministerial Council, Ljubljana, December 2005, MC.DOC/2/05.

⁷⁹⁸ OSCE Secretariat, Conflict Prevention Centre/Operations Service: "The OSCE Concept of Comprehensive and Co-operative Security," SEC/GAL/100/09, 17th June, 2009 for an overview of specific provisions related to the relevant areas, such as combating illicit trafficking of small arms and light weapons, action against terrorism, police matters, combating trafficking in human beings, and economic and environmental governance.

management have been developed on the basis of EU initiatives.⁷⁹⁹ However, all these documents do not have any intergovernmental approach, but are rather pragmatic in the description of procedures for BSM-related issues, checks at BCP's (land, water, air), as well as their surveillance. In addition, these cross-relevant documents have been developed for the EU MS and therefore have less impact on non-EU countries and, above all, no legal commitment to them.

In summary, the BSMC contains a total of five sections:

1. OSCE participating States shall consider the areas of BSM as an act of national responsibility and sovereignty. The OSCE participating States reaffirm their commitment to promoting open and secure borders in a free, democratic and more integrated OSCE area without dividing lines. They also commit themselves to co-operate following the principles of international law, mutual confidence, equal partnership, transparency and predictability, and pursuing a comprehensive approach in a spirit that would facilitate friendly relations between States.
2. The OSCE is mandated by its participating States to implement cross-border agreements and treaties. It is important to promote and support a wide-ranging cross-border co-operation between border guards and customs agencies and other involved government enforcement authorities and competent national institutions.
3. Close cooperation between the participating States and their relevant state border agencies in relation to cross-border movements of people, goods, services and investments shall be carried out in accordance with the agreed OSCE principles.
4. The individual segments of the OSCE executive structures - the Secretariat, the field operations in the participating States, the institutions - are thereby empowered to assist the participating States in the implementation of the BSMC and to support them in this process. These will be activated at the request of a single participating States and/or several participating States.

⁷⁹⁹ Note from the author: See *Schengen* Catalogue 1-4, EU Border Management Manual, EU Integrated Border Management Guidelines.

5. On the basis of the BSMC, the organisation aims to work with other international organisations and partners based on the principles of complementarities, comparative advantages and mutual added value.⁸⁰⁰

Through the adoption of the BSMC, all OSCE participating States have reaffirmed their commitments under international law, in particular international human rights, refugee and humanitarian law, and may also take into consideration standards and recommendations laid down by the WCO, IOM, the International Labour Organisation, UNHCR and other relevant international organisations. In addition, the participating States have agreed to promote and intensify cooperation between border guards, customs authorities, authorities issuing travel documents and visas, as well as other government enforcement and immigration authorities and unspecified governmental institutions.⁸⁰¹ Conversely, the OSCE's BSMC recognises the role of the OSCE as a competent partner within an appropriate policy framework with regard to cross-border activities and contributions. The organisation is supported by its competent departments and institutions, based on the principle of a common, comprehensive, cooperative and indivisible security policy. In addition, the BSMC describes a list of ways to bring the OSCE with its departments to develop further ideas and contributions. The objective is to improve and strengthen the operational capability in the areas of administration, control and securing borders.

The BSMC sets out a number of possible OSCE contributions in a non-exhaustive way as follows:⁸⁰²

- Promotion of political dialogue between OSCE participating States through confidence-building measures in border areas and promote dialogue in the technical field
- General contributions, such as the provision of assistance in the development and implementation of national BSM strategies and action plans, and in the development and implementation of training and education programs
- Specific assistance in the fight against terrorism and FTF, cross-border crime, irregular migration, illicit trafficking of drugs, THB and people smuggling, illicit

⁸⁰⁰ OSCE, Ministerial Council, "Border Security and Management Concept - Framework for Co-operation by the OSCE Participating States," 13th Meeting of the Ministerial Council, Ljubljana, December 2005, MC.DOC/2/05, p.1-5.

⁸⁰¹ Ibid. p.2.

⁸⁰² Ibid. Annex p.1-3.

trafficking in nuclear, biological, chemical and conventional weapons, as well as illegal waste disposal

- Development of special training programs for border guards in the detection of counterfeit travel documents by training and provision of technical equipment
- Implementation of internationally recognised security standards and norms
- Expertise and technical assistance in the areas of free and safe passenger transport by setting up efficient and swift entry and exit checks
- Support for economic and environmental activities such as:
 - Exchange of best practices and methods related to border control and customs procedures for import, export and transit
 - Promotion of cross-border cooperation in the economic and trade area
 - Intensification of cross-border cooperation in the field of environment and natural disasters, or other serious accidents

13.1.2. OSCE – National Focal Point Network (NFP)

In order to promote a trustworthy exchange of information between the participating States, the establishment of so-called 'points of contact and national focal points' was proposed in the further discussion for a successful and sustainable implementation of the BSMC.⁸⁰³ In 2006, the joint decision resulted in the development and implementation of the OSCE NFP network.⁸⁰⁴ It was intended to provide an additional channel for the trustworthy exchange of information with regard to prevention, aversion of transnational threats, security, control and management of the borders of the participating States through the NFP network. In addition to the respective national contact points, a central point of contact was created within the OSCE Secretariat whose central task is to provide information to the participating States and to facilitate the exchange of information between them. The most basic requirement that the OSCE and its participating States have in their own right was to facilitate the exchange and access of information between the participating States on relevant BSM issues concerning border control and surveillance. This central point of contact in the OSCE Secretariat is to be responsible for a current and timely exchange of information between participating States border law enforcement agencies.

⁸⁰³ Ibid. Point 13, p.4.

⁸⁰⁴ OSCE PC.Dec/757 (2006): 641st Plenary Session PC Journal 641, Agenda item no 3. TOR for the OSCE BSMC NFP Network.

It is, of course, up to the participating States officials to decide, which information would be provided, both in qualitative and quantitative terms. Further, it was also intended that the NFP network should not be a duplication of information exchange at other levels of bilateral interaction. Communication should be based on mutual trust, transparency and the international legal norms of data protection. The participating States remain free to set up the national contact point in accordance with the respective national circumstances; an OSCE standard was therefore not envisaged. Most important responsibilities of the national NFP have been described by the OSCE as follows:⁸⁰⁵

- The NFP is available as a point of contact and ensures all communications from the OSCE Secretariat and other NFP contact points reach the appropriate government authorities responsible for BSM-related issues (e.g., Border Police/Border Guards, Customs service, Migration, Anti-Narcotic Agencies) on a national level.
- The NFP coordinates the collection of relevant information from the appropriate government agencies dealing with specific BSM issues and communicates this information with other NFPs, when requested, on an international level.
- The NFP shall communicate, on behalf of the participating States concerned, requests for assistance to the OSCE Secretariat with regard to BSM-related issues that the OSCE might support and facilitate.
- The NFP communicates to the OSCE Secretariat information containing examples of national BSM 'best practices' to be further shared with participating States.
- The NFP provides timely updates to the OSCE Secretariat, in case of any changes of the contact information for the NFP in the participating States concerned.

The most important responsibilities of the OSCE Secretariat point of contact have been described by the OSCE as follows, to:

- Maintain the efficient functioning of the NFP network
- Process incoming information and requests from the participating States on BSM-related issues

⁸⁰⁵ Note from the author: The abbreviation NFP is used here for both the person and the national institution of the OSCE NFP Network.

- Compile an OSCE-wide list containing all necessary information on NFP's (e.g., names, contact details, addresses, organigrams, etc.)
- Inform NFP's concerning relevant BSM initiatives and activities in the OSCE area

The efforts in developing the NFP network of both the OSCE and most of the participating States were certainly supported by goodwill and more than 100 official representatives from 52 OSCE participating States are currently nominated as NFP and joined this network.⁸⁰⁶ However, it is not surprising that only superficial information is exchanged throughout this network, such as newsletters, or information about planned training courses and study visits. Clearly, sensitive information exchanged between the relevant participating States takes place only at the level of involved ministries and their departments, since the exchange of classified documents throughout this NFP network would not be safe.

Recent events have unfortunately shown very clearly how easy it is to spy on possible target persons and/or target objects and what immense dimensions these activities have assumed.⁸⁰⁷ Thus, the question arises as to the meaning and function of such an NFP network. Nevertheless, the recent crises have repeatedly shown that all efforts for dialogue are better than exposing themselves to the danger of violent motives according to the motto 'who is talking to each other does not shoot at each other'.

13.1.3. OSCE – Border Management Staff College (BMSC)

The OSCE BMSC is located in Dushanbe, the capital of Tajikistan in Central Asia.⁸⁰⁸ In accumulative reflection and managerial responsibilities of the author, the BMSC has been developed and set up to provide up-to-date knowledge and the latest insights in BSM-related issues in general and border surveillance, border control and cross-border cooperation in particular, through purposeful training and education. In addition, the BMSC serves as a platform for the exchange of good practices developed based on lessons learned and new ideas put to the test.⁸⁰⁹

⁸⁰⁶ OSCE (2017): OSCE BSM NFP Network. Available from: <http://www.osce.org/secretariat/107832> (Accessed on 13th February 2017).

⁸⁰⁷ WikiLeaks (2017): The online platform WikiLeaks repeatedly put secret documents into the net, but over itself gives the network hardly anything. "In doubt we publish" is the maxim of the site. The funded project is considered to be difficult to censor both technically and legally. Available from: <https://wikileaks.org> (Accessed on 13th February 2017).

⁸⁰⁸ OSCE (2009): Inauguration of the OSCE Border Management and Staff College (BMSC) in Dushanbe, Tajikistan on 27th May 2009. Available from: <http://www.oscebmcs.org/en/about-us>. (Accessed on 13th February 2017).

⁸⁰⁹ Note from the author: The author was a senior adviser in the development and deployment of the BMSC in Dushanbe.

Through these activities cross-border cooperation should be enhanced and information exchange facilitated between OSCE participating States and their partner countries. Furthermore, the BMSC was conceptualised as a central institution for education and training, research and development, as well as for the analyses of latest criminal phenomena in a cross-border context, development of common methodologies, as well as specification of technical equipment in the areas of safeguard, control and surveillance of borders. Within the framework of the three OSCE dimensions, in all activities related to border control and border surveillance, specific focus is put on areas to prevent transnational threats, combat cross-border crime, counter terrorism, FTF and violent extremism, cybercrime, irregular migration, THB and people smuggling, as well as illicit trafficking (including smuggling) of nuclear, biological, chemical and conventional weapons, as well as drugs. At a further level, efforts are focusing on free movement of travellers, the harmonisation of BSM models, elimination of bureaucracy and trade facilitation, cooperation in cross-border disaster management, as well as transport security in line with the motto 'open and secure borders'.

In addition, the BMSC has to cover the following specific areas:

- Establishment of an annual program with various offers of different training courses for border practitioners
- Strengthening of cooperation between the BMSC research and development department with other BSM institutions of OSCE participating States
- Development and expansion of a virtual library focusing on subject-specific literature in the BSM areas of border surveillance and control, border protection, cross-border crime phenomenology, TOC, THB and people smuggling, HR management, communication, development and implementation of BSM related projects focusing on institution and capacity building measures
- Planning and conducting out-reach events in the Central Asian countries with the aim of promoting cross-border and inter-institutional cooperation, as well as the exchange of information and developing new common models through workshops and seminars

13.2. United Nations

The United Nations Counter Terrorism Committee (UNCTC) was founded as a result

of the terrorist attacks of 11th September 2001.⁸¹⁰ Guided by Security Council resolutions 1373 (2001) and 1624 (2005), the UNCTC works to bolster the ability of UN MS to prevent terrorist acts both within their borders and across regions.⁸¹¹ On 28th September 2001 Resolution 1373 (2001) was unanimously adopted by the UN MS. The UNCTC encompasses all 15 MS of the Permanent Security Council and has been mandated to support MS with the implementation of resolution 1373 (2001). Consistent implementation, including the measures outlined therein, requires both legal and institutional measures to combat terrorist activities as follows:

- Financing of terrorism can be classified as a criminal offence
- Immediate freezing of any funds of persons involved in acts of terrorism
- Intransigent rejection and prosecution of any form of financial support for terrorist groups
- No acceptance for safe retreat areas for members of terrorist networks and groups, as well as providing food and/or other forms of any logistical support for terrorists and their sympathisers
- Extensive and proactive exchange of information with other governments on indications of groups planning or pursuing terrorist acts
- Ensuring the greatest possible cooperation with other governments in the identification, detection, arrest, extradition and prosecution of persons involved in such acts
- Any kind of support for terrorism and its networks must be included as criminal offences in national criminal law and consistently pursued by the courts

UN Resolution 1373 (2001) calls upon all UN MS to cooperate in the preparation and implementation of all relevant legal documents in the fight against international terrorism. Based on UN resolution 1535 (2004), the UN Security Council established the Counterterrorism Executive Directorate (CTED) to support the UNCTC in its work and to accompany the monitoring of the implementation of UN Resolution 1373 (2001).⁸¹² The CTED consists of approximately 40 people, of

⁸¹⁰ UN Counter-Terrorism Committee (2016): Working methods on how to assist and support UN MS. Available from: <http://www.un.org/en/sc/ctc> (Accessed on 13th February 2017).

⁸¹¹ UN Security Council, Security Council resolution 1373 (2001): Resolution 1373 (2001); Adopted by the Security Council at its 4385th meeting, on 28th September 2001. UN Security Council, Security Council resolution 1624 (2005). Resolution 1624 (2005) on threats to international peace and security, 14th September 2005, S/RES/1624 (2005).

⁸¹² UN Security Council, Security Council resolution 1535 (2004): Resolution 1535 (2004) on combating terrorism, 26th March 2004, S/RES/1535 (2004).

whom about half are legal experts, whose main role is to analyse UN MS reports with regards to national legislation, financing terrorism, border checks of persons, goods and services, police and law enforcement, refugee and migration laws, illicit trafficking of weapons, as well as security-relevant aspects in the transport and shipping sector. UNCTED also undertook expert inspections in the UN MS to assess and evaluate the implementation of Resolution 1373 (2001), so-called country assessments. Resolution 1624 (2005) refers primarily to the form of participation in the incitement to terrorist acts and call upon the UN MS, on the basis of actual evidence by law, to prevent such behaviour and to remove terrorists and their supporters from safe retreat areas. In 2005, the Counter-Terrorism Implementation Task Force (CTITF) was established by the UN General Assembly to implement the UN Global Counter-Terrorism Strategy (GCTS).⁸¹³ The CTITF was created to better coordinate and harmonise all UN activities in the fight against terrorism; 38 international entities belong to it. The mandate of the CTITF is to strengthen coordination and coherence of counter-terrorism efforts of the UN system. In 2011, the UN Secretariat also established the UN Counter-Terrorism Centre (UNCCT) within the CTITF business structure in order to promote international cooperation in the fight against international terrorism and stemming the flow of FTF and to facilitate the implementation of the UN Global Counter-Terrorism Strategy in an operational manner.⁸¹⁴

The following areas have been described by the UNCCT as the main focus of its responsibilities:⁸¹⁵

- Development of national and regional strategies to combat terrorism and stem the flow of FTF
- Support for institution and capacity building activities for MS border law enforcement agencies
- Combating the financing of terrorism

UNCTED Factsheet (2006): The Role of the Counter-Terrorism Committee and its Executive Directorate in the International Counter-Terrorism Effort. Available from: http://www.un.org/en/terrorism/pdfs/fact_sheet_1.pdf. (Accessed on 13th February 2017).

⁸¹³ United Nations Counter-Terrorism Implementation Task Force (2005): CTITF organises its work through working groups and counter-terrorism related projects and activities in areas where cooperation among United Nations system actors can add value for the implementation of the Strategy. Available from: <http://www.un.org/en/terrorism/ctitf> (Accessed on 13th February 2017).

United Nations Global Counter-Terrorism Strategy (2006): UN Resolution adopted by the General Assembly on 8th September, 2006 without reference to a Main Committee (A/60/L.62)] 60/288.

⁸¹⁴ United Nations Counter-Terrorism Centre (2011): The UNCCT was established in September 2011, to promote international counter-terrorism cooperation and support Member States in the implementation of the Global Counter-Terrorism Strategy. Available from: <http://www.un.org/en/terrorism/ctitf/uncct/index.shtml>. (Accessed on 13th February 2017).

⁸¹⁵ UNCCT (2011): The main strategic priorities of the centre. Available from: <http://www.un.org/en/terrorism/ctitf/uncct/index.shtml> (Accessed on 13th February 2017).

- Promoting dialogue, acceptance and understanding in the fight against the glorification of terrorism
- Fighting against terrorism while protecting human rights
- Strengthening and protecting the rights of victims of terrorism
- Protection of vulnerable targets (e.g., sensitive infrastructure)
- Border security and management (e.g., UNCCT–GCTF BSI)
- Cyber crime

In 2014, the UNCCT launched its third program, which includes a comprehensive initiative on BSM-related issues and aims to counter the newly identified challenges of transnational terrorism, FTF and cross-border crime.⁸¹⁶ In particular, government law enforcement agencies responsible for BSM-related issues should be strengthened in the areas of border security, border control and border surveillance to prevent transnational threats and combat terrorism, FTF and TOC. In light of the unique challenges posed by porous borders, UN MS recognise the importance of securing these borders and strengthening cross-border cooperation that allows neighbouring border security agencies and border communities to collaborate with one another in a holistic way. A multilateral, coordinated approach to BSM is integral to addressing the myriad of threats and challenges each state faces individually. To address these challenges, the UNCCT and the Global Counterterrorism Forum (GCTF) established jointly the Border Security Initiative (BSI), co-led by the United States and Morocco. The developed paper on 'Good Practices in the Area of BSM and the Context of Counterterrorism and Stemming the Flow of FTF' was adopted at the Seventh Ministerial Plenary Meeting in New York in September 2016.⁸¹⁷ These good practices are intended to inform and guide governments as they develop policies, strategies, programs and approaches for enhancing effective BSM, cross-border cooperation, and border surveillance in a counterterrorism context. They can also be used to shape bilateral or multilateral technical or other capacity-building assistance provide in these areas.

⁸¹⁶ Note from the author: In April 2015, the author was contracted by the UNCCT as the Senior Border Adviser and is responsible for the development and implementation of relevant programs and projects in the field of border management, border surveillance, border control and border security.

⁸¹⁷ Global Counterterrorism Forum (2017): On 22nd September 2011, the GCTF was launched at a Ministerial Plenary Meeting in New York as an informal, political, multilateral counterterrorism (CT) platform that has strengthened the international architecture for addressing 21st century terrorism. Available from: <https://www.thegctf.org/Cross-Cutting-Initiatives/Border-Security-Initiative> (Accessed on 14th February 2017). Note from the author: From 2014 until 2016, the author shows responsible for the development of the paper on 'Good Practices in the Area of BSM and the Context of Counterterrorism and Stemming the Flow of FTF', which was adopted by approximately 60 UN MS.

13.3. INTERPOL Border Management Programme

The International Criminal Police Organisation (ICPO – INTERPOL) is the oldest multilateral cooperation framework for international police cooperation. After the UN, INTERPOL is the second largest intergovernmental organisation in the world, linking the associated law enforcement agencies of its 190 MS through its global I-24/7 police communications network and provides access to the INTERPOL databases.⁸¹⁸ In addition, within the scope of its Border Management Program, INTERPOL provides support and access to the reference centre for travel and ID documents with regards to border checks on travellers.⁸¹⁹ To this end, the INTERPOL Border Management Task Force (IBMTF) was set up as a central contact and information point for all relevant activities and measures with regard to BSM.⁸²⁰

The IBMTF supports border control officers in their performance of checks with

- worldwide access to INTERPOL services and databases in real-time,
- training and as well as other measures to expand competences, and
- support in the coordination of operational measures.

The IBMTF uses both its own resources as well as specific expertise of some MS's border practitioners. In principle, INTERPOL considers stationary BCP's as strategically important locations to maintain and ensure national security and order. INTERPOL therefore supports their MS in granting continuous access to manhunt databases for identity checks⁸²¹ (1st line checks)⁸²² and in-depth checks (2nd line checks)⁸²³ in cases of suspicious activity at BCP's, airports and seaports. In 2004 the INTERPOL command and coordination centre (CCC)⁸²⁴ was set up,

⁸¹⁸ INTERPOL (2017): I-24/7 – a secure global police network. Available from: <https://www.interpol.int/INTERPOL-expertise/Data-exchange/I-24-7> (Accessed on 13th February 2017).

⁸¹⁹ INTERPOL (2017): Border Management as a priority. Available from: <https://www.interpol.int/INTERPOL-expertise/Border-management> (Accessed on 13th February 2017).

⁸²⁰ INTERPOL (2017): Integrated Border Management Task Force (IBMTF). Available from: <https://www.interpol.int/INTERPOL-expertise/Border-management> (Accessed on 13th February 2017).

⁸²¹ Note from the author: The '3-line model' for checking travel documents and ID cards is a model with three different access levels: 1. 1st line check means the control at the BCP (land, air, water); 2. 2nd line is an extended control of the document in the premises of the border control authority with the support of other technical aids with more time required after first suspicious evidence of counterfeiting or other irregularities has been identified; 3. 3rd line is the forensic examination of the document and preparation of an expert opinion on the most effective evidence in a criminal case.

See also Annex 7, point 15.

⁸²² Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (*Schengen Borders Code*). Definitions Art. 2 Nr. 11.

⁸²³ Ibid. Nr. 13.

⁸²⁴ Feltes, Thomas (2016): *Krimlex INTERPOL Informationsdauerdienst*. Available from: http://www.krimlex.de/artikel.php?BUCHSTABE=&KL_ID=91 (Accessed on 14th February 2017).

BKA (2014): ICPO-INTERPOL – *Eine internationale Organisation im Wandel der Zeit*. Bundeskriminalamt ICPO-download (classified), p.8.

which operates a 24/7 mode and three-shift⁸²⁵ operation. It can be used for urgent enquiries, coordination of cross-border operational measures and for crisis management.

INTERPOL makes an important contribution to facilitate information exchange of general police or case-related findings for the more than 190 member countries. This is defined by the INTERPOL statutes⁸²⁶ and facilitates a global and secure information exchange and communication system. In addition, INTERPOL provides comprehensive assistance in the preparation of overviews of situations with regards to strategic and operational case analysis.⁸²⁷ Strobl describes the assessment of a police and security situation as a moment in which, due to the principle of legality⁸²⁸, the police have to investigate criminal offences and simultaneously to prevent or halt⁸²⁹ them in terms of averting danger.

The assessment of a situation is thus an illustration of the police and security situation with diverse reference levels. The officials seconded to INTERPOL have no executive powers for criminal prosecution.⁸³⁰ Only the relevant national legislation in INTERPOL MS determines what kind of executive measures for prosecution may be carried out by their own national law enforcement officials. INTERPOL publishes information notes with regards to wanted persons and stolen property investigations and operates important search databases, such as the Stolen and Lost Travel Documents database (SLTD).⁸³¹ The SLTD provides the border control authorities connected with real-time access to the detection of stolen or lost travel documents and visas.

For example, in cases of border entry and exit checks, the number of a passport

⁸²⁵ Note from the author: 24/7 stands for 24 hours and 7 days a week, so permanent. A so-called 'three-shift operation' consists of a morning, afternoon and night shift.

⁸²⁶ Elster, Alexander / Lingemann, Heinrich / Sieverts, Rudolf (1979): *Handwörterbuch der Kriminologie*. Statutes of ICPO (INTERPOL) – ICPOST, p.56.

KA (2014): ICPO-INTERPOL – *Eine internationale Organisation im Wandel der Zeit*. Bundeskriminalamt ICPO-download (classified), p.8.

⁸²⁷ Strobl, Josef / Wunderle, Karl (2007): *Theorie und Praxis des Polizeieinsatzes*. This term is used differently on the one hand as a tactical concept, on the other as a part of the security situation, p.47.

⁸²⁸ Ibid.

⁸²⁹ Act on the Tasks and Powers of the Bavarian State Police, as amended by the notice of 14th September 1990 (last modified amendment of 22nd July 2014). Available from: <http://www.gesetze-im-internet.de/> (Accessed on 19th October 2016).

Article 2 Tasks of the police

Paragraph 1 – The police have the task of warding off the dangers of public security or order, which are general or in individual cases. [...].

Paragraph 4 – The police shall also perform the duties assigned to it by other legislation.

⁸³⁰ Gärtner, Heinz (2005). *Internationale Sicherheit. Der Soziologe Max Weber prägte den Ausdruck des staatlichen Gewaltmonopols bereits 1919, wonach alle Ausübung von Gewalt alleine dem Staat obliegt und als Grundlage eines funktionierenden Rechtsstaates angesehen werden muss*. P.48.

⁸³¹ INTERPOL (2016): Stolen and Lost Travel Document (SLTD) database. Available from: <http://www.interpol.int/INTERPOL-expertise/Border-management/SLTD-Database> (Accessed on 14th February 2017).

or ID card can be queried within a few seconds via the SLTD database as to whether this document has been reported as stolen or lost. The SLTD currently contains approximately 35 million data sets of stolen or lost documents from 174 different countries. From January to September 2016 it was searched more than 1,243,000,000 times, resulting in more than 115,000 positive responses, or 'hits'.⁸³² At this point, however, it must also be pointed out that a manhunt database can only be a successful tool when it is supplied with sufficient corresponding data.

Within the Border Management Program, INTERPOL operates the following databases in the fight against TOC, terrorism and FTF:⁸³³

- Stolen and Lost Travel Documents database (SLTD)
- Nominal databases⁸³⁴
- Travel Documents Associated with Notices (TDAWN)⁸³⁵
- Stolen Motor Vehicles database (SMV)⁸³⁶
- Stolen and Suspect Vessels database (SSV)⁸³⁷
- Illicit Arms Records and Tracing Management System (iARMS)⁸³⁸
- Edison TD⁸³⁹
- Digital INTERPOL Alert Library – Document (Dial-Doc)⁸⁴⁰

⁸³² INTERPOL (2017): Stolen and Lost Travel Document Database (SLTD). Available from: <https://www.interpol.int/INTERPOL-expertise/Border-management/SLTD-Database> (Accessed on 11th April 2018).

⁸³³ INTERPOL (2017): Border Management – Fighting terrorism and transnational crime through effective border management. Available from: <http://www.interpol.int/INTERPOL-expertise/Border-management> (Accessed on 14th February 2017).

⁸³⁴ INTERPOL (2017): Nominal databases – Records of known international criminals and missing persons. Available from: <http://www.interpol.int/notice/search/missing> (Accessed on 14th February 2017).

⁸³⁵ Bray, Shawn A. (2014): Statement before the Subcommittee on Border and Maritime Security Committee on Homeland Security United States House of Representatives at a Hearing Entitled "Passport Fraud: An International Vulnerability". Available from: <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg88781/html/CHRG-113hhrg88781.htm> (Accessed on 14th February 2017).

⁸³⁶ INTERPOL (2017): Stolen Motor Vehicle database – Records of millions vehicles reported stolen around the world 2005 – 2013. Available from: <http://www.interpol.int/Crime-areas/Vehicle-crime/Database-statistics> (Accessed on 14th February 2017).

⁸³⁷ INTERPOL (2017): Stolen and Suspect Vessels database – a lucrative trade. Available from: <http://www.interpol.int/INTERPOL-expertise/Databases> (Accessed on 14th February 2017).

⁸³⁸ INTERPOL (2016): Illicit Arms Records and tracing Management System (iARMS). Available from: <http://www.interpol.int/Crime-areas/Firearms/INTERPOL-Illicit-Arms-Records-and-tracing-Management-System-iARMS> (Accessed on 14th February 2017).

⁸³⁹ INTERPOL (2017): Edison TD – Examples of genuine travel documents to help in identifying fakes. This is an online database that provides relevant information and images on the appearance and content of authentically issued travel and identity documents of the participating countries. Available from: <http://www.edisontd.net/> (Accessed on 14th February 2017).

⁸⁴⁰ INTERPOL (2017): Digital INTERPOL Alert Library–Document (Dial-Doc). This database can be seen in conjunction with Edison TD, where participating countries are setting up the latest findings on new types of counterfeit documents and thus serve as a 'early warning tool' for other partner countries. Available from: <http://www.interpol.int/INTERPOL-expertise/Databases> (Accessed on 14th February 2017).

- Document Information System of Civil Status (DISCS)⁸⁴¹
- Fingerprints⁸⁴²
- INTERPOL Ballistic Information Network (IBIN)⁸⁴³

By providing and maintaining the described databases and relevant programs, INTERPOL makes a decisive contribution to the improvement of the standards of border control and border surveillance and is therefore a key player in modern border management structures. INTERPOL acts as a network to improve the co-operation of the participating countries in the fight against cross-border crime and terrorism. Through extensive training and advanced education measures combined with table-top exercises, it contributes decisively and proactively to the development of modern border management in the fields of institution and capacity building in its MS.

13.4. United Nations High Commissioner for Refugees (UNHCR)

The office of the United Nations High Commissioner for Refugees (UNHCR) was created in 1950, during the aftermath of the Second World War, to help millions of Europeans who had fled or lost their homes, thereby protecting the rights of refugees and ensuring minimum standards for their welfare.⁸⁴⁴ The special feature of UNHCR is that this term is both the personal office of the commissioner and the institution, the former Refugee Commissioner and current UN Secretary General António Guterres, who said: "Escape and expulsion are global challenges of our time."⁸⁴⁵

UNHCR directs and coordinates international initiatives for the protection and care of refugees as the most urgent measure and thus the most important task. UNHCR officials ensure that refugees are granted their rights to asylum and that their human rights are respected. This inevitably requires close and trustworthy cooperation with national authorities in the areas of BSM-related aspects, as well as regular migration. UNHCR is also committed to working for the people and ensuring that international agreements for refugees are signed and implemented

⁸⁴¹ Carlo Di, Fabrizio (2013): INTERPOL – Document Information System of Civil Status (DISCS), p.33.

Available from: <http://www.interpol.int/INTERPOL-expertise/Databases> (Accessed on 14th February 2017).

⁸⁴² INTERPOL (2017): Fingerprints contains fingerprints contributed by nearly all of the INTERPOL MS.

Available from: <http://www.interpol.int/INTERPOL-expertise/Forensics/Fingerprints> (Accessed on 14th February 2017).

⁸⁴³ INTERPOL (2017): Ballistic Information Network (IBIN). Available from: <http://www.interpol.int/Crime-areas/Firearms/INTERPOL-Ballistic-Information-Network-IBIN> (Accessed on 14th February 2017).

⁸⁴⁴ UNHCR (2017): History of UNHCR – United Nations High Commissioner for Refugees. Available from: <http://www.unhcr.org/history-of-unhcr.html> (Accessed on 14th February 2017).

⁸⁴⁵ Federal Ministry for Economic Cooperation and Development (2017): Germany G7 Initiative 2015.

Available from: http://www.bmz.de/g7/en/Entwicklungspolitische_Schwerpunkte/index.html (Accessed on 14th February 2017).

by as many states as possible. If countries are overwhelmed by transnational refugee waves in logistics and administration, the UNHCR provides managerial support, organises and finances the care for refugees and manages a transparent registration of the people. After the omission of reasons for their flight, UNHCR staff help to organise the return of refugees to their countries of origin and assist to build up the minimum subsistence level. UNHCR's mandate includes the support of all people, including those who are stateless.⁸⁴⁶ With the approval of the respective governments, the UNHCR also supports and provides internally-displaced persons in affected countries, which, by definition, are not covered by the Geneva Convention on Refugees.⁸⁴⁷

13.5. International Organisation for Migration (IOM)

The International Organisation for Migration (IOM) is the world's leading organisation in the complexity of migration combined with border management and collaborates closely at various levels, such as with governments and associated competent ministries, supranational and international organisations and non-governmental organisations (NGO) since its establishment in 1951.⁸⁴⁸ IOM is committed to effective international cooperation in all fields of migration in conjunction with border management and aims for pragmatic solutions between all parties involved, while representing the interests of people in need and providing humanitarian aid.

IOM works in the four broad areas of migration management:⁸⁴⁹

- Migration and development
- Facilitating migration
- Regulating migration
- Forced migration

IOM's BSM-related activities are aimed at assisting governments to develop policies, strategies and action plans, legislation and administrative structures, migration-related operational systems and human resources. This is necessary to

⁸⁴⁶ UNHCR (2017): Mandate and Tasks. In legal terms, the High Commissioner and his Office form a multilateral, intergovernmental institution, established by the GA as its subsidiary organ through resolution 319 A (IV) of 3rd December 1949, and provided with its Statute in resolution 428 (V) of 14th December 1950 (Annex). The Statute stipulates that the High Commissioner "acting under the authority of the General Assembly, shall assume the function of providing international protection [...] and of seeking permanent solutions for the problem of refugees." Available from: <http://www.unhcr.org/protection/basic/526a22cb6/mandate-high-commissioner-refugees-office.html> (Accessed on 14th February 2017).

⁸⁴⁷ UN General Assembly, Draft Convention relating to the Status of Refugees, 14th December 1950, A/RES/429.

⁸⁴⁸ International Organisation for Migration (2017): IOM is the leading inter-governmental organisation in the field of migration. Available from: <http://www.iom.int/about-iom> (Accessed on 14th February 2017).

⁸⁴⁹ Ibid. Core areas, tasks and responsibilities of IOM.

respond more effectively to diverse migration and BSM-related challenges and to institute good migration governance. Such activities are understood as partnerships, with the requesting government and other relevant interlocutors working closely with the IOM IBM-team to identify relevant needs, determine priority areas, and shape and deliver interventions. Since realities on the ground and the goals of governments and other actors in migration management change over time in both nature and priority, the activities continuously evolve to meet new migration challenges on the national, regional and international levels.

Current IOM priorities include:

- Supporting States to enhance their border and migration management structures and procedures (integrated border management, identity management, risk analysis);
- Supporting States to reduce irregular migration and facilitate regular migration; effectively counter migrant smuggling and strengthen the protection of migrants' rights;
- Building capacity in the field of humanitarian border management (HBM) and Health and Humanitarian Border Management (HHBM);
- Enhancing international cooperation and supporting harmonisation of national policies and practices within regional contexts towards common international norms;
- Enhancing legal migration by assisting States to more efficiently and cost-effectively process visas thru the provision of non-profit, international migration services, to include the operation of Visa Application Centres (VACs).

Taking into account 166 MS, a further eight states holding observer status and offices in over 100 countries, IOM is dedicated to promoting humane and orderly migration for the benefit of all.⁸⁵⁰ It does so by providing services and advice to governments and migrants. The respective regions imply individual scopes of duties and priorities and thus create different challenges for IOM, which is, however, always committed to the principle of a humanitarian and orderly migration. What is new, however, is that IOM has now been increasingly consulted by states for more than ten years to recommend and elucidate on individual solutions to the complexity of challenges encountered in modern border management.⁸⁵¹ To this end, IOM has set up a so-called Immigration and Border Management (IBM) team consisting of BSM experts and technicians, providing the necessary assistance to interested governments in analysing, assessing and evaluating the respective problem-solving processes.⁸⁵² The IOM IBM-team is

⁸⁵⁰ Ibid. State of play February 2017.

⁸⁵¹ Ibid. Integrated Border Management.

⁸⁵² Ibid. Immigration and Border Management Programme (2015), p.1.

Note from the author: The abbreviation 'IBM' of the IOM Immigration and Border Management Team is considered an unfortunate phrasing, as it can be easily confused with the EU terminus IBM Integrated Border Management.

divided into strategically important regions, as well as the IOM headquarters in Geneva. IOM's ideology of modern border management is focusing on the individual needs of the respective states and its efforts to ensure a smooth border crossing and preferential border clearance of *bona fide* travellers while maintaining the highest security standards. With the steadily increasing mobility of people and transfer of goods and services, IOM points out the enormous challenges of the necessary balance for open, and at the same time, secure borders. IOM is working in unison with the integrated border management concept and guidelines developed by the EU and has adopted the core elements in its own Immigration and Border Management (IBM) program.⁸⁵³

13.6. International Centre for Migration Policy Development (ICMPD)

In 1993, the International Centre for Migration Policy Development (ICMPD) was founded on the basis of a joint initiative of Austria and Switzerland and is headquartered in Vienna, Austria. This organisation should henceforth serve as a platform for informal dialogue, as well as an agency for expertise and efficient services to promote multinational cooperation in the areas of asylum and migration. ICMPD is an international organisation and is represented by 15 European MS with more than 200 employees and an office in Brussels as well as regional offices and representatives across Europe, North Africa, the Middle East and Latin America.⁸⁵⁴ In addition, ICMPD was given an observer status at the UN.⁸⁵⁵

ICMPD's strategic ambition is to develop innovative, comprehensive and sustainable models of modern migration management in connection with border management, as well as a service provider to exchange information from and between governments and organisations. To this end, the 15 MS of the organisation issued the mandate for the development and implementation of long-term strategies in the field of migration and BSM. These strategies primarily focus on early warning systems, the fight against causes related to dysfunctional BSM

⁸⁵³ Note from the author: IBM's core elements are Intra-Agency, Inter-Agency and International Cooperation. See further explanations in chapter 8.

⁸⁵⁴ International Centre for Migration Policy Development (2017): Member States are Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, The former Yugoslav Republic of Macedonia, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden and Switzerland. Available from: www.icmpd.org (Accessed on 14th February 2017).

Schubert, Klaus /Klein, Martina (2011): *Das Politlexikon*. Terms, facts, contexts. 5. Current edition. "International organisations (IO's) are associations of states established by international treaties and endowed with their own organs and their own spheres of competence. They serve to fulfil the precisely agreed (and thus limited) political, military, economic or social tasks without affecting the sovereignty of the Member States." Available from: <https://www.bpb.de/nachschlagen/lexika/politiklexikon/17655/internationale-organisationen> (Accessed on 14th February 2017).

⁸⁵⁵ Ibid.

systems, the harmonisation of immigration control standards and the coordination of foreigners, asylum and refugee policies.⁸⁵⁶ Another core element of ICMPD's activities is the promotion and improvement of international cooperation on migration-related issues and its fundamental research of respective phenomena. These include, in particular, the scientific research and analysis of migratory waves related to target countries in Europe, the causes in the countries of origin and the reasons for the flight from them (push and pull factors), as well as the development of possible measures for the early recognition of such waves and their prevention.⁸⁵⁷ The understanding of most EU MS on migration-related issues is predominately based on the principles of the rule of law and respect for human rights.

13.7. Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was founded on the initiative of the Swiss Confederation in 2000.⁸⁵⁸ DCAF has set itself the goal of developing innovative and significant contributions that are intended to strengthen good governance and promote security sector reforms (SSR). With these contributions, DCAF aims to make the state security sectors of countries involved more effective and efficient in their work and stands for the principle that security should be seen as a value, and the development and consolidation of the rule of law are essential factors for sustained peace. DCAF is committed to its principles of neutrality, objectivity and impartiality, equality and self-responsibility as a basis for the implementation of legitimate and sustainable reform processes of public administrations in the countries concerned. DCAF is headquartered in Geneva with currently 140 employees and has permanent delegations in Beirut, Brussels, Ljubljana, Ramallah and Tunis. Shortly after it was established, the senior management decided to set up a DCAF Border Security Program, which began with a workshop and corresponding exploratory talks with persons from the countries of South-Eastern Europe in November 2001.⁸⁵⁹

The program supports the respective governments in the set-up and development

⁸⁵⁶ ICMPD (2013): Migration and Development Policies and Practices; main themes and "3 G's" – capacity, coherence and cooperation, p.24 to 26.

⁸⁵⁷ ICMPD (2013): A mapping study of eleven European countries and the European Commission. Available from: http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD_General/Publications/Migration_and_Development_June_2013.pdf (Accessed on 14th February 2017).

⁸⁵⁸ DCAF (2017): A centre for security, development and the rule of law. Available from: <http://www.dcaf.ch> (Accessed on 14th February 2017).

⁸⁵⁹ DCAF (2017): Annual Report by the Director (2003): Point 3.2. Border Security Activities. P.24.

of modern border police services and the necessary framework conditions for cross-border cooperation between the authorities in the prevention of transnational threats and combating TOC.⁸⁶⁰ In this respect, DCAF places great importance on the involvement of all responsible institutions, starting from ministerial level to the border officer at the BCP, in providing and exchanging information on the latest trends and practices.

The overall objectives of the DCAF Border Security Program are:

- Support for border police services to improve cross-border cooperation and strengthen regional security
- Institution and capacity building of border police services in the fulfilment of the tasks and responsibilities in accordance with the EU standards

These areas, as reflected in the regional action plan for 2012-2015, have been worked out in detail with the responsible heads of the border police services concerned, in order to highlight precisely where improvements were needed.⁸⁶¹

The action plan describes three main areas:⁸⁶²

- *Schengen* integration → Here, specially developed training programs for border police officers are carried out to acquire the necessary competencies with the aim of a future EU membership and possible subsequent admission to the *Schengen* area.
- Training and education → Capacity building for border police officers through the provision of tailor-made training courses⁸⁶³ and knowledge transfer on the basis of close cooperation with EU MS, its instruments and mechanisms related to modern cross-border cooperation.
- Joint coordination activities → Assistance in the preparation and implementation of joint regional (border) police operations on prevention and aversion of danger, the fight against TOC and irregular migration.

The DCAF Border Security Program also advises and assists the countries in implementing the Police Cooperation Convention for Southeast Europe (PCC SEE),

⁸⁶⁰ DCAF (2017): Border Security Programme (2015): Countries were Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. Available from: <http://www.dcaf.ch/Region/Southeast-Europe/Projects/DCAF-Border-Security-Programme> (Accessed on 14th February 2017).

⁸⁶¹ DCAF (2017): Regional Action Plan 2012–2015 for Capacity Building and Increasing Common and Coordinated Measures in Area of Border Security in Western Balkans Region, p.3 and 4.

⁸⁶² Ibid. Three areas identified in the action plan of the BSM.

⁸⁶³ DCAF (2017): E-Learning Course on Police Integrity. DCAF is a pioneer in offering innovative education and training programs. This shows the e-learning program, which was introduced in 2012. Available from: <http://www.dcaf.ch/Region/Southeast-Europe/Projects/Police-Integrity-Building-Programme> (Accessed on 15th February 2017).

which promotes and regulates cross-border police cooperation.⁸⁶⁴ The program also takes into account the activities of regional actors in all areas of BSM, in line with Frontex, EUROPOL and other EU agencies.

13.8. Preliminary conclusion

The list of selected supranational organisations is merely exemplary rather than representative and conclusive. Other international organisations and their activities in the areas of BSM could have been mentioned here, as well as the prevention of TNT and the fight against TOC. The aforementioned organisations were selected because of their size and relevance, the duration of their existence, the mandate, their current involvement in the accomplishment of current interstate crises, as well as orientation in the development of new approaches to current phenomena in BSM-related issues and irregular migration. Supranational organisations and their intergovernmental cooperation in the context of IBM and relevant efforts to prevent transnational threats describe forms of information exchange and their interconnections with involved states.⁸⁶⁵ In this case, the states concerned have handed over parts of their competences and resources in their cooperation with such organisations to a supranational level in their efforts to prevent transnational threats and combat TOC. This can lead to restrictions of capabilities to act in individual cases, which can, however, again be of advantage in the overall consideration of mutual decision-making and problem-solving processes. States often reach identified goals in a collective, while other states that want to achieve their desired goals alone are not likely to attain the same success. This was particularly observed during the mass influx of irregular migrants (see chapter 5), which was mistakenly named as 'refugee crisis'. In the area of intergovernmental collaboration, formalities of cooperation between these supranational organisations and governmental entities are regulated, whereby the states retain their full sovereignty and make their decisions according to the consensus principle while maintaining their veto rights.⁸⁶⁶

The basis for cooperation between INTERPOL MS is the ICPO-statutes. In contrast to, for example, the *Schengen acquis* or bilateral police and judicial treaties, ICPO-statutes are not legally binding for INTERPOL MS in the context of international

⁸⁶⁴ Police Cooperation Convention for Southeast Europe (PCC SEE – 2006 to 2011), also called 'Vienna Convention' (2006). Article 3 – General Cooperation Measures, p.2.

⁸⁶⁵ Thiemeyer, Guido (1999): *Supranationalität als Novum in der Geschichte der internationalen Politik der fünfziger Jahre*. P.5–21.

⁸⁶⁶ Große Hüttmann, Martin / Wehling, Hans-Georg (ed.) (2013): *Das Europalexikon*. 2. Updated edition Bonn: Dietz 2013.

law. The exchange of criminal intelligence findings and case-based cooperation is voluntary, within the framework of the laws in force in the individual countries. The entire internal set of rules, in particular the data protection regulations, must be adhered to as soon as a state has decided to use the system 'INTERPOL' and operate there. In this case, Article 31 of the ICPO-statutes is to be reflected:⁸⁶⁷

In order to further its aims, the Organisation needs the constant and active co-operation of its Members, who should do all within their power, which is compatible with the legislations of their countries to participate diligently in its activities.

The authority of the Federal Criminal Police Office (*BKA*) to transmit personal data to the General Secretariat of ICPO-INTERPOL is derived from Article 14 paragraph 1, 5 *BKA* act.⁸⁶⁸ The transmission of the data to other national central offices (NCO) or the information gathering and evaluation must be in alignment with regulations of the General Secretariat. A fundamental problem, however, could not yet be successfully addressed or solved by any organisation; the delineation of borders in regions of post-conflict zones following the disintegration of states or a state union. For example, after the disintegration of the Soviet Union (see point 3.5.1.), the majority of the new states were exposed to the situation where the national borders were not clearly defined. This applies for example to countries in Central Asia, which are now confronted with the complicated task in conflict-laden negotiations of looking for solutions of delimitation.⁸⁶⁹ As a consequence, the state authorities are not unanimous, taking different positions as to the exact siting of the border. This applies specifically to regions where access to resources, fertile agricultural land, drinking water, or strategically important areas are concerned. This has a direct impact on the legal enforcement of the state monopoly of legitimate use of force with regard to rule of law in general and BSM-related issues and access to border zones in particular. The paralysing incapacity to regulate the border issues in this region is an example of the enormous potential for conflicts in this area. For example, Uzbekistan has mined parts of its borders without informing neighbouring states and has often entered into armed conflicts with neighbouring border guards, accusing them of crossing the border illegally.

⁸⁶⁷ ICPO-INTERPOL (2008): Constitution of ICPO-INTERPOL [I/CONS/GA/1956(2008)], p.6.

⁸⁶⁸ Act on the Federal Criminal Police Office (*Bundeskriminalamtgesetz – BKAG*), (Article 1 of the Federal Criminal Police Act and cooperation between the Federal Government and the *Länder* in criminal police matters) (*Bundeskriminalamtgesetz – BKAG*), § 14 Powers in international cooperation.

⁸⁶⁹ Note from the author: The countries concerned are Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

Table 13.8.1. – Supranational Organisations and IBM

	IBM ⁸⁷⁰	Target group	Operating	Regions
DCAF	No	Border Guards/Border Police Armed Forces	Since 2002	Western Balkan other countries
EU	Yes	Ministries Border Guards/Border Police Customs Service Phyto-Sanitary & Veterinary Service Immigration Service	Since 1985 ⁸⁷¹	Western Balkan Ukraine-Moldova Central Asia North Africa Middle East
EC	Yes	Ministries Border Guards/Border Police Customs Service Phyto-Sanitary & Veterinary Service Immigration Service	End of 1990's	Western Balkan Ukraine-Moldova Central Asia North Africa Middle East
Frontex	Yes	Ministries Border Guards/Border Police Customs Service Phyto-Sanitary & Veterinary Service Immigration Service	Since 2005 ⁸⁷²	28 EU MS
EUROPOL	Partly	Uniformed Police Criminal Police Border Guards/Border Police Customs Service	Since 1992	28 EU MS
ICMPD	Yes	Border Guards/Border Police Customs Service	Early 1990's ⁸⁷³	Southeast Europe Central Asia South America
IOM	Yes	Border Guards/Border Police Customs Service partly Immigration Service	Since 1950's	Global
OSCE	Yes	Border Guards/Border Police Customs Service Phyto-Sanitary & Veterinary Service	Since 2002	OSCE wide in 57 MS, and partner States
UN CTED	No	Border Guards/Border Police Customs Service partly Immigration Service	Since 2005	Global
UN CTITF	No	Border Guards/Border Police Customs Service partly Immigration Service	Since 2005	Global
UNCCT	Partly	Border Guards/Border Police Customs Service partly Immigration Service	Since 2011	Global
UNHCR	No	Ministries Border Guards/Border Police Immigration Service	Since 1950	Global

⁸⁷⁰ Note from the author: For the IBM definition, see section 8.1. "IBM [...] among all the relevant authorities and agencies involved in border security [...] goal of open, but controlled and secure borders."

⁸⁷¹ *Schengen acquis* – Convention implementing the *Schengen* Agreement of 14th June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders Official Journal L 239, 22/09/2000 p.0019-0062.

⁸⁷² Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

⁸⁷³ ICMPD (2016): Border Management & Visa. Available from: <http://www.icmpd.org/Border-Management-Visa.1566.0.html> (Accessed on 14th February 2017).

Chapter 14: Extraterritoriality and border control

14.1. State – State borders

As described in chapter 7, point 7.1, the border is understood as a territorial delineation and defined as a physical barrier where access checks prior to entering a national territory take place. The border is not an invention of modernism, but the result of a further evolution of border strips and zones of medieval empires.⁸⁷⁴ Only through the emergence of modern territorial statehood did border strips or zones evolve to border lines.⁸⁷⁵ The claim to power within a defined area was thus a decisive step in establishing modernity with regards to developing national borders. Bodin put up the thesis that there can be no state without its own national territory.⁸⁷⁶

Therefore, a state must have a territory and thus a state, its territory and its national borders are inevitably interlinked. Mrozek's interpretation is that state borders are a unique incarnation of the modern era, which was conditioned by a much clearer understanding of the state as a form of the coexistence of a human group and the delineation of this form against other such forms.⁸⁷⁷ Crucial for this reciprocal relationship was that people have been increasingly imbued with rights in relation to their state, whilst simultaneously having to take on specific roles and duties.⁸⁷⁸ The granting of rights to one's own citizens was therefore an important reason to define formal distinguishing features from 'own' citizens to quasi 'non-own' citizens, ergo aliens. This was primarily the definition of nationality as the main characteristic for inclusion or exclusion.⁸⁷⁹

⁸⁷⁴ uni-protokolle.de (2017): 'Modernity' was born from the preceding social upheavals by the enlightenment and the discovery of man as an individual. It is the concept in the history of Europe, America and Australia for the upheaval in all spheres of life against earlier traditions. Available from: <http://www.uni-protokolle.de/Lexikon/Moderne.html> (Accessed on 21st February 2017).

⁸⁷⁵ Rebman, Mara (2013): *Staatlichkeit im Wandel*. Territorial statehood [...] Complete control within a delimited territory, p.16.

Schneider, Reinhard (1994): *Lineare Grenzen – vom frühen bis zum späten Mittelalter*. P.51 et seqq.

Jaspert, Nikolaus (2014): *Grenzen und Grenzräume im Mittelalter: Forschungen, Konzepte und Begriffe Kapitel V: Grenzraum und Grenzsituation*. P.58.

⁸⁷⁶ Bodin, Jean / Niedhart, Gotfried (Ed.) (1976): *Über den Staat*. P.11.

⁸⁷⁷ Mrozek, Anna (2013): *Grenzschutz als supranationale Aufgabe*. P.58.

⁸⁷⁸ Jellinek, Georg (1900): *Allgemeine Staatslehre*. Jellinek defines the people as the totality of those citizens who have legal claims to the state power, p.409.

⁸⁷⁹ Juraforum (2017): German nationality. German citizenship is the legal membership of a natural person in the Federal Republic of Germany. Whoever is a German is regulated by Section 116 par. 1 Basic Law. "German nationality is thus neither identical with the German nor with an ethnic concept. German citizenship covers natural persons. However, rules based on citizenship are applied both to domestic and international law in accordance with legal persons established in Germany. Nationality and citizenship are synonymous in German law. At the same time, citizenship is an individual manifestation of the state-constitutive element of a nation-state, according to which a state is recognised under international law only as long as it has a state and power over nation-states (see three-element doctrine)." Available from: <http://www.juraforum.de/lexikon/deutsche-staatsangehoerigkeit> (Accessed on 21st February 2017).

A person who does not possess the nationality of the country in which that person is resident is referred to as a foreigner. National citizenship is the legal affiliation of a person to a state, which is legally regulated by law (e.g., through birth in line with the respective national act), or by an administrative act (e.g., naturalisation). Nationality is thus a formal classification of an individual to a state and at the same time generates an identification feature.⁸⁸⁰

Citizenship is characterised by special rights (e.g., suffrage, freedom of expression, freedom of religion) and obligations (e.g., tax liability, military conscription), and also includes special constitutional protective and defence rights against the state.⁸⁸¹ Nationality is regulated in many democratic states usually by law and in direct relation to the nationality of the parents, or by naturalisation. Nationality may be documented in the form of documents such as proof of citizenship, family register, birth certificate, identity card or passport that were issued by the national administrative authorities.

14.2. Boundary and border area

The border – from the perspective of the (border) police it can serve as a major tactical advantage for ensuring public safety and order. Borderlines and related zones allow border control authorities of democratic and liberal states to check travelling persons and their carried items on the basis of random police checks.⁸⁸²

⁸⁸⁰ BVerfGE 113, 273, (294): Federal Constitutional Court - "Civil rights and duties, which are linked to the possession of nationality for each individual, are at the same time constitutive foundations of the entire community."

⁸⁸¹ Pötsch, Horst (2009): The fundamental rights protect the freedom of each individual. They are defined in Sections 1 to 19 of the Federal German Basic Law - but also in the judgments of the Constitutional Court or in the European Convention on Human Rights. Available from: <http://www.bpb.de/politik/grundfragen/deutsche-demokratie/39294/grundrechte?p=all> (Accessed on 23rd February 2017).

⁸⁸² Federal Police Act of 19th October 1994 (Federal Law Gazette I, p. 2978, 2979), which has been amended by Article 2 of the Act of 23rd February 2017 (Federal Law Gazette I p.298)

§ 23 - Identity verification and testing of scrip

(1) The federal police to determine a person's identity

1. to avert a danger
2. for police control of cross-border traffic,
3. in the border area to a depth of thirty kilometres to prevent or eliminate unauthorised entry into the Federal territory or to prevent crime within the meaning of § 12 Section 1 No. 1 to 4,
4. if the person is in an institution of the Federal Police (§ 1, § 3), a plant or establishment of the federal railways (§ 3), an aviation serving installation or facility of international airport (§ 4), the official residence of a constitutional institution or a Federal Ministry (§ 5) or at a border crossing point (§ 61) or in the immediate vicinity thereof resides and facts justify the assumption that there crimes to be committed by persons located in or on these objects or the objects themselves are at immediate risk, and the determination of the identity on the basis of the risk assessment or the person related evidence is required, or
5. to protect private rights.

(1a) as referred to in paragraph 1, No. 3 border area covers the coastal area from the seaward limit of up to a depth of 50 kilometres, in addition, only in accordance with the Regulations to § 2 para 2 sentence 2

(2) In order to meet its responsibilities under § 7 of the federal police to further establish the identity of a person when they

1. stays in one place, justifying the assumption with respect to the facts that there
 - a) arrange, prepare or commit crimes or persons
 - b) conceal offenders
2. resides in a transport or supply unit or facility, a public transportation, office building or other vulnerable

This is based purely on the intuition and experience of the individual officers in the special police services without the need for hard factual evidence or prior police intelligence. Therefore, it is possible to check persons as to: (a) whether they meet the legal requirements for legal entry or exit, (b) whether they must be refused at the point of entry in terms of potential threats to public security and order, or (c) they can be interdicted from leaving the country.⁸⁸³

In his publications on Political Geography (1897), Ratzel⁸⁸⁴ dealt intensively with the relationship between a borderline and a border area (see the explanations in point 7.2). For Ratzel, the border area had an empirically more frequent appearance and considerably higher significance than a borderline.⁸⁸⁵ Through his

object or thereof in close proximity and there is reason to believe that their crimes to be committed by persons in or on those objects people or the objects themselves are in immediate danger, and to establish the identity on the basis of the risk assessment or the person related evidence is required, or

3. is encountered at a control point that has been set up by the Federal Police to

a) serious crimes or

b) the offenses defined in § 27 of the Assembly Law to prevent the facts speak for the commission.

(3) The federal police to take the necessary measures to establish the identity. You can stop the person concerned, in particular ask him about his identity and demand that he hand over identity documents for verification. When police control of cross-border traffic, the Federal Police may also require that the person concerned submits crossing the border. The person can be arrested and taken to the office when his identity or his permission to cross the border or otherwise cannot be determined only with considerable difficulty. Under the conditions of Theorem 4 to the person concerned and he is carrying things for items that are used to establish the identity, are searched.

(4) The Federal Police may, to the extent necessary to perform their duties, require that vouchers, certificates, or other proof documents are handed out for examination if the person concerned is obliged by virtue of a legal provision to carry these documents.

(5) The Federal Police may require that individuals identify themselves, which means the federal police (§ 1, § 3) or the headquarters of a constitutional organ or a federal ministry (§ 5) wish to enter or are found therein. Of the persons referred to in clause 1 objects carried may be searched at the inlet control if this is necessary due to the risk assessment or the person related clues.

Bavarian Constitutional Court (2006): decision of 7th February 2006 in the context of a complaint's procedure, file: Vf. 69-VI-04. "The provisions on the police search of carried items within the framework of the so-called dragnet controls (Article 22 (1) No. 1 in conjunction with Article 21 (1) (3) and Article 13 (1) (5) of the Police Act) are compatible with the Bavarian Constitution. They must be interpreted as meaning that the police are only allowed to exercise the power to intervene in the event of an increased abstract danger." Available from: <http://www.bayern.verfassungsgerichtshof.de/69-VI-04-Entscheidung.htm> (Accessed on 24th February 2017).

⁸⁸³ Passport Act (*PassG*) of 19th April 1986 (Federal Law Gazette Part I p. 537), as last amended by Article 8 of the Act of 25th July 2013 (Federal Law Gazette Part I p.2749)

Section 10 - Prohibition on travel out of the country

(1) The authorities responsible for policing cross-border traffic shall prohibit any German from leaving the country who has been refused a passport pursuant to Section 7 (1), or whose passport has been revoked pursuant to Section 8 or who is subject to an order pursuant to Section 6 (7) of the Identity Cards Act. The authorities may prohibit any German from leaving the country who is not carrying a valid passport or passport substitute allowing him/her to leave the country or if there are reasonable grounds to believe that he/she fulfils the conditions listed in Section 7 (1). The authorities may prohibit any German from leaving the country if there are reasonable grounds to believe that the passport's area or length of validity should be restricted pursuant to Section 7 (2) first sentence.

(2) In exceptional cases, the authorities responsible for policing cross-border traffic may permit a German who should be prohibited from leaving the country pursuant to (1) first sentence to leave the country, if he/she has a credible and urgent reason for having to leave the country.

(3) The authorities may not refuse any German entry to the area of application of this Act.

⁸⁸⁴ Göke, Pascal / Wirths, Johannes / Lippuner, Roland (2015): *Konstruktion und Kontrolle. Zur Raumordnung sozialer Kontrolle*. P.78.

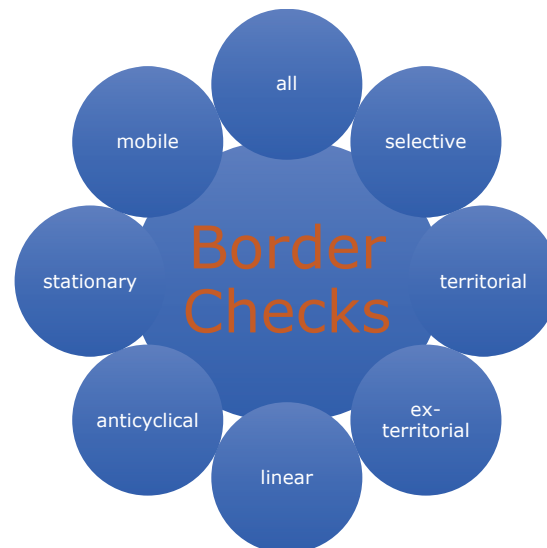
⁸⁸⁵ Lange, Katharina (2014): *Hundert Jahre Erster Weltkrieg – The global south between the fronts, boundaries on the rubbing board. The First World War and its consequences in the Middle East* Available from: <http://www.inkota.de/material/suedlink-inkota-brief/168-hundert-jahre-erster-weltkrieg/katharina-lange/> (Accessed on 25th February 2017).

Gehrig, Urs (2013): "Churchill's pen stroke - British-French capture plans [...] first as former war minister, then as a colonial minister, Churchill makes decisions that will have globally disastrous consequences. Today's map of the Middle East, the rise of Saddam Hussein and the Gulf War are the legacy of a conference organised

researches, Ratzel has concluded that in most cases, the nature has created boundaries and border areas, and thus he concluded borderlines as artificial. Based on his analysis, a linear spatial delimitation of a territory should abstract and reduce the complexity of the exertion of a state's monopoly on the legitimate use of power and ensure confidence of law enforcement. To this Ratzel remarked: "The border line is [...] an intellectual reminder, a relief of our thinking, something like to an average number."⁸⁸⁶

These conceptual approaches were practically administered with the implementation of the *Schengen* Convention and led to the abandonment of the classical stationary and therefore also static border control at the borderline to the mobile and flexible monitoring of the border area.

Figure 14.2.1. – Various models of border control (own illustration)



However, some politicians made a public spectacle of demolishing or cutting through the customs barriers, whilst creating new challenges and opening up new opportunities for innovation in the overall area of BSM-related issues. To this end, necessary and appropriate compensatory measures had to be newly developed and successfully implemented. As a result, the responsible ministries of the *Schengen* states were encouraged to expand border control and border surveillance activities in moving away from the borderline into the border area. In doing so, first of all it was necessary to establish the corresponding legal

by Churchill in Cairo in March 1921. Within a few years, Churchill and his co-workers separated new lands in the Middle East. The border demarcations were partly so unfortunate that they shape the conflicts up to the present day, the current civil war in Syria including [...]" Available from: <http://www.weltwoche.ch/ausgaben/2013-36/churchills-federstrich-die-weltwoche-ausgabe-362013.html>. (Accessed on 25th February 2017).

⁸⁸⁶ Ratzel, Friedrich (1897): *Politische Geographie, oder die Geographie der Staaten, des Verkehrs und des Krieges*. 1897. P.448.

requirements regarding effective emergency response and the original task of law enforcement agencies in terms of prevention before prosecution.

In Germany, Article 13 (1) of the Bavarian Police Act is the statutory basis, which regulates random police checks of persons on federal motorways and thoroughfares. It says: “[...] the police can verify the identity of a person who stays in the border area up to a depth of 30 km as well as on transit roads [...] and in public facilities of international traffic for the prevention or suppression of illegal crossing of the land border or illegal stay and combating cross-border crime, [...]”.⁸⁸⁷ Border surveillance and border control between two countries are no longer carried out solely along the borderlines or at BCP’s but are being shifted into the border areas inland of countries. Under ideal circumstances, the surveillance of border areas between neighbouring countries should work in both directions. By way of example, the *Schengen* agreement grants the law enforcement agencies of the respective adjacent *Schengen* state right of access, subject to certain circumstances – key word ‘hot pursuit’.⁸⁸⁸ Further aspects were discussed in the thematic area of developed ‘compensatory measures’ under point 8.7. and chapter 9.

14.3. Spatial relocation of the boundary (remote control)

The classical understanding of border control models subsumes a logical and natural understanding that territorial border lines of states and their officially defined BCP’s are perceived as the places where checks take place and legitimate access rights are granted or denied. In this context, a BCP is to be understood where travellers, goods and services are checked prior to onward travel. Here, state-legitimate actors have almost all the authority with regards to registration and control.⁸⁸⁹ Technical innovations, thematic expansions and spatial relocations of border checks result in new perspectives with regard to timely advanced checks of persons before reaching the target country. The singular and legally legitimate control of a person, in its conventional classical form with regards to the determination of legal entry into the target country, is therefore obsolete and belongs to border police romanticism and former ‘toll bar nostalgia’.

⁸⁸⁷ Law on the tasks and powers of the Bavarian State Police (*PAG*), as amended by the notice of 14th September 1990. GVBl 1990, p. 397 Last modified on 24.07.2001, GVBl, p.348.

⁸⁸⁸ *Schengen acquis* – Convention implementing the *Schengen* Agreement of 14th June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders Official Journal L 239, 22/09/2000 p.0019–0062. Article 41 Hot pursuit.

⁸⁸⁹ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.46.
Zolberg, Aristide (2011): *Managing a world on the move*. P.222.

The opportunities of security-relevant checks in a cross-border context have multiplied and are no longer limited to stationary border checks at official BCP's along defined borderlines. The absolute necessity of open, and at the same time, secure borders in the age of globalisation and an ever-increasing number of travellers, will only be achieved if new approaches towards innovative (border) police checks and their mechanisms are redefined in the international context and can become linked into effective work flow processes. Laube points out that a spatial relocation of border checks will not be deemed as a side effect, but as a real goal in the change process of BSM and thus a new perspective on strategically used spatial practices in the context of global security policies.⁸⁹⁰

Thus, the spatial relocation of border checks becomes an effective instrument, which appears as an encouraging model in terms of improved cross-border cooperation and managing new identified challenges related to transnational threats. What appears at first glance to be transparent and reasonable, at second glance becomes a realisation of just how complex and complicated it is to implement such projects successfully and sustainably.

- What motivates a state to relocate its border control activities outside its national territory?
- What advantages generate these types of intervention at other places?
- Which actors can effectively implement such initiatives?
- Is this exclusively a matter between two states, or do international organisations also play a role?

The list of possible questions is manifold. Nevertheless, this instrument in itself is not really new, it is the development of further ideas combined with creative technical opportunities that seems to be a recent transformation. As far back as the mid-1990s, were the first written developments published, which in the beginning analysed the phenomenon of spatially relocated border checks as a great innovation in applied administrative legal procedures and was described by Zolberg as 'remote border control'.⁸⁹¹ One of the essential advantages of a relocated border control is that border officials of the target country can get in contact with travellers, even though the persons are still distant in location and time from the target country, and before these persons start their journey to the desired destination country.

⁸⁹⁰ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.18.

⁸⁹¹ Zolberg, Aristide / Bast, Jürgen (Ed.) (1997): „The Archaeology of Remote Control“ in: Bast, J. (2011): *Right of residence and migration control*, p.39.

Thus, the term 'remote border control' also subsumes elements of steering control, which can develop desired interventions outside of national territory. In theory, a person can get in contact with extraterritorial border officers more than once if a person is on the way from country A to country B and needs to traverse several borders. This would primarily be the case for irregular migrants who would cross several countries or even continents before reaching their desired destination country. Spatially and temporally flexible controls also include opportunities to concentrate on mobile groups and not only on individuals. Laube comments on this: "Therefore, the territorial relocation of border control is defined as a strategy of the target country in which one's own resources (human, logistical or financial) are deployed in a place outside of the national territory in order to intervene and regulate the mobility of persons that are actually or potentially on their move to this target country."⁸⁹²

Laube's approach focuses on the territorial relocation of border control but considers only the possible entry of the individual and is therefore incomplete. In fact, border controls can be relocated both in terms of location and time and can be carried out prior to actual entry and exit. The territorial relocation of the border control represents the physical act and border officials seconded from the destination country are carrying out border checks on a different territory before the traveller reaches this country.

This is ensured through border officials from state border guards or border police (see point 11.4), or some of these duties are transferred to external actors (see point 8.6), or international organisations are involved in the areas of border management and migration (see chapter 13). This will implement additional filters in the process of access controls of travellers to a specific target country.⁸⁹³ In addition to the physical act of the spatially displaced border control, the prior checking of the personal data of the traveller by electronically transmitted data (e.g., ESTA, API, PNR, Air Travel Cycle) is used.

A possible description of border controls outside the national territory could

⁸⁹² Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.51.

⁸⁹³ EC Guidelines for Integrated Border Management (IBM) in the Western Balkans (2007). Security at external borders is the capacity of the external borders to constitute a barrage, or at least a reliable filter, for the EU MS against potential threats to:

- a) the effectiveness of checks and surveillance;
- b) compliance with Community or national regulations;
- c) the level of internal security of the common area of freedom of movement;
- d) law and order or the national security of the Member States, except as regards the military defence of the external borders of the European Union against aggression where one or more third countries commit it openly or claims responsibility for it. P.7.

therefore be as follows:

“Exterritorial border checks are advanced border controls of persons and their carried items, which take place outside the national territory, either on the territory of other states, or in international areas (e.g., international waters, transit areas), with the provision of own resources and logistics. They are highly relevant in the temporal as well as the local context, both for entry and exit. This instrument provides opportunities for the management of migration and better assessment of the situation in the strategic, operational and tactical behaviour of BSM law enforcement agencies. These measures require the necessary legal principles, special forms of competence and additional tools in areas outside the classical self-conception of borderlines and border areas. The effective implementation of spatially displaced border controls requires close bilateral or multilateral cooperation and involves a high degree of information exchange.”⁸⁹⁴

State initiatives to implement a territorial relocation of border controls are usually included in a strategy paper (see also points 3.2, 8.1, 11.10).⁸⁹⁵ The individual motivation of a state to carry out border controls outside its own territory require a considerable amount of personnel, technical resources and budget. For example, for several years the EU border agency Frontex supports Greece with qualified EU MS border experts to monitor and control the border towards Turkey, in order to combat irregular migration and other forms of cross-border crime.⁸⁹⁶ In addition to such holistic approaches as organised by Frontex, individual EU MS as well as non-EU countries have their own interests at heart when implementing their individual strategies of extraterritorial border controls.

The classic examples for this are the posting of

- a) Border Police Support Officers Abroad
- b) Border Police Liaison Officers
- c) Travel Document and Visa Advisers⁸⁹⁷

These experts are (a) involved in Frontex operations at the external EU borders; (b) seconded to the bilateral embassies to provide information, assessments of

⁸⁹⁴ Note from author: Own description.

⁸⁹⁵ Federal Ministry of the Interior (2014): Security – International Cooperation. Strategy of the Federal Government on forward displacement to combat drug abuse, organised crime and terrorism. Available from: http://www.bmi.bund.de/DE/Themen/Sicherheit/Internationale-Zusammenarbeit/Polizeiliche-Zusammenarbeit/polizeiliche-zusammenarbeit_node.html (Accessed on 28th February 2017).

⁸⁹⁶ BPB (2010): Greece / Turkey: Frontex deployment and growth of irregular immigration, [...] first deployment of the Rapid Border Intervention Teams (RABIT), which was established in 2007, for border security purposes. Available from: <http://www.bpb.de/gesellschaft/migration/newsletter/56968/griechenland-tuerkei-frontex-einsatz-und-zuwachs-irregulaerer-einwanderung> (Accessed on 28th February 2017).

⁸⁹⁷ Note from the author: See also the discussion in chapter 11, point 11.4.

situations and risk analysis; and (c) in the areas of consular services and the control of passengers at international airports in the host country. Detailed descriptions of their activities were shown accordingly in section 11.4. Three classic examples with different implementations, but with the same aim of temporally relocated border controls to prevent foremost irregular migration as well as other forms of cross-border crime. Furthermore, the use of these experts in cooperation with private actors offers further opportunities to increase the control density in so-called 'Public Private Partnership Initiatives' (see point 8.6). In cooperation with state actors, appointed entrepreneurs and companies, concepts are developed and implemented, which should generate positive synergies and so-called 'win-win situations'.⁸⁹⁸ Passenger carriers were legally obligated to bear the costs of returning passengers if the traveller does not meet the minimum requirements for entry into the destination country.⁸⁹⁹ Similar procedures would also be applied if the person is refused at the entry control.⁹⁰⁰ Therefore, the carriers are looking for close cooperation with state border officials in order to achieve a maximum level of conformity with legal preconditions and required safety standards for travellers and their carried items, as well as basic checks of their travel documents. The carriers assume the function of a so-called 'gatekeeper' with the objective of filtering out as many passengers as possible who do not meet statutory conditions for a legal entry into the destination country.⁹⁰¹ Through their contribution, they want to avoid unnecessary costs, ensure a maximum degree of security, be perceived as reliable partners in cooperation with state BSM actors and thus achieve the greatest possible autonomy in the sense of a trusting partnership. Relocated border controls are not only taking place outside the national territory according to the motto: drifting away from the borderline to the border area and from the stationary border control to mobile and space-oriented surveillance.

⁸⁹⁸ Note from the author: A 'publicly appointed entity' is a natural or legal person who has received powers of administration to perform public functions. They exercise sovereign powers conferred by law or administrative act, but always act under their own name. 'Publicly appointed entities' can be regarded as authorities in the legal sense of the law (§ 1 VwVfG) and can issue separate administrative acts. Corresponding breaches of duty consequently lead to official liability.

⁸⁹⁹ 'Warsaw Convention' is a multilateral treaty adhered to by the United States in 1934, which establishes a uniform set of substantive and procedural rules governing international air transportation. The 'Warsaw Convention' is the informal title for Convention for the unification of certain rules relating to international transportation by air, concluded at Warsaw, Poland, opened for signature on 12th October 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C.A. app. at 430 (West Supp. 1976) (adhered to by the United States 27th June, 1934). Liability of the Carrier.

⁹⁰⁰ German Residence Act in the version of the notice of 25th February 2008 (Federal Law Gazette I p.162), which has been amended by Article 1 of the Law of 23rd December 2014 (Federal Law Gazette I p.2439). Section 15 – Entry and Stay.

⁹⁰¹ Note from the author: The term 'gatekeeper' (in this context, also to be understood as access control) is interpreted here as a significant influencing factor for the further decision-making process.

Controls with regards to combating cross-border crime are also transferred from the borderline into a border district and further into the hinterlands of a country. Examples of this are police checks at stations (e.g., trains and buses), moving trains and expressways, motorway restaurants, thoroughfares and dangerous, or so-called 'discredited places'⁹⁰². These controls are generally aimed at detecting violations of the Resident Act and, in particular, of overstayers (see points 5.5 and 10.3).

An important criterion for the control of persons in a chronological coherence to the border crossing in comparison to the checks carried out inland of a country is the legal starting point. While persons can be subject to a random border police check in the phase of crossing the border, this means that police officers do not need any concrete evidence and can carry out the control without any suspicion. Police officers in general, however, in order to carry out spot checks at controls in Germany need to have legitimate reasons to do so in terms of concrete suspicion of an irregularity.⁹⁰³ Otherwise the control is classified as unlawful and contravenes the constitutional right to informational self-determination (see point 9.4.).⁹⁰⁴

This clearly contradicts the principle of free movement, but it is used as a common practice to combat the phenomenon of 'overstayers'. The concept of 'rear area monitoring' or 'rear area controls' has been established quietly. However, this does not refer to 'rear area controls' described by Strüver, which have been carried out in border areas since the 1990s that were applied *de facto* like random police checks (keyword: dragnet control).⁹⁰⁵ Rather, the controls in the border districts

⁹⁰² Act on the Tasks and Powers of the Bavarian State Police, as amended by the notice of 14th September 1990 (last modified amendment of 22nd July 2014).

Section 13 - Identity verification and check of qualification certificates

(1) The police may verify the identity of a person

1. to averting a danger,
2. if the person is in a place,
 - a) which is to be assumed on the basis of actual evidence that
 - aa) persons arrange, prepare or commit criminal offenses,
 - bb) persons stay without required residence permits, or
 - cc) hiding offenders, or
 - b) where persons work as prostitutes,
3. [...]

⁹⁰³ Ibid.

⁹⁰⁴ Note from the author: The term informational self-determination was first used in the context of a German constitutional ruling relating to personal information collected during the census in 1983. The German term is *Recht auf informationelle Selbstbestimmung* (RIS) Section 2 (1) of the Basic Law in connection with Section 1 (1) of the Basic Law. On that occasion, the German Federal Constitutional Court ruled that: "[...] in the context of modern data processing, the protection of the individual against unlimited collection, storage, use and disclosure of his/her personal data is encompassed by the general personal rights of the German constitution. This basic right warrants in this respect the capacity of the individual to determine in principle the disclosure and use of his/her personal data. Limitations to this informational self-determination are allowed only in case of overriding public interest."

⁹⁰⁵ Strüver, Anke (2005): Stories of the „Boring Border“: The Dutch–German Borderscape in People’s Mind. P.146.

were refined and further moved into the inland of countries. Laube refers to the relocation of border controls both externally and internally, and in contrast to the relocation of border checks in an exterritorial character, she speaks of related border checks of a "[...] push of the border inwards."⁹⁰⁶ Laube argues that if border control measures are implemented before, on and behind a border, the state succeeds in expanding its scope for control actions against identified target persons, i.e., travellers and migrants, which, however, is clearly in contrast to the *Schengen Convention*.

An excerpt from the *Schengen acquis*: "Alternative border checks are incompatible with the provisions of the *Schengen acquis* on the abolition of controls. These are systematic person controls on the occasion of the border crossing in the rear border area or within certain border zones. This shall be without prejudice to Section 2 (2)."

Finally, it should be discussed that the target groups differ in relation to the relocated border controls. In the case of the spatially displaced border controls outside the state area, all travellers are to be checked as far as possible, the controls in the case of compensatory measures and/or 'rear area controls' are focussed on specific target groups such as overstayers, THB and people smuggling, illicit trafficking of drugs, international vehicle crime and property criminality, as well as other phenomena of cross-border OC. The understanding of how border controls can be relocated thus attains a further dimension in its possible applications. It is not only limited to the frontier line and border zones, but also to the inland of a State, to areas which are remote from border areas and border lines, and at first glance do not have a classical link to BSM-related issues.

14.4. Instruments for the relocation of border checks

An essential advantage of stationary border controls is the visual contact with each vehicle and its passengers, who want to cross a BCP. In a safe environment, the border officer has the option to decide, which vehicle is to be stopped and who is to be checked.⁹⁰⁷ The abolition of stationary border controls with a simultaneous flexibilization of the control area raises the question of who are the respective targets of control in the flow of inbound and outbound traffic? In the case of stationary border controls, it is theoretically possible to check up to several

⁹⁰⁶ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P. 60.

⁹⁰⁷ Note from the author: Safe environment means adequate lighting and illumination of the control panel, roofing, control booths with possibilities for inquiry, communication, enhanced security through the presence of armed personnel from other authorities, e.g., Customs service.

hundred people within an hour, in comparison to only a few persons in mobile controls.⁹⁰⁸ Thus, these compensatory measures (see point 8.7) must be geared specifically to identified persons or groups of persons and their means of transport used, which are of considerable importance both on entry and exit.⁹⁰⁹ The control area and its dimension is a decisive criterion with regards to the transition of the description of extraterritorial border controls. States, which shift their border controls, must, in principle, consider two aspects for the effective implementation of their project:

1. Determination of target groups whose mobility is to be controlled by spatially displaced border controls (remote control)

2. Definition and use of the instruments to achieve the identified objectives

Some instruments of relocated border controls are well known and some of them have already been implemented and tested but may not have necessarily been understood as such. The known classical ranges of relocated border controls are shown in a non-exhaustive list in alphabetical order as follows:

- Anticipatory electronic transmission of personal data (e.g., ESTA, API, PNR, Air Travel Cycle)
- Checks at EU external borders organised by Frontex and implemented by EU MS border officers
- Cooperation agreements with carriers (air, water, land) through Private Public Partnership Initiatives
- Cooperation with the EU Border Agency Frontex
- Cooperation with international organisations, such as CTED, CTITF, IMO, IOM, UNOCT, UNODC and others
- EU initiatives to strengthen BSM infrastructures in non-EU countries to enhance border control standards when travelling to EU MS (e.g., IPA, ENP, EUBAM, BOMCA)
- Exchange of data and information for assessments of situations under bilateral or multilateral agreements (for example EURODAC, EUROPOL,

⁹⁰⁸ Note from the author: It is quite possible that several hundred persons can be checked within 60 minutes, for example at the airport, passengers in busses, international trains. In the case of controls in flowing traffic, the vehicle must be stopped and parked in a parking space in order to ensure an orderly control of the persons and their goods carried.

⁹⁰⁹ Note from the author: Entry checks are focusing on combating illegal entry and stay, smuggling, criminal offenses related to the law on residence, as well as other offenses. Departure checks are, *inter alia*, focusing on international vehicle crime (theft, stolen goods and embezzlement of high-quality motor vehicles from Germany or transit), stolen goods (shipment of burglary from Germany in connection with burglaries), narcotics legislation, as well as other criminal offenses.

EUROSUR, Frontex, ILECU)

- Frontex CIRAM risk analyses and derived recommendations
- Issuance of visas in embassies and consulates
- Joint border checks in international trains
- Joint Border Contact Centres
- Joint BCP's
- Joint patrols in border areas between neighbouring states
- Liability of carriers
- Passenger checks at the apron and in transit areas at international airports
- Readmission agreements with countries of origin and transit countries
- Regulation on the use of passenger data records (i.e., API and PNR)
- Rescue of boat people in international waters
- Secondment of Border Police Liaison Officers, Border Police Support Officers Abroad, and Travel Document and Visa Advisers
- Search notices posted by INTERPOL and EUROPOL
- Safe countries of origin and/or safe third country regulations

In her explanations, Laube identified only 13 instruments in the area of relocated border controls and divides them into three spatial areas: a) in the countries of origin, b) transit, and c) the place of arrival. This illustrates the various phases of the traveller, which instruments of extraterritorial border checks shall be applied and at which juncture.⁹¹⁰

14.5. Advanced Passenger Information (API)

Personal Name Record (PNR)

A very interesting case study is the 'Air Travel Cycle', a model that explains the various phases of air passengers and possible intervention potentials of state authorities responsible for BSM-related issues and border control standards, as well as other state actors responsible for public security and order.⁹¹¹ An initial pictorial description of this process is given in Annex 9 of the work.

The 'Air Travel Cycle' is divided in five phases as follows:

- Phase 1 - Pre-departure
- Phase 2 - Departure
- Phase 3 - Pre-Arrival

⁹¹⁰ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. Table 6.1. P.151.

⁹¹¹ UN CTITF-CTED Working Group (2015): Five Phases of the 'Air Travel Cycle'.

Note from the author: The author was a member of this working group in the development and implementation of this 'Air Travel Cycle' model.

- Phase 4 - Arrival
- Phase 5 - Post-arrival



Phase 1 – Pre-Departure

Phase 1 begins with the planning of the trip and what conditions need to be fulfilled for legal entry into the target country and encompasses all steps starting from the decision-making up to the check-in. Possible conditions are if travellers need to provide other documents (e.g., vaccination certificates, health insurance certificate) or additional requirements, whether you need a visa for the target country, or other permissions (e.g., Electronic System for Travel Authorisation – ESTA to travel to the US).⁹¹² Both, a visa and the ESTA, are to be understood as statutory preconditions for legal entry, not to be confused with permission for a permanent stay in the country.

Visa obligations for a given foreign country are decided principally on three factors:

1. The existing state of the bilateral relationship between the country of national origin and the destination state
2. The perceived likelihood of the overstay of one’s visa or abuse of immigration status, based on a thorough review of the applicant’s representations as well as historical statistics (keyword: overstayer⁹¹³)
3. Other national security-related concerns⁹¹⁴

The state ministries responsible for foreign affairs and internal security (border control) play an important role in the phase before leaving the country of origin and in particular, whether the travellers meet the requirements for entry into the target country.



Phase 2 – Departure

This phase begins with the check-in and ends with the boarding of the aircraft after completion of all security and border checks. The enforcement of all mandatory control measures is solely the responsibility of the government authorities of the

⁹¹² Note from the author: See further explanations in point 7.2. and 14.5.

⁹¹³ Note from the author: See further explanations under point 5.4.

⁹¹⁴ Note from the author: See further explanations under Chapter 7.

country of departure according to the sovereignty and territorial principle. However, the government authorities of the target country can already exert their influence here, obliging both the state authorities of the country of origin of the travellers and the airlines to carry out appropriate checks.⁹¹⁵ What is crucial here is the level of trustworthy cooperation between the security authorities of the participating countries, as well as the airlines.⁹¹⁶

There are two decisive factors to be emphasised:

1. The capacities and competencies in the exit control, both in terms of legal conformity, as well as security-relevant aspects in order to ward off dangers to public security and order
2. Availability of sufficient capacities in terms of personnel and technical equipment

International airports must have sufficient technical equipment so as to ensure minimum standards with regard to the necessary checks on persons and their carried items.⁹¹⁷ Air carriers also play a crucial part in the departure phase. During the passenger check-in process, air carrier staffs verify that passengers possess appropriate travel documents – including, when applicable, necessary visas – to enter the destination country. At this time, high-risk passengers may also be identified through vetting against national security data sets and international watch lists (lists of persons who are under observation). Other important actors in Phase 2 of the cycle are the customs service, border guards or border police, immigration authorities, national police officers, private security companies and the airport operators.



Phase 3 – Pre-Arrival

The pre-arrival phase begins when a passenger has boarded an aircraft and lasts throughout the course of physical transit. A State's border law enforcement agencies are now starting to work while the aircraft is in the air. The authorities of the target country receive the data of the flight travellers in standardised

⁹¹⁵ Note from the author: See further explanations under Chapter 14.

⁹¹⁶ Note from the author: These can be more than two countries (origin and destination) when it is open-jaw flight or flights with stop over.

⁹¹⁷ International Civil Aviation Organisation (2009): Security at international airports. ICAO Annex 17 – Security, 8th Edition (2006), and ICAO Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference, Doc. 8973/6, 200. Section 7.4., p.6.

procedures. Furthermore, the border authorities of the country of origin may provide additional information obtained in the context of travellers with certain suspicious activities, which were not sufficient for the interdiction of the journey. The automated pass-on of these data (APIS - Advanced Passenger Information System) allows the authorities of the target country to carry out electronic data checks before the passenger sets foot in the target country. This allows the national BSM authorities of the target country to undertake the following steps in anticipatory obedience:

1. Checking of all transmitted personal data and document numbers (passports, ID cards, visa) against national and international search files as well as watch lists
2. Implementing measures to identify persons with a particular risk profile
3. Taking precautionary measures to separate high-risk persons from other travellers

API data are, in addition to the biometric data: Family name, first name, date of birth, gender, number of the travel document, date of issue and expiry, issuing authority of the travel document, passenger data records and other technical passenger information. The main difference in data collection between the US and the EU is that the US always insists on the provision of the data while the EU applies the data on a case-by-case basis. In Germany, the EU Directive is implemented into national law by Sections 32 to 37 of the Federal Police Act.⁹¹⁸



Phase 4 – Arrival

The arrival phase typically begins when a passenger disembarks from the aircraft and moves to the arrival zone within the airport facility where the person must present him/herself before the border police, border guards or immigration officer. The decisions of the principal national border control authority made at the point of arrival may constitute the most critical one of the entire travel cycle. Here it is decided whether the person is allowed to enter or will be rejected.⁹¹⁹ In the absence of an API or PNR system or the Air Travel Cycle, the entry control provided through border police/border guards or immigration service will be the first

⁹¹⁸ Federal Police Act of 19th October 1994 (Federal Law Gazette I, p. 2978, 2979), which has been amended by Article 2 of the Act of 23rd February 2017 (Federal Law Gazette I p.298).

⁹¹⁹ Note from the author: See further explanations under point 5.4.2.

opportunity to acquire and assess traveller data. Depending on resource levels and a State's willingness to avoid long queues upon arrival, an initial questioning may last no longer than 30-90 seconds. This is not an adequate period of time to make consistently thorough and accurate admission decisions if the control officer must manually review the passport and visa, manually query any relevant databases, ascertain the passenger's travel history and purpose for travel, and then formulate and ask any questions required to make a decision for entry or refusal. Given the challenges of performing thorough initial border checks in less than 90 seconds, border control officials should, to the greatest extent possible, automate the first-line-control to permit officers to spend their limited time meaningfully interviewing the traveller. After the completion of the border control, the entry into the target country is deemed completed. Subsequently, customs control, i.e., the announcement of goods to be imported into the country, may be carried out. Key players being responsible for the entry control are the border police, border guards, immigration agencies, customs service and possibly other government enforcement agencies due to special circumstances such as threats from diseases such as Ebola.⁹²⁰

Border agency officials capable in interview techniques are critical. Over time, authorities have developed best practices for border control training. State's border agencies adopting these best practices should do so in a way consistent with international human rights standards, including the integration of gender-sensitive approaches. It is important to note that face-to-face interviews are separate to the technology processes that support receiving authorities. Asking intelligent questions is vital to identifying certain threats. Border officials must know what they are looking for and how to translate that into questions that will yield relevant insights. In all cases, front-line officials should not only have the opportunity for primary interviews, but also secondary screening measures. Secondary screening allows for more comprehensive reviews of specific passengers for admissibility, among other law enforcement and national security purposes (depending on the agency carrying out admissibility decisions). Both interviews and travel document examination should take place simultaneously following the phase models 2-level interview screening and 3-line document checks.

⁹²⁰ Note from the author: See further explanations under point 3.4., 7.3. und 7.7.

Phase 5 – Post–Arrival

The reproducibility of the timeline after the arrival of a passenger is probably the most difficult. Only after the passenger has entered the target country, can law enforcement officials note factual indications of a crime or that the person could pose a significant threat to national security interests (for example evidence of highly virulent diseases). Once a passenger has completed the processes of pre-departure, departure, pre-arrival, and arrival, the complex international air passenger security apparatus has been virtually exhausted for the journey. From this point onwards, competent state enforcement authorities have to take control of all criminal procedural instruments for determining the actual physical location of this person. If authorities arrest and process an individual suspected of a crime, and the citizenship/status of that individual is in doubt, police officers should take biometric and biographic information and run it against border and immigration databases to determine if the person has been lawfully admitted. National authorities are able to scan national databases, cross-checked with available international data. At this point, depending on national laws and regulations, as well as the requirements of international human rights law, national police authorities sometimes can request local jurisdiction to detain the individual or persons for a determined amount of time for the purposes of starting the appropriate removal process (if this outcome is preferred to using the criminal justice system to prosecute the person for the underlying criminal offense for which s/he was arrested).

API – Advanced Passenger Information and **PNR** – Personal Name Record

API systems manage the collection and forwarding of biometric data⁹²¹ and personal data⁹²² of the passenger as well as other relevant flight data⁹²³ by the responsible institutions and their secure transmission to the border control

⁹²¹ Federal Foreign Office (2015): The introduction of biometric features in travel documents is based on agreement within the EU and EU MS that will provide their passports with appropriate storage chips that store fingerprints and other biometric features such as photo, personal data, and other administrative data. Available from: <http://www.auswaertiges-amt.de/DE/Infoservice/FAQ/Reisedokumente/08a-BiometrischerPass.html?nn=383016> (Accessed on 1st March 2017).

⁹²² *Juristisches Lexikon* (2015): Personal data determine the identity of a person. This includes, in particular, the first name, surname, date of birth, family status, occupation, place of residence, dwelling and nationality. Available from: <http://juristisches-lexikon.ra-kdk.de/eintrag/Personalien.html> (Accessed on 1st March 2017).

⁹²³ International Air Transportation Association - IATA (2015): Flight Data eXchange (FDX). These are data related to the passenger, baggage, relevant travel data, passport data, payment methods and others. Available from: <http://www.iata.org/services/statistics/qadm/Pages/fdx.aspx> (Accessed on 1st March 2017).

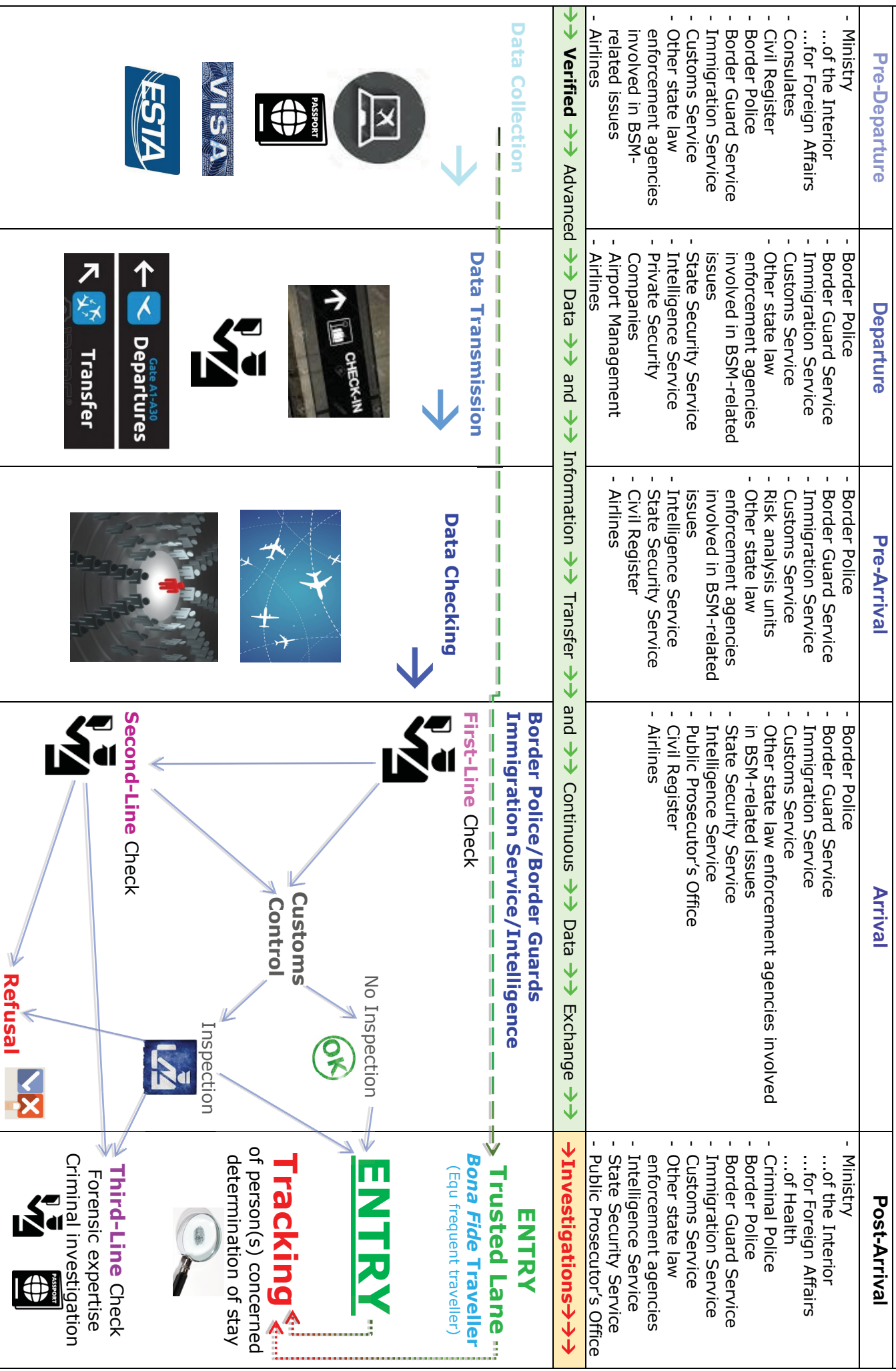
authorities in the country of destination. API can serve as decision guidance for the respective border control authorities before a passenger can board an airplane or leave the airport at the destination airport.⁹²⁴ The data are transmitted to the relevant border control authorities of the destination country before departure and are designed to effectively create border controls in which passengers with an increased risk profile can be subject to more precise and targeted control at the time of entry. API thus supports the efficient and speedy handling of high numbers of air passengers, while at the same time ensuring public safety and order and strengthening national security.

In the PNR⁹²⁵, or also the passenger data record, all data and significant transactions relating to a flight booking are stored in the so-called computer reservation system (CRS), including all other bookings relating to the flight journey such as hotel and car rental bookings. These data are collected for both a single air passenger as well as the group of passengers he/she may be travelling with, such as a joint trip. In general, the PNR system is a logistical requirement for airlines to exchange necessary information when a passenger requires several flights with different airlines to get to their destination ('interlining'). Compared to the API, the PNR is much more comprehensive and contains more than 30 different data areas, including personal data, credit card and communication data, flight data, luggage and reservation data, flight miles and much more. This allows law enforcement officials to define far more precise profiles of respective air passengers.

924 Note from the author: See further explanations under point 14.4.

925 European Commission (2015): Migration and Home Affairs. PNR – Passenger Name Record. Available from: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/passenger-name-record/index_en.htm (Accessed on 1st March 2017).

Figure 14.5.1 – Air Travel Cycle new (own presentation)



14.6. Preliminary conclusions

Transnational threats and their potential risks for internal and external security require constant review and adaptation to have appropriate security strategies and effective control mechanisms in place. As a result, the models to implement remote border checks becomes an indispensable part of national security policies in the area of security and must also be taken into account in the Common Foreign and Security Policy (CFSP). Travellers encounter officials of the respective state control authorities outside the destination country, a place where the frontier border control is used as a control instrument and the rules for legal access to the target country are enforced. It is, however, necessary to differentiate whether relocated border controls are carried out systematically and for all travellers, or only on a selective basis taking into account cost-benefit relations. Therefore, security interests of the countries that second border control experts to foreign countries⁹²⁶ are concentrated above all on intersections of international traffic flows (so-called hubs or aeronautical hubs), which are classified as problematic and high-risk and for the respective target countries of special and strategic interest within the framework of security.⁹²⁷ As discussed, these seconded experts have no legal powers of enforcement in the territory of another State and can only act as advisors. On the basis of bilateral agreements, the respective tasks of the seconded experts can then be described and defined. This principle also applies analogously to secondments of EU MS border experts in Frontex operations on the territory of another EU MS (see point 10.3.1.).

Similar procedures for extraterritorial selective border controls are also used in the surveillance of international maritime routes. In the context of the Frontex deployment 'Triton' and 'Sophia' (see point 5.8) refugee boats can be localised and identified with the aid of modern technical means and then targeted to: (a) take measures to protect life and limb; and (b) take measures balanced in terms of legally protected interests and proportionality related to BSM issues and border control. In contrast to an extraterritorial physical selective border control stands the usage of a permanent and systematically relocated border control system, which

⁹²⁶ Note from the author: Border Police Support Officers Abroad, Border Police Liaison Officers and Travel Document and Visa Advisers – see further explanations under point 11.4.

Airports as hubs of international traffic flows are then classified as problematic and risky if, due to the number of cases in the target countries, these airports can be used deliberately to leave the country without any bigger problems and then enter in the destination country and go illegal and underground. Either these persons then make asylum applications, or travel legally (no visa requirement), then enter illegally into other countries.

⁹²⁷ Wagner, Johann (2008, 2009): Comprehensive Risk Analysis of the Turkish Border Management System. 2008 – "Assistance to the EC Delegation in the Field of Integrated Border Management in Turkey, Project TR07/IB/JH/04". International Airport Istanbul-Attatürk.

does not require the permanent deployment of border officials on a different state territory, such as the ESTA of the United States of America. Notwithstanding the fact that, for example, EU travellers are exempt from visa requirements, all travellers to the US must apply for the ESTA accordingly and can only hope to enter the United States in the case of a positive decision.⁹²⁸ The fact of the provisional issuance of the ESTA certificate alone does not, however, claim any legal entitlement for entry into the USA. The United States has introduced this approval procedure to ensure that only those persons from participating countries are allowed visa-free travel, which meets the high security standards for entry control.⁹²⁹ A further advantage is that persons who are not eligible to enter the US can be filtered out beforehand. Today's on-line registration replaces previous forms, which were distributed on airplanes and ships and had to be presented at the point of entry to the immigration service. The ESTA form has a validity of two years in case of a positive notification and allows several visits to the USA up to a maximum duration of 90 days. Through the systematic introduction of the ESTA system, Laube compares the procedure to the issue of a 'mini-visa'.⁹³⁰ As described in point 9.3, the EU explores specific arrangements for the border crossing of *bona fide* travellers, which would give third-country nationals with low risk profiles a status of 'registered travellers'.⁹³¹ This status would be granted to the traveller on the basis of a test procedure and voluntary recognition of the target country introduced by all EU MS and would allow for a softer and simplified entry control on arrival in the target country. The test procedure could be carried out at the respective consulates or future planned common EU visa offices, i.e.,

⁹²⁸ U.S. Customs and Border Protection (2017): The Electronic System for Travel Authorisation (ESTA) is an automated system used to determine the eligibility of visitors to travel to the United States under the Visa Waiver Program (VWP) and whether such travel poses any law enforcement or security risk. ESTA approval authorises a traveller to board a carrier for travel to the United States under the VWP. Private carriers must be a signatory visa waiver program carrier. ESTA is not a visa. It does not meet the legal requirements to serve in lieu of a U.S. visa when a visa is required. Travellers that possess a valid U.S. visa may travel to the United States on that visa for the purpose it was issued. Travellers travelling on valid visas are not required to apply for an ESTA. In the same way that a valid visa does not guarantee admission to the United States, an approved ESTA is not a guarantee of admission to the United States. ESTA became mandatory 12th January 2009. VWP applicants are required to complete a blue Customs declaration upon arrival in the U.S. whether or not they have an ESTA authorisation. VWP travellers are no longer required to complete the green I-94W card. Available from: <https://esta.cbp.dhs.gov/esta> (Accessed on 3rd March 2017).

⁹²⁹ Ibid.

Participating countries for visa-free travel (Visa Waiver Program) are Australia, Belgium, Brunei, Czech Republic, Denmark, Germany, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Monaco, New Zealand, Netherlands, Norway, Portugal, San Marino, Sweden, Switzerland, Singapore, Slovakia, Slovenia, Spain, South Korea, and UK.

⁹³⁰ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.62.

⁹³¹ European Commission (2008): Communication of 13th February, 2008 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Preparing the next steps in border management in the European Union [COM(2008) 69 final - Not yet published in the Official Journal]. Next steps in border management in the EU. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14580&from=DE> (Accessed on 3rd March 2017).

where this status can be requested. *Bona fide* status must be given on the basis of jointly developed and accepted control criteria, which are binding on all EU MS.⁹³² While in the field of systematically established extraterritorial border controls like the described ESTA procedure, or even future planned *bona fide* status can be used permanently, this is legally not possible for secondments of border experts on the terrain of other states for systematically border controls. This would *de facto* mean the permanent establishment of relocated border control points to the territory of another state, which would be incompatible with international law and other conventions. The instruments of extraterritorial border controls are extensive and can be used effectively. The involvement of actors from private sectors is indispensable and has already proved itself in many ways (see point 8.6). The areas of the 'Public Private Partnership' certainly offer considerable potential for the development of interdisciplinary initiatives to improve efficient workflows through the involvement of all key stakeholders. The International Air Transport Association (IATA) recorded around 3.3 billion passengers for the year 2014, of which about one-third travelled internationally.⁹³³ This represents 800 million more passengers than in 2009, when a total of 2.5 billion people travelled by plane. In order to safeguard the principle of freedom of movement of persons in terms of open, and at the same time safe borders, there is a requirement for the highest safety standards in view of the enormously increasing frequency of travellers. 'Remote Control' in conjunction with 'Public Private Partnership' can be used here as effective and efficient instruments for the control of measures, which also include non-state actors and act as gatekeepers (see point 14.3).⁹³⁴

⁹³² Ibid.

Specific rules for the border crossing of *bona fide* travellers are in a non-exhaustive list: possession of a valid biometric passport, proof of sufficient financial resources, valid health insurance, invitation letter with commitment statement, as well as no indication of the security interests of the target country.

⁹³³ International Air Transport Association - IATA (2015): Global Passenger Survey. Available from: <http://www.iata.org/whatwedo/passenger/gps/pages/index.aspx> (Accessed on 3rd March 2017).

⁹³⁴ Note from the author: The private sector is already making significant contributions to international airports, such as security check and check whether travellers meet the requirements for legal entry into the destination country. In the same way, these actors can be trained in the detection of forged travel documents and visas, or in screening and profiling. They may include the officials of the border control authorities in the case of justified initial suspicious factors.

Chapter 15: Border management in transformation

15.1. Dimensions of borders – Three plus One

15.1.1. Land boundaries

Ultimately, the aspiration is for open borders with a simultaneous requirement for maximum security through the use of extensive and effective compensatory measures in accordance with the EU *acquis* and rule of law. However, the number of cases detected during the reinforced border controls at the G-7 summit and the resulting analyses have shown that the implementation of this project is more difficult than initially assumed.⁹³⁵ A return to the re-establishment of permanent stationary border controls between the *Schengen* states is (almost) impossible after the analysis of relevant facts with regard to proportionality and the principle of free movement and the *Schengen* Convention.⁹³⁶ However, in order to close security gaps that became visible during the reinforced border checks, which aroused general concern not just amongst politicians, further compensatory measures must be identified immediately, discussed at a political and expert level, defined and effectively implemented.⁹³⁷ An obvious starting point and potentially effective measure would be a rapid, significantly noticeable expansion of the staffing situation of special police units carrying out the dragnet controls in the border areas.⁹³⁸ This resulting increased police presence would ultimately culminate in more cross-border crime cases being detected and therefore potentially act as a much-needed deterrent.⁹³⁹

The more control, the more detected cases; the more detected cases, the more distinctive (and often also without reflection) is the subjective sense of security of a society. The citizens recognise that the state enforcement authorities are present in order to combat cross-border crime, but equally apparent is the fact that only a few of these offences are actually detected.⁹⁴⁰ In general, the perception of possible threats results in individual comprehension and the processing of respective information, leading to certain opinions being formed. Thus, this process will always remain as a process of subjective perception and trigger corresponding reactions. This perception of threats can take place unconsciously, or can even be deliberately controlled, as Daase's analysis shows in his statements

⁹³⁵ Note from the author: See further explanations under point 7.6.

⁹³⁶ Note from the author: See further explanations under chapter 5 and point 7.7.

⁹³⁷ Note from the author: See further explanations under point 7.6. and 8.7.

⁹³⁸ Note from the author: See further explanations under point 8.7.

⁹³⁹ Note from the author: See further explanations under point 7.2 and 14.2.

⁹⁴⁰ Note from the author: See further explanations under point 3.2.

with regards to the interpretational sovereignty of security.⁹⁴¹ Especially in association with state threat scenarios, which are communicated by state officials, the presumption of controlled perception is often very likely. Various objectively and subjectively perceived threats can be interwoven as a theme and used to be talked up as a national security issue, right up to an intergovernmental level of international security policy. In principle, the strategic approach and conceptual implementation of the BSM model of concentric circles was a very useful approach.⁹⁴² The *Schengen* area and the correlating principle of free movement are supported by the consistent application of the relevant EU standards and regulations with regards to modern and effective border management in the neighbouring countries, in accordance with national legislation. Surprisingly, the most recent lessons learned were in fact that not only did non-EU countries and their border regimes in *Schengen* adjacent regions perform inefficiently, but so did the individual *Schengen* states themselves.⁹⁴³ The deliberate non-application of the 'Dublin Procedure' laid down in EU treaties of some *Schengen* states border administrations not only undermined the principle of trust in the legal implementation of statutory foundations, it led to absurdity. The states concerned, which were obliged to implement a comprehensive filter function around the *Schengen* area, gave up their original responsibilities in terms of safeguarding borders and border surveillance, as *Schengen* states such as Greece did not fulfil their tasks, resulting in the arrival of tens of thousands of irregular migrants and refugees in these non-EU countries (for example FYROM and further on in Serbia). However, it was evident that the large volume of irregular migrants and refugees could no longer be administratively managed from the perspective of physical capacities and time constraints. According to the estimates of the police union, the minimum time for the acquisition of data and subsequent processing (i.e., basic personal data, photographs and fingerprints)⁹⁴⁴ of an irregular migrant is between 30 and 50 minutes. This does not take into account the necessary time for interviewing the person in question. For reasons of safeguarding, usually two officers must carry out this process. It is not difficult to appreciate therefore, that if several thousand irregular migrants arrive within a 24-hour period requiring

⁹⁴¹ Note from the author: See further explanations under point 3.2.

⁹⁴² Note from the author: See further explanations under point 7.2.

⁹⁴³ Note from the author: See further explanations under point 9.7.

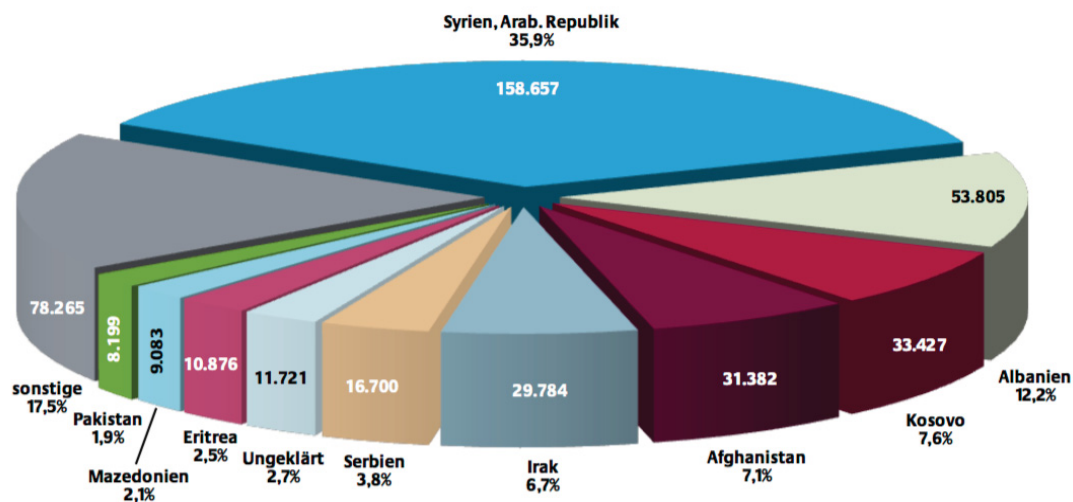
⁹⁴⁴ Der Spiegel (2015): Edition 29/2015. *Gute Reise*. P.47.

Note from the author: See further explanations under chapter 5.

checking and registration, with two officers managing one person, that the continuity of a normal police service is not a viable prospect. The approach taken to implement an effective problem-solving process must be a completely different one: that is, the causes are to be tackled, rather than focusing on particular symptoms. Responsible politicians of the affected EU MS and non-EU countries must understand that it is only possible to tackle these problem areas with a common approach and therefore join forces and focus their efforts accordingly.

Figure 15.1.1.1.: Countries of origin in 2015

Total number of initial applications: 441.899



Source: BAMF⁹⁴⁵

Of the 441,899 initial asylum applications submitted to the Federal Office for Migration and Refugees (BAMF) in 2015, Syria was first within the ranking of the top-ten countries with a share of 35.9%. Albania took second place with a share of 12.2%, followed by Kosovo with 7.6%. As a result, more than half (55.6%) of all initial asylum applications submitted since January 2015 were related to the three first-place countries of origin.

- Syria with 158,657 initial applications, in 2014 with 39,332 initial applications ranked 1st (increase + 303,4%)
- Albania with 53,805 initial applications, in 2014 with 7,865 initial applications ranked 5th (increase + 584,1%)
- Kosovo with 33,427 initial applications, in 2014 with 6,908 initial applications ranked 6th (increase + 383.9%)

⁹⁴⁵ Federal Office for Migration and Refugees (2016): Current figures for asylum in December 2015, p.8.

Table 15.1.1.2: First-time asylum applications in 2014 and 2015
main countries of origin (own presentation)

	2014		2015		First-time applications for asylum, changes to the previous year in percentage	First-time applications for asylum, changes to the previous year, absolute figures
	First-time applications for asylum	Total applications for asylum	First-time applications for asylum	Total applications for asylum		
Total	173,072	202,834	441,899	476,649	155,3%	268,827
Syria	39,332	41,100	158,657	162,510	303,4%	119,325
Albania	7,865	8,113	53,805	54,762	584,1%	45,940
Kosovo	6,908	8,923	33,427	37,095	383,9%	26,519
Afghanistan	9,115	9,673	31,382	31,902	244,3%	22,267
Iraq	5,345	9,499	29,784	31,379	457,2%	24,439
Serbia	17,172	27,148	16,700	26,945	-2,7%	-472
Unclear	3,421	3,678	11,721	12,166	242,6%	8,300
Eritrea	13,198	13,253	10,876	10,990	-17,6%	-2,322
fYROM	5,614	8,906	9,083	14,131	61,8%	3,469
Pakistan	3,968	4,226	8,199	8,472	106,6%	4,231

Source: BAMF⁹⁴⁶

In 2015, more than a third of applicants came from Syria (35.9%).⁹⁴⁷ Further, more than a quarter of the initial applicants, namely 27.4% or in absolute figures 120,882 persons, were registered from the six Balkan countries (Albania: 53,805, Kosovo: 33,427, Serbia: 16,700, fYROM: 9,083, Bosnia and Herzegovina: 4,634, Montenegro: 3,233).⁹⁴⁸ Compared to 2014, a total of 173,072 initial asylum applications were submitted throughout the year, so this figure was practically attained in the first half of 2015.⁹⁴⁹ Although the statistical recognition rate of asylum seekers from the countries of the Western Balkans Group is significantly below 1%, the initial applications of all countries from this region in 2015 account for more than 27%.⁹⁵⁰

⁹⁴⁶ BAMF (2016): Migration, Integration, Asylum Political Developments in Germany 2015 Annual Policy Report by the German National Contact Point for the European Migration Network (EMN), p.46.

⁹⁴⁷ Ibid.

⁹⁴⁸ Ibid.

⁹⁴⁹ Note from the author: See further explanations under point 5.2 and figure 5.2.3.

⁹⁵⁰ Schmidt, Manfred (2015): President of the Federal Office for Migration and Refugees on dealing with high refugee numbers. "[...] Almost none of the migrants from the Balkans receive protection, only 0.1 to 0.2 percent. [...]." Available from: <http://www.bamf.de/DE/Service/Top/Presse/Interviews/20150427-SZ/praes-eine-loesung.html> (Accessed on 5th March 2017).

In fact, on the basis of journalistic research by journalists from the *Süddeutsche Zeitung*⁹⁵¹ when interviewing refugees from Kosovo, it became clear that none of the respondents felt themselves to be persecuted, either politically, ethnically or for any other reason.⁹⁵² The UNHCR, the refugee agency of the UN, supports the return of rejected asylum seekers to Kosovo and also expressly applies to all minorities such as Roma and Ashkali.⁹⁵³ Only in reviewing the past decade, the EU has greatly contributed to the implementation of numerous large-scale projects that have helped the countries of the Western Balkan Group to develop functioning infrastructures to sustainably reintegrate repatriated people.⁹⁵⁴ There are primarily OC groups and structures in the Western Balkan countries, which are acting as a booster for this type of irregular migration.⁹⁵⁵ These criminals persuade people that even a short-term stay of only a few months will bring a financial benefit, since a legal claim to financial assistance is guaranteed. In addition, these criminals and people smugglers are deliberately spreading fake news, for example, stating that Germany would grant 'economic asylum' and regrettably, these vulnerable people are openly suggestible to such deception.⁹⁵⁶ After these people have sold their few belongings, they hand over this money to the people smugglers that are part of these TOC groups, and then they are moved to an EU MS of their choice.⁹⁵⁷

⁹⁵¹ Note from the author: Print media are not well-founded sources for scientific research. Nevertheless, background reports sometimes provide information to take this as an opportunity to conduct further research in the immediate context of the investigations.

⁹⁵² Süddeutsche Zeitung (2015): *Was Menschen vom Balkan zur Flucht treibt*. Available from: <http://www.sueddeutsche.de/politik/sichere-herkunftsstaaten-demokratien-mit-fussnote-1.2610249> (Accessed on 5th March 2017).

⁹⁵³ Roma Centre (2015): Roma are an ethnic minority in Kosovo. They speak the Albanian language. Available from: <http://www.roma-center.de/kosovo/> (Accessed on 5th March 2017).

Wissen.de (2015): *Ashkali* are an ethnic minority in Kosovo. They speak the Albanian language. According to their own tradition, they came to Kosovo from the time of Alexander the Great from Egypt and were the first inhabitants. Available from: <http://www.wissen.de/wer-sind-ashkali> (Accessed on 5th March 2017).

⁹⁵⁴ Comment by the author: Between 2004 and 2013, Johann Wagner was among others the responsible head of the following EU funded projects related to the creation of state infrastructures for the sustainable reintegration of returned persons to FYROM and Kosovo:

- a) 2004 – "Technical Assistance and Training to Develop and Implement the National Action Plan for Migration and Asylum at FYR of Macedonia"; budget 1 Mio Euros; duration 14 months.
- b) 2009 – "Strengthening the Rule of Law in Kosovo (IBM, Cross Border Cooperation, Asylum and Readmission)" - Twinning-Number: KS 08 IB JH 01; budget 1 Mio Euros; duration 27 months.
- c) 2013 – "Strengthening Readmission and Sustainable Reintegration in Kosovo" (IBM, Migration, Asylum and Readmission)" – Twinning-Number: KS 08 IB JH 02; budget 1,2 Mio Euros; duration 24 months.

⁹⁵⁵ EurActiv (2010): A historical day for Bosnia and Herzegovina and Albania? Available from: <http://www.euractiv.de/erweiterung-und-nachbarn/artikel/ein-historischer-taq-fr-bosnien-und-albanien-003902> (Accessed on 5th March 2017).

⁹⁵⁶ Federal Constitutional Court (2012): Verdict of the Federal Constitutional Court on the Asylum Seekers' Benefits Act. (*Urteil des Bundesverfassungsgerichts zum Asylbewerberleistungsgesetz*) ECLI: EN: BVerfG: 2012: ls20120718.1bvl001010. Available from: https://www.bundesverfassungsgericht.de/entscheidungen/ls20120718_1bvl001010.html (Accessed on 5th March 2017).

⁹⁵⁷ Note from the author: Preferred EU MS for the people from the Western Balkan countries are Germany and Austria.

The people smugglers rely on the ignorance of the people and falsely claim that any money paid out for the smuggling will be recouped multiple by staying in Germany for several months, on the basis of legally guaranteed cash payments. One of the main problems faced by the Western Balkan countries is the rapidly growing population with the simultaneous lack of employment. In all these countries, half of those capable of working do not find a job. However, the understanding of proper employment and the systems for notifications of vacancies and registration of jobseekers cannot be compared with equivalent EU MS systems. For years, this economic misery has pushed many tens of thousands of people into the EU and people of most Western Balkan countries can enter the EU without a visa. Thus, while people from Kosovo need to be smuggled into the EU, the people from the other Western Balkan countries enjoy relatively free movement. These developments were monitored and assessed over years by the EU and its specialised agencies, UNHCR, IOM and other IO's and recommendations have been developed as the EU could counteract this phenomenon.⁹⁵⁸ Ministers of Interior of the Western Balkan countries recognised the problem, but no legal means were available to interdict journeys of their citizens from leaving the country, since they fulfilled all legal requirements for their departure. Nevertheless, it would have been possible to combat these organised forms of people smuggling by proactive, joint, determined and concerted law enforcement actions by the Western Balkan Governments and their responsible enforcement authorities against the profiteers of the TOC groups in this region.

In retrospect, it can be stated that it would not have been very problematic to establish joint investigation teams in the Western Balkan countries concerned with the involvement of experienced investigators seconded from EU MS police services. These recommendations were emphatically expressed several times by using existing bilateral agreements between the various Western Balkan countries and EU MS governments in order to establish common law enforcement task forces.⁹⁵⁹ In the context of this close bilateral cross-border police cooperation, it would have been more effective to fight the TOC structures in the Western Balkan countries and eliminate the offenders, rather than discussing extensive and at the same time

⁹⁵⁸ Wagner, Johann (2013): Preparation of Feasibility Study and Technical Specification for supply of equipment. Specific Contract No. 10-32985/1 of the Framework Contract Beneficiaries 2009 (EuropeAid /127054/C/SER/multi LOT 7: Governance and Home Affairs). Feasibility study report.

⁹⁵⁹ Note from the author: The author recommended many times the establishment of joint investigation groups (task forces) to combat OC groups in the Western Balkan countries. For example, German investigators could have been seconded to the FYROM Ministry of Interior on the basis of existing bilateral agreements for cooperation to assist FYROM police officers to combat local OC groups, acting as people smugglers.

expensive repatriation programs for those people.

15.1.2. Water boundaries

International shipping companies handle approximately 500 million maritime containers per year, whereby the largest container ships currently can load and transport more than 20,000 containers. In addition, it is necessary to take into consideration that loading and unloading in international seaports must be managed as quickly as possible. What, on the one hand, is an advantage for the economy in terms of shipping such transport dimensions, conversely is an almost insoluble task for the national border law enforcement services in line with effective control of such numbers of maritime containers. These figures, therefore, can only give a rough idea of the apparently infinite opportunities to smuggle people and goods. In addition, the TOC groups do everything to conceal the sender (country of origin) and recipient (final destination) of the containers. International seaports are also considered to be dangerous places and extremely difficult to control. In Europe, the port of Rotterdam in The Netherlands is the largest port and was the world's busiest port, now overtaken first by Singapore and then Shanghai.⁹⁶⁰ It is particularly difficult for border control authorities to meet their tasks and responsibilities to carry out effective controls and to ensure a fast and smooth flow of goods at the same time. In addition, there is often a shortage of personnel for extensive checks, mistrust and insufficient cooperation, as well as the very complex work processes at international seaports. The TOC groups are exploiting these gaps and weaknesses in a targeted manner in order to maximise their profits from TOC business, while at the same time minimising potential risks. Corruption is also an issue for these criminals, and this risky melange of grievances on the one hand and the vulnerability of decision-makers on the other, becomes a very dangerous mixture and an extremely serious threat to the security of the international trade supply chain.

This threat has been recognised and therefore UNODC and WCO have developed the Global Container Control Program (GCCP) to assist governments in implementing effective controls on ship containers, targeting international drug trafficking and other cross-border crime.⁹⁶¹ In this respect, the establishment of so-called port control units (PCUs), a cross-departmental team of law enforcement

⁹⁶⁰ Note from the author: Most of the containers and stacking in the port is handled by autonomous robotic cranes and computer-controlled chariots.

⁹⁶¹ United Nations Office on Drugs and Crime (2015): UNODC–WCO Global Container Control Programme. Available from: <https://www.unodc.org/ropan/en/BorderControl/container-control/ccp.html> (Accessed on 5th March 2017).

specialists, consisting of risk analysts and experts from the various law enforcement agencies, is the centrepiece of the inspection and intervention teams in order to identify high-risk containers and to approach the responsible persons using the latest criminal police operations. Compared to other initiatives and projects, the GCCP benefits from individual donations from individual UN MS, which enables UNODC and WCO to train the competent border service officers of the UN MS in the area of risk analysis and criminal investigation, thereby promoting sustainability. UNODC and WCO developed a step-by-step approach for the training to enhance state border control standards in the area of risk analysis and profiling with a particular focus on strategic control of goods. Another important area of the GCCP is the exchange of relevant information and specific knowledge of the law enforcement authorities via a PCU communication system, as a prerequisite for a trustworthy cooperation in effectively combating TOC. Numerous significant seizures of large quantities of drugs, as well as other illegally smuggled goods, testify to the success of the GCCP and the CPUs in the fight against international drug trafficking and smuggling of goods.

15.1.3. Air boundaries

The International Air Transport Association (IATA) released an industry traffic forecast showing that airlines expected some 3.6 billion passengers in 2016. That is about 800 million more than the 2.8 billion passengers carried by airlines in 2011. The predicted number of global air travellers will more than double exceeding more than 7 billion passengers by 2034.⁹⁶² The prognosticated rise of international air travellers involves enormous challenges in terms of managing international airports and equipping them with the most modern standards in relation to all kinds of BSM-related issues in general and effective border checks in particular. This is inevitable to ensure and maintain public security and order, as well as national and regional security. From this point of view, necessary gaps and needs analyses have to be carried out and related strategies and action plans developed and implemented to ensure effective passenger control. These precautionary measures, in turn, require full alignment in accordance with international conventions, the EU *acquis*, as well as the respective national legislation.⁹⁶³ It calls for a comprehensive, anticipatory and responsible policy with

⁹⁶² statista (2015): Forecast number of global air passengers in 2014 and 2034 (in billions). Available from: <http://de.statista.com/statistik/daten/studie/374860/umfrage/flugverkehr-entwicklung-passagiere-weltweit/> (Accessed on 6th March 2017).

⁹⁶³ Note from the author: See further explanations under point 7.3 and 7.5.

regard to the security measures to be developed to ensure the integrity of the international travel cycle with regard to the conditions of legal entry as well as the necessary visas before travel.⁹⁶⁴ For a considerable time, many countries, IO's, the industry, as well as a broad expert audience, have worked closely together in the sustainable development of best practices based on lessons learned to promote modern, efficient and effective border management.⁹⁶⁵ These 'best practices' focussed, amongst others, on the continuous improvement of travel document security, a comprehensive information exchange between all actors involved, the promotion of public-private-partnership cooperation mechanisms, education and training for staff working in all relevant segments, as well as the strengthening of international police cooperation.⁹⁶⁶ However, in order to take into account the steadily huge increase of air travellers and related security checks and border controls with regards to time management and room capacities, as well as any other necessary security-related technology to prevent risks and to ensure public safety and order, more security-relevant measures need to be developed than those currently in use. In particular, it is necessary to develop and implement additional comprehensive and far-reaching measures that interfere with their safety-relevant approaches during the phases before departure, the actual departure at the airport and before the arrival of the passengers at the respective destination, as well as measures after the arrival of international air travel.⁹⁶⁷ This approach appears as a complementary mechanism in cooperation with extraterritorial border controls and the conduct of risk analysis with regards to travellers with risk potential in the context of ever-increasing air travel.⁹⁶⁸ Therefore, it is inevitable to develop all relevant safety precautions during the various stages of the air travel cycle in an integrated approach. These indispensable precautions should be based on the experience gained from best practices developed in order to identify and exploit new innovative potentials to combat irregular migration and cross-border crime, as well as to eliminate dangerous offenders and persons supporting terrorist networks. These new innovative potentials for ensuring public security and order should be self-explanatory in accordance with national laws and international

⁹⁶⁴ Note from the author: The issuance of a visa through border police services is only given in the fewest cases after arrival and immediately before the border inspection, and is subject to very restricted rules, such as cases of serious accident of a relative, death, funeral etc.

⁹⁶⁵ Note from the author: See further explanations under point 12.3.

⁹⁶⁶ Note from the author: See further explanations under point 8.6 and chapter 11.

⁹⁶⁷ Note from the author: See further explanations under point 14.3.

⁹⁶⁸ Note from the author: See further explanations under chapter 14.

conventions.

15.1.4. Cyber Space as a fourth dimension

It would be a fatal error to believe that cross-border crime must correlate with a physical crossing of borders. Undoubtedly, our societies are undergoing a huge transformation process with regards to the respective influence of electronic networks on our economic, social and cultural life. Consequently, the obvious consideration must therefore be whether governments and their competent authorities are willing and able to develop effective tools and mechanisms to combat computer criminality. In the 21st century a core area of TNT is doubtless the vulnerability of public security and order through attacks over the Internet. Cybercrime is understood to mean the commissioning of criminal offences, including criminal practices through the Internet, or the use of Internet technologies.⁹⁶⁹ This includes anything from downloading illegal files to stealing millions of Euros from online bank accounts. Cybercrime also includes non-monetary offences, such as creating and distributing viruses on other computers or posting confidential business information on the Internet. The opportunities of sabotage, criminal acts and espionage are largely anonymous for offenders and thus relatively risk-free. First and foremost, companies seem to be the preferred targets, but private users are not excluded.

Bulanova-Hristova and her colleagues categorise cybercrime into four sub-areas as follows:⁹⁷⁰

(1) Computer integrity crimes: 'Computer integrity crimes assault the security of network access mechanisms. They include hacking and cracking, vandalism, spying, denial of service, the planting and use of viruses and Trojans.'

(2) Computer-assisted crimes: 'Computer-assisted crimes use networked computers to commit crimes, usually to acquire money, goods or services dishonestly. In addition to Internet frauds there are socially engineered variants [...] and the manipulation of new online sales environments, particularly auction sites.' They also include piracy, extortion using ransom ware, online prostitution and the use of internet-based tools in relation to human trafficking and money laundering.

⁹⁶⁹ German Federal Criminal Office (2015): Cybercrime is a criminal offense by using modern information and communication technology and the Internet. These are:

- a) all offenses involving computer elements of computer crime or where the ICT has been used to plan, prepare or execute an act,
- b) offenses related to data networks, such as the Internet, and
- c) cases of threat to information technology. This includes all unlawful acts against the integrity, availability and authenticity of data, whether electronic, magnetic, or otherwise not directly perceptible or transmitted (hacking, computer abuse, data modification, misuse of telecommunications, etc.). "

⁹⁷⁰ Federal Criminal Police Office (2016): Cyber-OC – Scope and manifestations in selected EU MS. Edited by Bulanova-Hristova, Gergana / Kasper, Karsten / Odinet, Geralda, Verhoeven, Maite / Pool, Ronald / de Poot, Christianne / Yael, Werner / Korsell, Lars.

(3) Computer content crimes: 'Computer content crimes are related to the illegal content on networked computer systems and include the trade and distribution of pornographic materials as well as the dissemination of hate crime materials.'

(4) Online illicit marketplaces (OIM) / crypto markets: 'A crypto market may be defined as an online forum where goods and services are exchanged between parties who use digital encryption to conceal their identities. [...] The reliance on encryption technology differentiates crypto markets from other types of OIM.' Thus, this category includes cases where goods and services are exchanged between offenders on online marketplaces.

Cybercrime phenomena are very diverse and can only be mentioned by way of examples in the form of spying out data, cyber-terrorism and/or extremism, identity theft, Internet fraud, child pornography, bullying, violations of prohibitions of dissemination, copyright infringement, incitement and others. According to the annual report from 2013 of the Federal Criminal Police Office (*BKA*) in Wiesbaden, the number of cases of cybercrimes recorded in police criminal statistics, i.e. all crimes committed using modern information and communication technology or against them, rose in 2013 to a total of 64,426 cases.⁹⁷¹ Consequently, the State must, in the exercise of its original responsibilities, ensure the defence of general or individual threats to public security and order by its law enforcement authorities, and this applies in particular to cybercrime. The establishment of governmental cyber competence centres could provide initial approaches to promote a broader spectrum of protection rights of the society.⁹⁷² As governmental institutions, these centres can serve as professional contact points and provide specific advice to victims of cyber-attacks (or potential victims) for the prevention and defence of threats from the network. Furthermore, these experts should also provide extensive support for operators of a critical/sensitive infrastructure. A further core competency of these centres is that they will act as a link between state investigating authorities, the judiciary and victims. Both, companies and private individuals need contact persons from competent state authorities to ensure confidentiality and, in the case of attack, to help to coordinate the necessary steps for the defence and/or investigation of criminal offences. Currently, relatively little is known about cyberspace-related crime and thus it requires even more intensive research.⁹⁷³ As a result, the lessons learned from these processes must be drawn

⁹⁷¹ Federal Criminal Police Office (2015): Annual Report 2013.

⁹⁷² Bavarian Ministry of the Interior, for Building and Transport (2014): Increased fight against Cybercrime. Bavaria's Minister of the Interior Joachim Herrmann to one-year Cybercrime Competence Centre at the *LKA*, joint project with EUROPOL. Available from: <https://www.stmi.bayern.de/med/pressemitteilungen/pressearchiv/2014/37/index.php> (Accessed on 7th March 2017).

⁹⁷³ Note from the author: See also figure 3.2.4 – Bright-Dark Field Research.

as quickly as possible, and solutions reached to these transnational threats, where perpetrators can commit crimes in the cross-border context without having to cross country boundaries.

15.2. Factors of influence regarding the transformation process

A state is only as strong as it can safeguard, monitor and control its borders, or as Laube notes: "The recognition of state sovereignty stands and falls in the modern understanding, whether the state can control movements beyond its borders."⁹⁷⁴

A progressing globalisation and simultaneous accumulation of TNT by a significant number of serious crises in Europe, the Middle East and North Africa causes shifts of power, discloses values between our societies and creates an increasing aspiration of security and stability. Security is a primary need of people and a modern state must be able to ensure this requirement in self-perception with regards to effective border management as a fundamental function within a comprehensive security policy for its society. However, the implementation of this requirement is becoming increasingly difficult because of the eclectic causes and its serious implications. Security in its perception is not a static condition, but must be understood as an extensive concept that must react and function to dynamic processes in terms of threats and risks in the national as well as transnational context. This constantly requires new assessments of the general and specific situation(s) and calls for holistic approaches to solutions in the challenges to avert multi-dimensional threat scenarios. It requires an interdisciplinary, multi-layered, joint and well-coordinated elaboration of answers with regards to the relevant security-related questions and the implementation of effective problem-solving processes. In addition, these responses must also be in accordance with international treaties, conventions, laws and the principles of the UN Charter to avert and mitigate these TNT to public security and order, both internally and externally. The UN Security Council has the primary and universal responsibility for stability and peace, both in the regional and global context.⁹⁷⁵

In partnership of the UN, the EU, the CIS and the OSCE, as well as other supranational organisations and international institutions, they are capable and

⁹⁷⁴ Laube, Lena (2013): *Grenzkontrollen jenseits nationaler Territorien*. P.84.

⁹⁷⁵ Charter of the United Nations was signed on 26th June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organisation and came into force on 24th October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Chapter 5 – The Security Council. Article 24

1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. [...]."

determined to elaborate and provide appropriate contributions. Based on a large number of respective Member States, as well as on the basis of their existing expertise and experience, they should respond to these threats in a coordinated approach. However, it would be a misconception to believe that especially composed UN, OSCE, or EU missions provided with a robust mandate would solve the respective problems immediately. With the development of a common CFSP and the European Security Strategy, the EU shows that it must take on responsibility in the relevant areas, even with more diligence than ever before in its recent history.⁹⁷⁶

The EU, a synonym as an anchor for stability and balance, democracy and prosperity, not least through the eastward enlargement. At the beginning of the 21st century, the EU⁹⁷⁷ has assumed more and more responsibilities in coping with crises and conflict management, such as in South-East Europe (e.g., EUPM in Bosnia and Herzegovina, EULEX Mission in Kosovo, PAMECA in Albania), Eastern Europe (i.e., EUBAM in Ukraine and Moldova), Central Asia (i.e., BOMCA in all five Central Asian countries), Afghanistan (i.e., EU Police Mission in Afghanistan), Caucasus-Georgia (i.e., EU Monitoring Mission in Georgia), Palestine (i.e., EupolCops) and natural disasters such as Indonesia (e.g., tsunami disaster), as well as through further supportive measures in other parts of the world in the fight against terrorism and FTF, violent extremism and TOC. Nevertheless, the EU still faces complex transnational threats and enormous security-related challenges even after 30 years of the fall of the Iron Curtain. The described crises in Central Asia, the Middle East, North Africa, Eastern Europe and especially the conflict between Ukraine and the Russian Federation, as well as the phenomenon of *Transnistria*, are more than worrying and have a very high risk for enhanced escalation and further development of transnational threat potentials.⁹⁷⁸

Many of these crises are causal for the failure of states (i.e., fragile states, failed states⁹⁷⁹), which in turn can threaten peace, security and stability within the EU. These developments have unleashed and promoted new threat potentials in the areas of terrorism and the phenomenon of FTF, as well as violent extremism and

⁹⁷⁶ EUR-lex (2015): Common foreign and security policy (CFSP). The EU's CFSP was established in 1993 under the Maastricht Treaty. It has been progressively reinforced by subsequent treaties, particularly the Lisbon Treaty (Title V of the Treaty on European Union). Available from: http://eur-lex.europa.eu/summary/glossary/foreign_security_policy.html (Accessed on 7th March 2017).

⁹⁷⁷ Note from the author: See further explanations under point 3.7 and 12.3.

⁹⁷⁸ Note from the author: See further explanations under chapter 3.

⁹⁷⁹ Herdegen, Matthias / Thürer, Daniel / Hohloch, Gerhard (1996): *Der Wegfall effektiver Staatsgewalt: The Failed State*. P. 49-84.

TOC, as it was not thought possible until recently. The societies of EU countries are alarmed at these developments with incomprehension, but also with anger and politicking, as recent developments in Germany with the *PEGIDA* phenomenon have shown.⁹⁸⁰ Populists and agitators exploit the uncertainty of the population for the implementation of their own political agenda, which might have the potential to attack Germany's liberal and democratic fundamental order. The EU and its MS have to face these dangerous challenges in using the principles of well-fortified democracies.

By means of newly developed instruments, the EU is contributing to foster security and peace for the people of Europe and beyond with regards to combating existing poverty, reducing inequality, promoting good governance, enforcing rule of law and respecting human rights without restriction. The EU achieves this by implementing comprehensive project frameworks in order to promote and ensure sustainability and good governance in the beneficiary countries through long-term commitment.⁹⁸¹ Nevertheless, leaders and decision makers in the EU centres must explore and identify ways to determine to what extent these initiatives can be implemented in a more efficient, success-oriented and sustainable manner.⁹⁸² Therefore, the motto must be: Involvement of all relevant stakeholders and active forming participation, rather than conflict resolution and reactive crisis management.

Sustainability in the areas of conflict resolution and crisis management will only succeed if all relevant stakeholders are actively involved in contributing to problem-solving processes. Disregarding, or even excluding such stakeholders would only lead to delaying urgently needed solutions. The importance for the implementation of international conventions of the UN, EU and OSCE by the MS has already been pointed out.⁹⁸³ In addition to all relevant elements of these conventions, it is crucial to emphasise that respect for human rights, autonomy, the sovereignty of the countries and their territorial integrity, as well as a peaceful settlement of disputes between states, are considered absolutely non-negotiable.

⁹⁸⁰ Note from the author: *PEGIDA - Patriotische Europäer gegen die Islamisierung des Abendlandes*, equivalent to Patriotic Europeans against the Islamisation of the West. Current crisis in Central Asia, the Middle and Middle East, North Africa, Eastern Europe and especially the conflict between Ukraine and the Russian Federation, as well as the phenomenon of Transnistria, are more than worrying and have a very high risk of escalating more and more Transnational threat potentials.

⁹⁸¹ Note from the author: See further explanations under point 3.7.

⁹⁸² Note from the author: The author is currently involved as senior border expert in the project of „Evaluation of EU support for Security Sector Reforms in Enlargement and Neighbourhood Countries (2010-2016)“. The findings of the evaluation will be presented to the European Commission early 2018.

⁹⁸³ Note from the author: See further explanations under point 1.1.

Especially territorial integrity requires the utmost sensitivity, since, after the disintegration of the Soviet Union and the dissolution of former Yugoslavia, border demarcation between these states have not (yet) been clearly defined in many cases, and therefore different territorial claims are proclaimed. This leads to armed conflicts between state border guards in the countries concerned almost on a daily basis, unfortunately very often with a fatal outcome.

Recent experiences with regards to the Ukraine crisis clearly demonstrates that the EU needs to renew a strong cooperation in the transatlantic alliance, but also strengthening alliances with new partners. The EU and its agencies have achieved great success in the last decade through their programs (such as PHARE, CARDS, IPA, ENPI) in the fields of good governance, democratisation, rule of law, security sector reforms, change management and institution and capacity building. It is self-evident that it is not enough to rest on results achieved so far, but to exploit all potentials in order to continue to guarantee security and peace, based on common convictions and common approaches.

15.3. Common Foreign and Security Policy (CFSP) of the EU

For a long time, the EU was not necessarily recognised as an important actor or even global actor in external affairs. However, this changed as a result of the inception of the Maastricht Treaty on the EU in November 1993 and the introduction of a Common Foreign and Security Policy⁹⁸⁴ (CFSP). The CFSP is the successor of the European Political Cooperation (EPC) and the Treaty of Lisbon strengthened the structures of the CFSP further.⁹⁸⁵ The Common Security and Defence Policy (CSDP) is an integral part of the CFSP and provides the EU with a civilian and military capability.⁹⁸⁶ The CFSP offers a broad range of tasks and responsibilities with regional focus in the Eastern and South Eastern neighbouring regions and is based on the agreement and adoption of common positions of the EU MS. Unfortunately, explicit reservations of individual EU MS regarding decisions in favour impede the impact of the CFSP and the necessary responsiveness in crisis situations. As a result, the political dialogue with third countries and also groups of states constitute an important platform to affect the positions of the dialogue partners by means of continuous information exchange and enhanced

⁹⁸⁴ Note from the author: See further explanations under point 3.7.

⁹⁸⁵ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13th December 2007, 2007/C 306/01. Available at: <http://www.refworld.org/docid/476258d32.html> (Accessed 8th March 2017).

⁹⁸⁶ Treaty on European Union. Article 42 TEU. ABL 2008, C 115/13 of 9th May 2008. Note from the author: See further explanations under chapter 5.

cooperation.⁹⁸⁷ The principles and the institutional framework for these political dialogues are laid down in agreements (e.g., agreements related to associations, partnership and cooperation, etc.) or joint declarations. In the meantime, the EU is ever-present at a global level in a multi-faceted and competent manner, both in diplomatic day-to-day business, ministerial conferences as well as in crisis management.⁹⁸⁸ The EU has been noticeably positioning itself in terms of condemning human rights violations, providing necessary humanitarian aid to victims of transnational threats, supporting the establishment of democratically governed countries, or even participating in military interventions to restore security and stability in a country or even region, such as the Western Balkan or Sahel region since the beginning of the 21st century.⁹⁸⁹ In addition, the CFSP provides also guidance for EU MS to develop effective operational plans in sensitive areas such as health measures (i.e., epidemic control - Ebola⁹⁹⁰). Complex issues such as irregular migration, mass influx of refugees, counter-terrorism and FTF, violent extremism, fight against TOC, climate change and their possible impacts on security and stability cannot be solved by individual countries but require a common EU and international approach. This enables the EU to be recognised as a competent and fully capable partner and to be accepted in the search for effective and efficient problem-solving processes. However, the approach of the EU in solving these problems depends to a great extent on identified threat scenarios facing the EU and in relation to particular foreign affairs interests of individual MS. Finally, it is fundamental to speak with one voice and act in unity, which clearly is a challenge. Furthermore, it is of paramount importance to clarify what the EU is prepared to commit to with regards to assistance for other countries, how these expectations are communicated by these states and whether these can be fulfilled in a realistic attitude. Moreover, a possible involvement of the EU presupposes the legal mandate to operate internationally and the EU MS must agree to be represented by 'Brussels' in the sensitive areas of the security and defence policy.⁹⁹¹ This in turn requires a clear overview of who the key actors are in foreign affairs at a European level and should provide a clear understanding of the goals

⁹⁸⁷ Federal Foreign Office (2015): Common Foreign and Security Policy (CFSP) and its instruments. Available from: http://www.auswaertiges-amt.de/DE/Europa/Aussenpolitik/GASP/InstrumenteGASP_node.html (Accessed on 8th March 2017).

⁹⁸⁸ Note from the author: See further explanations under point 11.1.

⁹⁸⁹ Note from the author: See further explanations under point 10.4.

⁹⁹⁰ Note from the author: See further explanations under point 3.6.2.

⁹⁹¹ Regelsberger, Elfriede (2015): The international engagement of the EU. Available from: <http://www.bpb.de/izpb/203895/das-internationale-engagement-der-eu?p=all> (Accessed on 8th March, 2017).

and intentions to be pursued by the means available at their disposal.

15.4. EU assistance programs

A European area with the greatest possible freedom, security and justice requires close cross-border cooperation between law enforcement agencies and the judiciary. For almost two decades, the EU steadily shoulders more responsibilities for peaceful settlements and coping with crises and conflicts.⁹⁹² The EC as a leading institution has financed and implemented a large number of projects of different types. In 1998, an initiative was launched by the EU in the framework of the pre-accession strategy and preparation for the eastward enlargement of the EU, which is known as a 'Twinning Instrument' (stands for partnership, connection). The 'Twinning Instrument' is an EU-funded large-scale initiative to promote partnerships between similar ministries from EU MS and non-EU countries with a view to building public administrative structures that meet EU standards. Potential accession countries must commit themselves to adopt and recognise the EU *acquis*. The core idea of the EU 'Twinning Instrument' is to establish modern and effective public administrative systems in these countries. Interested countries should be enabled to review national legislation for gaps, to harmonise relevant laws and by-laws and, if necessary, to develop new legislation in accordance with the national constitution and the EU *acquis*. Within the framework of bilateral agreements between EU MS and non-EU countries, an administrative partnership between two ministries of the participating states is being undertaken. To date, EU Twinning projects have been increasingly applied to the Western Balkan countries whose financing has been ensured through the IPA program.⁹⁹³ Established as a successful instrument, the EU 'Twinning Instrument' is now being used effectively in countries without accession prospects. The EU Twinning partners are the countries from the ENPI program and the respective projects have been financed from this fund since 2007.⁹⁹⁴

⁹⁹² Note from the author: See further explanations under point 3.7.

⁹⁹³ Federal Ministry for Economy and Energy (2015): Twinning for administrative institution and capacity building. The following countries were considered candidate status: the former Yugoslav Republic of Macedonia, Montenegro, Serbia; countries without candidate status: Albania, Bosnia and Herzegovina, Kosovo, as well as Turkey. Available from: <http://www.bmwi.de/DE/Themen/Europa/twinning.html> (Accessed on 8th March 2017). Note from the author: See further explanations under point 3.7, 12.3 and 14.4.

⁹⁹⁴ Federal Ministry for Economy and Energy (2015): Twinning partners in the European Neighbourhood Region are Armenia, Azerbaijan, Georgia, Moldova and Ukraine, as well as Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia. Available from: <http://www.bmwi.de/DE/Themen/Europa/twinning.html>. (Accessed on 8th March 2017).

Note from the author: See further explanations under point 3.7.

The EU 'Twinning Instrument' defines the following main objectives: ⁹⁹⁵

- Support for the build-up and development of modern and effective public administration structures in the accession states and European neighbourhood states (including all relevant state authorities and institutions involved in BSM related issues, border control and border surveillance)
- Introduction and adoption of the EU *acquis*
- Exchange of knowledge and experience with EU accession countries and states in the European neighbourhood, as well as the initiation of long-term cooperation

15.5. Phenomenon mass influx of refugees

As a result of the lasting mass influx of refugees, the systems of some EU MS (foremost Greece, Italy and still to some extent Spain) and non-EU countries and their respective border authorities and asylum systems along the Balkan routes (e.g., FYROM, Serbia) have collapsed. For this reason, the controversial 'Dublin Procedure' has been suspended because the affected countries have not been able to cope with this mass influx for some time.

"At the present time, the *BAMF* is de facto not applying the 'Dublin Procedures' on Syrian nationals," said a *BAMF* spokesman in September 2015.⁹⁹⁶ This was a statement, which invoked extremely volatile consequences, as it was to be observed later. Putzke's legal analyses clearly listed relevant infringements against the Residence Act and argued that refugees who entered the Federal Republic of Germany did not have a valid passport or substitute passport, or a residence permit or any other authorisation to enter Germany.⁹⁹⁷ In all these cases, the entries were illegal in accordance with Section 14 (1) of the Residence Act and the unauthorised entry and illegal stay should have been investigated according to Section 95 (1) (3) of the Residence Act (see further explanations under point 5.4.1).⁹⁹⁸ According to the mandatory prosecution principle, the law enforcement

⁹⁹⁵ Federal Ministry for Economy and Energy (2015): Main objectives of the EU 'Twinning Project'. Available from: <http://www.bmwi.de/DE/Themen/Europa/twinning.html> (Accessed on 8th March 2017).

⁹⁹⁶ ntv.de (2015): BAMF abrogates 'Dublin Procedure', Exceptions for fleeing Syrians. Available from: <http://www.n-tv.de/politik/Bundesamt-kippt-Dublin-article15790871.html> (Accessed on 8th March 2017).
Note from the author: See further explanations under point 4.3.5.

⁹⁹⁷ Putzke, Holm (2015): Prof. Putzke, University Passau – *Ist Angela Merkel eine Schleuserin?* A criminal assessment. Available from: <http://www.jura.uni-passau.de/putzke/aktuelles/> (Accessed on 8th March 2017).

⁹⁹⁸ Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Residence Act – Germany. Section 14 Unlawful entry; exceptional visa

(1) The entry of a foreigner into the federal territory shall be unlawful if he or she

1. does not possess a required passport or passport substitute in accordance with Section 3 (1),
2. does not possess the residence title required in accordance with Section 4,
 - 2a. does possess the necessary visa pursuant to Section 4 upon entry, but obtained it by threat, bribery or collusion or by furnishing incorrect or incomplete information, for which reason it is revoked or annulled retrospectively, or

agencies would have been obliged to intervene.⁹⁹⁹

The government of the Free State of Bavaria commissioned Di Fabio, former constitutional judge, with an expert assessment to analyse whether Merkel's government was acting according to national law. Furthermore, Di Fabio was instructed to analyse whether the government grossly neglected effective border protection and border control, and if the lack of cooperation between the federal government with the state governments was an infringement of national legislation.¹⁰⁰⁰ Di Fabio's legal assessment with regard to the management of the massive influx of irregular migrants in line with the constitutional principles was very clear and he concluded in his expert assessment: "With its refusal to comprehensively control the national borders, the Federal Government has clearly infringed constitutional law." The legal opinion also states: "For constitutional jurisdiction, the Federal Government is obliged [...] to implement effective controls of the Federal Border if the common European border security and immigration system is temporarily or permanently disrupted". The expert's report therefore wants to prove to the Chancellor's governing party that the Basic Law no longer covers the work of the government.

15.6. Lack of enforceability of binding EU legislation

The third version of the 'Dublin Regulation' is in force since 1st January 2014 and establishes an EU MS responsible for the administrative proceedings of the asylum application.¹⁰⁰¹ As a disillusioning fact it must be stated that the Dublin agreement has failed according to leading EU experts, since a large number of irregular migrants originated mainly from economically weak regions in the East Europe,

3. is not permitted to enter the federal territory in accordance with Section 11 (1), (6) or (7) unless he or she possesses a temporary entry permit in accordance with Section 11 (8).
(2) The authorities charged with policing cross-border traffic may issue exceptional visa and passport substitute documents.

⁹⁹⁹ Code of Criminal Procedure in the version published on 7th April, 1987 (Federal Law Gazette [*Bundesgesetzblatt*] Part I p.1074, 1319), as most recently amended by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410). Section 163 - Duties of the Police

(1) The authorities and officials in the police force shall investigate criminal offences and shall take all measures that may not be deferred, in order to prevent concealment of facts. To this end they shall be entitled to request, and in exigent circumstances to demand, information from all authorities, as well as to conduct investigations of any kind insofar as there are no other statutory provisions specifically regulating their powers.
(2) The authorities and officials in the police force shall transmit their records to the public prosecution office without delay. Where it appears necessary that a judicial investigation be performed promptly, transmission directly to the Local Court shall be possible. [...].

¹⁰⁰⁰ ntv.de (2016): The European – The Debate Magazine. *Ist Kanzlerin Merkel eine Verfassungsbrecherin?* Available from: <http://www.theeuropean.de/wolfram-weimer/10656-verfahren-gegen-bundestkanzlerin> (Accessed on 9th March 2017).

¹⁰⁰¹ Regulation (EC) No 343/2003 - Dublin Regulation. The "Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national" was substituted by the new Dublin III Regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26th June 2013) with effect from 1st January 2014. Member States in which this Regulation constitutes directly applicable law are all the Member States of the EU, as well as Norway, Iceland, Switzerland and Liechtenstein.

Southeast Europe and North Africa in here in particular from Maghreb countries. As a result, EU MS and non-EU countries in the northern part of Europe do not receive any refugees, or just a few, because the classic routes of irregular migration run through the routes described in the South and South-East of Europe. The 'Dublin Procedure' does not regulate fair distribution of irregular migrants and refugees.¹⁰⁰² The intensive burdened EU MS therefore rightly call for solidarity between all EU MS since they are no longer able to cope with the mass influx for purely factual reasons such as lack of capacities with regards to the 'Dublin Procedure'. Eastern European EU MS in particular reject such quota. As a result, the EU needs new approaches for fair distribution of burdens between EU MS, as the 'Dublin Procedure' has not proved effective in practice, either through deliberate non-application or incomplete registration of refugees due to lack of capacities and pure overload. The EU refugee policy is in a dangerous and diffuse situation and needs as soon as possible, practical and mandatory solutions to deal with refugees and irregular migrants.

A successful management of the described scenarios calls for some significant reforms of state institutions in EU MS to strengthen their existing BSM capacities to safeguard and control borders. These security sector reforms should focus, *inter alia*, on border security, inter-agency and international cooperation, coordination of cross-border operational interventions of BSM law enforcement agencies, criminal investigation, information exchange and communication, as well as the development of good practices based on lessons learned. Precondition is a precise analysis of workflow processes (i.e., central, regional, local level) and the development of a comprehensive common understanding between border law enforcement agencies, both in the national and international context. The main objectives of such analyses are the identification of interface problems, the elaboration of recommendations to minimise possible friction losses, as well as the development of clear definitions of the respective areas of tasks and responsibilities and the means of communication between the respective competent authorities. The differences between border guards and border police were already discussed.

¹⁰⁰² Note from the author: See further explanations under point 4.5, 4.6, and 7.5.

Section 6 – Concluding remarks

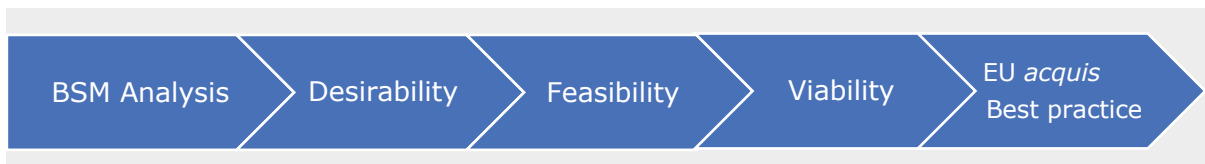
The aim of the PhD project was to give an overview of the most important processes of changes and renewals in the area of border management in Europe during the past 25 years. For this reason, the project focused on general conditions and discussions how European states promote open and at the same time secure borders in a free, democratic and more integrated area without dividing lines in the overall area of border security and its management. Therefore, it was essential to debate the correlation of TNT and TOC and analyse potential differences, overlaps, respectively communalities in its descriptions and definitions. In addition, defined responsibilities between government's border law enforcement agencies and their respective tasks focusing on inter-agency cooperation and information management were analysed and new challenges identified. In general, European states officially commit themselves to closely cooperate in BSM-related issues following the principles of international law and human rights, cross-border cooperation and information exchange, mutual confidence, equal partnership, transparency and predictability and pursuing a comprehensive approach to facilitate friendly relations between themselves. Border management in an integrated way is an extraordinary responsibility of each sovereign state to choose best practices and most modern standards to control, survey and protect their borders in relation to political, security, socio-economic, environmental and cultural considerations. A consistent application of the principle of legality and the implementation of effective control mechanisms serves the EU MS' domestic jurisdiction to effectively control and regulate the access of persons, goods and services. Hence, BSM-related activities of sovereign states have a direct relationship to territory, personnel, information and communication, technology, equipment, training and collaboration, both at intra-agency, inter-agency and international level. Respecting the fact that each government needs to be able to align its resources to deal with its BSM-related priorities in the most effective and efficient manner possible, there remains an underlying need for all experts to work collaboratively and cohesively to address the most serious threats from cross-border crime. In the 21st century, along with the process of globalisation, an evolving security environment creates new dimensions of threats and challenges to security and stability of transnational nature. This seeks for comprehensive, multidimensional, collective and well-coordinated responses.

Chapter 16: Conclusions from the thesis

16.1. Recapitulation of research methods

16.1.1. Review of feasible *versus* desirable research methods

The conduct of comprehensive analyses in the area of border security, management, surveillance and control needs, in addition to research, a pragmatic approach and realistic point of view. The primary aim is to learn as much as possible about the strengths and weaknesses of a BSM agency and its infrastructure, as well as opportunities and risks/threats, no matter if it is an EU MS or non-EU country, in relation to what is currently available (i.e., human resources, training, infrastructure, technical equipment, IT management etc.) and which gaps and needs were identified. Such an evaluation should serve that future capacity building of a BSM agency are made to be more effective in relation to strategic, operational and tactical interventions and what is desired, feasible and practical.



- A desirable solution, one that the BSM agency concerned needs.
- A feasible solution, to enhance strengths of strategic, operational and tactical capabilities.
- A viable solution, focusing on sustainability and inter-operability in line with EU *acquis* and best practices.

Desirability

A critical scrutiny in relation to desirability focuses on whether the suggested solution is a nice to have or a must have for a professional BSM law enforcement agency. It needs to be analysed what is the legal binding mandate of that BSM agency and what is the need for this agency to successfully implement this task, both at national level and for cross-border cooperation. Monitoring and evaluating at what this BSM agency is trying to implement and why it is important to them must be in alignment with national legislation and the EU *acquis* and international conventions. Such kind of assessment is to identify gaps and needs and proposed solutions in terms of desirability.

Feasibility

A feasibility study, conducted by external independent experts, is supposed to evaluate the operational and tactical capabilities of a BSM law enforcement agency.

The study requests the BSM agency to actively look internally and objectively to assess its strengths (e.g., human resources, level of education and training, technical infrastructure, information management etc.) and potential weaknesses. New capacity building measures can enhance current operational and tactical capabilities and built on where the BSM agency is already strong. This will strengthen the foundation of the BSM agency in the performance of their duties assigned by law. A feasibility study addresses the question, what needs to be done to make the BSM agency concerned more professional and competent.

Viability

Based on its findings, any gaps and needs assessment and/or feasibility study require the development of specific recommendations for improvement. At the same time, these recommendations should scrutinize if the BSM agency concerned is capable, both in terms of willingness and capacities, to implement the developed recommendations in line with the EU *acquis*. The aspect of viability aims whether the BSM agency is ready for change in the overall frame of security sector reforms for long-term sustainability in line with EU standards and best practices developed. In the past, too many initiatives for enhancing BSM agencies' capacities, both of EU MS and non-EU countries, built for short term success without considering the long-term impact.

16.1.2. Strengths and limitations of research methods

16.1.2.1. Strengths of the research work

The author considers the content analysis of the complexity of TNT and TOC and its comparison as a significant progress in the overall area of BSM. In the period of 2014 to 2017, the research work focused specifically on its correlation as well as identified new challenges in the areas of crime prevention, law enforcement and criminal justice, migration management, crisis and intervention management, inter-agency and international cooperation and the exchange of relevant information. In chapter three, the research work concentrated on the specification of TNT-related subject-areas, which were considered as most relevant for data gathering and its analyses of communalities and differences, as well as for the exchange of views during the interviews and technical discussions. A detailed list was developed that provides a comprehensive overview of all subject-areas identified in the field of TNT (see Annex 2). In the fourth chapter, the many aspects of TOC were analysed in relation to identified and potential risks for national border police/border guards and customs services and other relevant law enforcement

agencies involved in BSM and IBM, both of EU MS and non-EU countries with regard to their defined tasks and responsibilities related to national security and public order. Representative for other EU MS provisions of criminal procedure, section 100a of the German Code of Criminal Procedure¹⁰⁰³ served here as a good example and played a decisive role where all important criminal offences are specified in the area of TOC and a list of areas of crime, the relevant legal bases and offences of the classic areas of TOC was developed (see Annex 1). Serious crimes that are relatable to the area of TOC were contrasted and compared with TNT areas and in ten sub-areas, offences could be attributed both to TOC as well as to TNT (see table 3.3.1.). For the purpose of a comprehensive illustrative comparison, a list was developed with 44 individual items from the fields of TOC and TNT and compared with each other (see Annex 3).

Further on closer examinations, various OC definitions from EU MS, non-EU countries and IO's were studied and examined with regard to their individual characteristics and then contrasted in a comparative manner. The comparison of the various OC definitions brought the insight that the application and implementation of OC definitions is complicated and difficult to manage, since the content and the scope of the definitions of EU MS, non-EU countries and IO's varied greatly. As a result of this research, a summary of the examined OC definitions was developed (see Annex 5). With regard to TNT, to date, there is no all-in-one definition available to describe TNT in detail (see point 3.2.). As a paraphrase and in the context of security policy interests in the national, regional, global and intercultural context, it can be concluded that TNT are scenarios with potentially far-reaching and cross-border hazards for life or limb or considerable material assets.

Since the beginning of the 21st century, many EU MS faced enormous challenges in their migration management in general and significant disproportions in the reception of refugees in particular. Since 2015 at the latest, the EU experienced an unprecedented influx of refugees and irregular migrants as mass phenomena, as described in detail in chapter five. Far more than 1 million people arrived in a few EU MS and many of them were fleeing from war and terror in Syria and other countries. However, the research carried out also led to the conclusion that not

1003 German Code of Criminal Procedure (*StPO*), as amended by the notice of 7 April 1987 (Law Gazette I, 1074, 1319), which was last amended by Article 2 (3) of the Law of 21 January 2015 (Federal Law Gazette I, p.10) has been amended. The translation includes the amendment(s) to the Act by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410). Available from: https://www.gesetze-im-internet.de/englisch_stpo (Accessed on 16th November 2016).

everyone who comes to Europe needs protection and many of those leave their homes in an attempt to improve their lives. These people are often referred to as economic migrants, and if they do not have a legitimate claim to protection, then EU MS and non-EU countries' governments have an obligation to ensure that they return, either voluntarily or with use of coercive measures, to their home country, or to another country through which they have passed. The findings of the research work were discussed in detail in chapter five and point 15.1. of the thesis.

In chapter 13, the author focused in his research work on a merely exemplary selected number of supranational organisations and their activities in the areas of IBM. The selection was based on various factors as described in chapter 13, point 13.8. and their intergovernmental cooperation in the context of IBM and relevant efforts to develop instruments to prevent TNT, improve information management and their interconnections with involved states. Formalities for cooperation between these supranational organisations and governmental entities in the area of intergovernmental collaboration are regulated and the results of this research was illustrated in table 13.8.1. of the thesis.

In chapter 14, the research work introduced new models for the implementation of remote border checks and the provision of advanced passenger information as an indispensable part of national security policies and effective instrument of the EU IBM tool box related to compensatory measures. Individuals are faced with border officials of the respective state control authorities outside the destination country and personal data of individuals are provided in a pro-active manner for control and risk analysis. Seconded officials have no legal powers of enforcement in the territory of another State and can only act as advisors. Tasks and responsibilities of seconded experts are described and defined on the basis of bilateral agreements that apply analogously to secondments of EU MS border experts in Frontex operations on the territory of another EU MS (see point 10.3.1.). As a good result, the research work contributed for a significant improvement of the 'Air Travel Cycle' (see figure 14.9.).

16.1.2.2. Limitations and shortcomings of the research work

A limitation of the research in the overall area of BSM and migration management is in any case the lack of reliable data of refugees and irregular migrants who were not registered by the responsible officials in the Eurodac database in alignment with the 'Dublin Procedures' upon their arrival in an EU MS and then moved on to another EU MS (see explanations in point 5.9., 9.2. and 9.7.). The massive and

uncontrolled arrival of refugees, irregular migrants and/or asylum seekers has put enormous pressure not only on many EU MS' asylum systems, but also on the Common European Asylum System (CEAS) as a whole. The extent and temporary high concentration of arrivals has clearly exposed the weaknesses of the 'Dublin Procedure' that establishes the respective EU MS responsible for conduct of an asylum application based primarily on the first point of entry.

In further consideration, the phenomenon of secondary movements was identified as an area that is difficult to overlook as refugees and/or asylum-seekers move from the country (i.e., EU MS or non-EU country) in which they first arrived to seek protection or for permanent resettlement elsewhere. While most refugees and/or asylum-seekers seek protection in neighbouring states or states close to their countries of origin, many choose to move most in an irregular manner onwards from or through countries in which they had, or could have sought, international protection, to other countries where they may request such protection. Different factors may influence the motivation for such secondary movements and the decision to settle in a particular EU MS (see detailed explanations regarding push- and pull-factors in point 5.2.). The overall objective of the CEAS is to limit secondary movements of refugees and/or asylum seekers for protection between EU MS in accordance with the 'Dublin Procedures'. However, the mass influx of refugees and asylum-seekers to Europe during the last years has shown that the current system did not function to prevent such secondary movements. As a consequence, among others, the EC as well as most affected EU MS propose a comprehensive harmonisation of the EU asylum rules and a range of new measures on asylum policy. The CEAS is characterised by differing treatment of asylum-seekers, including in terms of the length of asylum procedures and reception conditions across EU MS, which can stimulate secondary movements.

Such cases of non-registered refugees and/or asylum seekers in accordance with the 'Dublin Procedures' or secondary movements of irregular migrants can only be investigated mostly through prioritised and targeted controls. Control offences are offences whose commission only become apparent when the criminal prosecution authorities carry out appropriate investigations. In the case of control offences, there are no victims who report the offence to the police on one's own initiative (e.g., offences against the Residence Act). As described in detail in point 5.6., the aforementioned offences related to secondary movements, irregular migration and

illegal border crossings are primarily control-related offences and the clearance of these offences correlates significantly with the intensity and extent of relevant measures to combat these offences.¹⁰⁰⁴ People who crossed illegal borders to EU MS report to the police or public prosecutor's office only in exceptional cases (e.g., for example in cases of missing a child, or rape) in all circumstances avoid indicating their true identity. For these reasons, the EC is proposing to revise and replace the current asylum instruments to better manage migration flows and offer adequate protection to those in need, in line with the approach set out in the European Agenda for Migration. In May 2016, as part of its proposed reform of the CEAS, the EC presented a draft proposal to make the 'Dublin Procedure' more transparent and enhance its effectiveness, while providing a mechanism to deal with situations of disproportionate pressure on EU MS' asylum systems, the Dublin IV Regulation.

Within the overall framework of BSM the EU IBM model is determined to prevent and avert all kinds of TNT in general and combating TOC, countering terrorism and FTFs in particular. IBM is based, *inter alia*, on the key principles of inter-agency cooperation and international cooperation. The analyses of currently practiced cross-border cooperation between law enforcement agencies from EU MS and non-EU countries show that close international police cooperation should not be limited to operational measures only. The fine-tuning of the same training standards is also necessary related to police training as well as basic technical equipment, in particular in the fight against TOC, terrorism and FTF and illegal border crossings. The research could not reveal the extent to which law enforcement authorities of countries of origin and/or transit have the necessary training and knowledge to recognise and investigate the phenomena of TOC, irregular migration as well as international terrorism and FTF. Training centres for police management and leadership and public administration in EU MS and non-EU countries are requested to strengthen international cooperation with the aim of advancing a tight network of European police academies and faculties.

16.2. Key findings of the research work

The different concepts of the respective governmental BSM authorities should be explained with a specific focus on border control and border surveillance, averting

¹⁰⁰⁴ *Rechtslexikon* (2007): The term of 'control-related offences' is used, whose commission is not noticed until the law enforcement authorities make appropriate inquiries. There is no victim in the case of control-related offences, which reports the offence on its own initiative to law enforcement agencies; example corruption. Available from: <http://www.lexexakt.de/glossar/kontrolldelikt.php> (Accessed on 6th December 2016).

of danger and criminal investigation, relevant responsibilities mandatory to the Procedure of Law, cross-border police cooperation, culture and traditions of the respective border services (i.e., individual or collective understanding), hierarchical structures and command, sustainability and ethics, commitment to reform and acceptance of new structures. State authorities responsible for the safeguard and control of the EU external borders as well as their adjacent neighbours need uniform education and training standards, as well as the provision of the latest technical equipment. It was therefore not really surprising that, in order to ensure effective and efficient inter-agency cooperation, the different education and training standards and views on the exchange of relevant information from the European states were identified as an area for improvement. In consequence, these border law enforcement agencies must be provided with a robust legal mandate to cope with all identified challenges to avert TNT, combat TOC and to investigate these criminal offences (see previous remarks on border guards and border police in point 8.3). In review it is apparent to some extent that relevant decision-makers, both at a political decision-making level, as well as within the respective BSM services, show interest for necessary reform processes and to implement them in a coordinated manner. Based on the findings of this work there is a great need for comprehensive interdisciplinary approaches to develop new ideas and concepts in the overall area of BSM and thus to ensure effective and efficient safeguarding and control of national borders. This applies above all to the areas of close and trustworthy cross-border police cooperation and a modern cross-departmental strategic security management to manage the challenges of these transnational threat scenarios and to guarantee security, order and stability for civil societies. On the basis of future analyses of work-flow processes elaborated by the relevant BSM authorities, it is then necessary to eliminate identified problems related to interfaces or fault lines and to strengthen inter-ministerial and inter-departmental cooperation. The characteristics of TNT and TOC described in this work are of crucial importance for the EU MS and adjacent neighbouring countries. This calls for the harmonisation of the BSM systems and infrastructure related to border control and border surveillance in accordance with EU standards and best practices developed, as well as for strong and trustworthy cooperation between the border law enforcement services. Furthermore, additional comprehensive efforts are required to train officers of the respective border services as effectively as possible and to equip them with state-

of-the-art technologies, which has been identified as a vulnerable area. One possible way of further researching relevant grey areas, particularly in the area of cybercrime, could be the establishment of international finding committees. Experts from governmental institutions and non-governmental organisations, non-profit organisations, art and culture, philosophy, sociology, religion and other areas discuss different perspectives of issues that could become a transnational threat in the near future, or already identified phenomena could become more critical. It remains a huge challenge to reach these standards and to reduce an apparent East-West gap one day. This requires sustained assistance and a comprehensive knowledge transfer from EU MS to the Eastern European neighbour countries. From today's point of view, this can only be achieved, among other things, by drawing up extensive programs of the above-mentioned organisations and institutions for the modernisation of BSM systems and their infrastructures, developing common standards, and bilateral agreements between the EU and their neighbouring countries.

16.3. Results achieved and contributions to knowledge gain in alignment with the research work

States generally recognize the need for enhancing cross-border cooperation and information exchange in order to significantly improve inter-agency and international cooperation and safeguarding borders in a holistic way. A multilateral and coordinated approach to effective BSM-related measures is integral to addressing the myriad of threats and challenges each state faces individually. From early 2014 until the end of 2017, all research work and analyses focused on the overall area of BSM with a specific focus on TOC, counter terrorism and FTF, avert of TNT, prevention of irregular migration, including to combat THB and people smuggling, and uphold the fight against other forms of cross-border crime. As a very important outcome of this research work, during the entire project duration the author maintained a continuous exchange of views through interviews of and technical discussions with senior law enforcement experts, conduct of case studies, analyses of statistics (i.e., annual and case-related) in terms of quantitative and qualitative indicators. Along with the findings of the research work, the author prepared a number of BSM-related documents in the areas of risk analysis and threat assessments, gaps and needs assessments, security sector reform evaluations, feasibility studies, annual reports and intermediate reports, as well as project reports, both quarterly and final reporting, which are accessible publicly.

Finally, all contracting authorities, such as the EU, EC, OSCE, UNODC, UNOCT and UNCCT approved these documents.

As a prime example of a set of elaborated documents, the author developed the *GCTF Good Practices in the Area of Border Security and Management in the Context of Counterterrorism and Stemming the Flow of Foreign Terrorism Fighters*. This paper was then adopted by more than 60 UN Member States during the 7th GCTF Ministerial meeting in New York in September 2016.¹⁰⁰⁵ These good practices are intended to inform and guide governments as they develop their policies, programs, and approaches for enhancing effective BSM, cross-border cooperation and information exchange, border control and border surveillance in the context of counterterrorism and TOC (see point 13.2.). The good practices can also be used to shape bilateral or multilateral technical or other capacity-building assistance in these areas. This good practice document was considered as a milestone in harmonising standards in the overall area of BSM and was developed also based on the findings of the comprehensive research work during this period. In the further course, the author used the GCTF Good Practices paper as the basis for the elaboration of a Training of Trainers (ToT) Curriculum for the development of training courses addressing good practices in the area of BSM. The ToT curriculum is considered as the basis for the organisation of training courses addressing good practices in the area of BSM related issues to avert TNT, combat TOC and counter terrorism and FTF's for Member States that addresses the framework document's 15 good practices in detail in order to build capacity and competence in these areas. Any programs, policies, laws, or actions implemented in furtherance of these good practices must be done so with full regard for States' obligations under all relevant international laws and norms. The ToT training curriculum will enable experienced personnel to guide future trainers first and foremost how to organise and deliver courses, workshops and seminars. This ensures that border officers get timely training to complete tasks according to Member State's border authorities' policies and procedures. The Training of

¹⁰⁰⁵ Global Counterterrorism Forum (2017): On 22nd September 2011, the GCTF was launched at a Ministerial Plenary Meeting in New York as an informal, political, multilateral counterterrorism (CT) platform that has strengthened the international architecture for addressing 21st century terrorism. Available from: <https://www.thegctf.org/Cross-Cutting-Initiatives/Border-Security-Initiative> (Accessed on 14th February 2017). Note from the author: From 2014 until 2016, the author shows responsible for the development of the paper on 'Good Practices in the Area of BSM and the Context of Counterterrorism and Stemming the Flow of FTF', which was adopted by approximately 60 UN MS.

Trainers (ToT) Curriculum addressing good practices in the area of BSM was adopted during the 8th GCTF Ministerial meeting in New York in September 2017.

16.4. Policy recommendations as a result of the research work

Mobility in connection with the crossing of nationally defined territories is usually restricted by the states' legal right for border control (see detailed explanations under point 5.4.). In this context, considerable legislative and official documents were reviewed, under which legal requirements such control and surveillance activities can be undertaken. As discussed in point 7.6. on the basis of Article 2 of the *Schengen* Agreement stationary border controls were re-established between Germany and their neighbouring states during the G7 summit in May and June 2015. The analyses of this dataset (see point 7.6.) then brought new perspectives in no case expected results.¹⁰⁰⁶ Since 2015 at the latest, the crossing of borders in the form of irregular migration and escape is perceived as mass phenomena and threat to public safety and order. The extent of identified crimes correlates significantly with the intensity and scope of relevant measures to combat these crimes.

The experiences made since 2015 have revealed that large-scale uncontrolled arrivals put an excessive strain on the EU MS' asylum and migration systems that has led to an increasing disregard of national legislation (see point 5.4.) and EU regulations (see point 15.5.). Ongoing discussions therefore demand vehemently to regaining effective control of the present situation by mandatory applying the current rules on the *Schengen* border code, IBM guidelines and asylum management, as well as through enhanced cooperation with key third countries (e.g., Turkey, Maghreb states, Western Balkan states).

It was undoubtedly noticed that that the overall migration situation has exposed fundamental weaknesses in the design of the EU's IBM and migration and asylum regulations. This undermines the EU's intention of effective IBM and does not ensure a sustainable sharing of tasks and responsibilities, which need to be addressed in a comprehensive manner urgently. For this reason, the EC developed a proposal for a regulation of the EU Parliament and of the Council to establish the criteria and mechanisms for determining the EU MS responsible for examining an application for international protection lodged in one of the EU MS by a third

¹⁰⁰⁶ Bavarian government (2015): Notification of the Bavarian State Government on the organisation and holding of the G7 summit in Garmisch-Partenkirchen at Ellmau Castle in the period from 7th to 8th June 2015. Available from: <http://www.bayern.de/staatsregierung/g7-gipfel-2015> (Accessed on 20th December 2016).

country national or a stateless person (recast).¹⁰⁰⁷ The EU intends to working towards a more sustainable approach to managing migration, both for people who need international protection and for those who move for other reasons. The approach aims to end irregular migration and dangerous movements and the business model of people smugglers, and to replace these with safe and legal ways to the EU for those who need protection. Protection in the region and resettlement from there to the EU should become the model for the future, and best serves the interests and safety of refugees. In line with the EU *acquis* and *Schengen* border code, EU MS are obliged to carry out systematic checks against relevant databases on persons, both EU citizens and travellers from non-EU countries, who are crossing the Union's external borders to preserve and strengthen the *Schengen* area. In order to strengthen the inter-agency cooperation and information management between BSM law enforcement, recommendations are made for areas as following.

16.4.1. IBM

The EU strives for high level of security by ensuring strong and effective IBM systems in combination with effective compensatory measures while safeguarding the free movement of persons in line with relevant EU's legal and regularity commitments and fundamental rights. Effective IBM systems supported by Frontex will facilitate legitimate border crossings and prevent irregular migration, detect illegal border crossings and fight cross-border crime at the same time.

This is only possible as long as EU MS' IBM services execute their border control conscientiously and professionally in line with Article 4 of EU Regulation 2016/1624 by:¹⁰⁰⁸

1. a) reinforcing the capacities for carrying out checks and surveillance at the external borders, including measures to prevent and detect cross-border crime, such as migrant smuggling, THB and terrorism;
- b) supporting search and rescue in the context of carrying out border surveillance at sea;

¹⁰⁰⁷ European Commission (2016): Proposal for a Regulation of the European Parliament and of the Council, Brussels, 4.5.2016 COM(2016) 270 final 2016/0133 (COD)

¹⁰⁰⁸ The European Border and Coast Guard Agency (Frontex) was established by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14th September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.09. 2016, p.1).

- c) implementing technical and operational measures within the *Schengen* area which are related to border control;
 - d) carrying out analyses of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;
 - e) supporting, within the scope of this Regulation, EU MS facing existing or potential disproportionate migratory pressure at the EU's external borders, including through technical and operational reinforcement, including by deploying migration management support teams in hotspot areas.
2. Further developing of the European Border and Coast Guard, through common capacity-building, joint procurement, establishment of common standards and any other measures streamlining the cooperation and coordination between the Member States and the European Border and Coast Guard Agency.
 3. Enhancing inter-agency cooperation at national level among the national authorities responsible for border control or for tasks carried out at the border, and at EU level between the MS, on the one hand, and the relevant EU bodies, offices and agencies or third countries, on the other.
 4. Ensuring the uniform application of the EU *acquis* at external borders, including through the implementation of recommendations from quality control mechanisms such as the *Schengen* evaluation mechanism in line with Regulation (EU) No 1053/2013, vulnerability assessments in line with Regulation (EU) No 2016/1624, and possible national quality control mechanisms.
 5. Setting up, operating, and maintaining IT systems in the area of border management, including the interoperability of these IT systems and their communication infrastructure.

16.4.2. Visa regime

The EU is encouraged to provide a common visa policy to facilitate legitimate travel and prevent migratory and security risks. Therefore, it is necessary to provide efficient and client-friendly services to visa applicants while maintaining the security and integrity of the visa procedure. The EU's visa policy has to ensure an efficient and uniform application of the EU's *acquis* on visas, including the further development and modernisation of the common policy on visas as well as continuous strengthening the cooperation among EU MS in visa processing. This needs the setting up, operating and maintaining IT systems in the area of the

common visa policy, including the interoperability between these IT systems and their communication infrastructure.

16.4.3. Asylum and Migration

EU MS need to enhance their efforts to increase management capabilities of migration flows in line with the EU *acquis* on asylum and migration and in compliance with the EU's commitments of the CEAS and on fundamental rights. EU MS must ensure a uniform application of the EU *acquis* and laws related to the CEAS. The EU as a community has to support individual EU MS' asylum systems with regards to improved infrastructures and services where necessary (e.g., Greece, Malta, Italy, Spain). The EU has to enhance their solidarity and responsibility-sharing between EU MS and in particular towards those most affected by migratory flows. The EU has to enhance its solidarity and strengthen the cooperation with third countries affected by migratory flows (e.g., Turkey, Lebanon, Jordan, Maghreb countries), as well as partnership and cooperation for the purpose of managing migration. The EU has to increase its efforts to counter effectively irregular migration by ensuring sustainability of lawful and effective readmission and return of persons in third countries. The EU's readmission policy has to be in line with a uniform application of the EU *acquis* and policy priorities in terms of infrastructures, procedures and services. This is to focus on an integrated and coordinated approach to smooth return management at the EU's and its MS' level for effective and sustainable return and reducing incentives for irregular migration. The EU's return and readmission policy should be assisted by measures for voluntary return and sustainable reintegration.

16.4.4. Internal security

The overall objective to strengthen the EU's internal security is to ensuring a high level of security through counter terrorism and FTF, combat radicalisation and violent extremism, fight effectively serious and organised crime and cybercrime, as well as assisting and protecting victims of crime. This requires a high level of pro-active, trustful and secure information management among the EU's law enforcement agencies and bodies as well as with third countries and IO's. Hence, the EU has to ensure the uniform application of the EU *acquis* on information exchange security supporting information management, including through the implementation of recommendations from quality control and evaluation mechanisms such as the *Schengen* evaluation mechanism and other quality control and evaluation mechanisms. This requires the set-up, adaptation and maintenance

of security relevant national and EU IT systems and communication networks, including their interoperability, and to develop appropriate tools to address identified gaps. This is necessary to increase the active use of national and EU security relevant information exchange tools, systems and databases ensuring that these are fed with high quality data.

16.5. Questions left unanswered

From a multitude of possible questions, the PhD project focused on two questions in the area of border management in Europe:

- What kind of TNT and forms of cross-border crime should be repelled and fought through the system of IBM?
- Which instruments and mechanisms should be improved, or developed, in order to ensure modern, effective, and efficient models of IBM?

In summary, it is evident that the complexity of the theme introduced a large number of further questions which, however, could not be dealt with and answered in this context. For this reason, the author wants to emphasise two further subject areas, which in any case require further research and clarification, namely: the 'Dublin Procedure' and the future role of the EU Border and Coast Guard Agency. The migratory and refugee crisis exposed significant structural weaknesses and shortcomings in the design and implementation of the EU's asylum system, and of the 'Dublin Procedure' in particular. It clearly turned out that the current system was not developed to ensure a sustainable sharing of responsibilities for applicants across the EU. This created situations where a few EU MS had to deal with the vast majority of refugees and/or asylum seekers arriving in the EU. As a consequence, this put the capacities of their asylum systems under strain and leading to lack of enforceability of EU regulations (see point 15.6.). Furthermore, the effectiveness of the 'Dublin Procedure' was questioned by a set of disputable rules related to the determination of responsibilities as well as length of administrative procedures. The current system is lacking clear provisions on applicants' obligations as well as on the consequences for not complying with them and is often vulnerable for abuse by the applicants. As a reminder, the objectives of the 'Dublin Procedure' is to ensure quick access of asylum applicants to an asylum procedure and the examination of an application in substance by a single and clearly determined EU MS. It became clear, that the 'Dublin Procedure' seeks for simplification and enhancement of effectiveness in practice. This includes for improvements to be equal to the task of dealing with situations when EU MS' asylum systems are faced

with disproportionate pressure.

Additional efforts are needed and should focus on aspects as follows:

- Optimisation of the EU system's legal framework to determine an individual EU MS responsible for examining the application for international protection.
- Significantly shorten the time limits for sending requests, receiving replies and carrying out transfers between involved EU MS.
- Guarantee a fair sharing of responsibilities between EU MS by improving the current EU asylum system and developing a mechanism for cases where EU MS would have to deal with a disproportionate number of refugees and/or asylum seekers.
- Stop abuses and prevent secondary movements of refugees and/or asylum seekers within the EU, in particular by including clear obligations for applicants to apply in the EU MS of first entry and remain in the EU MS determined as responsible.
- This also requires proportionate procedural and material consequences in case of non-compliance with their obligations.

In final confirmation, the Dublin system is the cornerstone of the CEAS and deals with the determination of which EU MS is responsible for an asylum claim. It operates through the legal and policy instruments in the field of asylum, in particular asylum procedures, standards for the qualification for individuals for international protection, and reception conditions, as well as relocation and resettlement.

Founded in 2005, Frontex' original mandate was to implement the EU's external border controls and support EU MS' border law enforcement services in the implementation of joint operations in a cross-border dimension. The EU agency deploys border guards and sea patrols where necessary, carries out risk management assessment, coordinates repatriation of illegal immigrants and to control and monitor EU external borders, based on the common rules of the *Schengen* border code. Over the years, the agency grew significantly in size and budget as Europe has faced waves of mass-influx of irregular migration. In 2016, Frontex was officially reconfigured as the European Border and Coast Guard Agency.¹⁰⁰⁹

As already discussed in detail in chapter ten, the EU agency Frontex has no political competencies and does not have any of its own police powers. Further, Frontex

¹⁰⁰⁹ Ibid.

has no appropriate powers of attorney towards other national BSM law enforcement agencies in the respective EU MS, or in the *Schengen*-associated countries.¹⁰¹⁰ In September 2015, Jean-Claude Juncker gave a speech to the EU Parliament on the State of the Union, calling for fundamental changes to the way in which Europe deals with asylum applications and proposing: “Frontex should be strengthened and developed into a fully operational European border and coast guard system”. These proposals consolidate Frontex’s position as a central component of the EU’s response to combat irregular migration and interlinked forms of cross-border crime. This policy brief looks at the opportunities and challenges posed by allocating additional resources to Frontex, including an operating staff of 10,000 by 2020. While this EU agency has already grown significantly in resources and infrastructure, the author’s summary is that there are too many questions left unaddressed related to its operational and executive mandate. Focusing only on the increase of border police officers at its disposal as well as Frontex’s capacities in general this might create a gap on capabilities in other areas, such as interoperability, inter-agency cooperation, information management, logistics and others. Regulating migratory flows effectively requires a more comprehensive approach than merely strengthening Frontex further.

From the author’s perspective, future efforts should focus also on aspects like:

- Consensual statement to define EU MS’ IBM systems and infrastructure as a shared responsibility for Frontex officials and the national IBM authorities.
- Extending Frontex’ capacities, mandate, tasks and responsibilities.
- Development of an effective entry-exit system (EES) for non- EU citizens at the external borders to obtain data on when and where every third country citizen enters and exits the *Schengen* area.
- Development and implementation of the European Travel Information and Authorisation System (ETIAS) for visa-free non-EU citizens (see more information in point 16.6.).
- Executing systematic database checks on *Schengen* citizens as well by using the SIS II database, when they cross borders (see detailed explanations in chapter eight). Checks are made by the national police, customs service, and border police/guards and can inform other institutions about people and items that they are searching for.

¹⁰¹⁰ Council Regulation (EC) No 2007/2004 of 26th October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Article 10 – Exercise of executive powers

16.6. Future research

The *Schengen* agreement is considered as a significant EU achievement in which the participating countries have officially abolished stationary border controls at their mutual borders allowing EU citizens, non-EU residents, visitors to the EU and the passage of goods and trade to freely and safely travel within the Union. This brings various benefits to citizens and communities across the EU; the free flow of travellers, goods and services also supporting the underpinning principles of both *Schengen* and the EU itself. However, this scale, complexity and interconnectivity of mobility generates enormous challenges upon those responsible for the EU's IBM agencies. The focus must certainly be on strengthening the managerial, operational and information management capacities for smooth travel of people, movement of goods and guarantee of services in line with EU *acquis* and policies, while ensuring the security and well-being of citizens and society.

This challenge is clearly recognised by the EC and EU MS that a risk-based approach within the overall area of IBM is a critical area to ensure that free movements and security, two naturally opposing ideals, can be balanced effectively and efficiently. As discussed before EU MS can reintroduce internal border controls in the event of security risks and potential threats on a temporary basis (see point 7.6. and 15.6.). The EC is now considering a request by the Interior Ministers of *Schengen* states for the reintroduction of stationary border controls for up to two years. A temporary reintroduction of border controls puts both EU and non-EU citizens in the same procedure, causing significant burdens to the entire system and its procedures, requiring additional resources, creating bottlenecks and delays and hampers mobility. Therefore, there is a high probability that this will lead to significant risks, threats and costs to EU MS and the EU as a whole, which have been clearly pointed out in research studies commissioned by the EC as well as EU MS governments.

Future research activities have to concentrate on how to ensure that border controls, whether applied at the EU's external borders or within the internal *Schengen* area, can be more target oriented, effective, efficient and therefore more valuable to support the strategic security management and policy aims of *Schengen*, the EU, and of MS and wider international community, in terms of public safety and order, social and economic wellbeing, cohesion and prosperity. New research activities may achieve this through ensuring an intelligent and risk-analysis-based approach to minimise risks and threats and challenges of balancing

the two opposing ideals of mobility and security through the development of innovative tools, smoothly functioning work-flow procedures and solutions by using the latest technology. As discussed in point 14.9. carriers are obliged to transmit, by end of check-in, advanced information concerning travellers whom carriers will transport to an authorised point of entry through which these travellers will enter the territory of the EU. This is at the request of the authorities responsible for carrying out checks on persons at external borders. These new developed systems for the provision of advanced data facilitates the collection and transfer of biometric data¹⁰¹¹ and personal data¹⁰¹² of an individual as well as other relevant travel data¹⁰¹³ by the responsible institutions and their secure transmission to border services in the country of destination.

Highly qualified experts in cooperation with national IBM agencies and their competent managers as end user partners and their identified IBM stakeholders will analyse current operating IBM systems and infrastructure. Based on their findings of what works and what doesn't in a current IBM model, the team of experts will develop a high-level target-operating model for desired end user visions for effective border control and surveillance. This will be both from a BSM agency and traveller viewpoint, of how such experts can make border control procedures more effective, on both the demand and supply side, to meet EC objectives and inform the development of the scientific, technical and innovation objectives in line with EU *acquis*. These objectives will address specific challenges and leverage towards the concept of 'Smart Borders' as an innovative approach (see also point 7.7.).

This will take into consideration recent developments in cryptography and attribute-based credentials, the proliferation and the advanced capabilities of smartphones, as well as advantages in sensor development and dialogue-based agents. The exploitation of widely used electronic devices and the application of innovative actions in the border control process will enhance the overall efficiency

¹⁰¹¹ Federal Foreign Office (2015): The introduction of biometric features in travel documents is based on agreement within the EU and EU MS that will provide their passports with appropriate storage chips that store fingerprints and other biometric features such as photo, personal data, and other administrative data. Available from: <http://www.auswaertiges-amt.de/DE/Infoservice/FAQ/Reisedokumente/08a-BiometrischerPass.html?nn=383016> (Accessed on 1st March 2017).

¹⁰¹² *Juristisches Lexikon* (2015): Personal data determine the identity of a person. This includes, in particular, the first name, surname, date of birth, family status, occupation, place of residence, dwelling and nationality. Available from: <http://juristisches-lexikon.ra-kdk.de/eintrag/Personalien.html> (Accessed on 1st March 2017).

¹⁰¹³ International Air Transportation Association - IATA (2015): Flight Data eXchange (FDX). These are data related to the passenger, baggage, relevant travel data, passport data, payment methods and others. Available from: <http://www.iata.org/services/statistics/gadm/Pages/fdx.aspx> (Accessed on 1st March 2017).

of the procedure while potential risks and threats could be minimised. The application of such technologies will offer manifold advantages. On the one hand, the BSM agencies can dynamically modify applied policies, based on the underlying political and societal environment; while on the other hand, the potential users could understand these policies and reduce the time while crossing a border by revealing properly the required attributes to the BSM authorities. At the same time, data must be protected by strong cryptography, providing both security and privacy simultaneously, and stay under the user's control.¹⁰¹⁴

Pro-active and secure information management between EU MS is key to strengthen the EU's defences against TNT, TOC and terrorism and FTF. The EU has been developing large-scale centralised IT information systems for collecting, processing and exchanging information relevant to security, migration and external border management over the past years. The EC in cooperation with experts has been working towards improving the interoperability and interconnection between these systems to maximise their benefits and close existing gaps. Hence, the EC initiated the development of the European Travel Information and Authorisation System (ETIAS) to strengthen security in the *Schengen* area under visa-free agreements. This follows the announcement by President Juncker in his State of the Union address in September 2016. He said: "We need to know who is crossing our borders. By November, we will propose an automated system to determine who will be allowed to travel to Europe. This way we will know who is travelling to Europe before they even get here."

The ETIAS will gather information on all travellers who are travelling visa free to Europe and ensure that possible security concerns are identified prior to travelling to the *Schengen* area, contributing to a more efficient management of the EU's external borders and improving internal security and the security of EU citizens.

16.7. Closing remarks

Stratenschulte links the definition of open and secure borders with the addition of 'freedom or security'.¹⁰¹⁵ He asks therefore what is more important here, and at the same time he asks whether this is the right question at all, whether a society

¹⁰¹⁴ Council of the EU 6077/10/11 REV 10 (2011): Working Group on Information Exchange and Data Protection (DAPIX). Data protection requirements – Prior to any processing of personal data and to evaluating the implementation of chapter 2 provisions, Member States have to guarantee the level of data protection and comply with all standards and procedures required by Chapter 6 of Council Decision 2008/615/JHA. To this end, they have to fill in the questionnaire set out in document 6661/1/09 REV 1 ADD 1 REV 1 CRIMORG 25 ENFOPOL 39 and send it to [...].

¹⁰¹⁵ Stratenschulte, Eckart D. (2010): *Freiheit oder Sicherheit – Dilemma oder falscher Gegensatz?* Available from: <http://www.bpb.de/internationales/europa/europa-kontrovers/38185/einleitung?p=all> (Accessed on 9th March 2017).

can live in freedom if there is no security. Stratenschulte denies this and refers to the fundamental starting point that the desired freedom presupposes a security, and that security must protect freedom, not limit it, or even abolish it. Humboldt made the following statement: "For without security there is no freedom."¹⁰¹⁶ Even after more than 200 years, this statement is more relevant than ever and has the potential to be recognised as a political maxim, as Beckstein notes in his assessment.¹⁰¹⁷ For Beckstein, Humboldt's statement is of paramount importance in two ways, because freedom should not be understood like a comfortable concept tailor-made to communities and democracy or as any optional freedom, and to leave what one as an individual just wants, regardless of the threat that emanates from it for others.¹⁰¹⁸ In addition, Humboldt added to this well-defined term 'freedom', a freedom that clearly refers to responsibility for oneself and others, a further term: the concept of security. Beckstein notes that this has always been interpreted as an antagonism, and from his point of view it should be refused as a big mistake. In consequence, security and freedom are not to be understood as contradiction, but as indispensable in their reciprocal interaction. Beckstein interprets Humboldt's assertion that security is to be understood as a prerequisite for freedom, and without certainty all freedom was nothing, because it would mean a life in fear. Only those people in societies that live in safety can develop freely. These findings are principally able to reach consensus within EU MS societies and have been recognised and acknowledged within the EU by the Tampere, Hague and Stockholm programs. At the same time, however, Beckstein tried to limit any exaggerated actions and urged a rational approach by stimulating: "As a general rule of thumb must apply, as little security measures as possible, and as much as necessary."¹⁰¹⁹ According to Beckstein, it would be totally wrong to emotionalise and ideologize these questions; only an objective debate would open the way to the most important facts and contribute significantly to effective problem-solving processes.

¹⁰¹⁶ Humboldt von, Wilhelm (1851). *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staats zu bestimmen*.

¹⁰¹⁷ Beckstein, Günther (2010): *Ohne Sicherheit ist keine Freiheit*. Available from: <http://www.bpb.de/internationales/europa/europa-kontrovers/38190/standpunkt-quenther-beckstein?p=all> (Accessed on 9th March 2017).

¹⁰¹⁸ Note from the author: See further explanations under point 3.1.

¹⁰¹⁹ Beckstein, Günther (2010): *Ohne Sicherheit ist keine Freiheit*. Available from: <http://www.bpb.de/internationales/europa/europa-kontrovers/38190/standpunkt-quenther-beckstein?p=all> (Accessed on 9th March 2017).

Stratenschulte, Eckart D. (2010): *Freiheit oder Sicherheit – Dilemma oder falscher Gegensatz?* Available from: <http://www.bpb.de/internationales/europa/europa-kontrovers/38185/einleitung?p=all> (Accessed on 9th March 2017).

Since the terrorist attacks of 11th September 2001 on the World Trade Center in New York and the Pentagon in Washington, people are intensively discussing how much security is needed for the freedom they want, and how these two factors can best be reconciled and coordinated with each other. On the basis of the question as to whether this devastating attack could have been prevented, extensive legislation and by-laws became effective, which have effected extensive behavioural changes. As a fundamental problem in the field of averting of danger, the mode of reactive behaviour has been defined as a solidified culture, which means that security measures are predominately taken on the basis of past events and not in a proactive way. Professional criminals are always using latest technologies, are highly mobile and very flexible within their structures and use this unconditionally to achieve their individual objectives in their respective criminal or terrorist networks with the aim of maximising profits while minimising risks. To analyse and recognise these developments is the overall approach to take, before it becomes a threat to a human being, population groups or a whole society. Therefore, the EU funded the research project on 'Foresight of Evolving Security Threats Posed by Emerging Technologies' (FESTOS).¹⁰²⁰ FESTOS was a project launched by the EC under the 'Security' programme Theme of the Seventh Framework Programme (FP7).¹⁰²¹ FESTOS was one of a series of projects and studies that aimed to cope with the emerging security threats on the European society and find ways to reduce their impact. The FP7 research program has been divided into four thematic areas, which in turn form four specific programs: cooperation, ideas, people and capacities.¹⁰²²

The detailed objectives of FESTOS were as follows:

- Identification of the relevant new technologies and new areas of scientific research focusing on five main areas: new materials, robotics, nanotechnologies, biotechnologies and information technologies, including technologies that may emerge from convergence of the different areas
- Foresight and assessment of security threats that may emerge from the identified technologies and research areas
- Elaboration of scenarios reflecting the emerging and evolving security threats
- Development of indicators to be watched as early warning signals;

¹⁰²⁰ European Commission (2015): FP-7-Project FESTOS. Available from: http://cordis.europa.eu/project/rcn/89978_en.html (Accessed on 10th March 2017).

¹⁰²¹ Ibid.

¹⁰²² Note from the author: In addition, there is a fifth program dealing with nuclear research. In total, there are 10 thematic areas, including the topic of security.

- Discussion of relevant societal and ethical issues aiming at possible policy measures and options to prevent proliferation and abuse of potentially threatening technologies

Additional evaluation and monitoring assessments are necessary to provide a comprehensive overview on the scope and performance of the implemented and ongoing EU support for Security Sector Reforms (SSR) in countries covered by the IPA and ENPI/ENI instruments. The assessments should aim at providing recommendations and further input for the improvement of the programming and implementation of EU support to SSR in general and BSM-related issues in particular. These efforts must be in line with the principles laid down in the communication JOINT (2016) 31 final 'Elements for an EU wide strategic framework to support Security Sector Reform' and the Global Strategy for the EU's CFSP. In addition, analysing technological, as well as societal developments in the next 20 years and beyond, such foresight studies should identify and assess new security threats that could stem from future technologies (see figure 3.2.4 – Bright-Dark Field Research). Special attention should be given through these project researchers to the potential breakthrough envisioned in the phenomena of convergence of technologies, which might open new surprising opportunities. Such research projects should therefore contribute to the improvement of security foresight as an effective tool to strengthen border security and management in Europe.

Open and at the same time secure borders are possible and not a contradiction.

Acronyms

AFSJ	Area of freedom, security and justice
AGIS	Framework programme on police and judicial cooperation in criminal matters
AIS	Automatic Identification System
API	Advanced Passenger Information
BAB	Motorway (<i>Bundesautobahn</i>)
BAMF	Federal Agency for Migration and Refugees (<i>Bundesamt für Migration und Flüchtlinge</i>)
BDK	Association of Federal Criminal Inspectors (<i>Bund Deutscher Kriminalbeamter</i>)
BGHSt	Federal Court of Justice (<i>Bundesgerichtshof in Strafsachen</i>)
BIOPASS	Automated Biometric Border Crossing Systems for Registered Passenger at Four European Airports
BKA	German Federal Criminal Office (<i>Bundeskriminalamt</i>)
BMI	Federal Ministry of the Interior (<i>Bundesministerium des Innern in Berlin</i>)
BOMCA	Border Management Program in Central Asia
BPB	Federal Agency for Civic Education (<i>Bundeszentrale für Politische Bildung</i>)
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CBM	Cooperative Border Management
CCC	Command and Coordination Centre
CCC	Common Core Curriculum
CEPA	Central European Police Academy
CEPOL	Collège européen de police / European Police College
CFSP	Common Foreign and Security Policy
CIRAM	Common Integrated Risk Analysis Model
CIS	Commonwealth of Independent States
CMC	Common Mid-Level Curriculum
CID	Criminal Investigation Department
CRS	Computer Reservation System
CSCE	Conference for Security and Cooperation in Europe
CSDP	Common Security and Defence Policy
DHPol	German Police University (<i>Deutsche Hochschule der Polizei</i>)
DNA	Deoxyribonucleic Acid
EBGT	European Border Guard Team
EC	European Commission
ECJ	European Court of Justice
ECTS	European Credit Transfer System
EES	Entry-Exit System
e.g.	exempli gratia
ENPI	European Neighbourhood and Partnership Instrument
EP	European Parliament
EPA	European Police Academy
EPC	European Political Cooperation
EPN	European Patron Network
ESDP	European Security and Defence Policy
ESS	European Security Strategy
ESTA	Electronic System for Travel Authorisation
Et al.	and others
EU	European Union
EUBAM	EU Border Assistance Mission to Moldova and Ukraine
EUFRA	EU Fundamental Rights Agency
EUGH	<i>Europäischer Gerichtshof</i>

EU MS	European Union Member State(s)
EUPM	European Union Police Mission
EURODAC	European Database for the Identification of Applicants (dac from daktyloscopy)
Eurojust	European Union's Judicial Cooperation Unit
EUROPOL	EU Law Enforcement Agency
EUROSUR	European Border Surveillance System
Falcone	EU Programme of exchanges, training and cooperation for persons responsible for action to combat organised crime
FBI	Federal Bureau of Investigation
FESTOS	Foresight of Evolving Security Threats Posed by Emerging Technologies
FJST	Frontex Joint Support Teams
Frontex	frontières extérieures – European Border and Coast Guard Agency
FTF	Foreign Terrorism Fighters
FYROM	former Yugoslav Republic of Macedonia
GCCP	Global Container Control Program
GCTS	Global Counter-Terrorism Strategy
Grotius	Programme of incentives and exchanges for legal practitioners
GUA	Border Police Support Officers Abroad (<i>Grenzpolizeiliche Unterstützungsbeamte Ausland</i>)
GVB	Border Police Liaison Officers (<i>Grenzpolizeiliche Verbindungsbeamte</i>)
Hippocrates	Programme of incentives and exchanges, training and cooperation for the prevention of crime
IATA	International Air Transport Association
IBM	Integrated Border Management
IBMTF	INTERPOL Border Management Task Force
ICAO	International Civil Aviation Organization
ICMPD	International Centre for Migration Policy Development
ICONET	Informal Competence Net
i.e.	id est
ILECU	International Law Enforcement Coordination Units
INTERPOL	International Criminal Police Organisation (ICPO)
IPA	Instrument for Pre-Accession
IOM	International Organisation for Migration
IS	Islamic State
ISIS	Islamic State of Iraq and Syria (also <i>Daesh</i>)
JCC	Joint Cooperation Centre
LETS	Law Enforcement Training Scheme
LKA	<i>Landeskriminalamt</i>
LSTD	Lost and Stolen Travel Document
MCA	Maximum credible accidents
MedSea	The European Mediterranean Sea Acidification in a changing climate initiative
MEPA	<i>Mitteeuropäische Polizeiakademie</i>
MS	Member States
NATO	North Atlantic Treaty Organisation
NFP	OSCE Border Security and Management National Focal Point Networks
NGO	Non-Governmental Organisation
OBP	<i>Ohrid</i> Border Process
OC	Organised Crime
OFA	<i>Operative Fallanalyse</i> / operational case analysis
OISIN	Programme for the exchange and training of, and co-operation between, law enforcement authorities
OLAF	European Anti-Fraud Office
OSCCP	OSCE's South-Eastern Europe Cross-border Co-operation Programme
OSCE	Organisation for Security and Co-operation in Europe
PAG	Law on the tasks and powers of the Bavarian State Police

	<i>(Polizeiaufgabengesetz)</i>
PAMECA	Police Assistance Mission of the European Community to Albania
PCU	Port Control Units
PHARE	Poland and Hungary Assistance for the Restructuring of the Economy
PKS	Police Criminal Statistic (<i>Polizeiliche Kriminalstatistik</i>)
PNR	Personal Name Record
POG	Police Organisation Act (<i>Polizeiorganisationsgesetz</i>)
RABIT	Rapid Border Intervention Teams
RCC	Regional Cooperation Council
RIS	Right on informational self-determination (<i>Recht auf informationelle Selbstbestimmung</i>)
RTP	Registered Traveller Programme
SALW	Small Arms and Light Weapons
SDÜ	<i>Schengener Durchführungsübereinkommen</i>
SeBoCom	Secure Border Communications
SECI	Southeast European Cooperative Initiative
SEECp	South-East European Cooperation Partners
SEEPAG	South Eastern European Public Prosecutors Advisory Group
SELEC	South Eastern Law Enforcement Centre
SEPCA	South Eastern Police Commander Association
SIS	<i>Schengen</i> Information System (SIS I and SIS II)
SIRENE	Supplementary Information Request at the National Entries
SPOC	Stability Pact Initiative to fight Organised Crime
STOP	Programme for persons responsible for combating trade in human beings and the sexual exploitation of children
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the EU
THB	Trafficking in Human Beings
TNT	Transnational Threats
TOC	Transnational Organised Crime
UN	United Nations
UNCCT	United Nations Counter-Terrorism Centre
UNCTED	United Nations Counter-Terrorism Executive Directorate
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMEER	United Nations Mission for Ebola Emergency Response
UNOCT	United Nations Office of Counter-Terrorism
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime and the Protocols
UNWTO	United Nations World Travel Organisation
US-VISIT	United States Visitor and Immigrant Status Indicator Technology programme
VIS	Visa-Information System
WCO	World Customs Organisation

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Annex 1 – Serious criminal offences related to Organised Crime

The following criminal offenses, as well as the individual offenses listed therein Section 100a subsection 2 of the Code of Criminal Procedure are regarded as characteristic in the area of OC.¹⁰²³

Serious criminal offences for the purposes of subsection (1), number 1, shall be:

- **Pursuant to the Criminal Code:**

- Crimes against peace, high treason, endangering the democratic state based on the rule of law, treason and endangering external security pursuant to sections 80 to 82, 84 to 86, 87 to 89a and 94 to 100a;
- Taking of bribes by, and offering of bribes to, mandate holders pursuant to section 108e;
- Crimes against the national defence pursuant to sections 109d to 109h;
- Crimes against public order pursuant to sections 129 to 130;
- Counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as section 152a subsection (3) and section 152b subsections (1) to (4);
- Crimes against sexual self-determination in the cases referred to in sections 176a, 176b, 177 subsection (2), number 2, and section 179 subsection (5), number 2;
- Dissemination, purchase and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3), section 184c subsection (3);
- Murder and manslaughter pursuant to sections 211 and 212;
- Crimes against personal liberty pursuant to sections 232 to 233a, 234, 234a, 239a and 239b;
- Gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;
- Crimes of robbery or extortion pursuant to sections 249 to 255;
- Commercial handling of stolen goods, gang handling of stolen goods and commercial gang handling of stolen goods pursuant to sections 260 and 260a;
- Money laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1), (2) and (4);
- Fraud and computer fraud subject to the conditions set out in section 263 subsection (3), second sentence, and in the case of section 263 subsection (5), each also in conjunction with section 263a subsection (2);
- Subsidy fraud subject to the conditions set out in section 264 subsection (2), second sentence, and in the case of section 264 subsection (3), in conjunction with section 263 subsection (5);
- Criminal offences involving falsification of documents under the conditions set out in section 267 subsection (3), second sentence, and in the case of section 267 subsection (4), in each case also in conjunction with section 268 subsection (5) or section 269 subsection (3), as well as pursuant to sections 275 subsection (2) and section 276 subsection (2);
- Bankruptcy subject to the conditions set out in section 283a, second sentence;
- Crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;
- Crimes endangering public safety in the cases referred to in sections 306 to 306c, section 307 subsections (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1), sections 313,

¹⁰²³ Code of Criminal Procedure in the version published on 7th April 1987 (Federal Law Gazette [Bundesgesetzblatt] Part I p.1074, 1319), as most recently amended by Article 3 of the Act of 23rd April 2014 (Federal Law Gazette Part I p.410)

- 314, 315 subsection (3), section 315b subsection (3), as well as sections 361a and 361c;
 - Taking and offering a bribe pursuant to sections 332 and 334;
- **Pursuant to the Fiscal Code:**
 - Tax evasion under the conditions set out in section 370 subsection (3), second sentence, number 5;
 - Commercial, violent and gang smuggling pursuant to section 373;
 - Handling tax-evaded property as defined in section 374 subsection (2);
- **Pursuant to the Pharmaceutical Products Act:**
 - Criminal offences pursuant to section 95 subsection (1), number 2a, subject to the conditions set out in section 95 subsection (3), second sentence, number 2, letter b;
- **Pursuant to the Asylum Procedure Act:**
 - Inducing an abusive application for asylum pursuant to section 84 subsection (3);
 - Commercial and gang inducement to make an abusive application for asylum pursuant to section 84a;
- **Pursuant to the Residence Act:**
 - Smuggling of aliens pursuant to section 96 subsection (2);
 - Smuggling resulting in death and commercial and gang smuggling pursuant to section 97;
- **Pursuant to the Foreign Trade and Payments Act:**
 - Wilful criminal offences pursuant to sections 17 and 18 of the Foreign Trade and Payments Act;
- **Pursuant to the Narcotics Act:**
 - Criminal offences pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, subject to the conditions set out therein;
 - Criminal offences pursuant to section 29a, section 30 subsection (1), numbers 1, 2 and 4, as well as sections 30a and 30b;
- **Pursuant to the Precursors Control Act:**
 - Criminal offences pursuant to section 19 subsection (1), subject to the conditions set out in section 19 subsection (3), second sentence;
- **Pursuant to the War Weapons Control Act:**
 - Criminal offences pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), each also in conjunction with section 21;
 - Criminal offences pursuant to section 22a subsections (1) to (3);
- **Pursuant to the Code of Crimes against International Law:**
 - Genocide pursuant to section 6;
 - Crimes against humanity pursuant to section 7;
 - War crimes pursuant to sections 8 to 12;
- **Pursuant to the Weapons Act:**
 - Criminal offences pursuant to section 51 subsections (1) to (3);
 - Criminal offences pursuant to section 52 subsection (1), number 1 and number 2, letters c and d, as well as section 52 subsections (5) and (6).

Annex 2 – Areas of Transnational Threats

- Accumulation and uncontrolled delivery of small and light weapons (SALW)
- Attacks on public facilities/sensitive infrastructure from outside (e.g., via Internet)
- Money laundering, production and distribution of counterfeit money
- Cross-border organised crime
- Illicit trafficking of organs
- Industrial espionage and misuse of intellectual property
- Internal and inter-state destabilisation conflicts
- International vehicle crime
- Internet crime - Cybercrime
- Disaster management after serious accidents with significant risks to life or limb and/or property
- Corruption
- Cross-country and continental diseases (pandemic, panzootic)
- Trademark counterfeiting and product piracy (counterfeit drugs)
- Mass expulsion, irregular migration and illegal immigration
- Trafficking of human beings (THB) and people smuggling
- Nuclear crime
- Organised production, distribution and trading of counterfeit documents
- Product piracy, trademark counterfeiting and drug counterfeiting
- Smuggling of goods
- Complex, large-scale security-relevant scenarios in a cross-border context (e.g., natural catastrophes, major accidents of power plants, bursting of dams, sensitive infrastructure and others)
- Significant deterioration of socioeconomic circumstances in a regional context
- Terrorism, Foreign-Terrorist Fighters and violent extremism
- Illicit cultivation, production and trafficking of narcotic drugs
- Dissemination of weapons of mass destruction
- Other forms of serious transnational crime

Annex 3 – Comparison of OC and TNT

No	Transnational threats areas and OC related crimes	OC national – international	Transnational Threats
1	Revenue code	X	
2	Weapons Act (gun control law); Military Weapons Control Act; Accumulation and uncontrolled dispensing of small arms and light weapons; Landmines	X	X
3	Attacks on public institutions / sensitive infrastructure through access from outside (via the Internet, for example)		X
4	Fraud	X	
5	Theft and dealing in stolen official documents	X	
6	Kidnapping for ransom	X	
7	Counterfeit money and money laundry	X	X
8	Gambling and betting fraud	X	
9	Cross-border organised crime		X
10	Manufacturing of counterfeit travel documents and ID cards	X	
11	Illegal export and smuggling of raw materials	X	
12	Illegal organ trafficking	X	X
13	Illicit trafficking of weapons	X	X
14	Industrial espionage and abuse of intellectual property		X
15	Internal and inter-state destabilisation conflicts		X
16	International vehicle crime	X	
17	Cyber crime	X	X
18	Disasters and serious accidents with significant risks to life or limb and / or property		X
19	Global warming		X
20	Corruption	X	X
21	Credit card fraud and credit card counterfeiting	X	
22	Art and antiquity crime	X	
23	Cross-country and cross-continental diseases (pandemic, panzootic)		X
24	Lottery and betting fraud	X	
25	Mass expulsion, irregular migration and illegal immigration		X
26	Trademark counterfeiting and product piracy	X	
27	THB for the purpose of sexual exploitation (women and children)	X	
28	THB and people smuggling	X	X
29	Nuclear criminality	X	X
30	Organised begging	X	
31	Pandemic, Panzootic		X
32	Product piracy and counterfeiting of medical	X	X

	drugs		
33	Smuggling	X	X
34	Protection racket	X	
35	Security related police operation in the cross-border context (e.g., natural catastrophes, major accidents of power plants, burst of dams, sensitive infrastructure and others)		X
36	Signifikante Verschlechterung von sozioökonomischen Umständen im regionalen Kontext		X
37	Criminal Code ¹⁰²⁴	X	X
38	Terrorism, FTF and violent extremism	X	X
39	Bypassing embargoes	X	
40	Environmental crime and illegal waste disposal	X	X
41	Illicit cultivation, production and trafficking of narcotics	X	X
42	Organised manufacturing, distribution and dissemination of forged travel documents and ID cards	X	
43	Dissemination of weapons of mass destruction		X
44	Economic crime	X	

¹⁰²⁴ Note from the author:

In the table under the heading "No 37 - Criminal Code", a single listed comparison of relevant offenses that can be attributed to both OC and TNT has been omitted for the sake of extensive illustration.

However, the following serious crimes under § 100a StPO can be assigned both to the OC and in the field of TNT: crimes against the peace of nations, high treason and the endangerment of democratic state under the rule of law as well as treason and endangering external national security; counterfeiting of money and official stamps; offenses against sexual self-determination; distribution, acquisition and possession of juvenile pornography; murder and manslaughter; money laundering and hiding unlawfully obtained financial benefits; fraud and computer fraud; offenses causing a common danger in the cases of Sections 306 to 306 c, 307 (1) to (3), 308 (1) to (3), 309 (1) to (4), 310 (1) and 313, 314, 315 para. 3, § 315 b para. 3 and §§ 316 a and 316 c.

Annex 4 – Definitions of diseases as transnational threats

- **Epidemic**¹⁰²⁵ – The occurrence of more cases of a disease than would be expected in a community or region during a given time period. A sudden severe outbreak of a disease such as SARS or Ebola.
- **Pandemic**¹⁰²⁶ – An epidemic (a sudden outbreak) that becomes very widespread and affects a whole region, a continent, or the world due to a susceptible population. By definition, a true pandemic causes a high degree of mortality (death).
- **Panzootic**¹⁰²⁷ – A panzootic is an outbreak of an infectious disease of animals that spreads across a large region (for example a continent), or even worldwide.
- **Endemie**¹⁰²⁸ – Experts define this as a native infectious disease that occurs permanently within a certain area. In Central Europe, for example, lung tuberculosis, measles, or scarlet fever may be mentioned.

1025 Sarre (2007): The term was formed more than 2,500 years ago by the Greek physician and scholar Hippocrates and is composed of the words "epi" and "demos"; Thus it is a disease that "enters upon a people." P.4.

1026 Sarre (2007): The word 'pandemic' is derived from the Greek words "pān" and "dēmos", meaning "something for the whole people". P.4.

1027 Huthmann, E. (2009): Examinations on woodpigeons (*Columba Palumbus*) for detection of infections with avian *paramyxovirus 1* (APMV-1), p.13 to 14.

1028 Wissen.de (2017): [...] in certain areas permanently occurring diseases (e.g., malaria, goitre in mountainous areas). Available from: <http://www.wissen.de/fremdwort/endemie> (Accessed on 11th March 2017).

Annex 5 – OC Definitions

Council of Europe

'Organised crime group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit.

'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty.¹⁰²⁹

European Union

A criminal organisation means a structured association, established over a period of time, of two or more persons, acting in a concerted manner with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.¹⁰³⁰

EUROPOL

'Organised crime group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit.

'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty.¹⁰³¹

'Law enforcement agency' shall mean any public agency entrusted with the investigation and/or prosecution of criminal offences in accordance with its legal mandate.

Germany-Federal Criminal Police Office (BKA) Definition

Organised crime is the planned commissioning of criminal offenses through striving for profit and power, which are individually or in their entirety of considerable importance, if more than two parties work on a longer or indefinite duration

- d) using commercial or business-like structures,
- e) by use of force or other means of intimidation, or
- f) influencing policy, media, public administration, the judiciary or the economy.¹⁰³²

¹⁰²⁹ Note from the author: German Criminal Code, Section 12 - Felonies and misdemeanours

¹⁰³⁰ European Union (2005): Proposal for a Council framework Decision on the fight against organised crime, COM/2005/0006 final - CNS 2005/0003. Article 1 (Definitions) The first paragraph of Article 1 partly takes over the definition of "criminal organisation" from the first paragraph of Article 1 of Joint Action 98/733/JHA.

¹⁰³¹ Note from the author: German Criminal Code, Section 12 - Felonies and misdemeanours

¹⁰³² Justiz Online (2016): *Gemeinsame Richtlinien der Justizminister/-senatoren und der Innenminister/-senatoren der Länder über die Zusammenarbeit bei der Verfolgung der Organisierten Kriminalität.*

Available from: <http://www.jvv.nrw.de/anzeigeText.jsp?daten=510&daten2=Vor>
https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1204

(Accessed on 16th November 2016).

EU MS Definitions

Belgium: Black et al./Annual Report Organised Crime

1. The methodical perpetration of offences that, each separately or collectively, have a considerable impact, for reasons of profit or power;
2. By more than two persons acting together;
3. For a prolonged or indefinite period of time;
4. With a division of tasks, in which they
 - a. use commercial structures and/or;
 - b. make an appeal to violence and/or other means of intimidation and/or;
 - c. exert influence on politics, the media, public administration, the judicial or the business world.

As has been noted elsewhere regarding the *BKA* definition, upon which the Belgian operational definition is based, such a standard sets wide and potentially unclear parameters within which organised criminal activity can be detected. Nonetheless, this same breadth of criminological definition is valuable as it provides enough scope to embrace possible and/or emerging trends rather than being excessively limited or constrained by highly specific attributes. (Black et al., 2000:3)

Croatia: Ministry of Interior

Organised crime comprises systematically planned, prepared, share-of-work committed criminal acts, performed by the members associated in a criminal organisation with permanent actions with the use of intimidation, violence or corruption regardless of state borders, with the view to obtain financial gain or social power. (Adopted on a seminar organised by the Ministry of Interior, Republic of Croatia, in Zagreb 11.-13.06.1997, with the participation of the Ministry of Justice, Attorney General's office, High Court, Ministry of Interior and representatives from the legal sciences. Submitted via e-mail by bspudic)

Great Britain: Home Office/NCIS (early 1990s)

Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities, which has as its primary purpose the generation of profits, irrespective of national boundaries. (Huber 2001, 216)

Ireland: Department of Justice, Equality and Law Reform

Organised crime is defined as an element of criminal activity carried out by criminal organisations that have as their main purpose the commission of one or more serious offences in order to obtain, directly or indirectly, financial or other material benefits. Organised crime covers a wide range of activities, the most damaging of which are drug trafficking, illegal trafficking of people, and fraud. It also includes a wide range of crimes such as high-tech crime, counterfeiting, the use of firearms by criminals, serious robbery, organised vehicle crime, intellectual property theft and others. (Department of Justice, Equality and Law Reform, last visited 20100516)

Italy: Giuliano Turone

Organised crime is any group of people committing systematically serious crimes having an economic aspect with a sort of a business organisation, where costs, profits, money launderings, investments and reinvestments are programmed with an entrepreneurial approach, so that the group may acquire a favourable position within an illegal market and, through that, and through consequent reinvestments, within the legal economy itself. (Turone 2007, 48-49)

UN Definition

Article 2. Use of terms

- (e) 'Organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (f) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (g) 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (h) [...].¹⁰³³

USA-FBI Definition

The FBI defines organised crime as any group having some manner of a formalised structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole.¹⁰³⁴

INTERPOL

Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.¹⁰³⁵

Other opinions

In three basic statements, von Lampe describes the nature of OC as follows:

4. Organised crime, such as the official German definition, is essentially the planned commission of criminal offences.
5. According to a different view, criminal acts are not primarily organised, just the people committing them.
6. According to a third view, the central moment of organised crime is the exertion of power, either by criminals alone or in an alliance of criminals and social elites.¹⁰³⁶

¹⁰³³ Note from the author:

German Criminal Code, Section 12 - Felonies and misdemeanours

(1) Felonies are unlawful acts punishable by a minimum sentence of one year's imprisonment.

(2) Misdemeanours are unlawful acts punishable by a lesser minimum term of imprisonment or by fine.

(3) Aggravations or mitigations provided for under the provisions of the General Part, or under especially serious or less serious cases in the Special Part, shall be irrelevant to this classification.

¹⁰³⁴ Definition FBI „organised crime“. Available from: <http://www.fbi.gov/about-us/investigate/organizedcrime/glossary>. (Accessed on 29th July 2014).

¹⁰³⁵ Nesbitt, Paul / Von Lampe, Klaus (ed.) (1993): Head of Organised Crime Group, cit. in Bresler, Fenton, INTERPOL, London. P.319.

¹⁰³⁶ Von Lampe, Klaus (2013): *Was ist organisierte Kriminalität?* From politics and contemporary history 63rd year, 38-39/2013,p.3.

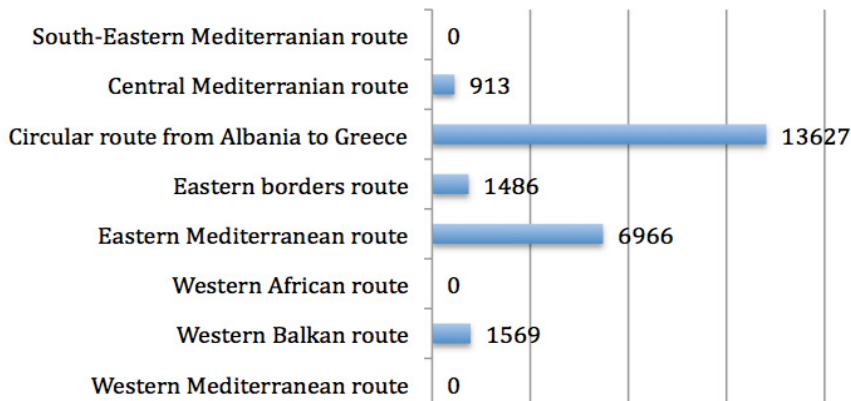
OC compared to gang crime

According to the German Criminal Code, a criminal organisation is pursuant to section 129 of the Criminal Code (*StGB*), when an association was formed whose purpose or its activities are directed to commit crimes. The concept¹⁰³⁷ of the gang presupposes the amalgamation of at least three persons, who have joined the will to commit a number of independent and, in some cases, unknown criminal offenses of the type of crime described in the Criminal Code. There is no need for a 'consolidated will' or an 'action in a superior interest of the gang'.

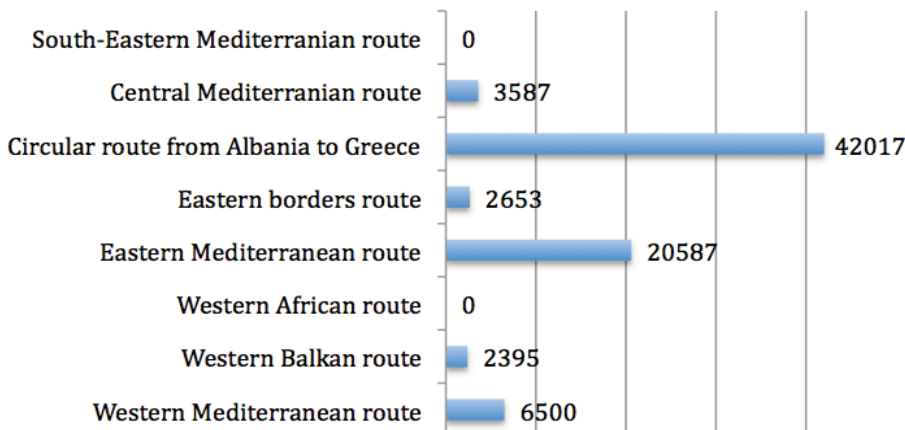
¹⁰³⁷ *BGH GSSt 1/00 - Beschluss v. 22. März 2001 (LG Münster).*

Annex 6 - Irregular Migration via 'Frontex Routes'¹⁰³⁸

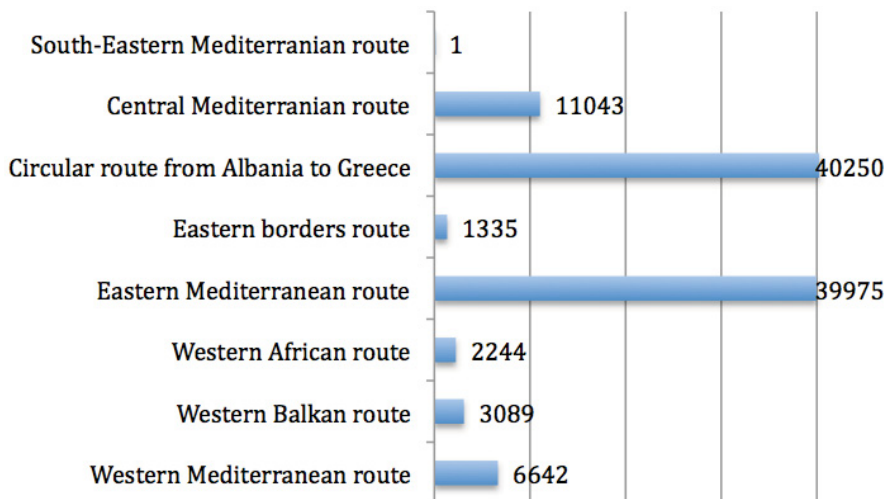
Figures from **2007**



Figures from **2008**

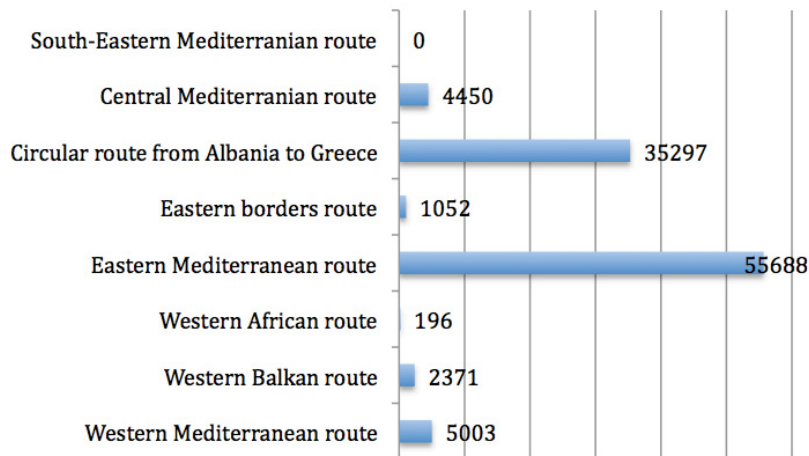


Figures from **2009**

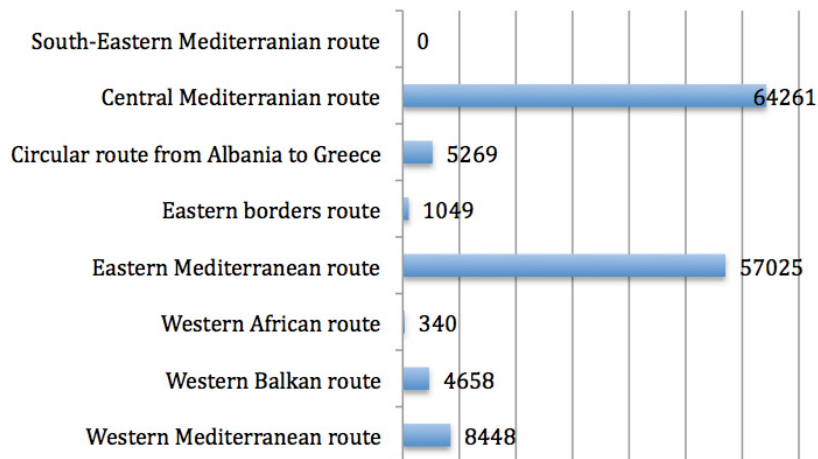


¹⁰³⁸ Frontex (2015): Registered numbers of irregular migrants coming across the seven main routes. The figures were collected in the years 2007 to 2014 as follows: 2007 -July to December; 2008 including 2013 from January to December; 2014 from January to October. Available from: <https://infoqr.am/fluchtlingrouten> (Accessed on 15th December 2016).

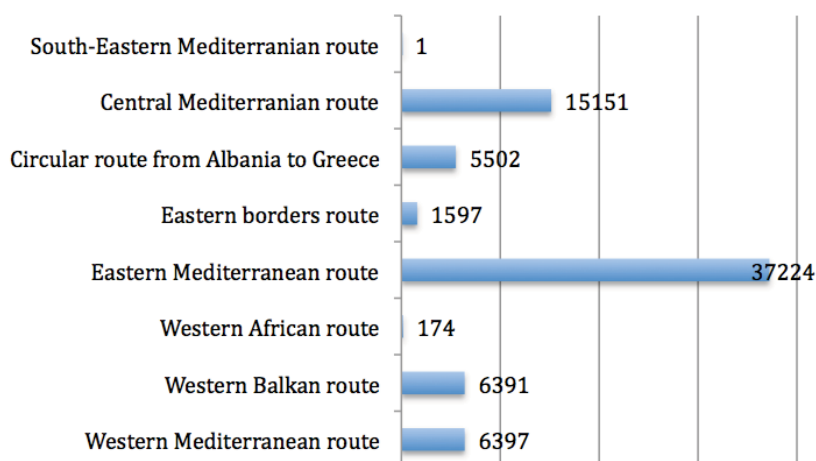
Figures from 2010



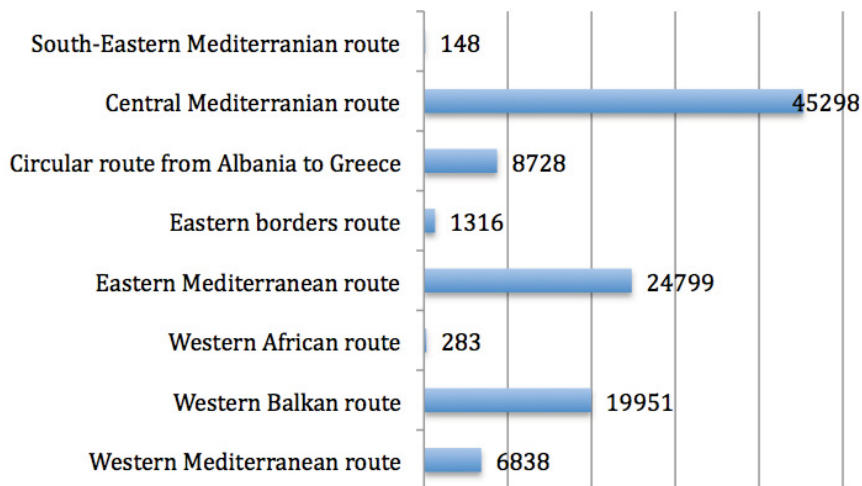
Figures from 2011



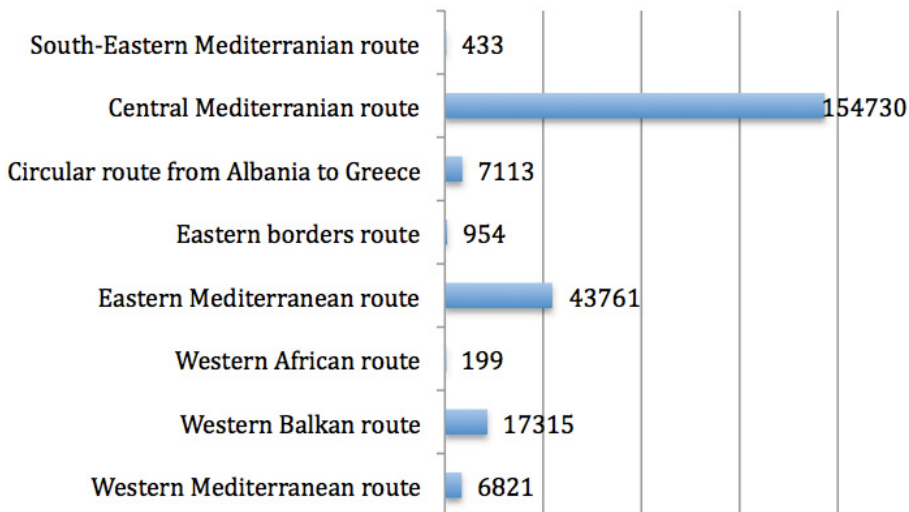
Figures from 2012



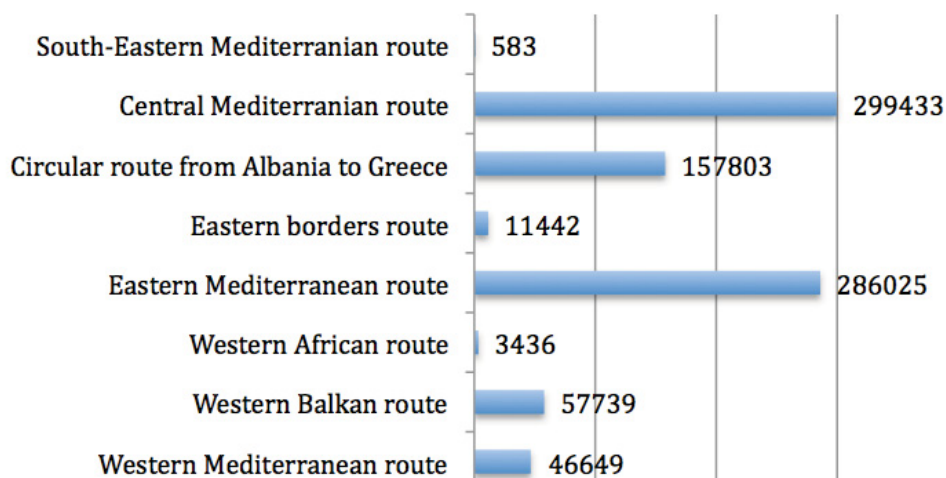
Figures from 2013



Figures from 2014



Total figures



Annex 7 – Important definitions in the area of BSM related issues¹⁰³⁹

1. **Air Travel Cycle** means practices in the pre-departure, departure, pre-arrival, arrival, and post-arrival phases of international air passenger travel. It highlights baseline steps to prevent cross-border mobility of terrorists and other criminals while facilitating international business and tourist travel.
2. **Advanced Passenger Information (API)** is an electronic communications system that collects passenger biographical data and basic flight details provided by the airline operator. The data are generally collected from the passenger's passport or other government-issued travel document.
3. **Border Control** means the activity carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance.
4. **Border Crossing Point (BCP)** means any crossing-point authorised by the competent authorities for the crossing of external borders.

Joint Border Crossing Point see point 19.

5. **Border Guard/Police** refers to any public official assigned, in accordance with national law, to a BCP or along the green or blue border or the immediate vicinity of the border that carries out border control and/or surveillance tasks in alignment with national law and international conventions.
6. **Border Checks** means the checks carried out at BCP, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of MS or authorised to leave it.
7. **Border Community** is often a disadvantaged section of the national population in a state, having high unemployment rates and high poverty levels and also unique within their official populations. What else could be added here?
8. **Border Liaison Office (BLO)** is a bi-lateral or multilateral office/centre where officials from relevant law enforcement agencies communicate, coordinate and cooperate among neighbouring border services and relevant law enforcement agencies, which are key elements aimed at effectively combating transnational threats and cross-border crime.
9. **Border Management**
Integrated, or Comprehensive, or Cooperative, or Coordinated Border Management shall mean a concept of effective border management describing the need for BSM agencies involved in border management – such as border guards, border police and customs service – to coordinate their work at national and international levels.
10. **Border Surveillance** means the surveillance of green and blue borders areas between BCP institutionalised by the competent state authorities for crossing borders and the surveillance of BCP outside the fixed opening hours, in order to prevent persons from circumventing border checks.

¹⁰³⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15th March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*) lays down Community rules for carrying out the border control of persons, covering both border checks and surveillance.

Green Border is the land border between two (2) official BCP areas.

Blue Border is any water border towards sea, lake, river, or creek.

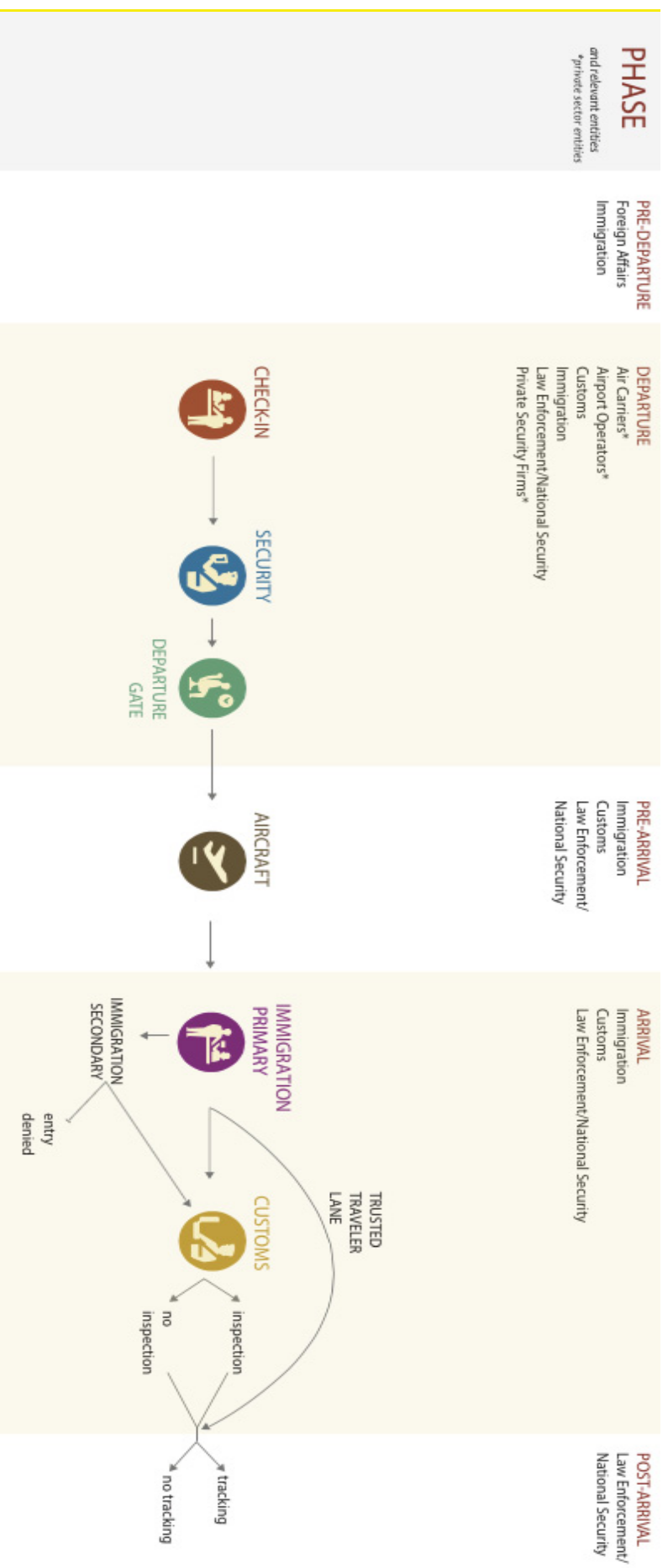
11. **Carrier** means any natural or legal person whose profession it is to provide transport of persons.
12. **Coastal Fisheries** means fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the territory of a Member State without calling at a port situated in a third country.
13. **Community Border Policing** is a working model of full service personalised border policing, where the same officers patrols and works in the same area/s on a permanent basis, from a decentralised place, working in a proactive partnership with people living in border zones to identify and solve problems."
14. **Cruise Ship** means a ship which follows a given itinerary in accordance with a predetermined program, which includes a program of tourist activities in the various ports, and which normally neither takes passengers on nor allows passengers to disembark during the voyage.
15. Document checks "**3-line-model**"
 - **First Line Check** means the regular control of ID documents at the BCP.
 - **Second Line Check** means a further check, which may be carried out in a special location away from the location at which all persons are checked (first line).
 - **Third Line Check** means the examination at forensic level to ensure that, as far as possible, all evidence is available in a form admissible in court.
16. **External Borders** means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, seaports and lake ports, provided that they are not internal borders.
17. **Internal Borders** mean any borders that are not international boundaries.
18. **Internal Flight** means any flight not landing in the territory of another country.
19. **Joint Border Crossing Point** means any common BCP situated on the territory of a State, at which State border authorities (foremost border guards and customs services) and neighbouring mirroring authorities carry out exit and entry checks one after another in accordance with their national legislation and pursuant to a bilateral agreements.
20. **Liaison Officer** is a person who liaises between two entities/organisations to communicate and coordinate their activities.
21. **Minimum Check** is the check to be carried out, as a standard rule, to verify their identity and nationality of a rapid and straightforward verification of the travel document, with the aim of checking the validity of it and of detecting the presence of signs of falsification or counterfeiting. This check may involve the consultation to relevant databases (e.g., INTERPOL SLTD).
22. **One-Stop-Shop** is a place where multiple services are offered, where for example customers can get all they need in just "one stop." The term describes a business model offering travellers the convenience of having multiple checks met in one location, instead of having to "drive from border service to another one" to attain related services at different stores.
23. **Pleasure Boating** means the use of pleasure boats for sporting or tourism purposes.

24. **Personal Name Record** (PNR) is a record in the database of a computer reservation system (CRS) in the airline and travel industries that contains the itinerary for a passenger, or a group of passengers travelling together. The concept of a PNR was first introduced by airlines that needed to exchange reservation information in case passengers required flights of multiple airlines to reach their destination („interlining“).
25. **Regular Ferry Connection** means any ferry connection between the same two or more ports situated in the territory of one State, not calling at any ports outside the territory of the State and consisting of the transport of passengers and vehicles according to a published timetable.
26. **Residence Permit** means documents issued by a Member State to third country nationals authorising a stay in, or re-entry into, its territory.
27. **Single-Window System** is a trade-facilitation model that allows parties involved in trade and transport to lodge standardised information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic then individual data elements should only be submitted once.
28. **Threat to Public Health** means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.
29. **Visa** means an authorisation issued by a MS or a decision taken by such State, which is required with a view to entry for an intended stay in that State or in several States, or for transit through the territory of that State or several States.

Annex 8 –Ethnically dominated OC groups

- **Albanian**-dominated OC groups
Illicit trafficking and smuggling of narcotics, pimping, THB and people smuggling, property criminality, violent criminality
- **Bulgarian**-dominated OC groups
Criminality in connection with economy, counterfeit criminality, property criminality, pimping, illicit trafficking and smuggling of narcotics, THB and people smuggling, environmental criminality
- **Dutch**-dominated OC groups
Illicit trafficking and smuggling of narcotics, criminality in connection with economy, avoidance of taxation and customs offences, property criminality, money laundering, counterfeit criminality, pimping
- **Georgian**-dominated OC groups
Property criminality, counterfeit criminality
- **Latvian**-dominated OC groups
Property criminality, Cyber crime, money laundry, criminality in connection with economy, avoidance of taxation and customs offences
- **Lebanese**-dominated OC groups
Illicit trafficking and smuggling of narcotics, money laundering, violent criminality, THB and people smuggling
- **Lithuanian**-dominated OC groups
Property criminality, illicit trafficking and smuggling of narcotics, criminality in connection with economy
- **Romanian**-dominated OC groups
Property criminality, avoidance of taxation and customs offences, counterfeit criminality, violent criminality, pimping
- **Russian**-dominated OC groups
Illicit trafficking and smuggling of narcotics, avoidance of taxation and customs offences, property criminality, pimping, THB and people smuggling, corruption, arms trafficking and smuggling, cybercrime
- **Vietnamese**-dominated OC groups
Illicit trafficking and smuggling of narcotics, criminality in connection with economy, avoidance of taxation and customs offences, property criminality, THB and people smuggling

Annex 9 – The ‘Air-Travel-Cycle’ for air travellers developed by the UNCTITF working group



In 2015 and 2016, the UNCTITF Working Group on Border Management Relating to Counter-Terrorism in cooperation with the Stimson Center developed the above depicted “Air Travel Cycle” to prevent the movement of terrorists within the framework of Cooperative and Coordinated Border Management.

Annex 10 –Indicators for the detection of OC-relevant issues

1. Preparation and planning of the crime

- Precise planning
- Adaptation to market needs by exploiting market gaps, exploring needs
- Work on order
- High investment, e.g., through pre-financing from unknown sources
- Influence into legal spheres
- Provision of safe havens abroad

2. Commission of a crime

- Precise and qualified implementation of the offence
- Use of relatively expensive expertise or scientific means and knowledge
- Mobilisation of specialists (also from abroad)
- Mutual cooperation based on division of labour
- Use of persons without criminal record
- Creation of huge networks of companies, difficult to understand and lack of transparency

3. Financial misconduct

- Use of funds from anonymous sources in connection with investments
- Acceptance of losses in commercial enterprises
- Discrepancy between the use of financial resources and the expected profit
- Abnormalities in financial investments, e.g., in the case of purchases of real estate or other property that are disproportionate to income

4. Use of criminal profit

- Re-investment of criminal profit into the legal economic cycle
- Sale within the framework of its own (legal) business activities
- Measures of money laundering

5. Conspiratorial criminal behaviour

- Counter observation
- Isolation
- Cover names
- Coding in language and writing
- Use of latest technical means of circumventing police surveillance measures

6. Connections between criminals and offences

- National
- Trans-regional
- International

7. Group structure

- Hierarchic structure
- A not easily explainable dependency or authority relationship between members
- Internal sanction system

8. Help for group members

- Escape support
- Assignment of specific lawyers and their remuneration by third parties
- Provision of substantial sums of money for criminal defence

- High offers of security money
- Threat and intimidation of people involved in the process
- Previously available witnesses are untraceable
- Anxious silence of affected persons
- Surprisingly nomination of witnesses for defence
- External care in cases of an investigation or imprisonment
- Care for relatives
- Readmission after detention

9. Corruption

- Inclusion in the social environment of the offenders
- Creation of dependencies (e.g., through sexual relations, prohibited gambling, interest rate and credit profiteering)
- Payment of bribes, providing of luxury apartments and vehicles, etc.

10. Monopolisation efforts

- 'Takeover' of business enterprises and partnerships
- Management of business operations through straw men
- Control of certain business sectors
- 'Protection' against payment

11. Public relations

- Controlled or tendentious publications that distract from a certain suspicion of action
- A systematic attempt to exploit social institutions (e.g., by conspicuous patronage)

Annex 11 – List of senior experts relevant to BSM, TNT, TOC and migration management

Interlocutor	Institution	Areas
Experts no 1	Heads of department Specialised Criminal Investigation Department, law enforcement Germany and Austria	Interface problems, cross-border criminal investigation, TOC, THB and people smuggling, illicit trafficking of drugs and SALW, international vehicle crime, terrorism and FTF etc.
Expert no 2	Head of Federal Police, Germany Section Border Control, law enforcement Germany-Austria	Migration, irregular migration, THB and people smuggling, expulsion and repatriation, German Act of Residence, <i>Schengen</i> Agreement, Geneva Convention, Palermo convention, others
Expert no 3	Federal Bureau of Investigation Head of department combating cross-border organised crime, law enforcement Austria	TOC, THB and people smuggling, illicit trafficking of drugs and SALW, international vehicle crime, counterfeit travel documents and visa, abuse of genuine travel documents etc.
Expert no 4	World Customs Organisation Head of department, working group UNCTITF, UN agency Belgium	TOC, illicit trafficking of drugs and SALW, contraband, interface problems, training, inter-agency cooperation and information exchange, others
Expert no 5	UN Office on Drugs and Crime Head of department, UN agency UNOV Austria	TOC, THB and people smuggling, illicit trafficking of drugs and SALW, inter-agency cooperation, interface problems, cooperation with INTERPOL and EUROPOL, etc.
Expert no 6	UN International Organisation for Migration Several heads of departments responsible for different regions, UN agency	THB and people smuggling, recognition of forged travel documents and visa, TOC, repatriation mechanisms and procedures, readmission and repatriation, expulsion, others
Experts no 7	IATA and ICAO Heads of departments and senior management Canada	Civilian aviation issues and related BSM security issues, API and PNR, TNT, TOC, terrorism and FTF's, THB and people smuggling, forged travel documents and visa, statistical data, risk analysis and threats assessments
Experts no 8	OSCE Secretariat Heads of Transnational Threats Department, Borders Unit, Special Police Matters Unit, Action against Terrorism Unit Austria	TNT and TOC, THB and people smuggling, illicit trafficking of drugs and SALW, international vehicle crime, inter-agency cooperation and information exchange, NFP network etc.
Experts no 9	INTERPOL Heads of departments responsible for different thematic areas, UN agency France	TOC, THB and people smuggling, illicit trafficking of drugs and SALW, international vehicle crime, interface problems, cooperation with EUROPOL and UNOCT on terrorism and FTF etc.
Experts no 10	FRONTEX	Frontex programs such as CIRAM risk analysis model, Eurosur, SIS, irregular

	Deputy director and heads of departments responsible for different thematic areas, EU border agency Poland	migration, THB and people smuggling, TOC, forged travel documents, smuggling routes, statistical data, risk analysis and threats assessments, interface problems between EU MS law enforcement agencies
Experts no 11	EUBAM Director and heads of departments responsible for different thematic areas, EU BSM program Ukraine and Moldova	EUBAM programs related to strengthening inter-agency cooperation, cross-border cooperation and information exchange, THB and people smuggling, TOC, forged travel documents and visa, risk analysis and threats assessments etc.
Expert no 12	ICMPD Head of BSM programme, IO Austria	Irregular migration, THB and people smuggling, TOC, forged travel documents and visa, smuggling routes, statistical data, risk analysis and threats assessments, inter-agency cooperation and information exchange etc.
Experts no 13	CTITF working group Representatives from different BSM agencies and IO's Worldwide	TNT, TOC, terrorism and FTF's, illicit trafficking of drugs and SALW, THB and people smuggling, counterfeit travel documents and visa, statistical data, risk analysis and threats assessments, interface problems, inter-agency cooperation and information exchange, API and PNR
Experts no 14	League of the Arab States Director of the Secretariat and senior management staff, regional organisation of 22 Arab member states Tunisia	TNT, TOC, terrorism and FTF's, illicit trafficking of drugs and SALW, THB and people smuggling, counterfeit travel documents and visa, statistical data, risk analysis and threats assessments, API and PNR
Experts no 15	World Border Security Conference Heads of national border law enforcement agencies, international BSM senior advisers Worldwide	TNT, TOC, terrorism and FTF's, illicit trafficking of drugs and SALW, THB and people smuggling, counterfeit travel documents and visa, statistical data, risk analysis and threats assessments, inter-agency cooperation and information exchange, API and PNR, Air Travel Cycle

Annex 12 – Interview structure used in discussions with senior experts relevant to BSM

1. Transnational Threats (TNT)

- Surveying of most relevant areas related to TNT in countries and regions.
- Specification of most relevant areas related to TNT by international organisations.
- Definition of TNT by national law enforcement authorities involved in BSM related issues as well as international organisations.
- Fact-finding of BSM related programs to avert TNT developed and implemented by countries and international organisations.
- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations in averting TNT.

2. Transnational Organised Crime (TOC)

- Surveying of most relevant areas related to TOC in countries and regions.
- Specification of most relevant areas related to TOC by international organisations.
- Definition of TOC by national law enforcement authorities involved in BSM related issues as well as international organisations.
- Fact-finding of BSM related programs to avert TOC developed and implemented by countries and international organisations.
- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations to combat TOC.
- Analyses on greatest intersections of existing definitions related to TOC, both of countries' law enforcement agencies and international organisations.

3. Migration

- Specification of most relevant areas related to migration in terms of indicators such as internal and international migration, THB and people smuggling, labour migration, influx of immigration and others.
- Survey of most relevant sub-areas related to migration by international organisations.
- Listing of technical terms and definitions related to migration developed and used by countries as well as determined by international organisations.
- Fact-finding of programs in the overall area of migration to avert mass movements of refugees and irregular migration by countries and international organisations.
- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations to combat irregular migration, THB and people smuggling.
- Analyses on greatest intersections of existing definitions related to migration, both of countries' law enforcement agencies and international organisations.

4. Inter-agency cooperation

- Specification of most relevant areas related to inter-agency cooperation of law enforcement agencies involved in BSM related issues in general and averting of TNT and combating TOC in particular.
- Survey of most relevant sub-areas related to inter-agency cooperation, both at national as well as cross-border level.
- Listing of technical terms and definitions related to inter-agency cooperation and used by countries as well as determined by international organisations.
- Fact-finding of programs in the overall area of inter-agency cooperation in the overall area of BSM and specifically to avert TNT and combat TOC by countries and international organisations.
- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations in the area of intra-agency and inter-agency cooperation.
- Analyses on greatest intersections of existing definitions related to intra-agency and inter-agency cooperation, both of countries' law enforcement agencies and international organisations.

5. Cross-border cooperation and information exchange

- Specification of most relevant areas related to cross-border cooperation and information exchange of law enforcement agencies involved in BSM related issues.
- Survey of most relevant sub-areas related to cross-border cooperation and information exchange.
- Compilation of technical terms and definitions related to cross-border cooperation and information exchange developed by countries as well as determined by international organisations.
- Fact-finding of programs in the overall area of cross-border cooperation and information exchange in the overall area of BSM and specifically to avert TNT and combat TOC.
- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations in the area of cross-border cooperation and information exchange.
- Analyses on greatest intersections of existing definitions related to cross-border cooperation and information exchange.

6. Training

- Assessment of most relevant gaps and needs related to initial education and specialised training for BSM law enforcement officers.
- Survey of most relevant sub-areas related to initial education and specialised training for harmonisation.
- Compilation of BSM curriculum modules related to basic and specialised training developed by countries as well as determined by international organisations.
- Analyses of BSM curricula, both from countries as well as international organisations, related to initial education and specialised training and

specifically to avert TNT and combat TOC.

- Compilation of good practices developed based on lessons learned by countries' BSM agencies and international organisations related to common training programs, both basic and advanced training.
- Survey of greatest intersections of existing curricula related to initial education and specialised training.

7. Interface problems

- Discussions on most relevant interface problems of EU MS law enforcement agencies involved in BSM related issues in combating and investigating TOC.
- Schedule of most relevant sub-areas related to interface problems for law enforcement agencies involved in BSM related issues and specialised criminal investigation departments, for example EU MS federalist or central structures.
- List of most relevant sub-areas related to interface problems for EU MS national law enforcement agencies related to cross-border criminal investigation and concerted activities, *inter alia*, with the involvement of EUROPOL and INTERPOL.
- Fact-finding of project initiatives in the overall area of mitigating interface problems to combat TOC by EU MS and Non-EU MS, as well as international organisations.
- Compilation of good practices developed based on lessons learned by EU MS' BSM agencies and international organisations in the area of minimising or eliminating interface problems.
- Analyses on common areas of existing interface problems related to intra-agency and inter-agency cooperation, cross-border cooperation and information exchange, both of countries' law enforcement agencies and international organisations.

Annex 12 a – Transcription of the Interview

Name: The name was blackened
Function: Head of Special Department to combat transnational organized crime in Germany
Date: March, 2015
Duration: 1 hour and 45 minutes
Venue: Bavaria, Germany
Language: The interview was held in German language.

1. Introduction

The interviewer and interviewee introduced to each other.

The interviewer explained the purpose of the interview for using this information for

- the development of the PhD thesis related to the thematic area of Border Management in Transformation in terms of the influence of transnational threats and cross-border organised crime,
- framework of thematic areas,
- specific experiences gained throughout the professional career,
- personal interventions for the improvement of inter-agency cooperation,
- others.

2. Transnational Threats (TNT)

Q: What are most relevant areas related to TNT in Germany and neighbouring countries?

A: First of all, please let me clearly emphasise that the original task(s) of (German) law enforcement agencies is to prevent any kind of threats and hazards before criminal investigation and prosecution will take place according to the motto: prevention before repression.

We have to distinguish between incoming and outgoing threats. Our tasks and responsibilities are not only to prevent our country of threats but have also to consider third-party claims.

Currently, in the context of TNT and the overall area of TOC I identified most relevant threats areas related to irregular migration, THB and people smuggling, illicit trafficking of drugs and SALW, money laundry, counterfeit ID and travel documents, smuggling of goods, fraud, and international vehicle crime.

Q: How did international organisations specify most relevant areas related to TNT?

A: I think the areas of INTERPOL and EUROPOL are clear, namely

- Accumulation and uncontrolled distribution of SALW,
- Climate change (global warming),
- Security on the Internet (cybercrime),
- Safety of the power supply,
- Terrorism and OC, and
- Dissemination of weapons of mass destruction.

Other EU agencies like Frontex and Eurojust are still in a process of development and depend also very much on political influence.

Q: Is there any common definition of TNT by national law enforcement authorities involved in BSM related issues as well as international organisations?

A: Finding an agreement on common definitions is still a big issue, both within the EU as well as in transatlantic context. According to my knowledge, there is no common TNT definition available so far.

Q: Can you provide any information regarding BSM related programs to avert TNT developed and implemented by countries and international organisations?

A: I have never worked only in BSM related law enforcement programs to avert TNT. However, as head of this specialised department we work with other law enforcement agencies, offices of public prosecutors and INTERPOL/EUROPOL in EU Member States and non-EU countries on a more or less daily basis.

Q: Are you aware of EU efforts in developing good practices based on lessons learned by EU countries' BSM agencies and international organisations in averting TNT?

A: Good practices are always welcome in terms of optimising work-flow procedures, enhance inter-agency cooperation, increase cross-border cooperation and information exchange. Since good practices do not have any legal binding character, it is up to us to accept them or not.

3. Transnational Organised Crime (TOC)

Q: Can you provide a brief survey of most relevant areas related to TOC in EU countries and neighbouring regions?

A: Very brief and non-exhaustive: illicit trafficking of narcotics and drugs smuggling, criminality in connection with economy, avoidance of taxation and customs offences, property criminality, money laundering, violent criminality, environmental criminality, counterfeit criminality, pimping, people smuggling, corruption, arms trafficking and smuggling, cybercrime others.

Q: Can you give an overview of specifications of most relevant areas related to TOC by international organisations?

A: Similar to my previous answer. However, TOC has also always a specific connection to a country or even region, for example Afghanistan is the world largest producer and exporter of opium and heroin, the EU countries are destination countries. With regards to international vehicle crime, the EU are target countries for theft and stolen vehicles then are moved towards the East Europe through the Baltic States and/or Southeast Europe.

Q: There is no common definition of TOC by national law enforcement authorities involved in BSM related issues as well as international organisations.

A: This is absolutely correct and that puts us up to enormous challenges in terms of range of authority, professional communication and common understanding. If you look at the German definition we have here clear descriptions of all kind of characteristic attributes, whereas other definitions are very vague.

An additional challenge is the lack of demarcation of what is gang crime and what organised crime? Too many actors are not aware of the clear distinction of these two organised forms of crime.

Q: What can you tell me about BSM related programs developed to avert TOC and implemented by countries and international organisations?

A: Well, INTERPOL and EUROPOL are running quite comprehensive programs to combat effectively TOC. Other organisations such as UNODC and OSCE are doing substantial efforts to fight TOC as well. Since we are law enforcement, my initial counterpart will be always INTERPOL and EUROPOL.

Q: Do you know about good practices developed based on lessons learned by countries' law enforcement agencies and international organisations to combat TOC?

A: In principle I have to say, that we are bound to legislation rather than good practices. Having said that, good practices are important in terms of improving inter-agency cooperation and facilitate cross-border cooperation and information exchange.

Q: What would you recommend for the development of an analyses on greatest intersections of existing definitions related to TOC, both of countries' law enforcement agencies and international organisations?

A: I would identify, collect and analyse all specific characteristics of relevant definitions from countries and international organisations, list them and compare them directly. So, for example structure of the group, number of members, profit related issues, corporate structure and division of labour, violence, temporal component, corruption etc.

4. Migration

Q: Please specify most relevant areas related to migration in terms of indicators such as internal and international migration, THB and people smuggling, labour migration, influx of immigration and others.

A: In principle, this is the responsibility of the Federal Police (former German Border Guards). We would be only involved as long as these groups of THB and people smugglers would be also involved in other forms of serious cross-border organised crime (e.g., illicit trafficking of drugs, SALW etc.).

Q: Can you give me an overview of most relevant sub-areas related to migration by international organisations?

A: Oh no, I am sorry. Here I could give you only some general information like anybody else.

Q: Are technical terms and definitions related to migration developed and used by countries as well as determined by international organisations of relevance for you?

A: Absolutely. For example, we need to understand what is THB and people smuggling, fake marriage, victim of THB, exploitation and other specifications in the overall area of migration. This understanding should be institutionalized between EU member states' law enforcement agencies responsible for combating these forms of TOC.

Q: Are you aware of programs in the overall area of migration to avert mass movements of refugees and irregular migration by countries and international organisations?

A: Less in my professional responsibility, but yes as an interested individual.

Q: Do you know good practices developed based on lessons learned by EU countries' BSM agencies and international organisations to combat irregular migration, THB and people smuggling?

A: The guidelines for IBM for example started as an initiative for good practices based on lessons learned. The guidelines are now permanent components in the overall area of IBM.

Q: What can you say in terms of greatest intersections of existing definitions related to migration, both of EU countries' law enforcement agencies and international organisations?

A: Only as a general statement, I assume that it is the same like with TOC. My strongest recommendation is here that at least EU MS should immediately accomplish the development of all-in-one definitions in both areas.

5. Inter-agency cooperation

Q: What can you tell me in terms of specification of most relevant areas related to inter-agency cooperation of law enforcement agencies involved in cross-border related issues in general and averting of TNT and combating TOC in particular?

A: In principle I have to refer here to national legislation (foremost the Code of Criminal Procedure, Law on the Tasks and Responsibilities of the Police), SOPs, administrative directives, international conventions and bi-lateral agreements. We as police officers can ONLY act and work within the framework of legislation and related work-flow procedures. Anything else would be not legal.

Q: Please give me an overview of most relevant sub-areas in your department related to inter-agency cooperation, both at national as well as cross-border level.

A: At the national level cooperation with the Public Prosecutors Office, Federal Office for Criminal Investigation (*Bundeskriminalamt*), State Office for Criminal Investigation (*Landeskriminalamt*), intelligence service, other specialised police departments, other law enforcement agencies involved in combating TOC.

At the international level INTERPOL, EUROPOL, Frontex, OLAF, Eurojust, Eurodac, UNODC, UNOCT etc.

Sub-areas are as follows but not exhaustive: illicit trafficking of narcotics and drugs smuggling, criminality in connection with economy, property criminality, money laundering, violent criminality, environmental criminality, counterfeit criminality, international vehicle crime, pimping, people smuggling, corruption, arms trafficking and smuggling, cybercrime others.

Q: What are technical terms and definitions related to inter-agency cooperation and used by countries as well as determined by international organisations?

A: Similar to the questions addressed related to TNT, TOC and other areas discussed so far, I would appreciate the formulation of definitions and endorsement of technical terms so that law enforcement officials, public prosecutors and judges will have a clear and common understanding of these areas. This would help enormously to avoid misunderstandings and misinterpretations.

Q: Are you aware of programs in the area of inter-agency cooperation and specifically to avert TNT and combat TOC by countries and international organisations?

A: Not to my knowledge. I only heard about EU funded projects in non-EU countries to strengthen inter-agency cooperation.

Q: Do you know about good practices developed based on lessons learned by countries' law enforcement agencies and international organisations in the area of intra-agency and inter-agency cooperation?

A: Here in Bavaria and/or Germany we don't have such a unified approach of good practices to be applied, as I have referred before to our legal obligations. What we do is exchanging our views of how cooperation functions better when-ever we discuss certain areas at regional meetings of heads of specialised police departments. In addition, the personal network based on trust is inevitable and shortens certain processes enormously.

Q: What are your personal analyses on greatest intersections of existing definitions and systems related to intra-agency and inter-agency cooperation, both of countries' law enforcement agencies and international organisations?

A: The greatest intersections in this regard are the different systems in place in EU Member States and non-EU countries such as federal systems (like Germany), central systems (like France), decentralised systems (trend in Western Balkan countries).

In addition, there are more problems in terms of lack of language competences, different education, chain of command, tasks and responsibilities, access to sensitive information, and others.

6. Cross-border cooperation and information exchange

Q: Please specify most relevant areas related to cross-border cooperation and information exchange of law enforcement agencies?

A: Most requests for information are as follows: verification of identities of persons, inquiries of owners of vehicles, issuance of documents (e.g., driver's license), ID and travel document numbers, visa, potential criminal records, pending lawsuits, witness statements, criminal networks, commitment of crime, police custody etc.

Q: Please give an overview of most relevant sub-areas related to cross-border cooperation and information exchange.

A: In addition to my previous answer I want to add like the following: general inquiries, current notifications, extradition, transfer of citizens/individuals, regular and ad-hoc reporting, joint police operational interventions, cross-border investigation, concerted police actions, joint patrolling and check-points, others.

Q: Compilation of technical terms and definitions related to cross-border cooperation and information exchange developed by countries as well as determined by international organisations.

A: Similar to the questions addressed related to TNT, TOC and other areas discussed so far, I would appreciate the formulation of definitions and endorsement of technical terms so that law enforcement officials, public prosecutors and judges will have a clear and common understanding of these areas. This would help enormously to avoid misunderstandings and misinterpretations.

Q: Do you know any programs in the overall area of cross-border cooperation and information exchange in the overall area of BSM and specifically to avert TNT and combat TOC?

A: In Germany we have currently seven cooperation centres towards our neighbouring countries. The centres offer full assistance in all kind of cross-border BSM-related issues on a 24/7 basis. In these joint centres, representatives of the police and customs services of partner states literally work together under one roof; as far as possible, the Centres are located near the border.

Q: What can you tell me concerning good practices developed based on lessons learned by countries' BSM agencies and international organisations in the area of cross-border cooperation and information exchange?

A: Here in Bavaria and/or Germany we continuously try to improve our relationship with our neighbouring law enforcement colleagues on the basis of bi-lateral agreements. We are in a permanent dialogue and exchange our views of how cooperation functions better when-ever we discuss certain areas at regional meetings of heads of specialised police departments. The personal network is based on trust is inevitable and shortens certain processes enormously.

Q: What are greatest intersections of existing definitions related to cross-border cooperation and information exchange?

A: I assume that it is the same like with TNT and TOC. My strongest recommendation is here that at least EU MS should immediately accomplish the development of all-in-one definitions in both areas.

7. Training

Q: What are most relevant gaps and needs related to initial education and specialised training for BSM law enforcement officers?

A: I strongly believe that the education and training of German police officers is very solid and comprehensive. The same refers to specialised training.

We are aware that 28 EU MS police services have different educational systems that seeks for harmonisation. However, with the establishment of EU thematic agencies (i.e., EUROPOL, Frontex), the systems of all EU MS are in a process of harmonisation, both in content and comprehensiveness.

Q: What do you consider as most relevant sub-areas related to initial education and specialised training for harmonisation?

A: Common training standards will build the fundament for optimising inter-agency cooperation, cross-border cooperation and information exchange between EU MS law enforcement agencies. However, a strategic approach will also require the adoption of necessary measures for joint police training and teaching aid standards, in particular in the fight against TOC, terrorism, FTF and irregular migration. Training and further education must also consider interdisciplinary components and up-to-date methodological-didactic principles, which should be continuously further developed in a target group- oriented manner.

Q: Compilation of BSM curriculum modules related to basic and specialised training developed by countries as well as determined by international organisations.

A: A Common Core Curriculum (CCC) was launched in 2007 and was a first standardised description of the necessary and required skills and knowledge in the area of BSM, border control and border surveillance. It was the aim of establishing a precise formulation of common objectives and values, as well as best practices in the overall area of BSM. It covers all relevant aspects to combat cross-border crime and necessary actions to be taken in the areas of emergency response, human rights, international law and management and leadership. It is important to emphasise that the CCC is not static and is constantly being reviewed to ensure that it is kept up-to-date and adapted to the latest standards with regards to training and advanced education.

Q: What is your analysis of the CCC, both from countries as well as international organisations, related to initial education and specialised training and specifically to avert TNT and combat TOC?

A: I want to refer to my previous answers and add, that training and further education is to be understood as a permanent process of keeping law enforcement officers continuously on highest level.

Q: Do you know good practices developed by countries' BSM agencies and international organisations related to common training programs, both basic and advanced training?

A: The EU's police training centres should be seen as a result of these efforts.

Q: Where do you see the greatest intersections of existing curricula related to initial education and specialised training?

A: Actually, this is a difficult question to answer since I am not a trainer and/or lecturer. However, a curriculum should be under permanent review, revision and up-date through professors, lecturers, professionals and practitioners and not be static. EU MS police education centres should reach out to partner institutions in other EU MS for sharing views and best practices.

8. Interface problems

Q: What are most relevant interface problems of EU MS law enforcement agencies in combating and investigating TOC?

A: Let me summarize it like that: legislation, language, chain of command, education, description of tasks and responsibilities, reporting, work-flow procedures, classification regulations, lack of bilateral or multilateral agreements.

Q: What are most relevant sub-areas related to interface problems for law enforcement agencies in cross-border nature and specialised criminal investigation departments, for example EU MS federalist or central structures?

- A: EU MS have different systems such as federal, centralized, de-centralized structures and hierarchies. The assumption to adapt things from one system into another, for example the German system into the French system, would be a fundamental mistake, since the competences are with officials in different systems. That means, whereas in Germany a senior police manager is competent for an official directive, in France a public prosecutor is competent for the same official directive... and this is only a simple example.
- Q: List of most relevant sub-areas related to interface problems for EU MS national law enforcement agencies related to cross-border criminal investigation and concerted activities, *inter alia*, with the involvement of EUROPOL and INTERPOL.
- A: As mentioned before, legislation, language, chain of command, education, description of tasks and responsibilities, reporting, work-flow procedures, classification regulations, lack of bilateral or multilateral agreements.
- Q: Are you aware of initiatives in the overall area of mitigating interface problems to combat TOC by EU MS and Non-EU MS, as well as international organisations?
- A: Not in detail, but a working group consisting of EU MS senior police managers, public prosecutors and judges would help to develop instruments for mitigating such lacks and gaps.
- Q: Are there good practices by EU MS' BSM agencies and international organisations in the area of minimising or eliminating interface problems?
- A: I mean this could be gathered by this working group as well.
- Q: What are common areas of existing interface problems related to intra-agency and inter-agency cooperation, cross-border cooperation and information exchange, both of countries' law enforcement agencies and international organisations?
- A: Again, main areas for me are: legislation, language, chain of command, education, description of tasks and responsibilities, reporting, work-flow procedures, classification regulations, lack of bilateral or multilateral agreements.

Thank you for your good cooperation and kindness to spend your time with me.

Annex 13 – Approval of reports through UN, EU, EC, and OSCE

Period	Organisation	Project
2015 - 2017	UNOCT New York	UNOCT BSM Initiative on Countering Terrorism and stemming the flow of FTF - Final, annual and quarterly reports - GCTF Good Practices in the area of BSM in the context of counterterrorism and stemming the flow of FTF, adopted by more than 60 UN Member States - Training of Trainers Curriculum related to the good practices paper
2017	EU Delegation in Belgrade, Serbia	Evaluation of the Serbian Border Security and Management - Comprehensive assessment of the actual status - Comprehensive risk analysis report - Gaps and needs assessment report - Final report
2014	EU Office in Jerusalem	Assessment report related to the "Technical Assistance Programme for the Palestinian Civil Police (PCP)"
2013 - 2014	EU Office in Kosovo	Intermediate and final report related to the twinning project - "Strengthening Readmission and Sustainable Reintegration in Kosovo" (IBM, Migration, Asylum and Readmission)" - Twinning-Number: KS 08 IB JH 02
2013 - 2014	EU Delegation in Skopje, FYROM	Comprehensive assessment report on the "Preparation of Feasibility Study and Technical Specification for Supply of Equipment" – FWC Beneficiaries 2009-LOT 7: Governance and Home Affairs – EuropeAid/127054/C/SER/multi
2012 - 2013	EU Delegation in Kiev, Ukraine	Comprehensive analysis report on the IBM Strategy and Capacity Assessment Report for State Border Guards and Customs Service in the Ukraine
2012	University Cologne, Germany	Security Handbook, co-author, ISBN 978-3-658-02752-0 Border Police and Border Guards Differences and cross-cutting issues
2012	EU TAIEX Brussels, Belgium	TAIEX report on "Strengthening the Rule of Law in Kosovo" (BSM, Asylum and Migration, Cross Border Cooperation, Readmission and Reintegration)
2011	University for Applied Public Administration Vienna (WN), Austria	Master Study Course for Senior Police Officers in police leadership and management, law enforcement and criminal justice (with distinction) Border Management in Transition – A Matter of Strategic Security Management
2009 - 2012	EU Office in Kosovo	"Strengthening the Rule of Law in Kosovo (IBM, Cross Border Cooperation, Asylum and Readmission)" - KS 08 IB JH 01 - Final, annual and quarterly reports - Law on Readmission (unique law in the world) - Good Practices in the area of BSM in the context of readmission processes
2005 - 2009	OSCE Secretariat Vienna, Austria	Head of unit, senior border adviser and focal point in the OSCE Secretariat for all BSM related law enforcement and criminal justice issues, cross-border cooperation, green and blue border surveillance, cross-border organized crime, terrorism and extremism, information exchange and migration related issues throughout the OSCE's area (56 participating States) of interest. - Final, annual and quarterly reports

		<ul style="list-style-type: none"> - Ad-hoc reports for delegations of participating States - Good Practices in the area of BSM
2009	EU Delegation in Ankara, Turkey	Comprehensive risk analysis report in relation to the "Technical Assistance for the Preparation of Border Surveillance Area Survey in Turkey - EuropeAid/127552/SER/TR"
2008	EU Delegation in Ankara, Turkey	Comprehensive risk analysis report in relation to the "Assistance to the EC Delegation in the Field of Integrated Border Management in Turkey, Project TR07/IB/JH/04"
2004 - 2005	EU Delegation in Skopje, FYROM	<p>"Technical Assistance and Training to Develop and Implement the National Action Plan for Migration and Asylum at FYROM"</p> <ul style="list-style-type: none"> - Final, annual and quarterly reports - Good Practices in the area of BSM, asylum and migration
2005	UNODC in Kabul, Afghanistan	Comprehensive risk analysis report related to the "Assessment of Counter Organized Crime and Narcotic Law Enforcement Capacities in Afghanistan in co-operation with the UNODC country office in Kabul on request of UN Headquarters Vienna"
2004	EU Office in Kosovo	<p>Development of a Strategy for the Border Police in Kosovo</p> <p>Elaboration of a tailor-made strategy for the green border surveillance of Kosovo towards neighbouring states including a procurement element for surveillance equipment for 1.5 million Euros including technical specification in alignment with the EU <i>acquis</i>, the <i>Schengen</i> Border Code and IBM guidelines for SEE</p>
2003 - 2004	EU Delegation in Podgorica, Montenegro	<p>"Technical Assistance for the reform of the Border Police of Montenegro in direct cooperation with the Ministry of Interior of the Republic of Montenegro"</p> <ul style="list-style-type: none"> - Final, annual and quarterly reports - Good Practices in the area of BSM, asylum and migration
2002	UN Peace Keeping Mission in BiH	<p>Chief of Joint Task Force (Criminal Police)</p> <p>Chief of Intelligence Service Project in Bosnia-Herzegovina Project</p> <p>Comprehensive investigation reports in major crime cases (e.g., irregular migration, THB and people smuggling, smuggling of small arms and light weapons, international car theft, forged travel documents, violation etc.)</p>
1998 - 1999	UN Peace Keeping Mission in BiH	<p>International Police Task Force – IPTF in Bosnia Herzegovina</p> <p>Team leader of the training unit - Border Service Department in Sarajevo</p> <p>UN-Supervisor for the local Border Police officers of all International airports in BiH</p>

Annex 14 – Confirmation from the University Passau, Germany

Geschäftsführung Dekanat



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Datum	27.11.2018

To whom it may concern

In September 2016, Mr. Wagner exmatriculated from the University of Passau and his status as „Doktorand“ (PhD candidate) was cancelled in order to transfer to Sheffield Hallam University based on his request.

After consultation, his supervisor confirmed that all data gathered by Mr. Wagner during this period of time as part of his doctoral research was in full compliance with the doctoral regulations (Promotionsordnung) of the University of Passau – as far as it was a matter of supervising.

At this stage of a doctoral research project our doctoral regulations don't require a formal review of ethics and research procedure.

Therefore it can be confirmed as above mentioned that Mr. Wagner carried his doctoral research without objection.

Yours faithfully
On behalf

Bettina Caspary
Geschäftsführung

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