EL DILEMA DEL MEDITERRÁNEO: ¿COOPERACIÓN EN GESTIÓN FRONTERIZA?*

The Mediterranean dilemma: Cooperation in border management?

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RESUMEN:

La gestión de fronteras es un área esencial para asegurar el Área de Libertad, Seguridad y Justicia de la Unión Europea (UE). La UE ha adoptado la gestión integrada de fronteras como una solución para salvaguardar sus fronteras externas y asegurar la seguridad interna de la Unión. Sin embargo, esto solo es posible a través de la cooperación con países terceros. La extraterritorialización de la frontera europea es crucial en la gestión de los flujos migratorios irregulares en el Mediterráneo.

Las nuevas tecnologías son un elemento central en la gestión fronteriza y son en la actualidad instrumentos de gobernanza moderna. El establecimiento de sinergias entre la UE y sus países vecinos del Sur es un poco ambigua. La UE pretende construir un área de cooperación

ABSTRACT:

Border management is a key area to ensure the Union's area of freedom, security and justice. The EU has adopted integrated border management as a solution to safeguard the Union's external border and thus ensuring the EU's internal security. However, this is only possible through cooperation with third countries. This extraterritorialisation of the European border is crucial in the management of Mediterranean irregular migratory flows.

New technologies have become central in border management and are now instruments of modern government. The establishment of synergies between the EU and its southern neighbours is somewhat ambiguous. The EU aims to build a Euro-Mediterranean area of cooperation, while it builds fences and

Euromediterránea, a la vez que construye muros y refuerza los controles fronterizos. Mediante el análisis de la cooperación en la gestión de fronteras en el Mediterráneo, pretendemos analizar los retos y oportunidades de una gestión integrada de fronteras envolviendo la UE y sus países vecinos.

Palabras clave: Gestión de fronteras, cooperación, inmigración, Mediterráneo, seguridad

strengthens border controls, selecting between insiders and outsiders.
Through the analysis of border management cooperation in the Mediterranean, we aim to assess the challenges and opportunities of an integrated border management involving the EU and its southern neighbours.

Key words: *Border management, cooperation, immigration, Mediterranean, security.*

INTRODUCCIÓN

The management of international migrations is one of the major challenges of the 21st century, as today's international mobility questions the understanding of borders and States' capacity to manage these movements. While technological developments have erased borders improving international mobility and politicians and economists advocate a global market in a world without borders, new security fears regarding human mobility have aroused, leading to the construction of walls or fences. This is one of the main paradoxes of this globalised world.

The elimination of internal borders, within the 'Schengenland'[1], implies a strengthening of controls in the external borders. Therefore, border management is a key to ensure the smooth working of the Union's Area of Freedom, Security and Justice (AFSJ). Integrated border management (IBM) is a strategic feature in the development of the AFSJ, given its importance in the safeguard of the Union's external border and, consequently, in the preservation of the Union's internal security.

The Mediterranean is a unique geopolitical region long known for its instability and conflicts. Regional security is also challenged by transnational threats, such as terrorism, drug trafficking, human smuggling and trafficking[2].

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[1]   The 'Schengenland' is understood as the area covered by the group of States which have signed the Schengen Agreement.

[2]   FERREIRA, S. S. Migrations and the Arab Spring – a new security nexus? *Human Security Perspectives*, vol. 10, n° 1. 2014, p. 73.

Moreover, irregular migratory flows from North Africa are often conceived as a threat to European security. The security interdependence between both shores of the Mediterranean is thus undeniable. Therefore, only through cooperation with third countries can the EU ensure an effective management of its external borders.

Partnership with the EU's Southern Mediterranean neighbours has mainly focused on the management of irregular migratory flows and, therefore, on border controls. The idea is to move border controls to neighbouring states in order to cope with transnational threats before they reach EU's borders. By externalising its Southern border, the EU aims to minimise transnational threats in its territory.

New technologies of surveillance and control, which enable the identification of potential threats, are central instruments in border management and have become mechanisms of modern governance. These systems are crucial elements in the management of Europe's Southern Mediterranean borders and, consequently, in the relationship with its neighbours.

Through the analysis of border management cooperation in the Mediterranean, we aim to assess the challenges and opportunities of an integrated border management involving the EU and its southern neighbours.

BORDERS AND SURVEILLANCE IN A GLOBALIZED WORLD

Within social sciences, the notion of border has a variety of semantics and terminologies, according to the different disciplines. Oddly enough, the globalization discourse of a 'borderless world' has brought scholars together to try to find a common ground (which has not been achieved so far) and gave new impetus to the study of borders[3]. At a time when we speak of a 'borderless world', new borders, walls and fences are being constructed.

In political sciences, the term 'border' is closely linked to the Westphalian modern State and its concept of sovereignty[4]. With the geopolitical changes

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[3] NEWMAN, D. The lines that continue to separate us: borders in our "borderless" world. *Progress in Human Geography*, vol. 30, n° 2. 2006, pp. 144-145.

[4] WOLFF, S. Border management in the Mediterranean: internal, external and ethical challenges. *Cambridge Review of International Affairs*, vol. 21, n° 2. 2008, p. 253.

in the international system after the Cold War, borders became more than a physical and static concept, to be understood as a process with a dynamic nature – the bordering process[5]. Thus contrasting with the physical border. Borders are more than lines 'drawn' on the ground or crossing rives and seas. As Marenin put it:

> The borders are not a line, but a zone with unclear and even global limits. The operational question is how a traditional external border protection system can be transformed, linked to and integrated into a wider zonal and global border control system[6].

It is the process through which borders are managed, the 'bordering process', that is central to this notion of border as a process[7]. Border control activities take place "far beyond those lines and extend deeply into the domestic security space and systems of other states"[8]. Thus the importance of border management in the preservation of States' internal security.

Historically, borders have often been at the heart of inter-state conflicts. Nowadays, borders, or more specifically bordering processes, are defined according to States' security perceptions and constructions, with the transnationalization of threats. Scholars have identified the current five challenges in border management: terrorism, asylum, human smuggling and immigrants trafficking, irregular immigration and drugs trafficking[9].

Security discourses often identify foreigners as a threat to internal or societal security. Through this securitization of immigration, border management places a particular focus in irregular immigrants[10]. The classical conception of border advocates the framing of irregular migrations as a security threat, along with other threats such as terrorism and drugs trafficking[11]. This framing is translated in the expressions used by the EU to qualify irregular migrations, such as

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[5]   NEWMAN, *op. cit.* p. 145.

[6]   MARENIN, O. "Challenges for Integrated Border Management in the European Union". Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2010, p. 15.

[7]   NEWMAN, *op. cit.* p. 148.

[8]   MARENIN, *op. cit.* p. 15.

[9]   DE CASTRO GARCÍA, A. El modelo Español de gestión fronteriza en el contexto de la Unión Europea: Éxitos e interrogantes. IEEE Documento de Opinión, n° 138. 2014, p. 3.

[10] FERREIRA, S. S. Imigração. Uma ameaça securitária para a Europa? *Jornal de Defesa e Relações Internacionais*. 2013.

[11] DE CASTRO GARCÍA, *op. cit.* p. 6.

'illegal', 'fight against' and 'combat'[12]. Bigo[13] claims that the securitization of immigration is the result of "computarization, risk profiling, visa policy, the remote control of borders, the creation of international and nonterritorial zones in airports, and so on"[14].

The concept of ban-opticon[15] allows us to study the relationship between security and surveillance[16]. The ban-opticon translates into the surveillance of a small group, through the application of exceptional measures and foreigners' characterization and contention. Therefore, surveillance and border control instruments play an increasingly central role in the management of irregular migratory flows.

The securitization of immigration, through an increase of restrictions and border controls, leads to an insecure governance based in misunderstandings. The focus of border management in irregular immigration may contribute to a loss of efforts and tools in the fight against transnational threats[17].

EU'S BORDER MANAGEMENT

The efficient management of borders is a priority issue in the political agenda of the European countries. The maintenance of border controls is essential to preserve EU's internal security. Thus, the creation of a 'Europe without borders', with free circulation of people, goods and services, seems to suggest that Europe is internally more vulnerable to threats. However, the elimination of internal borders with the Schengen Agreement, in 1985, led to a reinforcement of the external borders. New technologies have emerged to fill the gap in terms of surveillance and border mobility control. Systems that allow the identification of citizens and grant access to their records in various countries improve the control of cross-border movements.

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[12]   CARRERA, S. The EU Border Management Strategy. FRONTEX and the Challenges of Irregular Immigration in the Canary Islands. *CEPS Working Documents*, n° 261, marzo. 2007, p. 6.

[13]   Bigo, D. Security and Immigration: Toward a critique of the governmentality of unease'. *Alternatives: Global, Local,* Politica, n° 27. 2002.

[14]   *Ibid.*, p. 8-9.

[15]   The concept of ban-opticon derives from Jeremy Bentham's notion of panopticon, which aimed the observation of all. This concept is often used in surveillance studies with the purpose to watch everyone without being watched.

[16]   BIGO, D. Globalized (In)Security: the field and the ban-opticon. *Illiberal Practices of Liberal Regimes, the (In)Security Games*. 2006, p. 35.

[17]   DE CASTRO GARCÍA, *op. cit*. p. 16.

The Schengen Borders Code defines external borders as "the Member State's land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders"[18]. The EU's external border is a complex one, not only in terms of geography but also in terms of geopolitics, with intricate situations such as the cases of Ceuta and Melilla[19] (two Spanish autonomous cities in the African continent). For that reason, border management (BM) is crucial in the management of Europe's internal security.

As defined in the Schengen Borders Code:

> border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member State's internal security, public policy, public health and international relations[20].

BM aims to control and prevent threats that may jeopardize the Union's security. In this sense, it has to balance the openness of borders for legal mobility of people, goods and services while countering illegal crossings, risks and vulnerabilities[21].

The definition of priorities (on the importance of threats) in border control is essential to design strategies and legislation that enhance border management. As highlighted by Marenin[22], "violations of border control laws are equally illegal but not equal in terms of security concerns". In this sense, organized crime has to be placed higher than illegal crossings. Moreover, it is important to stress that irregular immigration is not a security problem *per se*, rather the mobility of people, i.e. illegal crossings.

Thus, the EU faces a dilemma, how to balance fortification with the need to soften border controls? How to balance the need for mobility with the need for control?

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[18] OFFICIAL JOURNAL OF THE EUROPEAN UNION. Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). European Parliament and the Council of the European Union. 2006, p. 4.

[19] It is important to take into account that these two Spanish cities are not part of the Schengen Agreement.

[20] *Ibid*. p. 1.

[21] MARENIN, *op. cit*. p. 29.

[22] *Ibid*. 29.

Member States (MS) consider control over their borders as a sovereignty prerogative. Nevertheless, with the creation of AFSJ, the management of external borders has shifted into a common interest shared by all MS. The concept of *burden-sharing* and solidarity are key to a common policy on border management[23]. While some EU countries are closely affected by irregular migrations, such as those in the Mediterranean shore, this is an internal problem which concerns all EU member states. Hence, there needs to be balance and solidarity between EU's countries to reach political decision on these matters and also on which values and interests to promote in terms of border management.

Border management should be conceived as an integrated framework covering all border-threats to the EU[24]. Thus, the common policy on the management of external borders has five dimensions: 1) a common corpus of legislation; 2) a common coordination and operational cooperation mechanism; 3) common integrated risk analysis; 4) staff and interoperational equipment; and 5) burden-sharing between Member States.

Border management highly relies on new technologies. Apart from radar and satellite systems, identification technologies increasingly involve biometric data, allowing a case-by-case risk assessment. With these new technologies the EU can move forward in the profiling evaluation, from a nationality profile (groups that represented greater risk) to a case-by-case analysis. Nevertheless, if security is reduced to limitless surveillance technologies it undermines the individual protection. Therefore, as stressed by Bigo, Carrera and Guild[25], "total information awareness is a security mistake".

FRONTEX is the agency responsible for prosecuting the reinforcement of EU's external borders, through joint maritime actions, risk analysis and feasibility studies. FRONTEX joint operations include an external dimension, the partnership with third countries, which allows "the expansion of surveillance and coercive control to the African coasts"[26].

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[23]   WOLFF, *op. cit.* p. 259.

[24]   CARRERA, *op. cit.* p. 3.

[25]   BIGO, D. et al. What Future for the Area of Freedom, Security and Justice? Recommendations on EU Migration and Borders Policies in a Globalising World. *CEPS Policy Brief*, n° 156, marzo. 2008, p. 3.

[26]   CARRERA, *op. cit.* p. 25.

The external dimension is a key ingredient for EU's efficient border management and security. The development of surveillance technologies and the creation of dispersed borders centres has placed the border far beyond EU's territory, expanding controls to the origin of mobility and threats. In this sense, the EU has developed a framework of Integrated Border Management (IBM) which results from the integration of different layers of border management.

INTEGRATED BORDER MANAGEMENT – IBM

The Laeken European Council of December 2001 introduced the concept of Integrated Border Management (IBM) – establishment of common standards with regard to the Union's border control and management, to the establishment of an Area of Freedom, Security and Justice. As stated in the Council's Conclusions, a "better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings"[27]. Thus, the Council asks for the "cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created"[28].

The December 2006 JHA Council defined IBM's five dimensions[29]:

1 Border control (through checks and surveillance), including risk analysis and crime intelligence;
2 Detection and investigation of cross-border crime, through cooperation with all relevant law enforcement authorities;
3 The four-tier access control model, through cooperation with third countries and control measures within the area of free movement;
4 Inter-agency cooperation for border management and international cooperation;
5 Coordination and coherence of Member State's activities and other bodies and agencies.

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[27] EUROPEAN COUNCIL. Presidency Conclusions. European Council Meeting in Laeken. 2001, p. 12.

[28] *Ibid*. p. 12.

[29] COUNCIL OF THE EUROPEAN UNION. Press Release 2768th Council Meeting Justice and Home Affairs. Brussels, 4-5 diziembro. 2006, p. 27.

This model encourages cooperation between Member States' agencies responsible for border management and control. Although MS maintain control over their own borders, this framework enhances cooperation and harmonization of practices and exchange of information between the different agencies. Thus, IBM is a "second layer of integration added to the basic practices of border management by states"[30].

One of IBM's main challenges concerns the integration of information systems. This has recently become true with the development of Eurosur – a platform designed to share real-time border related data. This IT (Information Technology) system allows a permanent and in real time surveillance of EU's external border. The following step might be the harmonisation of the national systems of border control and surveillance, so that they may all be integrated.

BORDER MANAGEMENT IN THE MEDITERRANEAN

Euro-Mediterranean relations

Euro-Mediterranean relations have been marked by ups and downs, due to internal and external factors that conditioned the relations between Mediterranean countries. Moreover, there are priority divergences between both shores of the Mediterranean. While southern countries focus on issues of co-development and common dialogue, the northern ones focus the control of migratory flows and the management of irregular migrations. Thus, border management, migrations and security have always been at the top of EU's Mediterranean agenda.

The EU has developed multilateral policy tools that deal with Mediterranean issues on a European level: the Union for the Mediterranean (UfM) and its predecessor the European Mediterranean Partnership (EMP), and the European Neighbourhood Policy (ENP). Moreover, there are several international fora, also involving the EU or some of its member states, such as the Five Plus Five Dialogue, other from international organizations such as NATO or from international conferences, such as the Rabat Process and the Tripoli Process, both in 2006. They all focus on the Mediterranean and on the promotion of dialogue in matters of security and stability, regional integration

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30   MARENIN, *op. cit.* p. 23.

and cooperation, economic, social and human solidarity. Despite this array of spheres of dialogue, as Ayadi and Cessa[31] underline, until 2011 "(…) the EU-Mediterranean relations consisted of a blend of state un-sustainability and regional cooperation dominated by inter-governmental relations and increasing depoliticisation and securitization". Rather than promoting political reform and human rights, the main focus was in securing EU's borders, in containing migration and combating terrorism.

The Union for the Mediterranean aims to bring new life to the Euro-Mediterranean dialogue and develop the political relation between the EU and the southern Mediterranean countries. It also aims for more balanced governance by reinforcing cooperation in matters of justice, migration and social integration. Security and border management is still central to its program and one of the main issues in the Mediterranean due to the massive flows of irregular migrants that try to reach Europe[32].

The policies adopted by the EU towards the Mediterranean region have long been criticized for its lack of political will to achieve its objectives and for often being one-sided. Despite the dedication to democracy-building, and the fact that development and migration remain at the top of the agenda in the region, in terms of migration management the EU did not come up with new approaches, rather "reaffirmed old positions regarding Mediterranean migration". The increased fear of massive flows of irregular immigrants led member states to further strengthen border controls. In this regard, Frontex has developed a set of Joint Operations to monitor the Mediterranean Sea.

Cooperation with third countries in border control

The development of a 'global approach to migration' has prioritized the improvement of border management, paying particular attention to irregular migrations from Africa. As pointed out by Carrera

> the strategy that the EU seems to be pursuing consists of a reinforcement of the security rationale at common EU external territorial borders – through

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[31] AYADI, R. y SESSA, C. What scenarios for the Euro-Mediterranean in 2030 in the wake of the post-arab spring? *MEDPRO Policy-Paper*, n° 2, octubre. 2011, p. 1.

[32] RODRIGUES, T. F. y FERREIRA, S. S. Realidades Demográficas no Mediterrâneo. II – Dinâmicas migratórias e análise a longo prazo das tendências demográficas (1950–2050). *GEEMA Working Paper*. 2011, p. 29.

the development of a discursive nexus between an integrated approach on borders (IBM) – and a global approach on migration[33]:

EU's Southern maritime borders are of strategic importance in border management, as the Mediterranean Sea and its Southern coastal countries are frequently conceived as a source of threats. Thus, the focus on the Southern border is a strategy to address these threats, particularly irregular migrations.

The increasing migratory pressure faced by Southern Member States in the first decade of the 21st century, led to the adoption of the 2006 communication from the Commission on "Reinforcing the Management of the EU's Southern Maritime Borders", which proposes a set of measures to combat irregular migration in Europe's southern shore and assesses the need to strengthen the dialogue and cooperation with third countries.

The EU has progressively reinforced surveillance and control in its Mediterranean border. As identified by Carrera[34], the control of the maritime border has two dimensions: 1) operational measures and the strengthening of maritime control and surveillance to cope with irregular migration; and 2) an external dimension which focuses on cooperation with neighbouring countries. As we can see, border management in EU's Mediterranean border is closely linked to migrations, particularly irregular migration.

Security concerns regarding the EU's external border and internal security led to the establishment of partnerships with its Mediterranean neighbours, including them in the control of sea borders (and also the land borders in the cases of Ceuta and Melilla,). Thus, as highlighted by Wolff[35], "cooperation with third countries has become one of the key components of BM".

The review of the European Neihbourhood Policy, after the 2011 uprisings in the Arab countries, to face the challenges of the changing political landscape in the Mediterranean, highlighted the EU's aim to: "strengthen the partnership between the EU and the countries and societies of the neighborhood: to build and consolidate healthy democracies, pursue sustainable economic growth and manage cross-border links[36].

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[33] CARRERA, *op. cit.* p. 2.

[34] *Ibid.* p. 6.

[35] WOLFF, *op. cit.* p. 261.

[36] EUROPEAN COMMISSION. A New Response to a Changing Neighbourhood. A Review of European Neighbourhood Policy. Brussels: European Commission and European Union External Action. 2011

Thus establishing the link between democracy-building and border management. With new stable democratic countries migration will decrease and will be better managed, at least that is the expectation"[37].

Through the cooperation with third countries, the "management of the border expands into the maritime territory of third countries in Africa"[38]. In this sense the EU has signed a set of agreements with its African partners, focusing on matters of migration management and border control. The conclusion of Euro-Mediterranean Association Agreements with southern Mediterranean partners provide a suitable structure for North-South political dialogue, while setting out the conditions for cooperation. The EU has so far signed agreements with seven countries: Algeria, Egypt, Jordan, Israel, Morocco and Tunisia. Within this framework the EU invites its partners to approximate their legislation to that of the EU.

Border management has been central to the Euro-Mediterranean relationship since the beginning of the 21st century, when the increase in South-North migratory movements fostered a closer cooperation between the EU and its Mediterranean neighbours. Nevertheless, successful cooperation with third countries mostly takes place at a bilateral level, such as the cooperation between Spain and Morocco.

At the same time, border management has become part of Mediterranean partners bargaining strategy to deal with the EU. Countries such as Morocco have used border management to influence EU migration policy and place pressure on negotiating other policies, of their own interest, with the EU. As Wolff[39] stressed out, these countries take advantage of EU's incapacity to manage its border on its own, exploiting its security concerns.

Apart from the bilateral agreements there are other multilateral surveillance projects, such as the *Seahorse Mediterraneo* and the *Seahorse Atlantico*. These maritime surveillance programmes aims to curb irregular migrations and is developed in collaboration with countries such as Spain, Italy, France, Portugal, Cyprus, Greece, Libya, Algeria, Tunisia, Egypt and Morocco. The aim of the project is to establish a satellite communication network among the countries involved, in order to diminish migratory pressure from Africa to Europe.

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[37] FARGUES, P. y FANDRICH, C. Migration after the Arab Spring'. MPC Research Report (Robert Schuman Center for Advanced Studies), septiembre. 2012, p. 5.

[38] CARRERA, *op. cit.* p. 25.

[39] WOLFF, *op. cit.* p. 263.

The EU has provided its neighbours with the necessary technology tools for border control and surveillance. However, the increasing development of surveillance and border technologies in Southern Mediterranean countries might be considered problematic given that there are countries where the standards of personal data protection are questionable. Although these countries have increasingly adapted their legislations to get closer to EU's standard, take the example of Morocco and Algeria which have updated their immigration legislation. These reforms aim to increase convergence of legislation between the two shores. Nevertheless, this is a challenge in countries such as Libya where there is no rule of law nor the authorities with competence to enforce it.

However, as pointed out by Carrera, moving the border or bordering process outside the EU poses two dilemmas. On the one hand, in a preventive action the immigrant is immediately qualified as an "irregular immigrant" even before crossing the border. This ignores that some immigrants might be asylum seekers of refugees, questioning human rights protection. Moreover, "nobody should fall within the category of irregularity before physically entering EU territory". On the other hand, pre-border surveillance averts the application of the European protection provided by the border, as those countries who exert the control are not covered by the Schengen Borders Code or by EU legislation. Therefore, this external dimension of pre-border surveillance, not only questions human rights guarantees, namely the prosecution of the Geneva Convention, but also leaves border management in a legal limbo as it no longer falls in the Union's legal framework in the field of borders.

FINAL CONSIDERATIONS

In an increasingly globalised world where the imperative of mobility questions States' capacity to manage regular flows, while coping with transnational security threats, border management has become central in States' agenda. Since the beginning of the 21st century and with the growing myriad of internal and external threats to EU's security - namely terrorism, organized crime and illegal flows - the EU has placed a greater emphasis in border management, particularly in its Mediterranean border.

Border management strategy has to accommodate not only the interests of all Member States but also the interests of EU's neighbour countries. Partnership with third countries is an important dimension of the EU's border

management strategy. It allows to deal with threats outside EU's territory or even to go to the root of problems. So far, bilateral cooperation on border management between an EU Member State and a Mediterranean partner (an example of success, with its ups and downs, is the cooperation agreement between Spain and Morocco), or even multilateral cooperation between a smaller group of countries (such as the Seahorse projects), has had effective results.

Nevertheless, the EU still has to circumvent some problems concerning the externalisation of border processes or what can be called of pre-border surveillance. First, is the definition of a priority list in terms of border crimes, where irregular border crossings have so far been the highest priority. Secondly, the labelling of 'illegal' before crossing a border raises questions regarding human rights and the respect for the refugee status. Moreover, giving countries, where the legislation on human rights protection or even data protection is questionable, the instruments to apply pre-border surveillance may prevent the applicability of the Union's governance that can be provided by its border.

Given the increasing reports of immigrants' deaths in the Mediterranean and the political instability in the Mediterranean's Southern shore, the time has come to rethink border management in the Mediterranean. It should take into account the need to cooperate with neighbour countries, while protecting human rights and the rule of law.

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