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Vision and Transterritory:
The Borders of Europe

Abstract

This essay is about the role of visual surveillance technologies in the policing of the external borders of the European Union. Based on an analysis of documents published by EU institutions and independent organizations I argue that these technological innovations fundamentally alter the nature of national borders. I discuss how new technologies of vision are deployed to transcend the physical limits of territories. In the last twenty years EU member states and institutions have increasingly relied on various forms of remote tracking, including the use of drones for the purposes of monitoring frontier zones. In combination with other facets of the EU border management regime (such as transnational databases and biometrics) these technologies coalesce into a system of governance that has enabled intervention into neighboring territories and territorial waters of other states to track and target migrants for interception in the "prefrontier." For jurisdictional reasons, this practice effectively precludes the enforcement of legal human rights obligations, which European states might otherwise have with regard to these persons. This article argues that this technologically mediated expansion of vision has become a key feature of post-Cold War governance of borders in Europe. The concept of transterritory is proposed to capture its effects.

Since the start of this decade, news of migrant boat disasters and the resulting

hundreds of deaths has reached European publics with predictable regularity.

With land borders in the South East of Europe reinforced to the point of near

insurmountability and regular channels of entry out of reach for most would-be migrants, the dangerous maritime routes, primarily across the Central Mediterranean, remain the most plausible form of passage for thousands of refugees and migrants. Over one million people arrived by sea in 2015 and just under 360,000 in the following year. In 2016, 4,899 persons were reported dead or missing in the Mediterranean and the figure for 2015 was 3,771 according to the United Nations High Commissioner for Refugees (UNHCR).[1] Within the larger context of high-level debates on the response to the ongoing migratory pressure at the Southern maritime borders, representatives of national governments and the European Commission have vowed to stop the disasters. They have promised to do so by aggressively pursuing people-smugglers who profit from the demand for transit to Europe, and by developing technological "solutions," whose purpose is to control European Union (EU) borders, but also ostensibly to save lives. As the European Commissioner for Home Affairs, Cecilia Malmström, said in October of 2013,

> The European Commission has developed a new tool, EUROSUR … to improve the situation. EUROSUR will help Member States to better track, identify and rescue small vessels at sea thanks to better coordination between national authorities, appropriate channels of communication and improved surveillance technology. (European Commission 2013b)

Eurosur, that is the European Surveillance System for the monitoring of the external maritime and land borders of the European Union, and the technologies it relies on, cannot, however, be reduced to simple enhancements of existing

maritime border policing capacities. Nor are they straightforwardly aiming for a more effective Search and Rescue (SAR).[2] Instead, I argue that these technological innovations fundamentally alter the nature of national borders. Expanding the area of surveillance in practice means that border agents of the EU and its member states are able to see places, things and people located in spaces that previously remained unseen. "Visibility," as Alison Mountz has argued, "proves crucial to understanding how states respond to migrants … during highly publicized, visible, visual, and seemingly exceptional crises along their borders" (Mountz 2010, 23). Sovereign vision, in this case the gaze of agents empowered by the state to watch the border for signs of trespass, now encompasses the high seas, territorial waters and coastal areas of third countries. By reaching into those spaces it effectively decouples existing jurisdictional boundaries from their geographical demarcations.

This development is part of a larger globalization-related phenomenon of the disaggregation and externalization of borders (Balibar 2002; Sassen 2007) in which "the multiple (legal and cultural, social and economic) components of the concept and institution of the border tend to tear apart from the magnetic line corresponding to the geopolitical line of separation between nation-states" (Mezzadra and Nilson 2013, 3). There was, to be sure, much attention in recent years to the planned and actual construction of new walls, fences and the deployment of troops along terrestrial borders, from Hungary and Greece to the United States, which may suggest the opposite shift: the reinforcement rather than disaggregation of the "geopolitical lines of separation." Wendy Brown has argued that such new walls constitute a desperate response of weakened states to the "ungovernability of a range of forces unleashed by globalization" (Brown

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2010). There is merit to her psychoanalytic argument that such spectacular bordering is a response to human need for protection and containment expressed as political anxiety and fear of the other. However, as Brown herself concludes, walls "are often nothing more than spectacularly expensive political gestures, sops to certain constituencies, signs of distresses that cannot be contained" (ibid., 91). In the end, evidence from the European Union points to the fact that states do both: they reinforce, and they disaggregate, they stretch, and they fortify, all along relying on advanced technological tools delivered by the expanding security-industrial complex (Hayes 2009; Andersson 2014).

Within that wider context the specifics of new border technologies demand a closer focus. The official aims of the deployment of advanced networked tools such as data centers, radars, satellites, and manned and unmanned aircraft are more efficient control of borders and, as Malmström and others have insisted, also the saving of lives (European Commission 2013c). However, the jurisdictional consequences of the technology-enabled shifts of sovereign vision remain officially unacknowledged. Building on my own research on European responses to boat disasters on the Mediterranean (Follis 2015), and on the work of others who show how EU border policies exacerbate the migratory crisis (Albahari 2015; Mountz and Loyd 2014; Human Rights Watch 2009; Weber and Pickering 2011; Spijkerboer 2007), I ask, *how* and *for whom* are jurisdictional boundaries manipulated? What are the legal and political benefits of these shifts and who is hoping to reap them? To answer these questions, I draw on STS and surveillance studies literature to develop a theoretical account of Eurosur as a system of "situated surveillance" (Gad and Lauritsen 2009). I set it in the context of the post-1989 history of bordering in

Europe as I present evidence from a selection of published statements and reports on its function and projected development. The empirical data I consider originates from (a) independent watchdogs and NGOs (Statewatch, the Heinrich Böll Foundation); (b) the European Parliament and the Parliamentary Assembly of the Council of Europe; and (c) EU institutions themselves (European Commission, Frontex).[3]

Vision beyond borders in the EU

Bordering in Europe has a long history. The institutions of the European Union, however, only began to concern themselves with details of border control and the related matters of asylum and immigration policy in the post-Cold War period, as the organization was getting ready to absorb new member states in the postsocialist East of Europe (Zaiotti 2011). The modes of border policing hammered out between member states and EU supranational bodies were initially a reaction to the divisions of the Cold War. Bordering practices evolved in response to the challenges presented by the internal openness of the Schengen zone (Schengen Borders Code 2006 with subsequent amendments), the threat of terrorism and organized crime, and finally the increasing migratory pressure at the Southern maritime borders.[4] We can trace the relationship between the expanding range of sovereign vision and the effective manipulation of jurisdictional boundaries through an analysis of the evolution of border surveillance, from the 1999 European Council Summit in Tampere, Finland, where key aspects of EU justice and home affairs were decided (Bunyan 1999), to the establishment of the Eurosur. The latter was approved by the European Parliament in October of 2013, in the immediate aftermath of the Lampedusa

migrant boat disaster that claimed over 360 victims and accounted for the atmosphere of moral urgency that helped frame Eurosur as a life-saving tool (European Parliament 2013a).

The acceleration of the development of EU border controls in the late 1990s began with the securitization of borders in Eastern Europe. In the late 1990s EU ministers did not anticipate movements of refugees from North Africa and the Middle East across the Mediterranean and Aegean Seas on the scale witnessed from 2011 onwards. Southern European states formed task groups on maritime borders (Western Sea Borders Centre in Madrid and Eastern Sea Borders Centre in Piraeus), but apart from the sea route between Albania and Italy, which saw the large-scale exodus of Albanians in the early 1990s (PACE 1992), boat arrivals were seen as a trickle rather than a mass phenomenon (IOM 2014: 86).

Thus, investment was concentrated on the new Eastern external borders of the EU, where throughout the late 1990s and early 2000s Cold War-era analog tools were gradually replaced with digital technology for regulating traffic as well as capturing and processing both visual and personal biometric data.[5] Watchtowers were dismantled, electric signaling fences and first generation night vision decommissioned. Instead, border units gained access to radar systems, towers with remotely controlled thermal vision cameras, ground sensors to trigger the cameras and portable motion detectors––all operating in concert with networked computers connected to EU-wide databases, such as the Schengen Information System (information on persons and items of interest) and Eurodac (biometric information). Helicopters and thermal vision vehicles purchased with EU funds from Europe's largest manufacturers of weapons and

security devices came equipped with day and night vision cameras with digital zooming, capable of penetrating the darkness far into the territory of the neighboring state.

These devices are not just paraphernalia or elements of the border spectacle introduced for what Peter Andreas described, in the US-Mexico border context, as the "symbolic and perceptual effects of escalation" in border policing (Andreas 2001, 4). Rather, they are designed effectively to project power beyond the physical boundaries of sovereign territory. As Mezzadra and Nielson put it, they render territory *elastic* (2013, 8), by stretching, in everyday policing practice if not in law, the limits of a single jurisdiction. For example, the deployment of thermal vision vehicles with long-range cameras on the external EU border between Poland and Ukraine enables Polish guards who are there to stop unauthorized crossings into the Polish/EU territory to take preemptive action. They are able to track the prospective border-crossers while they are still in Ukrainian territory, sometimes several hundred meters away from the Polish border. Such remote detection becomes an actionable finding. The Polish guards pass the information on to Ukrainian guards, who are then obliged, based on mutual agreements, to apprehend the prospective trespassers. Having never set foot on Polish soil the would-be migrants never become the "problem" of the Polish border guards. They would not have to be identified or registered in Poland. They are, instead, "a problem of the Ukrainians" (Follis 2012). This means that it is up to Ukrainian authorities and their policies and legal codes to apprehend, detain, remove or release into a legal limbo those migrants who were prevented from crossing the EU border. For as long as they remain in Ukrainian territory, they would not have a chance to make an asylum claim in an EU state

and, should they be detained, they would not be legally entitled to certain human rights guarantees, as stipulated in EU directives. They would instead find themselves within Ukrainian jurisdiction and would be subject to Ukrainian laws, not Polish or EU laws and standards concerning the treatment of economic migrants and asylum seekers (Rechitsky 2010). In this manner, Ukraine fulfills the role of a migration buffer zone for the rest of Europe.

The strategic significance of new Eastern borders was reflected in locating the headquarters of Frontex in the Polish capital Warsaw.[6] Its establishment, in 2004, was the culmination of several years of debates concerning the ways to enforce EU's external borders as a compensatory measure for the freedom of movement within the Schengen zone. It was an extension of the logic of controlling Europe's external borders by looking, and increasingly acting, beyond them. In 2005 the establishment, under EU Common Foreign and Security Policy, of the European Union Border Assistance Mission (EUBAM) to Ukraine and Moldova to promote "border control, customs and trade norms" in neighboring post-Soviet states further cemented that approach (Jeandesboz 2015).[7]

In the years that followed it was becoming clear that the fears of mass border breaches from the east were not in fact borne out. Instead, in 2006 Spain saw a sudden increase in the numbers of Africans attempting to reach its territory via the Canary Islands, from approximately 5,000 people in 2005 to over 39,000 in 2006 (PACE 2008, Carrera 2007). It was in response to that perceived crisis that in 2007 Frontex for the first time deployed a RABIT, a "rapid border intervention team." RABITs, created by secondary EU legislation, consist of international border control experts and practitioners selected and trained by

Frontex to provide "rapid technical and operation assistance" *in situ* to the EU

states that request it.[8] Under the guise of such "technicalities" and "operational

cooperation," Frontex provided specialized equipment, including patrol boats,

cars and helicopters that were furnished with long-range thermal cameras and

other devices. Joint Frontex and national patrols searched for and intercepted

migrants at sea beyond territorial waters and returned them to ports of

departure, effectively preventing them from lodging asylum claims on European

soil (PACE 2008, par. 48).

      This stage in the development of border surveillance, where the gaze of

the border agent is directed increasingly beyond the external border, is a key

step in the emergence of what I call transterritory, that is, the territory that has

been rendered elastic through the application of modern technologies of vision.

It is elastic in the sense that it expands as well as retracts. It remains strictly

bounded and difficult to penetrate for those coming in from the outside. But

those controlling sovereign borders can stretch them through their capacity to

see, and therefore to act, beyond the physical limits of their domain, for example,

by pursuing traffickers or transferring responsibility for intercepted migrants to

the authorities of another state. This manipulation of space and boundaries

ensures that states can evade, in ways I discuss below, the obligations imposed

by the current system of international and EU law, which remains grounded in

the static, non-elastic Westphalian notion of sovereign territoriality. According to

this notion, which is enshrined in the UN Charter and other instruments of

international law, states have exclusive power and sovereign jurisdiction over

their territory (Vaughn-Williams 2008). Not only are they entitled to non-

intervention by others into their internal affairs; they also control the terms and

conditions of border crossings into their territory (Kukathas 2011). In the European Union, most states have transferred some of their border control competencies to the supranational level through the process known as "pooling sovereignty" (Andreas and Snyder 2000).[9] This enabled the creation of agencies, such as Frontex, which act based on a mandate from EU members. In spite of these arrangements EU states reserve the right to formal sovereignty (Keohane 2002, 748) and as a principle it remains fundamental to the exercise of international relations and the practice of international law (including refugee law and human rights). However, as Agnew and others have shown, territoriality, imagined as "blocks of rigidly bordered space," has long been transcended by global flows and "*effective* sovereignty is not necessarily predicated on and defined by the strict and fixed territorial boundaries of individual states" (Agnew 2005, 442, emphasis added, see also Jones and Johnson 2016).

The Eurosur system emerges from the foundations established in Tampere and it embraces elastic boundaries. It has been in development since the early days of Frontex (Rijpma and Vermeulen 2015). It is designed to be fully transterritorial, that is, to detach more effectively than ever before the state's ability to watch its borders from the actual physical boundary. The practical implementation of this approach, however, appears much messier than the design might suggest.

Eurosur as a system of "situated surveillance"

Eurosur, established by EU Regulation No. 1052/2013, is an evolving system of systems that combines aerial vision and other surveillance data feeds

to provide the EU border agency Frontex and national authorities in EU member states with a "situational awareness"–– not just of the external EU border itself, but also of the "pre-frontier," which is the sea and land adjacent to the border but beyond the jurisdiction of any EU member state (European Commission 2011, Hayes and Vermeulen 2012). This breadth of vision enables new opportunities in terms of border control. But do the consequences really include, as it has been claimed, increased safety for those who board the boats to reach European coasts? What do these changes imply for the boats' passengers and for their advocates in Europe?

Long before 9/11, and more heavily since, security regimes at national borders have relied on a range of surveillance tools designed to extend the border guards' range of vision, both telescopically (to see people and objects at a distance from the border) and microscopically (to detect document forgeries or examine biometrics). Vision is the human ability to interpret our surroundings by processing information contained in the spectrum of visible light. But the contemporary international border constitutes what Charles Goodwin calls a "complex perceptual field" (1994, 611) and as such it demands more than the bare human capacity to see, with or without prosthetic devices. Like other such fields (those of science, medicine, policing and any other modern professional practice), it calls for *professional* vision that is organized in a specific manner, as a "temporally unfolding process encompassing both human interaction and situated tool use" (Goodwin 1994, 607). I approach these tools as technologies of vision in Donna Haraway's sense, that is, as skilled, or professional, practices of visualization. "The "eyes" made available in modern technological sciences," writes Haraway, "shatter any idea of passive vision; … all eyes including our own

organic ones are active perceptual systems, building on translations and specific

ways of seeing, that is ways of life. There is no unmediated photograph or

passive camera obscura in scientific accounts of bodies and machines" (Haraway

1988, 583). The same is true of maps and other representations of space, as we

know from the insights of critical cartographers (Pickles 2004). Those

representations of the land and the sea that are needed for effective control of

borders issue from vantage points at the intersection of the security industry and

European and national governance of migration.

The 21st century framing of migration as a security problem goes hand in

hand with the entrenchment of transterritorial vision. It is a distinctive way of

seeing, a form of "situated surveillance" (Gad and Lauritsen 2009), which, like

any type of vision, is "produced in specific arrangements of humans and

technologies" (ibid., 51). The specificity of the arrangements entails "situated,

cooperative work" of designated people and machines (ibid., 53). Those people

and machines are situated geographically (in member states that have external

EU borders), institutionally (in purpose-designed coordination centers) and

historically, in the sense that their work is framed by a particular early 21st

century juncture in the history of the European nation state. At this juncture,

political discourse affirms the need to reassert sovereignty over rights of

territorial access (Andreas 2003). This is manifest in the calls to "take control of

borders," which as of 2016-17 continue to gain traction and win votes across the

continent and are embraced not just by the political right but also by much of the

left (Feldman 2012), by Eurosceptics and Euroenthusiasts alike.

At the same time, however, the actual practice of border control is

fragmented, complicated by the nexus of national and international laws and

marked by friction between agencies at the national and the EU level (Frontex).

In spite of the investment in new assets and approaches introduced in response

to the exceptionally high number of migrants arriving in 2015 (European

Commission 2015, Frontex 2016b), these factors complicate translating the

discourse of "taking control" into action. In the 2015 Agenda on Migration the

European Commission introduced the rapid deployment of EU agents in

"hotspots" of migratory pressure and it renewed commitment to returning

migrants who do not meet the criteria for asylum (Schindel 2016). In 2016, an

agreement between the EU and Turkey drastically reduced the number of

persons entering Europe via Greece (Collett 2016). At the same time, the rising

fortunes of anti-immigrant and anti-EU parties in the West and East of Europe

suggest that these changes hardly translate into a public perception that the

problems at Europe's outer borders are actually being addressed (Lochocki

2016; Reynié 2016).

Apart from the complexity stemming from the multiplicity of agents and

tasks, the drive to shore up border control has thus far been checked by a set of

(arguably waning) institutionalized commitments to human and refugee rights,

which were designed in the post-1945 period to protect persons at risk of abuse

by their own states (Benhabib 2004; Dembour and Kelly 2011). This body of

international law prohibits refoulement,[10] collective expulsion and arbitrary

detention. It obliges nation states and EU agencies to consider applications for

asylum from persons who declare such need upon arrival, and to follow certain

minimum procedures in the treatment of applicants. Border policing must take

account of these obligations. As ethnographers have documented, "by the time

migrants arrive on sovereign territory, states have already begun to define on

their own terms who they are" (Mountz 2010, 26). As I have argued elsewhere, a key element of border agents' professional vision is the skill of preliminary screening and sorting of arriving migrants into relevant categories, i.e. potential subjects of refugee law, trafficking victims, unaccompanied minors and "economic migrants" who are not likely to qualify for international protection and thus could be deportable (Follis 2012). The degree to which border agencies respect international human rights obligations in their everyday work is under scrutiny from a range of international organizations, human rights watchdogs and activist groups (see e.g. PACE 2012). Because of the financial and logistical burden of these legal commitments, and because of the scrutiny, the designers of border and migration policy have been incessantly inventive when it comes to restricting the scope of their responsibility under human rights and refugee law.

Transterritorial sovereign vision delivers new possibilities to do so. It offers national and European border and coast guards the technologically mediated ability to see beyond the physical and jurisdictional limits of a given state territory and to generate and share images of remote spaces. It enables agents to locate objects, persons and groups within those spaces, long before they reach the sovereign borders of EU member states. This new way of seeing, I argue, is engineered to open up unprecedented possibilities of preemptive action and in this way to allow the most effective and seamless evasion yet of human rights obligations towards migrants.

Military tools for border control: the case of drones

Such range of vision as that offered by Eurosur historically has been pursued primarily for military purposes. The technological capacity to achieve it

has reached unprecedented levels with Unmanned Aerial Vehicles (UAVs), whose deployment by the US military has been the subject of much recent debate (see e.g. Benjamin 2012; Riza 2013; Gregory 2011; Suchman 2015). In the military, the purpose of transterritorial vision is always operational; not just to see or record, but to track and target that which is seen. As Grégoire Chamayou notes in *Drone Theory*, within military surveillance technology, "vision is a *sighting*: it serves not to represent objects but act upon them, to target them. The function of the eye is that of a weapon" (Chamayou 2015, 114).

In the United States and in Europe, drones have also been embraced for the purposes of border policing.[11] The framework of Eurosur stipulates planned deployment of drones, or Remotely Piloted Aircraft Systems (RPAS), as they are known in the EU jargon, over the Mediterranean Sea. In 2016, this technology was in Research and Development stage, piloted in selected areas through European Commission-funded projects.[12] Also underway is a PR effort to disassociate this technology from the idea of the "killing machines" deployed in counter-terrorism contexts. Hence the avoidance of the term "drone," and even of the seemingly more neutral "UAV" in official publications. Instead, as Hayes and colleagues have shown, the European Commission seeks to "condition" European publics "into accepting the roll-out of drones" by emphasizing their utility in law enforcement and humanitarianism (Hayes, Jones and Töpfer 2014, 24; Hasian 2016). Indeed, the Italian Navy operation *Mare Nostrum,* which ran from October 2013 to October 2014 in the Central Mediterranean and brought approximately 140 thousand people to safety, deployed Predator drones purchased from the United States ostensibly for humanitarian purposes (Marin 2016, 128). However, even in this case of an operation defined as primarily

humanitarian, as Marin shows, the drones were used mostly for surveillance purposes and their "deployment is connected to the strengthening of the intelligence dimension of border controls, which is part of a policy of externalization of border controls to [third countries]" (ibid., 129). The Frontex-led operation Triton that succeeded the *Mare Nostrum* mission has a different mandate (border control rather than search and rescue) and lesser range and assets, which involve manned surveillance aircraft but not drones (Frontex 2014).

RPAS constitute only one element in the arrangement of humans and machines that produce transterritorial vision, but they enable agencies to act in new ways on the perceived threat of irregular migration. In the context of Eurosur, documents make no mention of weaponizing drones, but they affirm that remotely piloted aircraft could be used, at a fraction of the cost of manned aircraft and with greater flexibility, for the monitoring of the external land borders and the pre-frontier area to "detect, classify and track all targets of interest independently of their size, as fast as possible and for as long as possible (persistent surveillance)" (European Commission JRC 2015, 15). "Targets of interest" are, for example, overloaded fishing vessels, where the detection focuses on an anomaly, such as the large number of people onboard as opposed to a normal-load vessel (ibid.). A "target" is also a mobile phone signal emanating from a vessel, vehicle or a person, particularly within an area where the normal signal density is low (ibid., 60). In addition to being deployed on the "blue" (maritime) and "green" (land) border they could "help with the monitoring of selected neighboring third-country ports and coasts" (Heyes and Vermeulen 2012, 37). Accordingly,

The monitoring of a port could be done in order to determine if/when a

specific vessel has departed. Coasts "with a distance of more than 40

nautical miles from the coasts of EU Member States" … could be

monitored by drones in order to recognize "preparatory activities" that

might indicate illegal immigration "such as the erection of tents, huts, the

gathering of vehicles or boats placed on the beach." (ibid., 38)

In itself, the adoption of military technologies for law enforcement is nothing

new, and neither are close ties between armed forces, national border guards

and weapons manufacturers (Jones and Johnson 2016). What is new is the

deployment of military technologies at and beyond borders that are designed to

treat migrants not just as persons on the move encountering state borders but as

physical and virtual (mobile phone signal) targets moving through space. The

drone is sent to track the target beyond the jurisdictional boundaries of EU

member states. The agents can therefore use the data it obtains to preempt the

target's entry into the sovereign space. [13]

Border guards use tools such as aerial surveillance and night vision to

achieve a comprehensive view of traffic at the boundaries of state territory. But

that traffic "is not simply there, ready-made and waiting for neutral observation"

(Gad and Lauritsen 2009, 51). Instead, the guards' perceptions of what is

happening at the border emerge through the interactive process of sharing and

interpreting live events, visual representations, risk analysis, country reports

and intelligence findings, weather patterns and other material and linguistic

phenomena. Based on such interpretations, border practitioners today aspire to

achieve "situational awareness" (European Commission 2013a) at the border, that is, a real-time, or as close to real-time as possible, picture of what is happening in the frontier and pre-frontier zone.

But situational awareness is paradoxical. The official documents that discuss it represent it as a form of near-panoptic vision, in the sense that it includes everything relevant to border control in one view: illegal border crossings, criminal activity, ordinary commercial traffic and irregular movements (Frontex 2015). On closer inspection, however, it may rather resemble Bruno Latour's oligopticon, that is, a site that "does exactly the opposite" of a panopticon, producing "extremely narrow views of the (connected) whole" (Latour 2005, 181). An oligopticon enables very detailed observation, and the tracing of a single mobile phone signal can exemplify that. But, as Latour points out, such observation is susceptible to blinding, distortion and misinterpretation. For example, there can be many reasons that a phone signal is lost or interrupted. But this could potentially compromise a border control operation to which that signal was vital, even with the hypothetical drone with the signal-tracking device being part of a larger interconnected system (European Commission JRC 2015).

Given the novelty of the platforms that are to deliver this new way of seeing, the complexity of the jurisdictional context in which they are to be deployed, and the secrecy surrounding many aspects of this deployment, research on planned and actual drone operations at borders is only beginning to emerge (Marin 2016; Hayes and Vermeulen 2012; Hayes, Jones and Töpfer 2014). Yet in spite of our limited knowledge of how border drones might work in the longer term and how precisely they might be integrated into existing,

manned aircraft and satellite-based systems of aerial surveillance, search and rescue (SAR) and anti-smuggling operations, it is still possible to highlight the questions that arise when the state's capacity to see is deliberately and routinely extended beyond the boundaries of state territory.[14] Given what we know about transterritorial vision's capacities and limitations in tracking and targeting, what might it mean for migrants themselves and, more broadly, for the political and legal efforts on behalf of migrants' rights?

To appreciate how the introduction of remotely piloted aircraft reframes the professional vision of border guards and therefore affects outcomes for passengers of migrant boats, it is instructive to turn to Derek Gregory's work on the role of military Predator drones in catalyzing the killing of civilians in Afghanistan (2011). Gregory observes that the drone offers the illusion of a fully transparent view of the battle space. Yet, as he has shown drawing on Haraway (1988), the promise of an all-seeing "eye in the sky" does not hold up. He too sets aside the concept of vision as a "purely biological capacity" and urges us instead to engage with the "'scopic regimes' through which drone operations take place" (Gregory 2011: 190). Scopic regimes "denote a mode of visual apprehension that is culturally constructed and prescriptive, socially structured and shared" (ibid.). In war, as in other contexts, that which is seen is historically conditioned and dependent on political and cultural perceptions embedded in the very design of the technology of vision that is being deployed. In the context of the war on terror battlefield, Gregory argues, the UAV scopic regime delivers "spaces of constructed visibility [which are] also always spaces of constructed invisibility–– because they are not technical, but rather techno-*cultural* accomplishments" (ibid.: 193). These new visibilities are particularly deadly because they "produce

a special kind of intimacy that consistently privileges the view of the hunter-killer" (ibid.). At the same time, the interpretation of who and what is visible in the video feed is an always complex process involving multiple actors occupying different positions in the hierarchy and different physical locations. The amply documented instances of killing civilians in unmanned and manned aerial strikes are often the result of culturally and politically skewed interpretation applied to an ambiguous picture, as performed by military personnel on the ground and in the air, ultimately to decide that a lethal attack is justified (see Wilke this issue).

Transterritorial vision such as that produced by Eurosur likewise may offer the illusion of transparent surveillance at what one document describes as a "non-negligible" distance (European Commision JRC 2015). And yet the picture it delivers is always already compromised by the oligoptic characteristics of its own infrastructure and by the culturally and politically mediated preconceptions of its embedded actors. Those actors, while not trained to kill in the military sense, participate, as Gregory Feldman documents ethnographically, in an enterprise that perpetuates the "structural marginalization of migrants" (Feldman 2013, 137). The administrative logic of migration management renders the people on the move anonymous and depersonalized, "just statistics," according to one of Feldman's informants (ibid. 136). Some individuals working within the system may well have some sympathy for the plight of migrants, or what Feldman describes as "an ambivalent ethical assessment of the effect of their work on others" (ibid.). Even so, this pales against the overwhelming logic of what Chamayou calls "hunting illegals," that is, the "technique of governing" the structurally marginalized "by making people feel insecure—putting people on edge, against the background of living in constant danger of being tracked

down and deported" (Chamayou 2012, 142). The scopic regime of border drones produces its own intimacies and privileged points of view, in this case those of an ambivalent border guard and would-be humanitarian who from a detached office location sees at once an overloaded boat at risk of sinking and an anonymous mass that must be stopped from crossing the border.

Transterritorial sovereign vision in practice

Eurosur, as the European Commission informs us, is a mechanism whereby "Member States' authorities responsible for border surveillance (border guards, coast guards, police, customs and navies) will be able to exchange operational information and cooperate with each other, with Frontex and with neighboring countries" (European Commission 2011). At its core, the idea is to enable real-time (or as close to real time as possible) border-related information sharing through a state of the art "system of systems" including EU and national satellites, radars, sensors and drones feeding both visual and numerical data to Eurosur national coordination centers (Lemberg-Pedersen 2015, European Commission 2013). Operational cooperation under Eurosur "engages the EU in policing neighbor state borders and vice versa" (Carmel 2013). It focuses in the first instance on the Southern maritime borders of Europe, but it draws Northern Europe's technological expertise and industry into the project. By promoting the use of drones and other robotic technology in EU border surveillance, the European Commission is ramping up the business incentives for security and military technology companies to enmesh themselves ever more closely in what Andersson has called Europe's "illegality industry" (2014). Frontex, the commissioning agent of much of this technology, is intended

to serve as the hub of the system. As described by Jorrit Rijpma and Mathias Vermeulen, data shared within the Eurosur framework

> may consist of information related to incidents at the EU's external land and sea borders, the status and position of patrols and small vessels as well as analytical reports and intelligence, for instance on changed migration routes or new methods used by traffickers in human beings or drugs. This data is then used to establish situational pictures at the national and European levels, as well as a pre-frontier situational sketch. (Rijpma and Vermeulen 2015: 454)

Official communications emphasize that "the increased exchange of information and the use of modern surveillance technology introduced by Eurosur can also be vital for saving the lives of migrants attempting to reach the shores of EU Member States in small and unseaworthy boats that are very difficult to track" (European Commission 2011; see also European Commission 2013). But such assurances are not to be taken at face value. To fully appreciate the limits of the EU and member states' commitments to "saving lives," we must unpack the concept of the "pre-frontier situational sketch."

The "pre-frontier" is neither an established legal term nor a recognizable concept in political geography, international relations, or any other field that engages with cross-border relationships between states. It has been coined for the purposes of EU border control but it lacks a precise definition. The Eurosur Regulation of 2013 provides only that "'pre-frontier area' means the geographical area beyond the external borders [of the EU]" (Article 3(g)),[15] and

that the framework will provide "selective monitoring of designated pre-frontier areas at the external borders, which have been identified through risk analysis and information as potential departure or transit areas for illegal migration or cross-border crime" (Article 12). There is no mention of *how far* the pre-frontier extends, or whether *any type* of "area," that is land, or water, sovereign territory or the high seas, could be part of it. We can only assume that the vagueness is strategic, the concept to be stretched and adapted as needed. The Regulation is somewhat clearer on what it understands to constitute "situational picture," namely,

> a graphical interface to present near-real-time data and information received from different authorities, sensors, platforms and other sources, which is shared across communication and information channels with other authorities in order to achieve situational awareness and support the reaction capability along the external borders and the pre-frontier area. (Article 3(d))[16]

What this technocratic language hides in plain sight is that seeing more paradoxically enables member states to do less. Agents taking part in Frontex operations, stretched between their migration and crime control responsibilities and the ill-defined obligations to respond to life-threatening emergencies, are to receive a far-reaching picture of vehicles, vessels and groups of people who might be at different stages of approach towards the borders.[17] But the ostensibly more effective and cost-efficient surveillance of the "pre-frontier," including the sea, is not primarily (and possibly not at all) about rescuing

migrants who attempt the treacherous journey. It is ultimately designed to ensure that rather than seeking protection in Europe, those migrants remain within jurisdictions where no European legal responsibilities are engaged. Far from the tracking of endangered boats, the heart of Eurosur is the idea of generating a robust picture of the movements of people and things *beyond* European borders. In the "pre-frontier," the EU and national authorities can project their power transterritorially, by advanced social and technical means, but they can shun any legal duties towards (prospective) migrants much more effectively than they can on their own territory.[18]

The Eurosur design offers a shortcut rescue and a concrete return, namely the non-arrival of new groups of unwanted people. With or without human intervention, drones could help identify the right moment for an interception, which would be outsourced to the maritime border patrols of non-EU coastal states without the need to send European assets. The migrants would be "rescued," only to end up arrested and detained by authorities in "partner" non-EU states such as Morocco, Libya or Turkey (as has indeed already been the practice, see e.g. Sunderland 2016). If the system were consistently to work in this manner, the benefits for EU member states would be manifold. There would be no further embarrassing arguments between states about permission to disembark and no reputation-damaging boat disasters off the European cost. There would be no need to bury hundreds of bodies in European soil, and no need for "push-backs," which have been declared illegal under international law by the European Court of Human Rights in 2012.[19] The high number of arrivals would drop and political victory over "uncontrollable" migration would be declared.

Why, then, in spite of the resources that are pouring into the realization of this vision, has this not happened thus far and, as noted in the opening of this article, why has the number of deaths increased since 2013? Firstly, as many critics have observed, the commitment of key European actors to rescuing migrants is much more tenuous than official pronouncements may suggest (Heller and Jones 2014; Fotiadis 2015; Rijpma and Vermeulen 2015). Since the start of operation Triton, Frontex does have a record of bringing migrants to safety, claiming (in a post dated October 10, 2016) that "between January and November 2016, assets deployed by Frontex to JO Triton were involved in the rescue of 48405 people" (Frontex 2016a). But these claims have to be assessed in light of Frontex's leadership's position that search-and-rescue operations are counterproductive because they only encourage desperate migrants to risk the passage (Kingsley and Traynor 2015). The legal framework of Eurosur does not embrace a humanitarian rationale and, in fact, as noted by Hayes and colleagues, "there is no obligation under the Eurosur legislation to ensure that Member States or Frontex initiate search and rescue operations should their plethora of surveillance tools locate a vessel in distress, and Mediterranean Member States have fiercely resisted attempts to insert binding search and rescue clauses in other EU legislation" (Hayes, Jones and Töpfer 2014: 71; see also Marin 2016). Secondly, returning to Gregory's argument, comparisons with the use of transterritorial vision in the military show that technologically advanced all-seeing systems perform rather different work than it might seem at first glance.

Conclusion: With a view to rescue?

The drones that are being readied for deployment at Europe's southern shores are, so far, not weaponized. While the visibilities and blind spots of Eurosur are still in an emergent state, we can provisionally hypothesize that they are probably not constructed with what Gregory calls "a view to kill" (Gregory 2011). But neither are they intended with a view to rescue. Instead, what the border services are conditioned to see is precisely that which the EU and its member states are seeking to curtail, namely the approaching "flows" or, as the UK PM David Cameron infamously called them, "swarms," of migrants which could be "stemmed," pushed-back with impunity or otherwise redirected (Shariatmadari 2015).

The political situation in the Southern Mediterranean region as of early 2017 remains unstable, and there are uncertainties concerning the long-term viability of Turkey's role as a migrant buffer zone for Europe. In spite of resources poured into such instruments as the EUBAM in Libya, the project of drawing third countries into the necessary "partnerships" that would help EU states achieve their goals is complicated. But the spread of surveillance capacity into those regions has not been halted. The Libyan EUBAM (EEAS nd.), with its 17 million euro budget from August 2016 to August 2017, aims to accomplish in a new region that which in previous decades was accomplished in Ukraine, namely, the setting up of a reliable migration buffer zone. The political reluctance to embrace fleeing foreigners in most European countries, the ambiguity surrounding rescue operations (Follis 2016), and the readiness with which European leaders are turning to use of force against suspected migrant smugglers (Peers 2015) are all factors underpinning the political demand for transterritorial visibility.

As Eurosur develops, integrating RPAS and other remote tracking technologies, transterritorial vision will become the norm in the policing of external EU borders. As it does so, we have to be prepared for the probability that rather than solving the problem of migrant deaths at sea, it will exacerbate it by introducing new vantage points from which to interpret where a given boat is going, whether it is in need of rescue and by whom. This is a context in which migrants' access to existing modes of legal protection will be increasingly cut off. Contemporary human rights and refugee law, static and grounded in the "national order of things" (Malkki 1995), will provide an increasingly ineffectual toolkit for the rescue and protection of migrants, refugees and other non-citizens. Transterritorial vision may eventually render obsolete traditional asylum premised on the idea that the applicant reaches the border of a sovereign state and asks for protection. This will be the case unless the political and judicial human rights establishment looks beyond the Westphalian notion of sovereignty (Cornelisse 2011) and learns a few transterritorial tricks of its own. Among hopeful signs is the idea expressed by the European Court of Human Rights in the *Hirsi et al. v. Italy* judgment of 2012 that states do not have discretion in summarily returning boats migrants back to the countries they came from without first examining their potential claims for protection (den Hijer 2016). The Court asserted that international obligations may follow states as they embark on maritime surveillance operations. But this is only a further incentive to deploy drones and other technologies that reduce the need to send border patrol vessels to sea.

In this light, human rights actors would do well to look towards the actions of migrants themselves, who, as Tazzioli observed, "looked for, targeted

and tracked down by an assemblage of humanitarian and policing technical gazes, … tried to appropriate and twist this striving for visibility" by using phones and connections on land to make contact and demand rescue (Tazzioli 2016, 576). As the crisis on Europe's shores has mounted, migrants and their activist allies sensed that decentralized, technologically mediated direct interventions are more effective than appeals to governments and international organizations. Such bodies continue to treat "territorial sovereignty as a neutral and self-evident basis for contemporary political organization" (Cornelisse 2011, 100) rather than acknowledge its nature as the manipulable resource that it has become. Owing to the work of such migrant-activist networks in North Africa and Europe we see such inherently transnational initiatives as the Watch the Med Alarmphone, a volunteer-operated hotline for boat people in distress, independent rescue boat operations and use of social media to help people arriving in Europe access information on available forms of assistance.[20] But even if such actions could be extended, and sometime in the near future an alliance of human rights actors and grassroots activists could come together to launch their own drones to scan the sea for people in peril, an alternative "view to rescue" would not in itself subvert the Eurosur scopic regime. For that to happen a political commitment to not letting people die at sea would have to prevail over the eager politicians' promise to "take control of borders."

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[1] For up to date data see the UNHCR Information Sharing Portal at

http://data.unhcr.org/mediterranean/regional.php (accessed on Dec 16, 2016).

2 Transnational computer networks, satellites and surveillance drones transform national borders in ways that cannot be sufficiently accounted for solely within the framework of securitization (Neal 2009) or the logic of migration management (Walters 2010).

3 These sources combined reflect the range of official positions, dissenting voices and external critiques of the technological pursuits at the maritime borders of the EU.

4 In 1985, the Schengen group (France, Germany, Luxembourg, Belgium, and the Netherlands) established the zone of free movement without checks on internal borders. The Schengen Convention became operational in 1995 and was later embraced by the majority of EU states.

5 Biometrics, as Louise Amoore has shown, have become central to border management during the early phases of the war on terror, responding to the need for scientific expertise and high tech efficiency in the face of the threat of "illegitimate mobilities" of suspected terrorists and other undesirable subjects (Amoore 2006; van der Ploeg 1999).

6 From 2004 to 2016 Frontex (*Frontières extérieures*) was known as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States. It was relaunched in 2016 as the European Border and Coast Guard with a strengthened mandate including command over a "rapid reaction pool" for emergency situations at the external borders and the right to conduct operations in third countries (Frontex 2016b).

7 A similar mission to Libya was launched in 2013.

[8] Summary of the legislation available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l14124 accessed on November 2, 2015.

[9] As Marin explains, the Schengen Border Code "provides for common rules on the checks and on the surveillance of the external borders. However, the whole construction of the Schengen integration, later incorporated into EU law… is such that every Member State bears the duty to control its borders and to carry out border checks" (Marin 2016, 125).

[10] Refoulement is the forcible expulsion or return of persons who have the right to be considered for refugee status to a country where they would face a threat to their life or freedom. It is prohibited in Article 33(1) of the UN Convention Relating to the Status of Refugees.

[11] On the deployment of Predator drones along the U.S.-Mexico border see Booth 2011; Barry 2013.

[12] For details see Hayes and Vermeulen 2012.

[13] At sea, the rescue vessels have become to some degree extensions of state territory where rescued migrants ought to be given an opportunity to express their need for international protection once the life-saving actions have been completed. See https://www.amnesty.org/en/latest/news/2012/02/italy-historic-european-court-judgment-upholds-migrants-rights/ on the ECHR judgment Hirsi Jamaa and Others v. Italy, 2012.

[14] Analyzing Eurosur's pursuit of "monopoly on surveillance" linked to the use of satellites Marouf Hasian Jr. argues that "sensory data can be used for both Mediterranean policing as well as *refutational and legitimation materials* that are needed by those who want to rationalize *exclusionary border practices*" (Hasian

Jr. 2016, 166, emphasis in original). The wider the space wherein such materials can be obtained, the richer presumably the persuasive arsenal of advocates of strict control.

[15] Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1052&from=EN [30 October 2015].

[16] See above.

[17] As Maarten den Heijer has shown, the Frontex Sea Borders Regulation (Regulation 656/2014) "fails to deliver concrete answers on … the exact scope of duties to engage in search and rescue and the guaranteeing of refugee rights" (den Heijer 2016, 54).

[18] M'charek et al. argue that these and related practices have a strong racial dimension. While the explicit language of race and ethnicity may be "absent from the official remit," the "'border machine' simultaneously constitutes and discriminates against racialized groups of people" (M'charek et al. 2014, 477).

[19] As of 2015 push-backs have been documented off the coast Greece and elsewhere (HRW 2015).

[20] For information on Alarmphone see http://alarmphone.org/en/. One example of an independent boat operation is the German-based Sea-Watch (http://sea-watch.org/en/); but see also Pallister-Wilkins 2015 for some reflections on operations conducted by Médecins Sans Frontières (MSF). CalaisAction on Twitter is one example of pro-migrant use of social media.

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