Joint Patrols at the EU's Southern Border

Security and Development in the Control of African Migration

Roderick Parkes

In August 2006, the EU launched the first of two projected joint border patrols at its southern border in response to mass inflows of irregular migration from Africa. This development has simultaneously been criticised as a further buttress of 'fortress Europe' and defended as performing an important humanitarian task. It cannot, however, be judged in isolation, and must be set within the context of the full range of migration-control measures that are directed at Africa. This broader picture indicates that if the EU is serious in its aim of effectively controlling migration from that continent without compromising the rights of migrants and the interests of third countries, it will have to adopt an approach that makes use of the full range of policy tools available to it and takes a longer-term, curative perspective.

Launched in August 2006, the first of two projected joint border patrols at the EU's common southern border aims to dissuade sea-bound migrants from arriving at the Canary Islands from West Africa. This move marks the EU's latest response to the considerable numbers of 'unwanted migrants' coming by sea to southern member state territory, many of whom claim asylum, and also to the large numbers of prospective immigrants who are estimated to perish attempting such crossings.

Details of the operation are unclear, though the degree to which this is due to security considerations as stated, or thanks to a reluctance to publicise continued problems garnering the necessary resources and mollifying the African states affected is not certain. 3.2 m Euro have been drawn from the EU's budget to fund Mission 'Hera II', which is being part-financed to a level of 20% by the Spanish government, and is projected to continue for *circa* nine weeks. The launch of Hera II follows close on the tail of EU measures to temporarily boost the Canary Islands' capacity to deal with irregular migrants (Hera I), and precedes a similar mission (Jason I) which aims to bolster controls around Malta and Italy. The establishment of the border patrols has been coordinated by the EU's recently founded agency for cooperation on the management of external borders, FRONTEX, and pools border control resources (including personnel, boats and aircraft) from participating member states. Hera II involves Italy, Portugal, Finland and Spain, with the latter com-

manding. Greece, Italy and Malta have signed up to Jason I.

The patrols have been praised as an example of solidarity between member states, since they spread the burden of external border control more evenly. The evidence of solidarity can, however, be over-stated: enlargement of the EU has simultaneously removed an external buffer zone to the EU's east (and south), and seen the accession to the EU (albeit not to the Schengen area) of a number of states which often lack the facilities to deal with large migration flows. Thus, enlargement has increased the clout of these former external buffer states within the EU, as well as potentially intensifying the exposure of the EU-15 to the negative effects of those states' inability properly to manage sizeable migration flows. Even before the 2004-accession, such tensions and concerns featured prominently, with Spain and Italy complaining that they received inadequate support, and indicating that they had comparatively few incentives to control their borders if immigration flows were anyway destined for other member states. Member states may therefore still be seen to be operating in large part out of a narrower sense of self-interest.

Nor should the novelty of the measures be exaggerated: previous joint operations, like the 2003 Operation Ulysses, have erected sea border controls off the coast of the northern Mediterranean and Canary Islands (see *Fig. 1*). The role of FRONTEX—which is the real innovation here—appears somewhat diluted during the operationalisation of the current missions, and it is unclear how a number of the operational co-ordination problems that plagued earlier missions are to be overcome. However, in light of the Commission's project for centralised EU border management, such problems have often been a prelude to further integration in this area.

The controversy of the border patrols

Since the joint operations of 2003, the EU's response to flows of forced and voluntary migrants from Africa has received growing attention. Its latest move is no exception. The patrols have been criticised as a further building block in the EU's efforts to defend its borders against unwanted immigrants. Critics, particularly from the NGO sector, contend that the humanitarian component of these measures was not a priority for the initiators of the plan and, removed from public scrutiny, it will not be a priority for those executing the plans either. The humanitarian function of the measures-namely facilitating sea-rescue, disrupting human trafficking and dissuading migrants from undertaking dangerous journeys—thus arises only incidentally to the broader aims of migration control. Sceptical commentators add that previous controversial proposals such as the setting up of joint external processing centres ('asylum camps') have been predicated on similar humanitarian concerns; in actual fact, they mask a move to block migrants' access to the national territory or even to international protection, and to shift responsibility for migration control to states that can ill-afford to bear this burden.

By contrast, it can be contended that, should the patrols be quickly complemented by further measures of the kind agreed at July 2006's Euro-African Conference on Migration and Development in Rabat, they would become just one tool in a wider range of migration control policies that indicate solidarity with third countries within the political constraints associated with a highly sensitive policy area. It might also be argued that the humanitarian component of these measures is rather more complex than cursory analysis suggests: these and similar measures, although ostensibly restrictive and illiberal, are seen as a means of avoiding a fundamental reform of the international asylum and migration law regime- something which has previously been mooted by EU member

Figure 1
Principal Maritime Joint Operations at the Southern Border

	Participating States	*Mission*
Alhambra (06.2005)	DE; SP	Surveillance of Spanish waters
Fer IAS (10.–11.2004; Fer IAS II 2005)	DE; GR; IT	Inspect merchant ships in Adriatic
Guanarteme (01.2005)	CY; DE; GR; IT; PT; SP	Counter clandestine immigration around the Canaries
Hera I (06.2006)	DE; IT; FR; PT; UK	Experts to the Canary Islands to aid in the identification of migrants
RIO IV (05.2003)	DE; DK; ES; FN; FR; NO; PT; UK	Improve border control systems in ports of candidate states
Triton I (03.2003; Triton II 12.2004; Triton III 08.2005)	FR; GR; IT; ES	Erect joint sea border controls off south-eastern Mediterranean
Ulysses (01.–05.2003)	ES; FR; IT; PT; UK	Erect sea border controls off north Mediterranean and Canaries

states like Austria, and which would probably be to the detriment of future forced migrants.

If such measures do indeed compromise the interests of today's migrants in order to ensure the rights of future categories of migrant, this implies that the joint border patrols form part of a broader raft of policies that seek to offer a permanent and curative solution to the problem of unwanted migration from Africa; if they do not form part of such a broader strategy, then—far from safeguarding the international migration law regime—measures like the joint patrols would appear merely to erode it. Moreover, although it is too early to judge the progress of the Rabat Action Plan (http://www.maec.gov.ma/migration/En/default.htm) it is worth verifying whether policies like the joint border patrols, which privilege the interests of the EU over those of African states, are the exception or the rule.

Do the current patrol measures dovetail with a broader set of policies that aim to deal with unwanted migration in a curative, long-term manner that takes a responsible approach to the interests of African states? Even within the bounds of the 'political realities' that policy-makers face, is the EU making full use of the possibilities available to it for controlling migration in this way?

Options for the control of African migration

European integration in the sphere of external and domestic policy has furnished the EU with a considerable range of possible tools for controlling migration from Africa. At least six strands of the EU's 'external dimension' of migration control are discernible, five building on traditional external policy areas (the 'development/economic cooperation', 'trade', 'diplomacy', 'humanitarian' and 'external security' approaches) and a further strand deriving from a core domain of domestic policy (the 'internal security' approach). In line with the above queries, these can be differentiated according to whether they
▸ take account of the interests of African countries,
▸ offer a long or short term response to the problem of unwanted migration, and

▸ are predicated on an aversive or curative approach to unwanted migration.

According to such a scheme, the 'development' and 'internal security' approaches would be situated farthest from one another: whilst the former seeks to provide a long-term, curative solution which is in the mutual interests of the EU and third countries, the latter offers a shorter-term, aversive response which is less obviously in the interests of third countries. Since the border patrols in many ways belong in the latter category, it is instructive to see what weight the two approaches currently receive in the EU's response to the problem of African migration.

Border patrols and the 'internal security' approach

The 'internal security' response to unwanted migration from Africa and elsewhere has involved the export of national tools of migration control to other countries, and the recruitment of third countries to function as buffer zones between the EU and unwanted migrants:

▸ the border controls of EU member states have been relocated to third countries. Member states' control personnel are increasingly active at exit points in third countries, and their consulates have gained a more important role in controlling access to the national territory.

▸ third countries have been expected, with or without assistance from the EU, to improve their management of migration and their control of individuals leaving their territory (giving rise to the controversial principle of 'illegal emigration'), and

▸ the return of unwanted migrants to third countries which they originate from or transited through has been facilitated. Readmission agreements have thus been signed with third countries (principally on a bilateral level between individual member states and third countries, but also in various forms at an EU level – see *Fig. 2*).

The 'internal security' approach has been associated with a number of controversial trends in the regulation of migration. Human rights and humanitarian norms make it difficult to expel unwanted migrants once they have arrived on the territory of the member states; much of the 'internal security' approach rests on a principle of 'remote control', preventing migrants from reaching the EU in the first place. Asylum-seekers have been increasingly conflated with illegal voluntary immigrants, further loosening the legal constraints on remote control. Such measures have softened the edges of national law and the international migration law regime, and are sometimes credited with having relieved the necessity of multilateral legal reform. Yet, they have offered at best a stopgap, reactive solution to the perceived incompatibility of the strictures of domestic and international legal regimes with the reality of global migration flows in the post-Cold-War context. Furthermore, although the advocates of this approach argue that it simply encourages other states to take proper responsibility for migration control, these measures have been associated with a trend towards extra-EU burden-*shifting*; this has involved a *de facto* displacement of responsibility for migration control to third countries as well as to private organisations like transport companies (via 'carrier sanctions' and restrictive visa regulations).

Although the details concerning the EU's joint patrols remain sketchy, it is possible to locate these measures within the 'internal security' approach: where patrols have been instrumental in the surveillance of sea-bound migrants, escorted them ashore or rescued them, this has usually facilitated those individuals' timely removal from the country. Such patrols have also sought to cut off channels of migration and to extend states' border controls into international waters or the maritime territory of third states, thus boosting 'remote control'. A 2003 feasibility study and programme on the protection and patrol of the EU's maritime borders

Figure 2
States with which the EU has or is negotiating readmission arrangements

EU readmission agreement concluded	EU readmission agreement under negotiation	EU mandate for negotiation of agreement	Treaty obligation to readmit own nationals	Agreement to dialogue on readmission
Hong Kong, Macao, Sri Lanka, Albania, Russia	Morocco, Pakistan, Turkey, Ukraine,	China, Algeria	African Caribbean and Pacific states (ACP), Egypt, Algeria, Jordan, Lebanon, Armenia, Georgia, Azerbaijan, Uzbekistan, South Africa, Chile	Tunisia, Israel, Moldova, Kazakhstan, Kyrgystan, Belarus, Yemen, Laos, Cambodia, Pakistan

Source: EURLEX Database (Search on 22 August 2006); Statewatch (2003),
http://www.statewatch.org/news/2003/may/12readmission.htm.

received criticism in a similar vein: they were felt to advocate an ambiguous understanding of the principle of territoriality in order to maximise the EU's capacity to block migration whilst minimising migrants' opportunities to activate rights. The proliferation of such operations in international waters has drawn comparisons with the establishment of international zones in airports; such zones create areas in which migrants are unable to claim some or all of the rights available to claimants on state territory. A lack of clarity about the immigration powers of member state officials operating in territorial, foreign and international waters has admittedly helped scupper earlier sea-bound joint operations (including Ulysses), however it has also led to a diffusion of liability and responsibility for such measures; this diffusion is compounded by the complex interplay of legal regimes, the lack of judicial and public oversight, as well as by the involvement of different member states and now FRONTEX. Other traits of the 'internal security' approach are identifiable: it has been contended that the 2003 documents conflate forced migrants with (potential) illegal voluntary immigrants in order to increase the EU's capacity to intercept vessels under the Law of the Sea. As for the humanitarian dimension of sea-rescue:

whilst 2003 plans argued for a meticulous interpretation of the duty to protect those aboard unseaworthy vessels, they appeared to do so primarily in order to expand and legitimise the scope of interception activity.

Although it might be expected that the EU would adopt a short-term, reactive (and symbolic) approach like joint border patrols in a crisis situation, the patrols are no isolated development; indeed the 'internal security' approach remains predominant in the EU's efforts at controlling migration from Africa. In part, this is a hangover from previous developments: the member states continue to grapple, for example, with the formulation of a list of 'safe countries of origin', which ought to have formed part of an earlier directive on the processing of asylum claims. Such lists are used to funnel asylum-seekers who come from countries where human rights are deemed sufficiently well-protected into a fast-track assessment of their claims. In its present form, the proposed list is highly 'Africa-centric'. Yet, the 'internal security' approach persists in measures recently called for, or adopted, in response to the problem of African migration: despite expressing concern about the need to address the causes of migration and increasing dialogue with African countries, many of the concrete measures in the 'Global Approach' to migration endorsed

by the December 2005 European Council belong to an 'internal security' approach. This certainly applies to the ream of measures which FRONTEX is to undertake, the negotiation of readmission agreements with Morocco and Algeria, and most of the measures set out for the EU's work with neighbouring countries.

Development cooperation as a response to unwanted migration

That development policies can mitigate the 'push' factors that cause forced and voluntary migration has long been recognised, but it is only really in the last quarter century that efforts have been made explicitly to link development tools with migration policies. The 'development approach' seeks to use development policy tools to alleviate poverty and improve the respect for human rights in third countries with the aim of alleviating migration pressures from these countries. It also aims to ensure that changes are made to existing immigration and immigrant policies to prevent them aggravating Africa's development problems. It constitutes a curative approach to migration, involving policies that are in the mutual interest of the EU and third countries.

The 'development approach' does, however, jar with the current priorities of EU migration control on a number of grounds:
- ▸ it does little for short-term control imperatives; it offers a long-term response to the problem of migration control, and one whose effectiveness remains under-researched,
- ▸ over the medium term such an approach may actually lead to a slight increase in unwanted migration flows, as travel becomes more affordable for Africans but the 'push' and 'pull' factors of migration are not fundamentally altered, and
- ▸ in order to reap the full synergies between development and migration control the EU would be forced to make changes to current immigration and immigrant policies.

Whilst some of these changes can be accommodated relatively easily into the EU's immigration and immigrant policy—the establishment of a system to facilitate immigrants' sending of remittances to their countries of origin for example—others would be more complex: the EU's policies for returning illegal immigrants to their countries of origin would have to take account of African states' development needs, potentially compromising the effectiveness of return measures; efforts to attract economic immigrants from African countries might be identified as one of the causes of their development troubles, and mechanisms would have to be introduced to prevent a 'brain drain'—again diminishing their effectiveness; immigrants' residence rights—formerly restricted as part of an effort to control unwanted immigration—would have to be liberalised to allow African migrants to return to their countries of origin for extended periods to directly invest knowledge and funds gained in Europe. Despite these apparent drawbacks, approaches which favour the development of third countries are acknowledged to be the principal way for developed states to foster a long-term solution to the problem of unwanted immigration from Africa.

Although the European Council and Commission have (sporadically) advocated such an approach since the early 1990s, it is only really since the beginning of this century that suitable measures have been developed. Funding has been channelled to the external dimension of migration control through a range of existing modes of cooperation but also through budget line B7-667 which was established in 2001 and by 2003 lay at 20m. Euro; this was superseded in 2004 by the AENEAS programme on financial and technical assistance to third countries in the fields of asylum and immigration which set aside 250m. Euro for the period from 1 January 2004 to 31 December 2008. In order to bring it into line with the framework of the Financial Perspective, the AENEAS programme has

been shortened to three years, but will be continued as a thematic programme for the period 2007–2013. The AENEAS Programme currently supports development activities, especially in sub-Saharan Africa. Yet, the geographical focus has principally been on states negotiating readmission agreements with the EU, and the thematic focus on expanding third countries' capacity to manage forced and voluntary migration.

As for the changes made to the EU's existing immigration and immigrant policies, the greatest movement has been in the establishment of remittance systems. The proposed Payment Services Directive ought to increase competition between remittance service providers to the benefit of African immigrants (although development/migration considerations were not substantially behind the directive's formulation). Through its AENEAS programme, the EU is, meanwhile, funding a remittance venture developed by the International Fund for Agricultural Development. The Commission has also signalled its awareness of the problems of 'brain drain', notably in its 'Strategy for Action on the Crisis in Human Resources for Health in Developing Countries' and in its Policy Plan on legal migration. However, earlier pronouncements on the development approach have not always been acted upon, even by the Commission, which is deemed to be less prey to electoral pressures than actors in the Council: its Communications on migration and development have, for example, signalled an awareness of the benefits that could accrue from tailoring return policies to African countries' development needs; these considerations were not apparent in the proposed directive on common standards in return policy, which contained no mechanisms for monitoring the effect of returns on the development of third countries.

Joint border patrols in the 'broader picture'

This analysis of the broader context of migration control suggests that the EU continues to focus on short-term, reactive measures which come to the detriment of third countries. This puts in question both the stated and unstated humanitarian rationales behind the joint patrols, and the patrols have indeed been criticised as a further cause for the tragedies that are reported around the EU's coast, rather than as their solution. A gradual change is, nevertheless, identifiable in the EU's broader approach to unwanted African migration: the focus of the 'internal security' approach has shifted in favour of co-developing African countries' capacity to deal with migration, as opposed to obliging them *de facto* to improve their controls (joint sea patrols with African states are a part of this); it has also included measures to publicise channels for legal migration instead of merely highlighting deterrents to illegal immigration. Progress too has occurred in the other strands of the external dimension of migration control (development; trade; external security; diplomacy; humanitarian), and attempts have been made to find synergies between them (e.g. by closing the gap between humanitarian and development approaches). Observers of EU asylum policy have yet to identify the category to which other high-profile developments—notably the so-called 'regionalisation of protection'—belong. These might either be situated in an internal security approach which favours remote control, or in a development/ humanitarian category.

It is hard to escape the conclusion that this progress is not great enough though, and that the EU is not making full use of the tools at its disposal. Part of the reason lies in the usual problems of coordination between different actors (i.e. those dealing with home affairs; foreign policy; development etc), which in the somewhat non-hierarchical political system of the EU may be particularly acute. The failure resolutely

to promote a longer-term, curative approach may also derive from the constraints imposed by the 'political realities' that policy-makers face. The development approach, for example, may cause a medium-term rise in unwanted immigration and require changes to current control-oriented policies—given the present situation, this might be viewed as politically untenable. Nevertheless, such an approach appears necessary if an erosion of the migration law regime is to be avoided, and the EU will shortly encounter a number of opportunities—the September UN High-Level Dialogue on Migration and Development, and the review of the 'Global Approach' at the end of 2006—to redouble its efforts in this regard.

The adoption of a longer-term, curative approach should not, however, be understood as a panacea. It would not, for example, be a replacement for traditional border control measures. There is also a need for serious debate and analysis about the form and effectiveness of such a policy, in order to prevent it becoming a 'progressive', but essentially meaningless, response to the problem of unwanted migration (see *SWP-Aktuell* No. 33/2004). Moreover, the adoption of such an approach would not relieve the need for a sober assessment of whether the current level of border control measures is merited on functional (social, economic, foreign and internal security policy) grounds, let alone on the more normative considerations that underpin the asylum regime. It has been argued, not least by the Commission, that the EU actually needs to open up new channels for legal immigration to meet its functional economic and demographic needs.

Prospects for the German Presidency

From this perspective, many commentators agree that the 2007 German EU-Presidency comes at an important point: the Presidency may be able to lead debate on, and lend crucial weight to, the longer-term perspective in migration control during

the review of the progress of the 'Global Approach'; it also appears likely that the first of the Commission's projected proposals on legal immigration will be dealt with under the aegis of the German Presidency, spawning opportunities to open channels of immigration. The proposal will deal with highly qualified workers, meaning that 'brain drain' considerations will also be treated.

However, several of these commentators have privately lamented the fact that it will fall to the German government to tackle these issues: Germany is regarded as one of the innovators of the 'internal security' approach and as, at best, a lukewarm supporter of longer-term approaches to migration control. Some suspect that the German government will seek to accentuate the security aspects of the 'Global Approach', and to extend their geographic scope from Africa to Eastern Europe. They also highlight Germany's reluctance to regulate legal immigration at the European level.

Certainly, there is little evidence that the German government is keen to regulate legal immigration at the EU-level; however, it may show a greater readiness to discuss these issues, if only to expose other potential obstructers of progress in this area who are free-riding on Germany's opposition, and to allay calls to deal with legal migration by qualified majority in Council. There will also be pressure for the Presidency to play the role of 'neutral broker' rather than promote its own concerns. Further, Germany has shown itself increasingly open to the adoption of a longer-term approach to migration control. The development policy of the current coalition signals a desire to deal with the root-causes of migration through development tools, and to ensure that other policy areas do not inadvertently add to these causes.

As for further integration in the area of border management: although—or perhaps because—its eastern border has mutated from an external to an internal EU border since enlargement, Germany is viewed as one of the supporters of greater coopera-

tion on the management of the EU's common borders. The government has previously supported greater operational as well as strategic centralisation in this area. The joint sea patrols are likely to give rise to a number of operational (e.g. the hierarchical control of the patrols) and legal (e.g. executive powers of personnel in foreign territory) questions concerning the role of FRONTEX many of which will speak in favour of granting the agency greater competencies. Attention in the German *Bundestag*, albeit mainly outside the parties of the current governing coalition, has, however, recently turned to the problems associated with maintaining parliamentary control of FRONTEX: European cooperation in the area of justice and home affairs has often been felt to favour the administrative level of the executive. Questions have arisen concerning whether the European Parliament's budgetary powers and right to request reports from the Executive Director of FRONTEX suffice to ensure parliamentary control of the agency.