

## 7 European border surveillance systems running a self-fulfilling circle – Pia Sombetzki and Jonas Quicker

### 7.1 Introduction: The exclusionary politics of asylum

*"The background for storing information in the SIS is wide and discretionary, many items of information are evaluative, and 'discreet surveillance' quite clearly opens for political surveillance and surveillance of a wide circle of individuals around the main person."* (Mathiesen, 1999, p.6).

As early as 1999 Thomas Mathiesen drew this conclusion based on an analysis of the first generation Schengen Information System (SIS). We intend to take up this line of reasoning, and highlight the exclusionary mechanisms built into the EU's common asylum policy, enforced through the development of a "vast 'panoptical machine'", potentially being "the most repressive political instrument of modernity" (ibid., p.31).

Since 2013 a network of border surveillance systems is in place, grounded on the advanced and interlinked functions of the Second Generation of the internal border surveillance system SIS (SIS II) and the introduction of the external European Border Surveillance System (EUROSUR). Both systems have been designed to monitor the influx of individuals, such as economic migrants and asylum seekers. This has become a highly topical issue, as the dividing line between asylum seekers and "illegal" immigrants has become blurred. Both groups are perceived as threats by a growing segment of the public and by right wing political parties throughout Europe (Aradau, 2004; Huysmans & Squire, 2009). In this line Squire (2009) stresses the emergence of the notion of "asylum-seeker-cum-illegal-immigrant" (p.12). Accordingly, it is suggested that surveillance by EU systems leads to the exclusion of undocumented asylum seekers that

become conflated with illegal immigrants and thereby are depicted as a threat to the Union's security. Against this background, this paper examines the question as to what degree the workings of EU surveillance systems foster this conflation of asylum with "illegal" immigration, in particular through a strengthened interoperability of the EU border surveillance systems, leading to an increasing exclusion of asylum seekers.

In line with the discourse on how transparency and surveillance influence power relations between actors in society, this section of the book explores how the emergence of more sophisticated border surveillance technology enforces an asymmetrical, unidirectional transparency gaze, which disproportionately empowers the observing state bodies in relation to the observed individuals. More precisely, this study investigates the conflation of the notions of asylum seekers and illegal immigrants, and argues that this was enforced through the new operating surveillance infrastructure effective since 2013, which interlinks functions of various EU surveillance databases. Thereby, our chapter goes beyond the theoretical explanations found in the literature for the development of the "asylum-seeker-cum-illegal-immigrant", and shows how the operation of EU surveillance systems leads to an enforcement of the depiction of both illegal immigrants and asylum seekers as threats. We firstly investigate the operation and establishment of the SIS II, which has integrated the European Arrest Warrant (EAW), the Visa Information System (VIS) as well as EURODAC. Secondly, we examine the operation of EUROSUR, which coordinates and extends European surveillance beyond its borders. It is claimed that both SIS II and Eurosur enforce a conflation of asylum with "illegal" immigration and thus foster an exclusion of asylum seekers.

The chapter pursues the argument as follows: Firstly, it sheds light on the development from a *threat-discourse* of asylum towards the emergence of a conflation of asylum with "illegal" immigration in the EU's asylum and

counter-terrorism policies. Secondly, the research elaborates upon the consequences of this conflation for the EU's internal as well as external border surveillance. Lakoff's framing methodology provides an adequate lens through which one can understand how cross-border migration has become securitized and asylum-seekers criminalized in these systems. The second section begins therefore by applying Lakoff's (2004) framing approach to EU policy documents on the establishment and operation of the SIS II and indicates three frames: an (1) illegal frame, a (2) security frame and a (3) conflationary frame which evokes asylum to be directly linked to illegality and in turn, to illegal immigration. Further, the analysis reveals the operation of these frames in the SIS II and unravels the extent to which the new features of the SIS II add to the conflation of asylum seekers with "illegal" immigrants. In the third part we proceed by applying Lakoff's framing method to the EU's external border surveillance system with a focus on EUROSUR. In this context, the framing analysis portrays the existence of Lakoff's three indicated frames in the policy documents on the establishment of EUROSUR and focuses then in greater detail on how these frames operate. Finally, after having established that the framing of policy documents led to a conflation of asylum with "illegal" immigration, the chapter provides evidence as to how the workings of these systems effectively strengthen the framing mechanisms and result into an exclusion of asylum seekers. In other words, we argue that the systems run a "vicious", self-fulfilling prophecy cycle as the frames are included in the daily routine, and thereby reinforce exclusion.

## ***7.2 Literature Review***

This study is embedded in the academic literature on EU asylum and migration policies and EU internal and external surveillance systems.

Considerable research exists on both the surveillance practices of SIS/II and EUROSUR and their impact on privacy (Mathiesen, 1999; Bigo, 2000a, b; Huysmans, 2006; Jeandesboz, 2008; Neal, 2009; Hayes & Vermeulen, 2012; Langheinrich, Finn, Coroama, & Wright, 2014; Marin, 2014). Furthermore, a number of scholars covered how a securitisation of EU surveillance has an exclusionary effect on refugees and economic migrants (Guild, 2006; Squire, 2009; Aas, 2011; Bigo, 2014). While these studies are clearly helpful to determine potential effects of increased EU surveillance, it remains so far underexamined how the specific framing of asylum seekers and "illegal" immigrants in EU documents invoked connotations of illegality and criminality. This is not to be underestimated as the EU wide coupling of refugees with illegality through documents related to these matters can have restraining practical policy outcomes that not only lead to a restriction of the inalienable EU right of asylum but also to indirect death sentences. Also it is highly important to investigate how such connotations were taken as a justification for broad-scale EU surveillance systems. Moreover, there is a lack of research on how EU surveillance systems interoperate and thus reinforce the narrative of criminality and subsequently, exclusion. This study attempts to fill this gap.

### *7.3 From a threat-discourse to the conflation of asylum with "illegal" immigration*

A combination of different factors caused a gradual construction of asylum as a problem or even a threat that searches for resolution through an intensification of internal controls and border surveillance systems on the Union level. What nurtures and justifies the discourse are three key assumptions: Firstly, an increase in numbers of asylum seekers is directly linked to the idea that a greater influx of people automatically causes severe

problems for receiving states. Secondly, loss of privacy resulting from highly integrated surveillance systems and databases is justified by the idea of abuse of the state's social welfare system by so-called economic migrants. Thirdly, underlying the principles of intensified surveillance at the Union's borders, is the assumption that the problems just mentioned, will actually be resolved by it (Squire, 2009, p.9).

Lewis and Neal (2005) argue that the asylum discourse more and more frequently conflates with issues of immigration (p.436). As asylum policies show, "illegal immigration" is taken as its main target. However, exclusionary politics are widened not only by attempting to control "illegal immigration" but by all kinds of possibly threatening mobile subjects. Especially in political and popular debates, asylum and "illegal" immigration are often put jointly in the focus of attention (Squire, 2009, p.12).

The following section discusses Lakoff's (2004) methodology in greater detail. It underlines the findings of existent literature on the framing of asylum as a threat and on its conflation with illegality, particularly "illegal" immigration.

#### ***7.4 Lakoff and the framing of immigration***

Lakoff (2004) distinguishes between three different levels of framing: (1) communicative, (2) conceptual and (3) moral framing. He argues that communication itself is embedded in a frame as communication is based upon an exchange of a message, medium or image between a messenger and an audience, all happening in a specific context. Through communicative framing, conceptual and moral frames are evoked and the frames form their own systems.

Lakoff (2006) explains this in an article on the framing of immigration in the US. President, G.W. Bush, presented his proposal for an immigration reform, which introduced the issue-defining notion of an *Immigration Problem Frame*. What is conceptually created through this term is, according to Lakoff, a set of *problems*, which offers a window of possibility for immediate *solutions* (p.1). With regard to moral framing, it is especially interesting to consider adjectives such as "illegal" or specific terms like "illegal immigrants" and "illegal aliens", defining and thereby framing the immigrants as criminals. In this context he explains that following a line of reasoning based on moral thinking implies that these "illegals" have to be punished or at least to be taken under control so that a system of law and order is restored (p.2).

Lakoff breaks down the framing of immigration to two main frames upon which the language in US policy documents on immigration is based. Namely, the (1) illegal frame and the (2) security frame. These two frames are also identified in the documents that are examined in the following section. Further, in the analysed documents, wording is in a way streamlined, which adds a third (3) *conflationary frame*, underlining a linkage between asylum and "illegal" immigration.

Even though the frames Lakoff identifies are related to the example of the US, the existent literature shows that the *threat* and *illegal* depiction of "illegal" immigrants are also found in a European context. In particular the third frame, is easily applicable to the EU context. The analysis focuses on the EU legislation for the establishment of the surveillance systems such as the SIS II and EUROSUR, as the decisions of policy makers are influenced by the way asylum seekers and immigrants are framed in the documents. If these documents enforce a conflation and subsequently a threat depiction of these groups on a discursive level, it is highly likely that this threat depiction

materializes in policy decisions of EU member states and thus reinforces the exclusion of asylum seekers on a practical level.

### *7.5 The exclusionary focus of EU internal border surveillance systems*

The internal border control of the EU has been subject to many crucial changes in recent years. Whereas the first generation of the Schengen Information System only included basic data, a 2007 Council decision incorporated new features such as photographs, fingerprints and type of offense, which resulted in the SIS II also integrating information provided by other systems such as the European Warrant Arrest (EAW) system or the Visa Information System (VIS). The first generation SIS was launched in 1995 based on the Convention on the Implementation of the Schengen Agreement of 1990 (Brouwer, 2008, p.1). Politically justified by the enlargement plans of the EU, the second generation Schengen Information System was introduced as a system also "technical feasible for a larger group of user states" (ibid., p.2).

The following sections aim at linking the advancements of the SIS II with the consequences for the exclusion of asylum seekers through a coupling with "illegal" immigrants. Firstly, the analysis indicates the frames that are evoked in the policy documents which determined the functions and the operation of the system. Secondly, it is investigated in how far new functions affected the consequences for possibly "illegally" entering asylum seekers. Thirdly, the interoperability of the SIS II with other systems such as the EAW as well as the VIS is put in relation.

### 7.5.1 Indicating conflation of asylum with threat and illegality in SIS II legislation

This section indicates the three types of frames, the (1) illegal frame, the (2) security frame and the (3) conflationary frame in the two main documents, determining the establishment, operation and use of the Second Generation Schengen Information System (II): The proposal for the Council Decision (COM, 2005, 230 Final, 31.05.2005), and the proposal for the Regulation of the European Parliament and of the Council (COM, 2005, 236 Final, 31.05.2005). Further, the Communication of the Commission to the Council and European Parliament on the *Development of the Schengen Information System II and possible synergies with a future Visa Information System (VIS)* is investigated to provide a first hand at the consequential influence of the interoperability between the SIS II and other systems.

Both documents on the establishment, operation and use of the SIS II ground the proposal on a common objective, namely "maintain[ing] a high level of security within an area without internal border controls" ((COM) 2005, 230/236 Final, p.2). The development of the SIS II thereby uses a language that evidently evokes a (2) security frame. In the section on *specific objectives*, which follows thereafter, we encounter a list describing the enlargement of the functions of the SIS II. Among these we find the integration of the European Arrest Warrant and the objective of "better data quality and improved identification performance" (ibid., p.3). In the context of these objectives, the possibility of an improved identification of individuals through the processing of biometrics and more detailed personal data is displayed. The purpose for these advancements is linked to the abuse of identities (ibid., p.3). Thus, an (1) illegal frame is evoked, linking the justification of a further advanced SIS II to the abuse of identities of EU citizens.

Under Chapter V *alerts on persons to ensure protection or prevent threats* are regulated. Article 23 displays the main objectives of this Chapter V, stating that

"1. Member States shall issue in the SIS II alerts on missing persons or persons who, for their own protection or in order to prevent threats, need to be placed under temporary police protection at the request of the competent administrative or judicial authority." (proposal for Council Decision, p.22).

The consequence of this objective is that asylum seekers who attempt to enter the Schengen Area illegally and thereby become subject to police detention upon detection, are portrayed as in need for protection or even as a subject projecting threat. The linking of the terms that is identified in this objective, evokes a third frame which (3) conflates asylum seeking with illegality.

Subsequently, Chapter VII concerns *alerts on persons and objects for discreet surveillance or specific checks*. Article 31 constitutes that

"at the request of the competent judicial or administrative authority, Member States shall, for the purposes of prosecuting criminal offences and for the prevention of threats to public security, issue in the SIS II alerts on persons or vehicles, boats, aircrafts and containers for the purpose of discreet surveillance or of specific checks." (ibid., p.25).

Asylum seekers that try to reach the Schengen area, for example by boat, according to this Article possibly become subject not only to specific checks but also to discreet surveillance. Effectively, this means a gathering of background information based on the conflation of (1) illegal and (2) security frames, which can be indicated by the wording of this article. That

this discreet surveillance is applied without the knowledge of the persons involved needs no further comment.

Finally, the conflation of protection with illegality, e.g. of asylum seekers who are in need of assistance, becomes evident in the documents describing further advancements of the SIS II, such as integration with the Visa Information System. Because of the practical potential for "thousands of end-users, which belong to police authorities, border control and immigration services" ((COM) 2003, 771 Final, p.27), the conflation of asylum seekers that enter the Schengen Area without required documentation with "illegal" immigrants, becomes decisive for the future refugee status of these persons.

In the following sections we first investigate the transition from SIS to SIS II and the design of the latter. Subsequently, we intend to show that the advancements of the SIS II are enforcing the frames just indicated and thereby generally strengthen the exclusionary forces behind the EU's asylum policies.

#### 7.5.2 How do EU internal border surveillance systems embrace exclusionary frames of asylum?

Hayes (2005) describes the SIS generally as an EU-wide version of the UK's Police National Computer (UK PNC) system. Whereas the UK PNC includes data such as criminal records and fingerprints, the first generation of the SIS contained only basic information and worked on a *hit/no hit*-entry level. The development from SIS/SIS+1 to SIS II not only enabled a process towards the general architecture of the Schengen Information System, but also achieved interoperability between SIS II and other EU border control

databases, such as the Visa Information System, Eurodac, and finally became an integral part of the work done by Europol and Eurojust.

The following sections aim at discussing to what extent the EU internal border surveillance systems reflect security, illegal, and particularly, conflationary frames as indicated in the conducted frame analysis. In this regard, especially the development from SIS/SIS+1 to SIS II is of great interest as the interoperability of the above mentioned systems and agents arguably contributed to the enforcement of the EU's exclusionary asylum politics, which conflate asylum with illegal immigration.

### **Development from basic to advanced data categories**

In the first generation of the SIS, the registration of personal data was still relatively limited. Under Article 94 (3) of the Schengen Convention, the collection of data has been restricted to six basic fields: (a) name/surname, (b) distinguishing features, (c) initial of second forename, (d) date and place of birth, (e) sex and (f) nationality, whether the person is (g) armed or (h) violent, (i) the reason for the report, (j) the action to be taken.

Article 20 (3) of the Council Decision (2007) on the establishment, operation and use of the second generation Schengen Information System (SIS II) extends the list with six new categories (in numbers only four as initial of second forename was abolished and the armed and violent status has been summarised in one category).

Particularly, the new categories on biometric photographs and fingerprints immensely add to the capacities of the SIS II to identify persons at the European borders but also at the outside, e.g. at embassies. Said

categories generally provide a fertile ground for interoperability with other databases such as Eurodac, registering fingerprints of asylum applicants and with the Visa Information System which saves biometric photographs for the purpose of processing Visa applications. The information from the European Arrest Warrant (EAW) system which could formerly be exchanged upon request from the SIRENE bureaux, are automatically included in the second generation of the SIS. The categories held under the EAW significantly add to the categories in place, indicated in the Council Decision on the establishment and operation of the SIS II. The list of categories of the EAW comprise information such as the (a) maiden name (where applicable); (b) residence and/or known address; (c) languages that the person understands; information relating to the warrant, judicial proceedings and type of offence (ten categories); (d) other information relevant to the case; (e) and information on related search and seizure orders. Hayes (2005) argues that the SIS II following this design, largely resembles the UK Police National Computer, in which historical data allows the police to "keep tabs" on suspects (p.2).

The integration of information from the EAW add to the interoperating character of the SIS II. Wide grounds for categorization and possibly *criminal tabs* that encompass great amounts of randomly registered people, are the result of these developments (Hayes, *ibid.*). Consequently, the conflation of asylum seekers with illegal activity and also illegal immigration becomes highly likely as everyone to be registered in either of the integrated systems becomes easily criminalized.

### 7.5.3 SIS II – new feature: interlinking alerts

Garside (2006) discusses the interlinking of alerts and identifies this new feature of the SIS II as a function leading to a merging of purposes of

informational assistance, executive action and investigative support. She argues that the consequence of an alert entry has to be foreseeable and personal. By the interlinking of alerts, the ability to foresee the consequence of the alert entry is however jeopardized. Further, she claims that it is debatable to what extent the consequences of an alert entry can remain personal. For example she sees a danger for the private or family life of people that might become subject to discreet surveillance due to attention given to them by interlinked alerts (p.5).

The implications of the interlinked alerts can lead to the observation of "family members", "gang members" and "suspected gang members". "Illegal immigrants" to be refused entry (Art.32) could for example be linked to their suspected "traffickers" (Art.36). Further, persons subject to discreet surveillance (Art.36) can be linked to wanted persons (Art.26) and to those to be refused entry (Art.32) (in Council Decision 2007/533/JHA). The results of this new feature are significant as the SIS II can increasingly be used as a tool of investigation. The registration of crime families or illegal immigration networks makes the association of innocent people with criminals highly likely and thereby fosters incidents in which asylum seekers are subject to a conflation with illegal immigrants (Hayes, 2005, p.5).

#### 7.5.4 SIS II – widened accessibility

Whereas the SIS in its first generation was limited to the workings of the police and immigration checks, the SIS II access is granted to a greater number of agents. Among these are (i) vehicle registration authorities, (ii) *Europol*, the European police Office, (iii) *Eurojust*, the EU prosecution's agency, (iv) national and judicial prosecuting authorities and (v) internal security and external intelligence agencies. Consequently, the SIS II is since 2013 also a host of law enforcement and displays new security functions by

the possible interactions between the data stored in the SIS II and specific search enquiries of the listed agents (Hayes, 2005, p.6).

Fassmann et al. (2009) argue that the widened accessibility of information for additional agents displays an attempt to put the EU's *logic of exclusion* into operation. Through the inclusion of more information but also more agents, the identification of "illegal" immigrants is greatly facilitated. In combination with biometric identifiers the system of exclusion becomes as watertight as possible, they claim (p. 267).

#### 7.5.5 Interoperability in the SIS II

In 2004, only one year after the decision to develop the Visa Information System, it was decided that this system would share a "common technical platform" with SIS II (Council Decision, 2004). Even though the EP voted against this proposal, the Council ignored the vote and adopted the Decision in June 2004 (Hayes, 2005, p.7).

The VIS stores all data which is processed in any visa application, no matter whether it is finally successful or rejected. Accordingly, its functions overlap with the ones of the SIS II, containing biometric photos. Further, it contains fingerprints, similar to the EURODAC database, which regulates asylum applications. This overlap of these functions is also displayed as a motivation of the Commission Working Party on SIS II. In February 2003 they noted that the co-development of VIS and SIS II

"provide[s] for one secure location, one Business Continuity System (BCS) and one common platform. Moreover, it could yield a two digit million € saving. The biometrics platform (which is expensive) could be paid for under VIS. Some other synergies might be found at end-user level, planning,

maintenance & support, efficient use of systems and networks interoperability." (Council doc. 6387/03, 25 February 2003, [6]).

The Council nevertheless notes that the VIS and the SIS II remain separated, with different set of data and access. However, as the early co-development indicates, interoperability between these surveillance systems is evident. Hayes (2005), echoing Matthiesen's claim, observes a "broad law enforcement access to VIS (including access for the security and intelligence services), providing, in conjunction with SIS II, an EU-wide fingerprint database of wanted persons, suspects and all visa entrants", heavily affecting also the increasingly frequent conflation of asylum applicants with "illegal" immigrants (p.8).

This observation is further enforced by the integration of the EURODAC database in the SIS II. The Commission communicated in 2005 that the "absence of access by internal security authorities to VIS, SIS II and Eurodac represented a serious gap in the identification of suspected perpetrators of a serious crime" (Boswell, 2007, p.603). Generally was the interoperability function between the VIS, SIS II and Eurodac crucially strengthened in the context of the London bombings of 2005 and the thereafter following the Hague Programme on Operational and Legislative Functions on Justice and Home Affairs (Hobbing, 2005, p.20)

### ***7.6 The exclusionary focus of EU external border surveillance systems***

EU surveillance measures do not stop at an internal level. The criminalization of asylum seekers and the consequent depiction as a security threat also necessitated an extension of surveillance to the EU's external borders and beyond. Under the *smart border* initiative the EU established the European Border Surveillance system (EUROSUR), which forms of surveillance exceeds

other systems as it constantly observes also a pre-frontier area beyond the EU's borders. Governed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, commonly known as Frontex, this system uses various, powerful, ambiguous measures of surveillance for the "purpose of [...] contributing to ensuring the protection and saving the lives of migrants" (Recital. 1, Regulation 1052/2013). This part of the research shows that EUROSUR not only falls short of fulfilling this purpose but also fosters the conflation of asylum seekers with "illegal" immigrants. This results in an exclusion of asylum seekers, which, in combination with the aforementioned internal border surveillance systems, feeds into the self-fulfilling prophecy cycle of exclusionary politics of asylum.

#### 7.6.1 Indicating conflation of asylum with threat and illegality in EUROSUR legislation

The language being used in these official documents couples immigrants predominantly with something negative, burdensome and potentially threatening. While there are legitimate reasons to establish a sophisticated register of migration, it is evident that the paranoia towards "illegal" immigrants is exploited for the justification of extensive surveillance tools. The Commission utters concerns that only 505,000 migrants have been apprehended in 2010 and that this is only a small proportion of the estimate total population of *overstayers*, e.g. persons who reside in a country even though their legal permission to do so has expired. However, even if there are more overstayers, the number of "illegal" immigrants ranges between 1-5% of the total population of the EU. It should raise concern that this number is used to justify Union wide surveillance measures that register

fingerprints and face scans of 700 million migrants every year (Regulation 2013/0059).

Council Regulation 2013/1052 on the establishment of EUROSUR frames migrants and asylum seekers to a stronger degree than the preceding ones. The majority of migrants that enter the Union over the Mediterranean are future asylum seekers from Syria, Afghanistan and Eritrea (EUROSTAT, 2015). EUROSUR is presented as working for reducing the loss of life at sea (Regulation 2013/1052). This victimizes the asylum seekers and thus relaxes the perception of asylum seekers as risk factor. However, the regulation puts also a strong emphasis on EUROSUR's aim to "reduce the number of irregular immigrants entering the EU undetected, and to increase internal security by preventing cross-border crimes, such as trafficking human beings and the smuggling of drugs." (Regulation 2013/1052, p. 1). It is evident that this communicative framing of "illegal" immigrants, which are most likely future asylum seekers, evokes negatively connotated conceptions and (3) conflates their asylum seeking status with the threat through illegal entering into the EU. Asylum seekers are thus connected to (1) illegality and stigmatized as individuals who try to circumvent the law by entering the Union undetected. In line with this conception that asylum seekers are connected to these crimes and thus (2) pose a security risk factor, the Regulation shall "apply to the surveillance of land and sea external borders [...] including measures for monitoring, detection, identification, tracking, prevention and interception of illegal border crossings" (Art. 2, Regulation 2013/1052). Correspondingly, Art. 9(3) stipulates the establishment of so-called national situational pictures, displaying and assessing the situation at the respective country border. These pictures shall consist of certain sub-layers: a) a sub-layer on unauthorized border crossings; b) a sub-layer on cross-border crime; c) a sub-layer on crisis situations; d) a sub-layer on other events, which contains information on suspect vehicles ... and persons.

These national situational pictures are meant to attribute an impact level, ranging from *low* to *high* to different regions (Art. 9(4), Regulation 2013/1052). The wording of these articles has more in common with defence strategies than with border monitoring. Every migrant that attempts to cross borders, which includes asylum seekers, is clearly depicted here as an intruding, threatening and disruptive element which merits increased surveillance to prevent an unauthorized breach of the EU's borders. More precisely, in conjunction with the indication of low and high impact levels, asylum seekers are connoted to a threatening attacking force, which necessitates the fortification of the borders at certain regions. Unmistakenly, Lakoff's frames of illegality (1), security (2) and the conflation of asylum seekers with "illegal" immigrants (3) are evident here.

#### 7.6.2 The European Border Surveillance System

EUROSUR relies on the use of various intelligence based surveillance tools to create a situational awareness, more precisely the "ability to monitor, detect, identify, track and understand cross-border activities ... to find reasoned grounds for reaction measures ... and to be better able to reduce loss of lives of migrants" (Art. 3b, Regulation 1052/2013). This is achieved through the collection of information at and beyond the EU's borders and the consequential drawing of situational pictures, presenting data, information and intelligence (European Commission, 2013). Operational information is shared between Member States and third-countries to improve coordination and establish these situational pictures on a European as well as national level. The drawing of such pictures shall improve detection of small-sized vessels, which are used for human trafficking, irregular migration or the transport of asylum seekers. The system keeps the EU's external borders under surveillance 24 hours, 7 days a week through the use of sensors,

infrared cameras and satellites (Hayes & Vermeulen, 2012). EUROSUR however, was only designed to improve detection. The follow-up measure in response to this situation remains the responsibility of the Member States.

Furthermore, EUROSUR uses Unmanned Aerial Vehicles (UAVs – commonly known as drones) to observe and locate vessels and the respective crews and passengers. Against this background, the system further expands the powers of Frontex as it extends border surveillance towards a pre-frontier area, which comprises non-territorial waters and territories of third countries. So far it is stipulated that no private data shall circulate within EUROSUR and between Member States and third countries (Council Regulation 2013/1052). Yet information is shared with various agencies, such as EUROPOL, the European Maritime Safety Agency and the EU Satellite Centre. More importantly, EU Member States maintain their own, bilateral relationships to third countries. It is thus questionable if privacy can be entirely guaranteed. So far, there is clearly a lack of safeguarding measures that effectively prevent the dissemination of collected data to third parties (Hayes & Vermeulen, 2012; Heller & Jones, 2014; Marin, 2014).

### 7.6.3 EUROSUR's de facto exclusion of asylum seekers

EUROSUR creates an exclusionary effect both on a discursive level and a practical level. On a discursive level, the statuses of "illegal" immigrants and asylum seekers have converged to the degree that both are perceived as threat and thus legitimize increased surveillance. The tracking and surveillance of migrants through UAVs, infrared cameras and sensors implies that there is a necessity to keep them under surveillance other than for their own good. High financial investment in surveillance tools to track every movement of migrant vessels seems to legitimize the xenophobic claims of

right wing parties across EU Member State parliaments which link migrants and asylum seekers to high-risk individuals. In the contemporary political and societal discourse, migration is coupled with crime (Huysmans & Squire, 2009) and thus creates a strong dynamic of social exclusion. The EU strengthens this connotation and exclusion through EUROSUR. Two formerly separated policy areas, one dealing with crime and the other with migration, have become merged. As a result, asylum and migration policies strengthen the dichotomy between "us" and "them" and support the narrative of the border, which demarcates a collective national identity against the outsider. The evident problem here is that such a concept of the border appears outdated in times of globalization.

The exclusion of asylum seekers through EUROSUR occurs on a practical level as well. Through the increased surveillance by drones and sensors at the EU's external borders, asylum seekers embark on more dangerous routes through the Mediterranean. A further form of exclusion by EUROSUR is the *de facto* restriction of the right to asylum. An earlier detection of migrants through the external border surveillance system is supposed to lead to earlier intervention by the authorities. However, as previous cases have shown, earlier intervention is likely to lead to push-back operations. In consequence, refugees are sent back before they can even apply for asylum and are thus denied access to the EU. UAVs and the authorities cannot distinguish between economic migrants and future asylum seekers when a vessel is spotted, and there is evidence that a migrant vessel is rather sent back with all passengers together than that a vessel is taken to European shores to sort out irregular migrants from asylum seekers (Hayes & Vermeulen, 2012; Shields, 2015; Guild, Carrera, 2009; Gabrielli, 2014). In this respect, the restriction of the right to asylum constitutes a form of structural violence as well, as the collective expulsion of migrants

leads to an exposition to the risks associated with human rights violations, discrimination, war and poverty in third-countries.

Through the conflation of asylum seekers with "illegal" immigrants EUROSUR engages in openly exclusionary policies against the illegalized other. This phenomenon shows parallels to what Schinkel (2010) describes as zoepolitics. Schinkel draws on the works of Foucault and Agamben and distinguishes between two forms of social sorting in populations, zoepolitics and biopolitics (which is less relevant for us). Zoepolitics is externally directed towards people outside the state (Schinkel, 2010, p. 156), who are denied the status of a political, social beings and reduced to bare life by separating these "non-citizens" from national citizens and the society. Thus, zoepolitics not only separates society from "outside-society" but also distinguishes citizens from humans. EUROSUR executes a similar form of distinction and can thus be described as a form of zoepolitics as well. Its surveillance targets unwanted individuals who are stigmatized as criminal others and should thus be excluded from European societies. In this respect EUROSUR can be understood as "ban-opticon" (Bigo, 2006, p. 46), which, unlike Foucault's neutral panopticon, adds a negative, exclusionary bias to its surveillance. And just like Foucault's panopticon, the observed asylum-seekers neither know when they are subject to the authoritative gaze of drones and satellites nor can they object to this surveillance. This form of exclusionary surveillance is not only harmful because it heavily breaches the privacy of asylum seekers. It is also detrimental because it directly, effectively causes harm to refugees (ibid.).

The findings above clearly demonstrate that a conflation of asylum seekers with "illegal" immigrants has led to increased practices of surveillance and securitization which in turn have resulted in their exclusion. It is argued in the next section that the interoperability of the EU's

surveillance network further enforces a coupling of asylum seekers and illegality, which in turn also strengthens its exclusionary forces.

### ***7.7 Interoperability among EU border surveillance systems and its consequences***

The most striking effect of the interoperability of EUROSUR with other surveillance systems such as SIS/II or VIS is the abuse of EUROSUR for law enforcement. SIS/II and VIS have created vast databases in which individuals are categorized and to a certain degree stigmatized. The clustering of refugee identities with illegal immigration networks or crime families can easily lead to increased surveillance, also by EUROSUR. Fassmann et al. (2009) argue that the inclusion of more actors and consequent spread of collected information between databases fosters the EU's *logic of exclusion*. This can provide the basis for what Kenk, Križaj, Štruc & Dobrišek (2013) call "function creep": The misuse of a technology for other purposes than it was designed for. As established above, EUROSUR shares its collected data with national and European authorities, such as EUROPOL or the EU Satellite Centre. Kenk et al. (2013) provide the example of acquired data by EUROSUR in which UAVs can be correlated with information from mobile devices. Subsequently, EUROSUR has the potential to establish a digital record of individuals, which would be certainly of interest for law enforcing agencies. As also internal border surveillance systems indicate that individuals or a group of individuals are suspicious, according to the given categories, it is not guaranteed that law enforcement agencies such as EUROPOL will not misuse the data the different surveillance systems provide.

It can thus be argued that an interoperability of EUROSUR and other EU surveillance systems is not a far cry away from maintaining a securitized, complete surveillance network, which is able to digitally and visually observe

every individual who does not match the right categories or is clustered with a crime network. Another point of concern is that UAVs can be hacked (Marin, 2014). If EUROPOL or other national authorities really intend to rely on surveillance techniques of SIS II and EUROSUR, a possibility for misuse is evident. Through the interoperability of the surveillance systems certain groups of "unwanted individuals", that is individuals that are rightly or wrongly assumed to be related to criminal activities, are effectively excluded. As established above, the conflation of "illegal" migrants and asylum seekers can thus result to a stronger form of exclusion of asylum seekers through the interoperability of these systems.

### *7.8 Conclusion*

The research set out to determine to what degree Squire's (2009) claim holds true and to further investigate how EU surveillance systems, on an internal as well as external level, inherit and operate a coupling of asylum seekers with illegality and threat. It not only revealed that these systems foster such a conflation but also foster the exclusionary effects of asylum politics through its operation.

Lakoff's framing methodology helped to indicate such a coupling on the policy level in both cases. Hereby we show that in the case of the SIS II, its surveillance mechanisms and specific checks are justified by a coupling of asylum seekers with security threats and illegality, particularly "illegal" immigrants. In the analyzed documents surveillance is legitimized as soon as asylum seekers enter the Union over irregular ways. Through this wording asylum seekers were linked with illegality and security risks. It resulted in broad categories triggering an alert in the SIS II system and hence provided the Member States with a certain liberty to register people as illegal aliens and to keep them under increased surveillance. The conflation of asylum

seekers with illegality has further led to the inclusion of new categories for registration that considerably extended the surveillance capabilities of SIS II through the collection of biometric photographs and fingerprints. To safeguard the Union from the perceived threat of ostensibly illegal migrants/asylum seekers, SIS II surveillance capabilities were enhanced not only by support of other surveillance systems, such as Eurodac, EAW and VIS, but also by the introduction of interlinking alerts. The analysis showed that these interlinking alerts are able to create illegal immigration networks that link innocent asylum seekers easily with criminals. Subsequently, the new features of SIS II strengthened the conflation of asylum seekers with illegal immigrants and thus widened the grounds of surveillance.

The analysis raised a further point of concern by showing that the widened accessibility of information for a greater number of agents creates a logic of exclusion. This leads to an extensive system of exclusion that applies as soon as an individual does not meet the right criteria. This system is strengthened by the interoperability of other surveillance systems such as the VIS. Thus, the research showed that framing, as it could be indicated in the analyzed policy documents, led to a conflation of asylum seekers with "illegal" immigrants and created a self-reinforcing effect as it is operated in surveillance systems such as the SIS II which introduced more actors and agents. This strengthened surveillance system excludes asylum seekers on an internal EU level, as asylum seekers become coupled with threat and illegality.

Further, we showed that this conflation is also evident in the set-up of the EU's external surveillance system. The application of Lakoff's framing methodology disclosed how policy documents indirectly stigmatized asylum seekers as criminals and security risk factor that necessitate constant sophisticated surveillance at and beyond the EU's borders. While these documents do not depict asylum seekers directly as threatening, they place

a strong emphasis on the illegality of their actions, more precisely, the cross-border movement through irregular ways. For asylum seekers from different regions around Europe, the movement over i.e. the Mediterranean is often the only way to reach the EU. Precisely this movement is highly illegalized and understood as a security threat. Subsequently, asylum seekers are understood as a security threat. As a result of the conflation of asylum with illegality, EUROSUR uses extensive surveillance techniques to prevent irregular cross-border movements. While it is presented as working to protect the life of migrants, it leads to the very opposite. Its effect is an exclusion of asylum seekers, on a discursive level as well as practical level. On a discursive level asylum seekers are stigmatized as high-risk individuals. On a practical level, asylum seekers are pushed towards using more dangerous ways to access the Union, which increases the likelihood of death. This form of structural violence is further strengthened through the interoperability with other surveillance systems and law enforcing agencies. A lack of democratic oversight and safeguarding measures against its abuse raises legitimate concerns that the interoperability of EUROSUR with other surveillance networks may in fact result in Bigo's (2006) "banopticon".

The surveillance network that evolves out of the interoperability of the internal and external EU surveillance systems arguably reinforces the discursive conflation of asylum seekers with "illegal" immigrants. The coupling which was first only embodied in policy is operated through the network of surveillance systems also in practice. To this respect, the operation of the conflation of asylum with threat and illegality in these surveillance systems creates a self-fulfilling prophecy cycle determining the future of EU asylum policy.

The research underlies certain limitations in that it could only focus on a small selection of policy documents. Also it was only able to discuss SIS II and EUROSUR in detail, while the other surveillance systems would have

merited extensive scrutiny as well. Nevertheless, it showed that framing in policy documents has self-reinforcing effects with potentially very damaging consequences. It is thus necessary to disentangle asylum policy and asylum seekers from security concerns and illegality. This is imperative if the EU places any importance on its values and if it seriously attempts to provide shelter for refugees. So far however, asylum seekers still remain victims of a "vast 'panoptical machine'" with the potential of being "the most repressive political instrument of modernity" (Mathiesen. 1999, p.31).

