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Master thesis

**Frontex: Securitizing agency or Human Rights bulwark?**

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MSc in Crisis and Security Management

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Final version – August 2017

The Hague

## Abstract

The following thesis examines the contribution of the European Border and Coast Guard Agency (Frontex) to the perpetuation of the securitization of asylum and migration in the EU. Furthermore, it analyzes Frontex' discourse and practices in terms of the protection of human rights principles enshrined in international and EU law. It achieves this by applying a comprehensive framework of securitization theory in which both discursive and non-discursive practices are analyzed. This framework is well-suited for the study of securitization processes in the EU and specifically in terms of migration and external border security. In its analysis, this thesis provides an in-depth look into the human rights implications of operations conducted by Frontex in which its commitment and adherence to fundamental rights, as well as its response to criticisms, are analyzed. For its analysis of Frontex' discourse, this thesis utilizes the method of critical discourse analysis, in particular Fairclough's three-dimensional model. For the analysis of Frontex practices a 'sociological approach' to securitization is implemented consisting of two criteria for determining securitizing practices. The thesis essentially concludes that the activities of Frontex can be regarded as contributing to a perpetuation of the securitization of migration and asylum in the EU. However, it highlights that the coordinating and supportive role in border control operations which Frontex has been granted, can be seen as argumentation for the limited capacity of Frontex to actually be a significant securitizing actor.



# Table of Contents

Abstract .....	1
List of Abbreviations .....	3
1. Introduction .....	4
2. Theoretical Framework.....	6
2.1 Introduction .....	6
2.2 Schools of Securitization .....	8
2.2.1 Copenhagen School.....	8
2.2.2 Paris School.....	10
3. Research Methodology .....	13
3.1 Research Design.....	13
3.2 Data Analysis.....	14
3.2.1 Critical Discourse Analysis .....	15
3.2.2 Security practices .....	17
3.3 Data Collection .....	19
4. Legal Background .....	20
4.1 Europeanization of external border management.....	20
4.2 Cornerstones of IBM.....	23
5. Analysis.....	26
5.1 Frontex: tasks.....	26
5.2 Relationship between Frontex and EU member states .....	27
5.3 Frontex: Operations.....	28
5.3.1 Land Border Control .....	28
5.3.2 Maritime Border Control.....	31
5.3.3 Safeguards for Migrants.....	34
5.4 Critical discourse analysis.....	35
5.4.1 Textual analysis.....	37
5.4.2 Discursive & Social practice.....	44
5.5 Security practices .....	46
6. Conclusion .....	51
References .....	53

## List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
ARA	Annual Risk Assessment
CDA	Critical Discourse Analysis
CEAS	Common European Asylum System
CF	Consultative Forum
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EBGT	European Border Guard Teams
EU	European Union
EUROSUR	European External Border Surveillance System
FRO	Fundamental Rights Officer
FRONTEX	European Border and Coast Guard Agency
FRS	Fundamental Rights Strategy
HRW	Human Rights Watch
IBM	Integrated Border Management
NGO	Non-Governmental Organization
RABIT	Rapid Border Intervention Teams
SAR	Search and Rescue
SBC	Schengen Borders Code
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of European Union
OHCHR	Office of the United Nations High Commissioner for Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

# 1. Introduction

Since the 1980s migration became a much debated subject on both the national and the European level. Whereas migrants and asylum seekers had traditionally been viewed within a humanitarian context, migration was starting to be viewed from a security perspective. This representation of migration as a security threat is the process known as the 'securitization of migration', which refers to the extreme politicization of migration and its framing as a security threat.

With the entry into force of the Schengen Convention in 1995 and the subsequent abolishment of all internal borders between member states, having secure external borders became a priority for the EU (Monar, 2006). Since migration by then had already been framed as a security issue, migration and asylum policy, along with external border management, became cornerstones of the EU's external border policies. Among scholars there is a wide-spread view that the trend of securitizing migration is especially visible in EU asylum and migration policy (Neal, 2009; Huysmans, 2000, 2006; Bigo, 2002). The securitization of migration is generally believed to have had negative effects on the status of asylum seekers, including the protection of human rights.

In the aftermath of 9/11 and the Madrid bombings the EU decided that cooperation between the member states along the EU external borders was vital for securing its internal borders. Within this internal-external security nexus the EU member states decided to establish an agency which would coordinate EU border management operations and protect its external borders from security threats such as terrorism, human trafficking, international organized crime and - now having been framed as a security threat - (irregular) migration. This agency was initially named the *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU*, better known under its acronym: *Frontex*. In October 2016 the agency became known as the *European Border and Coast Guard Agency*, but maintained its well-known acronym.

Frontex' activities have generated much controversy since its operational start in 2005. Its operations have been heavily criticized by human rights organizations accusing Frontex of militarizing the EU external border making it increasingly difficult for migrants to access European territories safely. Frontex is seen as the executive actor of the much criticized EU asylum and migration policies and therefore appears to have become a focal point for criticism of human rights organizations (Leonard, 2010). Therefore, an important objective of this thesis will be to uncover the operations and practices of Frontex and analyze its adherence to human rights. Moreover, Frontex will be analyzed in the context of the securitization of migration. However, since migration had already been securitized in EU asylum and migration policy at the time of Frontex' establishment, this thesis will not seek to answer the question whether Frontex has securitized migration. In fact, it will focus on analyzing to what extent Frontex has

contributed to the perpetuation of securitization processes in the area of asylum and migration in the EU. Hence, the research question addressed in this thesis will be:

*To what extent does Frontex, in its discourse and non-discursive practices, contribute to the securitization of migration and ensure the protection of human rights?*

In doing so, a comprehensive framework of securitization theory will be utilized combining analyses of both discursive and non-discursive practices, known respectively as the Copenhagen and Paris schools of securitization. Human rights critiques towards Frontex are juxtaposed with discourse produced by Frontex itself addressing these criticisms.

The structure of the thesis will look as follows. Firstly, the theoretical framework upon which the analytical part will be based is outlined, highlighting the comprehensive nature of this particular framework of securitization theory. Secondly, the methods for conducting an analysis with the comprehensive framework of securitization will be outlined. Thirdly, a genealogical overview will be given of EU migration legislation and external border management policy, showing the normative framework in which Frontex is meant to operate. Fourthly, the EU agency Frontex will be discussed in greater detail. Its mandate and operations relating to migration will be analyzed. Moreover, the discourse of Frontex will be discussed as this will aid us in analyzing any potential discrepancies and challenges between Frontex' narrative regarding the protection of human rights and their security practices. This analysis will apply the comprehensive framework of securitization theory. The thesis offers conclusions with respect to Frontex' discourse and practices in the context of the securitization of migration in the EU, as well as its adherence to human rights.

## 2. Theoretical Framework

The following chapter will stipulate the theoretical framework in which the analytical part of this thesis is to be conducted, namely that of a comprehensive framework of securitization. Securitization theory has often been presented “as one of the most promising approaches to the study of ‘new’ security issues such as migration” (Leonard, 2010, p. 234).

### 2.1 Introduction

Globalization has led to greater international interdependence as economic, political, cultural and social processes have become increasingly intertwined. Examples of globalization processes can be found everywhere, such as the process of integration in the EU in which an internal market has been created, a common currency has been adopted, and the freedom of movement in the Schengen area in which EU law has gained supremacy over national legislation. Holten (2011) describes globalization as the compression of time and space on earth in which the idea of distance has become a more relative concept rather than an absolute measure. Through modern-day technology direct communication can bridge great geographical distances and transcend time zones in an instant. This has led to the world becoming increasingly intertwined and interdependent. Simultaneously, globalization has also brought about security threats that are not necessarily bound to state borders, such as international terrorism, global pandemics, and the dangers of nuclear proliferation (Kusiak, 2012). Therefore, globalization has also contributed to a change in the perception of being safe and secure.

The classical way of perceiving security threats could be categorized into either domestic criminality or inter-state threat of warfare. This perception was formulated as the *classical security complex theory* (Buzan, Waever & De Wilde, 1998). However, after the Cold War the animosity between states began to decline and cross-border crime became prioritized as a security concern (Bigo, 2006). This called for increased transnational cooperation for safeguarding the EU’s internal security in which policy areas that had not been regarded as security threats were now being included. This change in thinking regarding security, in which far-reaching security measures are legitimized, is what we label as the process of securitization.

Globalization has created a shift in the way security is being perceived in the Western countries. As the Cold War subdued, the ‘classical’ threat categorizations dissipated and were replaced by cross-border criminality and acts of terrorism. The Western world increasingly geared their focus towards so-called ‘failed states’ in which political chaos and war had destabilized these countries (Bigo, 2006). Many citizens of these failed states were now fleeing increasingly towards the West in order to escape the chaos and violence in their home countries. In the course of the 1980s and 1990s Western states

were increasingly combating the 'negative effects' of globalization. The 9/11 attacks in the United States created a further shift in the way security threats were perceived as now a Western power had been attacked on its own soil by a foreign threat. This acted as a catalyst in paving the way for enhanced cooperation between different security actors and agencies (Argomaniz, 2009). Furthermore, it led to increasingly obtrusive governmental policy and legislation in order to guarantee safety and security. Examples of this are the Patriot Act and the Anti-terrorism, Crime and Security Act, installed respectively by the US and the UK following the 9/11 attacks. This type of new and far-reaching legislation, designed to better combat existential threats are, in many ways, a product of shifts in threat perception. This shift is propelled by securitizing actors and by securitizing events which lay the foundation for further-reaching legislation to be regarded as necessary. This process is what is known in academia as securitization.

This shift in the way security threats were perceived led to the concept of security going beyond that of military security within state borders (Holten, 2011). Nowadays, security is linked to themes that were previously not seen as part of the security realm, such as climate change, religion and migration. This refers to the fears surrounding terrorist attacks committed by religious extremists and the increasing resistance towards immigrants. The resistance towards migrants coming to Western countries stems from several perceptions of migrants. Firstly, the perception that they will elevate crime rates and abuse the welfare state system (Bigo, 2006). Secondly, the idea that granting access to migrants will create a threat to the host country's national identity and society. Buzan (1983) identified societal tendencies in which migrants are seen as a threat to 'societal security' in which the survival of their society is at stake. The concept of 'societal security' is defined by Waeber et al. as, "the ability of a society to persist in its essential character under changing conditions" (1993, p. 23). Thus, Buzan (1983) argues that these (perceived) changing conditions comes in the form of immigration which societies can perceive as a threat to the essential character of their society.

Securitization occurs when certain issues debated in the political arena are transformed into crisis situations by framing these issues as an existential threat that require extraordinary measures. Thus, "securitization can be seen as a more extreme version of politicization" (Buzan et al., 1998, p. 23). In the case of politicization a certain issue is part of, or included into, the political debate. However, in a securitized debate the state views a particular issue as a threat in which extensive measures and political actions are justified that otherwise would be deemed excessive (Buzan et al., 1998). The perception of security is not universal, as issues can be 'simply' politicized in one country, whereas in another the same issue is being securitized. An example of this is religion. In many countries religion is politicized as it is an integral part of the political culture, e.g. Iran or Indonesia. In the case of Islam its presence in several (predominantly Western) countries has been securitized and seen as a threat to the democratic values of these countries. A more historic example of this could be seen during the Cold War era in which the Soviet Union had securitized Western influences which were labeled as a



threat to the communist ideals. Therefore, Westerners were under constant watch in the Soviet Union or were refused from entering the country completely (Buzan et al., 1998).

## **2.2 Schools of Securitization**

Securitization is a process that is influenced by many different factors and actors. A previously non-securitized topic can find itself securitized later down the line. This is heavily dependent on whether the public indeed fears a particular issue and sees it as an existential threat to society. It is only then that securitization can become a powerful tool in the political debate. The concept of securitization was spawned by academics such as Ole Waever and Barry Buzan. Their concept of what entails securitization became known as the Copenhagen School.

### **2.2.1 Copenhagen School**

Since securitization is a process involving many different factors and actors, which is highly political, it is often influenced by a governing body through so-called 'speech acts'. These speech acts are directed towards the main target group of a governing body, which in the case of a nation-state is its population. Through these speech acts, governments can become proponents of a certain issue being securitized depending on the way they frame their public message. Security issues are therefore not necessarily a reflection of reality, but rather a constructed concept by certain actors. These actors are referred to as 'securitizing actors' and they are paramount in the framing of security issues. Therefore, "security is not of interest as a sign that refers to something more real; the utterance *itself* is the act" (Waever, 1995, p. 55).

Securitization is not an objective process based merely on facts and reality. However, it is also not purely a subjective process. For Buzan et al. (1998) securitization is an intersubjective process in which the 'audience' of the speech act plays a significant role. The topic or issue being discussed in a speech act by a (potentially) securitizing actor must be accepted by the audience for it to become securitized. This acceptance by the audience is more likely to occur when certain conditions are met in the speech act. These conditions are according to Buzan et al. (1998) both internal and external conditions. The internal conditions are linguistic features; the speech act must contain the language of security, meaning it must contain a scenario with an existential threat as its core message. The external conditions are more social and contextual features, related to *who* carries out the speech act, and in what manner the message is delivered. Firstly, the securitizing actor has to have a form of authority in society and must therefore have acquired a certain 'social capital' in order for its speech act to reach the target audience. Social capital can be seen as an acquired feature in which its volume is determined by the network of connections which the securitizing actor can mobilize. The more effective this mobilization, the more social capital someone possesses, and

vice versa (Bourdieu, 1968). Therefore, a securitizing actor must possess enough social capital in order to affect the audience's way of thinking and acceptance of the existential threat being portrayed. Secondly, whether an existential threat is believed to be true or false depends on whether the securitizing actor possesses persuasive powers which bring the issue at hand nearer to the audience members. By having the audience relate to the issue as it is portrayed by the securitizing actor in a way which calls home to the audience, the issue will be securitized and accepted as such more effectively.

The framing of an issue is what makes the difference in that issue becoming securitized. With this notion the Copenhagen School argues that security is about survival which can be seen as a traditional understanding of security. This traditional understanding refers to the attempt by securitizing actors to present something as an existential threat to the 'referent object'. The referent object can be explained as that which the audience holds dear and which should not be contaminated. For example, when a securitizing actor in country A wants to securitize country B, the actor of country A will aim to present country B as being a threat to the survival of country A. In this example country A can be regarded as the referent object suffering from an (constructed) existential threat.

According to the Copenhagen School an actor possessing significant social capital has to merely utter security for it to move "a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it" (Waever, 1995, p. 55). For securitization to be successful, three components or steps must be adhered to: "existential threats, emergency action, and effects on inter-unit relations by breaking free of rules" (Buzan et al., 1998, p. 26). Combining these components, the Copenhagen School defines securitization as:

*"the staging of existential issues in politics to lift them above politics. In security discourse, an issue is dramatized and presented as an issue of supreme priority; thus, by labeling it as security, an agent claims a need for and a right to treat it by extraordinary means"* (Buzan et al, 1998, p. 26).

When a securitizing actor aims to bring what he/she considers a problematic issue that should extend beyond the political arena, it transcends the notion of politicization. The political issue will then often become framed as a societal issue. The study of securitization processes should therefore not focus on assessing the existence of real threats, but rather on how issues are socially constructed and are made to be seen as security threats. Therefore, the Copenhagen School securitization framework is centered on discourse and "focuses on understanding which actors can speak security successfully, how they are accepted as legitimate actors in that role, and what consequences these 'speech acts' have" (Leonard, 2007, p. 18).

It is worth noting that the concept of audience does not only entail the national or regional populations as such. As Neal (2009, p. 337) states, "there is no methodological

prescription which says the 'audience' of security discourses must be 'public'. Audiences of security discourses might just as well be political professionals, bureaucrats and experts. This means that it is problematic to assume that there is such a thing as a unified 'public sphere' adhering to a single national discourse. Societies and political institutions are pluralistic and diverse which poses difficulties when interpreting consequences of securitizing moves.

### **2.2.2 Paris School**

The theory of securitization as designed by the Copenhagen School has become an important theory in the field of critical security studies and has been adopted by many scholars. Besides its critical acclaim, voices of critique have also been uttered by several scholars in bids to further develop securitization theory and make it more comprehensive (McDonald, 2008; Stritzel, 2007; Huysmans, 2004; Balzacq, 2005; Bigo, 2002). A main concern for those critiquing the Copenhagen School's theory is its lack of applicability in real-life situations in which the theory could be applied and tested empirically. In order to compensate for this lack of practical applicability, some scholars have suggested an alternative approach to the study of securitization processes. In this alternative approach the emphasis on speech acts is substituted for an emphasis on practices. This alternative approach is led by Didier Bigo who states that "it is possible to securitize certain problems without speech or discourse (...) [t]he practical work, discipline and expertise are as important as all forms of discourse" (2000, p. 194). This implies that the activities of security professionals and bureaucratic networks in reality play a larger role in securitization processes than speech acts (Huysmans, 2004).

We can see that the two approaches differ quite significantly both in its concept of securitization, as well as in the units of analysis they focus on. For the Copenhagen School framework the main unit of analysis is speech acts, whilst in Bigo's approach – sometimes referred to as the Paris School – and that of like-minded scholars, security professionals constitute the main unit of analysis.

Efforts to combine these two differing approaches have proven to be fruitful in several studies of securitization since combining the insights from both approaches can lead to more complete analyses of securitization processes (Leonard, 2007; Balzacq, 2011). Thierry Balzacq has made major contributions to the idea that the two approaches of securitization theory can be merged. He refers to the Copenhagen School as the 'philosophical' approach as it focuses on discourse and its linguistic content, "which is part of the philosophy of language fold" (Balzacq, 2011, p. 1). Regarding the approach on analyzing practices Balzacq (2001, p. 1) states that this is used "primarily in terms of practices, context, and power relations that characterize the construction of threat images". Due to this approach being influenced by social theory it is referred to by Balzacq as the 'sociological' approach.

Balzacq argues that the differences between the two approaches are not as stark as they might seem at first glance. In fact “the two variants are primarily ideal types, meaning that studies of securitization do not necessarily fall neatly within a particular category” (Balzacq, 2011, p. 3). Balzacq gives great importance to the actions which follow a speech act. In linguistics a speech act is seen as a unit of linguistic communication which can convey three types of acts: “(1) locutionary – the utterance of an expression that contains a given sense and reference, (2) illocutionary – the act performed in articulating a locution [style of speaking], (...) (3) perlocutionary, which are the ‘consequential effects’ or ‘sequels’ that are aimed to evoke feelings, beliefs, thoughts or actions of the target audience” (Balzacq, 2011, p. 4-5). Balzacq argues that “[p]erlocution does not belong literally to speech act since it is the causal response of a linguistic act” (Balzacq, 2011, p. 5). However, illocution and perlocution are often confused since the enactor of a speech act is intent on his/her words bringing about a perlocutionary effect. In this line of thinking the proverb ‘actions speak louder than words’ holds true. Without the intended perlocutionary effect following a speech act, the illocutionary act will be deemed unsuccessful. When applying this linguistic philosophy to securitization we can see that “the purpose is to prompt a significant response from the other (perlocutionary effect); unless this happens there is no securitization (...) perlocution is central rather than tangential to understanding how a particular public issue can change into a security problem” (Balzacq, 2011, p. 5-6).

Despite the differences in approaches to the theory of securitization, there is one point onto which all studies converge, namely that “the principle that securitization requires acceptance by an audience is a distinctive feature of securitization theory” (Balzacq, 2011, p. 8). This is what makes securitization an *intersubjective* process. However, “audience can only be one element of a larger theoretical pattern in securitization studies, one which draws its importance in relation to others” (Balzacq, 2011, p. 8). This audience can be persuaded by discourse, as discussed above. Yet, it is essential for discursive action to cause an effect amongst its audience if it wishes to be successful. For security professionals it is discourse which shapes their tasks and establishes the social relationships within the agency. Furthermore, its discourse creates “the instantiation of a particular communicative action” (Balzacq, 2011, p. 23).

It has become evident that securitization theory has evolved considerably since its development in the 1980s and 1990s, therefore Balzacq proposes a diverging definition of securitization from the one constructed by Buzan, Weaver and De Wilde. Balzacq (2011, p. 3) defines securitization as:

*“an articulated assemblage of practices whereby heuristic artifacts (metaphors, policy tools, image repertoires, analogies, stereotypes, emotions, etc.) are contextually mobilized by a securitizing actor, who works to prompt an audience to build a coherent network of implications (feelings, sensations, thoughts, and intuitions), about the critical vulnerability of a referent object, that concurs with the securitizing actor’s reasons for choices and*

*action, by investing the referent subject with such an aura of unprecedented threatening complexion that a customized policy must be undertaken immediately to block its development”.*

This definition incorporates the classical securitization units of analysis and observation, such as securitizing actors, referent objects, audience and existential threat, yet it adds an ‘assemblage of practices’ signaling that securitization entails more than merely ‘speech acts’. This merging of the Copenhagen and Paris schools of thought produces a comprehensive framework which can be well-suited for the focus of this thesis. Therefore, the following thesis shall utilize the definition formulated by Balzacq as the conceptualization of securitization.

### 3. Research Methodology

The following chapter lays out the methods that will be utilized in order to analyze Frontex' activities in the context of EU external border management and its conduct towards irregular migration and refugees.

#### 3.1 Research Design

The following thesis will be a descriptive, interpretive and, to a lesser extent, an exploratory qualitative study. It will implement two different analytical techniques, namely discourse analysis of official documents and press releases, and analysis of agency practices. It is descriptive as it will introduce the *issue* at hand and the EU's *instrument* designed to deal with this issue. The issue in this case refers to irregular migration into the EU in the form of refugees fleeing their war-torn and/or poverty-stricken countries. Whereas, one of the major instruments designed by the EU, and which will be a focus of this thesis, is the European Border and Coast Guard Agency known as Frontex.

Besides the descriptive portion of the study, this thesis will be an interpretive study as it focuses on "the meanings that shape actions and institutions, and the ways in which they do so" (Bevir & Rhodes, 2002, p. 132). Interpretive approaches to qualitative studies follow two premises. The first, rather straightforward, premise is that people act according to their own beliefs and preferences. People, in this regard, consist of everyone in both the public and private realm, and thus refers to the general population, as well as to politicians and policy makers. Hence, "[b]ecause people act on beliefs and preferences, it is possible to explain their actions by referring to the relevant beliefs and preferences" (Bevir & Rhodes, 2002, p. 134). The second premise of interpretive approaches is that "we cannot read-off people's beliefs and preferences from objective facts about them such as their social class, race, or institutional position. The impossibility of pure experiences implies that we cannot reduce beliefs and preferences to mere intervening variables" (Bevir & Rhodes, 2002, p. 135). This second premise follows from the argument that the first premise lacks the power of general applicability and is therefore not suitable for establishing a causal relationship since beliefs and preferences are impossible to corroborate (Bevir & Rhodes, 2002). The interpretive method is therefore not deemed as explanatory, but as an analytical tool to disclose meaning-making practices and show how these practices configure to generate observable outcomes (Bevir & Kedar, 2008).

Moreover, the study will be somewhat exploratory in nature as the study of securitizing discourse regarding migration into the EU has been prolific within the realm of critical security studies, yet the study of securitizing practices in the same context has been under evaluated (Leonard, 2007). In the case of Frontex' practices in the EU migration

context this phenomenon is even more prevailing. Since Leonard's 2007 PhD thesis entitled *The European Union and the Securitization of Asylum and Migration*, securitization of migrants in the context of practices has been eclipsed by the academic literature on securitizing discourse. Moreover, the excellent study on Frontex and securitization of asylum seekers by Leonard has since become somewhat outdated. This is due to the passing of time and, perhaps more importantly, the recent devastating developments in the Levant region of the Middle East, as well as ongoing conflicts and dictatorships in Africa (e.g. Sudan and Eritrea), and the subsequent refugee crisis in the Mediterranean. This thesis will attempt to merge the two streams of securitization studies described before and apply these to the study of Frontex' practices, which is an analytical framework that has been lacking in security studies in general (Balzacq, 2011), and has arguably been underrepresented within the trifecta of EU migration policy, Frontex, and irregular migration/refugees.

The following thesis consists of a case study with Frontex as its focus. A case study consists of a holistic in-depth examination of a specific topic which can be studied both quantitatively, as well as qualitatively (Sadovnik, 2007). As a research design the case study method has been chosen as it "investigates a contemporary phenomenon in depth and within its real-life context" (Yin, 2009, p. 18). The time frame of the analytical component of this thesis will encompass the years 2001-2016, with some earlier references throughout the descriptive parts in order to describe certain important events and developments. Frontex was established in 2004 which would arguably make 2004 a logical starting point, however the years following the 9/11 terrorist attacks are important years for understanding the mandate and 'atmosphere' in which Frontex was created. Furthermore, it is important to notice that securitization is not an abrupt process, but rather, "the process of securitization is gradual and incremental, and an issue can move along a continuum of risk/fear without ever reaching the stage of 'existential threat' where it merits 'emergency action'" (Abrahamsen, 2005, p. 71). Moreover, securitization requires to be reinforced through continuous securitizing practices, otherwise, "securitization will likely fade away, as other social constructions of the issue at hand will take priority" (Leonard, 2010, p. 238).

### **3.2 Data Analysis**

This thesis will be using securitization theory as its analytical framework, in particular two main strands of this theory known as the Copenhagen and Paris School approaches. Also termed by Thierry Balzacq (2011) as the 'philosophical' and 'sociological' approaches respectively. The discourse analysis content of the thesis will relate to the Copenhagen School, whereas the analysis of Frontex' operations in the Mediterranean will fall within the Paris School approach.

### 3.2.1 Critical Discourse Analysis

As the Copenhagen School approach focuses on analyzing discourse in speech acts it is important to lay out how this analysis is carried out and how discourse analysis will be utilized in this thesis. There are different academic approaches to discourse analysis. Oftentimes, the exact approach to discourse analysis is unclear and undefined (Jorgensen & Phillips, 2002) however, in order to be methodologically sound, an exact definition is required.

This thesis will be utilizing Critical Discourse Analysis (CDA) as its approach to discourse analysis. The CDA approach has its fundament in *social constructionism* which is a theory of knowledge borrowed from sociology and communication studies. It is an umbrella term for different approaches aiming to address “the processes by which people jointly construct their understandings of the world” (Leeds-Hurwitz, 2009, p. 892). This understanding of the world is achieved through language. As stated by Jorgensen and Phillips, “[w]ith language, we create representations of reality that are never mere reflections of a pre-existing reality but contribute to constructing reality” (2002, p. 9). All discourse analytical approaches take this premise as their starting point. Language is seen as a vehicle through which social identities and social relations are formed. Therefore, “[i]t means that *changes* in discourse are a means by which the social world is changed” (Jorgensen & Phillips, 2002, p. 9). In critical discourse analysis this change in discourse is a central area of interest and is highlighted by the concept of *intertextuality*. This concept refers to how individual discourses are based upon, and draw from, elements of other discourses. This intertextuality can in turn create concrete language which can be used to “change the individual discourses and thereby, also, the social and cultural world” (Jorgensen & Phillips, 2002, p. 7). By utilizing this notion one can not only investigate the reproduction of pre-existing discourses, but also changes in discourse through new combinations of discourse. To sum up, Jorgensen and Phillips state:

*“[c]ritical discourse analysis (...) present[s] a theoretical foundation and specific method for analysis of the dynamic discursive practices through which language users act as both discursive products and producers in the reproduction and transformation of discourses and thereby in social and cultural change” (2002, p. 17).*

Critical discourse analysis is a method through which the interplay between discourse, power, ideologies and social structures can be studied. It is based on the assumption that discursive practices, such as speech acts, can bring about ideological and societal developments. The word ‘critical’ is defined by Fairclough (2001, p. 4) as follows:

*“Critical is used in the special sense of aiming to show connections which may be hidden from people - such as the connections between language, power and*



*ideology. Critical language study analyses social interactions in a way which focusses upon their linguistic elements, and which sets out to show up their generally hidden determinants in the system of social relationships, as well as hidden effects they may have upon that system”.*

Given this definition of ‘critical’, CDA is a method of analysis that lends itself well for the study at hand, as it can be utilized to uncover subtle securitization processes that lie at the foundation of migration discourse.

Furthermore, the method of critical discourse analysis is particularly well-suited for studying the discourse of EU institutions and agencies as it focuses solely on text, talk and semiological systems, which are e.g. gestures, trends and fashions (Fairclough, 1992a). These analytical tools are utilized in order to explore “the social consequences of different discursive representations of reality” (Jorgensen & Phillips, 2002, p. 21). It is important to note that also within the field of critical discourse analysis there are differences in approach. Therefore, the CDA approach is sometimes categorized as a movement in which different approaches are present. For this thesis the choice has been made to focus on Fairclough’s approach to CDA as it is well-documented methodologically and particularly well-suited for this study.

#### *Fairclough’s three-dimensional model*

Fairclough’s approach to critical discourse analysis consists of a three-dimensional model comprising of a range of different, yet interconnected, concepts. The model portrays discourse as a three-dimensional phenomenon consisting of the text itself, as well as a discursive and a social practice. Fairclough’s model therefore does not merely focus on the content of a written text, but also on the processes of production and interpretation within the larger social context and its interconnectedness. An analysis based on Fairclough’s model will consist of a linguistic analysis of a text, as well as an interpretation of the relation between discursive processes and the text. This will be preceded by a contextualization of the relation between the discursive and social processes (Fairclough, 1995). Fairclough’s model can thus be depicted as follows:

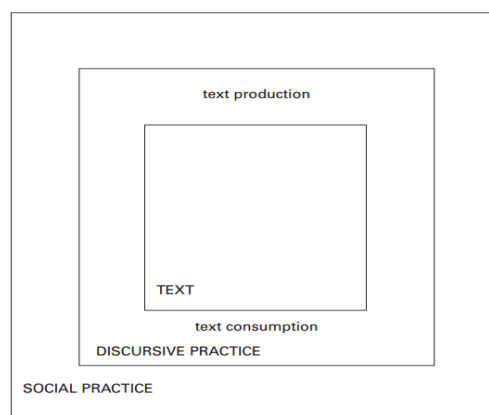


Figure 1: Fairclough’s three-dimensional model for critical discourse analysis (1992b, p. 73).

This depiction shows how the three dimensions are situated. The textual dimension describes a message, which is then interpreted in order to seek the meaning behind the description, proceeded by an explanation regarding the implications of the meaning for social practice (Fairclough, 1995). For clarification purposes it is important to note that social practices, as depicted by Fairclough, differs from the term 'practices' used throughout this thesis which refers to the non-discursive practices within the context of securitization.

### 3.2.2 Security practices

Since this thesis aims to analyze Frontex through a comprehensive framework of securitization as formulated by Balzacq (2011), it is important to establish what the sociological approach to studying securitization entails. The following sub-chapter will lay out the method through which the non-discursive practices of Frontex will be analyzed.

Before analyzing practices it is necessary to define the concept of 'practices'. Reckwitz (2002, p. 249) defines practices as "a routinized type of behavior which consists of several elements, interconnected to one another: forms of bodily activities, forms of mental activities, 'things' and their use, a background knowledge in the form of understanding and know-how, states of emotion and motivational knowledge". This definition is a broad conceptualization related to every type of practice in society. When analyzing security practices it is important to understand that "securitization is not necessarily the result of a rational design wherein goals are set beforehand, following a predetermined agenda" (Balzacq et al., 2010, p. 3). This means that the process of securitization consists of practices which produce intersubjective understandings that can lead to a certain way in which security threats are framed, without this in fact being the objective of these practices.

In order to prevent confusion, it is important to note that the term 'security practices' can also entail *discursive* practices. Therefore, scholars such as Balzacq have resorted to referring to *non-discursive* practices as 'tools of securitization' or as 'instruments of securitization'. These two concepts can be used interchangeably. A 'tool of securitization' is defined by Balzacq (2008, p.79) as "an identifiable social and technical 'dispositif' or device embodying a specific threat image through which public action is configured in order to address a security issue". An important part of this definition regards the description of practices being the embodiment of a perceived threat. As Leonard (2010, p. 237) sums it up, "securitizing practices are activities that, by their very intrinsic qualities, convey the idea to those who observe them, directly or indirectly, that the issue they are tackling is a security threat".

As security practices embody a 'specific threat image' these practices have "characteristics that allow those who become aware of them to know that their deployment aims to tackle a security threat and is therefore justified by the existence of such a threat" (Leonard, 2010, p. 237). According to Leonard (2010), two main types of practices can be identified which convey the idea that they are tackling a security threat and which therefore can be regarded as 'securitizing practices'. Firstly, she identifies the 'ordinary' or 'usual' practices which are employed when tackling issues that are widely recognized as being security threats. Examples of these widely recognized security threats include issues such as armed attack by a foreign state or terrorism. A common response to these type of events is the deployment of military force which sends the message that the issue the deployment is intended to tackle constitutes a security threat. Secondly, the practice of deploying 'extraordinary' measures. Exceptional practices suggest that the issue they are intended to tackle pose an exceptional threat which cannot be dealt with by 'ordinary' measures. Therefore, "[t]he deployment of such extraordinary measures (...) constructs the issue that they are addressing as a security threat" (Leonard, 2010, p. 237).

It is important to note that the term 'extraordinary' as used in the context of security practices is understood differently than the connotation given to the term by the Copenhagen School. In the context of the Copenhagen School the term 'extraordinary' relates to "justifying actions outside the normal bonds of political procedure" (Buzan et al., 1998, p. 24). However, in the context of security practices 'extraordinary' is understood more literally as anything out of the ordinary. This highlights the idea that the securitization framework does *not only* involve emergencies, exceptions or illegal activities, contrary to what the Copenhagen School advocates (Leonard, 2010). Moreover, extraordinary measures should be assessed regarding specific issues within specific political contexts. As Leonard (2010, p. 238) states, "for a measure to be identified as 'out of the ordinary' (...) [it] has not been previously applied to a specific policy issue in a given political context". This echoes the broad conceptualization of security as advocated by the Paris School which stirs away from narrower interpretations of what constitutes security practices (Bigo, 2002).

The two types of securitizing practices as described above can be identified as activities related to EU asylum and migration policy that:

*"[1.]have traditionally been implemented to tackle issues that are largely perceived to be security issues (...) and/or [2.] are extraordinary, not only in the sense of 'exceptional' or 'illegal', but more broadly in the sense of 'out of the ordinary' (i.e. never or rarely applied previously to asylum and migration issues in the EU and its Member States)" (Leonard, 2010, p. 238).*

A specific practice can fall within either one of these criteria, or in both since they are not mutually exclusive. Any one of these criteria need to be fulfilled for any practice to

be considered a securitizing practice. As such, these criteria will be used in order to analyze the practices of Frontex to see whether they fulfill either one of these two criteria.

### **3.3 Data Collection**

As sources of information, policy and legislative documents are utilized extensively, particularly those addressing security and border management of EU external borders. EU institutional documents that propose a common border management approach with Frontex as a coordinating agency will be utilized as units of analysis. In particular, the annual Risk Analysis reports published by Frontex will be utilized as they can be regarded as a cornerstone of Frontex' tasks. Moreover, they illustrate the way in which Frontex portrays itself as an EU agency. These documents will be analyzed according to the philosophical approach utilizing critical discourse analysis. Furthermore, European border management practices, in the form of Frontex operations, will be analyzed according to the sociological approach of security. In order to do so, tasks and operations conducted by Frontex will be investigated. This will shed light on European external border management in practice in relation to EU legislation and discourse. As the foundation of EU legal documents this thesis will utilize the Council Directives and Regulations that apply to the EU asylum system and the Schengen Borders Code. Also those documents relating to the mandate of Frontex will be highlighted, such as the relevant Regulations and its Code of Conduct. Moreover, treaties and reports from non-governmental and international organizations will be utilized, such as, *inter alia*, the UN Geneva Convention, UNHCR, European Convention of Human Rights, Human Rights Watch and Amnesty International.

Apart from the official EU and Frontex documents, this thesis will also be utilizing an already existing body of academic literature which comprises information about the topic being discussed. By utilizing both primary and secondary EU legislation, Frontex sources, NGO reports and academic sources, the document analysis will serve to adequately describe the EU migration and border management policy. This in turn will provide us with the necessary information to analyze adherence by Frontex to fundamental rights and its discourse on irregular migration. Moreover, it will provide us with the material to analyze the practices of Frontex through the scope of securitization.

## 4. Legal Background

Before addressing the topics regarding Frontex and its activities it is important to assess the legal framework in which asylum seekers, irregular migration and Frontex have to maneuver and operate. Since this thesis is intended as a case study on Frontex, this chapter will zoom-in on the increasing Europeanization of external border management of which Frontex is a product. Moreover, this chapter intends to outline the relevant legislation of the European legal order which affects the operations of Frontex and the lives of asylum seekers.

### 4.1 Europeanization of external border management

The general topic of transferring member states' competences to the EU is oftentimes a sensitive topic (Moravcsik, 2002). With regards to external border management, it touches upon the sovereignty of member states over their own coastal borders, and frictions do exist over the transferal of competences from the member states to the EU. However, there is a general consensus that management of the EU external borders is a community interest, as the protection of countries such as the Netherlands and Slovakia is dependent on border guards in Italy, Greece and Spain (Marenin, 2010). With regards to irregular migration, the 21<sup>st</sup> century has so far seen a vast amount of human displacement which has been triggered by various reasons, such as war, famine, terrorism and human rights abuses. The most recent UNHCR Global Trends report has shown that at the start of the year 2016 an estimated 65.3 million people have been forcibly displaced worldwide of which 21.3 million are registered refugees (UNHCR, 2016). Considering these figures, perhaps "it is no surprise that within the European Union, the management of migration has become a more dominant political topic than asylum" (Garlick & Kumin, 2008, p. 111). Migration management is indivisible from border management and therefore a task which befalls on border guarding institutions like Frontex.

The 1997 Treaty of Amsterdam has introduced the Area of Freedom, Security and Justice (AFSJ). One of the main objectives of the AFSJ was laid out in Article 1(5):

*"Maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime."*

In light of this AFSJ objective the members of the European Council agreed to establish a common EU asylum and migration policy at the Tampere European Council in 1999. An important objective of this common policy was to establish "a common European asylum system (CEAS) based on the full and inclusive application of the Geneva

Convention [on Refugees]" (Ippolito, 2013, p. 261). Following this shared objective first coined at Tampere, the CEAS has been further harmonized within EU policy with several binding measures established predominantly by the Council of the European Union. These measures include 1) the 2001 Temporary Protection Directive granting temporary protection to asylum seekers in situations of mass influx, 2) the revised 2013 Reception Conditions Directive establishing the minimum standards for the reception of asylum seekers, 3) the revised 2011 Qualification Directive establishing minimum standards for qualification for refugee status or similar forms of protection, and 4) the revised 2013 Procedures Directive establishing procedures for dealing with granting or withdrawing refugee status. Furthermore, important components of the CEAS include; the revised 2013 Dublin Regulation which establishes the responsibility of the member state to process the asylum application and protects asylum seekers through the principle of *non-refoulement*; and the revised 2013 EURODAC Regulation which established a EU database of the fingerprints of all asylum seekers which can be accessed by law enforcement agencies.

Garlick and Kumin (2008) argue that the Tampere European Council along with the four (initial) Directives by the Council constitute the real starting point of the CEAS. The system was further developed during the Hague Program in 2004 on "Strengthening Freedom, Security and Justice in the European Union" (European Council, 2005, p.1). The European Council referred to the Hague Program as constituting the *second phase* of the CEAS. The Hague Program is important for the development of the CEAS and in particular for the activities of Frontex. This is relevant for Frontex because the Hague Program further developed EU policy in the area of border management and, moreover, because it introduced the possibility to form partnerships and conclude agreements with third countries. This allows for Frontex to operate in third country territories as an EU body, facilitating Frontex' objectives and enhancing its effectiveness. The European Council argued that asylum and migration are by definition international issues which are best tackled together by establishing partnerships with third countries "to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, (...) resolve refugee situations by providing better access to durable solutions, build border control capacity (...)" (European Council, 2005, p. 5). The European Council also makes reference to the grim reality concerning "the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally" (2005, p. 5). The European Council further stressed "to continue the process of fully integrating migration into the EU's existing and future relations with third countries" (2005, p. 5).

Following this next phase in EU-wide cooperation on border and migration management, the European Council convened in 2006 to establish the Schengen Borders Code (SBC). The SBC focused on compensating the lack of internal borders, which arguably eliminates certain obstacles for transnational crime, with greater cooperation and legal instruments along the EU's external borders (European Council, 2006). In

Article 4(3) of the SBC measures were implemented against “unauthorized crossing of external borders at places other than border crossing points or at times other than the fixed opening hours (...) penalties shall be effective, proportionate and dissuasive” (European Council, 2006, p. 5).

The adoption of the Lisbon Treaty in 2009 abolished the pillar structure previously established during the Maastricht Treaty in 1993. This development relocated the AFSJ under Title 5 in the Treaty of the Functioning of the European Union (TFEU). This Title is important for the scope of this thesis as it lays down the divisions of competences of the EU and its member states in the AFSJ. Article 72 TFEU states:

*“This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and safeguarding of internal security”.*

This Article clearly indicates that the member states remain the main responsible parties in the area of security. The Title does include Articles which have the objective to establish advanced cooperation along the EU external border. This integration of external security is to be established through legislation from multiple EU institutions. Article 68 TFEU makes reference to the responsibility of the heads of state of the member states by stating:

*“The European Council shall define the strategic guidelines for legislative and operational planning with the area of freedom, security and justice”.*

Article 74 TFEU instructs a similar notion for the Council of the European Union (i.e. Council of Ministers) by stating:

*“The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission”.*

Article 77 TFEU constitutes responsibilities of the Union as a whole and, while referring explicitly to asylum and immigration, states in paragraph 1:

*“The Union shall develop a policy with a view to (...) the gradual introduction of an integrated management system for external borders”.*

In Article 77(2) TFEU the European Parliament is instructed, along with the Council, to adopt measures concerning:

*“(...) any measure necessary for the gradual establishment of an integrated management system for external borders”.*

Council Regulation 2007/2004, through which Frontex was officially founded, was in line with these Treaty articles and the Regulation explicitly referred to Article 66 TEC, which has been renumbered as Article 74 TFEU following the enactment of the Lisbon Treaty. With the establishment of Frontex, the Council adopted a measure, or created an agency for that matter, that would ensure cooperation along the external borders of the EU. Thus, complying with Article 74 TFEU.

Furthermore, Article 78 TFEU concerns the adoption of measures for ensuring a common asylum policy among member states and the obligation of providing humanitarian protection. Article 78(1) TFEU states:

*“The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties”.*

Moreover, in the Lisbon Treaty, Article 6 TEU describes three methods in which the EU solidifies its dedication to the protection of human rights. Firstly, Article 6(1) TEU grants the Charter of Fundamental Rights of the European Union the same legal value as the Treaties. Secondly, the EU accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as established by the Council of Europe (CoE). Thirdly, Article 6(3) states that fundamental rights, as guaranteed by the ECHR, shall constitute a general principle of Union law. This dedication of the EU to ensuring that human rights are protected, must form an important part of Frontex’ coordinating activities.

## **4.2 Cornerstones of IBM**

Frontex came into being with the creation of Council Regulation 2007/2004/EC. This Regulation provides the legal basis for Frontex’ activities and its mandate. Frontex is an intelligence-driven agency which has its headquarters located in Warsaw, Poland since the enactment of Council Decision 2005/358/EC. The agency is a Community body with its own legal identity and autonomy over its own budget. In its initial stage Frontex had as its main tasks the development of risk analyses in order to establish trends in the relevant geographical areas for Frontex, as well as identifying risk factors. Furthermore, Frontex was in charge of the coordination of operational cooperation between member states, as well as provide training and advice to partner agencies and member states (Frontex, 2015a).



Following amendments to Frontex' tasks and responsibilities through Regulation 863/2007/EC, the mechanism for Rapid Border Intervention Teams (RABIT) was formally established. These RABITs support the border guards of member states when there are exceptional migratory pressures along the EU's external borders. These teams consist of specially trained agents which are capable of assisting national or local authorities on short notice. This 2007 amendment was followed by Regulation 1168/2011/EU which further amended Frontex' tasks and objectives. Through the previous Regulations, Frontex had already been given the competence to conclude cooperation agreements with third countries. In the 2011 Regulation, the RABITs were renamed and dubbed European Border Guard Teams (EBGT). Also, Frontex got an additional competence to install a liaison officer in partner third countries and foster enhanced relationships in the field of technical cooperation. Furthermore, the 2011 Regulation laid down the development of a Code of Conduct to be inserted into Frontex' mandate. Article 1(4) of the Regulation stated that a Code of Conduct is to be inserted into Frontex' mandate. This Code of Conduct shall:

*“lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights, with particular focus on unaccompanied minors and vulnerable persons, as well as on persons seeking international protection”.*

In light of the recent refugee crisis which has seen an unprecedented number of asylum seekers seeking refuge in Europe, the European Council called for wider efforts in resolving this issue in a comprehensive manner. Their call for the reinforcement of border management and “to tackle the dramatic situation at the external borders and to strengthen the controls at those borders” (Council, 2016, p. 1) gave rise to the drawing up of a completely new Regulation. Thus, Regulation (EU) 2016/1624 was constructed which officially repealed all previous Regulations and has incorporated all pre-determined measures and competences into a new framework in which Frontex must operate. Moreover, the 2016 Regulation changed the original name of Frontex, being *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, to a more palatable, *European Border and Coast Guard Agency*.

Coinciding with the establishment of Frontex in 2004, the EU adopted the concept of Integrated Border Management (IBM). The Commission has defined IBM as “national and international coordination and cooperation among all relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and coordinated border management, in order to reach the objective of open, but well controlled and secure borders” (Commission, 2010, p. 9-10). According to the Commission, IBM “is important for safeguarding internal security, for preventing irregular migration and other cross-border crime and for ensuring smooth border crossings for legitimate travelers” (2010, p. 9).

As mentioned earlier on, Frontex was established in order to facilitate cooperation along the EU external borders. By establishing Frontex, EU border security management became institutionalized. An institution which has been given a key-role in implementing the concept of IBM since its strategy supports the development of European cooperation on border management (Carrera, 2007). Moreover, the Schengen Borders Code (SBC) - which was outlined before - presides over the management of the movement of persons and has direct effect in the EU member states. In essence, with the SBC the EU has acquired a common internal and external border control system (Carrera, 2007). Together, Frontex and the SBC are regarded as the cornerstones of the EU's IBM strategy (Hobbing, 2010).

## 5. Analysis

The protection of the EU external borders is a national competence. However, due to the common interest of having effective control mechanisms along the external borders of the EU, the EU member states created Frontex (Council, 2004). This chapter will analyze the tasks and responsibilities of Frontex, how they have developed over time, and how they relate to the responsibilities of the EU member states themselves. It will thus build upon the information provided in the previous chapter regarding Frontex and border management. Furthermore, the most prominent operations of Frontex, as well as their adherence to human rights will be highlighted. Moreover, throughout this chapter the dilemma's which Frontex faces within the context of the security-migration nexus will be analyzed. Lastly, selected discourse will be analyzed by utilizing Fairclough's CDA method while bringing it within the securitization framework. Similarly, Frontex' practices will be analyzed following Leonard's criteria for analyzing security practices.

### 5.1 Frontex: tasks

By granting Frontex a coordinating task in actions of member states along the external border of the EU, the EU has sought to produce a more efficient and uniform external border management. The added value of Frontex as perceived by the member states was the support that the agency has to offer to member states dealing with a high degree of irregular migration (Chillaud, 2012).

The tasks of Frontex consist of the following (EU, 2016):

- Coordination of operational cooperation between member states for the management of the EU external border.
- Assisting the member states in trainings and education of the national border and coast guards and offering them technical and operational support.
- Conducting risk analyses in which data is analyzed in order to create "a picture of the situation at the EU's external borders and the key factors influencing and driving it" (Frontex, 2017, pp. 2).
- Monitor migratory flows through migration management support teams.
- Assess any vulnerabilities amongst European national border authorities in light of potential challenges at their external borders.
- Maintaining and coordinating the Eurosur framework.
- Launching rapid border interventions (EGBT) at the external borders of member states in need of such assistance.
- Conducting Joint Return Operations with member states.

Similar to the member states, Frontex can be the initiator of Joint Operations and work together directly with individual member states. It is important to note that the risk analysis task is conducted “in order to *inter alia* reduce the emergency feature of migratory crises” (Chillaud, 2012, p. 50). Moreover, Carrera (2007, p. 12) has pointed out that “[Frontex] activities are, in most cases, ‘emergency-driven’”. Furthermore, an important aspect of Frontex’ mandate is that “[t]he agency is above all ‘technical’ in the sense that its mandate does not allow it to participate in European policy in the field of border control” (Chillaud, 2012, p. 50).

Within its relatively short lifespan, Frontex has seen major developments in terms of the expansion of its tasks and capacity building. As mentioned before, in 2007 RABITs were introduced which can be regarded as the first large expansion of the tasks and responsibilities of Frontex’ mandate. In essence, RABITs (nowadays: EGBTs) are border intervention teams which are deployable for limited periods of time in which they provide operational support to a member state which is overburdened by a sudden and unforeseen spike in the number of irregular migrants crossing its external border (EU, 2007). These teams consist of public servants from varying member states which are temporarily lent out to Frontex for an operation in one of the member states.

## **5.2 Relationship between Frontex and EU member states**

In 2002 both the Commission and the Council of the European Union drafted proposals for the establishment of an agency which would simplify and enhance cooperation and coordination between national border authorities without transferring any national tasks to that agency (Commission, 2002; Council, 2002). Therefore, Frontex has an assisting and advisory role in border management operations of requesting member states, and a shared responsibility with these member states to implement Integrated Border Management (IBM). However, the member states and national authorities remain responsible for their sections of the external borders and accountable for any decisions made and acts carried out (EU, 2016). Similarly, with EGBTs the end-responsibility lies with the member state receiving the assistance, even when Frontex effectively initiates and coordinates the operation. The decision to deploy a EGBT and the content of the operational plans requires the approval of both Frontex and the host member state. Once the operation has commenced, the command and control over the activities of the border guards are with the host member state (EU, 2007).

Border guards deployed by Frontex are known as ‘guest officers’ who in essence are equal to their host member state colleagues in terms of the command structure, as well as, civil and judicial accountabilities. This requires the guest officers of Frontex to adhere to the national laws and regulations of the host member state. The decision whether or not to admit asylum seekers to a member states territory is made exclusively by the host member state. The guest officers of Frontex have to follow the instructions

given to them by the host member state. Guest officers wear their own country's uniforms when performing their tasks in another member state while wearing a blue armband with the EU and Frontex insignia. Furthermore, guest officers are allowed to carry weapons and equipment while on duty in conformity with their home member state regulations, unless the host member state explicitly prohibits the carrying of certain weaponry in their national regulations. Moreover, guest officers are only permitted to use force when this is authorized by both host and the home member state and they do not enjoy immunity rights for criminal offences (EU, 2007). If the host member state decides not to press charges on a guest officer when suspecting a criminal offence, the home member state may press charges when the joint operation has ended and the guest officer is back home (Den Heijer, 2014).

### **5.3 Frontex: Operations**

Since Frontex deals with people in vulnerable positions who may or may not be granted access to the EU it is important to analyze the adherence of human rights. The 2016 Regulation explicitly incorporates the principle of *non-refoulement* as an essential component of adhering to human rights standards as laid down in the EU Charter of Fundamental Rights (EU, 2016). The *non-refoulement* principle guarantees the right for asylum seekers not to be returned to their countries of origin due to the dangers they face there. The Schengen Borders Code Regulation of 2006 conforms the absolute character of the *non-refoulement* principle which, as a humanitarian duty to fulfil, enjoys primacy over the duty to refuse entry for undocumented immigrants (EU, 2006). Since 2009, with the enactment of the Lisbon Treaty, Frontex is legally bound to the EU Charter of Fundamental Rights which contains several articles aimed at protecting refugee rights by adhering to the 1951 Refugee Convention (EU, 2000).

#### **5.3.1 Land Border Control**

The adherence to human rights by Frontex has been reason for much debate and protest (Rijpma & Vermeulen, 2015; Heijer, 2014; Garlick & Kumin, 2008). An example of an event that led to such debate is the 2010 Operation Poseidon in which a RABIT was deployed along the Greek-Turkish border. Their task was to intercept migrants during illegal border crossings and bring them to Greek detention centers where they were handed over to Greek authorities. In September 2011 Human Rights Watch (HRW) published a report titled *The EU's Dirty Hands*. The report reproached Frontex for its apparent involvement in the ill-treatment of migrants and its exposure to unhuman and humiliating detention conditions in Greece (HRW, 2011). Similarly, the European Court of Human Rights (ECtHR) ruled in January 2011 in *M.S.S. v. Belgium and Greece* that the conditions for migrants in Greek detention centers were in violation of human rights (ECtHR, 2011).

Following the pivotal ruling by the ECtHR, Frontex declared to be deeply concerned with the situation in Greece, but emphasized the responsibility of the Greek state, and not that of Frontex, in fixing the appalling living conditions. Frontex released a strategy called the *Frontex Fundamental Rights Strategy* in March 2011 stating that “Frontex considers that respect and promotion of fundamental rights are unconditional and integral components of effective integrated border management” (Frontex, 2011, p.1). The 2011 Regulation, further amending Frontex’ tasks and competences, was ratified shortly after HRW’s 2011 report. That Regulation further solidified the adherence to human rights in Frontex operations. Furthermore, the Regulation offered Frontex more possibilities in regards to responding to violations of human rights, with the most radical possibility being the dissolving of operational activities in cases of severe violations of human rights. Frontex officials are required to have received extensive training in EU and international law, including fundamental rights and access to international protection (EU, 2011). Furthermore, the amendments in the Regulation ensured that two supervising bodies were to be instated in order to safeguard Frontex’ adherence to human rights. These were to become the Consultative Forum and an independent Fundamental Rights Officer. The Consultative Forum (CF) assisted Frontex in establishing the Code of Conduct discussed in the previous chapter and advises Frontex on improving fundamental rights in its activities. Whereas the Fundamental Rights Officer (FRO) supports Frontex in the implementation of its Fundamental Rights Strategy (Amnesty International, 2014).

These improvements with regard to human rights adherence unfortunately could not prevent further accusations of human rights violations conducted or facilitated by Frontex. In April 2014 Amnesty International published a report titled *Greece: Frontier of Hope and Fear*. The report dealt with alleged illegal push-backs of irregular migrants having already entered EU territory and Frontex’ role in following up on these allegations. Allegedly, during Operation Poseidon Greek border guards would bring irregular migrants who had already crossed into Greece back over to the Turkish side without investigating their need for asylum. This sort of conduct would be in violation of the *non-refoulement* principle enshrined in *inter alia* Article 78(1) of the TFEU, the 2013 Dublin Regulation and Article 34 of the 2016 Frontex Regulation. Therefore, Amnesty International called for Frontex to terminate its Joint Operations Poseidon Land and Poseidon Sea which were being conducted in the Evros region and the Aegean Sea. Reportedly, in reply to the alleged violations committed by the Greek border guards, “Frontex (...) had raised such allegations with the Greek authorities in writing on a number of occasions and either received responses denying that push-backs had taken place or that investigations are being carried out” (Amnesty International, 2014, p. 27). Furthermore, they had set-up a ‘Joint Follow up Team’ which according to Frontex “ensure[s] the transparency of the internal investigation and the timely communication of the outcome to Frontex” (Amnesty International, 2014, p. 27). However, Amnesty International criticized the lack of transparency Frontex provided with regards to the

ongoing investigations and its operations in general, saying that very limited information was being published by Frontex.

This type of criticism beckons the question of who is politically and legally accountable in case of human rights violations committed by officers during joint border patrol operations. Would the accountable party be the home member state of the officer, the host member state where the officer is temporarily stationed, or Frontex when the officer is operating under its insignia (Den Heijer, 2011)? As discussed previously, it is the legal framework of the host member state into which the guest officers are incorporated. However, through its planning and coordinating role Frontex significantly influences the actions of guest officers, which gives Frontex a certain degree of responsibility for any events during its joint operations (Baldaccini, 2010). It is therefore questionable whether Frontex can remain completely unaccountable when it is involved in operations that allegedly have led to human rights violations, such as in the case of Operation Poseidon. In fact, in March 2012 the European Ombudsman initiated an independent investigation into the implementation of Frontex' Fundamental Rights Strategy (FRS) and Codes of Conduct. The inquiry which was submitted by the Ombudsman focused on Frontex' systemic framework of operation in light of specific instances allegedly infringing fundamental rights. Concerns brought forth by the Ombudsman regarding the legal framework of Frontex were plentiful. A major concern was that the FRS did not clarify "Frontex's responsibility for possible infringements of fundamental rights which occur in the course of its operations" (European Ombudsman, 2013, para. 59). Moreover, the Ombudsman assessed that "the legal framework applicable to Frontex operations, as described in the Code of Conduct, is indeed not clear" (European Ombudsman, 2013, para. 60). This ambiguity is shown in Article 3(1) of the Code of Conduct which states that participants in Frontex activities "shall comply with international law, European Union law, the national law of both home and host Member States and the present Code of Conduct". That provision reflects "the complexity of the legal background against which Frontex operations take place" (European Ombudsman, 2013, para. 60). The provision could imply that the lawfulness of guest officers' conduct in Frontex operations is determined by various jurisdictions.

In its reply, Frontex, reiterated the fact that they merely have a supportive and facilitating role with "the responsibility for the control and surveillance of external borders lying with the Member States" (European Ombudsman, 2013, para. 88). However, Frontex responded that it aims at increasing its responsibility whenever they have knowledge, or are notified, of possible fundamental rights violations during joint operations. Furthermore, Frontex has specified its aim to prevent violations of fundamental rights through several tools, namely:

*"(i) the harmonization of fundamental rights training in the Member States; (ii) the establishment of a monitoring and reporting system for possible violations of fundamental rights; (iii) the mainstreaming of fundamental rights in its activities;*

*(iv) the promotion of swift processing of potential complaints lodged by migrants with the respective Member States authorities in the course of joint operations; and (v) serving as the custodian of best practices” (European Ombudsman, 2013, para. 90).*

Frontex concluded its reply emphasizing its commitment to protecting human rights and arguing that its continuous efforts to ensure its core value ‘humanity’ remains a guiding principle in Frontex operations. Furthermore, they pointed out measures that had been taken referring to the drafting of the FRS and an Action Plan as a protocol for the FRS, as well as the establishment of the FRO and the CF. Moreover, the Ombudsman noted; “Frontex underlined that respect for and promotion of fundamental rights are a continued concern for it and the relevant Member States authorities and pledged its continuing efforts in this regard” (European Ombudsman, 2013, para. 91-93). Finally, the Ombudsman concluded in November 2013 that the explanations provided by Frontex were reassuring and that Frontex had adequately addressed the Ombudsman’s recommendations.

### **5.3.2 Maritime Border Control**

The vulnerability of irregular migrants at the EU external borders becomes tragically evident when it plays out at sea. Frontex’ largest and most costly joint operations are conducted at sea (Rijpma, 2010). Oftentimes, these joint operations at sea include guest officers from third countries, as for example during the Hera operation where coast guards from Senegal and Mauritania were deployed to return intercepted migrants (Carrera, 2007). As mentioned previously in chapter 4, by reaching agreements with third countries Frontex operations can be conducted in territorial waters of these partner countries. By conducting joint surveillance patrols in international waters and those belonging to third partner countries, Frontex’ patrols reach far beyond the EU external border. This enhances the difficulty for migrants to reach EU territory and are unable to apply for asylum within an EU country. Without an official asylum application migrants are in risk of being returned to their point of departure without having had the opportunity to exercise their asylum rights (Rijpma, 2010).

In May 2009 over 200 migrants from Somalia and Eritrea were intercepted by the Italian coast guard on the high seas between Libya and the Italian island of Lampedusa. Upon interception, the group of migrants was transferred to the vessels of the Italian coast guard and were returned to Tripoli and to the Libyan authorities. They were given no opportunity to apply for asylum and they were stripped from their identification documents, even though they had communicated their wish to apply for asylum in Italy to the Italian coast guard. The right to claim asylum is protected by the Geneva Convention and is an essential provision of the ECHR and the EU Charter of Fundamental Rights. This event led to the landmark *Hirsi Jamaa v. Italy* case to be



brought before the ECtHR. The ECtHR ruled in 2012 that the Italian coast guard had “continuous and exclusive *de jure* and *de facto* control of the Italian authorities” (ECtHR, 2012, para. 81), meaning that the migrants fell within Italy’s jurisdiction. Therefore, the Italian authorities ought to have conducted itself within the provisions of the ECHR. According to the ECtHR, Italy should have conducted individual investigations to ensure that the migrants would not be in risk of receiving inhuman treatment upon return in Libya. Following the ECtHR *Hirsi* ruling, several more countries have been accused of committing similar push-back operations, some of which involved operations coordinated by Frontex (Cordeil de Donato, 2014).

During Frontex operations at sea two areas of law become intertwined, namely the Law of the Sea and Asylum law. Differences in interpretation and implementation are inherent to the two different fields which can lead to conflicting and unclear situations (Den Heijer, 2011). Examples of such situations can be in the case of an emergency rescue operation when a migrant is in need of immediate medical treatment and should therefore be transferred to the nearest shore regardless of which country it belongs to. Which member state will be responsible for receiving the migrant and under which flag will his asylum application fall? In order to harmonize these types of questions during joint operations at sea, the Council and Parliament constructed Regulation 656/2014 establishing rules for the surveillance of the external sea borders within the context of operations coordinated by Frontex. Article 9 of the Regulation defines what constitutes an emergency situation and when the coast guard team should engage in a rescue operation. Furthermore, binding rules of conduct are determined with regards to when migrants ought to be brought to which country, how their safety can be guaranteed and how the asylum application process should be conducted. However, the 2014 Regulation is also lacking in its clarification of several important issues. This is the case for the right to appeal a decision, ensuring that a final decision of an asylum application is not made on the spot by a member of the coast guard, but rather through a just procedure in which the asylum seeker is provided with legal support and a translator (Carrera & Den Hartog, 2015). It is inconceivable to think that migrants on board of a ship can be provided with a just and thorough asylum procedure, which indicates that any migrant willing to apply for asylum in the EU should be brought to the territory of an EU member state.

The 2014 Regulation offers clarification regarding doubts over responsibility for asylum seekers intercepted at sea during surveillance patrols, as well as search and rescue operations (SAR). As Carrera and Den Hartog (2015, p. 10) stated, “[t]he new Regulation contains a legal framework that regulates and hence circumscribes the way in which border surveillance, SAR and disembarkation are to be carried out in the context of Frontex operations”. Unfortunately, the Regulation does leave certain matters unaddressed since its scope is limited exclusively to Frontex joint operations operating in EU member state waters. Extraterritorial waters of third countries are not covered by the scope of the Regulation. However, since Frontex is bound to the EU Charter of

Fundamental Rights, push-backs of migrants are equally unlawful in the territories of third countries.

In October 2013 Italy launched a SAR operation called *Mare Nostrum*. This operation was a reaction to the high number of migrants wanting to travel by sea from Libya to Italy and the subsequent rising death toll. The increase in number of migrants was due to the outbreak of a civil war in Libya in 2011. Since then the death toll in the waters between Libya and Lampedusa had greatly increased (Carrera & Den Hartog, 2015). When over 360 migrants drowned off the shores of Lampedusa in October 2013, Italy decided to set-up a large-scale military rescue operation in international waters aimed at intercepting and rescuing migrants and arresting human traffickers. During the time that *Mare Nostrum* was active, from October 2013 until November 2014, 150.810 migrants were intercepted and brought to Italian territory (Carrera & Den Hartog, 2015). While Italy was conducting its own SAR operation off the coast of Libya, it was calling for transferal of the national operation to a Frontex Joint Operation. This request was at first not received welcomingly as some member states voiced concerns that having EU ships patrolling near the shores of Libya would give the impression that the journey by sea is less perilous than it really is (Carrera & Den Hartog, 2015). The Italian government however emphasized that *Mare Nostrum* was an answer to the rising death tolls in the Mediterranean.

Eventually, the Council decided to give Frontex the green-light on launching a Joint Operation in international waters along the Libyan coastline. On 1 November 2014 operation Triton was initiated, which officially was the replacement for the Hermes and Aeneas joint operations already in existence, but which have had limited success after *Mare Nostrum* had been intercepting large numbers of migrants. Operation Triton, having only a third of the capacity of *Mare Nostrum* and a limited reach of 30 nautical miles off of the Italian shoreline, was not regarded as the replacement for *Mare Nostrum* (Carrera & Den Hartog, 2015). Moreover, the mandate for operation Triton differed greatly from that of *Mare Nostrum*. Whereas Operation Triton was initiated in order to support national authorities in border control operations, *Mare Nostrum* was explicitly intended to be a humanitarian rescue operation (Trauner, 2016). Frontex Executive Director Gil Areas Fernandez stated in a press release that “operation Triton focuses on border control and surveillance (...) [h]aving said that, saving lives will remain an absolute priority for Frontex” (Frontex, 2014, pp. 4). Additionally, the budget for both operations should be highlighted since it played a determining factor for the initial size of operation Triton. The amount that Italy paid for *Mare Nostrum* was €9 million per month. For operation Triton two existing budgets for operations Hermes and Aeneas were merged which amounted to a significantly smaller budget of €2.9 million per month. This also contributed to Frontex having to focus its attention more towards the northern borders of the Mediterranean, thus reducing the initial scope of operation Triton (Trauner, 2016). Feared was that due to the smaller operational area of operation Triton, their boats would not be able to reach sinking migrant boats in time. These fears

seemingly became realized as in April 2015 over 700 migrants drowned in one month time. This sparked a special assembly of the European Council in which the decision was made to triple operation Triton's budget (Trauner, 2016). In its statement, the European Council also announced that it wants to limit illegal migration flows from Libya and actively fight traffickers (European Council, 2015). Mere weeks following the decision of the European Council, Frontex reported having saved over 5500 migrants near the Libyan coast in less than a week. Frontex Executive Director Fabrice Leggeri stated, "I am proud to say that all of the vessels participating in Triton took an active part in the rescue operations over the last several days, helping to save thousands of lives" (Frontex, 2015b, pp. 2).

### 5.3.3 Safeguards for Migrants

So far we have analyzed how tensions can arise at the EU's external borders when it comes to border and migration control. On the one hand, fighting human trafficking and irregular migration, and on the other providing access to adequate asylum procedures and shelter whilst adhering to the prohibition of *refoulement* and collective expulsions. With regards to return operations coordinated by Frontex the question beckons what type of coercive means may be utilized.

As previously discussed, Frontex is bound by the EU Charter on Fundamental Rights, which enshrines the prohibition of inhumane or degrading treatment in Article 4, and the prohibition of collective expulsion and *refoulement* in Article 19. Border control and return operations often operate outside of the public eye for a variety of reasons, such as the distances of external borders to largely populated areas or because the operations are carried out outside of the territory of member states (Pascouau & Schumacher, 2014). Therefore, it remains important to conduct independent supervision over border control and return operations, as well as ensuring the access to legal aid for migrants. In this regard, Regulation 2016/1624 (see 4.2) introduced several new instruments and strengthened existing mechanisms of oversight. As the 2016 Regulation expanded the mandate of Frontex in terms of its competences in external border management and its financial and material resources, it also introduced better safeguards for migrants. Article 28 of the Regulation, regarding return operations, provides that all participating member states and Frontex must ensure respect for fundamental rights, the principle of *non-refoulement* and proportionate use of coercive means. Article 34 provides a more broad provision that Frontex must always ensure the protection of international obligations and fundamental rights. Article 40 provides that all members of Frontex 'teams' must abide by the fundamental rights principles. In Article 71 a more concrete safeguard for upholding fundamental rights during Frontex operations is provided by ensuring the direct involvement of the Fundamental Rights Officer (FRO) in drafting an operational plan. The FRO is furthermore involved in the decision to terminate a Frontex operation if any fundamental rights or international protection duties are violated, as

provided by Article 25 of the Regulation. Article 72 introduced a new instrument for Frontex to advance its oversight into fundamental rights infringements. One that had been requested by many NGO's, as well as the European Ombudsman in its 2013 decision. The provisions of Article 72 set-up a complaint procedure for individuals who have been affected by misconducts of team members belonging to Frontex operations. If an individual believes that its fundamental rights have been violated he/she can file a written complaint. These complaints are looked into by the FRO who passes these complaints on to Frontex' Executive Director in case of staff members of the agency and the Management Board in the case of guest officers (Rijpma, 2016). If necessary the FRO can inform the authorities of the home country of the guest officer alleged with violating fundamental rights. Upon request of Frontex, guest officers can be removed from the pool out of which joint operation teams are formed and the Executive Director can take disciplinary actions towards his staff. Although this new instrument is a positive development in terms of protecting fundamental rights it still falls short on several provisions. The complaint procedure does not include clear guidelines for sufficient follow-up of a complaint nor a timeline in which these complaints must be dealt with. More importantly, having an administrative procedure in place for investigating violations of fundamental rights cannot be considered as equal to a judicial procedure in terms of the right to an effective remedy (Rijpma, 2016).

We can conclude that although the newly installed complaint procedure and the rules regarding responsibility and accountability remain lacking in practice, it is safe to say that with Regulation 2016/1624 migrants affected by Frontex operations have more safeguards. However, a weakness remains with regards to the independence of the FRO, since he/she is intended to oversee the adherence of fundamental rights by Frontex, yet is also directly involved in Frontex operations. Frontex itself, is likely to remain somewhat unaccountable for any violations acted out during its joint operations, due to the end responsibility lying mostly with the host member state. Therefore, migrants seeking justice for human rights violations still have to depend on the ECtHR, where they can only denounce individual member states and not Frontex directly.

#### **5.4 Critical discourse analysis**

This part of the analysis focuses on the discourse Frontex utilizes for describing their tasks and justifying their operations. The purpose of this chapter will be to provide a detailed analysis of the way in which Frontex uses its public documents to present itself as an agency with both security and humanitarian responsibilities. The documents utilized in this discourse analysis will be the annual risk analysis reports that are published on Frontex' website and an important report from 2014 written upon request by the UN. Examining these documents allows for a cohesive presentation on how Frontex frames its own tasks, highlights its responsibilities and achievements, and portrays itself in general. These documents will be analyzed through the analytical

framework offered in Fairclough's CDA model which will aim to describe, interpret and explain the data following from Frontex' documents.

For clarification purposes it is useful to provide some background information on the type of documents that will be utilized in the discourse analysis. The Annual Risk Analysis Reports published by Frontex provide the public with the blueprints upon which Frontex conducts its operations. The aim of these risk analysis reports is to create a situational overview of the EU's external borders and identify key problem areas and the challenges these areas face. Moreover, the reports give a detailed description of what Frontex' operations have entailed, why these were conducted and how their operations will look like in the near future. As has become evident so far, on many occasions Frontex has had to defend and clarify its position and role in the vast public security industry. As a complementary document to the annual risk analysis, the discourse analysis shall also include a report written by Frontex on request of the Office of the High Commissioner for Human Rights (OHCHR) titled *Frontex report to the Office of the High Commissioner for Human Rights on its activities aimed at protecting migrants at international borders, including migrant children*. The report was published in June 2014 after it had been requested in Resolution A/RES/68/179 on the Protection of migrants adopted by the UN General Assembly in December 2013 (United Nations, 2013). The purpose of this report (henceforth: the UN report) is to describe Frontex' efforts in relation to the protection of migrants within the framework of human rights. This document can be seen as a response by Frontex to the accusations bestowed upon them by human rights organizations and various international organizations as discussed in the previous chapter. Moreover, this report carries significant importance for Frontex as the United Nations is arguably the most influential international human rights organization.

Since this discourse analysis will be implementing Fairclough's three-dimensional model, the analysis will be divided into three stages. The first stage consists of a text analysis of both Frontex' risk analysis reports - which will provide data on how Frontex describes its operations, responsibilities and purpose - and an analysis of the UN report which will uncover how Frontex legitimizes its work and its stances on migrants and human rights. Since this thesis makes use of securitization theory as its theoretical framework, the objective for this stage will also be to analyze the linguistic link between migration and security in Frontex' discourse. The second stage focuses more on interpreting the relation between discursive processes and the text by analyzing the discursive practice. Through interdiscursivity and intertextuality this phase seeks to contextualize how Frontex' texts are produced and interpreted. The third stage will consist of a contextualization of the relation between the discursive and social practice. This phase aims to place the Frontex' textual and discursive practice in a broader social dimension. Due to considerable overlap between phases two and three, they shall be discussed within one section of the discourse analysis.

### 5.4.1 Textual analysis

For the first stage of the analysis on Frontex' discourse we will analyze the way in which Frontex presents itself and which discursive strategies it utilizes for this self-presentation. This thesis identifies four main discursive strategies utilized by Frontex.

#### *Discursive strategy of security: protector of the EU's external borders*

Frontex portrays itself as a *protector of the EU's external borders* which faces security concerns that they help to combat. As irregular migration has already been elevated to the securitized level, as discussed previously, it is evident that for Frontex one of the security concerns to the EU's external borders which they tackle is indeed irregular migration. As an illustration of this, in the latest risk analysis report, Frontex' Executive Director Fabrice Leggeri wrote in the preface:

*"In 2016, the EU experienced another year of intense migratory pressure at its external borders"* (Frontex, 2017, p. 6).

The fact that this is the very first sentence of the entire report, illustrates the high level of priority that irregular migration has for Frontex. Since Frontex is keen on portraying itself as a protector of the EU's external borders, migration is repeatedly being discussed as an external threat to the internal security of the EU member states. In Frontex' very first annual report in 2006<sup>1</sup> the chairman of the Management Board, Minze Beuving, stated that:

*"After a year of gradual and crucial development, where the emphasis on administrative tasks outweigh operational activities the focus has shifted to **high profile operations combating large inflows on EU soil of illegal migrations in the Mediterranean area**"* (Frontex, 2006, p. 3).

This quote exemplifies Frontex' stance on irregular migration at the beginning of its existence. Several 'themes' can be taken from this quote, namely that migration can be seen as an illegal act which, if left unchecked, can threaten EU citizens. Therefore, Frontex, being the protector of EU's external borders, makes it a "high profile" security priority to halt the "large inflows" of these migrants. In order to accentuate the nature of the threat that irregular migration poses to the EU member states, Frontex has continuously made use of a multitude of hyperbolic adjectives throughout its discourse. In the two aforementioned quotes from 2006 and 2017, the terms 'large' and 'intense'

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<sup>1</sup> The reports released between 2006 and 2009 were not called 'risk analysis' but rather 'annual report' and later on 'general report'. The objectives of the pre-2010 reports were similar to the present day risk analysis.

are utilized in connection with inflows of illegal migrants. Similar adjectives can be found throughout all the annual reports published by Frontex. Examples of this are:

*“One limitation of **major** irregular migration flow to the EU, leading from Western Africa to Canary Islands, by almost 70 percent compared to 2006”* (Frontex, 2007, p. 4).

*“Determine the countries of origin presenting the **highest** risk of irregular migration”* (Frontex, 2013, p. 19).

*“Returns remain a priority in 2017, as the overall level of effective returns to non-EU countries has not increased significantly, despite the **massive** number of migrants arriving in the EU”* (Frontex, 2017, p. 7).

Also when not explicitly mentioning migration, Frontex utilizes similar hyperbolic adjectives to describe events.

*“Past experiences demonstrate that there are a **large** number of **unforeseeable** events and factors that can have a **profound** and **unpredictable impact** on the situation at the border”* (Frontex, 2013, p. 61)

By utilizing such type of discourse (irregular) migration is effectively portrayed as a security threat which Frontex must combat in order to ensure the safety and security of EU citizens.

However, it is worth noting that the way in which migrants are referred to explicitly has changed from the initial years of Frontex' existence. Whereas up until 2007, undocumented migrants were depicted by Frontex as 'illegal' migrants. This can be seen in the aforementioned quote from the 2006 report. From 2007 onwards, migrants were increasingly referred to in the annual reports as 'irregular' migrants, which carries a more neutral connotation. This development can be seen in the aforementioned quote from the 2007 report. In turn, human trafficking and smuggling was now exclusively referred to as being 'illegal', such as the 'illegal' actions of traffickers. The term 'illegal' refers to an explicit criminal act that requires coercive measures and carries repercussions. This is a key term in the discursive strategy utilized by Frontex as being a security actor and border protector and an important distinction to be addressed.

The process of securitization is not equal to the process of criminalization. It is evident in Frontex' discourse that irregular migration is regarded as a security issue that must be addressed. However, the act of human trafficking and smuggling is explicitly criminalized in Frontex' discourse. Frontex utilizes a much more adversarial type of language when addressing the actions of traffickers, which is different from its discourse explicitly referring to irregular migration. The following extracts illustrate this point:

*“A closer cooperation and information exchange between European law-enforcement authorities (both inland and at the external border) and customs authorities is crucial in the effective fight against trafficking” (Frontex, 2017, p. 27).*

*“Border control authorities are confronted with the detection of cross-border crimes such as trafficking in human beings” (Frontex, 2014c, p. 18).*

*“(...) raising the concern that an increasing number of migrants embarking on this route might end up in the hands of organized crime groups involved in trafficking in human beings” (Frontex, 2013, p. 31).*

The latter quote is interesting in the sense that it carries a more protective tone towards migrants. As stated, Frontex continuously presents irregular migration as representing a security problem for the EU. However, Frontex does make the distinction between victimized migrants and its criminal facilitators. This distinction will be analyzed more thoroughly later on.

#### *Discursive strategy of technocracy: effective border management*

In all of Frontex' annual reports, migrants are referred to in quantities and nationalities. Personal stories from migrants are omitted and no other type of identification is made. It is of course debatable whether Frontex should include such forms of personalization, however it is apparent that the language in Frontex' discourse is formal, technical and distant. This technocratic discursive strategy appears in three distinct 'themes' (Horsti, 2012). Firstly, Frontex' operations are described in a professional level management form of language which gives the agency a sense of 'professionalism' and 'expertise'. Secondly, Frontex' discourse regarding its border control and coast guarding operations is 'technical' which affects how border control operations are perceived. As Horsti (2012, p. 302) states, "border control is sanitized through technologized language and practice". Thirdly, the theme of 'efficiency' and 'cost-effectiveness' of its border control and return operations is portrayed as a characteristic of Frontex. The first two themes are particularly relevant to the discourse regarding migration and security. The third theme is more related to the economical nature of Frontex' missions and shall therefore not be discussed in greater detail.

The first theme relating to the professionalism of the agency, goes hand-in-hand with the level of expertise that is present within the ranks of Frontex and therefore constitutes a trustworthy agency. The key premise of the usage of professional language is for the audience to be convinced that the information presented by Frontex is factual and accurate. Through its discourse, Frontex wishes to convey a certainty that irregular migration is indeed a security concern that must be dealt with professionally and



effectively. Trustworthiness creates validity, which is of great importance to Frontex as an EU agency dealing with matters that are sensitive in the public opinion. Frontex therefore relies on being perceived as trustworthy and truthful in order to convey authority. As previously discussed in section 2.2.1, authority is gained through acquiring social capital as defined by Bourdieu. By portraying itself as having expert knowledge and being trustworthy, along with the fact that it is an EU agency, Frontex acquires a certain degree of social capital which in turn is a prerequisite for being a securitizing agent. Frontex can in fact affect the audience's way of thinking and acceptance of the existential threat being portrayed with regards to irregular migration.

Illustrative for this theme of professionalism and trustworthiness are the following quotes:

*"Frontex is a **trustworthy** operational European coordinator and contributor which is fully respected and supported by Member States and third countries"* (Frontex, 2006, p. 5).

*"Frontex identifies humanity, open communication, professionalism, team work and **trustworthiness** as values which shall be endorsed, shared, lived and performed by each member of staff and respected Frontex partners"* (Frontex, 2009, p. 3).

The second theme, regarding the usage of technical language - and oftentimes imagery - is especially relevant to the phenomenon of constructing migration as a security problem. With regards to imagery, the risk analysis reports since 2010 have increasingly acquired an abundance of graphs, charts and maps, providing visualizations of illegal migratory routes and depictions of migrants in terms of quantities and origin. These visualizations and depictions create the sense that one is seeing the details of a professional surveillance operation, "which in turn relegates the migrants to the status of an object of the omnipotent Frontex gaze" (Horsti, 2012, p. 303). Furthermore, the somewhat 'military' vocabulary utilized by Frontex, such as 'intelligence', 'joint operations', 'European Patrols Network', along with the maps resembling battle plans, "have an aim of 'dramatizing' the political situation and to give weight to the (security) legitimacy of the agency given the traditional role of military in addressing security issues" (Chillaud, 2012, p. 50).

Adding to Frontex' 'quasi-militarization' of EU border management is its increasingly technological sophistication. Frontex has recently operationalized a surveillance system called Eurosur, which is an "an information-exchange system that enables near real-time sharing of border-related data" (Rijpma & Vermeulen, 2015, p. 454). This system will be discussed in greater detail later on, however it is important to note that Frontex regards this new development in technology as an important tool in their operations. When talking about the new Internal Security Fund for the period 2014-2020 in the 2014 Risk Analysis report, Frontex states:

*“[F]inance the introduction and operation of the European Border Surveillance System, EUROSUR, notably through the purchase of equipment, infrastructure and systems in Member States” (Frontex, 2014c, p. 57).*

The discursive strategy of technocracy is exemplified with the use of technical and managerial style rhetoric, which serves multiple purposes. First, by presenting the operations as technology-driven and technical, Frontex shows high quality standards for addressing the issue of migration. Secondly, the public is assured that despite its ‘massive influx’, migratory flows can be, and are being, controlled and stirs the public away from chaotic and crisis-ridden scenarios. Finally, according to Horsti (2012, p. 303), “it mitigates any assumptions of human rights violation or brutal hands that might ever be involved in the control of migrants”.

*Discursive strategy of limited responsibility: Frontex coordinates and assists*

As discussed previously in section 4.1, Frontex is an agency created for the development of the AFSJ and therefore falls within the scope of Title V of the TFEU. Article 72 TFEU made it clear that the responsibility of member states to ensure internal security and maintenance of law and order remained undiminished. Frontex has made it clear that its mandate merely allows it to coordinate and assist national border management operations. Examples to illustrate this are the following quotes from two annual reports:

*“Frontex should **coordinate** operational cooperation between Member States in the field of management of external borders” (Frontex, 2006, p. 9).*

*“Frontex **promotes** and **coordinates** European border management with a special focus on migration flows. In application of the concept of Integrated Border Management, it additionally **supports** Member States in combating organized crime at the external borders, including the smuggling of goods and trafficking in human beings” (Frontex, 2014c, p. 42).*

Similarly to the aforementioned report of the European Ombudsman (see 5.3.1), Frontex oftentimes repeats that it has merely a supportive and facilitating role which in effect lays the brunt of the responsibility with the member states. However, it must be said that Frontex has publicly declared its responsibility as a coordinating actor:

*“EU Member States remain primarily responsible (...) [t]his does not relieve Frontex of its **responsibilities as the coordinator** and it remains **fully accountable for all actions and decisions under its mandate**. Frontex particularly focuses on **creating the conditions** for ensuring the compliance with fundamental rights obligations in all its activities” (Frontex, 2014b, p. 4).*

Although underlining its responsibilities as a coordinator and its mandate-determined accountability, Frontex does stir on the side of caution by stating that they merely create the conditions for adherence to fundamental rights. In the end, member states do remain the primary responsible actors. This notion has been reiterated in the 2017 risk analysis report:

*“It should be emphasized that the management of reception centers and the protection of migrants and refugees is an exclusive responsibility of EU Member States”* (Frontex, 2017, p. 40).

#### *Discursive strategy of humanitarianism: Frontex saves migrant lives*

Despite its security narrative, the humanitarian narrative is oftentimes present in Frontex' discourse. Frontex achieves this narrative in three different ways, namely by 1) referencing the victimized position of migrants in relation to human traffickers, 2) referencing the high standards Frontex upholds with regards to fundamental rights, and 3) referencing its efforts in rescuing migrants from dangerous conditions (Horsti, 2012). The humanitarian discursive strategy is linked to the security and technocracy strategies in the sense that Frontex often presents the safeguarding of migrants as justification for its security practices.

From the Executive Director Fabrice Leggeri we learn that:

*“In its maritime operations in the Central Mediterranean and the Aegean Sea, the Agency-deployed vessel rescued 90.000 migrants [in 2016]”* (Frontex, 2017, p. 6).

Despite these rescue efforts by Frontex, 2016 did see an increase in the numbers of migrant lives lost at sea which Frontex attributes to the criminal activities of human traffickers. Frontex addresses this as follows:

*“[this] increase in fatalities occurred despite enhanced operational efforts and the fact that most rescue operations take place close to, or sometimes within, Libyan territorial waters (...) any activity that would disrupt or deter these groups [traffickers] could significantly curb the flow of irregular migrants into the EU”* (Frontex, 2017, p. 8).

What is rather striking about this statement is that Frontex hints at wanting to disrupt the activities of human traffickers, yet is unable to do so with its present capacity. Moreover, Frontex utilizes the narrative that disrupting the activities of traffickers would decrease the flow of irregular migrants, instead of addressing the notion that deterring traffickers might decrease the loss of life at sea. This underlines the notion that Frontex' main concern is in fact border protection and not human protection.

Aware of the criticisms it has received from human rights advocates, Frontex utilizes its humanitarian discursive strategy as a direct response to those critiques and to showcase its dedication to protecting both border and human life. In its UN report, Frontex makes considerable use of the words 'promote' and 'protect' (or 'protection'/'protecting') when speaking of fundamental rights and human lives. Especially the word 'protect' is used prominently throughout the report (30 times in various forms). The words relating to 'protection' are mostly used in the sense of Frontex protecting fundamental rights and the need for international protection amongst migrants. This abundant use of the word, called over-lexicalization, could indicate a prepossession of Frontex, in which they stress their role as protectors. Furthermore, the words 'respect', 'promote' and 'support' are used multiple times (19, 16 and 13 times respectively). These words carry positive connotations which Frontex utilizes to convey its humanitarian message. Thus, Frontex' relation to fundamental rights is mostly described in a way that Frontex is actively protecting, respecting, promoting or supporting those rights.

Chapter IV of the UN report deals with challenges that Frontex is facing. In that chapter, paragraph 38 provides an interesting statement:

*"One of the main challenges in protecting the fundamental rights of migrants at the borders is to be able to effectively identify those in need of protection when they might not come forward explicitly and refer them to the appropriate authorities. Frontex is looking into ways to develop a strategy to raise the awareness of the important role of border guards in gaining access to the asylum procedures during Joint Operations which is an essential element for the effective guarantee of the right to seek asylum"* (Frontex, 2014b, p. 10).

As critiques have been on the rise, opposing the operations of Frontex, the agency has increasingly responded to these critiques through its humanitarian discursive strategy. Paradoxically, Horsti (2012) notes that Frontex' security discourse has evolved and increased alongside its humanitarian counterpart. Thus, humanitarian discourse is mixed with security discourse in order to legitimize Frontex' activities. Horsti refers to this as "humanitarian discourse legitimating migration control" (2012, p. 305). As such, Frontex apparently exists between two, seemingly contradictory, public images. On the one hand, Frontex conveys to the public that irregular migration is indeed a problem which poses a threat to internal security, but which Frontex is capable of solving. On the other hand, Frontex communicates that its operations are for the benefit of migrants as they save the lives of those having been left to their own devices by their criminal smugglers. This duality leaves Frontex balancing between different interests amongst the public and individual member states. The latter is due to the differences between member states in security perceptions as previously discussed in section 2.1 of this thesis. Horsti (2012, p. 305) argues that this "mitigates the critique both from humanitarian activists and from those concerned with national sovereignty".

#### 5.4.2 Discursive & Social practice

As discussed previously, irregular migration had already been securitized by the time Frontex was created and Integrated Border Management (IBM) was already being developed, displaying a prepossession in the EU for tackling the migration problem collectively. Within this already securitized context, Frontex has been created to tackle the problems that had already been securitized and mediatized extensively in the national media and political outlets. As Carrera (2007) has argued, Frontex' activities are 'emergency driven' and are the product of political pressures at both the national and the European level. This inevitably influences Frontex' discourse as it needs to adhere to these political pressures. The necessity for this adherence lies in the fact that Frontex as an EU agency is dependent on the EU member states for its existence. Frontex' security discourse, and its subsequent portrayal as a professional and indispensable agency, can be seen as a product of both the pre-securitized context and its dependence on EU member states.

The usage of security discourse while promoting a humanitarian narrative, as the textual analysis has depicted, shows how Frontex aims to emphasize that its security operations are in accordance with fundamental rights. In fact, Frontex goes to considerable lengths portraying itself as being a protector of fundamental rights. Moreover, Frontex makes a distinction between irregular migrants and the traffickers facilitating those migrants. This distinction lends itself for portraying the phenomenon of irregular migration as a criminal act, since Frontex advocates that human traffickers are its main facilitator, while depicting the actual migrants as victims of human trafficking. Therefore, Frontex arguably characterizes traffickers as "immoral villains, as outsiders of our societies, and thus control and surveillance of migration (and *de facto* migrants) is justified" (Horsti, 2012, p. 306). This justification on the basis of criminalization of human trafficking and subsequent victimization of irregular migrants, creates a more proportional and legitimate picture of Frontex' securitized operations.

In addition, the technocratic discursive strategy utilized by Frontex, depoliticizes its border control operations and make them seem neutral and logical. With this notion, Frontex stirs clear of the political spectacle of security emergencies and presents a technocratic approach instead (Neal, 2009). Moreover, the discursive strategy of technocracy represents a certain detachment of the human tragedy unfolding in Frontex' field of operation. As depicted in the textual analysis, the process of dehumanizing migrants is a product of how Frontex describes its work with regards to irregular migration:

*"(...) to tackle the challenges of migration flows and serious organized crime and terrorism at the external borders"* (Frontex, 2014b, p. 2).

By lumping migration together with serious organized crime and terrorism as being challenges to tackle, Frontex is effectively dehumanizing migration and placing it in a negative limelight. Such dehumanization of the people involved in irregular migration can be interpreted as beneficial for Frontex as it justifies its usage of technical and formal terms. Moreover, the usage of technical and formal terms can be used in Frontex' favor as it might exclude laypersons, without intertextual knowledge regarding Frontex, from understanding and challenging its work (Fairclough, 1992a).

When addressing the topic of border guards, Frontex makes it clear that border guards are a vital actor in the asylum process. In the UN report, Frontex states that "border guards are key for effective access to the asylum procedure" (Frontex, 2014b, p. 4). With regards to the practical work of border guards, they state:

*"[H]uman rights (...) and to learn how they are actually an integral part of their work (...) demonstrates how fundamental rights can easily be integrated into their [border guard] practices and procedures"* (Frontex, 2014b, p. 8-9).

Notice the usage of the words 'actually' and 'easily' when describing the relation between human/fundamental rights and the duties of border guards. It indicates that Frontex wants to present these statements as facts or common-sense, which would be an answer to critique voiced by human rights organizations regarding military style patrolling by border guards in Frontex operations (Amnesty International, 2014; HRW, 2011). Having such statements seem common-sense could enable Frontex to legitimize its operations. This is in line with the humanitarian discursive strategy depicted in the textual analysis. Frontex want to construct an image of a rescuing agency that saves migrant lives, as well as a security agency. Frontex has managed to connect humanitarian strategy with security discourse and has often made them appear in the same sentence. Leonard (2010) argues that the securitizing nature of Frontex' operations has been legitimized and obscured through humanitarian discourses.

Fairclough (1995) argues that a type of 'discursive dislocation', as can be identified in Frontex' discourse, can be conceptualized as 'discursive simulation' of discourses and practices originating from different contexts. In our case, humanitarian action – which originally belongs to a more philanthropic social context – is placed into another context, namely that of border control. This 'simulation' directs the public attention towards a charitable and humanitarian association with Frontex, while simultaneously weakening the notions that the public might have regarding border control, namely that of national sovereignty and militarized operations (Horsti, 2012). As such, Frontex frames itself around a discursive logic of humanitarianism and technology which is utilized to generate legitimacy for its existence and operations. Fairclough (1995) labels agencies that have the ability for discursive simulation as 'discourse technologists' which actively promote their preferred constructs to policy makers and the general public. Frontex can be regarded as a key discourse technologist on irregular migration in Europe.

## 5.5 Security practices

The remainder of this analysis shall focus on the non-discursive practices of Frontex. These practices follow from the tasks adhered to Frontex by its mandate. Several of Frontex tasks have been mentioned separately in section 5.1. They represent the main responsibilities of Frontex as a border and coast guard agency. These tasks contain certain overlaps, which shall be addressed in order to determine the main security practices to be analyzed. In the list of tasks mentioned in section 5.1, three tasks fall within the analytical scope of the risk analysis. These tasks include; the monitoring of migratory flows, assessing vulnerabilities along the EU's external border, and Eurosur. Furthermore, Eurosur and EGBTs will also be addressed within the framework of Frontex' tasks regarding training and assistance of member states. The tasks of Frontex to be analyzed shall thus be the following: 1) Coordination of operational cooperation between member states for the management of the EU external border, 2) Assisting the member states in trainings and education of the national border and coast guards, 3) Conducting risk analyses in which data is analyzed in order to create a clear understanding of the situation at the EU's external borders, 4) Conducting Joint Return Operations with member states. By analyzing these four tasks, this final part of the analysis will assess to what extent Frontex activities have amounted to securitizing practices.

### *Coordination of operational cooperation between member states for the management of the EU external borders*

Of all of Frontex' tasks, the coordination of joint operations at the EU's external borders certainly is a task which has gathered the most attention from NGOs, media and academia (Rijpma, 2010; Baldaccini, 2010). Moreover, coordinating joint operations is one of Frontex most important tasks with certainly the highest budget expenditure, namely 208.5 million euros over a total expenditure budget of 254 million euros for the entire agency in 2016 (Frontex, 2015c). Frontex has been granted powers to coordinate joint operations on land, sea or air, which can be initiated by a member state or by Frontex itself. Decisions on initiating an operation is usually based on risk analyses conducted by Frontex. As discussed before, the exact division of responsibilities between Frontex and member states has been clarified by the latest 2016 Frontex Regulation, however controversies remain (Rijpma, 2016), in particular when lives continue to be lost at sea in areas where Frontex is present. The official position of Frontex has remained unchanged since its inauguration, namely that its role is "strictly limited to that of a coordinator of the actions of the EU Member States, with which the responsibility for the control of the external borders fully remains" (Leonard, 2010, p. 239). However, as has been argued by Baldaccini (2010), the planning and coordinating role of Frontex gives it a certain degree of responsibility for any occurrences during its joint operations.

Whatever the case may be, the joint operations coordinated by Frontex are arguably securitizing practices for two reasons. Firstly, sea patrolling operations have traditionally been deployed in case of an imminent danger such as a military attack or drug-trafficking (Leonard, 2010). Members of these joint operation teams at sea oftentimes have a military background. Given the more traditional roles of military action in response to security threats, the stemming of migration flows is criticized due to its militarized character (Chillaud, 2012). This is the case in both discourse – as discussed in the textual analysis – and in practice. Moreover, regarding the second criteria for security practices, joint operations by Frontex can be seen as extraordinary practices, in the broad sense of the word. Due to the sophistication of Frontex' operations and its intelligence gathering through risk analyses, this practice can be seen as securitizing since it communicates sublimely the notion that such a sophisticated operation is necessary to fight irregular migration in order to provide safety for Europeans.

Secondly, joint operations at sea coordinated by Frontex can be considered extraordinary measures due to the legality issues surrounding their operations. As discussed before, Frontex operates within a complex legal area comprising of multiple legal instruments stemming from national, European and international law, and there are plenty of contentious topics from a legal point of view due to this complexity (Den Heijer, 2011). Perhaps a more problematic aspect of Frontex' operations is that the principle of *non-refoulement* has seemingly been violated on many occasions, as argued by Papastavridis (2010, p. 75), “the application of the principle of *non-refoulement* seems to be problematic in the majority of these [Frontex] operations since it is very likely that the persons onboard the intercepted vessels would be forced to return to their countries of origin”. This statement by Papastavridis was made in 2010, however in 2014 the – previously discussed – UN report for the OHCHR made a very limited mention of the principle of *non-refoulement* stating only that it will be implemented in their next Regulation. This reveals a problematic notion that for the longest time all intercepted people were treated as illegal immigrants, without much regard for any potential asylum seekers amongst them. Such actions would constitute breaches of international obligations (Leonard, 2010). It must be said, that indeed in the 2016 Frontex Regulation the principle of *non-refoulement* is incorporated more diligently in multiple provisions of the Regulation.

In summary, arguably the most important task of Frontex, certainly from a budgetary point of view, can be considered a securitizing practice as these joint operations can be seen as extraordinary activities. While military style operations certainly have their place and value in terms of combatting drug traffickers, piracy, terrorism, etc., the fact that similar materials and vessels are being deployed for the purpose of combatting irregular migration perpetuates the public image that migrants are a security threat.



## *Assisting the member states in trainings and education of the national border and coast guards*

Another important task in the work of Frontex is to provide trainings for national border and coast guards. Frontex has developed a standardized basic training course, as well as specialized courses on a variety of issues. These include courses on detection of false documents, joint return operations, air-naval cooperation for surveillance operations, etcetera. A 2015 Frontex report stipulating the work program for 2016-2019 pays specific attention to fundamental rights, albeit limited, by stating that it is a high priority objective of Frontex to “[e]nhance strategic cooperation with Frontex’ Consultative Forum on Fundamental Rights (...) [e]nhance the respect for Fundamental Rights in the culture of Frontex” (Frontex, 2015c, p. 17). Unfortunately, no further details are given into how Frontex wants to achieve this and whether this culture change will be taught in training courses. In addition, Frontex also provides trainings in the form of EGBT events in which the aim of these activities is “to enhance the competence of national border guards in the EU and to develop common standards, which will strengthen operational cooperation during the joint operations coordinated by Frontex” (Leonard, 2010, p. 241). Due to its emergency-driven nature, EGBTs can be seen as a securitizing measure as its deployment conveys the message that a threat to internal security has been identified and must be dealt with swiftly. According to the two criteria for security practices (Leonard, 2010), EGBTs do not necessarily constitute an extraordinary measure. However, the militarized nature of these intervention teams could convey the message that deterring action must be taken against irregular migration.

The content of the trainings organized by Frontex contain several securitizing elements that reinforce the idea that the EU is under threat and needs to be protected. To this aim, advanced technologies are utilized which can further perpetuate the notion that the threat of migration is so severe that high-tech surveillance, such as the Eurosur system, is necessary to combat it. Eurosur works with techniques of visualization which provide ‘situational awareness’. Eurosur intends “to improve the cooperation between national border guard forces and thus reinforces the overall control of the EU’s external borders” (Rijpma & Vermeulen, 2015, p. 454). It is an information-exchange system with Frontex as its central hub. Shared data varies in content and may consist of information on changed migrant routes or human trafficking. Eurosur carries an intrinsic connotation similar to that of intelligence gathering systems belonging to the militaries and secret services, adding to its securitizing capacity. Concerns over the implications of such a new technological instrument with regards to its impact on fundamental rights, were quickly brushed aside by the Commission. The Commission stated that the provisions of Eurosur were fully compatible with fundamental rights (Rijpma & Vermeulen, 2015). Regardless, the message portrayed both to the public and to border guards in training is that means such as ECBTs and Eurosur are necessary and legitimate for use against irregular migration.

### *Conducting risk analyses*

Frontex oftentimes presents itself as an ‘intelligence-driven’ agency with intelligence gathered from situational pictures, assessment of changes in regards to a certain topic, and risks and possible threats that are linked to it. The concept of ‘intelligence’ traditionally referred to information concerning threats to national security. As such, the use of the concept of ‘intelligence’ by definition constitutes a securitizing framing of migration (Leonard, 2010). This is due to the connotation of the concept of ‘intelligence’ which differs from terms such as ‘data’ or ‘information’ which are less militarized. This securitizing practice is reinforced by the “increasingly sophisticated structures developed by Frontex to gather, produce and exchange information on the migration flows towards the EU” (Leonard, 2010, p. 242), such as Eurosur, which are similar to the infrastructure used in order to continuously monitor threats, such as foreign invasions.

Frontex produces various types of reports, many of which are devoted to establish sound risk analyses aiming to assess the extent and changing nature of irregular migratory flows. Specifically, it releases an Annual Risk Assessment (ARA) which covers all of the EU’s external border in general (Horii, 2016). These ARAs serve as assessments for vulnerabilities and risks along the external borders. In addition, Frontex also releases tailor-made risk analyses focused on specific regions or topics. An interesting development from the point of view of securitization had emerged and it was the establishment in 2009 of the Frontex Situation Center (FSC). This FSC can be seen as the forbearer of Eurosur as its aim was also to provide real time situational pictures of the situation at the EU’s external border (Horii, 2016).

Frontex is an active participant in the ever increasing sophistication of detection systems and materials in order to produce ‘intelligence’. Given the fact that similar intelligence structures, akin to the FSC and Eurosur, have only been utilized in the field of battle, it is safe to say that “activities of Frontex in the field of risk analysis can also be seen as securitizing practices that contribute to the securitization of asylum and migration in the EU” (Leonard, 2010, p. 243). Furthermore, Horii (2016, p. 255) argues that “Frontex has made clear a link between migration and security by framing migration as a risk factor in designing an EU common risk analysis model”. Given that the migration-security nexus was already present when Frontex was created, it is unreasonable to say that through its risk analysis Frontex has generated a ‘norm’ in the nexus. However, Horii (2016) argues that Frontex has indeed embedded and operationalized the norm of the migration-security nexus through its risk analysis model.

### *Conducting Joint Return Operations with member states*

Migrants whom have received a rejection for their asylum application, the EU return policy is applicable and is also carried out by Frontex. The agency has been tasked with supporting joint return operations from different member states. Frontex has developed a so-called 'Return Section' which is located on a secure web-based network utilized by migration management services of the EU and other member states (Chillaud, 2012). As often the case with Frontex, the overall responsibility for joint return operations lies with the organizing member state and not Frontex. In fact, Frontex does not have the competences to organize joint return operations, they merely support already existing joint operations established by member states. This is in line with its discursive strategy of limited responsibility, as the narrative of being a coordinator and assistance provider is factually correct regarding joint return operations. However, through its knowledge and experience, Frontex remains a force to be reckoned with. Thus, even though Frontex has no explicit powers nor responsibility over return operations, "it plays an increasingly important role in the EU return policy by facilitating the organization of joint operations on the basis of its expertise and financial means" (Leonard, 2010, p. 246).

When regarding accountability for violations of fundamental rights, the EU and Frontex state that the participating member states in joint operations are accountable for breaches of fundamental rights occurring during that operation (Rijpma, 2016). However, this discursive narrative may lose force in the near future as Frontex has been given a shared responsibility with member states during joint operations following its October 2016 name change and revised founding EU Regulation.

The practices of Frontex in return operations are significantly 'out of the ordinary' which could have it fulfill a criteria of a securitizing practice. Leonard (2010, p. 247) explains this by stating that "nowhere else in the world, and never before, has there been such a high level of sophistication in the coordination of operations aiming to expel certain groups of migrants amongst such a large group of states". This observation depicts the fact that these joint return operations are in fact 'extraordinary'. Frontex facilitates the member states in these return operations which allows these to be set-up more easily than before. Consequently, Frontex' activities in coordinating joint return operations can be regarded as securitizing practices.

## 6. Conclusion

This conclusion will serve as the answer to the research question: *To what extent does Frontex, in its discourse and operations, contribute to the securitization of migration and ensure the protection of human rights?*

In order to answer the research question, a comprehensive theoretical framework was utilized for identifying processes of securitization. Through the methods that accompany this theoretical framework, this thesis has come to several observations regarding the framing of Frontex' discourse and the effects of its practices.

In its thirteen-year existence, Frontex has seen an exponential growth in its scale and influence. Despite the developments, the adage remains that Frontex is merely assisting EU member states in safeguarding the EU external borders, and therefore bears little responsibility for any misconduct or violations of fundamental rights. Whether this adage can remain practically unchanged remains to be seen. As the 2016 Regulation expanded the mandate of Frontex in terms of its competences in external border management and its financial and material resources, it also introduced better safeguards for migrants. Furthermore, Frontex is now more tightly bound by provisions of the EU Charter of Fundamental Rights and the principle of *non-refoulement*. Moreover, the coordinating and advisory tasks which Frontex fulfills can in fact, perhaps indirectly, lead to violations of fundamental rights. These situations could lead to Frontex having to take on more responsibility for its involvement in joint operations. However, blame shifting by the member states towards Frontex, giving it the brunt of the responsibility for any violation committed under the Frontex insignia, is not a solution, nor should it be allowed. Member states that intercept and divert migrant ships without properly assessing their need for international protection amongst the migrants should be held responsible for their actions.

It is however important for Frontex to be able to be held accountable for any violations or misconducts. EU law applies to Frontex permanently, unlike member states who fall outside of the scope of EU law when residing in international waters, as an EU agency, Frontex is bound by the EU Charter and international law, even when operating in third countries. In order for Frontex to become a true proponent of human rights it must at any time give priority to the upholding of fundamental rights. When border security and fundamental rights clash, the latter should always prevail. This will prevent Frontex from becoming an accomplice in violations of fundamental rights and will give the agency true legitimacy as a bulwark for human rights.

When looking through the scope of the comprehensive framework of securitization theory this thesis has identified some clashes, yet also some interlinkages, between Frontex' discourse and practices. With regards to the practices of Frontex, this thesis has demonstrated that the main activities of Frontex can be considered to be securitizing

practices, which therefore contribute to the perpetuation of the securitization of asylum and migration. All of the analyzed tasks fall within either one of the two (non-mutually exclusive) criteria for security practices. The tasks relating to the training of national border guards and conducting risk analyses fall into the first criteria of securitizing practices, whereas the coordination of surveillance and border security activities, as well as assisting in the organization of joint returns falls within the second criteria of extraordinary measures.

Through its discourse Frontex seeks to legitimize its existence and activities. The discourse analysis has uncovered that Frontex favors presenting its work within four main discursive contexts or strategies. These discursive strategies have been identified as 1) a security discourse, framing Frontex as the protector of the EU's external borders; 2) a technocratic discourse, through which Frontex portrays itself as a professional and trustworthy entity; 3) a limited responsibility discourse, in which responsibility for Frontex coordinated operations is mitigated; 4) a humanitarian discourse, framing itself as a protector of fundamental rights and a rescuer of victimized migrants.

It has become evident that Frontex legitimizes its work and power through its discourse. Contrastingly to the humanitarian discursive strategy, when speaking of migrants, the analysis has shown that Frontex at times tends to lump migration together with serious organized crime and terrorism as being challenges to tackle. Frontex is effectively dehumanizing migration and placing it in a negative limelight. This type of categorizing of migration allows for dehumanization to occur which Frontex can use to justify its technical and even (quasi-)militarized approach towards addressing migration issues, which is a tool for securitization.

In search for an appropriate answer to the research question, this thesis has shown the difficulties and challenges of tackling an issue of such societal and political significance as irregular migration. Much critique on Frontex' operations has been observed and examined in this thesis, as well as its own celebrated accomplishments. The analysis of both discourse and non-discursive practice in a security and humanitarian context revealed that Frontex arguably is a securitizing agent within the field of migration. However, the coordinating and supportive role in border control operations which Frontex has been granted, can be seen as argumentation for the limited capacity of Frontex to actually be a significant securitizing actor. A tentative conclusion can therefore be given that within the scope of Frontex' mandate, the agency is adamant in its discourse that saving lives at sea is a priority for Frontex. This notion seems to be on an equal status with Frontex' priority to coordinate border control operations. Having saved many thousands of lives since its founding, Frontex has shown to be an advocate for the right to life, which, in the end, constitutes the most important human right of all.

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