

Research Article

The Dilemma between Respecting Human Rights and Security Concerns in the EU Border Management Policies

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Abstract

Irregular migration is one of salient problems in world politics. In particular, for border states, it even causes a serious security problem. In this regard, authorities tend to link border management to a high security perspective. However, this attitude in certain cases risks infringing fundamental human rights, in particular for migrants. The aim of this article is to find the answer to the question, ‘to what extent do mechanisms in the field of border management guarantee at the same time the conduct of effective border controls and the respect of the fundamental rights of persons intercepted while crossing the border irregularly?’. It is argued that there is an inequality between border management and human rights, and this can be seen in the European Union’s border management initiatives in the land border between Greece and Turkey. FRONTEX and its RABIT operation are critically examined.

Keywords: Human Rights, Border Management, European Union.

JEL Classification Codes: F50, F55, F59

AB Sınır Güvenliği Politikalarında İnsan Haklarına Saygı ve Güvenlik İkilemi

Öz

Düzensiz göç dünya siyasetinin en önemli sorunlarından biridir. Özellikle sınırda yer alan devletler için bu aynı zamanda ciddi bir güvenlik sorunudur. Bu bağlamda, devletlerin sınır yönetimini yüksek güvenlik açısından ele alma eğilimleri bulunmaktadır. Ancak, bu davranış bazı durumlarda özellikle mültecilere karşı en temel insan haklarına saygıyı riske atmaktadır. Bu çalışmanın amacı “sınır yönetimi mekanizmaları aynı anda hem etkin sınır kontrolü ve hem de düzensiz sınır ihlali yapan kişilerin insan haklarına saygıyı ne kadar garantileyebilir?” sorusuna cevap bulmaktır. Bu çalışmada sınır yönetimi ve insan hakları kavramları arasında bir eşitsizlik olduğu, bunun Avrupa Birliği’nin Yunanistan-Türkiye kara sınırındaki sınır yönetimi inisiyatiflerinde görülebileceği savunulmuştur. FRONTEX ve onun RABIT operasyonu eleştirel olarak incelenecektir.

Anahtar Kelimeler: İnsan Hakları, Sınır Yönetimi, Avrupa Birliği.

JEL Sınıflandırma Kodları: F50, F55, F59

Geliş Tarihi (Received): 28.02.2022 – Kabul Edilme Tarihi (Accepted): 11.06.2022

Atıfta bulunmak için / Cite this paper:

Akgül, P. (2022). The dilemma between respecting human rights and security concerns in the EU border management policies. *Çankırı Karatekin Üniversitesi İİBF Dergisi*, 12 (1), 306-325. Doi: 10.18074/ckuiibfd.1079600.

1. Introduction

The border, which creates a distinction between insiders and outsiders, is a cause of imbalance between security and liberty (Basaran, 2011, p.1). In the context of this issue, the border has a plural conceptualisation, which includes both the border of rights and border control; in other words, a border should respect both fundamental human rights and the security of states. Therefore, there should be a balance between these two concepts, and the border management mechanism should guarantee them both. However, a considerable number of scholars have discussed whether border management can guarantee security and human rights simultaneously (Huymans, 2000; Bigo and Guild, 2005; Carrera, 2007; Basaran, 2008, 2011). The main concern is the securitisation of the concept of migration (Huymans, 2000; Bigo, 2005; Léonard, 2010). It predicts that in order to ensure internal security, a political elite prefers to ignore others' rights, due to seeing them as a threat or danger (Bigo and Guild, 2005; Huymans, 2006). For instance, in terms of asylum applications, certain states reduce asylum seekers' chances of being accepted (Huymans, 2000, p.572). Therefore, it is difficult to guarantee human rights and security equally, since these objectives "have been governed by a strict unanimity rule" (Balzacq and Carrera, 2005, p.4). As a consequence of this situation, migration has become one of the salient concerns for global politics.

Theoretically, fundamental human rights are taken for granted, and these rights protect individuals from governments and their unlawful policies, but when it comes to border zones, these rights may be limited or suspended by liberal states, due to concerns regarding citizens and unwanted movers (Bigo, 2005, p.50). Border zones may be defined as the outer edges of liberal states, where there is no necessary implication of liberal rules, and also an apparent lack of responsibility (Basaran, 2011, p.2). The reason for this division is to produce a dynamic of inclusion and exclusion between inside and outside, which is done by administrations (Huymans, 2006, p.2). Moreover, governments aim to make their borders invisible (Basaran, 2008, p.339). Furthermore, "governments can declare places under their jurisdiction as foreign territory or use other forms of legal spatiality to exclude people from fundamental rights" and can also produce so-called solutions so as to demonstrate that they respect fundamental human rights (Basaran, 2011, p.31; Bigo, 2005; Den Heijer, 2010). However, this only causes a clash between human rights and border control.

In border zones, when it comes to the conceptualisation of the politics of legal borders in terms of security and liberties, it should be considered that there are legal borders of policing and a legal border of rights. In border zones, "the scope of policing powers is broader than the scope of rights" (Basaran, 2011, p.44). In other words, due to believing that non-citizens are a security threat, states prefer to "accept [that] security concerns override constitutional protection" (Basaran, 2011, p.46). The strategy is "to play verbally with the limits between inside and

outside, but not to act as if the frontiers did not exist” (Bigo, 2005, p.57). This can be correlated with the shift of migration control (Huymans, 2000; Ucarer, 2001; Basaran, 2011). New migration policy approaches depend on new visa requirements, new practices, and other deterrent measures (Ucarer, 2001, p.290).

In the context of these perceptions, when it comes to conceptualising border control and border of rights, in terms of their implementation in the European Union (EU), the first problematic issue is the definition of a ‘good’ border management mechanism for the EU. This is basically related to security rather than to both security and respect for human rights (Huymans, 2000; Carrera and Guild, 2010). The reason behind this is perceiving unwanted movers as a threat or danger (Balzacq and Carrera, 2005, p.3). This problematic conceptualisation suggests, which is the second problematic issue, the ineffectiveness of the EU’s external border management systems such as FRONTEX and its RABIT joint operations (Carrera and Guild, 2010, p.1). The final problematic issue is that of debated states, where migration is perceived as a security challenge. Most debated states prefer not to emphasise unwanted movers’ rights (ECRE, 2010; HRW, 2011). For instance, RABIT operations in Greece’s external land border with Turkey are criticised by NGOs on the basis of the lack of respect for the fundamental rights of unwanted movers and their detention conditions (FRA, 2011).

In light of all of these issues, it is necessary to ask, ‘to what extent do mechanisms in the field of border management guarantee at the same time the conduct of effective border controls and respect of the fundamental rights of persons intercepted while crossing the border irregularly?’. The argument advanced by this article is that the contemporary European border management system focuses on security, while fundamental human rights are less considered. Therefore, it is not a guarantee of both border control and a border of rights simultaneously. In order to support this argument, official documents of the EU forming FRONTEX and its RABIT operation and reports of NGOs are utilised. Official documents are used to understand the meaning of good border management strategy for the EU, whereas the reports of NGOs are to illustrate the reality of the EU’s strategy in border zones. It is examined that even though in theory both FRONTEX and its RABIT operational aim is to provide good border management policy, including respect for irregular migrants’ rights, in practice these two units, as well as the EU itself, consider human rights less, which is presented in the NGOs reports. Therefore, this article is divided into four sections. First, it discusses what ‘good’ border management means for the EU. Second, in terms of defining good border management for the EU, it cites the example of FRONTEX. Third, as a supportive argument, this article gives the example of RABITs operation in Greece’s external land border with Turkey. Finally, after determining these problematic structures, it argues what the consequences of border management are.

2. 'Good' Border Management for the EU

It is important to state what good border management for the EU would consist of, due to the conceptualisation of its current activities. The reasons behind the creation of strong external border controls for member states are first that the influx of migration has become a threatening issue in Europe and, therefore, particularly after the end of the Cold War, European states have made serious attempts to rectify this issue (Monar, 2005, p.150). Second, after the 2004 enlargement, the EU's borders extended to include areas close to unstable and insecure regions and, therefore, the EU realised that it did not have an effective border control mechanism (Jorry, 2007, p.2).

The importance of external borders date back to the 1980s within the Schengen context. It can be said that the most significantly problematic issue is the Schengen agreement itself because it was based on making a connection between terrorism and other security problems and migration, and it also "locates the regulation of migration in an institutional framework that deals with the protection of internal security" (Huymans, 2000, p.757). It followed the Treaty of Amsterdam in 1999 with the creation of an 'area of freedom, security and justice' (AFSJ), which mainly had two functions: "to provide citizens with a high level of safety and to allow for a more efficient management of migration flows" (Monar, 2005, p.145). This followed the European Council in Laeken on December 2001, which stated that "better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings" (COM, 2002, p.2). This emphasis was much more related to the importance of constituting the common and effective management of external borders in the context of the boosting of security, and in ensuring that member states' citizens belong to a shared area (COM, 2002). Moreover, it would contribute to the "secure continuity in the action undertaken to combat terrorism, illegal immigration and trafficking in human beings" (COM, 2002, p.2). In the context of this issue, the 2002 Commission document contained five components: "a common corpus of legislation; a common co-ordination and operational co-operation mechanism; common integrated risk analysis; staff trained in the European dimension and inter-operational equipment; and burden-sharing between member states and the Union" (COM, 2002, p.12).

Between 4-5 November 2004, the European Council agreed on the Hague Programme, which aims to develop the AFSJ. The Hague Programme reiterates a "comprehensive approach, involving all states of immigration, with respect to the root of causes of migration, entry and admission policies and integration and return policies" (cited in Balzacq and Carrera, 2005, pp.5-6). Balzacq and Carrera (2005, p.6) claim that this programme appears to "recast the balance between freedom and security in a critical way". For instance, a substantial section of the programme puts excessive emphasis on security issues, such as the fight against

terrorism, organised crime or the so-called ‘exceptional migratory pressure’, while the protection of human rights on the other hand was just proposed under consideration of the new Fundamental Rights Agency and the European Court of Justice, which “are presented in parsimonious if not ambiguous terms” (Balzacq and Carrera, 2005, p.6).

In particular, after the 2004 enlargement, the importance of external borders increased where the EU’s borders touched unstable and insecure regions. The EU’s response to these challenges was the creation of ‘integrated border management’ (IBM) because, for the EU, good border management should aim for an “integrated and global response” to the challenges (Carrera, 2007, p.1). IBM has four goals: securing cooperation at the borders; conducting measures in the countries of origin of illegal mobility and threats; cooperation with security actors in other states; and cooperation with domestic security agencies (Marenin, 2010, pp.17-18). Under the Finnish Presidency, the Council agreed on the definition of IBM. In December 2006, the Justice and Home Affairs agreed on the conceptual framework of IBM. IBM consists of border control, which:

includes risk analysis and crime intelligence; detecting and investigating ‘cross-border crime’ in cooperation with all the relevant law enforcement authorities; the four-tier/filter access control model (in third countries, cooperation with neighbouring countries, at the EU external border and within the free movement area); inter-agency cooperation in border management including border guards, customs and police, national security and other relevant authorities; and coordination and coherence at the transnational level’ (Carrera, 2007, p.3, doc. 13926/3/06; Baldaccini, 2010, p.233).

However, the problematic issue is the conceptualisation of IBM by the EU. Theoretically, IBM should be a “delicate attempt to marry security and trade facilitation” (Hobbing, 2005, p.1), but the EU’s general notion towards IBM is “the way towards convergence of national systems in order to ensure a high and uniform level of persons at, and surveillance of, the external borders as a precondition to develop the area of freedom, security and justice” (COM, 2003, p.1; Jorry, 2007, p.8). As a result of this, it can be concluded that the basic aim of IBM is to consider the security of external borders (Jorry, 2007, p.5).

Overall, for the EU, a good border management mechanism should include security, because this will ensure full confidence between member states, increase the effectiveness of the organisation in terms of preventing illegal migration or human trafficking, combat internal and external threats and guarantee a high level of security (COM, 2002). The conceptualisation of border management, therefore, primarily focuses on “the development of non-tangible, technology-based and dispersed borders”, such as high-tech biometrics equipment (Carrera, 2007, p.5). However, it still makes a distinction between insiders and outsiders (Hobbing,

2005, p.10). Therefore, all of the EU's policies, regardless of being related to irregular migration, are based on negative definitions, such as 'fight against' or 'illegal', which have caused migrants to be reconceptualised as criminal or suspicious (Carrera, 2007, p.2).

3. The Case of FRONTEX

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (hereinafter referred to as 'the Agency' or FRONTEX) (a contraction of the French *'frontières extérieures'*) was established in 2004 by a regulation of the Council of the EU, based on a draft submitted by the Commission, to improve the integrated management of the external borders of the member states of the EU (Marenin, 2010; Council Regulation (EC), 2007/2004). FRONTEX started work in 2005. It is an Agency of the Community with headquarters in Warsaw (Baldaccini, 2010, p.229). Its main task is "to coordinate joint operations by Member States at the external sea, land and air borders of the EU" (Baldaccini, 2010, p.230). The legal basis of the establishment of FRONTEX is Article 62(2)(a) of the EC Treaty, which concerns common standards and procedures in relation to checks on persons crossing the external borders, and Article 66 EC Treaty on measures to ensure administrative cooperation between member states in the areas covered by Title IV (visa, asylum, immigration and other policies related to free movement of persons) (Baldaccini, 2010, p.233).

The aim of FRONTEX is to facilitate "the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member States" (Léonard, 2010, p.238; recital 4 of Council of Regulation (EC), 2007/2004). In light of this, the main tasks of FRONTEX are as follows:

to coordinate operational cooperation between Member States in the field of management of external borders; assist Member States on training of national border guards; carry out risks analysis; follow up on the development of research relevant for the control and surveillance of external borders; assist Member States in circumstances requiring increased technical and operational assistance at external borders; and provide Member States with the necessary support in organising joint return operations(Article 2 of Council Regulation (EC), 2007/2004).

In relation to IBM, FRONTEX fit in terms of risk analysis and crime intelligence, which FRONTEX uses so as to co-ordinate joint operations (Carrera, 2007, p.3). Basically, its main role is to co-ordinate risk analysis regarding its joint operations which refers to "the establishment of a network of contact points, of a register to record existing resources and infrastructure or of guidelines and specific recommendations", and also to assume a key role in the effective operation of the

IBM system (Jorry, 2007, p.18; Carrera, 2007). On the other hand, risk analysis and operations should be secret, the exception to this being general risk assessment (Baldaccini, 2010; Marenin, 2010).

However, it is not actionable, which means that it has limited practical utility, and also that its main interest area is group mobility rather than individuals, and finally it is not clear which situations are meant as risk (Marenin, 2010, p.15). Moreover, the legal existence of FRONTEX is problematic. FRONTEX, as a matter of principle, depends on member states' solidarity, which states that "the responsibility for the control and surveillance of external border lies with Member States" (recital 4 of Council Regulation (EC), 2007/2004). Therefore, it can be perceived that FRONTEX is not an independent institution and yet, on the other hand, the same regulation emphasises that FRONTEX is a Community body with 'full autonomy and independence' (recital 16 of Council Regulation (EC), 2007/2004) with 'legal personality and exercising [of] the implementing powers' (recital 14 of Council Regulation (EC), 2007/2004; Brouwer, 2010). This indicates that FRONTEX is co-ordinator and has legal autonomy (HRW, 2011).

Furthermore, FRONTEX depends on Member States' decisions in terms of helping problematic external borders (Monar, 2006, p.194). In light of this issue, in order to act on problematic borders, volunteer member states should initially deploy their experts there, but a lack of language and trust towards each other can cause ineffectiveness; moreover, the main task of conducting risk analysis and threat assessments, rather than taking an active role, may be undermined (Carrera, 2007; Jorry, 2007). Second, it includes a large scale of mission interest. Therefore, it is difficult to expect it to be more effective in all tasks (Jorry, 2007). Third, in terms of continuing its joint operations, it has a lack of resources (Monar, 2006, p.195). In light of these problematic issues, FRONTEX is based on "a migratory policy mechanism that places more emphasis on security rather than on freedom and justice, which subsequently contributes to establishing an expulsion agency" (Jorry, 2007, pp.19-20).

Respecting the human rights of unwanted movers' may be the most important and problematic issue (HRW, 2009, 2010, 2012). FRONTEX was criticised by a considerable number of NGOs and pro-asylum organisations (Léonard, 2010; HRW, 2009, 2010, 2012; UNHCR, 2010; ECRE and Amnesty International, 2010). Their common critiques are that FRONTEX joint operations are basically related to controlling borders, which means the security of borders, rather than respecting the fundamental human rights of refugees or asylum seekers, and also that it does not fulfil the conditions of international law and conventions (HRW, 2010, 2009, 2012; UNCHR, 2010). Therefore, in order to reduce criticism, rather than the first amendment, which in 2007 basically related to establishing Rapid Border Intervention Teams (Regulation No:863/2007), a second amendment was issued in 2011 in an attempt to revise the problematic structure of FRONTEX in

terms of fundamental human rights (Regulation No:1168/2011). The reason for the last amendment is “to strengthen in particular its operational capabilities while ensuring that all measures taken are proportionate to the objectives pursued, are effective and fully respect fundamental rights and the rights of refugees and asylum seekers” (recital 9 of Regulation (EC), 1168/2011). Furthermore, it co-operated with the EU Agency for Fundamental Rights (FRA) and adopted a fundamental rights strategy in 2011. Nevertheless, it was criticised by NGOs, in particular in terms of respect for the human rights of unwanted movers. For instance, the 2012 World Report of Human Rights Watch (HRW) stated that “[changes] failed to create a mechanism to hold FRONTEX accountable for rights violations”.

In 2015, after a serious migration inflow to the EU Member States, FRONTEX went into another salient change. In 2016, new legal basis expanded the operational powers of the agency, renamed the European Border and Coast Guard Agency (while keeping its FRONTEX acronym) (Moser, 2020). With this new basis, FRONTEX took crucial regulatory, operational and supervisory roles, which are border checks, border surveillance, returns, collecting and sharing information, fighting cross-border crime, and coast guard functions, including search and rescue (Regulation No: 1624/2016). With the amendment in 2019, FRONTEX reached its current form. This amendment bolstered the competences and expanded the tasks of FRONTEX (Moser, 2020). According to Moser (2020:np), one important development for FRONTEX is that its powers related to “the organisation, coordination, and conduct of return operations of irregular migrants” were strengthened. Its operational area also expanded; FRONTEX was not only interested in borders directly on the EU, but also third countries that do not share a direct border with a Member State stretching from Western Balkans, South Caucasus and large parts of Northern Africa and to the Sahel region (Regulation No: 1896/2019; Moser, 2020). With these two recent developments, it can be claimed that the EU attempts to be more active in keeping its borders safe and secure, but it is difficult for the EU to establish a balance between security and respect for fundamental human rights in that security concerns, in particular internal security, outweigh respect for fundamental human rights. Even though FRONTEX was strengthened with new human rights concerns, its mission is only to monitor rather than to take an active role, and so it is not as efficient as expected in that its operations in various places indicate this clearly.

4. A Case Study of the RABIT Joint Operation in Greece’s External Land Border with Turkey

Article 8 of Council Regulation 2007/2004 assures technical and operational support to a requesting member state in ‘exceptional and urgent’ cases. In the context of this issue, this support should provide the expertise of border guards for a limited period of time or technical assistance to external border control (Jorry,

2007; Léonard, 2010; Marenin, 2010). Owing to the first amendment of FRONTEX, a ‘Rapid Border Intervention Team’ (RABIT) was established in 2007 to prevent a mass flow of migration (Regulation (EC), 863/2007). Establishing an effective border management mechanism, essentially based on checks and surveillance, helps to combat illegal immigration and trafficking in human beings, and to prevent any threats to internal security; border control, therefore, is not only important for a single member state, but also for all of the Member States (recital 3 of Regulation (EC), 863/2007). In light of this issue, member states need the help of others. Therefore, RABIT operations place the highest importance on member states, and so its operations are based on the principle of ‘compulsory solidarity’ whereby Member States must make border guards available for RABIT deployment (Baldaccini, 2010, p.235). The tasks of the RABIT are to make available trained experts from member states to assist national border guards of a country that requests RABIT’s deployment in its territory on a temporary basis (Regulation (EC), 863/2007). The “mechanism [is] aimed at increasing the capacity and coordination-related competences of FRONTEX to provide operational assistance” to its member states, in particular in the context of personal and technical resources, which are “facing a situation of urgent and exceptional pressure” in terms of undocumented immigration from third country nationals arriving at points of external borders (Carrera and Guild, 2010:3; Article 1 of Regulation (EC), 863/2007). In other words, its main task is to strengthen the security of external borders and to prevent undocumented immigration. When performing these tasks, RABIT should fully respect human dignity and “should not discriminate against persons on grounds of sex, race or racial or ethnic origin, religion or belief, disability, age or sexual orientation” (recital 16 of Regulation, 836/2007). In the context of this issue, RABIT expects other member states’ contribution by way of national experts who are deployed in the ‘Rapid Pool’, for rapid operational assistance on border control and surveillance (Carrera and Guild, 2010, p.3).

In light of these definitions of tasks and conditions, the first RABIT joint operation has been deployed since its formation in 2007 on Greece’s external land border with Turkey. In this regard, the mission consisted of 175 border control specialists from various EU member states, as well as vehicles and other assets being deployed. Greece’s external land border with Turkey is an attractive illegal border crossing point for unwanted movers to the EU (HRW, 2008). Indeed, in 2011, the FRONTEX Annual Risk Analysis Report stated that in 2010, detection of illegal border crossings increased dramatically in the region, while in other regions they decreased. As a consequence of this increase, “the Eastern Mediterranean route became the main channel of irregular migration into the EU, and Turkey the main transit country for irregular migrants” (p.5). The other factors behind the increase are that in a geographical context it has 1,170 kilometres of land border and 18,400 kilometres of coastline, including islands (HRW, 2008). In addition to this, it is demarcated by the river Evros. Moreover, it

is the gateway to Schengen territory and the common EU external territorial border (Carrera and Guild, 2010, p.1). Finally, the region has a lack of security. Given all of these conditions, in October 2010, the Greek government requested RABIT's assistance in its external land borders with Turkey, due to the "exceptional mass inflow of irregular immigrants" (Carrera and Guild, 2010, p.1).

This joint operation is important because, not only it is RABITs' first joint operation, but also that it is in Greece. The current Greek national context is very much criticised by both international and European actors and NGOs due to its failed asylum system, which does not fulfil the criteria of basic EU asylum law and fundamental rights as stated in the 1951 Geneva Convention on the status of refugees (Carrera and Guild, 2010; HRW, 2011, 2008; CPT, 2011; UNHCR, 2010, FRA, 2011). Moreover, Greece is one of the EU member states that recognises refugees to the lowest degree, which amounts to being close to zero (Carrera and Guild, 2010, p.2). In addition, the UNCHR (2010) criticises the conditions of asylum seekers in Greece and describes it as a 'humanitarian crisis'. As an example of this, in 2009 a report from the Human Rights Watch (HRW) stated that "Greek police systematically arrest migrants on Greek territory, detain them for days without providing required registration" and that "migrants are regularly forcibly and secretly expelled to Turkey without consideration of their protection needs" (2009:np). Therefore, the European Council on Refugees and Exiles (ECRE) requested that EU member states stop sending asylum seekers to countries that do not guarantee their protection, such as Greece (ECRE, 2010). Furthermore, in January 2011, the Grand Chamber of the European Court of Human Rights ruled against Greece for returning asylum seekers, and decided that Greece had violated Article 3 of the European Convention on Human Rights in the *M.S.S. v Belgium and Greece* case (ECRE, 2011). Finally, there is no specific authority that deals with migration, as in Greece there are four different ministries dealing with migration management, and none of them have got clear responsibility (FRA, 2011).

In light of all of these issues, the first RABIT operation would be an important test for both the IBM and FRONTEX. The planned deployment was for just two months, but was subsequently extended in March, 2011. Nevertheless, afterwards FRONTEX would continue to be in the region under the aegis of the joint operation Poseidon Land (FRA, 2011). The aim of Greece's request for the deployment of RABIT was to tackle the exceptional and urgent irregular migration towards its territory. However, the Fundamental Rights Agency (FRA) pointed out that this operational assistance "covers only initial processing and does not impact on the most critical fundamental rights concerns" (FRA, 2011, p.9).

Due to this deployment, RABIT could create a deterrent effect and demonstrate co-operation among member states (FRONTEX, 2011). In this context,

FRONTEX documents state that the RABIT deployment fulfilled its mission and was successful. From a general perspective, RABITs' achievements are that member states supported the RABIT operation at both the border control level and in terms of technical and personnel assistance, and that FRONTEX oversaw effective co-ordination, which positively caused a 76% decrease in the number of irregular migrants when compared to the daily average before its operation (FRONTEX, 2011). In addition, in general conceptual terms, RABITs' operations contribute to increasing solidarity and mutual assistance between member states. In addition, this solidarity is based on the principle of 'compulsory solidarity', meaning that member states should contribute border guards to the 'Rapid Pool' and that they have to make them available when FRONTEX requests them (Regulation (EC), 863/2007; Léonard, 2010).

However, Carrera and Guild (2010) challenge FRONTEX's observations. According to the authors, the reasons behind the deployment are problematic. In order to deploy experts under RABIT, the situation should be an emergency and urgent, but there is the issue of defining which situations are emergencies or urgent (Marenin, 2010, p.15). Second, the time frame is problematic, as FRONTEX states that RABIT's deployment should be on a temporary basis, and not long term. Third, there is the expert team itself, as RABITs operational team is heterogeneous with members from different nations, who are also all police (Marenin, 2010, p.16). In addition, Carrera (2007, p.11) claims that "some issues concerning the tasks that proposal grants to the Teams still remain unclear". Moreover, it "reveals interrogations regarding the eventual participation of non-Schengen member states", and it therefore includes the complexities of border management (Jorry, 2007, p.15).

Regarding respecting fundamental human rights, Ulusoy, Baldwin-Edwards and Last (2019, p.22) reveal three specific priorities of the RABIT operation on the Greek-Turkish border indicating:

assisting Greece in overall management of border control [...] with significantly improved border surveillance and reception capacity; providing sustainable support for strengthened border control with the aim of reducing irregular migration flows; and assisting Greece in developing an adequate, mapped process for effective border management [...] including readmission capabilities.

However, the authors notice that these priorities do not include any reference to the respect of people's human rights, particularly immigrants, but rather regulations in accordance with security concerns (Ulusoy et al., 2019, p.5).

Furthermore, not only scholars, but also NGOs, criticise RABIT's activities in the region. Ultimately, RABIT shares these critiques with Greece. They criticise the inadequate detention facilities, the ignoring of fundamental human rights, the

transfer of migrants and lengthy bureaucratic procedures (HRW, 2011; FRA, 2011). According to them, these problematic issues continue with inhuman and degrading conditions. In addition to the problematic structure of RABIT stated above, one of reasons behind this is that there is no clear agreement between the Greek authorities and host border guards (HRW, 2011; FRA, 2011).

RABIT completed its operation on the Greek-Turkish border on 3 February, 2011. FRONTEX operations in Evros were then incorporated into Operation Poseidon Land, which was part of Operation Poseidon Sea. Since 2015, all operational activities on the Greek-Turkish border area take place under Joint Operation Flexible Operational Activities and Joint Operation Focal Points (Karamanidou and Kasperek, 2020a). However, the number of FRONTEX specialists remained few in number. After the Turkish government decided to open borders on 27 February, 2020, the Greek government requested assistance from EU/FRONTEX, and on 13 March, 2020, the RABIT operation started again on the Greek-Turkish border with an additional 100 border guards, as well as technical equipment (Karamanidou and Kasperek, 2020a). The operation was then extended to July, 2020. The EU also financially supports the Greek government with migration control. However, violations of fundamental human rights are still the biggest issue in Evros. Karamanidou and Kasperek (2020b:np) point out that “in March, 2020, pushbacks appeared to be conducted in the open, justified by reference to the exceptional situation in Evros. Since April, 2020, further pushbacks were reported, this time also transporting people from camps and detention facilities in mainland Greece”. This is the area where FRONTEX, and RABIT in particular, have operational activities. HRW (2021, 2022) criticises FRONTEX and RABIT for supporting Greece’s illegal activities and covering up violations, and the EU for not opening legal proceedings against Greece for violating EU laws.

As can be clearly seen from developments since 2010, it can be claimed that FRONTEX in general and the RABIT operation in particular were formed in order to deal within a security context rather than a humanitarian one for the EU. For instance, the RABIT operation in Greece was a control-oriented operation aimed at reducing migration flow, and so its primary concern was to prevent any illegal crossing from Greece to other EU member states. However, in this case the EU/Greece also labelled legitimate asylum seekers as a threat. Therefore, these initiatives are deficient in establishing a balance between border control and human rights.

5. Consequences of the Border Management

Border management embodies a ‘wicked’ policy problem, which has no technical, political or bureaucratic solutions (Marenin, 2010, p.10). In the context of the EU border management example, the IBM has three analytical models: “it includes operational and organisational co-operation with third parties; harmonises its regulations and policies to ensure that controls are executed in a similar manner

anywhere along the borders; and cooperates in collateral functions which support the effective management of border controls” (Marenin, 2010, p.17). In relation to this issue, EU policy appears to be based on inter-related approaches; on the one hand, it is “an integrated approach to the management of common territorial borders, and, on the other hand, a global policy covering migration” (Carrera, 2007, p.1). In this case, both technological development and the exchange of information play a crucial role ensuring a secured border (Carrera, 2007, p.2).

In particular, since the end of the Cold War, the EC/EU focused on redefining its borders. This caused a shift in migration control and changed the nature of the border (Den Heijer, 2010; Monar, 2006). This change not only related to the location, but also to the actors involved (Brouwer, 2010, p.200). The new border management system depended much more on technological measures, new visa requirements, relations with third countries and a restriction on the acceptance of asylum seekers. However, these technologies focus “analysis on risk groups, not on their surveillance” (Bigo, 2005, p.87). These developments caused a thematic change in the migration problem, as the current migration issue is based on the threat and danger of migrants to domestic stability and internal security and, therefore, security discourse and technologies penetrated the EU concept of migration policy (Huymans, 2000, p.751). This can be observed in the EU documents that put immigration and asylum in the same context as terrorism, illegal activities and border control. Moreover, the aim of the EU is to fight against whole migration cases rather than just illegal migration (Carrera, 2007, p.4).

Furthermore, the new border management system depends on security concerns rather than on establishing a balance between security and human rights. This practice conceptualises borders as “outside of state, extraterritorial spaces or lawless spaces” and so in border zones liberal practices are restricted and enforced by policing powers (Basaran, 2011, p.104). This has caused the creation of a dual system which refers to “liberal rule inside and security rule in the border” area (Basaran, 2008, p.351), because liberal states prefer to ignore fundamental rights at their borders, which can be correlated with the preference of states that their borders are invisible. Moreover, police forces become an important instrument in producing security. As a consequence, unwanted movers “are framed as a security problem” (Huymans, 2000, p.757). However, Basaran (2008, p.340) argues that the problem of security is not “its exceptionality but rather its banality”. Therefore, this new system does not respond to problems and, therefore, it is much criticised by NGOs and international organisations.

6. Conclusion

This article has analysed whether the new border management mechanism of the EU guarantees border control and the respect of human rights simultaneously. Furthermore, as an example of a border management mechanism, the new IBM

mechanism and one of its joint operations has been considered in the different sections. This was achieved by using the case of the FRONTEX and RABIT joint operation at Greece's external land border with Turkey. These mechanisms were selected because they prove that the new IBM strategy has not established a balance between border control, which is much more related to security, and respect of the human rights of unwanted movers. Therefore, it does not guarantee both of them. In addition, after making all of these problematic conclusions, this article discusses the consequences of border management. These cases demonstrate that the new border management mechanism is based on security, rather than a balance between security and human rights.

Politics have shown that the reality of a 'good' border management mechanism for the EU considers security and distinguishes insiders and outsiders by way of borders; in other words, it creates inclusion and exclusion between citizens and unwanted movers. Therefore, in the end, states prefer to ignore fundamental human rights in border areas and also create dual systems which are based on liberal rule inside and security rule at the border. Therefore, a 'good' border management mechanism does not respond to challenges and, as a consequence of this, is much criticised by both international organisations and NGOs.

These conclusions have been explained through examples such as FRONTEX and its RABIT operation in Greece's external land border with Turkey, which provides a good understanding of the article's arguments. FRONTEX is based on volunteer participation and not having a strong strategy and effective co-operation, and is extremely focused on risk analysis and monitoring rather than control and, as such, is not successful. Its RABIT operation on the Greek-Turkish border, due to its concept, which is exceptional, urgent and of a temporary time frame, is problematic and criticised by NGOs, in particular, human rights organisations. This is also problematic in Greece as well, due to its poor recognition of asylum seekers and detention conditions. Essentially, the RABIT operation on Greece's external land border with Turkey is much more of a concern for security, rather than going to the heart of the issue (Carrera and Guild, 2010, p.12).

In brief, this article has shown that the new border management concept caused a shift in the nature of the border and an externalisation of border control and migration policy. The reason can be seen in that unwanted movers are treated as a threat or danger. As a consequence of this situation, the new mechanism depends on new visa requirements, advances in technological equipment and the restriction of asylum applications.

Nevertheless, the EU border management strategy is still an ongoing process. Therefore, the EU should realise that secure borders do not mean building new walls, and are all about making clear rules and practices for legally crossing the border (Jorry, 2007). Moreover, the EU should implement rules non-discriminatorily and can also share responsibility with third parties, such as NGOs

or international organisations. Finally, the EU needs to agree on what problems and goals there are, and they also need a clear policy in order to solve these problematic distinctions.

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