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**A VISA FOR SCHENGEN'S EUROPE
CONSULAR PRACTICES AND REGULAR MIGRATION
FROM SENEGAL TO ITALY**

Francesca Zampagni

Best Participant Essays Series 2011/59

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Consular practices and regular migration from Senegal to Italy
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Abstract

In this paper I am going to explore the process of visa issuance of a European Union Member State's consulate in a country of high emigration, taking the Italian Embassy in Dakar as a case-study. The paper falls into two main sections. In the first part, I will present the context of my analysis, in order to get to grips with the significance of consulates within the wider framework of migration management in countries of origin. Thus, I will focus on the European Union visa policy, which represents one of the key EU instruments for regulation of migration flows from third countries, then on the role of Senegal in EU migration management as well as on the relevance assumed by Italy in Senegalese migratory routes. The second part deals with an analysis of visa' issuing procedures in the Italian consulate in Dakar, taking into account the whole process, from accessing information to issuance/refusal, in order to estimate costs of migrating with documents ('regularly') towards the EU. Furthermore, I will focus on family reunification visas to show how practices of control persist even in the case of a recognized right. My argument is that the map of Schengen visas represents a metaphor of the new division in our world, where EU Member States' consulates filter out 'undesirable people' at their gates with the presumption of 'migration risk' demanding stricter and stricter requisites for visas. It is difficult not to question the consequences of such practices on the development of the streams of 'irregular' migration and on the responsibilities that consulates come to assume.

Résumé

Dans cet article, j'explore le processus de délivrance des visas du consulat d'un État membre de l'Union européenne dans un pays à forte émigration, en prenant l'ambassade d'Italie à Dakar comme une étude de cas. Le document se divise en deux sections principales. Dans la première partie, je présente le contexte de mon analyse afin de se familiariser avec l'importance des consulats dans le cadre plus large de la gestion migratoire dans les pays d'origine. Ainsi, je me concentre sur la politique de l'Union européenne en matière de visas, un des instruments clés de l'UE dans le cadre de la régulation des flux migratoires en provenance des pays tiers. Ensuite, j'étudie le rôle du Sénégal dans la gestion de la migration de l'UE ainsi que sur la pertinence assumée par l'Italie dans sénégalais routes migratoires. La deuxième partie traite de l'analyse de visa »les procédures de délivrance dans le consulat italien à Dakar, en tenant compte de l'ensemble du processus, d'accéder à l'information à l'émission / refus, afin d'estimer les coûts de migration avec des documents (« régulièrement ») vers la UE. Par ailleurs, je vais me concentrer sur les visas de regroupement familial pour montrer comment les pratiques de contrôle de persister même dans le cas d'un droit reconnu. Mon argument est que la carte de visas Schengen représente une métaphore de la nouvelle division dans notre monde, où les Etats membres de l'UE des personnes indésirables »consulats filtrer 'à leurs portes avec la présomption de« risque migratoire exigeants »requis en plus strictes pour les visas . Il est difficile de ne pas remettre en question les conséquences de telles pratiques sur le développement du flux des «irréguliers» des migrations et sur les responsabilités qui viennent consulats à assumer.

1. Introduction

A Polish national driving in her car to Berlin will encounter the EU border for the first time at the physical edge of Germany. A US national arriving at Schiphol airport directly by plane from New York will encounter the EU border first at check-in in New York when his passport is examined by the airline staff and security officers there for the purpose of controlling the EU border. He will then re-encounter the EU border when he must pass through immigration control at Schiphol airport. A Moroccan national first encounters the EU border at the French consulate in Rabat when she seeks a visa. She will then re-encounter the border when she seeks to check in to catch her flight to Paris. She will again find the border when she arrives at Roissy Charles de Gaulle airport and passes through immigration control. So it is the individual who finds the border by virtue of his or her intentions and action relating to movement. But what is the border he or she activates?¹

The words of Elspeth Guild bring us directly to the question of what is a visa? The EU defines the term as an ‘authorization given by or a decision taken by a member state which is required for entry into its territory with a view to: an intended stay in that Member State or in several Member States of no more than three months in all, transit through the territory or airport transit zone of that member state or several member states’. Basically, the visa is an *individual* permission for entrance during a given period of time and for certain purposes which an individual must obtain from a foreign authority in his or her country of origin before arrival at a State’s ports of entry.

States have always sought to monopolize the legitimate means of circulation inside their territory and at their borders. In order to guarantee security and order, argued Bertelsmann² in his study on the passport system just before the First World War, a State has to keep a close eye on who enters its territory and must be free in its decision to refuse entry. Almost a hundred years later, States still subscribe to this view with few amendments and passports have been widely supplemented by visas. As Torpey³ highlights, the initial sense of the term ‘visa’ was as an endorsement of a travel document by a State official, in order to signify that they have ‘seen’ the document, in a context where the forms of travel document varied widely. Gradually, visa requirements came to acquire a second function: no longer mere endorsements, but rather a form of permission. The First World War was decisive in the move to general visa regimes: once introduced, they generally continued after the war. According to Ryan⁴, the international visa regime was further developed in the 1930s, as a result of refugee flows associated with Nazi’s Germany policies, particularly after the events of 1938 (*Anschluss*; annexation of the Sudetenland; *Kristallnacht* pogroms), which led potential destination States to use visa restrictions. Then, in the postwar era, visa requirements became commonplace within immigration control regimes.

As Neumayer⁵ demonstrates, contemporary nation-states employ bilateral visa restrictions in an attempt to manage the complex trade-off between facilitating and promoting economic and political interests while still maintaining immigration control and upholding security. As a consequence of this trade-off, a system has been put in place that is highly unequal in granting easy access to foreign spaces. The right to move is increasingly limited to those who are already economically advantaged, with the exclusion of the poor and refugees in search of international protection. This inclusionary-

¹ Guild E. (2001), *Moving the borders of Europe*, inaugural lecture, University of Nijmegen, 30 May 2001.

² Bertelsmann W. (1914), *Das Passwesen – eine völkerrechtliche Studie*, Strassburg: Heitz & Mündel; quoted in Neumayer E. (2006) 'Unequal access to foreign spaces: how states use visa restrictions to regulate mobility in a globalized world', *Transactions of the Institute of British Geographers*, 31 (1), p. 72.

³ Torpey J. (2001), *The invention of the passport*, Cambridge University Press: London.

⁴ Ryan B. (2010), 'Extraterritorial immigration control: what role for legal guarantees?' in *Extraterritorial Immigration Control*, ed. Ryan B. and Mitsilegas V., Leiden: Martinus Nijhoff Publishers, p. 4.

⁵ Neumayer E. (2006) cit.

exclusionary mechanism is based on the concept of 'risk' which has become more and more politically related to migration. With risk, the EU largely means practices that are defined as 'illegal'.⁶

The most illustrative evidence in the makeup of this external difference-producing border regime is perhaps the EU's so-called 'white' and 'black' Schengen lists (Reg. 539/2001)⁷ - wording recently changed to positive/negative lists⁸. Western governments refused to be satisfied by the information issued by the authorities of the countries that they deem 'risky' (the next paragraph will question which countries and why) and they prefer to carry out the identification of foreigners in the home country via consulates and to check their documents before departure, in order to prevent who is likely to become a 'security risk' if allowed to enter the EU territory. That is what is called 'remote control'⁹ which led to the establishment of visas to identify, to control and to supervise people who are motivated to travel.

The link between immigration control and security was also clearly articulated in the 2004 Hague Programme, according to which

the management of migration flows, including the fight against illegal immigration should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossing. Such measures are also of importance for the prevention and control of crime, in particular terrorism. In order to achieve this, a coherent approach and harmonised solutions in the EU on biometric identifiers and data are necessary.¹⁰

Thus, the expansion of visa requirements is a part of the wider process of developing a *continuum of security* through the proliferation of extraterritorial immigration control practices, which enables destination States to free themselves from legal guarantees otherwise available to migrants.

In recent years there has been increasing interest in the literature regarding the changes that European integration has meant for the external administration of the Member States, especially in the field of Common Foreign and Security Policy, but the Europeanisation of consular affairs in the field of visa issuance has received little attention until now.¹¹ French scholars have analyzed migration offices' practices, both in France and abroad¹², and recently the French NGO Cimade has published the dossier 'Visa refusé. Enquête sur les pratiques des consulats de France en matière de délivrance des visas', considering French consulates in Algeria, Mali, Morocco, Senegal, Ukraine and Turkey.¹³

According to this precious survey and adopting the same approach, this paper seeks to focus on consular practices of the Italian consulate in Dakar as a point of reflection on this topic.

⁶ Samers M. (2004) 'An emerging geopolitics of 'illegal' immigration in the European Union', *European Journal of Migration and Law*, 6, pp. 23-41.

⁷ Regulation (EC) 539/2001 'listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement', OJ 2001 L 81.

⁸ Meloni A. (2009); Van Houtum H. (2010) 'Human blacklisting: the global apartheid of the EU's external border regime', *Environment and Planning D: Society and Space*, 28, pp. 957-976.

⁹ Bigo D. and Guild E. 'Policing at a Distance: Schengen Visa Policies' in Bigo D. and Guild E., (2005), *Op. cit.*, pp. 233-263.

¹⁰ Paragraph 1.7.2, European Council, Presidency Conclusion, Brussels, 4-5 November 2004.

¹¹ It is worth mentioning Fernández A. (2006), 'The Europeanisation of Consular Affairs: the Case of Visa Policy', October, *Clingendael Discussion Paper in Diplomacy*, n° 105; Meloni A. (2006), *Visa policy within the European Union structure*, Berlin; New York: Springer.

¹² Spire A. (2008), *Accueillir ou reconduire. Enquête sur les guichet de l'immigration en France*; Cimade (2007) *De la loterie à la tromperie* (for an overview on prefectures); Armand C. (2006) *Droit d'asile ou NON de quoi? Témoignage d'une officière de protection au coeur de l'OFPRA*, Paris: Editions Toute Latitude.

¹³ Cimade (2010), *Visa refusé. Enquête sur les pratiques des consulats de France en matière de délivrance des visas*, Paris: Publications La Cimade.

With the purpose of retracing the 'legal way' of migration, otherwise hidden within walls of consulates, our research leads to an analysis of the local application of the European law on visas, which is becoming stricter and stricter. As a matter of fact, the largest irregular migratory systems operating in Europe take place through the abuse of visa conditions rather than through clandestine entry. The largest share of irregular workers in the Western European economy originates in countries that enjoy relaxed visa regimes or visa-waiver programmes. The data on apprehended aliens 'illegally' present in Western Europe show that the main irregular migratory flows originate in Eastern Europe, not in the Mediterranean.¹⁴

The Italian Ministry of Interior reports that migrants by sea represent about 13% of undocumented migrants presents in Italy, while the majority of them are overstayers (64%). The 23% left behind is formed of persons who entered Italy from other Schengen countries crossing borders with fraudulent means (Ministry of Interiors, 2007). As the Italian Ministry of Interiors points out, entry by sea 'is a bare entry channel, in respect of dimension, and it contributes in a low and decreasing way to the stock of irregular migrants presents in Italy'.¹⁵

'Are they real tourists, do they plan to immigrate? He is young and unmarried, does he have motivations to come back? Is he really his younger son? Do they have relatives already established in Europe?'. These are just few statements obsessively repeated inside visa offices. There is no obligation for the Member States to issue a visa to third-country nationals and the mere possession of a visa does not confer an automatic right of entry.¹⁶

Therefore, how does regular migration to the EU happen? What are its policies, theoretically and practically? How is visa issuance carried out by consulates?

A three-month experience of internship at the Italian Embassy in the Senegalese capital enabled me to retrace the procedure of visa application in order to comprise its real articulation and costs, both in economics and social terms. A combination of methods has been used in the study, with emphasis given to qualitative research techniques. The project includes participant observation in the visa office; the analysis of EU and Embassies' documents/data/procedures; informal discussions during work time with the prime counselor (diplomat in charge of the consular service) and other embassy officials.

In the first part of the essay, I will present the context, in order to give some sense of the significance of consulates within the wider framework of migration management in countries of origin. I will focus on the European Union's visa policy, which represents one of the key EU instruments of regulation of migration flows from the third countries, then on the role of Senegal in EU migration management as well as the relevance assumed by Italy in Senegalese migratory routes. The second part deals with the analysis of visa' issuing procedures in the Italian consulate in Dakar, taking into account the whole process, from the access to information to the issuance/refusal, in order to estimate the costs to migrate with documents ('legally') to the EU. At last, I will focus on family reunification visas to show how practices of control and the discretion of the administration persist even in the case of a recognized right.

¹⁴ European Commission (2004), *Annual Report on Asylum and Migration 2001*.

¹⁵ Monzini P. (2008), 'Il traffico di migranti per mare verso l'Italia. Sviluppi recenti (2004-2008)', CesPI, Working Papers 43/2008.

¹⁶ Art. 30, Community Code on Visas, Regulation (EC) 810/2009, OJ 2009 L 243.

2. European Union migration policies and Senegal

2.1 EU Visa Policy

2.1.1 Black and White lists

European Union policy on short-stay visa¹⁷ concerns the 28 Schengen States, that is the 27 EU Members States (other than Britain and Ireland) as well as Iceland, Norway and Switzerland. Its origins can be traced back to the 1980s when the Member States established intergovernmental cooperation on justice and home affairs. This cooperation was prompted by a desire to strengthen security particularly in the light of a perceived increase in cross-border crime and migration inflows deemed to require a coordinated and strong response from the Member States. Cooperation in this field was also linked to the establishment of free movement of persons in the EU, with the conclusion of the Schengen Agreement in 1985, followed by the Schengen Implementing Convention in 1990, which required the adoption of ‘compensatory’ measures by the Member States, such as common and effective external border controls.¹⁸ The 1997 Amsterdam Treaty incorporated the Schengen *acquis* into EU law with the so-named protocol.¹⁹ Thus, there are two sources for the current law on visa policy: the Union law²⁰ and secondary legislation stemming from Schengen Agreements. On the basis of former article 100c EC, the Council adopted Regulation 2317/95 which, after it was annulled by a judgment of the Court of Justice (1997), was replaced by Regulation 574/99 determining third countries whose nationals must have a visa at the time of the crossing of the external borders of the Member States. The new regulation only includes the common list of the third countries whose nationals are subject to the visa obligation: it set out a list of 101 ‘risky countries’. For third countries not appearing on the common list, Member States remained free to choose whether to impose a visa obligation or not. But the Schengen States coordinated their visa policy more thoroughly than regulations 2317/95 and 574/99 required. Gradually the Member States reached a harmonized position and two lists were drawn up: the first one of 32 third countries whose nationals were subject to the visa obligation in all the Schengen States; the second list of 44 countries who were not.²¹

The full harmonization of the Member States’ visa requirements occurred with Regulation 539/2001 which establishes the exhaustive ‘black’ and ‘white’ lists.²² Favoured countries appear on the ‘white list’, which means that their nationals do not require visas to enter the territory of the Union; countries whose nationals are ‘suspect’ are on the ‘black list’ and they must always have a visa obtained abroad before arriving at the borders of the Union. Between 1995 and 2005, the black list was updated four times. The most significant changes took place in 2001, facing up to the new security challenges with the addition of 31 new countries and the removal of Bulgaria and Romania,

¹⁷ The common EU visa policy covers only the regulations on short-term visa (up to 90 days). The issuing of long-term visas is the competence of the Member States.

¹⁸ Cf. Meloni A. (2006), *Visa policy within the European Union structure*, Berlin; New York: Springer.

¹⁹ The Commission, in the preamble to the proposal for a Regulation establishing the list of third countries whose nationals are subject to a visa obligation and the list of those who are exempted, explains: “The Amsterdam Treaty constitutes a remarkable step forward for the European integration into the field of visas policy in relation to the Maastricht Treaty. The latter by introducing article 100 C into the EC Treaty, put into Community law only two aspects of the visas policy (on the one hand the determination of third countries whose nationals have to be provided with a visa at the time of the external borders crossing of the Member States and, on the other hand the introduction of a standard visa model). However, the Amsterdam Treaty put into Community law all the other aspects of the visas policy by incorporating them into the new title IV of the EC Treaty ‘Visas, asylum, immigration and other policies connected with free movement of persons’ which aims at the creation of an area of freedom, security and justice’ which aims at the creation of an area of freedom, security and justice”. Bigo D. and Guild E. (2005), *Controlling frontiers: free movement into and within Europe*, Aldershot: Ashgate, pp. 241-242.

²⁰ Under former article 62 EC, now article 77, Treaty on the functioning of the European Union, OJ 2010 C 83.

²¹ Bigo D. and Guild E. (2005), *Op. Cit.*, p. 242.

²² Regulation (EC) 539/2001, OJ 2001 L 81.

due to their future entrance to the EU after the fifth enlargement. At the time of writing there are 30 countries on the white list and 135 countries on the black one.²³ Because of its link to the Schengen border-free zone, the content of the EU's visa list policy has generally been shaped by the preferences of the participating states. It is clear, however, that the avoidance of irregular migration is at the heart of the policy.²⁴ The aim of the system is to make sure that individuals who are not wanted by anyone of the Member States are not permitted to enter the territory. Thus the rules focus on who must be excluded and provide little guidance on who should be admitted.²⁵ The underlying principle of the system is the cross recognition of national non-admission decisions rather than harmonization.

The lists themselves do not discriminate directly on the basis of the GDP of the countries whose nationals do or do not have to get visas (ex. Saudi Arabia, UAE). However, the white list contains almost exclusively countries which are rich. Instead, the list indicates that the traditional prejudices of the Member States in respect of race and religion ensure that almost all countries, the majority of whose population is either black or Muslim are on the list. Not one country whose population is primarily Islamic is on the white list, with the exception of Brunei. These prejudices are supplemented by a second level of privilege or discrimination: wealth. Almost all of Africa is in the black list, while most of South America is in the white list. In conclusion, the black list denotes suspicion towards particular cultural identities, countries at war and poor countries.²⁶

According to the explanatory memorandum, the Commission explains the reasons for the inclusion and exclusion of certain countries from the list is as follows:

- Illegal immigration: the visa rule constitutes an essential instrument for controlling migratory flows. Here, reference can be made to a number of relevant sources of statistical information and indicators to assess the risk of illegal migratory flows (such as information and/or statistics on illegal residence, cases of refusal of admission to the territory, expulsion measures, and clandestine immigration and labour networks), to assess the reliability of travel documents issued by the relevant third country and to consider the impact of readmission agreements with those countries;
- Public policy: conclusions reached in the police Cupertino context among others may highlight specific salient features of certain types of crime. Depending on the seriousness, regularity and territorial extent of the relevant forms of crime, imposing the visa requirement could be a possible response worth considering. Threats to public order may in some cases be so serious as even to jeopardise domestic security in one or more Member States. If the visa requirement was imposed in a show of solidarity by the other Member States, this could again be an appropriate response;
- International relations: the option for or against imposing the visa requirement in respect of a given third country can be a means of underlining the type of relations which the Union is intending to establish or maintain with it. But the Union's relations with a single country in isolation are rarely at stake here. Most commonly it is the relationship with a group of countries, and the option in favour of a given visa regime also has implications in terms of regional coherence. The choice of visa regime can also reflect the specific position of a Member State in relation to a third country, to which the other Member States adhere in a spirit of solidarity. The reciprocity criterion, applied by States individually and separately in the traditional form of relations under public international law, now has to be used by reason of the constraints of the Union's external relations with third countries. Given the extreme diversity of situations in third countries and their relations with the European Union and the Member States, the criteria set out here cannot

²³ Lists include also entities: Macao and Hong Kong on the white list; Palestinian Authority and Taiwan on the black one.

²⁴ Ryan B. (2010), 'Extraterritorial immigration control: what role for legal guarantees?' in Ryan B. and Mitsilegas V., *Op. Cit.*, p. 12.

²⁵ The paternity of establishing lists does not belong to the EU: the US has been establishing lists of 'risky' people or countries since their first legislation on naturalization and immigration in 1790.

²⁶ Van Houtum H. (2010) 'Human blacklisting: the global apartheid of the EU's external border regime', *Environment and Planning D: Society and Space*, 28, pp. 957-976.

be applied automatically, by means of coefficients fixed in advance. They must be seen as decision-making instruments to be used flexibly and pragmatically, being weighted variably on a case-by-case basis.²⁷

In considering the set of criteria provided by the Commission, the first two grounds relate specifically to the activities of individuals: risk of illegal immigration and crime. In her analysis Guild defines the former, related to individual behavior, as being rather arbitrary and the latter as being ambiguous, because there is no harmonization between Member States on the concept of a threat to public order.²⁸ Only the third ground relates to countries: international relations, in terms of ‘regional coherence’.

It should be noted that the move of EU borders to within the territory of foreign states takes place unilaterally by decision of the Council and the lack of a requirement to justify the treatment of each country separately means that it is impossible to tell which part of which justification is in action. Visa requirements are for all nationals of a country on the black list, so the assessment of risk is in effect not connected to the individual behavior of the person who seeks to travel, but, as the European Commission has stated, ‘the decision to issue a visa should gradually move from the presumption of risk associated with the applicant’s nationality to an assessment of individual risk’.²⁹ Although the starting point of visa system continues to be nationality, the real targets are particular classes of individuals. Are these third-country nationals by definition more likely to be illegal immigrants or criminals than nationals of other countries? It seems so, in the EU approach, and it is only through the visa application that a particular individual could be, personally, an exception to the national identity and judged not to be a threat to the Union. Furthermore, Bigo and Guild state that

the issue of white and black lists, of imposition or not of visas seems then to say less about safety and migration imperatives, than about the social construction of more or less shared fears concerning the Other and about the way Europeans seek to construct an image of themselves, a common identity.³⁰

2.1.2 *Common Consular Instructions and the Community Code on Visas*

Conditions governing the issue of uniform visas are set by Common Consular Instructions (CCI) for diplomatic missions and consular posts, and the Community Code on Visas, which came into force 5 April 2010. The CCI are part of the Schengen *acquis* and they are amended regularly³¹ as they include practical rules: they lay out the list of supporting documents to be presented by the applicant together with the application form and they contain instructions for consular employees on processing visa applications and filling out visa stickers.

Despite being the first substantial document unifying consular visa practices, CCI contain a number of legal and procedural flaws which introduces legal uncertainty into the document and which creates the grounds for different applications by different consular services. Even the recent Visa Code, the first legally binding instrument which establishes ‘the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months’³², does not solve these points.

First, the very general list of supporting documents (Visa Code, article 14 and annex II) allows for too much discretion by the consular authorities in requesting additional documents that often resulted

²⁷ Document 500PC0027: Commission Proposal - COM (2000) 027 final. Bigo D. and Guild E. (2005), *Op. Cit.*, p. 244.

²⁸ For an in-depth consideration of the criteria see Guild E. (2001), *cit.*, pp. 33-37.

²⁹ COM (2009) 262/4, *An area of freedom, security and justice serving the citizen*, p. 19.

³⁰ Bigo D. and Guild E. (2005), *Op. Cit.*, p. 237.

³¹ See modifications of 2003 (*Common Consular Instruction*, OJ 2003 C 313) and the last one from 2005 (*Common Consular Instruction*, OJ 2005 C 326).

³² Regulation (EC) 810/2009, OJ 2009 L 243.

in very burdensome procedures of obtaining visas. Second, the right to appeal against visa refusal referred to the national legislation of the member States. The Visa Code addresses the lack of procedural harmonization which characterized the previous regime by introducing an obligation for the Member States to motivate visa refusal decisions (Visa Code, article 32(1) and annex VI).

The main novelties introduced by the Visa Code are presented in the table below.

Table 1. Novelties introduced by the Community Code on Visas

<i>Amendment</i>	<i>Expected effect</i>
Merging transit visa and short-stay visa (Art. 2)	The list of visa types does not contain the transit visa anymore that implies that for the purposes of transit or/and a short stay the same visa type will be issued.
Long-stay visa issued by a Member State will allow holder to move freely in the territory of Member States under the same conditions as a residence permit (Regulation 265/2010)	This amendment will allow the holders of the long stay visas to travel to the other Member States for three months in any half year, under the same conditions as the holder of a residence permit. This regulation will restore the principle of the freedom of movement of persons inside the Union that could not be previously enjoyed by the holders of the long stay visas, who were bound to stay only within the territory of the state that issued the visa.
Introduction of the unified application form (Art. 11)	The unified visa application will be used by all the Consulates of the Member States.
Visa fee (Art. 16)	The general visa fee is 60 EUR. The visa fee remains 35 EUR for the nationals of third countries which concluded visa facilitation agreements with the EU and for children from 6-12 years of age, regardless of the country of origin. The following categories of persons are exempt from paying the visa fee: children under 6 years, representatives of non-profit organisations, aged 25 years or younger, participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations, researchers as defined in the Recommendation No 2005/761/EC., school pupils, students, post-graduate students travelling to the Community for the purposes of study or education
Equal treatment of visa applicants (Art. 9, 23)	The maximum deadlines (2 weeks) for obtaining an appointment for lodging the application and for the Member State to take a final decision on the application (15 calendar days). Only under exceptional circumstances and in individual cases can this deadline could be exceeded. If a visa facilitation agreement envisions shorter deadlines, they shall be applied in relation to the nationals of the states that concluded such agreements with the EU.
Issue of visas with long validity for frequent travellers (Art. 24)	Where an applicant can prove a need for frequent travelling and he/she is known by the Member State's consulate for his/her integrity and reliability, a visa with a validity of up to 5 years and allowing for multiple entries should be issued.
The list of supporting documents has been specified (Art. 14)	Annex II contains a more specified but still non-exhaustive list of supporting documents to be presented by visa applicants.
Biometric data (Art. 13)	During the first application for the Schengen visa the applicant shall provide his/her biometric data such as a photograph, scanned or taken at the time of application, and 10 fingerprints taken flat and collected digitally that will be introduced into the VIS.
Motivation of visa refusal and the right of appeal of such negative decisions (Art. 32)	As of 5 April 2010 all the consulates of the Member States are obliged to provide the notification in cases of visa refusal, containing the explanation of said refusal and information about the appeal procedure in line with the national legislation of the Member States.

Source: Shamray V. (2010), 'EU Visa Policy: on the edge between the EU internal security and foreign policy', Budapest: Open Society Institute.

In accordance with article 51 of the Visa Code, the EU Commission has drawn up the ‘Handbook for the processing of visa applications and the modification of issued visas’ (Commission Decision adopted on 19 March 2010). It sets up operational instructions providing clear guidance on how consular authorities should issue short-stay visas in each and every individual case that might occur, also recommending best practices when the case is not clear. Some examples from the handbook as follow:

Examples of incoherence between declared purpose of stay and factual information provided:

- an applicant claims to travel to an industrial area, staying in a cheap hotel, for the purpose of tourism;
- an applicant claims to visit a professional event at dates that do not correspond to the actual dates of the event;
- an applicant claims that the purpose of the trip is to visit a friend, but it turns out that the person concerned is absent during that period;
- a trader in jewellery claims to have been invited to attend a medical conference.

Examples of cases where such further scrutiny may be necessary:

- A visa applicant indicates ‘family visit’ as the purpose of his journey to Slovakia, where he wishes to visit an aunt. The consulate has doubts about the family link between the two and asks for further proof of the family link.
- A third-country national has been invited to a Member State for a period of two months for specific studies/research at a university laboratory, presenting an authentic invitation from the university. During the examination of the application, doubts arise concerning the exact purpose of the studies/the research (risk of proliferation of chemical weapon) and the consulate wishes to verify the invitation and the background for it further.
- A third-country national claims to be a family member of a French national living in France (thus not covered by Directive 2004/38) and presents a certificate of marriage in a location where such false ‘tailor made’ certificates can be obtained easily and further information must be obtained from local authorities.

(...) However, a consulate may, in justified cases, request additional documents during the examination of an application which are not mentioned in the harmonised list published locally. Examples:

- an employment contract presented by an applicant is due to expire shortly; the consulate request the applicant to provide information regarding his future employment/economic situation;
- the signature on an application from a minor is suspicious and therefore the consulate checks the signer’s identity by comparing with the signature on other official documents;
- in case of the death of a relative in a Member State: a death certificate;
- in case of a wedding in a Member State: a marriage announcement.³³

The text neither creates any legally binding obligations upon Member States nor establishes any new rights and obligations for people who might be concerned by it. Rather it aims to ensure a harmonized application of the legal provisions. As a matter of fact it is a handbook for consular officials, who make use of it for ordinary practices, so it turns out to be most interesting in understanding the approach of consular officials towards visa applicants. Furthermore, a second handbook was adopted to be used for the implementation of EU legislation on the common visa policy by Member States’ central and consular authorities in charge of running consular services and ensuring cooperation between Member States’ authorities at central and local level: the ‘Handbook for the organisation of visa sections and local Schengen cooperation’ (Commission Decision adopted on 11 June 2010). In fact the harmonization of practices is carried out by Member States’ consulates themselves located in capital cities around the world with cooperation *in situ*.

³³ *Ibid.*

2.1.3 'Immigration risk': the local Schengen cooperation and the Visa Information System

The Schengen States are strongly encouraged to cooperate, in particular, at a local consular level.³⁴ Pursuant to the Common Consular Instructions (CCI, Part VIII), such cooperation essentially concerns the assessment of the 'immigration risk'. As regards the identification of 'risk categories', the CCI provides:

The diplomatic mission or consular post shall assume full responsibility in assessing whether there is an immigration risk. The purpose of examining applications is to detect those applicants who are seeking to immigrate to the Member States and set themselves up there, using grounds such as tourism, business, study, work or family visits as a pretext. Therefore, it is necessary to be particularly vigilant when dealing with 'risk categories', unemployed persons, those with no regular income, etc.³⁵

The assessment of the immigration risk is the first duty of the consulate in the visa's issuing process, which will be detailed further, and manifold instruments, both formal and informal, are used to check every suspicious facet of an applicant. It will be useful to present their legal framework in order to understand their operational application.

The Visa Code provides instructions for the local consular cooperation, renamed 'local Schengen cooperation'.³⁶ The form, scope and intensity of consular cooperation should reflect the local conditions. Generally, there is a formal system of regular meeting of visa officers of the EU member states in capital cities around the world. Under certain circumstances, such cooperation may be carried out in a less formal and structured manner, as daily exchanges of information between officials by telephone or e-mail.

Meetings normally take place at least every two or three months. They are called and organized by the consulate of the country which has the presidency of the Union, who notifies consular representations of other Schengen States (and sometimes even non-Schengen States) via e-mail about visa refusals, dates of regular meetings between their representatives and information on applicants 'may be exchanged from time to time'. According to the CCI (VIII, 3), the local information exchange includes 'persons whose applications have been refused because stolen, lost or falsified documents have been used, or because the exit date on the previous visa was not observed or because there is a risk to security and, in particular, there is reason to believe that an attempt is being made to immigrate illegally to the territory of the Contracting Parties'. This is what is called the 'assessment of the applicant's good faith'.³⁷ However, the exchange does not replace the actual examination of the visa application, nor the search in the Schengen Information System³⁸ or consultation with the requesting central authorities.

Thus, a supplementary system of discretionary *mala fide* lists, parallel to the SIS and built on dubious identifications, is implicitly encouraged by the CCI. It can collect the names of people who have never stayed in the Union, therefore excluded by the SIS, but classified as a 'risk group'. Central authorities of Member States tend to deny the existence of these lists, which are not juridically binding, but, as a matter

³⁴ Cf. Fernández A. (2006) 'The Europeanisation of Consular Affairs: the Case of Visa Policy', *Clingendael Discussion Paper in Diplomacy*, n° 105.

³⁵ CCI, Section V, OJ 2005 C 326.

³⁶ Community Code on Visas, Title V, article 48.

³⁷ CCI, section VIII, par. 3.

³⁸ The common list of persons not to be admitted is maintained electronically in the Schengen Information System (SIS) and is made up of all persons signaled by any of the Schengen states according to their national understanding of the criteria for inclusion and their national interpretation of public order and security. The definition of these persons for exclusion is defined by article 96 Schengen Implementing Agreement and it seems primarily based on what they did or represented while they were within the territory of the Union.

of fact, they ascertain the visa issuing/refusal.³⁹ Moreover, information is even exchanged on persons who are considered *bona fides*, in which case checks should be reduced (CCI, V).

The exchange of data between Member States assisting in the identification of any person who may not, or no longer, fulfill the conditions for entry, stay or residence in the territory of the Member States is improved by the Visa Information System (VIS).⁴⁰ Not yet operational in all consulates, the VIS contains the information on the whole 'visa history' of the applicants, including their biometric and personal data, information on travel documents, dates and places of visa application, type of visa requested, details of the person issuing the invitation, main destination and duration of intended stay, intended dates of arrival and departure, intended border of first entry or transit route, residence, current occupation and previous visa applications. The database will be accessible by visa, immigration and asylum authorities as designated by participating states and competent authorities responsible for carrying out checks at external border and within the national territories. According to article 31 of the Regulation concerning the VIS, data 'may be transferred or made available to a third country or to an international organisation listed in the Annex if necessary in individual cases for the purpose of proving the identity of third-country nationals, including for the purpose of return'.⁴¹ Although apparently set up as an administrative file, the VIS system will in practice function as an intelligent tool for the purpose of identifying third-country nationals staying illegally in the territory in order to enforce a return decision or removal order.⁴²

Furthermore, Annex 5(b) to the Common Consular Instructions (which has remained confidential) sets up a 'list within the list'.⁴³ There each Member State notifies the others of which nationalities on the visa list are of specific interest to it. Any application for a visa by a national of a country in the Annex 5(b) list must be passed on to the Member State which has expressed an interest, ignoring the reciprocity principle and lengthening waiting times of applicants. The EU border moves to within the third state as regards visa nationals but it continues to be manipulated from a distance by different Member States according to their understanding of risks.

2.2 Senegalese emigration

2.2.1 Senegal in the EU migration management

Senegal is on the black list. Historically an immigration country for African migrants, it gradually lost its capacity to attract migrant workers, becoming a key transit country for, and source country of, unauthorized and officially unwanted migratory flows to Europe.⁴⁴ According to the *Ministère des Sénégalais de l'Extérieur* (the ministry specifically dedicated to the Senegalese living abroad), in 2003-2004 the number of Senegalese living outside the country equaled 648,600 individuals, or 12 % of the total resident population in 2004. At that time, the same source estimated two unregistered for every registered emigrant. The majority lived in other African countries which, according to these figures, host 63% of the Senegalese abroad. Registered migrants were more likely to reside in Europe (58,4%), where the ratio unregistered/registered migrants equaled 0.5. With respect to regular

³⁹ Bigo D. and Guild E. (2003b), 'Les pratiques quotidiennes de la coopération consulaire', *Cultures & Conflits. Le mise à l'écart des étrangers: la logique du Visa Schengen*, n. 49-50.

⁴⁰ Regulation (EC) 767/2008, OJ 2008 L 218.

⁴¹ Regulation (EC) 767/2008, OJ 2008 L 218.

⁴² On the use of VIS and other EU databases used for immigration and border control and their impact on human rights see: Brouwer E. (2008), *Digital borders and real rights: effective remedies for third-country nationals in the Schengen information System*, Leiden: Martinus Nijhoff Publisher.

⁴³ Guild E. (2001), cit., p. 69.

⁴⁴ Carretero M.H. (2008), 'Risk-taking in unauthorised migration', in *Social Sciences Faculty*, Tromsø: University of Tromsø.

migrants, the *Global Migration Origin Database* reports that around the year 2000, the number of Senegalese residing abroad equaled 479,515 individuals.⁴⁵

Since the mid-1970s, Senegal has evolved into an important emigration country. The main triggers for emigration have been worsening socio-economic conditions especially in rural areas and the success of former emigrants, which has acted as a strong pull factor.

Initially, Cote d'Ivoire was the major sub-Saharan migration destination until the late 1990s: a result of the outbreak of civil war in 1999 and associated economic decline, not to mention xenophobia. Then, an increasing numbers of West Africans started to migrate outside the region, first towards South Africa, Gabon, Botswana and Libya, then also to Algeria, Morocco and Tunisia. Around 2000, the next fundamental shift in migration patterns occurred when sub-Saharan migrants started to join Maghrebians in their attempts to enter the Spanish enclaves of Ceuta and Melilla illegally or to cross the Strait of Gibraltar to Spain or from Tunisia to Italy. It might be worth mentioning here that Italy and Spain introduced visa requirements for North African workers in the early 1990s. Following de Haas, 'in this way sub-Saharan migrants forged a vital connection between the resurgent trans-Saharan and the already established Euro-Mediterranean migration systems'.⁴⁶

Europe (France, then Italy and Spain⁴⁷) as well as the US represent today the most important destinations for Senegalese emigrants. A result of free-circulation restrictions brought in by the Schengen Agreements, the Senegalese exodus towards Italy and Spain is inseparable from the protectionist drift that characterizes Northern Europe, in particular France (with the introduction of a visa in 1986). It is also the result of the progressive closing of African rich countries.⁴⁸

Lavenex and Kunz attribute the 'external shock provoked by the events in Ceuta and Melilla' (2005) to be one of the two factors responsible for the EU's engagement with Senegal in migration management; the other being an 'intensification of the migration-development discourse in international institutions'.⁴⁹ The increased patrolling of the Gibraltar Strait and the comparatively higher risk involved in its crossing greatly contributed to transforming West African countries into the main embarkation points for Western Europe. By reason of its position, candidates for emigration mainly from West Africa transit through Senegal in their attempts to reach Maghreb countries and Europe.⁵⁰

Frontex has actively patrolled the West-African seas since 2006 within the framework of the Joint Operation HERA, up to 1.300 kilometers from the Southern-European coast to tackle illegal migration flows coming from West African countries heading towards the Canary Islands. In addition, there is the Joint Operation NAUTILUS which, from 2006 onwards, has aimed to reinforce border control

⁴⁵ Di Bartolomeo A., Fakhoury T., Perrin D. (2010), *CARIM Migration Profile: Senegal*, Fiesole: EUI, RSCAS, p. 1.

⁴⁶ De Haas H. (2008), *Irregular Migration from West Africa to the Maghreb and the European Union: An Overview of Recent Trends*, Geneva: IOM migration research series.

⁴⁷ On Senegalese destinations, in particular France, Spain and Italy, see González-Ferrer A., Baizán P. (2010) 'Destination choices of Senegalese migrants: labor demand and immigration policies in receiving countries', *MAFE project* working paper, presented at FIERI, October 8th 2010. <http://www.mafeproject.com/>

⁴⁸ Bruzzone T., Fall P.D., Tall M., Gueye C. (2006), *Le milieu sénégalais et l'action transnationale des migrantes*, Rome: CeSPI.

⁴⁹ Lavenex S., Kunz R. (2008), 'The Migration-Development Nexus in EU External Relations', *Journal of European Integration*, 30(3), p. 449. See also Gisti (2006), 'Externalisation de l'asile et de l'immigration. Après Ceuta et Mellila, les stratégies de l'Union européenne', seminary, Paris, 20 March 2006.

⁵⁰ See Fall P.D. (2008), 'Les migrations africaines vers l'Europe: de l'appel de main-d'œuvre aux migrations clandestines vers les îles Canaries', Communication at the international seminary *Migraciones internacionales e integración cultural en los espacios insulares. Una perspectiva histórica*, Las Palmas de Gran Canaria: Universidad de La Laguna / Academia Canaria de la Historia, 2-4 June 2008.

activities in the Central Mediterranean and to control illegal migration flows coming from North African countries heading to Malta and Italy.⁵¹

In 2010 Spain and Senegal renewed bilateral agreements permitting Frontex to operate from a base in Dakar for another year. The Frontex mission in Senegal currently consists of two Spanish Guardia Civil patrol boats, a Spanish National Police helicopter and a private airplane leased by the Spanish Defence Ministry. One Frontex patrol boat also operates from the Mauritanian port city of Nouadhibou, located 800 km southeast of Spain's Canary Islands, a city that has become a key departure hub.⁵² Here there is also a detention centre from where collective expulsions mainly to Mali and Senegal are carried out (financed by Spain as well).⁵³ As a matter of fact, increased patrolling of the borders is one aspect of the shift of control of migration processes to the countries of origin: border controls, readmission of undocumented migrants and development aid make up three-unit of European migration policy.

'La question de l'émigration clandestine et de la gestion des flux migratoires est un thème dominant des relations entre le Sénégal et l'UE' argued the European Commission Country Strategy Paper for Senegal (2008-2013), which presents the strategic framework for cooperation between the Commission and Senegal under the 10th European Development Fund (the main instrument providing EU aid for development cooperation).⁵⁴

Furthermore, this strong association of factors is clearly shown by the attempts of the EU to conclude Economic Partnership Agreements with ACP countries (which include Senegal, in the region of ECOWAS), stemming from the Cotonou Agreement of 2000. Besides preferential access to EU products and the development aid framework, the EU has been pressuring the ACP states to agree on changes in the Cotonou Agreement (in particular article 13, the migrant provisions), which would make it easier for EU member states to return irregular migrants to their home countries. ACP states resisted incorporating such a provision in the agreement, wanting to deal with readmission issues on a bilateral basis. But they signed a joint declaration regarding cooperation in the area of migration.⁵⁵

Since the adoption of the Treaty of Amsterdam, which empowered the European Commission to conclude EU readmission agreements with third countries, negotiations have led to the entry into force of eleven readmission agreements: namely, Albania, Bosnia and Herzegovina, FYROM, Hong Kong, Macao, Moldova, Montenegro, Russia, Serbia, Sri Lanka, and Ukraine. There has also been the signature of an agreement with Pakistan. Special trade concessions, preferential entry quotas for economic migrants, technical cooperation and assistance, increased development aid and short-term

⁵¹ Frontex, 'Overview of sea border joint operations (2006–2009)' and Frontex, General Report 2009. On joint operations see Baldaccini A. (2010) 'Extraterritorial border controls in the EU: the role of Frontex in operations at sea' in *Extraterritorial Immigration Control*, ed. Ryan B. and Mitsilegas V., Leiden: Martinus Nijhoff Publishers.

⁵² 'Spain and Senegal renew agreement permitting Frontex to operate From Dakar', *Migrants at sea*, 24 May 2010.

⁵³ Opened in April 2006 in cooperation with the Spanish Agency for International Development Cooperation (AECID), the center is located in a former school restored by Spanish authorities. See: European Social Watch (2009), 'The Externalisation of Migration and Asylum Policies: The Nouadhibou Detention Centre', *European Social Watch Report*; Amnesty International (2008), 'Mauritania: «Nobody wants to have anything to do with us»: Arrests and collective expulsions of migrants denied entry into Europe', AFR 38/001/2008, <http://www.amnesty.org/en/library/asset/AFR38/001/2008/en/ad888d90-46c2-11dd-9dcb-1bbf1ead8744/afr380012008eng.html> (accessed September 2010).

⁵⁴ European Commission, Country Strategy Paper for Senegal (2008-2013).

⁵⁵ 'EU and ACP Fail to Reach Agreement on Migration in Revised Cotonou Agreement', *Migrants at sea*, 23 June 2010. For an in-depth analysis of EPAs see: CEPII-CIREM, *An impact study on the EU-ACP Economic Partnership Agreements in the six ACP regions*, Final Report, January 2008, Paris.

visa exemption have been the most common incentives used by the EU-27 Member States to induce countries in the South Mediterranean and Africa to cooperate on readmission.⁵⁶

The entry visa facilitations have played a major role in the negotiations of some of the agreements concluded thus far. The main purpose of these has been to facilitate, on the basis of reciprocity, the issuance of short-stay visas through multiple-entry visa or reducing the visa fee. Furthermore, a visa-free travel regime is recognised in all agreements as the long-term objective. It should be pointed out that only selected categories of persons are eligible for multiple-entry visas (official delegations, professionals, international lorry drivers, close relatives, journalists..). Some scholars argue that the EC visa facilitation agreements divide the society of the target country into two groups 'by easing the tight visa regime and fostering facilitated travel opportunities for bona fide travellers' while the vast majority of ordinary citizens cannot enjoy such advantages.⁵⁷

However, the use of visa facilitation as an incentive to sign readmission agreements has also been seen as rather limited in scope, since 'some Member States hesitate to close a door on irregular immigration to open a window on new potential irregular flows of visa overstayers, already the largest group of irregular migrants in the EU. [...]In other words, coupling is a limited policy tool that Member States will allow the Commission to employ in 'exceptional cases' '.⁵⁸

It is worth mentioning that EU agreements are inextricably embedded in a predominant bilateral readmission system. In recent years, particularly following on from the June 2002 Seville European Council which called for stronger cooperation in this field with third countries, EU Member States increased the use of bilateral 'non-standard' agreements linked to readmission. These agreements (e.g., memoranda of understanding, arrangements, pacts, and police cooperation agreements including a clause on readmission) are often based on a three-pronged approach covering: (1) the fight against unauthorized migration, including the issue of readmission, (2) the reinforced control of borders, including *ad hoc* technical assistance, and (3) the joint management of labour migration with third countries of origin, including enhanced development aid.⁵⁹

These alternative forms of 'cooperation' are often concluded with south Mediterranean and African countries. Most standard readmission agreements are signed, on the other hand, with central and Eastern Europe, countries which have been more collaborative in accepting the readmission of their citizens because of their candidate country status or in order to keep the European door open, even though they have no clear prospect of EU membership.⁶⁰ Italy has entered into 30 readmission agreements, signed with member States of the European Union and third countries, five of which are African nations: Algeria, Morocco (1998, readmission), Nigeria, Tunisia (1998, readmission and police cooperation) and most recently Egypt (2007).⁶¹

⁵⁶ Cassarino J.P. (2007), 'Informalising Readmission Agreements in the EU Neighbourhood', *The International Spectator*, 42 (2), pp. 179-196.

⁵⁷ Trauner F., Kruse I. (2008), 'EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool?', *European Journal of Migration and Law*, 10, p. 412.

⁵⁸ Roig A., Huddelston T. (2007), 'EC Readmission Agreements: A Re-evaluation of the Political Impasse', *European Journal of Migration and Law*, 9, p. 377.

⁵⁹ Cassarino J.P. (2010), *Readmission policy in the European Union*, Directorate General for Internal Policies, European Parliament policy report: <http://www.statewatch.org/news/2010/nov/ep-eu-readmission-policy-report.pdf>

⁶⁰ Cassarino J.P. (2007), (2010).

⁶¹ Di Pascale A. (2010), 'Migration Control at Sea: The Italian Case' in *Extraterritorial Immigration Control*, ed. Ryan B. and Mitsilegas V., Leiden: Martinus Nijhoff Publishers.

2.2.2 Italy, thirty years of Senegalese migration

After Gambia (20%), Italy is currently the third country of destination for Senegalese emigrants (the second in the EU with 10% against 18% of France).⁶² The rise of Italy in the archipelago of destinations for Senegalese immigration is explained by a great number of reasons, among the most important we must mention: the periodic amnesties of undocumented migrants (*sanatorie*); the characteristics of the Italian labor market (the importance of ‘black’ labour – that means that migrants, particularly irregular migrants, have access to wages – and its coexistence with a large underground economy⁶³); and, of course, the lack of controls. As a matter of fact, Italy has been, for several years, a country of high migratory pressure, where it was possible to live without great risks, even without documents, and, the migrant’s own administrative position had been regulated it was possible to return enough frequently to the country of origin.⁶⁴

The decisive factor for migrants choosing Italy is certainly the periodic possibility of amnesties, which had come about precisely because, until then, Italy did not have legislation to regulate the entry and residence of migrant workers, apart that is from a few ministerial memorandums.⁶⁵ Indeed, migrants of the first wave have been able to regulate their situation with the law 943/1986 (Senegal is in the second place according to the number of regulated). Those of the second phase have benefited from law 39/1990, so-called ‘Martelli Law’ (Senegal is in third place). In spite of the official closing of borders that has followed these first measures, between 1990 and 1994 the absence of systematic identity controls - that leaves a relative freedom of movement to the undocumented migrant – will perpetuate the migratory chain.

Considering that six amnesties have been decreed to date (the most recent in 2009), which have regularised approximately 1.5 million foreign nationals⁶⁶, it will be clear that Italian migration policies have, since the go, organically combined the structural submergence of undocumented migrant workers into the underground economy with their periodic emergence through the instrument of amnesties.⁶⁷ Another fundamental element in the institutionalised production of illegality is the management of migration movements through flow decrees (*decreti flussi*) that annually set an upper limit to the number of entries for the purpose of work for hire. This quota system has been structured in a selective manner, since a great many of the authorised slots are reserved for migrants from countries with which Italy has stipulated bilateral agreements. On the other hand, the system has increasingly come to be structured in a manner reminiscent of the old *Gastarbeiter* model, clearly encouraging entries for seasonal work rather than for permanent employment.

Therefore, many Senegalese have continued to enter Italy illegally. The economic crisis and the increasing attention of media and political authorities to the ties between irregular migration and

⁶² Some A.N. (2009), *Migrations au Sénégal: Profil National 2009*, IOM: Genève, p. 53.

⁶³ See Reyneri E. (1998), 'The role of the underground economy in irregular migration to Italy: cause or effect?', *Journal of Ethnic and Migration Studies*, 24 (2), pp. 313-331.

⁶⁴ Fall P.D. (1998), 'Stratégies et implications fonctionnelles de la migration sénégalaise vers l'Italie', *Migrations Société*, vol.X n°60, Paris: CIEMI.

⁶⁵ The legislation of reference, up to 1986, had been the ‘Testo unico delle leggi di pubblica sicurezza’ of 1931. Now immigration matters are governed by the *Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero* (Legislative Decree n.286/1998 with subsequent amendements, the so-called ‘Single Text on Immigration and the Status of Foreigners’). For an analysis of Italian legislation see *Diritto degli stranieri*, ed. Bruno Nascimbene (2004), Milan: Giuffrè; Einaudi L. (2007), *Le politiche dell’immigrazione in Italia dall’unità ad oggi*, Rome: Laterza.

⁶⁶ For an in-depth analysis of irregular migration in Italy see: EMN - European Migration Network, *Irregular migration in Italy. Illegally resident Third Country Nationals in Italy: State approaches towards them and their profile and social situation*, IDOS: Rome, December 2005.

⁶⁷ Cillo R. (2007), 'Italy Country Report', work package 2, Undocumented Workers Transition, EU sixth framework programme, Laboratorio di Formazione e Ricerca sull’Immigrazione, University of Venice Ca’ Foscari.

crime, combined with European pushes towards an intensification of border controls as well as the identification and expulsion of irregular aliens, have radically modified the situation.

However, among sub-Saharan countries, the Senegalese diaspora is the largest in Italy. On 1 January 2010, Senegalese regularly staying in Italy amounted to 71,000 (the sixteenth country in terms of resident population), against 53,941 in 2005.⁶⁸

Always underestimated by official statistics, that do not take into account undocumented migrants, the Senegalese presence has a regular and, a not small, irregular component. The exact number of irregular migrants living today in Italy is not known, and, currently, there is no way to fill this information gap. By way of example, we can report the estimates provided by different organizations.

According to Ismu⁶⁹, the total of undocumented migrants in Italy is about 651,000; Ocse estimates 750,000 and Caritas 1 million⁷⁰. As regards Senegalese migrants, according to Ismu, on 1 July 2005 the percentage of irregular migrants amounted to 18% of the total stock, calculated at 82,000.⁷¹ According to this estimate and considering the stock of 71,000 regular migrants, it is possible to assume the presence of 16,000 undocumented migrants from Senegal in Italy.

Despite its relevance in Senegalese immigration, Italy has no formal agreement on either migration nor repatriation with Senegal – unlike France⁷² and Spain⁷³ – but it has expressed an interest in concluding one. Recently, according to a press release of March 2010 that came out of the Italian Ministry of Foreign Affairs:

‘The two Ministers [Italian and Senegalese, *Ed*] have convened to structure and to regulate the bilateral consultations and have shown a full unity of views on the difficulties of clandestine immigration, favoring regular immigration accompanied by focused programs of cooperation for development, also related to professional training, in order to favor the re-integration of return immigrants in their country and the best use of monetary remittances coming from our country.’⁷⁴

The two countries nonetheless cooperate closely on matters pertaining to migration and Italy punctually returns illegal Senegalese immigrants⁷⁵, with Senegal’s agreement and on an informal basis. As Cassarino states,

‘faced with the difficulties inherent in the conclusion and concrete implementation of formal readmission agreements with Mediterranean countries, some European countries have recently started to devise a broader framework of cooperation based on administrative arrangements, bilateral deals and exchanges of letters and memoranda of understanding as an alternative to formal readmission agreements, arguing that these new forms of ‘compromise’ foster cooperation on readmission. Though they are not formal agreements, they nevertheless have serious implications on state-to-state relations and migrants’ rights to protection.’⁷⁶

⁶⁸ Istat (the Italian Central Statistics Office), 'Indicatori demografici Anno 2009', Press release, 18 February 2010.

⁶⁹ ISMU, Iniziative e Studi sulla Multietnicità: <http://www.ismu.org/>.

⁷⁰ 'Clandestini, in Italia sono un milione', *Corriere della Sera*, 10 August 2009.

⁷¹ 'Irregular migration in Italy', Policy Brief, *Clandestino* research project, July 2009.

⁷² See the *Accord de gestion concertés des flux migratoires* of 23 September 2006 and the circular NOR IMIM0900083C of 15 January 2010: <http://www.immigration-professionnelle.gouv.fr/nouveaux-dispositifs/accords-bilatéraux>.

⁷³ See the agreement of 9 November 2007 (prolonged early 2010) which granted an estimated 2,700 work permits for Senegalese workers seeking jobs in Spain.

⁷⁴ My translation. Press release, Italian Ministry of Foreign Affairs, Rome, 11 March 2010. Available at <http://ww.esteri.it/>.

⁷⁵ It should be pointed out that the national average of readmission is about 45%, while for Senegalese migrants it amounts to 23,2%. These data reflect the lack of readmission agreements between Senegal and Italy. Lencioni S. (2008), *L'immigrazione irregolare senegalese in Italia*, Returnet Report.

⁷⁶ Cassarino J.P. (2007), cit.

Despite the absence of a formal agreement, the readmission of Senegalese migrants to Senegal have been carried out from last summer on the basis of the police cooperation agreement, which was signed 30 July 2010, in occasion of what the Italian Government has called the ‘African tour’. The head of the Italian police Manganelli, accompanied by the undersecretary of the Ministry of the Interior (in charge for immigration in Italy), Nitto Palma, concluded an agreement of cooperation between Italian and Senegalese police in order ‘to intensify the fight to clandestine immigration and every kind of illicit traffic’.⁷⁷ A memorandum of understanding for this agreement was already discussed and drafted by the prefect Rodolfo Ronconi, Director of the Police Department of Immigration and Border, in March, during a meeting with the heads of the Senegalese police, at the Italian Embassy in Dakar.⁷⁸ The agreement is not public yet, but it is supposed to be similar to other police cooperation agreements. Generally, in this framework several initiatives of technical assistance can be undertaken. These can include the transfer of tools and equipment, as well as the organization of training courses, in order to improve the institutional and operational capacities of the competent authorities of the country of origin and the transit of migratory flows. Police officers can also be sent to Italian diplomatic and consular representations, to act as experts on migration issues.⁷⁹

3. Analysis of visas

As regards to the visa issue, Italian consulates are quite relevant in the EU framework. In 2009, Italy was the third country in terms of short-stay visa issuance, after France and Germany.

It should also be pointed out that the impact of the global economic crisis on migration to the EU: the Frontex Risk Analysis Unit states that ‘a 37% reduction in the number of visas issued was reported by eight Member States over the first quarter of 2009 compared with the first quarter of 2008’.⁸⁰

Table 2. Total of visas issued by Italian consulates per year (2005-2009).

2005	2006	2007	2008	2009
1 076 680	1 198 197	1 519 816	1 563 505	1 423 000

Source: Council of the European Union notes ‘Exchange of statistical information on uniform visas issued by Member States’ diplomatic missions and consular posts’ from 2005 to 2009.

Before going into details with the case-study, it might be useful to mention that there are 21 categories of short-stay visa, which can be divided into three main classes:

1. Uniform Schengen Visas (USV): valid for all the Contracting Parties' territories; they may be airport transit visas (type A), transit visas (type B), short-stay or travel visas (type C), valid for up to 90 days, for single or multiple entry. Exceptionally, the Schengen regulation enables important or well-known persons who frequently require a visa and who can provide the necessary guarantees, to be issued with C-type visas which permit a visit of up to 90 days in any half-year and are valid for one (C1), two (C2), three (C3) or five years (C5).
2. Limited Territorial Validity visas (LTV): these are only valid for the Schengen State whose representative issued the visa (or in particular cases for other Schengen states when specifically named) without any possibility of access to or transit through the territory of any other Schengen States. They are issued solely for humanitarian reasons, or in the national interest, or under international obligations as an exception to the common USV system. An alien may not

⁷⁷ An agreement ‘against clandestine immigration’ was signed during the same Italian tour with Gambia. Migreurop, *Italie: cronologie d'expulsion, débarquements et accords signés*, juillet 2010.

⁷⁸ Author’s investigation at the Italian Embassy in Dakar.

⁷⁹ Di Pascale A. (2010), cit.

⁸⁰ Frontex Risk Analysis Unit (2009), *The impact of the global economic crisis on illegal migration to the EU*, Warsaw, p. 22.

directly apply for these visas, which are issued in a few specific cases by the diplomatic or consular representative when it deems it appropriate to issue the visa for the reasons as stated even though not all the conditions are met for the issue of a Uniform Schengen Visa, or when the applicant does not hold a validly recognized travel document, in particular emergencies or in case of need.

3. Long stay or 'national' (NV) Visas, which are only valid for visits that are longer than 90 days (type D), with one or more entries, in the territory of the Schengen State whose diplomatic representative issued the visa, and transit through the territory of other Schengen States for a period of not more than five days. In the followings, the analysis of visas issued, the trends involved and the application procedures in the Italian consulate in Dakar is set out to show how consular practices goes beyond text indications and the issuing procedure is an uncertain intersection of contacts with individuals and institutions, which interpret them in their own way

The study does not touch on long-term visas, whose issuing belongs to the competence of Member States. As regards Italy, the long-term residence permit (*permesso di soggiorno CE per soggiornanti di lungo periodo*) is issued for an indefinite period to people who have been legally and continuously resident in Italy for five years and who have a minimum income (higher than the social allowance). A language test has also been required since December 2010.⁸¹

3.1 Visas from Senegal to Italy: quantitative evolution's analysis (2005-2009)

The consulate of Italy in Dakar is responsible for seven countries in the West-African region: Senegal, Mauritania, Mali, Guinea Conakry, Guinea Bissau, Cape Verde and Gambia. Consular services are accountable for the seven countries of competence, so the statistics on visa that we will analyse include applicants from all these countries. However, Senegal is by far the most numerous in terms of visa applications, followed by Cape Verde and Guinea.⁸²

To analyse better regular migration process to Italy we will focus on three categories of migration as provided in European law and policy: visitors/tourists, labour migrants and family members.⁸³

Labour migrants and family members are relevant for, respectively, the evidences of labour migration and family migration flows. Thus, the other kinds of visas are also a channel of migration. As a matter of fact, the largest irregular migratory systems operating in Europe take place through the abuse of visa conditions rather than through clandestine entry – *overstayers* represented almost 75% of so-called unlawful migration flows.⁸⁴ The largest share of irregular workers in the Western European economy originates in countries that enjoy relaxed visa regimes or visa-waiver programs. The data on apprehended aliens illegally present in Western Europe show that the main irregular migratory flows originate in Eastern Europe, not in the Mediterranean.⁸⁵ Therefore it is useful to take into account all types of visas, whether they be invitation, tourism, mission, sport or study.

Now we consider internal statistical data from the Italian embassy in Dakar in the last five years, 2005-2009, taken from the VIS system of the embassy.

⁸¹ For requirements see <http://www.poliziadistato.it/>. The language test came into force December 9th 2010, Circolare n.7589, 16th November 2010:

http://www.interno.it/mininterno/export/sites/default/it/assets/files/20/0828_Circ._test_italiano_n._7589_del_16.11.2010.pdf

⁸² Author's investigation at the Italian Embassy in Dakar.

⁸³ Asylum seekers are the fourth relevant category for a study on migration, but it would need a separate and deeper analysis and for reason of space we did not consider it here.

⁸⁴ Cf. Pastore F., Monzini P., Sciortino G. (2006), 'Schengen's Soft Underbelly? Irregular Migration and Human Smuggling across Land and Sea Borders to Italy', *International Migration*, Volume 44, Issue 4, pp. 95-119.

⁸⁵ European Commission (2004), *Annual Report on Asylum and Migration 2001*.

Table 3. Visas issued by the Italian Consulate in Dakar by types and year (2005-2009)
Processing on data of the Ministry of Foreign Affairs, Embassy of Italy in Dakar.

<i>Types of Visa</i>	2005	2006	2007	2008	2009
Business (USV)	247	349	575	773	295
Family reunification (NV)	1 490	1 295	1 841	3 433	3 304
Accompany a family member (NV)	22	11	17	14	37
Invitation	332 USV 4 LTV	411 USV 1 LTV	295 USV 3 LTV	525 USV	288 USV 2 LTV
Tourism (USV)	372 2 VTL	573	2 068	1 462	747
Medical care	31 USV 1 NV	24 USV 5 NV	51 USV 9 NV	33 USV 6 NV	31 USV 20 NV
Mission	188 USV 11 NV 1 LTV	268 USV 10 NV	384 USV 11 VN	375 USV 10 NV 2 LTV	348 USV 18 NV 5 LTV
Re-entry* (NV)	55	63	59	55	142
Sport competition (USV)	47	30	69	76	91 + 25**
Study	109 USV 64 NV	91 USV 84 NV	98 USV 50 NV	147 USV 63 NV	76 USV 46 NV
Study - Formation	-	1 USV 2 NV	1 NV	21 NV	7 NV
Study - Internship	-	-	1 USV 1 NV	3 USV 2 NV	1 NV
Study - University	-	-	-	-	14 NV
Religious motivations	26 USV 4 NV	19 USV 8 NV	40 USV 10 NV	38 USV 10 NV	29 USV 14 NV
Independent Work	2 NV	-	1 USV	1 USV 1 NV	1 NV
Independent Work - Arts	13 USV	59 USV	8 USV	13 USV	-
Subordinate Work	140 NV	142 NV	1 978 NV 13 USV	1 292 NV 10 USV	929 NV 9 USV
Subordinate Work - Sport	2 NV	3 NV	2 NV	3 NV	3 NV
Subordinate Work - Maritime	-	2 NV	-	-	-
Subordinate Work - Arts	-	-	-	15 USV	-
Transit (USV)	31	16	6	9	9
Airport transit (USV)	307	871	144	20	3
Work (total all types)	157	206	2 002	1 335	942
Visas issued (total)	3 529	4 377	7 790	8 458	6 576
Refusals	1 839	1 327	949	1 119	750
Refusal rate (%)	52	30	12	13	11

* The foreign nationals regularly resident in Italy, momentarily and incidentally deprived of the residence permit, or in possession of an expired one when s/he has applied for renewal in the times previewed by law, must ask for a re-entry visa to be able to enter Italy.

** Rome, World Swimming Championship 2009.

At first, if we consider all visas issued, we notice a progressive increase from 2005 to 2008, with a little downward trend in 2009. From 2006 to 2007 the number of visas issued increased by 3,413 and compared to 2005 the total of 2007 has more than doubled. The last decrease must be read in the light of scandals which took place at the Italian embassy during 2008. Schengen visas were sold by a high official of the embassy for about five or six thousand Euros.⁸⁶ Visas were limited in 2009, implying even fewer visas than in 2007.

Then, we analyse data by typology of visas considered. The first relevant change occurs in 2007, when there was an exponential increase in work and tourism visas, respectively growing by more than ten and four-fold. 2007 is the first year of reserved quotas for Senegal in the decree law on migration flows (1,000 per year⁸⁷) and the same quota occurs in 2008. The effects of quotas can be seen in the following years but for 2007 it has also to be considered as the second decree of 2006 (*decreto flussi bis*, 21 July 2006) which has added 350,000 entries for all who have lodged the application by the 21 July 2006. The first decree has provided 170,000 entries and applications received were about 520,000.

After several years of quotas at 170,000, the 2008 quota was limited to 150,000 home care workers (from those who applied under the 2007 quota). Lower quotas led to a reduction in inflows for employment in 2008, although these are visa issuance figures and include seasonal workers. The number of entries for employment fell further in 2009, when, due to the economic crisis, Italy did not enact a flow decree, but only an amnesty for the regularisation of domestic and care workers for anyone employed since April 2009.⁸⁸ Those of Senegalese nationality are in eighth place for applications (13,646 or 4,63% of the total).⁸⁹

A number of legislative changes were made in 2008-2009. In 2008, stiffer penalties were applied for illegal migration and family reunification requirements were also made stricter.⁹⁰ As regards family reunifications, this category is the largest for issued visas, in spite of all the difficulties which will be detailed in the 3.3 below. From 2007 to 2008 reunification visas almost doubled and the decrease in 2009 is very slight. This clearly shows the sedentarisation process of labour migration. According to Caritas, Africa is the continent with the highest family-reunification visa rate: 43,227, 33,5% of the total are for 'family reasons' (family reunification and visa to accompany a family member).⁹¹

Moreover, the existence of derogatory visas, should be noted, granted by representatives of Member States abroad in order to maintain good relations with local government. It is not possible to quantify them in our case-study, but, as an example, in a French consulate in an African country, the derogatory dossiers represented, in July 2007, a quarter of the 80,000 visas issued in that year.⁹²

⁸⁶ Sold visas were estimated at about 2,000. The only agency who spread the news was *Il Messaggero*: 'Senegal, inchiesta su visti falsi per 6.000 euro. Rimosso un funzionario dell'ambasciata italiana', 11 October 2008. See also: 'Traffico irregolari. Da Dakar a Roma con visti falsi: indagato diplomatico italiano', MeltingPot.org, 15 October 2008.

⁸⁷ Art. 2, *Decreto flussi 2007*, 30 November 2007; art. 2, *Decreto flussi 2008*, 10 December 2008.

⁸⁸ Employers had to demonstrate adequate income or justify their inability to do so, as well as paying a 500 euro fine. The government received about 295,000 applications, fewer than originally predicted. 180,000 were for domestic workers (maids and nannies) and the remainder for care workers. By mid-March 2010 about 85,000 permits had been issued; the rejection rate was about 6,3%. OECD report 2010, International Migration Outlook: SOPEMI.

⁸⁹ Ministry of Interiors, Final report, 1 October 2009.

http://www.interno.it/mininterno/export/sites/default/it/assets/files/16/0033_Report_Conclusivo_-_Dichiarazione_di_Emersione.pdf

⁹⁰ In July 2009 a 'Security Law' included reform of immigration law, further raising penalties for illegal immigration, placing restrictions on access to public services for those with permits, and increasing the maximum detention period for undocumented foreigners from 60 to 180 days. Fees were raised, renewal of residence permits is to be conditional on integration, and a language test will be required to obtain the long-term residence permit.

⁹¹ Caritas (2009), *Dossier Statistico Immigrazione 2009*, XIX Rapporto Caritas/Migrantes, Rome: IDOS.

⁹² Spire A. (2008), *Op. Cit.*, p. 26.

A further interesting piece of data is the number of refusals, in order to estimate the gap between applications and issuances. Data clearly shows a decrease in the percentage of refusal in terms of the total number of visas issued. It is worth mentioning here that the refusal of visas appears in the statistics only if the application is lodged in the visa office that rejects it, as a result of its assessment. If the application is considered incomplete, as in most cases, officials can suggest that the applicant supplement it with supporting documents. Civil employees can not directly deny a visa. Nor can they refuse to accept the application, but they can suggest that it be supplemented. The Italian embassy in Dakar tries to do this, giving detailed information at the front office or afterwards to the applicant to avoid refusals. Other embassies accept all applications and then reject the unsatisfactory ones.

3.2 Visa application, an opaque procedure in the name of security

How is the EU visa system transposed onto the ordinary practices of a Member State's consulate, especially in a country of high emigration (both regular and irregular) like Senegal? A period of observation of three months at the Italian embassy in Dakar has allowed me to reconstruct in detail the procedure of visa request, which has to be considered specific for the embassy itself, not necessarily the same as embassies of other Members States in loco or, indeed, Italian delegations elsewhere.

(i) Access to the Consulate, availability of information and the arrange of the appointment

The consulate of Italy in Dakar is in the same building as the Embassy, in the city center (*Plateau*). Because of its geographical position, the Senegalese capital is difficult to reach from other regions, especially from the south of the country (region of Casamance). It is not easy to pass through the Gambia, by reason of border controls, and the alternatives are to reach Dakar by sea (expensive and uncertain) or by land (a very long trip). Moreover, the plateau is really far from popular neighborhoods and *car rapides*, the cheapest transports, do not go to this district.⁹³ The displacement entails very often a stop of few days in Dakar with some relatives.

The visa office is on the ground floor. There are two entrances in the building: one for visa applicants, with security guards, and, ten meters past it, another one for civil servants, with a bell. As in most cases, in front of the embassy there is a *telecentre*, a copy bureau, ready to help applicants needing copies of their documents.

As regards information, on the website of the embassy (ambdakar.esteri.it, in English/French/Italian), there are the opening hours of the visa office, but only generic indications in Italian and English as regards to visa application, through the link of the website of the MAE (esteri.it/visti/index_eng.asp).

'C'est l'accès qui est difficile parce que nous n'avons pas d'interlocuteurs pour nous expliquer ces procédures', has declared an applicant for an Italian visa to the Senegalese Press Agency (APS).⁹⁴

Thus, a first visit to the consulate is necessary for the applicant to learn the full list of required documents since the information board in front of the consular building is the only comprehensive source of information, and only at visa offices detailed requirements forms are available. On the external wall of the building, near the entrance, the information board provides the following information: opening hours; services of the Anolf Senegal (*associazione nazionale oltre le frontiere*, supported by the Italian trade union *Cisl*)⁹⁵; cultural advertisements (announcements and scholarships);

⁹³ One way with *car rapide*, the common transportation within the city, is 50-200 CFA (0.10-0.40 Euros), while taxis are really expensive for Senegalese (500-2,000 CFA), so they usually share them. More frequently they walk, even for very long distances.

⁹⁴ 'Sénégal: Les demandeurs de visas veulent davantage d'interlocuteurs', *Agence de Presse Sénégalaise*, 12 Octobre 2009.

⁹⁵ Anolf offers services for migrants and their families in the field of: translation of documents (French/Italian), Italian language and culture, help for the visa application, health assistance and study.

notices from the visa office concerning new procedures; list of translators suggested by the embassy with phone and mail contacts.

For many people these are the first indications as regards to the procedure to follow. In particular, it is here that most learn that access to the front office is possible only by appointment and that there is no possibility of entering in order to ask information. No telephone number of the consulate or of the visa office is indicated. Only the *Africatel* service appears, in order to take an appointment and to attend the visa office. From 2001 the service has been outsourced to this private society. Other consular representations in Dakar make use of this private call center: France, Belgium, China and Portugal⁹⁶. The practice of externalisation seems to be spreading in consulates throughout the world and it has increased in the last years, being directed by the 390/2009 EU regulation.⁹⁷

The outsourcing to *Africatel* has led to a 25% increase of appointments at the Italian Embassy in Dakar.⁹⁸ The society manages and organizes a regular flow of people to the offices, the cost of the service falls entirely on the customer and the consulate obtains a saving both in terms of staff and offices, which can be given over to other needs. Obviously this service becomes a cost for customers, who have to buy at the bank windows of *Ecobank* a prepaid telephone card at the price of 5,000 Francs CFA (7,5 Euros) for 12 minutes of conversation with the call center.⁹⁹ A premium price enormously higher than the price of a local call at the standard rate: for instance with Orange Senegal the price is 85 CFA/min, or one hour of conversation at the price of the *Africatel* phone card. The appointments are given some weeks ahead of time. Applicants are called to attend the office in the morning at 8, 9, 10 or 11. The majority of people arrive half an hour or an hour in advance and, after having waited in the street, where there is no shade, they slowly enter in the courtyard of the embassy. There is a waiting area outside the visa office, under a tent which gives some shelter from the sun, a gift from the Anolf Senegal.

The time of entries is managed by security guards (SAGAM, a local security society), who are intermediaries in the management of entries and are also the only accessible source of information on procedures. In general, the involvement of security guards in favours and rewards' circuits is not unusual. An Italian *carabiniere* (a militarised branch of the police force) placed at the entrance of the embassy checks on the regular course of entries and also on any suspect movement.

Furthermore, because of the lack of information, the complex procedure and the applicants' lack of skills in facing said procedure, the 'professional' intermediaries have a wide margin of action. A simple information, some help to fill in the forms or to purchase documents are available outside the embassy.¹⁰⁰

'Nous venons ici les matins pour expliquer aux gens les procédures et, parfois, nous les aidons à rédiger les différentes demandes qui doivent accompagner les dossiers, moyennant de l'argent. Mais, nous ne fixons pas de prix, cela dépend de la bonne volonté de nos clients', an anonymous intermediary who works in front of the Italian consulate told the APS.¹⁰¹

⁹⁶ <http://www.africatel.sn/Ambassades.htm>.

⁹⁷ Cf. Beaudu G. (2007) and the updates in Beaudu G. (2009). The EU Regulation 390/2009 (OJ 2009 L 131) amends the Common Consular Instructions and it aims at disciplining the cooperation of consulates with external service providers.

⁹⁸ Author's investigation at the Embassy of Italy in Dakar.

⁹⁹ Cf. the same service of *Africatel* for the French Consulate in Dakar: Cimade (2010), cit., p. 79.

¹⁰⁰ See the examples of intermediaries' services outside the French Consulate in Mali: an information (500-1.000 FCFA); loan of Euros (20.000 FCFA); purchase of an appointment (15.000 FCFA); etc.. Source: Cimade (2010), cit., pp. 63-64.

¹⁰¹ 'Sénégal: Les demandeurs de visas veulent davantage d'interlocuteurs', *Agence de Presse Sénégalaise*, 12 Octobre 2009.

(ii) Lodging the form and interview

After having put together the required dossier and having fixed too the appointment, the applicant has to lodge their form at the visa office. The applicant must appear in person and the following must be presented: an application form, as set out in Annex I of the Visa Code, a valid travel document, a photograph, supporting documents as set out in the consulate's forms and travel medical insurance.

There are three front offices, two of them for all types of visas and the other one reserved for family reunification. It should be pointed out that there is another front office, reserved for business visas and under the authority of the commercial office, located next to the embassy building. A fast track for people well-known by the embassy – mainly managers of companies trading between Senegal and Italy – is then provided. This is done so that these do not mingle with other applicants and so their procedure is pushed on faster. Their appointments are fixed by telephone directly with the official in charge of the commercial office and the interview, even the assessment of the relevant documents and the purpose of the travel, is done at the desk, the applicant is invited to sit down and generally s/he already knows the official.

Going back to the ordinary procedure, the general rule provides that employees of the visa office must be Schengen citizens, assuming that this will limit any corruption, but, as a matter of fact, it is more practical for consulates to have officials who speak the local language.¹⁰² Therefore, there are often exceptions to the rule, usually with the recruitment of staff with double nationality or staff who have studied in Italy, as is the case in the Italian consulate in Dakar.

The official checks the dossier and questions the person in order to verify his/her reliability and to estimate the 'immigration risk'. The applicant is required to explain exactly what s/he is going to do in Italy, previous working experiences, contacts with those inviting them to Italy, the own family situation – wife and sons do not certainly prevent migration, but they are a factor in 'assessing the risk'. The age of applicants is assessed ('Young people are more of a risk', an official told me) and also the question of whether they have previously obtained Schengen visas

The official notes down, in the margin of the form, the assessments based on the answers of the applicant. Despite the specific training of the consular staff on how to assess visa application, it is worth mentioning the risks of bias and discrimination towards applicants, based on social extraction, gender, age, origin (both in terms of country and milieu, i.e. urban/rural).

After the initial inquiry-interview in order to verify the admissibility of the application, the official creates an application file in the VIS (already operational in Dakar) and the applicant must pay the visa fee of 60 Euros, that, it should be noted, is not refundable in case of refusal. The Italian consulate in Dakar, as per common Schengen practice, typically holds the passport of the applicant during the evaluation, in order to avoid requests in other consulates. Such procedure is not codified by law, but it occurs in some African states. At last, the applicant is called to an appointment after one or two weeks for the withdrawal of the visa.

'En général, si les documents à légaliser sont corrects et conformes, l'Ambassade les légalise sans problème. Seulement, ils prennent le temps nécessaire pour vérifier l'authenticité des pièces fournies. C'est pourquoi, le retrait prend près de deux semaines', states an applicant.¹⁰³ A spelling mistake is enough to have to recompose the whole dossier. The evaluation of the dossier is at the discretion of the consular staff who also considers indications and comments noted down by the official at the front office. Moreover, the consul is authorised to hold an additional in-depth personal interview with the applicant and, in cases of obvious discrepancies, to refuse a visa. Formal reunions of the local Schengen cooperation take place almost every three months at the EU delegation in Dakar, but there are also informal exchanges of information on applicants between Member States' consulates.

¹⁰² Bigo D., Guild E. (2003b), cit., p. 99-100.

¹⁰³ 'Sénégal: Les demandeurs de visas veulent davantage d'interlocuteurs', *Agence de Presse Sénégalaise*, 12 Octobre 2009..

(iii) Supporting documents

As we have previously argued, the list of supporting documents sets out in the annex II of the Visa Code is very general and each consulate could discretionally require additional documents that, in some way, confirm the purpose and conditions of the planned trip and guarantees regarding return and any means of subsistence. The Italian consulate in Dakar, as stated by reminder forms set out by the embassy, demands a long lists of documents, varying according to the required visa. For example, in order to receive a tourism visa the following are required: the invitation (using the embassy form) accompanied by a copy of the identity card of the inviting/ confirmation of the hotel booking with cost *per* night; the work contract of the applicant in Senegal (duly authenticated by the appropriate office); the registration certificate of the employer to the Registry of Commerce; the last three pay-packets; the IPRES card (Institut de prévoyance retraite du Sénégal); a bank statement (the required sum of 270 Euros/5 days, plus the cost of the hotel); return flight booking with confirmed dates (receipts of the travel agency are not accepted); health insurance valid for the Schengen area, with a minimum coverage of 30.000 Euros. Each document must be supplied with copies. All the required documents concerning the job are essential in order to demonstrate the possession of means of subsistence as well as the disinterestedness in migrating to Italy. The requirements are very specific in order to assess the veracity of the purpose of the trip. The authentication of the work contract as well as the registration certificate of the employer, are compulsory to avoid frauds, because contracts are frequently drawn up for friends or relatives to facilitate the issuing of a visa, though the persons concerned are not actually employed. As regards the insurance, many societies offer special packages for this specific request of visa applicants. The rate here, valid for three months, is among the cheapest ones (*Mondassur*, 67 Euros).¹⁰⁴

Therefore, to calculate the price of the visa all the costs for the dossier that the applicant has to meet have to be considered together. Additionally there are the expenses for the journey (or journeys) to the capital and eventual costs of intermediaries. In Senegal, the mean monthly income amounts at 1,080 US dollars¹⁰⁵, about 565,000 CFA. It seems relatively high, but the polarized income distribution in a country where the human poverty index reaches 41,6% of the population has to be underlined¹⁰⁶.

Finally, next to economic costs there are also the human costs that applicants must face, both in terms of time (travel to Dakar, times waiting there) and individually (the psychological pressure of being constantly under scrutiny through the process and in any further moment when a check takes place).

<i>Estimation of the mean price of a tourism visa</i>	
Call for appointment (Africatel) :	5.000 CFA
Identity Card (prerequisite for the passport) :	1.000 CFA
Passport :	20.000 CFA
Photos :	2.000 CFA
Insurance Schengen :	45.000 CFA
Visa :	39.960 CFA
Total =	112.960 CFA
+ Flight : 300.000 - 450.000 CFA	

(iv) Refusal and motivation

A decision on an admissible application must be taken within fifteen calendar days of the date on which it was lodged. At the Italian consulate in Dakar the withdrawal of passports – with or without visa – takes place every Wednesday at 2 p.m. and is a fast procedure.

¹⁰⁴ Package 'Schengen Europe Access', http://www.mondassur.com/devis/schengeurop_access.pdf.

¹⁰⁵ United Nations Development Programme and Ministry of Economy and Finance of Senegal, *Evaluation du programme d'action de Bruxelles (2001-2010) adopte lors de la 3ième Conference des Nations Unies sur les PMA*, Rapport National, January 2010.

¹⁰⁶ UNDP, *Human Development Report 2009*.

There are intermediaries who collect passports, since photocopies of the identity card of the applicant and of the intermediary are sufficient to do that and the majority of people prefer to pay for this service rather than face another journey to the capital.

In the case that a visa is granted the official often specifies the importance of attending the visa office on the applicant's return. Until now it was a practice used in order to pick out those who have re-entered and overstayers. But the VIS system – that is already operational at the Italian Consulate in Dakar, as we have previously stated – will check returns. One of the aims of VIS regulation is 'to assist in the identification of any person who may not, or may no longer, fulfill the conditions for entry, stay or residence on the territory of the Member States'.¹⁰⁷

It should be pointed out that the checks are anything but over because a visa does not automatically provide a right of entry to the visa holder.

Until April 2010 Italy did not justify visa refusals: according to Italian law there was a right to appeal within sixty days of notification at the Regional Administrative Court (T.A.R.) of Latium. Only the refusal of visas for family reunification, work, medical care and study needed to be justified.¹⁰⁸

As previously stated, the Visa Code imposes the justification and notification of the refusal for all visas with the 'standard form for notifying and motivating the refusal, annulment or revocation of a visa' (annex VI). A list of multiple choice boxes states that a visa is refused if the applicant:

presents a false travel document (1); gives no justification for the purpose and conditions of the intended stay (2); provides no proof of sufficient means of subsistence for the duration of the stay nor for the return to his/her country of origin/residence (3); has already exhausted the three months of the current six-month period (4); has been issued an alert in the Schengen Information System for the purpose of refusing entry (5); is considered to be a threat to the public policy, internal security or public health of one of the Member States (6); provides no proof of travel medical insurance, if applicable (7); presents supporting documents or statements whose authenticity or reliability is doubtful (8).

The last box (9) is exactly the normative transposition of the notion of 'migration risk': 'your intention to leave the territory of the Member States before the expiry of the visa could not be ascertained'. Thus, the refusal is always possible, even though the application is completed.

Next to some evident and objective motivations (1, 4, 7), the refusal could also be founded on manifold vague and porous reasoning, subjected to the discretionary interpretation of the consular staff.

Such a decision may be appealed in accordance with Italian law.

3.3 Right of family reunification: the persistence of practices of control

The European Convention of Human Rights does not include a right of family reunification (*Abdulaziz, Cabales, Balkandali v. United Kingdom*) but the foreign national who legally resides in a State has the right to respect 'family life' (ECHR, article 8):

Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁰⁷ Articles 2(e) and 20, Regulation (EC) 767/2008, OJ 2008 L 218.

¹⁰⁸ According to the Single Text (see note 58), art. 4 par. 2 'it is not obligatory to specify the grounds for denial of entry visas, except with regard to visa applications covered by articles 22, 24, 26-29, 36 e 39' (referring to applications regarding visas for work, joining family members, medical treatment or study). The procedure is also set out on the MAE website: http://www.esteri.it/MAE/EN/Ministero/Servizi/Sportello_Info/DomandeFrequenti/Visto_per_Italia/default.htm?LANG=EN

According to the ECHR, the notion of 'family life' is not restricted to the family predicated on marriage. The Court considers 'family life' every couple not necessarily married but who lives together, with sons (*Gül v. Switzerland*). On the other hand, the polygamist family is not included (*Rabia Bibi v. United Kingdom*).

However, as a matter of well-established international law a State has the right to control the entry of non-nationals into its territory and where immigration is concerned, article 8 of the Convention cannot be considered to impose on a State a general obligation to authorise family reunion on its territory (see, for instance, *Gül v. Switzerland* and *Rodrigues da Silva and Hoogkamer v. the Netherlands*).

Moreover, the Court considers that, in the context of family reunification, it rests with the persons alleging that there is a family relationship to provide reliable evidence thereof and to demonstrate that the relationship constitutes 'family life' as understood in article 8 of the Convention (*Taher v. Sweden*).

In Italian law the right of a family to live together enjoys explicit constitutional cover (art. 29 and 30 of the Italian Constitution). Its nature as a fundamental right, therefore recognized also for the alien, has progressively found clear definition in a rich jurisprudence of the Constitutional Court and, in particular, in article 28 of the 'Single Text on Immigration and the Status of Foreign Nationals' (hereafter referred to as the 'Single Text') which ratifies the right of family reunification. It seems, however, that the aspect of the control of entries prevails on guarantees connected to the exercise of a subjective right as well as the precarisation of the *status* of regular migrants seems to be an integral part of the politics of 'safety'. Our case-study turns out to be a demonstration of this thesis.

The procedure of family reunification consists of two phases. The first one is held in Italy and it regards the verification of the *objective* requirements for the issue of a *nulla osta* (literally 'no impediment to' pursuing the reunification procedure) by the Single Desk for Immigration (*Sportello Unico per l'Immigrazione*) in the province of residence of the family member. The second phase begins in Senegal only after the release of the *nulla osta*. It falls to the Italian consular posts abroad and it demands the verification of the *subjective* requirements for the issuance of the entry visa (family relationship and other features of the persons that reunification concerns).

The foreign national can only make a request for the following family members: a spouse who is adult and to whom they are still married (i.e. not legally separated); minors, even if depending on the spouse and born out of wedlock (including adopted children), provided that the other parent gives his/her consent; adult, dependent children, whenever they cannot provide for their own support due to a health condition that causes complete invalidity according to Italian legislation; the parents of the requesting foreign national (but not of the spouse) provided that they are supported by the foreign national and if they do not have other children in the country of origin, or rather parents over the age of sixty-five whenever their other children cannot support them due to serious health problems.¹⁰⁹

Polygamous marriages are excluded in Italian law – polygamy is a crime according to article 556, Criminal Code – so just one wife can benefit from the right of reunification (not necessarily the first one) and sons of other wives, not admitted to reunification, remain excluded, unless on behalf of a superior interest in application of the Convention of the Rights of the Child of 1989.

Therefore, in order to make a budget of the economic and social costs of reunification it is necessary to consider both phases, the first in Italy and the second in Senegal.

¹⁰⁹ Single Text, Art. 28.

3.3.1 What is required?

(i) From Italy: house, income and the “*nulla osta*”

The request for the *nulla osta* must be supplied with two fiscal stamps of 14.62 Euros (one for the application and the other for the *nulla osta*) and two copies of the stay permit/card, declaring the availability of housing and income requirements. Housing requirements are very strict: in addition to the copy of the lease contract/property act/lease free of charge, it has to be proved that the housing falls within the minimum standards provided by regional law for public residential housing, producing the specific certificates from the municipal office or the health fitness certificate granted by the ASL (Local Health Agency) office in the territory. A annual income must come from a legitimate source and it has to be not less than the annual amount of the social allowance if the applicant asks for reunion with just one family member, double the amount if the requester asks for reunion with 2 or 3 family members. In order to determine this figure the total income of cohabiting family members is considered. The applicant has to show their last income declaration, in case of subordinate work, or certificates which demonstrate autonomous work (registration certificate to the Commerce Office and a copy of their VAT number).¹¹⁰

When the required documentation has been lodged, the Single Desk issues the *nulla osta*, which has to be sent to the interested relative and to the embassy of reference. The issuance of the *nulla osta* is subject to the new term of 180 days, introduced by law 94/2009 (new art. 29, para. 8 Single Text) which has removed the provision of tacit consent on the part of the administration. This term was before associated with the obtainment of an entry visa, with the risk that the terms for the conclusion of the procedure become excessive, raising also doubts about contrasts with EU law that, even being permissive, provides that ‘as soon as possible and however within nine months from the date of presentation of the request, the competent authorities of the Member States shall have written down their decision for the applicant’.¹¹¹

This shift turns out to be particularly severe if it is considered that long attends entail consequences above all in relation to the inclusion of minors rejoined in the destination society.

(ii) In Senegal, a galaxy of certificates

Together with the *nulla osta*, the rejoined relative has to present the documentation certifying kinship, the marriage or age (in the case of a minor) and every other relevant certificate. The aim is to assess the veracity of identity and of any documents proving kinship. In Senegal the retrieval of certificates is a serious problem: births are often recorded late, archives are lost in floods or other catastrophes and certificates themselves are not easily legible because they are handwritten. Moreover, falsifications are common and for applicants it is not unusual to find a stamp from a Minister through friendship networks. In the Italian consulate ‘original false’ is employed to indicate certificates for which the border between fraud and truth is slight, as far as the document is not really falsified but it is not even truthful and there are no possibilities of further verifications.

The reminder list of necessary documents for the visa application diffused by the consulate in Dakar is divided into three parts, respectively for parent, spouse and children. For each category required certificates are listed. The common documents for the three categories are the form with identity photo, the *nulla osta*, the passport, the birth certificate of the applicant and the family certificate. For the spouse, the certificate of marriage and the certificate of recent divorce (less than six months) are required. For the child, the certificate of marriage of parents, the recent parent

¹¹⁰ For an in-depth analysis of the Italian law on family reunification, updated with the law decree 160/2008 and the law 94/2009, see: Cascelli A. (2010), 'Recenti modifiche alla disciplina del ricongiungimento familiare di cittadini extracomunitari', *Rivista dell'Associazione Italiana dei Costituzionalisti*, n° 00, 2 July 2010.

¹¹¹ Article 5 para. 4, directive 2003/86/CE. Cascelli A. (2010), cit.

authorization (less than three months) with the copy of the identity card of the parent and the sentence on the transcript of the birth.¹¹²

The largest number of required documents concerns the parent: marriage certificate or death/divorce certificate of the spouse; birth certificate of the child resident in Italy; certificate of dependency and economic guarantee for the rejoined; a certificate of 'collective life'¹¹³; copies of deposit slips paid by the child resident in Italy in the last year; in the case of retirement, the IPRES card and paying-in slips are required.

'Every act of civil status must be duly translated and legalized by a representative certified by the Ministry of Foreign Affairs', concludes the reminder. However, from the 1 March 2010 it is no longer necessary to pay for the legalization of the documents for a family reunification visa, but it is interesting to remember that before this date there were some very high costs. A birth certificate or a marriage act cost 10,515 CFA; a police record, a family record book or a parental permission cost 15,600 CFA.

Regarding costs for the obtaining acts from the Senegalese Ministry of the Interior, these range between 200 CFA and 500 CFA for towns and between 75 CFA and 150 CFA for rural communities, for each document.¹¹⁴

The price of an entry visa for family reunification is currently 49,200 CFA (75 Euros).

3.3.2 DNA and BMD tests, biological controls in quest of the 'real'

Since the documentation related to the family and parental relationships is not held to be reliable, the consular posts can use the DNA testing, in order to verify *real* kinship, or the Bone Mineral Density test, mainly used to diagnose cases of osteoporosis but which allows – at least theoretically – an estimate of age within six months and thus the true age of applicants. The DNA technology is the only non-documentary method accepted for proof of biological kinship.

The law decree 160/2008 introduces into Italian law the possibility for consular posts abroad to impose a DNA test for the release of kinship certificates (as regards both children, be they minors or majors, and parents of the applicant in Italy) at the expense of the interested parties (new paragraph 1bis, art. 29, Single Text).¹¹⁵ In particular, the test can be required when the kinship 'cannot be proved with certainty through certificates or acts issued by competent foreign authorities, in reason of lack of an established authority or however when it exist justified doubts on veracity of aforementioned documents'. On this subject, article 2 of the Decree of the President of the Republic (D.P.R. 334/2004) should be mentioned which had already provided that 'in reason of lack of an established authority or presumed unreliability of documents released by the local authority, [...] diplomatic and consular posts provides for the issuance of certifications [...] on the strength of verifications considered necessary, carried out at the expenses of interested parties'¹¹⁶. Furthermore, IOM local missions are already offering voluntary DNA tests to applicants for family reunification.¹¹⁷

¹¹² The sentence on the authorisation of the transcription of the birth is a judicial decision which authorises the official to register in the State Register of the place of birth, a birth up to a year after the event.

¹¹³ The certificate of 'collective life' attests that minor children are living and dependants.

¹¹⁴ Source: <http://www.demarches.gouv.sn/>.

¹¹⁵ In 2008 in Italy there was also the Bertolini proposal (supported by *Partito delle Liberta'*, the right-wing party): it was aimed at allowing the use of the DNA test to obtain a family reunification visa, in order to avoid 'the increasing irregular migration flows which determine a serious situation of insecurity and illegality, never more bearable in our country'. The proposal consisted of only one article which provides for the alien the compulsory requirement of the DNA test for the reunification with a blood-relation. In France, the Mariani proposal of 2007 introduced, in an experimental way, the DNA test but only for motherhood and was facultative until 2010. The use of the test was forbidden before this proposal.

¹¹⁶ D.P.R. 334/2004, *Gazzetta Ufficiale* n° 33, 10 February 2005.

The Italian collaboration with IOM began in 2001 in the embassies of Nairobi and Addis Ababa; in 2003 it was extended to diplomatic posts in Saudi Arabia, Pakistan, Syria and Sudan, then to other embassies where identification has been a serious problem. In April 2005, the Director of the Regional Office for Mediterranean area and IOM Mission Chief in Italy proposed to the Italian Ministry of Foreign Affairs greater use of DNA tests for citizens of other countries where documentation is unreliable or inexistent.¹¹⁸ In this way, the possibility of proof was established for applicants who, for various reasons cannot produce valid documentation as proof of their kinship. They can now require on a 'voluntary' basis, the DNA test to be carried out by IOM offices, at which necessary test kits are distributed.

The IOM office in Dakar works together with the Italian consulate both as regards DNA and BMD tests. Regarding this second tool of biological control, a sentence of the Italian Supreme Court has declared the activity legitimate as it was carried out by the Italian embassy in Accra, which used the BMD test to deny a young Ghanese an entry visa in Italy to rejoin her mother, regularly resident in Italy. The X-ray of the skeletal apparatus had ascertained the age of twenty-five years old, against the minor age declared and certified by the applicant. 'Understood that the certifications released by the foreign State are valuable only in that country, the Italian consular posts can proceed to all the necessary administrative checks with the purpose to establish the real age of those people that asks for the visa for entering Italy, among which the BMD examination'.¹¹⁹ The officials of the Italian consulate in Dakar apply an ample 'threshold of tolerance' to the results of the examination, considering a margin of error of two or three years of age.

However, the transformation of data with medical finality into juridical truth is worrisome. This logic that proceeds from the alliance between the obsession with fraud and the enthusiasm for numerical results favours the achievement of a real *technologie du soupçon*.¹²⁰ The obsessive distinction among 'true' and 'false' minor or among 'true' and 'false' parents shows the systematic mistrust that rules in the good management of visa applications.

The fairness of these alleged universally-recognised requirements might also be questioned. The application of a biological criteria as well as the minor age requirement in a society where the filiations concept and the sense of family are completely different might, indeed, be seen as discriminatory towards foreign nationals

At last, even after clearing the various steps previously described, the rejoined family member has to pay in order to get (and subsequently to renew) the stay permit for family motivations. The amount 'is fixed between a minimum of 80 and a maximum of 200 Euros with a decree of the Minister of Economy and Finances, in concert with the Minister of Interiors'.¹²¹ The obstacles interposed between the right and its concrete exercise risk has become so numerous so as to act as deterrents in undertaking a legal way to achieve family reunification.

(Contd.) _____

http://www.asgi.it/public/parser_download/save/dpr.334.2004.pdf

¹¹⁷ Such an opportunity had expressly been introduced by the decree 5/2007 but in the exclusive interest of refugees, for the purpose of releasing of substitutive certifications from Italian consular posts, if the interested parties could not prove their own family ties because of their status (new paragraph 29 bis, Single Text). Cascelli A. (2010), cit.

¹¹⁸ 'Unità familiare e test del DNA', IOM publication.

¹¹⁹ Supreme Court, Section I Civil, Sent. n. 1656, 25 January 2007.

¹²⁰ Cette France-là, 'La technologie du soupçon: tests osseux, tests de pilosité, tests ADN', *Mouvements*, n°62, avril-juin 2010, pp. 80-83 (originally published on *Cette France-là*, volume I, February 2009).

¹²¹ Cascelli A. (2010), cit.

4. Concluding remarks

Out of the sight of the civil society, the issuance of visas has become a key element in EU migratory policy: the destiny of family migration, workers, students, refugees, it is decided in prefectures of country of destination as well as in the country of origin, through a sort of outsourcing process. The expansion of visa requirements is a part of the wider process of the proliferation of extraterritorial immigration control practices, which enables destination States to free themselves of the legal guarantees otherwise available to migrants. EU Member States began to 'externalize' border controls towards the Maghreb countries by transforming them into a 'buffer zone' to reduce migratory pressure on Europe's southern borders.

As we have seen, (some) applicants for a Schengen visa are, even before they start the procedure, generally held to be 'risky' because of their assumed intent to overstay the period that would be granted to them. It is up to the individual to prove that he or she does not constitute a threat and that he or she can be regarded as *bona fide*. This means that for these people the real border of the EU has moved within their home country and that it is no longer, or no longer exclusively, at the border of the State they want to enter. It is at the consulate level that their entry is examined and not where they pass the physical border of the State. The border is activated *before* their entry into the territory. As a matter of fact European consulates abroad get to be the first controllers of Schengen borders, even before the border police, customs or immigration offices. Consular posts are hardly a perceivable border, nevertheless they are very real.

Passing to the other side of the counter of visa offices enable us to break with a technocratic vision which reduces the role of the official to a mere executor. Spire classified officials of visa offices into two groups: 'pragmatists' and 'averses'.¹²² The latter, in an attempt to be fair, consider every point which can weigh in favour of the release of the visa. For pragmatists, the high number of applications forces them to take into account only the assessment of economic means, rejecting other elements so as not to waste time. The discretion which can be used by officials has a double sense: on the one hand, the absence of publicity of practices, the secret which surrounds oral instructions, and, on the other hand, the choice between different options, still remaining in the frame of law. 'C'est au cas par cas', states an official.¹²³ They have the possibility of choosing a criteria, while hiding another one, in order to legitimate the decision taken.

The head of the consulate (Ambassador or First Counselor) can impose operational rules to harmonise practices, and this happens at the Italian consulate in Dakar, but in my opinion and according to my observations, despite differences of behaviour among officials, the visa *itself* represents an instrument to *select* migrants. It is a channel to manage migration and it is difficult not to question the consequences of such practices on the development of the streams of 'irregular' migration and on responsibilities that consular officers come to assume. As De Haas states, 'more and more complex visa requirements as well as increasing border controls have led to the swift diversion of migration routes and an increase in the risks, costs, and suffering of the migrants involved rather than a decline in migration'.¹²⁴

Since the introduction of visa requirements for North African countries by Italy and Spain in the early 1990s, illegal crossings of the Mediterranean Sea have been a persistent phenomenon. In 2000, sub-Saharan Africans started to join and have now overtaken North Africans as the largest category of irregular boat migrants.¹²⁵ Since 2003, Spain and Morocco, as well as Italy and Libya, have collaborated in joint naval patrols and on the readmission of migrants in exchange for aid. From 2006

¹²² Spire A. (2008), *Op. Cit.*

¹²³ Interviews to employees of the visa office in an African consulate in 2007: Spire A. (2008), *Op. Cit.*, p. 80.

¹²⁴ Cf. de Haas H. (2008), *Op. Cit.*

¹²⁵ *Ibid*, p. 48.

Spain, with a limited support from Frontex, patrols the routes between Senegal, Mauritania, Cape Verde, and the Canary Islands by airplane, helicopter and patrol boat. Frontex also coordinates patrols involving Italy, Greece, and Malta to monitor the area between Malta, the Italian island of Lampedusa, and the Tunisian and Libyan coast.¹²⁶

Finally, the growing discrepancy between restrictive migration policies and the demand for cheap migrant labour in Europe and Libya should be noted. Migration control is considered an essential condition for the preservation of a model of social protection in developed countries but migrants themselves are, at the same time, needed. European and African countries seem to have little genuine interest in stopping migration because their economies have become dependent on, respectively, migrant labour and remittances.

In this scenario, as we have seen, the legal channel for migration is becoming stricter and stricter, as is the criminalisation of irregular migration. According to some scholars, this process is aimed against the entire migrant population and is designed to weaken the positions of the entire world of work.¹²⁷

The Italian prefect Pansa, central director of immigration and of the Border Police of the Ministry of the Interior, recently declared that ‘the national production system often prefers illegals [*clandestini*]: less expensive and more flexible workers. Today we begin to have the first regular immigrants who become unemployed, while the illegals *are* nearly always employed. Indeed, illegality [*clandestinità*] or the possession of a residence permit for surreptitious work purposes are preferential requisites for access to a world of work that prefers to hire without contracts and without guarantees. [...] An undocumented [*in nero*] worker is an advantage for the entrepreneur’.¹²⁸

In this framework, the visa policy in countries like Senegal, which play the role of important ‘gate-keepers’ for Europe, needs to be studied as well as all migratory dynamics, to understand the different level of European migration policies, far from borders, far from seas, but which, nevertheless contribute to building up the undefined walls of this porous ‘fortress Europe’. Migration from West Africa to the Maghreb and Europe will continue. As long as no more legal channels for migration are created to match the real demand for labour and as long as large informal economies exist, it is likely that a substantial proportion of this migration will remain irregular. Policies to ‘combat illegal migration’ not only criminalise migration but are also bound to fail because they are among the very causes of the phenomenon that they pretend to combat.¹²⁹

¹²⁶ See Frontex, ‘Overview of sea border joint operations (2006–2009)’, cit.

¹²⁷ Cillo R. (2007), cit., p. 23.

¹²⁸ *Ibid.* See: Pansa A. (2006), ‘Chi bussava alla nostra porta?’, *Limes*, n° 2.

¹²⁹ Cf. De Haas H. (2008), *Op. Cit.*

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