

B O R D E R   R E G I O N S   S E R I E S

# BORDERS, FENCES AND WALLS

State of Insecurity?



EDITED BY  
**ELISABETH VALLET**

ROUTLEDGE



## BORDERS, FENCES AND WALLS

*Contrary to what we have been told by the globalization theorists that the world has become deterritorialized and borderless, the past decade has seen an upsurge in the construction of new fences and walls as part of the inter-state borders within the international system. This is largely due to the sense of fear of the 'outsider' in a post 9/11 world. Part of this is real, much of it is a social construction which enables governments to justify the establishment of new border fences as a means of keeping out the 'alien' and controlling their own territory. The collection of chapters in this book highlights diverse aspects of the ways in which walls and fences function in a globalized world, covering regions as far apart as America and Spain, and from the West Bank to Africa. The book is to be recommended for all students of the renaissance discipline of border studies.*

David Newman, Ben Gurion University, Israel and Editor, *Geopolitics*

*Notwithstanding all the post-Cold War 'endist' illusions, the contemporary world political map is marked by a growing number of boundaries and walls. This book presents an important aid in the understanding of this far from painless process. This set of contributions edited by Elisabeth Vallet moves a step towards a theory of walled borders, introducing at the same time a wide array of different case studies.*

Elena dell'Agnese, Università di Milano-Bicocca, Italy

*With its rich collection of contributions, this volume illustrates the diversity amongst physical borders in different parts of the world. It is an important and very welcome addition to the border studies literature.*

Emmanuel Brunet-Jailly, University of Victoria, Canada

# Border Regions Series

Series Editor: Doris Wastl-Walter, University of Bern, Switzerland

In recent years, borders have taken on an immense significance. Throughout the world they have shifted, been constructed and dismantled, and become physical barriers between socio-political ideologies. They may separate societies with very different cultures, histories, national identities or economic power, or divide people of the same ethnic or cultural identity.

As manifestations of some of the world's key political, economic, societal and cultural issues, borders and border regions have received much academic attention over the past decade. This valuable series publishes high quality research monographs and edited comparative volumes that deal with all aspects of border regions, both empirically and theoretically. It will appeal to scholars interested in border regions and geopolitical issues across the whole range of social sciences.

# Borders, Fences and Walls

## State of Insecurity?

*Edited by*

ELISABETH VALLET

*University of Quebec at Montreal, Canada*



**Routledge**

Taylor & Francis Group

LONDON AND NEW YORK

First published 2014 by Ashgate Publishing

Published 2016 by Routledge

2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

711 Third Avenue, New York, NY 10017, USA

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

Copyright © Elisabeth Vallet 2014

Elisabeth Vallet has asserted her right under the Copyright, Designs and Patents Act, 1988, to be identified as the editor of this work.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Notice:

Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

### **British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

### **The Library of Congress has cataloged the printed edition as follows:**

Borders, fences and walls : state of insecurity? / edited by Elisabeth Vallet.

pages cm. -- (Border regions series)

Includes bibliographical references and index.

ISBN 978-1-4724-2966-7 (hardback) 1. Border security--Case studies. 2. National security--Case studies. 3. Emigration and immigration--Government policy--Case studies. I. Vallet, Elisabeth, author, editor of compilation.

JV6225.B674 2014

355'.033--dc23

2014015347

ISBN 9781472429667 (hbk)

ISBN 9781315569758 (ebk)

# Contents

<i>List of Figures</i>	<i>vii</i>
<i>List of Tables</i>	<i>ix</i>
<i>Notes on Contributors</i>	<i>xi</i>

Introduction	1
<i>Elisabeth Vallet</i>	

## **PART I        INSECURITY AND BORDERS IN EUROPE AND NORTH AMERICA**

1	The Mediterranean Sea as a European Border: Trans-Mediterranean Migration, Forced Return and Violation of Fundamental Rights	11
	<i>Maria Chiara Locchi</i>	
2	The Canary Islands' "Maritime Wall": Migration Pressure, Security Measures and Economic Crisis in the Mid-Atlantic	27
	<i>Josefina Domínguez-Mujica, Ramón Díaz-Hernández and Juan Parreno-Castellano</i>	
3	A Community of Borders, Borders of the Community: The EU's Integrated Border Management Strategy	51
	<i>Denis Duez</i>	
4	Border Games: From Duel to Russian Roulette at the Border	67
	<i>Markus Heiskanen</i>	
5	Borders, Bordered Lands and Borderlands: Geographical States of Insecurity between Canada and the United States and the Impacts of Security Primacy	85
	<i>Victor Konrad</i>	

## **PART II        TOWARDS A THEORY OF BORDER WALLS?**

6	Walls and Borders in a Globalized World: The Paradoxical Revenge of Territorialization	105
	<i>Jean-Jacques Roche</i>	
7	Border Fences in the Globalizing World: Beyond Traditional Geopolitics and Post-Positivist Approaches	117
	<i>Sergei Golunov</i>	

8	Is the Wall Soluble into International Law? <i>Jean-Marc Sorel</i>	131
9	Walls of Money: Securitization of Border Discourse and Militarization of Markets <i>Elisabeth Vallet and Charles-Philippe David</i>	143
<b>PART III      FENCED BORDERS IN THE TWENTIETH AND TWENTY-FIRST CENTURIES</b>		
10	Walls and Access to Natural Resources <i>Sabine Lavorel</i>	159
11	Border Fences as an Anti-Immigration Device: A Comparative View of American and Spanish Policies <i>Said Saddiki</i>	175
12	Walls, Sensors and Drones: Technology and Surveillance on the US–Mexico Border <i>Rodrigo Nieto-Gomez</i>	191
13	Technologies, Practices and the Reproduction of Conflict: The Impact of the West Bank Barrier on Peace Building <i>Christine Leuenberger</i>	211
14	Towards a High-Tech “Limes” on the Edges of Europe? Managing the External Borders of the European Union <i>Vincent Boulanin and Renaud Bellais</i>	231
15	Towards the Wall between Nogales, Arizona and Nogales, Sonora <i>Irasema Coronado</i>	247
16	Border Wall as Architecture <i>Ronald Rael</i>	267
	<i>Index</i>	279

# List of Figures

2.1	Map of irregular migration routes from Africa to the Canary Islands (2006)	32
2.2	Links between migration stages and policing measures	40
2.3	Links between migration stages and the labour market regulation	44
5.1	Map of the Cascade Gateway	90
16.1	Different forms of barrier used along the US–Mexican border	268
16.2	Flooding in Nogales, Arizona caused by the border wall	270
16.3	Water catchment wall, El Paso, TX	271
16.4	Water treatment wall, Calexico, CA	272
16.5a	Solar wall	273
16.5b	Solar wall	273
16.6	Solar hot water wall	274
16.7	Water and life safety wall	275
16.8	Family visits across the wall	276
16.9	Yoga across the wall	277
16.10	Bike path and pedestrian wall	277



*This page has been left blank intentionally*

# List of Tables

2.1	Landmarks in the management of unauthorized migration flows in the EU and in Spain (1985–2010)	33
2.2	Spain's economic indicators and immigration	45
4.1	Transformation of borders	70
14.1	Illegal immigration in Europe (detections or cases as reported by Member States)	233
14.2	Alternative aggregation technologies of public supply	234

*This page has been left blank intentionally*

# Notes on Contributors

**Renaud Bellais**, ENSTA Bretagne, France.

**Vincent Boulanin**, École des Hautes Études en Sciences Sociales, Paris, France and Stockholm International Peace Research Institute, Sweden.

**Irasema Coronado**, Professor at the University of Texas at El Paso, USA and Executive Director of the Commission for Environmental Cooperation Montreal, Quebec, Canada.

**Charles-Philippe David**, Raoul-Dandurand Professor of Strategic and Diplomatic Studies, UQAM, University of Quebec at Montreal, Canada.

**Ramón Díaz-Hernández**, Permanent Professor in the Department of Human Geography at the University of Las Palmas de Gran Canaria, Spain.

**Josefina Domínguez-Mujica**, Permanent Professor in the Department of Human Geography at the University of Las Palmas de Gran Canaria, Spain.

**Denis Duez**, Professor in Political Science and Director of the Institute for European Studies at the University of Saint-Louis, Brussels, Belgium.

**Sergei Golunov**, Research Fellow at the Centre for EU-Russian Studies, University of Tartu, Estonia.

**Markus Heiskanen** works in the research unit of the Finnish Border and Coast Guard Academy, Finland.

**Victor Konrad**, Adjunct Research Professor in the Department of Geography and Environmental Studies at Carleton University, Ottawa, Canada.

**Sabine Lavorel**, Lecturer in Public Law at the University of Grenoble II/CESICE, France.

**Christine Leuenberger**, Senior Lecturer in the Department of Science and Technology Studies at Cornell University, USA.

**Maria Chiara Locchi**, Member of the Department of Public Law at the University of Perugia, Italy.

**Rodrigo Nieto-Gomez** works at the Center for Homeland Defense and Security at the Naval Postgraduate School in Monterey, USA.

**Juan Parreno-Castellano**, Permanent Professor in the Department of Human Geography at the University of Las Palmas de Gran Canaria, Spain.

**Ronald Rael**, Associate Professor at the University of California, Berkeley, USA with a joint appointment in the departments of Architecture and Art Practice.

**Jean-Jacques Roche**, Professor at the University Paris II, Pantheon Assas, France.

**Said Saddiki**, Associate Professor of International Relations and International Law at Al-Ain University of Science and Technology, Abu Dhabi, UAE and Sidi Mohamed Ben Abdellah University, Fez, Morocco.

**Jean-Marc Sorel**, Professor at the Sorbonne School of Law (University of Paris 1) and Director of the IREDIES, France.

**Elisabeth Vallet**, Adjunct Professor of Geography and Scientific Director, Raoul-Dandurand Chair at UQAM, University of Montreal, Canada.

# Introduction<sup>1</sup>

Elisabeth Vallet

In 2013, Turkey became the fourth country in less than two years to announce plans for a new border wall. After Bulgaria, Greece (which completed a barrier along its border with Turkey in December 2012) and Israel (which completed the bulk of its barrier with Egypt in January 2013, began reinforcing the 56 kilometres of fortifications on its border with Syria,<sup>2</sup> and planned an upgrade and extension of its barrier with Jordan<sup>3</sup>), Turkey announced the construction of a border wall to solve its security problems on the Syrian border.<sup>4</sup> To be sure, the idea of fortifying a border is not new. From the building of the Roman Limes in the second century CE (which included Hadrian's Wall and the Antonine Wall in Scotland), the construction of the Great Wall of China begun in the third century BCE, King Gudfred of Denmark's Danevirke built in the seventh century, the Silesian Walls and the Japanese *genko borui* built to guard northern Kyushu Island against Mongol invasions, up to more modern structures such as the iconic Berlin Wall, the "wall" has been a constant in international relations.

However, the fall of the Berlin Wall (and the new international order that emerged at that time) opened an era of globalization that seemed to irrevocably doom the State to obsolescence (Balibar and Badie, 2006). With the apparent movement towards a world without borders (Ohmae, 1990; Badie, 1999, 2000; Galli, 2001; Zolo, 2004; Schroer, 2006) – or at least a world where borders are less and less important (Lévy, 2005: 40; Brunet-Jailly, 2005, 2010; Andreas, 2003a: 82) – academics began shifting away from State-centric interpretations of international relations (Paasi, 1998: 70–71). But while observers assumed that, following the fall of the Berlin Wall, the world would never be the same, the borders, walls and barriers that were symbolic of the bipolar world and were expected to perish with it returned with a vengeance in the aftermath of 9/11 (Jones, 2012; Brown, 2009; Vallet and David, 2009; Vallet, 2012; Paasi, 2009: 216), accompanied by a new border discourse (Newman, 2006).

Walls had not actually disappeared after the Cold War (12 remained standing, half of which served very conventional purposes<sup>5</sup>). But what leads us to speak of the "return"

---

1 This study was made possible by a research grant from the Social Sciences and Humanities Research Council of Canada.

2 "More than 90 per cent of the fence, which is about 130 kilometers long in total, was built shortly after the 1973 Yom Kippur War". It no longer meets current security needs, partly because "severe weather in the Golan Heights has battered the fence over the years to the point where in certain places, it barely exists" and also because of the situation in Syria. Gili, Cohen, 2012. "IDF reinforces security along border fence with Syria", *Haaretz*, September 14, 2012; "Israel to fortify Syrian border fence", *AFP*, January 6, 2013.

3 Largely because migrants from the Sinai have been forging new migration routes passing through Jordan.

4 "Turkey to build 2.5-kilometer-long wall on Syria border", *Hurriyet Daily News*, May 23, 2013.

5 The walls between South Africa, Mozambique and Zimbabwe, between Israel and Syria, Israel and Lebanon, China and Hong Kong, China and Macao, Rhodesia, Mozambique and Zambia, Cuba and the Guantánamo zone, the first phase of the wall between India and Pakistan, the wall in the

of border walls is the contrast between the “world without borders” discourse and the resurgence of wall-building, particularly after 2001. After peaking at 19 between 1945 and 1991 and declining to 12 by the end of the Cold War, the trend was reversed with the addition of 14 new walls during the decade following the Cold War. In the 20 years after the end of the Cold War, the total number of walls more than tripled.<sup>6</sup>

But despite the appearance of new walls in the post-Cold-War period, studies continued viewing walls through a stubbornly local lens, a consequence of the persistent “territorial trap” (Agnew, 1994). So the scholarly literature on walls essentially consisted of case studies – i.e. analysis of “a” wall from various point of views: anthropological (Latte Abadallah and Parizot, 2011), legal (Kahan, 2004; Araujo, 2004), biological (Su et al., 2003), historical (Martínez, 2009; Sterling, 2009) and sociological (Medina, 2007). With a few exceptions – such as the studies by the geographers Newman and Paasi (1998), Jones (2009) and Foucher (2007); the philosopher Brown (2009); the legal scholar Sorel (2010); and the political scientists Vallet and David (2012a, 2012b, 2013) – the wall was not regarded as a global phenomenon. And even in the latter cases, it was approached more often than not from within the confines of a single discipline. Exceptions include special issues of the magazines *Hermès* and *Diplomatie*, and of scholarly journals such as the issues of the *Journal of Borderland Studies* and *Études internationales* edited by Vallet and David (2012a and 2012b).<sup>7</sup>

However, the scope of the trend, combined with the changing nature and function of “the” wall, did prompt some researchers to draw distinctions between contemporary border walls and the border fortifications of the past. It has been suggested that the modern wall, as a “post-Westphalian” phenomenon (Brown, 2008: 54), extends beyond the limits of the military structures, such as the Maginot Line or the Siegfried Line, that typified the 1945–1991 period, being distinguished from classical border barriers by three features: control of the border, physical demarcation of the border and asymmetry (Hassner and Wittenberg, 2009). These walls are artefacts of a new era in international relations and of a new understanding of the very idea of the border. Border walls have become the “fault lines of globalization” (Ritaine, 2009a: 160) as well as markers of identity, instruments of differentiation (Foucher, 2008), tools at the service of State sovereignty (Brown, 2009; Parizot, 2009: 53; Latte Abdallah and Parizot, 2011).

What initially could be interpreted as a tightening of security spurred by 9/11 proved to be a ratchet effect produced by the reaction against fast-paced globalization, which had not been wholeheartedly embraced by many members of the international community. While 9/11 may appear to have ratified the return of the wall as a physical object and political instrument (Jones, 2010), the speed with which walls sprang up suggests the existence of a latent tendency that predated 9/11, at least at the ideational level. The apparent security-seeking reflex actually sprang from the pull of identity, which explains

---

demilitarized zone between the two Koreas, the separation line in Cyprus, and Morocco’s wall in Western Sahara all survived the end of the Cold War (see Vallet and David, 2012a and 2012b).

6 Estimates of the length of the extant walls vary: 18,000 kilometres according to Foucher (2007), more than 41,000 kilometres according to Rosière (2009) (trimmed to 39,000 in 2010), a little more than 29,000 kilometres according to Vallet and David (2012). The differences are due to the fact that some counts may include not only completed walls but also those in the advanced planning stage, and that the numbers are generally based on government figures.

7 Every two years, an international conference on that issue takes place in Montreal. Most authors of this edited volume have participated in at least one of the four international conferences on the subject organized by the Raoul Dandurand Chair in 2009, 2011 and 2013.

why democracies also set about fortifying their boundaries (Jones, 2012; Foucher, 2007) in order to demonstrate their ability to regain control of their borders (Foucher, 2009: 6): as of 2013, the US, Israel, Greece, Spain and India had a total of 6,000 kilometres of walls.

Since 2001 (Jones, 2009; 2012), the purpose of new walls has been not so much to convert a front line into a *de facto* border as to address two threats: migrants and terrorists (the two sometimes overlap or blend together in the pro-wall discourse). The upshot has been the creation of a worldwide great wall of globalization (Davis, 2007: 172) that has become virtually impossible for migrants from the South to scale. The quest for absolute impenetrability (Bennafla and Peraldi, 2008; DeBardeleben and Neuwalh, 2005: 11, 23; Zielonka, 2002: 11–12) leads to the establishment of systems of norms, visas, exclusions and deportation processes which, by fragmenting the territory, ultimately create protected sanctuaries (Rekacewicz, 2009).

Still, walls are not truly impregnable (Lecumberri, 2006, although her argument is disputed: Staniland, 2005–2006: 31–34; Weizman, 2008: 90). In some respects, walls may even be said to be illusory, for they give rise to bypass strategies and alternative routes (Pallister-Wilkins, 2012; Wittenberg, 2009). It has been suggested that their true purpose is to maintain a sense of security and identity (Ritaine, 2009: 161). Walls provide tangible evidence that governments are doing something (Hassner and Wittenberg, 2009). To be sure, this has always been the case (Duffin, 2009), but in the wake of 9/11, optics seem to take precedence over reality and domestic politics over foreign policy and diplomacy: the image of a fortified border becomes more important than its actual effectiveness. In this age of risk management, the wall, its various functions (protection, pacification, separation and even segregation – see Karlin, 2012) and accompanying security mechanisms (El Maslouhi, 2009: 6; Beck, 1999) are all conscripted to serve the logic of perception: they are not only the most important functional elements but also the most visible components of interconnected surveillance processes (Ritaine, 2009; Gonzalez, 2012).

\* \* \*

The wall, in the proportions it has now assumed, is a unique, almost unprecedented, object in international relations. But it is also an artefact that stretches back in time to antiquity. Over its history, the wall has embraced a heterogeneous range of structures built with diverse motivations on a variety of borders. This book considers walls as a global phenomenon, one that is expanding primarily because of States' perceived insecurity in a globalized world. Part I deals with Europe and North America, the two large free-trade blocs produced by the 1990s and the end of the Cold War, where this tendency is particularly evident. Maria Chiara Locchi, Josefina Domínguez-Mujica, Ramón Díaz-Hernández, Juan Parreno-Castellano, Denis Duez, Markus Heiskanen and Víctor Konrad investigate the current state of affairs in European and North American States, which stands in contrast to the prevailing view at the end of the Cold War, and discuss how legal and political instruments are being mustered to support ever-stricter control over borders, up to and including the erection of walls, real and virtual.

In view of this closing of borders, we need to rethink the wall in view of its new meaning and the reconfiguration that has occurred since the end of the 1990s, and to analyse, at a theoretical level, the reterritorialization effected by border walls. In Part II, Jean-Jacques Roche, Serghei Golunov, Elisabeth Vallet and Charles-Philippe David and Jean-Marc Sorel bring theoretical perspectives to bear on the resurgence of border walls in an increasingly globalized world.



Finally, Part III consists of a series of case studies of the most important border barriers of the twentieth and twenty-first centuries and their impacts. Sabine Lavorel, Said Saddiki, Rodrigo Nieto-Gomez, Christine Leuenberger, Vincent Boulanin and Renaud Bellais, Irasema Coronado and Ronald Rael look at how the growth of border walls has ushered in new ways of thinking about border areas from every point of view: law, sociology, technology, the environment, art.

It is our hope that this multidisciplinary approach will serve to shed new light on the wall phenomenon as a whole, in all its aspects.

## References

- Agnew, J. 1994. The Territorial Trap: The Geographical Assumptions of International Relations Theory. *Review of International Political Economy*, 1: 53–80.
- Andreas, P. 2000. The Wall after the Wall, in Andreas, P. and Snyder, T. (eds), *The Wall around the West. State Borders and Immigrations Controls in North America and Europe*. Oxford: Rowman & Littlefield Publishers.
- Araujo, Fr. R.J. 2004. Implementation of the ICJ Advisory Opinion – Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Fences [Do Not] Make Good Neighbors? *Boston University International Law Journal*, 22: 349–385.
- Badie, B. 1999. *Un monde sans souveraineté*. Paris: Fayard.
- Badie, B. 2000. *La Fin des territoires. Essai sur le désordre international et sur l'utilité sociale du respect*. Paris: Fayard.
- Balibar, E. and Badie, B. 2006. L'étranger comme ennemi. Sur la citoyenneté transnationale. CERI, Projets transversaux: <http://www.ceri-sciencespo.com/cerifr/transversaux.php>.
- Ballif, F. and Rosière, S. 2009. Le défi des *teichopolitiques*. Analyser la fermeture contemporaine des territoires. *L'Espace Géographique*, 38(3): 193–206.
- Beck, U. 1999. *World Risk Society*. Cambridge: Polity Press.
- Bennafla, K. and Peraldi, M. 2008. Introduction. Frontières et logiques de passage: l'ordinaire des transgressions. *Cultures & Conflits*, 72, winter [En ligne], mis en ligne May 19, 2009: <http://www.conflits.org/index17383.html> [July 27, 2011].
- Bocco, R. 2011. Pratiques de lieux, logiques des pouvoirs: une lecture foucauldienne des espaces israélo-palestiniens, in Latte Abdallah, S. and Parizot, C. (eds), *À l'ombre du mur – Israéliens et Palestiniens entre séparation et occupation*. Arles: Actes Sud/MMSH.
- Brown, W. 2009. *Murs – Les murs de séparation et le déclin de la souveraineté étatique*. Paris: Les prairies ordinaires.
- Brunet-Jailly, E. 2005. Theorizing Borders: An Interdisciplinary Perspective. *Geopolitics*, 10(4): 633–649.
- Brunet-Jailly, E. 2010. Introduction – Borders, Flows and Territories, in *Theorizing Borders and Borderlands*. Special Issue of *Geopolitics*, Guest Editor, 15(4).
- Caldeira, T. Pires do Rio. 2001. Urban Segregation, Fortified Enclaves, and Public Space. *City of Walls. Crime, Segregation, and Citizenship in São Paulo*. Berkeley: University of California Press, 256–296.
- Chamoiseau, P. and Glissant, É. 2007. *Quand les murs tombent – L'identité nationale hors la loi?* Paris: Galaade.
- Clochard, O. 2003. La Méditerranée: dernière frontière avant l'Europe. *Les Cahiers d'Outre-Mer*, 222, April–June: <http://com.revues.org/index862.html> [July 30, 2011].

- Crépeau, F., Nakache, D. and Atak, D. 2007. International Migration: Security Concerns and Human Rights Standards. *Transcultural Psychiatry*, 44(3): 311–337.
- Cuttitta, P. 2007. Le monde-frontière. Le contrôle de l’immigration dans l’espace globalisé. *Cultures & Conflits*, 68: 61–84.
- David, C.-P. and Vallet, É. 2009. “Mirror, Mirror on the Wall – Why Is there a Wall after All? The Return of the Wall in IR”. Paper delivered at the conference of the International Political Science Association, Santiago de Chile.
- Davis, M. 2007. *In Praise of Barbarians: Essays against Empire*. Chicago: Haymarket Books.
- Davis, M. and Akers Chacón, J. 2006. *No One Is Illegal: Fighting Racism and State Violence on the U.S.-Mexico Border*. Chicago: Haymarket Books.
- Debardeleben, J. 2005. *Soft or Hard Borders?: Managing The Divide in an Enlarged Europe*. Aldershot: Ashgate.
- Dryef, Z. 2008. Rueil: autour de la cité, le mur de la honte ... ou du renouveau? *Rue89*, 6 August.
- Duffin, J. 2009. “The Plague Wall: Health-Care Surveillance in Eighteenth Century Europe”. Paper delivered at the “Walls and Fences in International Relations” conference, Raoul-Dandurand Chair of Strategic and Diplomatic Studies, UQAM, Montreal, October 29–30, 2009.
- Economist*, The. 2006. Walls and Fences from Sea to Shining Sea, January 12, 2006.
- El Maslouhi, A. 2009. “Murs et reterritorialisation des relations internationales post-Guerre froide”. Paper delivered at the “Border Walls in International Relations” conference, Raoul-Dandurand Chair of Strategic and Diplomatic Studies, UQAM, Montreal, April 1, 2009.
- Foucault, M. 1999. *Les Anormaux*. Paris: Gallimard.
- Foucher, M. 2004. *Fronts et frontières, un tour du monde géopolitique*. Paris: Fayard [1st edition 1989].
- Foucher, M. 2007. *L’Obsession des frontières*. Paris: Librairie Académique Perrin.
- Galli, C. 2001. *Spazi politici – L’età moderna e l’età globale*. Bologna: Il Mulino.
- Gonzalez, S. 2012. Muro fronterizo infinito: <http://www.ipernity.com/blog/occupyusa/402373> [November 12, 2012].
- Gottmann, J. 1952. *La politique des États et leur géographie*. Paris: Armand Colin.
- Hassner, R. and Wittenberg, J. 2009. “Barriers to Entry: Who Builds Fortified Boundaries and Are They Likely to Work?” Conference, Raoul-Dandurand Chair of Strategic and Diplomatic Studies, Fences and Walls in International Relations conference, UQAM, October: <http://polisci.berkeley.edu/people/faculty/WittenbergJ/Barriers%20to%20Entry%20UQAM.pdf> [May 25, 2013].
- International Court of Justice (ICJ). 2004. Public sitting held on Monday 23 February 2004, at 10 a.m., at the Peace Palace, President Shi presiding, on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion submitted by the General Assembly of the United Nations). Verbatim Record, online.
- Israel Ministry of Defence. 2003. *Israel’s Security Fence*: <http://www.seamzone.mod.gov.il/pages/eng/default.htm> [July 24, 2007].
- Jones, R. 2009. Geopolitical Boundary Narratives, the Global War on Terror, and Border Fencing in India. *Transactions of the Institute of British Geographers*, 34(3): 290–304.
- Jones, R. 2010. The Border Enclaves of India and Bangladesh: The Forgotten Lands, in Diener, A.C. and Hagen, J., *BorderLines and Borderlands – Political Oddities at the Edge of the Nation-State*. Lanham: Rowman & Littlefield, 15–32.

- Kahan, R. 2004. Building a Protective Wall Around Terrorists – How the International Court of Justice’s Ruling in the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Made the World Safer for Terrorists and More Dangerous for Member States of the United Nations. *Fordham International Journal of Law*, 28(2004–2005): 827–878.
- Karlin, M. 2012. The Border Wall: The Last Stand at Making the US a White Gated Community, Truthout, March 11: <http://truth-out.org/news/item/7147:the-border-wall-the-last-stand-at-making-the-us-a-white-gated-community> [May 10, 2013].
- Konrad, V. and Nicol, H. 2008. *Beyond Walls: Re-inventing the Canada-United States Borderlands*. Aldershot: Ashgate.
- Lasky, J.R., Jetz, W. and Keitt, T.H. 2011. Conservation Biogeography of the US–Mexico border: A Transcontinental Risk Assessment of Barriers to Animal Dispersal. *Diversity and Distributions*, 17: 673–687.
- Latte Abdallah, S. and Parizot, C. (eds). 2011. *À l’ombre du mur – Israéliens et Palestiniens entre separation et occupation*. Arles: Actes Sud/MMSH.
- Le Boedec, G. 2007. Le détroit de Gibraltar. *EchoGéo*, Numéro 2 [En ligne], mis en ligne le 22 February 2008: <http://echogeo.revues.org/index1488.html> [July 30, 2010].
- Lecumberri, B. 2006. Los muros, una estrategia geopolítica que alimenta la violencia – Entrevista: Yves Lacoste, Geopolítico Frances. *La Republica*, October 28, 2006.
- Lévy, A. 2005. Des murs, remparts contre la réalité. *Libération*, October 20, 2005.
- Martinez, O. 2009. Border Conflict, Border Fences, and the “Tortilla Curtain” Incident of 1978–1979. *Journal of the Southwest*, July 30, 2009.
- Medina, I. 2007. At the Border: What Tres Mujeres Tell Us About Walls and Fences. *Journal of Gender, Race & Justice*, 10: 245.
- Newman, D. 2006. The Lines that Continue to Separate Us: Borders in our Borderless World. *Progress in Human Geography*, 30: 1–19.
- Newman, D. and Paasi, A. 1998. Fences and Neighbours in the Postmodern World: Boundary Narratives in Political Geography. *Progress in Human Geography*, 22(2): 186–207.
- Novosseloff, A. and Neisse, F. 2007. *Des murs entre les homes*. Paris: La Documentation française.
- Ohmae, K. 1990. *The Borderless World*. New York: Harper Business.
- Paasi, A. 1998. Boundaries as Social Processes: Territoriality in the World of Flows. *Geopolitics*, 3(1): 69–88.
- Paasi, A. 2009. Bounded Spaces in a “Borderless World”: Border Studies, Power and the Anatomy of Territory. *Journal of Power*, 2(2): 213–234.
- Pallister-Wilkins, P. 2012. “Fences don’t make us safe”: <http://www.politics.co.uk/comment-analysis/2012/02/14/comment-fences-don-t-make-us-safe> [May 19, 2013].
- Rekacewicz, P. 2009. Vers la sanctuarisation des pays riches. Un monde interdit, in *Frontières, migrants et réfugiés*, Cartographier le présent, Études cartographiques, décembre, p. 11: <http://www.cartografareilpresente.org/article418.html> [September 15, 2010].
- Ritaine, É. 2009. La barrière et le *checkpoint*: mise en politique de l’asymétrie. *Cultures & Conflits*, 73(Frontières, marquages et disputes): 13–33.
- Rosière, S. 2009. “La prolifération des murs, symptôme d’une mondialisation ‘fermée’?” Paper delivered at the “Walls and Fences in International Relations” conference, Raoul-Dandurand Chair of Strategic and Diplomatic Studies, UQAM, Montreal, 29–30 October.
- Sajjad, A.S. 2006. Fencing the Porous Bangladesh Border: [Worldpress.org](http://Worldpress.org), December 14, 2006.

- Sanguin, A.-L. 2007. Les nouvelles perspectives frontalières de l'union européenne après l'élargissement de 2004, *L'Espace Politique* [En ligne], 1, 2007-1: <http://espacepolitique.revues.org/index437.html> [July 30, 2009].
- Schroer, M. 2006. *Räume, Orte, GrenzenAuf dem Weg zu einer Soziologie des Raums*. Frankfurt: Suhrkamp.
- Sivan, E. 2006. À propos du mur en Israël, in Michel Foucher, Henri Dorion, *Frontières – Images de vies entre les lignes*. Paris: Glénat et Muséum.
- Sorel, J.-M. (ed.). 2010. *Les murs et le droit international*. Paris: Éditions Pédone.
- Staniland, P. 2005. Defeating Transnational Insurgencies: The Best Offense is a Good Fence. *The Washington Quarterly*, 2005–2006: 31–34.
- Sterling, B.L. 2009. *Do Good Fences Make Good Neighbors?* Washington, DC: Georgetown University Press.
- Su, H., Qu, L.-J., He, K. et al. 2003. The Great Wall of China: A Physical Barrier to Gene Flow? *Heredity*, 90: 212–219.
- Weizman, E. 2008. *À travers les murs – L'architecture de la nouvelle guerre urbaine*. Paris: La Fabrique éditions.
- Zielonka, J. 2002. Introduction: Boundary Making by the European Union, in Zielonka, J. (ed.), *Europe Unbound – Enlarging and Reshaping the boundaries of the European Union*. London: Routledge.
- Zolberg, A.R. 1989. The Next Waves: Migration Theory for a Changing World. *International Migration Review*, 23(3): 403–430.
- Zolo, D. 2004. *Globalizzazione. Una mappa dei problemi*. Rome-Bari: Laterza.

*This page has been left blank intentionally*

PART I

Insecurity and Borders in Europe  
and North America

*This page has been left blank intentionally*

# Chapter 1

## The Mediterranean Sea as a European Border: Trans-Mediterranean Migration, Forced Return and Violation of Fundamental Rights

Maria Chiara Locchi

### **Immigration Policies in Europe and the Transformation of European Borders**

European and particularly Italian immigration policies are a useful point of observation in the transformation of state borders. Many scholars, especially political scientists and legal sociologists and philosophers, have been studying this phenomenon trying to clarify the conceptual categories and the mechanisms of social control that lie underneath the legal regulations of European border control systems (Cutitta, 2006a, 2007a, 2007b, 2009; Bigo and Guild, 2005a; Bigo and Guild, 2010). State borders can no longer be considered only as lines between spheres within which two or more political entities exercise their constitutional authority and exclude the others' sovereignty (Lombardi, 1985: 435). This notion of "border" has been inherited from the past, from the long and troubled process of formation and consolidation of territorial and national States in Europe, with the transition between the "personal State", which was based on personal ties, and the "territorial State", which was defined by spatial control as an essential feature of sovereign power (Tilly, 1993; Maćzak, 1995: 125). The institution of rigid and well-controlled borders and the consequent transition from private to public control of human mobility have played a key role in facilitating the shift from feudalism to modern capitalism. In this regard, John Torpey's work (Torpey, 2000) represents a remarkable contribution, since it points out the importance of improving personal identification techniques in order to control people's movements. Using new registration systems, population census, identity and travel documents, states were more easily able to identify and distinguish between "their" members and the "others", which was an essential step to "penetrate" society and gain control over it.

Geopolitical and legal structures that were built upon the pillars of territorial and national States have been subjected to processes of deep erosion that can be labelled as "globalization" for a significant period of time. In such a framework international migration is an important causal factor and a privileged perspective for the comprehension of the erosion phenomena implied by globalization. Furthermore, in the context of immigration policies, the tensions that are shaking nation-states should not be associated too simplistically with the dissolution of the State and the superimposition of supranational political entities. In the domain of immigration policy, States continue to be the dominant players and their weight on the international scene is heavily influenced by the political and economic balance of power, with the result that among all sovereign states, which are equal on a formal level, some states are "more sovereign" than others.

With regard to the transformation of the "border", European immigration policies represent an interesting case study. The process of European integration and the consolidation



of the right to free circulation within the EU has changed the notion of what constitutes a border. The 1985 Schengen Agreement established an area of free movement through the abolition of “internal” borders, or the borders of Schengen member States.<sup>1</sup> The Schengen Agreement and the subsequent 1992 Maastricht Treaty produced an “Europeanization” of the notion of “citizen”, who is entitled to free entry and circulation, as well as of the concept of “alien”. After Schengen the conceptualization of the “alien” was no longer based on an exclusively national perspective, since nationals of a State that does not join the Schengen area are considered to be “aliens”.

Therefore the abolition of internal borders has not only resulted in the improvement of the freedom of movement; it has also caused the strengthening of “external” frontiers, making Europe a “fortress” to people who wish to enter it. The features of European border policy poses the question of whether the transformation of European State-borders has meant the overcoming of a “State logic” or if there has been an intensification of national paradigms in the exclusion of the “others”.

### *An “Anticipated” European Border: The Application for a Schengen Visa*

Didier Bigo and Elspeth Guild have explained the process of “anticipation” and delocalization of European borders into immigrant-sending countries, where borders “contact” individuals prior to their departures for Europe (Bigo and Guild, 2005b). An alien who wishes to enter Europe has to apply for a visa to the diplomatic representative of the European destination country if he or she is a national of a State subject to a visa requirement.<sup>2</sup> The application for an entry visa can be viewed as a “first European border” considering that entry visas have turned into important tools for the prevention of and fight against illegal immigration. Diplomatic officers carry out what has been defined as “policing at a distance”, consisting of different forms of controls and investigations implemented through sophisticated technological devices (SIS, VIS, Interpol) and typical police procedures and means. The dominant logic is such that suspicion towards a “country” or a “nationality” makes “the granting of a visa [...] an exception to the exclusion” (Bigo and Guild, 2005b: 236). Checks carried out by diplomatic representatives aim to verify whether aliens respect general and specific entry conditions to the Schengen area and to assess if he or she represents a “threat” to public policy, national security or international relations. The implementation of this activity on the part of diplomatic officers cannot be considered only from a legal and formal perspective, referring to their duty to verify sufficient means of support, medical insurance, SIS report or other risks to public order. Diplomatic authorities themselves become *de facto* immigration policy makers implementing legal rules by highly-discretionary practices

---

1 Being a European State does not automatically coincide with being a “Schengen State”: “To prove that they are ready to join the Schengen area, the Member States undergo a ‘Schengen evaluation’ by Member States’ experts (supported by the experts of the European Commission) to verify all relevant areas of the Schengen *acquis*: control of land, sea and air borders (airports); issuing of visas; police cooperation; readiness to connect to and use the Schengen Information System; and data protection” (from the site of the EU Directorate-General for Home Affairs).

2 According to the “Community Code on Visas” (Reg. EC n. 810/2009 of 13 July 2009) Schengen States can issue short-term visas (Schengen visas) for stays that do not exceed three months within a six-month period and visas for visits exceeding that period. While the first are valid for the entire Schengen area, the second remain subject to national procedures. However National visas are valid as short-term visas for a period of not more than three months.

(Infantino, 2010).<sup>3</sup> In checking whether the foreign citizen is reported on the SIS or is a threat to public policy, internal security or public health in any way, diplomatic officers use the concepts of “threat” and “security”, which have developed by the accumulation of the different notions and criteria elaborated in European countries (Rigo, 2007: 128). Therefore, each Schengen State has to take on the responsibility of issuing of Schengen visas on behalf of the other member States.

### *The Countries of Origin and Transit of Migrants as “Europe Gatekeepers”*

European countries and the European Union as a subject of international law actively involve North African countries in preventing and fighting against irregular immigration, even more so since 9/11. This involvement is carried out by several instruments, such as: readmission agreements, through which the countries of origin and transit of immigrants commit to the readmission of undocumented aliens pushed back by European countries;<sup>4</sup> police cooperation agreements, which can provide for joint surveillance to patrol the Mediterranean Sea, joint investigative and formative activities, liaison officers dispatched from one country to another in order to coordinate cooperation activities; and the construction of detention centres and the reinforcement of the deportation of illegal immigrants from North African countries. This kind of involvement in the fight against irregular immigration raises several economic and political problems for those countries, since it is the result of a cooperation that is formally bilateral but is basically dominated by European States. Europe succeeds in gaining this “assistance” by offering some “incentives”, such as: financial contributions in order to buy border surveillance equipment or to build detention centres; special funds in the framework of development cooperation; reservation of shares of the yearly legal immigration quotas; and facilitations for nationals of the cooperating countries who reside in the European destination country (Cuttitta, 2006b: 116).

A key point of this cooperation is the legal adjustment of North African countries to restrictive European paradigms on immigration and the legal condition of aliens. Most North African countries have passed “Euro-style” legislation in the last 12 years, improving and strengthening legal devices which are typical of the Western and European immigration model: entry visa restrictions; the strict connection between employment contract, entry visa and residence permit; the multiplication of detention centres; and forced deportations (see Perrin, 2005: 70; Perrin, 2009: 19).<sup>5</sup>

---

3 F. Infantino has conducted interesting empirical research at the Italian Embassy and Consulate in Rabat and Casablanca, addressing the issue of the delocalization of the Italian (and European) border into the countries of origin and transit of immigrants.

4 The readmission policy has gained an increasing importance at the EU level. See European Council Conclusions, 2006: “Managing migration requires dialogue and close cooperation with third countries. The European Council has called for such cooperation in the context of the comprehensive policy and, in a first stage, the focus of implementation has been on Africa”. The latest European institutional developments (the five-year Stockholm program and the Lisbon treaty) confirmed such importance. Readmission agreements between European Union and some North African countries are still under negotiations, such as those with Morocco and Algeria; Italy signed return and readmission agreements with Libya, Algeria, Morocco, Tunisia and Egypt.

5 The following North African countries recently passed restrictive legislative reforms on immigration: Libya (2004 and 2005); Tunisia (2003–2004); Algeria, (2002–2003); and Morocco (2003). Sociological and legal analyses of immigration policies in North Africa can be found in CARIM – Consortium for Applied Research on International Migration.

The hallmark of these legislative acts and related administrative practices is the consolidation of the idea of national citizenship as a “border”, as a line between an “inside” and an “outside”. With the rise of national States in the Arab world, Western legal institutions, such as territorial and national States as well as nationality as the right to belong to a nation State, have already been transplanted to a different legal system. This transplant had caused an irreversible change in the political and legal conceptions of “belonging” in terms of being a “legitimate member” or an “alien”, in the Islamic world. In fact, in the Islamic State the conception of belonging to the political community was defined by different connection criteria. On the one hand, there was the common religious “matrix” under which non-Muslims were regarded as aliens; on the other hand, there was the mosaic of affiliations to families, tribes, and Islamic schools of thought (Lewis, 1999; Chabel, 2002; Vercellin, 2002; Parolin, 2007; Perrin, 2011). The incorporation of the Western national citizenship model into the Arab world has not definitively neutralized multiple belongings but the contact with European political and economic necessities and legal rules has been producing major transformations of social and legal categories relating to the condition of aliens, migrants, nomads and stall holders. In this regard the contemporary case of the traditional trans-Saharan migration routes is significant (see Pliez, 2006, who studied the Libyan region of Fezzan). Transit economies have been developing over centuries along ancient routes and the repressive approach of European immigration policies has had a negative impact on the configuration of trans-Saharan mobility, which is now regarded as “trans-Mediterranean” migration.

### **The Italian Policy of Returning “Boat People” and the Violation of Fundamental Rights**

The Italian measures of readmission and forcible return of irregular migrants in the Mediterranean has to be situated within the wider context of European policy to fight illegal immigration. In addition to the increasing cooperation between Europe and transit countries, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, called Frontex, was instituted in 2004. The aim of Frontex is to improve the integrated management of the external borders of EU member States by facilitating and rendering more effectively the application of European Union measures related to the management of external borders.

Due to its geographical position, Italy is one of the southern “gates” of Europe, along with Greece and Spain. Therefore the repressive measures adopted by the Italian government have a key role in fighting against irregular immigration in Europe as they benefit other European countries. Since 2009 the Italian policy has resulted in a dramatic increase in the return and readmission of undocumented migrants, especially through intense cooperation with Libya. From a human rights and ethical perspective, the intensification of this restrictive approach raises many serious questions, particularly concerning the respect of legality and of fundamental principles and liberties. In fact, it is worth noting that since 1988 more than 19,372 migrants have died in the Mediterranean trying to reach European coasts.<sup>6</sup> In the last two years (2011–2013) alone more than 3,500 migrants have died along the

---

6 See Fortress Europe, an online observatory on immigration and its victims in the Mediterranean. The observatory collects all the news related to boats sinking or being lost in the Mediterranean and it support journalistic inquiries on the matter: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>.

maritime borders of Europe, but the real number could be much larger; in fact, no one really knows how many wrecks have actually occurred in the Mediterranean.

*Compliance with the Obligation of Transparency and Respect of Legality in the Italian Legal System*

The Italian policy of returning boat people in the Mediterranean raises problems with regard to transparency and the respect of legality because of the way that cooperation with Libya has been implemented over the years. The relationship between the two countries has had a long history, since the Italian colonial enterprise at the beginning of the twentieth century it has been filled with violence, injustice, opportunism, diplomacy and cooperation. The cooperation achieved in recent years is highly ambiguous since it is based on the exchange of assistance in the fight against irregular migration for huge economic support which is officially presented as restitution to Libya for the Italian colonial enterprise.

The cooperation between Italy and Libya on immigration matters began in 2000 through several agreements, signed by both centre-right-wing and centre-left-wing Italian governments without full disclosure of the terms and conditions. The behaviour of Italian authorities invited criticism since it demonstrated utter disregard for the requests of civil society and the role of the parliament. In 2007, a clearer and more detailed protocol “to deal with the phenomenon of illegal immigration” was signed and in 2008 Italy and Libya established the Treaty of Friendship, Partnership and Cooperation (Ronzitti, 2009). This treaty created a partnership between the two countries and made explicit reference to the respect of fundamental human rights and liberties. This important remark was intended to appease those who had been denouncing the gross injustices and human rights violations which were occurring in Libya with regard to the treatment of sub-Saharan immigrants and have been documented in detail in reports by several important organizations (see Human Rights Watch, 2009, 2010; FIDH, 2012; Amnesty International, 2013). The reference to the respect of fundamental rights was indeed limited since it consisted of the specification that “legislations” of both countries should have observed. The chapter on immigration was also broad and vague about the Libyan obligations; neither the treaty nor the following implementation protocol provided a legal basis for intercepting boat people in international waters and returning them to North African coasts (Tondini, 2010: 4). The criticism of legal scholars focused on the implementation protocol. In particular, the protocol was considered to violate the Italian Constitution, which obliges the government to ask for a preventive parliamentary intervention in order to ratify international agreements on political matters or that provide economic burdens.<sup>7</sup>

The 2008 treaty – which was ratified by the Italian parliament – was then “*de facto* suspended” before the 2011 military attack on Libya due to the troubles and abuses occurring in the African country.<sup>8</sup>

Since the fall of the Gaddafi regime in 2011 the situation of asylum seekers, refugees and irregular migrants in Libya has worsened considerably. Human rights and the respect of legality are increasingly at risk and violence, racism and xenophobia are on the rise across the country. Despite the institutional chaos and the open violations of human rights of migrants, the collaboration between Italy and Libya on migration issues has continued.

7 Art. 80 Ital. Cost. See T. Di Pasquale, 2010: 5.

8 Those were the exact words of the former Italian Ministry of Defense, Ignazio La Russa, see: Libia: La Russa, Trattato con Italia di fatto sospeso, *La Repubblica*, 26 February 2011.

After a first agreement with the National Transitional Council of Libya for cooperation in the fight against illegal immigration, including the return of irregular migrants (17 June 2011), the Ministers of Interior of Italy and Libya signed a verbal agreement which set out a number of additional areas of cooperation including border surveillance and voluntary return and repatriation (3 April 2012). Amnesty International expressed serious concern about the contents of the agreement, which have not been disclosed despite repeated requests to the Ministry of the Interior, and is convinced that the operations “against illegal immigration” have not been made in accordance with international standards on human rights (Amnesty International, 2012).

In October 2013 Italy launched “Mare Nostrum”, a highly controversial operation, both military and humanitarian, with the aim of improving search and rescue operations and enhancing the protection of national borders. With the new operation, which includes amphibious ships, unmanned drones and helicopters with infrared equipment, Italy is attempting to deal with the waves of refugees and migrants arriving on its coasts and the risk of further tragic incidents like the capsizing of a boat carrying migrants on 3 October 2013, near Lampedusa.<sup>9</sup> In November 2013 two additional “technical agreements” between Italy and Libya were signed, with the aim of strengthening the bilateral cooperation on migration; the Italian Ministry of Defense, Mario Mauro, stated that “safe and stable borders are necessary for an appropriate management of migration flows and to protect the fundamental rights of migrants”.<sup>10</sup> Many observers have expressed their concerns about the overall sense of the recent collaboration between the two countries; with the signing of the last technical agreements the true meaning of mission “Mare Nostrum”, more military and less and less humanitarian, has been unveiled (Vassallo Paleologo, 2013).

The relations between Italy and Libya are part of a wider cooperation framework put in place by the EU, which is also mostly unknown to the general public. On 22 May 2013, the Council of the European Union initiated EUBAM Libya, a civilian mission under the Common Security and Defense Policy (CSDP), to support the Libyan authorities in improving and developing the security of the country’s borders.

### *The Infringement of the Law of the Sea*

A second question concerns the infringement of maritime law conventions,<sup>11</sup> with particular reference to the determination of competency on international waters between North Africa and Sicily and the obligations to assist persons in distress at sea and have them disembark at a “place of safety”.

---

9 On 3 October 2013, a boat carrying migrants from Libya to Italy sank off Lampedusa, a Sicilian island representing the Italian (and European) outpost in the Mediterranean. It was reported that the boat had sailed from Misrata, Libya, but that many of the migrants were originally from Eritrea, Somalia and Ghana. More than 360 people died in the shipwreck, which can be considered one of the worst disasters to occur in the Mediterranean in recent years.

10 *Italy – Libya: Cooperation Agreements*, 29 November 2013, [http://www.difesa.it/EN/Pri\\_mo\\_Piano/Pagine/20131129\\_Italy%E2%80%93Libyacooperationagreements.aspx](http://www.difesa.it/EN/Pri_mo_Piano/Pagine/20131129_Italy%E2%80%93Libyacooperationagreements.aspx). In particular, two agreements were signed: a first one on the employment of Italian remotely piloted aircraft to support Libyan authorities in border control activities in southern Libya; a second one on training activities in favour of Libyan personnel.

11 1982, United Nations Convention on the Law of the Sea (UNCLOS); 1974, International Convention for the Safety of Life at Sea (SOLAS); 1979, International Convention on Maritime Search and Rescue (SAR); 1989, International Convention on Salvage.

With regard to the first aspect, the problems arise in relation to the Italian Revenue Police (*Guardia di Finanza*) intercepting and stopping boat people in international waters and returning them to Italian–Libyan patrol boats with the assistance of Frontex. One of problematic aspects of this is the violation of those maritime international rules, which qualify international waters between North Africa and Sicily as a SAR (*Search and Rescue*) zone of Malta. In this respect a dramatic event occurred on 16 April 2010. The Turkish cargo ship *Pinar* rescued 154 immigrants whose boat was at risk of sinking in the waters of the Sicily Channel and also found a young woman's body. The *Pinar* was prevented from reaching either a Maltese or an Italian port because neither country would accept responsibility for the people rescued due to a different interpretation of international law. Immigrants were left stranded for four days with insufficient food and water and forced to sleep on the deck of the ship. They were finally allowed to disembark in Italy on 20 April (Amnesty International, 2010).

The legal treatment of Sicilian fishermen, who rescue illegal immigrants in distress at sea while working on their fishing boats in the Mediterranean, represents a clear example of the extent to which a restrictive immigration policy is able to cause flagrant violations of international human rights law. On one hand, Italian law recognizes the crime of aiding illegal immigration, even if the same law dismisses such a crime in cases of “rescue and humanitarian assistance”. Regardless, judges are charged with the establishment of all the relevant circumstances of the case and sometimes fishermen have been put on trial and convicted by courts. On the other hand, from the humanitarian side of maritime law, States should provide the “most appropriate assistance available” to people in distress at sea who are rescued by fishing boats.<sup>12</sup> Every shipmaster has the responsibility to render assistance to people in distress anywhere at sea without any discrimination and respecting human dignity. According to these conventions illegal immigrants have the right to be disembarked at a “place of safety”, which is defined as the “next port of call” of the rescue ship and does not necessarily coincide with the nearest or the most convenient port of call. It is likely that, to an Italian boat, the nearest “place of safety” is an Italian port, where it can dock and where the right to asylum and fundamental rights of immigrants are (at least in theory) granted (Vassallo Paleologo, 2009).

### *The Violation of the Right to Asylum*

A final question concerns the violation of the right to asylum and international protection of the refugee *status*. By intercepting and returning boat people Italian authorities infringe several international, European and national legal norms, which comprise the “multi-level system” of asylum. This system is based on different legal sources: Art. 3 of ECHR (European Convention on Human Rights), which prohibits torture and inhuman or degrading treatment or punishment and provides a sort of *de facto* right to asylum and principle of non-*refoulement*; the 1951 UN convention relating to the *status* of refugees; the EU asylum directives; Art. 10, par. 3 of the Italian Constitution, which provides for an autonomous constitutional right to asylum; and the Italian immigration law, which imposes substantial and procedural guarantees in the area of push-backs of undocumented immigrants. The main problem is that the Italian returning policy prevents boat people from applying for the recognition of asylum as well as refugee *status*. Individuals who risk sinking in the Sicily Channel are considered to be “illegal immigrants”, or are charged with entering Europe in

---

12 SAR Convention, Annex, Ch. 2, Art. 2.1.9.