

*migr***e**u**rop**__

At the margins of Europe

**The externalisation
of migration controls**

2010-2011 Report

Migreurop member organisations

BELGIUM : CIRÉ Coordination et initiatives pour et avec les réfugiés et étrangers / CNCD Centre national de coopération au développement / LDH Ligue des droits de l'homme / SAD Syndicat des avocats pour la démocratie

SPAIN : Andalucia acoge / APDHA Asociación pro derechos humanos de Andalucía / CEAR Comisión española de ayuda al refugiado / SOS Racismo / ACSUR-Las Segovias

FRANCE : ACORT Assemblée citoyenne des originaires de Turquie / Act Up-Paris / ANAFE Association nationale d'assistance aux frontières pour les étrangers / ATMF Association des travailleurs maghrébins de France / FASTI Fédération des associations de solidarité avec les travailleurs immigrés / FTCT Fédération des Tunisiens pour une citoyenneté des deux rives / GAS Groupe accueil et solidarité / GISTI Groupe d'information et de soutien des immigrés / IPAM Initiatives pour un autre monde / JRS France Jesuit Refugee Service / La Cimade / MRAP Mouvement contre le racisme et pour l'amitié entre les peuples

ITALY : ARCI Associazione ricreativa culturale italiana / ASGI Associazione studi giuridici sull'immigrazione / Melting Pot / NAGA Associazione volontaria di assistenza socio-sanitaria e per i diritti di stranieri e nomadi

MALI : AME Association malienne des expulsés / ARACEM Association des refoulés d'Afrique centrale au Mali

MOROCCO : ABCDS-Oujda Association Beni Znassen pour la culture, le développement et la solidarité / AFVIC Association des amis et familles des victimes de l'immigration clandestine / AMDH Association marocaine des droits humains / AMERM Association marocaine d'études et de recherches sur les migrations / GADEM Groupe antiraciste d'accompagnement et de défense des étrangers et migrants / Pateras de la vida

MAURITANIA : AMDH Association mauritanienne des droits de l'homme

PORTUGAL : SOLIM Solidariedade Imigrante

UNITED KINGDOM : Statewatch / Barbed wire britain network

LEBANON : Frontiers

SWITZERLAND : Solidarité sans frontières

TOGO : Attac Togo

TURKEY : HCA Helsinki Citizens' Assembly / RASP Refugee advocacy and support programm

The network also includes around thirty individual members.

Table of contents

Introduction : When peoples rebel, the Union fortifies itself	6
Part 1 – On Turkey’s border: the last eastern wall	11
I. Between Iran and Turkey: a high mountain border	12
Random controls	12
The ordeal of crossing	13
An area marked by a significant number of irregular entries	13
Extreme climatic conditions	14
Militarisation of the region	14
Inhumane treatment	16
Hunting foreigners	17
The legal procedure	17
Turkish authorities’ practices on the Iranian border	17
II. Van, the net	20
"Satellite city", jail-city	21
An endless internment	21
Refugee strategies	21
An NGO support network under construction	22
A dehumanising asylum system	22
The UNHCR local branch	22
The foreigners’ police	24
Multiple forms of oppression: painful survival in a camp-city	25
Harassment and exploitation of women	25
The paradoxes of the right to asylum	26
Psychological distress and depression	26
At the service of the EU: exclusion and organisation of returns	27
The future "reception" centre	27
The future detention camp	28

Part 2 – "Stowaways" in harbours and at sea	29
Glossary and acronymism	32
III. " Grains of sand " in sea freight	33
Travelling on board of merchant navy ships	33
Humans in the midst of merchandise	33
Invisibility of "stowaways" in ports	34
Some authentic migration odysseys	36
The extreme vulnerability of "stowaways"	39
Human tragedies	39
Pact of silence concerning asylum requests	41
The presence of unaccompanied minors among the "stowaways"	44
IV. Financial stakes and security measures	46
People caught up in huge financial stakes	46
The penalties incurred by "stowaways"	46
The risk of fines and economic losses for carriers	47
Securing port areas to the hilt	49
The securitarian drift introduced by the ISPS code	50
Perimeters and control of entry points	51
Reinforcing controls around ships arriving from "risk" ports	53
V. The detention of maritime "stowaways"	58
Onboard, during the journey	58
Interviewing people after they are found	58
Confinement in a cabin	61
Additional work for seamen	62
In the ports, places of detention	64
Confinement on board of a ship	64
Surveillance by seamen and resorting to private security companies	66
Other detention spaces: waiting areas and informal facilities	67
"Stowaways" who have scant information about their rights	69
Random availability of interpreting	69
The weakness of jurisdictional control on detention	70
Requesting protection: a difficult right to exercise	71

VI. Towards a privatisation of returns	75
The growing role of insurance companies in the management of "stowaways"	75
A variety of public and private actors	75
The key role played by P&I clubs	79
Objective: getting rid of them at any cost	83
Repatriation by flight : acting quickly without regard for rights	84
Arrest upon return	87
Repatriation by boat	88
"Assisted" escapes in ports	91
Appendix	93
"country sheets" Migratory situation in merchant harbours	94
Germany (Hamburg)	94
Bulgaria (Varna and Burgas)	95
Cyprus-EU(Limassol)	96
Spain	97
France	98
Italy (Genoa and Naples)	99
The Netherlands (Rotterdam)	100
"Arab revolutions and migrations", inter-NGO press releases by Migreurop	102
Lampedusa (Italy): Europe must not be afraid of democracy in North Africa	102
Until when will EU's migration policy rest on South Mediterranean dictatorships?	103
Call for a EU solidary intervention in the Mediterranean	104
Call for a humanitarian evacuation of the 250 Somalian, Ethiopian and Erythrean refugees blocked in Benghazi	105
Emergency of a moratorium of repatriations towards Tunisia and of a decent reception of the Tunisians in the EU!	106
Deadly vice-like grip in the Mediterranean: hundreds of boat Peoples killed by international coalition's inaction	108
A flotilla to stop the killing in the Mediterranean	109
The Mediterranean: NATO finally comes to the aid of shipwrecked migrants, but the European Union refuses to admit them	110
A NATO ship leaves dozens of migrants dying at sea in the Mediterranean	112
Bibliography	113

Introduction

When peoples rebel, the Union fortifies itself

In 2011, a report on the violence of migration controls could not ignore the dramatic situations which occurred in the Mediterranean, with the death by drowning or exhaustion on board of overloaded and often damaged boats of several thousands exiles seeking to flee Libya, but lawfully prevented from doing so because of the surveillance of sea borders implemented in the south of the European Union (EU). While the fieldwork on which this report is based was mainly carried out before the outbreak of the Libyan uprising in February, Migreurop has closely followed this tragic demonstration of Western selfishness when faced by the movement of refugees¹.

This is because the revolutionary Arab movements, applauded – sometimes belatedly – by European governments, have not led the latter to reconsider the issue of population movements from these southern Mediterranean neighbours. While they included it in the agenda of the summit held in Brussels in June 2011, it was to express their concern about "massive migratory movements provoked by the events (...)" and to decide to implement partnerships with neighbouring countries to the south and east to "manage

mobility in a secure environment so as to address the root causes of migrations"². The message is clear: in the field of migration, the EU wants to continue following the course that it has set so far. To do so, it will stick to extending and reactivating the agreements struck with authoritarian regimes that have been ousted from power with new provisional governments, following the same direction. The Libyan National Transition Council has understood this well and, hardly a month after the start of the uprising in Lybia, one of its leaders stated that his movement wished to combat illegal migration if it were to seize power, in particular by respecting the "friendship treaty" signed in 2008 by Silvio Berlusconi and Muammar Gaddafi³. Far from hearing the call for change expressed by the Arab revolts, Europe primarily seeks to perpetuate the system established since the end of the 1990s that keeps migrants at a distance. A system that gives rise to many human rights violations, which Migreurop regularly reports.

This 2010-2011 report focusses once again on two pillars of European migration policy that Migreurop has often described: the subcontracting of controls and the detention of migrants and asylum seekers, this time surveyed in their maritime and eastern dimensions. The research conducted in several European ports and on the eastern Turkish

1. See press releases in appendix 2.

2. Conclusions of the European Council of 23 and 24 June 2011.

3. *AFP*, 29 March 2011

border, shed new light on these mechanisms that have not been documented extensively to date.

Subcontracting and transfer of migration controls

The externalisation of migratory controls takes on many varied forms: the EU's decision, in the wake of the Tunisian revolution, to deploy Frontex on the high seas off the Tunisian and Libyan shores, in order to dissuade the populations freed from the yoke of dictatorship from heading towards Europe, is an example of the delocalisation of borders, embodied by radars, drones and other sophisticated equipment at sea in this case. Even more typical of the European strategy to keep migrants at a distance, this time through 'buffer zones' and the subcontracting of controls to third countries denounced by Migreurop, is the example illustrated by the Turkish model. While a wall is being built in western Turkey to prevent border crossings into Greece, Turkey actively cooperates with EU policy by locking its eastern border with Iran and by organising, as readers will see, a real hunt for refugees.

Externalisation also involves the privatisation of controls. Adopted as soon as 2001, a European directive envisages sanctions for carriers transporting passengers who do not have the documents required to enter an EU member state. This transfer of a state function to private agents is not something new. Since the early 1990s, it has been the rule in merchant navy ships for the treatment of 'stowaways' who board merchant ships in the hope of reaching Europe. In this sector, policing tasks have effectively been primarily transferred towards shipowners and insurers. The report describes and analyses these processes on the basis of testimonies collected in German, Italian, Spanish, Dutch, French and Bulgarian ports. As in most cases of sub-

contracting, these transfers of competencies are a further incentive for violations of rights and of the law because, as they happen in secret and there is little information about them, if there is any at all. The development of detention practices is one of the most blatant examples of this.

Detention

In its commentary on its first map of 'camps for foreigners in Europe' in 2003, Migreurop already raised the matter of the diversity of administrative mechanisms aimed at grouping migrants together, and called to "move beyond the sole reference to detention and consider any place used to exclude migrants as a camp"⁴. The variety of forms that detention can take on today for the purpose of migration control has been growing since then, ranging from large detention centres surrounded by walls and fences to a multiplicity of makeshift, often tiny, places that are scattered across arrival and transit areas for exiles who are heading towards northern Europe. The inhumanity of the former has been repeatedly revealed over the last few years, when there have been revolts by detainees, suicides and intentional fires in Belgium, the United Kingdom and in several large detention centres for foreigners awaiting expulsion (CIE) in Italy, highlighting its nature as a means of concentration. Versatility is a feature of the latter: we are referring to the "reception and identification" centres set up in a few days by the Italian authorities when 20,000 Tunisians arrived in the winter of 2011, or to the camps established shortly afterwards by the Turkish authorities to confine fleeing Syrian refugees. Other ones that are found in the crevices of the urban, rural and maritime landscapes are hardly visible: this is true of an administrative detention facility (LRA) in a French police station, of a police station at the border between Turkey and Iran, of a cabin on

4. See the migreurop.org website.

a merchant navy ship in which a "stowaway" is held. Presented as temporary by the authorities, these places generally only offer very dubious reception conditions, often in violation of detainees' rights. In rare instances, these failings are punished, particularly when they concern asylum seekers: in 2009 and 2010, Turkey was found guilty twice by the European Court of Human Rights following the detention of two Iranians who were denied access to the asylum procedure and risked being deported to Iran.

Current events in the Mediterranean have given rise to some new variations on the theme of camps: in July 2011, a Spanish NATO ship became a mandatory confinement space for over a hundred boat people, largely sub-Saharan as well as some Tunisians and Libyans, that it had just rescued⁵. As Malta and Italy – in breach of the 1951 Geneva Convention on refugees and of the principle of non-refoulement of refugees – had refused to let them disembark, the Almirante Juan de Borbón wandered at sea for six days until a Tunisian navy ship finally accepted to take charge of them, taking them far from Europe, which was where they wanted to go.

As inverted symbols of detention, walls against migration have been gaining ground in Europe. The one that will strengthen a part of the Greek-Turkish border was announced in 2010 and started being built in July 2011 – 12.5 km, near the Evros river. Conceived following the Ceuta and Melilla "fences" model that isolates the Spanish enclaves of these two cities in Moroccan territory, the three-metre-high Greek-Turkish wall, will be formed by a double barrier between which police patrols will be able to circulate. In the west, like in eastern Turkey, Europe draws separation lines, which Anglo-Saxons term "borderlines": a word that also designates "

'limit case' in medicine (...) or a 'limit conditions', that is, clinically identifiable but operationally found in a state between life and death, which could be the quintessential border, the crossing from which no one has ever returned"⁶. Detaining does not just mean keeping migrants in a limited place. Increasingly often, situations of confinement take on the form of reception in so-called "open" centres like the one which is set to open soon near Van in eastern Turkey thanks to EU funding, and where Migreurop has conducted research.

Detaining sometimes also paradoxically means forcing people into mobility. Facing the obstacles placed in their way, denied reception, chased by law enforcement agencies, many exiles have become slaves of the movements that are imposed upon them, and wandering becomes their only available solution. In this way, European governments know how to exclude foreigners without needing either bars or walls.

Putting an end to the bloodshed at the Union's borders

For twenty years, the sinister figure of migrants who died at the gates of Europe while they hoped to find protection or decent living conditions there has continued to grow⁷. This balance took on a unique dimension in 2011 after the outbreak of the Arab revolts. War in Libya has placed those who try to flee the country in a deadly grip⁸: on one side, the forces controlled by Colonel

6. Jean-Daniel Chaussier, "La frontière devant ses limites. Transgression et recomposition", in Maïté Lafourcade, *Actes des journées de la Société internationale d'Histoire du droit*, Bordeaux, Presses Universitaires de Bordeaux, p. 7.

7. According to the United against racism website, there have been over 15,000 victims, without counting those who were never found.

8. Migreurop, "Etau mortel en mer Méditerranée", statement of 11 May 2011, cf. appendix 2.

5. 114 people: 88 men, 20 women – five of them pregnant – and six children. Source: Spanish defence ministry available on Internet

Gaddafi – who always managed to instrumentalise the migration issue – push them to take to the sea in the worst possible conditions. On the other side, the EU, far removed from adopting the necessary measures to receive them, tries to prevent them from reaching its shores. The outcome is alarming: in June, UNHCR estimated that 2,000 people had drowned in the Mediterranean during the five previous months.

Beyond the contradictions of an international coalition that was meant to guarantee the "responsibility to protect", it is the overall European immigration and border control policy that has to be put to question. Since the early 2000s, north African countries have accepted the role as Europe's border guards, chasing and detaining people who wanted to exercise their right to emigrate⁹. Current historical events in the Arab world must be the opportunity to reconsider relations between the northern and southern Mediterranean and to break away from the liberty-stifling heritage of the EU's dictator-partners to put an end to the bloodshed at its borders.

OC, CR

9. Let us recall that this right is envisaged by several texts whose scope is international, like the Universal Declaration on Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966.

Part 1

On Turkey's border: the last eastern wall

Part 1. Between Iran and Turkey: a high mountain border

Random controls

The border between Iran and Turkey is 454 kilometres long and its altitude ranges between 2,500 and 3,000 metres. On the Turkish side, three border posts regulate entries and exits from Turkey: Gürbulak (Ağrı) and Kapıköy (Van) in the north, Esendere (Hakkâri) in the south. They are located in mountain passes or in valleys. Irregular crossings of goods and people take place in the high mountain, before and at some distance from these border posts.

The *jandarma*¹ is responsible for border surveillance. The gendarmerie stations are found at irregular distances from each other, depending on the local topography and close to roads and villages, which are important centres for smuggling activities. Extreme climatic conditions reduce the effectiveness of border controls. The *jandarmas* control the surroundings of their stations or the areas where their patrols operate from time to time, as well as the roads between border villages and the main towns. There are not any thermal cameras or any other such devices. The controlled regions are not bounded and, when they change, new "illegal crossing" paths start to operate a bit further along. A total control of the border seems to be an illusion, even though the Turkish state is setting up new gendarmerie posts. Some parts of

this mountain territory are under the control of the PKK, the Kurdish guerrillas. From Doğubeyazit to Yüksekova, there is no armed conflict between the PKK and the Turkish army; the fighting takes place in the southern region where the Iranian border is. The smugglers and traffickers pay taxes to the PKK in order for them not to undertake any military actions between Doğubeyazit and Yüksekova. In fact, if that were to happen, the Turkish army would respond and fighting would ensue that would compromise the very profitable cross-border activities that ensure the villages' economic survival².

On the Iranian side, since August 2009, the authorities decided to multiply border control mechanisms in order to restrain trafficking in goods and so-called illegal emigration. At the moment, a 1.50-metre-high concrete wall is under construction. It should eventually be fitted with infrared cameras and there will be control posts at intervals of 2 kilometres from each other, meaning a total of 162 such posts. This wall already exists in some short portions of the border. In some other places, there is a trench that is one metre wide and one metre deep. These new measures disrupt Kurdish families' relationships and ancestral activities. In fact, villagers have a habit of visiting their relatives who live on the other side of the border, as well as conducting the seasonal migration of

1. Officers of the gendarmerie, a security body mainly comprising young men doing their national service.

2. Orhan Deniz, geography professor at Van University and author of a six-year field study at the Turkish and Iranian border [interview held on 9 February 2011].

their flocks to summer pastures and smuggling all kinds of goods (fuel oil, petrol, textile, sugar, tea, medicines, drugs) to ensure their daily subsistence.

An Iranian asylum seeker in Van told us about the barrier that the wall represents: "I started walking at 2 in the morning with a group of 42 Afghans and Pakistanis, and some Iranian smugglers. (...) At the border, there was a wall that is around 1.50 metres high, topped with electrical wire. The smuggler cut off the power. After the border, we ended up with a Turkish smuggler and continued walking for six more hours until we reached a village. We rested in a cattle shed, some gendarmes heard our voices and came in several cars. I was sitting near to the door, I pushed the first gendarme who broke in and I ran away. I was the only one who managed to escape, I don't know what happened to the others."

The ordeal of crossing

An area characterised by a significant number of irregular entries

In spite of the uneven landscape and harsh climate, it is the shortest, cheapest, safest and one of the least controlled passageways from Asia to Europe. Migrants and refugees³ flock here from numerous central Asian, Middle Eastern and African countries. For example, Mauritanian nationals have crossed this border. According to information collected by

3. In this chapter, the word "refugee" will be used in its wider acceptance and not just in its legal sense (unless the opposite is stated and unless it is used in connection with "asylum seeker" and "rejected"): it will simultaneously encompass asylum seekers, people who obtain refugee status, those awaiting resettlement in another country and those who are refused asylum.

IHD⁴ for the year 2010, migrants from 30 different nationalities were arrested in the provinces that border with Iran⁵.

On the Iranian side, the towns of Urmia, Salmas (Shahpur), Khoy and Maku are used as gathering centres where smugglers form groups while they wait to start the border crossing. Then, by car or in lorries, they take them to some villages that are close to the border, where migrants often stay in cattle sheds for lengths of time that vary greatly, depending on the risk of arrest, the climate and their physical conditions. After this, they set off on foot or on horseback, for the wealthier ones.

In order to avoid the areas that are under control and the border posts, they have to move up to isolated places on the border, and then descend on the other side. If the passageway they chose is close to the roads found on both sides of the border, the walk lasts half an hour. But in these areas, controls are more frequent. Therefore, more often, migrants walk for between three and twelve hours to leave Iran and enter Turkey. At the border, Iranian Kurdish smugglers deliver the groups to Turkish Kurdish ones, with whom they generally have family bonds or are acquainted. They agree to share the money at a certain stage of the route. Generally, the groups stop briefly in a village on the Turkish side to rest. Then they are separated and carried using different means of transport: those who travel in lorries are hidden in the vehicles' compartments; those who move in minibuses or by car are provided false documents. Their destination is one of the following three Turkish cities: Yüksekova, Van or Doğubeyazit, which are urban centres where migrants are gathered and then dispersed. On average, between five hundred and a thousand Tur-

4. İnsan Hakları Derneği, a human rights association.

5. The people who were caught while they were "illegally" crossing the Iranian border were mainly nationals of Pakistan, Afghanistan, Iran, Turkmenistan, Myanmar and China. [Interview held on 24 February 2011].

kish liras⁶ are requested for the crossing. Once they arrive in Van, for example, some ask for asylum and stay there until they receive an answer. The others only stay for one or two days to rest, wash and put together some money to organise rest of their journey towards Istanbul, Izmir and Europe. During these few days, they stay in abandoned houses or relatively inconspicuous ones that belong to local intermediaries of the smugglers' organisations⁷.

Extreme climatic conditions

To breach the border, "irregular" migrants pass at an altitude of over 2,500 metres. In the winter, this region is covered by a layer of snow that is between one and two metres high. The average yearly temperature in the border cities is 4.4°C in Çaldıran (2,050 metres) and 6°C in Başkale (2,460 m), with minimum temperatures that reach -46°C in the winter. Some of the villages are snowed in during the winter, as there are no means to clear the snow from the roads. Migrants have to climb up and then descend from mountains and, most of the time, they walk at night for several days in a row. The conditions are worsened by the lack of real meals or pauses, apart from a few hours of poor quality sleep on the frozen ground. If these journeys are extremely difficult for adults, for children, crossing the Iranian border is a veritable ordeal. Migrants risk getting lost, deadly falls, being attacked by wolves or starving or freezing to death after being trapped in wind or snow storms. In the spring of 2002, some villagers found the dead bodies of 19 migrants near Çaldıran. They had frozen to death at an altitude of 2,500 metres, after they had crossed the border and had either got lost or been stuck in a blizzard⁸. Further south, in

March 2007, on Mount Yigit, some soldiers found the bodies of seven people who had frozen to death, one of them torn to pieces by wolves. In the summer, it rains a lot and the mud considerably hampers the night crossings.

An Afghan woman who came to Turkey with her three children stated: "It was very dark and it was raining. There was a lot of mud on the road, so I lost my shoes in it and had to continue barefoot. (...) Ten people from our group slid off the mountain and died⁹."

Militarisation of the region

The border between Iran and Turkey is also affected by dangers linked to the region's militarisation. Soldiers, particularly Iranian ones, often open fire on people who are close to this border, without drawing any distinction between guerrilla fighters, smugglers or migrants. In May 2000, the Turkish army killed nine people from a group of 153 Afghans, Bangladeshis and Pakistanis who were trying to cross the border "illegally"¹⁰. In 2009 and 2010, on the Turkish border, the Iranian army killed 65 and 90 people respectively (in particular smugglers of merchandise or people)¹¹.

6. Between 215 and 430 euros.

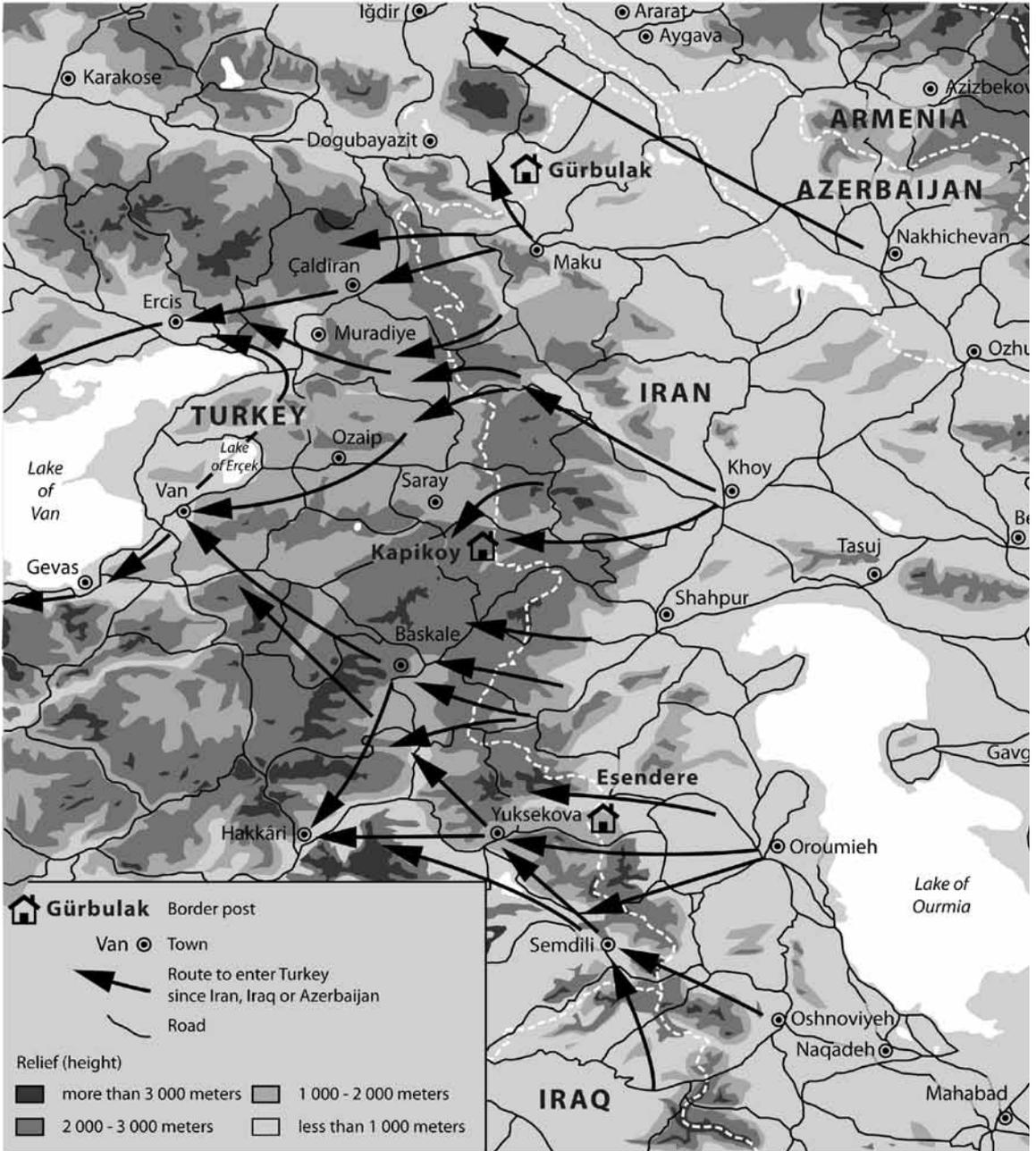
7. Orhan Deniz, "Uluslararası Göçler ve Türkiye'ye Yansıması: Sığınmacılar, Mülteciler ve Yasadışı Göçmenler.", İstanbul, Çantay, 2009.

8. Orhan Deniz, *ibid.*, p. 164.

9. All the testimonies in this chapter were collected by the author in Van between November 2010 and March 2011.

10. Cf. Website: albawaba.com.

11. Cf. Website: en.firatnews.org.



Eastern Turkey: migrations and borders in high altitude, © Orhan Deniz, 2010

Inhumane treatment

Despite the fact that migrants have to grant their smugglers a degree of trust, they are often subjected to violence and inhumane treatment. Some smugglers rob them, abandon them and then call the jandarma officers. Others hold the migrants captive until their families pay a ransom. The poorest are especially targeted by the smugglers' violent behaviour. For these migrants, travel conditions are even more inhumane: 60 people at a time crammed in relocation or gravel trucks or even in petrol tanks, they have to wait for hours and face the risk of suffocating¹². They are also sometimes locked in cattle sheds for whole days without any commodity, cursed and threatened by people who have firearms. Some women are sexually abused by smugglers¹³.

The story of this Afghan woman asylum seeker in Van with her husband and their two very young daughters is typical of the travel conditions that numerous families endure.

"It took us 24 days to travel from Herat in Afghanistan to Van. Three days after our departure, we arrived in Urmia, then the smugglers brought us on foot to a village close to Salmas. We were locked up with 60 people for 18 days in a small cattle shed that was in very bad shape. They only gave us a little bit of bread and some yoghurt, and very little water. We were continuously crouching for 18 days, our feet were very swollen. We did not have enough space to lie down, so we hardly slept. It was very dirty, we couldn't wash and the smugglers didn't let us out to go to the toilet, so everybody had to relieve themselves in the cattle shed. We would bang on the door for hours, but the smugglers would not open it. They were bringing some new people every day: they said that the passageway was blocked because the police was controlling the area. Only single men

were leaving, whereas families had to wait for much longer in the cattle shed before they left because, with the children, there was a greater risk of being caught. We tried to set off walking with a group on three occasions, but there was mud and snow, so the smugglers would take us back to the cattle shed.

Finally, one night in December, across the snow-capped mountains, we walked for eight hours. We could hardly breathe. One of my daughters, who was three years old at the time, nearly died. She could not breathe anymore, she was choking and lost consciousness. So I screamed. One of the smugglers revived her. The three smugglers shouted at us as if we were dogs. They were telling us to run, they threatened us with firearms and they cursed us. If we sat down on the way, they would tell us that the police were coming, so we would panic. We paid 1,800 dollars for all this.

Then, once we had crossed into the Turkish side, they forced all the women to enter a house in order to check that we were not hiding any money on us. Inside the house, there was a woman who forced us to undress completely and she then searched us while she blew cigarette smoke into our faces. One of the women had sewn a pocket onto her underwear and had hidden some money there, so the other woman shouted at her. I had 100 dollars, I kept them in my hand and she didn't see anything. The woman took all the money off six women and they were taken away by the smugglers, who threatened to kill them. I don't know what happened to them. They did the same to the men.

Before we continued our journey, the smugglers separated the women and the men into two groups. They often take the women in a separate group to rape them¹⁴. My hus-

14. The testimony on sexual violence is a result of several months frequenting these women. When it was collected, the interpreter explained that the pretty women were often taken separately and raped by smugglers in the mountains, during stops to rest.

12. Cf. Website: kentselhaber.com.

13. Orhan Deniz [interview held on 3 March 2011].

band and I had shouted and refused to be separated, so they didn't. We started walking again until we reached a village from which we went to Van in a bus."

Hunting foreigners

The legal procedure

According to the law, jandarma officers are responsible for border control and arresting migrants who try to cross the border "illegally". They keep them in custody until the morning, then they have to transfer them to a facility run by the foreigners' police of the province (Van, Ağrı or Hakkâri). The allotted time for lawful transfers is not stated by the law. Once they are there, they are kept in custody to be interrogated. They then appear before a judge for violating article 5 682, § 35 of the law on passports¹⁵. The judge asks them why they crossed the border illegally: if they wish to apply for asylum, their application is submitted to the foreigners' police, which must send it to the interior ministry in Ankara. Following an inquiry, the ministry decides whether to grant them temporary settlement in Turkey as asylum seekers or not. Before they receive an answer, asylum seekers are kept in foreigners' police facilities or in a detention centre. For those who do not want to apply for asylum, the judge issues an order to return them to their home country. These people are placed in detention while they await this expulsion¹⁶.

The first real law on asylum, immigration and foreigners was set to be voted in the autumn of 2011. A special department has been created within the interior ministry in order to prepare this text that, for the first time, is expected to transfer immigration

policy to a civilian authority. Procedures regarding the arrest, detention and expulsion of foreigners will be organised and modelled in accordance with the European Union's "standards". Detention centres are under construction with the support of European funds. The only centre that will be close to the Iranian border will be in Van.

Turkish authorities' practices on the Iranian border

Arrests

Van and Edirne are the two Turkish provinces where there are the most arrests of "irregular" foreigners. That is, there were 5,624 arrests near to the border with Iran and 10,298 people arrested on the exit route towards Greece in 2008, while the total for the whole country was 65,737. There were high numbers of arrests in the other provinces close to the Iranian border as well: 2,707 in Bitlis, 1,051 in Ağrı and 1,005 in Batman¹⁷.

There appear to be few arrests at the border itself: officially, 376 migrants were arrested while they were trying to cross the Iranian border "illegally" in 2010¹⁸. This can be explained by the difficulty of enacting controls and the lack of resources in jandarma posts to detain arrested migrants. For example, even if the gendarmes notice that five large groups of migrants pass through the area they control on some nights, they will only stop one, because they will then have to detain them overnight, feed them (while they have to keep stocks for between 30 and 50 military officers in that isolated mountain outpost), and finally transfer them to police stations in Van, Ağrı or Hakkâri. Hence,

15. Onur Varol, lawyer of TIHV, a human rights association in Van [interview held on 7 March 2011].

16. IKGV, a UNHCR partner NGO [interview held in Ağrı on 7 February 2011].

17. Orhan Deniz, *ibid.*, p. 145.

18. Figures provided by the interior ministry to IHD-Diyarbakır.

most of the arrests take place in the region's roads, particularly at the cities' entry points, when there are identity checks and/or vehicle searches¹⁹. These arrests are often reported in the local press. Some testimonies report controls that are not very tight, as a result of the likely corruption of officers. On this topic, an Iranian asylum seeker in Van said: "90 kilometres away from Van, the smuggler put me on a public minibus. The driver and the eight passengers knew that I was an irregular migrant. On the way, we were searched by the police. They found some cigarettes smuggled from Iran that were hidden in our vehicle, but they didn't note that my Turkish identity card was fake. They did not arrest anybody, they took the cigarettes and allowed us to leave."

Finally, the police conduct widespread operations to round up immigrants in households. For example, 31 smugglers and 3991 migrants were arrested in Doğubeyazıt in December 2007²⁰.

Retention

Many people are arrested in border regions but, due to a lack of facilities, their detention is not frequent and generally for a short time. The Turkish NGO, HCA/RASP, a member of Migreurop, receives calls from migrants detained throughout Turkey, yet this NGO has received very few calls from the Turkish-Iranian border region over the past year*²¹: either the migrants do not have access to a telephone, or they are either not detained or only held for a very short time.

The detention of "irregular" migrants and refugees initially takes place in jandarma stations when they are arrested in the mountains, for a few hours until the morning, before their transfer to the province's forei-

gners' police station, unless they are instructed to cross back across the border immediately after they have countersigned a removal order issued at a distance by a judge. When they are transferred to Van, Ağrı or Hakkâri, until they appear before the judge, the migrants are held in the cells of the yabancilar misafirhanesi, the "foreigners' guest house" found in the police facilities. In Van there are two cells in the basement, one for men and the other one for women, which have a toilet and bathroom inside them. The men's cell is surrounded by iron railings and the women's one by walls. The number of people detained inside the cells ranges from zero to fifteen²². However, groups of 150 persons are sometimes arrested in the province, which, according to different accounts from migrants, suggests that the police refoules a large number of people in an entirely illegal way.

Administrative detention is linked to the judicial procedure: those who apply for asylum are detained for as long as the formalities last (taking their photograph, fingerprints) and until the interior ministry's authorisation arrives; the others are expelled. In Van, detention does not last longer than 15 days, because detention capacities are limited and it generates important financial costs. Instead, in Ağrı, the length of detention may last between 15 days and four months²³.

Expulsions

Under the law, "irregulars" should be placed in a detention centre after their arrest, in order to obtain a travel document from their home country's authorities to organise their return by aeroplane. Only people who enter "illegally" through Greece or Syria can be returned across these borders, as these two countries have signed a readmission agreement with Turkey.

19. Orhan Deniz [interview held on 20 March 2011].

20. Cf. Website: diyadinnet.com.

21. Oktay Durukan, head of the "protection" unit at HCA/RASP [interview held on 15 March 2011].

22. Onur Varol [interview held on 7 March 2011].

23. IKGV-Ağrı [interview held on 7 February 2011].

For a deportation to Iran to be lawful, the Turkish authorities must bring the migrants to the border post and discuss with the Iranian authorities so as to ensure that they will readmit them. Iranian citizens are generally accepted. Instead, readmitting Afghans and Pakistanis would mean paying for their transport, food and accommodation to take them back to their countries of origin which are thousands of kilometres away from this border. Iran refused to sign the readmission agreement it was proposed by Turkey in 2001. The Turkish authorities' goal was to be able to enact mass returns of the thousands of migrants who use this route. However, cooperation meetings are regularly organised between the Turkish and Iranian border provinces' authorities for the purpose of fighting illegal cross-border activities and the Kurdish guerrilla. In 2009, a cooperation agreement was signed and, in 2010, an agreement for the joint use of certain border posts was accepted by both parties. To date, only Iranian nationals can "lawfully" be expelled to Iran.

Nonetheless, the Turkish authorities regularly deport groups of hundreds of Afghans, Pakistanis and even Somalis, Nigerians and Mauritians in a completely illegal manner, with or without a prior appearance before a judge²⁴. They are taken to remote locations away from the Iranian border posts by Turkish border guards and are enjoined to cross the border before they are abandoned. Migrants who are arrested and held elsewhere, like in Istanbul, are also divided into groups and made to board minibuses that cross the country until they reach the border with Iran. Generally, after a short while, these expelled migrants try to enter Turkey again. In this way, an Azerbaijani woman has entered

Turkey 17 times after she was expelled on 16 occasions²⁵.

It is very hard to obtain information on the number of illegal expulsions carried out and on the conditions in which they were conducted. Local NGOs have very scant information about violence by the police, since everything takes place in secret. However, it is known that in 2008, 22 asylum seekers from Uzbekistan who arrived in Van were illegally expelled twice within a month, in complete violation of the rights of refugees. Threatened with firearms, the authorities forced them to return to Iran. Then, they were enslaved by some people for seven days in the mountains, until they paid a ransom. After walking for three days, they returned to Van. Despite the mobilisation of NGOs across the whole country, they were expelled again a few weeks later: the police went to the place where they were staying at night and took them to an unknown destination²⁶.

24. When a judge issues a removal order to the Iranian border for a non-Iranian person, in effect, the order is not lawful. [Oktay Durukan, interview held on 15 March 2011].

25. Orhan Deniz [interview held on 3 March 2011].

26. Cf. Website: ihop.org.tr.

II. Van: the net

Van, the main city of the region that borders with Iran, is one of the most important stops in Turkey for migrants before they continue their westwards journey. However, Van is also a veritable net, an open-air camp in which thousands of asylum seekers, refugees and rejected asylum applicants are stuck for indefinite lengths of time.



The duality of the Turkish asylum system

Turkey has ratified the 1951 Convention and the 1967 Protocol on the status of refugees, yet it has set a geographical reservation that makes the Turkish asylum system unique and more complex: only the nationals of Council of Europe member states can obtain asylum in Turkey. Since June 1962, when the Convention was ratified, 44 persons have been granted refugee status there¹. The nationals of countries that are not members of the Council of Europe - who constitute a majority of asylum seekers in Turkey² - can only obtain temporary asylum. UNHCR³ is responsible for reaching a decision on their asylum applications, but the outcome of the procedure also depends on the Turkish interior ministry and on the "third" countries' consulates, because they

hold decisional power during certain stages in the asylum procedure. In fact, when they arrive in Turkey, these people can submit an asylum application to UNHCR but, after their registration with UNHCR, they must also apply for temporary asylum before the interior ministry in order to be able to stay legally in Turkish territory. If their application is accepted, they will be forced by the ministry to settle in one of the 28 "satellite cities" during the entire procedure. Asylum seekers and refugees cannot choose the town where they will live, nor can they leave it, unless they have an authorisation to do so issued by the foreigners' police⁴, whose station they have to report to on a weekly basis.

After recording their application, UNHCR conducts the interviews and inquiries to enable it to reach a decision. If the first instance decision is a rejection, the asylum seeker can lodge an appeal before UNHCR, which empties the very principle of an appeal of its substance. If UNHCR rejects the case again, the person faces the threat of being expelled⁵. When UNHCR grants refugee status on the basis of the 1951 Convention or any other kind of protection envisaged by its mandate, UNHCR is then responsible for handing over the refugee's file to the consulate of one of the "third" countries (Canada, United States, Australia, Scandinavian countries) in order to initiate

1. In this context, the term "refugee" is used to refer exclusively to persons who were granted refugee status by UNHCR.

2. In July 2010, 14,751 people from countries that are not Council of Europe members were registered by UNHCR in Turkey. 8,707 of them had been granted refugee status, and 6,044 of them were asylum seekers who awaited a decision by UNHCR. Cf. "UNHCR in Turkey: Facts and Figures", August 2010, p. 11.

3. Office of the United Nations High Commissioner for Refugees (UNHCR).

4. Most asylum seekers never leave the city, unless there is a medical emergency or an appointment in an embassy or at the UNHCR in Ankara.

5. There is a possibility of asking UNHCR to reopen a case, a long and hardly ever successful procedure, unless there was a serious mistake in the processing of the application or a change in the situation in their home country.

a resettlement application procedure. These consulates reach a decision on the basis of the national quotas agreed by their government and they organise the departure of the refugees that they accept, which is only possible after authorisation by the Turkish interior ministry⁶. As a result of these quotas, numerous refugees are not resettled in "third" countries within a reasonable frame of time. Moreover, these countries mainly accept refugees who are recognised by UNHCR in accordance with the 1951 Convention: people with any other status are rarely resettled, unless their situation makes them extremely vulnerable. Finally, there are many people who hardly have any hope of ever being resettled due to their nationality. For example, the "third" countries accept very few Afghans. If there is no option of resettlement, the refugee can stay in Turkey depending of the authorities' goodwill, with the same residence constraints, until the situation in their home country is considered safe.

.....

" "Satellite city", a jail-city "

An endless internment

Found in the Kurdish region in southeastern Turkey, around 100 kilometres away from Iran, Van, a city with 600,000 inhabitants, is one of the 28 "satellite cities" in Turkey which asylum seekers and refugees cannot leave (see the box, above). The rule is that they must stay within a 40-kilometre radius around the UNHCR local branch⁷ and report to the foreigners' police station to sign a document, once a week for the women and twice for the men. This open-air internment is often endless because of the many different stages of the procedure and the various levels of decision-making: some refu-

6. The refusal by the ministry to allow a refugee to leave may, for example, be a result of a failure to pay the residence permit tax during the temporary asylum period.

7. Van is the only "satellite city" in Turkey that has a UNHCR branch.

gees have been living there for four, eight or twelve years, or even longer. UNHCR and the "third" countries' authorities believe that several Afghans in Van have not endured sufficient persecution to obtain a place within the "third" countries' quotas. As a result of the war in Afghanistan, these people cannot be returned anymore, either. UNHCR nonetheless grants them refugee status, while it knows that there is no hope for them to be resettled. Yet, the UN body repeatedly tells them without any clear explanations that they will soon be resettled, thus keeping them in a condition of vain hope that many of them cling to. This situation unceasingly postpones any plan to leave towards another destination.

The strategies of refugees

As UNHCR does not give them any indication on waiting times, refugees in Van think that their presence there is just temporary. Their stay in this "satellite city" is only meant to last as long as it takes to process their application. Their life is clearly guided by this feeble hope of being resettled, as the very limited learning of the Turkish language and the choice of neighbourhoods in which to live demonstrate: the majority live in *Iskele* and *Kale*, two neighbourhoods that are close to the foreigners' police station. Others live in *Istasyon* in the vicinity of the UNHCR offices.

They have suspended their life project for as long as the asylum procedure lasts. Stuck in this city, they develop living and survival strategies by creating spaces to manoeuvre in for themselves, social bonds and they acquire a degree of visibility within Turkish society. There, they are born, marry, die, practise their religions, celebrate their cultural and religious feasts, go to school, work, etc. You can also notice the effect of community on the choice of the neighbourhood where they live. Iranians often already have a contact before they arrive in the city, where fellow Iranians

provide them shelter and then find them lodgings. Afghans are usually left by the smugglers in front of the Ömer mosque in the city centre. Other Afghans who already live in Van regularly pass in front of the mosque to see if some new fellow Afghans have arrived, and they host them in their homes. Otherwise, newcomers can also find accommodation with the support of local NGOs. They acquire some furniture and household appliances through the mediation of refugees whose resettlement is underway, neighbours or NGOs.

An NGO support network under construction

The increase over the last few years in the number of asylum seekers, refugees and rejected asylum applicants, with or without their families, has led to the development of a real support network of NGOs. Since April 2010, three new NGOs that are solely dedicated to lending refugees assistance (TIHV, IKGV, VanMiyad-Der⁸) have been created. Some older NGOs now increasingly work with refugees: the very militant women's association VAKAD, the education NGO TEGV and the Muslim charity NGO Mazlum-Der.

A dehumanising asylum system

The UNHCR local branch

The functioning of UNHCR in Van is symbolic of the coldness, rigidity and absurdity of the bureaucratic humanitarian system.

8. TIHV, Turkish human rights association: in Van, TIHV deals with cases involving the detention of refugees and human rights violations; IKGV, a partner NGO of UNHCR, specialises in access to healthcare and social aid; VanMiyad-Der is a young local association that sets up projects for professional training and job creation for refugees.

The building's entrance is proof of this: a long metal fence capped by barbed wire and surveillance cameras. Asylum seekers wait in the street for translators to ask them why they are there, from inside the grounds. Any written or oral communication starts by issuing them a registration number. This code, which is made up of several numbers, becomes the refugees' only identity, and they know it by heart, even in Turkish. The asylum procedure is the main feature of their life in Van. The translator either decides to set them an appointment or not, depending on the reason that they have given. Inside, security guards keep their eyes on the surveillance screens. Refugees can only enter the ground floor, where the interviews are held. They all speak about the humiliating treatment to which they are subjected by some members of the staff. If we add the exasperation caused by the endless wait to receive an answer to this, there are many people who nurse genuine hatred towards representatives of the local branch of UNHCR.

An asylum seeker who arrived in 2010 told us of his first disappointments: "The United Nations... I had the image of an honourable organisation committed to the refugees' cause. When I was involved in the political struggle in my country, the UN was a sort of dream. Now, I have come down to earth with a bang: I ran away to escape from being jailed and I find myself in another jail with people who consider us inferior human beings... The UNHCR employees found a job thanks to people like me who fled their countries. So, they could at least say hello to us kindly and ask us how we are doing. I understand that they get bored of hearing similar stories every day, but they are paid to do that, and boredom is an element of most jobs. This doesn't mean that you can mistreat your clients.

The other day, I arrived at the UNHCR at 8 a.m. with a friend. The translator took us into the waiting room, there were only

two of us. (...) Once we were inside, we were not allowed to leave. At around midday, the translator and the legal officer came and told us that they were going to have lunch, without even asking us if we were hungry, if we wanted anything. That really shocked me, we are human beings like them. Then, they finally deigned to receive me at 4.30 p.m. for my registration. I had been there since 8 o'clock in the morning without moving from my chair, without having drunk or eaten anything."

A female asylum seeker with her children who had been in Van for two years and had found it difficult to meet UNHCR officers on several occasions, said: "When I want UNHCR to listen to me, I go to slash my veins with a knife in front of its doors. I've already done it several times."

A young asylum seeker who has been in Van for seven years has also had some problems to be received: "I waited for a year and

a half to get my first interview with UNHCR! Afterwards, I waited for an answer for more than two years. It is impossible to know when we'll get an answer about our asylum application. During all this time, UNHCR never told me something like 'the answer will come in two years' time', they only said 'wait'. And when the answer finally arrives, there isn't any kind of explanation attached to it. (...) We are refugees, but we are still human beings. It's impossible to know when we might get an answer to our asylum application.

Every day, refugees gather in front of UNHCR, they camp, they start hunger strikes. These meetings don't draw any attention, or they only do so if the demonstration lasts for several days. UNHCR treats us like sub-humans. Refugees are traumatised when they arrive, they don't necessarily understand the system, they express what happened to them as best they can, and the legal officer has no reason to get irritated, shout and humili-



On the road from Van (Turkey) to Urmia (Iran), a view of the snow-covered border, © Mathilde Blézat

liate them like that. The UNHCR employees don't care about the important impact that their job has on our lives, for them it is just a matter of some working hours and a salary at the end of the month. (...) We would see how they would fare, if one day they were to be given a number and were deprived of their freedom of movement. It's been seven years now that I'm here, I have never left Van. From the entrance to the ceiling, I really hate UNHCR. Sometimes, I want to go there and break everything."

The foreigners' police

Due to the lack of a real law on asylum, the interior ministry delegates important decision-making power to the local police on anything that concerns the concrete aspects of refugees' lives.

On this issue, a refugee explained: "Once, I came to ask to apply for my *Ikamet*⁹ (residence permit) and after they refused, I asked them 'What can I do?' The police officer answered: 'Hang onto a large stone and then go and jump to the bottom of the lake in Van'. I said 'Fine' and then I left and went into the street in the direction of the lake. The cop ran after me to stop me. On another day, I went there with an Afghan friend. The police officer at the entrance sniffed at him and then said: 'You're an Afghan, aren't you? Afghans stink, they are dirty'. They treat us like dogs, and we can't do anything, just keep our anger in check."

However, unlike other "satellite cities" in Turkey, the police in Van applies the circular of March 2010 on exemption from payment of the *Ikamet* tax (300 euros per year) rather well. Hence, most refugees and asylum seekers in Van have an *Ikamet*, but their status forces them to be interned in their "satellite city". The Turkish asylum system has built an invisible border within the territory itself, an

airlock that excludes a large number of refugees from enjoying a decent life¹⁰.

Multiple forms of oppression: painful survival in a camp-city

It is true that refugees are not put under lock and key where they would be invisible, but in a situation in which they do not enjoy rights and freedom of movement¹¹, their relations with Turkish people and Kurds can be very difficult. Discrimination, exploitation, racism, harassment and depression are their everyday reality. A family of asylum seekers bears witness to this: "We couldn't pay our rent. We had barely enough to buy bread and tea, our daily diet. The owner came with a stick to get rid of us. Fortunately, a grocer from the neighbourhood came and paid the rent."

Harassment and exploitation of women

Female asylum seekers and refugees suffer particularly difficult living conditions in Van¹². All the refugees experience the same confinement, but living conditions are dif-

10. Read Nurcan Özgür Baklacioğlu on the concept of Turkey's internal border, "Building 'Fortress Turkey': Europeanization of Asylum Policy in Turkey", *The Romanian Journal of European Studies*, pp. 7-8, 2009.

11. To have access to health services, to schooling or to a work permit, you have to ask the police for a foreign resident's number, which you can only obtain once you have an *Ikamet* (residence permit). It takes a long time.

12. There are almost the same number of women and men among the refugees in Van, and even more children. The statistics provided by UNHCR (1,700 refugees and asylum seekers) do not correspond with the truth. There are many people whose cases have been closed, others have extended mandates, others have had their asylum application rejected but, nonetheless, they are not returned or deported, etc...

9. Residence permit for foreigners.

ferent for men and women. Women are forced to work irregularly and, apart from exploitation (which also applies to men), they are exposed to various specific types of violence in a society in which women's work is sometimes judged in a derogatory way. The media, fantasy peddlers, spread the image of foreign women who have come for the purpose of becoming prostitutes, particularly Iranian women who are perceived as having fled to be able to remove their veil. Refugees in Van are constantly harassed in the street, in front of the foreigners' police station when they report and sign a document every Wednesday. They are also threatened by telephone, attacked or raped. These extremely serious events may happen along the route from Iran, in the street, in their employers' homes (by the fathers in the families where they do the housework), by their landlords, police officers or sometimes even their neighbours. There are also prostitution rings that try to kidnap them. Finally, there are many husbands who stay at home without a job and are violent towards their wives.

A young female asylum seeker's testimony supports this view: "We are a very large family, and I'm the only one who works. I do cleaning work and it has already happened that the boss tried to hit me and to rape me. Being a foreign girl is awful, especially if you're quite pretty. I put on make-up and I dress well, so people say that I sell my body. But in fact, I work myself to death and I fight to get my meagre wage."

All the young Afghan and Iranian women we met said that they had faced attempts to rape them or harassment since they have been in Van. A majority of these women are very ashamed and the idea of talking about it scares them. Very few of them file lawsuits. For many Iranian, Afghan or local families from Van, the virginity of an unmarried woman is a supreme obligation. Filing a lawsuit entails the risk that their father, husband or anyone else may be informed about the

incident during an investigation. This means that these women may be considered "soiled" and be subjected to reprisals, rejected by their husbands, or they may even become victims of a "crime of honour". Moreover, their access to legal redress is limited: in effect, there is a slim chance of suing someone and obtaining compensation, all the more so as those who attack them are sometimes police officers and that, generally speaking, the police does not want to deal with their complaints, and sometimes even accuses them of inventing rapes to speed up their asylum procedure. Insofar as UNHCR is concerned, it does not react quickly or in concrete terms to such incidents. UNHCR's translators and legal officers in Van are all men, except for the very new legal officer. On this matter, a young female asylum seeker said: "I went to file a lawsuit. The police officers limited themselves to saying: 'You shouldn't be so pretty, it's normal for you to have problems.' And at UNHCR, they told me: 'You should find yourself a Turkish husband'."

A section of the Bar association in Van specifically dedicated to women's rights has been opened in January 2011. The women's association VAKAD now sends the women who wish this to lawyers who are part of this special section to which it is linked. This Bar association section defends female refugees and local women for free. Moreover, in VAKAD, Afghan and Iranian women find people who listen to them carefully and give them solidarity. Finally, the new NGO VanMiyad-Der plans to open a hairdressing saloon whose entire staff would exclusively comprise female refugees.

We should also recall that the Iranian border is only around one hundred kilometres away from Van and that Iranians can go to Turkey without a visa. Hence, it is easy for them to go to Van to resolve their political or family issues there, to find and threaten to kill women who have fled from a forced marriage or violent husband, or who wish

to get divorced in Turkey. Some of these women were received in VAKAD or state-run women's shelters, from which they are forbidden to leave for months because of the high risk of being murdered. Generally, a decision to change one's "satellite city", issued by the interior ministry, takes several months.

The paradoxes of the right to asylum

Hence, for refugees, the city of Van resembles a prison which does not just deprive them of their freedom of movement, but also enables their persecution. These are two of the paradoxes of the asylum system that has been set up: the system's mission is to protect women and men who have fled oppression, but during the time it takes to reach a decision about their application, it imposes a place of residence upon them which they cannot leave if new persecutions take place. In effect, this system neither gives them the means, nor the freedom to escape from what they are fleeing from. The paradox is even more violent for Iranian refugees in Van: they are forced to stay in a city that is very close to Iran where their compatriots can go easily and have little trouble finding them¹³. In the case of female refugees in Van who suffer sexual harassment and exploitation by local men from the city, this system makes them even more vulnerable, rather than supporting them.

Psychological distress and depression

This vulnerability can also be gauged at the level of refugees' psychological and physical health. Dehumanisation through the bureaucratic nature of the asylum procedure, waiting times whose length is undefined, great material insecurity, racism and exploi-

13. It often happens that the Iranian secret services go to Turkey in order to threaten and attack opponents who have left the country.

tation push large numbers of refugees and asylum seekers towards depression as well as other kinds of illnesses.

An Iranian asylum seeker spoke of his hard life in Van: "We are treated like sub-humans by UNHCR, the police and society. Our life is absurd, we just go round and round. Every day is the same. Many of us have nothing to do, so they fall ill, they have heart attacks, take antidepressants and become alcoholics."

According to another refugee: "Van is a real jail". He feels that his "house is an evishane, a jail-home. But in prison they give you food, you have a bed and you don't have any bills to pay. (...) I'm completely depressed. I take a lot of antidepressants. The medicine that the doctor prescribed me was not strong enough, so I switched to an illegal medicine that is terrible for my health and I have started to take strong drugs. Often, I can't sleep for several nights in a row, I'm always thinking. I want to cry, but nothing comes out, it's impossible. I go round and round in my jail-home."

Some refugees even go so far as to say that they would be "happier dead than in the current situation."

At the service of the EU: exclusion and organisation of returns

Van is affected by two "*Twinning*" projects established in association with the United Kingdom, Denmark and the Czech Republic¹⁴. They seek to equip Turkey with mechanisms to control and manage influxes of migrants that are in line with the "Com-

14. *Twinning* projects are technical assistance projects for countries that are candidates to EU accession. They function through cooperation between member states and beneficiary states.

munity acquis". These projects should enable Van to dispose of two additional centres in 2013: a reception centre for asylum seekers¹⁵ and an administrative detention camp whose purpose would be to make it easier to expel people to Iran.

The future "reception" centre

The goal of one of the *Twinning* projects is to "set up a reception [centre] system for sorting and providing accommodation to asylum seekers and refugees¹⁶", a novelty for Turkey. Turkey's asylum system is in the process of changing from an out-camp system, the satellite city system, to an in-camp system, which involves the European style of camps, with an obligation for asylum seekers to live in a centre that is managed by the authorities. The centre in Van, whose construction has begun in the spring of 2011, will have a capacity of 750 people¹⁷. This procedure is imported from the European Union within the framework of Turkey's EU membership negotiations.

Humanitarian and social arguments are put forward to justify this¹⁸. The centre is presented as an open area which respects "freedom of movement", and it will be located in the area of Kurubaş, in a remote location that is 30 kilometres away from Van. Thus, asylum seekers will depend on transports organised by the camp's authorities and they will be subjected to restrictive rules (imposed room and eating companions, curfew, signing compulsory daily presence records, controls on those who visit). The

15. Asylum seekers will be forced to live in one of the seven centres until a decision on their refugee status is issued by UNHCR.

16. Cf. Website: ec.europa.eu/enlargement.

17. Onur Varol [interview held on 7 March 2011].

18. Providing proper accommodation in a location that doctors, NGOs and UNHCR will have access to, where children will be encouraged to go to school and adults to find a job.

rules will be in line with the "standards" of the countries that cooperate in this *Twinning* project.

In reality, the in-camp system is merely a stage in the process of detention in an increasingly confined space. This place will also be marked by the exclusion, invisibility and increasingly systematic controls of these foreigners. A "modern and well-structured asylum system, including a network of reception centres managed by specialised staff", in order to be able to pose remedy to the freedom that is still possible in a "satellite city"¹⁹. Finally, the project presents respect for human rights and – following the example of the project on expulsion centres – "control of illegal immigration", the creation of "conditions for returns" and making "the implementation of readmission agreements more effective" as its overall objectives. With such goals, the centre will in fact partly resemble an administrative detention facility.

The future detention camp

In June 2010, the construction of a closed centre whose size is 5,543 m² started in Van. Its objective is "to control illegal migrants who must be expelled, (...) and to provide them accommodation during the readmission procedure towards their country of origin"²⁰. It will be possible to detain 308 men and 64 women in it, which means a major change in comparison with the around 15 people who can be held in the foreigners' police cells at present. There will be four common rooms: a dining hall for 200 people, a place for religious worship, an infirmary and a leisure room. This centre should be completed in December 2011.

According to the governor of Van, Münir Karaloğlu, "those who we call illegal are

19. It is also claimed, without any hang-ups, that one of the goals is "to teach asylum seekers to take charge of their own lives"!

20. Cf. Website: ec.europa.eu/enlargement.

human beings as well. We wish to receive people in more humane conditions until they are expelled. This is what our interior ministry's plan is, (...) it funds a part of it. Inch'Allah [If it is God's will] we will be able to make a nice 'guest house' [the detention centre] for them. Of course, it won't be a place where they will live permanently, but they will just be given shelter there from when they are arrested until their expulsion²¹."

In this way, Turkey is integrating more than ever into the "Europe of camps", a system that comprises "open" and closed centres, readmission agreements, directives (Dublin II, the "returns" directive) and a digital fingerprint database (modelled on the Eurodac system) that is spreading across Europe, its neighbouring countries, and countries of origin.

MB

21. Press conference, June 2010.

Part 2

"Stowaways" in harbours and at sea

In this part of the report, the terms followed by an asterisk are explained in a small glossary that follows the introduction.

In 2010, over 393,000 third-country nationals have endured a refusal of entry at the external borders of the European Union (EU): 336,789 at the land borders, 50,087 in airports and 6,704 at the sea borders¹. Among the latter, "stowaways"* found on board of merchant navy ships appear far less numerous than migrants caught on regular liners carrying passengers.

Migreurop has nonetheless chosen to focus on these "stowaways" on freight transport ships, not just because these situations remain very opaque and marked by discretion, but particularly because they reveal a transfer of responsibility from public authority towards private actors, at the level of border controls and the taking into charge of migrants who are caught. Unlike what happens in other types of borders, this process appears particularly well developed in port areas.

Within the port communities, these migrants concern and mobilise several actors. Although the interests of public authorities and private companies are of a different nature, they converge: the implementation of European migration policy on one side, and the prevalence of economic activity on the other.

In effect, these situations give rise to difficulties for the professionals of maritime transport. The presence of "stowaways" may have a direct impact on the performances of port companies (the immobilisation of a ship that entails additional costs for shipowners, delays in deliveries, etc.) and, more generally, on the attractiveness of ports. Since the 1990s,

different procedures that aim to allow passengers who are deemed undesirable to disembark as quickly as possible have thus been introduced; port actors use different ploys to resolve the "problem of stowaways" at the expense of the latter's rights.

Thus, at present, the different modes of cooperation pose the question of the absorption of state powers to control borders by private actors and the privatisation of the management of migration flows itself.

The interest paid to this migration phenomenon brings forth four significant themes concerning the damage caused by European asylum and immigration policies:

- the length of migration journeys, authentic odysseys experienced by thousands of people that were raised in our previous annual reports;
- increasingly restrictive legislation;
- the detention of foreigners in places that are difficult to access (on ships and within ports);
- and the externalisation of the responsibility for "unwanted migrants" towards private actors who wish to make them disembark as quickly as possible for the purpose of repatriating them to their home country or the port from which they left.

Places and methods

The research concerning maritime "stowaways" was conducted in seven states of the European Union and one neighbouring country, in a total of 23 ports: Germany (Hamburg), Bulgaria (Burgas, Varna), Cyprus (Larnaca, Limassol), Spain (Algeciras, Barcelona, Bilbao, Valencia), France (Bordeaux, Caen, Cherbourg, La Rochelle, Marseille, Saint-Nazaire), Italy (Bari, Catania, Genoa,

1. European Commission, SEC(2011) 620 final, 24.5.2011, Communication from the Commission to the European Parliament and the Council, Annual Report on Immigration and Asylum (2010), p. 78.

Naples, Palermo), Morocco (Tangiers) and the Netherlands (Rotterdam). In Belgium, the press review carried out by the *Ligue des Droits de l'Homme*, a member of Migreurop, has enabled us to have some accurate elements concerning the "stowaways" who were caught on ships that arrived in the ports of Antwerp and Zeebrugge. The sample of ports in which research was carried out comprises important port areas such as Rotterdam or Hamburg, medium-sized ports like Barcelona, Genoa or Marseille and some smaller ports – in terms of their volume of exchanges – like Varna or La Rochelle.

In each port area, interviews were held with various actors from the professional maritime sector (maritime agents, ship captains, etc.), from the milieu of organisations (seamen's club, migrant defenders, etc.), as well as local and national authorities. Testimonies from migrants were also collected.

In the seven countries, members of Migreurop and partner associations have made it possible to complete the different inquiries. This report is also the result of four investigations conducted in Germany, Bulgaria, Spain and Italy within the framework of the activities by *Echanges et Partenariats*². Finally, this report has benefited from the support of the observatory on the rights of seamen (Nantes, France) and by the *TerrFerme*³ research programme.

2. <http://ep.reseau-ipam.org/>

3. "Les dispositifs de l'enfermement. Approche territoriale du contrôle politique et social contemporain". Based in Bordeaux, this programme is funded by the Agence nationale pour la recherche (ANR) and by the Regional Council of Aquitaine, <http://terrferme.hypotheses.org/>

Glossary

Accommodation ladder. An opening in a boat's hull which provides access to the ship from the quay, via a portable flight of steps.

Bulk carrier. A ship that is used to transport solid merchandise in bulk. The products that it transports may be timber, cereals, coal, ore, sand, etc. Bulk carriers transport around a third of the world's maritime freight.

Chemical tanker. A tanker ship that transports chemical products.

LNG carriers. Ship transporting liquid natural gas.

Oil tanker. A tanker ship that is used to carry petrol and its by-products (fuel) .

P&I clubs (*Protection and Indemnity Insurance Clubs*). Conceived in the United Kingdom in the mid-19th century, these insurance companies are meant for ship owners to cover their civil liability as well as that of ship charter companies, which classic insurance companies call "fixed premiums" and do not guarantee.

Roll-on Roll-off (RORO) ship. A ship that is used to transport wheeled vehicles or trailers loaded with merchandise that are loaded and unloaded using one or several ramps, or through doors found in the ship's hull. This type of ship is different from the merchant navy ships that are loaded vertically using cranes.

"Stowaway". A person who has boarded a merchant navy ship without a ticket, without the captain's consent or that of those responsible for the vessel, who is discovered during the crossing. In Spain, a specific term exists, *polizón(es)*, which we employ where appropriate. In the Netherlands, the word *verstekeling* designates these people who embark on an adventure on the seas and oceans. In Germany, the international term *stowaway* is used, or also the expression *blinde passagiere* (literally, "blind passengers").

Acronyms

Anafe	National association for assistance at the border for foreigners (France)
Ceseda	Code on the entry and residence of foreigners and on the right to asylum (France)
CDPMM	Disciplinary and penal code of the merchant navy (France)
CIE	Identification and expulsion centre (Italy)
CRA	Administrative detention centre (France)
Fal	Convention on facilitation of international maritime traffic
ISPS	International ship and port facility security code
LPEMM	Law on state ports and the merchant navy (Spain)
Ofpra	French office for the protection of refugees and stateless people (France)
Omi / Imo	Organisation maritime internationale / International maritime organization
Paf	French border police
P & I club	Protection and indemnity insurance club (cf. glossary)
Solas	International Convention for the Safety of Life at Sea
EU	European Union
UNHCR	United Nations High Commissioner for Refugees

* Chemical, methane and oil tankers are all classified under the term tankers (derived from the English oil tankers, literally "oil tanks"), or even supertankers for the largest ships.

III. "Grains of sand" in sea freight

Three quarters of the worldwide movement of merchandise takes place on maritime transport, that is, there are nearly 25,000 billion tons of freight that circulate on the seas and oceans¹. In the midst of these immense loads, every year, there are migrants and asylum candidates who face situations in which they have to wander permanently, that strip them of all their rights.

Travelling on board of merchant navy ships

Humans in the midst of merchandise

Among the merchant navy ships, roll-on roll-off ships*, or ROROs, and bulk carriers* are most concerned with cases of "stowaways"*. Various people who were asked claimed this, and a ship captain explained that "stowaways often use ROROs, it's easier to board them". In Marseille, Genoa or Barcelona, this kind of ships arriving from west African ports or those in central Africa like Douala or Port-Gentil, regularly have migrants on board. In the port of Nantes-Saint-Nazaire, the few people who are inter-

cepted often arrive close to Cheviré bridge, where the timber carriers dock. However, the bulk carriers that transport fertilisers or other dangerous materials generally do not allow many chances to migrants who travel in the holds. Pierre Sauvestre, manager of the *Cogemar* agency² in La Rochelle, recalls having "found a dead person in a hold where there was some urea³: the corpse had mummified".

In contrast, very few migrants travel on board petrol tankers or ships that transport dangerous materials, like LNG carriers*. The significant security measures around port facilities limit access to people who do not participate in loading and unloading operations. Likewise, the number of migrants caught inside the containers remains very low, even though the containerisation of merchandise transport has increased considerably over this last decade⁴. This means of passage has effectively become far too dangerous since almost all of the containers are sealed. Nonetheless, it still happens that people are discovered in a container. For example, on Monday 26 February 2007, eight Moroccans were discovered in Antwerp on a container carrier that had come from Africa. Upon arrival in the port, they attracted the attention of people working on the quay by striking the

1. Rachel Rodrigues-Malta, "Villes portuaires horizons 2020. Les nouveaux enjeux du développement", *Méditerranée*, no. 111, 2008, p. 9.

2. International maritime transport company.

3. Product destined for manufacturing nitrogenous fertiliser.

4. The economic crisis which is ongoing since the last quarter of 2008 has nonetheless considerably slowed down the containerisation market.

steel walls of the containers that they were closed in⁵.

Invisibility of "stowaways" in ports

Chart 1: "Stowaways" worldwide, recorded by the IMO

Year	2002	2003	2004	2005	2006	2007	2008	2009
"Cases" (A "case" corresponds with the arrival of one or more people)	267	183	98	96	244	252	494	314
"Stowaways"	574	481	210	209	657	889	2052	1070

Source: International Maritime Organization

The IMO (International Maritime Organization) regularly publishes⁶ statistics concerning "stowaways" on boats worldwide (cf. chart 1). In view of the figures from 1999 (545 recorded "cases" involving 2,253 "stowaways")⁷, an important decrease can be noted in the early 2000s, a period during which security mechanisms in ports linked to the ISPS (cf. chapter II) international code were set up. Then the number of cases recorded by the IMO returned to similar figures to those of the late 1990s, an increase that may be related to the increase in controls within port areas and/or attempted crossings.

These figures, which are still of scant significance, are far from exhaustive because research work carried out in different European ports shows that, on the one hand, states do not always record every case and, on

the other, they do not appear to transmit all the data to the IMO. As evidence of this, in Spain, the latest official figures date back to 2003 and 2004, and refer respectively to 502 and 387 arrivals of *polizones*⁸, meaning that they have a higher figure for these two years than that provided by the OMI for the whole world.

As far as we know, there is no European-wide database, and statistics by country are still incomplete. Hence, the question posed by Migreurop to the Spanish interior ministry in December 2010 regarding the number of arrivals of *polizones* in the 2005-2010 period has remained unanswered. The scale of the only recent figures available to us are most often those of a port. For example, in 2007, Barcelona port recorded 72 *polizones* and the total number of "stowaways" there,

5. MAP, "8 clandestins marocains découverts au port d'Anvers", 27 February 2007 [available on Internet].

6. See its website: imo.org.

7. For 1998, the IMO only recorded the number of "cases" (504).

8. Out of thirty-one ports in total. The data primarily concerns the ports of Algeciras, Barcelona, Cádiz, Las Palmas and Valencia; those for Bilbao are not available [Source: *Comisaría General de Extranjería y documentación*].



Containers in port of Barcelone, © Julia Burtin

was 197 for the 2005-2007 period⁹. One of the officers in charge of the maritime border police in Bilbao port explained that in the years 2005 and 2006, "at least three or four *polizones* arrived every week, whereas today there are only two or three per year". Without disclosing exact figures, one of them said that in Barcelona, Valencia, Tarragona and Bilbao, he had "worked with around thirty *polizones* in 2010, without counting those who I did not have to repatriate by aeroplane because they stayed on board of the ship".

In Italy, the numbers of "stowaways" are rarely disclosed. An article in *la Repubblica* nonetheless tells us that 93 migrants were caught in the port of Genoa in 2009, that

9. Figures provided by the *Comisaría General de Extranjería y documentación* and mentioned by Antonio Baquero, "Unos 350 polizones llegan al puerto de BCN en cinco años", *El Periódico de Catalunya*, 27 April 2008.

is, a 30% increase compared to the previous year¹⁰.

In La Rochelle, according to a former PAF (French border police) officer, their number varied between twenty and thirty in the 1990s, then between fifteen and ten in the 2000s. The director of the *Cogemar* agency stated that nine people were discovered on board of the company's ships in 2010: "in the previous year – he said – we had only had one. Ten years ago, we sometimes had thirty people during a single year". In Saint-Nazaire, according to several people we asked, the number of foreigners caught has also decreased considerably, and it is limited to fewer than ten people per year. In an Anafé report from 7 May 2003 concerning the waiting areas in Nantes and Saint-Nazaire, it may be observed that the number of "sto-

10. Massimo Calandri, "A Genova sbarcano sempre più clandestini", *la Repubblica*, 31 March 2009.

waways" was in fact higher in the early 2000s (46 in 2000, 23 in 2001 and 61 in 2002).

In the three great northern European ports, namely Antwerp, Rotterdam and Hamburg, the number of interceptions has likewise decreased during the last few years. In the port of Antwerp, the number of recorded "stowaways" – who mainly arrive from African countries-, which had been around two hundred in the first half of the 1990s (199 in 1989, 218 in 1995, then 164 in 1996)¹¹, fell to 102 in 2005 and to 37 in 2009, according to the Foreigners' Office¹². In the largest European port (Rotterdam), only a few dozen "stowaways" have been recorded over the last few years, while in the late 1990s and early 2000s, several hundred people arrived in cargo ships. In Hamburg – Europe's second largest port – the number of arrivals went from between 60 and 80 at the start of the 2000s, to around ten people as of 2005. One officer from the Hamburg maritime police claimed that "their number was in the region of 170 in the 1990s. That is nothing, if you consider the number of people who arrived through the green border at the time. (...) The figure is ridiculous, isn't it? Obviously, they kept us busy, but you cannot really talk of migratory pressure."

From these few images based on figures, one may hold on to two features. Since the implementation of the ISPS code, the number of "stowaways" who were taken into custody in European ports has considerably decreased. But several people we spoke to also believe that the figure has primarily changed due to the implementation of this regulation upstream, in African ports. Moreover, although these figures remain partial, one

can note that the number of people who are caught is higher in southern ports than in those in northern Europe. This difference may be linked to the fact that migrants have disembarked during the first times when they dock, to be returned later to their home countries.

Some authentic migration odysseys

Through their laws concerning the fight against illegal immigration that were established decades ago, the authorities of European states force shipowners to conduct controls prior to the ship's departure, as well as in port areas to prevent illegal boarding, and on the boats.

Boarding the boat

In ports of departure, the boarding of "stowaways" is generally made possible by using seamen, dockers or other people working on the quays, like ship maintenance workers, as intermediaries. The lengths of the loading process, which are generally longer for bulk carriers than for RO-ROs, allow a slightly greater chance for migration candidates. Roland Doriol -a volunteer in the reception halls for seamen in Nantes and Saint-Nazare and a seaman during the 1980s and 1990s- recalls that when he used to work, "stowaways managed to climb on using the accommodation ladder*. On certain boats, it was also quite easy to board the vessel in empty containers, as they were not sealed. Hence, people could hide in them." With the introduction of the ISPS code, most of the containers are now sealed*¹³ before they are taken to the port, one out of plenty of measures that do not totally impede the presence of "stowaways" but cause the price that must be paid to board the ships to rise.

13. Containers that are not sealed are generally opened in order to check that there is nobody inside them.

11. Eddy Surmont, "Le corps de deux Africains dans un cargo à Anvers", *Le Soir*, 20 January 1997 [available on Internet].

12. For all the Belgian ports (Antwerp, Ghent, Ostende, Zeebrugge), the number of "stowaways" who are caught has been continuously decreasing: 306 in 2002, 239 in 2003, 150 in 2004, 128 in 2005, 116 in 2006, 90 in 2007, 91 in 2008 and 61 in 2009.

Hiding on the boat

In international texts and national legislations, the fact of hiding on a ship is often evoked, which reminds us that it is a practice that has always existed. The first article of the 1957 international convention defined a "stowaway" as "a person who (...) secretes himself in a ship without the consent (...) of the captain". The 1965 convention to facilitate international maritime transport (FAL), amended in 2002, describes a "stowaway" as "a person who is secreted on a ship, or in cargo (...) subsequently loaded" on the ship.

Thus, in ports of departure, captains may ask crew members to look in every part of the ship. This operation sometimes enables the crew to make unwanted passengers disembark before the ship has slipped its moorings¹⁴. Roland Doriol reminds us that "in certain ports like Abidjan, Lomé, Point Noire or Cotonou, it often happened that, an hour before departing, we would raise the bridges and search for stowaways. We used to look everywhere, in every possible corner, the lifeboats, chimneys, cabins, wardrobes, behind the ventilators, in the ventilation shafts, under the bases of the engines, etc." However, one of the managers of the *Cogemar* agency in La Rochelle explained that "this is never easy, there are always some things that you will not check. It is impossible to search an entire ship from top to bottom; the vessels have immense volume. And it is even harder with the restriction on the number of seamen in crews."

A former PAF officer in La Rochelle claims that on ROROs, migrants can also hide in the ramps; but sometimes, there are only material indicators (bottles, remains of food) to show traces of their passage.

Migrants often travel in conditions that endanger their life. For example, on 20 December 2005, ten young Nigerians were discovered "in a very pitiful state" at the level of the Kallo lock, near to Antwerp port, after an eleven-day crossing that had cost two of their fellow travellers their lives. The investigation showed that the RORO's captain "did not know about their presence on board". The port official had noted that they had occupied a technical space that was under the rudder. "When they came out of their unlikely hiding place, they were dehydrated and hungry, they only wore trousers and a T-shirt and they shivered after spending 11 days in that minuscule place that was not heated." The *Saint-Elmo*, which was "flying a Maltese flag, but belonged to a Neapolitan ship-owner, carried cars. It had left Lagos on 9 December and its destination was Libourne, after calling in Antwerp"¹⁵.

Random landings

As few "stowaways" are allowed to enter the territory, they continue their odyssey on the boat that they boarded. Most countries in the world refuse to let them disembark.

In Spain, out of the 889 *polizones* who arrived in 2003 and 2004, around 78% were kept on board before continuing their "journey". The others were sent back to their home country by aeroplane (cf. chapter IV).

In 2002, UNHCR raised the case of two Iraqis who were kept on a ship in Limassol (Cyprus) for nearly two weeks before their situation was resolved. Sweden, the Netherlands, the UK, Ireland and Spain had previously refused the two men's entry into their territory¹⁶.

14. On 21 November 1995, in the port of San Pedro (Ivory Coast), the crew of the *Elise D* was thus able to make fifteen "stowaways" disembark, who were handed to the local authorities. Cf. Eddy Surmont, "Aller simple pour les quatre clandestins survivants de l'*Elise D*", *Le Soir*, 28 December 1995 [available on Internet].

15. Quotations drawn from the article: "D'abord des soins pour les clandestins", *La Libre Belgique*, 23 December 2005 [available on Internet].

16. William Walters, "Bordering the Sea: Shipping Industries and the Policing of Stowaways", *Borderland e-review*, vol. 7 n° 3, 2008, p. 5 [available on the website: borderlands.net].



Containers in port of Barcelone, © Julia Burtin

In November 2005, three Algerians and three Moroccans who had set off from Tangiers port on the container ship *Kenza* were intercepted in Rotterdam. "The three Algerians requested asylum and the ship set off again with the other three people on board towards Casablanca via the German port of Bremerhaven. But when the *Kenza* returned to Rotterdam in late December, the Dutch authorities handed over two of the three passengers whose asylum applications had been rejected. On 3 January 2006 in Casablanca, following the Moroccan authorities' refusal to admit the two passengers, they left again for a second journey to Rotterdam. And, on 15 January, the Dutch authorities demanded that the *Kenza* readmit the third

Algerian whose asylum application had been rejected on board"¹⁷.

Conversely, police officers in the port of Varna told us of a case of migrants who refused to disembark in Bulgaria. They wished to continue their journey, in the hope of being able to disembark in another EU country. Thus, on 2 July 2004, a ship flying a Maltese flag had a Somali and two Rwandans on board who refused to disembark in Varna to seek asylum there. On 27 April 2005, four Moroccans on a Georgian boat arriving from Turkey wanted to go to Italy: hence, the boat continued along its route with the four passengers on board.

17. Olivier Clochard, "L'interminable errance des passagers clandestins maritimes", in Luc Cambrezy & al. (ed.) *L'asile au sud*, Paris, La Dispute, 2008, p. 173-186.

.....

A (not) simple one-way trip to Genoa

After undertaking a first trip to Brazil in 2007, by boat and with another person, the Guinean national Abou Sylla was sent back to Senegal by plane. In April 2008, he attempted a new adventure on board a merchant navy ship.

"After staying in Dakar for six months, I left Senegal in a boat. A person who worked in the port offered to let me board a timber carrier that was leaving towards Europe in exchange for 500 euros. My hiding place was high up in the ship, in a cabin where there was a hole from which, in particular, I was able to observe the seamen searching the boat before departure. On the third day, as I had not eaten, I showed up before the crew, which took charge of me. My clothes were dirty, some seamen suggested that I wash and gave me some new clothing. (...) From Dakar to Genoa, the journey lasted eight days with a very short stop in Tenerife -two or three hours long- during which I was able to break the door of my cabin and get off by sliding down the thick rope found at the rear of the ship. However, as I was dressed in clothes bearing the boat's name, the police soon found me and handed me over to the ship's captain, who was Italian. When the boat slipped its moorings, the seamen, a majority of whom were Romanians, locked me in another cabin. Throughout the crossing, I was treated relatively well. Only one seaman was unpleasant towards me; he slapped me and took my gold ring. (...) When we arrived in Italy, they called the police, which recorded my fingerprints. Then I stayed on the boat, which returned to Dakar. But as the boat had some damage, some repair work needed to be done. Thus, it was kept still for eight days in the port of Genoa. Locked in my cabin, I had to tap on the glass to be given some water; this also allowed one of the workers to see me. But we could not understand each other. So I tore a sheet of sticky paper from one of the windows and I indicated that I wanted to write. He went to look for a pen and I wrote the word help. (...) Then, he contacted a lawyer who came on board and, in this way, I was able to disembark and lodge an asylum application. After a few months, I was granted subsidiary protection."

[Interview held in May 2011]

.....

The extreme vulnerability of "stowaways"

Human tragedies

Since around twenty years ago, newspaper articles regularly remind us of the danger of the journeys by maritime "stowaways" on cargo ships. By looking at the map of border deaths¹⁸ again, it can be seen that ships are the setting for deadly accidents. Some people die of asphyxia because they have travelled close to extremely dangerous materials (phosphates, ureas, etc.), others perish because they have been unable to feed themselves. Finally, there are some who are victims of unscrupulous crews that murder them by throwing them overboard.

Deaths on board...

If the death of 58 Chinese who suffocated in a container between Zeebrugge and Dover in June 2000 remains one of European migration policy's deadliest accidents in the last twenty years, several other European ports including the one in Antwerp have also had to face this type of events. Thus, it sometimes happens that corpses are found at the bottom of cargo holds: two people on the *Elise D* on 28 December 1995¹⁹, two more on the *Nedlloyd Zaandam*, which flew a German flag, a few days later²⁰. These people often come from Africa. Above, we mentioned the case of two Nigerians who secretly boarded the *Saint Elmo* RORO and died at

18. Available on: blog.mondediplo.net.

19. Eddy Surmont, "Aller simple pour les quatre clandestins survivants de l'Elise D", *Le Soir*, 28 December 1995 [available on Internet].

20. Surmont Eddy, "Sont-ils morts avant ou pendant le trajet entre Dakar et Anvers?", *Le Soir*, 2 January 1996 [available on Internet].

sea two days before they arrived in Belgium. The survivors spoke of "a twelve-day odyssey, without food nor water, passing from the heat in their countries to the harshness of the European winter"²¹. This also concerns Spanish ports. For example, on 28 April 2008, in the port of Fuerteventura (Canary islands), out of eleven people who travelled on the *Rosa Delmas* cargo ship, five perished.

Finally, it also happens that some "stowaways" drown after jumping from the ship's deck to swim to the coast, hoping that they may avoid the port authorities in this way. This was the case of an Algerian in October 2010 when the boat was arriving in the port of Valencia. As a result, liners are often accompanied by a police boat when a "stowaway" is on board: according to an inspector of the Bulgarian border police, this makes it possible to check that the migrant does not jump overboard.

... or thrown overboard

During our inquiries, we have never asked our interviewees if they had been aware of any crimes similar to those committed in the *Mac Ruby* case (cf. the box above). However, various people raised this issue during interviews, alluding to similar situations that may have occurred.

According to a deputy commander of a French port, some crews do not hesitate to throw "stowaways" into the sea. However, he does not think that this happens on ships of the *Delmas* maritime company, but he says that he cannot be as certain regarding boats of the *Necoship* company²². He believes that "on certain ships, the working conditions are so mediocre that, if the situation arises, the

matter of nourishment is raised, and of the difficulty of feeding additional mouths".

In the port of Marseille, a Romanian captain did not deny the existence of such tragedies, and mentioned another Romanian captain who supposedly threw two migrants overboard, before adding: "You cannot travel with them, they are undesirables everywhere. Hence, this can happen"²³.

In Spain, when they were asked about the fate of *polizones* who it was impossible to disembark without the identification documents or time to successfully conclude the procedure for repatriation by aeroplane, two maritime agents answered that this "hardly ever" happens. Then, one of the two added that the *polizones* would, rather, have an interest in "knowing how to swim" and that "with a bit of luck, [the seamen] will leave them three miles away from a coast".

Without evidence, which is always hard to obtain, we nonetheless feel that the *Mac Ruby* case has strongly affected the spirits of professionals from the merchant navy.



The Mac Ruby case

In November 1992, the ship Mac Ruby left Douala, in Cameroon, with a Cameroonian "stowaway" on board. When it called in Tokoradi (Ghana), eight Ghanaian dockers also boarded it in secret. When the crew members discovered eight of the passengers, the captain and some Ukrainian seamen decided to kill them and then throw them overboard to avoid having to pay a fine upon arrival. During its stop in the port of Le Havre (France), the Ghanaian survivor testified, and the crimes were on the front page of all the newspapers. In 1995, the captain and his deputy, who were convicted of conspiracy to murder and kidnapping, were sentenced to life imprisonment by the Seine-Maritime court of assizes. Three other seamen were sentenced to 20 years' imprisonment.

Behind this sinister event, one should recall

21. Isabelle Lemal, "Deux clandestins nigériens périssent en mer", *Le Soir*, 27 December 2005 [available on Internet].

22. These views have been compared with those by a volunteer of a seamen's association.

23. *Hommes à la mer*, film by Malek Sahraoui and Elvira Curtet, 2010.

that the merchant navy sector is affected by growing competition. The immobilising of a ship or fines inflicted by public authorities give rise to important costs and, consequently, limit profits. Hence, there are financial and economic challenges that arise between seamen and other actors. The *Mac Ruby* had previously been managed by two other captains, who had successively been dismissed for having been unable to "manage" the presence of "stowaways" on this ship that flew a Bahamian flag. In any case, the owners -to be precise, those in charge of the Monaco-based group Vlasov through its subsidiary companies MC Shipping (American) and V. Ships (based in Cyprus and Monaco)- were not disturbed by the justice system in the case of the eight murders. While this case was marked by criticism from several quarters, other events show the indifference of the international community, states, shipowners, or even port authorities in relation to these tragedies. In May 2004, a seaman on the *Wisteria* accused his South Korean captain of having thrown four Senegalese overboard in the high sea off the Mauritanian coast²⁴. After the police caught the captain, the Spanish justice system declared that it did not have the competency to conduct the investigation because the facts had unfolded in international waters.



Pact of silence concerning asylum requests

In view of the statistics obtained and of the research conducted in the different ports, the number of asylum seekers who arrive on merchant navy ships is particularly small in European countries as a whole. Whether it is in Germany, Bulgaria, Spain, France, Italy or the Netherlands, the different actors (shipowners, maritime agents, etc.) generally consider "stowaways" economic migrants²⁵. The lack of asylum seekers appears to be connected to several factors. First of all, let us note that the texts and practices concerning the admissibility of applications, their assessment as urgent or not and the freedom of people while it is examined vary from country to country.

Beyond the difference in rules, when a person seeks to submit an asylum application, the ship-owner must commit, through their insurance, to provide for the costs of repatriation if the person's request is rejected. Otherwise, they will incur a fine of several thousand euros (cf. chapter II). Awaiting for the authorities to allow a procedure to start or examine the application, the ship is thus immobilised, which gives rise to considerable additional costs for shipowners and causes delays in subsequent deliveries.

As a result, the different actors make sure that the people are unable to apply for asylum and are quickly repatriated by aeroplane to their countries of origin, or continue their "journey" on the ship for as long as it takes to find a solution for them to disembark. The European policy of carrier sanctions also clearly appears to be a major obstacle to access to asylum procedures in Europe.

In Spain, the report by the Defensor del Pueblo [ombudsman] on legal assistance

24. José Luis Jiménez, "La Policía detiene a tres mandos del barco que abandonó a cuatro *polizones* en el mar", *ABC*, 30 May 2004 [available on Internet].

25. The outcome of the asylum applications by the ten Nigerians who arrived on the *Saint-Elmo* (cf., above) was a rejection: they were repatriated by aeroplane, with the cost paid by the ship's owner.

to foreigners, released in 2005, records the arrival in Spanish ports of 2,303 *polizones* who submitted around one hundred asylum applications (that is, close to 4%) in the period from 2000 to 2003. For the period from 2004 to 2010, their number decreased three-fold: only 29 asylum applications were lodged.

Chart 2: Number of asylum applications in Spanish ports (2008-2010)

Year	2008	2009	2010
Asylum applications	7	1	3

Source: UN High Commissioner for Human Rights

In Barcelona, between 2005 and 2007, out of 197 *polizones*²⁶, the Barcelona Bar Association²⁷ was only contacted on three occasions to provide legal assistance to these migrants.

Thus, if one sticks to the differences observed between the number of arrivals of *polizones*, the number of requests for legal assistance and the number of asylum applications recorded at sea borders, one could naïvely conclude that the majority of the *polizones* who arrive in Spanish ports do not wish to enter its territory, nor do they wish to be granted international protection. Evidently, as we were told by the Valencia Bar lawyer Paco Solans, "it does not seem very likely that a person who has risked their life to flee from their country declares not to want to at least enter the territory when they arrive in a Spanish port." Lawyers and associations also note the unexplained difference between the figures of *polizones* and those of migrants caught when they arrive in Spanish airports, where numerous denials of entry and asylum applications are recorded. This

process of rendering *polizones* invisible leads to an element that may provide an answer: it is the police monopoly over the procedure. As one of the lawyers who participated in the working group on *polizones* in Barcelona indicated²⁸: "In the ports, only the police is present to assess whether a person expresses their wish to enter Spain or not. How can we know if what the *polizones* say is interpreted correctly? There is nobody there to observe the police controls." Javier Galparsoro, the president of *Cear Euskadi*, mentions his view that there is a "*pact of silence*" that lasts until the boat's departure; thus, he adds, "with the boat, the border leaves. And alongside the border, the problem leaves."

In Germany, in the port of Hamburg, out of 15 people who arrived by sea in 2008, only two lodged an asylum application. In 2010, eleven "stowaways" were recorded, including three asylum applicants. There, again, it is amazing to see that only some of them request protection.

26. Antonio Baquero, "Unos 350 *polizones* llegan al puerto de BCN en cinco años", *El Periódico de Catalunya*, 27 April 2008 (Source : *Comisaría General de Extranjería y documentación*).

27. Commission dealing with foreigners' law, equivalent to the Bar association in France.

28. This group of people (lawyers, activists in associations) seeks, through their actions, to ensure that the rights of *polizones* are respected in the port of Barcelona, by establishing contacts with the totality of maritime actors.

In some other German ports, the director of *Unicon* -an insurance company²⁹ that manages the "situation" (cf. note 6) of "stowaways" - deems that a majority of the foreigners on boats are economic refugees. After conducting an interview with an interpreter present, he stated that his employees are able to discern whether "they have reasons to seek asylum for religious or political reasons, or not. When it is necessary, we contact UNHCR and work together in order for the people to be able to lodge their application. But when they come here saying that they are seeking a better life and a job, this is not a reason for seeking asylum³⁰". The question obviously arises as to whether this sort of private body is competent to decide whether to submit an asylum application before official services or not. According to the director of the mission to seafarers, the procedures are supposedly respected but "people are not too zealous when it comes to information about the right to asylum. However, if they say the word asylum, then the procedure is transmitted to the authorities". Hence, the fate of these foreigners is supposedly simply linked to the uttering of this word. In several European ports on the Atlantic, private actors responsible for "stowaways" have also mentioned that the police sometimes asked them to say as little as they could about asylum. In France, the number of asylum applications at the borders in port areas is almost

nonexistent: nearly 99% of applications are recorded in the Parisian airports of Orly and Roissy, and the remaining protection requests mainly come from provincial airports.

In the port of Rotterdam (the Netherlands), the number of foreigners who request protection is very low as well. However, the port police does not wait for them to say the word "asylum". According to the police officers we asked, from the moment when they realise that the person risks being in danger if they are returned to their home country, they take the necessary steps to enable the person to lodge their asylum application. The foreigner is then led to the port police post for a few hours, where a first interview is held in front of the maritime agent who represents the ship-owner's P&I insurance company. Then, the applicant is placed in one of the country's waiting or detention areas³¹, until their request to enter the territory for reasons of asylum is examined.

Finally, in Bulgaria, the ports of Burgas and Varna are likewise scarcely affected by the arrival of asylum seekers, a de facto situation that is linked to the behaviour of the police administration. In 2007, in the port of Burgas, four "stowaways" who boarded a boat in Senegal were refused entry to the territory to seek asylum by the country's authorities. After UNHCR was informed by the boat's captain, the police authorities nonetheless "agreed" to accept the four applicants to take them to the Busmantsi detention centre near Sofia -something which did not happen in the case of the two Iraqis who arrived in Varna in 2003.

29. One of the private companies that have stipulated contracts with shipowners in order to insure them against the possible risks connected to the transport of merchandise. Among these risks, there is that of material accidents, deteriorated merchandise and... "stowaways" (cf. chapter IV).

30. According to Mr. Glaser, of the maritime police, in Hamburg the insurance company does not participate in the first interview and is limited to signing the guarantee, as well as contacting the consular authorities. Apparently, again, practices vary in different places. According to Mr. Dohm and Mr. Stroux, at that time (the 1990s), an insurance company like Pandi Services was not just on board during the interview, but it also collected information about the stowaways in order to describe them in its acts and render its services even more attractive. This was not raised at all during our interviews.

31. The Zestienhoven expulsion centre (*Uitzetcentrum*), the transit zone of Schiphol-Oost (*Passantenverblijf*), the detention centre at the Schiphol-Oost border (*Grenshospitium*), or the detention centre of Alphen aan den Rijn (article 6 of the Dutch law on foreigners).

.....
Protection requests denied by the Bulgarian police

On 24 February 2003, in Beirut (Lebanon), two Iraqis boarded the *Cape Bear*, a ship flying a Liberian flag, by climbing the chain anchor rode, then they hid in the hold. The two people were discovered between the ports of Zawiya (Libya), where the boat stopped, and Varna (Bulgaria). During the rest of the crossing, they were held in one of the boat's cabins. When they arrived in Varna on 28 February, the police refused to consider their request for protection. On 12 March, they were interviewed again by the boat's captain and by a maritime agent. They deemed that the request for protection should be considered. Having failed to get the police in Varna to understand them, the captain sent an e-mail to the Bulgarian police authorities, to the State Agency for Refugees and UNHCR. On 15 March, a lawyer from the Bulgarian Helsinki Committee boarded the boat in order to meet the passengers and consider their asylum application, and UNHCR formally asked the Bulgarian border police to allow the two passengers to disembark. In spite of these different steps, the asylum applications were only recorded on 17 March, the date when the boat left the port of Varna (that is, four days behind its schedule). When they arrived in Constanța (Romania), the two migrants finally disembarked and obtained humanitarian protection.

.....

The presence of unaccompanied minors among the "stowaways"

The young foreigners who travel on board of these large ships do not appear to enjoy the specific regime that they should be accorded. For example, in France, the disciplinary and penal code of the merchant navy states that "the minor should be separated from any other person who is held" (article 29). But the material conditions on the ships do not offer many solutions. According to several testimonies, crews usually hold people in one or two cabins without concerning themselves about the passengers' age. In La Rochelle, a former border police officer explained that people who claim they are minors are followed by an ad hoc administrator until they are placed in a specialised facility. But these are "quite rare situations", according to the police officer.

Asked about the presence of minors among the *polizones*, the Bilbao (Spain) border police answered negatively. However, the press mentions the existence of minors, as does the association CEAR, which recently intervened in support of some *polizones* who arrived in northern Spanish ports and in Valencia. For instance, Javier Galparsoro of CEAR Euskadi mentioned the arrival in June 2009 of two Ghanaian minors on a Norwegian boat, the *Virana*, in the port of Vigo in Galicia. He explained that "one said he was 13, the other one 15. The police did not alert any organisation or lawyer, we found out about the story well after the events, talking to a journalist. The bone test established that they were adults, and this was without a second test although they were aware of the margin of error for this kind of test. Of course, the witnesses did not speak the same language as the translator, and if a witness does not understand the interview, what can he testify about? Answering a question about the reasons for leaving, one of them

answered that when his parents died, some problems arose within his tribe. The police did not seek to find out anything else about this. The boy had not said "asylum" and neither had he stated that he wanted to enter Spain. He had only said that he did not want to go back to his country. They were left on the boat without any legal assistance until it left towards France." In a decision issued on 25 May 2011, the high court of justice of Galicia, seized by the association CEAR, recognised the responsibility of the *Subdelegación del Gobierno*³² in "the violation of the right of effective protection connected to the right to free legal assistance" for these two minors: the ruling was described as "historical" by the association, even though it did not envisage any "sanctions" and only "partly remedied the serious irregularities that are customarily observed in Galician ports"³³. Finally, the Bar and CEAR association found out through the press³⁴ about the arrival of seven Algerian *polizones* in the port of Valencia, some of whom were minors, on 7 October 2010.

OC

32. Equivalent of the region's sub-prefecture (office of the government's deputy envoy in charge of security).

33. "El TSXG declara 'lesión del derecho fundamental' de dos polizones llegados a Vigo en 2009", *El Faro de Vigo*, 1 June 2011 [available on Internet].

34. Javier Martínez, "Un polizón muere ahogado en aguas de Valencia tras saltar de un buque", *Las Provincias*, 8 October 2010 [available on the website lasprovincias.es].

IV. Financial stakes and security measures

People caught up in the huge financial stakes

"Stowaways"* and carriers are theoretically subject to considerable penal and/or financial sanctions envisaged in national laws. The sums that are in play are such that civil insurance companies (P&I clubs) have established the figure of the "stowaway" as a risk against which carriers must be guaranteed. In spite of the possibility of avoiding sanctions in practice, the financial loss involved in the presence of an "unwanted" passenger in maritime freight makes this a serious issue, especially in a context where economic performance is the primary concern.

The penalties incurred by "stowaways"

"Stowaways" are liable to incur penal sanctions. The penalties are not automatic because they depend on national laws, and it appears that they are not implemented very often once the passenger has finally been returned.

Beyond the refoulement procedure, Germany does not provide any penal sanction to reprimand the unlawful arrival of a passenger in a German port. By contrast, in France, article L 5531-15 of the transport code establishes that "the fact of fraudulently boarding

a ship with the intention of undertaking a long distance crossing or international navigation is punished with six months' imprisonment and a 3,750 euro fine". In a similar vein, article L 621-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Ceseda, code for the entry and residence of foreigners and for the right to asylum) envisages that, for having entered French territorial waters without the required administrative documents, even if they have not disembarked, a "stowaway" risks one year's imprisonment and a 3,750 euro fine. It should be clarified that, in any country, laws concerning immigration policies are applied in their territory and territorial waters alike (up to 24 nautical miles from its coast).

In Spain, a "*polizón*"* is not subjected to penal punishment. In 1992, the law on the state's ports and the merchant navy (LPEMM) abrogated the penal and disciplinary code of the merchant navy, whose article 70 punished the offence of unduly embarking with a prison sentence and a fine¹. Afterwards, the LPEMM then set a series of administrative offences among which was "unlawful boarding on a Spanish ship"², which is always liable to incur a substantial fine. Nonetheless, as can be seen, this provision only punished the passenger if the boat

1. Cf. Eduardo Javier Ruiz Vieytez, "Informe sobre la condición jurídica de los polizones en los puertos de la comunidad autónoma del País Vasco", December 1998.

2. Ley 27/1992 de Puertos del Estado y de la Marina Mercante, 24 November 1992, art 115.2.

was Spanish and moreover, as P&I club correspondents claim, it appears that it is not applied.

The risk of fines and of economic losses for carriers

Fines

Carriers can also incur sanctions, largely financial. Moreover, the multiplication of fines for carriers has encouraged civil liability insurance companies – *Protection and Indemnity insurance clubs* (P&I Clubs) – to add a specific "stowaways" clause to their contract.

In all ports, the control authorities must be informed about the presence on board a boat of passengers who are not recorded on the roll of crew members. Failing to report this may be punished with a fine. In Bulgaria for example, carriers risk having to pay a fine of up to 3,000 lev (1,500 euros), which may be higher for repeat offenders³. More generally, when someone is discovered on board of a ship, the captain must inform the authorities of the next port where it will call about this immediately, in accordance with the specifications detailed in the fourth chapter on the treatment reserved for "stowaways" in annex 2 of the FAL Convention⁴. There are some variations to this principle in local laws and practices. In Spain, instructions from 2007 oblige the captain – in practice, the maritime agent – to inform the border police "with sufficient prior notice" about the arrival of a migrant on a boat⁵. In Rotterdam, the port

police (Rijmond Politie, ZHP) deems that the captain must warn it about the presence of a "stowaway" from the moment in which the boat enters Dutch national waters. If maritime companies do not comply with this requirement, they then incur a fine that may be of up to 5,000 euros per person.

Apart from fines concerning the declaration of migrants, carriers may incur other kinds of financial sanctions. In France, article L 5531-16 of the code of transports punishes assisting or concealing the boarding or disembarking of a "stowaway" with six months' imprisonment and a 3,750 euro fine. This punishment is doubled when the offence is committed as part of an organised group. In Spain, article 115.2.e of the LPEMM also punishes carriers for the "escape" of a stowaway in a Spanish port with a hefty fine, considering that, in such a case, the captain refuses to "keep the stowaway on board". Finally, fines against carriers may be imposed once the people are authorised to disembark.

Canadian researcher William Walters stresses that financial penalties adopted against carriers represent an important source of annoyance for them: "The latter deem that migrations across the world are none of their business and that, as a result, they should not be the first responsible parties designated during migration controls⁶". It should be clarified that, in practice, from the moment in which carriers cooperate "in a satisfactory manner" with the authorities of the country of destination, these same countries "could envisage reducing the amount of the payment that is due, taking into account the shipowner's interests" as a FAL circular indicates⁷. Issued by the International Maritime Organization (IMO) in 1996, this cir-

3. Law of 23 December 1998 on foreigners in the republic of Bulgaria, amendment of 29 April 2007, arts. 49.1.4 and 49.2.

4. The FAL Convention "on facilitation of maritime traffic" came into force on 5 March 1967. By virtue of this convention, on "reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community", cf. Directive 2002/6/CE, which came into force on 9 April 2003.

5. Instructions on the treatment of foreign stowaways of 28 November 2007 of the Dirección General de la Policía y de la Guardia Civil, Dirección General de Política Interior and Dirección General de Inmigración.

6. William Walters, "Bordering the Sea: Shipping Industries and the Policing of Stowaways", *Borderland e-review*, vol. 7 no. 3, 2008, p. 5 [available on the website: borderlands.net].

7. Circular, FAL.2/Circ.43 of 25 January 1996 [available on Internet].



Secure access at the entrance of La Rochelle port, © Olivier Clochard

cular concerns "directives on the sharing of responsibilities to promote the satisfactory regulation of cases of unlawful boarding" and emphasizes "cooperation between all those involved, including shipowners, captains and also the countries where they embark, disembark and, lastly, the countries that are crossed during refoulements⁸". Thus, from this viewpoint, as long as the captain does not obstruct the procedure that must be followed when a "stowaway" surfaces at a port, he may be exonerated from paying the amounts that are owed. For example, the Dutch port police notes that maritime companies prefer to cooperate rather than having to pay a fine. Likewise, in Spain, the P&I clubs state that from the moment when adequate security mechanisms are implemented by the insurance companies, the captain is generally not considered responsible for a person's escape

8. Cf. Judith Attali, *Le transport maritime de passagers clandestins*, Université de Droit, d'économie et des sciences d'Aix-Marseille III, 2008 (Outline of the Master's in Maritime and Transport Law), 2008.

and, hence, a financial punishment will not be imposed on him.

Economic losses

While, by means of a cooperation with the control authorities, carriers can reduce or avoid the economic risk of financial penalties, W. Walters recalls that international norms impose the organisation and funding of the repatriation of migrants on shipowners (see chapter IV). It should be noted that, once a migrant is taken charge of⁹ by the insurance company of the shipowner, the latter may experience an increase in their insurance premium¹⁰ (see the "Words from the Captains" box, below).

Two "risks" that may have economic consequences feature alongside financial

9. It may concern the costs of repatriation or costs concerning the "securitisation" of the boat on which the migrant is held.

10. That is, it is the bonus-malus system or the decrease-increase coefficient implemented by insurance companies

losses: a possible increase in the length of journeys in order to disembark the "undesirable person(s)" and/or a delay resulting from the calls that must be made in one or more ports in order to comply with control or disembarking procedures. "Stowaways" thus represent a financial burden for both the ship-owner and the chartering company, which may give rise to a problem of financial responsibility between the two. In fact, often, conversely to what happens to the shipowner, the chartering company (or hirer) of the boat in charge of transporting merchandise is not considered responsible for the "stowaway", but suffers the consequences of their presence. In this case, as a P&I club correspondent in Barcelona explained, "insurance companies deal with this later among themselves".

An article by the Transport International Magazine reports that "with today's ever increasing emphasis on swift deliveries and fast turnarounds, seafarers' humanitarian instincts are placed under serious economic pressures". Thus, "in October 2004, the German-owned container ship *Lydia Oldendorff* was held for a week off the coast of Malta after two stowaways were found hiding in one of its containers. The ship was permitted to dock in Valetta, its next scheduled port of call, in order to unload cargo, but the asylum seekers were not allowed ashore. During the impasse, the ship's owner incurred losses for delayed cargo delivery, while onboard conditions became increasingly tense for the asylum seekers and crew alike. The ship was finally allowed to dock in Italy¹¹".

Securing port areas to the hilt

Since the 1980s, the theme of security within the maritime world has acquired growing importance. For example, the Montego Bay Convention¹² provides that any ship may circulate freely at sea on condition that it does not prejudice the peace and public order. However, new measures aimed at consolidating maritime security were adopted after the 11 September 2001 attacks. Under the effect of a strengthening of anti-terrorist laws, western countries, with support from international organisations, have intensified the "securitisation" of so-called strategic spaces, including ports. After the conference of contracting states to the Solas Convention¹³ held in December 2002 in the IMO headquarters, the International ship and port facilities security code (ISPS), an international code for the security of ships and port facilities, was adopted in 2004 and ratified by 164 countries. As Judith Attali explains, "this code has the aim of establishing an international framework that calls for the cooperation of contracting governments, public and private bodies, as well as actors of the maritime and port sectors to prevent and detect threats, and to enact customised measures to tackle security incidents"¹⁴. The list of threats mainly includes acts of piracy, terrorism and unlawful trafficking (smuggling of arms or drugs), so-called illegal immigration, sabotage and hostage-taking. The code designates security incidents as "unlawful acts or acts with malicious intent".

11. "Damned if they do..." Transport International Magazine, 22 January 2006 [available online].

12. United Nations Convention on the Law of the Sea, 1982.

13. Solas (International Convention on the Safety of Life at Sea) is an international treaty adopted in 1974, aiming to define various rules concerning security, safety and the functioning of ships.

14. Cf. Judith Attali, *op. cit.*

The securitarian drift introduced by the ISPS code

The ISPS code incorporates a number of functional prescriptions that mainly concern the control of access to ships and port facilities (people, merchandise, supplies). In practice, ships and port facilities have an obligation to set up a security plan that guarantees the implementation of the necessary measures to protect people, cargo, maintenance equipment, the ship or port facility against the risks of a security incident. For example, for ships, an officer appointed by the maritime company evaluates the risks for a ship in order to draw up a security plan that, when necessary, will result in the installation of additional equipment (surveillance cameras, metal detectors, etc.).

Once their plans are approved, ships will be issued an international security certificate by the state whose flag they fly. As for port facilities, they are subject to a declaration of compliance issued by the state. Finally, ships and port facilities regularly undergo inspections by the state whose flag a vessel flies or by the state in which the port is, whose goal is to ensure that the ISPS code is properly applied. Thus, since 2004, ISPS certification, which is a guarantee of lawfulness and of compliance with security norms by port facilities and ships alike, "is an unavoidable door opener for the totality of operators"¹⁵. Prior to each stop, the security officers on board and in the port talk to decide the level of surveillance that should be adopted. If they disagree or fail to comply, a boat may be forbidden entry into a port or, vice-versa, a boat may refuse to dock. Implementation of the ISPS norms thus entails an important financial stake for ports as well as for maritime companies.

The generalised implementation of the ISPS code implies a series of transforma-

tions in the definition and management of port areas, as well as a securitarian ideological drift in the maritime context. The appearance of this new frame of reference based on anti-terrorist rhetoric signals the emergence of new security challenges whereby "irregular" migration is raised to the status of a threat, with an extension of the scope for the implementation of prevention techniques. Control mechanisms induce some important changes in "risk" management: while law enforcement agencies and sub-contractors from private security companies used to intervene almost exclusively in controlling port areas and access to the ships, the ISPS code now transfers police competencies to frontline professional crews, that is, seamen on boats' crews and maritime companies (see the "Words from the captains" box, below).

According to the P&I clubs and border police officers, the implementation of the code has supposedly contributed to a great extent to the decrease in the arrival of migrants in ports. This decrease has been referred to on the basis of the official figures that we have collected (cf. chapter III).^{*} As an example, according to the PAF, the number of foreigners caught in the Saint-Nazaire port fell significantly until it was no more than around five people in 2005: "According to the PAF captain, this development is supposedly connected to the ISPS code"¹⁶. Statistics concerning the port of Rotterdam indicate that the number of arrivals of stowaways there has supposedly decreased ten-fold since the ISPS code was established. Finally, in Spain, two P&I club correspondents who work in various ports also noted that the number of "stowaways" taken into charge has fallen since the implementation of the ISPS code, while control mechanisms have multiplied in certain ports of departure and on board of the boats alike.

16. Anafé, "Campagne de visites des zones d'attente en France. Novembre 2005 à mars 2006", 2006

15. Ibidem.

Perimeters and control of entry points

The securitarian drift that followed the implementation of the ISPS code has significantly altered the geography of port areas: infrastructures are converted in order to respond to the new specifications for cargo, some areas are enclosed on the basis of the nature of controls and the trend towards withdrawal of ports becomes more marked. It is also worth noting that beyond this evolution, their functional specialisation leads to port areas developing at the margins of urban centres, something that effectively contributes to their geographic isolation. Practically, they have become increasingly difficult to penetrate or to disembark a boat there without being noticed, as a P&I club correspondent in the port of Barcelona stated: "A stowaway is generally caught in the port if he escapes from a boat."

At the La Rochelle port authority in France, the port's deputy commander notes that the works undertaken five years ago in order to establish a closure of the port area are about to be completed. After these works whose costs are estimated at several million euros are carried out, he deems that "we are far less affected by the arrival of stowaways, because it is difficult to have access to the ships, it is far more complex to leave the port area in which the boat docks". This effect of sealing through the existence of a physical closure is also present in other ports. For example, the port of Pasajes in San Sebastián in Spain is surrounded by a wall that only has two available entry points that are under surveillance for the entry of vehicles and of the staff. Barcelona port is surrounded by fences all along its side. The security plan of the Tangiers Med port, provided by the company EADS at a cost of 18 million euros, includes high-security fencing topped by inclined

panels (*à bavolet*)¹⁷ equipped with an anti-intruder videosurveillance system and "small target" sensors in the stretches of water. The port commander also claimed that most candidates to travel irregularly are stopped at the level of the barrier by the security guards' patrols.

While it seems impossible to set up an enclosure of the entire port area in several ports (as examples, the ports of Rotterdam in the Netherlands and of Genoa in Italy spread out respectively over 40 and 22 kilometres), the "securitisation" of port areas also translates into the establishing of closed areas within ports themselves, as well as the setting up of surveillance systems.

In Saint-Nazaire in France, the customs authority feels that "the port's security is guaranteed well, (...) we are in a port where you find out about things quite quickly". Overall, fifteen customs officers control the totality of the customised facilities of the port, which correspond to almost 1,300 hectares¹⁸ (including terminals, logistical platforms and industrial sites), and in which 3,195 stops by ships have been recorded during 2009. A former seafarer who is now a volunteer in the reception halls for seamen in Nantes and Saint-Nazaire, nuances the customs officers' views. He believes that various port areas such as the "Agro" quay¹⁹ are easy to enter: "It is impossible to conduct controls constantly." Elsewhere, the sealing and closing of spaces to optimise controls nonetheless appear rigorous.

In Genoa in Italy, the entrance reserved for ferries that undertake crossings as national or international liners is closed by a fence and controlled by the border police. It can only be entered by someone if they have a transport

17. Bavolet: inclined upper part of a fenced enclosure which generally supports a combination of stretched barbed wire, reinforcing its anti-intruder dimension.

18. Port Atlantique Nantes Saint-Nazaire, "Rapport annuel 2009".

19. Terminal for agricultural food merchandise.

ticket or a pass that is reserved for workers. The Voltri terminal, an independent area that is exclusively meant for commercial container traffic, is isolated from the rest of the port area by fencing and it is controlled by the guardia di finanza (the customs police). In the limited access areas, private security agencies are hired to control circulation at the entry and exit points. Finally, the port area is monitored by a videosurveillance system. The use of control cameras appears to be widespread. In Varna in Bulgaria, the head of the dockers' trade union explained that seven cameras continuously monitor the entrances to the port.

In Hamburg in Germany, the head of the seamen's mission noted that the implementation of the ISPS code "has made life more difficult for seamen and has largely blocked irregular migration. (...) Here, even the terminal where coal and timber are transported has become a high-security zone. And the seamen themselves don't have the right to walk across this part of the terminal." In fact, the port's terminals have reinforced their security rules by taking advantage of the possibilities allowed by the new code: "The terminals are extremely securitised at present. They are surrounded by enormous barbed-wire fences, and it is impossible to enter them unless you possess a card. The only chance [for a "stowaway" to reach dry land after leaving the boat] would be to jump into the water just before the boat casts off its moorings and to swim to the mainland from the [River] Elbe. Which is difficult and very dangerous. (...) The terminal operators have thus exploited the ISPS in order to be able to further securitise their facilities."

In this way, the securitarian challenge as it is defined in the ISPS code appears to have impregnated practices, up to the point where the American company *Royal Caribbean* suspended stops by its cruise ship *Voyager* of the seas in the port of Palermo in Sicily, because the latter did not comply with the security

criteria concerning the "terrorist threat" provided in the mentioned text: access to certain quays found in the ferry terminal and to cruise ships was not sufficiently controlled for the liking of this company.

.....

Ports that move further away from cities, the example of Tangiers

Opened in 2007, the Tangiers Med port embodies what its commander calls a "hub port"²⁰, in which port complex rhymes with cutting edge economic centre: an interface that no longer incorporates local industry like the old port of the city of Tangiers did, particularly by moving north Moroccan coal and cereals, but is only driven by "world/world" dynamics, to quote the captain. A specialised platform for the transshipment of merchandise, where large container carriers disembark their loads on the quay in order to allow smaller vessels to transport them towards secondary ports on the Mediterranean, Tangiers Med bases its activity on quick transit. Located around forty kilometres away from the city itself, when it came into operation, this royal project heralded the conversion of the old port, which was progressively transformed into a marina and nonetheless kept its fishing activity. Informal workers, dockers and porters who had self-organised as an association, had to shut up shop. They have now been replaced by the operating companies of the Tangiers Med terminals. Female workers from the textile and prawn-peeling factories in Tangiers city will soon leave towards the logistic and industrial free trade areas set up next to the new port; passenger lines have already been transferred there. Just the Tangiers Med I project will soon be able to record the transit of 8 million containers per year, with a current average of 40 ships stopping daily. The expansion which bears the name Tangiers Med II will open in 2014. This complex is a regionalised economic and security fortress, whereas it turns its back on the city of Tangiers. It is difficult to enter it: fences and cameras cover the space; it is difficult to leave it as well. The Tangiers Med port sees itself as comprehensive and has already spawned the building of a new

20. Platform for exchanges.

town, Chrafat, around twenty kilometres away from it, to accommodate its workers.

.....

Reinforcing controls around ships arriving from "risk" ports

The ISPS code, which builds up the figure of the "stowaway" as a menace to ships' safety, commits port complexes as well as maritime companies to adopt specific measures to fight so-called irregular immigration. These "prevention" mechanisms, encouraged by insurance companies (P&I clubs) that pay the costs or take charge of organising the repatriation of "stowaways" (cf. chapter IV), are enacted during the different stages in the boats' journeys.

Analysis of the "migration risk"

According to W. Walters, some maritime agents of the P&I clubs and security agencies have their own databases for the purpose of evaluating the "migration risk" within ports. The author refers in particular to the UK-based Robmarine insurance company which specialises in taking charge of "complaints concerning people"²¹, including the management of "stowaways" on merchant navy ships. Taking on an "expert" role in this field (according to its own terms), every year the company produces maps that indicate the different "hot spots" and "risk regions" where "stowaways" are likely to embark²². The boat captains who we met in the port of Barcelona confirmed this trend towards early analysis of the "migration risk", as their boats are more or less equipped with surveillance material depending on their route (cf. see the box, below). Insurance companies and the autho-

rities in ports of call alike, determine their control or prevention activities on the basis of where the boats come from, evaluating the frequency of boardings by "stowaways" in the different ports. In this way, boats that come from the coasts of Maghreb countries are deemed suspicious of representing a "migration risk". As a P&I club correspondent in the port of Marseille noted, "the regular services with Maghreb countries, particularly those of the *Compagnie Marocaine de Navigation* [Cmanav, Moroccan navigation company], which mainly uses ROROs, are often affected by the phenomenon of stowaways." An article published in *El Watan* in 2005 described the port of Algiers as "a veritable sieve in spite of the fact that Algerian ships and port facilities were made compliant with the specifications of the ISPS code in July 2004"²³. This remark followed the immobilisation of an Algerian ship, *El Djorf*, in the port of Antwerp: "It was subjected to an administrative measure decided by the Belgian customs service after the discovery of kif, smuggled cigarettes and more than ten Algerian stowaways. (...) Since the past Tuesday 26 April, the ship has hence been blocked in the port awaiting for the company to pay this fine, so as to re-embark the stowaways to take them back to Algeria." The general inspector of the maritime company, contacted by the newspaper, pointed out the possible repercussions of this incident on control practices: "Such an operation will have effects on Algerian ships from the moment when the Belgian customs authorities, and perhaps even European ones, will keep an eye on all the ships that come from Algeria. Each time, they will be checked with a fine comb because there has not been a tight control on the affected services at their departure."

Measures adopted in the

21. See the company's website: <http://www.robmarine.com/>

22. William Walters, op. cit.

23. Salima Tlmeçani, "Du kif et des clandestins à bord du navire El Djorf", *El Watan*, 2 May 2005 [available on Internet].



Secure access at the La Rochelle port, © Olivier Clochard

boarding ports

While ships that come from areas deemed to be a "migration risk" are subjected to heightened controls in the ports of call, maritime companies and P&I clubs have also tried to anticipate the arrival of "stowaways" in the ports where there is a likelihood of them embarking. One of the officials in charge of Comptoir Général Maritime (Cogemar)²⁴ thus explains that his company threatened its guard officers in Morocco not to pay them

24. Subsidiary companies of the Bolloré group, the *Cogemar* agencies specialise in port maintenance.

unless the number of arrivals decreased: "Today, there are no longer many Moroccans caught on the ships, whereas their number was quite noteworthy during the 1990s: during a crossing, nine Moroccans were discovered on a ship. This decreased, or even disappeared, on the day when we told the companies providing guards which monitor Moroccan ports: no cure, no pay²⁵". Other P&I clubs mentioned the existence of control instruments used by security companies in order to prevent people from introducing themselves into containers. Speaking of the *pointeurs*²⁶ in the Tangiers Med port, a P&I club correspondent who is based in Marseille explained that "we have even given them laser guns to detect people in the containers". Other companies have sniffer dogs, like those that are made available to them by the Dutch company *Lisar*²⁷.

According to Judith Attali, following the FAL circular and with an interest in sharing competencies, ports of departure must meet certain obligations for the management of stowaways "such as accepting a stowaway who is a national or resident in the country that has been reached (article 4.1), questioning the stowaway (article 4.2), their arrest and placement in detention if they are discovered before casting off moorings or while the ship is still in territorial waters (articles 4.3 and 4.4)²⁸". Moreover, with the

25. "Pas de remède, pas de salaire".

26. *Pointeur* (in French): security guard in the Tangiers Med port responsible for checking the exported merchandise.

27. William Walters, op. cit.

28. Judith Attali, op. cit.

introduction of the ISPS code, a number of ports of departure, following the example of those in Tangiers and Algiers, have intensified their control measures to enter the port area and to have access to the ships. Hence, a P&I club correspondent based in Marseille stated that Tangiers Med is the "most securitised port in the Mediterranean". The Tangiers Med captain claims that the security system contributes to making it attractive, because several systems for the control of merchandise prior to their being loaded on ships have been implemented: "At the port's entrance, the lorries are checked by customs officers, particularly the seals on containers. Then the lorries enter what we call the lock where, at first, the cargo's radioactivity is verified. Afterwards, we auscultate each lorry with the help of heart-beat detectors. Finally, we examine the lorries using two scanners. We conduct between two hundred and one thousand controls every day and, in this way, we catch between six and eight stowaways every month".

To end, it is worth mentioning the impact of the externalisation of migration controls at the European Union's borders on the arrival of "stowaways" in boats. The Frontex agency's 2009 annual report notes a "significant reduction of the number of apprehended migrants at Spanish ports (rounded to 400/840) partially due to the increased performance of border checks at the places of departure, resulting from the cooperation of the Spanish authorities with their Moroccan counterparts²⁹".

Prevention mechanisms on the ships

The ISPS code has encouraged maritime companies to implement mechanisms to counter migration within the ships themselves. Its security plan defines three levels of

security. The second of these levels is an invitation to "maintain, for a specified period, as a result of an increased risk of a safety incident", some additional measures (reinforcing entry controls, heightened surveillance), especially for the purpose of preventing "stowaways" from boarding ships. Hence, on advice from the P&I clubs, maritime companies have implemented "stowaway search check lists"³⁰, inviting crew members to check all the boat's corners prior to every departure (see the box, below). Moreover, as the head of the seamen's mission in Hamburg observed, control procedures to board a boat are more cumbersome and stricter: "The crew must conscientiously record those who board and those who get off. If you want to get on board, you must leave your documents at the entrance and explain why you are boarding". Seamen have also been dictated some "preventative" rules of conduct. Thus, "the doors allowing access to cabins must be locked with a key. (...) There must always be a crew member serving on the accommodation ladder to monitor the movement of people in both directions. Guards have a duty to be attentive in case some individuals may wish to board the vessel from the front or rear, by climbing the ropes or beneath the rails of the quayside, especially at night. Such surveillance requires the hiring of several guards in order to ensure that there is one at each end of the ship. (...) Dockers are meant to board vessels from the accommodation ladder. In strategic places on the ship, one could stick posters indicating the sanctions incurred by people who board it irregularly, for the purpose of discouraging potential stowaways. (...) At night, there must be sufficient lighting around the ship, particularly at the level of the moorings"³¹. It should be noted that these preventative measures, like the crew's obligations if a "stowaway" is caught on board, give rise to time wasting, making the atmosphere tense,

29. Frontex, 2009 Annual Report, p. 44. (In the report's terminology, "400/840" is the rate for the 2009 figures in relation to those from 2008).

30. Protocols for searching and checking for the presence of a stowaway.

31. According to Judith Attali, op. cit

causing complaints by the crew due to their additional duties, etc. (see the box, below, and chapter III).

To conclude, and as the P&I clubs' representatives stress, security mechanisms, while they obstruct the access of would-be migrants to the ships, do not manage to stop it entirely. One representative of a P&I club explained that "it is always difficult to monitor the ships in African ports, particularly ROROs and bulk carriers". Another correspondent, based in Marseille, stressed the complex nature of crossing borders, especially in places of convergence where traffic is as dense as in ports, where the securitarian exercise is not sufficient to curb inevitable complicities. He feels that there are "great complicities in the Tangiers Med port, like those of the pointeurs whose task it is to control the containers. For a little cash, they become smugglers. Down there, they are corrupt at every level. I am sure that there are complicities at the level of captains, crews and terminals, but also by the local border police. Perhaps their counterparts in France are mixed up in their dodgy deals as well."

introduced with the entry into force of the ISPS code in 2004, "a great change in the ways of operating", which institutionalised this policing role that captains claim they are forced to carry out. The boat must be meticulously searched before each departure to sea, with the stowaway search check list provided by the maritime company (cf. see above). Moreover, from the moment when a person is found on board during the crossing, the procedure (the ship security handbooks, in application of the ISPS code) requires the captain to "make every effort to establish the port where they boarded, the identity and nationality of the stowaway" and to transmit this information to their shipowner, to the authorities of the port where the stowaway embarked and of the next ports of call, as well as those of the state whose flag their ship flies. To do this, one of the captains who travels along regular routes stated that he has a questionnaire provided by the maritime company to conduct questioning to identify stowaways: "The person always says where they come from because they are scared and if they oppose any resistance I put on a bit of an act. I make him think that we may be obliged to get rid of them. The thirty-two stowaways who I found had embarked in a Turkish port, in the very place where they ended up disembarking". Once they have been identified, the person is put into a cabin that the captain says he has "securitised", that is, that everything that may hurt them has been removed before taking their belt and shoelaces. "The person is under my charge, they must arrive in good health. To prove this, I take some photographs of the person at different times during the crossing." The captain explained that managing the migrant on board is a delicate task: "I am uncomfortable. I must explain to the crew that if I confine or detain the person, it is not to harm them. I also have to make two seamen work to monitor the cabin." "Before - the other captain pointed out - the stowaway used to stay with the crew, we would watch the television together without this posing any problems." While the first one concluded: "At present, the insurance company imposes a penalty when we discover migrants on board that requires us to improve the surveillance of entry-points on to the ships".

.....
Words from the captains

Having called in the port of Barcelona, two captains of container carriers chartered by Turkish maritime companies told us of the pressures resulting from the "threat" that a "stowaway" represents. They stated: "It is not a matter of us being scared of the person, but the complications caused by the presence of a stowaway lead us to consider them a constant threat, a risk that must be avoided. Having a migrant on board is synonymous with reprisals, additional responsibilities and workloads." One of the captains claimed he navigates in what he classifies as "risk areas", namely coasts in west African and Maghreb countries. This is why his boat is equipped with surveillance cameras and movement sensors at the boarding points. Apart from resorting to technology, the captains explain that "preventative methods" have been

JB

V. The detention of maritime "stowaways"

Once they have been found, it is compulsory for a ship's crew to take charge of "stowaways"*. If the captain or one of his subordinates conducts a preliminary interview with the people who have boarded the boat irregularly, the seamen will have to ensure they undertake the combination of tasks that concern the presence of these "adventurers". Now, with the reinforcement of migration controls and the liberalisation of maritime transport in the merchant navy sector, the working conditions of many seamen¹ have worsened. It is a side effect that this does not ease the relations that seafarers entertain with these foreigners, whether this is on the ship or upon arrival in ports. The situation of these migrants, both in material and legal terms, is only made more fragile as a result.

On board, during the journey

Before reaching a territory, the border can regularly surface in a more or less arbitrary manner in international waters. This expanded acceptance of the sea border enables us to analyse the functioning of these geographical objects, ephemeral carriers of new demarcations, that merchant navy ships are. While there are a number of international conventions and national legal

frameworks concerning "stowaways", in practice they are handled with a view to basis of pragmatic considerations, even if it means regarding with contempt the regulations that are in force.

Interviewing people after they are found

On ships flying a French flag, article 26 of the Code disciplinaire et pénal de la marine marchande (CDPMM, disciplinary and penal code of the merchant navy) states that "the crimes, offences and unlawful acts committed on board may be investigated and ascertained, either following a complaint by any interested person, or *by right of office*², (...) by the captains of the ships on board of which the crimes and offences have been committed". To investigate these unlawful acts, which include the case of "stowaways", judicial police officers are the first actors³ mentioned in article 26. But in their absence, when the boat is in the high seas, preliminary

2. Emphasis added.

3. After them -and before the ship captains-, are the administrators of maritime affairs, the officers and navy officers who command state ships or vessels, maritime navigation inspectors, *syndics des gens de mer* (high-level civil servants attached to the maritime affairs department of the ministry for the environment, energy and sustainable development of the sea), coastguards, maritime fishing surveillance officers, maritime *gendarmes* (police force with military status) and customs administration officers.

1. In the 2000s, the majority of crew members are Chinese, Indonesian, Filipino or Ukrainian nationals.

enquiries⁴ are the ship captain's responsibility, who hence enjoys similar powers to those of a judicial police officer.

When crew members discover one or more people, they immediately warn the ship's captain, who will then interview them in order to establish their identity, nationality, address, language or even family relatives. This way of operating does not comply with French legislation. The questionnaire⁵ featured below shows that some elements concerning their appearance can also be recorded: height, weight, colour of their eyes and hair, shape of their face, skin colour, etc. A photograph may be attached to the document. The people in charge of the boats also try to learn about the reason for the journey, the place and date when the passengers embarked, and they way in which they were able to board them.

The method they used to embark may prove important, because it sometimes enables captains to demonstrate to the authorities of the following port of call that the various security measures have been well implemented in the port where the passengers have embarked and that, as a result, they cannot be held responsible for their presence.

In certain cases, it would appear that it is crew members – other than the captain – who interrogate the passenger(s) to record the different details.

Once the first information concerning "stowaways" is recorded, the questionnaire

is transmitted to the P&I club⁶. In France and on ships flying a French flag, the captain must write down all the information in a report that is then sent to the administrator of maritime affairs (article 27 of the CDPMM). In addition, before reaching the port, the captain must also inform the boat's owner, as well as the authorities in the port of departure, those of the following port call of call and those of the state whose flag it flies, unless the P&I club takes care of this.

One of the objectives of the interviews conducted on board is to prepare the person's expulsion upstream, even before they have disembarked. In the light of what we were told by P&I club correspondents in several European ports, everything leads us to believe that the interview by border police officers merely fulfils a formal requirement. In fact, it seems that the decision about the "stowaway's" fate is made well before the border police officers come into play. Thus, during an interview in February 2011, a P&I club correspondent explained to us that a Ghanaian *polizón* was meant to arrive in the port of Valencia (Spain) in the following week, and he had already prepared the administrative repatriation procedure, in connection with the Ghanaian consulate and the Spanish border police – rather than obstructing the work of insurance companies, this procedure was appropriate to enable the *polizón's* quick repatriation.

Finally, when a foreigner refuses to reveal their identity or even their nationality, the maritime company is still responsible for taking charge of them until it obtains further information that is needed to organise their return. Hence, the person is kept on board and the boat may depart again, until these details are obtained. In the Netherlands, an official from Nautilus International, a Dutch

4. During our enquiries, several people we spoke with (in Bulgaria, France) also described these first interviews as "preliminary interviews", because once the boats were on the quayside, the P&I clubs*, to which the expulsion of "stowaways" is entrusted, conduct other interviews (regardless of whether the port police authorities are present or not) to obtain further information.

5. The questionnaires may have different presentations depending on the maritime company but, overall, they seek to collect similar elements.

6. P&I clubs keep all the information forms and file them. This was confirmed to us during several interviews, particularly with the Dutch P&I Club (DUPI) on 4 February 2011.

QUESTIONNAIRE – STOWAWAY / PERSON RESCUED AT SEA

English

This form can be used to record details of stowaways or persons in distress rescued at sea



Signature

Signature box

Description

01 Age

02 Height

03 Weight

04 Complexion

05 Hair

06 Eyes

07 Form of face

08 Marks / Characteristics

Details

09 Full name

10 Place of birth

11 Date of birth

12 Nationality

13 Religion

14 Gender

15 Language(s) spoken

16 Home address

17 Father's name

18 Father's birth-place

19 Mother's name

20 Mother's birth-place

21 Parent's address

22 Marital status

23 Name of spouse

24 Nationality of spouse

25 Spouse's address

26 Occupation

27 Employer's name

28 Employer's address

29 Date & time found

30 Place of hiding

31 Port of boarding

32 Date & time of boarding

33 Method of boarding

34 Reasons for boarding

35 Type of ID - Passport ID Card Seaman's card Other

36 Number

37 Place of issue

38 Date of issue

39 Date of expiry

Other Information (Previous record, possessions, contacts in other parts of world)

Questionnaire used in France by representatives of the P&I clubs*

seamen's trade union, pointed out that the P&I clubs in Rotterdam can transmit a file to one of their associates in the boat's next port of call; "foreigners have been blocked in this way for months, at times for a year", he added⁷. In this way, "stowaways" can be carted around from port to port, locked in a cabin without being able to leave it.

Confinement in a cabin

After the interview, the captain usually orders their confinement in a closed place on the boat. The French law states that the person may be held "for the time that is strictly necessary" – a wording that is vague enough for people to be detained for the entire crossing, if the authorities deem that they may "endanger" the ship's cargo or the security of other people on board⁸. The French transport code also highlights the captain's power, detailing that he has "the authority to maintain order, the safety and security of the ship and of the people on board, over all the people, regardless of their nationality, who are present on board for whatever reason. (...) As the depositary of public authority, for these purposes he may employ any coercive means that is made necessary by circumstances and is proportional to the pursued goal" (article L.5531-1). As a result of the length of journeys, these legislative provisions generally lead to migrants being held for longer periods than those envisaged for detention or police custody before charges are brought on the mainland.

According to professionals from the merchant navy, "stowaways" are always viewed as a problem. In the Netherlands, a crew member noted that "certain foreigners may

be violent at the time when they are found: locking them in a cabin then becomes compulsory in order not to endanger the crew". Besides, seamen will make an effort, on orders from the captain, to "securitise" the cabin by sealing its openings and placing padlocks on the doors. In La Rochelle, a member of the *Marin'Escale* association went so far as to speak of "prison" when he recalled the bars soldered onto portholes.

According to P&I clubs, seven years later, most boats that travel along regular scheduled routes are equipped with "securitised" cabins, especially along routes where these situations are recurring, like those with connections to the ports of Algeciras and Alicante. The new container ships also have cells that are meant specifically for holding people, but they are not just reserved for "stowaways". They may also serve to detain pirates who are caught or seamen who violently oppose the officials in charge of the ship. In construction plans for Dutch ships, an additional cabin is often provided for this purpose.

Instead, on other merchant navy boats, the detention of foreigners can pose serious material difficulties because the cells that are used, not envisaged for this function, often lack any kind of furniture. Some captains themselves refer to the conditions of detention imposed upon these foreigners as disgraceful⁹. A former French border police (PAF) officer highlights these people's courage. He even empathises with those migrants who have also always shown respect when they were before him: "You know, in my job, I regularly see some pretty harsh events but I admit that these situations have always moved me from a human point of view. You should see the places where these people have hidden and where they are later held. When

7. Interview held on 3 February 2011.

8. "On request from the state prosecutor (...) or with his agreement, the captain may order consigning a person who imperils the ship's preservation, its cargo or the security of people who are on board to be held in a closed place, when the fittings of the ship allow this" (article 29 of the CDPMM).

9. Judith Attali, "Le transport maritime de passagers clandestins", Outline of the professional Master II course in Maritime and Transport Law under the tutorship of Christian Scapel (Université de Droit, d'Économie et des Sciences d'Aix-Marseille III), 2008, p. 30.



Vessel in the port of Hamburg, © Marine De Haas

I started working in the border police, these were things that I did not expect. (...) The only comfort in the cabin was a light mattress and a trickle of water. The material conditions were really dirty, and sometimes things were hardly any better for the seamen. (...) The boats of misery receive misery."

Additional work for seamen

"Finding a stowaway on board of a ship, we should not hide this, is a further burden for the seamen", the same officer stressed. Crew members are effectively obliged to feed and clothe them as well as they can. The seamen must also ensure their hygiene by accompanying them to the shower, waiting for them to wash and taking them back to their cell.

In spite of these different forms of care that are more or less respected, upon arrival in the port, migrants sometimes have grease-stained overalls that the seamen have given them as their only item of clothing. A French police officer told us that he has repeatedly witnessed the arrival of badly dressed people who only had a toothbrush and a bible. He also recalled the endless showers that the people had when they took them to the PAF facilities. In 2005, a doctor from the port of Antwerp observed that "stowaways" suffer "various illnesses, connected to inadequate nourishment or the lack of warm clothing [in addition to] numerous cases of tuberculosis, pneumonia and scabies"¹⁰.

10. Jean-Claude Matgen, "Des malades, des blessés et parfois des morts", *La Libre Belgique*, 23 December 2005 [available on Internet

On certain ships, when a relationship of trust is established between these people and crew members, the captain may let them come and go "freely". On other boats, the captain grants the foreigners the possibility to leave their cell only for a few hours every day, and the seamen have a duty – there as well – to monitor them. Some of the people in charge of boats act in a way that is accommodating before their "temporary guests", allowing them to eat with the crew, but "the fact of eating with the 'stowaways', of talking with them may lead to us being considered accomplices from the authorities' point of view", ship master Jean-Paul Declercq told us in July 2011¹¹. Even these practices have now become exceptional.

Some migrants discovered in the high seas are made to work on the ship until the next port of call, which may be viewed as a form of punishment¹². In the past, some crew members would deem that these people should also "work to earn their food throughout their stay on board"¹³. Several of the people we spoke with indicated that these activities, ranging from unpleasant tasks to minor jobs, are quite frequent. On the contrary, other maritime officials claimed that, at present, migrants are systematically isolated in cells and they are not asked to work. These differences appear to indicate that practices are quite different from one ship to another.

.....
"Boat people" and "stowaways": the testimony of a former seaman

A Jesuit priest and electrician seaman for around thirty years on board of merchant

navy ships chartered by a French company, Roland Doriol was a member of those crews which, in the south-east Asian seas in the 1980s, encountered boat people to whom they lent assistance. At that time, migrants from Vietnam who fled persecution in their home country were rescued by French crews and were also issued the necessary administrative documents required for their reception and residence in France. After between 12 and 20 days spent on board of their make-shift vessels, exposed to attacks by pirates who engage in pillaging, kidnapping women, committing acts of violence, facing a lack of food and water, under the scorching sun, several dozen people including babies did not survive. After some delicate manoeuvres to move alongside them, some fugitives of all ages and social conditions (fishermen, farmers, students, soldiers) were received by the crew. Exhausted men, women and children were treated, washed, clothed and fed. The seamen's disrupted daily life was organised in terms of sleeping spaces and meal preparation, which gave rise to powerful human exchanges and sometimes to some incidents. Solidarity protected some from new attacks by Thai pirates, whereas others participated in the daily needs of life in a community within a limited space. Then, it was administrative contingencies that marked the rhythm of life on the boat. French authorities from the local embassies in ports of call then took over. The formalities to disembark were nonetheless dealt with by local authorities. During this time, UN teams took over to ensure the needs of life on board. Disembarking these dozens of people after their rescue gave rise to moving farewells. Ten years later, some entirely different concerns framed the discovery of boat people in the Mediterranean Sea. The same applies to "stowaways" discovered on ships. Both groups are perceived as a threat for the smooth completion of the crossing, the priority is for them to disembark as soon as possible. However, this is not always possible in view of the uncertain administrative and health conditions of these unexpected passengers, with ports of call refusing to welcome them. Hence, it is inevitable and obligatory for the crew, whose means are most often very limited,

11. Meeting at the *Observatoire des droits des marins* (Observatory on seamen's rights), Nantes.
 12. William Walters, "Bordering the Sea: Shipping Industries and the Policing of Stowaways", *Borderland e-review*, vol. 7 no. 3, 2008, p. 3 [available on the website: borderlands.net].
 13. Eddy Surmont, "Aller simple pour les quatre clandestins survivants de l'Elise D", *Le Soir*, 28 December 1995 [available on Internet].



Port of Palermo, © Filippo Furri

to have a duty to share their supplies and scant living spaces with migrants. Deemed potentially dangerous, they are subjected to strict security rules. Under surveillance, they may be locked up in an office or cabin that has been fitted out as a cell. While this is not the most radical choice that may be chosen, because it has been claimed that sometimes "stowaways" are thrown overboard by crews that are unscrupulous and under extreme constraints.

.....

In ports, places of detention

The detention of "stowaways" is based on different practices depending on the countries concerned, or even on the ports within a same state. However, regardless of which port areas are concerned, the confinement of foreigners on board of ships is commonplace, although legislation sometimes forbids resorting to this practice. In this case, they are kept on board of ships and are kept under surveillance, either by seamen or by private security companies. Detention spaces outside of boats appear not to be used as often.

Confinement on board of a ship

In France, keeping people on board of boats made its appearance in legal terms in a circular dated 23 May 1927¹⁴. Until today, foreigners have been detained on ships, and this is in spite of the law of 1992 concerning the creation of waiting zones, which forces the border police to put "stowaways" in places conceived for the reception of foreigners caught at the borders. Besides, the State Council recalled that it was forbidden to detain a foreigner on a ship in a decision on 29 July 1998, but this decision has not (or has hardly) modified the administration's practices¹⁵. On 2 February 2004, in the port of Verdon (Bordeaux), seven Ghanaians were kept on board of a ship of the *Delmas* company which had previously called in Le

14. Kristenn Le Bourhis, *Les transporteurs et le contrôle des flux migratoires*, Paris, L'Harmattan, 2001, p. 72.

15. In 1997, the International Maritime Organization (IMO) reminded all its member states that all efforts must be made in order to "avoid situations in which a stowaway must be detained on board of a ship indefinitely". To do this, the IMO asked the countries to cooperate with ship-owners for the purpose of organising the person's return to a suitable country.

Havre. As the authorities of this last port had informed the Bordeaux border police about the presence of the seven people, police officers notified them that they had been refused entry once the ship arrived. Thus, on 4 February, they set off again on board of the ship until they reached Dakar.

In La Rochelle, a port official said that during the summer of 2010, a "stowaway" had been held on board of a ship; two members of the Marin'Escale association also stated that two people were confined on board of a ship of the *Delmas* company in December 2010. In Marseille, the a P&I club representative stressed that "along regular routes, it is in everyone's interest not to disembark the stowaways¹⁶".

France and a majority of other European states consider merchant navy carriers responsible for their presence on their ships. Besides, they often deem that confinement on board of ships is a suitable measure, regardless of what the law states. Depending on where one is, institutional actors (police officers, P&I club agents, etc.) justify the confinement of these migrants on board of boats in ports in different ways. Beyond the views that stress that this is an "old practice", their arguments point out the "rationality" of various measures adopted against them. Therefore, confinement on board may be linked to a lack of valid travel documents and to the fact that the authorities do not consider that they are responsible, or to security measures, or even to the weakness of the mechanism and the financial losses that disembarking people may give rise to.

In certain German, French or Italian ports, the authorities treat not allowing people who do not have valid documents to enter the territory as a matter of principle. Refusal to disembark the foreigner may have the search for information for the purpose of returning them more easily as its goal. In the

port of Hamburg, an official of the Unicom agency said that it is necessary to explain to them that if they do not have documents, it is impossible to disembark from the ship and, hence, they will have to be detained. "It is important – he added – to make them understand that if they do not cooperate with us by telling us where they are from, they will not get off the boat soon. That is where the real difficulty lies: managing to explain the current situation to the person." Moreover, French and Italian police officers deem that foreigners enter their countries' territory only in the moment when they pass through the border control posts; now, those who have migrated cannot reach them while they are on board. Thus, the geographic border does not coincide with the legal border¹⁷. According to a Bulgarian border police official, as "stowaways" are under the captain's authority, they must be locked in a cabin.

In the Netherlands, under the pretence of complying with ISPS code security measures and the Dutch law on foreigners, people are detained on the ship for the time it takes to organise their return.

In a report by Anafé (2006), an officer highlighted that "placing the foreigner in a hotel is a cumbersome administrative procedure. It involves the cost of the hotel and the mobilisation of several officers, sometimes just to guard one foreigner. Confinement on board is a lot smoother". As a result, it appears that there is considerably more activity by the quayside.

Most of all, keeping people on board during a stop makes it possible not to delay the boat, because if migrants are informed about their rights – particularly the right to seek asylum or to receive medical treatment-, the boat will be immobilised for longer, until the applicant receives an answer to their pro-

16. Interview held in March 2011.

17. For the record, the state exercises its sovereignty in terms of migration controls up until the adjacent area (24 sea miles from the coast).

tection request or is discharged from hospital. In Marseille, a P&I club representative told us that "migrant support associations found in places of detention systematically advise stowaways to apply for asylum (...), which is a great source of nuisance for us, because it means a lengthier immobilisation of the boat", and an additional expense for the shipowner.¹⁸ Hence, as they are considered a source of insecurity, these people are held in a cabin inside the ship, often outside of any legal framework.

Surveillance by seamen and resorting to private security companies

Once the boat is on the quayside, the passengers considered undesirable are usually subjected to a first check by border police or customs officers. If they are kept on board, they may also undergo a final check by these same authorities prior to the boat's departure and/or before their transfer towards the airport, from where they will be returned. But between these two operations, it sometimes happens that there are no police officers: hence, they are placed under the surveillance of the boat's seamen, or of private security companies.

In the first scenario, "like in the high sea, the seamen ensure the surveillance of the stowaways", an official of the port of La Rochelle explained, and this gives rise to additional work for the sailors. An official of the Unicom agency stated that in several German ports (Bremen, etc.), there are not any accommodation facilities and "the person must therefore stay on board for the time it

takes the authorities to carry out the necessary formalities to obtain their documents. The crew members then take them into their charge, then they place them under surveillance after having put them in a locked space. They may give them new clothes and something to drink and eat."

In the second scenario, the authorities strip themselves of any responsibility for taking the foreigners who arrive at their border into their charge by resorting to private security companies. This is how things are in Germany, where dog handlers are used,* and in the Netherlands. In Bulgaria, according to the border police in the port of Burgas, on 14 November 2008, four Algerians travelling on board of a ship flying a Panamanian flag were held on a boat during the stop. The captain resorted to the private company *Robmarine Shipping Overseas*¹⁹, which deployed six security agents to place them under surveillance before they were taken by the police to the detention centre of Busmantsi²⁰. The intervention by these enterprises usually results from a decision by the P&I clubs. In certain cases, the role of these agencies is limited to surveillance alone; nourishment, hygiene and clothing are provided by the seamen or by P&I club representatives.

In Spain, when a "polizón" is found a regular line service, as a rule, they are held on board until the boat returns to the port of departure. The maritime agent or the P&I club correspondent asks for the cabin – if this was not done previously – and the boat to be securitised in order to prevent the polizón's escape. The law on state ports and the merchant navy²¹ punishes "the captain's refusal to keep a polizón on board" with a heavy fine.

18. And the wait may be even longer, because if the applicant files an appeal if their application is refused in the first instance, the appeal must be instructed in the Paris administrative court. And, according to the law, the person should be escorted by police officers for the purpose of appearing before the court. But this is far from always being the case, in which case the hearings take place without the interested party being present.

19. <http://www.robmarine.com/>

20. For further information on the Busmantsi centre, see Morgane Truchi, *Droit d'asile en Bulgarie, amer retour sur l'année 2010*, 2011, <http://emi-cfd.com/echanges-partenariats/spip.php?article104>.

21. *Ley de Puertos del Estado y de la Marina Mercante* of 24 November 1992, arts. 115.2.e and 120.2.b.

In order to avoid any risk, bars are attached to the portholes of the detainee's cabin and the maritime agent has a video-surveillance system installed in the vicinity of the cabin. Generally, two security guards from a private company are employed to monitor the boat from the quay. During the presentation whose title was *Stowaways in Spain* in the framework of the P&I clubs conference in Amsterdam in 2009, a manager of *Pandy Hispania and Correspondant*²² noted that it is more prudent to employ security guards, because this represents an important argument to defend themselves against possible sanctions by the port authorities if an escape occurs. P&I club correspondents explained that the setting up of adequate security mechanisms means that the captain is not generally deemed responsible for a *polizón's* escape.

Other detention spaces: waiting areas and informal facilities

The detention of "stowaways" in detention centres where they may be better informed about their rights appears to be quite rare. In several countries (Germany, Bulgaria, France), some closed facilities found outside of the port area are sometimes used. Foreigners are transferred there in order to organise their return to their home country using the same boat or a different means of travel.

In large German ports like Hamburg, a "stowaway" may be taken to prison. Thus, after it is informed about a person's presence by the insurance company, the maritime police intervenes on board in order to hold a short interview with them. Then, they make them disembark to take them to *Holstenglacis* prison, which is in the city centre. Treated like a criminal, the foreigner is placed in temporary detention in the space reserved for those awaiting expulsion. Of course, they

have set foot on the ground, but the police does not deem their entry into the territory to be effective. A police officer justified detention to us using the risk of the passenger escaping: "For security, he must be placed in detention for as long as the boat is in the quay." He felt that it would be an aberration to call upon the crew to be responsible for the detention of these foreigners on the boat. Then he added: "Seamen cannot be entrusted this royal prerogative, it is up to us to take care of it. We cannot ask the captain for the foreigner to stay on board without being locked up, and at the same time try and ensure that they do not set foot ashore." Hence, in Hamburg, the starting point is that a captain is not in a position to be entrusted the imprisonment of a person and that only a judge may take on such a responsibility. However, this practice appears to be possible, because the director of Unicon assured that, in various ports in the region of Lower Saxony, "stowaways" are kept on board as the closest prison is a two-hour drive away.

In France, the port waiting area mechanism comprises around twenty places²³ managed by the PAF or customs services. With their boundaries defined by the prefect of the department [government envoy in charge of security in the administrative division], they remain in the realm of legal fiction because, according to the law, they stretch "from the boarding and landing points to those where controls on people are carried out" (article L 221-2 of the *Ceseda*). Well, in cargo ports, while the disembarking points are known, controls may take place anywhere: thus, port waiting areas would often resemble spaces with a shifting geometry. Half of the waiting areas do not have any accommodation facilities. Other ones, either within or near to the port grounds, may include an accommodation facility "assuring the foreigners concerned services of

22. It is a company of P&I club correspondents that covers most Spanish ports.

23. Their number rises to nearly thirty if one includes waiting zones in overseas territories.

the sort provided by a hotel" (article L 221-2). Thus, hotel rooms may sometimes be commandeered (Cherbourg, Sète); seamen's reception halls may also be used (Le Havre). In La Rochelle, a few years ago, when a boat would stop for longer than twenty-four hours, people were usually placed in the *Les Terrasses* hotel²⁴. Fearing that the foreigners may escape from their rooms, police officers soon began using rooms that were in the building's basement, which had the advantage of having bars on their windows. "It wasn't a prison, but it looked like one", the manager of a maritime company argued. The conditions in which they are held are sometimes informal. In Marseille, a manager of the *McLeans* company said that "stowaways are taken to the border police station in the port, to then be taken to a CRA (administrative detention centre)".



border checkpoint in the port of Rotterdam, © Eva Ottavy

Finally, some people are sometimes transferred to detention centres where they could be better informed about their rights. This applies to Bulgaria, where some "stowaways" are taken to the Busmantsi centre (cf. below). In the Netherlands, the law also authorises border guards to choose another place of detention²⁵. In Marseille, migrants may be kept in the CRA in Canet. In La Rochelle or Saint-Nazare, it also happens that some people are taken to the waiting zone in Roissy airport (Paris). A Ghanaian who was caught twice in

the port of La Rochelle, in July and December 2010, was taken to the Roissy waiting zone the second time he was arrested. His asylum application at the border was rejected by the interior ministry but, after four days' detention, the judge for liberties and detention (JLD) of the Bobigny *tribunal de grande instance* (TGI, superior court) freed him²⁶. Regarding this situation, the representative of *McLeans* highlighted that "it is an aberration. The judges release them like that into

24. In 2003, around ten people were kept in this hotel which is near to the port of La Pallice.

25. Law on foreigners of 2000, chapter 2, section 6-1.

26. Article L 222 of the *Ceseda* states that, after four days, keeping people in waiting zones may be extended twice by eight days, only by a judge*, the guarantor of individual freedoms in accordance with art. 66 of the Constitution.

the nature without considering their personal situation; they generally have nothing, and there aren't any organisations to take care of them."

"Stowaways" who have scant information about their rights

People who are discovered on a ship in the high sea are first subjected to the laws of the state to which the boat belongs: in fact, it is the flag they fly that establishes competencies in this field. Hence, in theory, they should be informed of the rights concerning the entry of foreigners that are applicable in this country. However, the ships flying a state's flag do not always have to return immediately to the country they belong to, and the laws of the country where they call are therefore very often applied. But the quest for competitiveness and economic performance by shipowners does not leave much space to guarantee the rights of migrants. According to the manager of the *Cogemar* La Rochelle-based company, nowadays there are no longer companies that ensure the totality of maritime transport: "The consequence is – he said – that the operating staff is provided by different companies. Technical operations are different from commercial operations, and financial directors are those who manage everything." The director of this company notes that only the minimum is done for the well-being of the seamen²⁷. "Fitting out the ships is the least of their concerns, – he added-. Nowadays, during stops, you rarely see the seamen. (...) The human aspect has completely disappeared from our professions. The keyword is: the best quality as cheaply as possible."

27. He specifically referred to a change of crew in 2009 on a ship, whereby the Ukrainian seamen returned home in a bus from the port of La Rochelle.

sible. (...) As the goal is to ensure the security of ships while keeping costs as low as possible, you can imagine that the rights of stowaways do not carry much weight in this context."

Random availability of interpreting

As happens in many detention centres in Europe, foreigners do not always enjoy the assistance of an interpreter, at best interpretation is provided by people who are present in the vicinity of the places of confinement. It sometimes happens that qualified people intervene, but their purpose is not always to inform migrants about their rights, but rather, to try to obtain all the necessary elements for their return to their home country.

Certain authorities like the customs services in Saint-Nazaire (France) deem that, as long as the person speaks a little bit of French or English, they are in a position to inform them of their rights "in a language that it is reasonable to believe that they understand"²⁸. In this very port, the president of the *Syndicat des agents consignataires de navire* (SACN, Ship consignee agents trade union) notes that he has also served as an interpreter for foreigners caught by the customs services. In La Rochelle, the border police has repeatedly asked one of the *Cogemar* agency officials to translate some formal acts into English. The latter added, about the way in which the procedure unfolded: "I was paid once, but I did not do this for the money. We had good relations with the police and sometimes it was slightly make-shift, one day the police officers asked me to assist a Roma person who did not speak a word of English. I had to draw on a sheet of paper to enable us to understand each other."

The maritime police in Hamburg port assures that, if communication is English is not possible, an interpreter is called. In

28. Cf. article L 213 of the *Ceseda*.

this way, some companies like Unicon are capable, in a very short time, of resorting to intermediaries who are not content with just translating the authorities' words, but they also help to identify people. This agency's director noted that he has "a team of available specialists", among whom there are three Moroccans. He added: "I also have some people who cover African languages like Swahili and plenty of other regional dialects. In the main, they are independent partners who we call upon, depending on the situation. In this way, they can communicate with the stowaways and they can also tell us exactly where they come from, in what region they have lived, depending on their accents or the way in which they speak."

The weakness of jurisdictional control on detention

At best, holding migrants in ports is the effect of an administrative decision (France, the Netherlands, etc.). This decision is seldom controlled by a judge because the stops by boats last for around two or three days, that is, sometimes for shorter periods than those provided for by law that enable foreigners to exercise their rights before a magistrate²⁹. Foreigners detained on ships rarely enjoy information and an effective access to their rights, either because the boat has left with the "stowaway(s)" on board, or because they have been returned to their home countries by aeroplane.

In Germany, when the boat only stays in the quay for a few hours, the person is not brought before the judicial authority. According to a member of the maritime police, a report must always be validated by the judge in order to keep them on board.

29. In particular, this applies to France, where the foreigner who is placed in a waiting zone is under the administration's exclusive control for the first four days during which they are held, and where only a judicial judge* may decide an extension for eight further days.

In 2008, the Spanish newspaper *Publico* bore the title: "Those who come in a *cayuco*³⁰ have more rights than a *polizón*", before stating that *polizones* constitute the most vulnerable category of migrants who arrive in Spain, because they are deprived of their most basic rights³¹. In effect, in spite of the regulation of entry conditions and the control of foreigners on Spanish territory³², in practice, *polizones* are subjected to a differentiated treatment, established through administrative instructions issued by the interior ministry. Since 1994, four instructions³³ concerning the "treatment of *polizones*" and not published in the official journal, allow the authorities to organise a procedure at the margins of common law. This is because while these texts are presented to establish the criteria for a homogeneous treatment of the *polizones* and partly to respond to reforms in the regulation on foreigners or to recommendations issued by the *Defensor del pueblo* [ombudsman]³⁴, they mainly set the bases for implementation of their rights that are recognised by the legislation.

For example, in the late 1990s and early 2000s, the interview held on board of a boat by two police officers in front of two witnesses (and an interpreter, if necessary) was carried

30. The term *cayuco* designates a dug-out wooden boat used by Mauritanian or Senegalese fishermen. Vessels of this kind were widely used to try to reach the Canary islands after setting off from the African coast.

31. Diego Barcala, "El que viene en cayuco tiene más derecho que el *polizón*", *Publico*, 8 April 2008.

32. Organic Law 02-2009 on the rights and freedoms of foreigners in Spain and their social integration – Royal Decree 2393-2004 approving the Regulation of Organic Law 04-2000 on the rights and freedoms of foreigners in Spain and their social integration – Law 12-2009 regulating the right of asylum and subsidiary protection – Royal Decree 203-1995 approving the regulation for the implementation of Law 05-1984 regulating the right of asylum and refugee status.

33. Cf. in particular l'instruction 5 bis A/94 issued by the Secretaría de Estado de Interior on the treatment of *polizones*.

34. The function of the *Defensor del pueblo* or *Ombudsman* is similar to that of the *Médiateur de la République* in France.

out for the purpose of identifying the polizón and to check their state of health as well as the treatment that they received on board. Now, as of 2001, the Defensor del pueblo recommends the "necessary adaptation"³⁵ of the instruction to article 22 of the Law on foreigners. This legislative provision envisages that the person may enjoy free legal assistance and the services of an interpreter, insofar as the administrative procedure "may result in a refusal of entry into the territory or in a request for international protection".

Thus, the instruction from 2002 includes the right of the polizón to receive legal assistance, but this possibility is limited to two specific scenarios according to a partial reading of the aforementioned article: a polizón will not be provided legal assistance from the start of the procedure, but from the moment when they explicitly express their intention to enter the country's territory or to request protection from the Spanish state. To assess the intention of the polizón, only one question is asked by the two national police officers: "Do you wish to add anything?"³⁶ Now, the Defensor del pueblo notes in his 2005 report³⁷ that foreigners cannot receive legal assistance in these conditions, insofar as they usually do not know their rights "and the legal consequences of the words that they must speak if they wish to enter Spain or demand the Spanish state's protection", because the question evidently lacks "concreteness". As a spokesman of the associations and lawyers who work in defence of the rights of foreigners, the Defensor del pueblo thus required that legal assistance be provided to the polizón from the first interview with the police officers. This recommendation was nonetheless ignored in the 2007 instruction. And, in order to "help" the *poli-*

zones to "express their will before the Spanish authorities"³⁸, the Spanish authorities only added two new questions to the police form, namely: "What do you ask of the Spanish authorities?"³⁹ and "For what reasons did you leave your country?"

Beyond the fact that the need for legal assistance and/or international protection is subjected to the exclusive interpretation of the police, the 2007 instruction also contravenes the right of an asylum seeker to be immediately transferred to the facilities envisaged for this purpose, as provided for by the national law on asylum. Relegated to the edges of the port areas, "stowaways" hence find it hard to be informed of their rights, particularly the one to request protection.

Requesting protection: a difficult right to exercise

Shipowners and captains have a duty to ensure the repatriation of these foreigners to their home countries and they may be subjected to financial punishments for not doing so, unless they are admitted into the territory for reasons of asylum. But we have seen that the shipowners and captains do not usually take the risk of informing them of their rights because, on the one hand, the asylum procedure gives rise to more important delays than those resulting from repatriation⁴⁰ and, on the other hand, shipowners may have a fine imposed on them if the application is rejected. In La Rochelle, concerning the rights of foreigners, a maritime agent explained: "You know, you must not tell them that they

35. Recommendation of the *Defensor del pueblo* of 28 May 2001.

36. Questionnaire in annex 1 of the 2002 instruction.

37. Defensor del Pueblo (2005), *Informes, estudios y documentos informe sobre asistencia jurídica a los extranjeros en España*, p. 233 [available on Internet].

38. Joint instructions of 28 November 2007 issued by the *Dirección general de la policía y de la guardia civil*, the *Dirección general de política interior* and the *Dirección general de inmigración*. They were not published in the official journal, but they are available on the websites of the Bar Association of Madrid and of associations that work on migrants' rights.

39. *In* questionnaire in annex 1 of the Instruction.

40. Recall that the administrative procedure concerning the repatriation of "stowaways" starts while the boat is still in the high sea (cf. supra).



Vessel in the port of Hamburg, © Marine De Haas

can request asylum, we are there to defend the rights of shipowners. Here, it is rare for people to ask for asylum; usually, that happens in Paris when they are kept in a waiting zone. (...) The quicker the procedure is, the better. (...) We had good relations with the border police while it was here⁴¹. They used to advise us to say as little as possible about it. We are there to oil the administration's machine."

When, in 2002, UNHCR stated that "the identification and then the registration of asylum seekers cannot really be conducted properly other than on land"⁴², in numerous ports, "stowaways" who required protection

continued being held on board of boats. In Spain, a "stowaway" is kept on the ship for the time that it takes for the procedure for admissibility into the territory to be examined by the *Oficina de asilo y refugio* [Asylum and Refugee Office]. They are not disembarked unless the boat definitively leaves Spain while the procedure is still ongoing. Nonetheless, during this time, they may be kept on board if the boat travels from one Spanish port to another. Now, in the same note, UNHCR recalled that "operations to register refugees on board of ships, regardless of whether it is an early screening procedure or an actual determination of status, have already been attempted in the past in crisis situations. They have posed a number of problems such as, among others, those of access to translators, of respect for the confidentiality of interviews that are always held in difficult conditions on

41. The border police office in the port of La Rochelle closed at the start of 2010. At present, the customs services are competent for taking "stowaways" into their charge.

42. UNHCR, *Background Note on the Protection of Asylum Seekers and Refugees Rescued at Sea*, 2002.

board of a ship, of access to appropriate legal counsel and that of appeal mechanisms"⁴³.

This information about the right to asylum, which could have been produced by organisations working to defend migrants' rights or lawyers, is in conflict with the fact that in most port cities, the associations' offices are far away from the roadsteads. Moreover, since the ISPS code was introduced, access to the port areas is often regulated, and this situation considerably obstructs visits by NGOs or lawyers. In Hamburg, a member of the former AG *Blinde Passagiere*⁴⁴ recalled that in the 1990s, several captains had the association's telephone number. "At the time – he said – the captains used to call us when the boat arrived in the port with 'stowaways' on board. We could follow their individual situations and, when necessary, exert some pressure on the police to provide more information."

.....
Does the "Returns" directive concern detention on board of ships?

While the law of the sea makes shipowners subject to the law of the state to which they belong, the "Returns" directive concerns all European ships. Hence, for a boat that does not fly the flag of a member state, the directive cannot be applied while it is in the high sea. Nonetheless, it should affect the totality of ships that are found in the territorial waters of one of the Union's countries⁴⁵.

According to article 15 of the European directive, "Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the

removal process"⁴⁶. Less coercive measure may be employed. Now, in plenty of cases, being held in a cabin on board of a ship is a more constraining measure than being placed in a detention centre. Apart from the competent consular authorities with which they may be made to communicate, "stowaways" can rarely be in contact with their legal representatives or, when possible, members of their family. The people should thus at least be taken to a specialised detention centre, once the boat is moored in a European port. Let us recall that detention can only be decreed by administrative or judicial authorities. If it is not lawful, "the third-country national concerned shall be released immediately", the same article 15 states.

As regards unaccompanied minors, the directive recalls that they must only "be detained as a measure of last resort" (article 17). Moreover, prior to any return decision, children must be taken into the charge of "appropriate bodies other than the authorities enforcing return". Now, it does not appear that any such body intervenes in port areas. At best, the minors enjoy assistance after they have been transferred into a detention centre. Finally, the people who are responsible for enacting returns (P&I clubs, the captain, police officers) do not appear to make sure they know whether the minors are "returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return" (article 10).

To end with, the European directive which came into force at the end of December 2010, establishes that access to legal assistance must be free of charge for foreigners who are detained.

.....

OC, MS

43. *Ibidem*.

44. Group of people who worked on the issue of "stowaways" at sea.

45. The Rotterdam port police, which appeared not to know this text, indicated that it would implement it if it was asked to do so by the ministry. Moreover, it stressed the difficulty of setting up this mechanism in view of the extremely short time during which the ships stay moored. Besides, regarding the ISPS code, there would be a need for an authorisation for people providing legal advice.

46. Emphasis added.

VI. Towards a privatization of returns

The growing role of insurance companies in the management of "stowaways"

While European police forces are required to apply the laws defined by migration policies, the maritime transport industry governs the situation of "stowaways"* in terms of economic loss. The connection between the two turns migrants into victims of interests that go beyond them, whose management is guided more by practical considerations than by the law. In Marseille, an employee of a maritime insurance company deemed that "the treatment of cases of stowaways is informal from start to finish, you must have good relations with all the actors".

A variety of public and private actors

The sea border area, wide and expansive, includes different spaces contained in the "foreland" (the ports' maritime outpost: the ships, territorial waters, etc.) and in the "hinterland" (mainland rear-guard terrain of ports, detention centres, airports, etc.). There, public and private actors who intervene are in close contact. In practice, the management of "stowaways" interlocks with the constitutive chain of the merchant navy's activity. Three categories of actors are directly concerned

by the "problem of stowaways": shipowners, insurance companies and the authorities of the place of arrival.

Shipowners

Legally, international texts clearly designate carriers as having civil responsibility for "stowaways" they have on board. Hence, this applies to the ship-owner.

However, an International Maritime Organization (IMO) resolution of 1997 points out that, as the 1957 International Convention relating to "stowaways" has never come into force, "stowaway cases can best be resolved through close co-operation among all authorities and people concerned"¹. Therefore, shipowners, shipmasters, the authorities of the country of departure and of the country of arrival must all work together.

Maritime insurance companies

If shipowners have taken out an insurance policy that covers the risk of "stowaways", they require the shipmaster to contact a local correspondent of their agency in the port of arrival as quickly as possible. 90% of the world's fleet is insured by shipowners' mutual insurance companies called P&I clubs* (*Protection and indemnity insurance clubs*). These clubs cover the risks (running aground, pol-

1. Resolution A.871(20) – adopted on 27 November 1997 by the IMO – entitled "Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases" [available on Internet].

lution, loss of containers, etc.), but their services may also be entrusted to local private companies, which are companies of representatives. They exist in all of the world's large ports and competition is harsh.

The way in which the director of one of them, the Bremen-based *Unicon* company, presents its mission before the P&I clubs, bears witness to the professionalisation and privatisation of the management of "stowaways": "Insurance companies have correspondents in all the port cities. They call upon us as expert specialists in the field of identification and repatriation. We offer to provide them the "*emergency documents*" needed for repatriation, but also "*airline security*", and we have a large specialised team that accompanies the repatriation. We take care of all of that".

If, in exceptional cases, the representative cannot go there, they delegate their mission to a maritime expert to assist the shipmaster.

According to a maritime expertise firm based in La Rochelle, in France, "usually, the captains do not speak a word of French. Most of the time, we communicate in English. My husband [the firm's director] also speaks Italian and understands a few words of Romanian. The captains are there primarily for their commercial operations, and not for administrative problems".

Finally, it appears that the mutualist system of the P&I clubs is increasingly facing competition by traditional non-mutualist insurance companies.

Whatever shape they take on – agencies of P&I club representatives, maritime experts' firms, traditional insurance companies – maritime insurers play the role of intermediaries between the shipowner and local authorities.

The local authorities

The maritime insurance company is responsible for declaring the presence of a "stowaway" before the national authorities, that is, those of the port, customs and the border police.

Different procedures depending on the ports

Apart from differences in legislation, the range of procedures that are applied in European ports may be explained by the fact that insurance companies, but public authorities as well, look for pragmatic solutions to the "problem of stowaways". It appears that compromise is the driving force of negotiations between public and private actors to organise refoulements at the border. For different reasons, economic as well as political, both are driven to work together. Certain "stowaways" pay the cost of these "arrangements" and may be subjected to unlawful procedures.

In Barcelona, the captain of the container ship *Rosa A* of the Turkish company *Arkas* explained that from the moment when a "stowaway" is found on board, every captain must inform the *Designated Person Ashore* (DPA), a figure introduced by the ISM code², about this. The DPA transmits this information to the company which, in turn, warns the maritime agent in the port where the boat is preparing to dock. The maritime agent of the port of Barcelona explained that he is then responsible for informing the port authorities, the police and/or customs services – an obligation that will lead to punishment if it is not carried out. He added that, in order to "manage" a "stowaway", an organisational triangle is formed between the P&I club correspondent, the maritime agent and the authorities (often the police). The captain – in practice, the maritime agent – is in charge

2. International Safety Management. This international safety management code is applied to maritime companies. It came into force on 1 July 2002.

of informing the border police "sufficiently in advance" about the arrival of a "stowaway". Once the boat has moored, two maritime police officials board it. A police officer in Bilbao explained: "We verify the conditions in which the *polizón** is kept. For example, if we feel that the cabin in which they are locked is unsuitable, we ask the captain to place them somewhere else on the boat. Then, we follow all the stages in the 2007 Instruction. We conduct the interview in the presence of two witnesses and an interpreter". The Barcelona border police noted that the two witnesses are chosen among "any people who are in the vicinity" and that, often, one of the two witnesses is the maritime agent or the P&I club correspondent, something that the latter confirmed, before explaining that they also often act as stand-in interpreters on behalf of the police.

In the Netherlands, when the presence of a foreigner is detected, the captain must warn the authorities of the next port of call. Most often, they directly contact their insurer (a P&I club) who, in turn, will inform the Dutch police. While the boat is in the quay, the royal constabulary police (*Koninklijke Marechaussee – Kmar*) is in charge of the control procedure, except for Rotterdam, where the port police (*Rijmond Politie – ZHP*) boards and interviews the captain and then the "stowaway". Considering the very large number of arrivals of ships, the ZHP is only in a position to check 10% of the ships that travel through Rotterdam. As for the customs services, they inspect some of the containers.

From the arrival of a boat in a French port, two administrative authorities intervene: the customs services check the merchandise, the police check identities and travel documents. As a general rule, the border police refuses to allow "stowaways" to disembark and requires them to be refoiled by the ship, knowing that if the person disembarks, the carrier is liable to incur a fine, in accordance with

the *Code de l'entrée et du séjour des étrangers* (Ceseda, Code for the entry and residence of foreigners).

According to a former PAF (*police aux frontières*, border police) officer in the port of La Rochelle, "when the shipowner warns customs about the presence of a stowaway, no one is fined even though in theory we should [fine them]. But if the captain is cooperative, usually nothing happens. The customs service warns us; then we board the ship in order to check the person's health and their living conditions; if it is a short stop and the person is well fed, then they are left on board."

In the port of Saint-Nazaire, customs officers go to find the "stowaway" on the ship and lead them to their offices. Then the person is placed at the police's disposal, in accordance with a protocol set up between customs and the PAF. In theory, the customs services have a duty to take them to Nantes airport but, most of the time, it is the PAF which travels with them.

In Marseille, according to an employee of the *McLeans* company, "from the moment when we are alerted by the captain, we draw up the passenger's step-by-step record: the port where they boarded, their identity, their state of health, their state of mind. What they want, and whether they are violent. We also try to know whether the ship has already called in a European port. All this data is passed on to the PAF. Then we conduct some monitoring work in the roadstead, that is, when the ship is approaching but has not yet docked: we send doctors if they are needed and we ask the captain to securitise a cabin if they have not yet done so. The crew must organise to ensure security on board. When the boat reaches the quay, the police awaits them. Stowaways are either taken to the PAF station in the port before they are led to the administrative detention centre (*centre de rétention administrative*, CRA), or they are directly escorted to the CRA in Canet."

When a boat arrives in the port of Varna (Bulgaria) with a "stowaway" on board, the captain must inform the authorities. The captain holds a preliminary interview with the migrant, and transmits the information to the police. The latter contacts the embassy to verify the "stowaway's" identity, without allowing the person any chance to request asylum in this way. The authorities request a travel document to organise their refoulement. On the quay, Bulgarian police officers guard the ship. The migrant is held there throughout the procedure (cf. chapter III).

In Italy, the captain is required to inform the competent authorities about the presence of a "stowaway" at the time when they are found. They also have theoretical duty to head towards the first port that is suitable to receive this person to entrust them to the authorities. In case they refuse, the captain must keep the migrant on board, under their responsibility. Sometimes the shipmasters, even after they have indicated the presence of a "stowaway" on board, are questioned and may even be accused of "assisting illegal immigration" by the Italian police. In such cases, some heavy fines may be imposed on them. The consequences of this situation are obvious: when a "stowaway" is discovered by the crew, the shipmaster rarely chooses to alert the Italian police. On this issue, a seaman said: "If you discover a stowaway on board, you cannot return them to the port, there would be too many problems for the shipmaster. Hence, what the crew does if it has the time to do so, is to stop the boat around half a mile away from the coast, and to make the person disembark into a small make-shift raft. These vessels are built using two empty jerry cans, joined up with a plank of wood, and the migrant is given a few euros, something to eat and some water. But people also say that some crews abandon them in the high sea with the same small raft, I think it's the same as killing them."

Disengagement by the police

The multiplication of the private actors who intervene in the management of "stowaways" who arrive in Europe by sea could eventually rule out national police forces from the border refoulement procedure entirely. In any case, this predictable development is not enacted without a degree of tension, as the port community sometimes refuses to be made locally responsible for European migration policy.

..... *The law of silence: Spanish associations excluded from reception procedures for polizones*

Out of the 197 *polizones* who arrived in the port of Barcelona between 2005 and 2007, the commission dealing with foreigners' law in the Barcelona lawyers' guild (equivalent to the Bar in the UK), was only called upon on three occasions. The decrease that has been recorded between the number of arrivals of *polizones* and that, insignificant, of requests for legal assistance led to the creation in 2007 of the *Refuge and Stowaway Monitoring Group* established by the aforementioned lawyers' guild, with Amnesty International, the Red Cross and the associations CEAR and ACSAR³. In 2009, this group met the port authorities and asked to be systematically informed about the arrival of *polizones*, so that they may be able to provide them legal assistance from the first police interview (see chapter V). The request was also submitted to the *Subdelegado del Gobierno* (government envoy), but he did not reply.

However, there are still hardly any requests for legal assistance sent to the lawyers and associations by the police, either to inform them of a refusal of entry into the territory or to ask them to assist an asylum seeker. The Red Cross⁴ in Barcelona noted that it has only assisted one Iranian *polizón* in 2010,

3. Comisión Española de Ayuda al Refugiado (CEAR) and Asociación Catalana de Solidaridad y Ayuda al Refugiado (ACSAR).

4. The Spanish Red Cross has a convention that it signed with the interior ministry since 2004 to ensure "social" (health and legal) assistance for migrants who arrive in the country's airports and ports.

two Moroccans in 2008 and two Colombians in 2007. In Tarragona and Pasajes (the port of San Sebastián), there has not been any request for legal assistance recorded by either the organisation or by the lawyers' guild in over five years. In Valencia, like in the Basque Country, the lawyers' guild and delegations of the association CEAR said that, in most cases, they find out about the arrival of *polizones* through the press, and not with the police as intermediaries, as the procedure would normally require. For example, lawyers in Valencia found out about the arrival of seven Algerian *polizones* on 7 October 2010 by reading the local newspaper. When their boat approached the port, they jumped into the water in order to swim to the coast, and one of them drowned. On the next day, another boat carrying seven Nigerian *polizones* reached the quay. In spite of these *polizones*' evident intention to enter Spanish territory and despite the pressure exerted by lawyers on the *Subdelegación del gobierno*, relayed by the *Defensora del Pueblo* [ombudswoman], they were not lent any legal assistance. All of them were kept on board.

On 20 June 2011 in Valencia, in a public statement⁵, Amnesty International criticised the lack of transparency regarding the arrival of *polizones* in the ports in the Valencian autonomous region, as the prefecture did not provide any information about the number of arrivals, and their age and health conditions. The organisation also noted these people's vulnerable situation as, in a majority of cases, the *Delegación de Gobierno* did not grant them the chance of enjoying legal assistance.



The key role played by P&I clubs

P&I clubs are not a recent invention. Established in Great Britain in the 19th century, P&I clubs allowed shipowners whose responsibility was increasingly engaged as

a result of the quick expansion of maritime trade, to cover the cost of damage to the ship's hull and of other risks connected to transport (damaged cargo, contamination of the sea water, etc.).

Nowadays, it consists of a mutualist insurance system that covers the civil responsibilities of shipowners. In 2005, the largest P&I clubs, thirteen of them, came together in the International Group of P&I clubs. 80% of them are based in London. Each P&I club has its own rules, which correspond to the clauses of a contract proposal submitted to shipowners. Cover for the risk of "stowaways" is always offered to the shipowners, who may or may not subscribe to it. Increasingly, P&I clubs have made the prevention and resolution of incidents linked to the presence of "stowaways" a normal feature of their activities.

The P&I club correspondents who are present in ports have a role as proxies. In effect, they must report all the actions they undertake to the mutual insurance company. For shipowners, these local correspondents are effective intermediaries: they know the legislation and practices of the country and the port where they are based. When a "stowaway" is found, their work only has one goal: to organise their repatriation towards the country the migrant departed from or their home country at any cost. The key concern is speed, in order to limit the costs incurred in managing the "stowaway".

The costs associated with taking charge of "stowaways"

The costs associated with taking charge of migrants, including nourishment, accommodation, clothing, consular fees, return tickets for passengers, escorts, etc. are borne by the shipowner. The expenses incurred are

5. "Amnistía Internacional denuncia la situación de los polizones que llegan en barcos a la Comunidad Valenciana", 20 June 2011, Europa Press [Available online].

considerable⁶ and, in addition, the cost that keeping the boat moored for the duration of the procedure that follows the discovery of a "stowaway" must be taken into account. Among these costs, is the lengthy hiring of the quay space, delays in deliveries, etc. There are also some set costs (amortisation) and the commercial loss, which may vary, as it can happen that the ship arrives empty or does not have any merchandise to load. During the summer, "these situations may be a terrible constraint for boats that shuttle between Morocco and France", observed a P&I club representative in Marseille. These are usually mixed ships carrying passengers, vehicles and merchandise, but in any case the commercial loss is substantial, whether it is a small boat, a ferry or a large container ship. As a result, the shipowner has a great interest in being insured. A correspondent of the *McLeans* company in Saint-Nazaire also explained that: "Once a stowaway is reported, we are there primarily to watch over the shipowner's interests."

.....
Examples of the costs arising from the presence of "stowaways" on board of a ship

"The Treasury sends us invoices for the accommodation of our stowaway held in a CRA, that is, around 15 euros per day and per stowaway" (McLeans, Marseille).

"The expenses include the hotel bill when foreigners are placed there, meal trays including those for the police officers guarding them, the cost of clothing, the cost of escorts to Bordeaux or Roissy, sometimes with nights spent in hotels, aeroplane tickets including those for police officers when they accompany the people to their home countries, although this is not always the case, and the costs connected to the procedural steps undertaken before the consulates" (a maritime agent from the port of La Rochelle).

"We are obliged to have direct flights for

foreigners, as flights with stopovers pose additional problems because you have to obtain transit visas. Well, direct flights like, for example, Paris-Freetown (Sierra Leone), are a lot more expensive than those that pass through London. (...) One of our clever tricks consists of buying return tickets but we only use the outgoing one" (a maritime agent from the port of La Rochelle).

"The texts say that the shipowner must be fined as a matter of course. The amounts are different depending on whether we are dealing with a minor (perhaps 10,000 euros) or an adult (5,000 euros). But if everything is done in orderly fashion and the P&I club correspondent gives their word of honour that they will take charge of the foreigner's repatriation from start to finish, then the PAF does not fine us. In this sense the police are nice, they don't want to kill the port, they want the port of Marseille to stay attractive on a global scale, not like the dockers, especially in this moment with everything that's going on... Moreover, I have not felt that they have become stricter since Sarkozy has come to power" (McLeans, Marseille).

"If the crew on board of the boat does not pay attention and the stowaway escapes, then the insurance company must pay" (the director of Unicon, Hamburg).

"We give them some pocket money, between 150 and 300 euros, to help them cope once they are back home" (the director of Unicon, Bremen)

.....

6. According to our interviews with various agents, the time for taking charge of these people – when the boat is in the quay – ranges between two and four days. But we must recall that this "taking into charge" may start before docking.

Identification and travel document

To organise a return by flight, the P&I club agent needs to know the identity of the "stowaway" on board. With the shipmaster as an intermediary, they collect information by telephone before the ship docks (cf. chapter V), on the basis of which they will be able to ask the concerned consular authorities to recognise their national. In effect, they need to obtain a travel document as quickly as possible to return the migrant. Hence, it is important for the agents to have good contacts with consulate staff, something that can cause great harm to people who have fled their country to seek protection.

Furthermore, migrants generally know that their presence give rise to considerable economic stakes and that professionals have

an interest in seeing them disembark smoothly. Several P&I club officials admit that they use "incentive methods" to make them return to their home countries.

In Spain, in principle, the first interview with a "stowaway" should be conducted by the police. In practice, as a P&I club correspondent explained, "we almost always conduct it before them, and they don't realise". An identification questionnaire is filled out by means of the information collected by the shipmaster, it is often completed through a telephone conversation between the correspondent and the "stowaway" while the boat is navigating. The correspondents are serious: they always manage to establish where the person comes from. "There are means to do this", they say. One of the correspondents provided the details: "I ask some questions, I lie, I say that I will help them, I ask to talk to their family to reassure them, to tell them that he's fine, etc.". Another one added: "When a



Photo: View of the port of Rotterdam, © Eva Ottavy

person has been locked up in a cabin during a crossing, they always end up telling us their identity". The form must be signed by the "stowaway": "You can make a *polizón* sign anything, a blank sheet, or a questionnaire that they don't understand because it is not translated. We explain to them that it would be best for them to sign it in order to disembark in Spain, because otherwise they risk staying on board of the boat for months". Correspondents then scan the signature and affix it wherever they want.

The questionnaire is sent to the consulate so as to allow it to carry out an official identification, a prior requirement to issuing a temporary travel document. Certain consulates limit themselves to issuing the identification document from their offices, whereas others prefer to send one of their representatives to the boat, with the costs paid by the P&I club. Two correspondents explained that, since a short while ago, the Algerian embassy refuses to identify "stowaways" because only the police is competent to submit such a request. This does not make any sense, according to the correspondents, because the police authorities are not responsible for repatriating the "stowaway". In December 2010, it was impossible to make two Algerian nationals disembark in the port of Bilbao, while the boat on board of which they were held was preparing to cross the Atlantic Ocean.

Once a person has been identified, the consulate issues a travel document to the correspondent, in return for a fee of around a hundred euros. It may happen that a migrant is "recognised" by an embassy that is not too attentive from a country of which they are not nationals. In such a case, they will be repatriated to a country that is not their own.

In Germany, talking about maritime insurers, the border police explained: "They are the ones who take care of the documents. I don't know anything about how they do it. It is really amazing that they always manage to.

To date, they have always succeeded and in record-breaking times. They must really have some good relations." Let us recall that the director of the private firm *Unicon* boasted about the quality of the services that his firm offers insofar as the identification of "stowaways" is concerned (cf. chapter V).

In France, when the stops by ships are no longer than two days, returns are difficult to organise because there is not enough time to obtain a travel document. Thus, the authorities keep the people on board, and these ships will set off again with the migrants until their next port(s) of call: "Sometimes the stowaways stay on board for months", a *McLeans* employee stated. During these operations in which time limits are tight, personal considerations may delay the processing of a case and lead to a lengthening of the time during which a "stowaway" is held. The same employee evoked a case in which she could not "have the travel document from the consulate because the official who had to sign the document was at her hairdresser's, which postponed obtaining the document until the next day".

In La Rochelle, when maritime agents are called upon to deal with a "stowaway", they fill in a questionnaire that seeks to establish the person's identity and to gather information about their family and professional status, as well as some morphological traits: height, weight, the colour of their skin, hair and eyes, the shape of their face. These questionnaires are similar to those used by the shipmasters (cf. chapter V). In this same port, according to a maritime agent, only the consulate of Sierra Leone is cooperative and issues travel documents; Moroccans are generally taken to the Moroccan consulate in Bordeaux; for the other nationalities, it sometimes happens that it is the insurance company's representative in Paris who exerts pressure before consular agents to obtain a temporary travel document. "During the stop in La Rochelle, when we do not manage

to identify people's home country, the boats set off again and the following port will take charge of their cases; you know, one is never sure of anything." In cases when there is not a consulate in France, insurance companies usually resort to those based in London or Brussels.

In the large European ports, P&I clubs systematically contact consular services even before they know if the "stowaway" wishes to request asylum. However, this hypothesis is far from being unrealistic, considering the risks that they take to embark upon the sea crossing. But the migrants are not left any choice. Before they set foot on the European continent, the plan for their repatriation is already well underway.

A "humanitarian assistance"

In Hamburg, the director of *Unicon* clarifies that if migrants "want to apply for asylum, then they do not receive a Lufthansa ticket, nor new clothes, nor pocket money. (...) Instead, we give those who choose to return some clothes and between 150 and 300 euros of pocket money so that they may cope once they are back home": this is how the blackmailing that "stowaways" undergo begins. Several P&I club correspondents thus boast about meeting the migrants' needs. For example, in Marseille, if a person states their intention to return, a *McLeans* employee "takes charge of running some errands like, in particular, to buy them shoes because the crew which has a duty to guard them usually chucks them overboard. The idea behind this is that once the ship is in the port, a stowaway will not be able to go far without their shoes. "

In the port of La Rochelle, a maritime agent who is less selective told us: "When the boat is in the quay, the border police boards it and informs the stowaways of a refusal of entry and a decision to keep them in the

waiting zone. (...) Then, I often used to go to Vet Affaires to buy them some clothes (tracksuits, pullovers) because certain migrants did not have anything to put over their backs, apart from T-shirts and light trousers. I also used to buy them some basic toiletry products. The people would either be repatriated to their home countries or the countries they came from, or they stayed on board of the ship when it left again towards the port where they embarked. (...) The principle on which everything is based is that the person is free when they leave, they are accompanied back to the border."

The pretext of the "humanitarian assistance" lent by the P&I clubs justifies their actions in dealing with "stowaways" in positive terms. Some of them delegate this task to their colleagues: because it is "too hard psychologically, the situations are too sad", a *McLeans* employee points out.

Hence, the procedure applied to these migrants who are in port areas is basically coordinated by private actors. The P&I clubs, which cover the risk of "stowaways" for shipowners, play a crucial role. In all the ports that we visited, the police only appears to intervene to "keep up appearances". Does the same apply to the management of repatriations?

Objective: getting rid of them at any cost

We have understood that "stowaways" are viewed as a major risk against which maritime companies have an interest in being protected. The main goal for a crew that discovers one or several of them on board is to get rid of them as quickly as possible in order for them not to delay the boat's schedule and not to cause excessively high costs for shipowners. Insurance companies (P&I clubs) are almost always present during the procedure, and they intervene, through different means, to make the foreigner return to where they

came from. It is all about resolving the matter quickly: time is money, and a boat that is immobilised in a port quickly causes the transport budget to soar.

As the objective is to spend as short a time as possible in the quay, sometimes only for a few hours, the ship's journey is obviously disrupted by the presence on board of a foreigner who is not authorised to disembark. This is why insurers ask shipowners to warn them as soon as possible about the presence of a "stowaway", in order for them to adopt all the necessary measures before the ship docks, in particular that of getting consular authorities to go there. However, as Judith Attali stresses regarding these migrants, "one of the major difficulties concerns them disembarking" because they "stay on board for a long time, while negotiations are undertaken on land to find a state that would be willing to authorise them to disembark"⁷. According to UNHCR, "it is often very difficult to manage to disembark the stowaways. A positive outcome in this sort of situations largely depends on the nationality of the concerned person, on the possibility of identifying them, on the planned travel route of the ship on which they are and especially on the degree of possible cooperation with the port and immigration authorities in the ports of call that are scheduled for the ship"⁸. This is where the insurance companies and private companies with which they work come into play and activate their different networks to organise these people's repatriation as quickly as possible.

According to a *McLeans* correspondent, the person is usually sent back to the country where they embarked, and he felt that "it is far easier than to send them to their home

country". Nonetheless, the procedures differ from one port to another: "Over time, I have learnt not to ask any questions and not to understand too much about this, they are truly cases in which there aren't any rules", he added. While these comments by a jurist are surprising, one must understand that the practices whose purpose is to return migrants depend on a number of factors (cooperation with the maritime police, obtaining temporary travel documents from consulates, organising a plan for repatriation, in particular).

In Barcelona, two P&I club correspondents believe that, although the treatment of "stowaways" differs depending on whether they are on board of regular liners or on a tramper ship (a boat that does not have a fixed schedule or published ports of call), they are repatriated in 95% of cases, 70% of them by boat towards the port where they embarked, and 30% of them on flights from Spain to their home country.

Repatriation by flight: acting swiftly without regard for rights

International and national texts make the shipowners (and hence, finally, the insurance companies) bear responsibility for managing a "stowaway", in all the countries where we have conducted inquiries. In effect, it is up to them to cover the costs connected to their presence (accommodation, nourishment, clothes, health care), on the one hand, and those connected to their repatriation, on the other.

In Spain, the 2007 Instruction provides that the costs resulting from the presence of a "stowaway" (on the boat or on land), like those concerning repatriation towards their home country, must be paid by the signatory and the shipowner (hence, indirectly, by the P&I club). In France, according to article L.213.4 of the *Ceseda*, people are sent back to their home country or the one they

7. Cf. Judith Attali, *Le transport maritime de passagers clandestins*, Université de Droit, d'économie et des sciences d'Aix-Marseille III (Outline of the Master's course in Maritime and Transport Law), 2008.

8. UNHCR, *Note d'information en vue de la Table ronde d'experts sur le sauvetage et l'interception en mer en Méditerranée*, 2005.

have left from by the maritime company that brought them there. The same scenario applies to Germany and the Netherlands, where the costs of repatriation are borne by the carrier (hence by their insurance company). According to Dutch law, "if the foreigner has arrived on a boat or aeroplane managed by a carrier, they must leave the Netherlands in the same means of transport or by a means decided by the border guards". This provision enables the authorities to pass responsibility for the return to the maritime companies and airlines.

According to testimonies collected from Dutch actors in the management of "stowaways", P&I clubs usually prefer to return people by flight rather than by boat. In fact, as not all the ships carry out return trips between two ports, taking them back to the port of origin may take some months and, therefore, it would represent an important expense in terms of food, clothing, etc. The "return" by boat can nonetheless take place when a ship goes back along its same route. But according to professionals of this sector, a Dutch shipmaster will only allow such a return if the person's identity (and particularly their nationality) has been established. If this is not the case, they will ask the Rotterdam port police to let them land and deal with them.

Repatriation plans

"We have a very limited time slot. Within that time, as I said, it is a matter of finding some identity documents, or a travel document, of finding out whether the person will be returned by boat or aeroplane. You must check what airlines are available, if there is a direct flight or if a stopover is necessary. You must take care of informing the airline in advance, you cannot disembark them on the day of departure without having alerted the company." By hearing the comments by the director of the *Unicon* company, which P&I clubs regularly resort to, you unders-

tand that managing a "stowaway" turns into a race against time, simultaneously strategic and logistic. Agents must act quickly, in an organised manner, making the most of the contacts they have established with the police, airlines and consular services.

In Spanish ports, when the "stowaway" is on board of a cargo ship, the correspondents of P&I clubs take charge of their repatriation by flight. They stated that they have to act as quickly as possible, very often prior to the boat's arrival, in order to organise the person's landing and their departure without having to delay the ship's course. They said that they implement a well-oiled protocol in which a whole series of actors intervene, but in which the P&I clubs remain the masters of the game. They added that it is important for the migrants to "leave" the boat, otherwise it becomes difficult to repatriate them from another European country: "In France, it's difficult, in Italy, it's impossible", one of them said.

Straight away, the correspondents submit a repatriation plan to the Subdelegado del Gobierno, in order for the official to issue the necessary safe-conduct to lawfully transport the foreigner to the airport. This repatriation plan contains all the documents that are needed to organise the return, namely, the aeroplane tickets, travel documents and information concerning the private security guards who will escort the "stowaway" to the airport, or even to their home country – there are usually two security guards for each passenger.

The correspondents explained that they drive these "unwanted" migrants to Barajas airport in Madrid, from where a large number of direct flights depart. The airline is always informed about the presence of these foreigners. They often personally accompany them to their home countries without assistance from private security guards. In this case, one correspondent notes, "I lie, I tell

them that I am from the police in order for them to behave without resisting". Sometimes, they resort to buying good behaviour. One of them told us that he gave some "stowaways" 400 euros to get them "to behave well, with a part paid upon departure, and the rest when they arrive".

In theory, in the port, the authorities await confirmation that the migrants are on their flight, or even in their home country, before they allow the boat to leave, and for the purpose of ensuring that the repatriation has been taken care of properly by the consignee or shipowner. The correspondents explained that, in practice, disembarking "stowaways" is authorised earlier if it is absolutely necessary for the boat to leave the port. They mentioned the possibility, which is rarely afforded, to accommodate them in facilities provided for this purpose (they exist in the ports of Bilbao and Barcelona). The facilities are under the surveillance of private security agents. It also happens that "stowaways" are led to the airport from when they leave the boat and wait there for their aeroplane to depart.

Private agents at the service of expulsions

Field research carried out in several European ports have clearly shown that private agents (security companies, or those providing guards, etc.) are frequently mobilised during the repatriation procedure of "stowaways". However, in the different national legislations, finding, arresting and handing over migrants in an irregular situation are tasks that are reserved to the police or gendarmerie [police force with military status] services.

This applies to Belgium, where the repatriation of "stowaways" is governed by the law of 5 June 1928 that details the disciplinary and penal code for the merchant navy and maritime fishing. According to another law of 10 April 1990 on security firms, it is

very clear that finding, arresting and guarding these migrants are missions that cannot be exercised by these businesses. In a question asked in the Belgian Senate⁹, Mr. Anciaux nonetheless wondered about the activities of the Antwerp-based SIAS security firm, which has allegedly enacted various missions to find and guard "stowaways", in association with the port authority (waterways police). The responsible minister had acknowledged the existence of this practice, while stressing that "there has never been any cooperation between the maritime police station and the SIAS firm, in the sense that this firm has never been called upon by the maritime police station, but rather, it was directly invited by a P&I club, solely to escort a number of stowaways during their repatriation." Thus, the minister deflected responsibility onto the insurance company, but ended his answer by recalling that such practices are forbidden: "As of 2 June 1995, P&I clubs have been informed of the fact that they could no longer resort to a private firm to escort stowaways. It has never been a matter of a cooperation agreement between my services and the private firm."

In the Netherlands and in Germany, our research has shown that private firms are likewise increasingly called upon to successfully enact the repatriation of "stowaways" by providing, among other things, escorts during returns by aeroplane. In Rotterdam, the insurance company has contacts with the Dutch royal constabulary police (Kmar), the authority that is in charge of accompaniment when a return is enacted. Either the Kmar may assign two police officers to this task, in which case the P&I club will take care of all their expenses (aeroplane tickets, nights in a hotel in the country of origin, meals, etc.), as well as remunerating them for their service time. Otherwise, the P&I club must wait for two Kmar officers to be available but, as we

9. Senate of Belgium, session in the 1996-1997 year, bulletin 1-43 of 15 April 1997 [available on Internet].

have seen above, time is limited: maritime and insurance companies feel that the boat's departure cannot be delayed. Then, another solution is available to them: private security agencies, like the German firm *Unicon* (see the box, above), which offers its services to maritime companies to identify and facilitate the return of foreigners. Security agents move when a P&I club needs them. In Germany as well, the law provides that the repatriation of foreigners must take place with an escort of two police officers. Nonetheless, *Unicon* agents sometimes take charge of this mission, fielding their professionalism (calm, mastery of African languages, speed of action, etc.). One of their tasks may be to convince the foreigner to enable their identification in order to return them. Asked about his firm's cooperation with maritime police forces, the director of *Unicon* explained: "Over time, we have got to know each other very well. They know exactly what we can do to help them, and what we cannot do. Everyone knows their role."

Arrest upon return

"Stowaways" are detained throughout the procedure of arrest, identification and return, whether this is on the boat, in the port, in prisons or detention centres. But their detention does not necessarily end when the people have returned to their home country or to the port where they embarked. According to the director of *Unicon*, in some countries, "stowaways" are imprisoned from the moment when they arrive in the country because they have illegally left its territory: "In Tanzania, for example, these people are directly imprisoned because they left the country illegally, and it is a criminal offence. This also applies to Morocco, where they are taken directly to prison." The people who are taken back experience, again, situations in which they are very unsafe, without legal support where they are. Moreover, it is difficult to know what

happens to them, as the escort's mission ends once the return has been carried out.

Sometimes the insurance company asks its local correspondent to register a complaint against the migrant before their home country's border police. In return for a few dozen euros, the practice apparently makes it possible to maintain good relations with the local authorities, like a *McLeans* partner in Marseille explained: "For example, in the case of Moroccan nationals, we ask our correspondent to file a complaint against the migrant in the moment when the boat arrives in order to avoid any bother with the Moroccan border police. Moreover, we bribe them not to have to pay a fine (50 euros), especially when the ship is not Moroccan. There is a lot of corruption in this country. To avoid having any trouble, we also ask the captain to take some photographs of the stowaway every day in order to prove that they are treated well."

.....
Unicon

The Unicon company, established in 2006 and based in Bremen (Germany) shortly after the actual implementation of the ISPS code, is the perfect example of the professionalism that insurance companies, maritime companies and authorities increasingly call upon to manage "the problem of stowaways". The firm's director defines Unicon's partners as "specialist experts in the field of identification and repatriation". This agency is active worldwide.
Unicon specialises in three domains: translation (useful for identifying people), obtaining temporary travel documents and accompaniment during repatriation. Translation is a key issue because it is through the interview that contact with the migrant is established, and it is also through a good translation that the latter can make their reasons for wanting to stay in the country of arrival understood. As has been said in the previous chapter, the director has at his disposal "people who cover practically every African language, Swahili, Arabic and local languages. (...) In many cases, they are independent partners who we call upon depending on the situation."

The other key point is obviously contact with the embassies and consulates for the purpose of obtaining travel documents in record-breaking times for "stowaways". The Unicon director explained that his firm is well known by now and recognised by the different consular services, and that procedures have become very fast. Furthermore, this business works as a network and has correspondents in ports throughout the world. It is not unusual for the firm to call upon associates in order to organise an identification or repatriation when its colleagues cannot travel there: "In each port city, we know some people from other agencies. If necessary, we call them and ask them to go on board for us. We send them all the information that we have received previously, the advanced planning, and we organise the returns from a distance. We can also intervene by telephone without resorting to other agencies." As regards repatriation by flight, although the law provides that the police must escort the "stowaways", firms like Unicon take charge of this task increasingly often.

.....

Repatriation by boat

As we have seen, the main goal of the actors involved in managing a "stowaway" is to repatriate them as quickly as possible: "The administration has an interest in refouling [the person] as quickly as possible, taking the policy of combating illegal immigration into account. In turn, the transport company is constrained by economic imperatives, and delays caused by a stowaway on board soon add up to thousands of euros. However, this refoulement procedure is often difficult to enact, considering the ship's destination¹⁰".

Economic issues are often set forth to justify keeping a migrant on board and to continue along the scheduled route, regardless of whether they are taken back to the port of

departure or whether their situation is examined in the following port of call. According to the *Unicon* director, "we cannot afford to wait. The boats have very precise routes, programmes that must be respected, schedules to follow. They are already expected in the following ports to unload their goods. All these matters involve exorbitant costs. Having a boat stuck in a port would be far too expensive. One has to try to manage to find a solution quickly while the boat stays in the port. Otherwise, the person stays on board and we look for a solution before the boat docks in the next port."

The deputy port captain in La Rochelle noted that it is possible for the undesirables to be taken back to the place where they came from when boats provide regular commuter services. However, according to a maritime experts agency, "at the start [of the 1990s], most ships came directly from Africa. There were not many ports of call. Today things have changed considerably, ships call in several ports, like in Portugal". Hence, it is quite rare for a ship to go directly back to the place where it came from.

In the port of Varna (Bulgaria), the border police highlighted that migrants are taken back to their port of departure, which contradicts the company *Fidelitas*, which claims that it takes responsibility for the cost of transporting migrants to Sofia and the cost of flights.

In Spain, the P&I club representatives who we met noted that they are not systematically informed about the presence of a "stowaway" on a regular liner because the shipowner, with the maritime agent as an intermediary, may decide not to use their services, particularly if the port where the migrant boarded has been identified and their presence does not constitute a danger for the crew.

In Saint-Nazaire, the director of the *Sogebbras* agency and president of SACN (*Syndi-*

10. Cf. Judith Attali, *Le transport maritime de passagers clandestins*, Université de Droit, d'économie et des sciences d'Aix-Marseille III (Outline of the Master's in Maritime and Transport Law), 2008.



The port of Rotterdam, © Eva Ottavy

cat des Agents Consignataires de Navire, Ship consignee agents trade union) raises the matter of knowing exactly what the insurance companies cover. He argues that "as long as the insurance company does not intervene, everything goes through us, the consignees. Unlike a P&I club that only intervenes if the shipowner asks them to, now they do not always rely on them."

In Hamburg, the maritime police officer we spoke with explained that his service is responsible for going to find the foreigner in prison to take them back onto the boat when it wishes to slip its moorings: "When we find out that the boat wishes to leave, we

contact the prison, we tell them when we will go to find the person and we go there in a car. Once we are on board, we make sure that they cannot disembark. We stand in front of the door and mount guard." He added that, unlike what happens in repatriation by aeroplane, there is no need for travel documents as the "stowaways" remain detained on board during the journey and are taken back to the port where they embarked.

Sometimes, once we reach a port, certain passengers jump onto the quay and injure themselves. "There have been countless broken ankles and legs", explained Roland Van Cleempoel¹¹. "Thus, I was taken to cure two stowaways imprisoned in Bruges. They had seriously injured themselves, one in

Lisbon and the other one in Bordeaux while they tried to escape. The were put back onto the boat in spite of their fractures." On 16 October 2008, a 31-year-old man from an African country drowned in the port of Antwerp near the Albertdok. He had jumped overboard with another 23-year-old man. They had been locked in a cabin on boat that was meant to repatriate them.

11. Roland Van Cleempoel is a doctor in the port of Antwerp. The quotations are drawn from an article by Jean-Claude Matgen, "Des malades, des blessés et parfois des morts", *La Libre Belgique*, 23 December 2005 [available on Internet].

If a migrant has left the boat to apply for asylum or if they have been interviewed by the police services, tensions may arise with the crew when they come back on board to be returned. As a partner of the *McLeans* company in Marseille said: "When the stowaway's asylum application is rejected and they are put back on board, they are received badly by the crew because the ship has been delayed."

In Italy, the boats are sometimes called upon to refoule migrants who are intercepted outside of the port area. Several cases may be mentioned from Bari, Ancona and Venice in which migrants caught in the vicinity of ports, but outside of them, have been arrested by the police and deemed to have been "caught in the act of committing an offence", that is, while they tried to cross the border illegally. Taken back to the ports from which they are believed to have left, they were put back onto boats and returned to Greece. All this process unfolds on the basis of an arbitrary management and a discretionary extension of the border because, although an enclosure exists to limit the port, the "border" may move beyond it to reappear elsewhere.

Transfers from boat to boat

The Spanish correspondents of P&I clubs mentioned the possibility of repatriating "stowaways" on a different boat from the one on board of which they travelled in cases in which the second ship would reach the port where they embarked more quickly than the first one. A maritime agent explained that they had recently enacted a boat switch in the port of Barcelona to repatriate a person. One of the two boats was returning to the port of departure, whereas the other one (which had taken the migrant there) continued along its route to Genoa. The boats do not necessarily have to fly the same flag, but they must have been chartered by the same maritime company. Of course, the captain's agreement is required and this service may also be paid for.

Diversion from the planned route

Finally, it is possible for the boats to be diverted from their route for the purpose of repatriating migrants. This kind of situation is rarely envisaged because, as a P&I club correspondent explained, the person who charters a boat is not always the one that is responsible for the "stowaway", and changing a planned route amounts to making navigation times longer and, hence, to increasing the cost of running the ship. By providing the example of the Algerian coasts, one correspondent explained that in order to make a diversion from a planned route as short as possible, migrants may be "returned" without the boat having to dock in the port of departure, on condition that the authorities of the country of departure come to find them in the place where it anchors.

Repatriation to a different country from the one where the passenger embarked is sometimes negotiated with the authorities of certain African countries that accept to allow these migrants to disembark. The person in charge of a French company recalled a "stowaway found on a ship that had enacted a 'stopover' in Dakar in order to make the person disembark. In my view, when this happened, there had to be an agreement between the P&I clubs and the Senegalese government. We are not privy to the secrets of those on high, we are not necessarily informed, the insurance companies manage these situations through their experts." While the shipowner is held legally liable, insurance companies cover the expenses resulting from the re-routing or delay of the ship "which has been made necessary by the measures to treat an ill person and the organisation of their repatriation, the wait for someone to replace a crew member who is injured or ill"¹², or also

12 Delaye Marie-Camille, Les garanties P&I, Université de Droit, d'économie et des sciences d'Aix-Marseille III (Outline of the Master's in Maritime and Transport Law), 2007.

to disembark passengers or people who have been rescued at sea.

"Assisted" escapes in ports

The Schengen Convention represses assistance lent to the irregular entry or residence of a foreigner. In France, article L622-1 of the *Ceseda* punishes "any person who, through direct or indirect assistance, has aided the irregular movement or residence of a foreigner in France (...) with five years' imprisonment and a fine of 30,000 euros".

In view of the sanctions and complications that the presence of one or more "stowaways" on board of a ship entails, it may seem easier for its crew to allow the people to leave discretely and to unburden itself from the financial responsibility that results from this. With the entry into force of the ISPS code in ports throughout the world and the increasing securitisation of port areas, this sort of manoeuvre has become complicated and risky for the crew. If the police services ever establish the link between the boat and the "stowaways", the crew then incurs the punishment mentioned above. A member of the maritime police in the port of Hamburg recalled a case in which several African migrants appeared, in the middle of winter, wearing flip-flops and T-shirts in front of their office in the port. It did not take the police officers long to draw the link between a boat that had just arrived and these migrants. The crew confessed that they had let the "stowaways" escape in order not to have to bear the costs. The company was prosecuted through the justice system.

However, it appears that the different security mechanisms set up in ports and the operations of the Frontex agency that is in charge of the surveillance of the EU's external borders greatly restrict the margins of manoeuvre for crews in this field. The data and information exchange in ports between police services concerning trafficking rein-

force their control capabilities. In 2009, Frontex welcomed the progress achieved in this field within the framework of an operation called *Zeus*, which was meant to increase border guards' awareness of "the misuse of transit visas, seamen's documents and 'false maritime agencies' in member states associated to the Schengen area. (...) Cooperation with the BSRBCC¹³ was reinforced thanks to the active participation of almost all its members, with Germany as the host country and including the Russian Federation as well. The production of a practical handbook seeks to help border guards in their routine work. The first steps taken by the EU and for inter-agency cooperation were enacted through access to the databases held by the EMSA¹⁴, which could help to fight this particular kind of crime in the field of immigration effectively. Another advance that has similar importance, was that of cooperation and information-sharing on trafficking in this field between airport and port authorities¹⁵".

MDH, MS

13. BSRBCC is a cooperation between different bodies (police, customs, border guards) from different countries on the Baltic Sea that combat cross-border crime and work towards the environmental protection of maritime areas. See its website, <http://www.bsrbcc.org/>.

14. European Maritime Safety Agency. See its website, <http://www.emsa.europa.eu/>.

15. Frontex, General report for 2009, 52 p. [available on Internet].

Appendix

Appendix 1

Data sheets per country

Migratory situation in the ports open to merchant navy ships

Germany (Port of Hamburg)

Data. This is the second European harbour in terms of volume, just behind that of Rotterdam. At the beginning of the 1990s, the police recorded the arrival of 150 to 170 "blinde Passagiere"¹ a year. This number fell after the implementation of the international ISPS code for the security of port facilities in 2002. Nowadays, five to ten persons a year arrive by boat and, according to the police, on average only a quarter of them ask for asylum.

Organization of controls. The port of Hamburg is a very strictly controlled space. The security of each terminal is ensured with measures of the highest quality, and it is impossible to enter a terminal without having an official authorization. The *Wasserschutzpolizei*, naval police, is responsible for controlling the boats; they check the passenger lists and the crews' visas, and intervene when a captain reports the presence of *blinde Passagiere* on board².

Central role of the P&I marine insurance in a chain of several actors: Privatization of the handling of foreigners. In Hamburg, as in Bremen, there are numerous correspondents of the P&I Clubs (such as Pandi Services); the handling of *blinde Passagiere* can be contracted out to other private bodies such as Unicon³.

– **Before arrival in the harbour.** If a stowaway is present on board, the captain must warn the P&I Club's correspondent so that they in turn may inform the naval police and start organizing the documents required for the individual's return. If the information is not provided by the crew, the captain is liable to a fine and a judicial penalty that varies according to the circumstances and the judge's decision.

– **On arrival in the harbour.** The *blinde Passagiere* do not remain on board the ship, unless it leaves within hours after arrival. In that case, the judge signs a document indicating that they do not have to appear before the court. In all other cases, the stowaways are taken to the

1. Stowaways, literally "blind passengers".

2. This situation varies from port to port; in Hamburg the naval police is responsible for the boat controls, but in other harbours it may be the customs department or the border police.

3. Cf. A description of the firm is in the textbox in part IV.

premises of the naval police and identified. Then they are placed in custody in the central prison of Holstenglacis in Hamburg, following a procedure similar to that used in the airport waiting area. If the foreigners do not mention the word 'asylum', they are simply sent back to their country of origin. If they explicitly ask for asylum, they are transferred to the *Sportallee*, the registration office responsible for asylum requests, and then they are admitted to a reception centre for asylum seekers. During a period of two years after their arrival, the insurance company is held financially responsible for their return if their request is rejected.

– **Provisions for returns.** The foreigner may be returned on the same boat (which is fairly rare) or sent back by plane after the correspondent has obtained the required *laissez-passer* (temporary travel document) from the consulate. The insurance companies do not hesitate to offer clothing, pocket money and cigarettes in order to convince the *blinde Passagiere* to reveal their identity without delay. They help with logistics for the return by providing two private escorts (whereas the law envisages two federal police escorts) and ensure the cooperation of the local police in the country of origin or in the country where the would-be migrant boarded the ship.

MDH

Bulgaria (Ports of Varna and Burgas)

Data. Varna and Burgas are Bulgaria's two large harbours; they are situated along the Black Sea and admit the bulk of the naval freight. Varna stands under the authority of the port of Burgas which is the country's largest port for stocking containers. Bulgaria has adopted the international ISPS code for the security of ports.

According to the police and to insurance agents⁴, there are few migrant arrivals, and most of the stowaways do not wish to disembark in Bulgaria. No arrival is reported to have taken place since 2005; during the two previous years, the border police reported that 20 migrants were intercepted, while insurance agents mention 12 cases. In Burgas, 14 arrivals are said to have taken place since 2003 and none since 2008. The countries of origin of stowaways are mainly Iraq, north Africa (Morocco, Algeria), east Africa (Rwanda, Somalia) and west Africa (Nigeria, Liberia, Ghana).

Central role of the P&I marine insurance: from the crossing of the border to the return, privatization of the handling of foreigners. In Varna and Burgas, three insurance companies have been found to act as correspondents of the P&I Clubs⁵.

– **Before arrival in the harbour.** Stowaways are under the captain's authority. They are usually locked up in a cabin; expenses for their food, clothing, and other needs are supported by the maritime company. On the ship, the security officer is assigned by the captain to keep watch on the place where migrants are locked up. The fine may be up to 3,000 euros if stowaways are not declared to the port authorities.

4. Source: interviews carried out between January and March 2011 with the border police in Varna and Burgas, and with an insurance agent from the firm Fidelitas.

5. Fidelitas, Kalimbassieris Maritime and Omur Marine Limited.

– **After arrival in the harbour.** The ship may remain alongside the quay for a few hours or even a few days until the migrants can be identified. During this time, police officers are on the quay to make sure that the migrants do not disembark. The identification of stowaways, by way of an interview on board, is carried out by the insurance company.

If a person requests asylum, the Bulgarian law on asylum and refugees states that he/she be immediately disembarked. Nevertheless, in 2003 the border police in Varna refused to register the request for protection of two Iraqis, although the captain of the ship, an NGO⁶ and UNHCR had intervened on their behalf. After being immobilized for 17 days, the ship finally left Varna for Constanza, in Rumania, where the Iraqis were granted humanitarian status.

– **Provisions for returns.** Once the consular authorities have delivered a laissez-passer, the stowaways are allowed off the ship, and the insurance company provides an escort to take them to the Busmantsi detention centre in Sofia so that their return by plane may be organized. Whenever the administrative formalities cannot be satisfied, Fidelitas points out that stowaways are kept on board while their possible return by air is being organized from the next port of call.

MT

Cyprus-EU (Port of Limassol)

Data. First port in Cyprus (90 per cent of passenger traffic and two-thirds of the containers).

Organization of controls in the port. The entry of the Republic of Cyprus into the EU in 2004 and the geopolitical location of the island have turned it into a "particularly sensitive"⁷ area; the ports of Limassol and Larnaca have been modernized to comply with the standards of the Schengen agreements. The two ports are now equipped in conformity with the ISPS norms. Controls are carried out by the immigration services (Ministry of the Interior). Twenty-four hours before arrival, the ships stopping in Cyprus transmit an exhaustive list of passengers, in order for the people who do not have right of entry in Cyprus or those in need of a visa to be identified. This practice has become increasingly common since 2004. Containers are examined by the immigration services with the agreement of the port authorities, but a systematic control proves impossible given the volume of the traffic.

When the coast surveillance service detects a suspicious boat heading for the coasts, they inform the maritime police. A patrol boat then intercepts the boat and takes it to the port where the migrants are disembarked and directed to the immigration services⁸.

If a stowaway is identified on board of a ship, the immigration services are in charge of the arrest of the person and of investigating who helped him/her embark. There is no transit zone in the port, but the foreigner may be detained for a short time in port premises before

6. The Bulgarian Helsinki Committee, a Bulgarian NGO for the defence of human rights.

7. Cyprus Port Authority.

8. Exercise Argonaut, Cyprus, Report 3, 2009 (available on internet).

being taken into detention; although this happens quite rarely. When the person asks for asylum, the immigration services take charge of him/her. The applicant is then admitted to enter the territory as an asylum seeker but – like other foreigners without a residence permit – he may also be maintained in a detention centre or sentenced to imprisonment for "irregular" entry⁹.

The maritime company is responsible for the return of a stowaway, which proves to be difficult if it is not possible to know from which port they embarked, if the passenger has no identity document or if the authorities of the country where they are supposed to have embarked refuse to let them re-enter. Such situations may give rise migration journeys that last several months¹⁰.

Role of maritime insurance (P&I Club): Towards a privatization of the handling of foreigners. The P&I Clubs take care of the fines and of the return in case a stowaway is identified on board, and also bear the expenses for hiring guards and prison costs. If the foreigner escapes from the boat, however, those expenses are not covered by the P&I Clubs; they consider that the maritime company committed a mistake by not being able to stop the person escaping.

MM

Spain

In Spanish, a stowaway is called a *polizón*. Since 1994, the Ministry of the Interior has issued a series of administrative directives on the organization of a procedure that sets the treatment of the *polizón* aside from ordinary law (based on a deficient interpretation of the law). The *Defensor del Pueblo*¹¹ has repeatedly intervened in favour of the respect for *polizones'* fundamental rights, but to no effect. The 2007 directives¹² currently in force provide for the intervention of two officers of the national police (often the sea border police) on board of the ship without guaranteeing legal aid. According to the law, it is obligatory to provide such aid free of charge when the administrative procedure is liable to lead to a refusal of entry on the territory or to a request for international protection. Once on board, the police officers carry on an interview by way of open questions without mention of the *polizón's* right to seek asylum, and they decide whether a lawyer must be contacted. In the great majority of cases, the police report that the *polizones* wish to "continue their travelling"; with very few exceptions, lawyers and associations for the defence of migrants' rights are never informed of the presence of a *polizón* alongside the quay, even if he/she is under age.

The 2007 directives state that the *polizón* must be disembarked immediately for 'humanitarian reasons' or if he/she is being ill-treated by the crew. A *polizón* may also be taken off the ship and to the port 'outbuildings' if the procedure of admissibility into the territory has not been completed by the Oficina de Asilo y Refugio (OAR) at the moment when the ship is

9. For further information, cf. the website migreurop.org.

10. The Cyprus Shipping Association (CSA) reports the case of 21 migrants who, in 2009, spent three months on a ship which sailed from port to port without being able to disembark.

11. An equivalent to the Médiateur de la République in France, or an ombudsman elsewhere.

12. Joint directives of 28 November 2007 by the Dirección General de la Policía y de la Guardia Civil, the Dirección General de Política Interior and the Dirección General de Inmigración.

leaving Spain definitively. According to an agreement signed with the Minister of the Interior in 2004, the Spanish Red Cross is entitled to provide 'social' assistance (sanitary and legal) to migrants who arrive in Spanish ports. A *polizón* may be disembarked when the shipowner organizes and meets the costs of his/her return by air. In all other cases, *polizones* are kept on board of the ships.

The most recent data concerning the number of *polizones* who arrive in Spanish harbours dates back to 2003 and 2004¹³. They are respectively 502 and 387, mostly registered in the ports of Las Palmas, Barcelona, Valencia, Algeciras and Cadiz. A great majority (78 per cent) of those *polizones* were then held on board of the ships before continuing their 'trip' on board. Extracts from answers to parliamentary questions put to the government on 21 July 2004 record 2,303 arrivals of *polizones* during the 2000-2003 period, and about 100 asylum requests (approximately eight per cent). More recent figures are not available. However, the press and organizations report arrivals of *polizones* whenever they can, in particular in the ports of Bilbao and Valencia. It should be noted that in 2004 the organization CEAR¹⁴ initiated civil action proceedings to denounce the crew of the *Wisteria* for abandoning four *polizones* at sea off the Canary Islands.

JB

France

Data. There are 21 merchant navy ports on the French mainland (including those found on the Mediterranean and Atlantic coasts as well as the Channel ports), some very large ones, like Marseille¹⁵ or Le Havre, and some smaller ones like Caen, Cherbourg or Toulon. No precise figures are available at the national level, but it is known that during the 1990s several thousand stowaways arrived on cargo ships. For example, in 1992 their number was 156 in Dunkirk, 346 in Calais, 92 in Boulogne, 462 in Le Havre, 124 in Sète and 540 in Marseille. Then, with the introduction of the ISPS code, the numbers decreased in the years after 2000; according to the border police, 1,006 foreigners were caught in all of the ports in 2007¹⁶.

Organization of controls in the ports. The customs services and the border police are officially responsible for controls in the harbour zones. Most of the time they operate on the ship since authorities are given notice of the presence of stowaways when the ship is at sea. Therefore the waiting zones – which were defined by the Quilès Law in 1992 as spaces "from the disembarking points to those where personal controls are carried out" – vary from case to case when the ship docks. As a consequence, few rights¹⁷ are guaranteed to foreigners who continue being held on ships during the call, despite a judgment by the Conseil d'État which declared this type of practice illegal in 1998. Only a few waiting zones are provided with accommodation facilities (Marseille, Sète, and Saint-Nazaire, before the 2004 fire). In other

13. Source: Comisaría General de Extranjería y documentación.

14. CEAR: Comisión Española de Ayuda al Refugiado

15. cf. Roger Lejeune, " Problématique du contrôle des frontières ", Les cahiers de la sécurité intérieure, n°19, 1995, p. 35-45.

16. Anafé, Statistiques relatives aux étrangers à la frontière, 2008, p.9 (available on Internet).

17. Interpretation, appeal against a decision denying the entry on the territory, information concerning asylum, etc.

ports, stowaways may be accommodated during the wait in a hotel room requisitioned by the authorities, or they may be transferred to another waiting zone.

Central role of the P&I maritime insurance: from the crossing of the border to the return, privatization of the handling of foreigners.

– **Before arrival in the port.** The shipowner or captain is liable to be fined a maximum of 5,000 euros for each unidentified stowaway.¹⁸ But in practice, the maritime company is usually not reported provided it manages not to allow the foreigner to be admitted into the territory. In most ports, agents of the P&I Clubs start the expulsion procedure for stowaways before the ships arrive in the port.

– **On arrival in the port.** Once the ship has arrived, police and customs officers speak with the captain and with the stowaways; but the procedure is mostly carried out by agents of the P&I Clubs. In some ports such as Marseille, they insist "the treatment of stowaway cases is informal from beginning to end". However, transfers to the waiting zones or to the courts are the responsibility of the police; these transfers are usually aimed at sending the foreigner back to his/her country of origin or to the port where they boarded the ship (very few people actually have a chance of seeking asylum).

Organization of returns. The return still takes place by boat, but shipowners and insurance companies prefer sending foreigners back by air in order to resolve the stowaways' situation as quickly as possible.

OC

Italy (Ports of Genoa and Naples)

Data. The country has a number of tourist, commercial and industrial harbours along its 7,500-kilometre coastline. The 20 most important merchant navy harbours have recorded close to 450 million tonnes of goods in 2009. In 2010, the port of Genoa, which stretches across 22 kilometres, recorded its largest commercial traffic with 51.9 million tonnes of goods and 3.6 million passengers¹⁹. The port of Naples had a commercial traffic of 22 million tonnes of goods in 2010, of which six million by container-ships and six million by roll-on/roll-off ships. The creation of sea highways, such as the Mediterranean Highway Network (RAM; *Réseau autoroutes méditerranéennes*), has brought about an increase in commercial traffic.

Controls. Important security measures²⁰ have been taken in the Adriatic ports where many migrants are known to be transiting; controls in the Mediterranean (Sicily, Southern Italy) are less important although the crisis in North Africa has led to their intensification.

From December 2002, the ISPS code has brought about a reinforcement of migration controls. Surveillance in the ports is entrusted to the police (border police, maritime police, and customs police) as well as private security agencies. The crew is responsible for controls on

18. Ceseda, art. L 625-1.

19. Source: *Trail Liguria*

20. Cf. Migreurop Report 2009-2010.

cargo ships, while private agencies cooperate with the crew on ferries. In Genoa, ferries enter through a zone that is monitored and fenced, and containers converge to the *Voltri Terminal Europe* (VTE), which is an artificial pier to the west of the town equipped with a vide-surveillance system. This is the same in Naples, where zones for merchandise are separated from passenger zones (cruises and ferries).

Controls on cargo and container ships are more random than those on ferries; scanner types of control technologies are rarely used. Around 12 to 14 per cent of containers are checked in the port of Naples, eight to nine per cent at a national level.

It is very difficult to have access to data concerning arrests. However, the border police state that in 2008, 93 immigrants from Africa were arrested in the port of Genoa ("some twenty more than in 2007"). Stowaways, the majority of them Tunisians and Moroccans, are sent back to their country of origin. Officers of the *Polmare* (maritime police) identify them and then entrust them to the ship captain who takes them back to the port where they embarked.

The scarce information about arrests on cargo ships or in Italian ports shows that practices of controls on the ships take place at the margins of legality (a case reported in the port of Genoa is mentioned in a textbox in Part I). In April 2010, the border police in Naples held nine migrants on the cargo *Vera D* (property of the Hamburg company Peter Dohle, flying a Liberian flag); five of them were underage according to various associations, whereas the police considered them adults. The migrants, who were from Ghana and Niger, had hidden in a container in the port of Abidjan, in the Ivory Coast. Their situation surfaced thanks to dockers and it led to a mobilization of maritime trade unions and associations for the defence of migrants' rights. After seven days, the migrants were disembarked and led to the Centre for identification and expulsion (CIE) in Brindisi.

FF

The Netherlands (Port of Rotterdam)

Data. The fourth port in the world and the first one in Europe, its harbour stretches across 10,500 hectares and a length of 40 kilometres. At the end of the 1990s, some hundreds of *verstekelingen*²¹ arrived on cargo ships to the Netherlands. The number fell after the implementation of the international ISPS code for the security of ports in 2002.

Organization of controls in the port. *The Koninklijke Marechaussee* (Kmar), *royal gendarmerie*, is in charge of border controls in the ports of the Netherlands, with the exception of Rotterdam where it is the role of the *Rijmond Politie* (ZHP), port police.

Central role of the P&I maritime insurance: from the crossing of the border to the return, privatization of the handling of foreigners.

– **Before arrival in the port.** The captain is liable to be fined up to 5,000 euros for each *verstekeling* if he does not inform the authorities of the next port of call of their presence on board, through the P&I Club. If they are discovered on Dutch ships, foreigners are locked up

21. Stowaways.

for the duration of the journey in a cabin available for this purpose²². Dutch crews must give food and clothing to people found on board.

– **On arrival in the port.** The harbour police come on board and speak with the captain and with the foreigners who were found. Only a few foreigners request asylum, those who ask for protection are taken off the ship and to the port police for a second interview, in the presence of the P&I Club agent. After a few hours in these premises, they are led to one of the waiting or detention zones in the Netherlands²³.

– **Organization of the return.** The other foreigners are sent back by plane or by ship; in the latter case, they are kept, detained, on the ship. The law²⁴ allows the Dutch authorities to make the maritime companies take responsibility for the foreigner's return. According to professionals, a Dutch captain will agree to take a person back on his boat only if his/her identity and nationality have been duly proved. For returns by air, the P&I Club contacts the foreigner's consular authorities so that they can deliver a laissez-passer. The company pays for the plane ticket and asks the Kmar for two police escorts whose time and other expenses the company will have to cover. If no Kmar escort is available, they resort to the private firm *Unicon*²⁵. When the foreigner refuses to reveal his/her identity or when he/she does not wish to ask for asylum, the maritime company is still responsible for their return. The foreigner will be kept on board and the company will try to find a solution before the next call. The local P&I Club may pass on the case to one of its colleagues in the hope that a solution may be found elsewhere.

EO

22. If an atmosphere of trust is prevalent, the captain may let the person move around the ship, and also take part in minor work activities (*interview with an official of Nautilus International, Dutch sailors trade union, 03/02/2011*).

23. Centre for expulsion of Zestienhoven (*Uitzetcentrum*); transit zone of Schiphol-Oost (*Passantenverblijf*); detention centre at the frontier at Schiphol-Oost (*Grenshospitium*); detention centre of Alphen aan den Rijn, as provided by the 2000 law on foreigners (article 6).

24. Law on foreigners, 2000, chapter 2, section 5/2.

25. cf. Description of the firm in the textbox in part IV.

Appendix 2

"Arab revolutions and migrations"

NGOs Joint press releases and Migreurop press releases

Lampedusa (Italy): Europe does not have to be afraid of democracy in North Africa.

(14 February 2011)

Several thousands of persons, mainly Tunisians, have arrived by boat during the last few days to Lampedusa Island.

Raising fears of invasion and the threat of terrorism, Italy, which has declared a state of humanitarian emergency, is demanding an immediate mission by the Frontex agency to patrol the coast of Tunisia and to intercept migrant boats. Italy has requested to put on the agenda of the next meeting of the European Ministers of Home affairs the issue of "crises in North African states and their consequences on immigration and the security of Europe". The Italian minister of Home affairs has furthermore announced that he will meet his Tunisian counterpart to discuss the issue of repatriation.

Migreurop network wonders about the reasons that have enabled the crossing of several migrant boats in this zone of the Mediterranean, which had been "locked" for several months following the conclusion of cooperation agreements between Italia, Libya and Tunisia for maritime borders control. Who has an interest in highlighting the threat of disorder in these states ?

Migreurop asks :

the Italian authorities to afford reception and protection to the migrants who have arrived on Lampedusa and in order to better manage the situation, to allow independent NGOs access so as to support and inform migrants about their rights ;

the Tunisian authorities to reject the role of sub-contractor in migratory controls, played for years by the former regime, in refusing to conclude with Italy readmission agreements which enable the expulsion of their citizens;

the European Union to do nothing that weakens Tunisian democracy and in general the aspirations of North African people against authoritarian regimes, for which western diplomacy has congratulated itself. Far from raising fears and encouraging a behaviour of rejection, these aspirations should be an opportunity for a new mode of relations between Europe and its neighbors from the South.

Rather than Frontex patrols and readmission agreements, it is the lifting of migratory controls which should celebrate the spirit of liberty coming from Tunisia and Egypt.

The European Union's migration policy: support for dictatorships to the south of the Mediterranean

(22 February 2011)

Since the beginning of the last decade, the European Union and its Member States have leant on the regimes south of the Mediterranean in the interests of externalizing its asylum and immigration policies. While protest movements are developing against dictatorial regimes in northern Africa and the Middle East, the statements and actions by European governments show that the "defence of democracy" and "non-interference" are mere rhetoric as they move to reaffirm the necessity of a closure of borders which undermines fundamental rights.

Thus, while the Libyan armed forces are massacring rebels throughout the country, coronel Qadafi brandishes the spectre of a migratory invasion by threatening European states of putting an end to any "cooperation in the field of the fight against irregular immigration" if the European Union continues to "encourage" the popular demonstrations. The EU, through the words of its High Representative for foreign affairs, Catherine Ashton, claims that it does not want to give in to blackmail¹ at the same time as European bodies continued to negotiate, less than a week ago, Libyan participation in their policy to secure the Mediterranean space.

After the fall of the dictatorship in Tunisia, a few thousand Tunisian migrants who arrived on the island of Lampedusa (Italy) have been portrayed as a threat against which the EU must defend itself by mobilising its allies in northern Africa. "Fortress Mediterranean" must be defended at the cost both of the aspirations of populations and the principles (liberty, democracy, human rights...) that were declared as the foundations of the construction of the EU. Now, while demonstrators in northern Africa and the Middle East are struggling against police control, the European states respond through securitarian measures. In particular, the EU promises to release money to help Tunisia to control its borders and stop its nationals from pursuing their "right to leave any country including their own" (art. 13 of the Universal Declaration of Human Rights).

In doing so, the EU and its member states hope that the international agreements signed by dictators and which undermine human rights will be taken up again by the new regimes. This war against migrants that has led thousands of people trying to escape patrols and other military devices to die in the Mediterranean and tens of thousands more locked up in the camps of Algeria, Egypt,

1. Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on events in Libya, 20/02/2011. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/119397.pdf

Libya, Tunisia... It is at the core of the EU's diplomacy to such an extent, that several of its member states have panicked at the collapse of regimes that they had been arming for several years². Today, these weapons, often provided or funded by European states, are turned against the Libyan people who are struggling for its freedoms.

While the member states as a whole are tempted to align themselves with the Italian position and "not to interfere in the transition process which is underway in the Arab world (...) particularly in Libya (...)", it is urgent to recall that the EU is facing a historic situation. Respect for its founding principles demands that Europe ceases to support the regimes whose attacks against the rights of their own populations are made even worse by the fact that these regimes are used as border guards of Europe. Only a radical reorientation of migration policy will enable an opening of a new era, marked by less injustice, inequality and fewer violations of rights in relations between the European Union and its Mediterranean neighbours.

Call on the European Union for a support intervention in the Mediterranean area

(3 March 2011)

While major political changes, heralding the end of the authoritarian regimes, are processing in the south of the Mediterranean area, governments and instances in the European union are especially concerned about how to protect themselves from "uncontrollable migration flows" potentially brought about by these upheavals. Experts and diplomatic services, which were unable to see the current political movements looming ahead, aren't afraid to assert that thousands of migrants are likely to literally flood into European territories.

In 2001, the EU adopted a "temporary protection" mechanism for country nationals who are victims of a natural catastrophe, of political turmoil in their country, or of an armed conflict, and who are in urgent need of a shelter in Europe. Yet, the European Commission hastened to tell that "there was, for now, no refugee flows arriving from Libya". Meanwhile, the Commission sent patrols on its sea borders, via Frontex, to prevent potential refugees, considered as irregular migrants, from crossing the Mediterranean Sea!

At the same time, the situation is worsening every day more inside Libya and at its borders. In Tunisia, where tens of thousands of refugees are arriving, the system is overloaded, despite all the efforts of the local authorities. Europe cannot pretend the plight of dozens or hundreds of thousands of people in need of protection in unstable countries, or of that of resident migrants from various Arab, Africa, Asian countries residing there, was none of its business.

Not so long ago, Europe was proud of deploying "a Euro-Mediterranean policy". Would this ambition now explode into pieces at the very moment when many potential partner nations of this "Euro-Mediterranean area" are in the process of becoming democracies?

2. France and Great Britain announced the suspension of deliveries to export security material, which is further evidence that the Libyan regime is supported by numerous states of the European Union, particularly for the sake of the fight against illegal immigration (AFP news release of 18 February 2011).

We call solemnly upon all European governments, EU authorities, all political parties to take emergency measures, in cooperation with partners in the Mediterranean area, so that:

Planes are available to allow for a quick repatriation of not only European nationals, but also of all who can and want to come back to their country, such as Egyptians who are currently in Tunisia;

The evacuation by air or by sea, from places of the Libyan territory which are not under the control of Gaddafi, is made possible for foreigners stuck in Libya and whose governments are unable to evacuate;

Reception schemes, established on European territory for those refugees who can't return to their country;

A temporary protection scheme is implemented as soon as possible to grant protection to those in need in the current emergency situation;

Frontex patrols cease blocking the arrival of refugees coming by sea;

Brandishing the constant spectre of "invasion", which nourishes the fears of European populations must stop. The idea that blocking migration from unstable countries should be the major priority must cease.

We refuse this criminal selfishness. We want a Europe of solidarity and welcome.

Call for a humanitarian evacuation of the 250 Eritrean, Ethiopian and Somali refugees blocked in Benghazi

(10 March 2011)

Migreurop network is in contact with a group of 250 Eritrean, Somali and Ethiopian refugees who are currently blocked in Benghazi, Libya.

They are shouting a warning cry in denouncing the dangerous situation which they now face. When they requested protection, they were only offered to be transferred to Egypt by bus at the expense of the IOM (International Organisation for Migration). They refused this offer which, according to them, does not address their protection needs. They expressed their wish to meet with representatives of UNHCR (United Nations High Commissioner for Refugees).

Among them are people in exile who spent months, sometimes years, in Libyan prisons. Others have been deported several times to Libya by Libyan or Italian authorities, while they were trying to reach Italy by sea. Some even saw their asylum request registered by UNHCR as they were detained in the camp of Misrata.

Most of them don't have any identity documents: these were withdrawn by their employers, a common practice in Libya.

Exhausted from the long detention periods they were submitted to in often sub-human conditions, terrified at the idea of staying in Libya or of being transferred in Egypt where they fear their request for international protection might not be received, they ask the European institutions to hear their voice.

On March 8, 58 Eritrean refugees from the refugee community based in Tripoli (about 2,000 people) reached Italian soil through an evacuation operation coordinated by the Italian embassy in Tripoli, the Italian Council for Refugees, and the Catholic authorities based in the Libyan capital city.

Migreurop network is joining the Italian organisations³ in their request for the other Eritrean refugees in Tripoli to be evacuated as well. It also ask for the refugees blocked in other cities, especially the 250 refugees who call for help in Benghazi, to be urgently transferred in an EU member state where their asylum request could be examined.

The situation of refugees in Libya is, to a large extent, the direct result of the agreements concluded between this country, a country notorious for mistreating foreigners and refugees, and the European Union as well as some member states, including Italy.

Without the slightest reaction from the highest bodies of the EU, Italy concluded many migration-related bilateral agreements with Libya, and carried out many deportation operations in breach of international law both in 2009 and 2010⁴.

For many months now, the European Commission itself has been negotiating with Libya towards an active cooperation of Mouammar Gaddafi's regime in the externalisation of migration controls. That the heavy price of these negotiations would be paid by the migrant and refugee community was obvious to everyone. The European Union and the member states, who acted as sorcerer's apprentices when flattering a dictatorial regime which they are now rejecting, have to meet their responsibilities by taking care of the refugees who are in danger in Libya.

Urgency of a moratorium on the expulsions to Tunisia, and for a dignified reception of Tunisian nationals in the EU!

(4 April 2011)

For the two last months, Tunisia has been highly pressured, notably by Italy, into the strengthening of its borders' control and the readmission of its nationals landed in Lampedusa. Silvio Berlusconi's visit, on this April 4th, aims at securing such commitments of the Tunisian government, and this in the spite of the many calls launched by Migrants Rights Defence Organizations as well as the exceptional situation the country has to face. Tunisia is living historical moments and has to take on considerable challenges regarding democracy building. The situation brings high hopes, but remains complex and is also getting particularly tricky by the war over Libya. Since the beginning of the Libyan crisis, Tunisia has hosted more than 200 000 persons, which is six times more than Italy. Even if most of the persons landed in Tunisia have now been repatriated, thousands remained blocked in borders' camp because they can't join their home country, Ivory Coast, Eritrea and Somalia being at war.

3. <http://habeshia.blogspot.com/2011/03/appello-alla-comunita-europea.html>

4. A complaint was filed against Italy following the deportation of Eritreans and Somalis to Libya in May 2009

It is hypocritical and immoral for the EU, to rejoice with the Tunisian revolution on the one hand, whereas it requires Tunisia to be its border guard on the other hand. Such a position remains guided by the so-called necessity to prevent Europe from a "migratory flood", which prevailed at the time of Ben Ali's dictatorship. On the contrary, it is urgent to acknowledge the democratic change that has occurred and to rebuild the EU-Tunisia relationship with fair and transparent roots. European states cannot answer to this on going democratic transition by a repressive policy against migrants, in using the threat of a collective expulsion.

Not only should such a threat be lifted, but EU member states have to welcome in dignity those who arrived in Europe in the past weeks. For more than one month, the management of the situation by the Italian government has been mainly based on arbitrariness and incoherence. The way Tunisians are treated in some detention centers in Italy, the hunt on migrants in the South of France, and the ping-pong game many fall subject to a the French-Italian border, are unacceptable. It is, lastly, intolerable that the European Union let Tunisia take care alone of people fleeing Libya with no possibility to return to their country. The European Union has the duty to be up to the situation in taking the Tunisian example of welcoming all the people escaping Libya as a model.

Exceptional circumstances require exceptional measures to be taken, and the EU has all necessary tools, both legal and political, at its disposal to face them. Member states should therefore, with no further delay, face up to their own responsibilities, and:

- Declare an immediate moratorium on the expulsion of Tunisian nationals to Tunisia ;
- Grant admission to stay under exceptional circumstances to Tunisian nationals who already arrived in France and Italy;
- Guarantee access to the European territory for all the people seeking protection and to refrain from all measures or agreements which may impede this;
- Implement the temporary protection mechanism enshrined in the directive from 20th July, 2001 to the benefit of all those who may be entitled to it;
- Welcome, within a resettlement framework, refugees currently at the Tunisian-Libyan border who wish to be resettled;
- Grant asylum or protection to all the people who cannot be repatriated due to the situation in their country of origin ; It matters, on the short run, to set up a European aid and cooperation programme with Tunisia to enable its nationals to enter member states regularly for the purpose of working or studying.

Deadly grip in the Mediterranean Sea / Hundreds of boat people killed by inaction of the international coalition.

(11 May 2011)

Since January 2011, over 1,000 migrants have drowned while attempting to reach the fortified coasts of the southern shores of the European Union.

Since January 2011, over 1,000 migrants have drowned while attempting to reach the fortified coasts of the southern shores of the European Union. These figures must be added to the 15,000 victims of the "war against migrants " which reaches these days new peaks of inhumanity. According to information, a boat carrying over 600 people is lost in the high seas off the Libyan coast⁵, amidst general indifference.

In its issue of May 8, 2011, the British newspaper *The Guardian* reports that, at the beginning of April, around 60 boat people died of starvation and thirst after having been adrift for days. Threatened by the patrols entrusted with preventing their arrival on the Italian and Maltese coasts, they were also under the watch of the vessels of the international coalition deployed in Libya.

An impartial inquiry must quickly establish the responsibilities of the combination of actors which have failed in their duty to assist the vessels and people in distress, violating the most basic rules of international maritime law.

Beyond these events, which are symptomatic of the contradictions of a coalition that is a guarantor of the "responsibility to protect " defended by the international community, this matter that questions the European immigration and border control policy as a whole.

Since the turn of the century, countries in Northern Africa have been playing a role as the EU border guards by pursuing and detaining people who wish to enact their right to emigrate (art. 13 of the Universal Declaration on Human Rights). The subcontracting of migration controls to dictatorial regimes is at the core of the EU neighbourhood policy. Faced by the historic events that are stirring the Arab world, the reaction of the European countries has been to exert pressure on the political forces arising from popular uprisings (the Tunisian provisional government, the Libyan national transition council) in order to have them to fully assume the heritage of repression and denial of freedom of the EU dictators-partners.

To stop a few thousand people who, seizing the opportunity offered by the weakening of the policing apparatuses, sought to reach Europe, Frontex agency deployed its military means (ships, aeroplanes, helicopters...) around the island of Lampedusa and opposite the Tunisian and Libyan coasts. The objective of Operation Hermes is to dissuade people from departing northwards, contravening the 1951 Geneva Convention and the principle of non-refoulement of asylum seekers.

At present, the migrants who set off from North Africa and seek protection in Europe are caught in a deadly grip. On one hand, there is the Libyan regime of colonel Gaddafi which pushes them off aboard sea relics ; on the other hand, ships under the flags of the states in the international coalition refuse to assist these boat people who are in danger.

5. Dépêche *AFP* May 11, 2011 " Les migrants africains, victimes collatérales de la guerre civile en Libye "

European states and Frontex agency cannot continue to violate with impunity international conventions on sea rescue and on the protection of refugees. An intervention based on solidarity by the EU in the Mediterranean is possible⁶ and must put an end to the European countries' inhumane attitude towards migrants who have left North Africa. As long as these hostilities will not have ceased, the coalition engaged in the name of the "responsibility to protect" will continue to kill while disregarding the international law that it supposedly embodies.

A flotilla to stop deaths in the Mediterranean

(7 July 2011)

Hundreds of thousands of people have fled Libya since the crisis began in February 2011. As of June 14, according to the International Organisation for Migration (IOM), one million refugees had left the country ; more than 500,000 heading to Tunisia, more than 300,000 to Egypt and 70,000 to Niger.

Every day, refugees arrive in Tunisia in already overpopulated camps⁷. The majority are nationals from Sub-Saharan African countries where conflict is ongoing (Somalia, Sudan, Eritrea, Ivory Coast...) and it is therefore impossible to repatriate them ; as time goes on, their living conditions are becoming more and more difficult, while the risk is growing that the country hosting them may end up itself destabilised,

These refugees are caught in a vice : Gaddafi's regime is using the migration issue as a weapon by forcing thousands of people to embark on makeshift vessels ; at the same time, many Africans are accused of being mercenaries in the pay of Tripoli and fall prey to armed men in the zones now under the control of the NTC (National Transitional Council)⁸. Meanwhile, the states participating in the coalition forces don't seem to establish a single link between their military intervention and those forced into exile. The European Union still hasn't taken any initiative to host these people⁹ or to save those endangered at sea. On the contrary, the EU is reinforcing border surveillance through the deployment of the Frontex agency in the Mediterranean while vessels of the coalition forces do not provide assistance to boat-people. The UNHCR estimates that more than 2,000 people are missing at sea since February.

Numerous organisations are now pressuring the European authorities so that refugees can enter the European Union, for support to be provided to the countries where refugees are forced to stay, and so that measures are taken to stop deaths in the Mediterranean. To no avail.

6. See Migreurop press release "Call on the European Union for a support intervention in the Mediterranean area", 03/03/2011, (<http://www.migreurop.org/article1820.html>).

7. http://afrique-europe-interact.net/index.php?article_id=462&clang=2

8. See the FIDH report "Double tragedy for Sub-Saharan Africans" <http://www.fidh.org/Double-tragedy-for-Sub-Saharan-Africans>

9. The situation in the refugee camps located in the South of Tunisia may strongly destabilise the country, see the joint report of the Gadem and the Cimade – in French – (2011) "Défis aux frontières de la Tunisie", 50 p. and Human Rights Watch's releases (<http://www.hrw.org/en/middle-eastn-africa/libya>)

The lack of hospitality within European policy has reached such an appalling level that it is our duty to act and to show the possibility of a Euro-Mediterranean area based on solidarity and respect for human rights.

Following a meeting in Cecina (Italy), a coalition of Euro-Mediterranean migrants' rights organisations, decided to charter a flotilla which will undertake maritime surveillance so that assistance is finally provided to people in danger. The participatory organisations call on European bodies and governments on both sides of the Mediterranean to establish relations within this common area on the basis of exchange and reciprocity.

This flotilla will embark political figures, journalists, artists, and representatives of the organisations involved in the project.

Such an ambitious operation will not be meaningful unless it achieves large scale mobilisation.

Any organisation, trade-union, political representative, seafarer, journalist, artist or other individual interested in this initiative may join this mailing list : "Mediterranean Intervention " .

The Mediterranean : NATO finally comes to the aid of shipwrecked migrants, but the European Union refuses to admit them

(20 July 2011)

The signatory organizations named below demand that the European Union provide a unified response to the tragedy in the Mediterranean. We insist that migrants and refugees who risk their lives crossing the sea must be admitted onto European soil.

In response to the systematic failure of European ships to rescue shipwrecked migrants in the Mediterranean Sea, people across Europe and Africa cried out for justice. Finally, on July 11th a Spanish ship used by NATO forces, called the Almirante Juan de Borbón, came to the rescue of more than one hundred women, men, and children of sub-Saharan African origin¹⁰, whose makeshift boat was sinking in international waters. These shipwrecked migrants had set out from Libyan ports¹¹, but they never made it to European soil¹².

The prospect of criminal charges brought against NATO for its failure to rescue shipwrecked migrants has begun to bear fruit, but the European Union remains unmoved. In fact, the Italian and Maltese governments have refused entry to the European military ship carrying rescued migrants. Rome refused entry under the pretext of overcrowding on the Island of Lampedusa, while the

10. 114 persone, 88 uomini, 20 donne – di cui 5 incinta – e 6 bambini. Fonte, Ministero spagnolo della difesa [<http://www.defensa.gob.es/gabinete/...>]

11. <http://www.rfi.fr/afrique/20110716-navire-espagnol-secouru-immigres-clandestins-peine-trouver-port-debarquement-medite>

12. <http://www.timesofmalta.com/articles/view/20110716/local/Still-no-reply-from-Nato-on-rescued-migrants.375796>

Maltese government claimed that the shipwreck took place too far from its territory and was thus under NATO's responsibility¹³.

The day of the rescue, three survivors who required immediate medical attention were transferred to a Tunisian military vessel and received treatment in a Tunisian hospital. Five others were evacuated by helicopter to Valetta (Malta). For six days the *Almirante Juan de Borbón* was forced to remain in international waters because not one state in the European Union or in the Atlantic Alliance would admit the refugees. Finally, on the morning of July 16th, a Tunisian military vessel brought the remaining survivors back to Tunisia, despite the fact that the *Almirante Juan de Borbón* never entered Tunisian waters.

This event highlights, yet again, the cowardice and inhumanity of the European Union's reaction to shipwrecks in the Strait of Sicily. Several further observations on this point are required :

- Even if NATO, in this precise case, complied with its legal obligation to rescue those shipwrecked in international waters, the present events are disincentive to assist migrants at sea since most European nations continue to systematically fail to comply with their own obligations in terms of search and rescue;
- Italy refused to accept about one hundred shipwreck survivors because it worried about overcrowding in the refugee camp on Lampedusa Island. As a result, these individuals were sent to Tunisia, where, since fighting broke out in Libya, it is estimated that over 650,000 refugees have entered the country. Tens of thousands of these refugees still survive in deplorably overcrowded camps;
- All of the shipwreck survivors were sent to Tunisia despite the fact that some were Tunisian nationals who might have been asylum seekers. In that case, the principle of non-refoulement might not have been respected.

When they do not let boat people drown in the Mediterranean (according to the United Nations High Commission for Refugees, 2,000 migrants have drowned in the Mediterranean between February and June 2011 alone), European nations nevertheless refuse all responsibility for the people they rescue. Countries with military ships in the Mediterranean wash their hands of all responsibility for these migrants and refugees by sending them to Tunisia ; a country already on the verge of serious instability. Tunisia can do little to aid the thousands who flee violence in Libya, let alone accept all of the shipwreck survivors that NATO sends to its shores. European countries are particularly culpable when it comes to Tunisian asylum seekers whose rights are completely ignored during this process. As of yet, the European Union has provided no unified means to facilitate the rescue and legal admittance into Europe of shipwrecked migrants and refugees.

We cannot accept this state of affairs any longer. Once more, the participating organizations call for a unified European system for the admittance of migrants and refugees who risk their lives on the high seas. We call on the African and European public, especially those who find themselves at sea, to speak out against this slaughter in the Mediterranean.

13. <http://www.rfi.fr/afrique/20110716-navire-espagnol-secours-immigres-clandestins-peine-trouver-port-debarquement-medite>

A NATO ship leaves dozens of migrants dying at sea in the Mediterranean

Italy is indignant that NATO didn't force the migrants back to Libya

(5 August 2011)

Thursday night, an Italian coast guard patrol rescued almost four hundred people aboard a boat that had left Libya six days before and was lost for more than 36 hours off the coast of Lampedusa. Arriving in Lampedusa, migrants declared tragic deaths had occurred from hunger and fatigue during the voyage and dozens of bodies were thrown over board¹⁴.

The migrants first attempted to board a Cypriot tug boat, then an Italian helicopter made an unsuccessful rescue effort. According to the numerous reports, the NATO ship was only 27 miles from the ship in distress, while Italian coast guard patrols travelled 90 miles to rescue the migrants.

Italy informed they want to open an investigation to clarify why the migrants have been rescued by NATO, which also means, according to recent proposals of the Italian government, that migrants would have been returned to their port of departure. On August 2nd, Italian Senate approved a proposition that engages the Italian government to require Atlantic Alliance boats to block migrant ships in the Strait of Sicily and return them to African coasts. Yesterday, the president of the Northern League committee of the Italian Senate, Federico Bricolo confirmed this position declaring to the press that it was urgent that NATO begin to, "block migrants leaving Libya et return them to the African coast in order to stem the number of deaths " along European coasts.

Italy ignores principles established in the Law of Sea. Any person in danger at sea must be rescued but must also be disembarked in a safe and secure location. The disembarkation of asylum seekers and refugees in territories where their lives or safety may be threatened is clearly prohibited. The protection needs and the principle of non-refoulement should have been taken into account both by NATO and Italian authorities.

On the contrary, failure to assist migrants in danger seems to be the rule in the strait of Sicily, where more than 2000 deaths occurred since the beginning of 2011.

This new example demonstrates once more, if needed, that the obligation to provide assistance at sea will be respected only so long as migrants are sent back to the country from which they are fleeing. On July 11th of this year, a Spanish NATO vessel rescued over one hundred migrants, only to return them to the coast of Tunisia after not a single European nation would accept them.

14. http://www.medicisenzafrontiere.it/msfinforma/comunicati_stampa.asp?id=2705&ref=testataHomepage2

Bibliography

Articles and reference books

Buzulier Marie, " État des lieux relatifs au problème des passagers clandestins ", in *Les ports havres de paix ? Les espaces de la concurrence maritime*, L'Observatoire des Droits des Marins (Ed.), 2006, p.31-49.

Clochard Olivier, " L'interminable errance des passagers clandestins maritimes ", in *L'asile au sud*, Cambrezy & al. (Ed.), Paris, La Dispute, 2008, p. 173-186.

Goy Raymond, " Le régime international du passager clandestin ", *Annuaire du droit de la mer*, 2001, p. 169-183.

Goy Raymond, " Les passagers clandestins en droit international ", in *Les ports havres de paix ? Les espaces de la concurrence maritime*, L'Observatoire des Droits des Marins (Ed.), 2006, p. 81-87.

Julinet Stéphane, " Comment faire cesser la pratique illégale de la consignation des passagers clandestins à bord des navires de commerce dans les ports français ? " in *Les ports havres de paix ? Les espaces de la concurrence maritime*, L'Observatoire des Droits des Marins (Ed.) , 2006, p. 73-80.

Le Bourhis Kristenn, *Les transporteurs et le contrôle des flux migratoires*, L'Harmattan, Paris, 2001, 175 p.

Raulin (de) Arnaud, " L'affaire du *MC Ruby* et les tendances nouvelles " in *Les ports havres de paix ? Les espaces de la concurrence maritime*, L'Observatoire des Droits des Marins (Ed.) 2006, p. 89-108.

Walters William, " Bordering the Sea: Shipping Industries and the Policing of Stowaways ", *Borderland (e-journal)*, Vol. 7 / n° 3, 2008, 25 p.

Reports and Notes

Anafé, *Zones d'attente des ports, des aéroports et des gares ferroviaires – Visites des associations habilitées, 1998-1999*, 1998, 36 p.

Anafé, *Zones d'attente des ports, des aéroports et des gares ferroviaires – Visites des associations habilitées, 1998-1999*, 1999, 26 p.

Anafé, *Campagne de visites des zones d'attente en France – novembre 2005 à mars 2006*, 2006, 68 p.

Attali Judith, *Le transport maritime de passagers clandestins*, université de droit, d'économie et des sciences d'Aix-Marseille III (mémoire de master de droit maritime et des transports), 2008.

Civipol¹, *Étude de faisabilité relative au contrôle des frontières maritimes de l'Union européenne*, Bruxelles, 2003, 92 p.

Delaye Marie-Camille, *Les garanties P&I*, université de droit, d'économie et des sciences d'Aix-Marseille III (mémoire de master de droit maritime et des transports), 2007.

Unhcr, *Note sur les passagers clandestins en quête d'asile*, 1988

Unhcr, *Note d'information sur la protection des demandeurs d'asile et des réfugiés sauvés en mer*, 2002.

Unhcr, *Note d'information en vue de la table ronde d'experts sur le sauvetage et l'interception en mer en Méditerranée*, 2005.

Websites

Association française des capitaines de navires (Afcan) : www.afcan.org

Association nationale d'assistance aux frontières pour les étrangers (Anafé) : www.anafe.org

L'observatoire des droits des marins : www.obs-droits-marins.fr

International Maritime Organization (Oim) : www.imo.org

1. Civipol is a consulting and services firm of the French Home Affairs office.

The following people participated in writing the report:

(p.09) Olivier Clochard, Claire Rodier

(p.28) Mathilde Blézat

(p.45) Olivier Clochard

(p.57) Julia Burtin

(p.73) Olivier Clochard, Maud Steuperaert

(p.91) Marine De Haas, Max Sabadell

(p.101) Marine De Haas, Morgane Truchi, Marie Martin,
Julia Burtin, Olivier Clochard, Filippo Furi, Eva Ottavy

The following people contributed to producing the report:

Jean-Pierre Alaux, Emmanuel Blanchard, Pauline Boutron, Julia Burtin, Sara Casella Colombeau,
Marie Charles, Olivier Clochard, Marine De Haas, Brigitte Espuche, Filippo Furri, Caroline Intrand, Marie
Martin, Alain Morice, Eva Ottavy, Sara Prestianni,
Roselyne Rochereau, Claire Rodier, Max Sabadell, Maud Steuperaert, Morgane Truchi

Translation French to English and revision by:

Nurdane Bourcier, Olivier Clochard, Mikaël, Franssens, Yasha Maccanico, Nicole Mayer, Eva Ottavy, Anna
Sibley, Alexandra Strang.

Final editing: Olivier Clochard

Cartography: Olivier Clochard, Orhan Deniz

Coordination: Olivier Clochard

Layout: Alterpage - Caroline Maillary - Simon Mazurelle

Cover photograph: Port of Genoa, © Mattia Santini

This report was published thanks to support from:



For this third edition of its annual report, the Migreurop network continues its critical evaluation of the externalisation of migration policies implemented by the governments of the European Union and of its effects on populations. While this process entails extremely varied elements, ranging from the restrictive granting of visas to the Frontex agency's operations while it includes readmission agreements, this report, drafted on the basis of original research, is devoted to studying two aspects that are not well known about the subcontracting of migration controls at the gates of Europe, and also well beyond them.

In the first part, extending the research conducted previously in Turkey, we focus specifically on the eastern border with Iran, a region that is marked by plentiful arrivals of migrants coming from neighbouring countries, but also from the rest of Asia and Africa. In search of protection or civil peace, the majority of these men, women and children are exposed to inhumane treatment by smugglers and the Turkish authorities alike, who arrest them and place them in jails. The people who are not returned to Iran are assigned residence in Van – a city that is close to the border – and have to face a temporary asylum system that, in effect, is endless, very humiliating and a source of many forms of oppression, particularly for women. With a view to Turkey's future adhesion to the EU, European authorities demand that this country's government improve these expatriates' living conditions by building reception and detention centres which, in spite of everything, resemble places of exclusion and denial of freedom.

The second part, which is divided into four chapters, shows the different facets of the treatment reserved for "stowaways" on board merchant navy boats and in maritime ports, both when they depart and upon arrival, on the basis of observations and interviews in around twenty port sites around Europe. From prevention to arrest and detention followed by return, the regime that is applied to these passengers remains marked by discretion, opacity and a lack of respect for the rights of human beings. The implementation of new security plans that are increasingly restrictive and sophisticated translates into a transfer of the responsibility of states to private companies, for controls on land or at sea and for taking charge of passengers who are caught. Through different means that are not always lawful, under the financial threat of all-powerful insurers, the challenge is to stop these migrants' departure at its source, or otherwise to create a duty for the different actors (ship owners, seamen, port authorities) to return them either to their home country or towards the ports where they have come from. In this way, the report identifies yet another dimension of the detention of foreigners in places that are difficult to access, on ships and in ports, and these last spaces, withheld from the public's view, help to complete the mapping of camps for foreigners in Europe and in Mediterranean countries undertaken by Migreurop.

October 2011

10 euros

Migreurop

21ter rue Voltaire 75011 Paris

Tél : +33 1 53 27 87 81

Fax : +33 1 43 67 16 42 – contact@migreurop.org

www.migreurop.org