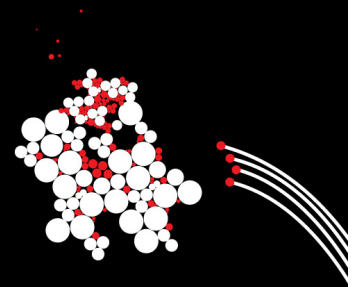
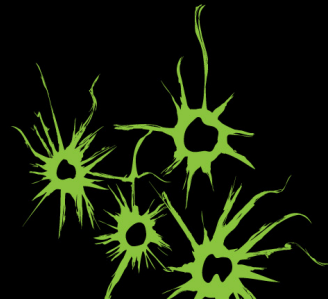
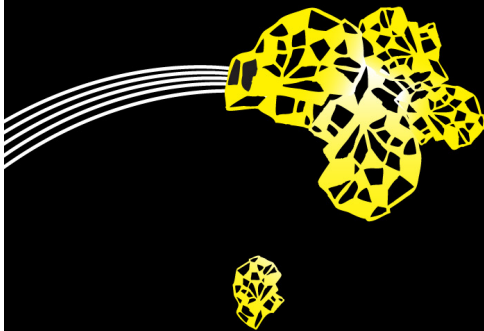


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“Drones deployment in border surveillance: a threat to data protection?”

Conference SURPRISE, PRISMS, PACT
“Citizens’ Perspectives on Surveillance, Security and Privacy”
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Outline:

- Background and theory
- Drones deployment in border surveillance
 - Rationale for drones
 - Facts (US, EU, IT)
 - Surveillance at the borders: EUROSUR
- Data protection issues of Drones’ Deployment in border surveillance
- Observations (policy of intelligence, preventive border surveillance)

1. Background:

- Governance of migration > border surveillance as a core policy to govern irregular migration
- Securitization theory: fortress Europe > high-tech fortress Europe
- “Course aux armements”:
 - databases,
 - Smart Borders (EES, RTP),
 - EUROSUR
- > technology for surveillance



2. The *rationale* behind drones (in border surveillance):

- Costs: cheaper (?), calculated per h/flight (?)
- Autonomy (or remoteness) > rationalizing human resources
- High endurance (Predator: > 20 h, Camcopter: 6 h)
- Information/intelligence (ISTAR: intelligence, surveillance, target acquisition, reconnaissance): “flying big brother”



2. The *rationale* behind drones (in border surveillance):

- Increased surveillance > situational awareness > humanitarian dimension: saving human lives at sea (political discourse, Commission)
- Problems...



2. Reality. The criticalities of Search and Rescue (S.A.R.):

- S.A.R. is a Member States' competence (and not EU, but...)
- FRONTEX: limited capacity
- Member States face challenges while engaging in SAR: disembarkation
- “Left to die” boat (2011), Salamis (2013) and more (criminal sanctions for boats helping migrants in distress)...



3. “I have a ...” drone! US and drones in border surveillance

- A ‘dream’ which is a reality since 2005
- Predator and Guardian for land and sea borders
- Terrorism and illicit cross-border activity + counter narcotics operations
- Fed. Aviation Authority (FAA) Modernization and Reform Act: by 2015, safely integrate drones in civil airspace (DELAYED)
- Surveillance + support LEA
- “New, sexy, futuristic fix ... for immigration control”



3. The ‘European’ drone, state of the art:

- FP7 projects (see Euro-drones report)
- IT (12 drones), SP, EL
- Frontex. Laitinen: “seems to be a reliable and cost-effective means for surveillance” (2013)
- ALL EYES project (Remote sensing and detection technology project), CLOSEYE project
- CONOPS for detecting and tracking of small boats (in relation with FP7 activities)
- Sensors, etc.. Integrated system solutions for border surveillance
- workshops
- TREND: “Let’ s face them! They’ re here to stay”

3. The European drone: Italy

- 2 drones deployed in Mare Nostrum
- Close to the Libyan shores
- EUBAM mission > capacity building and cooperation with Libyan authorities

Actual function: prevent migration?
Prevent departure of boats?



4. The context of border surveillance: Frontex, EUROSUR and drones

- FRONTEX: IBM, integrated border management (Schengen)
- Coordinate operational cooperation between MSs at the external borders of the EU (joint operations)
- Assist MSs in return operations
- Research, risk analysis and training
- External competence

4. EUROSUR: EUROpean border SURveillance system

- Common framework for the exchange of information and for cooperation between MSs and Frontex in order to improve situational awareness and to increase reaction capability at the external borders ...
- for the purpose of detecting, preventing and combating cross-border crime and contributing to ensuring the protection and saving the lives of migrants



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4. The context of border surveillance: ... EUROSUR

- Surveillance > intelligence (EUROSUR: National Situational Picture, European Situational Picture, Common Pre-Frontier Intelligence Picture)
- EUROSUR has several provisions aiming at the surveillance of the external dimension of the borders: CPIP, bilateral cooperation MS-TC; cooperation FX and EEAS... 1) prevent migration; 2) by preventing migration, it might save human lives;
- Drones are going to be the operational tool to gather information!!
- EU's competence on SAR? No, it is for the MS: SAMARIS !!!

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5. Data protection issues:

- Art. 7 ChFR, Art. 8 ECHR; Art. 8 ChFR
- DPD, DP in FD, + lex specialis, recast (necessity and proportionality)
- Drones challenge DP and privacy: ISR (or ISTAR) can include visual data (>Peck v. UK)
- Data protection in migration control: is not public security nor criminal justice but relates to them
- Blurred area where the operational dimension makes a challenge in itself (Peter Hustinx' speech)

5. Data protection rights:

- EUROSUR Regulation: provides for rights, Rec. 13, Art. 13: DPD, FD, national laws
- Rec. 13 “any exchange of personal data in the ESP and in the CPIP should constitute an exception. DPD and DP FD .. are applicable sine lege speciali”
- Art. 13: if NSP processes personal data: compliance with DP
- Art. 18: cooperation with third parties (UN bodies)
- Art. 20: cooperation of MS with TC: MS may exchange information and cooperate with TC.
- THREAT: function creep
- EFFECTS: deter migration? Chilling effect?

Externalization

6. Final observations:

- costs: how cheap/expensive are drones? (mutualisation)
- process: technology-driven (democracy replaced by technocracy?)
- implications of DD in BS:
 - 'militarisation' of BS? Necessity?
 - extra-territorialization > externalization of BS (Hirsi, venue shopping)



6. Some opportunities...?

...(%) Implications:

- de-humanizing border surveillance, if unconnected from S.A.R. (vs: surveillance: epistemic bridging?)
- increased surveillance > increased control (duties?) and increased situational awareness > actors (states) will know more and therefore it could be easier to call them to respect of their own responsibilities, ideally;
- Transparency: information will be partially classified, so it could be (as) hard (as now) to scrutinize MS actions

7. Thanks. Contact: L.marin@utwente.nl

- Need to 'surveiller' the consequences of increased surveillance with drones

