



Border Management Issues: Border Security and Humanitarian Aspects

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I. Introduction

"It has been predicted by the arts!" In 1990, the British screenwriter and novelist William Nicholson drew the attention to the mass movement of sub-Saharan citizens due to their bad living conditions in the film *The March*, a price winning BBC TV production. He described the migration of sub-Saharans to Europe, escaping from hunger and thirst. The initial small group is joined by more and more people on the march. Their dialogues inspire reflection. The leader of the group, Mahdi, argues as follows: "In Europe you have those wonderful small cats. We heard that one of these cats cost you more than 200 US Dollars a year. Let us be your cats. We could drink milk, lick your hands, we can purr and are much cheaper to be fed."¹

The refugees then refuse million-dollar EU aid packages for voluntary return to their countries of origin. As thousands of refugees pass the Strait of Gibraltar, they are welcomed with tanks at the Spanish coastline. The fortress Europe secures its moat with the force of weapons. "We are not ready for you; yet, maybe one day, we only can hope so. What world would it be otherwise?". Those are the words of the European Commissioner for Refugees

¹Der Marsch, 1990. [film] Directed by David Wheatley. Great Britain, BBC. Available at: < <https://www.youtube.com/watch?v=IFeu8jEQ2TA> > [Accessed 21 Oct 2014].

in the film, addressed to the black 'Ghandi', Mahdi, as Europe finally closes its borders.

The film is now almost 25 years old and it is legitimate to ask, whether Europe is ready yet for the migration movements or not. What changed in the refugee policy? What kind of ideas, concepts, strategies or solutions have been developed? Did we forget about them or do we not want to realize them?

II. European Migration and Security Policy in Change - A Demoscopic View

Creating a picture of migration worldwide, according to UN studies², we face a global explosion of population from today around 6,5 billion up to 8 billion in 2025 and 9,3 billion in 2050. Over two billion of them are Muslims. A UN projection of population worldwide calculates the doubling of the African population from 900 million (with 42 % less than 15 years old) up to 2 billion in 2050, with a decline in Europe by around 100 million down to 630 million in 2050. The population in the most populated countries of the Near and Middle East region (besides Egypt also Morocco, Turkey, Iran, Algeria, Iraq, Saudi Arabia and Yemen) registered a plus of 286 % from 1950 to 2004, and a further increase of 78 % is estimated by 2050. In the five North African countries Morocco, Algeria, Tunisia, Libya and Egypt a current population of 165 million has been calculated, and prognoses forecast its increase up to 195 million by 2020. On the other hand, the population in EU countries will shrink tremendously until 2025. With this global picture in mind, we have to look deeper into the EU concepts of migration and combating illegal migration.

² United Nations, Department of Economic and Social Affairs, 2013. Probabilistic Population Projections based on the World Population Projects: The 2012 Revision. [online] Available at: < http://esa.un.org/unpd/ppp/Figures-Output/Population/PPP_Total-Population.htm > [Accessed 21 Oct 2014].

III. EU Legislation Facilitates Border Control and Security Procedures

III.1 The Schengen Treaty³ in Practice

29 years ago, five countries initiated the first Schengen Treaty of 14/06/1985 called Schengen I. France, Belgium, Luxemburg, the Netherlands and Germany abolished the borders between their countries. It was the first step, a huge innovation in Europe, and they were trying to convince more countries to join this agreement. On 19/06/1990, the Schengen Convention was signed with more details regarding the execution of the agreement, which came into force on 26/03/1995. The United Kingdom and Ireland did not join the agreement and Denmark had a special status. Iceland, Norway, Liechtenstein and Switzerland joined the agreement based on international law treaties. In 2014 in total 26 EU countries with around 420 million citizens, 42.673 km of external sea borders and 7.721 km of land borders had joined the Schengen Agreement.

III.2 The Treaty of Amsterdam⁴

This treaty was signed in 1997, came into force 1999 and incorporated the Schengen Agreement into the legal system of the EU but also included exception rules concerning the Schengen Agreement. It included a 5-year transitional period until complete execution of the Schengen Convention. The Schengen acquis standard has been required to be fulfilled by all new EU accession

³ European Union, 2000. The Schengen acquis. [online] Available at: < <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0922%2801%29&from=EN> > [Accessed 21 Oct 2014].

⁴ European Union, 1997. Treaty of Amsterdam. [pdf] Office for Official Publications of the European Communities. Available at: < <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> > [Accessed 21 Oct 2014].

candidates. Legal regulations have followed, e.g. Common Visa Regulation and Common Visa Codex. Trying to achieve closer co-operation amongst member states, migration and asylum policy as well as free movement of people were transferred from the intergovernmental third pillar into the supranational first pillar, hence becoming EU Community Law.

III.3 The Treaty of Nice⁵

The Treaty of Nice was signed in 2001 and came into force 2003. As well as the Treaty of Maastricht and Amsterdam it dealt with the 3-pillar policy of the EU. Further important issues have been designed such as the Justice and Home Affairs (JHA) sector, Common Security and Defence Policy (CSDP) and Police and Justice Cooperation in Criminal Matters (PJC).

III.4 The Treaty of Lisbon⁶

This treaty was signed in 2007 and came into force in 2009. It established for the first time a High Representative for Foreign and Security Policy, which is in fact the EU foreign minister post. Following this, the treaty created in the Common Foreign and Security Policy the establishment of a new EU foreign service. The merging of the European Community and European Union led to the abolishment of the 3-pillar model and an enlargement of national influences in the decision making process in police and judicial cooperation in penal law matters.

⁵ European Union, 2001. Treaty of Nice. [pdf] Official Journal of the European Communities. Available at: <https://www.ecb.europa.eu/ecb/legal/pdf/en_nice.pdf> [Accessed 21 Oct 2014].

⁶ European Union, 2007. Treaty of Lisbon. [pdf] Official Journal of the European Communities. Available at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>> [Accessed 21 Oct 2014].

III.5 The Hague Program⁷ of 2004

The Hague Program was a security-focussed document mainly dealing with the reinforcement of fundamental rights. Its particular subjects were the fight against terrorism, a balanced concept to manage migrations flows, a common asylum procedure, a maximisation of positive migration effects, an integrated protection of the external borders of the EU, data protection and information exchange and elaboration of a strategic concept in the fight against organised crime.

III.6 The Stockholm Program⁸ in 2009

This program consisted of various common aspects of European Security and Defence Policy which were to be implemented in the time frame between 2010 and 2014. It mainly dealt with internal and public security issues, migration policy, combatting organised crime, e.g. in the field of human trafficking and human smuggling. It also included the European Pact on Immigration and Asylum, dated from 24 September 2008⁹.

⁷ Council of the European Union, 2004. The Hague Programme : strengthening freedom, security and justice in the European Union. [pdf] Council of the European Union. Available at: < http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf > [Accessed 21 Oct 2014].

⁸ European Union, 2010. The Stockholm Programme - An Open And Secure Europe Serving And Protecting Citizens. [pdf] Official Journal of the European Union. Available at: < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> > [Accessed 21 Oct 2014].

⁹ Council of the European Union, 2008, European Pact on Immigration and Asylum; Available at: < <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013440%202008%20INIT>> [Accessed 01 Nov 2014]

IV. Border Control Aspects as Integrated Tools to Manage Migration Flows

When talking about borders we immediately think about air borders, land borders and sea borders as predominant types. As a line, which marks national soils, we can distinguish borders under the aspect of process management and channelling of border traffic. Starting with the air borders it is generally easy to manage the border traffic. Airports are usually constructed in a way to provide a certain space for border control counters and lines. The infrastructure avoids uncontrolled passing. The airfields are small and provide good options for border control. However, usually border police is not based at airfields. The work is usually carried out by authorized staff of the airfield authority or air traffic control. Concerning land borders, surveillance, and control is more difficult. Whilst at border stations (roads, railways), infrastructure is similar to airport controls, green borders have to be surveilled in a coherent and consistent manner. The concept has to consider technical and human resources to detect illegal border crossings, to prevent them and to prosecute perpetrators. Big rivers, mountainous terrain, as well as deserts make the concept of multilevel border surveillance measures¹⁰ irreplaceable. Sea borders usually deal with a further dimension. The territorial waters are within the 12-mile zone, beyond which there are exclusive economic zones or international waters. Only keeping people away from entering is not the final solution.

The current migration flux in the Mediterranean is a good example of the helplessness of border guard services. The situation of migrant boats in really bad conditions, stormy weather, penetration of territorial waters (illegal entry), and emergency situations combined with European Court of Human Rights decisions regarding push back operations, limit the toolbox of activities for border forces at sea.

¹⁰ Patrols, air surveillance e.g. with helicopters and night vision goggles; intrusion detectors and where necessary fences and towers.

V. Integrated Border Management as One of the Solutions

In the 21st century, it is not the time to speak about walls and fences, obstacles and searching for illegals at borders. Integrated border management with an optimum of creative concepts, sophisticated technical support and human rights based operations provide a guide towards a more effective and efficient border control. With an integrated border management it is possible to increase the mobility of persons and goods. At the same time, one should ensure the right balance between open, but secured and controlled borders. A border management strategy and implementation /action plan requires:

- i. intra-service cooperation;
- ii. inter-agency cooperation; and
- iii. international cooperation.

Intra-service cooperation means that within a police force or border guard service, various departments have to work together in a comprehensive way to achieve common results. Border guard activities in the context of the Mediterranean aero-naval operations, the work of surveillance, detection and Search and Rescue (SAR) operations have to be closely coordinated with scientific staff, ground staff and sanitary units, to ensure clear processing and finally the right results when apprehending suspects.

Inter-agency cooperation is mainly needed when various competences are focussed on one subject or individual. Border control services, customs and sanitary/phytosanitary services have to work closely together at the borders and are requested to carry out a lean control procedure, which is, almost everywhere, a one stop control.

International cooperation is a must for information exchange, data exchange, letters rogatory, international arrests, warrant orders and border crossing investigations as well as for hot pursuit.

VI. Prerequisites for Border Crossing into Schengen Countries

The Schengen Borders Code (SBC) defines in Article 5 the common prerequisites for third country nationals to cross EU borders for temporary stays in the Schengen area. Each individual who would like to cross the EU borders is in need of a valid travel document (usually a national passport) as well as a valid visa or resident permit. Furthermore, he/she has to prove travel reasons, sufficient financial means to pay daily expenses and may not have a notice or refusal of entry in the Schengen Information System (SIS). The person may not be considered a threat to public policy, internal security, public health or the international relations of any of the Member States. Each individual who has a resident permit or visa for a longer stay in any Schengen Member State has a transit right, even if not all conditions are fulfilled (Art. 5, para 4 SBC).

The following list gives an overview over the legal framework and common prerequisites for an entry into and a temporary stay in the Schengen area specified in Article 5 (para 1) of the SBC:

- Valid travel document (usually national passport).
- Valid visa or resident permit.
- Proof of travel reasons and sufficient financial means to pay daily expenses.
- No notice or refusal of entry noted in Schengen System SIS.
- No risk or threat for the public security, the internal security, public health or the international relations of any Member State.
- Resident permit or visa for longer stay in other Schengen member states – Transit right even if not all conditions are fulfilled (Art. 5, para 4 SBC).

VII. Challenges on National Levels 2013

Since 2011 Italy faces a tremendous amount of migrant arrivals through the Mediterranean, due to the Arab Spring and the political changes in Libya, Tunisia and Egypt. Whilst a high number of Tunisian citizens were refused entry and sent back, the arrivals from Libya, mainly sub-Saharan nationals, were constantly increasing due to the fact that no proper government structures could be established until today and Libya did not accept refusals. Sub-Saharan refugees arriving today in Italy tend not to accept for their fingerprints to be taken and try to go immediately to North European countries where bigger communities are already established. Without the fingerprints, repatriation according to Dublin III regulation is more or less impossible.

Germany itself has an increase of legal migration from East European countries, in particular from EU Member States Romania and Bulgaria. In the top ten countries of origin of asylum seekers in Germany are Serbia, Russian Federation, Macedonia (FYROM), Bosnia-Herzegovina, and Kosovo. Russian asylum seekers are mainly from Chechnya, although there is no major change of the situation in the Russian Caucasian republics. However, smuggling organizations foster the migration, claiming that Germany would support Chechens' migration with financial benefits. The civil war in Syria pushed thousands of families to leave their country. Germany granted protection for a high number of Syrians. The crisis in Egypt also influenced the migration movement to Italy and Europe. The economic situation in Tunisia does not promote perspectives for young people, so that still many of them try to leave for Europe. But despite many individually tragic situations, we should not forget the high threat of Islamic terrorism/extremism (e.g. by Al Qaida), often using migration movements to enter Europe in order to carry out their terrorist activities. Finally, the situation in Afghanistan and the withdrawal of the international forces creates advantage for the Taliban and encourages Afghan citizens to leave the country to join their families in Europe.

The following list provides an overview over the numbers and origins of asylum seekers in Germany in the years 2012 and 2013:

Number of asylum seekers 2012 – 64.539 individuals

Number of asylum seekers 2013 – 109.580 individuals

| Country of Origin | Numbers in 2012 | Numbers in 2013 |
|--------------------------|------------------------|------------------------|
| Serbia | 8.477 | 11.459 |
| Afghanistan | 7.498 | 7.735 |
| Syria | 6.201 | 11.851 |
| Iraq | 5.352 | 3.958 |
| Macedonia (FYROM) | 4.546 | 6.208 |
| Iran | 4.348 | 4.424 |
| Pakistan | 3.412 | 4.101 |
| Russian Federation | 3.202 | 14.887 |
| Somalia | 1.243 | 3.786 |
| Eritrea | 650 | 3.616 |

VIII. Concepts and Strategies against Illegal Migration

For a comprehensive evaluation and assessment of the migration situation in the target countries at the borders, the transit countries and the countries of origin, gathering of information is of paramount importance. Only with correct country and situational assessment, political decisions can be made. Therefore, the German security agencies led by the Federal Ministry of Interior, created the Joint Analysis and Strategy Centre for Illegal Migration, located at the German Federal Police Headquarters in Potsdam. This centre is composed of all of the important agencies dealing with illegal migration. The key players are the German

Federal Police, the Federal Criminal Police, the Federal Office for Migration and Refugees, the Federal Customs Service, the Federal Office for the Internal Intelligence Service, the Federal Intelligence Service, the Ministry of Foreign Affairs and the Ministry of the Interior. This centre collects, assesses and evaluates various information of the before mentioned agencies and produces documents and concepts as basis for the political decision making process and operational activities.

VIII.1 Advanced Deployment Strategy

The Federal Police and the Ministry of Interior in Germany follow an advanced deployment strategy in the sense of controlling migration from the beginning and trying to grasp the phenomenon at the roots. The advanced development strategy consists of the following aspects:

- Strategic development of the bilateral engagement of the Federal Police abroad:
 - Supporting the Federal Police in national tasks.
 - Considering the political directives of the Federal Ministry of the Interior.
 - Advising the Federal Ministry of the Interior regarding strategic or political questions.
 - Planning of resources (budget and human resources).
- Planning and implementing of bilateral border related capacity building (training and equipment) and the stability pact with third countries:
 - Reinforcing Border Police structures.
 - Optimizing border related cooperation.
 - Encouraging the setting of the rule of law.
- Coordinating and updating the current deployment and operation settings of:
 - Border Police Liaison Officers
 - Document and Visa Adviser
 - Border Police Support Officers in EU countries
 - Bilateral European Border Police cooperation



Source¹¹

A good example of success is the operation of Document and Visa Advisers to avoid illegal migration in the air traffic. Nineteen Border Police Liaison Officers and 39 Document and Visa Advisers stopped in one year more than 20.000 inadmissible passengers from boarding an aircraft with improper documents.

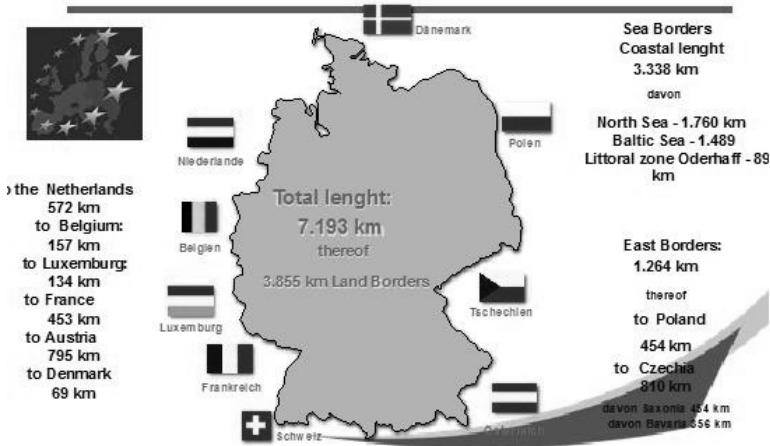
¹¹ All charts of the Federal Police are provided by Federal Police Headquarters Potsdam, Office for International and European Affairs, dated 12.04.2014

VIII.2 Collaboration with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

The German Federal Police is one of the main partners of the FRONTEX and supports all the FRONTEX' missions at the European external borders. EUROSUR (European Border Surveillance System), the new surveillance system, envisages the fusion of existing national border surveillance systems with focus primarily on the south Mediterranean Sea borders and eastern land borders. The objectives are mainly to optimize situational awareness at the EU's external borders and to reinforce the intervention capacities of the Member States. The prerequisite for this is the establishment of a national coordination center in each Member State. Poland, Finland, Slovakia, Italy, France, Spain as well as FRONTEX participated in the pilot project. The enlargement of the number of participating countries is successively planned until the end of 2014 (Germany's participation is envisaged for October 2014).

VIII.3 Operations of Border Police Support Officers

The German Federal Police provides advice, expertise and support for European border police stations on a bilateral basis as well as in FRONTEX missions, e.g. for the execution of EU regulations and detecting fraudulent documents to prevent illegal migration. Areas of operations are mainly hot spots at sea, land and air borders of the EU as well as internal borders between Member States. The form of deployment varies from short-term deployment between one month and two years like in Greece, Italy and France or under the regime of FRONTEX operations, in so-called Joint Operations, Focal Points and Rapid Border Intervention Team (RABIT). Some 250 Federal Police officers are trained and prepared for these missions and nearly 200 officers are deployed in various missions yearly.



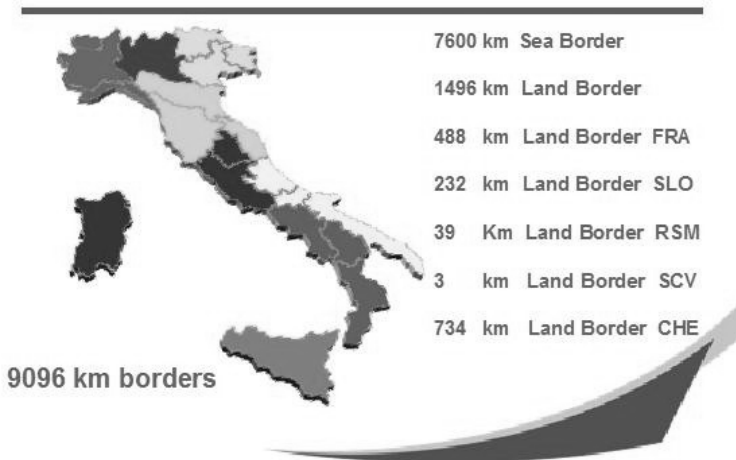
IX. Irregular Migration in the Mediterranean Countries

IX.1 The Situation in the Mediterranean during the Arab Spring

After the big waves of refugees in the Arab spring in 2011, Italy and Malta have been drastically concerned by this migration influx. Serious discussions started in the EU in particular, because Italy was asking for more burden sharing. Amongst legal instruments, the EU Directive 2001/55/EC of 20th July 2001, concerning minimum regulation for temporary protection in the case of mass migration and measures for a balanced reception in EU countries was the focus of Italy. The EU Commission and many Member States refused the use of this directive because the prerequisites did not exist. Italy issued resident permits and travel documents for North African refugees in 2011 – 2013. The refugees used this opportunity to travel to other European countries.

Advanced Deployment Strategy

Border length of the Republic of Italy



However, not only the question of burden sharing and document availability for travelling was in discussion. A re-admission of the main part of refugees, after a denied asylum request, was not possible, and even their identification was often quite problematic. Obstacles in the re-admission because of restrictive attitudes of the countries of origin also slowed down the process of a proper reaction to illegal migration. German Administrative Courts meanwhile came up with more and more decisions to abandon re-admissions according to Dublin III to Italy. Various groups blamed the Italian standard of refugee camps for being inhuman and insufficient.

IX.2 Decision of the European Court of Human Rights, Hirsi Jamaa and others vs. Italy

In this context, the European Court of Human Rights decided on the well known Hirsi Jamaa and others vs. Italy case, dealing with the push back activities of Italian maritime authorities to Libya. The court clearly pointed out that the push back of a refugee boat from international waters back to Libya was a:

- Violation of Art. 3 European Convention on Human Rights (ECHR) – applicant was exposed to risk of inhuman and degrading treatment in Libya.
- Violation of Art. 3 ECHR , applicant was exposed to risk of arbitrary deportation to their country of origin.
- Violation of Art. 4 ECHR and IV. additional protocol – action was forbidden - collective expulsion.
- Violation of Art. 3 and 13 ECHR and Art. 4 additional Protocol No 4 – deprivation of effective legal protection through Italian authorities.

IX.3 Illegal Entries Italy 2012/2013

| Kind / Place of Entry | Numbers in 2012 | Numbers in 2013 |
|-------------------------------------|------------------------|------------------------|
| Illegal Entries | 35.872 | 30.011 |
| Refusal of Entry | 18.592 | 16.482 |
| Refusal of Entry not possible | 17.280 | 13.529 |
| Refusal of Entry at the borders | 6.764 | 7.713 |
| Boat arrivals total | 13.267 | 42.925 |
| Boat arrivals Calabria | 2.056 | 3.980 |
| Boat arrivals Friuli Venezia Giulia | 0 | 0 |

| | | |
|----------------------------|--------|--------|
| Boat arrivals Apulia | 2.719 | 1.030 |
| Boat arrivals Sardinia | 4 | 29 |
| Boat arrivals Sicily | 8.488 | 37.886 |
| Boat arrivals from Tunisia | 28.123 | 908 |
| Boat arrivals from Libya | 28.431 | 27.314 |

X. Crisis Areas and the Impact on Illegal Migration

Crisis management and crisis intervention in countries like Afghanistan, Iraq, Libya, Tunisia, Syria and Egypt have an important impact on illegal migration. Afghanistan is the best example to prove that it is possible that international reconstruction and stabilization activities are encouraging the population to build up their country and improve their situation. Trust into the measures of the international community often dissuades people from leaving their country.

Illegal migration aspects are not considered sufficiently in strategic planning. Clearly, some political decisions can have a serious impact on illegal migration. Future oriented strategies and concepts are often missed and political processes are often limited due to the fact of political discontinuity often caused by changing political mandates.

XI. Options for Migration Policies and the Way Ahead

Planning and acting in a defensive way, illegal migration could be controlled by reinforcing FRONTEX as an European agency for the control of external borders. The Advanced Deployment Strategy can also be used by reinforcement through security cooperation, in particular with North African and Central African countries and partner states. Common memoranda or agreements provide the basis for the development of security. We also face an

ongoing discussion about refugee reception centres outside Europe. In line with these activities, a reinforcement of the coast surveillance and a consequent readmission wherever it is necessary, would round up the old perception of the 'Fortress Europe'.

Taking the demographic framework of Europe into consideration, one could think about the strategic reduction of 'youth spill-over' in the North African countries through target oriented and determined migration options for qualified young people, first in limited numbers. According to qualification, there also is a need in the European labour market for various professions. With clear concepts and priorities, a serious consideration of integration aspects and the definition of common cultural values, there would be chances to reduce illegal migration beyond the above-mentioned fortress mentality. Neither should we ignore the needs of the countries of origin regarding illegal migrants, nor the situations in the transit countries and rather focus on aspects of the Advanced Deployment Strategy. We have to commit ourselves with these countries to mitigate the negative effects of illegal migration. International terrorism has been growing in the last few years and wherever it finds a 'fortress', it will attack it. Therefore, we should avoid the perception that goes along with the picture of the 'Fortress Europe'.

Finally, I would reiterate that border management and border control is something positive for the security of the population. Borders have to be open and transparent and border guarding means only checking who wants to cross and whether the subject is permitted to cross or not. However, as long as individual life is in danger, border guards have humanitarian and ethic priorities - saving lives.