



GREECE

The EU's Dirty Hands

Frontex Involvement in Ill-Treatment of Migrant Detainees
in Greece

HUMAN
RIGHTS
WATCH



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Summary

Between November 2, 2010 and March 2, 2011, nearly 12,000 migrants entering Greece at its land border with Turkey were arrested and detained. The detention facilities where they were held did not meet minimal human rights standards. Though their treatment varied from place to place, the European Court of Human Rights (ECtHR) has held that migrant detention in Greece generally constitutes “inhuman and degrading treatment.”

During this same period, the European Union’s (EU) agency for the management of operational cooperation at external borders, Frontex, provided Greece with both manpower and material support, made available by participating states, which facilitated the detention of those migrants in sub-human conditions in Greece’s overcrowded migrant detention centers.

This report addresses this disturbing contradiction. Although the ECtHR categorically ruled that the transfer of migrants to detention in Greece would expose them to prohibited abuse, an executive agency of the EU and border guards from EU member states knowingly facilitate such transfers.

The focus of this report is the period of Frontex’s “RABIT 2010” deployment in Greece. With RABIT (“Rapid Border Intervention Team”), Frontex deployed 175 border guards contributed by Norway and EU member states to the Greek government’s efforts to manage the influx of migrants into the northeastern region of Greece along the Evros River bordering Turkey. The “guest officers,” chosen from a pool provided by participating EU member states and other non-EU European states, operated in Greece in their respective national uniforms but not under the operational control of their home authorities.

Frontex describes its mission as one of coordination, research, and surveillance. But Frontex sent equipment such as vans, buses, patrol cars, and a helicopter, provided by participating states, and covered the expenses incurred by the RABIT operation. Frontex also operated in close proximity to the four detention centers where human rights violations have consistently been recorded. During the RABIT operation, guest officers from participating states who went out on patrols with at least one Greek officer were authorized to apprehend migrants and then transfer them to Greek counterparts who ran the detention facilities.

Frontex has been present in the Evros region since October 2010. The RABIT mission was designed as an emergency measure in response to the arrival of a large number of migrants to Greece. RABIT was initially planned to end December 2 but was extended until March 2, 2011, and then replaced by a permanent Frontex presence conducting the same tasks.

During Frontex's deployment, on January 21, 2011, the European CtHR issued a judgment that was not specifically directed at Frontex but which is fundamentally relevant to its role in Greece. In *M.S.S. v. Belgium and Greece* the court found that Greek detention practices violated Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman and degrading treatment, and that Greece's asylum system was dysfunctional. The court also concluded that Belgium too violated its human rights obligations by knowingly exposing the applicant, an Afghan asylum seeker, to inhuman and degrading treatment when it transferred him back to Greece. The court said that Belgium infringed upon a right that it had previously recognized as "non-derogable, even in cases of extreme pressure or emergency."

In the course of the RABIT mission in Greece, Frontex also facilitated the transfer of migrants to centers of detention within Greece where Human Rights Watch documented the same inhuman and degrading conditions as those condemned by the ECtHR. Human Rights Watch contends that Frontex is similarly responsible for having knowingly exposed migrants to treatment which is absolutely prohibited under human rights law.

During the four months examined in this report, RABIT patrols regularly apprehended migrants who crossed the border into Greece and took them, sometimes in buses provided by Frontex, to the detention centers. After patrols, border guards deployed as part of the RABIT force reported back to their home authorities, who knew or should have known about the conditions to which their agents were sending the migrants. Nevertheless, no European participating state publicly raised concerns that the activities of the patrols involved violations of the prohibition on inhuman treatment, and none withdrew from the mission.

In December 2010, during the RABIT deployment, Human Rights Watch visited detention centers in the Evros region of Greece and found that the Greek authorities were holding migrants, including members of vulnerable groups such as unaccompanied children, for weeks or months in conditions that amounted to inhuman and degrading treatment.

We found overcrowding to be a common problem in detention facilities in the Evros region. In Tycherio, Feres, and Soufli, women were held in the same cells with men. The Feres police station held 97 detainees at the time of our visit, though the police said its capacity

was 30. A 50-year-old Georgian woman detainee said, “You cannot imagine how dirty and difficult it is for me here....It's not appropriate to be with these men. I don't sleep at night. I just sit on a mattress.”

In Fylakio, by contrast, the authorities separated men from single women but detained unaccompanied children together with unrelated adults in large, overcrowded cells. Sewage was running on the floors, and the smell was hard to bear. Greek guards wore surgical masks when they entered the passageway between the large barred cells.

Human Rights Watch’s observations and the testimonies we gathered on detention conditions in Evros in December 2010 were consistent with our previous reports on conditions in Greek migrant detention centers dating from 2008 and those of other organizations which have been monitoring and documenting the conditions of detention for migrants in Greece. In a January 2011 review of these reports the ECtHR concluded:

All the centers visited by bodies and organizations that produced the reports ... describe a similar situation to varying degrees of gravity: overcrowding, dirt, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care. Many of the people interviewed also complained of insults, particularly racist insults, proffered by staff and the use of physical violence by guards.

During the RABIT mission Frontex also provided personnel who conducted nationality-determination screenings that were, in effect, rubber-stamped by the Greek authorities. These screenings determine detainees’ country of origin in order to facilitate their deportation. Although these screenings were not intended to identify international protection needs, in reality they were usually the most substantive interviews detainees had before being deported. Given the formidable barriers to lodging asylum claims in Greece at that time (particularly in the Evros region), the exclusive enforcement emphasis of these interviews appears to have contributed to the protection gap in the Evros region, including the risk that genuine refugees might not be identified and would be subjected to refoulement.

This report argues that Frontex activities in Greece do not meet the standards set out in the EU’s Charter of Fundamental Rights, by which Frontex is bound. Since the ban on participation in activities which would expose individuals to inhuman and degrading treatment is absolute, the onus is on the EU to work with Greece to rectify the situation of

inhuman and degrading conditions in detention before it co-operates with Greece in activities that are intricately linked to the task of detaining migrants.

In this regard, Human Rights Watch welcomes the decision to deploy European Asylum Support Officers (EASOs) to Greece to assist the Greek authorities in establishing a working asylum system and that EASO has made Greece a priority for 2011. Human Rights Watch also welcomes amendments that are expected to establish a Fundamental Rights Officer (FRO) within Frontex and a Consultative Forum to assist the agency in fundamental rights matters— though we have reservations about proposed amendments to the Frontex Regulation that would expand and operationalize its mandate.

These measures alone, however, are not sufficient.

In order to comply with human rights obligations not to expose migrants to the inhuman and degrading conditions in the Evros region, Frontex should immediately make its engagement in border enforcement operations in Greece contingent on the placement of apprehended migrants in facilities with decent conditions, which could be achieved in the short term by transferring irregular migrant detainees to other areas of Greece where detention standards are acceptable, such as on Samos Island, or making detention spaces available in other places in the EU where conditions meet international and EU standards.

Furthermore, all states that participate in Frontex and contribute border guards and material support also bear responsibility and incur liability for human rights violations by virtue of their involvement in Frontex activities. All participating states are bound by the European Convention on Human Rights (ECHR), and participating EU member states are also bound by the EU Charter on Fundamental Rights. Each participating state should carefully review its co-operation under the auspices of Frontex with a view to assessing the risk that such co-operation facilitates the violation of fundamental rights

While the primary focus of this report is on Frontex and its responsibility not to be complicit in human rights violations, it is not meant to absolve the Greek authorities from their responsibilities. Since 2008, Human Rights Watch has published three reports documenting Greek violations of the rights of refugees, asylum seekers, and migrants. Several other organizations have published similar reports. Greece's well documented failure not only to provide decent conditions of detention for migrants but also asylum for refugees has been acknowledged by the Greek government, which should take immediate steps to improve detention conditions and implement the recently announced reforms of its asylum system.

As new migration crises emerge in the Mediterranean basin and as Frontex's responsibilities expand, there is an urgent need for a shift in EU asylum and migration policy from an enforcement-first policy to a protection-first policy. This is not only legally required but is a worthy and achievable approach for the EU, its agencies, and member states to take in addressing real problems that are susceptible to real—and principled—solutions.

Key Recommendations

To the European Commission, the European Parliament and the Council of the European Union

- Amend the Frontex Regulation to make explicit, and thereby reinforce, the obligation not to expose migrants and asylum seekers to inhuman and degrading detention conditions.
- Amend proposed Frontex Regulation Art. 26a to empower the Fundamental Rights Officer to refer Frontex to the Commission for investigation and where appropriate infringement proceedings in the event that the Frontex executive director fails to suspend operations despite persistent and serious violations of the Charter and/or in the event that members states and their agents persistently violate the Charter during Frontex operations.

To Participating European States

- Suspend any participation in Frontex operations that fail to adhere to binding international human rights standards.
- Instruct border guards deployed on Frontex missions on their obligations under international law. Ensure that border guards are trained and conversant regarding all rules and standards pertaining to the transfer and treatment of detainees.

To the Frontex Management Board

- Suspend the deployment of EU border guards to Greece unless migrant detainees can be transferred to facilities elsewhere in Greece (or outside of Greece) that meet EU and international standards or until the conditions of detention in the Evros region where migrants are currently detained are improved and no longer violate European and international standards.
- Intervene with Greek officials and monitor compliance to ensure that migrants apprehended by guest guards are transferred to detention facilities that comply with European and international standards.
- Conduct thorough assessments of the risk that human rights violations may occur before engaging in joint operations or deploying RABIT forces.

To Greece

- Implement the recently adopted asylum reform package as fully and as quickly as possible.
- Ensure access to asylum procedures at the border and in the border region.
- Reduce overcrowding by using alternative facilities and alternatives to detention as much as possible.
- Immediately improve detention conditions, and immediately create open reception centers for asylum seekers and members of vulnerable groups, such as children.

Methodology and Scope

Human Rights Watch conducted research for this report in Greece from November 28 to December 4, 2010 and from February 13 to February 17, 2011. We visited the following places of detention in Greece: Venna detention center; Fylakio detention center; Tycherio police station detention cells; Feres police station detention cells; Soufli police station detention cells. Outside of detention, we interviewed migrants living in the city of Athens.

Two Human Rights Watch researchers conducted 65 individual interviews with migrants, refugees, and asylum seekers in Greece. Interviews with migrants, refugees, and asylum seekers were conducted directly in English, Arabic, Russian, and French. We also conducted interviews with the aid of interpreters in Dari, Pashtu, and Persian.

Human Rights Watch interviewed detainees from various nationalities including 14 Iraqis, 10 Iranians, and smaller numbers from Afghanistan, Pakistan, Eritrea, Syria, Tunisia, Morocco, Palestine, Sudan, Algeria, Cameroon, Georgia, Sri Lanka, and Turkey. The interviewees generally were males in their twenties or early thirties. Most were traveling singly and not part of family groups. We did however interview 7 women and 12 children from ages 14 to 17.

Individual interviews averaged about 30 minutes but some lasted well over one hour. In some cases Human Rights Watch picked out interviewees in detention and reception centers from among those who indicated a willingness to be interviewed after we made a group presentation. Outside of detention centers, local nongovernmental service providers and migrant community members helped to identify interviewees. Interviews were conducted in privacy with no third parties present other than an interpreter. Where a family member was present, this is indicated in the text.

In all cases, Human Rights Watch told interviewees that they would receive no personal service or benefit for their testimonies and that the interviews were confidential. All names of refugee and migrant interviewees are withheld for their protection and for the protection of their families. The notation used in this report uses a letter and a number for each interview; the letter indicates the person who conducted the interview and the number refers to the person being interviewed. All interviews are on file with Human Rights Watch.

Human Rights Watch also interviewed Greek police officials responsible for migrant detention centers in the Evros region.

We interviewed Frontex’s deputy executive director in Evros and other Frontex officials in Frontex’s Piraeus office, but the “guest guards” of participating states deployed to Greece through Frontex indicated that they did not have permission to answer our questions regarding their experience in Greece. We corresponded in writing with Frontex officials during the research, writing, and editing phases of this report, which incorporates their comments on portions of an earlier draft of this report.

I. Background: Frontex



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History

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, known as Frontex (a contraction of the French “*frontières extérieures*”) was established as an executive agency of the European Union (EU) on October 26, 2004.¹

The EU did not conceive of the agency as a policy-making or enforcement body but rather as a platform for cooperation between EU member states on issues of border

¹ Council Regulation (EC) No 2007/2004, October 26, 2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:349:0001:0011:EN:PDF> (accessed April 13, 2011) (Below: “Frontex Regulation”). The agency’s program of work is set by a management board comprised of one representative from each EU member state and two representatives from the European Commission.

enforcement.² Today, in describing its mission, Frontex emphasizes coordination, research, and surveillance.³ As Gil Arias Fernández, deputy executive director of Frontex, told Human Rights Watch in a meeting in the Greek town of Orestiada in December 2010:

We are always explaining what is sometimes difficult to explain. Our role is one of a coordinator. We act as a facilitator between states for resources. The operations are always led by the host state.⁴

There may be a good reason why Frontex's role is "difficult to explain." Although Frontex has insisted it is less "actor" than "coordinator," it has quickly developed into a powerful actor that plays a key role in enforcing EU immigration policy.⁵ The Frontex budget has grown exponentially in recent years, reflecting this development. From €6.2 million in 2004 (just under US\$9 million), Frontex's budget grew to more than €88 million (or over US\$120 million) in 2010.⁶ Frontex has a staff of 272 seconded national experts, temporary, auxiliary, and contract staff, according to its web page.⁷

Through the years, Frontex has become increasingly active through joint operations, in which it has organized European member states' resources for operations along EU's external borders and at airports.⁸ It has also coordinated increasing numbers of joint maritime operations, some of which have involved coordination with countries of embarkation outside the EU, such as Senegal. Many joint maritime operations, such as Frontex's Hera I, II, and III operations, which succeeded in dramatically reducing the number of boat arrivals in Spain's Canary Islands, seem to have had the objective of

² The commission's proposal suggests that the agency "shall simply assist Member States in implementing Community legislation in the fields of control and surveillance of the external borders and the removal of third-country nationals." COM (2003) 687 final/2, p. 4. Norway and Iceland joined Frontex as participating states through Council Decision 2007/511/EC of February 15, 2007; Switzerland and Liechtenstein joined as participating states through Council Decision 2010/490/EU of 26 July 2010. The United Kingdom, Ireland, and Denmark did not participate in Frontex's founding regulation and are not bound to or subject to its application.

³ See Frontex's Website, under "tasks": http://www.frontex.europa.eu/origin_and_tasks/tasks/ (accessed April 3, 2011).

⁴ Human Rights Watch interview with Gil Arias Fernández, deputy executive director of Frontex, Orestiada, December 3, 2010.

⁵ For example, on January 1, 2011, Frontex signed a cooperation agreement with Cape Verde. See: http://www.frontex.europa.eu/newsroom/news_releases/art88.html (accessed April 3, 2011).

⁶ See breakdown of budget for 2005 at:

http://www.frontex.europa.eu/gfx/frontex/files/2005_budget_mb_decision_of_30_jun_2005.pdf and breakdown of budget from 2010 at: http://www.frontex.europa.eu/gfx/frontex/files/budget/budgets/2010_budget_amendments_tbp.pdf (both accessed April 1, 2011).

⁷ Frontex's Website: http://www.frontex.europa.eu/more_about_frontex/ (accessed July 7, 2011).

⁸ See Frontex's explanation on "joint operations" at:

http://www.frontex.europa.eu/structure/operations_division/joint_operations/. See "examples of accomplished operations, including budget, objectives, and participating Member States, at: http://www.frontex.europa.eu/examples_of_accomplished_operati (both accessed April 3, 2011).

preventing boats from landing on EU member state territories.⁹ This has also prevented migrants—including asylum seekers—from availing themselves of procedural rights that apply within EU territory.¹⁰

In July 2007 the Frontex Regulation was supplemented by the RABIT Regulation, which created "Rapid Border Intervention Teams" aimed at stopping the massive arrival and entry of migrants.¹¹ The RABIT Regulation also authorized members of the teams to bear arms and to use force, with the consent of the host member state.¹²

Frontex is now forming partnerships with national border-enforcement authorities in all participating states.¹³ In Greece, Frontex not only has provided EU personnel and resources through the RABIT deployment, but also in 2010 established an office in the Greek coastguard headquarters in Piraeus seaport as the headquarters for all operations in the Eastern Mediterranean area, which coordinated two joint operations, Poseidon 2010 and Attica 2010.¹⁴

With the growing reliance on Frontex operations and increasing migratory pressures on the EU's external borders in 2011, the Council of the European Union and the European Parliament moved to grant Frontex more authority. In September 2011 the European Parliament and Council are expected to adopt amendments to the Frontex Regulation that will widen Frontex's mandate, in particular by giving it the authority to "initiate and carry out joint operations and pilot projects" in cooperation with the participating states.¹⁵

⁹ "HERA II Operation to be Prolonged," Frontex News Release, October 13, 2006, http://www.frontex.europa.eu/newsroom/news_releases/art3.html (accessed July 8, 2011).

¹⁰ Article 14 of the Frontex Regulation grants the agency the mandate for "facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries."

¹¹ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0030:0039:EN:PDF> (accessed August 16, 2011).

¹² "Guest officers" are authorized to use force in the same way that the border guards of the host state are allowed to. Regulation (EC) No 863/2007, July 11, 2007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0863:en:NOT> (accessed April 13, 2011), Art. 6(6).

¹³ Frontex letter to Human Rights Watch, May 19, 2011.

¹⁴ Frontex letter to Human Rights Watch, March 29, 2011.

¹⁵ Proposed amendment of Article 3 of Council Regulation (EC) No 2007/2004 of October 26, 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. In addition to the more expansive powers, the proposed amendments included a provision that Frontex "shall fulfill its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union, international law, including the Convention Relating to the Status of Refugees of 28 July 1951 ("the Geneva Convention"), obligations related to access to international protection, in particular the principle of non-refoulement." (Article 1.2) The amendments also include instructions for Frontex to create a code of conduct for all persons participating in Frontex activities to act according to the principles of the rule of law and respect of fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as persons seeking international protection. (Article 2a)

Legal Authority

There is a paradox at the heart of Frontex’s legal existence. On the one hand, the Frontex Regulation stipulates that “the responsibility for the control and surveillance of external borders lies with the Member States.”¹⁶ On the other hand, the same regulation says that Frontex is a Community body with “full autonomy and independence”¹⁷ with “legal personality and exercising the implementing powers, which are conferred on it by this Regulation.”¹⁸ Frontex, therefore, exists both as a specter-like coordinating manager as well as an actor with legal autonomy.

Frontex derives its legal authority from the Frontex Regulation, which, as it existed prior to proposed amendments expected to be adopted in September 2011, specifies that the agency’s main tasks are: 1) to coordinate operational cooperation between member states in managing external borders; 2) to assist member states in training national border guards; 3) to carry out risk analyses and surveillance of external borders; 4) to provide member states increased technical and operational assistance at external borders when necessary; and 5) to support member states by organizing joint return operations.¹⁹

The proposed amendments add additional responsibilities to Frontex’s mandate, including assessment of member state capacity to secure external borders; participation in control and surveillance of external borders; technical and operational assistance at external borders, including sea operations, especially in situations of specific and disproportionate pressures; setting up European Border Guard Teams for rapid deployment during operations; coordinating joint returns; developing coordinated information systems; and assisting in the development of European border surveillance and information-sharing systems.

As the amendments were being drafted, the European Parliament’s Committee on Foreign Affairs commented in early 2011 on the expansion of powers that the amendments would give Frontex:

This proposal would provide the Agency with a reinforced role in preparing, coordinating and *implementing* operations with special regard to the sharing of tasks with EU Member States, namely in terms of deployment of

¹⁶ Frontex Regulation, Article 1.2.

¹⁷ Ibid, Preamble, para. 16.

¹⁸ Ibid, Preamble, para. 14.

¹⁹ Frontex Regulation, Art. 2.

human resources and technical equipment. Besides, with this proposal, Frontex's internal and external mandate and powers would be significantly enhanced. The Agency would be able to co-lead border patrol operations with EU Member States, deploy liaison officers in third countries, coordinate joint return operations, launch and finance pilot projects.²⁰ (Emphasis added).

In light of these possible developments, the committee expressed concern at the time about Frontex's lack of transparency and accountability and questioned whether the proposal would provide sufficient oversight of Frontex, including its human rights performance:

The overall question of responsibilities between Member States' officers, the host Member State border officers and Frontex's personnel remains unclear and ambiguous in the Commission's proposal and should be treated by the lead committee of Parliament together with open questions with regard to the component body for complaints in case of violations of human rights of migrants.²¹

One of the amendments expected to be adopted in September 2011 places responsibility on home member states to discipline guest officers engaged in Frontex activities who violate fundamental rights or international protection obligations but also authorizes the executive director of Frontex to suspend joint operations or pilot projects if he "considers that violations concerned are of a serious nature or likely to persist."²²

Although the Frontex Regulation, as it existed prior to the amendments expected to be adopted in September 2011, did not include a provision that explicitly protected refugees and vulnerable groups, it did say that Frontex "respects the fundamental rights and observes...the Charter of Fundamental Rights of the European Union."²³ The expected approval of the proposed amendment to the Frontex Regulation in September 2011 will remedy this lacuna in Frontex's explicit protection regime both by directing Frontex to draw

²⁰ See European Parliament, Opinion of Committee on Foreign Affairs, 2010/0039 (COD), January 18, 2011, p. 3 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-448.907+02+DOC+PDF+Vo//EN&language=EN> (accessed September 8, 2011).

²¹ *Ibid.*

²² Proposed amendment, Article 3a, of Council Regulation (EC) No 2007/2004 of October 26, 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

²³ Frontex Regulation, preamble, para. 22.

up a “code of conduct” to guarantee respect of fundamental rights with particular focus on unaccompanied children and vulnerable persons,²⁴ and by directing that:

In accordance with Union and international law, no person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons shall be addressed in accordance with Union and international law.²⁵

The code of conduct does not, however, address the consequences of non-compliance with the code, leaving an accountability gap.

As an EU agency, Frontex is bound by the Charter of Fundamental Rights of the European Union, including Article 1, providing that “Human dignity is inviolable. It must be respected and protected;” Article 4, providing that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment;” and Article 18, providing that “the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”²⁶

As early as the drafting of the Frontex Regulation, some predicted that the creation of a common border control agency would be problematic if it did not include proper European standards on protection as well. Thus, for example, Christian Ulrik von Boetticher, rapporteur for The European Parliament’s Committee on Citizens’ Freedoms and Rights, commented during the drafting process that “it is premature to set up such an operational structure without harmonized standards on for example the definition of the refugee.”²⁷ But for the EU, “harmonized” enforcement preceded “harmonized” protection.

²⁴ Proposed amendment 2a to Frontex Regulation.

²⁵ Proposed amendment 2.1b to Frontex Regulation.

²⁶ Charter of the Fundamental Rights of the European Union, (2000/C 364/01), December 18, 2000, http://www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed April 25, 2011).

²⁷ See Report on the Proposal for a Council Regulation Establishing a European Agency for the Management of Operational Co-operation at the External Borders (COM(2003) 687 - C5-0613/2003 – 2003/0273(CNS)), February 24, 2004, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2004-0093+0+DOC+XML+Vo//EN> (accessed April 3, 2011), p. 31.

While harmonized enforcement has certainly preceded harmonized protection, the EU is moving towards a common European asylum system with a harmonized refugee definition and procedures, but, as evidenced by Greece, implementation still lags behind formal harmonization. The inclusion of additional human and fundamental rights standards in the proposed amendments to the Frontex regulation indicate progress by making explicit rights guarantees that were previously implied.

Cooperation with Other EU Agencies

Although Frontex was not entrusted with a mandate to protect the human rights of migrants, to its credit, on May 26, 2010, the border enforcement agency signed a cooperation arrangement with the Fundamental Rights Agency (FRA).²⁸ The FRA is an advisory EU agency whose scope of activities includes “the fight against racism, xenophobia and related intolerance.”²⁹ A press release announced that FRA would “assist Frontex in further and comprehensively integrating the fundamental rights approach into its activities, as called for in numerous recent Council and Parliament communications.”³⁰

The agreement between FRA and Frontex includes provisions allowing Frontex to obtain expert opinions from FRA on joint operations and envisions FRA training of border guards and Frontex staff.³¹ FRA is also expected to provide guidelines on respecting rights during deportations.³² The agreement does not grant binding force to any of FRA’s opinions that would control Frontex’s actions. The proposed amendments to the Frontex Regulation, expected to be adopted in September 2011, would, however, establish a Consultative Forum to advise Frontex on the development and implementation of its Fundamental Rights Strategy, and directs the agency to invite FRA, the European Asylum Support Office (EASO), UNHCR, and other relevant organizations to participate in the Consultative Forum.

²⁸ Cooperation Arrangement between The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, May 26, 2010 http://fra.europa.eu/fraWebsite/attachments/Cooperation-Agreement-FRA-Frontex_en.pdf (accessed April 13, 2011) (Below: “Cooperation Arrangement”).

²⁹ Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights, February 15, 2007, Article 5(b), http://www.fra.europa.eu/fraWebsite/attachments/reg_168-2007_en.pdf (accessed July 7, 2011). The same regulation says that FRA work should relate particularly to the Charter of Fundamental Rights (preamble, paragraph 9), which, in turn, makes no distinction, except specifically in Chapter 5 on Citizen’s Rights, with respect to the rights of non-citizens living in the EU.

³⁰ “Frontex Signs Cooperation Arrangement with Fundamental Rights Agency,” Fundamental Rights Agency press release, May 27, 2010, http://www.fra.europa.eu/fraWebsite/media/mr-270510_en.htm (accessed April 3, 2011).

³¹ Cooperation Arrangement, Articles 3, 5, and 8.

³² *Ibid.*, Art. 8

The amendment, if adopted, will also create the position of Fundamental Rights Officer (FRO) to report directly to the Frontex Management Board and the Consultative Forum.³³ But the amendment does not authorize the FRO to take enforcement action if the FRO believes persistent and serious violations of fundamental rights are occurring during Frontex operations. This accountability gap would be addressed by amending the Frontex Regulation to allow the FRO to refer complaints to the European Commission for investigation and, where appropriate, infringement proceedings if, for example, the Frontex executive director has failed to suspend operations despite serious and persistent violations, or if actions by member states and their agents during Frontex operations violate the Charter.

On March 8, 2011, FRA released a critical report on the emergency situation in Greece, including an assessment of Frontex's role in this emergency (see below: Greece Criticized).

Another EU agency relevant to the situation in Greece is the European Asylum Support Office (EASO), established in May 2010 to help coordinate and improve the implementation of asylum policies.³⁴ Although EASO had not yet become operational in Greece at the time of Frontex's RABIT deployment, Kari Wahlström, head of the Frontex Operational Office in Greece, told Human Rights Watch that EASO would complement Frontex so that a balance between enforcement and protection would be maintained.³⁵ EASO has also indicated in its plan for 2011 that Greece will be a priority for the agency.³⁶

On April 1, 2011, Cecilia Malmström, EU Commissioner for Home Affairs, declared that EASO teams would be deployed in Greece. This would be the first deployment of agency teams since EASO was established.³⁷ Just as Frontex has been designed not to make

³³ Proposed amendment, Article 26a, of Council Regulation (EC) No 2007/2004 of October 26, 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

³⁴ Regulation (EU) No 439/2010 of the European Parliament and of the Council of May 19, 2010 establishing a European Asylum Support Office. The European Asylum Support Office is to strengthen practical cooperation on asylum by facilitating the exchange of information and experiences between European Union (EU) countries.

³⁵ Human Rights Watch interview with Kari Wahlström, February 15, 2011.

³⁶ Work Programme 2011, European Asylum Support Office, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/easo_work_programme2011_/easo_work_programme2011_en.pdf (accessed September 9, 2011).

³⁷ Commissioner Malmström said: "I am aware of the very difficult conditions in which irregular migrants and asylum seekers are being detained in the Evros region. The humanitarian situation in these places of detention is a major concern. Third-country nationals held in detention for whatever reason should always be treated in a humane and dignified manner and I call upon the Greek authorities to take immediate action to remedy the situation. In this respect, I encourage Greece to make maximum use of emergency measures financed under the European Refugee Fund, to address immediate needs until Greece's new national independent asylum agency is established. I equally welcome the cooperation of the Greek authorities with the UNHCR and its strategic involvement in the reform of the asylum system." "Statement by Cecilia Malmström, EU Commissioner for Home Affairs, on the Deployment of EU Asylum Support Teams in Greece," European Commission Press

administrative decisions, EASO too is not authorized to make determinations on asylum requests. Like Frontex, EASO does not have a specific mandate to intervene directly on detention conditions.³⁸ Refugee status determination procedures and detention responsibilities remain the responsibility of EU member states.

Because this report deals with the period of the RABIT deployment prior to the establishment of the EASO presence in Greece, it remains to be seen how the encouraging step of the EASO deployment will influence reform of Greece's dysfunctional asylum system and whether its presence will have a salutary influence on improving conditions of detention even if this is not specifically within EASO's mandate.

Release, Memo/11/214, April 1, 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/214> (accessed April 4, 2011).

³⁸ Regulation (EU) No 439/2010, May 19, 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF> (accessed April 4, 2011).

II. Protection Crisis in Greece

On September 21, 2010, the United Nations High Commissioner for Refugees (UNHCR) declared the asylum situation in Greece a “humanitarian crisis.”³⁹ UNHCR said that Greece’s lack of a functioning asylum system had “important implications for the wider EU.”⁴⁰

Not long after the UNHCR’s declaration, on November 2, Frontex deployed RABIT “guest officers” (as they are called by Frontex) in the Evros region for the first time in an operation that lasted until March 2.⁴¹ After the RABIT deployment ended, Frontex’s presence in Evros continued, performing the same tasks under the title “Joint Operation Poseidon Land 2011.”⁴²

The Making of an Emergency

The “humanitarian crisis” UNHCR described had been developing for a number of years as Greece became the major gateway for undocumented migrants and asylum seekers into the EU. This emergency developed out of a confluence of Greece’s geographic location and porous borders, the chronic mismanagement of its asylum system, and the fundamental problems with its migrant detention system. But the EU added greatly to Greece’s burden with the Dublin II Regulation, which assigns responsibility for examining asylum claims to the first EU country in which an asylum seeker sets foot.⁴³ Asylum seekers who travel to other member states can be returned to the country where they first entered the EU. This arrangement exposes member states on the external borders of the EU to disproportionate responsibility for assessing the asylum claims of irregular migrants entering the EU by land. Given Greece’s location, Dublin II exacerbated the country’s large backlog of asylum applications and appeals, while adding strains to its overcrowded detention facilities.⁴⁴

³⁹ “UNHCR Says Asylum Situation in Greece ‘A Humanitarian Crisis,’” UNHCR Briefing Notes, September 21, 2010, <http://www.unhcr.org/4c98a0ac9.html> (accessed March 22, 2010).

⁴⁰ *Ibid.*

⁴¹ Evros is officially designated as a Peripheral Unit belonging to the Periphery/Region of Eastern Macedonia and Thrace, but for ease of reading, we will refer to this as “the Evros region” throughout the report.

⁴² Frontex, “RABIT Operation Ends, Replaced by JO Poseidon 2011,” Warsaw, March 3, 2011, http://www.frontex.europa.eu/newsroom/news_releases/art98.html (accessed March 22, 2011).

⁴³ Council Regulation (EC) No 343/2003, February 18, 2003 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF> (accessed April 13, 2011) establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national, February 25, 2003. Human Rights Watch analyzed the problems with the Dublin-II Regulation on several occasions before, see: *Greece/Turkey – Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008, <http://www.hrw.org/en/node/76211/section/8>, p. 22.

⁴⁴ Human Rights Council, Mission to Greece Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, March 4, 2011, A/HRW/16/52/Add.4,

Frontex explained how Greece became the gateway to Europe in its “risk analysis” report for 2010:

Following decreased departures from Libya and Western Africa, Turkey has now become the most important transit country for illegal migration.... The bilateral collaboration agreements with third countries of departure on the Central Mediterranean route (Italy with Libya) and the Western African route (which Spain signed with Senegal and Mauritania) had an impact on reducing departures of illegal migrants from Africa.... As a corollary to the sharp decreases registered in Italy and Spain, the number of detections of illegal border crossings in Greece rose from 50% of the total EU detections to 75% of the total.⁴⁵

In its first and second quarterly reports of 2010 Frontex further identified "a continued and intensified shift from the Greek sea border to the Greek land border with Turkey."⁴⁶ These analyses culminated in Frontex’s November 29, 2010 statement declaring that "Greek external borders ... now account for 90 percent of all detections of illegal border crossing along the EU external borders."⁴⁷

Arias Fernández of Frontex explained that the agency’s RABIT deployment was set in motion “because of a drastic increase of numbers [of detected migrants] and because the humanitarian situation also made the European Commission encourage Greece to ask for our help.”⁴⁸

Preparing for the RABIT Deployment

Frontex was well aware not only of the increase in irregular entries but also of the deepening protection crisis in Greece. While preparing for the RABIT 2010 deployment in Evros, a Frontex official visited Greek detention centers in October 2010 and the agency

<http://www.scribd.com/doc/50378215/Human-Rights-Council-Mission-to-Greece> (accessed April 3, 2011) (Below: “Mission to Greece Report, March 4, 2011”).

⁴⁵ Frontex, Extract from Annual Risk Analysis 2010, March 2010,

http://www.frontex.europa.eu/gfx/frontex/files/frontex_ara_public_version.pdf, p. 12 (accessed April 3, 2011).

⁴⁶ Frontex, “FRAN Quarterly Update” Issue 1, January-March 2010, p. 3,

http://www.frontex.europa.eu/situation_at_the_external_border/art15.html (accessed April 4, 2011); Frontex, “FRAN Quarterly Update” Issue 2, p. 4, www.frontex.europa.eu/download/.../fran_q02_2010_public.pdf, (accessed April 4, 2011).

⁴⁷ “Current Migratory Situation in Greece,” Frontex Press Release, November 29, 2010,

http://www.frontex.europa.eu/rabit_2010/background_information/ (accessed April 4, 2011).

⁴⁸ Human Rights Watch interview with Arias Fernández, December 1, 2010.

considered the possible implications of a land deployment in Greece and of its involvement in a broken system.⁴⁹

The Frontex officer, Leszek Szymanski, head of the Operational Management Component in the Frontex's Piraeus office, visited the detention center of Fylakio, as well as other detention centers in October 2010, and found that the facilities were overcrowded (he told Human Rights Watch that around 700 people were detained in Fylakio at the time of his visit, almost twice that facility's capacity of 386).⁵⁰ Szymanski also visited other detention facilities, including the Tycherio detention facility which, as we saw in our later visit to Tycherio, houses detainees in large, dimly lit rooms with cement beds.

Frontex's decision to visit the detention facilities suggests that the agency understood that their conditions were relevant to its task. The agency told Human Rights Watch that it knew about the "difficult" conditions since the beginning of the agency's presence in the area in October 2010.⁵¹

The conditions that existed in Fylakio at the time of Szymanski's fact-finding mission were indeed nothing new. Various human rights groups, including Human Rights Watch, have repeatedly criticized conditions in Greek detention centers as failing to meet international standards throughout the past decade.⁵² In January 2011 the European Court of Human Rights (ECtHR) reviewed the vast reporting literature that had accumulated on Greece since 2005, summarizing its findings as follows:

All the centers visited by bodies and organizations that produced the reports listed above describe a similar situation to varying degrees of gravity: overcrowding, dirt, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care. Many of the

⁴⁹ Human Rights Watch interview with Kari Wahlström, head of Frontex Operational Office, with Leszek Szymanski and Gerald Baumkirchner, Piraeus, February 15, 2011. (Below: "Human Rights Watch interview with Wahlström and staff, Piraeus, February 15, 2011," unless only a particular named person is being quoted.)

⁵⁰ In a letter of May 19, 2011 from Gil Arias Fernández, Deputy Executive Director of Frontex to Human Rights Watch, Frontex challenges that Szymanski, who was one of a group of experts sent to the Evros region, ever "examined or inspected" Greek detention centers. They do not however dispute that he visited the centers and witnessed the conditions.

⁵¹ Frontex letter to Human Right Watch, unpublished document, March 29, 2011.

⁵² See <http://www.hrw.org/legacy/wr2k2/europe10.html>. See also Human Rights Watch, *Stuck in a Revolving Door*, 2008, <http://www.hrw.org/reports/2008/11/26/stuck-revolving-door>; Human Rights Watch, *Greece—Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, 2008, <http://www.hrw.org/reports/2008/12/11/left-survive>.

people interviewed also complained of insults, particularly racist insults, proffered by staff and the use of physical violence by guards.⁵³

Manfred Nowak, the former UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, visited the Fylakio detention center within days of Szymanski's visit. The situation he describes there on October 12, 2010 would have been essentially the same as on the day that Szymanski was present:

Due to the high occupancy over the last months, the center was in a very poor state at the time of the visit. When entering the building the detainees became very agitated and initially the officers were reluctant to open the cells. The conditions of detention were extremely poor. There were not enough beds for each detainee forcing many to share beds or sleep on the floor. The beds, blankets and pillows were very dirty. The sanitary installations were in a very poor state with dirty walls, doors and water running out the washrooms and toilets. The cells were humid and the floors dirty. The cells were poorly lit, many ceiling lamps were broken and there was almost no natural light. There was little space between the bunk beds allowing detainees to move around. They had no access to a yard and outdoor exercise.

The semi-open cell for the new arrivals was in the worst state. The bathroom appeared not to be cleaned for a long time. The toilets were clogged causing water and feces to stand in the washroom. The detainees defecated in the corridor of the washroom and the dirty water ran out of the bathroom in the sleeping cell causing unbearable smell. Consequently, many new arrivals preferred to sleep outside.⁵⁴

During that same time, Nowak also visited a number of police stations in Evros and found that they appeared to operate almost exclusively as migrant detention facilities rather than as conventional police stations. In all but one of the police stations he visited he found that foreign nationals were "detained in overcrowded, dirty cells, with inadequate sanitary facilities, no or insufficient access to outdoor exercise and inadequate medical

⁵³ *M.S.S. v. Belgium and Greece*, judgment of January 21, no. 30696/09, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=880339&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, (accessed August 22, 2011), para.160.

⁵⁴ Mission to Greece Report, March 4, 2011, Appendix paras. 40 – 41.

attention,”⁵⁵ He found these conditions “to amount to inhuman and degrading treatment, in violation of Articles 7 and 10 of ICCPR.”⁵⁶

Kari Wahlström, head of the Frontex Operational Office in Greece, explained to us how, despite its knowledge that conditions in Greek detention centers had been characterized as inhuman and degrading, Frontex decided to go forward with the RABIT deployment:

The facts were known to us from the very beginning, but the pressure on the border grew. While knowing the conditions, it was still necessary to stop this, as the situation was not under control.⁵⁷

Human Rights Watch considers that at the preparatory stage in October 2010 Frontex had good reason to know that if its operations included the transfer of migrants to Greece custody this would lead to those people being subject to inhuman and degrading conditions in violation of fundamental rights enshrined in international and European law.

RABIT 2010

The RABIT operation began after Greece sent a request to the Frontex headquarters in Warsaw, as required by the RABIT Regulation. This was not an exclusively Greek initiative. According to Arias Fernández, the European Commission “encouraged” Greece to ask for Frontex’s help in view of the developing emergency in Greece.⁵⁸ Frontex responded positively to this request and sent 175 border guards to Evros drawn from a pool of guards from other EU member states and participating non-EU states. On November 2, 2010, the operation got underway.

In addition to the border guards, Frontex sent material support including one helicopter provided by Romania; four buses provided by Austria, Hungary, and Romania; five minibuses provided by Romania, Austria, and Hungary; 19 four-wheel-drive patrol cars provided by Romania, Austria, Slovakia and Germany; nine vans with thermo-visual

⁵⁵ Mission to Greece Report, March 4, 2011, Summary p. 2.

⁵⁶ Ibid., Also at para. 47: “The Special Rapporteur concludes that the conditions in all facilities visited operating to detain aliens awaiting deportation, with the exception of the Mersidini Migration Detention Centre, were not in conformity with the UN Body of Principles for the protection of all persons under any form of detention or the UN Standard of Minimum Rules for the Treatment of Prisoners. The prolonged detention of aliens under the described conditions of detention amounts to inhuman and degrading treatment, in violation of Articles 7 and 10 ICCPR.” The International Covenant on Civil and Political Rights, adopted December 16, 1966, General Assembly Resolution 2200A (XXI), entered into force March 23, 1976 <http://www2.ohchr.org/english/law/ccpr.htm> (accessed April 25, 2011).

⁵⁷ Human Rights Watch interview with Kari Wahlström, February 15, 2011.

⁵⁸ Human Rights Watch interview with Arias Fernández, Orestiada, December 1, 2010.

equipment provided by Austria, Bulgaria, Germany, and Hungary; and three office units (portable buildings) provided by Denmark.⁵⁹

Minibuses and buses were used to transport migrants to Greek detention facilities.⁶⁰ Frontex set up the offices to use for nationality determination interviews (“screenings”) and for questioning migrants on smuggling and organized crime (“debriefing”) in four of the detention facilities: Fylakio, Tycherio, Feres, and Didymoteicho.⁶¹ Frontex also covered the expenses of the RABIT operation.

When the operation started, a Frontex press release explained that the operation in Greece was to be exemplary from a human rights point of view:

Observance of fundamental rights and respect for human dignity are central components of all Frontex operations. At all stages of the operation the highest standards of ethical conduct and professionalism are expected from all participating officers. ‘Zero tolerance’ policy to infringement of fundamental rights will be applied throughout the operation, particularly with regard to people in need of international protection.⁶²

Greece Criticized

In March 2011, coinciding with the end of the RABIT operation (which did not end Frontex presence in the area), Greece once again was subject to exceptionally strong international criticism. Several prominent human rights monitors laid out detailed accounts of inhuman and degrading treatment and lack of access to asylum. This time, the reports documented abuses that took place during a period in which EU agents were aiding the perpetrators.

The Committee for the Prevention of Torture

On March 15 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a “Public Statement Concerning Greece.”

⁵⁹ “Frontex to Deploy 175 Specialist Border-Control Personnel to Greece,” Frontex Press Release, October 29, 2010, http://www.frontex.europa.eu/newsroom/news_releases/art81.html (accessed April 3, 2011).

⁶⁰ Frontex letter to Human Rights Watch, unpublished document, March 29, 2011.

⁶¹ *Ibid.*

⁶² “Greece RABIT 2010 Deployment,” Frontex Press Kit, October 29, 2010, www.frontex.europa.eu/download/.../rabit_2010_deployment.pdf (accessed April 3, 2011).

⁶³ The CPT painted a grim picture of the Greek situation of migrants and asylum seekers in Greece.

According to the CPT's evaluation, the Greek government had not only failed to improve abusive conditions that CPT had warned about as early as 1997. The CPT report also charged that the Greek government had misrepresented the situation of migrants. According to the CPT's evaluation, the conditions in Greek detention facilities for migrants may have reached their all-time worst at the height of Frontex's RABIT deployment:

Regrettably, the findings made during the CPT's most recent visit to Greece, in January 2011, demonstrated that the information provided by the authorities was not reliable. Police and border guard stations continued to hold ever greater numbers of irregular migrants in even worse conditions. For example, at Soufli police and border guard station, in the Evros region, members of the Committee's delegation had to walk over persons lying on the floor to access the detention facility. There were 146 irregular migrants crammed into a room of 110m², with no access to outdoor exercise or any other possibility to move around and with only one functioning toilet and shower at their disposal; 65 of them had been held in these deplorable conditions for longer than four weeks and a number for longer than four months. They were not even permitted to change their clothes. At times, women were placed in the detention facility together with the men. Similar conditions existed at almost all the police premises visited by the CPT's delegation. In the purpose-built Fylakio special holding facility for foreigners in the Evros region, irregular migrants, including juveniles and families with young children, were kept locked up for weeks and months in filthy, overcrowded, unhygienic cage-like conditions, with no daily access to outdoor exercise.⁶⁴

The EU Fundamental Rights Agency

The EU Fundamental Rights Agency's "Thematic Situation Report of March 8, 2011" also made significant findings on the emergency in Greece. As the FRA explained, "The situation at the EU's external land border between Greece and Turkey constitutes a

⁶³ See "Public Statement Concerning Greece," European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) Press Release, March 15, 2011, <http://www.cpt.coe.int/documents/grc/2011-10-inf-eng.htm> (accessed April 4, 2011) (Below: "CPT Report").

⁶⁴ *Ibid.*, p. 3.

fundamental rights emergency. People, including pregnant women and families with small children, are held in inhumane conditions.”

The report also specifically references Frontex.⁶⁵ Leszek Szymanski, the Frontex official who had visited the Greek migrant detention facilities in Evros prior to the Frontex deployment, was in the region when the FRA was carrying out its inspections. In light of the cooperation agreement between Frontex and the FRA,⁶⁶ Szymanski accompanied FRA during some parts of its visits to detention centers in late January 2011, including Fylakio.⁶⁷ The agency evaluated the RABIT deployment and found its presence to have a positive impact in some areas, for example saying that its engagement in processing of individuals “seem[s] to have reduced the risk of informal push-backs to Turkey for persons who have crossed irregularly into Greece.”⁶⁸

The FRA report is highly critical of the inhuman and degrading conditions in detention centers in Greece, but declined to address Frontex’s role in transferring migrants to authorities who will subject them to inhuman and degrading detention, saying that this falls outside its mandate:

The operational assistance provided by the EU through Frontex covers only initial processing and does not impact on the most critical fundamental rights concern – the inhuman conditions in which persons are currently being held, because the reception of persons crossing the borders irregularly is seen as falling outside the mandate of Frontex.⁶⁹

FRA’s report on the rights emergency in Greece is a damning one and provides a useful critique and action plan of what is wrong in Greece. However the FRA missed an opportunity to address a significant contributing factor to the level of detainees held in inhuman and degrading conditions by failing to examine the role Frontex’s operations play in transferring migrants to detention centers with conditions that the EU rights agency characterized as inhumane.

⁶⁵ The Fundamental Rights Agency, “Coping with a Fundamental Rights Emergency,” March 8, 2011, http://fra.europa.eu/fraWebsite/media/pr-o8o311_en.htm (accessed April 13, 2011) (Below: “FRA report”).

⁶⁶ See the Fundamental Rights Agency section, above.

⁶⁷ Interview with Wahlström, February 15, 2011.

⁶⁸ Ibid., FRA report, p. 9. For more on informal push-backs to Turkey, see *Greece/Turkey – Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008, pp. 32-47, <http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-o>, and *Unsafe and Unwelcoming Shores*, October 2009, <http://www.hrw.org/en/node/86025>.

⁶⁹ FRA report, p. 9.

Frontex Attempts to Reduce Violations in Detention

Having learned of the dire situation in the detention centers, Frontex attempted to help temporarily alleviate the crisis. Thus, for example, the agency offered Greece tents to relieve some of the pressure in the overcrowded detention centers. These tents, however, were found unfit for winter conditions and thus were not used.⁷⁰

When the RABIT deployment began, Frontex also approached the Greek government with an idea to house some of the migrants in a military base on one of the Greek islands.⁷¹ Furthermore, the agency raised the possibility that a particular sugar factory could be renovated and made into a detention center. As of February, Frontex informed us that these suggestions were "being processed," and that the Greek authorities had made no decision on them.⁷²

Because Frontex had demonstrated an interest in seeking practical solutions to address the problem of migrants in abhorrent detention conditions, Human Rights Watch wrote to Arias Fernández on December 7, 2010 urging his agency to press the Greek authorities to start transferring migrants to empty detention centers in other parts of Greece.⁷³

In a response dated December 9, 2010, Arias Fernández repeated the position Frontex consistently takes: "We have no direct role in the immigration or asylum systems of member states and especially not in detention." He also said, however:

I raised the question of the difficult conditions in the detention centers with the Hellenic Police authorities last week during my visit to Orestiada. Frontex also sent a letter to the Greek Management Board representative drawing their attention to the problem. We have also made the European Commission aware of the situation, in order to seek possible support from the EC to tackle this problem.⁷⁴

Separate from the RABIT deployment in Greece, in March 2011, Frontex adopted a "Fundamental Rights Strategy" for its operations as a whole.⁷⁵ The preamble to the strategy

⁷⁰ Human Rights Watch interview with Arias Fernández, Orestiada, December 1, 2010.

⁷¹ Human Rights Watch interview with Wahlström and staff, Piraeus, February 15, 2011.

⁷² Ibid.

⁷³ Human Rights Watch letter to Gil Arias Fernández, December 7, 2010.

⁷⁴ Frontex letter to Human Rights Watch, December 9, 2011.

⁷⁵ Frontex, "Frontex Fundamental Rights Strategy," March 31, 2011, [fx_fund_rights_strategy_endorsed_by_mb_31.03.2011.pdf](http://www.frontex.europa.eu/newsroom/news_releases/art105.html) available at http://www.frontex.europa.eu/newsroom/news_releases/art105.html (accessed April 14, 2011).

sets out that Frontex considers respect and promotion of fundamental rights to be “unconditional and integral components of effective integrated border management.”⁷⁶ Indeed, the strategy takes important steps towards accountability: it notes that the Court of Justice of the European Union (CJEU) currently has authority to review “the legality or provide interpretation to guide the acts of the EU Agencies which in turn are obliged to respect fundamental rights in all their activities” and that “Frontex should therefore also take into account the relevant EUCJ case-law in its activities.”⁷⁷

Likewise, the strategy states that when the EU accedes to the European Convention of Human Rights the European Court of Human Rights will also be able to review the actions of the EU and “Frontex should therefore also take into account the relevant ECtHR case-law in its activities.”⁷⁸

As well as referring to the obligations under the Charter of Fundamental Rights of the EU, the strategy states, “All human rights instruments adopted by the United Nations and the Council of Europe Conventions as ratified by all the Member States are applicable.”

The document emphasizes that Frontex shares responsibility with member states, but distinguishes between member state responsibility for their actions and Frontex’s responsibility for coordinating those actions. Article 13 of the strategy reads:

Member States remain primarily responsible for the implementation of the relevant international, EU or national legislation and law enforcement actions undertaken in the context of Frontex coordinated joint operations (JOs) and therefore also for the respect of fundamental rights during these activities. This does not relieve Frontex of its responsibilities as the coordinator and it remains fully accountable for all actions and decisions under its mandate. Frontex must particularly focus on creating the conditions for ensuring compliance with fundamental rights obligations in all its activities.⁷⁹

⁷⁶ Ibid., preamble.

⁷⁷ Ibid., para. 7.

⁷⁸ Ibid., para. 6.

⁷⁹ Ibid.

III. Inhuman and Degrading Detention Conditions

“I am originally from a land of war, but I never saw suffering like I see here.”
—Iraqi detainee, Tycherio, November 2010

Detention Conditions

In December 2010, during the RABIT deployment, Human Rights Watch visited detention centers in the Evros region of Greece. We found that the Greek authorities were holding migrants, including members of vulnerable groups, such as unaccompanied children, for weeks or months in conditions that amounted to inhuman and degrading treatment.

Fylakio

According to Brigadier General Georgios Salamagkas, head of the Police Directorate of Orestiada, the Fylakio migrant detention center, located about 12 kilometers from the border in northeastern Greece, housed 450 detainees at the time of our visit,⁸⁰ while its capacity, according to the FRA, is 375.⁸¹ The large overcrowded cells were equipped with rows of bunk beds. Unlike in other places (Tycherio, Feres, and Soufli) the authorities here had separated men from single women, but unaccompanied children and unrelated adults were held together in most cells. Families were held in cells with single men. Upon our arrival, the many detainees pressed with bodies and faces against the bars, some of them shouting, eager to be “chosen” for an interview. The atmosphere was tense, occasionally breaking into shouting in protest, following a riot the previous day.

Sewage was running on the floors. According to the Greek guards, this was because the prisoners broke the toilets, while protesting against their conditions.⁸² The smell was hard to bear, and Greek guards wore surgical masks when they entered the passageway between the large barred cells.

A 14-year-old Afghan boy who had been detained for 43 days at the time we interviewed him, said, “The toilet is broken. The sewage comes out. There's a very bad smell. If a person comes here, 100 percent he will get sick.”⁸³ Another 16-year-old Afghan boy who

⁸⁰ Human Rights Watch interview with Georgios Salamagkas, Orestiada, December 1, 2010.

⁸¹ Note that this number is different from the one provided to us by Leszek Szymanski of Frontex, who indicated the capacity was 320.

⁸² Note that Manfred Nowak also reported seeing feces and urine on the floor in the living quarters during his visit in October 2010, Human Rights Council Report, March 4, 2001, p.34.

⁸³ Human Rights Watch Interview S-18, Fylakio, December 1, 2010.

had spent two and a half weeks detained in Fylakio at the time of our interview said, "The bed here is dirty, really dirty. On two beds four of us are sleeping... In 18 days they took us out only once."⁸⁴

Two Eritrean boys requested to talk with us together. The 17-year-old talked about his own hardships, but also told us about some of his younger friend's problems:

There is not enough water. Sometimes we spend hours without water, and then they give us dirty water to drink. For five days I was asking to see a doctor but was not able to see one yet. Recently we had a strike here because they did not provide us with access to phones or doctors. Yesterday there were problems again, and again we went on strike. They took everyone outside and did a search on us.

This search was violent and I was hit during the search. I don't have shoes, as I lost them during the search. The guards asked us to take them off and then my shoes were gone.

I left Eritrea firstly because there is nothing to eat. Then there is also the military service. When I was interviewed, they asked me basic questions about Eritrea. A woman asked me about the currency used in Eritrea and about other languages spoken there. I knew the answers to these questions. They were sitting in a container.⁸⁵

The "container" this boy was referring to was the Frontex office in Fylakio located in the space between the main detention building and the outer wall.

His 14-year-old friend had already spent a longer period in Fylakio:

I have been here 26 days, after I came from Turkey. For three days in the beginning I was sleeping on the floor. Now I'm sharing a bed with another five people: a Somali, a Bangladeshi, an Afghani, an Egyptian, and one other Eritrean. We use the bed in shifts, which means that some use the bed during the day and others during the night. In general, we are 83 people in a room with 30 beds.

⁸⁴ Human Rights Watch Interview S-19, Fylakio, December 1, 2010.

⁸⁵ Human Rights Watch Interview I-21, Fylakio, December 1, 2010.

There is no way to go out for fresh air, and it is impossible to use the toilets because they are too filthy. We don't brush our teeth because we do not have tooth brushes. They took our belongings from us outside, and did not let us take them back until now. There is only cold water and no soap. Only recently they gave us three pieces of soap and after many days I was able to wash myself.

The worst problem is that they don't tell us how long we'll have to stand this. Every week they say, "One more week."⁸⁶

While we escorted the two boys back to the cells, the younger boy told us that the authorities had taken his SIM card, which is the only place he had his family's contacts. He said that Greek police tossed it on the ground when searching him. He pointed to the courtyard and asked, "Could you possibly go look if it's still there?"

These two boys were among a total of 120 unaccompanied children there at the time of the Human Rights Watch visit.

A 16-year-old unaccompanied Afghan boy who had been detained in Fylakio for 17 days when we spoke with him, told us about police violence as disciplinary punishment:

One night they took me out and beat me. I don't know why. They took us into the place where the telephones are in the small room and beat us. First they were two, then two others [joined]. It happened at night. We were four or five who were not sleeping. We made noise; we were shouting because all people became crazy and we were in bad conditions. They took us out because of that. It happened one week ago. They were many. They hit me with a stick. Three or four police officers hit me on my upper leg two or three times.⁸⁷

Former Fylakio detainees also spoke about guard violence there. An Iranian asylum seeker in Venna detention center told us that when the Greek police caught him, along with two others, the police beat them in the courtyard after they tried to escape from Fylakio. For two or three days they could not walk.⁸⁸

⁸⁶ Human Rights Watch Interview I-22, Fylakio, December 1, 2010.

⁸⁷ Human Rights Watch Interview S-19, Fylakio, December 1, 2010.

⁸⁸ Human Rights Watch Interview S-23, Venna, December 2, 2010.

A former Fylakio detainee who was registered as a Georgian national but said he was stateless, characterized conditions inside Fylakio detention center, saying, “They are aggressive in Fylakio... the police don't look at us as humans but as animals. They don't care. They just throw the food inside [the cell] and they don't care if people kill one another over the food. Those who are stronger eat. The others don't.”⁸⁹

As Human Rights Watch observed during its research visit, the main detention building in Fylakio is in plain view of the prefabricated container that serves as the Frontex office where nationality-determination interviews take place. People sitting in it can see the detainees being brought in and out in security vehicles. The sounds of protests, which also broke out during interviews we conducted, were audible where the Frontex office is located.⁹⁰

Tychero

Tychero is a town in the municipality of Soufli, located about two to three kilometers from the border, where migrants are held in a police station that had previously been used as a train station. During our visit the Greek police were holding migrants in two cells that were not originally designed to detain people, but looked like storage rooms. They were poorly lit, had no beds, and were overcrowded, with 130 detainees in the facility that, according to police authorities there, had a capacity for up to 48.⁹¹

Migrants had to sleep on pieces of cardboard or directly on the concrete floor. Greek guards confirmed to Human Rights Watch that the detainees there urinate in bottles as they do not have access to toilets.⁹² Detainees showed us a corner where they urinated and one detainee showed us a small backpack that showed damage apparently caused by mice. We observed guards escorting a group of migrants from the cells to a nearby field to defecate.

⁸⁹ Human Rights Watch Interview S-22, Venna, December 2, 2010.

⁹⁰ For corroboration of our findings on Fylakio, see HRC report, pg. 33. See also: FRA report, pp. 25 – 26, Human Rights Watch, *Stuck in a Revolving Door*, 2008, <http://www.hrw.org/reports/2008/11/26/stuck-revolving-door>, pp. 70-71.

⁹¹ Human Rights Watch interview with Haralampos Vomvellis, commander in Tychero Police Detention facility, November 30, 2010.

⁹² The guard's comment was not a formal interview. Human Rights Watch heard similar accounts of detainees having to urinate into bottles and saw bottles of urine in the cells at the Petrou Ralli detention facility during our 2008 visit, as reported in *Stuck in a Revolving Door* report, p. 82. The CPT made the same observation in two Greek detention centers (CPT Report to Greece, February 8, 2008, pp. 17, 18). The Greek government responded to the CPT by saying that this had “happened in the past, and only in cases of psychologically disordered detainees,” and that detainees at present have access to the toilet “24 hours a day, or whenever they ask.” (Response of the Government of Greece to the CPT Report, p. 9, para. 1.a.(6)).



Migrants in the Tychemo detention center asked the Human Rights Watch researchers that their conditions be photographed. © 2010 Human Rights Watch

An Iraqi man who had been detained for 48 days when we spoke with him described the situation at Tychemo police station as follows:

I am originally from a land of war, but I never saw suffering like I see here. Unless you faint they will never let you see a doctor ... There is no electricity and no water. We drink from the urinal.⁹³

Feres

Feres is a town in the municipality of Alexandroupoli about three to four kilometers from the border, where migrants are held in a police station also not originally designed for detention. During our visit, the police were holding 97 detainees there, even though the police themselves said its capacity is 30. We were also told that during the summer, which

⁹³ Human Rights Watch Interview I-15, Tychemo, November 30, 2010. For more on Tychemo, see FRA report, pg. 25.

is the “high season” for migration, 120 people were held there. Men and women were held together.

A 50-year-old woman from Georgia, who had been detained for 12 days and said she came to Greece for medical treatment, told us about her ordeal at Feres police station:

You cannot imagine how dirty and difficult it is for me here. It is not possible to shower. I don't know what will happen....All the men smoke inside. There are also younger women. It's not appropriate to be with these men. I don't sleep at night. I just sit on a mattress.⁹⁴

Two 16-year-old unaccompanied boys from Iran and Iraq who had spent 50 days in detention at the time we interviewed them described conditions inside the Feres police station:

During the day I sleep. The food is bad. I bought the soap [myself]. It costs one Euro. I have no toothpaste, and no clothes to change. For seven days I have been sleeping in the toilet because there is no space.⁹⁵

A 39-year-old man from Sudan told Human Rights Watch about police violence at the Feres police station:

Once, during the night, some of the people who were there for a long time didn't want to sleep and chanted. The police simply came and hosed everyone that was there. The water was cold, and the night was cold as well.

They counted us twice a day, once in the morning and once in the evening. When someone would not stand in line like they wanted, they beat him with a club. Sometimes when someone remained asleep during counting time, they also beat him.⁹⁶

He also told us that there was a severe lack of medical care at Feres and no doctor. He said that under these conditions, the detainees had to try to help themselves:

⁹⁴ Human Rights Watch Interview S-2 Feres, November 29, 2010.

⁹⁵ Human Rights Watch Interview S-3, Feres, November 29, 2010.

⁹⁶ Human Rights Watch Interview I-14, Tychemo, November 30, 2010.

There was one girl who had been poisoned, and we had to go back to our traditional medicine, because there was no doctor. We mixed water and salt in order to induce vomiting.⁹⁷

A 22-year-old Iranian detainee we spoke with in Feres told us that he was fearful that the police would beat him up because he decided to talk with us. He also said that one night he had a fight with another detainee, and was therefore “punished” by the police with beatings. At the time, he said, the police decided to take out all the men in the detention facility, and beat them all.⁹⁸ A Greek police officer confirmed this in an informal conversation with Human Rights Watch. He said that the detainees fight every night and that the police enter and beat them all together.⁹⁹

Spiridon Daskaris, the commander of the Feres detention center, spoke openly about the difficult conditions, but explained that as Greece was hit hard by the financial crisis, they simply did not have the ability to provide better standards:

We owe money to laundry and food providers. The detainees don’t have soap now, because the supermarket that has provided this is fed up. We asked again and again. Some people buy from their own money. When we get help it is usually not from our state but from others.¹⁰⁰

Soufli

Soufli is a municipality in the Evros region very close to the Evros River. In our visit to the Soufli police station, we once again found an extremely overcrowded, filthy and poorly lit facility, in which men and women were not separated. One of the Greek policemen there mentioned to the Human Rights Watch interpreter that two days previously a woman was raped in a cell by another detainee.¹⁰¹ Human Rights Watch inquired if Frontex knew about the allegation. We received the following answer:

Frontex had got the information from the field about a case of alleged rape around 5/6 November 2010; Frontex immediately approached the Hellenic Police and asked them for internal investigation which was agreed. Frontex

⁹⁷ Human Rights Watch Interview I-37, Athens, February 13, 2011.

⁹⁸ Conversation with Human Rights Watch Interpreter G-2, Feres, November 29, 2010.

⁹⁹ Informal conversation with police officer at Feres.

¹⁰⁰ Human Rights Watch Interview with Spiridon Daskaris, Feres, November 29, 2010. For general corroboration of our findings on Feres, see HRC report, pg. 42; FRA report, pg. 25.

¹⁰¹ Informal conversation with police officer, Soufli, November 29, 2010.

received a report stating that the alleged rape case was not confirmed by the investigation.¹⁰²

A 17-year-old unaccompanied Iraqi boy told us of his attempt to escape from the Soufli detention facility and how Greek police officers used physical violence after they caught him:

Once I tried to run away. They caught me after five minutes. They beat me after that. They beat me a lot on my neck, legs, head. They kicked me. They didn't beat me with a baton. For four hours they tied my hands up; they tied my hands to the bars; for four hours; and they threw water on me. It was in Soufli. Then they took me to the place where the other detainees were. I was beaten for 30 minutes or one hour. Everybody beat me. I was not taken to the doctor. I was injured on my fingers, and my nail fell off [shows us]; for two weeks I couldn't sleep because I was in such pain.¹⁰³

As with the other police stations and detention centers, the atmosphere was tense at Soufli during our visit. When we presented ourselves for the last time before leaving, making sure that there were no detainees there who still wanted to talk with us, one person shouted: "I don't want to speak about human rights. There are no human rights here. This place is a grave!"¹⁰⁴

Access to Asylum

Detainees told Human Rights Watch that it was difficult to lodge an asylum claim from the detention facilities in Evros. The difficulty in filing asylum claims should be considered in light of the abusive detention conditions. Detainees consistently expressed fears that if they requested asylum, they would remain detained in such conditions for longer periods of time and that it was impossible to receive refugee status in Greece. This deterred them from lodging asylum claims. This 17-year-old Iraqi boy's account shows how detainees' fears are often accompanied by a lack of basic information about what seeking asylum means and how long the process will take:¹⁰⁵

¹⁰² Frontex letter to Human Rights Watch, March 29, 2011.

¹⁰³ Human Rights Watch Interview S-3, Feres, November 29, 2010.

¹⁰⁴ Shouted comment heard by Human Rights Watch, Soufli, November 29, 2010. For corroboration of our findings on Soufli, see HRC report, pg. 31; FRA report, pg. 27.

¹⁰⁵ The Fundamental Rights Agency reports similar findings. See, p. 22: "When speaking to the migrants held in the facilities, the FRA was confronted with a generalized lack of understanding about why they were detained and for how long they remain there. This resulted in heightened stress and could contribute to the violent acts with the facilities that were reported by FRA. Such lack of information, combined with the absence of independent legal advice also explains why individuals follow

One Iranian requested asylum, waited for a hundred days in detention, and was rejected. Then he sewed his mouth ... That's why I didn't ask for asylum....I heard that those who request asylum don't get any decision and have to wait for ten years.¹⁰⁶

In Soufli an Iraqi man approached us and asked us to help him file an asylum claim. When we told the Greek policeman standing nearby that the person wished to file a claim, the police officer replied to him through us: "Tell him if he asks for asylum it will take a very long time. Until the first decision comes it takes one and half months. If it's denied and then he wants to appeal it takes more months. And he will stay here."¹⁰⁷

In Venna, another Iranian detainee said he wanted to apply for asylum, but that "the police say that if we ask for asylum we will stay for more than six months."¹⁰⁸

The police commander in Tycherio detention center confirmed that applying for asylum extends the duration of detention in inhuman and degrading conditions:

Some have applied for asylum. They have to be sent to Alexandroupolis. Most do not apply for asylum, but wait to get to Athens after they get their papers. Applying for asylum makes the detention longer. We have to examine the requests. If the requests are rejected the applicants are either readmitted or deported through their embassies.¹⁰⁹

alleged instructions obtained by smugglers not to apply for asylum at the border. In addition, most interlocutors stressed that those who seek asylum are likely to remain in the border detention facilities for a much longer period of time, as the police waits for a decision by the refugee commission before ordering their release."

¹⁰⁶ Human Rights Watch Interview S-3, Feres, November 29, 2010.

¹⁰⁷ Informal conversation with Greek police officer, November 29, 2010.

¹⁰⁸ Appendix to Human Rights Watch Interview S-22, Venna, December 2, 2010.

¹⁰⁹ Human Right Watch Interview I-5, Tycherio, November 29, 2010.

IV. Frontex's Enforcement Role in Greece

Even though Frontex is not formally a decision maker, in practice it appears that guest officers deployed with Frontex were indeed making de facto decisions on the ground in Evros as they were involved in extensive activities, including the apprehension of migrants and in making nationality-determination recommendations that were, in effect, rubber-stamped by the Greek authorities.

Apprehensions

A principal purpose of the RABIT deployment was to enhance Greece's capacity to control its land border with Turkey. Assisting Greece to apprehend undocumented migrants was one of the central ways that Frontex contributed to this goal. This included the deployment of 175 guest border guards as well as providing Greek police with equipment, funding, and advice on enforcement tasks.



View of the Feres detention center from the balcony where RABIT border guards were taking their break.

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Arias Fernández told Human Rights Watch that Frontex goes on patrols, accompanied with at least one Greek officer. He said that in these patrols the “guest officers” are authorized to apprehend migrants and then transfer them to Greek counterparts who run the detention facilities. In our meeting with three Frontex officials, Kari Wahlström, Leszek Szymanski, and Gerald Baumkirchner, we raised the concern that when guest border guards apprehend migrants and transfer them to Greek detention centers they are thereby exposing the migrants to inhuman and degrading treatment. The three Frontex officials confirmed that the border guards from the RABIT deployment did, in fact, participate in such patrols, and Baumkirchner responded by saying:

You say that we should be doing things that we are not doing, or that we should stop doing what we are doing. But this is the procedure. We do things according to our mandate.¹¹⁰

As indicated above, these Frontex officers confirmed that they were aware of the generally unacceptable detention conditions that have been extensively documented.¹¹¹ The physical locations where Frontex border guards work also make it clear that they, too, are familiar with these conditions. In Feres detention center, for example, Human Rights Watch met with several Slovak border guards who were sitting there during the day. Although they were unwilling to engage with Human Rights Watch in substantive discussions about their work, they acknowledged that they participate in apprehensions and said they were fully aware of the situation at the detention center. As they were waiting for their nighttime patrol as part of the RABIT force, the Slovak border guards sipped coffee and chatted on a balcony overlooking the open-air part of the detention area, from where the detainees were visible.

Although Frontex has explained that RABIT border guards are under “instructions” from Greek authorities,¹¹² a strict chain of command is not evident when guest guards deployed by Frontex patrol alongside the Greek police. Although the Frontex Regulation holds that border guards participating in RABIT “shall wear their own uniform while performing their tasks,”¹¹³ officials in the Frontex Operational Office in Piraeus explained that they are not under the command of their home authorities. Nevertheless, in some cases, they report back to their home authorities after going on patrol. During RABIT patrols guest border

¹¹⁰ Human Rights Watch interview with Gerald Baumkirchner, Piraeus, February 15, 2011.

¹¹¹ Human Rights Watch Interview with Wahlström and staff, Piraeus, February 15, 2011.

¹¹² Ibid. This is also made explicit in the RABIT regulation: Regulation (EC) No 863/2007, July 11, 2007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0863:en:NOT> (accessed April 13, 2011), Article 5,

¹¹³ Frontex Regulation, Article 4.

guards work under a Greek "shift leader," who is supposed to bear legal responsibility if anything goes wrong.¹¹⁴ However, when asked if a shift leader is the commander of the patrol, Szymanski said:

The RABIT patrols are without a commander, but the shift leader leads the patrols. In comparison with a commander, a shift leader is slightly less high in the hierarchy. The shift leader is always Greek. He gives the running orders for the patrol. The member states are not involved in the patrol plans....They [the guest officers] don't have any contact with the member states during the shifts.¹¹⁵

In the absence of a clear agreement that displaces Greek authority over the patrols, primary responsibility for what happens during the patrols would normally fall on the Greek authorities because the patrols take place on Greek sovereign territory.

Nationality-Determination Interviews

Frontex's involvement in border-enforcement includes providing personnel who conduct nationality-determination interviews, often referred to as screenings. The purpose of these interviews is to determine the interviewed person's country of origin in order to facilitate his or her deportation. The screenings are conducted in detention facilities in Evros. Human Rights Watch observed three nationality-determination screenings conducted by one Frontex interpreter and two Frontex country experts. We observed Greek police bringing detainees to the Frontex team and not remaining during the course of the interviews. The three interviews that we observed in Tycherio detention facility did not include any Greek police personnel and were carried out exclusively by Frontex agents.

Since so few of the migrants in the Evros region (including many who will eventually lodge asylum claims in Athens) apply for asylum there, the nationality-determination interviews are the most substantive interview of any kind that most migrants experience. The FRA report observed, "The screening by the joint teams is the only extensive interview carried out with an irregular migrant at the border, unless he/she is interviewed by Frontex to obtain information about patterns of organized crime."¹¹⁶

¹¹⁴ This came up both in the interview with Arias Fernández, Orestiada, December 1, 2010 and in the interview with Wahlström and staff, Piraeus, February 15, 2011.

¹¹⁵ Human Rights Watch interview with Leszek Szymanski, Piraeus, February 15, 2011.

¹¹⁶ FRA report, p. 22.

Nationality determination is important because Greece cannot deport nationals of certain countries and, therefore, also does not detain citizens of those countries once their national identities are established.¹¹⁷ Manfred Nowak, the former UN special rapporteur on torture, describes the effects of this practice in his report from an October 2010 research mission in Greece:

The length of detention was witnessed to be dependent on the nationality of aliens. While aliens who cannot be deported (e.g. from Afghanistan, Somalia, Pakistan) were usually released within several days with an order to leave the country within 30 days, those that can principally be deported often had to wait up to several months in police custody. This created a feeling of extreme injustice and discrimination among the detainees.¹¹⁸

On January 20, 2000, Turkey and Greece signed an agreement,¹¹⁹ according to which third-country nationals as well as nationals of Greece and Turkey who cross the Greek-Turkish border irregularly can be returned to the country from which they came. Since the two countries signed the agreement, they have consistently disagreed on its interpretation and application. As a general rule, Turkey accepts back only nationals of countries with which it has its own readmission agreements. At present, in practice, the agreement applies to Iraqi, Syrian, Iranian, and Georgian nationals.¹²⁰

Irregular migrants who are not deportable under the Greece-Turkey readmission agreement may still be deported directly to their home countries. This can only happen if that country recognizes the deportee as their own national. There are particular countries, including some that do not have diplomatic missions in Greece, which do not cooperate with Greece in facilitating the deportation of their citizens.

¹¹⁷ Greece's inability to return migrants from certain countries at times relates to the dangers of violence in those countries, but also sometimes relates to lack of diplomatic relations or lack of cooperation with the sending countries for accepting their nationals back.

¹¹⁸ Mission to Greece Report, March 4, 2011, para. 39.

¹¹⁹ "Agreement between the Hellenic Republic and the Republic of Turkey on Cooperation of the Ministry of Public Order of the Hellenic Republic of Turkey on Combating Crime, especially Terrorism, Organized Crime, Illicit Drug Trafficking and Illegal Migration," January 20, 2000. For an analysis of readmission agreements and human rights, see European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, "Readmission Policy," PE 435.632, September 2010, http://cadmus.eui.eu/bitstream/handle/1814/14957/EP_ReadmissionPolicy_en.pdf?sequence=4 (accessed April 14, 2011).

¹²⁰ FRA report, p. 24.

As the commander in Tychemo detention center explained, nationality determinations are a decisive factor affecting the duration of detention in these facilities because they also determine whom it will be possible to deport:

Keeping people depends on nationality. If they are nationals of a country neighboring Turkey, we apply for readmission. That can take up to six months. To nationals of other countries we give papers that tell them they have to leave the country within 30 days—after two or three days when the public prosecutor decides that they will not press charges.¹²¹

Because certain nationalities cannot be deported, some undocumented migrants claim to be members of these groups. Frontex’s nationality-determination screenings are meant to address this phenomenon.¹²²

Although these screenings are not intended to identify international protection needs, in reality they are usually the most substantive interviews detainees have before being deported. Given the formidable barriers to lodging asylum claims in Greece (particularly in the Evros region),¹²³ if these interviews fail to facilitate access to the asylum process, they can result in the deportation of genuine refugees. A 17-year-old boy from Syria whom we met in Fylakio had what appeared to be a credible claim as a refugee. Despite alleging that he had been subject to persecution in Syria, he told Human Rights Watch that he did not want to apply for refugee status because the Greek police had told him that this would prolong his detention. He also said that the police had recorded his date of birth as two years older than he told them, thus rendering him as an “adult,” despite him stating that he was a child. Out of fear, misinformation, and distrust he initially lied about his national identity:

My brother had political problems in Syria, and therefore spent a long time as a political prisoner in Syria. The *Mukhabarat* [secret security police] also took my father and spoke with me as well. I also had bad economic problems and often did not have enough to eat in Syria.

I was 24 days in Venna. The Greeks already released all the people that came with me, and I don't know why they are continuing to hold me here. The smugglers told me to write down that I'm Palestinian, but now I'm still here.

¹²¹ Human Rights Watch interview with Haralampos Vomvellis, commander in Tychemo Police Detention facility, November 30, 2010. The charges in question are criminal charges for illegal entry to Greece.

¹²² Interview with Arias Fernández, Orestiada, December 1, 2010.

¹²³ *Stuck in a Revolving Door*, pp. 86-91.

My registration was processed by three people including one translator. In the beginning I wrote down that I'm Palestinian. The translator started by talking with me in Arabic, but then switched to Kurdish. I told them that I'm 17 years old but for some reason they registered me as 19 years old.

Then after a few days I admitted that I'm Syrian, because I couldn't take it any longer.

Policemen told me that if I will apply for asylum, I will never get out of here. I therefore do not want to submit a request for refugee status. I was here 45 days and no one spoke with me about refugee status. There are people here who asked for refugee status and are here for 55-60 days.

I certainly do not want refugee status in this country. They are treating us worse than animals— there is not even enough water here for us to drink. We are almost never taken outside. Sometimes they take us for just a few minutes. They treat us with violence.¹²⁴

Because these are, in practice, the only substantive interviews most migrant detainees in the Evros region have, they may also influence whether people who may in fact have legitimate refugee claims actually lodge claims for asylum. The Syrian boy believed that asking for asylum was not an option because it would mean extending his stay in intolerable detention. This boy was screened to determine his nationality but, as he said, “no one spoke with me about refugee status,” and he was not able to challenge his age determination.

We do not suggest that the failure to protect in this instance lies exclusively with Frontex nationality-determination screeners, but that the manner in which nationality-determination screenings operate in the Evros region is indicative of a misplaced emphasis on enforcement by all authorities involved in this process such that the protection needs of a self-identified unaccompanied child appear not to have been identified. The absence of any non-adversarial interview to inform this boy of his rights, to elicit his story of feared persecution, or to determine his best interests as a child—in combination with inhuman and degrading detention conditions—left him to make ill-informed decisions that potentially exposed him to risk of serious harm.

¹²⁴ Human Rights Watch interview I-20, Fylakio, December 1, 2010.

The Fundamental Rights Agency report points to the possibility of refoulement based on the combined lack of protection mechanisms and unbridled enforcement mechanisms, including the Frontex's nationality-determination procedures:

While the Greek authorities are responsible for the readmission process, the fact that no system exists to determine if a person proposed for readmission is indeed in need of international protection, also puts the European Union at a grave risk: EU assistance is provided to determine nationality and hence to facilitate readmission without having a parallel assistance provided to identify whether persons to be readmitted are in need of international protection.¹²⁵

It was not clear whether or how detainees can challenge the nationality-determination interviews, how the determination is recorded, or how errors in nationality determination might be identified and corrected, short of a country of presumed nationality not accepting the person back.

Given the impact of Frontex nationality determinations on crucial issues such as length of detention, deportation, and asylum, the question arises at what point the Greek authorities accord Frontex's nationality determination the force of an administrative decision and whether and how a person can challenge or appeal this decision. The Greek police personnel we discussed this with also told us that they treat Frontex's nationality-determination screenings as determinative. The police commander in Tycherio said:

Frontex screens alone, and then they give the dates and papers. The police don't do screenings. We talk with them in English or Greek, but very much rely on the information that Frontex gives us.¹²⁶

Spiridon Daskaris, police commander at the Feres detention center, provided a similar account:

The screening process is a Frontex process.... If someone says he's from Palestine, they must know Palestine. They must know where it is and the map. They ask, "Who is your president? Where is your capital city?" They

¹²⁵ FRA report, p. 24.

¹²⁶ Human Rights Watch interview with Haralampos Vomvellis, commander of Tichero police detention facility, November 30, 2010.

tell them: “you declare that you are Palestinian—say the truth.” They also try to get information on facilitators [smugglers].¹²⁷

Georgios Polyzoidis, head of Alexandroupolis police directorate, emphasized that Frontex does the screenings and that the Greek authorities accept their nationality determinations:

Screenings are done by Frontex, we follow their opinion. But if the migrants insist on their identities they undergo another screening and sometimes even a third one. Only Frontex does the screenings. The screenings take no more than two months.¹²⁸

Frontex maintains that their nationality determinations are not binding but rather are “presumptions” that the Greek government can accept or reject when it tries to deport people. As Arias Fernández put it:

The screening is not certain. The only way to know for sure where someone is coming from is when the country of origin confirms. Depending on the presumption, we request from countries confirmations and removal. The only thing we do is provide the template. The Greek authorities also have to be present in the interview. We make presumptive determinations for about 80 percent of the migrants, whereas for about 20 percent of them we don’t make presumptions at all.¹²⁹

From what we saw however during one full workday chosen at random at Tycherio, the Greek authorities, in practice, are not necessarily present in the interviews and rely exclusively on Frontex to make the nationality determinations. In a letter to Human Rights Watch that challenges this observation, Frontex’s Arias Fernández said, “The participation of Greek police officers was constant in most of the screening and de-briefing activities. It could have happened however that in a few cases Greek officers, due to urgent operational needs, were called to perform other duties, leaving the screening/de-briefing room for a certain time.”¹³⁰

¹²⁷ Human Rights Watch interview with Spiridon Daskaris, Feres, November 29, 2010.

¹²⁸ Human Rights Watch Interview with Giorgios Polyzoidis, December 2, 2010.

¹²⁹ Human Rights Watch interview with Gil Arias Fernández, Orestiada, December 1, 2010.

¹³⁰ Gil Arias Fernández, Frontex Deputy Executive Director, letter to Human Rights Watch, reference number 8534, May 19, 2011 (on file with Human Rights Watch).

V. Frontex's Responsibility for Exposing Migrants to Inhuman and Degrading Treatment

With the Lisbon Treaty, which entered into force on December 1, 2009, the Charter of Fundamental Rights of the European Union became binding law on all European Union agencies.¹³¹ Frontex's authority to act, therefore, is not unlimited, but rather is fettered by the Charter. Article 18 guarantees "the right to asylum" and Article 4 of the Charter states, "[N]o one shall be subjected to torture or to inhuman and degrading treatment or punishment."¹³² Article 3 of the European Convention on Human Rights (ECHR) also guarantees the right not to be treated in a degrading or inhuman way, using the exact same language.

Under these standards, Frontex's activities may be subject to review by the Court of Justice of the European Union (CJEU) for their adherence to fundamental rights norms, as acknowledged by Frontex in its Fundamental Rights Strategy.¹³³

Human Rights Watch believes that Frontex has fallen short of its obligations to respect the absolute prohibition on exposing individuals to inhuman and degrading treatment as a result of its cooperation with Greek authorities in detaining migrants in Greek detention facilities where the conditions violate European and international human rights standards.

In this chapter we analyze Frontex's violation of the prohibition of inhuman and degrading treatment against the most relevant analogy to Frontex's activity already discussed by the European Court of Human Rights (ECtHR) in, *M.S.S. v. Belgium and Greece*. In this case, the court said that Belgium violated the prohibition by returning an Afghan asylum seeker to Greece.¹³⁴

Transferring Migrants to Known Abusive Conditions of Detention

As mentioned previously, in the case of *M.S.S. v. Belgium and Greece*, the ECtHR found that detention conditions of migrants in Greece violate article 3 of the ECHR, which states,

¹³¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, December 13, 2007 <http://eur-lex.europa.eu/JOHtm1.do?uri=OJ:C:2007:306:SOM:EN:HTML>; The Charter of Fundamental Rights of the European Union, 2000/C 364/01, December 18, 2000, http://www.europarl.europa.eu/charter/pdf/text_en.pdf (both accessed April 13, 2011), Art. 6, para. 1.

¹³² Ibid.

¹³³ Frontex, "Frontex Fundamental Rights Strategy," March 31, 2011, para. 7.

¹³⁴ Frontex specifically declared in its "Fundamental Rights Strategy" that the ECtHR human rights jurisprudence applies to its activities, Ibid.

"No one shall be subjected to torture or degrading treatment or punishment."¹³⁵ Particularly important is one clause in the court's ruling. After describing detention and living conditions in Greece in detail, the court determined:

Based on these conclusions and on the obligations incumbent on the States under Article 3 of the Convention in terms of expulsion, the Court considers that by transferring the applicant to Greece the Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment. That being so, there has been a violation of Article 3 of the Convention.¹³⁶

The court's jurisprudence has reiterated that the prohibition of inhuman and degrading treatment is uniquely uncompromising.¹³⁷ In June 2010 in *Gäfgen v. Germany*, the court articulated this absolute prohibition:

Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible ... even in the event of a public emergency threatening the life of the nation.¹³⁸

Although Frontex rejects any responsibility for what happens to migrants in detention in Greece because it has no mandate over that detention, Human Rights Watch maintains that such a mandate is not the basis on which liability is incurred. Not having the mandate to intervene in abusive detention centers does not absolve Frontex from responsibility and liability where it co-operates in activities that contribute to exposing detainees to the abuses that occur in them.

¹³⁵ Human Rights Watch recognizes that Frontex is not bound by the ECHR, since the EU has not yet acceded to the Convention. But the *M.S.S. v. Belgium and Greece* ruling of the ECtHR is nevertheless instructive and touches on the prohibition to subject people to inhuman and degrading treatment that appears not only in the ECHR, but in the Charter as well, to which Frontex is bound.

¹³⁶ ECtHR, *M.S.S. v. Belgium and Greece*, paras. 367-368.

¹³⁷ See ECtHR *Selmouni v. France*, no. 25803/94, ECHR 1999-V

<http://www.unhcr.org/refworld/country,,ECHR,,MAR,456d621e2,3ae6b70210,o.html> (accessed April 4, 2011). The Court confirmed that even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see also ECHR *Chahal v. the United Kingdom*, 15 November 1996, Reports of Judgments and Decisions 1996-V, <http://www.unhcr.org/refworld/country,,ECHR,,IND,,3ae6b69920,o.html>, (accessed April 4, 2011)).

¹³⁸ ECtHR, *Gäfgen v. Germany*, no. 22978/05, June 1, 2010, <http://www.bailii.org/eu/cases/ECHR/2010/759.html>, (accessed April 4, 2011).

As the ECtHR has made clear, although the human rights situation in a detaining country must be assessed to determine whether prohibited treatment is likely to occur, liability for violations under the ECHR will be incurred by a sending party “by reason of its having taken action which has as a direct consequence the exposure of an individual to the risk of proscribed ill-treatment”¹³⁹

In *M.S.S. v. Belgium and Greece* the court emphasizes that there are two components to the violation of the prohibition of inhuman and degrading treatment: 1) taking *action* that in fact contributes to the exposure of a person to inhuman and degrading treatment; and 2) having *knowledge* that the action will have that result. Both these conditions are necessary for such a violation to occur. Neither of them alone is sufficient.

Frontex consistently and repeatedly took action during RABIT 2010 that exposed migrants and refugees to inhuman and degrading treatment in the detention facilities in Evros. Most notably, this occurred when border guards participating in Frontex patrols apprehended migrants that they knew would be held in facilities where the conditions were inhuman and degrading. Nearly 12,000 migrants were apprehended and transferred to the Greek facilities during the RABIT deployment.¹⁴⁰ Of course guards deployed by Frontex neither apprehended nor transported all of these migrants, but the agency directly or indirectly had a hand in their apprehension and transfer to detention centers and, thus, in their subsequent detention in inhuman and degrading conditions.

As documented in this report, upon apprehending migrants and transferring them to Greek custody, Frontex personnel knew or should have known what the conditions were in the detention facilities where these migrants would be detained.

Frontex sent a mission to visit detention facilities before the start of the RABIT deployment, which witnessed sub-standard conditions, and Frontex addressed the Greek government to change such conditions, once again reflecting knowledge of inhuman and degrading conditions.¹⁴¹ Leaving no doubt about its knowledge, Frontex wrote to Human Rights Watch on March 29, 2011, saying:

Frontex staff was constantly present in the Evros area in October 2010 in the framework of the ongoing projects JO Poseidon 2010 Land and Attica 2010. Having put in place the operational reporting systems and regular

¹³⁹ *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I.

¹⁴⁰ Frontex letter to Human Rights Watch, March 29, 2011.

¹⁴¹ Human Rights Watch interview with Wahlström and staff, Piraeus, February 15, 2011.

visits, Frontex management was aware about the difficult conditions in the detention facilities.¹⁴²

That Frontex decided despite this knowledge of “difficult conditions” to cooperate with Greece in exposing individuals to inhuman and degrading treatment can only be regarded as a breach of its legal obligations to respect the prohibition on inhuman and degrading treatment.

According to an article in the German magazine *Der Spiegel*, German police officers deployed as part of RABIT, stationed in Evros, criticized the harsh treatment of migrants. The article documents that the police officers saw migrants being forcefully handled and sometimes driven by gunshot into mine fields. The German officers reportedly added that after being arrested, people were placed in vans without seats or windows, and transported to detention centers where they were held in “absolutely degrading” conditions.¹⁴³ The article said, “Because such methods and situations violate German law, the officer in charge has ordered that German officers no longer take part in certain assignments.”¹⁴⁴

Der Spiegel quotes a German Federal Ministry of the Interior spokesman as saying, “Germany is watching the developments with concern and has already demanded that Greece improve the situation of refugees.”¹⁴⁵ In our meeting with Frontex in their Piraeus office, we asked for their response to the report, and they claimed that the article was misleading. Gerald Baumkirchner, a Frontex officer present in the meeting, responded:

We cannot expect that work styles will be the same. They [the German “guest officers”] compared what they saw with what they know from home....But the other issues, regarding human rights violations, we made clear that these will not be tolerated.¹⁴⁶

When we presented our preliminary conclusions to the three Frontex officers who met with us, they expressed concern about detention conditions in Greece and explained that they

¹⁴² Frontex letter to Human Rights Watch, March 29, 2011.

¹⁴³ “Griechenland-Türkei: Grenzpolizisten jagen Flüchtlinge in Minefeld,” *Der Spiegel*, December 11, 2010, <http://www.spiegel.de/politik/ausland/o,1518,734123,00.html> (accessed April 14, 2011) Translations of *Der Spiegel* article by Human Rights Watch; see also “Media: German officers criticize Greek treatment of migrants,” December 11, 2010, http://www.monstersandcritics.com/news/europe/news/article_1604981.php/Media-German-officers-criticize-Greek-treatment-of-migrants (accessed April 14, 2011).

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Human Rights Watch interview with Gerald Baumkirchner, Piraeus, February 15, 2011.

had voiced that concern to the Greek authorities.¹⁴⁷ They also explained that their mandate does not allow them to do more, even though, as the head of the office, Kari Wahlström, explained, sometimes they would like to.

Frontex's most common and consistent argument is that detention falls outside its mandate, a position reiterated in a letter to Human Rights Watch in May 2011.¹⁴⁸ Frontex's disavowal of any responsibility for exposing migrants to human rights violations when its officials both on the ground and at the highest levels were fully knowledgeable about the direct consequences of its actions is inconsistent with the agency's positive statements about the centrality of respect for fundamental rights and freedoms in its operations.

On the institutional level, Frontex has considerable discretion in planning its operations and, therefore, ought to take into account whether these operations are consistent with the principles of the "Fundamental Rights Strategy" announced by the agency just as it was transitioning from the temporary RABIT deployment to a longer-term joint operation on the Greek border.¹⁴⁹ If Frontex assesses that its actions are likely to fill already overcrowded detention facilities and that those detention facilities do not meet minimal standards, then it should conclude that the "risk" in terms of involvement in human rights violations is too high.

In conclusion, Frontex's activities that facilitated the detention of migrants in Greek detention centers during the RABIT deployment violated the prohibition on inhuman and degrading treatment. As such, all such activities should immediately be suspended until measures are taken to ensure that the absolute prohibition on degrading treatment is not violated.

The consequences of FRONTEX suspension of activities in Greece

In response to Human Rights Watch's call for suspension of its activities that contribute to migrant detention in Greece, Arias Fernández, the deputy executive director of Frontex, replied:

Frontex has a legal obligation to respond to a request by a Member State for a RABIT operation if conditions are truly an emergency. In the case of

¹⁴⁷ Human Rights Watch interview with Kari Wahlström and staff, February 15, 2011.

¹⁴⁸ Letter from Arias Fernández, Deputy Executive Director Frontex to Human Rights Watch, May 19, 2011.

¹⁴⁹ Frontex, "Frontex Fundamental Rights Strategy," March 31, 2011

http://www.frontex.europa.eu/newsroom/news_releases/art105.html (accessed April 14, 2011).

Greece they were—and to say no would have been irresponsible. If Frontex had followed the course of action recommended by HRW and let Greece deal with the emergency on its own, how would this have helped the situation? Would the migrants have been in better conditions? Or is HRW suggesting that border controls should simply have been lifted and those wishing to enter the Schengen area irregularly via Greece have been left free to do so?¹⁵⁰

While Frontex may have a legal obligation to respond to a request by a member state for a RABIT operation in an emergency, the response should not be “at all costs.” The response must still comply with the binding obligations to respect fundamental rights—whether under the EU Charter or the ECHR. Therefore Frontex cannot lawfully engage in activities which violate the absolute prohibition on torture and inhuman and degrading treatment.

As the ECtHR has re-iterated on multiple occasions, no circumstances, no behavior of the victim (such as illegal border crossing), or even an emergency “threatening the life of the nation” (which the migrant emergency was not) justifies resort to use of inhuman and degrading treatment. For migrants who are held in the appalling conditions of Greek detention centers, whether they were initially detained by Frontex patrols or by Greek border guards operating alone is irrelevant. To the extent that the presence of “guest” border guards has curbed any other illegal practices such as unlawful push-backs or physical abuse of detainees by Greek agents, then that monitoring role could have been performed without actual assistance in the apprehension and transfer of migrants to inhuman conditions.

Frontex and participating states should have explored other options at the time of Greece’s request for a RABIT deployment. For example they could have considered detaining irregular migrants elsewhere in the Schengen area where conditions were compliant with EU standards, including other areas of Greece where detention standards are acceptable, such as on Samos Island, which Human Rights Watch suggested to Frontex at the time.¹⁵¹

¹⁵⁰ Letter to Human Rights Watch, May 19, 2011, p. 2 on file with Human Rights Watch.

¹⁵¹ “We would like to bring to your attention that detention facilities for migrants on Samos and Chios Islands with a total capacity of more than 400 places are currently empty.... We therefore decided to call on Greek authorities to immediately start transferring migrants from the Evros region to the Aegean Islands.... We therefore believe that our proposal is realistic, doable, and would immediately improve the desperate conditions of many migrants. We therefore urge you to press Greek authorities to start transferring migrants as a matter of priority.” Email letter from Simone Troller, senior researcher, Human Rights Watch, to Gil Arias Fernandez, deputy executive director of Frontex, December 7, 2010, on file with Human Rights Watch.

Alternatively, deployment of Frontex patrols could have been made conditional upon the EU and Greece taking the necessary measures to ensure that any migrants detained would not be held in inhuman and degrading conditions. Human Rights Watch has not seen evidence that these or any other options were ever even entertained. Indeed it appears that neither Frontex nor participating states required that Greece observe even the most basic of human rights obligations—those related to treatment of detainees and access to asylum—before agreeing to the Frontex deployment. Human Rights Watch urges Frontex and participating states to urgently consider alternatives to providing help to Greece which ultimately only serves to detain more migrants in well-known inhuman conditions.

VI. The Fragmentation of EU Responsibilities

Member State Responsibility

Although participating states did not exercise operational command over their border guards deployed with Frontex's RABIT 2010, they were nonetheless accountable for human rights violations that arose as a result of their co-operation with Greece. In several cases, the European Court of Human Rights (ECtHR) has established that the delegation of state powers to international organizations is limited by the requirement that international organizations adhere to human rights norms. Thus, when agents of participating states knowingly transfer migrants to inhuman and degrading treatment, those countries, too, are liable for violations of their international obligations.

EU member states and other participating European states, many of which have stopped transferring migrants to Greece under the Dublin-II agreement in the wake of *M.S.S. v Belgium and Greece*, should not turn a blind eye to what their border guards are doing while deployed under the auspices of an EU agency.¹⁵² That RABIT border guards wear their own national uniforms underlines that they act in the name of their home countries. In order not to be complicit in inhuman and degrading treatment of detainees, participating states should condition future involvement in RABIT and similar deployments on there being no co-operation in activities which will lead to the ill-treatment of detainees.

Frontex and Greek Responsibility

In its analysis of Greece's failures to address the protection emergency in Evros, the FRA goes into some detail about what it calls "the fragmentation of responsibilities for migration" in the Greek government.¹⁵³ The agency makes some important points on the lack of clarity on the coordination and the division of labor among several government bureaus. But the fragmentation of responsibilities is not limited to the Greek domestic authorities. It can also be applied to the division of labor among domestic and international actors.

Traditionally, sovereign states have the primary responsibility for ensuring human rights. On the other hand, Frontex has focused solely on enforcement. During RABIT 2010 this EU

¹⁵² On the importance of precedent in the ECtHR, and of national officials taking into account Convention rights, including the jurisprudence on them, see Alec Stone Sweet and Helen Keller, "The Reception of the ECHR in National Legal Orders," in Keller and Stone Sweet, eds, *A Europe of Rights* (Oxford, 2008), p. 14.

¹⁵³ FRA report, p. 14.

agency operated alongside a Greek sovereign authority that purportedly had sole responsibility for protection but that was not fulfilling its obligations to provide protection. Therefore, migrants and refugees confronted enforcement barriers (enhanced by Frontex's engagement) without the requisite human rights and refugee rights protections that provide remedies against unbridled enforcement.

As Frontex continues to operate in Greece, and other places, Human Rights Watch believes such an unbalanced and unaccountable situation is unsustainable and dangerous for migrants, asylum seekers, and refugees.¹⁵⁴

¹⁵⁴ On the importance of accountability mechanisms in international executive agencies taking administrative decisions, see Benedict Kingsbury, Nico Krisch and Richard B. Stewart, "The Emergence of Global Administrative Law," *Institute of International Law and Justice* (2005), <http://www.iilj.org/GAL/documents/TheEmergenceofGlobalAdministrativeLaw.pdf> (accessed April 14, 2011).

Recommendations

To the European Commission, the European Parliament, and the European Council

- Amend the Frontex Regulation to make explicit, and thereby reinforce, the obligation not to expose migrants and asylum seekers to inhuman and degrading detention conditions.
- Amend proposed Frontex Regulation Art. 26a to empower the Fundamental Rights Officer to refer Frontex to the Commission for investigation and where appropriate infringement proceedings in the event that the Frontex executive director fails to suspend operations despite persistent and serious violations of the Charter and/or in the event that members states and their agents persistently violate the Charter during Frontex operations.
- Oblige Frontex to include: a human rights assessment prior to engaging in future operations, including “joint operations” and RABIT deployments; a mechanism for reporting on human rights abuses during operations; and a mandatory human rights review at the close of each operation.
- Demand Frontex set up investigating and reporting mechanisms for human rights violations during the course of its operations.
- Determine whether Frontex’s involvement in Evros during the RABIT deployment and continuing with the Poseidon land operation has been compatible with its obligations under the Charter of Fundamental Rights of the European Union.

To Participating European States

- Suspend any participation in Frontex operations that fail to adhere to binding international human rights standards.
- Instruct border guards deployed on Frontex missions on the obligations under international law. Ensure that border guards are trained and conversant regarding all rules and standards pertaining to the transfer and treatment of detainees.
- Set up an anonymous whistle-blower protection system to facilitate self-reporting of Frontex rights violations by member states’ border guards participating in European Border Guard Teams.
- Do not participate in Frontex or other migration control operations without first independently assessing the human rights record of the EU host country and, where applicable, the human rights records of neighboring states outside the EU that are partners in the operation.

To the Frontex Management Board

Ensuring that Operations are Consistent with Human Rights Obligations

- Suspend the deployment of EU border guards to Greece unless migrant detainees can be transferred to facilities elsewhere in Greece (or outside of Greece) that meet EU and international standards or until the conditions of detention in the Evros region where migrants are currently detained are improved and no longer violate European and international standards.

Accountability

- Lay out reporting guidelines for border guards in future Frontex deployments on how they should act and report when confronted with or observing human rights violations, including ill-treatment of detainees.
- Investigate how many migrants detained by Frontex patrols were transferred to detention centers with inhuman and degrading conditions and what has happened to these transferees.
- Intervene with Greek officials and monitor compliance to ensure that migrants apprehended by guest guards are transferred to detention facilities that comply with European and international standards.

Risk Analysis

- Conduct thorough assessments of the risk of human rights violations occurring before engaging in joint operations or deploying RABIT forces. Such assessments should take into consideration independent assessments by governmental and non-governmental rights monitors.
- Develop an action plan in consultation with the Consultative Forum to mitigate any risk identified.
- Refrain from operations if risk assessments show they are likely to expose migrants to human rights violations and if the risk cannot be averted.

Training in Human Rights

- In cooperation with FRA and UNHCR, provide human rights training to guest officers both on the principle of nonrefoulement and on minimal standards of detention. Clarify that guest officers must not, under any circumstances, take action that would expose migrants to inhuman and degrading detention conditions or that would subject refugees and asylum seekers to refoulement.

To Greece

Human Rights Watch has made extensive and detailed recommendations for improving Greece's asylum and migration enforcement systems in three other major reports. *Most closely related to this report, Human Rights Watch recommends that Greece:*

- Implement the recently adopted asylum reform package as fully and as quickly as possible.
- Ensure access to asylum procedures at the border and in the border region.
- Reduce overcrowding by using alternative facilities and alternatives to detention as much as possible.
- Immediately improve detention conditions, and immediately create open reception centers for asylum seekers and members of vulnerable groups, such as children.
- Provide protection and safe accommodation for unaccompanied children and other vulnerable groups.
- Prosecute police and coast guard officials who abuse their authority.

To the Fundamental Rights Agency

- Clarify that the scope of the Cooperation Arrangement with Frontex explicitly includes the human rights of migrants, including protection from inhuman and degrading treatment.
- Seek amendment of Article 3 of the Cooperation Arrangement that only grants FRA access to Frontex Joint Operations "upon request."

To the European Asylum Support Office (EASO)

- Develop training in asylum processing specifically designed for Greek personnel posted in Evros (according to Article 6 of EASO's mandate).
- Work to improve access to asylum for migrant detainees in the Evros region and the Greek islands by, among other steps, ensuring that trained asylum officers will also be available to interview asylum seekers in locations where Frontex officials are conducting nationality-determination interviews.
- Assess the impact of inhuman and degrading treatment of detainees on access to asylum in Greece.
- Report publicly on any violations of the rights of asylum seekers by Greek or Frontex personnel in detention centers in Greece.

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The EU's Dirty Hands

Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece

In November 2010, the European Union's (EU) agency for the management of operational cooperation at external borders, Frontex, began providing Greece with manpower and material support to patrol its borders along the Evros River with Turkey. This report assesses Frontex's involvement in, and responsibility for, exposing migrants detained by border patrols to inhuman and degrading conditions of detention in Greece's overcrowded migrant detention centers in northeastern Greece.

Frontex deployed 175 border guards, chosen from a pool provided by participating European states as part of a rapid border intervention team (RABIT). During the four months examined in this report, RABIT patrols regularly apprehended migrants and took them, sometimes in buses provided by Frontex, to the detention centers. RABIT has been replaced by a permanent Frontex presence.

During the RABIT deployment, the European Court of Human Rights (ECtHR) issued a judgment, *M.S.S. v. Belgium and Greece*, which found that conditions in Greek migrant detention centers were inhuman and degrading and that Belgium violated its human rights obligations by knowingly exposing an Afghan asylum seeker to inhuman and degrading treatment when it transferred him back to Greece.

In the course of the RABIT mission in Greece, Frontex also facilitated the transfer of migrants to centers of detention within Greece where Human Rights Watch documented the same inhuman and degrading conditions. Human Rights Watch contends that Frontex is similarly responsible for having knowingly exposed migrants to treatment which is absolutely prohibited under human rights law.

This report argues that Frontex should immediately make its engagement in border enforcement operations in Greece contingent on the placement of apprehended migrants in facilities with decent conditions either by transferring them to other areas of Greece where detention standards meet human rights requirements or by making detention spaces available in other places in the EU where conditions meet international and EU standards.

Since November 2010, Frontex, the EU's border agency, has deployed "guest officers" seconded from other European states, to assist Greece in patrolling its land borders. Migrants detained by patrols are transferred to detention centers in Greece where the conditions of detention are so poor that they are deemed inhuman and degrading.

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