A critical analysis of the European Southern external border and the role biopolitics plays in the various attempts to control migratory flows.

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DECLARATION BY CANDIDATE

I hereby declare that this thesis, “Borders, Bodies and Bare Life ”, is my own work and my own effort and that it has not been accepted anywhere else for the award of any other degree or diploma. Where sources of information have been used, they have been acknowledged.

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Prelude
May 28th 2014, the sun slowly rises above the Atlas Mountains and shines its light on the Spanish city of Melilla. Normally, the city is peaceful and quiet at this early hour, but this day is different. The morning calm is interrupted by screaming and shouting as 1000 irregular migrants storm the six-meters high fences whilst the Moroccan and Spanish police forces try to prevent them from succeeding in this. About 500 of them manage to mount the three razor wired fences, slip past the police forces and make it to the migrant reception centre. After a long and exhausting journey, they made it into ‘Europe’. The outburst of joy and laughter is very understandable considering all the things they have been through, yet will prove to be premature with what lays ahead of them: the European asylum procedure. Meanwhile, their repelled ‘brothers’, some of them severely wounded, return to their make-shift shelters in the mountains on the other side of the border. From these mountains they can see over the fences, past the guards and surveillance cameras, look at the city and the promise it holds to them. There they wait for the next attempt to cross the border, waiting for another chance to make it into Europe.

Introduction
The story above is only one of many that can be told about the European borders. The many different stories vary in case, but also in perspective. The story above for example speaks of ‘irregular migrants’, not of ‘illegal immigrants’ as others do. This story has a much more ‘humane’ angle considering the border from a migrant’s perspective, whereas other stories might consider much more the (‘negative’) impact these migrants will have on the European society, speaking about the ‘risk’ they pose to the EU and how the EU is ‘flooded’ by these ‘illegal immigrants’.

These stories, how they vary, and how their subtle differences construct different ‘realities’, allowing for different practices, have inspired this research. How is it possible that practices like six-meters high, razor wired fences, overcrowded asylum centres and drowning migrants at sea are deemed acceptable and even legitimate? How can the gap between values of the European Union, expressed in the official policies on the European external border, and the actual practices at the border be explained? These questions have been the starting point of this research and resulted in the following research question: How is the European external border being governed and what are the implications of this for those trying to cross it?

There are many ways to answer this question, but this thesis will do so using a critical IR approach. The aim of this is to provide additional insight to the European external border and to increase our understanding of the logics that govern it. To do this, the first chapter will start off with a broad analysis of the European external border at Melilla. Melilla has been chosen as the
central case for this research for its peculiar yet illustrative location at the European external border. Melilla is a small Spanish enclave located on the Moroccan shore of the Mediterranean and is, together with a similar city named Ceuta, the only land border the EU has with the African continent. It is therefore a popular destination for migrants, who consider it an easily accessible stepping stone into the EU. It no longer is ‘easily accessible’ though; as mentioned above, it is fortified with a triple, six-meter high fence with razor wire, motion sensors and teargas sprinklers, to just name a few protective measures. So far however, this has not stopped the migrants from trying to cross the border; their numbers continue to grow. The far-reaching security applications installed at Melilla are more physical and concentrated than most other parts of the European external border thanks to its unique location. Because of this, the underlying rationales that can be found everywhere along the entire European external border are well visible in Melilla, which is why it will be central in this research.

In order to gain an understanding as complete as possible of the case, this chapter will touch upon all relevant aspects of the European external border. Firstly, it will look at the history of the border at Melilla to see how current practices have come about. In order to grasp the broader European context, the establishment of European border agency FRONTEX and the Europe-wide change of perception will be discussed shortly. Other factors of influence, like the introduction of biometrics to the field of border security will be discussed along with the migrants’ journey and backgrounds. Legislative aspects like the readmission agreements and the principle of non-refoulement will discussed as well, after which the chapter will finish with describing the living conditions at the migrants’ reception centre in Melilla, CETI. The aim of this chapter is not just to get a broad understanding of the case, but will be also be crucial in explaining the concepts in the later chapters.

After describing the case in the first chapter, the second chapter will try to shed a different light on the border. This research will do so by using different tools derived from post-modern thought, in order to provide different perspectives on the border and reveal underlying rationales that are absent in the dominant narrative. The chapter will start with briefly exploring literature on borders to explain how the European external border can be encountered many times and is no longer confined to one geographical space. After this, literature on the politics of ‘risk management’ will be touched upon, contemplating on work of Ulrich Beck, Claudia Aradau and Rens van Munster. Risk management is being increasingly applied in Western governance and the aim of this section is to unveil that this is another rationale at work at the European external border. The work of Michael Foucault offers another explanation for the policies at the European external border, namely ‘biopolitics’. Biopolitics offers a different view on the rationales behind European border management and gives an explanation for the European fixation on stopping the
migrants at the border. The aim is to offer an alternative explanation of the border and to provide a different context to the problems involved, so to denormalize their state and increase our understanding of both concept and case.

The final chapter will see these alternative approaches to the border come together by using a concept of Giorgio Agamben, one of the main thinkers that continued with Foucault’s thought. The concept is named after ‘an obscure figure of archaic Roman law’, homo sacer, yet perfectly explains the position migrants today at the European external border at Melilla find themselves in. Core to Agamben’s argument are power constructs where the ordinary rule of law is de facto postponed and the state of exception becomes the rule. In this particular ‘zone of indistinction’, security forces can act unchecked as a temporary sovereign over the lives of those trapped in this construct and their deaths are no longer considered a crime. After Benjamin Muller and Nick Vaughan-Williams already successfully applied the concept to contemporary cases, this thesis will apply it to the European external border at Melilla and see how it enables the deaths and suffering of many as ‘acceptable’. After applying this, the chapter will finish with looking if similar power structures exist elsewhere on the European external border in order to see whether Melilla is a unique case or whether it can be said that the problematic power constructs are structurally ingrained with the European external border.

The unchallenged, unconsidered modes of thought that underlie the practices at the European external border have far-reaching implications for those trying to cross it. It is therefore of great importance to challenge those, not so much as to prove that they are wrong, but to challenge them for the sake of challenging itself. Only if we are conscious of what modes of thought are at work we can look for ways to improve the practices that arise from them. The practices at the European external border currently result in violations of the migrants’ human rights, a border that is both being fortified and diffuse and an asylum procedure that is contradicting in itself. It is therefore of utmost importance that more research is being done on this border, from various angles, in order to enlarge our understanding of modern-day borders. This research hopes to be one contribution to this.
Chapter 1: The European External Border at Melilla

Melilla, as mentioned in the introduction, is located on the southern shores of the Mediterranean. Apart from the sea to the northwest, it is completely surrounded by Moroccan territory. Together with Ceuta, a Spanish enclave in Morocco located more to the West, it is the only place where Spain, and thus the EU, has a land border with the rest of the African continent. The city has a long and rich history, having been occupied by Phoenicians, Punics, Romans, Vandals, Byzantine, Hispano-Visigoth, and Moorish rulers before falling under Spanish control in 1497. Ever since, the Spanish have managed to keep invaders out of their city. Keeping intruders out of Melilla is still being attempted today by its current rulers, using fences, razor wire and guards, making it appear as if little has changed since the times of kings and fortresses. In fact, the European border is often referred to in this way: ‘Fortress Europe’.

This chapter attempts to give an understanding of the European external border by describing the situation at Melilla, its historical development and the broader European framework. It will do so by first shortly investigating the historical roots of this border in order to see how such an extraordinary border has come about. Then it will shortly walk through the changing attitude towards migrants across Europe to take into account the broader picture on where the demand to control the border came from. Europe’s border agency Frontex and one of its core programs Eurosur will be the next subjects of scrutinization, as they have become important players at the European External border and can be considered an archetype of the technological, biopolitical approach to borders. Having cleared out the broader framework in which Melilla is placed, the chapter will go back to Melilla and see what the border looks like in modern times and how it has changed over the last two decades. Not only the border has changed, the people trying to cross are different as well. The final section will shortly treat the descent and background of the migrants and what they face during their journey towards the European Union before it concludes with live at the CETI, the migrant reception centre in Melilla. This section is to provide a migrants’ perspective on the European External border, as an alternative for the technological, governmental one that is often dominant.

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1 There is another land border between Spain and Morocco, called Peñón de véllez de la Gomera, an old military fortress. Together with Ceuta and Melilla and a couple of tiny islands near the Moroccan coast they form the plazas de soberania. As only Melilla and Ceuta face high number of irregular migrants trying to get into Europe, the other plazas de soberania will not be further taken into account in this research.
History of the Border at Melilla

Ceuta and Melilla have been under Spanish control for centuries, which considered them useful military outposts to exert control in the area. Due to an agreement with France, northern Morocco became a Spanish protectorate from 1912 until 1958. Within this protectorate, the cities of Ceuta and Melilla however remained an exclusive position in this political construction, remaining an integral part of Spain.

For many years the border at Melilla had been a disputed, but a quiet one. It was considered a traditional border, between two nations. When Spain ceded the territories of its protectorate over northern Morocco to an independent Morocco in 1956, it made an exclusion for Ceuta and Melilla because of their historical ties, turning the cities into its southern borders again. Morocco officially still claims both cities as integral part of its territory, yet in reality, little of this is visible. The two countries continue to increase their cooperation, something that has been especially expanding in the past decade, as this thesis will show later on. Until two decades ago, few paid attention to the border at Melilla.

This all changed after the implementation of the Schengen agreements in March 1995, turning the border into the external border of the European Union. The internal borders of the Schengen area had diminished. Suddenly, a trip from Rabat to Paris, Berlin or Amsterdam would only require the crossing of one single border; the one at Melilla. This quickly started to attract those looking for a better future in Europe who did not acquire a visa or residence permit. To stop this influx of irregular migrants Spain constructed a double, three-meter high fence along the ten kilometre long border with Morocco. According to Pietro Soddu, this was the first time that the border between Morocco and the Spanish cities was clearly demarcated. Before this time the border had been relatively open and had been ‘a place of interaction and exchange’. Where for centuries Africa and Europe would meet at Melilla and Ceuta, the two cities now embodied the divide between the two worlds. The construction of the fences was co-funded by the European Union and was completed in 1998.

The changes of the border at Melilla can be seen as exemplary for the changes in attitude towards borders and migration in Europe in general. It is important to take this into account; in order to get a full understanding of the border at Melilla, one must bear the broader frame of which it is part in mind, the European Union External border and its accompanying institutions and policies.

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2 In fact, on March 26th 1995 only the EU members of Belgium, France, Germany, Luxemburg, the Netherlands, Spain and Portugal were part this ‘borderless’ area. This soon grew with the expansion of both the EU and the Schengen area.

Shifting Attitudes

The attitudes towards migrants and the perception of the European borders have changed multiple times in the past 60 years. Broadly speaking, during the 50s and 60s migrants were often people returning from the (former) colonies and there was little to no protest against their arrival for they were ‘coming home’. In the late 60s and 70s the (Northern) European economies were blooming and needed cheap labour. Whilst it was not intended that those migrant workers would stay, their stay was not opposed. This changed in the 80s when the economic bloom had come to an end and the demand for cheap labour fell. Migrants were no longer actively recruited abroad and questions about integration and its supposed link with criminality appeared.\(^4\) In the meantime, people crossing the eastern border, the Iron Curtain, were considered welcome and their arrival was seen as a ‘victory’ over the east, showing that the western system was better. The 90’s came and public opinion had shifted from considering migrants as useful workforce to an economic burden and drain of the welfare systems.\(^5\) These changes in attitude were reflected in the policies concerning migrants, which shifted along from an economic issue to becoming a security issue.\(^6\) This was when the fences at Melilla were erected.

At Melilla, the border would not appear to change physically for some years to come, but the European external border underwent some serious changes. As the Schengen agreement was made part of the European Union membership –although some reservations remained\(^7\) –the ‘borderless’ area grew larger. The law-abiding citizens of the member states and those holding a legitimate visa or residence permit could now travel freely throughout the Schengen area, yet criminal networks and those who did not have the legitimate documents to stay in the EU could do so as well. Therefore, in order to strengthen the external borders from those elements coming in, an agency to monitor the external borders was created: FRONTEX.\(^8\)

Frontex and Eurosur

Frontex does not govern the external border on its own; even though this was the initial plan, the governance of the border has remained a core responsibility of the member states themselves. Instead, Frontex became an assistant body for the member states to help govern the external

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\(^7\) Ireland and the United Kingdom remained outside of the Schengen agreement.

\(^8\) FRONTières EXtérieures was created with the 2007/2004 (EC) regulation and started being operative on 3 October 2005.
The European external border at Melilla is thus being governed by several actors: the Spanish state through its central and local governments, Frontex and the broader legislative framework decided upon in the European Council and the European Commission. Since its becoming operative in 2005, Frontex has been able to extend its actions within its mandate and has put an undeniable stamp on the European external border.

Generally speaking, Frontex role consists of three functions: (i) the exchange of information and co-operation between member-states on issues related to immigration and repatriation; (ii) to help out at border and custom control, in particularly surveillance, border checks, trainings and risk analyses; and (iii) to coordinate co-operation between border guards, customs and police in non EU-states. Only in case of an ‘urgent and unprecedented threat’ does FRONTEX deploy rapid intervention teams, which are provided by the member states, to help guard the border. This happened for example with the Hera missions at the Canary Islands or the Hermes mission near Lampedusa. At the moment, there is no such mission at Melilla.

With the emphasis added above, Frontex dependency on member states consent becomes clear. The information Frontex bundles has to be received from the member states, the missions Frontex conducts at the borders can only be carried out on request of the member state, with guards that have to be provided by the member states. Nevertheless, Frontex has conducted several missions with relative ‘success’, like the Hera missions mentioned above. ‘Success’ is written with quotation marks, since there has been a lot of criticism on Frontex ‘successes’. In case of the Hera missions, agreements with Senegal and Mauritania allowed Frontex ships to patrol in their territorial waters, with an official of the country in case, making it possible to intercept the migrants even before they enter European waters. Thanks to this legal construction, the migrants were sent back to the transit countries before they had the opportunity to apply for a European asylum. This way, the goals of bringing down the number of migrants entering the EU via this ‘Western African route’ were met. This not only came at the cost of denying people the possibility to apply for asylum, it de facto illegalized the act of departing from the Senegalese or

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11 The Hera missions (I, II, III) took place from 2006 till 2007 and had the objective to stop the number of migrants entering the EU via the Canary Islands using small boats to sail there from Mauritania and Senegal.
12 Hermes is the name of the Frontex mission that helps patrol on the Central Mediterranean Route near Lampedusa and Sicily in order to identify and intercept the migrants as soon as possible. For more information, see the Frontex website: http://frontex.europa.eu/news/hermes-2011-starts-tomorrow-in-lampedusa-X4XZcr
13 M. Hobolth (2006), Governing the borders of Europe: the establishment of the FRONTEX agency, Paper prepared for the 2nd CHALLENGE Training School on „Security, Technology, Borders: EU Responses to New Challenges,
Mauritanian shore. Similar stories of criticism can be found about the Frontex missions at the Greco-Turkish border, or at the mission near Lampedusa. The goals however, bringing down the number of irregular migrants crossing the European External border at a specific location at the border, were achieved.

These kind of missions are the exception rather than the rule and Frontex’s main activity has been the gathering of information of the migrants detected crossing the European border, their countries of origin and their motivation, in order to map the main migratory routes and emerging trends. This all is combined into quarterly risk analyses that identify ‘weak spots’ in the European external border and make predictions about the increase or decrease of irregular migrants at certain sections. The information it uses is provided by the member states, yet increasingly gathered by Frontex itself as well.

To gather this information, Frontex has turned to technological solutions. Technology is perceived as an efficient way to gather large swathes of data despite the relative limited resources Frontex has. Security cameras and detection sensors might be expensive, but they cost a lot less than a fully trained guard and do not suffer from human errors like tiredness or distraction. More and more, technology is being perceived as a panacea for border control. The European external border is still surveilled by aerial and naval patrols, yet increasingly has seen the usage of (night vision)cameras, movement sensors, drones, radars and satellites to detect and map irregular migrants approaching the border. This information is used for two purposes: (i) coordinating intercepting/safe-and-rescue missions to arrest/safe the migrants and (ii) producing risk analyses. For the first task it has created EUROSUR, which is explained in the paragraph below. The latter is one of Frontex core tasks; to map the major migrant routes, shifting trends in the migrants’ countries of origin and identification of ‘weak spots’ of the European external border. These risk analyses are subsequently being used to determine where basis resources will have to be allocated to and which sections require extra backing in order to manage the European border as effective as possible.

Eurosur was created to translate all the information generated by these technologies into manageable pieces of information that can be used to coordinate guards and support missions. According to Frontex, Eurosur is an ‘information-exchange program designed to improve the management of the EU external borders. Eurosur enables real-time sharing of border-related

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17 The FRONTEX annual risk analysis is publicly available on the FRONTEX website: http://fronter.europa.eu/publications/?p=2&c=risk-analysis.
information between members of the network”.

In other words, it puts together all the border related data that is being produced by ground, naval and aerial patrols, commercial ships, third countries, satellites, radars, drones and other surveillance technologies, attempting to create a complete overview of everyone near the entire European external border. This is then shared with the relevant actors in the area, so that they can take follow-up actions. Eurosur, by providing ‘complete’ information, enables the management of the external border to be as efficient as possible. Because Frontex, and the member states, have to make choices on where to allocate their limited resources (to which part of the external border), such information is crucial for optimal border control; it provides oversight and enables intercepting/saving as much irregular migrants as possible.

The control at the border has also seen an increase in technology; guards increasingly rely on a technology called ‘biometrics’ to identify and categorise migrants. Biometrics measures distinct features of a body. As everybody has its own distinct ‘watermarks’, these techniques can be used to compare results with databases and this way identify a person. Examples of biometrical data commonly used are fingerprints and iris scans, yet in recent years technologies are being developed and used that measure body or facial health patrons (thermography), the way someone walks (gait), someone’s body odour or even the size and pressure points of one’s foot. These techniques have been appearing on the European external border at a growing rate and a large multi-billion industry producing these technologies has emerged around it. That biometrics are perceived to bear great potential became visible already in 2007, when Frontex conducted a large scale study on the applicability of Biometrics on the European external border (one of the very first studies the then young organisation conducted).

The increasing usage and reliance on technology at the border will be further elaborated upon in the next chapter.

The Border at Melilla Today
Back to Melilla, back to 2005. Until then the fences that were constructed in the nineties had served their purpose well; only a small number of migrants had attempted to cross the external border at Melilla. Yet as other routes into Europe were better secured and the economic crisis hit

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20Carr, M. We want to welcome the living, not the dead. Statewatch Journal, vol 23 no 3. p 8, 10.
24Frontex Study on automated Biometric border crossing systems for registered passenger at four airports August 2007.
(Northern) Africa, the border appeared less and less frightful with the promise that lay behind it: Europe.

In September that year, Melilla made the world headlines because, again, migrants were climbing its fences en masse. In September, when thousands of migrants tried the same, five of them died. Reports differ on the cause of death; some accuse Moroccan police of using excessive violence, others lay the blame at the Spanish side of the border, saying that the deaths were due to injuries caused by the razor wire and rubber bullets. The official statement though, was that these deaths were the unfortunate result of 500 people trying to breach a border fence all at once; they were overrun and trampled by the crowd. Spanish police denied all responsibility for the deaths.

After this, the old fences received an update and a third fence was constructed by the Spanish government. The European external border at Melilla was now being ‘protected’ by 11 kilometres of three parallel six meter-high fences, topped off with razor wire, with a road running in between the fences to allow security forces to be on the spot quickly when necessary. To further obstruct migrants trying to cross the border illegally, tear gas sprinklers were installed and to increase surveillance (night vision) cameras and sound, movement and heat sensors were placed. This again reduced the number of migrants attempting to cross the border at Melilla. In 2007, most of the razor wire was removed again, for it caused terrible injuries to the few who tried to climb the fences regardless of it.

From 2008 onwards however, irregular migrants had found their way back to the Melilla ‘gate’ to Europe. The graph of Frontex shows that in 2008, roughly 6500 migrants were detected migrating into Europe ‘illegally’ via the ‘Western Mediterranean route’. Taking this Western Mediterranean route means entry via either Ceuta or Melilla, or by crossing the strait of Gibraltar by boat. Other routes migrants take are for example the ‘Central Mediterranean Route’ (Lampedusa, Malta and Sicily from Tunisia, Libya or Algeria) or the ‘Western African Route’ (the Canary Islands from Senegal and Mauritania). In total 159,100 ‘illegal entries’ were reported in 2008 over the entire external border of the EU.

29Webber, F. The cradle or the grave? EU migration policy and human rights. Statewatch Journal, vol 23 no 3. p4
The migrants crossing the border at Melilla, about a quarter of the 6500\textsuperscript{31}, thus only make up for a small section of the total amount of migrants crossing into the EU irregularly. Interestingly, the total number of illegal border crossings went down with 33\% in 2009, to 104,599 in total, whereas the total amount of migrants attempting to cross into Europe via the Western Mediterranean Route went up with 10\%, to 6650.\textsuperscript{32} This gap can be explained by the poor employment conditions in Algeria and Morocco at the time, as the number of Sub-Saharan nationals trying to cross into the EU via the Western Mediterranean route actually decreased in 2009.\textsuperscript{33} The role of criminal people smuggling networks was not expected to be big in 2008 and 2009, as it was mainly Moroccan and Algerian youth that made the attempt on an individual initiative.\textsuperscript{34}

Image 1: Frontex numbers of detected illegal border crossings (land and sea) on the Western Mediterranean Route.

The decrease in 2010 can be explained by the low employment in Spain itself in 2010, when the Algerian and Moroccan youth learned from the already existing Diaspora community that Spain was not much better than their home country.\textsuperscript{35} Already in 2010, there is a rise in ‘non-specified’ people, assumedly sub-Saharan people, from being the second largest group with 31\% in 2009 to the largest with 71\% in 2010.\textsuperscript{36} This trend has continued until today and is expected to continue for the years to come.

Most of these sub-Saharan migrants are men between 25 and 35 years of age, and are often low to medium educated. Yet in recent years, they were increasingly joined by (pregnant) women of the same age and background, sometimes carrying children along. Their presence at the

\textsuperscript{32} See image 1 and 2.
\textsuperscript{34}Frontex (2010), see above, p19
\textsuperscript{35}Frontex (2011), see above, p 15, 19
border at Melilla points to the involvement of people smugglers, for the journey would be too hazardous to conduct on own initiative.\(^{37}\) The role of people smugglers will be further elaborated upon below. The significant increase in the number of migrants in 2011 is an exception in the trend, which can be explained by the Arab Spring revolutions, where many fled the political regime change in Tunisia and many –especially Sub-Saharan people, who increasingly faced mistrust thanks to the rumours about Sub-Saharan militia fighting for Gaddafi –departed from the tumultuous Libyan civil war.\(^{38}\)

Although 2012 saw less migrants entering Europe via the Western Mediterranean route, the decline in numbers was relatively small when compared with the total number of ‘illegal’ entries into the EU in 2012\(^ {39}\) and was a significant increase with respect to 2010, when the EU total number was a lot higher compared to that of 2012. In 2013, the total numbers of migrants crossing the European external borders irregularly was equal to that of 2009 and 2010, yet again there was an increase of irregular migrants entering Melilla.

Due to this, Melilla came increasingly back in the picture of Spanish and European policy-makers, which led to the previously removed razor wire to be reinstalled again, the fences receiving an update of an anti-climbing maze and the border security was boosted with both material and manpower in October 2013.\(^ {40}\) In the 2014 Frontex Annual Risk Analysis the border at Melilla is elaborated upon more than previous years. Several times in 2013, the Spanish government had warned of the ‘permanent threat of migration’ the cities of Melilla and Ceuta faced. The report mentions that there had been “several violent incidents of migrants trying to cross the fence in large groups (more than a hundred persons), sometimes resulting in casualties”.\(^ {41}\) 2013 was also the first year that saw more migrants entering the Western Mediterranean Route via land (meaning the cities of Ceuta and Melilla) than via sea. Image 2 and 4 depict how this trend has developed. The increased usage of the land route is ascribed to the increased naval patrols and improved surveillance techniques, like Eurosur, that are taking place in the Mediterranean sea.

\(^{39}\)See image2.
The Frontex table shown below in image 3 displays the number of ‘illegal entries’ from 2009-2013 in the top row. Another interesting indicator shown in the graph is that of ‘Refusals of entry’, which in the graph shows a relatively stable number. In the note underneath it however, it states that the number of refused entries at the cities of Ceuta and Melilla alone in 2008 totalled a number almost five times higher than the European total that year. In the following years this number would decline, although remain far above the European total. Why these numbers are so high and why they are not taken into account in the rest of the graph is not explained anywhere. All that is explained is that a member state has the right to refuse entry to a person when he or she does not apply to the Schengen Border Criteria. The background of these people and their reasons for attempted entry is not mentioned and remains a blank spot.

The outlook the 2014 Frontex report gives is an expected continual to a slight increase of the numbers of migration in Europe, with the increase mainly expected at the southern and south eastern borders. It is expected that the main route for migration remains the Central Mediterranean one, with the Western and Eastern Mediterranean routes expected to become more popular as well. Thanks to the difficulty of these routes and their continuing popularity, an increase of criminal networks providing human smuggling operations are expected as well. The report ends with the note that it is hard to predict the total numbers of migrants because the political unrest that might cause massive migration is usually unforeseen.

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42 Refusal of entry is possible if the migrant meets one or more of the following conditions: has no valid travel document; has a false/counterfeit/forged travel document; has no valid visa or residence permit; has a false/counterfeit/forged visa or residence permit; has no appropriate document justifying the purpose and conditions of stay; has already stayed for three months during a six-month period on the territory of the member states of the European Union; does not have sufficient means of subsistence in relation to the period and form of stay, or the means to the country of origin or transit; is a person from whom an alert has been issued for the purposes of refusing entry in the SIS; is a person from whom an alert has been issued for the purposes of refusing entry in the national register; is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union. Frontex Annual Risk Analysis 2014, p 25.

The Road to Melilla

The section above mainly speaks about the measures taken to reduce the number of people who attempt, and those who succeed, in crossing the border. Every number however represents a person and is a story in itself. The following section will try to give an insight in what kind of people are actually crossing the border, what their reasons are and how they got to the European External border at Melilla (and what they encountered there) in order to provide a migrant’s perspective. This should give an alternative narrative and in this way broaden our understanding of the European external border.

The Sub-Saharan migrants in general are lowly educated and have limited knowledge of French and/or English. According to a survey by a Spanish newspaper, approximately 90% is uneducated, 9% has enjoyed an average education and 1% possesses a college degree. As mentioned earlier, the largest section nowadays is of ‘non-specified’, but assumed Sub-Saharan, descent. The reason for this, according to the Frontex analysis, is that the migrants fear repatriation after making it into Melilla and burn their papers to prevent this. This is contested by several NGOs, as will become evident below. The absence of papers makes it more difficult to establish the claims of their asylum application and to differentiate between political-religious refugees and social-economic ones. Although almost all make an application for asylum, several
documentaries and Sorensen’s research paint the picture that many migrants are economic refugees.  

One of the documentaries, Bab Septa, shows interviews with those who made it into Melilla. Many migrants acknowledge that they came to Europe looking for work. Yet it is important to take into account that work in Europe has a different kind of value to the migrants than it does to Europeans. A migrant in the Euronews video, exemplifies by stating “I’m not here because I love Europe so much. I don’t want to spend the next fifty years there. I’m doing it for my family. I just want to make enough money so that I can open my own business at home. Europe for me would mean another chance in life. Now, I have no chance in life, zero. All I want is to make something of my life”. This statement contributes to the image that rises from the varying reportages, that for most migrants working in Europe is an investment. They have to pay for the journey, take the risk of crossing the border, but once in they can make money that will allow them to support their family and start building on a future.

Others in the videos come from warzones, like the migrant who fled the war in Mali after his brother and parents were massacred, for whom Europe would mean a new life. This second group is more likely to stay for a longer period. Examples of their countries of origin are Mali and the Democratic Republic of Congo, but many Syrian refugees fleeing the war have made it to Melilla as well. Other nationalities of the migrants cover entire West-Africa, from Senegalese to Cameroonian, even Rwandese, while others come from even further away: Bangladesh. These migrants, already in Melilla, came to Melilla with the help of people smugglers. They were flown to Nigeria, from which a network of smugglers brought them to Melilla.

The United Nation Office on Drugs and Crime confirms this trend in a report that focussed on the role organized crime in Saharan migration. Non-African migrants are being smuggled by significantly better organized and connected networks of smugglers. The smugglers facilitating the African migrants are often a loose combination of officials, local tribes, and migrants themselves who wish to make a little money by sharing their experience before continuing with


49 For instance, see the videos mentioned in note 46 above, where the migrants portray Europe as a means to better their prospects in live.


52 UN office on Drug and Crime report (2011) The role of organized crime in the smuggling of migrants from West Africa to the European Union.
their own journey.\textsuperscript{53} There is an entire network of various routes one can take; some are illegal, some are legal and others are something in between. The documentary ‘Borders’ shows that, even if one attempts to get to the European external border by legal means, one is still subject to corrupt officials, the risk of having your papers taken or being arrested and deported on the basis of suspected ‘illegal migration’.\textsuperscript{54}

The stories the migrants tell paint a picture of a hazardous journey, facing criminals, extortion, corruption and discrimination.\textsuperscript{55} Many have lost friends in their attempt to make it to Europe. In one particular case, a man from Ghana was the only person of a group of nine who had made it to Melilla.\textsuperscript{56} These cases are not unique. In some cases, smugglers wish to make extra money, abandoning the migrants in the desert until they pay more money. In other cases the migrants are left behind because the smugglers fled after spotting a military patrol. The migrants spend days in the desert, surviving by drinking their own urine until they were found by the Mauritanian military.\textsuperscript{57} Nobody knows how many have died in the desert.

\textbf{Readmission agreements}

Some manage to make the trip in a few months, yet most travel for years before they make it to Melilla. Many travel a part of a distance, stop and work to gain enough money to complete another part of their journey.\textsuperscript{58} As described above, an unknown number of the migrants die in their attempt. There is however another reason why migrants never make it to the actual European external border: they are stopped by the governments of transit countries.

Allegedly, the EU ‘pays’ its neighbouring countries to stop the migrants for them with aid packages.\textsuperscript{59} For example, Tunisia received an extra 140 million Euro in aid in 2011 so that in

\begin{flushright}
\textsuperscript{54} Documentary \textit{Borders} (2013). See above.
\textsuperscript{55} UN Office of Drugs and Crime report (2011) see above
\textsuperscript{56} Number 9. (2013, June 28). \textit{stop the violence at the borders! [video file]} retrieved from \url{http://www.youtube.com/watch?v=w67kSMkUEWQ}.
\end{flushright}
return, it would help rebuke the number of migrants fleeing the civil war. Apart from aid, transit countries receive mobility partnerships, allowing citizens easier access to working visa, or favourable trade agreements. Readmission agreements are an effective tool in these practices. They aim at ‘controlling irregular migration and ensuring cooperation on the readmission of irregular migrants’, by allowing the EU and the third country to repatriate irregular migrants to their territories. In other words, they enable the EU to send unwanted migrants back to the country they come from.

Thanks to the readmission agreements, migrants are stopped far before they reach the actual European external border. These agreements are often criticised by NGOs and academics because it out sources the European external border control to transit countries, where the EU does not have to take responsibility for the living conditions of the migrants or guarantee their human rights. In 2014, the EU had readmission agreements with 13 countries and has binding readmission provisions with 79 other countries via the Cotonu agreement. This ‘outsourcing of the border control’ will be subject of further scrutinization in the second chapter.

**Europe in Sight**

If, after the long and perilous journey, the migrants make it to the borderlands at Melilla, Europe is still far away. In the forests surrounding Melilla, hundreds of migrants hide and wait for another chance to make an attempt at entering Europe. The migrants here are anxious for the Moroccan security forces that often patrol the hills, looking for irregular migrants. There are countless reports of migrants receiving severe beatings from the Moroccan forces, who use metal rods to chase them away. Their make-shift shelters are destroyed and whatever the migrants have is taken from them. The migrants pictured in the various videos carry patches and bandages and make a frightened and haunted impression. In one video, a man dies because of his injuries in

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64Webber, F. The cradle or the grave? EU migration policy and human rights. Statewatch Journal, vol 23 no 3. P 5
65See the video’s referred to above, by Number 9 and the EU reporter, the third video is by Journeyman pictures, Journeyman Pictures. (2014, March 17). The EU funded brutality facing migrants in Morocco. [video file] retrieved from http://www.youtube.com/watch?v=Qiep-nQdno8.
front of the camera. Other migrants tell they were asked to give their papers by Moroccan police, yet were never given back, definitively eliminating the means to enter Melilla legally. This explanation for the absence of papers of the migrants in Melilla differs significantly from the one the Frontex report gave.

On several occasions, the migrants have been arrested by the Moroccan auxiliary forces and were relocated. In 2005, the Moroccan government deported groups of migrants to the border with Algeria, leaving them in the middle of the desert without water or any resources. In another case, a migrant claimed he was reallocated to the desert with several others and saw two people being shot in front of him by the Moroccan police. Although it remains difficult to establish how many people have died, at least 17 did because of this. Image 4 (below) provides the grave numbers of how many people have died over the last decades and how many have gone missing. Since some of the migrants at Melilla have not had contact with their family in months, nor all missing cases are reported, it can be assumed that the real number lies even higher.

The Frontex report is almost completely silent about all the injuries and deaths at its border at Melilla and Ceuta. All it mentions is the sentence quoted earlier; speaking of the situation as ‘sometimes resulting in casualties’, which it ascribes to the fences. This way, it constructs the image that if the migrants, who tried to climb the fence ‘illegally’, hurt themselves whilst doing that, it is unfortunate, but their own fault. This not only ignores the passive role of placing fences with razor wire, yet also neglects the active role the Spanish government is playing by approving the activities of the Moroccan police.

Another example of the active role that Spain plays in these practices is the ‘trading’ of favourable trade treaties and development aid under the condition that transit countries, in this case Morocco, stop the migrants before they reach the Spanish border. In 2004, Morocco received 280 million euro in ‘development aid’, in order to be better able to deal with the burden irregular migrants give it. Investigative journalist Maite Vemeulen even accused the Moroccan government of using the migrants as ‘leverage’ so it could strike better bargaining deals with Spain and the European Union in areas like fishing rights and visa regulations.

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66 Number 9 video, see above, 14:29
67 Number 9 video, see above.
Discarded Rights

The practices ascribed above stand in contrast with the general narrative of the European Union as ‘an area of freedom, security and justice’. Besides the practices being against Europe’s own ideas, there are also fundamental legal principles being violated at the border. In the past two decades the migrants have become increasingly framed as ‘illegal migrants’, but they are not the ones committing illegal acts on the European external border. Firstly, the United Nations Declaration of Human Rights states that “everyone has the right to freedom of movement and residence within the borders of each state” and that “everyone has the right to leave any country, including his own, and to return to his country”, practically making migration a right. Furthermore, the principle of non-refoulement means that any signatory country under the Geneva Convention is obliged to take in refugees and not send them back. This core principle also implies that a country has to offer a refugee the possibility to apply for asylum and, if this request

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73 Art 2, Treaty of the European Union.
is turned down, provide the rationality of refusal and give the migrant the possibility to appeal. Finally, article 19 of the Charter of Fundamental Human Rights of the European Union, states that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”.

Spain’s practices at Melilla violate both the principle of non-refoulement and article 19 of the charter. An agreement from 1992 with Morocco enables it to send migrants it does not want back to Morocco, without any form of process. This denies the migrants their right to apply for asylum and expels them to a state in which, as shown above, they face inhumane and degrading treatment and punishment.

The Spanish newspaper El País calculated that about 30% of the migrants in Melilla get repatriated to Morocco this way. Numerous migrants in the documentaries also stated that they had been inside Melilla already, yet were repatriated by Spanish police without any form of process. In one case, the migrants had taken refuge in a sympathising politician’s house, yet were driven out with tear gas and deported back to Morocco. Another video shows how migrants are led through a ‘backdoor’ in the fences and handed over to the Moroccan forces without any form of process. Worse, one video even shows how Moroccan auxiliary forces were on the Spanish side of the fence and assaulted a migrant with an iron cane until he laid still on the ground, after which he is dragged back to Morocco. Meanwhile, Spanish civil guards stood by and watched without intervening.

These practices cannot be found in any Frontex report, yet interestingly, if the Frontex2014 Annual Risk Analysis is read carefully, there is a gap in the text: “Once in Melilla, migrants are turned over to Spanish Police Headquarters for identification, and many are transferred to the Temporary Centre for Immigrants (CETI- Centro de Estancia Temporal de Inmigrantes)”. Notice how the word ‘many’ implies that not all migrants make it to the CETI.

What happens to the others is not mentioned anywhere, though it can be assumed that they end up

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79 Journeyman pictures video, see above.
81 For the beating, see the following video at [http://video.repubblica.it/mondo-solidale/presi-a-bastonate-e-agrediti-con-le-armi-i-migranti-al-confine-marocco-spagna/170028/168517at0:48](http://video.repubblica.it/mondo-solidale/presi-a-bastonate-e-agrediti-con-le-armi-i-migranti-al-confine-marocco-spagna/170028/168517at0:48).
on the Moroccan side of the fence. In conclusion, there is a significant discrepancy between the rights the migrants have on the one hand and the practices they face on the ground in Melilla on the other. In this exceptional situation the policies to stop the large numbers of migrants seem to have led to the normal politico-juridical order de facto being suspended.

**Life at the CETI**

Those ‘many’ that do make it to the CETI are jubilant, cheering and screaming of bliss for they think they’ve made it into Europe. But ‘Europe’ is still not within reach. After their registration, the migrants can apply for asylum, after which a lengthy process commences that takes many years. These centres can be found all over Europe, and even outside the EU, as the Migreurop map reveals. The living conditions can vary greatly per centre, yet the migrants in the CETI state that they’re ‘being treated well’.

The stay at the CETI is dominated by waiting. Of course many hope to be given asylum, yet most will settle for being transferred to centres in mainland Spain. From there on, in case their request for asylum is turned down and the migrants are given a letter that asks them to leave voluntarily –something many interpret as a free pass into Europe– the migrants can slip away, opting for a life in illegality. The procedure can take from 4 months up to 2 years, though cases lasting over 4 years are no rarity either.

The most significant problem the CETI is coping with however is the severe overpopulation. The original capacity of the centre when constructed in 1999 was accommodate 472, yet thanks to the new influx of migrants of recent period the number currently housed at the CETI is over 2000. Makeshift tents have been set up to accommodate all migrants, yet some migrants have taken matters into their own hands and constructed their own shelter elsewhere in Melilla. The overpopulation of the centre has put pressure on the centre’s facilities; the migrants

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85 For this, see two of my previous researches, governing through risk paper, checks article.


89 A reason for this was the overpopulation at the centre, though the fear of being repatriated played a significant role in this as well. The migrants were of Bangladeshi descent. Razowsky, F. K. (2011, August) The
sometimes have to queue for hours if they want to use the sanitation facilities, which are being ‘overused’. The waiting lines for dinner can go all the way around the building, making some migrants opt to cook their own meals on bonfires instead. As the area surrounding the compound is not being cleaned by anyone, garbage and organic waste are accumulating there. As opposed to certain other centres, the migrants at CETI are allowed to leave the compound and many ‘established’ migrants work day jobs in Melilla (like washing cars and cleaning shoes).

Despite the mildly positive tone of the comments of the migrants, their content gives the impression living conditions are far from good. In 2002 the CETI received severe criticism by a report of Human Rights Watch on Spanish migration policy. Back then, the report criticized the overpopulation of the centre, which forced migrants to sleep outside in make-shift shelters. Another major point of critique was the fact that on several occasion migrants had been expelled out of Melilla back into Morocco by Spanish police forces, resulting in migrants being afraid to leave the compound. Most of all, the report’s main conclusion was that the apparent randomness that determined what outcome the migrants’ application would have; similar cases would receive verdict ranging from granted asylum to direct expulsion. This report is of course outdated, but the increase in numbers, the lack of notable structural change and the reports of the migrants suggests its content still has relevance today.

That the problems described in the Human Rights Watch report have not vanished from the CETI is exemplified by the story of 52 migrants from the Democratic Republic of the Congo (DRC). In May 2014, after being transferred from Melilla to mainland Spain, they were taken by Spanish police from the centre they stayed at and forcefully put on a plane to Congo. Upon arrival the local authorities put them in the Centre of Detention and Rehabilitation Kinshasa, infamous for its inhumane living conditions. Extraordinary about this case is that Spain and the DRC do not have a readmission agreement. Furthermore, the migrants were not given any form of process or information about the reasons for expulsion. With the increase of readmission agreements, academics and NGOs fear that these practices will become an easy solution to Europe’s ‘migration problem’.  

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The migrants’ centre in Melilla has some positive aspects as well; it offers courses to the migrants in computing, gardening or other handicraft professions. Furthermore, volunteers provide medical attention to those who suffered wounds from the fences or fell to the raging tuberculosis in the centre. Another interesting aspect of life in the CETI is the high solidarity amongst migrants, regardless of the many different nationalities. According to an investigative journalist that remained several days at the CETI, the migrants themselves have established mechanisms to keep the social peace and have rules that are equal to all. Even though there is not sufficient alternative evidence to support this claim, it does support the picture that derives from the various sources. Even if the official rules might not always be applied in the CETI in Melilla, there is no complete suspension of a juridical-political order, like there is outside Melilla. Instead, the official juridical-political order, even though sometimes absent, in general appears to be simply more blurred and fused with an alternative order, created by the migrants themselves.

The European external border has undergone serious changes in the past decades, something that also has become apparent in Melilla. At the European level, major changes were the shift in attitude towards migrants and the increasing reliance on technological solutions. Eurosur is an example of this in the field of border surveillance and information gathering, whereas biometrics and the wide variety of technological applications on the border fences are exemplary for controls at the physical border. The creation of Frontex can be seen in this light; a European agency that tries to come up with a holistic view of who is crossing the border by relying on technological solutions.

The border at Melilla has seen a significant transformation as well. From an unimportant, relative ‘open’ border, it has become one of the heaviest guarded in the world. In line with the European trend, the border at Melilla is also seen massive increase in the usage of surveillance and sensory technologies. The migrants attempting to cross the border at Melilla have changed as well, from largely people of Moroccan and Algerian descent to mainly migrants from Sub-Saharan countries. The pressure on the border at Melilla has seen different intensities, with three major migratory waves of which the third is currently taking place.

Originally the EU tried to stop, or at least delay, migrants by making the border harder to cross; erecting fences, shoring up border defences by installing barbered wire and technological hardware and have security forces present as soon as possible. In the last decade, especially France, Italy and Spain have increasingly turned to another approach to deal with the ‘migration

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93 In April 2014, 226 migrants had received treatment against tuberculosis. See 20 Minutos Spain above.
94 Ibid.
problem’: readmission agreements. These agreements and the practices of security forces, like the Moroccan police at the border at Melilla, give rise to questions about the EU’s real commitment to humanist values, like those expressed in the Charter on the Fundamental Rights of the European Union\textsuperscript{96} and the way these values seem to be inapplicable to the borders of the Union. The external border seems to have become a grey zone where it is unclear whether someone has crossed the border and which rights apply and which can be lifted.

The next chapter will try to create understanding of this complex situation by going into the literature on borders. After that it will explain the rationales behind governing through risk and use Foucault’s biopolitics to unveil logics that govern the European external border that are less keen to the eye. This should provide a suitable run-up to the third chapter where the migrants at Melilla are viewed through Agamben’s concept of homo sacer.

Chapter Two: Deconstructing the Border

The previous chapter tells a story of interplay; a kind of cat-and-mouse game, with many different cats (the various governmental actors) and large numbers of mice (the irregular migrants). Both strive for the good life; the latter by getting into the EU, the first by if not preventing, at least limiting the latter from doing so. It is striking to see what influence this had on the life of the migrants, the physical appearance of the border and the EU’s relationships with its neighbouring countries. But there are more interesting sides to this story that are not visible at first sight.

To scrutinize these aspects of the border, this chapter will use tools from the post-modern tradition. These approaches specifically will help to unveil the rationalities that ground the practices described in the previous chapter and will show that the dominant narrative is inadequate to capture the scope of the European border. The alternative narrative that will arise from this and the next chapter is therefore meant to, if not replace, at least supplement the current dominant narrative of the European border.

Two academic works that have aimed to provide an alternative narrative on borders are Benjamin Muller’s Security, Risk and the biometric state and Nick Vaughan-Williams’ Border politics: the limits of sovereign power, both addressing borders form a Post Modern angle. Their work will be used to provide another insight on modern-day borders and the role biopolitics, biometrics and concepts of risk management play at it. The aim here is not to provide an extensive account on the literature on borders and on Risk, as the scope and length of this thesis does not allow for that. The aim is to derive a general understanding of these critical approaches to the border that will provide a different view on the European external border at Melilla.

From here, the practice of governing through risk can be further scrutinized, which shall then be related back to the dominant logics governing the European external border. When using the concept on risk management in politics, one cannot leave the concept of biopolitics out. For this, besides Muller and Vaughan-Williams, Foucault’s work will be used to look at how migrants can be seen as different ‘risks’ to the European population and give another explanation for the kind of treatment these migrants receive. The chapter will finish with exploring the ancient Greek concepts of zoë and bios, as understood by Agamben in order to denormalize our current understanding of ‘life’. This should provide us with the perfect starting point to explore the concepts of zone of indistinction and homo sacer in the next chapter.

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Getting a hold on Borders

Historically, the thin black lines depicted on political maps have never fully resembled the border in reality. Borders are not confined to such a limited place; before crossing this thin line physically, the border is encountered multiple times before. The political influence of governments for example is not limited by the borders and exceeds far beyond them. International traders encounter the border long before the actual physical border when having to fill in the required paperwork prior to even commencing with their trade. Likewise, the border is not as ‘thin’ for people trying to cross it without the ‘right’ passport or with the ‘suspicious’ background.98 They encounter the border for the first time long before they depart from their home countries in the form of visa requirements or whilst they are travelling in the shape of patrols in third countries. Modern borders nowadays are much more ‘hybrid’, dispersed globally and, like Nick Vaughan-Williams stated, “imply a ‘thickness’... that thin lines on maps do not otherwise represent” .99 Vaughan-Williams argues that, although throughout history the borders of a state’s territory and the limits of security, law and authority have never completely coincided, today’s borders are in practice far away from the commonsensical image of them.100

The common image of the European external border does not confine the practices of security, law and authority of the European Union. In the previous chapter it became visible that migrants encounter the borders of the European Union long before the actual one that is depicted on geopolitical maps. ‘Pre-border surveillance’, a the term first coined by Carrera101 in relation to the Frontex missions at the Canary Isles, is a practice that can be seen at an increasing rate at the European external border. Because of the European Union-funded patrols and detention by third countries of the migrants heading for Europe, the sub-Saharan migrants encounter the European external border for the first time in the heart of the Saharan dessert. The territory of the EU remained the same, yet in the past two decades its border practices have expanded further, attempting to control migration far beyond its actual borders. This “offshoring of the border”, as Vaughan-Williams puts it, “complicates the straightforward notion of an alignment between the territorial limits of the Union on the one hand and the limits of its ability to attempt to control movement on the other. This disaggregation illustrates that the relationship between borders and territory is not static but increasingly dynamic”.102

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100 Vaughan-Williams, N. (2009), see above, p 33.
The ‘dynamism’ Vaughan-Williams refers to is not just limited to the patrols of third countries, stopping migrants before they reach the European border. The dynamic relationship between border and territory is also visible in the European visa regime. By requiring would-be migrants to file an application to enter the EU before they even depart the European border is stretched far across the world, up until the very populations it wishes to refrain from migrating.

This dynamic works on both sides of the border. The migrants that managed to climb the fences of Melilla were on Spanish territory, yet had not completed the crossing of the border. Those that were arrested and pushed back into Morocco had not made it across the European border whilst they were on Spanish territory. Similarly, it can be argued that even if the migrants make it to the asylum centre, they’re still not really in the European Union. The migrants at the CETI are given the chance to apply for asylum and generally are provided basic food and shelter, yet they remain excluded from full access to the European Union; they are not allowed to have formal jobs or to travel within the EU, not to mention access to fundamental rights like voting, freedom of detention and legal equality. The migrants are detained within the European Union, inside it yet outside it at the same moment.

In the same line of reasoning it can be argued that the migrants that were repatriated via there admission agreements had never entirely crossed the European border. Even on the territory of the European Union, they could be sent back to their countries of origin without any form of process, because they were never fully in the European Union. This would not happen with a person that had been in the EU for a longer period or a person that came from a country like the US. This connects to the idea that borders are experienced differently by different people.

Vaughan-Williams argues that there is a dominant belief of a ‘global borderless world’, particularly in the West, since many experience borders as ‘a mere formality and take mobility as almost a given’.103 This belief stands in sharp contrast with what people from areas like Latin America, Asia or Africa experience when they cross a border, as their crossing is observed and scrutinized more intensely and their stay requires an extensive visa application. Elspeth Guild and Didier Bigo have shown that the approvals for these visa applications are highly dependent on the country of origin, which is used to determine whether a person is likely to ‘overstay’ after their visa expires.104

The map they produced shows that a person from the US or Australia is not required to apply for a EU visa beforehand, making his first encounter with the border take place at the airport in Europe. A person from Cameroon on the other hand cannot leave Cameroon, as no carrier will take him without a visa. In this case, the border is located at an embassy within

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103 Vaughan-Williams (2009), see above, p 14.
Cameroon. For the inhabitants of a countries like Somalia or the Democratic Republic of Congo, having acquired a visa is not enough to ensure a stay in the EU as the visa can be revoked by any member state at any time for ‘security reasons’. This means that even if the person has acquired a visa and stayed in a country of the EU, it can still lose its visa if he crosses into another member state that annuls his visa and sends him back without a process. In this line of argument, the person in this case would, after living in the EU with a visa for a while, still not have completely crossed the European border.

The observation that “Borders [...] are no longer at the border”, once famously said by Étiene Balibar, applies even more today to the European external border. The European external border has become hybrid, at multiple places at the same time, for some a formality, for others a near continuous line of obstacles that stretches from their homes in the country of origin to their destination in Europe. This approach to the border as something not confined to one place, encountered in different spaces dependent on one’s background, explains how the European external border can be located at; its original position, now demarcated with the infamous fences; at the surrounding hills where the Moroccan police forces round migrants up; further south in the Saharan desert where third countries stop migrants heading to the EU; and on European territory where some migrants still are not inside the European Union. This however does not answer why this border is open for some and nearly impregnable for others. A possible explanation for the leading rationales that operate these practices at the European external border can be found in the literature on Risk Management and the affiliated Governing through Risk.

Risk and Ways to Contain It
The concept of risk first emerged in the 16th century and over the past 300 years it has grown to become a crucial factor in determining opportunities and threats for both companies and governments. Ulrich Beck and Anthony Giddens were the two main scholars that introduced the concept of Risk to the field of sociology. Giddens attributed society’s increasing occupation with the (safeguarding of the) future as generator of notions of risk. According to Beck, who published his first work on Risk just before the Chernobyl disaster in 1986, risk has not so much grown out of a demand by society, but is a product of modernity. Risks, according to Beck, do

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not exist in themselves; they are creations of the human mind, like hazards and insecurities are. Of course, these ‘dangers’ like a hurricane or an accident are real, but calculating the likelihood of them and translating these insecurities into risks is an intellectual practice that roots from modernity. It is modernity itself that is responsible for “inducing and even introducing hazards and insecurities.”

After the 9/11 attacks, terrorism became a main topic for Security studies and IR in general. With this, Risk gained the attention of IR scholars as well. Two scholars who made the connection of risk to governance were Aradau and van Munster, who introduced ‘governing through risk’, which can be explained as the translating of insecurities into risks, categorizing these risks and approach governance as a practice of managing these risks as best as possible. An interesting addition Aradau and van Munster made was the introduction of ‘precautionary risk’, which symbolized, as Muller explains, another “attempt at prevention, taming the limit, monitoring, managing, and governing the ungovernable and the uncertain”.

Precautionary risk seeks to take into account what cannot be taken into account realistically, like the likelihood of a terrorist attack or the possibility of an invasion. These risks cannot be realistically calculated and tell more about our perception of knowledge and how we see the world. It is an attempt to “manage uncertainty”, and “govern the ungovernable” to create a state of (perceived) certainty. Risk thus is the vehicle to conquer uncertainty by offering a likely certainty. Despite this essentially being impossible, this kind of risk calculation is increasingly being applied at the management of the border.

Governing the border through risk means everybody crossing the border is considered a ‘risk’. The risk this person poses to the EU can vary from very small, say a man from the US that has travelled to the EU regularly, to big, like a man from Somalia whom will be visiting the EU for the first time. In this theoretical example, both men do not represent any threat to the EU. The mere fact that the latter man was born in a place that is more often associated to lawlessness, despite this essentially being impossible, this kind of risk calculation is increasingly being applied at the management of the border.

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113 Muller, B. (2010) see above, p 14.
religious extremism and terrorism however will have him being constructed as a bigger risk. The first man is also identified as a risk (albeit a significantly smaller one), as he still has the potential to be a threat to the EU. This man being a citizen of the USA, a country with a (perceived) similar western culture, is being translated into a smaller likelihood of him posing a threat and subsequently constructed as a smaller risk. The rationale behind governing through risk is that by translating every object of governance into risks of varying degree the government sources can be allocated most efficiently and catastrophes prevented most effectively. The kind of threat somebody holds can be multiple; yet whether it concerns a risk of terrorism, criminality, diseases or socio-economic disruption, the most important fact is that it is unknown and thus poses increased uncertainty.

The example above only uses two variables: country of origin and number of previous entries. Muller shows that in reality, a whole lot more variables are taken into account at the management of the border. A result of applying the concept of risk management and the subsequently rendering of every migrant as a risk is that as much information as possible from everybody passing the border is gathered and screened in order to “cast the net as wide as possible”.

The application of risk management at the European external border comes in two distinct ways. The first concerns the identification of regular migrants entering through the official entries of the EU. When a person approaches the border (for instance by booking a flight, applying for visa), he is scanned and the risk he poses is calculated. Yet the uncertainty remained that the person crossing the physical border might be someone else than the one that got accredited a visa. Partially triggered by the terrorist attacks, the urge to be certain about who is crossing the border, to reduce uncertainty, led to the extensive application of biometrics at the European borders as discussed in the previous chapter. Apart from checking for illegal goods like weapons or drugs, biometric technology’s main task is to identify people, to certify that the person trying to cross the border is who he says he is. This is being done by gathering and keeping vast amounts of data of the people crossing the border. This data subsequently is being used to look for correlations with the data the biometric scans produce on the spot.

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118 Muller, B. (2010) see above, p 94.
As the policies attempt to create certainty, the biometric technologies are made as sensible as possible, so to minimize the uncertainty that someone can slip through. In practice, this results in a significant higher number of people being singled out for further inspection due to false positive identification than before the introduction of biometrics at the border.\textsuperscript{122} The discomfort and delay this gives to people crossing the border is weighted out against the minimalization of uncertainty.

The application of biometrics and risk management is not the panacea they are grasped to be; the certainty they provide is only a perceived one as real risk remain incalculable, ‘black swans’ aren’t taken into account and the security systems remain open to human errors\textsuperscript{123}, not to mention the implications this has for matters as privacy and freedom.\textsuperscript{124} They did however manage to make unauthorized entry of the border via the official entries nearly impossible, leaving those filtered out with little options but to try an irregular passage into the EU.

Looking at irregular migration from the perspective of risk provides an explanation for the extensive security deployment at Melilla. The (perceived) certainty risk management and biometrics have established over migration is threatened by irregular entries. Every migrant climbing the fences at Melilla is an uncalculated risk and poses an unknown threat to the EU, undermining the carefully constructed certainty that was achieved at regular entry points. In this light, irregular migration poses a fundamental threat to the perceived certainty of a European safety and stability, and this threat is in turn being used to legitimize the exceptional security practices at the European external border at Melilla described in chapter one.

The role risk plays at the management of the European external border becomes even more evident when looking at one of Frontex’ key activities: making risk analyses. Likewise, these risk analysis are an attempt to counter uncertainty. These analyses give numbers and predictions on how many migrants from which specific country are likely to cross at what section of the European external border, enabling counter-measures to be taken and resources to be allocated accordingly, so to constrain the migratory flows and reduce the uncertainty it poses.

The focus on Risk at the border at Melilla is also reflected in the policies concerning the migrants that cross the border. It gives an explanation why directly after crossing the fences, these ‘risks’ are contained in the CETI, separated from the European society. In the CETI the migrants are registered, their backgrounds documented and their motivation to migrate recorded, in order to

\textsuperscript{122} Muller, B. (2010) see above, p 94.


\textsuperscript{124} For this, see Muller, B. (2010) see above.
estimate the genuineness of their asylum application and to gain insight in the migratory flows. In the light of the Risk literature, it can also be said that this is a way of gaining more information over the uncertainty the migrant poses, making the risk calculable. This way, the CETI functions as a way to contain the risks that enter the EU irregularly, in which the risks these migrants pose can be calculated, translating their uncertainty into (perceived) certainty.

**Biopolitics**

Analyzing the migrants at Melilla from this perspective of Risk cannot be done without including the concept of biopolitics. Biopolitics can be described as the ‘management of populations’, the politics of governing the biological features of the human species. The term was first coined by Michael Foucault in his lectures at *Collège de France*, and further elaborated upon in the *History of Sexuality* (vol. 1) and *Society must be defended*.

In his study of power Foucault notices the changing modes of ‘governmentality’ that emerged throughout the seventeenth and eighteenth centuries. The original legal or juridical mechanism that was dominant during the Middle Ages, consisting of simple penal law prescribing prohibitions and punishments, became inapt to explain the complexity of the government’s power of the population. Therefore, he introduces ‘disciplinary power’ to explain the ‘closely meshed grid of material coercions’ that disciplined elements by enclosing them within a space and ordering them hierarchically. The same logic of the juridical mechanism is still in place, yet it is enhanced by a “series of supervisions, checks, inspections and varied controls that, even before the thief has stolen, make it possible to identify whether or not he is going to steal or not”. On the other end, punishment will not just consist of a public hanging or banishment, but consist of the transformation of the guilty with penitentiary techniques like moralization, correction and obligatory work.

Foucault gives an example of disciplinary power by contrasting the trial of a criminal in the mid 18th century, who was publicly tortured, with the highly organized and strict daily routines...
inmates were subject to one century later. He refuted theories that this change was thanks to humanitarian concerns of reformers nor was aimed at punishing more effectively. Instead, Foucault observed that these changes were part of a broader, continuous range of ‘measures of subjectivication’. The prison is a perfect example of a structure set to order and discipline inmates into compliant and submissive individuals. These measures of subjectivication reach much further than the walls of a prison; the military, hospitals and schools are other cases where disciplinary power is exercised to establish order, and thus certainty.

A second, distinct type of power Foucault describes emerges in the mid-eighteenth century and derives from two different emerging logics. On the one hand, the disciplinary mechanism became further enhanced with mechanisms of security, which contrary to disciplinary mechanism took a holistic view of society, using statistics and calculations to determine the net costs and gains of technologies of security for society as a whole. Combined with the emergence of demography and research into the relation between resources, wealth, the population and circulation with the works of Quesnay, Mohau and Süßmilch on the other hand, this gave birth to what Foucault termed ‘biopower’.

Biopower came with the realisation that humankind could be seen as a species itself. This enabled a kind of power that concerned not the relation of the state with an individual or society, but its relation with the sum of the bodies it governed: the population itself. To be clear, biopower is not about the relationship of the sovereign vis-a-vis the subject like disciplinary power is, but concerns the entire population made up not of individuals, but of ‘docile’ bodies. The change in perception has its roots in the sixteenth century mercantilist idea that a population is not a burden but key for a bigger workforce, a more competitive economy and thus of value. Biopower aims for the optimization of this productive power by making sure the circulation and movement of a population is led in such a way that it increases internal trade and mobility, yet is protected from internal dangers. Exemplary for these internal dangers are diseases or workplace accidents, for which the technologies of biopower would for instance be the usage of statistics on birth and mortality rates, immunizations and obligatory insurance. Via the promotion of healthy life styles, the subsidization of pharmaceutical industries and healthcare regulations, biopolitics

aims at bringing a population, the sum of its bodies, in its best shape so it can produce optimally.\(^{136}\)

Central for biopolitics is movement, or circulation, within a population. This allows for the renewal of bodies within a population, and with this the sorting of the productive elements from the unproductive ones. This is contrary to disciplinary power, which aim is complete observation, something much easier when everything stays put. Biopower thus appears to be more ‘free’ and less controlling than disciplinary power. Yet even though disciplinary power tries to control individuals via observation, isolation, ordering and punishment, whilst biopower favours circulation, movement and expansion within a population, the two types of power are not opposing. In fact, the two kinds of power can complement each other.\(^{137}\) Biopower requires ‘docile bodies’, which are best created through disciplinary structures of subjectivication. In the end, the ambition of both types of power is to control a population; either via exercising power over all individuals or by steering the population as a whole in one direction.

Biopolitics is often described as to ‘make live’ (a kind of life that allows for optimal production).\(^{138}\) This is different from the classical Schmittian notion of sovereign power, which as Foucault explains was about the ‘right to decide over life and death’. Paradoxically, this right was only exercised when the sovereign decided to take a live, thus actually the right was to kill, or in other words: ‘the right to take a life or to let live’.\(^{139}\) Vaughan-Williams explains the emergence of biopower had changed this notion into ‘the power to make live and let die’.\(^{140}\) Thus where the sovereign right was formerly exercised over the decision to end a life, biopower concerns the continuous steering of a population to live a specific kind of life.

To understand this particular difference, we must look at the original distinction the ancient Greeks made when addressing what is today known as ‘life’. Giorgio Agamben explains that in ancient Greece the separation of life into two very different concepts explains their understanding of politics, and consequently their understanding of the limits of the power of the sovereign. When talking about the life a citizen had in the polis\(^ {141}\), his political life, the word bios would be used. This included all possible interactions with fellow citizens and the status one had in the public space. When talking about living itself, like any animal, men or gods, zoë would be

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\(^{136}\) Muller, B. (2010) see above, pp 11-12.


\(^{138}\) Vaughan-Williams (2009) see above. p 80-81.

\(^{139}\) Ibid. p 80.

\(^{140}\) Ibid. p 81.

\(^{141}\) Polis literally means ‘city’ in Greek, but when referring to it the Classical Greek could also mean ‘citizenship’, or ‘body of citizens’. For this thesis, polis is understood as the state within the normal political-juridical order.
used. Zoē concerns both life within the household and life in the most elementary sense: simple natural life itself.\footnote{Agamben, G. (1995) \textit{Homo sacer, Sovereign power and bare life}. California: Stanford University Press-Stanford. P 9, 10.}

In the beginning of his book \textit{Homo Sacer}, Agamben emphasizes that during the classical period, natural life remained excluded from the political realm. According to Agamben therefore the beginning of modernity is marked by “the entry of zoē into the polis –the politicization of bare life as such”.\footnote{Ibid. p 10.} According to Foucault this moment ‘is situated at the point at which the species and the individual as a simple living body become what is at stake in a society’s political strategies’. In other words, the territorial state became a state of a population. One of the originary moments of this were the declarations of rights in the end of the 18th century (like the United States Bill of Rights or the French Declaration of Rights of man and Citizen of 1789) which marked “the inscription of natural life in the juridical-political order of the nation-state. The same bare life that in the ancient regime was politically neutral and belonged to God as creaturely life and in the classical world was (at least apparently) clearly distinguished as zoē from political life (bios) now fully enters into the structure of the state and even becomes the earthly foundation of the state’s legitimacy and sovereignty”.\footnote{Ibid. p 75.} Bare life is not the same as zoē, nor is it bios for that sake; bare life is something between the two, a stripped version of life produced in a ‘zone of indistinction’.\footnote{Vaughan-Williams, N. (2009). See above. p 99.} This zone of indistinction is where biopolitics is exercised in its purest form and is of core importance for Agamben’s argument, which will be discussed in further detail below.

Agamben bases much of his argumentation on Foucault’s theory of biopolitics, but disagrees with him on one important point, namely that zoē has never been completely detached from the political realm and that the rule of the sovereign originally has been biopolitical.\footnote{Ibid. p 98.} The sovereign’s right to take a life would automatically imply one’s life, both zoē and bios, is affected: both would come to an end. This way, bare life is included in the judicial order, though only through its exclusion from it. Biopolitics are thus at least as old as the sovereign exception; according to Agamben, it is even “the original activity of sovereign power”.\footnote{Agamben, G. (1995). See above. p 11.} For Agamben therefore, the real change Modernity has brought is “not simply the fact that life as such becomes a principal object of the projections and calculations of state power. Instead the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life—which is originally situated at the margins of the political order—gradually begins coincide with the political realm, and exclusion and inclusion, outside and inside, bios and zoē,
right and fact, enter into a zone of irreducible indistinction.”\textsuperscript{148} As a consequence of this, zones of indistinction can appear everywhere in the juridical-political realm as long as the sovereign exception remains hidden in our political system. The European external border at Melilla appears to be a perfect example of a zone of indistinction where bare life is subject to sovereign power, as will be shown below.

The rationales grounding biopolitics are similar to the ones that ground risk management. In essence both occupy themselves with a Sisyphean task: to gain control over uncertainty. Biopolitics attempt to steer the population into lifestyles that would keep it in optimal condition, expanding control over it and increasing its productivity. By having the population move in a certain way that avoids, or minimizes, internal dangers as much as possible, biopolitics tries to evade the uncertainties ubiquitous in a vast, ever moving population. By steering this movement, or circulation, not just can it be diverted down more productive paths, it also allows for a shifting of the productive bodies from the unproductive. Only after uncertainties like epidemics or unproductive attitudes are translated into risks can biopolitics be practiced. Risk management can thus be seen as an essential part of biopolitics.

Similarly, the relation between biopolitics and borders is an obvious, though ambiguous one. As stated above, biopolitics marked the shift of the territorial state to the state of the population. Biopolitics is about movement and circulation of a population and constraining this by means of the classical physical borders does not make sense from this perspective. As was shown earlier, this classical definition of the border has lost its relevance for today’s reality, especially when looking at the European external border. Biopolitics is not without borders however; with the population as subject of power, the border of the state is at the boundaries of the population. The aim of the state is to produce docile bodies, a careful and lengthy process. The productive power of this carefully produced population is threatened by foreign bodies, which can cause disarray or spread unknown defects that had been so meticulously averted within the population. Following Muller, we can say that the Biopolitical State thus focuses on the bodies that cross the border from outside into the population.\textsuperscript{149} This does not have to coincide with the actual physical border; crossing into the population can take place at many locations in the Biopolitical State.\textsuperscript{150}

Looking at the European external border at Melilla from the perspective of Biopolitics unveils the underlying rationales at work at the border and gives an explanation for the characteristics of the security practices. First of all, it explains why the European external border has become hybrid; the function of territorial demarcation has passed and moved into controlling the bodies that pass into the European population. This focus on bodies instead of the

\textsuperscript{148} Ibid. p 12.
\textsuperscript{150} Vaughan-Williams, N. (2009). See above. p 117.
geographical border itself is exemplified by the extensive deployment of biometric security systems. The extensive visa application, the screening of people before they’re at the border, the risk analyses of the migrants’ background and calculations of the possible threat they might carry for the population, make sense when approaching it from a biopolitical angle. Most of all, the logic of biopolitics explains why the EU and Spain are going to such great lengths to stop irregular migrants from crossing into the European population. Even after the bodies have crossed the physical border, they are still kept separate from the Spanish population by collecting the migrants in the CETI and other subsequent centres for asylum seekers. What it does not explain however is how it is possible that the results of this security apparatus, namely the suffering and deaths of irregular migrants, are deemed acceptable. The peculiar situation the migrants are in at Melilla (they are without rights and can be killed without it being considered homicide) can be explained by returning to Agamben’s work and using his concept based upon an obscure figure of archaic Roman law: Homo Sacer.
Chapter Three: Bare Life at Melilla

Homo Sacer

When analyzing migrants trapped at the margins of a Biopolitical state homo sacer, literally ‘sacred man’, might not be the first concept to think of. This, as Agamben himself calls it, ‘obscure figure of archaic Roman law’ offers a very interesting insight into the sovereign production of bare life, which applies perfectly to the position of irregular migrants at the European external border.

It is especially this concept that makes Agamben’s interpretation of biopolitics particularly useful for this analysis. Other academics that continued with Foucault’s work, for instance Dillon, have put their emphasis more on how biopolitics has become part of the western political-juridical order and the continuous creation of biopolitical life affects all citizens. Agamben’s concept shares the central thesis that biopolitics is all about creating biopolitical life, yet differs in his explanation of the origin and application of biopolitics. Like we saw in the previous chapter, Agamben disagrees that biopolitics originates from the eighteenth century, but instead argues it has always been an integral part of the sovereign exception. By connecting biopolitics to Schmitt’s work on the sovereign, Agamben gives an explanation for why some bodies are more affected by biopolitics than others and why biopolitics can be much more prevalent in some places than others. As will be argued below, this distinction provides us with another insight in how the European external border is being governed.

In ancient Roman law, the homo sacer was a man who had been judged for a crime, but did not receive conventional punishment. Instead he became homo sacer, ‘a man who may be killed, but not sacrificed’. This meant if anyone would kill the homo sacer it would not be considered homicide, whereas death by ritual practices was not permitted. There are several explanations for this seemingly contrasting position. Either the homo sacer had already lost its soul to the gods by committing his crime and thus there was no possibility of sacrifice. The other explanation is that sacrifice in ancient Rome was considered the same as death sentence, barring the homo sacer from a public trial as he already had one.

Agamben explains this peculiar punishment by comparing it to the ancient Germanic-Scandinavian ‘ban’ a person committing a crime could receive. This form of sentence would ban a person from a community and turn him into a ‘free man’ that had no protection from being killed either. The interesting about both ‘the ban’ and homo sacer is the relation between society and the
banned that remains; the banned is excluded from the *polis*, yet is closer to it than a foreigner. The exclusion of the banned from the *polis* nevertheless remains him included into the political realm; the banned thus remains part of the *polis* through an inclusive exclusion. The *homo sacer* is neither inside nor outside the *polis*, but instead ends up in the aforementioned ‘zone of indistinction’. The *homo sacer* is stripped of a citizen’s normal access to judicial and political institutions and with neither zoē nor bios, all that remains is his bare life. Agamben therefore argues that the *homo sacer* is the ultimate expression of sovereign power, as only the sovereign can invoke the rights one normally has and reduce a citizen to bare life.

For Agamben the purest example of biopolitics is not, as Foucault argued, the prison, but the concentration camp. The concentration camps of the Nazis are often associated with a state of exception and martial law, but Agamben shows that such dichotomies do not hold for the concentration camp. The camp is not outside the juridical order, but instead a zone of indistinction that is included into the realm of the law through its exclusion from it. Most importantly, “what is taken into the juridical order is the state of exception itself”, when it “ceases to be referred to as an external and provisional state of factual danger and comes to be confused with the juridical rule itself”. In the camp the state of exception has become the rule and the sovereign, the Führer, decides on bare life in its purest form (albeit indirectly through the structure of the camp and the camp officials).

According to Agamben, the essence of example of the camp is not the relentless production of bare life, but instead consists in the “materialization of the state of exception and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction”. Consequently, regardless of denomination, physical structure or type of kind crime committed, every time such a structure is created we can speak of a camp. Agamben shows that an apparently innocuous place has the potential to become a camp when “the normal order is de facto suspended and in which whether or not atrocities are committed depends not on law but on the civility and ethical sense of the police who temporarily acts as sovereign”. For instance, Agamben gives the examples of the stadium in Bari where Italian police gathered ‘illegal’ Albanian immigrants before sending them back to Albania; or the zones d’attentes where asylum

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154 Greek word for city that not just refers to the city itself but also to citizenship and the body of citizens. It therefore can be interpreted in this context as the political realm.
158 Ibid. p 71.
159 Ibid. p 71.
162 Ibid. p 97-99.
163 Ibid, p 98.
164 Ibid. p 98-99.
seekers at French airports are detained up to four days before the judicial authority can intervene. This leads us back to what Agamben considered the decisive change Modernity has brought: no longer are the zones of indistinction located at the margins of societies, instead they can appear everywhere with the lines between law and exception, inclusion and exclusion, inside and outside and zoē and bios are becoming increasingly blurred.

**Hominès Sacri at Melilla**

The camp and the migrant share a history that goes back almost a century; the first camps in Europe were built in the beginning of the 20th century in attempt to control migratory flows from the east by creating spaces of control. As we saw in the previous chapter, today’s migrants heading for Europe are (again) herded together in spaces of control, both inside and outside Europe. The CETI in Melilla aims at achieving the same—to control the influx of migrants—and is part of the European structure of migrant containment institutions, but to which extend can they be compared to the camps Agamben describes?

Life in CETI is not what Aristotle would call *eu zên*, ‘good life’, as the living conditions barely provide for a normal zoē: the overpopulation, limited sanitation, long waiting lines and lack of personal space have a severe impact on the migrants’ zoē. The migrants do not have the right and liberties citizens of the EU have, nor do they enjoy the rights they used to have when they were still a citizen of their home country. They are not without rights however; they do have the right to apply for asylum, to appeal in case of denial and to food and shelter. Despite these rights being granted to a limited extend, it cannot be said that the migrants are without rights. It can be said also that the migrants have a limited political life in their own community, as the conflicts are solved internally among the members. The courses offered by the CETI provide the migrants with capabilities for enhancing their future chances for a better bios. Both the bios and the zoē of the migrants in the CETI are not impressive, but it cannot be said that they are stripped of both. Their lives are not easy, but cannot be called bare life. For Agamben to determine whether the CETI can be dubbed a ‘camp’ is whether it “is a space of [...] absolute impossibility of deciding between fact and law, rule and application, exception and rule, which nevertheless incessantly decides between them”. These lines, between fact and law, rule and application, exception and rule might be somewhat blurred, but it is certainly not impossible to decide between them. The migrants are not subjected to the whims of the (temporary) sovereign and cannot be killed unpunished. Therefore, the CETI is not a good example of a camp, nor can its inhabitants easily be considered a modern version of *homo sacer*.

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167 Ibid. p 98
This is not to say that there is no zone of indistinction at Melilla though; like Agamben and Vaughan-Williams argued, the new Biopolitical reality enables zones of indistinction to appear anywhere if “the essence of a camp consists in the materialization of the state of exception and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction”. Which in practice would result in “an apparently innocuous space actually delimits a space in which the normal order is de facto suspended and in which whether or not atrocities are committed depends not on law but on the civility and ethical sense of the police who temporarily acts as sovereign”. If the ‘delimiting of the space’ does not have to be physical, which arguably is not necessary if bodies are nevertheless trapped inside a certain space, then there is a large space at the European external border at Melilla that meets this description perfectly; namely the mountains surrounding Melilla.

This at first sight harmless space has seen the formal order de facto suspended with the conducts of Moroccan security forces in response to the high number of migrants that are waiting to make an attempt of crossing the border. The exceptional use of force that is applied to disperse the migrants has slowly moved into a regular practice that has long surpassed the original aim of the activities. Similarly, the first fence was constructed as a response to the then exceptional increase of migrants and a suspension of the normal order. Two decades later, this exception on the normal order is still in place and is more present today than ever. The fences have only become higher, more technologically advanced and more lethal and have a large swath of security officials guarding it.

The migrants find themselves stuck in a space that is both inside and outside the political-juridical order, completely subjected to the goodwill/antipathy of the security forces. They do not have access to Moroccan, European or political-juridical institutions from their country of origin to demand their rights or protection. Their living conditions are minimal as their makeshift shelters are systematically demolished, their meals are prepared on small bonfires to prevent detection and sanitation is nonexistent. Of a zoê or bios can hardly be spoken; the migrants’ life has been reduced to simple bare life.

The most decisive feature for determining whether the irregular migrants stuck before the European external border at Melilla are modern-day homo sacer can be found in the original Roman description; “it is not permitted to sacrifice this man [homo sacer], yet he who kills him will not be condemned for homicide”. With this definition in mind it becomes imaginable that, despite the ample number of deaths at the border, not a single person is known to have served sentence for it. Imagine the political turmoil the death of a citizen from any country in the world

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by excessive use of force by security officials would give at a (more) regular border crossing and the contrast makes it painfully clear that the migrants around Melilla are indeed *homo sacer*. Because the migrants have unlawfully crossed the border, their sentence is becoming *hominem sacri*. This would also explain the strong discourse persistent in official documents speaking of ‘illegal immigrants’, which effectively enables the migrants’ fate linguistically. What is more, it would nevertheless be impossible to ‘sacrifice’ the migrants, or in other words sentence them to death by court.\(^\text{171}\) Such a thing would not only be impossible from humanitarian and historical grounds, it would also be against biopolitical logic as it would imply returning the *zoē* back to the *homo sacer*, freeing him from the zone of indistinction.

The migrants caught in the zone of indistinction at the European external border at Melilla add an interesting insight to Agamben’s concept of *homo sacer* and the camp. Vaughan-Williams already further elaborated upon Agamben’s notion of the ‘dislocating localization’\(^\text{172}\) of modern camps, showing that these camps can appear virtually everywhere, even in the midst of the *polis* for a short amount of time.\(^\text{173}\) In this light it is no longer necessary to have a clear demarcation of fences or walls like Agamben describes the camp, but simply requires a space where the bodies are captured in. Now, thanks to the logics of hybrid borders, risk management and biopolitics, the camp can even be located outside the actual state. Vaughan-Williams already showed that today’s camps can already be physically located outside the state’s borders, like Guantanamo Bay, Abu Ghraib and the Bagram prison, but they were at least legally built on US territory and operated by US officials.\(^\text{174}\) The camp at Melilla is not only outside (yet included through an exclusion) the political-juridical realm of Europe, it is physically and legally located outside the state and operated by third parties. The camp we see before Melilla therefore might mark yet another step in biopolitical thinking and another process of producing bare life.

**The Sovereign and Homo Sacer at the European External border**

In the first chapter it became clear that the European external border at Melilla is a unique one; its peculiar structure and location provided a perfect case to study the logics that govern the border at Melilla. Similarly, the zone of indistinction outside Melilla is a unique one, but the logics and power structures that created it can be found all over the European external border. Like Agamben said, the modern-day camp can be found at any space that “delimits a space in which the normal order is de facto suspended” and where security forces “temporarily act as sovereign”, “independent of the kinds of crime committed that are committed there and whatever its

\(^{171}\) Ibid. p 94.
\(^{172}\) Ibid. p 99.
\(^{174}\) Ibid. pp 103-105, 111-113.
The influx of irregular migrants into Europe have led to the creation of several spaces along the border where the normal order has become de facto suspended and the exception has become the rule, and where the death of the *homo sacer* can go unpunished.

Examples of these spaces are for instance the area surrounding Ceuta, Melilla’s sister city. Here, the migrants are caught in a similar space between a heavily fenced city and a mountainous area with nothing but their bare lives and Moroccan security forces that act as temporary sovereigns over them. Another example of *hominis sacri* at the European external border are the migrants held in the overpopulated detention centres in Libya or Algeria, their construction paid for by Europe, where their bare lives were completely subjected to local security forces acting as temporary sovereigns. Or the unknown number of migrants that try to cross the Saharan desert and find their bare lives depending on the whims of their smugglers. In this sense it can even be argued that the reason no one has been charged for the innumerable deaths by migrants at the Mediterranean Sea is that the migrants were *hominis sacri* who lost their bare lives in a zone of indistinction that stretched from the shores of African to the Italian coast.

The European external border is enormous, especially if one takes its hybrid nature we saw in the previous chapter into account. The case is not that the entire border is in fact one big camp; the border generally is, although at the margins, within the normal juridical-political border. The governance of the European external border becomes particularly problematic when there is a threat to the European biopolitical body (like a large influx of irregular migrants) and the state of exception is declared; especially when the threat maintains and the state of exception becomes the rule. The nature of the European external border, which still has the exceptional threat, is dealt with outside the normal political-juridical order. This way, it becomes possible to strip the migrants to their bare lives and enables the (temporary) sovereign to act unchecked.

This also explains Agamben’s notion that “the political system no longer orders forms of life and juridical rules in a determinate space, but instead contains at its very centre a dislocating localization that exceeds it and into which every form of life and every rule can be virtually taken”, and that the “camp as the dislocating localization is the hidden matrix of the politics in

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which we are still living”. What this means is that our political system originates from the structures of the sovereign and the camp and thus still has some of these biopolitical logics hidden within it. These logics, embodied by the camp, are an integral part of our political system and come into play whenever an exceptional threat endangers the biopolitical lives of the state and the state of exception is created. Like Agamben said, it’s not the atrocities committed or the topography that determines the camp, but the structure. It is this structure that, as both product and creator of biopolitical logic, is key in producing the European biopolitical life. In the same sense the separation of the Jewish body was the immediate production of the specifically German body during world war two, the separation of the migrant bodies is the immediate production of the specifically European body in our times. Hidden in the structure of the European external border is the biopolitical logic that aims to produce the European body, which works through the various shapes of the camp along the border in which the sovereign decides over the bare life of the homo sacer of this age: the migrant.

Conclusion

The European external border is probably the most complex border of our times; it consists of local, national and supranational actors and institutions, is located in various forms at numerous places, its ‘thickness’ dependent on the person trying to cross it. In the first chapter this thesis has explored various aspects of the border by using Melilla as guiding case study. The Schengen agreement, the globalizing world and the changing attitudes across Europe have led to the erection of fence after fence in attempt to stop the migrants from entering the EU. When this did not stop the migrants either, the authorities resorted to exceptional practices outside the normal political-juridical order to face the ‘threat’ with.

As the influx of migrants persisted, the exceptional practices pushed aside fundamental rights of migrants, like the principle of non-refoulement and the right not to be expelled to countries where one faces a serious threat or degrading and inhumane treatment. In Melilla the continuous arrival of migrants has not only led to the extensive application of a far-reaching security apparatus, it has also led to excessive and illegal practices by both Spanish and Moroccan security forces. The migrants are trapped outside the city in degrading and inhumane conditions and their only way out is over the razor-wired fences of Melilla.

The second chapter showed that the common border discourse is far from capable of capturing the reality of the European external border; the border has become highly hybrid and discriminative. Its governance has seen an increase in the application of risk management, driven by the underlying logic that it will increase certainty. This obsession with creating certainty has led to everybody crossing the border being framed and calculated as a risk, whereas this is, as Frontex admits in its own reports, impossible. Looking at the border with the logics of biopolitics in mind, the focus on bodies instead of individuals, and the separation of the migrants from the European population, becomes understandable.

Those that cross irregularly, because there are no regular options left for them, are being conceived as a threat because of the uncertainty they pose according to these hidden logics of risk and biopolitics. In some cases this has led to the creation of spaces where it is no longer possible to distinguish between law and fact and where state of exception has become the rule and de facto replaced the normal political-juridical order; zones of indistinction, or the modern camp. Using this concept, it becomes possible to explain how the security forces can decide (as temporary sovereigns) over the bare lives of the migrants. The migrants have become homo sacer, enabling for their deaths not being considered homicides and stripping their lives down to bare life. Where the concentration camps were once the purest embodiment of biopolitics, the camps along the
European external border have become one of today’s purest forms of biopolitics and plays a central role in the production of the European biopolitical body.

Recently, migration has been much discussed in public debate due to the humanitarian crisis taking place in the Mediterranean Sea. This February, a Spanish court accused 16 law enforcement officials of using disproportionate force against migrants trying to cross into Ceuta more than a year ago. In another case, a migrant has sued the Spanish Civil Guard for pushing him back into Morocco after he had climbed the fence at Melilla. These developments can point to the direction that the normal political-juridical order is moving back into the zone of indistinction that surround the European external border. This is a very interesting development and further research into this would be much recommended.

For now, is of great importance that we understand the complexities of the European external border and the underlying logics that are at play, if the humanitarian crisis taking place at Europe’s southern borders is to be addressed properly. Only after understanding the structures upon which the practices are built, can they be changed. In the short term, a political solution is necessary to deal with migration within the normal-political order. In the long run, we should follow Agamben in researching the structures that enable the creation of the camp in its many shapes that are hidden within our political systems. Only then can we make sure that the *homo sacer* remains an obscure figure from archaic Roman law.
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