2015

The ambiguity of EU borders

The notion of inclusive exclusion applied to European immigration of the asylum seeker.

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Major: Sociology
Name: Nephele de Bruin 940515138030
Supervisor: Bram Jansen
Wageningen University

Abstract

The notion of inclusive exclusion of Agamben is applied to the European immigration crisis. In a state of exception the EU and its member states, decide who is placed within the sphere of law and who is not. The asylum seeker is put in a position of being simultaneously inside (included) and outside (excluded) the EU, revealing the ambiguity of the EU border at the Mediterranean sea. The notion of inclusive exclusion goes beyond the dichotomy of inclusion and exclusion, showing the interconnectedness of securitization and humanitarianism within the EU immigration agenda, that tries to deal with the migration crisis in the first months of 2015. A trend of securitization seems to actively exclude the asylum seeker, often depriving him or her from the right to seek asylum. Subsequently, there is a trend of humanitarianism - including the asylum seeker- which at first sight opposes a trend of deterrence. However, humanitarianism has as well become a way to reinforce the authority of the state; a humanitarian border appears in which the purpose for humanitarian action and security measures can no longer be distinguished. Nonetheless it cannot be denied that there is also a moral obligation for the EU and its member states to preserve humane circumstances, so close to the EU. The case of operation Triton, among others, shows how inclusion and exclusion, humanitarianism and securitization, and their underlying motives are insurmountably intertwined.

Key words: inclusive exclusion; asylum seeker; securitization; humanitarianism

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1. Introduction

The rising flow of immigrants to the EU, in the first months of 2015, has reinforced a public fear that these immigrants - as 'thieves of enjoyment' - will invade the privileged lifestyles of citizens of 'fortress Europe'.[1] These sentiments of fear and rejection have led to more restrictive immigration policies on the EU and national level; construction of fences at the border of Greece and Bulgaria and increased security checks at the Moroccan and Turkish borders[2]. This sometimes leaves the asylum seeker, fleeing from conflict, persecution and poverty, only one way to cross the EU border: the Mediterranean sea.

Only in the first five months of 2015, 103.000 immigrants arrived in Europe, most of them in Italy and Greece.[3] The high number of asylum seekers entering the EU overwhelmed the asylum system and the ability to provide sufficient reception centers, care and examinations of asylum applications. In the end of 2014, the government of Italy decided to end their national Mare Nostrum operation, which was responsible for many rescue and search efforts at sea.[4] The EU was unwilling to help Italy with financing this expensive but humane immigration agenda, so Italy was no longer able to keep this operation going. Operation Triton took its place, financed by the EU member states, covering a significantly smaller area on sea to rescue refugees and other migrants passing the sea in unequipped boats. The situation, emerging in the months that followed, was alarming; the death toll of boat immigrants crossing the Mediterranean had risen to 1500 victims only in the first four months of 2015[5]

The large number of deaths triggered other sentiments besides fear and rejection. Media coverage on the topic became daily and human rights organizations like Amnesty International started campaigns[6] to urge government leaders to change these deterrence policies. NGOs working in the area and across Europe have criticized Europe's border control and immigration agenda.[4] On 23th of April 2015, the EU planned an emergency summit.[7] The many casualties were found unacceptable by a majority of the EU member states and the horrific security situation in Libya had increased pressure on the EU to act.[8] It was decided that operation Triton was going to be extended. As a border security agency, Frontex also received the responsibility to increase their rescue operations. "Many different policy options have been discussed over the years, from tougher sanctions against smugglers and traffickers, to the creation of more safe and orderly channels for migration, including increasing refugee resettlement quotas".[8] There has, however, not yet been found a way to protect humane circumstances as well as security issues. In the first months of 2015, policies concerning immigration to Europe have once again been revalued and questioned.

Within the EU a trend towards securitization can be observed[9], constructing the walls of 'fortress Europe', higher and higher. Some argue this trend was set in motion after the terrorist attack of 9/11, which triggered fear for terrorism.[9] However, by making the journey to the EU more dangerous, an operation based on a security mandate, such as operation Triton, gets involved in humanitarian purposes. It is this humanitarianism, as "the aid and action designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of man-made crises and natural disasters"[10], in which different actors, both the EU and its member states among others have become involved in, at EU borders.

The purpose of this thesis is to show the ambiguity of EU borders at the Mediterranean sea. It is shown that - where securitization and humanitarianism are seemingly contradicting trends with different purposes – they have become very much intertwined. With the use of Agamben's[11] notion of *inclusive exclusion* the struggle of the EU and its member states to deal with the migration crisis is shown; a struggle to maintain humanitarian standards as well as security for EU citizens, which reinforces their role as protector and legitimate sovereign. The notion of *inclusive exclusion* can be seen as a state of exception – in which the position of the asylum seeker is simultaneously inside (included) and outside (excluded) the law.[12] On the one hand the asylum seeker seems to be excluded from the 'fortress Europe'; boats on the Mediterranean sea are turned back or even prevented from going. On the other hand, Agamben argues that the excluded asylum seeker can, based on this exclusion, become included in the system. Trough emergency meetings and subsequently increased efforts and rescue operations to prevent them from drowning, the asylum seeker reaches this position of simultaneously being included and excluded from the EU. Considering that both exclusion and inclusion are inherent to this notion of *inclusive exclusion*, as well as it is to the immigration phenomenon, it will enable to look beyond the dichotomy of these concepts. This allows to show how securitization and humanitarianism and their underlying motives and purpose have to some extent become indistinguishable, and how this lead to the ambiguity of the EU borders.

The question central in this thesis is: *In which ways does the notion of inclusive exclusion apply to European immigration of the asylum seeker and how is this reflected in the mandate of Frontex?* The chapters which follow each contribute to answering this central question. At first the notion of inclusive exclusion will be explained and linked to the immigration phenomenon at EU borders answering the question: *How can the notion of inclusive exclusion be recognized at the EU borders?* In the chapter that follows the concept of securitization will be discussed, with reference to the notion of inclusive exclusion, as trend influencing the European immigration phenomenon. This leads to the question: *What role does securitization play in the notion of inclusive exclusion at the EU borders?* The fourth chapter, in line with this, will explore the role of humanitarianism in the notion of Inclusive exclusion, in which the question *What role does humanitarianism play in the notion on inclusive exclusion at EU borders?,* is central.

This thesis is a literature study on the ways in which the notion of inclusive exclusion can be applied to European immigration of the asylum seeker. The theory of the state of exception, and the notion of inclusive exclusion derived from it, are based on quite rigid arguments, which do not leave much room for nuances. Nevertheless, the theoretical framework enables to analyse the immigration phenomenon at EU borders from a challenging perspective, offering new findings. Furthermore, both securitization and humanitarianism are looked upon from different perspectives and theories, weighing and questioning their expected role in the immigration phenomenon. The main theories will be applied to several operations of Frontex ; among those Frontex' current operation Triton, as a striking example for the recent developments in the immigration policy of the EU. News reports and press releases of agencies such as UNHCR are subsequently used to give a better understanding of the immigration phenomenon at EU borders in the recent years or even months .The following chapter will first look into the theory of the state of exception and the notion of inclusive exclusion.

2.The notion of Inclusive exclusion of refugees at EU borders

Although more than 11.000 people were rescued during the first half of April 2015,[5] the EU border security agency Frontex was clear in its interview with the Guardian, in which the head of Frontex explained that it cannot be their priority to save the lives of migrants. *"Triton cannot be a search-and-rescue operation. [...]This is not in Frontex's mandate, and this is in my understanding not in the mandate of the European Union."* [13] Frontex was established in 2005, as border security agency of the EU, shortly after the Schengen agreement was made, which dissolved internal borders within the EU[14]. Some may say that with launching this agency, subsequently 'Fortress Europa' was born.[15] Frontex has the responsibility to safeguard the security at the borders of the EU; managing the external border of the EU and coordinating and supporting the border security operations between member states [16] Frontex has taken irregular immigration as their target and additionally aims to fight illegal residence after legal entrance in the EU. According to the head of Frontex, these main targets show that Frontex is not the right and adequate agency to prioritize rescue operations.

By working together with countries on the other side of the Mediterranean sea - Morocco, Libya among others - the EU tries to decrease the flow of immigrants crossing this sea to come to Europe. By stopping unequipped boats from going and, as Frontex phrases it; get them "turned back to safety before the dangerous voyage", they can save more lives.[16] Frontex argues that if they were able to close this entrance to the EU, casualties due to drowning could be avoided. It would be a win-win situation as closing one of the largest irregular immigration routes to Europe would not only prevent unauthorized border crossings, but also combat cross-border crime; terrorism and human trafficking.[5] On national level, in politics and public opinion, there has already been a call for complete closure of borders. One of the political parties that opted for this, was the VVD - the largest political party in the Netherlands- according to them to prevent a pull factor and a disruption in society.[17]

Where do these targets of deterrence come from, that shape EU immigration policies and design the mandate of Frontex? What led to an EU immigration policy that aims to decrease the immigration flow and how can this be linked to the notion of Inclusive exclusion? In this chapter the sub-question *How can the notion of inclusive exclusion be recognized at EU borders?,* will be addressed. In this chapter the notion of Inclusive exclusion will be elaborated, after discussing Agamben's theory of the state of exception,[11] which is at the basis of the notion of Inclusive exclusion. Furthermore, Frontex and specifically one of its operations, Triton, will be discussed, to create a deeper understanding of the immigration phenomenon at EU borders.

2.1 The state of exception

The EU member states have put in motion an immigration policy that aims to decrease the immigration flow to the EU, by putting deterrent border control in force. As mentioned in the introduction, immigration is a highly debated political topic in the first couple of months of 2015, leading to crisis meetings and short term decisions. Why should this flow of people to Europe be so urgently stopped? Diken and Laustsen[1], authors of the book *Culture of Exception,* argue that it is the contemporary discourse of immigration, which frames the immigrant as danger to the body , 'penetrating its borders'. It makes the immigrants and thus the asylum seeker an 'outsider inside',

"Clinging to trains, attempting to cross the Channel in boats […]to become against whom citizens unite without feeling any political or moral obligation"[1](p.24) This contemporary discourse in which the asylum seeker becomes criminalized is in line with the trend of securitization, which is often traced back to the increased fear of terrorism, since 9/11[9]. However it is not only fear for an increasing risk of terrorist attacks. Bauman[18] argues, in his theory on Wasted Lives, that the asylum seeker " brings home distant noises of war and the stench of gutted homes and scorched villages that cannot but remind the settled how easily the cocoon of their safe and familiar may be crushed and how deceptive the security of their settlement must be". Upon the recognition of this threat to society and its citizens, the theory of exception of Agamben[11] comes to the fore, which lies at the basis of the notion of inclusive exclusion.

The state of exception is a temporary suspension of jurisdiction in order to cope with crisis[11]; to deal with threats to society, such as (illegal) immigration to the EU. The law is legally suspended as an ultimate sovereign act. In the juridical order the state of exception is based on two elements indispensable to law: morality and decision. Agamben[11] argues that in normal situations the decision is diminished compared to the norm that holds, whereas in an exception the roles have been reversed; the exception allows for a decision. The threat of the rising flow of immigrants, whether or not an actual threat, is used by the state to show its autonomy and power position as protector and sovereign. "In suspending the norm, the state of exception reveals , in absolute purity, as specifically juridical formal element: the decision".[11] Agamben argues that the state of exception has become its ultimate global formation in today's world: the state of exception has become the rule. The norm of law can be annihilated by governmental decision while still claiming to apply the law. Governments are actually "ignoring international law externally and producing a permanent state of exception internally"[1] In most extreme cases, this decision determines whether certain people will be placed within the sphere of law or not.

This theory, as a basis for the notion of inclusive exclusion, can already lay the basis for analysing the immigration phenomenon at EU borders. According to the universal declaration of human rights, adopted in 1948, "Everyone has the right to seek and to enjoy in other countries asylum [to escape] from persecution"[19] However, by increased effort to keep 'illegal immigrants' out, pushing them back without asylum procedure that examines their motives and investigates their asylum application, this universal human right is ignored. What is striking for the latter is that using the term 'illegal immigrants' is clearly a political claim, inherent to the way the immigrant is to be treated. According to a report of Amnesty International almost half of the immigrants that try to cross the EU borders irregularly are political refugees or refugees fleeing war. However, "the EU is no more porous for them than it is for economic migrants".[6] It is the state of exception that allows the EU and its member states, to decrease the norm and actively decide to suspense the jurisdiction to cope with crisis: an increased flow of immigrants crossing the EU borders via dangerous routes. In this state of exception the EU and member states, decide who is placed within the sphere of law and who is not. This is where the notion of Inclusive exclusion can be derived from.

2.2 The notion of inclusive exclusion

This paragraph will take a closer look at the notion of Inclusive exclusion. By discussing western politics – "that constitutes itself through an exclusion of bare life"[12] - Agamben introduces the notion of inclusive exclusion. The bare life is presented as life of a 'homo sacer' – the sacred man who in

Roman times "may be killed and yet not sacrificed"[12] - in which the exclusion implies a capacity to be killed, yet, without being worth juridical punishment. According to Diken and Laustsen[1] the asylum seeker is an 'instantiation of the homo sacer', which means it holds no qualities except that of being human. Therefore "the asylum seeker conveys a grey zone of ambivalence as to his internality/externality vis à vis the society, and this provokes a fundamental undecidability"[1](p.79); society is not directly able to decide if this human being is illegally invading our welfare system or actually "subject of human rights, [inviting] everybody to accept as the most sacred of the sacred"[1].The notion of inclusive exclusion captures the position of the asylum seeker that follows from this zone of indistinction: being included while excluded.

This notion subsequently shows that inclusion and exclusion in society is a function of power; the state decides upon who is within the sphere of law and who is not and therefore who is excluded and included in society. The exclusion of 'bare life' – in this case the asylum seeker- defines the sovereignty of the state, as it has been able to take up the decision to do so. However, although exclusion is necessary for the state to define itself as the authority and protector, subsequently the decision to include the excluded allows the state once again to take up such a decision. Thereafter, the notion of inclusive exclusion shows that an exclusion - not based on friend/enemy distinctions but rather on the characterization of bare life/political existence - can subsequently lead to an inclusion.[12] In other words: in the state of exception the asylum seeker can be included as a consequence of its exclusion.

This leads to a 'double way' in which the bare life – the asylum seeker- is captured in the political, Ziarek[20] argues in her review on *Homo Sacer* of Agamben.[12] One the one hand, as already mentioned, the asylum seeker can be included in the political, allowed to enter the sphere of law, reach and perhaps allowed to stay in Europe. On the other hand, the asylum seeker will always be stuck into a position of "unlimited exposure to violation which does not count as a crime".[20] This means that the excluded asylum seeker has a possibility to become included, only without an "integration with political existence; rather, it is a disjunctive inclusion of the inassimilable remnant, which still remains the target of sovereign violence"[20] The theories and concepts of Agamben explained above are rather rigid, framing modernity as driver of human disposability to exclusion and reduction to the bare life at any time. In what follows, the theory of inclusive exclusion will be used as a basis – or rather a starting point- for the analysis of the immigration phenomenon at EU borders.

2.3 Crisis of the nation-state

It could be said– based on the theory of the state of exception- that the rapidly increasing flow of immigrants in the first months of 2015, has caused or was followed up by a state of emergency. Public fear, increased sentiments of nationalism and inadequate asylum systems might have all been part of the creation of a political space and support for the EU member states to act in a state of exception. In the creation of political space, it is important to recognise that choosing a label for immigrants is choosing for a specific point of view, inherent to inclusion and exclusion. As the frontex might label them as illegal immigrants, creating space to treat them accordingly, NGOs would be more inclined to frame them as refugees. The way we label them – though negotiated or contested - shapes how we treat them. The label 'asylum seeker' - used in this thesis - does not yet decide whether immigrants are legal or illegal, legitimate or illegitimate. "The terms asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated".[21]

Agamben speaks of refugees, as " nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state, from the birth-nation to the man-citizen link"[11] Since the analysis of the inclusive exclusion takes place at the border of the EU in this thesis, the refugee is in fact still a 'seeker' of asylum. With claiming to be a refugee, subsequently, this application also questions the 'fundamental categories' of the nation-state. It should be noted that the role of asylum seeker in relation to the EU will differ. The relation between discourse and implementation of immigration policies on the EU level are different than on state level can be observed. The difference between the role of the EU and its member states in regard to the notion of inclusive exclusion, will be discussed in the next chapter.

Agamben refers to Arendt[22] who states that the nation-state and human rights are insurmountably connected in a way that a crisis of one ends the other accordingly. As the asylum seeker questions the fundamental categories of the state, the increased pressure to deal with the immigration flow to Europe could be framed as a crisis of the nation state. The state of exception became evident with the establishment of Frontex, that implements operations to send back or prevent immigrants to cross the Mediterranean sea 'illegally'. The need to protect the EU from immigrants, could be caused by the fear for the theft of enjoyment[1] ,increased security to prevent terrorism[9], economic incentives, or by crisis of the nation-state.[22] Whatsoever, the need for exclusion – keeping the immigrant outside - is seen as more important than preservation of the Universal Human Rights, even though these always seem to be highly valued in the western society. The Dutch government even stated Human Rights are "a cornerstone of Dutch foreign policy"[23] The disregard towards some Universal Human Rights could coincide, at least to some extent, with Arendt's argument that a crisis of the nation state can be the end of Human Rights. Even though human rights organizations, like Amnesty International, argue that the anti- immigration policy of the EU ignore important Human Rights, the member states still claim to apply the law. This is exactly what Agamben[11] analysed with his theory on the State of Exception.

The decision to deprive certain people from their rights, reducing them to bare life and putting them outside the sphere of law, does not yet touch upon the inclusion that can consequently follow. According to Agamben's notion of inclusive exclusion, the inclusion of asylum seekers at the EU borders can only occur in the state of exception, as consequence of their exclusion. From this point of view, only through a deterrent border control and decreased rescue operations (its exclusion) the asylum seeker undertakes a dangerous boat trip. Some asylum seekers, among other immigrants become then included in the system as they are rescued on the edge of drowning. Although rescue operations are not priority of Frontex the EU member states has incorporated this inclusion well. Yet, what has actually been the underlying motive of EU member states to decide that every sinking boat in reach should be rescued by Frontex? Is it the moral obligation of states and the EU to maintain humane standards close to EU territory?[24] Or is it only - from the notion of inclusive exclusion – the decision to include the excluded that allows them to reinforce and maintain their authority? Agamben[11;12] would argue the latter. Diken and Laustsen[1] pose it as follows "every time the refugee is excluded we should be looking for the inclusive gesture that follows it, which is part and parcel of the social bond between us and them"[8].

In either case, the asylum seeker stays excluded after being rescued, as they even in their inclusive ness stay exposed to violation.[12] What we know of the situation at the EU borders, in countries such as Italy and Greece, is that the asylum seeker is subjected to detention, zero- tolerance policies

(detention for even little crimes)[1](p.90) and is confronted with regulations such as the Dublin convention, which limits them to only the first country of arrival in the EU to seek asylum. Shown trough the notion of inclusive exclusion; their prior exclusion, leaves them without the full rights of Europe's own citizens, while being included and 'inside the EU'. Even a bit further in time, "Behind the long, strife-ridden process that leads to the recognition of rights and formal liberties stands once again the body of the sacred man [...], his life that cannot be sacrificed yet may, nevertheless, be killed".[12] Although granted with a permit to stay, one will always remain outsider, that can be excluded from political life, any moment.[1]

2.4 The role of Frontex

Frontex and one its current operations will be discussed in this section, to see how the theory can be recognized at EU borders? Frontex– established in order to maintain security and safety at EU borders "is one of the increasing numbers of European agencies with an independent legal personality and operational and budgetary autonomy.[25] In its 10 years of existence it has executed several operations that combat irregular immigration and fights illegal residence after legal entrance in the EU. The case of operation Triton, as one of these operations gives a better insight in the notion of Inclusive exclusion, as it entails both aspects of this notion. Prior to operation Triton, at the end of 2013 Italy had launched a national operation, 'Mare Nostrum', that aimed to actively search and rescue immigrants who cross the Mediterranean sea.[4] However, due to unmanageable high financial costs Italy was compulsive to end this operation in the end of 2014.

In November that year, Frontex launched operation Triton, which was according to the European Commission, an operation only "intended to support the Italian efforts, and not a replacement or substitute for Italian obligations in monitoring and surveying the Schengen external borders".[26] Operation Triton is funded by the EU member states, but has far lower budget than Italy spent on the Mare Nostrum operation.[4] Mare Nostrum was active in international waters whereas Triton only operated in 30 miles of the Italian coast. "While saving lives is an absolute priority in all maritime operations coordinated by Frontex, the focus of Joint Operation Triton will be primarily border management".[27] In later statements, discussed in the introduction, Frontex states that saving lives cannot at all be their priority.[13] Hence, operation Triton focusses on border management and security which also includes, as EU Ministers agreed on this, cooperation with third countries. This is in order to strengthen border control in Ethiopia, Niger, Libya, Egypt and Tunisia, preventing illegal immigrant to get to the Mediterranean sea, and urge for resettlement in local places.[4]

Bilateral agreements were also needed to extent the area Frontex was allowed to operate in. In fact "Frontex has not, as a matter of European Union law, a mandate to operate beyond the external borders of the Union".[25] As many of Frontex operations, as well is operation Triton, take place in territory of other states, "the consent of the coastal States is sine qua non for the entry and exercise of enforcement jurisdiction on the part of EU States".[25] Agreements between Spain and Mauritania exist that provide legal allowance for operations such as HERA ll, which will be discussed in chapter 3. "They provided for the warships or airplanes of the EU Member States involved to patrol in the territorial waters of Mauritania and Senegal and interdict vessels carrying potential migrants from these States".[25] Furthermore Frontex has agreements with, the Russian Federation, Ukraine, Croatia, Moldova, the United States, among others, to extent the area Frontex can maintain border 'control'.

Collaboration with Libya goes further back in time, as Italy has had agreements on border security issues for the past twenty years. The collaboration is criticized by many NGOs, as Libya has no recognised system that deals with immigrants, nor does it provide protection for refugees. Nevertheless, agreements have enabled return operations of Italy and now Frontex and EU member states, to deport thousands of immigrants, among them refugees, from Islands as Lampedusa and Malta.[28] This case of Libya will be discussed in more detail in chapter three.

A couple of months after the operation Triton was launched an alarming situation occurred: a death toll over 1500 victims only in the first 4 months of 2015.[5] In a crisis meeting of the European Council on the 23th of April 2015, the EU came to a statement: "The situation in the Mediterranean is a tragedy. The European Union will mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of the human emergency that we face."[7] They expressed to have an immediate priority to safe more people frown drowning. Subsequently, resolutions were developed that incorporate both security measures, including fighting traffickers and prevention of illegal migration, and humanitarian assistance, including search and rescue operations and an increase in emergency aid.[7] However, although border security is to a great extent institutionalised trough the establishment of Frontex and its operations, "it is noteworthy in respect of FRONTEX search and rescue operations that there is [still] no uniform practice with regard to disembarkation of the persons in distress and this is resolved on an ad hoc basis.[25]

The mandate and work of Frontex, show us how immigration policies and regulations embody both exclusion and inclusion. From a priority of excluding immigrants, a situation of emergency evolves, that leads to an inclusion. According to Agamben[12] exclusion as well as inclusion is a way of maintaining and (re-)defining the power of the state. It is by actively taking up the decision to keep the immigrant outside, and on the other hand the decision to rescue some, which reinforces their authority. The notion of inclusive exclusion is useful to analyse and understand the ambiguity of the EU border at the Mediterranean. The notion of inclusive exclusion will be discussed in further depth, by looking at two important trends in the immigration phenomenon at EU borders; humanitarianism and securitization. These seemingly contradicting processes will be linked to the notion of inclusive exclusion, which will therefore contribute to the central question of this thesis: *In which ways does the notion of inclusive -exclusion apply to European immigration of the asylum seeker and how is this reflected in the mandate of Frontex?* The next chapter will elaborate on the role of securitization.

3. The role of Securitization

The walls of 'Fortress Europe' seem to have become stronger and higher since Frontex took its place as security agency of the EU, in 2005. However, a trend of securitization – constructing these walls- was already visible in the first decade of the 21th century, specifically after 9/11.[9] Some may argue that 9/11 made it possible for this trend of securitization to further develop.[29](p.7) Others say securitization is a more complex phenomenon that can only be understood in a plural and constructivist way.[30] In this chapter securitization will be discussed, using two different views of Neal[30] and Leonard.[31] This will give a more extensive understanding of the securitization trend present at EU borders . Their analysis and conclusions lead to several implications for the relation between securitization of immigration and the notion of inclusive exclusion. Furthermore, the concepts legitimacy and power will shortly be touched upon as closely related issues to securitization. The trend of securitization is analysed in this chapter to answer the sub-question *What role does securitization play in the notion of inclusive exclusion at the EU borders?* Frontex and some of its operations will be discussed in regard to this trend. Discussing the trend of securitization, present in the immigration phenomenon, and the ways it is recognized in the work on Frontex, will increase our understanding of the extent to which the notion of inclusive exclusion can actually be applied to European immigration of the asylum seeker at EU borders.

3.1 Securitization

The securitization theory was developed by researchers, Ole Waever among others, of the Copenhagen School. The theory is based on the idea that the world is socially constructed - like security threats – and therefore we can never be sure of what is real.[31] "The securitization of an issue allows a successful securitising actor to claim that the issue [needs] emergency measures and [allows for] actions outside the normal bounds of political procedure" [32] Relating it to Agamben[11], being able to construct security threats to society would be a tool to create support for a state of exception. "The relevant audience accepts this claim [of a threat] and thus grants to the actor a right to violate rules that otherwise would bind".[33] To make such a claim of emergency or threat the role of discourse and speech are important aspects.

Not only active use of speech or a dominant discourse indicate a trend of securitization. Security measures and exceptionalism often have a longer past which can, to some extent, have become institutionalised.(p.27)[31] Therefore not only a definition of securitization based on discourse enables to analyse security trends, a practical definition will be just as useful. Bigo[34] defines securitization based on practices as "the securitization of immigration [also] from a range of administrative practices such as population profiling". According to Leonard[31] the discourse analysis of securitization regarding immigration, is no longer able to grasp the dynamics as it does not incorporate the practices and established institutions that deal with the security threat. It can be argued though that discourse and practices are not so easy to separate; discourse and practices both play a role in the institutionalisation of security measures. Looking at it from a historical perspective, it can be noted that securitization of immigration has been a trend going back for several years, if not decades. Accordingly, developments such as the establishment of Frontex, that go back for about 10 years, show us that a discourse for securitization is not new. Security measures implemented in the first operations of Frontex, since 2005, were already focussed on fighting irregular immigration.[5] Now

in the initial months of 2015, it can subsequently be seen that discourse and speech are actively taken up and used by politicians and organisations involved to gain support for the way the situation is handled and securitised.[5;17]

Claiming an issue as a threat to gain public support, enables an actor – e.g. the state .- to act outside the normal bounds. This is in line with Agamben's theory; the power of the state lies in the possibility to use the force of law, outside the normal bounds of the law, as a state of exception.
Nevertheless, the EU is not a state and therefore plays a slightly different role.[31] The EU has a major role in connecting the member states through laws, procedures and other means. Despite, the EU would not have the best institutions to carry the capacity of a state of exception, according to Neal[30] . In fact, it could even be argued that it would not be "desirable, instrumental or feasible for the EU to operate in this way".[30] Since the role of the EU is different from the role of the state, securitization will most likely appear in another way. On the national level for example, securitized issues can be extensively debated and covered in the media; a direct interaction between a politician and its political statements, and the public takes place. However, on EU level this "relationship between discourse and the reception, discussion, legitimation and actualization of policy proposals and changes is less"[30] and different. Furthermore , the impact of immigration is not the same among EU member states, which can therefore not be looked upon in the same way. The Dublin convention – forcing asylum seekers to seek asylum in the first EU country they arrive - has other implications for states like Italy and Greece, as first country to arrive for many immigrants, than Sweden and the Germany for instance. The threat of immigration to society might be likewise perceived and acted upon differently among EU member states, although they sign for the same EU policies and agreements. It should be taken into account that the relation between discourse and implementation of immigration policies on the EU level are different than on state level can be observed . Securitization of immigration on the EU level is especially observed within institutionalization and normalization of emergency, such as the establishment of Frontex.

The fact that immigration has become securitized, and emergency measures have become normal, has led to some striking implications for the way immigrants are dealt with. As already discussed in the second chapter, Frontex has built bilateral agreements to extend the territory they are allowed to operate or in control. The collaboration of Italy, and in more recent years of the EU, with Libya shows that, for the sake of security and protection of EU territory, humanitarian rights are often neglected. Libya has no system that regulates or deals with the protection of refugees and neither did it – as the only country in North Africa - sign 1951 Geneva Convention on Refugees. [21] Nevertheless, Libya has been an important partner in dealing with the immigration flow to the EU for a long time. "There are numerous formal and informal instruments in the co-operation on migration issues, including the possibility of sending migrants and potential refugees back to Libya who have already left Libyan shores." [21] Agreements with Libya have been tried to keep in secret, but from the little that is known, in six years from 2004, more than 4000 immigrants, from several countries were sent back from Lampedusa, an Italian Island, to Libya. Many NGOs have at that time urged the European commission to correct especially Italy "for the violation of the prohibition of collective expulsions in the European Charter of Human Rights and the violation of the non-refoulement principle of the 1951 Geneva Convention on Refugees" [21] However, the commission announced that it would not be within their capacity to judge the Italian, and later EU, policy.

3.2 The notion of inclusive exclusion

As the trend of securitization is shortly discussed, this paragraph will examine what role this trend of securitization has regarding the notion of inclusive exclusion at EU borders. First of all, securitization shows us that reality can be shaped. "There are no security issues in themselves, but only issues that have been 'securitised', i.e. constructed as such"[31](p.7). It could thus be argued that the sovereignty of the state and the power to suspense the jurisdiction is based on this fact that reality can be framed. When a threat is made 'real', the state has the legitimate power to rule outside the law; a necessity is created to exclude. Therefore a trend of securitization of immigration increases the risk for an asylum seekers to be excluded from the law, which makes him/her more vulnerable to violations: allowance for 'push-back' operations, sending boat immigrants back to Libya, without an identification process or interview, including those who are identified by UNHCR in need of protection.[35] Is this trend of securitization, with its undeniable influence on the anti-immigration agenda, a necessary tool for the EU to gain authority? Neal[30] would argue that it is not that simple.

It cannot simply be said that these policies – reacting on threats - would have been illegitimate without being securitized. In 'non-securitized' situations they could have been accepted and implemented as well and securitization might for that matter not be 'necessary'. Subsequently, as discussed in the previous section, it can be questioned whether the EU even has this power to rule in a state of exception. Neal[30] argues that FRONTEX, as executing body of the EU immigration policy is able, in an extensive way, to institutionalize and normalize and regulate immigration at the Mediterranean. This would imply, according to him, that FRONTEX does not need immigration to be securitized, enabling them with the exceptional rule. However, as discussed in the previous section, securitization is not necessarily linked to recent emergencies and crisis. It can also be found in institutionalized[31] and normalized forms of securitization based on long standing discourses of crisis and threats, in which the exception is no longer recognized as such. Accordingly, it can be argued that institutionalization of immigration security measures – e.g. the establishment of FRONTEX – has normalized the exception. Schutster[36] nicely shows, in line with Agamben[11], how this normalization of the exception is something contemporary. "Deportation, detention and dispersal have formed an occasional part [of the migration regimes of European countries] throughout the twentieth century, though they tended to be used in response to particular events or 'crises'."[36] However, they now have become 'normalised'.

How is this recognized in practice? In 2006 the first operation of Frontex at the Mediterranean sea, started, under the name HERA.[37] This was a joint operation requested by Spain to control the increasingly high inflow of immigrants on the Canary Islands. In the extended operation HERA ll, interviews were conducted with around one third of the 585 migrants that managed to arrive at the Islands and 1,167 migrants were prevented from coming or sent back to the west coast of Africa.[25] This operation, called upon in emergency, became in fact a pilot project for all joint operations that were to follow. This "emergency became very soon permanent and, in 2007, HERA was transformed into an ordinary operation, the first link in the chain of controls [...]from the Atlantic to the Aegean Sea to encircle the southern borders of Europe".[37] It could be argued that as a state of exception has been normalised, so as well became this 'crisis'. The joint operations of Frontex and EU member states, that followed in the footsteps of HERA, are an example of how emergency measures, to act upon crisis, are institutionalised and normalised at EU borders. As at first security measures, such as

fending of boat immigrants at the Canary Islands, were an exception to deal with a crisis situation; these measures are now part of the Mandate of Frontex.

Moreover, a striking example for the institutionalisation of crisis management is the establishment of the 'Rapid Border Intervention Team (RABIT) Program in 2007[38]. This is a mechanism that facilitates a fast track formation of border guard teams, "in a situation of urgent and exceptional migratory pressure".[39] Team members of the RABIT program are police or immigration officers of member states, working in national law enforcement. The mechanism behind the RABIT program is based on a security mandate, as response to crisis situations. When the inflow of immigrants rises, these teams are called upon as extra manpower, to deal with this 'threat'. Although the EU and its member states have stated to avoid tragic incidents, in which force is used to maintain security and control, "it should be noted that the RABIT Regulation explicitly provides for the right of the RABIT officials to carry and use weapons in FRONTEX joint operations".[40] Again this shows that crisis at the Mediterranean are mediated by institutionalised security measures, allowing these teams to decide upon inclusion or exclusion. Both crisis and the exception (of exclusion) have become the standard.

3.3 Legitimacy and public support

Although exclusion of immigrants at EU borders cannot be simply captured by the theory of securitization it certainly plays an important role. Bigo[34] explains that the securitization of immigration is inherent to the increasing fear of the political power to lose authority over its territorial borders. Securitization of issues such as immigration can enable states to show their "role as providers of protection and security"[34] (p.2) and provides a way to enforce legitimacy for political existence and decisions. "At a time when it is proving difficult for EU elites to legitimate the European polity among the Continent's citizens, such mobilization [of security threats] can have a powerful allure; and there is some suggestion, that European political leaders have consciously decided to use the domain of justice and home affairs as a vehicle for demonstrating the EU's 'relevance' to citizens, and building public support".[41]

Accordingly, the EU elections in 2014 showed that parties calling for deterrence immigration policies and security measures have gained support. "The National Front led by Marine Le Pen has taken its largest share of the vote in its 40-year history with 25 percent of the votes. The anti-immigration party has pledged to drastically cut immigration and reduce the influence of Islam".[42] On the national level several political parties have been using this discourse of securitization as well. Dutch Pre-minister Rutte recently called for a complete closure of European borders. Although this suggestion was not accepted by the majority of other Dutch parties, the aim to increase public support for such measures and thus for parties and leaders that propose them, is reached through the construction of a threat to society. The spokesman of the VVD, Azmani, stated that the current migration system will not be able to handle the immigration flow, forming a great risk to 'our' safety,[43] and he is not the only one. Polls showed that only one in five respondents of the Dutch public thinks the UN convention of 1951 "on refugees should continue to be honoured by allowing refugees to resettle in Europe".[44]

The threat and feeling of unsafety allows the state to increase the security operations and projects at EU borders, and legitimizes proposals for extreme security measures. Projects of exclusion, such as the construction of walls, are implemented; "Bulgaria has largely completed the construction of a 33

km barbed wire fence at the border with its south eastern neighbour Turkey as it tries to cope with asylum seekers."[45] Subsequently, one can wonder how inclusion – based on an initial exclusion- can still be a legitimate decision, since the asylum seeker is already framed as threat. It can be argued that using labels is a very important way in which the state can legitimize both the exclusion and inclusion in a securitized field. How is this being played out? Going back to the theories of Diken and Laustsen[1]; the contemporary discourse that allows and strengthens a securitization trend, aiming for exclusion, is the criminalization of the asylum seeker. Media coverage on the topic show how politicians use extreme cases of criminalization of asylum seekers. "Mass migration has brought with it a whole new type of crime, from the Nigerian fraudster and the eastern European who deals in drugs and prostitution to the Jamaican concentration on drug dealing," stated Fox, president of the Association of Chief Police Officers in the UK.[46] The immigrant can be labelled as illegal, terrorist, jihadist etc.. Greece's defense minister for instance used these labels in his threat to open borders to immigrants - including 'jihadist' as he stated - if they won't get more financial support of the EU.[47]

As more restricted immigration policies are introduced, at the Mediterranean sea a dangerous situation occurs, resulting in a significant amount of casualties. Many deaths are the result of the unequipped boats, packed with people, trying to cross over. Again the decision on exception – this time an inclusion – can be taken up by EU member states in emergency meetings, providing them this authority once more. One could assert that to legitimize rescue operations the immigrant needs to be labelled in a different way since the insurance needs to be kept that the threat (of terrorism, human trafficking, economic immigrants) is handled. As discussed in the previous chapter, the EU expressed its compassion with the 'refugees' drowning in the Mediterranean sea.[7] A division is created between the refugee, who has a legitimate reason to come to the EU and the illegal immigrant who does not. The labels can be used to legitimize different treatments; the trafficker and jihadist need to be (excluded) dealt with and the refugee and asylum seeker should be rescued (included), you could say.

A way that seems to advance the co-existence of exclusion and inclusion in the immigration agenda - often called upon by member states and political parties - is the local relief project. This entails humanitarian assistance and aid in the area refugees come from. It is a popular solution, as both exclusion and inclusion can be realized; security measures as well as humanitarian assistance. All immigrant categories can be excluded from EU territory; it can be guaranteed that the illegal immigrant is effectively kept out (the threat handled), while the refugee can receive aid and care in the area. He/she ends up in another form of inclusive exclusion, qualifying for humanitarian aid and included in the relief programs from EU funds, providing temporary settlement for instance, however only based their actual excluded position.

Focus on local relief strategies are current for refugee camps in Jordan. Providing proper shelter, an option for temporary settlement, can decrease the flow of people traveling further to Europe. In 2013 the Jordan government received an additional amount of money of 50 million euros from the EU in 2013 to facilitate temporary settlement of Syrian refugees.[48] In January 2015 the European Commission made a press release stating that 136 million euros will be spend on humanitarian aid in the host communities of Syrian refugees, Turkey, Lebanon, Jordan and Iraq.[49] In all, the European Commission alone has provided €817 million in humanitarian funding for the Syrian crisis, for which half goes to funding to refugee settlement in the neighbouring countries. Local relief funding and

programs perfectly show the core of the notion of Inclusive exclusion, in which both securitization as humanitarianism play a role.

3.4 Conclusion

What can be concluded is that exclusion is clearly inherent to the EU immigration policies of the past decade. The role of securitization for the notion of inclusive exclusion is clear to the extent that it aims for - and enables this exclusion. A trend of securitization can be recognized in both discourse and practices that have become institutionalized. It should be acknowledged that the EU has a different role than the states since the relationship between that discourse, legitimation and implementation of policies are different. What is evident though in both EU and national politics, is that securitization of immigration has been a way to legitimize the European and national polity among its citizens.

Hence, securitization of immigration can be seen as a tool to re-establish sovereignty, as the inflow of immigrants have questioned the state as protector of its citizens. Securitization allows for the decision to exclude, which according to Agamben,[12] is exactly what increases the power claim of the state. Therefore securitization is related to the issue of legitimacy and power, being played out by political parties and states. It is however, important to a understand that securitization of immigration can be influenced by recent 'new' crisis as well as part of a longer history. According to Agamben[11] and Schutster[36] a state of exception that allowed to control and deal with crisis – such as high immigration flows - have now been normalized into mechanisms and institutions on the EU level; operation HERA and RABIT program were an example for this.

Furthermore, by applying the notion of inclusive exclusion to EU operations focused on local relief, a remarkable aspect of the EU immigration agenda reveals itself; ambiguity. Local relief programs, in fact function as security measure as well fulfil a humanitarian role. Within the security mandate of EU policies, with a purpose of exclusion, also an inclusion is incorporated. These two seemingly contradicting decisions both need to be legitimized. For that matter, labelling is an important player and political tool, as for instance the discourse of the criminalized asylum seeker supports the trend of securitization. Agamben[12] argues that both exclusion and inclusion can strengthening the sovereignty of the state, yet, what does it imply for the role of humanitarianism at EU borders if security is part of the same operation, the same mandate? Humanitarianism has always been part of the immigration policies of the EU, however, in April 2015 rescue operations even became a priority for operation Triton.[27] Humanitarianism within the immigration policies, seems at first sight to oppose the trend of securitization. However, when applying the notion of inclusive exclusion to the humanitarian approach within the EU immigration agenda some questions come to the fore. Can it be argued that humanitarian assistance as the 'exceptional' inclusion, on which the EU has decided in their emergency meetings, is a moral obligation or has it in fact become part of the securitized EU border? The question - *What role does humanitarianism play in the notion of Inclusive exclusion?* - is discussed in the following chapter on humanitarianism.

4. The role of humanitarianism

The trend of securitization has made immigration to the EU a deadly journey. Already in 1997 it was concluded by EU member states, that circumstances leading to tragic cases such as the case of Kates I Rades, should at all times be avoided. In the case of *Kates i Rades*, an Albanian boat sunk in the Adriatic Sea during an anti-smuggling operation of an Italian warship: fifty eight people drowned[25] Now, more than 15 years later, similar incidents can be recalled, increasing the number of people that died trying to enter Europe. By raising the walls of the EU, fatal consequences have led to what is called the humanitarian border, where humanitarian aid is heaped along the symbolic boundaries of the EU.[50]

Humanitarianism is understood as the act of providing humanitarian assistance which –according to the initiative Good Humanitarian Donorship - means " the aid and action designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of man-made crises and natural disasters, as well as to prevent and strengthen preparedness for the occurrence of such situations"[10] Contradicting opinions and perspectives on humanitarianism today can be distinguished, posing different implications for the notion of inclusive exclusion and the role it has in the immigration phenomenon at the EU borders. The question central in the chapter is: *What role does humanitarianism play in the notion on inclusive exclusion at EU borders?* A link will be made with the trend of securitization and the way both approaches in the immigration phenomenon at EU borders merge, is discussed.

4.1 Humanitarianism

According to Agamben[12] there is a strong separation between humanitarianism and politics as well as there is a partition of rights of citizens and that of man. Furthermore, he argues that humanitarian organizations "can only grasp human life in the figure of bare or sacred life and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight. "[12] Agamben argues that only when human life is seen as bare life, it can qualify for aid and protection. Therefore humanitarian organisations - only in existence trough the bare life- reproduce the existing order of the sovereign state and the isolated position of the refugee (included though excluded).

Humanitarian organisations often claim to work for what the system has failed to do and therefore their job is to become redundant.[51] However, a Dutch war reporter, Arnold Karskens, did not agree with this claim. In the media he shared his intention to sue NGOs working with asylum seekers[52]. He argues that humanitarian organisations fail to warn asylum seekers – instead encourage them- for the dangerous journey on the Mediterranean sea and are therefore responsible for the many deaths in early April, 2015. Agamben's statement, that humanitarian actions of organisations maintain the power position of the state and the excluded position of the asylum seeker, and Karskens argument, that humanitarian rescue operations and aid at sea only encourages the inflow of asylum seekers, seem two different things. What is similar in these arguments though, is that humanitarian organisations are found responsible for reproducing a situation in which the asylum seeker is trapped in a vulnerable and excluded position. For many, there are no legal ways to reach Europe, but then a

possible inclusion - a possibility to (illegally) reach the EU coast or be rescued - let them take the risk of a dangerous and deadly journey.

Looking at it from this angle one could argue that by keeping the asylum seekers outside the EU, the asylum seeker is saved from this position in which he/she becomes included only through its exclusion, and thus always vulnerable to violations. The latter is, however, not the reason behind Karskens' accusation against NGOs and neither how Agamben approaches it. Karskens argues that humanitarian assistance should be offered in the region asylum seekers flee from. In line with the arguments of the political party VVD[17], earlier discussed, this would be cheaper and reaches more people. Nevertheless, in Agamben's view, local relief funds are likewise leading to an inclusive exclusion and as well reinforces the sovereignty of the state. Without arguing that these statements are the same, both question the role of 'fighting the system', for the sake of people in need, in which humanitarianism is mostly displayed. It enables to analyse humanitarianism at EU borders from different perspectives and shows roles it can have regarding the notion of inclusive exclusion.

Another interpretation of humanitarianism points to an opposing process taking place. Unlike Agamben[12], William[50] argues that humanitarianism has become precisely more intertwined with politics: "Since the mid-2000s [...] informal policies of humanitarian exceptionalism have been replaced by policies of contingent care that link care to enforcement". She argues that state-led humanitarian action, practices of care, are in order to increase control of the state over people and places. The moral, political and ethical involvement of these humanitarian actions should therefore be reconsidered. Contrasting with Agamben[12], William[50] argues that the idea of care relations, primary only between state and citizens (separating the rights of man and citizens), are now overruled by humanitarianism as it "mobilizes a transnational imaginary in which care responsibilities do not stop at national borders and are not halted by citizenship status"[50] (p18) This can be recognized in the increasing amount of development aid and funds of EU or member states that is spent on local relief funds. The funds for refugee camps in Jordan and neighboring countries[48], could represent the extension of the 'humanitarian border'; care responsibilities are taken up far from EU territory. However, William would argue that this extension of humanitarian borders is rather another strategy of exclusion and security.

The arguments of William[50] and Agamben[12] differ on which trend is taking place regarding humanitarianism; Agamben argues that politics becomes separated from humanitarianism and William states humanitarianism (care) is more entwined with the political power. However, both trends are recognized to be reinforcing and asserting 'territorial sovereignty'. Agamben's argument can somehow be compared with the discussion Karskens started, planning to sue NGOs, as they both question humanitarian organizations on their assumed influence. Moreover, Williams[50] view can be identified in developments during the first months of 2015. Operation Triton is at the moment both appointed to safeguard security and control as well as responsible to rescue drowning immigrants. As Frontex' mandate is shaped by EU immigration policies, it cannot be denied that politics is highly integrated in its formation. The question whether and how humanitarian action should be implemented has become a political debate. Instead of humanitarian organizations facilitating the power claim of the state at the Mediterranean sea, it is apparent that the state itself also takes up the role of the care taker; as a way to struggle for sovereignty and control over immigration flows, William would say.

Accordingly, it is often the humanitarian norm to rescue boat immigrants in danger, covered in both conventional and customary law, which is used to legitimize the interception, and control, of boats on international waters. [25] In fact - according to the Law of the Sea Convention (article 110) and customary law – Frontex is only allowed to intercept boats under a few circumstances (suspected involvement in piracy, slave trading, unauthorised broadcasting, absence of nationality of the ship). However, when there is a need to provide humanitarian assistance, the interception of boats is also justified. Moreover, this way of justifying interceptions "has attained great significance in everyday State practice and is very often the stated objective as well as the claimed legal justification for many FRONTEX operations"[25]. This example - in accordance with Williams argument - shows how state-led humanitarian assistance - rescue and care operations – can be a tool to justify security checks of boats on international waters.

In line with this argument, the humanitarian role taken up by the EU is not so much a moral obligation, but merely as means of enforcement, to control those in need, only to "facilitate their timely deportation".[50] Looking at the EU border, local relief, rescue operations and the existence of detention centres as immigrant shelters in Italy would then only be in order to keep the asylum seeker outside or under control. However, this argument is quite rigid and not necessarily agreed on. First of all, once in Europe, control over asylum seekers seems to become less, as many of them travel further into Europe after reaching the EU coast, seeking asylum in several places, despite the Dublin convention.[53] Even when the asylum seeker is not granted with a permit to stay, deportation can be a difficult and long process, in which for instance, the asylum seeker has the right to apply multiple times for a permit, with any new information.[54] One could argue that once in Europe, the asylum seeker is relatively free in moving around, therefore more difficult to control. Inclusion, trough humanitarian assistance and rescue operations only in order to keep control on the inflow of immigrants – hence rather a disguised exclusion - would therefore not be a satisfying. Agamben[12] would be right though to argue that even a genuine inclusion – being rescued e.g.- is based on a prior exclusion, which means always being vulnerable to violation. Also inside Europe, to some extent included, the asylum seeker is subjected to violence and violation of their human rights. Only recently, January 2015, Human Rights Watch reported that at the port of Calais, many asylum seekers, including children, are victims of abuse," beatings and attacks with pepper spray", by the French policy, and have no access to shelter.[55]

Nonetheless – contradicting with the latter and with arguments of Agamben[12] and William[50] - the EU and its member states are expected to have a moral obligation to provide humanitarian assistance, without being necessarily favoured by it (to gain control). With the existence of a range of treaties and conventions that member states signed "there can no longer be any doubt that, today, the EU is based on the rule of law and respect for human rights, as protected in the European convention on Human Rights."[56] That is not to say that there are no deformities in EU policies, such as non-admission and non – arrival measures.[57] Non- arrival measures, for instance, are in order to keep the asylum seeker at distance from the EU, where an asylum application needs to be issued. The asylum seeker is allowed to seek asylum in the EU but is not able to arrive in the EU. To argue, however, that humanitarianism is only a disguised security strategy, captured in a trend of securitization, is one step too far according to some scholars. [57;58]

Taking both arguments into account, it can be recognized that the EU and its member states are involved in a struggle to take into account principles of Human Rights while the immigration agenda

has been subject to a trend of securitization for years now. One could subsequently question if humanitarianism can still be fully distinguished as the "aid and action designed [solely] to save lives, alleviate suffering and maintain and protect human dignity".[10]

4.2 Managing an immigration crisis

The EU manages an immigration policy that on the one hand tries to keep the immigrant excluded, since it is seen as a threat to the EU, and on the other hand needs to uphold their humanitarian standards. Frontex uses a fairly new security system to manage immigration flows at EU borders: "Eurosur, is [...]a sophisticated monitoring system consisting of satellites, drones and radar systems, that can be used to save refugees, intercept them or even keep them out".[58] This system implies that the EU would easily be able to decide upon exclusion and inclusion in each specific situation, recue or keep outside, trough technology; reinforcing the power position of the state over and over. This however does not mean that the ability to take such decisions enabled the EU and its member states to handle the migration crisis; to deal with the immigration flow while maintaining both humane circumstances and security at the EU borders and coastal areas. Sommer[59] discusses three discourses, including securitization and a human rights based approach, present in the EU *Global Approach to Migration and Mobility* of the EU in 2011. She concludes similarly that "Drawing them [all three discourses] together in a 'managed migration' approach has however revealed the limits of uniting the positions involved".[60] A Greek law maker, reflecting on the crisis situation in Greece and Italy, even calls it an impossible task the EU entrusts some countries with; "To seal of the borders, on the one hand, and to save human lives on the other".[60] The decision to either include or exclude should secure the authority of the state.[12] It could be argued though that the inability to fulfill both the aim to close the borders – which has not happened till now- and to maintain humanitarian standards has made the EU polity regarding immigration disputable.

The inability to conform to both approaches is demonstrated with the non-refoulement principle - shortly touched upon in the third chapter- as an highly contentious issue within the implementation of the FRONTEX mandate.[25] The non-refoulement principle "prohibits States from returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion".[61] Not only in human rights treaties, also the common European and national asylum law has incorporated this principle.[25] This principle coexist with the fact that many boats crossing the Mediterranean sea are returned back, or even prevented from going. Despite the argument of Frontex, that by stopping unequipped boats from going they can save more lives,[16] asylum seekers have then not been evaluated on their application or reasons to come to Europe. According to Papastavridis[25] it is therefore "highly unlikely that the European States concerned, particularly in the context of Frontex operations, pay respect to this obligation [of non-refoulement]". Therewith Frontex is failing to consider international, European and national law. This example demonstrates that on the one hand all EU member states have signed human rights treaties, and are to conform with European laws, though on the other hand Frontex and the EU member states see the need to neglect those laws for the sake of the protection of EU territory.

Nevertheless, there are cases that show how compliance with Human Rights treaties and laws are incorporated in security issues; causing sometimes ambiguous situations. In 2010 a couple of Somali pirates were caught at sea and taken to court in the Netherlands. They were sentenced to prison for

five years.[62] The striking part is that these Somali pirates could – and at least one of them did - seek asylum afterwards, as a political refugee. Although the fact that securitization has made immigration policies more restricted and deterrent, it cannot be denied that Human Rights still have a role in immigration policies; even for 'the real' criminals, an obvious example of a threat.

With immigration portrayed as security issue as well as a humanitarian one, the EU is placed in a difficult position. Agamben[12] was not so wrong when saying that the asylum seeker creates a situation that questions the fundamental categories of the state, and in this case the EU. On the one hand the state, endangered by the arrival of the asylum seeker, must show its power by taking up the decision of exclusion, which might satisfy them who call for complete closure of borders. On the other hand, inhumane situations close to or at EU territory - rising casualties at sea, packed reception centres etc. - call for a humanitarian response. In the meantime, as this crisis forces the EU and member states to react, decide and justify - many critical voices have arisen. Bernd Lucke, spokesman for the party Alternative for Germany (AFD), calls for refugees who enter the country illegally be taken immediately to a "safe African country." "We have to make it clear that being on some overloaded boat is not an admission ticket to the EU. Otherwise, more and more people will undertake this risky trip," he says.[59]

4.3 The notion of inclusive exclusion

To recap, the notion of inclusive exclusion shows how humanitarianism on the one hand, and securitization on the other, create ambiguous situations at EU borders. Securitization leads to a clear exclusion aiming to keep the (constructed) threat outside, and humanitarianism, instead, seems at first sight to include the asylum seeker, by rescue operations and provision of aid. Then, Agamben[12] argues, that both inclusion and exclusion amplify the sovereignty of the state and William[50] depicts the situation in a similar way: "state- based humanitarian efforts that aim to preserve the biological life of migrants [are] both a strategy of governance and technology of enforcement".[50] (p.18) According to Agamben, taking up the decision to include, to provide humanitarian assistance to some, is in fact already a power claim of the state (or EU). According to William an inclusion only takes place in order to control and keep the authority over them who are initially excluded. They both do not acknowledge that the state can have the moral obligation to offer humanitarian assistance, without a direct link to control and power. Notwithstanding that this argument is debatable, the role of humanitarian organisations and state- led humanitarian action are put in a different light.

It means that humanitarianism is very much intertwined with a trend of securitization, which asks for an understanding beyond the dichotomy of inclusion and exclusion. Humanitarianism might not have been so apparent if securitization and excluding measures, had not taken such an advance in the immigration phenomenon at EU borders. It would be in line with Agamben[12] and William[50] to argue that humanitarianism (and organizations involved) only exists on the basis of securitization, assisting the state in its power struggle. Yet, securitization and humanitarianism cannot simply be seen as succeeding one another. Hence, two types of humanitarianism need to be distinguished, state-led and non-state humanitarianism, to show that inclusion and exclusion within humanitarianism is not a black and white story.

Concerning non-state humanitarianism, NGOs are expected to strive for alleviating suffering of those in need, or something as such.[10] However, their humanitarian mandate can be questioned when looking at the role they play pertaining to the immigrant – state relationship. Can they be held responsible for the deaths that follow from deterrent immigration policies? Unlike Karkens[53], Agamben [12]- though questioning the independency of humanitarian organisation – never directly argued for this. Indeed many organisation are dependent on subsidies and governmental regulations – the decision of the state to include or exclude- and therefore they are very much connected to the power system of the state. However, this argument overlooks the fact that there are also influential organisations working rather independent from state- led operations, actually targeting to become redundant. MSF (Medicines Sans Frontiers) launched a search and rescue operations on the Mediterranean, owning a boat that can carry 700 people to rescue[63]. MSF executes rescue operations without participating in debates about who to provide with care and who to keep excluded. "MSF does not have a mandate or means to assess the immigration status of the people we assist. We provide medical care without judgement and strongly believe that no human being should drown when the means exist to prevent it".[64]

Looking at state-led humanitarian action, a different analysis takes place. According Agamben[12] and William[50] state-led humanitarian action is only in order to keep control and decide upon those who are initially excluded. "Death and its potentiality[…] peppered with minimalist efforts to preserve the biological life of migrants, if only so that life can then be more effectively removed from national territory"?[50](p.18) Although it is disagreed on that the EU and members states only provide humanitarian assistance in order to increase control or authority, humanitarianism and its purpose certainly appears to have become intertwined with security purposes. This is for instance shown in systems like EURODAC.[64] The system incorporates a database of fingerprints, taken from every immigrant upon arrival at EU borders, which enables Member States to trace and control their movement in the EU. It is found so important that the European Commission allowed "Member States [to] permit the use of detention for the purpose of ensuring that migrants are fingerprinted and some [to] permit the use of a proportionate degree of coercion for this purpose"[40] Asylum seekers who are rescued but not willing to give their fingerprints can be imprisoned and only get an accelerated border procedure to investigate their asylum claim. These systems – William[50] would say- show us the 'real' purpose of rescuing boat immigrants at sea, or interception them at the turkeys borders.

4.4 Conclusion

It can be concluded that humanitarianism cannot be seen separate from the securitization of immigration policies, neither is it leading to or aimed at solely an inclusion or exclusion. Regarding humanitarianism, inclusion can on the one hand be seen as solely based on its exclusion, in order to gain control (state-led humanitarianism) or reinforcing the power system (non- state humanitarianism). On the other hand, it cannot be denied that there are humanitarian organization who are rather independent, aiming to become redundant. Furthermore, there is a moral obligation for state-led humanitarianism to maintain humanitarian standards, which often contradicts with the consequences of securitization. In operation Triton the border security teams are responsible for both humanitarian and security operations. Security measures, such as detention and the EURODAC system, can be put into practice under the guise of humanitarianism, but security tools, such as

Eurosur, are also deployed to make humanitarian rescue operations effective. Local relief programs as well as different aspects of operation Triton, show that humanitarianism is a contradicting aspect of immigration at EU borders, in which several opposing and contested goals are hidden. It is therefore impossible to argue that humanitarianism is only an inclusive, moral trend, neither it can be argued that inclusion by state's decision is fully in order to control the 'excluded' asylum seeker. So far, the EU has not been able to settle the migration crisis at the Mediterranean. The fact that securitization and humanitarianism, inclusion and exclusion have become intertwined within the immigration agenda at the EU is revealed by the notion of inclusive exclusion. The fact that EU and member states aim for both an inclusion and exclusion, sealing the borders while taking into account human rights, have led to the fact that humanitarianism and underlying motives can no longer be seen separately from its counterpart, securitization.

5. Conclusion

By applying the notion of inclusive exclusion to the immigration of the asylum seeker at EU borders in different ways and by discussing trends and approaches involved, several conclusions can be drawn.

The theory of Agamben,[11;12] the notion of inclusive exclusion and the state of exception were discussed. In the state of exception, the norm of law can be annihilated – ignoring international law and human rights- by governmental decision while still claiming to apply the law. This is exactly what happens in the migration crisis at EU borders through the effort to keep the 'illegal immigrants' excluded. Furthermore, in the state of exception the asylum seeker can also be included as a consequence of its prior exclusion. What the notion of inclusive exclusion and cases such as operation Triton clearly reveal, is that the asylum seeker is subjected to both inclusion and exclusion. From a priority of excluding immigrants, a situation of emergency evolves – rising casualties at the Mediterranean- that can lead to the decision to include. It is by actively taking up the decision, on the one hand, to keep the immigrant outside, and on the other hand the decision to rescue the immigrant, that authority is reinforced. This is how at first sight the notion of inclusive exclusion can be recognised at EU borders.

Subsequently – by discussing the role of securitization – it can be concluded that exclusion is enhanced and reinforced through securitization of immigration in the past decade. The role of securitization for the notion of inclusive exclusion is clear to the extent that it aims for - and enables this exclusion. The role of securitization is to frame immigration as a threat to society and to EU citizens. This is achieved through discourse[31], the so called criminalization of the asylum seeker,[1] and institutionalization of practices.[30,] When a threat is constructed the state, as a protector of security, will be more supported to decide for an exclusion. As a crisis asks for exceptional measures, the asylum seeker becomes more vulnerable to be actively kept out, exposed to violations and dangerous circumstances, as there is no safe legal way to reach Europe and to seek asylum.[64]

Regarding the role of humanitarianism, it was stressed by William[50] and to some extend Agamben,[12] that humanitarianism is a decision to include, merely for control and maintenance of authority: "to use as means of enforcement [and] facilitate their timely deportation".[50] This would mean that inclusion – humanitarian rescue operations or assistance – are solely based on its initial and especially its ultimate exclusion. However, humanitarianism in order to gain control, as a full explanation is unsatisfying. First of all, it is discussed that this inclusion brings inside the (constructed) 'threat' to society. Once in Europe, control over the asylum seeker seems to become less, as we see that people travel everywhere, seeking asylum in several places.[53] Subsequently, deportation can be a difficult and long process.[54] The asylum seeker is relatively free in moving around, therefore more difficult to control. Opposing William,[50] it is argued that providing humanitarian assistance is not solely in order to keep control but also a necessary decision, based on moral obligations of the state., to maintain humanitarian standards.[57;58] Although the role of humanitarianism is contested, it is recognized that even if an asylum seeker gets included, the initial exclusion makes him or her always vulnerable to violation of their human rights; carrying and keeping the "capacity to be killed yet not sacrificed."[12]

Based on different authors, news releases and reports of NGOs a final conclusion is on the surface, answering the central question: *In which ways does the notion of inclusive -exclusion apply to European immigration of the asylum seeker and how is this reflected in the mandate of Frontex?* The notion of inclusive exclusion shows the ambiguity of EU borders. There is a trend of securitization that makes the Mediterranean one of the few entrances to the EU, without any assurance that this entrance provides a safe arrival in Europe. The asylum seeker and all other immigrants are in that sense excluded from 'Fortress Europe'. Subsequently, there is a trend of humanitarianism, both state led and non-state organisations organise humanitarian rescue operations or assistance The EU and member states have signed the convention of Human Rights and are obliged to keep the circumstances humane so close to its territory. The excluded asylum seeker is included; he or she gets the opportunity to seek asylum and possibly a place to stay.

However, humanitarianism has become a way to control as well;[50] so the inclusion is not only based on an initial exclusion, it is also in order *keep* the asylum seeker excluded. A humanitarian border appears in which state-led humanitarian action develops securitization characteristics. In line with this, non-state humanitarian organisations do not appear to necessarily have this humanitarian role that they aim for, since they are only in existence and based on the excluded position of the asylum seeker.[12]

By managing both inclusion and exclusion measures, following a trend of securitization while aiming to maintain humanitarian standards, the EU and member states are placed in a difficult position. Operation Triton needs to take up the role of rescue agent - military ships are executing humanitarian tasks - but also follows a security mandate. Systems that were developed in order to improve border security, such as the Euro-sur system, are also deployed in order to rescue drowning boat immigrants. Instead of reinforcing authority of EU and member states, by constantly taking up the decision and maintaining a crisis situation, the EU polity is highly criticized from opposing sights. Thousands of immigrants each month still arrive at the EU, leaving many EU citizens with a feeling of unsafety and fear, since immigration is constructed as a threat, while humanitarian standards are even far from sustained. With rising amount of emergency meetings, criticism on the increasing casualties, it can be said that the EU has not managed to develop an immigration policy that successfully reaches both approaches.[60]

By applying the notion of inclusive exclusion to the immigration of the asylum seeker at EU borders, it especially showed that purpose and measures of securitization and humanitarianism can no longer be fully distinguishable from each other and therefore inclusion and exclusion - seemingly opposing each other- have become intertwined. The immigration crisis at the Mediterranean, has become a power and identity struggle of the EU and member states, leading to an infinite ambiguity, in which the asylum seeker is caught in a position; excluded though simultaneously included from the EU.

6. Discussion

It should be noted that this analysis of the immigration phenomenon at EU borders, by means of the notion of inclusive exclusion, is restricted by limited time. Many aspects of immigration at EU borders that came to the fore through the notion of inclusive exclusion are only shortly touched upon. In this thesis the main theories were applied to several operations of Frontex; among those Frontex' current operation Triton. It could be valuable to go deeper into this agency, as it shows striking examples of how the immigration crisis is handled by the EU and member states. With more extensive research, using more literature and analysis of policy and news reports, new links could be made to the notion of inclusive exclusion, showing the ambiguity of EU borders. Furthermore, it should be noted that the theory of Agamben is rather rigid, leaving little space for the nuanced situation that can be seen in reality. Therefore, analysing other theories regarding inclusion and exclusion could be of added value.

The theory however, enabled to analyse the immigration phenomenon at EU borders from a challenging perspective, offering new findings. Both securitization and humanitarianism are looked upon from different perspectives, questioning their expected role in the immigration phenomenon. It would be relevant to do further research on both influential trends, as this immigration crisis leads to inhumane circumstances. It asks for a better understanding how this crisis persists and what role each actor has in this crisis. This will enable to look for solutions or improvements in EU immigration policies in a grounded way.

Lastly, the situation taking place at the Mediterranean is an issue which has developed very recently. Therefore, the actual long term impact of new situations or decisions can turn out differently than expected. This means that future research is necessary for an adequate analysis of the long term impact.

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