

Safeguarding Human Rights in the EU?

Cooperation between the Frontex Consultative Forum and Frontex

By: Marina Gregovic
Supervisor: Laura Landorff
Aalborg University
Date: 31.05.2018
Characters: 128.881

Abstract

Human rights are one of the European Union's core values on which the EU is founded. This value has, however, been at stake, as one of the EU's agencies, the European Border and Coast Guard Agency, Frontex, has received massive criticism for not upholding human rights during its operations. The agency was created in 2004 with the aim to help control the external borders of the European Union. As an attempt to address the human rights problems in Frontex, the European Parliament and the Council of the EU adopted a regulation in 2011, in which it was stated that a Consultative Forum on Fundamental Rights should be established. The main role of the Consultative Forum is to advise Frontex on all questions related to human rights.

This thesis examines how the Frontex Consultative Forum on Fundamental Rights creates human rights norms with regard to the Frontex Joint Operations Poseidon. This will be done, in order to understand the cooperation between the Frontex Consultative Forum and Frontex in safeguarding human rights in the European Union. In order to address this, annual reports published by the Frontex Consultative Forum on Fundamental Rights from 2014 until 2017 has been analysed in terms of a content analysis, where recommendations presented in the annual reports. First, they have been analysed in order to understand how they are related to human rights. Secondly, they have been analysed and discussed, with the use of the social constructivist theory, in order to explore how the Frontex Consultative Forum on Fundamental Rights creates human rights norms.

By analysing the recommendations, the following has been discovered; the Frontex Consultative Forum on Fundamental Rights publishes recommendations that relate to human rights, as they either include a human rights article or words/terms that are being compared to human rights articles. In addition, the Frontex Consultative Forum on Fundamental Rights creates human rights norms related to Joint Operations Poseidon by using language to interpret concerns, so that the recommendations are related to human rights, by visiting the operational areas and making observations and by using existing human rights norm to create new norms. Given that Frontex has to comply with human rights according to EU law, the agency has to adopt the human rights norms created by the Frontex Consultative Forum on Fundamental Rights. The recommendations also showed that in most cases, Frontex has adopted the norms. When adopting the norms, it is argued that cooperation between the two actors is enhanced. Thus, the two actors are safeguarding human rights, when cooperating.

Keywords: Frontex, Frontex Consultative Forum on Fundamental Rights, Human rights, Norms

Characters: 2649

List of Abbreviations and Acronyms

AI	Amnesty International
AIRE Centre	Advice on Individual Rights in Europe Centre
CCME	Churches' Commission for Migrants in Europe
Charter	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
Commission	European Commission
Consultative Forum	Frontex Consultative Forum on Fundamental Rights
Council	Council of the European Union
EASO	European Asylum Support Office
EC	European Community
ECHR	European Convention on Human Rights
ECRE	European Council for Refugees and Exiles
EP	European Parliament
EU	European Union
Europol	European Union Agency for Law Enforcement Cooperation
Eurosur	European Border Surveillance System
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
FRS	Frontex Fundamental Rights Strategy
HRW	Human Rights Watch
ICJ	International Commission of Jurists
IOM	International Organization for Migration
JO	Joint operation
JRS	Jesuit Refugee Service
NGO	Non-governmental organisation
OSCE ODIHR	Organization for Security and Cooperation in Europe: Office for Democratic Institutions and Human Rights
PICUM	Platform for International Cooperation on Undocumented Migrants
RABIT	Rapid Border Intervention Team

TEU	Treaty of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
1951 Refugee Convention	United Nations Convention relating to the Status of Refugees

Table of contents

1.0 Introduction.....	1
1.1 Structure	3
1.2 Scope of the thesis	4
1.3 Reviewing the literature on Frontex and human rights in the EU.....	5
1.4 Reviewing the literature on human rights norms and human rights groups	7
2.0 Human rights in the EU.....	8
2.1 Defining fundamental rights and human rights.....	8
2.2 ECHR and the Charter.....	8
3.0 Frontex and the Consultative Forum	10
3.1 Origin and mission.....	10
3.2 Criticism of Frontex	14
3.3 Frontex Consultative Forum on Fundamental Rights.....	16
4.0 Methodology.....	17
4.1 Ontological and epistemological considerations	17
4.2 Qualitative case study	18
4.2.1 Choice of case.....	21
4.3 Choice of data	21
4.3.1 Selecting data.....	22
4.4 Research method.....	23
4.5 Choice of theory	24
5.0 Social Constructivism.....	25
5.1 Historical development	26
5.2 Developments and main assumptions.....	27
5.3 Criticism of the theory	29
5.4 Operationalisation	29
6.0 Analysis	31
6.1 Joint Operations Poseidon (Greek/Turkish border and Bulgarian/Turkish border).....	31
6.2 Consultative Forum Annual reports 2013-2016.....	32
6.3 Consultative Forum annual reports 2013-2016 - JOs Poseidon	33
6.3.1 Implementing the Eurosur Regulation in Frontex.....	35
6.3.2 Border procedures	37
6.3.2.1 The principle of non-refoulement	37
6.3.2.2 Data protection	38
6.3.2.3 Identification, screening and debriefing activities.....	39
6.3.2.4 Creation of norms – border procedures.....	40
6.3.3 European Border Guard Training.....	43
6.3.4 Mechanisms.....	44
6.3.4.1 Individual complaints mechanism	44
6.3.4.2 Referral mechanisms	45
6.3.4.3 Creation of norms – mechanisms.....	46
7.0 Conclusion	48
8.0 References.....	50

1.0 Introduction

Human rights have been on the European agenda since 1950, when the members of the Council of Europe (CoE) signed the European Convention on Human Rights (ECHR) (Council of Europe 2018a). In 2000, the European Council introduced an additional human rights document in the EU: the Charter of Fundamental Rights of the European Union (Charter) (Chalmers et al. 2010: 237), which is binding for the Member States of the EU (Art. 51.1 in the Charter). Besides the Member States, it is also binding for every EU institution, agency and body (ibid.). Since 2007, with the Lisbon treaty, it has been legally binding as outlined in Art 6.1 in the Treaty of the European Union (TEU) (European Union 2012: 19). Moreover, pursuant to Art. 2 (TEU), respect for human rights, freedom, equality and human dignity are some of the European Unions (EU) values on which the Union is founded (European Union 2012: 17).

However, the respect for human rights in the EU has been at stake, especially one European agency has been accused for not upholding human rights during its work. The European Border and Coast Guard Agency (hereafter: Frontex or the agency) has been criticised from different non-governmental organisations (NGO's), international organisations and EU agencies for not respecting human rights (Aas & Gundhus 2014: 3). The agency was established in 2004 in the wake of an increased focus on external border management in Europe following the preparation of the 2004 enlargement round and following an increased influx of immigrants arriving to Europe (Leonard 2009: 375-376). Furthermore, the terror attacks in the USA on 11 September 2001 resulted in an increased focus on security in the EU (Leonard 2009: 376). These events led to that the Member States realised it was important to strengthen cooperation in management of the EU's external borders (ibid.).

The main role of the agency is to help Member States of the EU control their borders (Frontex 2017a) for instance by coordinating and organising joint operations (JOs) in the Member States who have external borders (ibid.). It is during different JOs, where both local staff and Frontex personnel participate (ibid.), that the agency has received most criticism. Human Rights Watch (HRW), the United Nations High Commissioner for Refugees (UNHCR) and Amnesty International (AI) have, for instance expressed concern about the work of Frontex in different reports, where the agency has been criticised, e.g. for their involvement in inhumane treatment of migrants at detention centres in Greece (Human Rights Watch 2011) and for their involvement in pushing back migrants in the Atlantic and the Mediterranean (Kumin 2007; Human Rights Watch

2009; Amnesty International 2014). Also the Parliamentary Assembly of the Council of Europe has raised concern about the responsibility of the agency during its activities and about the lack of transparency in JOs (Parliamentary Assembly of the Council of Europe 2013).

In response to the criticism, the agency adopted a Fundamental Rights Strategy (FRS), an Action Plan and a Code of Conduct, which is binding for all persons participating in Frontex activities (Frontex 2011a: 21). In addition, the European Parliament (EP) and the Council of the EU (Council) adopted a new regulation¹ on 25th of October 2011 concerning Frontex, in which it was stated that a Consultative Forum on Fundamental Rights (hereafter: Consultative Forum) should be established and a Fundamental Rights Officer should be appointed (Frontex 2011a: 12).

This indicates that the Consultative Forum was devised in order to improve the human rights situation at the EU's external borders. In September 2012, the Consultative Forum was created by the Frontex Management Board and consists of both international organisations such as the CoE and the UNHCR and of NGO's such as AI and Save the Children (Frontex 2017b). It has an advisory role, where its members advise the Frontex Management Board and the executive director of the agency, in all questions related to fundamental rights (ibid.), for instance by giving recommendations to the agency (ibid.). In its working methods, it is specified that the Consultative Forum is "*a knowledge and expertise resource to enable Frontex and its Management Board to gain information and advice relevant to the aim of developing and promoting the respect of fundamental rights in all Frontex activities*" (Frontex 2013a: 1).

In academia, the agency itself has been widely analysed. Most papers have, however, focused on the activities of the agency in relation to human rights (e.g. Klepp 2010; Carrera et al. 2013; Majcher 2015) or focused on the establishment process of Frontex (Ekelund 2014). But no one has, as far as I know, analysed the Consultative Forum before or included its role when analysing the activities of Frontex and human rights, which means that there is a gap in academia. Thus, the Consultative Forum is interesting to examine in order to produce new knowledge to academia. Moreover, given the perception that the Consultative Forum was created as an attempt to address the human rights problems in Frontex and given the fact that members of the Consultative Forum, such as AI, have accused the agency for violating human rights, I think it is relevant to examine the work of the Consultative Forum in order to understand if and how the

¹ Regulation (EU) No. 1168/2011

Consultative Forum and Frontex safeguard human rights. Thus, also to find out if human rights are still being violated in Frontex activities. This means, that in this study, the cooperation between the Consultative Forum and Frontex, when it comes to safeguarding human rights, will be investigated. This has led to the following research question:

How does the Frontex Consultative Forum on Fundamental Rights create human rights norms with regard to the Frontex Joint Operations Poseidon?

In order to understand how norms are being created between the two actors, the social constructivist theory will be applied in this thesis, as the theory, among other things, emphasises the importance of norms in the society (Jackson & Sørensen 2013: 218-219).

As the agency has received most criticism related to their JOs, this thesis will focus on JO activities. More specific, it will focus on the JOs Poseidon. The choice of these operations will be explained in the methodology chapter under subchapter 4.2. Furthermore, the thesis will cover JOs Poseidon from 2013, because the Consultative Forum became operative that year (Consultative Forum 2014: 6). The purpose of this thesis is to explore how the Consultative Forum constructs norms related to human rights towards Frontex in relation to JOs Poseidon. Consequently, also to understand what role the Consultative Forum has in Frontex. This will be done by analysing recommendations from the Consultative Forum to Frontex.

1.1 Structure

In order to answer the above-mentioned research question, first, the scope of the thesis will be presented. Following the presentation of the scope, there will be a presentation of the literature review on the agency and on human rights in the EU. In the second chapter, human rights in the EU will be presented. Hereafter, an elaborated overview of Frontex and the Consultative Forum and their role in the EU system will be outlined in chapter 3. Fourthly, a methodology chapter, which will include the ontological and epistemological considerations, the methods and the analysis plan of this thesis, will be presented.

The methodology will also include why the Consultative Forum and JOs Poseidon have been chosen, when addressing Frontex and human rights and why the social constructivist theory will be used in this study. Following the methodology chapter, a chapter about the social constructivist theory will be presented. The chapter will include a brief historical background of

the theory, a subchapter concerning the main assumptions of the theory and how it will be used in this thesis. Chapter 6 will consist of the analysis, where annual reports published by the Consultative Forum in the period 2014 and until 2017 will be analysed in order to find out what topics the Consultative Forum emphasises in its recommendations and how these are related to human rights. With the use of the social constructivist theory, it will also be analysed and discussed, how the Consultative Forum creates human rights norms. Lastly, this thesis will include a conclusion, where the main points are summed up and the research question answered.

1.2 Scope of the thesis

In this thesis, the work of the Consultative Forum will be examined. In this regard, focus will be on the Frontex operations, at the external borders of the EU, the Consultative Forum mentions in its annual reports. This means, that there may be some other operations or activities conducted by the agency, which will not be investigated. More specific, this thesis focuses only on JOs Poseidon and recommendations related to these operations. The choice of JOs Poseidon will be explained further in chapter 4.2.

As the Consultative Forum is being examined, this research will focus on Frontex activities from 2013, because the Consultative Forum started its work that year (Consultative Forum 2014: 6). That means, that activities related to JOs Poseidon prior to 2013 will not be elaborated. Moreover, the thesis will focus on annual reports from the Consultative Forum covering the years 2013 - 2016, published from 2014 and until 2017. Due to the time frame of this thesis, the latest Consultative Forum report (annual report 2017) will not be included, as it was made public available on the home page of Frontex in mid-May this year. Additionally, in regard to the recommendations from the Consultative Forum, this thesis will only contain recommendations from the Consultative Forum as a whole. Hence, no individual statements from the members of the Consultative Forum will be included. The reason for this choice will be clarified in section 4.3 concerning the choice of data.

In the section about human rights in the EU, the focus will be on the rights outlined in the ECHR, the treaties of the EU, the Charter and the United Nations Convention relating to the Status of Refugees (1951 Refugee Convention). Additionally, only the articles concerning migrants and the work of Frontex at the EU's external borders will be presented, for which reasons rights related to employment, welfare and environment protection and articles about the

European Court of Human Rights, the abolition of the death penalty and general provisions will not be included.

1.3 Reviewing the literature on Frontex and human rights in the EU

As briefly mentioned in the introduction, the role of the Consultative Forum is an uncovered issue in academia. The role of Frontex, however, is not. In academia most papers concerning Frontex, have focused on the activities of the agency.

Silja Klepp, for instance, examines the EU asylum system, more specific refugee protection and border control in the Mediterranean Sea, where Frontex operates (Klepp 2010). Klepp argues, that Frontex prevents vessels from arriving on EU territory and that the agency returns refugees back to Libya – a country that has not signed the 1951 Refugee Convention (ibid.). According to the 1951 Refugee Convention, it is prohibited to send refugees back to a country, where there is a risk that they are subject to persecution, better known as the non-refoulement principle, and it is prohibited to send refugees back without giving them the possibility to apply for asylum, thus human rights are at risk in the Mediterranean Sea (ibid.). In addition, Klepp raises concern on the lack of transparency in Frontex operations (Klepp 2010: 16).

Also Peter Slominski, examines the border control in the EU (Slominski 2013). He examines the power of legal norms in the EU's border control and looks at Frontex JOs at sea (ibid.). In this regard, he looks at how EU Member States manipulates formal and substantive dimensions of the law, for instance, the non-refoulement principle is interpreted differently by the Member States, e.g. Greece and Italy state that the principle is only applicable in EU territory, whereas Belgium and the Netherlands states that it is also applicable outside the EU (Slominski 2013: 41-44). In this regard, he argues that the states use norms and interpretation to achieve their own goals (Slominski 2013: 48) and that state use carefully formulated words when describing the principle, which allows actors to interpret it differently (Slominski 2013: 44).

This means that Member States but also Frontex can argue that they act in accordance with international law, in this case with the non-refoulement principle (ibid.). He also looks at how human rights norms have been transformed in the EU including in Frontex, where he claims that there have been improvements in clarifying the norms in e.g. the Frontex Code of Conduct and in the Frontex FRS. Nevertheless, he argues that there are still problems with the transparency in border control operations (Slominski 2013).

Sergio Carrera, Leonhard den Hertog and Joanna Parkin analyse the tasks of three EU agencies: the European Asylum Support Office (EASO), European Union Agency for Law Enforcement Cooperation (Europol) and Frontex (Carrera et al. 2013). In their paper, they look into how some activities conducted by these agencies may have a negative impact on EU principles and rights enshrined in the Charter (Carrera et al. 2013: 339). In relation to Frontex, they argue that in Frontex JOs, human rights such as the right to seek asylum and the principle of non-refoulement may be at stake (Carrera et al. 2013: 344). They endorse that the relevance of human rights has been taken into consideration by the agency, for instance, with the adoption of the FRS (Carrera et al. 2013: 351). However, they argue that, it is still unknown to which extent these frameworks are effective in practice (*ibid.*). In relation to the creation of the Consultative Forum, they state, that it will lead to more reporting on human rights in the work of the agency, but as the Consultative Forum was relatively new at that time, the effectiveness of the Consultative Forum remains to be seen (Carrera et al. 2013: 355).

Katja Aas and Helene Gundhus investigate the inconsistency between the human rights discourse in the activities of Frontex and in its public self-presentation (Aas & Gundhus 2015). In regard to the activities of the agency, the criticism Frontex has received during JOs related to core fundamental rights such as the right to life and the principle of non-refoulement is mentioned (Aas & Gundhus 2015: 3). In the paper, Aas & Gundhus interviewed, among others, Frontex staff and analysed Frontex documents in order to understand the role human rights have in Frontex (Aas & Gundhus 2015: 4).

The interviews and the analysis divulged that human rights are an important part of the agency's internal discourse and its self-presentation (*ibid.*). Frontex has paid more attention to human rights, for instance, with the adoption of the FRS and the Code of Conduct and with the creation of training courses for border guards (Aas & Gundhus 2015: 14). Although the agency attaches great importance to human rights, contradictions between the discourse and the practices of the agency can still be found (Aas & Gundhus 2015: 7-9). However, the interviews and analyse also showed, that it can be difficult for Frontex border guards to perform their tasks, because they operate in an area consisting of more than one jurisdiction (Aas & Gundhus 2015: 14). Consequently, the question on responsibility is unclear (*ibid.*).

Izabella Majcher addresses the question on the responsibility of Frontex (Majcher 2015). In her paper, she challenges the assumption that Frontex cannot be held responsible for human rights violations committed in Frontex operations (Majcher 2015: 47). The agency claims

that it is not responsible for possible human rights violations, because it has a coordination role and no executive powers (*ibid.*). Majcher, however, argues that because Frontex has legal personality under EU law (Majcher 2015: 52) and legal autonomy, which means, the agency can perform its tasks independently from the European Commission (Commission) and the Member States (Majcher 2015: 50), there is a shared responsibility between the agency and the Member States (Majcher 2015: 77). In addition, it is argued, if Frontex assists a state that violates human rights, the agency may also be responsible for the breaches (*ibid.*).

1.4 Reviewing the literature on human rights norms and human rights groups

Looking into norms in the EU, Cristof Ross and Natascha Zaun examine how international norms impact the asylum and migration policy of the EU (Ross & Zaun 2014: 45). As their paper revolves around the EU asylum and migration policy, human rights norms are also investigated (Ross & Zaun 2014). Ross and Zaun investigate the robustness of norms, and conclude that the more robust a norm is, the more likely it is to be integrated into EU law (Ross & Zaun 2014: 67), thus norms matter (*ibid.*). In their paper, the following factors determine the robustness of a norm: 1) Specificity – is the norm well defined and understood by the actors? (Ross & Zaun 2014: 48), 2) Binding force – is the norm legally binding for the actors? (Ross & Zaun 2014: 49), 3) Coherence – is there coherence between the norm and other norms? E.g. with constitutional norms (*ibid.*), and 4) Concordance – is the norm extensively accepted by the actors, i.e. whether there is concordance among actors (Ross & Zaun 2014: 49-50).

In relation to human rights groups and human rights norms, David Forsythe looks into the relationship between NGO's and human rights (Forsythe 2012: 240) and looks into how one can measure the influence of human rights groups towards society (Forsythe 2012: 255). He argues, that it is difficult to analyse the influence of any interest group, including human rights groups, because it is challenging to measure the concept of success (*ibid.*). In order to do so, one can, for instance, divide the concept into different degrees (*ibid.*), such as success in getting a subject on the agenda, success in achieving serious discussion about the subject, success in obtaining procedural or institutional change and success in achieving changes in politics (Forsythe 2012: 255-256).

However, it can be difficult to determine whether it is human rights groups that influence an issue, because there may be other actors who also influence the society at the same time such as the media (Forsythe 2012: 256-257). Nevertheless, Forsythe claims, there are some

cases, where the influence of human right NGO's is evident, e.g. when NGO's contributed to negotiation of human rights in treaties and helped to transform the political culture of states, so that these today are more aware of human rights (Forsythe 2012: 257-258).

2.0 Human rights in the EU

This chapter will present an overview of two human rights documents in the EU, namely the ECHR and the Charter. However, also the 1951 Refugee Convention will briefly be presented because it is enshrined in Art. 18 in the Charter (Right to asylum), where it is stated that the right for asylum shall be assured in accordance with the articles in the refugee convention (European Parliament et al. 2012: 399).

One may have noticed that both the term fundamental rights and the term human rights have been used in the previous chapter. For the sake of clarity, the two terms will be defined in the first subsection of this chapter, followed by a subsection containing the overview of the human rights documents in the EU.

2.1 Defining fundamental rights and human rights

According to the European Union Agency for Fundamental Rights (FRA), the term "fundamental rights" is used to describe the rights of a person within a geographically specific area, whereas "human rights" are universal rights (European Union Agency for Fundamental Rights 2018). The EU, for instance, uses the term "fundamental rights" as a human rights concept for the citizens of the EU (ibid.). In spite of this difference, the two terms are similar to each other (ibid.). This will be shown in the next subchapter, where the ECHR (as the name indicates: a European human rights convention) and the Charter (a Charter of Fundamental Rights) will be presented. As both international law, e.g. the 1951 Refugee Convention and EU law, e.g. the Charter is used, the term human rights will be applied in this thesis.

2.2 ECHR and the Charter

The first document concerning human rights in Europe is the ECHR, which was signed in 1950 by the, at that time, 12 Member States of the CoE (Council of Europe 2018a). The signing of the Universal Declaration of Human Rights, which was signed by the United Nations (UN) in 1948, inspired the CoE to create an equivalent document with the aim to protect human rights in Europe (European Court of Human Rights & Council of Europe 2010: 5).

ECHR has been binding for the members of the CoE since 1953 (Council of Europe 2018a), thus the members are obliged to ensure and guarantee both civil and political rights in Europe. Today, it consists of 59 articles, which all have been there since the commencement and of 6 protocols with additional articles, which contains amendments of rights (European Court of Human Rights & Council of Europe 2010). For instance, in respectively protocol 1 and 4, the right to free movement (Art. 2, protocol 4), the right to education (Art. 2, protocol 1) and the prohibition of collective expulsion (Art. 4, protocol 4) were added (European Court of Human Rights & Council of Europe 2010: 32-35). Under section two in the ECHR, also a European Court of Human Rights was established with the aim to protect civil and political rights enshrined in the ECHR (European Court of Human Rights & Council of Europe 2010: 14-27).

Rights secured in the ECHR are, for instance the right to life (Art. 2), the right to respect for private and family life (Art. 8) and the right to freedom and security (Art. 5) (European Court of Human Rights & Council of Europe 2010: 6-12). Apart from the prohibition of collective expulsion, torture or inhuman and degrading treatment or punishment (Art. 3), discrimination (Art. 14), and slavery and forced labour (Art. 4) are, among other things, also prohibited (*ibid.*).

Besides the ECHR, there is the Charter, which is binding for the institutions, agencies, bodies and Member States of the EU (Art 51.1 the Charter). This means that the Charter is also binding for Frontex. Pursuant to Art. 6.1 in the TEU, the Charter was adopted in 2000 and has since 2007 with the Lisbon treaty had the same legal value in the EU system as the treaties. The European Council decided to create the Charter, as they saw it was necessary to strengthen the safeguarding of human rights in the EU, thus they decided to create an updated document on human rights (Chalmers et al. 2010: 237). This was crucial due to the changes and developments in the fields of science, technology and society (Chalmers et al. 2010: 237- 239).

The Charter determines the political, social and economic rights for the people in the EU (*ibid.*). It covers the rights and freedoms enshrined in the ECHR, economic and social rights from the European Social Charter and the Community Charter of the Fundamental Social Rights of Worker and rights from the common constitutional traditions of the Member States of the EU (*ibid.*). Thus, the content in the Charter is similar to the content in the ECHR. The difference is that the Charter includes social and economic rights for the citizens of the EU.

It consists of 54 articles divided under seven titles: human dignity, freedoms, equality, solidarity, citizens' rights, justice and general provisions (*ibid.*). Human dignity covers, among other things, the right to life (Art. 2) and the prohibition of torture or inhuman and

degrading treatment (Art. 4). Freedoms include the right to liberty and security (Art. 6), the protection of personal data (Art. 8), the right to asylum (Art. 18) and the prohibition of respectively collective expulsion (Art. 19.1) and removing or expelling anybody to a country, where there is a risk that she/he would be subject to torture, death penalty or other inhuman or degrading treatment (Art. 19. 2) (Chalmers et al. 2010: 238). Art. 19.2 is also mentioned in the 1951 Refugee Convention under Art. 33.1 (United Nations High Commissioner for Refugees 2010: 30) and is better known as the non-refoulement principle. Equality includes non-discrimination, e.g. on sex, race and colour (Art. 21) (Chalmers et al. 2010: 238). Solidarity covers the workers' rights, whereas citizens' rights cover the rights of the EU citizens such as the right to vote. (Chalmers et al. 2010: 239). The justice section describes the rights related to justice issues such as the right to an effective remedy and to a fair trial (Art. 47) (ibid.).

The Charter is geographically determined to be applicable to the EU Member States and the ECHR is applicable to the members of the CoE, whereas the 1951 Refugee Convention is universal. It was established with the aim to guarantee human rights for refugees (United Nations High Commissioner for Refugees 2010) and defines who is a refugee and presents the legal and the social rights the refugees are entitled to from states that have ratified the Convention (ibid.). As mentioned in subchapter 1.2, only articles, which can be related to migrants, refugees and the work of Frontex in relation to JOs Poseidon, are applied in this thesis.

3.0 Frontex and the Consultative Forum

This chapter will present an overview of the European Border and Coast Guard Agency and its role in the EU and an overview of the role of the Consultative Forum. The first subsection in this chapter describes the origin and mission of the agency, followed by a subsection outlining the criticism the agency has received during its operations. In the third subsection, an elaborated overview of the Consultative Forum and its role in Frontex will be presented.

3.1 Origin and mission

Since the signing of the Rome Treaty in 1957, the Member States of the former European Community (EC) have been obligated to ensure free movement of persons, good, services and capitals in the community (Frontex 2017a). In order to ensure free movement, five Member States decided, in 1985, to sign an agreement (the Schengen agreement) in which an area of free movement was created (ibid.). This meant that the countries abolished their internal borders and

created a common external border. In order for the countries to have common rules at the borders, they also agreed on an Schengen Implementing Convention in 1990 (Lavenex 2010: 459). The Schengen agreement entered into force in 1995 and was integrated into the EU legal framework with the Amsterdam treaty in 1999 (Frontex 2017a). With the commencement of the treaty, also cooperation in the areas of immigration, asylum and police cooperation became further strengthened (Uçarer 2013: 285). For instance, in 2002, an External Border Practitioners Common Unit, whose job was to coordinate the operational cooperation at the external borders of the EU, was established (Leonard 2009: 378).

As mentioned in the introduction, at the time of the creation of Frontex, the Member States of the EU felt it was necessary to focus on external border management due to the 2004 enlargement round² and the increased inflow of immigrants arriving to Europe, but also to strengthen the security in the EU following the terror attacks in the USA (Leonard 2009: 375-376), thus there was a need for enhanced cooperation among the Member States. Following the creation of the Common Unit, the European agency, Frontex, was established on 26 October 2004 with the Council Regulation (EC) 2007/2004 under the name the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex 2017a). According to the regulation, the agency was established in order to improve the integrated management of the EU's external borders (Council 2004: 1). The agency started its activities on 1 May 2005 (Council 2004: 11).

Since the first regulation, there have been three amendments concerning Frontex. In 2007 with regulation (EC) 863/2007, the EP and the Council created a Rapid Border Intervention Teams mechanism (RABIT)³, which offers any Member State rapid operational assistance for a limited period of time, if the country is facing a condition of immediate and exceptional pressure at their border (European Parliament & the Council 2007: 30-32).

Later, in 2011, the EP and the Council adopted regulation (EU) 1168/2011 in which human rights were given more attention in the Frontex sphere (European Parliament & the Council 2011). It was, for instance, required that the agency should develop a Code of Conduct containing procedures with the purpose that fundamental rights and the rule of law are guaranteed by all persons participating in Frontex activities. The regulation also highlighted that Frontex, in

² The 2004 enlargement round brought 10 new Member States to the EU. The Member States already in the EU raised concerns that the new countries could not uphold effective border control at the EU's external borders (Leonard 2009: 375-376).

³ NB, in regulation (EU) 1168/2011 (Art. 1a), RABIT was replaced with European Border Guard Teams, which now defines all deployed border guards.

all activities, shall work in compliance with the Charter, the 1951 Refugee Convention and relevant international law (European Parliament & the Council 2011: 5-6). Furthermore, as mentioned in the introduction, it also required that a Consultative Forum should be established and a Fundamental Rights Officer should be appointed (European Parliament & the Council 2011: 17). Fundamental rights have, however, been mentioned in the context of Frontex before the regulation from 2011 was adopted. Already in the 2008 general report published by Frontex, the agency stated that promotion and respect for fundamental rights are the most important value of European border management (Frontex 2008: 10).

On 14 September 2016, Regulation (EU) 2016/1624 replaced the old regulations and instead the European Border and Coast Guard Agency was established. Despite the new regulation, the agency still has the same legal character and same acronym: Frontex (Frontex 2017c). Because of enhanced security concerns in the EU and due to the migration crisis the EU witness in 2015, the Commission proposed for the creation of a European Border and Coast Guard in order to ensure better integrated management of the external borders of the EU (European Commission 2015: 2-3).

The main task of the agency is to contribute to the management of the external borders of the EU by providing technical and operational assistance and expertise to the Member States, in order to promote, develop and coordinate a high and uniform level of border management (Frontex 2017a). This is done through JOs, rapid border interventions, risk analysis/information exchange, joint return operations and training of guards (ibid.). Frontex coordinates and organises JOs that take place either at sea, land or air borders, when a Member State needs assistance at the external borders. In that case, the agency deploys staff and technical materials such as aircrafts, vessels and surveillance equipment. It is the EU Member States who contribute with these resources, i.e. the agency does not have its own staff or equipment (ibid.; Frontex 2017d).

As mentioned earlier in this chapter, the agency can also assist with a rapid border intervention, at a request from a Member State, who witnesses extreme pressure at their external borders, for instance due to the arrival of a large number of non-EU nationals trying to enter the Union illegally (European Parliament & the Council 2016: 19). When a Member State requests for assistance, the executive director of Frontex shall decide whether to launch a rapid border intervention within two days (European Parliament & the Council 2016: 21). If the intervention is launched, the agency shall, within 5 days, deploy a minimum of 1500 border guards from the

Member States (European Parliament & the Council 2016: 25) and shall, within 10 days, send the necessary equipment (European Parliament & the Council 2016: 36), hence the agency can provide immediate assistance to the Member State.

Prior to any JO or rapid border intervention, a risk analysis is conducted by the agency. As a matter of fact, all activities in which Frontex contributes are based on risk analyses containing the situation on the external borders, including the migratory flow, the trends and the challenges the EU is facing at its external borders. This also means that the agency, with the risk analyses, helps the national border authorities share relevant information with the Member States (European Parliament & the Council 2016: 16). The agency also shares information regarding smuggling, human trafficking and terrorism with national authorities and other EU agencies such as Europol, in order to prevent these crimes in the EU (European Parliament & the Council 2016: 3).

Another task of the agency is to provide assistance to the Member States by, for instance, organise joint return operations of non-EU persons, who are in the EU illegally. It can either react upon the request of a Member State or on its own initiative, propose assistance to Member States. Frontex does not have any competences to decide who should be returned. It is always the Member States that take these decisions (European Parliament & the Council 2016: 28-29). Frontex has also developed common training standards for border guards in order to ensure professional and uniform border control standards throughout the EU (European Parliament & the Council 2016: 33). Furthermore, the agency supports the Member States and non-EU countries with search and rescue operations at sea (European Parliament & the Council 2016: 14) and cooperates with non-EU countries in order to ensure a high standard of border administration in the neighbouring region of the EU (European Parliament & the Council 2016: 44-45).

Frontex consists of a management board and an executive director (including a deputy executive director). The executive director manages Frontex and is responsible for preparing and implementing decisions made by the board (European Parliament & the Council 2016: 52). Pursuant to Art. 25,4 in the new regulation, the executive director also has the power to suspend or terminate a Frontex activity, if he/she deems that there are breaches of fundamental rights in the activity (European Parliament & the Council 2016: 28). The management board is composed of one representative from each Member States and two representatives from the Commission. Countries that are associated with the Schengen acquis also participate in the

meetings. Representatives from Ireland and the United Kingdom are also invited to participate in the board meetings (European Parliament & the Council 2016: 47-51). The management board controls the functions of the agency by, for instance, adopting the work program of the agency, appoints an executive director and a deputy executive director and a Fundamental Rights Officer and adopts the annual budget of the agency (ibid.).

Even though Frontex is active and visible at the external borders of the EU, it has to be mentioned that the agency does not have the primary responsibility for the administration of the external borders (European Parliament & the Council 2016: 2). In the original regulation from 2004 and the regulation from 2011, it is clearly stated that the Member States are responsible for the management of the external borders (Council 2004: 1; European Parliament & the Council 2011: 5). Pursuant to the new regulation, this competence also falls under the Member States (European Parliament & the Council 2016: 2). Nevertheless, the new regulation also states that border management should be carried out as a shared responsibility of the agency and the national authorities (ibid.). This ambiguous statement can raise questions when determining the responsibility of the agency.

3.2 Criticism of Frontex

The above-mentioned responsibility question has since the agency started its activities been discussed and, as briefly touched upon in the introduction, the agency has been criticised from different organisations for violating human rights during its operations and in this regard also been criticised for disclaiming responsibility during its operations.

To name an example of such criticism, the UNHCR sow doubt about whether Frontex during JO Hera 2007, where the agency patrolled in the Atlantic, took into account whether there were any refugees on board the vessels the agency rerouted (Kumin 2007: 25-27). If there were any refugees in the boats, they have to have the possibility to apply for asylum according to both the Charter and the 1951 Refugee Convention (Art. 18 the Charter). Moreover, by not taking into account whether any refugees were on board the vessels, any possible refugee might have been returned to a place where she/he could be in danger (Kumin 2007: 25-27). In that case, Art. 19.2 in the Charter would be violated.

During JO Hera 2008 (also in the Atlantic), 5969 migrants were rerouted back to Africa. Because officers from Senegal and Mauritania were on-board the Frontex vessels, the

agency insisted that the officers from these countries were responsible for ensuring that human rights were safeguarded (Human Rights Watch 2009: 36).

In 2010, Frontex deployed a RABIT to Greece because the country witnessed an extreme flow of migrants entering Greece. Many of the migrants were arrested and detained in centres with inhuman facilities (Human Rights Watch 2011: 1). During the RABIT operation, the agency helped Greek border guards in detecting migrants at the borders and sending them to Greek authorities that managed the detention centres (ibid.). Prior to the RABIT, a Frontex official visited some of the detention centres and saw that the centres were overcrowded and with inhuman facilities. Even though the agency knew about the conditions at the centres, the agency felt it necessary to deploy a RABIT because the situation at the border was not under control (Human Rights Watch 2011: 20-23). HRW stated, that because the agency knew about the conditions, the agency should have known that when the agency chose to send migrants to the Greek authorities, it would lead to that the migrants were exposed to inhuman and degrading treatment (ibid.). In this way, the agency violated human rights stated in Art. 4 (the Charter) or Art. 3 (ECHR).

The agency itself stated that it respects human rights in their JOs but that it did not have any competences to do anything in relation to the detention centres, because this competence lies within the Member States (Frontex 2011b). Despite the statement from Frontex, HRW argued that even though the agency did not have the prerogative of intervention in the detention centres the agency was not excused from responsibility because Frontex transferred the migrants to these centres (Human Rights Watch 2011: 47).

The parliamentary Assembly of the Council of Europe also stated that because the agency coordinates JOs, it does have an impact on how the JOs are carried out at the borders, hence the agency needs to realise that it is also responsible for safeguarding human rights (Parliamentary Assembly of the Council of Europe 2013: 423-424). In order to improve the situation, a FRS and a Code of Conduct binding for all staff participating in Frontex activities were adopted (Frontex 2011a: 12). Moreover, the EP and the Council required that a Consultative Forum should be established and a Fundamental Rights Officer appointed (Frontex 2011a: 21).

Despite the initiatives in Frontex, AI called on the executive director of Frontex to suspend parts of JO Poseidon at the land border, because human rights were violated (Amnesty International 2014: 17). With the new regulation from 2016, also an individual complaint mechanism was introduced. With the mechanism, any person can now submit a complaint to the

agency, if the person feels that Frontex staff is not safeguarding human rights during any Frontex activity (European Parliament and the Council 2016: 55).

3.3 Frontex Consultative Forum on Fundamental Rights

The Consultative Forum was introduced in regulation (EU) 1168/2011 under article 26a, where it was stated that the agency should create a Consultative Forum who will assist the agency by advising in fundamental rights questions (European Parliament and the Council 2011: 17). According to the new regulation from 2016, in order to advise the agency on fundamental rights matters, the Consultative Forum shall have access to all information regarding respect for human rights in the activities of Frontex. This can also include visits from the Consultative Forum to JOs, joint return operations or rapid border interventions, if the host Member State of the operation approves such visits (European Parliament and the Council 2016: 54-55).

Additionally, the Consultative Forum shall publish a public available annual report, which includes its own activities and its recommendations and opinions to the agency (European Parliament and the Council 2016: 55; Frontex 2017b). The members of the Consultative Forum adopt the recommendations and opinions with unanimity (Consultative Forum 2014: 12).

Furthermore, pursuant to Article 70.3 of the new regulation, the Consultative Forum also has to be consulted on the development and implementation of the FRS, the Code of Conduct, the common training standards for Frontex personnel and the establishment of the individual complaints mechanism (European Parliament and the Council 2016: 54).

The Frontex management board established the Consultative Forum in 2012 and it became operational in 2013 (Consultative Forum 2014: 6). Today, it consists of 15 members and is chaired by two of its members⁴, who represent the Consultative Forum (Frontex 2017b). According to the 2016 regulation, the EASO, the FRA and the UNHCR shall be invited to be a part of the Consultative Forum (European Parliament and the Council 2016: 54), thus these three are permanent members. Besides the permanent members, also the CoE, the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe – Office for Democratic Institutions and Human Rights (OSCE ODIHR) are members (Frontex 2017b). Furthermore, also 8 civil society organisations⁵ are members of the Consultative Forum

⁴ UNHCR and JRS in 2016 (Consultative Forum 2017a: 14).

⁵ Civil Society organisations in the Forum: the Advice on Individual Rights in Europe Centre (AIRE Centre), AI, European Council for Refugees and Exiles (ECRE), Churches' Commission for Migrants in Europe (CCME),

(ibid.). All the members work in the area of protecting fundamental rights of migrants in Europe (Consultative Forum 2014: 6).

The current composition of the Consultative Forum has been operational since September 2015 and its mandate will end in December 2018 (Consultative Forum 2017a: 14). It has to be mentioned that Save the Children was not a member of the Consultative Forum until September 2017, where a member chose to withdraw from the Consultative Forum (Frontex 2017e). In the work programs of the Consultative Forum for 2017 and 2018, it is evident that it is the organisation Caritas Europa, who chose to withdraw as a member (Consultative Forum 2016b: 2; Consultative Forum 2017b: 2). It has not been possible to receive information from Caritas on why they left the Consultative Forum. Consequently, the reason for the withdrawal remains unknown.

4.0 Methodology

In the following chapter the methodological considerations of this thesis will be outlined. The first subchapter will present the epistemological and ontological considerations of this thesis, followed by a subchapter covering the research design including the framework and the choice of case of this study. Subsequently, in subchapter three, a data collection subchapter including source criticism when collecting data will be outlined. The research method including the analysis plan will be presented in the fourth subchapter. This chapter round off with a presentation of why the social constructivist theory was chosen in this thesis.

4.1 Ontological and epistemological considerations

Ontology deals with the assumptions mankind have about the world, thus how we understand the world (Klemmesen et al. 2012: 22). In this regard, two poles can be mentioned: objectivism and constructionism (Bryman 2016: 28-29). The objectivist position claims that the world exists independently from subjects (Klemmensen et al. 2012: 22) or social actors as Bryman call the subjects (Bryman 2016: 28- 29).

According to Bryman, the objectivist position claims that the social actors cannot influence the social reality or any social phenomenon, as it is external for the actors (ibid.). The constructionist (also called constructivism) position states the opposite; that social actors can

International Commission of Jurists (ICJ), Jesuit Refugee Service (JRS), Platform for International Cooperation on Undocumented Migrants (PICUM), and the Red Cross and Save the Children (Frontex 2017b).

influence the reality and that the social actors continuously create social phenomena (Bryman 2016: 29-30; Klemmesen et al. 2012: 22). Thus, the social reality is a social construction.

As described in chapter 2, human rights came on the international agenda in 1948 with the Universal Declaration of Human Rights, which was signed by the members of the UN (European Court of Human Rights & Council of Europe 2010: 5). Hence, one can argue that social actors constructed the human rights phenomenon. Given that human rights play a central role in this study and given that the analysis of this thesis will revolve around recommendations constructed by the Consultative Forum, the constructionist position is applied in this project.

Following the ontological considerations, one can look at the epistemological considerations. It deals with what is or what should be acceptable knowledge (Bryman 2016: 24), so saying one investigates what knowledge is and how we accept knowledge. One epistemological position is positivism, where one of the core values is that only what is observed with our senses can be confirmed as knowledge (ibid.). It builds on objectivity (ibid.), which means for instance thoughts and subjective values are excluded. In contrast to the positivistic position is interpretivism. It claims that it is important to distinguish people and objectives in order to understand how individuals interpret the world, which is essential in order to generate knowledge (Bryman 2016: 26). In this case, knowledge will be generated by, exploring how the members of the Consultative Forum interpret human rights in their recommendations.

In addition, one interpretive approach is the hermeneutic, which tries to establish understanding through interpretation of texts (Holm 2014: 95). It indicates that interpretation is achieved in the hermeneutic circle, which implies that in order to understand the whole context of a text, one have to understand each part and reverse (ibid.). Given that this project will only include texts, it also attempts to establish understanding through interpretation.

4.2 Qualitative case study

One distinguishes between three types of researches: quantitative, qualitative or mixed method (Bryman 2016: 31-34). The difference between those is that the quantitative approach is characterised by numerical data, whereas the qualitative approach consists of textual data. The mixed method, as the name indicates, is a combination of the two other research approaches (ibid.). Because the qualitative approach focuses on textual data, one of the advantages of using it, is that it can give an in-depth insight on social reality (Bryman 2016: 401), which in this case will be the recommendations given by the Consultative Forum. Moreover, as this thesis departs from a

constructionist and interpretative position, where a pattern and relations are trying to be found and recommendations are being interpreted, the qualitative research strategy is applied in this study.

Another thing to look at is the relationship between theory and research by determining whether ones data will be selected in order to test a theory or to generate a theory. Theory in this sense is used to explain observed regularities (Bryman 2016: 18). One can work with either the inductive or the deductive theory. The deductive theory draws on existing theory from which a hypothesis or more hypotheses are outlined. These are then tested on empirical data with the goal to either falsify or verify the hypothesis/hypotheses (Bryman 2016: 21-22). The inductive theory, on the other hand, does not draw on existing theory but rather on observations or findings, from which theories are formed (ibid.). This thesis will depart with observations/findings, from which a conclusion based on the collected data will be formed. Hence, the inductive approach is used in this case.

When evaluating a research, there are different research criteria that have to be fulfilled (Bryman 2016: 41). One of them is replication, which means that researches have to be replicable, which means that the procedures of the research shall be clarified, in case other scholars want to replicate it, for instance in order to include new knowledge (ibid.). Another criterion is validity, which includes 4 sub criteria such as external validity, which indicates whether the results from the study can be used to generalise (Bryman 2016: 42). Another criterion is reliability, where one evaluates whether there is consistency in what has been examined. In order to fulfil this criterion, one has to make sure that if others repeat a similar or identical study, the same results will emerge (Bryman 2016: 41). In order to construct a structure for the collection and analysis of data, one must determine the research design (Bryman 2016: 40).

Bryman outlines 5 different research designs: quasi-experiments, cross-sectional, longitudinal design, case study and comparative design (ibid.). Commonly, the case study is characterised by studying only a case for instance an organisation or a specific issue area (Bryman 2016: 60). Given that this thesis scrutinise the Consultative Forum and how it creates human rights norms in Frontex JOs Poseidon, the research design applied is the case study design. Consequently, the other research designs will not be further elaborated in this thesis. More specifically, as mentioned in the introduction, this project will investigate the recommendations, related to Poseidon JOs, conducted by the Consultative Forum from 2013, because the Consultative Forum became operative that year.

The JOs Poseidon is moreover seen as one specific issue area (one case), because the Consultative Forum does not distinguish its recommendations between Poseidon Land and Poseidon Sea (Consultative Forum 2015: 18-30). Accordingly, it would be difficult to determine which recommendation belongs to which exact operation. In addition, JOs Poseidon were selected because the Consultative Forum frequently has visited these JOs according to their annual reports (Consultative Forum 2014, 2015; 2016a; 2017a), and as described in subchapter 3.2, it is during their operations Frontex has received criticism, including during JOs Poseidon, e.g. when AI wanted parts of the JO Poseidon land to be suspended (Amnesty International 2014: 17).

When investigating only one case, an intensive strategy is used, which entails that one or few cases are studied more in depth, thus one studies more about less (Andersen et al. 2012: 72) instead of using the extensive strategy, where one examines several cases, so saying studying less about more (ibid.).

The design can be divided into different types of cases (Bryman 2016: 62-63) for instance the critical case, which is defined as a case in which the researcher has developed a hypothesis. Hereafter a case is selected in order to better understand the circumstances in which the hypothesis can be verified or not (ibid.). Another type is the extreme of unique case, where the case is, as the name indicates, unique. Accordingly, the case is worth to examine (ibid.). Thirdly, a case study can be a representative of typical case, where one examines the circumstances of an everyday situation (ibid.). Fourthly, there is the revelatory case type, which is defined as a case type, where a phenomenon that has not been accessible previously can be observed and examined (ibid.). Lastly, one can also work with a longitudinal case, where focus lies on how a situation changes over time (ibid.). That being said, these types can be combined (ibid.). This is also the case of this project.

Given that no hypothesis is applied in this thesis, the critical case type is precluded. In addition also the representative case is excluded, as it do not deal with everyday situations. Because the work of the Consultative Forum has not been scrutinised before, one can to some extent argue that it is a unique case. As the Consultative Forum was recently established, statements and other data from the Consultative Forum are relatively new, thus one can conclude that the design in this study mainly is a revelatory case. However, one can also argue that elements of the longitudinal case type is applied, because this study will look at how human rights norms have been created by the Consultative Forum, since the creation of the Consultative Forum

in 2013. In this regard, this thesis will also indirectly investigate whether the situation at the borders, where JOs Poseidon takes place, has been improved.

It has to be mentioned that the single-case design has difficulties in fulfilling the criteria concerning external validity because only one or few cases are being examined, thus a single-case design study cannot be used to generalise (Bryman 2016: 62). Given that this thesis will only focus on the recommendations regarding JOs Poseidon, it cannot completely conclude on how human rights norms are being created and possibly safeguarded by the Consultative Forum and on how the cooperation between Frontex and the Consultative Forum is, because other recommendations have not been included. In order to generalise the effect of the Consultative Forum, one has to include all recommendations stated by the Consultative Forum. The thesis can, however, give an indication on the issue.

Moreover, in relation to Frontex's effort to uphold human rights during their overall activities and other operations, the result of this thesis cannot generalise the effort of the agency. To get a clear picture, one has to include all operations and activities conducted by Frontex.

4.2.1 Choice of case

Summing up, this project applies the single-case research design and will investigate the creation of human rights norms by the Consultative Forum and the cooperation between the Consultative Forum and Frontex in JOs Poseidon. As mentioned in the previous subchapter, the types of cases applied are: mainly revelatory case, somewhat unique case and longitudinal case. I have chosen to work with the role of the Consultative Forum in creating human rights norms, because the work of the Consultative Forum has not previously been examined.

4.3 Choice of data

The empirical data for the analysis will consist of annual reports for the year 2013-2016 published by the Consultative Forum from 2014 and until May 2017. It is in these annual reports, the recommendations and statements of the Consultative Forum figure. These are the primary sources of this thesis.

Both first-hand and second-hand sources are used in this study. First-hand sources are defined as sources that are not constructed by other sources (Elklit & Jensen 2012: 125). In this case, the first-hand sources are regulations produced by the EP and the Council and other legal documents such as treaties, conventions and declarations created by either other EU actors e.g. the CoE and the Commission or by international organisations such as the UN. Also official

reports such as annual reports and general reports from the Consultative Forum and Frontex are defined as first-hand sources.

Second-hand sources, on the other hand, are defined as sources that are generated from other sources (ibid.). The second-hand sources applied in this project consist of articles, reports from organisations, academic books and journals.

As mentioned in subchapter 1.2, no individual statements from the members of the Consultative Forum related to the work of the Consultative Forum will be applied. During the writing process, the members have been contacted via e-mail with the purpose to receive information on their work in the Consultative Forum. The members, who replied, all referred to the annual reports published by the Consultative Forum.

4.3.1 Selecting data

When choosing data, one has to include all relevant data and not only include data that matches to one's own expectation (Elklit & Jensen 2012: 119). In order to evaluate the data, one can investigate the 4 following questions (Elklit & Jensen 2012: 125-126): 1) is the text reliable? In this case, it is investigated whether the author was present at the event or whether he/she collected information from other (ibid.), 2) is the author objective? This question is concerned with whether there are any personal, political or economic motives behind the source (ibid.), 3) is the text a first-hand source or second-hand source (ibid.)? and 4) is the context of the event correctly interpreted? This question relates to whether the author has enough knowledge about a situation/phenomenon to be able to interpret it correctly (ibid.).

In regard to the recommendations issued by the Consultative Forum, only recommendations related to JOs Poseidon will be applied. Consequently, the recommendations are not randomly selected. Thus, a purposive sampling approach is used in this thesis (Bryman 2016: 408).

By using official publications from EU organisations and institutions, Frontex, the Consultative Forum and international organisations, the authenticity is high and the sources are reliable, because members of the organisations and institutions were present when the documents were signed. In chapter three, where the roles and missions of Frontex and the Consultative Forum are described, articles and reports from the webpage of Frontex and official EU documents such as regulations from the EP and the Council have been used in order to guarantee the

reliability of the sources. Academic books and articles have, however, also been used in order to specify parts of the origin of Frontex.

Furthermore, it is possible to replicate the study, because all data used is public available and referred to by using source references. Hence, the replication criterion is fulfilled. However, if the contacted members of the Consultative Forum had given their opinions and information about their work in the Consultative Forum, the criterion would not be entirely met.

Presuming that all articles at the webpage of Frontex are published by the agency itself, one can argue that all information is genuine. When examining the statements from Frontex regarding human rights abuses, e.g. in chapter 3.2, the reliability criterion, however, cannot be entirely fulfilled, because it can be difficult to prove whether the agency is objective or has some political motives in their statements.

4.4 Research method

When investigating documents, both printed and online material, in order to evaluate or review them, one can use the document analysis method (Bowen 2009: 27). One is using this method to find meaning, understanding and develop knowledge on a specific topic (ibid.). Normally the method is combined with other methods such as the use of interviews or observations in order to ensure high credibility of the findings (Bowen 2009: 28). By using interviews one can get access to further information on a specific topic (Halkier et al. 2012: 144). According to Bowen (2009: 29), the document analysis can, however, be used as the only method in a project, as a so-called stand-alone method. He even argues, that within the interpretive paradigm or when using the hermeneutic approach, which as mentioned earlier is the case in this thesis, documents may be the only relevant materials (ibid.).

Documents have 5 functions, such as providing background information and historical understanding (Bowen 2009: 29-30). It can generate new questions that may be important for the research (ibid.). It gives additional research data for instance when one conducts interviews, document material can be used as supplement to other data e.g. interview (ibid.). It can identify changes and developments over time (ibid.) and it can be used to verify findings from other data sources (ibid.). The method is efficient as it is not time consuming (Bowen 2009: 31). Furthermore, it is often easy to access documents, as many of them are public available (ibid.). It is also not expensive compared to other methods, because the data has often already been collected (ibid.). Additionally, document sources are also not reactive during the study compared

to e.g. observations, where the observed persons may behave differently, because they are being observed (ibid.). This also means that document data is stable and do not change (ibid.) and lastly, documents cover a long period of time (ibid.).

On the other hand, the method also provides some limitations in a study. For instance, documents can suffer from a lack of details because they are not created with the purpose to be included in a study (Bowen 2009: 31-32). It is also possible that the documents are difficult to find again (ibid.). The process in this method includes skimming, reading and interpreting the text (Bowen 2009: 32), in order to examine the context of the text. Furthermore, the process includes elements of the content and thematic analysis, for instance, when using the content analysis, the findings are divided into categories (ibid.). This will be done in this thesis, in order to establish an overview.

First, all the recommendations will be read thoroughly and interpreted in order to discover which recommendations are related to the case. As already stated, an inductive approach is applied in this thesis. Hence, when reading the recommendations, the content of the data will be divided into categories by the use of open coding. When using open coding, keywords and themes will appear (Jakobsen 2012: 177-178). In addition, when using open coding, one does not have already given categories (ibid.), i.e. categories appear when reading the data (ibid.). After the first coding of the recommendations, in some cases the categories will be further categorised. Once the categories are established, their content will be analysed and interpreted in order to understand how they are related to human rights. Hereafter, it will be analysed and discussed, with the use of the social constructivist theory, how the Consultative Forum creates human rights norms with regard to JOs Poseidon. The different categories found in the recommendations will be outlined in chapter 6.3.

4.5 Choice of theory

The theoretical framework of this thesis is the social constructivist theory. In relation to human rights, the realist, liberalist and neorealist theories have different perceptions of the importance of human rights (Dunne & Hanson 2009: 62). Looking at the realist theory, it states that the international system is an anarchy system consisting of sovereign states (ibid.), which means that there is no central authority above the states (ibid.). Moreover, states are rational actors, who always pursue their own goals in order to increase power and security (ibid.). As for human rights, the realists do not give much attention to them and claim that they are a luxury (Dunne & Hanson

2009: 63-65). They do, however, acknowledge that human rights are present in today's society, but they claim that in time of crises, human rights will be overridden in favour of national interests (Dunne & Hanson 2009: 63).

The liberalist theory on the other hand states that all individuals have natural basic rights, e.g. that all people are equal and that these rights must be respected (ibid.). It emphasise that human rights are continuations of the natural basic rights (ibid.) and states that, over time, human rights have had an increased role in the world, which is clear to notice, as states have enshrined human rights in constitutions (ibid.). The theory, however, emphasises that institutions are essential for human rights being safeguarded (Dunne & Hanson 2009: 65) because without institutions states would not uphold human rights (ibid.).

Finally, constructivists emphasise that the identity and the beliefs of a state is socially constructed and claim that human rights are important in society (Dunne & Hanson 2009: 64-65). In this regard, they also state that human rights are not natural rights but are socially constructed (ibid.). Liberalism and constructivism both emphasise the importance of human rights.

However, Thomas Risse and Stephen Ropp argue that when studying human rights, it is important to look at the identities of the actors, because they can explain why there are conflicts over human rights (Risse and Ropp 1999: 236). This also means that the interests of the actors, involved in safeguarding or violating human rights, are not naturally given (ibid.). The constructivist theory also emphasises the importance of non-state actors and norms in the international system, as they can affect the interests and identity of states and other actors (Finnemore & Sikkink 1998: 899; Jackson & Sørensen 2013: 218-219; Keck & Sikkink 1999: 89). As the focus of this thesis is on human rights and the cooperation between the Consultative Forum and Frontex (which both are non-state actors), the theoretical departure of this study will be the one of social constructivism.

5.0 Social Constructivism

In this chapter, the social constructivist theory (hereafter referred to as constructivist theory) will be presented. The first subchapter presents the historical development of the theory, followed by a subchapter in which the main assumptions of constructivism will be outlined. Thirdly, a

subchapter concerning criticism of the theory will be presented. In the final subchapter, there will be an introduction on how the theory will be applied in this thesis.

5.1 Historical development

Until the end of the Cold War, the international system has been characterised by the two main international relation approaches: liberalism and neorealism (Jackson & Sørensen 2006: 162-164). After the end of the Cold War, however, the constructivist theory appeared with an alternative approach to understand the international system (ibid.).

According to the constructivists, the end of the Cold War showed the lacks of the neorealist theory, because the theory could not explain why the war ended or why other states had not balanced against the USA in order to ensure their own security (ibid.). Furthermore, according to the constructivist theory, the weakness of the neorealist theory results from the theory's focus on materialism which means the theory focuses on material forces such as military forces (ibid.). Constructivists rejected this materialist view of the international system and instead argued, that the end of the Cold War showed that the system is not fixed but can change (Jackson & Sørensen 2006: 162) and that the system is not constituted by material forces but by ideas (ibid.). Hence, the constructivists have an ideational view of the world (Jackson & Sørensen 2006: 165).

Liberalists acknowledge the importance of ideas in the international system, however they are more interested in liberal ideas (Jackson & Sørensen 2006: 163) and focus on trade agreements and economic interdependence between the states (Howorth 2011: 201). Furthermore, both neorealism and neoliberalism insist that the interests are naturally given (Rosamond 2013: 93). The constructivist theory, on the other hand, argues that interests are socially constructed (Jackson & Sørensen 2016: 162). It is social factors such as ideas and norms of the actors that form the system (ibid.), which mean that the international system is an invention set up by humans (ibid.). Thus it is socially constructed.

One of the first to work with social constructivism was Immanuel Kant (Jackson & Sørensen 2006: 164). He stated that knowledge would be subjective and not objective because knowledge will not be created outside the human consciousness (ibid.).

Also Alexander Wendt contributed to the development of the constructivist theory. In the article *Anarchy is what states make of it*, he claimed that the international system consists of ideas and identities, which are socially constructed (Wendt 1992). He rejected the neorealist statement, which said that anarchy would lead to a self-help system, where collective security and

a central authority do not exist (Wendt 1992: 392-394). Wendt, instead, argued that the question whether or not anarchy would lead to a self-help system and conflict, cannot be decided in advance, because the structure of the anarchic system is constituted of an interactional process between the states (ibid.). Consequently, anarchy is what states make of it (Wendt 1992: 395). Wendt also points out, that it is through this interactional process, that identities and interests of the states are created (Wendt 1992: 396-398), thus states do not know in advance who they are and what they want (ibid.). It may change in different social contexts (ibid.).

5.2 Developments and main assumptions

As mentioned in the previous subchapter, the constructivist theory emphasises that reality is socially constructed by ideas and identities of the actors involved in the interactional process. Constructivists have an ideational view of the system, in which ideas matter more than material forces (Jackson & Sørensen 2013: 213) because, as they argue, the ideas define the meaning of the material forces through interpretation (ibid.). Ideas are defined as set of beliefs, principles and attitudes that are held by organisations, society, social groups, policy makers or individuals (ibid.). The ideas are shared among people and have to be shared in order to matter in the system (ibid.).

As one may have noticed, Wendt focuses on how identities and interests are created between states. Martha Finnemore, who is also a constructivist, contributed with another variant on the theory, in which she focuses on the norms in the international society (Jackson & Sørensen 2013: 218). She argues, that the norms in the international society affect and define the identity and interests of a state (Jackson & Sørensen 2013: 218-219). Norms in this context are defined as a standard of what is considered proper behaviour for actors (Finnemore & Sikkink 1998: 891), so saying what is wrong and what is right. Proper behaviour is determined by looking at the judgement of a community or a society (Finnemore & Sikkink 1998: 891-892). Not all norms will be powerful and it is different under what conditions they will be powerful (Finnemore & Sikkink 1998: 905). It depends on whether the norm is clear and specific, in other words, the formulation of the norm (Finnemore & Sikkink 1998: 906). It also depends on the content of the norm and which themes it is addressing (ibid.).

Finnemore and Sikkink examine how norms influence the international society by presenting a “norm life cycle” (Finnemore & Sikkink 1998: 895) In the cycle they explain how an idea becomes a norm (ibid.). First, the norm emerges, when actors try to convince states to adopt a

certain idea/norm (ibid.). Then states will accept the norm, i.e. the norm is seen as being created (ibid.). Lastly, the norm is being internalised in e.g. legal documents (ibid.). Norms emerge because norm entrepreneurs have ideas about proper behaviour (Finnemore & Sikkink 1998: 896-897) that means they consider something as being good for the society. Norms are created by interaction between actors, who have the same idea about a specific issue (ibid.). As a result norms are not “something” out there (ibid.). Moreover, the norm entrepreneurs are seen as essential for norm emergence, because it is the entrepreneurs, whom “*call attention to issues or even “create” issues by using language that names, interprets and dramatizes them*” (Finnemore & Sikkink 1998: 897). In addition, the norm entrepreneurs can also use existing norms to create new norms (ibid.).

Finnemore also claims that norms are transferred to states through international organisations. This means that international organisations teach states, what their interests should be and can also push states to adopt norms (Jackson & Sørensen 2013: 218-219). Consequently, states are not the only important actors in the international system. Norms can also be promoted through other organisational platforms such as NGO’s or transnational advocacy networks (Finnemore & Sikkink 1998: 899). These platforms can use their expertise and information to convince states to accept specific norms or to change other actor’s behaviour (Finnemore & Sikkink 1998: 899-900). It is, however, often difficult for the networks and international organisations to force states to agree on a norm (Finnemore & Sikkink 900), which is why they must convince them, that it should be adopted. States may then accept the norm in order to strengthen their reputation and their self-esteem (Finnemore & Sikkink 906).

Also Margaret Keck and Kathryn Sikkink stress that the international system consist of others than states, for instance non-state actors who interact with states, each other and with international organisations (Keck & Sikkink 1999: 89). Non-state actors are, for instance, networks of activists, who are united by a commitment to a certain issue such as human rights or environmental protection (ibid.). In addition, networks can change the identity and interests of states but also non-state actors (Keck & Sikkink 1999: 90).

Given the assertion that norms define and affect interest and identity of a state and given the claim that networks also can change the identity and interests of non-state actors, it is assumed that actors also can try to convince non-state actors to adopt a norm. According to these statements, it can be argued that the constructivist theory can, among other things, be used to

understand how non-states actors with the use of norms can influence states, international organisations and each other through communication.

5.3 Criticism of the theory

The social constructivist theory has received criticism from other scholars, in particular from neorealists. Neorealists are sceptical about the importance of norms (Jackson & Sørensen 2013: 225). They acknowledged their existence, but at the same time claim, that norms will often be ignored by powerful states, because powerful states have other interests (ibid.). In addition, they are sceptical about the social interaction process and the constructivist claim that the system is what states make of it, because neorealists claim that the structure of the international system coerces states to be egoists, who always will seek security (ibid.).

Hofferberth and Weber are also critical of the theory, in specific regarding its claims about norms (Hofferberth & Weber 2015: 76-77). They argue that, the theory fails to explain why actors comply with norms and how new norms are emerging (Hofferberth & Weber 2015: 76-77). Furthermore, it is criticised because, it fails to explain why some actors choose to override already established norms (Hofferberth & Weber 2015: 80).

In regard to norms creation, they are sceptical about the norm life cycle model proposed by Finnemore and Sikkink, in which it is assumed that norm entrepreneurs through interaction select norms, which they diffuse to states (Hofferberth & Weber 2015: 81-82). Hofferberth and Weber are sceptical because the model does not indicate from which social context the norm comes from and in which discourses it is enclosed (ibid.). They also criticise that the model does not take into account, that norms can be understood differently and accordingly also can be transformed (Hofferberth & Weber 2015: 82-83). This means that norms, according to the constructivist theory, can only be accepted or rejected and not redefined (Hofferberth & Weber 2015: 85). Hofferberth and Weber contradicts this, and argue that the construction of norms do not end in the last stage of the norm life cycle, i.e. in the internalisation stage, because norms can be reinterpreted and changed (Hofferberth & Weber 2015: 90). In addition, they claim that actors do not apply norms as they are, but reinterpret their meaning in a given context (Hofferberth & Weber 2015: 85).

5.4 Operationalisation

The social constructivist theory will be used in the analysis, in order to assist the findings from the first part of the analysis (which will analyse how the recommendations are related to human

rights). As mentioned in chapter 4.4, the recommendations have been divided into categories. Under each main category, the theory will be applied in order to investigate, how the Consultative Forum via its recommendations creates human rights norms. Human rights norms are, in this thesis, perceived as norms concerning or related to human rights.

As described in chapter 4.1, this thesis will depart from a constructionist position, in which it is stated that social actors create social phenomena (Bryman 2016: 29-30). In addition, as mentioned in chapter 2, human rights entered the international agenda in 1948, when the members of the UN signed the Universal Declaration of Human Rights (European Court of Human Rights & Council of Europe 2010: 5). Thus, it can be argued that social actors created human rights. Furthermore, given that norms are defined as a standard of what is considered proper behaviour (Finnemore & Sikkink 1998: 891), it can be argued that human rights are norms. Frontex is obligated to ensure human rights according to Art 51.1 in the Charter, so one can argue that it also has to ensure human rights norms.

The theory claims, among other things, that a norm emerges because norm entrepreneurs have some ideas about proper behaviour (Finnemore & Sikkink 1998: 896-897). As my thesis will be concerned with the creation of human rights norms, focus will be on the first stage of the norm life cycle: the norm emergence. However, it is perceived that the last “stage” of norm creation is when Frontex adopts the norm. Thus, in the last stage, there is consensus between the Consultative Forum and Frontex.

When applying the theory in the analysis, the main assumptions related to norms will be used to analyse and discuss the content of the recommendations. For instance, that norms are created through interactions between different actors (Finnemore & Sikkink 1998: 896-897), that actors can use existing norms to create new norms (Finnemore & Sikkink 1998: 897) and that actors use their expertise and information to convince states and non-states to adopt a norm or change behaviour (Finnemore & Sikkink 1998: 899-900; Keck & Sikkink 1999: 90). In this case, the actor (or the norm entrepreneur) is the Consultative Forum, whereas the non-state actor is Frontex.

In addition the social constructivist theory claims, that norms can be used to affect actor’s behaviours (Jackson & Sørensen 2013: 218-219; Keck & Sikkink 1999: 90). In order to analyse the consensus between the two actors, the above-mentioned claim will be discussed in the analysis.

6.0 Analysis

This chapter will present the analysis of this thesis. The first two subchapters will briefly present the Poseidon JOs and the annual reports of the Consultative Forum in general. In this regard, subchapter two will also show, how the agency has reacted to the recommendations. Thirdly, the recommendations indirectly and directly related to JOs Poseidon will first be analysed and interpreted in order to find out how they are related to human rights and then with the use of the social constructivist theory, it will be analysed and discussed how the Consultative Forum creates human rights norms in Frontex JOs Poseidon.

6.1 Joint Operations Poseidon (Greek/Turkish border and Bulgarian/Turkish border)

JOs Poseidon covers the land and sea borders between Greece and Turkey and Bulgaria and Turkey (Consultative Forum 2014: 28). Poseidon is a series of operations, which have been extended every year. The first JO Poseidon was launched in June 2006 at the Greek/Turkish borders and lasted until July the same year (Frontex 2006: 11). The operations are named after the year in which they occur, for instance JO Poseidon 2012 Land (Frontex 2013b: 58-59).

In 2013 and 2014, JO Poseidon Land was hosted by Greece and Bulgaria, whereas JO Poseidon Sea was hosted by Greece only (ibid.; Frontex 2014: 49-50). In 2014, Greece witnessed an increased migration flow at their sea borders (Frontex 2014: 54), where the number of migrants increased from 10815 in 2013 to approx. 45000 in 2014 (ibid.). This led to launching a Poseidon Rapid intervention in December 2015, replacing the regular JO Poseidon Sea (Frontex 2015: 28). Poseidon Land was not extended in 2015 (Frontex 2015). However, the agency still operated in the same area with the JO Focal Point 2015 (Frontex 2015: 48). In 2016, the Poseidon Rapid Intervention was running until May, where it was replaced by JO Poseidon Sea 2016 (Frontex 2016: 20). Also JO Focal Point Land 2016 was activated, e.g. at the Bulgarian-Turkish border (Frontex 2016: 9).

Like every other Frontex activity, the operations are based on risk analysis reports (Frontex 2017d). At the borders, Frontex staff conducts both border checks and border surveillance of the borders (ibid.). In addition, the agency also helps to ensure that there is an exchange of expertise and experience among the national border guards, for instance in relation to detecting persons hidden in vehicles at the land borders (ibid.). Expertise also covers detection of

fake documents or interviews of undocumented migrants in order to determine the nationality of the migrants (ibid.). In relation to operations at the sea border, the agency also participates in search and rescue operations, these are, however, coordinated by the Maritime Rescue Coordination Centres of the Member States (ibid.).

The Consultative Forum visited JOs Poseidon both land and sea borders in Greece and land borders in Bulgaria in 2013 (Consultative Forum 2014: 28) and wanted to undertake a follow-up visit to the JO Poseidon Land both at the Greek/Turkish border and the Bulgarian/Turkish border in 2014 (Consultative Forum 2015: 29). The Greek authorities did, however, not approve such as visit, for which reason the Consultative Forum only visited the Bulgarian/Turkish border (ibid.). As mentioned in subchapter 3.3, the host Member State of the operation has to approve every visit from the Consultative Forum. In 2016, the Consultative Forum visited three Frontex operations in Greece including JO Poseidon Sea (Consultative Forum 2017a: 34).

6.2 Consultative Forum Annual reports 2013-2016

Prior to the presentation of the annual reports, it is important to mention, that the recommendations issued by the Consultative Forum has no binding role on the management board of Frontex, because the Consultative Forum only has an advisory and consulting role (Consultative Forum 2017a: 13). As mentioned in subchapter 1.2, annual reports covering the years 2013 - 2016 will be applied in this study.

In the first report, covering the year 2013, the Consultative Forum produced 35 recommendations related to the Frontex Programme of work, operations of the agency, risk analyses and training (Consultative Forum 2014). Out of these recommendations, Frontex only turned down 5 (ibid.). One of the rejected recommendations concerned that the agency should consult civil society organisations, when creating protection measures for vulnerable persons such as children (Consultative Forum 2014: 20). The recommendation was turned down, as the agency argued that the issue does not lie within their competences (ibid.). Thus it depends on the Member States (ibid.). Besides the 5 rejected recommendations, the rest of the recommendations were either accepted or were still being discussed at the time of the publication of the report (Consultative Forum 2014). Despite the Consultative Forum visited JOs Poseidon in 2013, the first report does not include any recommendations directly related to the visit (ibid.).

In the 2014 annual report, however, recommendations directly related to the Poseidon visit are included (Consultative Forum 2015). The 2014 report consists of 23 recommendations related to the same issues as the former report. Out of these recommendations, 4 were turned down by the agency (ibid.). The rest were either accepted, partly implemented into the framework of the agency or still being discussed (ibid.). The Consultative Forum undertook a follow-up visit to Poseidon Land in Bulgaria in 2014 (Consultative Forum 2015: 29). The recommendations related to that visit were presented in the 2015 annual report (Consultative Forum 2016a).

The third report, the 2015 annual report, is different from the two former reports, because not all recommendations are explicitly outlined (ibid.). In addition, the outcomes of the recommendations are not mentioned, for instance, in relation to the JO Poseidon Land (Bulgaria) visit from 2014, the Consultative Forum states that many of the recommendations have been implemented (Consultative Forum 2016a: 20) and only outlines 4 recommendations (ibid.). Consequently, there might be recommendations related to the visit that will not be included in the analysis.

The 2016 annual report focused on, among other things, the new Frontex regulation (Consultative Forum 2017a). Prior to the adoption of the new regulation, the Consultative Forum shared its views on the regulation, where it expressed 5 concerns related to the new regulation. However, none were adopted (Consultative Forum 2017a: 17-19). Furthermore, the report does not include the outcomes of all recommendations, for which reason it will be difficult to analyse how the agency has reacted to them (Consultative Forum 2017a). 53 recommendations and opinions, however, are included (ibid.), and cover the following topics: JOs, the new regulation including the new Frontex individual complaint mechanism, cooperation between Frontex and third countries such as Turkey related to air border JOs, child protection in air border JOs, training and the FRS (ibid.).

6.3 Consultative Forum annual reports 2013-2016 - JOs Poseidon

In order to get an overview of the recommendations related to human rights in the JOs Poseidon, they have been categorised into the following categories:

Categories	Category 1: Implementing European Border Surveillance System (Eurosur) regulation in Frontex	Category 2: Border procedures	Category 3: European Border Guard Training	Category 4: Mechanisms
------------	--	-------------------------------------	---	---------------------------

Categories 2 and 4 have been further categorised into the following:

Category 2	Category 4
1. The principle of non-refoulement	1. Individual complaints mechanism
2. Data protection	2. Referral mechanisms
3. Identification, screening and debriefing activities	

Category 1: the Eurosur regulation is seen as indirectly related to JOs Poseidon, because the system is used at the external borders of the EU (European Parliament & the Council 2013: 11). Thus, including in the area where JOs Poseidon take place.

Category 2: border procedures include both the identification, screening and debriefing activities at the borders and more general border procedures such as respect for the principle of non-refoulement and protection of migrants' personal data. As a result these represent the subcategories in category 2.

Category 3: European border Guard Training is also seen related to JOs Poseidon, as the Consultative Forum expresses that its training recommendations are applicable to all staff deployed in operational areas (Consultative Forum 2015: 25).

Category 4: mechanisms cover referral mechanisms and individual complaints mechanism, which represent the subcategories in category 4. These mechanisms are relevant to all JOs coordinated by the agency (Consultative Forum 2014: 43; Consultative Forum 2015: 26).

As the Consultative Forum advises the agency in human rights matters (European Parliament and the Council 2011: 17), one can argue that the recommendations are somewhat related to human rights. In order to find out how they are related, the content of the

recommendations in these categories and their relation to human rights will be analysed in the following subchapters. Moreover, with the use of the constructivist theory, it will be analysed how the Consultative Forum creates human rights norms.

6.3.1 Implementing the Eurosur Regulation in Frontex

The Eurosur regulation is mentioned in the 2013 annual report and the 2014 annual report (Consultative Forum 2014: 18-19, Consultative Forum 2015: 19). In the recommendations, the concerns revolve around safeguarding human rights and implementing the Eurosur regulation in the Frontex programme of work (ibid.). According to the regulation, in Art. 2.4, the Member States and Frontex shall comply with fundamental rights (Consultative Forum 2014: 18). The Frontex programme of work does, however, not include how this will be done in practice (ibid.).

In this regard, the Consultative Forum has expressed two recommendations, which together comprise 10 lines. Both recommendations refer to that “*saving the lives of migrants*” is an “*explicit purpose of the regulation*” (Consultative Forum 2014: 19; Consultative Forum 2015: 19). Despite their length, it can be argued that the recommendations are specific, because they both refer to an already established article in the regulation. Both recommendations emphasise, that it should be a priority for the agency to state, in its programme of work, how it will ensure that lives of migrants are saved (Consultative Forum 2014: 19; Consultative Forum 2015: 19). Moreover, in the recommendation from the 2014 annual report, the recommendation has been extended to also include, that the agency with the implementation of the regulation, also shall “*contribute to ensuring the protection... of migrants*” (Consultative Forum 2015: 19).

The sentence “*saving the lives of migrants*” is emphasised in both recommendations. They can somewhat be alluded to the UN Convention on the law of the sea, in which it is stated that governments shall give assistance to persons, who are in distress at sea (Human Rights Watch 2009: 37), i.e. governments shall save the lives of migrants. As Frontex coordinates and organises JOs, in which Frontex staff also participate and send technical materials to, e.g. surveillance equipment and vessels (Frontex 2017a; Frontex 2017d), Frontex shall also assist persons in need at sea.

By using “*ensuring the protection of migrants*”, it can be argued that the Consultative Forum refer to that the rights of migrants shall be protected. It could be the right to asylum (Art. 18 the Charter), the prohibition of torture or inhumane treatment (Art. 4 the Charter, Art. 3 ECHR) or the prohibition of refoulement (Art. 19.2 the Charter, Art. 33.1 the 1951 Refugee

Convention). Hence, one can argue, that the recommendations are related to human rights already established. Consequently, in this case, the Consultative Forum sees human rights as a priority for the agency. As of 2015, the regulation is not mentioned in the annual reports (Consultative Forum 2016a; 2017a), thus it is assumed that the Consultative Forum is satisfied with the formulation of the Eurosur regulation's human rights' article in the Frontex programme of work.

Analysing category 1 from a constructivist point of view, the organisational platform, the Consultative Forum, tries to convince Frontex to adopt a certain norm. The norm, in this case, is that compliance with human rights in practice, as stated in the Eurosur regulation, shall be clearly formulated in the Frontex programme of work and that this formulation shall be a priority for Frontex. The Consultative Forum sees this as important for the agency, in order to ensure human rights in Frontex operations.

As the content of the recommendations showed, the Consultative Forum calls attention to the issue by using specific words such as "*saving the lives of migrants*" and "*contribute to ensuring the protection... of migrants,*" which, as mentioned earlier, can be related to already established human rights enshrined in the ECHR and the Charter. As stated in chapter 5.4, human rights are norms. Hence, it can be argued that, the Consultative Forum uses already established norms to try to convince Frontex to accept this issue. Both the use of specific language and the use of already established norms are mentioned in the constructivist theory in relation to norm emergence (Finnemore & Sikkink 1998: 897).

Furthermore, the Consultative Forum also applies the words "*explicit purpose*" of the regulation and mentions Art. 2.4 of the Eurosur regulation in the recommendations. This can be related to the theoretical claim that organisational platforms (in this case the Consultative Forum) use their expertise and information to convince other actors to change their behaviour (Finnemore & Sikkink 1998: 899-900).

As the Consultative Forum does not mention the issue in the other annual reports, it can be argued that the issue has been accepted by the agency. According to the theory, Frontex could have accepted the issue in order to enhance the reputation and self-esteem (Finnemore & Sikkink: 906). It can, however, also be argued that this particular issue is not a norm as such, because it is not related to behaviour. The Consultative Forum's idea is more related to norm promotion, because implementing the human rights article from the Eurosur regulation into Frontex's programme of work would mean that human rights are being promoted in Frontex. Nonetheless, it can be argued that also promotion of norms can be used to improve cooperation

between the agency and the Consultative Forum with regard to safeguard human rights, because more focus is given to human rights.

6.3.2 Border procedures

Border procedures are mentioned in all 4 annual reports included in this study. In every report, the main theme (border procedure) has been further categorised in order to get an overview of what the Consultative Forum emphasises in relation to border procedures. As mentioned in subchapter 6.2, the 2015 annual report is vague as it only outlines 4 recommendations, whereas one of these is related to border procedures (Consultative Forum 2016a: 20). Consequently, the 2015 annual report appears only once in the subcategories.

6.3.2.1 The principle of non-refoulement

The recommendations in this subcategory concern the principle of non-refoulement. More specific, the Consultative Forum underlines the importance that the principle is respected in Frontex activities (Consultative Forum 2015: 24) and that Frontex should look into claims about violations of the principle (Consultative Forum 2015: 26). Both recommendations are based on observations made from the Consultative Forum's visit to JOs Poseidon in 2013 (Consultative Forum 2015: 22).

The first recommendation states that the agency should have "*a particular focus*" on the non-refoulement principle (Consultative Forum 2015: 24). In order to do so, Frontex "*must*" examine how local authorities better can be informed on how to respect the principle and the agency "*must*" also include its obligation to the principle in the operational plans (ibid.). Furthermore, the Consultative Forum also points out that in preparation of deployment, human rights should be "*particularly*" highlighted, where e.g. the non-refoulement principle, the right to asylum and the rights of undocumented migrants should be included (ibid.).

The other recommendation concerning the non-refoulement principle underlines what should be done, if migrants claim that there have been violations of the principle (Consultative Forum 2015: 26). In such cases, the Consultative Forum states that the agency should make a profound investigation into the claims, register the claims and cooperate with the Member States when investigating the claims (ibid.). In addition, it is recommended that such cases should be public available (ibid.).

As mentioned in respectively the literature review and the chapter concerning criticism of Frontex, concerns have been raised regarding the compliance of the principle in

Frontex JOs at sea borders (Kumin 2007: 25-27; Carrera et al. 2013: 344). It can, therefore, be argued that the above-mentioned recommendation is created in order to uphold and create more focus on the principle of non-refoulement.

As mentioned in both chapter 2.2 and chapter 6.3.1, the principle of non-refoulement is mentioned in both the Charter and the 1951 Refugee Convention and the right to asylum is outlined in the Charter with reference to the 1951 Refugee Convention. Thus, these recommendations are directly related to human rights. In the other reports, the non-refoulement principle is not discussed in relation to JOs Poseidon (Consultative Forum 2016a, Consultative Forum 2017a). Consequently, one can argue that the non-refoulement principle in JOs Poseidon, according to the Consultative Forum, is being respected. On the other hand, it cannot be alleged that the principle is being respected in all Frontex operations.

6.3.2.2 Data protection

In the 2013 and 2014 annual reports, the Consultative Forum also emphasises the protection of migrants' data, for instance, in the 2013 annual report, it is stated that Frontex should ensure that personal data of migrants is being protected (Consultative Forum 2014: 35). Data protection is seen as related to JOs Poseidon, because the procedure upon arrival to any external border of the EU, includes screening and identification of the migrants (Consultative Forum 2014: 32). In addition, the migrant can, voluntary, choose to be debriefed, in order for the Member State and Frontex to gain information, such as, the reasons for coming to the EU and which route the migrant has taken (ibid.). During these procedures, the migrant might outline personal information, which should be protected.

In the recommendations concerning data protection, the Consultative Forum uses the terms "*should ensure*" and "*data protection*", which are the keywords in the recommendations (Consultative Forum 2014: 35; Consultative Forum 2015: 40). In the 2014 annual report, data protection is also mentioned in relation to sharing of data with non-EU countries (Consultative Forum 2015: 20), whom Frontex cooperates with in managing the external borders of the EU (European Parliament & the Council 2016: 44-45). The Consultative Forum raised concern in this regard, because Frontex did not elaborate, how it will ensure that data is being protected outside EU territory (Consultative Forum 2015: 20).

Data protection is directly mentioned in the Charter under Art. 8. where it is stated that "*everyone has the right to the protection of personal data concerning him or her.*"

Furthermore, one can argue that it is also included in Art. 8 of the ECHR: right to respect for private and family life, where data protection then will be included in the term “*private life*.” This means that data protection should also be binding for members of the CoE, such as Moldova (Council of Europe 2018b), who participated in JO Poseidon Land 2014 (Frontex 2014: 49).

As in the chapter above, these recommendations are directly related to human rights already established. Furthermore, as with the categories mentioned earlier, protection of data is not expressed in the 2015 and 2016 annual reports (Consultative Forum 2016a; Consultative Forum 2017a). Consequently, it is assumed that the Consultative Forum is satisfied with data protecting procedures in Frontex JOs Poseidon.

6.3.2.3 Identification, screening and debriefing activities

The recommendations in this subchapter are related to the general border procedures at the external borders of the EU. Some of them are based on observations made by the Consultative Forums during the visit to JOs Poseidon in 2013. These are expressed in the 2014 annual report (Consultative Forum 2015). However, identification, screening and debriefing activities are also outlined in the other annual reports, for instance, in the 2013 annual report, it is mentioned with regards to the registration process of migrants (Consultative Forum 2014: 32-33).

As mentioned in the chapter above, upon arrival to any external border of the EU, migrants are being screened, in order to try to identify the nationality of the migrants (ibid.). Besides screening, there is also debriefing, which is voluntary for the migrants (ibid.). Debriefings are interviews conducted by national border guards, where experts deployed by the agency may join the interview. The interview can, however, also be done without experts (ibid.). It is in relation to the debriefing procedure, that the Consultative Forum has given its recommendations. The Consultative Forum states that the agency “*should insist*” that the migrants are informed, in a language that they understand, about the purpose of the interview and about the possibility to seek “*international protection*” (Consultative Forum 2014: 34). In addition, Frontex “*should ensure*” that staff conducting interviews is able to identify any cases where “*fundamental rights violations may have occurred during travel or upon arrival and to handle vulnerable and traumatised persons accordingly*” (ibid.). These recommendations are also expressed in the 2014 annual report (Consultative Forum 2015: 24-25).

Compared with the other recommendations within category 2: border procedures, these recommendations do not express a direct link to any human rights articles enshrined in the

EU. Nevertheless, with the use of specific words such as “*international protection*” and “*fundamental rights violations*,” they can be connected to human rights articles. “*International protection*” can somewhat be compared to the right to asylum, enshrined in Art. 18 in the Charter. “*Fundamental rights violations during travel or upon arrival*” can be related to several human rights articles enshrined in both the Charter and the ECHR such as the prohibition of trafficking (Art. 5.3 Charter), the prohibition of slavery and forced labour (Art. 4.1 and 4.2 ECHR and Art. 5.1 and 5.2 Charter), the prohibition of discrimination (Art. 14 ECHR and Art. 21.1 Charter) and the prohibition of torture (Art. 3 ECHR and Art. 4 Charter).

The recommendations related to the Consultative Forum’s visit to JOs Poseidon in 2013 about border procedures highlight the importance of identifying vulnerable persons (unaccompanied minors, victims of human trafficking, persons with disabilities and pregnant women) and persons, who are in need of protection (Consultative Forum 2015: 23; 27). Furthermore, it is emphasised that during the border procedure, migrants should be clearly informed on how and where to submit an asylum application, i.e. the right to seek asylum (Consultative Forum 2015: 23). In order to implement these recommendations, the Consultative Forum and the Fundamental Rights Officer has helped the agency in amending the debriefing guidelines of the agency (Consultative Forum 2016a: 20). In the latest report, the 2016 annual report, the importance of identifying vulnerable persons is, however, again stressed (Consultative Forum 2017a: 35-36).

The protection of vulnerable persons is not mentioned in the human rights documents applied in this thesis. Nonetheless, it is stated as one of the core values and principles of Frontex in its Code of Conduct (Frontex 2017f: 5), which is binding for all staff participating in Frontex activities (Frontex 2011a). In addition, it is also stated in Art. 4 in the Code of Conduct, which is about fundamental rights (Frontex 2017f: 11). For that reason, it can be argued that the recommendations are related to human rights.

6.3.2.4 Creation of norms – border procedures

As the first subcategory in chapter 6.3.2 showed, the Consultative Forum emphasises that the non-refoulement principle is being respected in Frontex activities. The Consultative Forum argues, that if the local authorities were better informed on how to respect the principle and claims about possible violations of the principle were investigated, the principle will be respected. According to constructivist theory, norm entrepreneurs have ideas about proper behaviour (Finnemore &

Sikkink 1998: 896-897). Furthermore, norms are created through interaction between actors (ibid.). The norm in the first subcategory is, that Frontex, in its activities, should safeguard the principle of non-refoulement by informing about the principle and by investigating possible violations of the principle.

The Consultative Forum calls attention to the norm by using the terms “*particular focus*” and “*non-refoulement principle*” directly in the recommendations. As the content of the recommendations showed, the principle of non-refoulement is enshrined in both EU law (the Charter under Art. 19.2) and international law (1951 Refugee Convention Art 33.1). According to the constructivists, norm entrepreneurs use existing norms, when creating new norms (Finnemore & Sikkink 1998: 897) and as outlined in chapter 5.4, human rights are seen as norms. Consequently, it can be argued that the Consultative Forum has used an existing human rights norm to create a new norm. Moreover, this norm is seen as a human rights norm, because it is directly related to human rights. Thus, it can be argued that Frontex is obliged to accept this norm. This claim can be seen in one of the recommendation, where the Consultative Forum uses the verb “*must,*” when outlining the responsibilities of the agency in regard to the non-refoulement principle (Consultative Forum 2015: 24).

In addition, the recommendations were made based on observation from a visit to JOs Poseidon in 2013 (Consultative Forum 2015: 22). As the theory argued, organisational platforms can use their expertise and information to persuade other actors to change their behaviour (Finnemore & Sikkink 1998: 899-900), for which reason it can be argued that the Consultative Forum, as an organisational platform, uses their knowledge from the visit in order to persuade Frontex to agree on the norm.

As the non-refoulement principle is not mentioned regarding JOs Poseidon in the other annual reports (Consultative Forum 2016a; Consultative Forum 2017a), it is believed that the norm has been adopted by Frontex. This means that the cooperation between the agency and the Consultative Forum in safeguarding human rights, with regard to the non-refoulement principle at JOs Poseidon, has been improved. Consequently, one can argue the norm has affected the behaviour of the agency.

In the second subcategory regarding data protection, which is mentioned in the 2013 and 2014 annual reports, the Consultative Forum has created the following norm: migrants’ data should be protected both in the EU but also outside the EU. As mentioned in the second

subcategory, protection of data is a human right enshrined in the Charter (Art. 8), and it can be related to Art. 8 in the ECHR.

Like in the subcategory regarding the non-refoulement, the Consultative Forum calls attention to the norm by using terms, e.g. “*should ensure*” and “*data protection*” directly in the recommendations, i.e. already established human rights norms are used, when creating new ones. As it is directly related to human rights, it can be argued that the norm is a human rights norm. Consequently, the agency should adopt the norm.

Also in this case, data protection is not mentioned in any of the other annual reports (Consultative Forum 2016a; Consultative Forum 2017a), which gives the same conclusion as with the non-refoulement case mentioned earlier.

Compared to the two subchapters, the third subchapter: identification, screening and debriefing activities is not directly related to human rights already established. However, as explained in chapter 6.3.2.3, the specific words used in the recommendations can be related to human rights. Furthermore, the norms are visible in the two other categories, whereas this category consist of several norms about how to behave accurately in relation to border procedure, according to the Consultative Forum, e.g. that migrants should be informed about their rights (Consultative Forum 2014: 34), that migrants should know what the purpose of debriefing is (ibid.), and that staff conducting interviews should be able to identify cases where there might have been human rights breaches and able to identify vulnerable persons (ibid.).

Analysing these from a constructivist point of view, these norms are emerged, because the Consultative Forum has called attention to the issues by using language that names and interprets the issues (Finnemore & Sikkink 1998: 897). In this case, the Consultative Forum has used language that interprets the issues, in order for the issues to be related to human rights. This is done by using specific words and sentences in the recommendations, such as “*international protection*”, “*fundamental rights violations during travel or upon arrival*” and “*to handle vulnerable and traumatised persons accordingly*” (Consultative Forum 2014: 34). As already stated, in chapter 6.3.2.3, the terms can be connected to established human rights norms found in both the Charter, the 1951 Refugee Convention and the ECHR and in the Code of Conduct of Frontex. Consequently, these norms are related to human rights.

As with the non-refoulement recommendations, recommendations from the 2014 annual report presented in this subcategory are based on observations from the JOs Poseidon visit in 2013. Hence, again it can be argued that the Consultative Forum uses their expertise and

information to convince Frontex to adopt the norms, which is one of the claims of the constructivist theory (Finnemore & Sikkink 1998: 899-900).

In the 2015 report, it was stated that the debriefing guidelines of Frontex were amended with the help from the Consultative Forum and the Fundamental Rights Officer (Consultative Forum 2016a: 20), for which reason it can be argued that the norms were accepted by the agency.

On the other hand, it can be argued that not all norms were not accepted, because the Consultative Forum stress the importance of identifying vulnerable persons in the 2016 report (Consultative Forum 2017a: 35-36). The theory cannot explain, why actors chose to ignore already established norms, which also is one of the criticisms of the theory (Hofferberth & Weber 2015: 80). It can, however, be explained by Hofferberth and Weber, as they state that norms can be reinterpreted and changed (Hofferberth & Weber 2015: 90).

6.3.3 European Border Guard Training

As mentioned earlier, border guard training recommendations are associated with JOs Poseidon, because they concern training standards for Frontex personal deployed in operational areas (Consultative Forum 2015: 25).

For instance, in the recommendations from the 2013 and 2014 report, the Consultative Forum stresses that a “*priority*” for the agency should be that the border guards, deployed in operational areas, receive more efficient “*training on human rights*” and that border guards prior to deployment should receive “*training on human rights*” (Consultative Forum 2014: 39; Consultative Forum 2015: 23-25), in order for the border guards to correctly understand what human rights are and how they are ensured (ibid.).

In addition, regarding the visit to JOs Poseidon in 2016, it is also expressed that joint training for both local officers and Frontex staff could be considered (Consultative Forum 2017a: 36), which would mean that all officers participating in the operation obtain the same comprehension of human rights. Consequently, these recommendations are associated with human rights, because they stress the importance of human rights and see the training as a priority.

Using the constructivist theory’s definition of a norm (Finnemore & Sikkink 1998: 891), proper behaviour, in this case, is that Frontex shall priorities that their border guards receive more efficient training on human rights. Compared to the other recommendations, the

recommendations concerning border guard training are not specific on how the norm is created, e.g. in one of them it is stated

“Frontex should consider prioritising fundamental rights training for border personnel deployed in operational areas” (Consultative Forum 2015: 25).

It can, therefore, be argued that the Consultative Forum emphasises this norm as a priority in order to ensure human rights. Most of the recommendations are created based on observations made during visits to JOs Poseidon in 2013 and in JOs Poseidon in 2016 (Consultative Forum 2015: 23-25; Consultative Forum 2017a: 36). For that reason, it can be argued that the Consultative Forum uses their knowledge from the visits to convince Frontex to adopt the norm, which, as previously mentioned, is a claim from the constructivist theory (Finnemore & Sikkink 1998: 899-900). It can, however, also be argued that it is not a human rights norm as such, but merely a norm created in order to ensure human rights in the operations, including JOs Poseidon.

6.3.4 Mechanisms

The recommendations about mechanisms include an individual complaints mechanism, which was included in the new Frontex regulation from 2016 (European Parliament and the Council 2016: 55), and which can be used by any individual who feels that their human rights have been violated during any Frontex operation (ibid.). The recommendations in this chapter also concern referral mechanisms, i.e. mechanisms aspired to identify, protect and assist individuals, by referring them to the relevant national authority, in order to ensure that the human rights of the individuals are being protected (Consultative Forum 2015: 28).

6.3.4.1 Individual complaints mechanism

Prior to the inclusion of the individual complaints mechanism, in 2013, the European Ombudsman expressed that an *“effective mechanism to monitor the respect for fundamental rights in all the activities on Frontex”* should be created (Consultative Forum 2014: 43). In addition to this, the Consultative Forum stated that an individual complaints mechanism should be established (ibid.).

As mentioned above, it took some time before the mechanism was created. However, the Consultative Forum has in every report emphasised the establishment of the mechanism and seen it as being *“an important tool”* for safeguarding human rights (Consultative Forum 2015: 38; Consultative Forum 2016a: 28). In addition, it is seen as being important,

because it would “*provide access to justice and an effective remedy*” (ibid.), which the agency is obliged to according to their responsibilities (ibid.).

It is one of the responsibilities of Frontex, because it is stated in the Charter under Art. 47: Right to an effective remedy and to a fair trial, where it is stated, “*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy.*” This article is also enshrined in the ECHR under Art. 13, which means that these recommendations are directly related to human rights enshrined in both the Charter and the ECHR. In response to the recommendations, the agency stated that it is in the responsibility of national or EU courts, i.e. they should handle complaints from individuals (Consultative Forum 2014: 43).

With the 2016 regulation, the mechanism was established, however, the Consultative Forum still had some concerns, for instance, that it is not clear how individuals can receive access to an effective remedy (Consultative Forum 2017a: 19; 22), which is crucial in order for Frontex to ensure that it complies with their obligations (ibid.). By not having a sufficient complaints mechanism, the agency cannot ensure compliance with Art. 41 and Art. 47 in the Charter (ibid). Art. 41 in the Charter highlights the right to good administration, such as “*the right to have ones affairs handled impartially, fairly and within reasonable time*” (Art. 41.1 Charter). As these recommendations are published in 2017, it is still to be seen whether the Consultative Forum is satisfied with the complaints mechanism and whether Frontex has implemented the recommendations.

6.3.4.2 Referral mechanisms

The recommendations about the referral mechanisms emphasise the importance of efficient referral of individuals, from the deployed Frontex border guards to the national authorities. According to the Consultative Forum, such referral mechanisms are “*an essential tool to guarantee fundamental rights protection and provide appropriate assistance to persons with specific needs*” (Consultative Forum 2015: 28).

During their visit to JOs Poseidon in 2013, the Consultative Forum stressed that the operational plans of the agency should include information on how the referral mechanism can be activated in the host Member State, i.e. how and where Frontex border guards can refer individuals to (Consultative Forum 2015: 26). It can be argued, that by establishing efficient referral mechanisms, the deployed Frontex staff would know where to refer possible asylum

applicants to, which would mean, that the right to asylum could be ensured in practice. Thus, it can be argued, that the referral mechanisms are related to Art. 18 in the Charter.

In addition, it is presumed, that efficient referral mechanisms will provide prompt referral of persons with specific needs, i.e. vulnerable persons, who needs protection. As already stated, protection of vulnerable persons is one of the core values and principles of Frontex, according to its Code of Conduct (Frontex 2017f: 5).

In 2015, it was noticed that the agency changed its handbook regarding operational plans, in which better information about referral mechanisms was introduced (Consultative Forum 2016a: 20). In the latest report, however, the Consultative Forum states that the referral mechanisms could be strengthened by adding information on the referral mechanisms, and by cooperating with international organisations and NGO's (Consultative Forum 2017a: 35).

6.3.4.3 Creation of norms – mechanisms

As the first subcategory in chapter 6.3.4 showed, the Consultative Forum stresses that an individual complaints mechanism should be established, because it is seen as an important tool for safeguarding human rights (Consultative Forum 2015: 38; Consultative Forum 2016a: 28). When establishing the individual complaints mechanisms, Frontex shall ensure that individuals, who feel that their human rights have been violated, can have access to justice and an effective remedy (ibid.). For the Consultative Forum, this is considered as being proper behaviour. Thus, it is the norm in this subchapter.

By referring to recommendations presented by the European Ombudsman, the Consultative Forum place emphasis to the norm suggesting that the individual complaints mechanism should be established (Consultative Forum 2014: 43). This means that the Consultative Forum, as an organisational platform, uses their expertise and information to convince Frontex to adopt the norm. As mentioned before, the theory argues, that organisational platforms can use their expertise and information to convince actors to agree on specific norms (Finnemore & Sikkink 1998: 899-900).

Furthermore, as with the non-refoulement and data protection norms mentioned earlier, the Consultative Forum refers to already established human rights norms by using the sentence "*provide access to justice and an effective remedy*" directly in the recommendations (Consultative Forum 2015: 38; Consultative Forum 2016a: 28). As the content of the recommendations, in this subcategory, showed, this sentence is in accordance with both the

Charter and the ECHR. As explained previously, the constructivist theory claims that actors use existing norms in order to create new ones (Finnemore & Sikkink 1998: 897). As the norm is directly related to human rights, it can be argued that it is a human rights norm.

As mentioned in the introduction of chapter 6.3.4, the individual complaints mechanism was introduced with the new Frontex regulation. Thus, on the one hand, it can be argued that the norm by the Consultative Forum has been approved by the agency. On the other hand, it can be argued, that it is not Frontex who has created the complaints mechanism, but the EP and the Council, as they made the regulation.

As regards to the referral mechanisms, the Consultative Forum underlines that Frontex should ensure that efficient referral mechanisms are established (Consultative Forum 2015: 26). By doing that, human rights would be ensured in practice, as the Frontex staff would know how and where individuals could be referred to (ibid.). The Consultative Forum sees this as proper behaviour. Thus, it is the norm in this subchapter.

As with the identification, screening and debriefing category, the Consultative Forum calls attention to the issue by using language that names and interprets the issue (Finnemore & Sikkink 1998: 897), in order to relate the issue to human rights. In this case, this is done, e.g. by referring to that referral mechanisms are “*an essential tool to guarantee fundamental rights protection.*” As mentioned earlier, this statement can be related to the right to asylum enshrined in the Charter. However, it can also be related to other kinds of protection, for instance, the articles mentioned in chapter 6.3.2.3, e.g. prohibition of discrimination and prohibition of torture and inhumane treatment. Consequently, it can be argued, that this norm relate to human rights and is created by using interpreted elements of a norm already established.

In 2015, the norm was accepted by the agency, which is clear as it was introduced in the handbook to the operational plan (Consultative Forum 2016a: 20). Thus, it can be argued that cooperation in this field was improved. However, in 2016 the Consultative Forum addresses the issue again (Consultative Forum 2016a: 20; Consultative Forum 2017a: 35), for which reason it can be argued that the agency has chosen to ignore the norm. As mentioned in chapter 6.3.2.3, according to Hofferberth and Weber, the constructivist theory cannot explain this (Hofferberth & Weber 2015: 80).

7.0 Conclusion

The European Border and Coast Guard Agency, Frontex, has been criticised for not upholding human rights during its operations at the external borders of the EU. In response to the criticism, a Consultative Forum on Fundamental Right was created with the purpose to advise Frontex on all questions related to human rights.

Based on the following research question: How does the Frontex Consultative Forum on Fundamental Rights create human rights norms with regard to the Frontex Joint Operations Poseidon? This thesis has sought to find out how Frontex and the Consultative Forum cooperate in safeguarding human rights in the European Union. Thus, the thesis also sought to find out what role the Consultative Forum has in the Frontex system. This has been done by, first, analysing annual reports published by the Consultative Forum from 2014-2017, in order to find out how the recommendations, presented in the annual reports, are related to human rights.

The analysis revealed that the Consultative Forum has focused on the following issues: implementing the Eurosur Regulation in the Frontex programme of work, Border Procedures, European Border Guard Training and Mechanisms.

Furthermore, it revealed that 1) implementing the Eurosur regulation in Frontex is related to human rights, as the recommendations stress that Frontex, in its programme of work, should include how protection of rights of migrants will be done in practice. 2) Border procedures are related to human rights, because it includes, e.g. the principle of non-refoulement and protection of data, which both are two rights enshrined in EU law. 3) European Border Guard Training is somewhat related to human rights, because the recommendations emphasise that efficient training will ensure human rights in Frontex operations. 4) Mechanisms are also related to human rights, due to the fact that effective mechanisms would ensure the human rights of individuals, e.g. an effective individual complaints mechanism would ensure the right to an effective remedy, which is enshrined in EU and international law.

Secondly, with the use of the social constructivist theory, the issues in the annual reports were analysed and discussed in order to explore how human rights norms are created via the recommendations of the Consultative Forum. In this context, norms are defined as a standard of what is considered appropriate behaviour (Finnemore & Sikkink 1998: 891). Consequently, human rights are norms. This also means that Frontex should adopt the norms, as it is obliged to ensure human right pursuant to EU law.

In the annual reports, the following was revealed: 1) in the first issue, it is discussed that it is more related to norm promotion and not creation, e.g. when implementing human rights articles in the Eurosur regulation. 2) The Consultative Forum uses existing human rights norms to create new norms, for instance using human rights articles directly in the recommendations. 3) It visited different parts of JOs Poseidon both in 2013, 2014 and 2016, where recommendations were made based on observations. Hence, the Consultative Forum uses their knowledge to create norms. 4) The Consultative Forum calls attention to an issue by using language that names and interprets the issue, in order to relate the issue to human right. 5) The European Border Guard Training norm was difficult to analyse, in terms of finding out how the norm has been created. Some of the recommendations in this category were vague. This is one of the disadvantages of the document and content analysis, as documents can suffer from a lack of details because they are not created with the purpose to be included in a study (Bowen 2009: 31-32). Additionally, it can also be argued that it is not a human rights norm, but a norm created in order to ensure human rights.

In addition, it was discussed, how norms can change actors' behaviour. In this regard, the recommendations showed, that in most cases Frontex adopted the norms, as they are obliged to, because they are human rights norms. In two cases, however, norms have not been adopted by the agency. However, the same issue (norm) came back on the agenda of the Consultative Forum the following year. The theory fails to explain, why Frontex in some cases has chosen to ignore already established norms. In further studies, one can investigate why Frontex do not comply with every norm, despite the fact that the norms concern human rights, that Frontex are obliged to respect, according to EU law.

It was also argued, that when Frontex adopts norms, as in most cases, then the cooperation between the Consultative Forum and Frontex is improved. Hence, it can be concluded that the presence of the Consultative Forum in Frontex and the cooperation between the actors means that more focus on safeguarding human rights is established.

Recapitulating, the Consultative Forum has created human rights norms with regard to JOs Poseidon by using already existing human rights norms enshrined in treaties or conventions, such as the non-refoulement principle and protection of data, by using their expertise and knowledge from e.g. the observations made during visits to JOs Poseidon and by using language to interpret issues so that the recommendations are related to human rights.

8.0 References

Aas, K. F. and Gundhus, H. O. I. (2015) Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life. *British Journal of Criminology* 55, 1-18.

Amnesty International (2014) *The Human Cost of Fortress Europe, human rights violations against migrants and refugee at Europe's borders*. [Online] Available at: <https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa/bericht-the-human-cost-of-fortress-Europe>

Andersen, L. B., Binderkrantz, A. S. and Hansen, K. M. (2012) Forskningsdesign. In: L. B. Andersen, K. M. Hansen and R. Klemmensen, (eds.) *Metoder i statskundskab*, 2nd edn. Copenhagen: Hans Reitzels forlag, 66-96.
Bowen, G. A. (2009) Document Analysis as a Qualitative Research Method. *Qualitative Research Journal* 9(2), 27-40.

Bryman, A. (2016) *Social Research Methods*, 5th edn. Oxford: Oxford University Press.

Carrera, S., den Hertog, L. and Parkin, J. (2013) The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy?. *European Journal of Migration and Law* 15, 337-358.

Chalmers, D., Davies, G. and Monti, G. (2010) *European Union Law*, 2nd edn. Cambridge: Cambridge University Press.

Consultative Forum (2014) *Annual Report 2013*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2013.pdf
[Retrieved 10.04.2018]

Consultative Forum (2015) *Annual Report 2014*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2014.pdf
[Retrieved 05.05.2018]

Consultative Forum (2016a) *Annual Report 2015*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2015.pdf
[Retrieved 25.05.2018]

Consultative Forum (2016b) *Program of Work for 2017*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_work_programme_2017.pdf
[Retrieved 10.04.2018]

Consultative Forum (2017a) *Annual Report 2016*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2016.pdf

[Retrieved 10.04.2018]

Consultative Forum (2017b) *Program of Work for 2018*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Consultative_Forum_Program_of_Work_2018.pdf

[Retrieved 10.04.2018]

Council of Europe (2018a) *The European Convention on Human Rights: The Convention in 1950*.

Available at: <https://www.coe.int/en/web/human-rights-convention/the-convention-in-1950>

[Retrieved 01.03.2018]

Council of Europe (2018b) *About the Council of Europe – Member States*.

Available at: <https://www.coe.int/en/web/yerevan/the-coe/about-coe/map-member-states>

[Retrieved 12.05.2018]

Council 2004. Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *Official Journal L 349*, [online] 25.11.2004, 1-11. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R2007&from=EN>

Dunne, T. and Hanson, M. (2009) Human Rights in International Relations. In: M. Goodhart (ed) *Human Rights: Politics and Practice*. Oxford: Oxford University Press, 61-76.

Ekelund, H. (2014) The Establishment of FRONTEX: A New Institutional Approach. *Journal of European Integration* 36(2), 99-116.

Elklit, J. and Jensen, H. (2012) Kvalitative datakilder. In: L. B Andersen, K. M. Hansen and R. Klemmensen (eds.) *Metoder i statskundskab*, 2nd edn. Copenhagen: Hans Reitzels forlag, 117-143

European Commission (2015) *Proposal for a Regulation of the European Parliament and the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC*. Strasbourg: European Commission. Available at:

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf

[Retrieved 06.04.2018]

European Court of Human Rights and the Council (2010) *European Convention on Human Rights*. Strasbourg, 1-55. [online] Available at:
https://www.echr.coe.int/Documents/Convention_ENG.pdf
[Retrieved 10.04.2018]

European Parliament and the Council (2007). Regulation (EC) 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) 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers. *Official Journal L 199*, [online] 31.07.2007, 30-39. Available at:
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0863&from=EN>
[Retrieved 22.03.2018]

European Parliament and the Council (2011). Regulation (EU) 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *Official Journal L 304*, [online] 22.11.2011, 1-17. Available at:
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1168&from=EN>
[Retrieved 22.03.2018]

European Parliament and the Council (2013). Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur). *Official Journal L 95*, [online] 06.11.2013, 1-26. Available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1052&from=EN>
[Retrieved 20.05.2018]

European Parliament and the Council (2016). Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC. *Official Journal L 251*, [online] 16.09.2016, 1-76. Available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN>
[Retrieved 05.04.2018]

European Parliament, the Council and the Commission (2012). Charter of Fundamental Rights of the European Union. *Official Journal C 326*, [online] 26.10.2012, 391-407. Available at:
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>
[Retrieved 20.02.2018]

European Union (2012). Consolidated version of the Treaty on European Union. *Official Journal C 326*, [online] 26.10.2012, p. 13 – 45. Available at:
https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF
[Retrieved 20.02.2018]

European Union Agency for Fundamental Rights (2018) *Frequently asked questions*.
Available at: <http://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions>
[Retrieved 24.04.2018]

Finnemore, M. and Sikkink, K. (1998) International Norm Dynamics and Political Change.
International Organization 52(4), 887-917.

Forsythe, D. P. (2012) *Human Rights in International Relations*, 3rd edn. Cambridge: Cambridge University Press.

Frontex (2006) *Frontex Annual Report 2006*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Annual_report/2006/annual_report_20061.pdf
[Retrieved 05.05.2018]

Frontex (2008) *General Report 2008*.

Available at:

<https://frontex.europa.eu/about-frontex/key-documents/?category=general-report&year=2008&lang=en>
[Retrieved 08.04.2018]

Frontex (2011a) *General Report 2011*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Annual_report/2011/General_Report_2011.pdf
[Retrieved 22.03.2018]

Frontex (2011b) *News Release: Frontex's Reaction to HRW report*.

Available at:

<https://frontex.europa.eu/media-centre/news-release/frontex-s-reaction-to-hrw-report-uw7Qqq>
[Retrieved 22.03.2018]

Frontex (2013a) *Working Methods of the Frontex Consultative Forum and Modalities of the Transmission of Information to the Frontex Consultative Forum*.

Available at:

https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Working_Methods.pdf
[Retrieved 22.03.18]

Frontex (2013b) *General Report 2013*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Annual_report/2013/General_Report_EN.pdf
[Retrieved 05.05.2018]

Frontex (2014) *General Report 2014*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Annual_report/2014/General_Report_2014.pdf
[Retrieved: 05.05.2018]

Frontex (2015) *General Report 2015*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Annual_report/2015/General_Report_2015.pdf
[Retrieved: 05.05.2018]

Frontex (2016) *Annual Activity Report 2016*.

Available at:

<https://frontex.europa.eu/about-frontex/key-documents/?category=general-report&year=2016&lang=en>
[Retrieved: 05.05.2018]

Frontex (2017a) *Mission & Tasks*.

Available at: <https://frontex.europa.eu/about-frontex/mission-tasks/>
[Retrieved 01.03.2018]

Frontex (2017b) *Consultative Forum: General*.

Available at: <https://frontex.europa.eu/fundamental-rights/consultative-forum/general/>
[Retrieved 22.03.2018]

Frontex (2017c) *Legal Basis*.

Available at: <https://frontex.europa.eu/about-frontex/legal-basis/>
[Retrieved 22.03.2018]

Frontex (2017d) *Types of operations*.

Available at: <https://frontex.europa.eu/operations/types-of-operations/>
[Retrieved 23.03.2018]

Frontex (2017e) *News Release: Save the Children selected for Frontex Consultative Forum*.

Available at:

<https://frontex.europa.eu/media-centre/news-release/save-the-children-selected-for-frontex-consultative-forum-IEpkPY>
[Retrieved 10.04.2018]

Frontex (2017f) *Code of Conduct*.

Available at:

https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf
[Retrieved 25.05.2018]

Halkier, B., Harrits, G. S. and Strømbæk Pedersen, C. (2012) Indsamling af interviewdata. In: L. B. Andersen, K. M. Hansen and R. Klemmensen, (eds.) *Metoder i statskundskab*, 2nd edn. Copenhagen: Hans Reitzels forlag, 144-172.

Hofferberth, M. and Weber, C. (2015) Lost in Translation: a critique of constructivist norm research. *Journal of International Relations and Developments* 18, 75-103.

igit

Holm, A. B. (2014) *Videnskab i virkeligheden – En grundbog i videnskabsteori*. Frederiksberg: Samfundslitteratur.

Howorth, J. (2011) The EU's Security and Defence Policy: Towards a Strategic Approach. In: Hill, C. and Smith, M. (eds) *International Relations and the European Union*, 2nd edn. Oxford: Oxford University Press, 197-225.

Human Rights Watch (2009) *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*. [online] Available at: https://www.hrw.org/sites/default/files/reports/italy0909web_0.pdf [Retrieved 22.03.2018]

Human Rights Watch (2011) *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*. [online] Available at: https://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf [Retrieved 22.03.2018]

Jackson, R. and Sørensen, G. (eds) (2006) *International Relations – Theories and Approaches*, 3rd edn. Oxford: Oxford University Press.

Jackson, R. and Sørensen, G. (eds) (2013) *International Relations – Theories and Approaches*, 5th edn. Oxford: Oxford University Press.

Jakobsen, M. L. F. (2012) Kvalitativ analyse: kodning. In: L. B. Andersen, K. M. Hansen and R. Klemmensen, (eds.) *Metoder i statskundskab*, 2nd edn. Copenhagen: Hans Reitzels forlag, 173-187.

Keck, M. E. and Sikkink, K. (1999) Transnational advocacy networks in international and regional politics. *International Social Science Journal* 51(159), 89-101.

Klepp, S. (2010) A Contested Asylum System: The European Union between Refugee Protection and Border Control in the Mediterranean Sea. *European Journal of Migration and Law* 12, 1-21.

Kumin, J. (2007) *Control vs. Protection – refugees, migrants & the EU in UNHCR: Refugee or Migrant? Why it matters*. [online] Available at: <http://www.unhcr.org/afr/475fb0302.pdf> [Retrieved 10.04.2018]

Lavenex, S. (2010) Justice and Home Affairs: Communitarization With Hesitation. In: Pollack, M.A., Wallace, H. and Young, R. (eds.) *Policy-Making in the European Union*, 6th edn. Oxford: Oxford University Press, 457-480.

Leonard, S. (2009) The Creation of FRONTEX and the Politics of Institutionalisation in the EU External Borders Policy. *Journal of Contemporary European Research* 5(3), 371-388.

Majcher, I. (2015) Human Rights Violations During EU Border Surveillance and Return Operations: Frontex's Shared Responsibility or Complicity?. *Silesian Journal of Legal Studies* 7, 45-78.

Parliamentary Assembly, Council of Europe (2013) Frontex: Human Rights Responsibilities. *International Journal of Refugee Law* 25(2), 407-434.

Risse, T. and S. C. Ropp. (1999) International human rights norms and domestic change: conclusions. In: T. Risse, S. C. Ropp and K. Sikkink (eds) *The Power of Human Rights – International Norms and Domestic Change*, Cambridge: Cambridge University Press, 234-278.

Roos, C. and Zaun, N. (2014) Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration. *European Journal of Migration and Law* 16, 45-68.

Rosamond, B. (2013) Theorizing the European Union after Integration Theory. In: Cini, M. and Perez-Solorzano Borragan, N. (eds) *European Union Politics*, 4th edn. Oxford: Oxford University Press, 85-102.

Slominski, P. (2013) The Power of Legal Norms in the EU's External Border Control. *International Migration*, 51(6), 41-53.

Uçarer, E. M. (2013) The Area of Freedom, Security, and Justice. In: Cini, M. and Perez-Solorzano Borragan, N. (eds) *European Union Politics*, 4th edn. Oxford: Oxford University Press, 281-295.

United Nations High Commissioner for Refugees (2010) *Convention and Protocol relating to the status of refugees*. [online] Available at: <http://www.unhcr.org/3b66c2aa10> [Retrieved 20.03.2018]

Wendt, A. (1992) Anarchy is what States Make of it: The Social Construction of Power Politics. *International Organization*, 46(2), 391-425.