

Doing Frontiers: On the Performativity of the European Border and Migration Regime

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WORKING PAPER



DOING FRONTIERS

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EUROPA

MIGRATION

PERFORMATIVITÄT



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DOING FRONTIERS

ON THE PERFORMATIVITY OF THE EUROPEAN BORDER AND MIGRATION REGIME

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ABSTRACT

Determining European territory is a delicate endeavor. A definite borderline is hard to identify. Instead, European security discourse spans a space with conditional qualities: open for some, impervious for many. Referring to Judith Butler's theory, this contribution's aim is to disclose performative forces that create corresponding subject-categories. Particularly, expert-driven legislation on migration and the militarization of the security discourse is relevant. It is possible to reconstruct a multidimensional matrix of intelligibility. For this, relevant policy documents are analyzed by conducting a qualitative content analysis. This contribution allows to critically question foundational dimensions of European identity constituted by regulatory and exclusive practices at the borders.

**KEYWORDS: EUROPE BORDERS MIGRATION
BUTLER PERFORMATIVITY**

DOING FRONTIERS

DIE PERFORMATIVITÄT DES EUROPÄISCHEN GRENZ- UND MIGRATIONSREGIMES

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ZUSAMMENFASSUNG

Eine definitive Grenze des europäischen Territoriums lässt sich nur schwer identifizieren. Der europäische Sicherheitsdiskurs spannt einen begrenzten und exklusiven Raum auf: Offen für manche, undurchlässig für die meisten. Dieser Beitrag zielt auf die Offenlegung der performativen und subjektivierenden Aspekte dieser Grenzdiskurse. Die Migrations- und Asylpolitik sowie die Militarisierung des Sicherheitsdiskurses sind hier von Bedeutung. Es ist möglich, entlang der Theorie Judith Butlers eine multidimensionale Matrix der Intelligibilität zu rekonstruieren. Dafür wurden mit Hilfe einer qualitativen Inhaltsanalyse relevante Policies analysiert. Der Beitrag erlaubt eine kritische Hinterfragung der durch regulatorische und exkludierende Praktiken an den Grenzen gegründeten Europäischen Identität.

**KEYWORDS: EUROPA GRENZEN MIGRATION
BUTLER PERFORMATIVITÄT**

DRAWING UP FRONTIERS WITH JUDITH BUTLER¹

In Europe, the *Schengen agreement* changed border crossing within signatory states to a subtle act. Only sporadic signs, sometimes an old border facility, refer to the break of two territories that, nowadays, can be crossed comfortably by foot, plane or car without being obliged to undergo major controls. The situation is very different at the external borders of the EU – depending on the person intending to cross the border. Many cross those borders easily, by plane, for instance. Others, however, fail to cross. Even their mere attempts are repelled.

The constitutive function of state borders, the demarcation and protection of a territory, seems to be fulfilled on very different terms – depending on the mode of crossing and the subject that attempts to do so. Moreover, the enforcement of borders has different and changeable qualities: While Schengen suspends restrictions of movement for specific cases, the activities of the *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)* reach much further than the actual territory of the EU. One thing, however, remains similar according to our argument: Borders can be understood as a performative practice, as something that is generated by a *doing* which has to be understood as part of a discourse. Borders do not only constitute territorial discontinuities, but legitimize the control of individuals – not only at the territorial borderline itself. They do not provide mere safety functions, since they are not in principle insuperable. Quite the contrary: they are highly permeable – for some.

This *selective permeability*, in conjunction with different modes of border crossing, leaves room for the impression that the decision on who is allowed to enter might not be taken at the border itself. Rather, the frame for this selectivity has to be predefined culturally and institutionally. But how do these selective processes work? How did they become powerful enough to fulfill these functions? And, how must a subject be constituted to fulfill all conditions to enter?

With the help of a theoretical conception that we call *doing frontiers*, we want to show theoretically and methodically that through the creation of the Schengen area, dynamics were triggered that are considerably connected to current dynamics regarding European external borders. As will be shown, they are observable in regulatory practices, dimensions of the intelligibility of border-crossing subjects and the theory of a constitutive necessity of an exterior. All these are understood in reference to theoretical conceptions developed by Judith Butler. At the same time, considering the concept of *epistemic communities*, we want to show what future developments could be implied if the resources of identity consolidation continue to shift from the 'historic Other' of the EU, the Europe of the World Wars, to the 'extraterritorial Other': The

¹ The first version of this paper was the result of a highly productive seminar on 'importing theory' into IR given by Tobias Gumbert at the University of Muenster. We had the opportunity to present our ideas at the 5th international graduate conference 'Borders of Orders' at the Cluster of Excellence 'Normative Orders' in Frankfurt/Main in November 2014. Further revisions of this paper were also a result from comments by the reviewers of the DNGPS-Working Paper Series. We would like to give thanks to everyone who accompanied the origination process of this paper, be it as lecturer, organizer or critical commentator. Unfortunately, even though the process of drafting, discussing and finalizing the paper has been lengthy at times, the topic did not lose its actuality. The events of 2015 could only be considered in the conclusion.

Other that Europe tries to exclude by building walls and fences (cf. Diez 2004: 319). It is necessary to ask whether Europe will be able to keep up with its normative claims of peace, freedom, and democracy.

This paper's comprehension of current developments of the European border regime is based on an examination of the Schengen Agreement and a content analysis of policy documents. Complemented with an examination of a study by the European Union's *Institute of Security Studies*, we argue that the genesis of a 'European' identity and the practices carried out on external borders of the EU can be understood as co-constitutive. This allows us to depict a critical perspective on the discourse on European identity.

The remainder of the paper is structured as follows: First, the contribution will be located scientifically with regard to content and concept; second, the theoretical perspective on the European border regime, based on the work of Judith Butler, shall be developed as a thematically-oriented specification of central concepts that will be the basis for the content analysis of central academic and policy papers in the last section of the paper.

EUROPEAN BORDERS AND THEIR CURRENT IMPACT

To an increasingly self-confident degree, the European Union presents itself as a powerful organization with state-like borders. The aim of this section is to work out relevant aspects of the thematic complex of the European border and migration regime. At first, the term *border*, with all its relevant implications, shall be outlined and located in the context of the European border-defense regime. Subsequently, further central conceptions that will prove useful for the endeavor at hand are presented. They include theorizing about new geo-politics of the EU as well as the concept of *epistemic communities* that will be of vital importance for this paper.

(NO NATION, NO) BORDERS?

To understand the ambivalence of *doing frontiers*, we first discuss what is usually understood as a border and how this applies in the case of the Schengen Agreement. In classical terms a distinct geographically defined borderline signifies 'a territorial, evident demarcation between two exclusionary social orders' (Laube 2013: 23, own translation), usually a line between two neighboring states. The dichotomy associated with this demarcation has certain implications for the population of a territory that either resides within or outside a territory, thereby being part of a certain social order. Borders suggest a homogenous interior (Krause 2009: 70), opposed to a heterogeneous exterior. Hereby, 'the function of borders is fulfilled at the external line of a state' (Laube 2013: 29, own translation) where the social order terminates and meets its negation. Territorial statehood as a stable basic principle of modern societal order (Krause 2009: 165) – and thereby the enforcement or neglect to be part of a population – can be traced back to the *Peace of Westphalia* in 1648 and thus can not be described as natural in any way: Borders 'demonstrate and materialize exclusivity by creating the space where membership is regulated' (Ellebrecht 2013: 49).

Quite non-natural in a similar way, the 'category of the European' (Krause 2009: 201, own translation) and its negation, the Non-European are terms that have specifically been developed just within the last three decades. Their implications become more and more important in the discourse constituting European identity. Territorial principles can be applied not only to nation-states, but also to a 'quasi-state, supra-state, post-state institutional structure' (ibid.: 177, own translation), such as the European Union, by postulating a homogenous interior contrasting the heterogenous exterior. Therefore, the definition of borders as distinct geographical lines seems applicable to the EU, at least at the first glance. However, Christiansen and Jørgensen, for instance, suspect a 'Maze Europe' (Christiansen/ Jørgensen 2007, 74) rather than a 'Fortress Europe' (ibid.) due to the incoherent overlapping of multiple and sometimes diverging policies.

It seems to be helpful to think of 'borders as spaces in their own right' (Ellebrecht 2013: 52-53), as a territory of social interaction, rather than a distinct demarcation of a nameable identity. European identity thus cannot refer to a pre-discursively defined polity and/or territory and thus is something that is continuously under construction.

SCHENGEN AND THE DEMARCATION OF THE EXTERIOR

The most important impulse for the establishment of what one might call a European territory was not initiated by the EU itself: The Schengen agreement as a step by step abolition of identity checks at shared borders has originally been a 1985 signed contract between the Benelux states, France and the Federal Republic of Germany. Only in 1997, with the *European Amsterdam agreement*, was it integrated into EU legislation. The Schengen area is not identical to the EU territory.

However, by abolishing internal borders, Schengen, for the first time, created something approximating a European territory by establishing the necessary dichotomy of interior and exterior. Since then, the concept of a 'European border' steadily became more important. In 2002 the European commission proposed a 'system of integrated European border defense' (Weinzierl 2005: 102, own translation). Before, this task was conducted by each member state individually. This integration of border defense measures triggered the foundation of the European agency for the operative cooperation at external borders of member states (FRONTEX) in 2004. The practice of this agency reveals the particular character of European borders as 'spaces in their own right' (see above): FRONTEX, like other EU institutions, operates not only within EU borders but also tries to process border controls in international waters and non-European states. These include activities such as the management of refugee camps on the African continent or return agreements with North African states. This approach, known as 'offshoring' (Buckel 2013: 209), can be described as the 'exterritorialisation of border controls' (Laube 2013: 17, own translation), with the purpose to exonerate European borders. The treatment of refugees in this context has been criticized repeatedly (Doerfler 2012).

GEOPOLITICAL AMBITIONS AND EPISTEMIC COMMUNITIES

We argue that border policies are considerably intertwined with migration policies, as border controls are conceived of and used to systemize and regulate migration movement. In the case of the European Union, Buckel states that

‘the EU becomes territorial with its migration control policies [...], since then, a genuinely European border, European border controls, European passports and new legislation, everything to hinder irregular border crossing activities, are possible; only then, a European surveillance and information technology, European Visa regulations, a European border agency as well as multiple practices of controls of the territory become possible’ (Buckel 2013: 57, own translation).

Generally, literature on the European context suggests an antagonism between increasing openness within the EU and a strengthening of controls at its external borders: ‘The internal borders of the EU have disappeared only to reappear for aliens’ (Pijper 2009: 203; cf. Foucher 1998: 242). Verstraete confirms this observation similarly: ‘Freedom of mobility for some could only be made possible through the organized exclusion of others, forced to move around as illegal aliens, migrants, or refugees’ (Verstraete 2001: 29). Analogically, Pijper concludes, after extensively reviewing literature on the matter, that ‘the narratives are summarized under the headings of, first, internal market policy and, second, external border management’ (Pijper 2009: 204). These developments lead to Thomas Diez’s consideration of a revival of European ‘geopolitics’ in the context of EU policy making (Diez 2004: 319). Thereby, the European context proves to be a very particularly or even unique:

‘For most of the time after the Second World War the most important other in the construction of a European identity has been Europe’s own past. [...] However, since the 1990s geographic and cultural otherings are on the increase, marking a return of geopolitics in European identity constructions and undermining the notion of European integration as a fundamental challenge to the world of nation-states’ (ibid.),

questioning a merely normative power of the European polity. As will be further specified later, these *otherings* led to the sustained consolidation of a distinct European border space.

But *where* is this powerful discourse to be located? Here, we refer to the conception of *epistemic communities*. It aims at conceptualizing the importance of ideas in discourses regarding international relations (Haas/Adler 1992: 367). Epistemic communities are therefore not to be taken as hegemonic political forces aiming to govern (ibid.: 371); but rather they ‘are not in the business of controlling societies; what they control is international problems’ (ibid.). An epistemic community is characterized as ‘a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim of policy-relevant knowledge’ (Haas 1992: 3). Think tanks, for instance, meet this definition, but also political, economic or scientific actors that do not necessarily have to know each other. Their status as an epistemic community becomes detectable in their coherent approach on the policies they influence. Both kinds are important for the analysis to follow.

Particularly in the context of common foreign and security policy, or more specifically common security and defense policy, which is even more strengthened since Lisbon 2009, we see

a particular importance of epistemic communities such as the one formed by the European *Institute of Security Studies (EUISS)*. Here, the outstanding role of experts for legitimizing border and migration policies becomes evident, as institute recommendations often find their way into EU practices in an unrevised and unchallenged form (Dolzer 2013: 4). The degree of assertiveness of these expert discourses in the context of the European polity should not at all be neglected. If the EUISS, for instance, following Dolzer's analysis, manages to intertwine its discourse with the de facto practices at European external borders, the results of the analysis in section four can be read as a foresight on what might be coming next concerning the handling of migrants and refugees, as will also be shown in the analysis.

THEORETICAL FRAME AND CONCEPT

Can the above-described shift in determining European identity and the armament of European borders be understood as a mere coincidence? We do not think so and try to demonstrate this in the subsequent parts of the paper. But first, we explicate the theoretical frame of our argument.

The poststructuralist perspective theorized by Judith Butler (Butler 2007: 32) is a productive approach to thinking about borders because it is rooted in a way of regarding differences as always precarious, thus re-definable and in permanent need of stabilization. These differences cannot refer to anything predefined and therefore natural. Instead, they are brought into existence through ever-changing discourses. All of this applies to borders as well. *Constructing borders* with Butler includes the expansion of perspectives beyond borders, since a first epistemological assumption refers to the necessity of a *constitutive Other*, referring to the just introduced poststructuralist logic of difference. We are part of a life that 'is never merely our own' (Butler 2009: 50). Thereby, we are ontologically dependent on an exterior and our identity is conditioned by this non-terminable Other that is and is not a part of us.

In poststructuralist theory, a discourse is the frame for our ability to perceive and understand. Discourses have an epistemological function. Comparable to operative constructivism (cf. Stäheli 1995) this logic does not question the materiality of objects, but it argues that even materiality is only constitutively thinkable within discourse (Bialasiewicz et al. 2007: 406). Butler's specific reading of this theoretical foundation is her proposal to understand discourse also in dimensions of performativity. She thus condemns the differentiation of discursive and non-discursive practices (ibid.), which enables us to expand poststructuralist thought beyond a theorizing of language alone.

Butler particularly approaches processes of the discursive (self)constitution of subjects in epistemological fields – often, but not exclusively in the field of gender. Not only the 'performative and continued self work and self representation of subjects 'at work'' (Reckwitz 2008: 82, own translation; see also Butler 1997, 54) but also the subjectivation of individuals through powerful discourses are part of her theorizing.

Butler argues that the subject constitutes itself through a *matrix of intelligibility* (Butler 2010: 24), a set of categories and their manifestations that predefines the socially meaningful, understandable and admissible (Villa 2012: 173): 'We are made to be somebody – by reference,

name, denomination and identity categories' (ibid.: 39, own translation). This constitution has to be understood as a process, since the normative arrangement of this matrix originates in performativity and speech acts. Both are embedded in the alteration of discourses, continuously stabilizing and destabilizing borders between identities. The moment a person speaks, discourses may materialize, becoming meaningful and powerful – and thereby potentially challenge the conditions of power. It is impossible to determine how a speech act is heard and understood (Villa 2012: 25).

This opens up the potentiality – but not the capability – that through the problematization of normality, norms of a discourse may be contested (ibid.: 105). This critical, subversive, norm-challenging practice, the provocative undermining of regulatory practices that problematize social exclusion and naturalizations, is called *queer* by Butler. This term involves much more than just the provocative play with gender identities. The intention of a queer acquaintance with norms, 'a permanent critical questioning of identity categories and their political relevance' (Villa 2012: own translation), is not the assimilation of the afore excluded in a given order, but much more the problematization of normality itself (ibid.: 105).

The critical endeavor here is to retrace the emergence and legitimizing strategies of a discourse constituting subject identities (Butler 2010: 7). It is possible since identities are constantly fragile and in danger of collapsing due to their discursive constitution (Reckwitz 2008: 82, own translation). The constitution of subject identities is supported by the maintenance of identities through *regulatory practices*, particularly in the form of exclusion (Butler 2012: 53) as can be perceived, for instance, when FRONTEX repels refugees in the Mediterranean Sea.

The impact on the individual by *subjectivation* reaches far beyond the constitution of a subject – it has the character of normative violence 'determining who counts as a subject' (Lloyd 2011: 85) and why. The normative violence lies in the forced distinction between inclusion and exclusion that is predefined by a normative arrangement. The consequence of this kind of sanctioning can be expanded beyond questions of gender (Butler 2012: 51) and refers to violent, normative schemes for constituting humankind in general (ibid.: 173). Where no subject has been constituted, there can be no murder and death, it cannot be mourned and there will be no obituary as evidence of worthiness; the last confirmation that life was existent is denied (ibid.: 51). This has for instance been made visible in a performance of the 'Center for Political Beauty', a group of critical artists, dealing with the striking absence of mourning after the death of refugees (cf. Rzepka 2015).

With this theoretical background, the differentiation of performance and performativity becomes comprehensive: 'Performance [...] occurs within the conditions of possibility brought into being by the infrastructure of performativity' (Bialasiewicz et al. 2007: 408). This infrastructure of performativity is a discursive mode, enabling the generation of ontological effects, thereby questioning or stabilizing the impression of subjectivity, or creating new forms of what a subject may be (Butler 2012: 50) – performance therefore presumes performatively originated subjectivity that operates via existing, predefined roles. Gender as performance, for instance, would be such an unchangeable affirmation of performatively engendered subjectivity

(Weber 1998: 80).

Performativity, on the contrary, as a practice creating ontologies, opens the perspective for *doing*. In this sense 'the formulation of gender [has to be understood] as performative staging' (Villa 2012: 74, own translation). *Staging*, hence *doing*, corresponds to a normative frame with the character of a regulatory practice. The performative correspondence with a norm goes hand in hand with a performative exclusion of non-correspondence, a negation that is inherently connected to performative practices (Butler 2010: 23). The differentiation between performativity and performance is relevant, since performance has to be understood as a re-enactment of existing roles and identities.

How, then, is it possible that these interrelations of discourse and performativity trigger restricting materialities such as borders? Butler 'pleads for a multiplication of the term of the material, according to the specific discourse, scientific discipline, practice, or constellation' (Villa 2012: 79, own translation). Thereby, the material is not only the surface, but a 'process of materialization that stabilizes over time' (Butler 1993: 9). Approaching materialization in this way, possibilities of identifying discourse-dependent materialities open up. Legitimizing strategies of what seems to be naturally given in a material sense can be identified in this process.

Following our theoretical framework, we resist the reflex of acknowledging borders as given by understanding them as a performative practice: They were and are materialized and naturalized. They are performative demarcations that predefine included and excluded subjects within a powerful discourse. References to natural demarcation lines such as mountains or rivers are an effect of the felt need for non-discursive legitimacy. The result of this performative creation is the main argumentative figure of this work, *doing frontiers*. But how were the discursive foundations of this particular *doing* laid down? Where do they originate? To answer this question, the genesis of the identity of a shared European territory and the performative practices associated with linking territory and identity have to be retraced. At the same time, regulatory practices for the maintenance of a differentiation between interior and exterior have to be identified.

We believe that central dynamics, triggered by the ratification of the Schengen agreement, can be coherently explained with the presented conceptions by Judith Butler, applying these to the genesis of FRONTEX, EUROSUR and EES, and a recent publication by the EUISS.

CONTENT ANALYSIS – FROM SCHENGEN TO EUROSUR

In the following content analysis, the theoretical framework developed in the previous section is to be applied and further developed, not in a generalizing way but as a case related illustration of validity of our theoretical import (Kuckartz 2010: 85). All steps were developed while examining the material at hand.

For the analysis, and after thorough research on relevant European Union online sites, six central policy and academic documents were chosen and related to each other: (1) The Schengen Acquis Agreement (Schengen 1985), (2) the Council Regulation (EC) No 2007/2004 (FRONTEX

2004), (3) the Communication from the Commission to the European Parliament on EUROSUR (EUROSUR 2008), (4) 'What ambitions for European defense in 2020?' by the European Institute for Security Studies (EUISS 2011), (5) Regulation (EU) No 1052/2013 (EUROSUR 2013), and (6) the Proposal for establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals (EES 2013). This institutional perspective serves as a first step in order to comprehend the relevance and the potentials of Judith Butler's theory in the realm of International Relations, leaving room for further inquiry, by delineating the regulative and discursive emergence of European border and migration management.

To begin with, a thematic coding of the documents was agreed upon, suggesting a 'common-sense technique' (Kuckartz 2010: 84), implying that the thematic coding as such is not reflected as part of our methodical approach. Nevertheless, we stress that 'each component of interpretative practice serves as endogenous grounds for raising serious questions relating to the empirical assumptions of ongoing inquiry. Critical consciousness [... must be build into each] framework' (Holstein/Gubrium 2005: 499).

It should not be ignored that the engagement with the complex of problems at hand forces us to become part of the discourse, since we talk about what should be considered as a problem in international relations. This, at least, justifies the necessity of a transparent handling of our empirical research method. The thematic coding was conducted in vivo as a computer based analysis with the help of MAXQDA. Following Hopf et al. (Hopf et al. 1985; Hopf et al. 1995; Hopf/Hopf 1997; Hopf/Hartwig 2001), four analytical steps were undertaken: (a) development of categories, (b) coding of material, (c) development and identification of specific fields for a (d) in-depth analysis of chosen fields (cf. Kuckartz 2010: 85).

Hereunto, a thematically limited but generally open coding was applied to the Schengen agreement (Schengen 1985). Based on the categories developed for coding the Schengen agreement, such as 'internal or external border checks', 'internal or external nationality', 'border crossing activities', 'police' and 'territoriality' all other documents were coded. When necessary, further categories were applied. In a next step, three major fields, the genesis of a European territory (4.1), regulatory practices and modes of subjectivation of migrants/refugees (4.2) and demarcation through armament (4.3) were identified on the basis of the concentration and thematic cluster of keywords in these fields and will be presented in the following sub-sections.

SCHENGEN – ORIGINS OF A EUROPEAN TERRITORY

The starting point of the analysis is the Schengen agreement (Schengen 1985) as a central moment of the constitution of a common European border area and the genesis of an interior/exterior difference.² The multilateral agreement between the Benelux states, France and the Federal Republic of Germany implies a shifting of border checks to the exterior borders of

² We argue that there were important cultural and political developments prior to the Schengen agreement, constituting a common and shared European identity linked to a previously only incompletely developed notion of territoriality. Nevertheless and in addition, we argue that the Schengen agreement, in the course of building a shared European border, has unique character since it constituted the qualitatively new exterior that could possibly threaten the interior of the EU, making the exterior an essential aspect of interior identity construction.

signatory states: 'With regard to the movement of persons, the Parties shall endeavor to abolish checks at common borders and transfer them to their external borders' (Schengen 1985: Art. 17; cf. Art. 24). Here we see the beginning of the development of a common European territory that is characterized by the free movement of citizens of signatory states within a designated area.

Furthermore, internal border management facilities and controls should be abolished as fast as possible:

'[The parties] shall take the measures required to facilitate the movement of nationals of the Member States of the European Communities resident in the local administrative areas along their common borders with a view to allowing them to cross those borders at places other than authorized crossing points and outside checkpoint opening hours' (ibid.: Art. 6).

Multiple times, the document emphasizes the importance of maintaining the security of this new territory. In order to do so, the harmonization of laws and visa requirements of signatory states have to be approached: '[The parties] shall take the necessary steps in order to apply their procedures for the issue of visas and admission to their territories, taking into account the need to ensure the protection of the entire territory of the five states' (ibid.: Art. 7). This includes the standardization of regulation for foreigners ('aliens'), the minimizing and abolishment of border checks within the territory, but also the guarantee to protect the health of people, animals and plants (ibid.: Art. 24). At this point, an exterior (*the aliens*) is constituted in difference to the interior (*the people*) that at least tacitly is believed to be in need of protection. It is further emphasized that all necessary security measures have to be in place to defy this exterior:

'To that end [the parties] shall endeavor first to harmonize, where necessary, the laws, regulations and administrative provisions concerning the prohibitions and restrictions on which the checks are based and to take complementary measures to safeguard internal security and prevent illegalized immigration by nationals of states that are not members of the European Communities' (ibid.: Art. 17).

With reference to external nationalities, internal nationality is emphasized as a potent category, offering a first glimpse on rudimentary forms of the genesis of a genuine identity. In this context, it is clarified that 'before any conclusion of any bilateral or multilateral arrangement similar to this Agreement with States that are not parties thereto, the Parties shall consult among themselves' (ibid.: Art. 27), introducing a new quality of common migration and border policy within a given territory. After the implementation of Schengen, a European territory with a common border is formed that claims prevalence over the borders of a yet-to-be developed common polity, which is presented as something that has to be jointly secured.

REGULATORY PRACTICES AND SUBJECTIVATION

To maintain a genuine European identity, as it has been constituted by Schengen, a discursively created border has to be materialized. This happens via regulatory practices at external borders that exclude the exterior, decreasing the danger of subverting the 'identity' of the interior. In order to secure such a fragile, discursively created identity, there is a 'need for creating an integrated management of operational cooperation at the external borders of the Member States of the European Union' (FRONTEX 2004: 1). FRONTEX, the European border management

agency, is obliged to combine activities and abilities to help with the removal of members of third country states, for instance:

'The Agency should [...] provide the necessary assistance for organizing joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third country nationals illegally present in the territories of the Member States' (FRONTEX 2004: 2).

The existence of third countries – or 'Others' – as a reference for the practice of the agency is taken as granted. It is quasi-naturalized and functions as a foundation to legitimize the agency's actions. At the same time, this naturalization opens up the possibility that the territory within the border is subjectified: The territorial space of the EU adopts an identity that is realized by exclusion and develops practices to maintain it. To facilitate these practices at external borders is the intention of EUROSUR, a program to strengthen and simplify the surveillance of external borders. Three stages on how to make this project work were made public in 2008. Stage 1 calls for the '[u]pgrading and extending [of] national border surveillance systems and interlinking [of] national infrastructures in a communication network' (EUROSUR 2008). Stage 2 emphasizes the upgrading of these networks and systems. Stage 3 implements a further practice for materializing identity: 'All relevant data from national surveillance, new surveillance tools, European and international reporting systems and intelligence sources should be gathered, analyzed and disseminated in a structured manner' (ibid.). Since drones and other surveillance technology, inevitable to keep up these efforts, are not allowed on European territory according to the EUROSUR regulations, external borders have to delimitated or expanded to neighboring nations to enforce security ambitions:

'However, currently UAVs [Unmanned Aerial Vehicle] are not allowed to fly in civil airspace for legal and technological reasons. Extending their operation to coastal areas of third countries of departure would require appropriate agreements with those third countries. In this respect, the overall context of our relations with the third countries concerned will have to be taken into account' (EUROSUR 2008).

The short-term aim of reducing *illegalized* migration with potentially deadly outcomes shall, in the long-term, be shifted completely to third states. These aims shall be achieved by analyzing data on migration by European institutions and thus enabling increasingly precise actions against illegalized migration (cf. EUROSUR 2013: 9).

The expansion of border activities aims outwards to prevent illegalized migration through new regulatory practices, thereby stabilizing European identity. The implementation of a European Entry-Exit-System has the aim to enforce existing legislation with technical means. While potentially illegalized migrants already sense the impact of European borders in their home country or through FRONTEX boats in the Mediterranean Sea, the case presents itself differently for legal border crossing activities. The EES will extend data aggregation to a point where all non-Europeans are forced to register all their biometrical data and identity information into a database (ibid.: 3). As soon as this system is established, every border crossing activity will be retraceable. Non-European travelers will be obliged to check whether the total amount of 90 legal days within a time span of 180 days on European territory is exceeded or not. If this limit is exceeded, the subject is codified as an irregular or illegal migrant:

'Support the identification of irregular migrants; by storing biometrics in the EES on all persons not subject to the visa requirements, and taking into account that the biometrics of visa holders are stored in the VIS [VISA Information System], Member States' authorities will be able to identify any undocumented irregular migrant found within the territory that crossed the external border legally; this will in turn facilitate the return process' (ibid.: 3).

Using biometrical data will make this possible even when 'third country nationals destroy their documentation once they have entered the Schengen area' (ibid.: 2).

This technological enforcement of existing legislation aside, statistics on travelling movements and illegalized migration will enable a reform of visa policies:

'The analysis generated by the system will allow for an evidence-based approach to e.g. visa policy, as the EES will provide precise data on whether there is a problem with overstayers of a given nationality or not, which would be an important element when deciding whether to impose or lift, as the case may be, the visa obligation on the third country in question' (ibid.: 3-4).

At this point, the above-mentioned *matrix of intelligibility* can be redefined as a *matrix of intelligibility of the border crossing subject* integrating categories of recognition or refusal of subjectivity. By raising nationality-related data, nationality alone already determines which individuals move freely or not, a materialization that would not be possible from outside the discourse.

At the same time, according to EES Directive 2004/38/EC, restrictions are irrelevant for members of states within the European economic area and citizens from *EFTA* states (Iceland, Norway, Liechtenstein or, for the time being, Switzerland), as long as these person produce 'sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member state' (Directive 2004/38/EC: Art. 7, Abs. 1b), further restrictive legislations should not be applied and are considered unnecessary in the context of free movement within European territory. Here, intelligibility is not fixed to nationality alone, but also to a certain socio-economic situation – a further dimension that is relevant for legal border crossing. Hence, not only a discursively created nationality, but also the economic status can determine the intelligibility of a subject.

Furthermore and strikingly, nationality and economic position are not listed in EES documents referring to anti-discrimination arrangements (EES 2013, 19). The anti-discrimination arrangement fails to meet the categories of the matrix of intelligibility of the border crossing subject. Thus, the differentiation outlined is of high relevance when it comes to the question of which subjects are intelligible to the discursive order of European status quo so as not to be seized by regulatory practices and thereby being pushed back to the place of origin. These practices enforce the normative-exclusionary subjectivation of potentially identity-subverting subjects and set dimensions of either nationality or economic position as entry resources to the European territory.

EUISS – DEMARCATION THROUGH MILITARIZATION OF THE SECURITY DISCOURSE

The *European Union Institute for Security Studies (EUISS)* is an independent agency, established to produce analyses and recommendations for common foreign and security policies of the Union.

It is part of EU structures and can be seen as a powerful *epistemic community*, as the self-description at the beginning of the publication suggests: the EUISS can be thought of as ‘an interface between European experts and decision-makers at all levels’ (De Vasconcelos/EUISS 2011). In the following section, an analysis of a publication by the EUISS on defense perspectives until 2020 shall illustrate how a security discourse by expert communities performatively constitutes an interior/exterior difference.

Significantly, the publication, consisting of multiple analyses by experts, is introduced with a quotation from Thukydides’ Peloponnesian War. According to him one is ‘more formidable to [his] enemies’ (ibid.: 3) as long as one plans one’s actions carefully. Enmity as the guiding theme predefines relations to agents outside the EU as antagonistic rather than cooperative. The usage of military means is implied. Here, notable differences between expertise and political assessments of potential dangers can be identified. While, in her introduction to the German edition, Catherine Ashton writes ‘about partners [...] – the United States, NATO, Russia, China, India’ (Ashton 2011: 7, own translation), the subsequent parts of the publication postulate a strategic expansion and standardization of military capabilities as an inevitable answer to challenges in a multipolar world. Reacting to the alienation from those nation states that are not being perceived as modern a polity as the EU requires ‘hard power politics’ (Ries 2009: 68) are suggested to enforce European interests up to the possibility of military confrontation.

Furthermore, a special focus lies on combat operations outside the EU, ideally with UN legitimation. ‘Peace building’ is of vital importance (de Vasconcelos 2011: 160), showing that military competences should also include ‘regional and global policing’ (Ries 2009: 63) as further outlined in the publication. The intersection of police and military tasks is accompanied by the mitigation of interior/exterior differences within EU territory, whereas the exteriorialization of European borders seems to be of vital importance. It is suggested that EU military should perform domestic political tasks in third national countries. These also include operation to fight smuggling and illegalized migration, as well as action schemes for the Mediterranean Sea (ibid.). The externalization of security problems legitimizes the obliteration of differences between the fields of activity for ‘military, paramilitary or civilian organisations’ (ibid.), having police duties being executed by a range of organizations including the military and therefore militarizing civil society problems. The partial merging of military and police goes hand in hand with a discursive shift from defense to security:

‘Today our security is increasingly dependent upon global transnational functional flows [...] Protecting flows will require global military policing capabilities (protecting sea lanes and critical nodes, etc.) and some power projection (preventing choke operations, managing regional instability)’ (Ries 2009:69).

The ‘functional flows’ suggest an economic dimension of European security that has to be secured by the military as police, thereby explaining the economic dimension of the matrix of the intelligible subject: There is proclaimed to be no significant political divergence between western elites anymore; rather political and economic conflict becomes visible in the form of tensions between unequal socioeconomic classes of a global society (ibid.: 63). This becomes particularly evident where European borders collide with ‘less developed’ parts of the world, especially in the

Mediterranean Sea or the Eastern Atlantic, where refugees try to cross into European territories: 'As we are unlikely to have solved this problem at its root by 2020 – i.e. by curing dysfunctional societies – we will need to strengthen our barriers. It is a morally distasteful, losing strategy, but will be unavoidable if we cannot solve the problems at their root' (ibid.: 73).

CONCLUSION

In September 2014, the *International Organization for Migration* reported that, worldwide, over 4000 refugees died during their attempts to migrate in that year alone (IOM 2014). 3072 of them drowned in the Mediterranean Sea (ibid.). The island of Lampedusa, north of Tunisia, is only one of the many prominent stigmas of the exclusive European border regime. According to Pro Asyl (Pro Asyl 2010), within two decades, about 10.000 people died in the Mediterranean and Atlantic sea. Amnesty International criticizes the reactions by the EU so far: Rather than looking for sustainable, humanitarian solutions, funding goes to projects enhancing migration control activities by FRONTEX (Amnesty International 2012: 53).

Whether the European Union is able to embrace its own normative claims in terms of human rights and dignity has to be doubted. However, the situation is not hopeless. The European territory could develop into an entity that no longer depends on the exclusion of certain subjects, especially not based on categories such as nationality or economic position. Rather than just addressing a mere claim, the human rights Charta of the EU, especially article 21 that forbids the discrimination on the basis of fortune (European Union 2012) might be applied particularly for subjects looking for security in Europe.

The foundational resources of a European identity can and have to be renegotiated politically. Human rights can be understood as a framework assisting this political conflict – if we refrain from understanding them as mere principles of an individualized, anti-collective liberal framework. The French philosopher Claude Lefort criticizes the liberal understanding and the Marxist critique of human rights, since both in his eyes fail to understand the dimensions of connectedness the symbolic order of human rights implies (Lefort 1990). The right of free speech, for instance, cannot be fulfilled without somebody listening. Free action always acts on somebody acting her_himself. In a recent interview, Slavoj Žižek urges the European polity, and especially the political left, to recognize refugees as political subjects, implying the necessity of a common struggle against capitalism and political conflict about the founding principles of a European identity (Žižek 2015). Recognizing asylum seekers and refugees as political subjects within the European polity could, again referring to the terminology of Butler's theory, assist the *queering* of European identity. The 'historic Other' once worked as a founding principle of this identity. However, we cannot foresee the results of the events that took place in the second half of the year 2015.

The framework developed in this paper enables us to critically question not only the (deadly) impact of the European border regime but also the foundational dimensions of European identity through regulatory and exclusive practices at the borders. In a further step it would now be necessary to extend research on the performative qualities of European identity involving not

only regulatory expert discourses but also civil society and political inquiry. Discourse analysis on European media on that topic and press releases by the Union are considered a fruitful starting point, for instance, further emphasizing the notion of *subjects at work* rather than just policy papers and scientific documents. Understanding borders as performative and reconstructing the dimensions of a matrix of intelligibility sets a starting point for a research program that adds up advantages other approaches on the topic do not offer. It allows us to coherently connect the discursive level of the constitution of subjects with the performative level of the ontologization of European territory and identity – reproducing the structure of Butler’s theory in International Relations (cf. Wilcox 2014: 361) and thereby in a field in which the difference between grievable and non-grievable life (Butler 2009) is ubiquitous.

If the European Union does not manage to tackle the discrepancy between its own claims and the use of brute force to stabilize its identity, it will remain dependent on a ‘losing strategy’ (Ries 2011: 73), namely the demarcation of an exterior Other, strengthening geopolitical, military territoriality.

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