# Turning “Fortress Europe" Inside Out: Bordering Practices and the EU’s External Border

https://www.e-ir.info/2012/01/26/turning-fortress-europe-inside-out-bordering-practices-and-the-eus-external-border/

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This essay will argue that through a series of institutional, legal and administrative bordering practices both at the state and grassroots levels, the external border of the European Union has become dispersed within and beyond its territory, blurring the territorial scope of sovereign prerogatives and thus giving them precedence over individuals’ rights. In order to understand how power relations are intrinsically ingrained in territorial dynamics, this essay will focus on the notion of the border from the perspective of critical geopolitics. In this essay, the external border of the European Union will be analyzed through the lens of Michel Foucault’s concept of assemblage: “an ensemble of heterogeneous discursive and non-discursive practices, and regimes of truth and conduct […]” (Walters: 563). In adopting a definition of the border that focuses on practices, this essay will question the traditional geopolitical assumption of the state-centric nature of power – what John Agnew calls the “territorial trap” – and demonstrate that manifestations of power are not “limited to or contained within the territory of a state” (Kuus: 4). Given its Foucaultian approach to defining borders and its acknowledgement of their plurality – following Étienne Balibar’s notion that borders are ubiquitous – this essay will treat the external border of the European Union as a typical case of how bordering practices lead to the pre-eminence of sovereign rights and prerogatives over the mobility rights of individuals. This theoretical framework therefore implies the use of an Agambenian definition of sovereignty, one that incorporates the state of exception, the sovereign’s ability to suspend its own juridical order, at its core. In addition to providing a theoretical assessment of how the state manages to disperse its own border through the state of exception and the practices that perpetuate it, this essay will also link its theoretical content to the policies and practices of Frontex (the European Agency for the Management of Operational Cooperation at External Borders) and the Schengen Information System (SIS), which underpin the European Union’s “Justice and Home Affairs” policy (Walters & Haahr: 93).

## I- The Exception through Practices in Theory: Agamben, Butler, Bigo and Salter

Giorgio Agamben provides insight on how the state manages to restrict individuals’ rights by blurring the Walkerian distinction between what lies beyond its border (the outside) and what is contained within it (the inside). Agamben’s explanation of how the state can disperse its borders (its juridical limits) revolves around the notion of the state of exception. Agamben argues that the state of exception, which was once a “temporary suspension of the law,” has now become a “permanent spatial arrangement” (Agamben 1995: 169). By borrowing the Schmittian notion that “the essence of the state’s sovereignty [is] not the monopoly to coerce or rule, but the monopoly to decide” (Schmitt 1985: 13), Agamben explains how the state blurs its juridical limits and extends its prerogatives through his notion of “dislocating localization” (Agamben, 1995: 197). “Dislocating localization” occurs when the state of exception disrupts the Schmittian “structure of exception.” Schmitt posits that there exists a fundamental relation between the juridical (or political) domain and territory. He argues that the “*nomos* of the Earth” involves the binding of the juridical-political order with a concrete territory (or *Ortung*) and the existence of the biological (*zoé*) and the social (or political) (*bios*) as mutually exclusive spheres (Schmitt, 1996: 29). However, when the sovereign declares a state of exception, Schmitt’s model breaks down because the political system “no longer orders forms of life and juridical rules in a determinate place” (Agamben, 1995: 196). When this occurs, the state of exception generates a “zone of

indistinction between a juridical and a political order, between inside and outside […]" (Agamben, 1995: 181). This zone of indistinction thus blurs the traditional geopolitical understanding that a state's jurisdiction stops at its external border. Because the state does not respect its own limits (its borders) when conducting border controls, thus "dislocating" its location, Audrey Macklin argues that such a reality points to a "trend toward the decline of the geo-political borders as the limit of state jurisdiction or assertion of power over noncitizens" (Macklin: 386).

Despite the notion that the distinction between the inside and the outside of the state is blurred through the state of exception, the suspension of sovereign norms in "zones of indistinction" does not expunge sovereign influence. Despite the sovereign's feigned absence, its prerogative nonetheless remains. Agamben even posits that the sovereign is "the guardian who prevents the undecidable threshold between violence and right, […] from coming to light" (Agamben 2000: 113). From Agamben's perspective, the sovereign remains, paradoxically, "both outside and inside the juridical order." (Agamben, 1995: 19). The sovereign reproduces the threshold of indistinction between the inside and the outside, as it is always "on the move" in Walkerian terms (Walker: 15), further blurring the inside/outside dichotomy. Juridical power grants the sovereign the ability to proclaim a state of exception (the power to suspend the order's validity), placing the sovereign outside the juridical order while nonetheless remaining inside because "it is up to him [the sovereign] to decide if the constitution, *in toto*, is to be suspended" (Schmitt, 1996: 123). By being both inside and outside, the state of exception generates a "threshold of undecidability between life and law, between *autoristas* and *potentas*" (Agamben, 2005: 110). This threshold of the law (that manifests itself at the border, according to Mark B. Salter) makes the "juridico-political system transform itself into a killing machine" for *homines sacri* (2005: 86), the expendable lives Agamben defines as "the original figures of life taken into the sovereign ban" (1995: 92). This sovereign-made zone of indistinction therefore endows it with the ability to indiscriminately turn individuals into *homines sacri* through the politicization of their biological existence.

Agamben posits that sovereignty's direct management of biological life has become the state's main *raison d'être*, making violations of human rights possible – and even inevitable. He does so by arguing that the sovereign is responsible for submitting these "zones of indistinction" (the border in all its forms) to a "force of law without law" (Agamben, 2005: 52). Because the sovereign is both inside and outside the juridical order, the sovereign's state of exception "separates the norm from its application in order to make its [the norm's] application possible" (2005: 49). In other words, although its application is suspended, law does remain in force in these spaces. In this situation, Agamben deduces that the safeguarding of the norm and its application to "normal" situations depends on the existence of "fictitious lacuna," in which the norm is suspended (Agamben, 2005: 49). Individuals caught in these "fictitious lacuna" or "abject spaces" (in Engin Isin's and Kim Rygiel's terms) (Isin & Rygiel: 184) are thus not subjects *in* the law but simply rather subjected to it. Sovereign prerogative, which manifests itself through a declaration of the state of exception, therefore supersedes individual rights.

Although Agamben's top-down analysis of the state of exception provides a theoretical explanation for how the state manages to express its pre-eminence, it disregards the daily practices that are instrumental in reinforcing and sustaining the sovereign power that manifests itself at the border. Notwithstanding sovereignty's pivotal role in the territorial blurring of its jurisdiction, Judith Butler concentrates on the underlying political and discursive practices that manage and produce the exception. Butler emphasizes Foucault's argument that "governmentality," a concept she defines as "a mode of power concerned with the maintenance and control of bodies and persons […]," is essential to "vitalizing" the state and ensuring its survival (Butler: 52). Butler, who insists that sovereignty needs to be performed, argues that those who carry out the practices linked to governmentality, the "petty sovereigns," are responsible for the upkeep of sovereign prerogatives and what Agamben calls "zones of indistinction" (65). Butler argues that sovereignty is consistently reintroduced in the "very acts by which state suspends law, or contorts it to its own uses" (57). The individuals who consider certain border crossers "dangerous" and can decide to restrict their mobility are part of this apparatus of governmentality that constitutes a "ghostly and forceful resurgence of sovereignty" (59). Governmentality, or the management and politicization of bare life in Agambenian terms, therefore becomes a new site for the manifestation of sovereignty in which unaccountable subjects (the "petty sovereigns") are endowed with the discretionary task of deciding on what constitutes the exception.

Didier Bigo and Mark B. Salter also follow Butler's notion that sovereignty is expressed through the daily practices that sustain it. Bigo focuses his analysis on how the "professionals of the management of unease," or the

"professional of (in)security," be they bureaucrats, customs and police officers or security guards, are instrumental in extending sovereign prerogative (Bigo, 2006: 110). The idea that these "professionals" (or "petty sovereigns" in Butler's terms) demonstrate and reinforce the sovereign's pre-eminence over individuals' rights adds another level of analysis to Agamben's bottom-down approach in theorizing the state of exception. While Agamben's theory overlooks the quotidian practices that reinforce sovereign power, Bigo's concept of the "banopticon" as a form of governmentality fills this theoretical void.

Bigo argues that Jeremy Bentham's and Michel Foucault's notion of the "panopticon," the idea that all members of society are under surveillance given their physical proximity with those designated to watch them, is inapplicable when the sovereign declares a state of exception. Agamben defines the relation of the ban as the "relation of exception" stemming from the sovereign's decision to include (or a*ban*don) an individual from the law (Agamben, 1995: 34). Bigo, however, asserts that it is rather the banopticon, the idea that the exception entails the "management of unease" through a careful assessment of what constitutes a "risk," that generates and perpetuates the state of exception (Bigo, 2007: 21). The "management of unease," a form of governmentality developed through routines and technologies – and not the sole decision of the sovereign – defines the exception by pre-emptively delineating target groups as "threatening" or "abnormal," hence restricting their ability to cross the state's border.

From Bigo's perspective, the state of exception is not a mere Schmittian statist decision. Bigo insists that the daily practices that underpin the state's bureaucratic framework are instrumental in the intersubjective understanding of what constitutes an exception. Much like with a Möbius ribbon (Bigo 2001: 96), it is "no longer possible for the border [between inside and outside] to be made objective" because it relies on the discretion of the observer, or the "(in)security professionals" (Bigo 2007: 16); the Walkerian inside/outside dichotomy becomes blurred. Although Deborah Cowen and Neil Smith do not cite Bigo directly, they nonetheless endorse his notion of Möbius ribbon security by observing that "the separation between 'internal' (domestic) and 'external' (foreign) security that bounded geopolitical forms in western states is giving way" (Cowen & Smith: 30). When the distinction between the inside and the outside becomes fluid, administrative practices reinforce the state of exception by protecting the state from these banned individuals. The daily, repetitive nature of these practices is critical to the "normalization" process that makes them unquestioned. By focusing on practices, Bigo arrives at the Agambenian conclusion that the state of exception, temporary by definition, has become a permanent form of spatial organization, notably manifesting itself at the border.

Salter, much like Bigo, focuses on practices to understand how the border has become a locus for the expression of sovereign power. Salter argues that "governmental procedures of examination at the border institutionalize a continual state of exception," which generate a "spatio-legal fiction of territorial sovereign" (Salter: 365). From Salter's perspective (which follows Butler's line of argument), the border must perpetually be "performed" by both (in)security professionals and border crossers to fortify and justify sovereign prerogative over individual rights. Because Salter considers that "every decision of the border guards is a decision to ban or to include in the law" (370), the border crosser, regardless of his status, is subjected to a biopolitical filter at the precise moment in which the sovereign decides on entry or non-admittance (370). The individual is thus completely at the mercy of the state's sovereign power at that moment, caught in an "extra-political nowhere" (270). Every bureaucratic practice and decision, which Bigo calls "routines of exception," is therefore analogous to the "sovereign moment" that occurs at border crossings (366). In this context, bureaucratic decisions, which begin in a border crosser's native country through the acquisitions of a passport and visa, are expressions of sovereign will; every sovereign decision leading up to the individual's crossing of the border could therefore be considered a type of border crossing. From William Walters' perspective, such a situation highlights the "dispersed" and "denaturalized" nature of the border (Walters: 562). Although Salter does not concur with Étienne Balibar's position that "borders are everywhere," preferring to consider that "each claimant is a stranger" (Salter: 375) and therefore focusing on the type of decisions that affect all border crossers (and not targeted groups as in Bigo's analysis), his approach can nonetheless be linked to Bigo's banopticon and to Walters' notion that borders can, in fact, be dispersed. Given its focus on ingrained practices, Bigo's banopticon provides insight on how Salter's moment of sovereign decision at the border can materialize through the professionals who manage unease and extend the sovereign's jurisdiction (and borders) through spatio-legal fiction.

### II- Frontex and the Schengen Information System: Extending Sovereignty through Practices

The stated policy goal of the European Union's "Justice and Home Affairs" in the 1997 Treaty of Amsterdam was to make Europe an "area of freedom, security and justice" (European Commission 1999: 2). Focused on "internal security," this policy and the institutions and agencies that support it sought to address new forms of insecurity including "terrorism, drug-smuggling, mass asylum-seeking, […]" (Walters & Haahr: 92). Although the practices that stem from these policies might have seemed to bolster the external border of "Fortress Europe" in an attempt to make the internal realm a zone of "freedom and justice," they have had the opposite effect. Instead of reinforcing the external border, these practices actually have been instrumental in destabilizing it, dispersing the metaphorical walls of "Fortress Europe" into a discontinuous plurality of borders. Through their exceptional practices, these agencies have blurred the territorial scope of sovereign prerogatives and therefore have given them precedence over individuals' rights.

Frontex, created in 2004, is a decentralized EU regulatory agency with administrative, legal and financial autonomy that promotes a "pan-European model of integrated border security" (Vaughan-Williams: 65). Frontex plays a key role in expanding sovereign prerogative by extending the European Union's external border beyond its territory. It does so, in part, by blurring what constitutes the inside and the outside of the European Union through "pre-border surveillance." In fact, Frontex performs control and surveillance activities on individuals long before they reach the European Union's external border, dispersing it beyond its territory if one considers, as Elspeth Guild does, that the border is a site "where a control takes place on the movement of subjects into or within the EU" (Vaughan-Williams: 67). Frontex's HERA II operation, which took place from August to December 2006, clearly illustrates how Balibar's notion that "borders are no longer at the border" (Balibar 1998: 217) creates a "zone of indistinction" that blurs the inside and the outside of the state. Operation HERA II had the expressed aim of preventing "migrants from leaving the shores" of the African continent (Vaughan-Williams: 67). Surveillance planes from Finland and Italy were flown in the African airspace (over Mauritania, Senegal and Cape Verde) to deter migrants from attempting to attempt to enter the European Union illegally. This form of "border performance" hundreds of kilometres away from the European Union's actual external border demonstrates how the controls associated with the physical limits of the state have been displaced. Hera II thus shows the extent to which Frontex's practices allow the sovereign exception to express itself in an "off-shore" manner. These practices perpetuate the Agambenian "dislocating localization" in which the limits of the sovereign's political-juridical order is no longer tied to a specific territory.

In addition to blurring the Schmittian "*nomos* of the Earth" (the binding of territory and a given political-juridical order), Frontex's practices also lead sovereign prerogative to have precedence over individual rights through its "joint return operations" (Léonard: 245). In fact, the Council Regulation of the European Union has entrusted Frontex with tasks relating to the "EU return policy," which often involve the removal of third country nationals in an illegal situation. By facilitating legally questionable deportations through its expertise and financial means, Frontex manages to separate the norm from its application. Sarah Léonard argues that Frontex's joint return operations do not respect the "*non-refoulement*" principle, a cornerstone of international law. This principle "prohibits states from acting to 'expel' or 'return' individuals to situations where they may face persecution or where their fundamental human rights may be at risk" (Klug & Howe: 70). Given that the individuals Frontex deports are indiscriminately considered illegal immigrants, the agency's practices attest to the notion that the sovereign's quest for internal security transcends individual rights as well as the law. Frontex's joint return operations thus point to the idea that its practices separate the norm from its application. By exerting control over individuals who have reached the EU's external border or who have managed to cross it, Frontex's practices render these individuals *homines sacri* by returning them to places where their fundamental rights will most likely be violated. Frontex's joint return operations therefore contribute to the sovereign's tactful evasion of Article 2 of the International Covenant on Civil and Political Rights (1966), which stipulates that all ratifying states must "undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind […]" (ICCPR, 1966: article 2). By removing these "undesirable" individuals from the European Union's territory, Frontex demonstrates how sovereign power politicizes biological life by managing it directly. Returning individuals to places where their biological existence is threatened demonstrates the extent to which sovereignty's prerogative allows state

power to transcend the legal system, making it both inside and outside its own juridical order. By generating a "force of law without law" (Agamben, 2005: 52), practices that subject individuals to the law without endowing them with rights demonstrate how the border and its controls, in its physical location and its dispersed forms, is a biopolitical filter that does not admit the individuals whose lives are deemed expendable: the *homines sacri*.

Beyond its role in joint return operations, Frontex's mandate is also to "assess changes, risks and threats with possible impact on the security of the EU's external borders" (Frontex 2009: 29). Frontex's Risk Analysis Unit (RAU), composed of Bigo's "(in)security professionals," has the discretionary power to decide whether an individual constitutes a risk. This dispersion of sovereignty's mandate to decide on the exception attests that the European Union's external border, the traditional limit of sovereign prerogative, has been dispersed. These discretionary practices conducted by professionals produce and perpetuate the exception, thus leaving individuals in an "extra-political nowhere" (Salter: 370) in which their basic rights can be abrogated. Frontex's new unit, the "Situation Centre," perfectly embodies this notion. According to Léonard, its main goal is to provide a "real time" picture of the potential flows of illegal immigration (Léonard: 243). The Frontex Situation Centre can thus initiate a "24/7 emergency response mechanism […] when a situation is critical and needs a high level of attention" (Frontex 2009: 18). Frontex has the ability to deploy its military forces – which notably include "26 helicopters, 133 vessels and 22 fixed-wing aircrafts" (Léonard: 239) – beyond and within the European Union's territory. Such practices do not only blur the traditional limit of the sovereign's jurisdiction but also show how sovereignty relies on the interpretations and decisions of "petty sovereigns" (in Butler's terms). Despite Frontex's ability to respond to "critical situations," the agency fails to define what constitutes such a situation. The notion that a situation may require a "high level of attention" becomes dependent on the observer, the professionals responsible for "managing unease." Frontex's military and technological capacities, which are key in producing and acting upon risk assessments, are reminiscent of Bigo's banopticon, highlighting the discretionary practices involved in determining which groups or individuals constitute a risk.

Although Frontex's exceptional practices contribute to the dispersion of the European Union's external border, the Schengen Information System (SIS), a bureaucratic mechanism that underpins the European Union's "Justice and Home Affairs," further provides insight on how bordering practices give pre-eminence to sovereign prerogative over individual rights. Bigo argues that the SIS demonstrates how those "who govern can no longer rely on the rhetoric of sovereignty, citizenship, and the *raison d'État* with the same performativity" (Bigo, 2006: 114). As a transnational surveillance system, the SIS is composed of a "series of national databases connected to a central system which holds information on suspected criminals, missing persons, unwanted aliens, stolen vehicles and documents" (Bantekas & Nash: 279). Before migrants or travellers are expelled from the territories of the 25 countries part of the Schengen Space, their personal information is entered in the SIS. Other individuals are pre-emptively profiled and placed on a "visa list" because their country of origin is more likely to make them a "risk" (Michael & Michael: 180). Because of the SIS's ability to track individuals' records before they enter, while they travel within and after they leave the European Union's territory, the crossing of the EU's external border is not limited to the actual border. This technology disperses the controls associated with bordering practices beyond and within the European Union's external border. In other words, the SIS proves that entering the EU is a process of "sovereign decision" that begins before and ends after the physical border has been crossed (Salter: 370). The tentacular reach of this Information System attests not only to Walters' idea that the EU's external border has become dispersed through a blurring of the traditional inside/outside dichotomy, but it also reinforces Bigo's and Salter's position that the discretion of those who "manage of unease" is a key manifestation of sovereign prerogative over individuals' rights. Because the founding principle of this database is the mutual recognition of bureaucratic decisions between Schengen states and not the harmonization of what constitutes a threat, an individual's detention – or status as a "threat" – in one country results in an immediate response by all other states bound by the Schengen Agreement (Michael & Michael: 180). Given that 85 percent of records of people in the SIS as of January 1, 2010 – a total of 736,868 records – were of third-country nationals reported as "unwanted aliens" (CUE: 1), it is clear that "(in)security professionals" play an instrumental role in reinforcing the sovereign's ability to decide what constitutes the exception.

In conclusion, the exceptional practices carried out by Frontex, which include pre-border surveillance, risk assessments and joint return operations, as well as the information contained in the Schengen Information System play a pivotal role in dispersing the European Union's external border beyond and within its territory. By destabilizing

the border's actual location through a blurring of the traditional geopolitical dichotomy between the inside and the outside, these practices demonstrate that the border no longer constitutes the geographical limit of a state's power and jurisdiction. The various forms of surveillance and control that once were associated with the border as the sovereign's jurisdictional limit have been displaced through the sovereign's ability to declare a state of exception. This, in turn, is reinforced by "petty sovereigns" and "(in)security professionals" through the decisions they make on a daily basis. Despite their respective nuances, Agamben's theory of the exception, Butler's notion of sovereignty's performativity, Bigo's banoption and Salter's notion of the sovereign decision all provide theoretical insight on the dispersion of the European Union's external border. Their respective theoretical approaches do not only highlight the flaws in the traditional geopolitical notion that sovereign power is contained within the state's territory. They also corroborate the idea that the sovereign's ability to decide on the exception, combined with the institutions and individuals that perform it daily, give sovereign prerogatives precedence over individuals' rights.

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*Date written: 03/2011*