

8 Seaborne Migration: Europe's Boat Migrants and their Refugee Vessels

In the context of maritime migration to Europe, vessels also play a role as vehicular facilitators. The following exploration of the appropriation of boats and ships in the context of unauthorized Mediterranean crossings will illustrate that the vessel is a focal point in many ways. Boats and ships are not only central to the practical endeavor of maritime migration to Europe; they are also a crucial asset for the organization of this specific journey which provides for a particular access to the legal and administrative territories of the EU.

If the program of a watercraft can be phrased as “to carry across water,” migration disturbs this aim. The program “get people into Europe by sea” requires a certain type of vessel. Tracing this program means asking for the vessels’ relation to the phenomenon of unauthorized migration to Europe. This in turn means portraying the vessels’ share in the illicit market of smuggling migrants, describing its strategies to remain undetected, exploring the circumstances on board as well as the vessels relation to the migrants’ death toll in the Mediterranean Sea.

The following three sections focus on the ambivalent features that both stem from and are reflected by the condition, appropriation and image of the migrant vessel as “refugee boat,” “ghost ship” or “cargo freighter.” In order to decipher and understand how politics approaches these different ambivalent features, the following sections outline the rumors, the factual findings, the indicators and images concerning boats, ships, and their migrant passengers, as well as the symbolic work they do. Moreover, they examine how far the condition and image of the vessel blends into the status ascribed to maritime migrants heading for Europe. If Mathias Bös (1997: 135) is right stating that “categorizations of migrations are determined rather by political processes than by migrants’ characteristics,” the question is: what are the political processes leading to the category of boat migration and boat refugees?

8.1 BOATS AND BORDER ENFORCEMENT IN THE MEDITERRANEAN

As a mode of migration and circulation between countries bordering the Mediterranean Sea, maritime crossings have been quite regular. The mode of crossing the Mediterranean by boat preceded the efforts of European countries to regulate the phenomenon. This is to say that the appropriation of boats for migration has been one of the Mediterranean's "historical uses" (Pugh 2000: 31) and did not emerge as a subversive strategy or illegal practice, but as a regional practicality. What emerged, however, was the commercialization of unauthorized Mediterranean crossings, along with border control and surveillance practices. This section is about the boat mediating the two.

8.1.1 Boats for Migration: From "Historical Uses" to First Schengen Targets

In the 1960s, irregular migration was a rather tolerated practice in the Strait of Gibraltar. The distance of only 14 kilometers between Tarifa and Tangier could be crossed using small fishing vessels. The only hindrances were either strong currents or ship traffic (Carling 2007b: 22). Another historic route was the trip by boat from Tunisia or Libya to Italy. With fishermen commuting between Tunisia and Sicily to sell fish on their mutual local markets, and many Sicilian-Tunisian marriages and thus family visits, going back and forth by boat across the Sicilian Channel used to be a rather common practice.¹ Moreover, would-be migrants only needed a valid passport to travel to Italy, as the Tunis-Palermo and Tunis-Trapani ferries traveled back and forth in the Strait of Sicily (Ben-Yehoyada 2011: 19). For both countries, Italy and Spain, irregular migration and the informal economy were closely related; the corresponding networks aligned both labor and transportation. This is well illustrated by the case of the Tunisia-Sicily connection:

"Other Tunisians found both work and a ride to Italy on Sicilian trawlers that anchored in Tunisian ports. Sicilian captains in search of cheap fuel or undisturbed fishing in Tunisian waters often hired Tunisian crewmen to mediate the exchanges. The Sicilian fishing fleet

1 Gloria Cipolla, Cooperazione Internazionale Sud Sud (CISS), personal interview in her office at the CISS in Palermo, Sicily (March 25, 2011).

played a dual role for would-be migrants: Its easily approached sailors got the Tunisians aboard the trawlers, and then its vessels carried them across the channel. In the business of clandestine migration, transporters and passengers were somewhat interchangeable. Many of the Sicilian fleet's Tunisian crewmen were originally passengers, who later arranged for the passage of friends and relatives, who still later became coworkers on the trawlers." (Ben-Yehoyada 2011: 19)

With informal transportation networks up and running between Mediterranean countries, trips "did not require much secrecy, if any" (Ben-Yehoyada 2011: 19). This changed, however when the Schengen acquis stipulated stricter control of the exterior borders. By joining the Schengen group in the early 1990s, Italy and Spain committed themselves to aligning their migration, visa and border control policies with the Schengen acquis.² Until their borders were waived, both countries introduced major legal reforms.³

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- 2 On November 27, 1990, Italy signed the Schengen Agreement. Spain and Portugal followed on June 25, 1991 while Greece joined on November 6, 1992. However, border controls between these countries and other Schengen members only got waived when checks had been tightened at the then external border of the Schengen area. For Spain and Portugal, this was March 26, 1995; for Italy October 26, 1997; for Greece March 26, 2000.
 - 3 Spain: The very first law to regulate immigration policies in Spain was passed by the government in July 1985. Presented as an urgent bill, the 'Law about the rights and freedoms of foreigners in Spain' (Ley Orgánica 7/1985 sobre derechos y libertades de los extranjeros en España, known as the Ley de Extranjería [Foreigners' Law]) was hardly debated in Parliament and passed "by virtual unanimity" (Moreno Fuentes 2000: 10). The urgency was declared with reference to joining the Schengen states by January 1986. The new law foresaw restrictive immigration policies and a strong focus on border control. "The new Law also defined the presence in Spanish soil without the necessary authorisation, as an offence punished with expulsion from the territory" (Moreno Fuentes 2000: 10-11). The resolution proposal of April 1991 initiated a series of decisions and directives: regularization of irregular foreign workers (1991, 1996, and 2000), employer sanctions, the introduction of a quota for foreign workers in 1993. In 1991, visa requirements were introduced for Latin American and Moroccan nationals. Due to these restrictions on labor immigration, asylum claims were used to work in Spain, as asylum petitioners still had the right and possibility to work while their claim was reviewed (Cornelius 1994: 351). This, again, led to the 1994 reform of Spain's asylum law. The previous regulation, which was considered generous and left

In anticipatory adjustment, the “Europeanisation” (Moreno Fuentes 2000: 2) of immigration policies shaped Spain’s national policies at a point in time when the issue of immigration had not even reached the national agenda (Cornelius 1994; Moreno Fuentes 2000; Kreienbrink 2004). Kreienbrink shows that in the 1980s, Spain’s immigration and border policies were hardly defined, and even in the 1990s, Spain’s economic focus on the tourist economy thwarted strict mobility regulations (2004: 73-86, 91). For Italy, too, Kitty Calavita (1994: 320) found a “relative absence of public debate on this issue [immigration],” as immigrant black labor formed a substantial part of the Italian economy, and in many places was considered complementary to the local workforce (ibid: 311). During the 1980s, both countries had transformed from countries of emigration to countries of immigration (Bade 2000; Boswell 2005: 2-3). However, the emergence of national immigration policies was fostered by the new task of securing maritime borders as Schengen borders.

Overall, and significantly, the institutional incentive to codetermine EU policy in this emerging policy field, namely border surveillance and control, preceded the experience of migration as an actual problem. Moreno Fuentes accordingly comments on the case of Spain:

“In the absence of a nationally specific stand on immigration the ‘Europeanisation’ of this area of policies represented not only the participation of Spanish officials in the committees created to coordinate and define a common European immigration policy, but also the somehow thoughtless acceptance of European policy objectives within the legislation implemented at the national level. The result was a very restrictive policy that did not correspond to the early stages of the migratory processes that were affecting Spain.” (Moreno Fuentes 2000: 2)

it at the state’s discretion to grant asylum for humanitarian reasons, was abolished and asylum was restricted to the political refugee of the Geneva Convention (Kreienbrink 2004: 189-235). Italy: In 1990, the Italian government passed the Martelli Law (named after the then justice minister Claudio Martelli), Italy’s first immigration legislation, which enacted visa requirements for North African nationals and was communicated as strict and discouraging of immigration. However, commentators also considered it a hidden regularization program (Calavita 1994: 318). The Italian debate was generally more concerned with undocumented migration, rather than with asylum (Turner et al. 2006: 88-92). Southern European countries turned both into countries of immigration and into gatekeepers of the EU – not only in terms of geography but also in terms of policies.

Effectively, Spain and Italy were the last countries in Western Europe to introduce visa requirements for North African nationals and only did so in compliance with the Schengen Acquis: Spain in May 1991 and Italy in 1990. The significance of introducing visa requirement for Northern African nationals to the emerging external EU border must not be underestimated. By introducing these visa requirements, Northern Mediterranean states decided to be European countries and to pronounce Schengen membership while putting less emphasis on their hitherto regional economic ties. However, legalizations in Spain and amnesties in Italy indicate that a clean break was neither possible in terms of enforcement, nor was it politically or economically desirable.

One Means of Transport, Multiple Itineraries

Since the early 1990s, the Schengen-induced increased border control measures have been discussed as contributing factors to the changing patterns of (maritime) migration. In fact, intensified sea patrols and tightly enforced borders seldom dissolve migratory intentions but rather lead to displacement effects (Haas 2006, 2008), a diversion of routes, as well as the emergence of transit migration (Simon 2006; Mehdi Lahlou 2006). Several commentators argued that the new visa requirements together with the enforcement of Schengen borders not only resulted in more queuing for visas, but fueled “a rapidly expanding economy of illegal migration services” (Carling 2007b: 11).⁴

Furthermore, boat migration was diverted to the Canary Islands to the effect that in “2003 and 2004 unauthorized arrivals by boat along the Spanish coasts were split almost equally between the Canary Islands and the Spanish mainland” (Carling 2007b: 14). Moreover, boats increasingly departed to the Canary Islands from West African countries, particularly Mauritania (approx. 800 km) and Senegal (approx. 1,400 km). When in 2006, boat migration to the EU reached its first peak with a total of 72,035 arrivals, the majority of migrants landed on the Canary Islands, which according to Lutterbeck amounted to 33,126 persons (Lutterbeck 2010: 130). The Atlantic route toward the Canary Islands was said, however, to cause an unequally higher migrant mortality. Already in 2009, members

4 Alison Mountz and Ronja Kempin describe the mutual interrelation between border enforcement and human smuggling as “geographically relational” (Mountz/Kempin 2014: 86). They even push the argument to the extent of stating that “enforcement measures and human smuggling industries tend to escalate in symbiotic fashion: as one intensifies, so too does the other” (ibid: 85).

of the Red Cross mentioned to me during a personal interview that for every person that arrives, 1.5 have died at sea.

At the same time, the composition of migrant nationalities on board the vessels diversified at the beginning of the new millennium; which among other aspects, also implies that the business spread. This latter effect was more pronounced than any increase in the total number of migrants. In 2003, the Moroccan Ministry of Interior reported that for the first time, the number of sub-Saharan clandestine migrants had outnumbered the number of national clandestine migrants, the difference being 12,400 to 23,851 (quoted in Mghari 2005: 201). In 2008, Hein de Haas noted with regards to EU bound migration from North African countries, that “(r)ather than an increase *per se*, the major change has been that, after 2000, sub-Saharan Africans started to join illegal Mediterranean crossings and have now overtaken North Africans as the largest category of irregular boat migrants” (Haas 2008: 13-14, emphasis original). This trend continued to 2012 (Bruycker/Di Bartolomeo/Fargues 2013: 6). Ten years later, in 2018, sea arrivals’ most common countries of origin are Mali, Afghanistan, Irak and Syria.⁵ These dynamic aspects need to be remembered when quoting aggregated numbers on maritime migration to Europe.

8.1.2 From Counting Boats to Classifying Migrants as “Arrivals by Sea” to Counting “Illegal Border Crossings”

In the years that followed Spain’s newly received Schengen membership, the number of boats intercepted at sea increased more than a hundredfold. While in 1991, four so called *pateras* were reportedly intercepted in Spanish coastal waters, 1,020 were reported in 2002 (Kreienbrink 2004: 210). More boats also meant more immigrants. In that same period, detentions increased from 477 to 16,670 (ibid). However, the increasing numbers of *pateras* and immigrants not only documented the increase of migratory flux but also resulted from increasing ambitions of the Guardia Civil del Mar, which had just been founded in 1991 (Kreienbrink 2004: 210) to detect and seize vessels and passengers. Moreover, this was spurred by a continued increase in border surveillance and more sophisticated technology in the Integrated System of External Vigilance (SIVE, in the

5 UNHCR (2018): Desperate Journeys. Refugees and migrants arriving in Europe and at Europe’s borders. January-December 2018, at: <https://www.unhcr.org/desperate-journeys/> (accessed October10, 2019).

Spanish: *Sistema Integrado de Vigilancia Exterior*)⁶. Hence, the numbers collated in table 3 are not only a description of the phenomenon of migration, but also of the activities of border surveillance and control. This demonstrates well the argument that I made above with regard to the epistemological challenge of thinking about (political) borders: political borders are not generated by way of practices of subversion; it is rather that subversion is itself defined by way of bordering and by those classifications that mediate bordering.

With regional migration being part of the informal economy, boat migration turned out to be the most visible part that could be tackled (cf. Genova 2013).

Kreienbrink, who documents one of the earliest reports of data on unauthorized maritime immigration to Spain, captioned his table “seized ‘*pateras*’ and persons apprehended thereof” (Kreienbrink 2004: 210). Here, the new move in border enforcement finds expression: *pateras* are seized and their passengers apprehended. Even though the possibility of boat-migrants with a valid visa is not excluded in this formulation, the discursive link between arriving in *pateras* and being apprehended is revealed. Of course, this link has not been set by Kreienbrink. The author’s table merely documents the emerging lens of sorting out EU-bound migration. In a very practical sense of stopping and interdicting the continuation of a directional movement, the seizure of *pateras* has turned into the performance of border control. Implementing the Schengen acquis meant stopping *pateras*. In the context of freedom of movement within Schengen, *pateras* became the reference point for problematizing access to the Schengen area.

Theories of globalization and conceptions of postnational political forms trip up on the modern territorial border. Likewise, any national administrative logic of quantifying migration crumbles vis-à-vis data collection on seaborne migration. Acknowledging eventual biases emerging from territorial, that is, administrative references, different authors also include apprehensions in North African countries, such as Morocco or Libya (cf. for instance Fekete 2003). At the same time, classifications are unclear: what to count in order to document border control activities and what kind of migration actually violates the border? Boats, migrants, Moroccans on a tourist visa, persons per boat? The numbers in table 3 document early tentative classifications of Spain’s Europeanized border enforcement.

6 The effects of the SIVE have been discussed by Carling (2007b) and Kaufmann (2008).

Table 3: Boats to Europe (1991-2004)

Year	vessels intercepted *	persons detained **	ratio (rounded) ***
1991	4	477	112
1992	15	616	41
1993	33	1925	58
1994	34	352	10
1995	130	1800	14
1996	339	1.573	5
1997	399	887	2
1998	557	2.995	5
1999	475	3.569	8
2000	807	15195	19
2001	1060	18517	17
2002	1020	16670	16
2003	942	19.176	20
2004	740	15.675	21
* in Spanish waters, by Spanish border guards ** apprehensions, persons detained off the vessel *** persons detained/vessels intercepted			

Sources: Numbers quoted in Kreienbrink 2004: 201; Lutterbeck 2006: 63; Mehdi Lahlou 2006: 117

Returning to the quantifying representation of the phenomenon, in 2006, Lutterbeck, too, quotes the number of “[i]nterceptions of vessels and undocumented immigrants in Spanish waters,” providing the number of detained persons to capture the number unauthorized migrants (Lutterbeck 2006: 63). Carling argues that the “only way of quantifying the unauthorised migration flow is to refer to

apprehensions along these borders” counting “the number of interceptions of unauthorised migrants along the Spanish coasts” (Carling 2007b: 20). His methodology is accepted and applied widely.⁷ In a sense, both Lutterbeck and Carling construct the border along Spanish enforcement activities. While Lutterbeck quoted both the number of boats and the number of immigrants intercepted *in Spanish waters*, Carling skips the numbers of vessels, but provides the number of interceptions *along the Spanish coast*, thereby quantifying persons which had been picked up at sea and detained on Spanish territory. Successively, reporting the number of boats is replaced by a reference to the location of interception.

Only speculation can be advanced about why Kreienbrink did not mention any territorial restriction to the sample, and why Carling and most of his successors, skip the number of boats. However, I dare to speculate: The lack of a geographical reference in Kreienbrink’s account might result from considering this information as superfluous, as it was taken for granted that sea patrolling only occurred in territorial waters, be it due to legal compliance or limited enforcement capacities, or in reflection of the practices of boat migration.⁸ The lack of geographical information may also be explained by the focus of discursive attention: it was not the legality and scope of border security that was up for debate, but the fulfillment of Schengen obligations, which were symbolically communicated and performed by the stopping of boats. Despite the legal vagueness of whether border surveillance and control practices amount to enforcement jurisdiction, the data on ‘boats’ and ‘persons detained’ are used to sketch the proportion of the issue at stake. At the same time, the issue at stake found localization “at sea,” and “on boats.”

This hypothesis is further supported by the lack in substantial knowledge which could be generated from the number of boats within the frame of Europe bound maritime migration. The number of unauthorized migrants could not be extrapolated from the number of boats, especially because boats were known to commute. With migrants being forced to swim the rest of the way, boats were reused for transport purposes.

7 Michael Jandl (2004) also proposed a methodology to estimate “illegal migration” in Europe; however, his approach is not as widely applied as Carling’s methodology.

8 The Spanish Guardia Civil generally operated close to the Spanish coast. This tactic was reportedly deployed in order to avoid that facilitators threw their passengers over board once detected (Kreienbrink (2004: 210). This alludes to quite a different operational philosophy than the one in place post-SIVE or during Frontex Joint Operations, when the ideal of intervention ‘already at the shores of third countries’ is pursued.

In fact, in a strict methodological sense, a trend analysis cannot be derived from the data presented, as it is based on triangulation and thus on different labels and methods of quantification. Often triangulation is aptly used to cross-check data and gain the most plausible numerical information. In this case, the triangulation of data, sources and their utilization also reveals the insecurity concerning the new labels of border enforcement and migrant illegality. Deciphering the classifications used in the collated table 3 reveals how the sorting machine in the Mediterranean was successively programmed.

Consequently, the issue at stake – Europeanization of border management and Schengen compliance – was projected onto the migrant vessel, and connected boat migration and the image of “black young men jam-packed in a fishing vessel” to border violation and illegality. This had consequences for the way boats were treated by authorities – in fact, boats seem to be far more than means of transportation, which could be counted to determine the volume of traffic. During her field work in Libya, Sicily, Lampedusa and Malta, legal anthropologist Silja Klepp (2011) came across numerous traces of boats as flexible resources. Klepp remembers the following anecdote from an official at the Lampedusa boat cemetery:

“In 2003 and 2004 there were always repeated requests from Libya and Lampedusa for stolen boats, which were then brought back to Libya by the Italian navy. As soon as they realized that the boats arrived back on Lampedusa fully laden with migrants, they began working to destroy the boats immediately. Ever since, he [the official]’s been convinced that the Libyan government was hidden behind the organization of maritime migration. In 2005 the delegation of the Libyan army came to Lampedusa to look after their boats. The Libyans had always repeatedly asked for their boats, but he always kept them away from the ship’s graveyard because he didn’t want to give the boats back.” (Klepp 2011: 224-225)

The migrant vessels are as much a resource for strategic businesses as for symbolic politics: in order to prevent Libyan authorities from engaging in the smuggling business, the boat cemetery official – in a preventive manner – keeps the vessels hidden. Meanwhile, the request by the Libyan government for ‘its own boats’ can duly be interpreted as diplomatic provocation. This corresponds with the idea of a boat cemetery, and with the public destruction and burning of boats which, during the 1990s, had been decreed by the Berlusconi administration several times and appeared to commentators as the “equivalent to destroying an enemy’s logistic assets” (Pugh 2004: 57). Finally in 2015, these vessels acquired the status of a strategic military target. In May 2015, the EU’s foreign policy

chief, Federica Mogherini, asked the United Nations to “authorise military action to destroy boats used to smuggle people from Africa to Europe” (Melvin 2015). A military mission, dubbed EU NAVFOR Med (European Union Naval Force - Mediterranean), has been planned “to intercept and board what are deemed to be ‘hostile’ vessels, preferably before they have left Libyan waters” (*The Economist* (N.N.) 2015b). Further description of the plans mentioned the confiscation and destruction of boats, possible in harbors or on land “by helicopter gunships or even special forces” (ibid). *The Economist* also reported that NATO offered to help if requested; there is, by contrast, little mentioning of the proceedings with regard to the migrants on board.

The small boats, the *pateras*, function as initial evidence in a process of problematization (Foucault). Moreover, just like the sailing ship disappeared again off the map once the new world was founded (Certeau 2013 [1984]: 121); counting boats disappeared again once the Mediterranean had been transformed into Europe’s imagined southern maritime border. Furthermore, attention is not only geared to irregular migration itself, but peculiarly toward this particular mode of travel: by sea. In fact, this is the very attribute which gives name to migrants’ quantifications: arrivals by sea. With this label detached from any legal or territorial reference, arriving on board these vessels, refugees and migrants land on EU shores as if they came out of nowhere. The labeling is most non-committal and almost without reference. The only localizing reference made: by sea, dispenses any political vector.

Today, information on the boats or freighters on which migrants travel is no longer provided numerically, but rather in terms of the vessel’s condition. The political implications of these conditions – overcrowded, small and unseaworthy – will be dealt with in the next section (8.2). For the moment, it is important to emphasize that despite the iterated description of the kind of migration – “they arrive by boat” – migration dynamics have changed significantly throughout the past 30 years.

The Frontex agency has increasingly developed its Risk Analysis Unit (RAU), which is tasked with producing reports on the situation along the external borders. Since 2010, Frontex publishes Annual Risk Analysis (ARA). Frontex provides quickly accessible and neatly visualized data on its website, to the effect that there is hardly any news on migration to Europe which is not flanked by data of the agency or its visualizations. Frontex counts the number of illegal border

crossings and distinguishes them by routes.⁹ While the Schengen regulations brought a new logic of classification to the Mediterranean space, Frontex analyses have formalized the knowledge on Europe-bound migration through the lens of its illegalization. Likewise, Frontex's classification of distinguishing between different routes supports Bös's hypothesis that rather than migrants' characteristics, it is political processes which determine how we count.

8.1.3 Deaths at Sea: Quantifying the Migrants' Death Toll

This also holds true for the counting of migrant fatalities in the Mediterranean. As unauthorized migration occurs clandestinely, fatalities *en route* are hardly quantifiable. Both boats and bodies might be involved in unsighted accidents. In 2009 UNHCR's answer to a frequently asked question states that the "exact death toll will probably never be known as some of the flimsy vessels used by boat-people just disappear without trace."¹⁰

In 2019, however, the UNHCR provides comprehensive data on what is now called "the Mediterranean Situation," including the number of land arrivals, sea arrivals, and dead and missing, as well as data on the most common nationalities of Mediterranean sea and land arrivals.¹¹ This is not self-evident, but the result of increased public and political pressure with regard to the availability of data on the situation of refugees and migrations crossing the Mediterranean following (a) the 2013 Lampedusa incident referred to in the introduction, (b) the increase in Mediterranean crossings during the refugee crisis following the war in Syria in 2014 and 2015, and (c) the *Mare Nostrum* operation, which triggered a discussion on the legality and effectiveness of border enforcement and rescue operations, thereby generating a demand for data to prove or refute the various claims. In February 2017, when I submitted the manuscript of this book as a PhD thesis, the only comprehensive data available on migratory movements across the Mediterranean was provided by the Frontex: the agency identified migration routes, provided numbers and maps and explained where the migratory pressure was the

9 Cp. Frontex, Website: Migratory Routes Map, at: <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/> (accessed October 19, 2019).

10 UNHCR (2009): Irregular Migration by Sea: Frequently Asked Questions, May 28, 2009, at: <https://www.unhcr.org/subsites/euasylum/4a1e48f66/irregular-migration-sea-frequently-asked-questions.html> (accessed 14.10.2019).

11 The information is constantly updated and available at: <https://data2.unhcr.org/en/situations/mediterranean>.

strongest, and which route was currently used the most. The number of dead and missing was not provided. This section describes the state of official non-knowledge at that time.

In practical terms of producing data, estimates of the number of deaths at sea have been based on different sources: “on survivors’ accounts of the number of passengers” (Carling 2007a: 330), on distress calls to UNHCR or coastal authorities, on projections based on bodies found ashore, or lately, also on estimates of border guards who have been deployed during Frontex Joint operations (cf. Meyer 2015).¹² In essence, “[f]atalities are counted as the sum of bodies discovered and persons registered as missing” (Carling 2007a: 331). In terms of generation and processing of data, the number of persons registered as missing is frequently added to the number of fatalities in order to compensate for those deaths which remain unsighted and unregistered. Generally, numbers of maritime migrant fatalities can be regarded minimum estimates.

Apart from the practical problem of quantifying incidents which occur out of sight, quantifications often carry an administrative bias, as only bodies found on European shores are included. Liz Fekete commented in 2003 that “the ‘nautical graveyards’ are increasingly in African territorial waters ensuring that the problem is hidden even further from the European gaze” (Fekete 2003: 3). Similarly, Henk van Houtum criticized that the deaths, which is to say the names of individuals and causes of death, are “made absent, unrepresented, and invisible” (van Houtum 2010: 968). Out of sight is hence not only out of mind, but also out of official statistics, and thus political concern.

The fact that the numbers of deaths which occur during maritime migration to Europe are not officially counted had been criticized by activists, researchers and the European Parliament (EP). The most explicit critique has been formulated in a 2007 report titled “The human costs of border control,” by Thomas Spijker-

12 When the German government provided data on the number of victims along the European external borders for the first time in 2012, it was emphasized that this data was not to be considered part of official statistics. The numbers would be based on information provided by federal police officers who had been deployed to support the work of Frontex. According to this information, 180 refugees had died during an attempt to enter the EU in an unauthorized manner. It was also highlighted that 3,300 persons had been rescued during Frontex operations during the same time period (Meyer 2015).

boer, written on request of the EP. His study assesses “the relationship between irregular immigration, increased border control, and the number of casualties at Europe’s maritime borders” (Spijkerboer 2007: 127). While different scientists have identified border control as contributing merely indirectly to the number of fatalities,¹³ Spijkerboer comes to conclude that the rising number of migrant fatalities is “a result of increased border control” (ibid). Duly acknowledging that there is no consistent evidence base from which to derive such claims, Spijkerboer rather points to the paradox of the situation, namely that border control practices are thought of as both a counter measure and a cause of migrants’ death. He argues that a reliable data base would not only allow for validity checks against political claims, but would also allow open discussions on the legality of (supranational) border control.

“Getting more and more precise data would enable us to discuss the validity of the proposition often made by European governments, holding that border deaths can be combated by combating irregular migration. As matters stand now, it seems more likely that the reverse is true: border deaths increase as a consequence of intensified border control. This effect of increased border control has bearings on its legality which have yet to be assessed.” (Spijkerboer 2007: 139)

Despite the declared political relevance of data on this topic to border policy in Europe, the paucity of any official count of migrants’ deaths had *not* been overcome in 2015. In 2014 Spijkerboer and Last wrote a report for the IOM; they noted that “[a]gencies that deal directly with migrants attempting to cross the southern EU border without authorization, such as the national coast guards and Frontex, do not include data on deaths in their annual reports or statistics” (Last/Spijkerboer 2014: 96). Considering the fact that Frontex hosts an entire Risk Analysis Unit, which collects and processes various border related data from member states and international agencies such as EUROPOL and European Maritime Safety Agency (EMSA), this official non-knowledge is hardly intelligible. The explanation might be found in the political weight of the numbers. To officially register cases means to officially accept liability. Governments would

13 Carling approaches this question with a quantitative research design and concludes that “it is difficult to claim that the control measures are directly responsible for the increasing number of fatalities. Apparently, the growth in the number of deaths results from an increased number of migration attempts, combined with a constant or slightly falling risk of dying on the way” (Carling 2007a: 340).

have to relate to those numbers. Even though causal responsibility of EU border enforcement practices with regard to fatalities cannot be verified, this does not relinquish EU governments from doing something about the death toll.

“The obligation of a State to take appropriate steps to safeguard lives is not conditioned on a causal relationship between the State’s actions and someone’s death. Rather, the obligation is triggered by the State’s *knowledge* that a particular life is at risk and that same State’s *ability* to do something about it.” (Spijkerboer 2007: 138, emphasis added)

The relation between *knowledge* on a particular risky pattern and the *ability* to mitigate the risk is also illustrated in the example of road fatalities. In that case, the prevention of movement by repression is reported to be successful, that is, an increase in control pressure is claimed to reduce the number of road fatalities. This is the impetus of European states’ argument that fighting migration means fighting related deaths: an intensification of border control would thus reduce the migrants’ death toll. A government is not responsible if someone died while crossing the road, yet, if the street had been known to be busy, a traffic light or zebra crossing could have been installed to prevent such a death. Applied to border control, the question is whether increased surveillance increases the risk of trips going wrong or in the bolstering of their safety. Again, it is the decision between hunter and friend which suggests an answer in this case.

Kiza considers the increase in the number of fatalities a possible Achilles’ heel “of the EU strategy of a criminalization and securitization of migration” (Kiza 2008: 213), as the escalation, more than the actual number, would impeach the effectiveness and legality of border policies in the Mediterranean.

The available data on refugees and migrants who died on their way to Europe has been collected by activists or NGOs in an attempt to document and denounce states’ border control practices. NGOs document and count the number of deaths they attribute to EU border policies and practices. Even though these have turned into “the primary sources of data on border related deaths in the Mediterranean” (Last/Spijkerboer 2014: 96), their statistics are far from functioning as a monitoring mechanism. Recent accounts of the death toll by the Migration Policy Center (Bruycker/Di Bartolomeo/Fargues 2013) and IOM (Brian/Laczko 2014b) thus criticize the fact that governments do not monitor the impact of their practices themselves.

The international non-governmental organization UNITED for Intercultural Action (UNITED) has started listing the deaths of refugees and migrants, which it considers related to European states’ immigration and border control policies

and practices.¹⁴ The UNITED list of deaths compiles the dates migrants were found, the number of fatalities, the causes of death, countries of origin and the sources which reported on the incident. UNITED thereby provides a starting point for long-term research on the matter.¹⁵ The list not only includes deaths that occurred at the border but also those that can be attributed to the migratory journey: death in the Sahara or in transit countries, death or suicide in detention centers, death as a stowaway, as victims of racist attacks in Europe, or homeless. While the list functions as a reminder and as a monitoring instrument, these cases are included to illustrate the range of effects attributed to EU border policies, even if the fatality did not occur at or along the geographic border. Last and Spijkerboer have filtered the UNITED list of deaths for those cases which have directly occurred “during the attempt to cross a southern EU external border” (Last/Spijkerboer 2014: 92). They counted 14,600 out of the 17,306 cases UNITED listed between 1993 and November 2012.

The second alternative source is the blog of “Fortress Europe,” initiated by Gabriel del Grande, an Italian journalist and writer. Between 1988 until October 2014, the blog listed 21,439 deaths.¹⁶ Working with this data, the Migration Policy Center (MPC) has produced two reports, narrowing down the numbers to those cases that relate to maritime crossings (Bruycker/Di Bartolomeo/Fargues 2013; Fargues/Bonfanti 2014). Their methodology resulted in counting “15,016 dead and missing persons [...] from January 1998 till September 30, 2014” (Fargues/Bonfanti 2014: 5).¹⁷ Already in 2008, Ernesto Kiza argues that the mass

14 On June 20, 2015, the International Refugee Day, UNITED published an updated list of deaths, and states that between 1993 and 2015 “at least 22,000 refugee deaths can be attributed to the ‘Fatal Policies of Fortress Europe,’” at: <http://unitedagainstre Refugee deaths.eu/about-the-campaign/about-the-united-list-of-deaths/> (accessed August 25, 2015).

15 The documentation of UNITED has been used by Carling (2007a) and Kiza (2008), who examined the relation between border enforcement and migrant fatalities.

16 Gabriel del Grande, Blog “Fortress Europe” at: <http://fortresseurope.blogspot.de/> (accessed February 1, 2017). In October 2019, the Italian site of the blog, which provides translations to 20 languages, lists reports to February 2016.

17 Comparing the list on the Fortress Europe blog to the UNITED list of death, Last and Spijkerboer found a more extensive coverage of the Egyptian (Sinai)-Israeli border and the Sahara in the Fortress Europe blog and a more comprehensive coverage of Greece and Spain in the UNITED list of death (Last/Spijkerboer 2014: 92), which stresses again that quantifying the death toll always remains partial.

victimization in the Mediterranean shows an “ever clearer escalation dynamics” (Kiza 2008: 213). This trend has continued to aggravate until today. In 2013 Bruycker and colleagues found that

“the maritime route to Europe is amongst the most dangerous in the world. Moreover, the last section [the boat passage, S.E.], at the gate of the EU, is the most lethal, and mortality during the journey has increased considerably in the last decade (Bruycker/Di Bartolomeo/Fargues 2013: 4).

Likewise, IOM concludes that in 2014, the Mediterranean has been “the deadliest sea in the world for migrants” (Brian/Laczko 2014a: 20), with deaths related to the crossing making for 75 per cent of all migrants’ death in that year.

8.1.4 What Contributes to the Trip Being Increasingly Lethal?

Available data suggests that the number of fatalities rises and falls in roughly the same way as the number of arrivals by sea. This rather general description updates Carling’s 2007 finding to June 2015.

Yet, what does the relation between arrivals and fatalities tell us? Does it suggest a mere proportional relationship in the sense that the number of fatalities depends on the number of persons who migrate by sea? Is the risk of dying at sea normally distributed? In order to assess this question, we can first look at whether the risk of dying at sea has changed over time – that is, whether certain periods of time were more lethal than others despite the general trend. Carling (2007a: 331-336) proposes calculating a migrant mortality rate (MMR), which shows the relation between dead and missing and departures. Following Carling, departures are estimated as the number of dead and missing plus the number of arrivals (*ibid*: 332).

There are several restrictions with regard to the reliability of the data and thus also problems with regard to the validity of an MMR. Both the number of arrivals as well as the number of dead and missing persons might be under-recorded. This could also vary in degree at different points in time. For instance, during the 1990s, undocumented migration to Spain was estimated to be almost 50 per cent of the general migratory influx (Carling 2007a). However, and in strong contrast, in 2011, Frontex officials estimated that 98 per cent were detected before arriving at European shores. Consequently, only two per cent of arri-

vals were undocumented.¹⁸ As discussed above, the number of dead and missing can only be taken as a minimum estimate. Both factors, however, change the MMR. If detections work well and most arrivals are counted, but the number of deaths at sea is not reported accurately, the statistical risk of dying at sea decreases. Likewise, if the quality of data on deaths at sea remains the same, while arrivals succeed undetected, the calculated risk is higher than empirical observations lead us to believe. In any case, the question of what contributes to the trip being increasingly lethal cannot be found using the MMR.

An evaluation of the contributing factors suffers from both the classical out-of-sight-out-of-mind problem related to issues at sea, and the secrecy of border enforcement's operational information. Overall, six different explanations have been proposed as contributing factors to the increasing victimization of migrants in the Mediterranean: first, the condition of the vessels; second, the the smuggling business; third, EU border enforcement measures and policies; fourth, the involvement of authorities; fifth, self-endangerment, and sixth, diffusion of responsibility.

However, when considered more closely, these explanations interfere with each other in an odd way and reveal the possible political interpretations which are implicitly there. The vessel, for instance, has been identified as a serious risk both in policy research, such as by UNODC, and in academic research as well as in investigative journalism. The causes of fatal accidents have been attributed to the poor state of many vessels, or to the fact that these kinds of small fishing boats or inflatable dinghies are not made for sea voyages. Ernesto Kiza, for instance, researched the victimization of migrants *en route* for the case of the southern EU borders between 1999 and 2004. Kiza demonstrates that "the vehicle most used in the context of undocumented migration from South to North is [...] simultaneously the most problematic and dangerous" (Kiza 2008: 237). Based on data from UNITED, Kiza's study documents an increase in the use of boats for clandestine seaborne migration (ibid: 213-323, 241). In comparison to other means of transport (he further accounts the categories walking, swimming, container, lorry, and others), between 80 and 96 per cent of cases in the sample period used boats (ibid: 238). According to Kiza, three problems are related to the utilization of boats in this context. First, the carrying capacity of the vessel is usually exceeded; second, the poor condition of the vessel itself (leakages, engine failure); and third, a lack of qualified operators on board the vessels (ibid:

18 Head of Sea Border Sector at Frontex and colleague, personal interview (May 27, 2011).

239). These deficiencies are, however, either attributed to economic reasoning, that is, commercialized migration facilitation, or to border enforcement measures. Italy provides an instructive example in the latter case. There, “ultra-modern speedboats (zodiacs) of the ‘*scafisti*’ [smugglers]” have been replaced by hardly seaworthy fishing vessels (ibid: 337-338). Likewise, in Spain, it could be observed that the deployment of seaworthy *pateras* which were hitherto used for regional fishing and had been appropriated for migration purposes, have been replaced by *pateras* which were ‘adjusted’ by deteriorating the vessels state to the business of transporting migrants clandestinely (ibid: 338). It has been suggested that the condition of the vessel was adjusted to and provoked by border enforcement measures and the narrow admission requirement of ‘being almost in distress.’ Moreover, tight border controls increased the number of deaths as the maritime journeys were forced to take more dangerous detours. In addition, tougher border controls increased the costs of being transported. Different forms of self-endangerment have been advanced with regard to the increasing death toll in the Mediterranean. Different officials mentioned to me that migrants would deliberately provoke a distress situation in order to force border guards to take them on board. Other forms of self-endangerment include panic aboard the vessels, or throwing navigational equipment aboard when being spotted by a helicopter or aircraft. Technical problems to send a rescue call were also mentioned.

Yet again, this contradicts the observations of journalist Wolfgang Bauer during his attempt to across the Mediterranean in a boat among Syrian refugees. According to Bauer, the transportation business has developed into an economically competitive market, and bad service might result in passengers denouncing smugglers or middlemen to authorities. Furthermore, with the money for the trip being left with middlemen, trips are often only paid after the successful completion of the journey. Smugglers thus have an interest in organizing a safe trip. For every person making the journey attracts five new clients.¹⁹

Ultimately, the diffusion and, at times, avoidance of responsibility for rescue at sea, which Silja Klepp already observed in 2007 in her ethnography on the maritime boundary in the Mediterranean, remains difficult to pinpoint. At the same time, public discourse has become used to blaming fatalities to the unseaworthiness of boats, the greed or cruelty of smugglers, and an argument that has been foregrounded since 2015: the pull-factor of rescue measures. Overall, access to the operational field has proven difficult for researchers. This is precisely why it

19 Journalist Bauer, telephone interview (June 2014).

is so difficult to verify or denounce the claim that better surveillance and a better exchange of information would contribute to saving lives at sea. If there is hardly any reliable, official data, and if, at the same time, democratic and public control is limited by reference to the operational nature of border enforcement, this means that the relation between border policies and enforcement measures and the loss of lives at sea cannot be officially assessed. However, the fact that Frontex stated that 98 per cent of boats were detected raises questions of why an increasing number of people die while at the same time more boats are being spotted. Finally, with regard to the justification of EUROSUR, it is remarkable that among all the reasons discussed in media and academia, the alleged lack of surveillance and of interagency cooperation and good communication has not been mentioned as a factor contributing to the increasing death toll.

8.1.5 The Passage: ... at Sea ... on Board, and Under Cover of Darkness

In the context of flight and migration by sea, the small boat not only stands for a means of transport, but also for the *condition of being transported*. Testimonies of this “modern Odyssey”²⁰ are, however, rare. For example, even though legal anthropologist Silja Klepp conversed with different migrants, she only cites two testimonies of the actual experience of being on board a migrant vessel, and those are rather evasive. A woman with whom she met several times in Hal Far on Malta assures “she had been asleep for the entire time of the journey of four night and four days” (Klepp 2011: 219). Another migrant Klepp spoke with didn’t want to talk too long about the sea journey and gave a staccato memory of the passage:

“We spent three days and three nights on the water. For two days and nights we met no one at sea, but then a Tunisian fishing boat supplied us with a few bottles of water and bread. During all of the crossing we prayed to Allah. Especially the darkness of the night made us afraid. Then we saw other fishing boats. We thought we were on the way to Italy, and drove on in the same direction. We had a compass with us. But then we found ourselves in the port of La Valletta, and the police and an ambulance were waiting for us.” (quoted in Klepp 2011: 219)

20 Journalist Bauer, telephone interview (June 2014).

The anthropologist reflects that it became successively clear to her, “that to all who cross the Mediterranean this way, it means a traumatic experience of which no one easily speaks” (Klepp 2011: 219). By contrast, Ruben Andersson’s research in Senegal revealed that testimony is not only an individual’s story, but also a sellable thing, a product of specific expectations, namely “stories of deaths and suffering at sea” (Andersson 2010: 40). Not to mention these are also products in increasing demand, “[j]ournalists, police, academics, aid workers and research students [...] have combed the terrain for interviews with migrants and repatriates” (ibid). There is enough reason and opportunity to only tell one’s story for money: “For a small sum, I’ll give you three or four guys,” was the ‘special offer’ made to the anthropologist, “10,000 cfa (15€) is enough, since you are a research student” (ibid). Journalists had reportedly paid tenfold.

Trauma-related speechlessness on the one hand, commodified and exoticized suffering on the other – and in-between: the passage, without witness.

The passage seems to be a *dark field* in every sense of the word. In fact, darkness is as much a prerequisite to a successful, that is, undetected embarkation, as it is the disquieting condition of several hours of the journey. While embarkation can only be unreeled under cover of darkness, darkness aboard a vessel merges up and down, vanishes orientation, and renders the horizon invisible. Under cover of darkness equally means to be at its mercy. The sea carries this ambivalence between functional necessity and essential threat, too. The water covers the tracks of routes, but also causes deaths at sea to vanish. It carries the boat, but might as well swallow the vehicle along with its passengers.²¹ Recon-

21 This sensation is powerfully worked out in Nam Le’s short story “The Boat,” Nam Le describes the atmosphere of darkness at sea as a “black syrup” (Le 2008: 233) and a “viscid space without reference or light or sound” (Le 2008: 233) and follows the experiences of a girl, called Mai on board a foundering vessel in the South China Sea. I consider it necessary to provide an impression of the probable condition on board a refugee-vessel, and this condition and even the imagination of these conditions blend into the political handling of the phenomenon. For it is a lived experience and not merely an attested trauma. In order to evoke a possible atmosphere, I shall ‘import’ fiction: “Finally the storm arrived in force. The remaining light drained out of the hold. Wind screamed through the cracks. She felt the panicked limbs, people clawing for direction, sudden slaps of ice-cold water, the banging and shapeless shouts from the deck above. The whole world reeled. Everywhere the stink of vomit. Her stomach forced up, squashed through her throat. So this was what it was like, she thought, the

sidering Habib Buhari's statement against this background, it becomes apparent that the only emotion mentioned refers to the darkness of the night. Water and bread, prayer and compass are tools for the passage. There is no mention of hunger or thirst, uncertainty, panic or hope. The profound experience of being existentially at mercy of the dark sea underpins his halting account of the passage. In reports to the European spectator, these sensations are translated into soundbites: "When I was on board the vessel, I thought I was dead," stated a migrant in a documentary of 'their journey' on German television – and at this point I would not need a reference as it is a ubiquitous and random quote. The passage which "depending on the places of embarkation and destination [...] can last anywhere between 2 hours and 30 days" (UNODC 2011: 30) remains hidden from view.

ZEIT-journalist Wolfgang Bauer was the first journalist to actually cover the seaborne passage. He provided insights into the organization of crossings from Egypt. Together with the photographer Stanislav Krupar, Bauer clandestinely joined a group of Syrian refugees trying to get from Egypt to Italy by boat across the sea (Bauer 2014). The documentary starts with an interesting decision: based on rumors about the different conditions of vessels deployed for the trip, the journalists decided not to start from Libya or Tunisia, but from Egypt. From Libya or Tunisia "the distance to Italy is shorter, but the boats are extremely dilapidated. The Egyptian smugglers have to travel a larger distance, but therefore deploy better ships" (ibid: 14). On first account, the crossing seemed to be the

moment before death. She closed her eyes, swallowed compulsively; tried to close out the crawling blackness, the howl of the wind. She tried to recall her father's stories – storms at sea, waves ten, fifteen, meters high! – but they rang shallow against what she'd just seen: those dense roaring slabs of water, sky churning overhead like a puddle being mucked with a stick. She was crammed in by a boatload of human bodies, thinking of her father and becoming overwhelmed, slowly, with loneliness. As much loneliness as fear. Concentrate, she told herself, And she did – forcing herself to concentrate, if not – if she was unable to – on the thought of her family, then on the contact of flesh pressed against her on every side, the human warmth, felling every square inch of skin against her body and through it the shared consciousness of – what? Death? Fear? Surrender? She stayed in that human cocoon, heaving and rolling, concentrating, until it was over" (Le 2008: 231-232). The blanket atmosphere of the elements, of water and wind, and of an omnivorous darkness, the narrowness, the smell, the bodily surrender, these descriptions cut through the soundbites sought after by media coverage.

most disturbing part of the journey. In his report, Bauer quickly relativizes this concern: “We thought that the sea is the greatest danger on our journey. Yet the greatest danger lurked: on land” (ibid). The journalist then provided a fascinating insight into the business of commercialized migration facilitation and its different legs: different means of transport, different hideouts, different profiteers, kidnapping, protection racket and the permanent uncertainty about when the vessel will be ready.

The refugees are in an awkward manner both clients and commodities on which ‘local migration lords’ base their businesses. The crossing itself, however, did not succeed. Their boat was detected in Egyptian territorial waters, all passengers were detained and the journalists had to reveal their identity and were deported to Turkey.

In a telephone conversation, Bauer described the moment his group was able to “change the medium from land, with all its diffuse uncertainties, to the sea into a boat” as a “great moment.” Most of the fellow passengers had a blissful smile on their face when finally being on board. At last, the journey was no longer a pretense of concealment or “a game of hide-and-seek.” All the diffuse feelings, the uncertainty, was washed-up since “the boat is very concrete.” This was particularly so, since while waiting and hiding, being in vulnerable diffuse fear, it had always been unclear whether there will be a boat at all, that is, whether the final leap will be possible and dared at last. “So in the beginning,” states Bauer,

“there is less fear. When you’re first on the boat, you have first and foremost a feeling of relief. Being on the boat is like being on the rail, an apparent automatism, no more hiding. It’s a kind of congratulatory moment. That changes, of course, depending on the progress of this modern Odyssey.”²²

Yet again, the European spectators’ knowledge about the precise nature of this course remains dark. Whatever occurs during passage, when turning up on Europe’s public horizon, it is in the form of an overcrowded boat. Individual testimonies, the passengers themselves remain mute and visually aggregated to a boatload of people, to the visual image of the cramped and unseaworthy small boat. All that which is not known is compensated by the taken-for-granted, explanatory image of the migrant vessel, to which I will now turn.

22 Journalist Bauer, telephone interview (June 2014).

8.2 “WHEN YOU SEE THE BOAT, THE BOAT TELLS THE STORY”

The statement heading this section was given toward the end of an interview conversation with two Frontex officials from the Sea Borders Sector in the agency's headquarter in Warsaw. The scheduled time for the interview ran out, and the PR officer entered the room as to guide me to the next interview she had scheduled for me. “Do you see your job adequately represented in the media coverage,” was the final question my interview-guideline prompted; and despite the shortage of time, it provoked a twenty minute answer. The two Frontex officials answered in an engaged manner, stating that the mandate of Frontex was poorly understood. They felt that the media coverage was wrongly focused. Reports would focus on humanitarian issues while it was criminal networks that border management was dealing with. Underlining the fact that migrants were victims and that the facilitators were the targets of border control and surveillance activities, the officers provided printouts of photographs of drugs detected on board a small vessel and of crowded boats. They mentioned different stories of migrants who, during debriefing, described their situations as vulnerable. According to the Frontex officials, the majority of migrants have no idea about what they got themselves into. Thus, they would end up in a situation at mercy of facilitators, who, in a low risk/high profit business, took advantage of migrants' aspirations. One of the officers stated that the amount of money which was generated through these illegal networks was shocking to him, and that considering Frontex's limited budget and capacities, he always felt one step behind.²³ While the officers of the Sea Border Sector presented their images of the issue at stake as corrective to one-sided media coverage, the PR officer joined in providing demonstrative evidence, stating that migrants were taken in by facilitators. Referring to the photographic material on Frontex's website, she concluded:

“If you look at the photos, some of which are on our website, you can see the boats that people come on. [...] I mean this is, when you see the boat, the boat tells the story. And sometimes the boats are supposed to have hundreds of people. I mean, it's self-explanatory.”²⁴

23 Head of Sea Border Sector at Frontex and colleague, personal interview (May 27, 2011).

24 Press officer at Frontex, conversation aside from the interview with the officials from the Sea Border Sector at Frontex (May 27, 2011).

According to the Frontex officials, the boats clearly indicate the carelessness of the facilitators, the profitability of the smuggling business, as well as migrants' cluelessness. In a similarly obvious way, the boat represents the misery of the migrants on board. "The boat tells the story." Yet, what story is this exactly? And how does it become involved in politics?

In the EU media, the condition of the migrants' vessel as unseaworthy, small, overcrowded, wooden or rusty is referred to as an almost explanatory variable. In fact, the standard reference to the condition of the boat is not infrequently the explanatory punchline to any news about seaborne migration. Maegan Hendow, for instance, writes that the passage turns "a dangerous trek for the old and overcapacity boats used for the journey" (2013: 193). In her article on "Tunisian Migrant Journeys," she underlines the lack in safety of the maritime trip to which the condition of the vessels – "overcrowded and often dilapidated" (ibid) – contributes to a large extent. The amount of agency attributed to the vessel is noteworthy. It is the vessel whose capacity is exceeded, and to whom the trip is dangerous. At the same time, the safety of many trips is, in fact, compromised by the condition of the vessel and the number of people on board. Yet, this image not only describes a condition, it is explanation and rubric.

Apart from the factual deficiencies of migratory vessels – which I am explicitly not denying – images of crowded and unseaworthy vessels have become an archetypal image, an icon, almost used as taken-for granted explanation rather than individual testimony. Pictures and photographs are used as interchangeable images. This section deciphers within the taken-for-granted suggestion quoted from the Frontex officials. It takes apart the obvious idea about the scrupulous smuggler, the unseaworthy and crowded boats, and the migrant at mercy – at mercy of the smuggler, the boat and the sea. In order to do so, I will take issue with its three recurring attributes – overcrowded, small and unseaworthy – and ask for their problematization and appropriation in politics. Concomitantly, the following explorations decipher the "vehicle-body entanglements" (Walters 2011: 6), which the strangely undividable hybrids of the refugee boat and the boat-people represent: A crowd of people bound to, put into, dependent on and visually integrated with their means of transport. Analyzing this depiction of transport, the image of the cramped, unseaworthy, and small vessel, can reveal how the politics of pity and risk (Aradau 2004) underpin the emergence of an EU border mandate.

8.2.1 Overcrowded – “The Boat is Full”

If something is full, matters are beyond enough; a limit is met, almost exceeded. Crammed vessels indicate the scarcity of space, to the extent that more (for the case of vessels additional passengers or cargo) means shipwreck and an end to all. The almost over-capacity vessel is both a visual and verbal metaphor. Along with the expression “Das Boot ist voll” (“The boat is full”) comes an impetus of scarcity of space, resources and capacities, which has prominently, yet controversially characterized the asylum debate in Switzerland since the Second World War and reappears then and again in the German public debate on migration and asylum policies. Even though this allusion appears askew and inadequate vis-à-vis jam-packed migrant vessels in the Mediterranean, a careful consideration reveals overlaps and their absurdities.

What turned into a metaphor of political rhetoric, *Das Boot ist voll*, is the title of a book by the Swiss journalist and writer Alfred Häsler (2008 [1967]) in which he critically engaged with Swiss refugee policy during the Second World War.²⁵ In Switzerland, the reception of particularly Jewish refugees was a controversial issue during war-time, with the metaphor of the lifeboat igniting public controversies. Eduard von Steiger, a member of Swiss government, introduced the expression during a talk in Zürich, where he metaphorically compared Switzerland to a lifeboat:

“Who has to commandeer a strong, already occupied lifeboat with limited capacity and limited inventory while a thousand victims of a shipwreck scream for rescue, it seems hard to measure when he can’t take them all.” (quoted in Häsler 2008 [1967]: 170)

The emphasis Steiger stressed was that of an ethically bitter, but necessary decision; as the lifeboat has limited capacities, reception must be limited too.²⁶

Even though the metaphor was controversially discussed in Swiss parliament, it hit the mark of the Swiss self-image as caring, humanitarian, yet reasonable and neutral (Häsler 2008 [1967]: 160-185).²⁷ After the war, the emphasis of

25 The English edition appeared in 1969 titled “The lifeboat is full”.

26 An approximate 20,000 political refugees, most of them Jews, had been refused entry into Switzerland or had been taken back beyond the border, another 14,500 entry permits had been refused. At the same time protection was granted to an approximate 60,000 civilians (de Weck 2008 in Häsler 2008 [1967]: XVIII-XVIII).

27 Cf. Kreis (2006) for a discussion.

the lifeboat metaphor was shifted toward the humanitarian aspect. “Switzerland imagined and presented itself as a humanitarian haven that had given protection to those who had needed it” (Falk 2010: 85). This impetus was particularly conveyed by a poster made by the Swiss painter Victor Surbek.²⁸ The 128x271 cm poster presents Switzerland as an open lifeboat, the Swiss flag is set on the right side of the vessel behind four strong, rowing, helmeted Swiss soldiers.

The sea is depicted as rough and dark. On the left side, three rescued persons, two adults and one child, sit wrapped in blankets. In the middle of the vessel, another rescued, bare-chested person is lying on the lap of someone else, mimetically representing the Pietà (the Christian allegory of pity). Even though there is not much room left in the lifeboat, a strong man stretches out his hand to someone drowning. The poster “was used for an exhibit that was displayed in several Swiss cities just after the war. The aim of the poster was to collect money for the war-damaged countries of Europe” (ibid). The self-portrayal was condensed in the verbal and visual metaphor of the lifeboat, and this allowed for both the performance of a humanitarian image and the justification of its limits. The lifeboat is the materialized necessity to triage the needy.

In his 1967 book, Häslar took issue with the Swiss self-portrayal of a humanitarian neighbor to Nazi Germany and criticized the self-righteous justification of legitimate rejection. Against the background of the Indochina refugee crisis in 1979, Häslar challenged Swiss asylum policies again. He published an article in *Die Weltwoche* entitled “Unser Boot ist nicht voll” (Engl.: *Our boat is not full*), in which he urged for the Swiss government to accept more refugees (Kreis 2006: 342). The Swiss self-portrayal as lifeboat with limited capacities was rendered absurd, in view of these images of crammed refugee boats in the middle of the sea. When faced with these boats, the legitimacy to worry about one’s own vessel, which rather resembled a container ship than a lifeboat, was rendered problematic. The question of whose capacities are actually exhausted has been picked up by several caricatures since then. Yet, in addition to the impetus of comparison, which had been fostered by these cartoons and images, the new agency of the refugees, who themselves attempt to save their lives by taking boats, became apparent. As refugees and migrants themselves took boats to save their lives, the depiction of the lifeboat was fundamentally jarred. Even though the image of the (nearly) over-capacity lifeboat was challenged, the metaphor remained an established part of the Swiss asylum debate (Kreis 2006).

28 Francesca Falk (2010, 2011) has analyzed Surbek’s poster convincingly; and I follow her analysis here. Surbek’s poster is reproduced in her publications.

In the early 1990s, the metaphor was also used in Germany. Initially, it was only deployed in the right-wing political discourse, such as on the election poster of the National Democratic Party of Germany (NPD). However, in August and September 1991, leading German newspapers such as *Der Spiegel* and *Frankfurter Allgemeine Zeitung* introduced the metaphor into mainstream discourse (Pagenstecher 2008a).

Yet again, even though the metaphor prevailed, the image of the refugee related to it changed fundamentally. This was triggered and reflected by the Benetton Poster by Oliviero Toscani which recalled the 1991 Vlora incident. Even though the metaphor of the overcapacity boat prevailed, the visual image fundamentally confounded its very own metaphor, giving it just another spin.

Catachresis I: Masses on Vessels – The 1991 Vlora Incident

When the cargo ship Vlora landed in the Albanian port of Durrës to unload sugar from Cuba on August 7, 1991, approximately 10,000 Albanians took over the ship and forced the captain, Halim Milaqi, to take them to Italy. It was reported that tens thousands of Albanians were waiting at the port of Durrës “in the hope of going on board ships that would take them to Italy”²⁹. “My father called me,” an Albanian pizza baker is later quoted in *Der Spiegel*, “he told me that 50,000 people besieged the port of Durres” (N.N. 1991: 122). The next day, the Vlora approached the coast of Puglia and forced its way into the port of Bari with an estimated 10,000 Albanian nationals on board.³⁰ After being allowed to disembark for humanitarian reasons, the passengers were led to La Vittoria Sports Stadium and detained there. When the Italian authorities organized immediate repatriations, clashes broke out between the Italian police and the Vlora passengers. While being detained, the Albanians used iron bars and pieces of the stadium’s building material to fight the police. Water and food supplies were dropped into the sports arena from a helicopter. The situation was dramatic, *Der Spiegel* reported “a Dantesque inferno” (ibid). The masses of Durrës who, rather than waiting for a Swiss life boat, hijacked a random cargo freighter to make their way, were finally repatriated by an “armada of ferries, troopships and aircrafts” (ibid). The harsh and prompt deportation of the majority of the Vlora’s passengers by

29 Parliamentary Assembly of the Council of Europe (PACE) Report on the Exodus of Albanian Nationals (1992: para. 23). The PACE Report is only available in excerpts at: <http://migrantsatsea.org/tag/vlora/> (accessed February 1, 2017).

30 Ibid, para. 25.

the Italian government was interpreted as a signal to the Schengen group (Pagenstecher 2008b: 609) that Italy was about to join.

The takeover of the Vlora in Durrës was captured in a photograph by the Albanian Telegraphic Agency (Pagenstecher 2008b: 610), which became known for recalling the disembarkation at Bari on August, 8, 1991. It was used under this heading in the context of a controversial commercial campaign, which printed “realistic” photographs, for instance, of blood-soaked clothes, victims of war, or HIV carriers.³¹ “Regardless of the controversy discussed in press agencies, press councils and feuillets regarding whether one should advertise using misery and death for fashion, the image of migration was listed as one of the most dreadful images of the decade” (ibid: 609). This was in spite of the fact that the artist who designed the “Vlora-poster,” Oliviero Toscani, might have used the photograph in a sarcastic, provocative and ambivalent manner (Scorzin 2010: 103-104) by pointing to the absurdity of whose boat was full. The image became emblematic for Europe’s redefined view on refugees and migration.

The depiction differs fundamentally from the image of the refugee that underpinned the Geneva Convention and the Cold War period. It was no longer families or heroic political refugees which were on the move and needed protection (Salomon 1991). Flight and migration was rather identified with undifferentiated, yet insurrectionary masses.³² Chimni’s essay is classic in describing the shift in perception with regard to the figure of the refugee post the Cold War. He shows that the “image of a ‘normal’ refugee – white, male, anti-communist” led to a justified rejection with regard to the ‘masses from the global South’ who were “here for no good reason, [...] abused hospitality, and [...] [whose] number were too large” (Chimni 1998: 357). This “myth of difference” was centrally based on the notion of masses. The notion of masses blurred any difference between migration and flight, as well as individual biographical and legal issues. While individuals are attested to a capacity to act and speak, as well as an individual biography and a reason to migrate, “masses are portrayed as elemental”

31 For a visual impression of the 1992 campaign of United Colors of Benetton by Oliviero Toscani see the poster collection at the Museum für Gestaltung Zürich, at: <https://www.eguide.ch/de/objekt/united-colors-of-benetton/> (accessed December 20, 2019).

32 For the transformation of the construction of the figure of the refugee since the Geneva Convention, see Salomon (1991). Katharina Inhetveen aptly describes the dominant self-conception in Europe: “one isn’t a refugee, one was a refugee” (Inhetveen 2010: 150).

(Johnson 2011: 1029).³³ They therefore appear overwhelming, as existential threats to the receiving countries.

Moreover, public imagination of the refugee and migrants as masses goes in line with alienation, distancing, and a form of othering. The gaze at masses has a distancing effect. In this sense, Susanne Luedemann commented that one who “writes on masses cannot be and does not want to be part of it” (Luedemann 2012: 105). The notion of masses is based on a gaze from a distance, as viewed from the land or even from above. With regard to masses on vessels, it includes the possibility of observing the shipwreck from a distance, wondering why they even embarked under these conditions with an almost scientific curiosity (Blumenberg 1997). It is this curious-yet-distant gaze that allows one to evaluate and assess: the refugee status, the intention of migration, the reasons to move, the trustworthiness of the refugee, the organization of the journey. The relation between the observer and the masses has been described as a “relation of distanced criticism, even condemnation” (Luedemann 2012: 105). The crowd that empowers itself disputes the idea of the individual who is fleeing for reasons of political prosecution, that is, the refugee of the 1951 Geneva Convention.³⁴ Thereby, the image of the masses allows for justifying the necessity to limit admission. In the sense, the image ‘masses on vessels’ triggered EU bordering, even though their boat was indeed, much more overcapacity than their ships of state.

Just as Surbek’s poster provides both justification and a portrayal of humanitarian and restrictive asylum policies, the image of the Vlora illustrates a similar ambivalence: the grief of the many is obvious, but the reference to their sheer

33 In fact, Johnson argues that this link to the elemental and the savage has only been unpacked as regards (non-white) refugees from the South: “It is in the commentary on refugees in Africa and Asia that references begin to refer to ‘floods,’ ‘flows,’ and ‘hordes’ of refugees. Rather than individuals, refugees began to represent masses of people moving across borders – not fleeing persecution, as outlined in the Convention, but fleeing violence and war, intimidating in their numbers” (Johnson 2011: 1023).

34 The Geneva Convention defined that refugee status may be granted to a person who as a “result of events occurring before January 1, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” United Nations (1951) Convention on the Status of Refugees, Art.1 A (2).

numbers limits admission capacities. Thus, it might not be by chance that journalist Michael Schwelien (2004) used the photograph as book cover to his 2004 monograph, “Das Boot ist voll. Europa zwischen Nächstenliebe und Selbstschutz” (Engl.: *The boat is full. Europe between humanitarianism and self-protection*). Whose vessel – Europe’s ship of state or the migrants’ boat? Yet, there is one further catachresis in the context of Europe bound flight and migration: migrants and refugees appear as a mixed flow in overcrowded fishing vessels – no longer as an event, but as established phenomenon. In this context, the active insurgent masses are transformed into an immobile crowd. Aboard small fishing vessels, boatloads of African migrants travel toward Europe.

Catachresis II: Europe’s Other aboard Overcrowded Pateras, Cayucos, or Rubber Dinghies

Careful consideration reveals that it is merely the image of masses which is maintained, rather than an actual comparability in numbers. As we have seen above, in the 1990s, *pateras* boats from Morocco to Spain were reported to carry between ten and 30 passengers. During the first decade of the new millennium the number of passengers per vessel ranged between approximately 150 and 400. According to Fargues and Bonfanti (2014: 2), between 1998 and 2013 there was an annual average of 44,000 migrants who arrived on boats. Yet, the depiction as masses was and still is present, and supports and reproduces the myth of invasion (Haas 2008).

Migrants appear “tightly packed” in overcrowded vessels and as a result, there is a visual depiction of masses which is maintained, and which suggest that there are “too many of them.” The “visual type” (Walters 2014: 7) of the overcrowded vessel suggests that there are too many migrants on board, both for the vessel to be seaworthy as well as for European receiving states. Furthermore, the image of the boatload of people makes it difficult to distinguish them visually as individuals. Integrated with and stuffed into the vessel, they present one image and also one case to Europe’s public imagination.

When they become visible on Europe’s public horizon, their boat is not almost full, but already overloaded. This fundamentally differs from the lifeboat scenario. While rescue and humanitarian assistance follows criteria of need, the crowd necessitates sorting them out. The notion of being overcrowded thus provides the basis for the myth of difference (Chimni 1998) and also provides the justification for screening, sorting, and debriefing migrants. Moreover, when characterized as “armada of the poor and desperate” (ZDF 2014), boat passengers are both victim and threat in one and the same boat. Therefore, the oscillat-

ing reference to migrants and refugees is possible because they appear as undifferentiated boatloads.

In addition, the image of a “collective body of migrants appearing on western shores offers up a spectacle of clandestinity,” whereby those considered illegal appear as irrational savages, incomprehensible to such a point that they can be studied (Andersson 2010: 43). The depiction of a cramped vessel in the middle of the sea stirs up fear *and* incomprehension. As emphatic emotion (“What if I was in their place?”), there is the fear that an overcrowded boat might capsize. The fear emerges vis-à-vis an existential threat. Yet, rather than a fellow feeling, this empathy is based on pity and commiseration. From the perspective of the EU-based spectator, incomprehension (rather than catharsis) dominates the gaze on the image. “No wonder, they don’t reach if they travel under these conditions. How reckless, and yet, how desperate must they have been?” could be the inner monologue of the European spectator. Apart from the questioning of identity and legality which serves to somewhat “localize” the person, there is a general devaluation of the entire endeavor of maritime migration. The view of the overcrowded vessel from land recalls sensibilities similar to the antic and premodern perspective, which valued seafaring as outrageous and blasphemous (Makropoulos 1998: 56-57). Meanwhile, orderly and safe maritime endeavors on registered, seaworthy, and technically advanced ships stand for the justified pursuit of happiness and the exploration beyond one’s own horizon. These different gazes, the antic and premodern valuation of seafaring and the modern version of enlightenment, are both present when seaborne migration is assessed by onlookers, who evaluate the endeavor using the boat as an indicator.

Migratory ambitions on overcrowded and small fishing boats are at odds not only with politics, but also with reason and physical possibilities. Hence, that which ought not be moving, raises questions of legality and rationality. Empathy, a profound lack of understanding, and fear can equally and simultaneously be evoked by this image. Suspicion and unease dominate the seaward gaze.

Finally, the attribution “cramped vessel” is also used as an image that entices urgency. As such it is appropriated by migrants and facilitators. The journalist Wolfgang Bauer reported on three-level vessels, on which migrants hid below deck until they were close to a European state’s coast. Only then, Bauer told, did migrants request to stand on deck, thus *performing* the image of the overcrowded vessel. The visual image of a cramped vessel turns into a warning signal and an SOS. The self-explanatory character which Frontex attested to the vessel – if you see the boat the boat tells the story – is taken up to craft an image of urgency and victimization. Thereby the vessel transforms into a kind of passport substitute, with ‘overcrowded’ providing for the just documentation to be identified as

worth of access and assistance. Assuming that European spectators take the boat as an explanation, the organization of the trip will consider the following question: ‘If the boat is detected, what story needs to be evoked’?

8.2.2 Small, Open Fishing Vessels

The site inspection at the beginning of this chapter examined the difference between boats and ships with regard to technical and legal classifications. The size of a vessel has been worked out as the recurring distinction between boats and ships, with the size of a vessel determining the technical condition of seaworthiness. While ships are built to go on international sea voyages, boats are rather made for coastal waters and thus remain imagined in the local or regional. Furthermore, the Hai Hong incident presented in chapter 7 has illustrated that ships repurposed for commercialized migrate can trigger diplomatic conflicts between governments and UNHCR, while boats can be dealt with as a regional phenomenon. Hence, in the context of the Hai Hong incident, a symbolic difference between “boat-people” and “ship-people” could be observed. This is also true with regards to the political attention paid to their arrival: while boats may remain in the realm of the unknown or wanted ignorance, ships cannot be denied. At first glance, small boats appear as the medium of choice to clandestine migration. The general framing of small boats is revealed in the following UNODC assessment:

“Beyond their easy availability, fishing vessels are less likely to raise suspicion given that there is a legitimate reason for this type of vessel to be out at sea. Finally, fishing vessels often do not require registration domestically or internationally, and are not required to have satellite or other tracking systems on board, meaning that smugglers can use them with very little risk of being connected to them. Where vessels are unseaworthy and not intended for reuse, there is no risk to the smuggler in assigning an unskilled person, possibly even a migrant, to captain and navigate the boats. Fishing vessels used to transport migrants generally end up at the bottom of the sea and were never intended for use in more than one journey.”³⁵

Additionally, small boats are a technical challenge to border surveillance, because they are difficult to detect amid the waves. In cases where the vessel’s en-

35 UNODC (2011): *Smuggling of Migrants by Sea*, p. 29 at: http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf (accessed August 27, 2019).

gine is above water, radar does not always detect it.³⁶ Small boats are thus imagined as being able to sneak ashore. The image of the small boat supports a notion of clandestinity. In turn, this condition seems to be an essential requirement to avoid detection. The same holds true for the different registration requirements and the technical equipment required for larger vessels, such as the Long Range Identification and Tracking System. It seems probable that dockyards exist where these transponders are dismantled.³⁷ In these cases, the attribution “small” does not mean “boat,” rather it is ships which are technically invisibilized and thereby disassociated from politics.

The kind of adventure undertaken with a vessel strongly depends on its size: the sailboat stands for expedition, the small boat for the local earning a living. The image of the small fishing vessel with African migrants thus made it appear like a regional phenomenon. The fishing vessel is supposed to stay in local African territorial waters and be used for earning a living. However, the vessels used for maritime EU bound migration seem to be ships in the technical and administrative sense of the word, and it was only through the SOLAS description that one speaks of a ship starting at 12 passengers (cf. chap.7.1). The attribute “small” can be interpreted as a political perspective, which classifies the kind of migration undertaken with these vessels as irrational. Just as these kinds of boats are not meant for international voyages, their passengers are meant to remain “local” and “at home.”

The 2007 Marine I Incident

Strangely enough, the documentation of the 2007 *Marine I* voyage starts with its distress call. Little to nothing seems to be known about the organization of the vessel or the business behind its voyage. It was merely reported that the *Marine I* was an Italian built prawn trawler (Brothers 2007a). Even accounts on the vessel’s point of departure are inconsistent. International newspapers assumed that the vessel “set off from the troubled West African nation of Guinea or from Ivory Coast in early December, and was probably destined for the Canaries” (ibid).

In later accounts, Conakry, Guinea is cited as the port of embarkation (Wouters/Den Heijer 2010: 2; Kumin 2014: 306). There is no mention of flag state affiliation or the owner of the vessel. Kees Wouters and Maarten Den Heijer merely note that it was “not clear under which flag the ship was sailing, nor who the owner was” (Wouters/Den Heijer 2010: 2). Only the Spanish journalist,

36 Head of Research and Development at Frontex, personal interview (May 27, 2011).

37 Journalist Bauer, telephone interview (June 2014).

Nicolás Castellano, assumed in an interview with legal theorist Sonja Buckel that the crew, who apparently left the vessel prior to the distress call, had been Russian (Buckel 2013: 247). She reports that the flag flown by the *Marine I* upon the arrival of Spanish authorities hangs framed in the Regional Coordination Center for the Canary Islands as a reminder of the incident (ibid: 243).³⁸ Whether the flag is Italian or from Ivory Coast cannot be determined from her photograph.

The distress call which subjected the *Marine I* and its passengers to interstate agreements was sent on January 30, 2007. Engine failure was stated as its reason for calling distress. The *Marine I* was on the high seas and was allegedly transporting 369 migrants of African and Asian origin (Brothers 2007b). As the responsible search and rescue (SAR) authority, the Senegalese responded that it did not have the adequate equipment to assist such a large vessel in distress. Mauritania also refused responsibility as it had not signed the SAR Convention.³⁹ Several days after the distress call, on February 4, 2007, the Spanish maritime rescue tug *Luz de Mar* reached the *Marine I* and “provided immediate relief by handing out supplies of water and food” (Wouters/Den Heijer 2010: 2). However, another eight days were needed before the vessel was brought back to port.

For six days, the Spanish government negotiated with the Senegalese and Mauritanian authorities. On the 10th of February, an agreement between Spain and Mauritania was reached: The Mauritanian authorities agreed that – for humanitarian reasons – the *Luz de Mar* would tow the *Marine I* into the port of Nouadhibou. In exchange, Spain guaranteed that none of the *Marine I* passengers were to remain in Mauritania. For that purpose, Spain was requested to provide airplanes on which the migrants could be repatriated. Only when the airplanes reached Nouadhibou would the cargo ship be allowed to enter the port. Moreover, the *Marine I* was only allowed to dock for four hours, during which time the migrants had to be triaged into three groups and transported off accordingly. The first group was created for persons “of African origin,” which were to be repatri-

38 The *Marine I* incident has been documented and analyzed in detail by Sonja Buckel (2013: 243-289) and by Wouters and Den Heijer (2010). Further accounts have been provided by Thomas Gammeltoft-Hansen (2011: 129-130) and Judith Kumin (2014: 306-307). I mainly follow Buckel’s account in the below elaborations.

39 Amnesty International (2008): Mauritania: Nobody wants to have anything to do with us, Arrests and collective expulsions of migrants denied entry into Europe, July 1, 2008, at: <https://www.amnesty.org/en/documents/afr38/001/2008/en/> (accessed August 29, 2019).

ated to Guinea-Conakry. The second group was reserved for those Asian migrants who agreed to return voluntarily. Finally, the third category was supposed to include the unmovable rest: those persons who would not accept return, and thus be transferred to Spain for repatriation (Buckel 2013: 245-246).

The dominant reasoning underpinning this categorization was repatriation and its logistical requirements. In doing so, the agreement clearly ignored the possibility that persons in need of international protection could be among the passengers on board the *Marine I*. The principle of non-refoulement didn't apply as the grounds for its application (presence of those in need of international protection) was not considered in the first place. The firm claim that all passengers were illegal immigrants was paired with the demonstrative rejection of any room for interpreting their political status. The willingness of the Spanish government to pay 650,000 Euros to Mauritania, rewarding the cooperation in the case of the *Marine I*, further highlights the atmosphere that must have determined the negotiations – the endeavor of the *Marine I* could under no circumstances be successful. The same attitude could be traced among Southeast Asian states in the case of the Hai Hong incident. Similar to the procedures in 1978, the first negotiations concerned the opening of a port to the migrants' vessel.

As provided for in the agreement of February 10, 2007 between the government of Spain and its Mauritanian counterpart, the passengers of the *Marine I* disembarked in Nouadhibou on February 12. The Spanish journalist Nicolás Castellano, who witnessed the arrival of the *Marine I*, reported in an interview that the situation on board was disastrous. The migrants were lying down, packed like sardines, the vessel was full of rats and the passengers were in a fragile state of health (quoted in Buckel 2013: 246-247). Yet, after a first medical treatment, two groups of 35 persons each were immediately flown out. The remaining 299 passengers of the *Marine I* were kept in a hangar for screening purposes. Only two days after disembarkation the great majority of them, 276 persons, had signed 'voluntary repatriation agreements' which repatriated them to either India or Pakistan. "During the interviewing and registration by IOM, these passengers had declared that the reason for their departure was fear of ostensible persecution as a result of the conflict in Kashmir" (Wouters/Den Heijer 2010: 3). Nevertheless, passengers were never asked whether they were in need of international protection. Authorities involved assumed "that these people were illegals" (Buckel 2013: 247). By April 23, 2007 most *Marine I* passengers had been repatriated.

The remaining 23 migrants who refused voluntary repatriation were kept in a fish processing plant in Nouadhibou port for another three months until July 23, 2007. During these months, they were guarded by Spanish security forces. Dur-

ing the entire five months, a total of 1,330 Spanish police officers had been deployed in Mauritania to monitor the impromptu detention facilitation. Detained in the fish processing plant in the port of Nouadhibou, Mauritania, the 23 immobilized migrants were kept in a “limbo jurídico,” a legal grey zone. They were de facto under Spanish jurisdiction, but withheld from any rights provided in the Spanish legal system or in international human rights. This was also clarified by the UN Committee Against Torture decision of November 21, 2008.⁴⁰

On July 23, 2007, the detention of the 23 migrants in the Mauritanian fishing plant ended. The logistics that organized the confinement of the 23 migrants suggests that these passengers, under no circumstances, were allowed access to the Spanish legal system. Thirteen persons had been flown out to Pakistan on a Spanish plane. The remaining ten were flown to Gran Canary. From there a group of four was flown to Portugal where they received work and residence permits (Buckel 2013: 257). The other six persons were taken to the Spanish enclave Melilla. Two of them received asylum while the other four remained in Melilla for another three years (their asylum application had been refused). Nonetheless, the Spanish administrations were reluctant to expel them due to humanitarian concerns but also issued the three persons no papers. Finally, in June 2010, the last two passengers of the *Marine I* were hospitalized in a Barcelona based psychiatry ward that specialized in traumatic refugee experiences (ibid: 257-258).

The case of *Marine I* has been described by journalist Nicolás Castellano as “the greatest scandal of border control in terms of human rights” (quoted in Buckel 2013: 286). And in fact, the case of the *Marine I* reveals a de facto extension of Spanish jurisdiction in the form of control over the ship’s passengers. At the same time, there was also a suspension of law and a refusal of access not only to Spanish territory, but also to the legal system upon which the Spanish policemen based their authority to restrict the liberties of the migrants. The legal borders of policing where thus extended not only to Mauritania but also attached to the duration of ‘processing’ the passengers. Meanwhile, the legal borders of rights were out of reach for the migrants and thus seemingly removed. The tension between the legal border of policing and the legal border of rights was unilaterally resolved in favor of Spanish authorities. This can be described as a classic strategy of offshoring: increase in competences (profit) as well as evasion of

40 J.H.A. v. Spain, CAT/C/41/D/323/2007, UN Committee Against Torture (CAT), 21 November 2008.

legal restrictions or obligations. Literature primarily described this as extraterritorial (border) control measures.

The question, however, is how the proceedings could be possible. And this is where the vessel comes in again. The *Marine I* had sent a distress call, and as the vessel was in distress, Spanish authorities got involved in a rescue operation. The Committee against Torture noted that the Spanish state “maintained control over all persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou”⁴¹ Despite the exercise of jurisdiction, rights were not made available to the detained former passengers of the *Marine I*. According to Amnesty International, the conditions of detention were “grueling.” The human rights organization reported “that the Spanish authorities exercised significant psychological pressure on the 23 individuals requesting asylum in Nouadhibou [...] in order to break their physical and moral resistance.”⁴² When criticized for the inadequate detention, the Spanish government replied to Amnesty International that

“although it had no jurisdiction in the matter, [the intervention] occurred with the sole aim of fulfilling its humanitarian duty to come to the rescue of the boat [*Marine I*] and to save the passengers and crew. This is why one cannot call its conduct into question or demand it assumes responsibilities and takes actions that are outside its jurisdiction.”⁴³

The distress situation of the *Marine I* was declared the justificatory basis for Spanish intervention. The humanitarian obligation turned into a substitute for sovereignty. At the same time, further responsibility was rejected. Hence, the case of the *Marine I* also points to a blurring of interception and rescue operations. While interception operations can at any moment and in any location turn into rescue operations, the jurisdiction over vessel and passengers does not cease with the termination of the distress situation. Rather, the rescue operation mobilizes the legal borders of policing by uncoupling them from the place and time of distress. Yet, this is only possible when the law of the sea is decoupled from in-

41 J.H.A. v. Spain, CAT/C/41/D/323/2007, UN Committee Against Torture (CAT), 21 November 2008 (emphasis added).

42 Amnesty International (2008): Mauritania: Nobody wants to have anything to do with us, Arrests and collective expulsions of migrants denied entry into Europe, July 1, 2008, at: <https://www.amnesty.org/en/documents/afr38/001/2008/en/> (accessed August 29, 2019), p.31.

43 Ibid, p. 30.

ternational refugee law (Buckel 2013: 273), thereby allowing for a fragmented reading of legal obligations and legal competences.

The negotiations over a vessel pending in international waters remind us of the *Hai Hong* bargaining in 1978. At that time, western countries agreed to resettle the boat-people to which Southeast Asian countries opened their shores. Temporary access to territory was traded for access to asylum and permanent resettlement. Yet, the negotiations over the *Marine I* and its passengers go beyond the diplomatic bargaining which could be traced in the *Hai Hong* case. In the case of the *Hai Hong*, western countries appeared as a third party, as an international community. The idea of burden sharing underpinned Southeast Asian governments' pressure on western governments and their stubbornness toward UNHCR. Even if the migrants on board the *Marine I* represented global inequalities, the call for burden sharing couldn't be redirected. Both cases demonstrate that being on board a vessel, migrants' access to rights is protracted and subject to negotiation.

Looking back at the role UNHCR took during the *Hai Hong* incident, opinion seemed to changed overnight and all Indochinese refugees on board the *Hai Hong* were declared *prima facie* refugees. The organization's stance in the case of the *Marine I* was quite different. The organization did not get involved in any negotiations with potential receiving states, nor did it comment on the refugee status of passengers. Apart from an UNHCR letter to the Spanish government of April 20, 2007, where UNHCR attested that among the 23 remaining passengers of the *Marine I* there was none in need of international protection, the organization was hardly involved in the procedures. After UNHCR attributed all passengers with *prima facie* status in the case of *Hai Hong*, the organization might have evaded any similar signal that would allow for linking the vessel to a *prima facie* refugee status. In fact, in 2011, a UNHCR official stated in an interview with Buckel that the Spanish government wanted to "evade the impression that one only needs to hop into a boat to arrive in Spain" (quoted in Buckel 2013: 257). The vessel which came to indicate the need of international protection after the *Hai Hong* incident was not to be provided again with recognition of legal status.

News about larger vessels and freighters either stir up indignation with regards to the circumstances and conditions on board, or outrage over nonexistent captains and the cowardice and cruelty of facilitators (cf. the below section). Meanwhile, the sensation stirred up by small boats rather relates to incomprehension, pity, and the angst of being close to death. The small boat is the image of bare life when evoked in the sense of the raft of the medusa; the image of the sacrilegious attempt to overcome nature; and the image of one's own determination when

evoked in an archaic sense. Consequently, the image of the small boat allows for an oscillation between two dispositions: blaming migrants for the most irrational of journeys and depoliticizing the savage refugee.

8.2.3 Unseaworthy – a Technical Description?

Toy boats, nutshells, one-way-ships,⁴⁴ the tenor is pretty much clear: this vehicle is not made for overcoming *any* space. This kind of boat shouldn't be used to cross the sea in the first place. When examining the characteristics of boats and ships as vehicles in chapter 7, I've shown that boats weren't considered suitable for the high seas or international voyages, but remained locally bound in conception *and* dedicated purpose (Ger.: *Widmung*). The appropriation of these vessels for Europe bound migration thus counters the image of "ought-to-be-traffic." The attribute of "unseaworthy" points beyond the technical description; it also hints at moral and political implications.

The condition of the vessel allows for the classification of seaborne migration as a humanitarian issue. Lutterbeck, for instance, states that "irregular migration across the Mediterranean has also become a serious humanitarian issue, as the would-be immigrants often travel in unseaworthy and overloaded vessels and accidents are frequent" (Lutterbeck 2010: 127). If the vessel is in bad shape, the condition of being transported is grueling. However, worse conditions increase the chances of being rescued. Thus, the condition of the vessel is provoked by an atrocious and inhuman double bind: the vessels ought to be strong enough to carry a certain amount of people, yet, if the vessel should succeed, its condition can only be marginally acceptable, that is, barely strong enough to make the whole journey. In fact, even during the Italian operation *Mare Nostrum*, the condition of the vessels used along the central Mediterranean route worsened. Before the operation was launched, Italy's Defense Minister Mario Mauro reportedly stated that:

"the ships would be escorted to the nearest safe port, in compliance with international law. If there aren't any migrants in need of medical assistance [...] and if the ship is able to sail, it will be taken to the safest and nearest port, not necessarily Italian." (quoted in AN-Samed (N.N.) 2013)

44 All three expressions have been used by Frontex officials during interviews conducted for this study, as well as in German and international press releases.

Even though a careful reading of this statement reveals that access to Europe requires a life-threatening state of either vessel or passengers, the poor condition of the intercepted vessels was interpreted as an indication of the unscrupulous and rough business conducted by facilitators. The image of the unscrupulous smuggler was pushed further in January 2015 with the incidents of the freighters *Blue Sky M* and *Ezadeen*, which were carrying more than 1,300 Syrian refugees. After these two freighters were stopped in the Mediterranean, new labels began to surface. The ships were described as “crew-less freighters,” “spectral vessels,” and the “new tactic” of smugglers was attested a “new dimension of cruelty” (cf. Spalinger 2015; Frances D’emilio 2015). The smuggling business was described as scrupulous, cynical, and inhuman. Across the international press, it was reported that the use of cargo ships was a new trend whereby the abandoning of the vessels was the new tactic of smugglers. For the first time since the enforcement of Schengen borders in the Mediterranean, media attention was solely geared toward the freighters and the organization of their journeys.

On December 30, 2014 the Moldovan-flagged cargo freighter *Blue Sky M* drew attention as “a passenger sent a distress call [...] when the ship was off Greece. Greek authorities scrambled a navy frigate and helicopter, but the captain said the vessel wasn’t in distress and didn’t require assistance” (*Associated Press* (N.N.) 2014). In Italian waters the ship was boarded by coast guards officials who were lowered from a helicopter. A female passenger had reportedly called the Italian Coast Guard, stating that freighter was alone and needed help. After the coast guards found the *Blue Sky M* on automatic pilot, the “spectral vessel” tagline began to spread. The assessment of the Italian coast guard commander Filippo Marini particularly helped paint a dramatic picture and pointed to the vessel itself as a new threat. According to Marini, “despite strong winds and high waves, Coast Guard officers were lowered onto the ship’s bridge and managed to regain of the steering about a half-hour before it was due to strike the coast” (Frances D’emilio 2015). The language appeared rather militarized with Marini comparing the vessel to a bomb: “Certainly it’s very dangerous because a ship with no one on the command bridge is like a bomb that will strike up against the reefs” (ibid). The state of the “abandoned vessel” was described as ready for the scrap heap. By January 2, 2015 news of the *Ezadeen* spread as another episode of this “new tactic,” Marini’s bomb metaphor had already transformed into a piece of information: it was recalled that the *Blue Sky M* was set on a “collision course for a stretch of Italy’s southern coast” (Povoledo/Cowell 2015). The narrative was mimicked for the Sierra Leone-flagged *Ezadeen*:

“For the second time in three days, the Italian authorities found themselves racing on Friday to rescue hundreds of migrants from an aging freighter that traffickers had pointed toward Italy and then abandoned, leaving the ship to plow through wintry seas at top speed with no one at the helm, heading straight for the coastline.” (Povoledo/Cowell 2015)

The information provided was contradictory – rescuers were reportedly “able to board the ship only after it ran out of fuel and stopped” (ibid). By the afternoon it had apparently been towed to a dock by an Icelandic ship operating in the Frontex mission *Triton* (Spalinger 2015). Despite several inconsistencies, the episode was taken as “further confirmation that traffickers had hit on a new tactic to extract ever greater profits from human misery while eluding apprehension” (Povoledo/Cowell 2015). Even though the image of an unseaworthy vessel would usually provoke at least some humanitarian considerations, the characterization of the vessel as “abandoned” and “spectral” channelled all public interest toward the vessel and the business of commercialized migration facilitation. No distinction was made between captain, crew and smugglers. Moreover, information on the vessel and its registration, often difficult to get, was available in this case. The Moldovan-flagged *Blue Sky M* belonged to the Romanian based company Fairway Navigation Ltd, and the Sierra Leone-flagged *Ezadeen* was owned by the Syrian businessman Youssef Mohamad Lebbadi, whose shipping company is based in the port city of Tarus (Jakob/Gottschlich/Braun 2015). The fact that the *Ezadeen* was employed as a cattle ship was used to further underline the victimization of refugees by facilitators. The profit margins of a facilitator are estimated to be one million dollars per steel-hulled vessel, with passengers being charged up to 6,000 dollars each (Povoledo/Cowell 2015). Facilitators are described as cowardly and cruel.

By framing the *Blue Sky M* and the *Ezadeen* as “ghost ships” and “spectral vessels,” Frontex sets a particular moral valuation of the incidents. And even though it won’t be possible to know whether Frontex has chosen this precise narrative deliberately or unwittingly, the characterization of ghost ship recalls the S.S. Jeddah affair of August 1880. For this incident, the label of the ghost ship and the valuation of the captain being coward and cruel, were first coined.⁴⁵

45 During the night of August 7 and 8, 1880, the S.S. Jeddah, a British steamer with 778 men, 147 women, 67 children, and 600 tonnes of cargo (sugar and timber) was damaged to the point where water started flowing into the engine room. This caused a serious distress situation. The Captain Lucas Clark abandoned the ship with his first officer on a life boat, which was picked up by another steamer and brought to Aden.

Cowardly and cruel – such is the moral assessment that is meant to be evoked by the tale of the spectral vessel – a narrative which in its application to the incident of the *Blue Sky M* and the *Ezadeen* diffuses rescue responsibilities and the refugee question at Europe's borders and one-sidedly blames facilitators and seafarers.

However, in April 2015, investigations of the German news magazine *Panorama* found that the *Blue Sky M* had been navigated by seafarers who “used their professional skills to save the passengers from war” (Buchen 2015). A passenger is quoted as noting that the captain had carefully navigated the ship along the coast. Moreover, the journalists' investigations exposed that the *Blue Sky M* was “seaworthy without any reservation [Ger.: *ohne Einschränkungen seetauglich*]” (ibid). The Italian prosecutor in Lecce confirmed this valuation.

When confronted with the *Panorama* investigations, the Frontex press officer argued that Frontex information at that time was not as good as the magazine's information. This did, however, not lead to public corrections by the European agency. This situation also demonstrates that Frontex, with poor information, apparently assumed that the ship was unseaworthy and ready for the scrap heap. The focus on freighters and their allegedly poor state was set by Frontex and has been echoed by the international press. In fact, the unseaworthy vessel and the criminal networks fall in the operational field of the agency, while asylum policies or humanitarian issues don't fall in the auspices of border enforcement, not even in its coordination efforts. By channeling the discourse toward spectral ves-

Meanwhile the abandoned passengers on board the *Jeddah* ceaselessly bailed water out of the ship, pumping four days and nights. They set new sails and with the right wind, the *Jeddah* drifted toward the coast where the British steamer *S.S. Antenor* spotted it and towed it to Aden. Two days later, on August 10, 1880, Captain Clark telegraphed Singapore that the *Jeddah* sunk with 953 pilgrims on board and that all passengers had perished. One day later, on August 11, 1880 a second telegram was sent by the Captain of the *Antenor* which had towed the *Jeddah* into the harbor of Aden. This one reported that all lives had been saved. The fact that Captain Clark had abandoned his ship in distress was publicly condemned. Commentators revealed sheer indignation and called Clark's behavior of the lowest modes of action and especially of cowardice. “The maritime court in Alden judged Clark guilty. He had failed to apply the simplest judgment on that day and had showed a ‘shameful lack of courage’ as well as ‘massive misconduct.’ The owner of the harbor added that the captain committed the greatest inhumanity” (summarized from and quoted in Kreitling 2015, also cf. Moore/F. R. G 2000).

sels, Frontex contoured its target and mandate, and thus positioned itself in the fight against criminal facilitation networks. Meanwhile, nothing was reported about the whereabouts of the passengers. With the exception of the alleged captain, no individual testimony was covered in media reports. Passengers' reasons for fleeing were not even speculated upon. Although the Syrian passengers most probably have all been granted refugee status, it was not in the interest of Frontex to have this message disseminated. Scandalizing the cruelty of smugglers and the condition of the vessel as unseaworthy, Frontex set the agenda and diverted possible signals of group refugee status. Furthermore, as Frontex had just launched the joint operation *Triton*, which replaced the Italian rescue operation *Mare Nostrum*, a general discussion about the legality and proportionality of EU border enforcement measures and rescue obligations was adamantly avoided.

The *Panorama* journalists concluded that Frontex would surely be content with its power to define the incident. The incident of the Blue Sky M shows "how far Europe's border protectors go in the propaganda fueled fight against illegal migration. Obviously, they want to pass the responsibility for the death of many refugees onto the smugglers" (Buchen 2015).

This episode further demonstrates that "unseaworthy" is not a mere technical description, but implies discussions of ownership, responsibility and sometimes even suggests a moral valuation.

8.3 WHAT STORY DOES THE BOAT TELL?

"If you see the boat, the boat tells the story" – this explanatory and evaluative shortcut condenses around the boat, what cannot be understood nor classified as one: the complex circumstances, the different motives of migration and the varying itineraries. While UNHCR's description of "mixed flow" warns not to treat all passengers equally only because they arrived by equal means, the suggestive explanation that the condition and image of the vessel is supposed to provide reduces all rhetorical differentiation to a subtly evaluative assessment. The diverse itineraries get reduced to their cramped presence at sea.

While section 8.1 focused on the metric dealings with boats, their passengers and deaths at sea, section 8.2 examined the visual and verbal metaphor of the small, overcrowded and unseaworthy refugee boat. It could be shown that numbers hardly contribute to the public or political valuation of the situation in the Mediterranean. Migratory endeavors as well as asylum requests are rather assessed and "explained" with reference to the condition of the vehicular facilitator. Overcrowded, unseaworthy, small – all three adjectives are attributed to

those vessels repurposed in the context of European-bound flight and migration. Even though the analysis in section 8.2 meant to challenge the supposedly self-explanatory image of the overcrowded depilated migrant vessels, I am not denying the poor state of most of these vehicles. Rather, I wish to illustrate that there is an oscillating reference behind the supposedly self-explanatory image. As a result, different “stories” are evoked parallel to one another, allowing for the oscillating reference to refugee boats, migrant vessels and their passengers, which in the process translates the unsuitability of the vessel into different evaluations of the migratory endeavor itself.

Again, what story does the boat tell? – An intimate, anti-modern relation? A tale of limited capacities, of subversion, of humanitarian urgency or of profit-oriented appropriation?

All three attributes: small, overcrowded and unseaworthy, share the impetus that this maritime journey is not meant to occur. An overcrowded or small boat, and explicitly unseaworthy vessel, is not made for international voyages nor for any directional movement on water. These vessels are not built for the amount of people they carry and they are not meant for being used to travel to Europe. Size and seaworthiness – the two main distinguishable features between boats and ships – are turned on their head in the context of flight and migration.

The vessel’s suitability no longer embodies the nature of the sea, but responds to the nature of international refugee policies as well as the nature of a surveillance apparatus and EU border enforcement measures. A vessel’s flexible suitability integrates and reflects the ambiguities and contradictions of European border policies. The unseaworthiness of the vessel is the substitute “passport” to passengers’ admission into Europe and their subsequent access to rights.

The tale of limited capacities evoked by referring to the “overcrowded” has two facets: it entails the narrative of urgency and humanitarian need while at the same time questioning the admission capacities of receiving states. The reference to sheer numbers and masses de-individualizes migrants and refugees to boat-loads of people of which there are “just too many.” The portrayal of an undifferentiated mass thus allows for distancing and evaluation. Both the profitability of the smuggling business and the victimization of smuggled migrants is evoked by the mere reference to the condition of the boat as crowded and unseaworthy. While the victimization removes political agency, the condition of the vessel carries the implication of reckless endeavor, of a “you should have stayed where you came from” accompanied by a shake of the head.

The reference to small fishing vessels suggests an intimate relation between the vehicle and its passengers to the regional or “local” appropriation. Fishing vessels are supposed to stay local and earn their owners a living. They intimately

relate to the area where they are from, exactly like the refugees, who are evoked with a constitutive connection to their homeland (Inhetveen 2010: 157). Small boats are decisively not part of international politics, and thus cannot count on the rights and obligations state grant each other.

Arriving by boat, migrants' itineraries and their complicated organizations are effectively reduced to the sea passage. Their itineraries are aggregated to arrivals by sea. The conditions under which one is being transported obscures the reasons for migration and can be used as purifying, to attribute pity or to argue for repatriation. The different images of vessels and their attributes are entangled in politics through the stirring up of emotions such as fear and pity, or by enticing suspicion and calculations of risk. These emotions and the explanations they suggest don't only seem plausible to the general public; they merge in an unstat-ed way and leave one irritated, uncertain, and unsettled when faced with the standard image of the migrant vessel as an open boat stuffed with young black people, mostly men. Empathy, a profound lack of understanding, and fear can equally and simultaneously be evoked by this image.