“Med Agenda”, MEDAC Series in Mediterranean IR and Diplomacy, is aimed at publishing and preserving distinguished studies, speeches and articles dealing with international relations, diplomacy and security in the Mediterranean region. The authors are invited speakers, academics and diplomats, at MEDAC conferences and lectures, as well as MEDAC experts.
Perspectives in a Changing Mediterranean
Essays in Honour of Dr. Joe Borg
Dr. Joe Borg
Mediterranean Academy of Diplomatic Studies (MEDAC)

Perspectives in a Changing Mediterranean
Essays in Honour of Dr. Joe Borg

Malta, September 2016

Med Agenda — Special Issue

MEDAC Publications in Mediterranean IR and Diplomacy
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In recent years, the Mediterranean Academy of Diplomatic Studies has been extremely fortunate to benefit from the wisdom and leadership of Dr. Joe Borg, former Minister of Foreign Affairs of Malta and former Commissioner of the European Union.

This publication is a tribute to Dr. Joe Borg from MEDAC academic staff who would like to extend their sincerest appreciation for all that Dr. Borg has contributed to our Euro-Mediterranean world.

During his tenure as Minister of Foreign Affairs of Malta, Dr. Borg had a front row seat throughout the fascinating journey that resulted in Malta’s accession to the European Union. Dr. Borg’s unique diplomatic professionalism and his meticulous negotiation skills allowed Malta to navigate through post-Cold war relations and secure EU membership in 2004. As a result, Malta has become a more relevant actor in Euro-Mediterranean regional relations and international affairs, as a major contributor to peace and prosperity initiatives and an advocate for the safeguarding of the maritime global commons.

In the Maltese legal arena, Dr Borg also pioneered the adoption of a number of laws in the corporate sector, which brought Maltese legislation in line with European best practice. In particular, he was instrumental in drafting the Maltese Companies Act of 1995, which is one of Malta’s longest and most comprehensive laws. In this sphere, one must also note that Dr Borg has lectured countless students of law and commerce and is widely recognised for his expertise in commercial law.

As Commissioner of the European Union for Fisheries and Maritime Policy, Dr. Borg raised the profile of this very important sector on
the international stage and allowed the European Union to become a more credible actor in this economically and environmentally dynamic strategic area.

Dr. Borg’s legacy as the statesman who led Malta’s European Union negotiations will influence generations of Maltese to come. It was through his perseverance as a relentless and persistent promoter of Malta’s interests and convincing proponent of the major contribution that Malta would make to the EU’s Euro-Mediterranean agenda that enabled Malta to become a relevant member in the European Union. This is further highlighted by the fact that Malta will assume the Presidency of the EU in 2017.

All of us at MEDAC are grateful that Dr. Borg has been sharing his expertise and scholarly thinking with us on Euro-Mediterranean relations and diplomacy on a regular basis and contributing to our academic programme through his teaching and research supervision. MEDAC’s participation in numerous international seminars and conferences has been greatly enriched by Dr. Borg’s direct guidance and involvement and has allowed the Academy to become a more relevant platform for Euro-Mediterranean academic exchange.

MEDAC looks forward to continuing to be a beacon of confidence and open dialogue in the Mediterranean at a historic moment when both are necessary to ensure a better tomorrow for all the peoples of the region.

Professor Stephen Calleya
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September 2016
Introduction

Malta will be taking up the challenge of running the Presidency of the European Union on the 1st of January 2017. It will be the first time for Malta to hold the Presidency since it became a member of the EU in 2004. The next time Malta will hold the Presidency will be from July to December 2030.

One area identified as an absolute priority for the Maltese Presidency is the Mediterranean. This makes sense, because of Malta’s location and its history and because, in any case, the subject is very topical with the whole question of migration and the huge security concerns that exist within and around the region. The last time that a Presidency was held by a Member State, which had an immediate interest in the Mediterranean, was in 2014 when it was held by Greece in the first six months and then by Italy during the second six months. The next time around will be in 2020 when Croatia will be at the helm. Meanwhile Bulgaria and Romania will each be holding the Presidency; however, presumably, they will focus more on the Black Sea than on the Mediterranean. The EU Presidency will thus be entrusted to a Mediterranean State after a gap of two years and then again, there will be another gap of over two years before the EU Presidency lands in the hands of another Mediterranean State.

After a two year wait the appetite for some strong achievement for the Mediterranean should be there. Accordingly, the hope for a successful outcome rests fairly and squarely upon Malta in the knowledge that if this opportunity is missed it may be quite a little while before another similar occasion presents itself.
It is in this light that Malta will be taking up the challenge on the 1st January 2017.

**The Mediterranean Today – Malta’s forthcoming EU Presidency**

Over the last twenty years or so, the Mediterranean has been very much the central topic of discussions and of initiatives between the EU and Arab partners. We have witnessed the setting up of the Euro-Mediterranean Partnership first and then the Union for the Mediterranean as well as the European Neighbourhood Policy.

These initiatives have had their successes but they have also been the cause of a number of disappointments. The line of demarcation between one and the others is at times unclear and issues of continued relevance and of prevalence over one another rear their heads at regular intervals.

We in the Mediterranean have also been the first hand witnesses of the so called ‘Arab Spring’. Less than six years ago we were all speaking about it and we were all full of hope of great things to come. What happened in Tunisia was a great cause of hope and, with its ups and downs, the turn of events there since then has left a trail that augurs well for the future. It may, however, still be early days to speak of a solid foundation for a democratic State based on the rule of law and the respect for human rights. Egypt followed with the overthrow of Mubarak but the outcome there has, so far, been somewhat less inspiring than in Tunisia. We then experienced the Libyan bloodbath with the elimination of Gaddafi and his repressive regime. Again can we speak here of a successful outcome? Maybe, in time, we will, if the various factions that abound learn to live and to work together. In the meantime, the situation on the ground is chaotic, even meriting the title of a failed state. This is so much so that the terrorist IS has managed to claim a foothold within Sirte, which in turn necessitated intervention by the United States. It is hoped that the setting up of the Government of National Accord close to the end of 2015 by the United Nations Support Mission in Libya (UNSMIL) can help bring about some change for the better in the short term. It is clear, that the developments in Syria – the
refusal on the part of Assad to relinquish power notwithstanding the outcry by the Syrian masses for him to go; the ensuing civil war; the wave upon wave of massacres; the mass exodus of Syrians fleeing from their homeland in search of somewhere where to live in peace; the surge of the IS within Syria – are a far cry from what had been hoped for and what may have been expected to occur.

The rise of the IS over the last few years, in the aftermath of the ‘Arab Spring’, has cast a very dark cloud on all the efforts that had been made by those in the Arab world who wanted progress in the direction of the installation of a western style democratic rule. The horrible reaction to this was in fact the birth of the IS which was promoted by those who advocated extremist forms of fundamentalism and supported by elements who wanted no part in such a democratisation process. The birth of the IS in turn promised nothing more than a violent solution to what was perceived as the demoniacal process of ‘westernisation’ of the Arab world. It is very much an outright manifestation of the Machiavellian maxim that “the end justifies the means”. The problem here is not, however, whether the end can ever justify the means, but that the end being sought is itself, to say the least, of dubious validity, especially when looked at from the point of view of those who perceive democratisation and the rule of law as a significant part of the common good.

The violence; the mass destruction of human lives; the eradication of whole towns and villages; the obliteration of historical treasures belonging to the patrimony of mankind and the installation of terror within whole parts of the Arab world bear no justification and they cannot ever be excused in any manner, shape or form. Needless to say, the export of such violence and terror to Europe as we have witnessed in particular, in France, in Belgium and, more recently, in Germany, is abhorrent. All this has translated into a climate of enormous insecurity and of tension and has given rise to a mood of self-preservation and self-protection prevailing over any desire to try to work for compromise solutions and towards a peaceful outcome to the existing problems found in the Mediterranean.
What we see happening in and around the Mediterranean is overshadowing the longstanding Palestine-Israeli conflict. It is still there, it is still simmering, at times boiling, but no one is really focussing on it. All efforts are now directed against IS. All efforts aim at addressing the vast security concerns caused by it. In Europe, given the realities found within and surrounding our countries, we are no longer speaking of working in partnership with our neighbours around the Mediterranean but of security issues and challenges, of migration, of terrorism and counter-terrorism and so on and so forth.

This is the picture facing the incoming Maltese Presidency in so far as the Mediterranean is concerned. As a Mediterranean Member State par excellence, Malta is expected to and it ought to do her outmost to seek to address the present realities and to not just stop there but to also seek to find a long term way forward regarding the relations between the European and the Arab worlds.

**The Immediate Realities**

Starting first with the concerns we have to contend with, I am of the view that, even though it may be extremely difficult, if not impossible, to find immediate and lasting solutions to the present situation on the ground, we ought at least to seek to identify ways and means of correctly addressing security issues and of dealing more effectively with the huge migration problems we are witnessing.

Such mass migrations are serving as fodder to fuel racist sentiments across a wide spectrum of European society especially amongst those who have experienced and are experiencing huge influxes of people from our neighbourhood and even further afield. Rightist movements and nationalist fronts are using this to cause fear and to foment hatred, thereby giving rise to calls for such people to be exported back home without even considering for a minute whether they would be possibly sending them back to their death. Such sentiments are not the exclusive domain of the Border States within the EU. They are increasingly being felt in all parts of Europe and especially in those where the presence of migrants is becoming more of a daily reality.
The result is a large increase in support for all those within the political world calling for the closure of borders, the sending back of all migrants to where they came from and the shielding against any foreign influence. Such calls are now being directed not only at so called ‘irregular migrants’ but at all non-nationals, giving rise to xenophobic sentiments against other Europeans including nationals of other EU states. It suffices here to recall what was said by those in the UK who were in favour of the UK leaving the EU during the BREXIT referendum campaign.

The recent atrocities experienced within certain Member States have been associated with the whole migration issue and many have accepted the connection without batting an eyelid, without bothering to challenge how true this is. Any assertion that a good number of migrants are themselves terrorists, or at least terrorists in the making, is completely biased and unfounded. The argument that terrorists are finding their way in the EU courtesy of the migrant flows that are taking place is tenuous to say the least. It is therefore wrong to mix migration, even if irregular, illegal or whatever one may want to call it, with terrorism. The identified perpetrators of all the barbaric acts we have been witnessing are not persons who had just entered France or Belgium or Germany or anywhere else without authorisation but individuals who have been there for a long while, possibly children or grandchildren of persons who had settled there and made it their new home and who are nationals of that country.

*Is the closure of the EU’s borders to migrants, therefore, a solution to terrorism?*

The closure of borders against migrant flows will not solve the terrorism problem. If terrorism is coming from within, and there is no evidence that it is not, it has to be addressed in the same manner as all other forms of terrorism perpetrated by extremist groups and all other types of organised crime. What we are witnessing today is no different from the Brigate Rosse and the Baader Meinhof gang of the seventies. The same measures adopted for the eradication of such gangs of terrorists have to be resorted to here.
Is suspension of Schengen a solution to terrorism?

If the source of terrorist acts in Member States is from within, suspension of Schengen serves no real purpose. It may serve to deter terrorists from grouping up together and joining forces to perpetrate particular acts but it does not solve the problem itself. The only real solution is increased intelligence and strengthened coordination of anti-terrorist forces across the EU.

Is suspension of Schengen by one of more Schengen States a solution to migration?

Having tough controls at the borders of one’s country may curb migrants seeking refuge or seeking a new home from entering there. It may alleviate the problem in that particular country, but it does not solve the problem being faced by the EU as a whole, as a result of the huge humanitarian crisis it is being faced with. It simply exacerbates the problem in those parts that are the first points of entry and flies against any idea of solidarity and of burden sharing. Suspending Schengen leaves the problem just outside your doorstep.

Different permutations and combinations have been tried, whether in the form of unilateral initiatives (by constructing border fences) or bilateral ones (by agreeing with a transit third country to keep migrants there). Have they worked in practice? They may have provided a temporary respite. They are not, however, a permanent solution.

If we accept that people movements in the direction of the European Union from its immediate and not so immediate neighbours, especially to the South, is a reality for the years to come (and assuming that sending them back to their homeland is not an option), therefore the problem has to be addressed by all of us together. In other words, a multilateral approach to the problem is the only real way forward. If there is acceptance today, that the migration phenomenon is a European concern and that it has to be addressed at a European level, the solution has to lie in agreeing on the apportionment and allocation of such migrants, within the different EU Member States, rather than seeking
to find unilateral, *ad hoc* remedies which may only increase tensions instead of providing solutions. No matter how hard one tries to find alternative remedies, the reality is that the European approach is the only solution that offers prospects of permanence. All others are only stop gap measures.

The next step that will follow from such an agreement is to work out proper ways whereby the integration of such persons within their new home is made possible.

By taking these steps, we would not in any way be renouncing to the fight against terrorism and to seeking to curb organised crime associated with migrant smuggling. It is undoubtedly essential to tackle these scourges head on. Again, here, increased police cooperation targeting directly migrant smugglers, drugs and arms dealers and the like must be the solution.

*The Long-Term Approach to the Mediterranean*

If we were for one moment to put aside the realities before us of mass migration and the plague of terrorism, and if we were to focus our attention on the more long-term approach for the Mediterranean, what may be proposed as the way forward?

One way forward would be to opt for “more of the same”, by maintaining the *status quo*, with the Union for the Mediterranean and the European Neighbourhood Policy continuing to occupy centre stage. One may argue that what we have in place has worked well in times when the going was good and, at most, what we should do is to fine tune what there is. While doing so we may also propose new initiatives on the cultural, socioeconomic or on any of the other fronts to supplement the pool of initiatives that already exist.

This is one approach, which makes sense, and which is less risky for any Presidency since some success may always be registered no matter how measured it may be.
The other approach would be to come forward with an innovative strategy that seeks to bring about a complete overhaul of Euro-Mediterranean relations. Such an approach is more uncertain as to its outcome and so achieving a successful result becomes riskier. To justify such an approach, one may argue that, based on the logic that even when the going was good what there is in place did not work well enough, now that the going is far worse what we have in place is not working at all. We therefore need to come up with something new either to completely replace the Union for the Mediterranean and the European Neighbourhood Policy or to at least change whatever is not working within those instruments with something that can work.

**Conclusion**

Addressing the immediate concerns being faced in the Mediterranean, perforce, requires seeking agreement on the reinforcement of all existing modes and the setting up of new modes of cooperation on the security front. Agreement is also indispensable on the whole question of the existing migration problem, the clampdown of people trafficking and organised crime connected therewith, and on the fight against terrorism.

All this needs to be accompanied by a determined effort to seek to find a way forward for Euro-Med relations, which looks beyond the immediate realities and focuses on the long term, whether in the form of improving on what we already have in place or by going back to the drawing board in order to draw up something new. Taking up the latter challenge and achieving a successful outcome is by far easier said than done.

Agreement would only be possible if a real effort is made on all fronts in the formulation of the way forward.

As is said: “Where there is a will there is a way”. The Mediterranean can be a tough test for the validity of this statement. Not even the intricate web that is the Mediterranean may, however, be strong enough and complex enough to resist the force of the truth behind this statement.
The chances of success would be real if any such initiative is not driven by one set of players and is not based on the agenda set by one of the sides. Co-ownership of the initiative rather than leadership by anyone in particular should dictate matters and it goes without saying that it should be founded on a genuine sense of co-operation between all parties which should continue to prevail at all times so that it will be, and will be perceived to be, the motive force behind the whole initiative.

The Maltese Presidency could make the groundwork and lay the foundations for this to come about. The possibility of achieving a positive outcome may not be high, but the sense of achievement if it were to succeed would be enormous. A famous Chinese proverb rightly says, “A journey of a thousand miles begins with a single step”.

The question, however, is: Is there any appetite in the European Union and in the Arab world for all this? If there is, then no effort should be spared by all those who are able and willing to take the first step.
In the world of 7 billion people, the emergence of more turbulent times in international relations has unleashed numerous forces that are undermining the very foundations of the sovereign state system. The incredible level of inequality between different peoples around the world and the increase in hate crimes against different religions and cultures is manifesting itself in ways that are often proving very difficult to manage within countries and at a regional level.

The process of rapid change in domestic and international relations continues at an amazing pace affecting the fabric of our political, economic and social landscape. Since the end of the Cold War in general but especially since the Arab upheavals of 2011, major questions are being asked in Europe and the Arab world about which direction the world is moving in and whether this is the path to a future of more stability and prosperity or uncertainty and austerity.

In light of the more turbulent and transitional times across the southern shores of the Mediterranean, is it possible to shift EU external policy making in such a manner that a re-set in Euro-Mediterranean relations takes place towards a more cooperative regional framework where all security challenges are addressed in a more coherent manner? Given the fragmented nature of contemporary inter-Mediterranean relations and the serious risk of EU integration faltering further after the Brexit vote, it is in everyone’s strategic interest to map out a Euro-Mediterranean strategy that connects more effectively with the unstable reality currently manifesting itself. Failure to adopt such a strategic agenda will only further erode the relevance gap that should exist between the people and their respective governments across the region.

Against this very fluid context, Malta will be assuming the EU Presidency in 2017. It has already been announced that Malta’s EU Presidency will
focus on three main themes: migration, maritime affairs in terms of transport, tourism, and relations between the EU and its neighbours in the Mediterranean. During the EU Presidency Malta together with other countries will be expected to put forward proposals to take stock of the situation in each of these areas and formulate a way forward to address the challenges in each of these very important strategic sectors.

A review of contemporary trends indicates that what we require is more of a focus on solidarity and not just security. The numerous challenges we are facing dictate that a clear message be communicated which emphasises that we either all swim together or else sink together. In order to carry this out it will be important to clearly stipulate that all of us in the European Union and beyond share a common future and it will be essential that a counter narrative to the divisive policies that some are putting forward is introduced and implemented.

Given the indivisibility of security in Europe and the Mediterranean, the EU must continue to adopt a more proactive stance when it comes to influencing and managing the international relations of the Mediterranean area if it wants to project stability in the area successfully. The challenge the EU is facing is to demonstrate that it can be a source that exports stability rather than imports instability. In recent years, it seems that the latter is happening more often than not and this is already having tremendous consequences for all of us.

The very fluid nature of international relations during the first two decades of the new millennium has resulted in an ever-changing global security landscape. Perceptual changes taking place in the Euro-Mediterranean security environment demand a strategic re-think when it comes to addressing and managing more effectively sources of instability. The continuous emergence of different sources of insecurity demands a more flexible modality of security management as states in the international system seek to limit the ramifications from the dominant insecurity landscape in which we find ourselves.

The very fluid and dynamic contemporary post-Cold War era demands that the concept of security be constantly under review. In post-Cold War international relations, there has been a gradual shift away from
traditional security concerns that focus exclusively on military threats to so-called soft security risks and threats. This category of security challenges includes terrorism, organized crime, drug trafficking, illegal migration, and climate change.

The United States’ Global War on Terror (GWOT) that dominated the strategic landscape for a decade after the 9/11 terror attacks in New York and Washington D.C. unleashed military offences in Iraq and Afghanistan that reinforced the traditional military dimension to security challenges, and provided a boost to a more innovative approach that focuses on intelligence gathering, sharing and monitoring on a global basis. The United States’ withdrawal from Iraq and Afghanistan has resulted in the emergence of a security vacuum that has been taken over by numerous militant forces including ISIS.

In 2003, the EU adopted its own Security Strategy that set out to delineate the new security environment, the EU’s strategic objectives and policy implications. The following areas were identified as the main bones of contention: terrorism, proliferation of weapons of mass destruction, an escalation of regional conflicts both globally and in the proximity of the EU, an increase of failed states, and organized crime that includes cross border trafficking in drugs, illegal migration, and weapons. (1)

In an effort to address more effectively the long list of security challenges, the European Union launched its Global Strategy for the EU Foreign and Security Policy entitled ‘Shared Vision, Common Action: A Stronger Europe’, in June 2016. The EU clearly refers to the EU supporting cooperative regional orders globally including in the Mediterranean. (2)

In the section entitled ‘A Peaceful and Prosperous Mediterranean, Middle East and Africa’, the EU stipulates that it will intensify its support for and cooperation with regional and sub-regional organisations and other functional cooperative formats in the region. This policy objective is to be achieved by mobilising bilateral and multilateral initiatives and collaborating with civil societies in the region. (3)

The EU identifies five lines of action: first, in the Maghreb and the Middle East, the EU will support functional multilateral cooperation. This will include working through the Union for the Mediterranean to
strengthen border security, human trafficking, counter-terrorism, non-proliferation, water and food security, energy and climate, infrastructure and disaster management.

The EU also commits itself to continuing to dedicate its diplomatic resources to fostering dialogue in regional conflicts in Syria and Libya and to continuing to support the Quartet in the Palestinian-Israeli conflict.

Second, the EU will strive to deepen sectoral cooperation with Turkey. This includes seeking to pursue the accession process by anchoring Turkish democracy to the EU membership criteria including normalisation of relations with Cyprus. After the Turkish military coup attempt of July 2016 it remains to be seen how successful the EU will be in balancing its strategic perspective with realities unfolding in Turkey.

Third, the EU will continue to seek engagement with the Gulf States, including the Gulf Cooperation Council, (GCC). An effort will also take place to build on the Iran nuclear deal and its implementation.

Fourth, growing transnational interaction between North and sub-Sahara Africa, as well as between the Horn of Africa and the Middle East, the EU will support cooperation across these sub-regions. This ‘neighbours of neighbours’ approach will include triangular relationships between the Red Sea area and Europe and the Horn Africa and the Gulf to address common security challenges and economic opportunities. More specifically the EU also commits to focusing on cross-border dynamics in North and West Africa, the Sahel and Lake Chad regions through closer links with the African Union, the Economic Community of western African States (ECOWAS) and the G5 Sahel.

Fifth, the EU also stipulates that it will dedicate more of its resources towards African peace and development by working more closely with the African Union, ECOWAS and the East African Community among others. A key objective will be to generate economic growth and create jobs and to implement a sustainable development agenda that focuses on issues pertaining to migration, health, education, energy and climate, and science and technology.
The 2016 EU Global Strategy recognises that the Mediterranean is already a geo-strategic area where numerous sources of insecurity threaten to escalate and put regional and international stability at risk. It also admits that regional dynamics that need to be urgently addressed include the collapse of failed states, the increase of terrorist activities, the Israeli-Palestinian conflict, the proliferation of all types of weapons, energy security, environmental degradation and the ever-increasing state of economic disparity between the northern and southern shores of the Mediterranean. The Strategy does not however offer any specific insight into the specific types of security initiatives that will be introduced to tackle such a broad agenda.

The absence of a Mediterranean centric security arrangement to address security challenges in the Mediterranean is certainly a recipe for an increase of sources of insecurity as this strategic waterway is perceived as a zone where illicit activity can take place unchecked. It is quite ironic that the more interdependent the global security theatre of operations has become, the less connected security mechanisms in the Mediterranean have become. If such a trend continues, it is clear that the security vacuum in the Mediterranean will result in even more instability emerging in the Euro-Mediterranean area.

The setting up of a Euro-Mediterranean regional security network would dispel the perception that the international community has largely neglected the Mediterranean since the end of the Cold War. The possibility that such a perception becomes further entrenched is particularly high more given that post-Cold War great powers have continued to upgrade their attention towards other regions adjacent to the Mediterranean such as the Balkans, the Arabian Gulf and sub-Saharan Africa, but not the Mediterranean basin itself.

The increase of instability in the Mediterranean makes it clear that it is a strategic error to concentrate your security forces in one region at the expense of securing stability in adjacent regions. International attention towards the Balkans, the Caucasus, and Eastern Europe in recent decades seems to have taken place at the expense of investing diplomatically into a comprehensive security structure in the Mediterranean. The resultant security vacuum has witnessed a multiplication of sources of
insecurity thrive across the Mediterranean including illegal migration, drug trafficking and other types of organized crime. Foreign policy strategists that are seeking to establish peace and security around the Euro-Mediterranean area should introduce policies that seek to balance sub-regional interests and not turn regional security into a zero-sum game where sub-regions compete for attention.

When addressing the plethora of security issues in the Mediterranean, international actors such as the European Union must guard against promising more than they can deliver. The 2016 EU Global Strategy runs the risk of raising expectations once again too high. The EU must therefore be prepared to work closely with other security institutions such as NATO and the OSCE and also the League of Arab states and countries such as the United States, Russia and China, to develop a functioning security framework in the Mediterranean.

If such an exercise is to be successful, it is essential that all Euro-Mediterranean countries become more vocal, transparent and engaged in the post-Cold War security environment that is evolving around them. Otherwise, they will have no one to blame but themselves for becoming further marginalized from the wider security framework that is emerging globally.

Since the new millennium commenced, a more interdependent international security system has evolved. Given their geographic proximity and commonality of security interests it is thus in the interest of both the EU and the countries of the Mediterranean to strengthen security relations between them. Measures that can be taken to realize this include proceeding with the next round of enlargement in the Western Balkans in the shortest time frame possible, speeding up the processing of rapprochement with Turkey through its accession negotiations, and ensuring a dynamic and consistent implementation of the Union for the Mediterranean project driven agenda.

When it comes to North Africa and the Middle East, it is however also of paramount importance that a common political and security agenda be articulated along the lines that were identified in the political and security basket of the Barcelona Declaration of November 1995. The
absence of a comprehensive political and security agenda and a socio-cultural framework, as the Union for the Mediterranean focus seems to suggest, cannot create the necessary holistic security agenda that is necessary to attract a collective Mediterranean approach to security challenges.

Security Dynamics in the Euro-Mediterranean Area: Towards a New Paradigm

Since the end of the Cold War and especially after the September 11 2001 attacks, there has been a continuous perception in Europe of a threat from the Middle East. Alarming headlines in the international media focusing on instability in the Middle East, terror attacks across Europe and the regular arrival of hundreds of illegal migrants from the southern shores of the Mediterranean to Europe highlight such a trend.

The flow of news reports coming from the Middle East predominantly feature threatening images such as extremists preaching hatred against the West, or terrorists displaying contempt for human rights, or brutal dictators seeking to acquire weapons of mass destruction. Such images portray the Middle East as an alien, hostile and backward region. They also help focus attention on the large migrant communities across Europe from these countries. Xenophobia towards migrant communities across Europe has strengthened and given rise to large right-wing political movements in France, Britain and the Netherlands.

During the first decade of the new millennium, negative perceptions of the Middle East have been further fuelled by constant images of violence and terror activities. These include, Islamic extremists preaching hatred against the West (Iran, Lebanon), terrorists displaying contempt for human rights (Lebanon, Gaza, Syria, Israel), brutal dictators flush with billions of dollars of oil money often seeking to purchase all types of weapons, and Muslim leaders and masses determined to establish Islamic states with laws that go against secular Western standards of civilization.
Bombardment of such images by the 24/7 media has led European and American audiences to develop more of a racist and xenophobic attitude towards the Middle East during the past decade. As a result, a chorus of discontent has emerged across Europe and North America against continuing to provide development and security assistance to such countries. It is no coincidence that this policy option has emerged as one of the most fiercely debated in the 2016 American election campaign between Hillary Clinton and Donald Trump. Both have sought to reassure the American public that America would adopt a more hawkish approach towards the Middle East in an effort to halt global terror attacks.

While it is clear that the Middle East is not an alien, backward and hostile region, the media’s portraying of such images has resulted in such a perception emerging and gradually gaining ground. It has also led to a focus on the large immigrant communities of Middle East origin that are already established in Europe and North America. The backlash against migrant communities in Europe has given rise to right wing political movements in all countries that have increased their popularity as tension against migrants has spiralled.

The presence of both contemporary and historical beliefs may conspire to make Europe more receptive to a perception of threat from the Middle East during the next two decades. Deeply rooted folk memories in Europe of the long and bloody battle between Christianity and Islam continue to resonate. Whether real or myths, this history can easily be revived as a political resource by anti-immigrant movements as happened during the referendum in 2009 that resulted in a majority voting against the construction of minarets in Switzerland.

The revival of Islamic extremism easily provokes fears across Europe of a resurgence of the Islamic faith seeking to make up for past battles lost. Political sensitivity to migrant communities is easily amplified as a result of long-term high levels of unemployment in Europe. If not addressed in a concerted manner the Huntington ‘Clash of Civilizations theory’ could become a more realistic perspective in Euro-Mediterranean security discourse in the future. This is an outcome that would have
catastrophic consequences for all peoples of the Mediterranean and beyond and is therefore a scenario that must be fiercely rejected. (6)

Addressing the issue of illegal migration through increased cooperation and information exchanges on policing, visa controls and asylum policies through the Schengen framework and the Frontex mechanism has so far only had limited positive results.

In reality the economic affluence that Europe enjoys and militarily supremacy especially when compared to its southern neighbours, makes the suggestion that the Middle East is a threat to Europe seem nonsensical. Yet, since the end of the Cold War, there has been an increasing perception in Europe and North America that the new enemy after communism would come from the Middle East. Alarmist propaganda fuelled by the media has focused on the emergence of an Islamic jihad against the West, particularly after the 9/11 attacks against the United States. The more recent wave of terror attacks in Europe in 2015 and 2016 has given rise to a regular reference in the media to ‘radical Islamic terrorism’ fuelling the perception of a radical Islamic threat to modern civilization.

This perception has been further bolstered by the ever-increasing number of illegal migrants that have sought to seek a better life in Europe by crossing the Mediterranean. A “migration invasion” syndrome gained ground since the new millennium with tens of thousands of migrants from North and sub-Sahara Africa opting for maritime trafficking that more often than not ended up in a futile attempt to arrive in Europe.

The European Union’s inadequate response to the flow of a large number of people seeking political asylum or refugee status also underlined the hollow commitment developed countries have when it comes to humanitarian policies and welfare resources. Falling birth rates in Europe coupled with the large number of arrivals from the southern shores of the Mediterranean led many pundits to question what impact such a phenomenon would have on the future identity of the different nation states of Europe.

The mishandling of the mass migration influx into Germany in 2015 and the vote in the United Kingdom to exit the EU for numerous reasons,
including the mismanagement of migration flows from outside the EU, makes it crystal clear that the time has come to introduce a more robust border security mechanism if the EU is to sustain its experiment in regional integration in future. The free flow of EU citizens within the EU will only be possible if an external land and maritime border is enforced with adequate resources.

During this time of turbulence and transition across the Euro-Mediterranean region, it is essential that the European Union and all other international actors with a capability to influence Euro-Mediterranean regional dynamics seek to steer relations in a cooperative direction instead of a clash that some are seeking. Navigating relations requires an effort to influence them and not just assume an observer status stance. The arc of instability that has emerged in the Mediterranean demands a strategic re-think that seeks to suppress forces of instability.

More than five years since the revolutions swept across the Arab world, the EU must come to terms with the fact that it has so far not succeeded in putting forward a Euro-Med strategy that offers the Arab world an opportunity to cooperate more closely with Europe. Failure to propose a collective security paradigm that reflects the interdependent and indivisible nature of Euro-Mediterranean relations is resulting in a return to fragmentation of embryonic regional relations nurtured since the 1990s and the emergence of a number of failed states as seen in Libya and Syria.

Twenty years after it launched the Barcelona Process the European Union must realise that if it is serious about wanting to contribute towards restoring stability in the Mediterranean it is imperative that it adopts a holistic approach towards security along the lines it had when launching the Euro-Mediterranean Partnership in 1995.

Rekindling a comprehensive strategy that offers political, economic and socio-cultural support to neighbouring countries across the southern Mediterranean would provide the European Union with precisely the type of narrative that has been absent since 2011. The EU should adopt a more visible approach towards the Mediterranean and unequivocally support political and economic reforms that are based on a functioning
rule of law system of governance. Such a modality must be inclusive in nature and integrate civil society into the fabric of decision-making. While such a strategy could form part of an over-arching Neighbourhood Policy the time has come to admit that the security challenges facing the EU on its eastern and southern borders require separate and more intensive mechanisms that are able to address the fast changing realities on the ground. Adopting a Euro-Med strategy that focuses on trends in the region is essential if the European Union wants to be a credible actor in the Mediterranean.

Ten Strategic Euro-Mediterranean Trends

Numerous geo-strategic factors are contributing to an increase of insecurity across the Mediterranean. Ten major issues have had a negative impact on Euro-Mediterranean relations since the end of the Cold War and have prevented the emergence of a more cooperative security culture in this part of the world. Closely examining and systematically addressing the ten trends is essential if the causes of insecurity in the Mediterranean area are to be better managed.

First, there has been a considerable rise in terrorism in the region. The migration of Islamic State (ISIS) from Iraq and Syria to Libya has further consolidated this trend. Continuous acts of terror in all countries across the southern shore of the Mediterranean including the specific targeting of overseas residents as has been the case in Tunisia and Egypt and Turkey has resulted in a state of emergency and high alert that are stretching the security capabilities of the respective states to try and cope with terrorism.

This increase in tension has had major economic consequences on tourism receipts and on private foreign investment at a time when such revenues are essential if the Mediterranean developing states are going to be able to provide a better standard of living to their respective citizens. A concerted Euro-Mediterranean counter-terrorism strategy that brings together both soft and hard security resources together is long overdue. A key challenge for all democratic governments will continue to be how
to enhance counter-terror measures without undermining the freedom and rights of citizens living in a democracy.

Second, a more robust policy of diplomacy must be introduced to address ongoing conflicts in the Mediterranean. The six-decade Israel-Palestine conflict is pivotal to the geopolitics of the Mediterranean and has to be resolved through a policy of compromise.

Since the collapse of the Oslo peace process the Israel-Palestine conflict has been in a state of paralysis. The Israeli-Palestinian conflict remains the main bone of contention in the Mediterranean area. It impacts negatively, directly and indirectly, on attempts to harness closer political, economic, and social development across the Mediterranean. Before efforts to resuscitate peace negotiations will be successful, numerous factors must take place.

The United States must assume a more direct involvement in peace efforts. President Obama signalled a more dynamic and balanced approach towards this conflict upon being elected to the Oval Office but has failed to deliver on such a promise and has not succeeded in bringing the protagonists back to the peace table.

The European Union’s continuous commitment to the Quartet’s peace efforts also rings hollow after more than a decade of no progress. A re-think in this regard is long overdue. The EU needs to introduce a more robust diplomatic strategy that seeks to advance the compromises necessary to achieve a two-state solution to the Israel-Palestine conflict.

In addition, reconciliation between different Palestinian factions is a prerequisite to the Palestinians adopting a credible negotiating position. A sustainable national unity government or a consensus government must be formed if the Palestinians are to be taken seriously in any future marathon of peace talks with Israel. The al-Fatah and Hamas political movements must be prepared to put the Palestinian people’s greater interest of an independent Palestinian state ahead of their own political interest in any given situation. Failure to do so will relegate the Palestinians to a continuation of suffering.
Israel remains pivotal to the geopolitics of the Mediterranean. Israel continues to serve as a unifying force that brings her opponents together. In this catchment area of the Mediterranean Israel is the only state that has an economic profile similar to that of mainstream European states. Israel is also a leader in technological development and economic development.

Securing a permanent peace with Palestine is in Israel’s interest, as the open conflict will continue to serve as a continuous security challenge within and from outside Israel. The prospect of a nuclear Iran or nuclear Arab state will also remain an existential threat.

In addition to investing in a more robust diplomatic strategy towards Israel and Palestine, the EU should invest a great deal more in diplomatic initiatives that seek to restore order in Syria and Libya. The EU’s large aid budget needs to be coupled by more spending on diplomacy, which is actually very cheap in relative terms and can be very effective when compared to defence spending.

Third, the growing call for political freedoms from Arab citizens all through the region that reached a climax in the ‘Arab Spring’ of 2011 needs to be better supported by the international community. As populations across the Arab world have become better educated they now want a say in public affairs, or at the very minimum, a number of basic freedoms including association and expression.

Arab citizens in Tunisia, Egypt and Libya do not believe anymore that the alternative is between autocratic regimes or Islamic radicals. Political Islam as one model of politics is to be embraced as long as it does not undermine the basic rights of citizens. The majority of Arab citizens have demonstrated that they want peaceful evolutions after the revolutions. The fascinating Jasmine Revolution in Tunisia in January 2011 and the overthrowing of the Mubarak regime in Egypt in February 2011 and the Gaddafi regime in October 2011 provided tremendous momentum to this reality. Developments since have stifled this sentiment and it is unclear if this historic moment is going to deliver the inclusive representative system of governance that so many have lost their lives to achieve.
Political reform must remain a priority on the agenda. Governments in the region have to tackle the immense challenge of a now vastly educated population and few political freedoms. This population does not believe anymore in the black and white choice “us or chaos” that they have long been offered by their governments. Islamic extremism is no longer an excuse. Terrorism needs to be fought at the same time that governance is improved, not at the expense of good governance. Political reform in the region is a strategic goal for the EU because the lack of it opens the door for many forms of instability. Political reforms must not go down the priority list of EU countries in the region.

Fourth, there has been a tremendous increase in the trafficking of human beings across the Mediterranean towards Europe, which is part and parcel of the sophisticated organised crime network. These networks are well organised, well equipped and connected to security forces throughout the region. The illegal migration racket in the Mediterranean is a 250 million Euros business per year, counting only the “fees” collected by these networks. This figure is to be compared to monthly police force salaries of 150-200 Euros in North Africa.

Since the turn of the new millennium, the Mediterranean has increasingly moved into the international spotlight as a front-line area for illegal migration from the African continent towards the European Union. Since 2002, the central Mediterranean has experienced a growing influx of migrants predominately from the Horn of Africa, practically all of which have departed from the Libyan coast towards Europe. Even though, in absolute terms, the total number of sea-borne migrants crossing the Mediterranean has not consisted of a massive exodus from Africa, the continuous flow of migrants has become a permanent feature of the security challenge landscape. Moreover, the challenge of managing illegal migration flows has had an enormous impact on the small state of Malta in proportional terms, given the country’s small size and very high population density.(7)

Consequently, illegal immigration has become one of Malta’s top policy priorities, nationally as well as at the EU level, where Malta has been calling for responsibility-sharing mechanisms and support from other EU countries to help cope with the regular flow of migrant crossings.
Malta’s EU Presidency in 2017 will be an opportunity to call for a more dynamic EU migration policy.

Addressing the trafficking of human beings in a comprehensive manner that seeks to separate legal from illegal migration is long overdue and essential, as the number of migrants is certain to rise in the decade ahead as sub-Saharan states struggle to cope with the rising expectations of their respective populations. A more forward looking and inclusive EU migration policy must be forthcoming if this human security challenge is to be properly addressed. One should bear in mind that the EU would need 20 million new workers between 2020 and 2030 to sustain current level of productivity, workers that its demographic trends will not produce.

Illegal migration will thus remain a major security challenge for the foreseeable future. This migration originates mostly from Sub-Saharan Africa and Egypt. The 2016 European Union Global Strategy correctly indicates that a triangular partnership between Europe, North Africa and sub-Sahara Africa needs to be implemented. Nowhere is this more evident than when it comes to addressing the trafficking of migrants across the Mediterranean. Adopting a common approach between Europe, the Mediterranean and African countries is the only way to fight criminal networks effectively. The sooner a political dialogue between the EU and its counterparts in the southern Mediterranean and Sub-Saharan Africa is formulated the better.

The collapse of Syria since 2011 has resulted in the exodus of millions of Syrians towards Europe and the Gulf states. The chaotic manner in which Germany sought to accommodate more than a million refugees in 2015 has undermined the confidence of a large sector of the EU population and political spectrum that previously supported such a policy.

Thus far, the European Union has not yet developed any real comprehensive policy on the integration of migrants. For the last few years, it has tended to turn a blind eye to what happens to these individuals after their period in detention. Nevertheless, the reality is that
the numbers living and working (or wanting to work) in communities across the EU are growing.

At the start of the twenty-first century, it is time to come to terms with the fact that illegal migration is a challenge that will continue to dominate security patterns of interaction between the northern and southern shores of the Mediterranean. The reality of extreme poverty and civil strife in Africa coupled with the fact that this may be exacerbated by climate change dictates that serious planning must take place to cope with an influx of refugees in Europe at any given moment.

The knee jerk policy reaction of the European Union towards Turkey in 2015 and 2016 to stem the flow of migrants towards Europe is unlikely to deliver the desired result for a number of reasons. First, how long before Turkey demands more compensation beyond the billions of Euros already promised to sustain its efforts to halt the flow? Moreover, will the EU be able to achieve a continent wide consensus to introduce visa liberalization to Turkish citizens? Will the EU be able to guarantee that the rights of those people not being allowed to leave Turkey are safeguarded?

A fifth trend influencing Euro-Mediterranean regional relations is the slowdown in European Union political dynamics, in particular since the signing of the Lisbon Treaty in 2009. The Brexit vote in 2016 caps a long process of continuous paralysis in the EU that has been more preoccupied with trying to address economic challenges through austere measures than providing a regional integration narrative that attracts the support of its member states.

The EU has been able to have a profound positive impact on Euro-Mediterranean regional thanks to its successful enlargement process. The admission of ten states in 2004 and then Bulgaria and Romania in 2007 and Croatia more recently has enabled the EU to stabilise political and economic relations far beyond the original six member states ever envisaged. The EU should now map out a policy that will allow it to admit other Balkan accession states and encourage Turkey to stay the necessary course required to meet the EU accession criteria if it wants to continue to be a source of stability in non-EU member states.
Sixth, the external relations policy of the EU in general and the European Neighbourhood Policy in particular have not delivered the desired results. The ENP review process has gone on too long. The EU needs to adopt a more robust diplomatic agenda in its adjacent regions, especially in the Mediterranean. While the Euro-Mediterranean Partnership launched in the 1990s promised a dynamic Euro-Mediterranean cooperative relationship, the successive European Neighbourhood Policy and Union of the Mediterranean have been perceived as a dilution of the EU’s commitment towards a peaceful and prosperous Mediterranean. If the concept of the ENP is to remain, it must be given a Mediterranean specific agenda with clear short-term oriented goals and the necessary diplomatic and economic resources to implement the agenda.

Seventh, Euro-Mediterranean relations can only be improved if a credible border control mechanism is in place to prevent and deter sources of insecurity. The EU must upgrade its land and maritime border capabilities if its citizen’s faith is to be restored after the numerous experiences of security infringements that have taken place on a regular basis.

The time has come to investigate the feasibility of upgrading the Frontex operation in the Mediterranean into a permanent Euro-Mediterranean Coastguard Agency (EMCA) that would be mandated to co-ordinate the co-operative security network with a mission statement and plan of action similar to those carried out by a coastguard. As with the case of Frontex, it is essential that this initiative should involve collaboration not only between EU countries, but also between EU and southern Mediterranean states.

The significant increase in sources of instability in the Mediterranean ranging from trafficking of human beings to the proliferation of weapons smuggling and terror related activities dictates that Euro-Mediterranean states should focus on introducing a security mechanism that can assist in addressing security challenges that all riparian states are facing. The common bond that all Mediterranean states share is their maritime heritage and the security threats that result from such a common geographical reality.
At the moment, there are no elaborate mechanisms to contend with a security crisis that would result from an accidental collision at sea between transport tankers crossing through the choke points of the Mediterranean basin, such as the Straits of Sicily or Straits of Gibraltar. In addition, very few practical measures are being taken to tackle the alarming rate of degradation that is currently taking place in the marine environmental sector. As a result, marine biology and everything linked to maritime activities, including tourism, is suffering more and more year in and year out.

Two other sources of instability that have benefited from the maritime security vacuum that exists are traffickers in drugs and human beings. The ever-increasing proliferation of drug consignments is reaching ever deeper into the civil societies of the Mediterranean. As already discussed above the accentuation of illegal migratory flows from south to north have already negatively affected the lives of millions of people in the Euro-Mediterranean area and risk undermining further the legal structures of all Euro-Mediterranean states.

The geographical proximity between Europe and North Africa requires an early warning Euro-Mediterranean border control coast guard mechanism that can monitor such security risks and threats. Once this has been realised, the co-operative maritime security network can be instructed to draw up optional policy positions on security issues that are regarded as the most serious. Such an exercise in itself will raise awareness of the vulnerable position Mediterranean states are currently in and the weak defence mechanism they have at their disposal to cope with such security threats.

This security enhancement initiative should seek to establish a Euro-Mediterranean Coastguard Agency (EMCA). The EMCA would be mandated to co-ordinate a co-operative maritime security network similar to other coastguards around the world. The EMCA could initially carry out stop and search exercises in two principal areas: maritime safety and maritime pollution. This phase could be enhanced at a later stage by monitoring other aspects of security that include narcotics trafficking and the transport of illegal migrants. (8)
It is essential that this initiative should be introduced in as flexible a manner as is possible. Such an early warning mechanism should be open to any of the Euro-Mediterranean states that wish to participate. Those countries with the most experience in the area of maritime co-operation, such as Italy and Spain, should share their expertise with other willing and able Mediterranean states. EMCA could also seek the maritime security technical expertise that has already been achieved by the EU and NATO, through their respective experiences in EUROMARFOR and Operation Active Endeavour in the Mediterranean.

In addition to strengthening political and security channels of communication, the establishment of such a Euro-Mediterranean early warning network will assist in cultivating more intense crisis management mechanisms in an area where these are lacking. Practical confidence building measures will enhance the level of trust between Euro-Mediterranean states and therefore set the stage for a more intricate security strategy to follow.

Areas where partnership-building measures can be introduced include conducting simulation exercises of oil spills, ensuring that international standards are observed during the cleaning of oil tankers, and monitoring the activities of non-Mediterranean fishing boats that are operating in the Mediterranean with a particular emphasis on over-fishing.

As experiences with irregular migration over recent years have shown, the challenges of coping with sea-borne migrants concern not only naval forces, but also fishermen. In the large majority of cases, the would-be immigrants are first spotted or encountered by fishing vessels, which have a much larger presence at sea. However, while the fishermen could, in principle, play an important role in saving the lives of migrants who are in distress at sea, fishermen often themselves have felt “under threat” from the growth in illegal immigration, and have criticized the insufficient support they have received from governments in coping with migrant encounters at sea. The creation of a Euro-Mediterranean Coastguard Agency would be able to assist fishermen who have to address this issue by assisting in the complex task of rescuing migrants in situations of distress.
The neglect of such security risks has already had severe consequences in some parts of the world that have seen their entire ecological and service industries wiped out overnight. The natural geographical characteristics of the Mediterranean expose it to consequences that are even more serious should any of the above security risks continue to take place unchecked. It is therefore in all Euro-Mediterranean states’ interest to seek the creation of a Euro-Mediterranean Coastguard in the shortest time frame possible. Whether the political will to launch such a security mechanism can be found is of course entirely another matter.

Eighth, energy security has already emerged as one of the more prominent factors influencing the international relations of the Mediterranean. In the twenty-first century oil is much cheaper in absolute terms, in real terms counting inflation and most important, in relation to income levels. Therefore, people do not mind paying €1.50/litre for normal gasoline. Unless there is even more of a significant price hike there is unlikely to be any downturn in global energy consumption.

The strategic importance of energy security in the Mediterranean is evident as a result of the increase of oil and gas pipelines connecting Turkey, Egypt, Algeria and Libya to Europe and the significant volume of energy transport through the Mediterranean. The consolidation of gas, oil and electric transmission lines around the Mediterranean has created an increasingly important Mediterranean energy market. As a result, global powers, including the United States, Europe, Russia and China, continue to increase their interest in the energy security of the Mediterranean.(9)

Socio-economic development in the MENA region is dependent upon having access to an ever-growing demand for energy. The unequal distribution of increasingly limited resources, in particular water and deteriorating environmental conditions further underlines the importance of energy security in the Mediterranean.

By 2030, global gas production is set to double but demand across the southern shore of the Mediterranean is also set to double resulting in several countries becoming net importers of energy. (10) Some of the main questions that will need to be addressed in this regard
include: how will the Euro-Mediterranean region cope with the ever-increasing energy needs of North Africa and the Middle East? How can a balance between human development and limiting carbon emissions be achieved? How can a larger share of renewable energy sources be integrated into the current energy mix? What model should be adopted to develop a mutually beneficial and stable Euro-Mediterranean regional energy market? (11)

Ninth, the forces of economic globalisation with the major expansion of China and India as global powerhouses have taken their toll on the Mediterranean region, especially in the textile sector. The dismantlement of the textile agreements in 2005 in countries like Morocco, Tunisia, Turkey and Egypt has had a major negative impact on the productivity of these sectors. The competitive rise of countries such as Brazil, Argentina, South Africa, Russia and Indonesia has also undermined the Mediterranean southern shore countries’ ability to attract the foreign direct investment necessary to improve their productivity.

The negative downturn of the European economy since 2008 is having a major negative impact on the southern shore countries of the Mediterranean that rely on the EU for 50 to 80% of their exports and for a large part of their investment and tourism. A revival of the European economy is essential to future, positive growth of Mediterranean state economies.

Sustainability of democratic reform across the southern shores of the Mediterranean will require economic development on a major scale for decades. In order to attract the billions of Euros necessary to spur job creation and improve Mediterranean competitiveness, the international community needs to provide political and economic support that assists in creating the conducive type of environment that will attract international investors to the region.

In the past few years, regular reference to the so-called BRIC countries has been made to highlight the spectacular economic progress that these emerging states have been making. Brazil, Russia, India and China have established themselves as pacesetters of the developing world and have
been succeeding in consistently boosting their productivity. As a result, an ever-growing number of citizens in each of these states have been able to benefit from a significant improvement in living standards.

It is highly significant that none of the BRIC states are located in the Mediterranean. Since the end of the Cold War, no major economic success stories have been registered along the southern shore of the Mediterranean. While it is true that states such as Morocco and Tunisia have restructured their economies to take larger advantage of the more competitive economic climate that has evolved and Libya and Algeria benefitted from a major upswing in revenue whenever energy prices increased, none of the states in this region of the Mediterranean area have emerged as major economic powerhouses.

**Tenth**, while there has been a resurgence of regionalism globally since the end of the Cold War no such trend has emerged in the Mediterranean. Instead, the Mediterranean has become more of a strategic fault-line between competing geo-political forces and a crossroads between different religious and cultural traditions. The absence of regional arrangements in the Mediterranean and more importantly of contemporary initiatives that are seeking to promote regional cooperation in the Mediterranean, has resulted in the Mediterranean becoming more of a north-south frontier than a region of cooperative interaction.

In the past two decades, numerous initiatives have been proposed to stimulate the concept of regionalism in the Mediterranean. The most prominent of these initiatives are the 5 + 5 sub-regional initiative launched in 1990 that brings together the five southern European states of Portugal, Spain, France, Italy and Malta with their North African counterparts, namely Mauritania, Morocco, Algeria, Tunisia and Libya. Other initiatives include the Arab Maghreb Union that was established in 1989, the League of Arab States that was set up in 1945 and the Union for the Mediterranean, which was launched in 2008 by the European Union as a complement to the Euro-Mediterranean Partnership and European Neighbourhood Policy. The Italian-Spanish proposal of 1989 to establish a Conference on Security and Cooperation
in the Mediterranean is another initiative that never progressed beyond the drawing board. (12)

A lack of consensus among Mediterranean riparian states on the strategic priorities of foreign policies has undermined efforts to nurture pan-Mediterranean relations. A fundamental factor hindering a resurgence of regional relations is the fact that regional dynamics in the different sub-regions of the Mediterranean remain too asymmetrical to be put into a single institutional framework. Socio-economic, political and military disparities that exist between the northern and southern states of the Mediterranean are so divergent that it often seems impossible to try and institutionalize so many different interest groups into one regional forum. (13)

In order for a functioning Euro-Mediterranean regional forum to emerge, the countries concerned must perceive that they share a common strategic future and ideally a collective identity. Such essential characteristics remain absent or too weak upon which to build a coherent regional framework. Addressing long-standing conflicts in the region such as the Arab-Israel conflict will assist in overcoming the common strategic gap that continues to dominate Mediterranean relations. Moreover, Mediterranean security issues do not attract enough international political support to mobilize the necessary resources to start bridging the divide that exists between the northern and southern shores of the Mediterranean. The striking lack of South-South integration must be succeeded by a thrust of regional integration as has happened in most parts of the world since the end of the Cold War.

Looking Ahead

Looking ahead towards 2030 the Middle East and North Africa (MENA) will remain an important geopolitical location due to the large oil deposits in this region of the world and the region’s potential as a source of instability. The MENA’s near future will be determined by how the leaders of these countries decide to manage political reform, energy profits, demographic changes, and open conflicts.
The first major immediate challenge Arab states in transition are facing is of achieving growth rates above six per cent annually to absorb the new workforce generation and provide a completely different narrative to the high number experiencing youth unemployment. (14)

If serious economic, educational, social and legal reforms are implemented and law and order are restored then international investors will be prepared to invest in these states. This process must include integrating moderate Islamic political parties that are certain to multiply during the next two decades.

A ring of failed states in this part of the Mediterranean area would severely undermine the stability necessary to attract foreign direct investment on a large scale and to ensure the safe passage of commodities through the global supply routes of the Red Sea and the Straits of Hormuz. The emergence of an arc of crisis across the southern Mediterranean will ultimately impinge upon all states across the Mediterranean and undermine their position in the global political economy of the twenty-first century.

Since the end of the Cold War, the global economy has drawn the majority of states in the international system closer together. Yet growing interdependence has not affected all parts of the globe to the same extent. In fact, while the intensity of political and economic relations across Europe has resulted in it becoming one of the most advanced regionally integrated areas of the world, the Mediterranean remains the least integrated.

The European Union’s Euro-Mediterranean Partnership (EMP) launched more than twenty years ago in November 1995 and the EMP Barcelona Declaration held great promise of creating a more peaceful, stable and prosperous Euro-Mediterranean region in the twenty first century. Instead, the opposite has happened. The time has come to reflect upon the Barcelona Declaration of 1995 and refocus the EU’s energy on specific short-term oriented goals that were already highlighted in the Declaration.

In many ways, the European Neighbourhood Policy (ENP) has diluted the EU’s focus towards the Mediterranean. The time has come for the
European Union to shift from being a passive observer of the historical moment taking place in the Mediterranean since 2011 and to become an active player that nurtures confidence across the Mediterranean and supports seriously a Euro-Mediterranean cooperative security agenda.

It is also important for the European Union to recognize its limitations. The EU on its own lacks the political and economic means to correct the socio-economic and political disparities in the Mediterranean. This is even more the case now that the EU is confronted by the challenge of managing the exit of its first member state from the Union after the Brexit vote of June 2016.

The United States can certainly help make up for some of Europe’s shortcomings along its southern periphery. After all, co-operating with Europe in the Mediterranean could be a decisive foreign policy mechanism that assists in strengthening the transatlantic partnership at a stage in history when its entire raison d’etre is being questioned.

After the tragic events of September 11th 2001 and subsequent wars in Afghanistan and Iraq, it is in the international community’s interest to avoid the emergence of new fault-lines such as the one that is settling between the northern and southern shores of the Mediterranean. Improving the livelihood of the millions of people along the southern shores of the Mediterranean must emerge as a concerted transatlantic foreign policy goal if such a division is not to become a permanent feature of the Mediterranean region.

If the ‘clash of civilisations’ scenario is not to attract tens of thousands of recruits in the years ahead, the West must find ways of opening further channels of communication with all governments in the Mediterranean, including possible Islamic regimes. Otherwise, the slow process of democracy building in the Maghreb and the Mashreq will come to a halt and the wave of anti-Western radicalization may increase. (15)

Some estimates envisage as many as twenty million people in North Africa opting for emigration into Europe in the coming few years, where salaries are anything between eight to ten times higher than in the South. The emergence of a “Fortress like Europe” where borders are sealed in an effort to discourage possible migrants would only
exacerbate this problem further. European policy-makers should recall, that large communities of workers originating in the sub region of the Mediterranean such as the Maghreb, have already made a significant contribution to the success of European industry. (16)

While the Euro-Mediterranean Partnership and the subsequent Union for the Mediterranean have sought to arrest the process of polarisation between the northern and southern shores of the Mediterranean, the post-Cold War era has so far not seen a significant reversal of this trend. This structural development is what is stifling the establishment of a co-operative Mediterranean region.

It is also worth noting that political will on its own will not be enough to influence geopolitical relations on such a large scale. Economic support must also be forthcoming. The Americans had spent the equivalent of 125 billion Euros in the Marshall Plan towards Western Europe between 1947 and 1951 compared to the 20 billion that Brussels had devoted to the Euro-Med Partnership between 1995 and 2005. (17)

If the goal of fostering economic development is to take place across the MENA region then an ‘Arab Marshal Plan’ should be created. This fund, which will require tens of billions of dollars to be effective, could be financed by the rich Gulf States and would be geared towards restoring ailing Arab economies over a period of five years. Such a Fund would provide vital support for Arab states to undertake the necessary reforms in a socially sustainable manner and ultimately help in economic growth and job creation. (18)

A quarter of century into the post-Cold War era there are clearer signs that the East-West divide of the past is being replaced by an international security system where North-South divisions are becoming the dominant feature. (19) Unlike the European continent where the fall of the Iron Curtain ushered in a period of reconciliation, the Mediterranean remains a frontier area of divisions. European and Middle East international region disparities and conflict continue to be the hallmark of Mediterranean interchange.
References


(3) ibid., p.34

(4) ibid., p.35

(5) ibid., p.36


(13) ibid., p. 119.


(19) Wallace, W., The Dynamics of European Integration, Royal Institute of International Affairs, Pinter, 1990, pp.8-12.
1. Migration in the Mediterranean: understanding the context

It is important for the EU and its Member States to place the phenomenon of migration in its proper context. Contextualising the issue of migration will assist in avoiding sensationalist language or overreaction by the EU, its Member States and the citizens of the Member States at large. The first basic fact that needs to be factored in any discussion about migration is that migration itself is an entirely natural phenomenon that has taken place continuously throughout human history. Indeed, the history of Europe itself is a history of immigration and emigration. In recent European history, there have been large movements of peoples within Europe in the aftermath of the two world wars, as well as large scale migration from Europe to North America and Australia throughout the nineteenth and twentieth century.

Another important contextual fact relates to the increase of the numbers of migrants throughout the world in the past 15 years. UN statistics demonstrate a very significant upward trend in the number of migrants worldwide:

The number of international migrants ... reached 244 million in 2015 for the world as a whole, a 41 per cent increase compared to 2000...
Thus, any upward trend in migration to the EU must be seen within this broader picture. Furthermore, the statistics also show that the EU does not host a disproportionate number of migrants within the broader framework of global migration flows. The EU in fact hosts around 20 million non-EU nationals within its borders\(^3\). These facts put the issue of migration towards the EU in a proper perspective. Therefore, any increase in the numbers of migrants crossing from the southern and eastern parts of the Mediterranean into the EU (and other European states such as Macedonia) needs to be viewed as part of this global increase of migratory flows.

It is undeniable that in recent years migration across the Mediterranean into Europe has increased, mostly through seaborne migration. In the past couple of years, one notes significant increases in seaborne migrants across the Mediterranean into Europe. In 2013, the UNHCR estimated 60,000 migrants crossing into Europe via Mediterranean seaborne routes while in 2014 the numbers increased substantially to 219,000 migrants\(^4\).

The increase in these numbers also needs to be understood within its proper context. On the eastern Mediterranean, a large scale civil war is being fought in Syria while in the central Mediterranean Libya is subject to serious instability and civil strife. The Syrian civil war, in particular, has swelled population movements across the eastern Mediterranean with significant repercussions on Turkey, Jordan and also Greece. The route via Turkey into Greece has been at the heart of European concern with the summer, autumn and winter of 2015/6 witnessing the EU in crisis as it debated how to deal with the migrant influxes emanating from the Eastern Mediterranean. There is no doubt that Syrians fleeing from conflict are entitled to protection as they qualify for refugee status under international law. Thus, they are a particular type of migrant that has rights under both international and European law as well as the laws of EU Member States. At this stage, it is useful to clarify the terminology that is used in describing various kinds of migrants.

\(^3\) Eurostat, Immigration in the EU, 10 June 2015 (data from 2014)
\(^4\) UNCHR, Special Mediterranean Initiative, June – December 2015, 16 June 2015
2. Migrants, Refugees and IDPs

Migrant is a generic term that the IOM defines in very wide terms as: “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.” Within this paper, the focus shall be on international migrants, i.e. persons who cross an international border for whatever reason and whatever length of time. More specifically, the primary focus will be on forced migrants who cross an international border. Even when excluding internal migrants, this is an admittedly wide term.

International migrants may be further subdivided into forced and unforced migrants. Forced migrants are persons whose motives for moving include an element of coercion such as “threats to life and livelihood, whether arising from natural or man-made causes”. Within this category of forced migrants, one can locate migrants who qualify for the status of refugee, which is a special status under international law providing specific protection to such individuals. A refugee is a particular type of migrant who leaves his or her country of nationality for very specific reasons. This is clearly stipulated in the Convention Relating to the Status of Refugees (the Refugee Convention) of 1951 and the Protocol Relating to the Status of Refugees of 1967. The Convention defines refugee as any person who is “outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion.”

The difficulty with this definition is that it excludes from within its purview other types of forced migrants who are coerced into leaving their country of habitual residence due to natural phenomena such as droughts etc. It also excludes migrants who are to some extent forced to leave their country of habitual residence due to factors such as extreme poverty, loss of livelihood and hunger. Such migrants, while not falling into the definition of refugees, may also merit specific protection given
the challenges they are facing and the forced or partially forced nature of their migratory movement. While such specific protection may not currently exist in international law, it is useful to state, albeit briefly, the current state of international law within the context of migration both forced and unforced migrants.

3. International Law

Given the preceding reference to the 1951 Refugee Convention, it is convenient to commence with a brief reference to the fundamental principles of this treaty. As already alluded to this Convention defines the term refugee in terms of individuals forced to flee their country as a consequence of persecution. The notion of persecution is particularly pertinent as it underscores the reason why refugees are deemed to require special protection. Within this context, the most important right granted to refugees under the Convention is the right not to be returned to the country from which they have fled. This is known as the principle of non-refoulement. This principle has evolved into a customary rule of international law binding on all states. Furthermore, the Convention also establishes, inter alia, that any person having the status of refugee may not be punished on the grounds of illegal entry into a country where he is seeking refuge. The Convention also provides other rights to refugees in terms of socio-economic matters as well as legal status. Nevertheless, it may be argued that for persons fleeing persecution, the ability to enter another country without authorisation and without fear of punishment or expulsion is the most important protection that features in the Convention. It is regrettable that international law does not extent the same protection to persons fleeing extreme poverty or migrants fleeing the deleterious impact of climate change.

Smuggling in persons is a phenomenon that is closely related to the plight of migrants fleeing their countries of origin due to persecution or poverty. Attention to human smuggling has increased in the Mediterranean as part of the broader concern with migratory flows from the eastern and southern shores towards Europe. It is widely conjectured that on the southern and eastern Mediterranean shores
there are very significant numbers of people who, for various reasons, are attempting to cross into Europe\(^5\). Given that authorised, safe and regulated travel to Europe is virtually impossible for these migrants; such persons have very limited options for getting into Europe. Thus, migrants are effectively being forced to disburse extortionate sums of money to smugglers who pack them in unseaworthy vessels in order to arrive in Europe. These crossings, in dangerously cramped vessels, have often resulted in tragedies at sea with hundreds of migrants drowned in the Mediterranean over the past decade\(^6\).

International law addresses the matter of smuggling in persons through the Protocol Against Smuggling in Persons of 2004. Amongst the various obligations imposed on State Parties in the Protocol, two deserve specific mention:

(i) The obligation to criminalize smuggling and related acts; and

(ii) The obligation not to subject smuggled persons to criminal prosecution for having been the object of smuggling.

It is significant that in this Protocol, international law is acknowledging that smuggled persons are not criminals and should never be treated as such. This is a very pertinent point that states should do well to remember.

In recent years the focus of attention within the migration context has been on the issue of unauthorised migratory flows, whether they concern refugees or other types of migrants. This is even more so in the Mediterranean region where the sea crossings towards Europe have monopolised media and political attention. Nevertheless, it is important to remind ourselves that there are other migrants who, irrespective of their legal status, are already in a third country living and working in (often)-precarious conditions. As such, migrant workers may often

\(^5\) See \url{http://www.telegraph.co.uk/news/worldnews/europe/italy/11418158/Italy-fears-refugee-exodus-from-Libya-will-cross-Mediterranean.html}

\(^6\) See for example \url{http://www.reuters.com/article/us-europe-migrants-italy-drownings-idUSKCN0XH1R2}
fall into the hands of unscrupulous employers. This risk is aggravated given that such workers lack the protection normally provided by the state of nationality. In such a context, one can appreciate the efforts of international law to provide some basic protection to this category of workers through the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. Amongst the key provisions within this Convention, two of the most noteworthy ones are the following:

Migrant workers cannot be subject to collective expulsion and have the right to equal remuneration as nationals as well as the right to join trade unions.

Migrant workers shall be free from slavery, serfdom and forced labour.

It is a well documented fact that migrant workers are especially at risk of exploitation, being paid less than local workers and subjected to working conditions that local workers would refuse. The perils of abuse of migrant workers are heightened when such workers enter the country of employment irregularly. In such cases, the workers are even more at the mercy of their employers and have practically no protection whatsoever.

Finally, a brief reference to the Trafficking in Persons Protocol is also apposite as victims of human trafficking are also migrants (in most cases forced migrants or fraudulently induced migrants). It is self-evident that this category of migrants is an especially vulnerable group of persons. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons was adopted in 2000 with the aim of adopting measures throughout State Parties that would lead to the suppression of trafficking through preventive measures but also through the effective punishment of perpetrators.

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8 See for example http://www.reuters.com/article/us-italy-migrants-slavery-idUSKCN0WV13U
of traffickers. The Protocol however, goes beyond preventive and punitive measures and encourages State Parties to adopt measures “for the physical, psychological, and social recovery of victims…such as providing (a) appropriate housing; (b) counselling and information on their rights; (c) medical, psychological, and material assistance; and (d) employment, educational, and training opportunities.” The Protocol also provides that State Parties should consider adopting measures that permit victims of trafficking to remain in the territory to which they have been transported. Such a measure would be an inducement for the victims to act as whistleblowers on their traffickers and highlights the role of trafficked persons as victims.

In this context the Convention on the Elimination of Discrimination of Women (CEDAW) is also a relevant and widely accepted international legal instrument. CEDAW stipulates that:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

In its 2006 recommendations to Malaysia, the Committee on the Elimination of Discrimination against Women stated that the country should:

“ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against their traffickers.”

4. EU law and policy

Before addressing the EU’s legal and policy responses to the phenomenon of increased migratory flows from the southern and eastern Mediterranean, it is important to take a step back and reflect briefly on the EU’s founding principles. The main constitutional text of

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the EU is the Treaty on European Union that opens its Preamble with the following assertions:

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

... Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law\(^{10}\)

The substantive text of the Treaty builds upon these lyrical commitments to human rights, freedom and the rule of law. Article 2 of the Treaty states unequivocally that the European Union “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” This general commitment to human rights principles is then given sharper legal focus in Article 6(3) where the human rights contained in the European Convention on Human Rights and Fundamental Freedoms “shall constitute general principles of the Union’s law.” These unequivocal commitments to human rights in the EU’s foundational legal text establish a clear presumption that human rights laws and concerns should guide the Union’s laws and policies in all spheres of activity. The extent to which this has been the case in the area of migration is, at best, doubtful.

The EU’s laws on migration and asylum are comparatively new. Within its internal borders the Union is founded upon the principle of free movement of people, namely EU nationals are entitled to travel throughout the Member States unhindered and they have employment and social rights in any Member State where they choose to establish themselves. The adoption and gradual expansion of the Schengen

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Agreement (originally signed in 1985 by 10 Member States) has created a largely borderless European Union with an accompanying common visa policy (the so-called Schengen Visa).

As has been pointed out by Visser, “Europe is currently a border free zone (as far as the Schengen countries are concerned). However, for asylum seekers and beneficiaries of international protection, borders still exist. Their status is only a national decision. One might ask the question if this situation is sustainable in the long term.” The prevailing situation is one where the right of third country nationals to travel into the EU is governed by a mixture of EU and Member State laws and policies. In recent years, the EU has been moving to establish a Common European Asylum System to ensure similar procedures, methods and outcomes for asylum applications in all Member States.

However, quite apart from the EU’s evolving policies on asylum, the reaction of the EU and its Member States to the increasing migratory flows from the eastern and southern Mediterranean has been reactive (as well as reactionary on occasion), incoherent and largely ad hoc. One may suggest that it has largely failed to take into account human rights and human security concerns in favour of national security approaches. Whatever the merits (or flaws) of such an approach it is clearly not in line with the obligations laid out in the Treaty on European Union outlined above.

In order to substantiate such a claim one can assess some of the recent policies adopted by the EU within this context. In April 2015, following the tragedies that occurred in the Mediterranean Sea that month, the EU adopted a Ten Point Plan to deal with migration across the Mediterranean. As advocated elsewhere, “these points focus primarily on the smugglers who ferry the migrants across the Mediterranean on mostly unseaworthy vessels. However, targeting smugglers is

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12 Ibid
merely targeting a symptom rather than a cause. The root cause of the migration, as has been suggested above, is human insecurity related to conflict, persecution and poverty. The destruction of smugglers’ capacity does nothing to address these causes of human insecurity... It is telling that nowhere in the Ten Points is a reference to the human rights, human dignity and human security of migrants.”

The Ten Point Plan was soon followed by a more comprehensive document: The European Agenda on Migration, which the EU adopted on the 13th May 2015. The key components of the Agenda may be summarised as follows: (i) reducing incentives for irregular migration; (ii) border management and saving lives at sea; (iii) a strong asylum policy; and (iv) a new policy on legal migration. The Agenda starts by acknowledging that migration is a natural human phenomenon that has occurred throughout history and that it is important to view migration in a holistic context. In particular, the Introduction to the Agenda underlines the complexity of migration, which requires a multiplicity of policy responses while keeping in the mind the most “immediate imperative is the duty to protect those in need”.

Despite this positive and human-centric introduction, the policy prescriptions offered in the Agenda contain minimal references to human rights and human security with state-centric and traditional security approaches taking the lead in formulating the EU’s migration policy. In essence, while the European Agenda on Migration acknowledges that the EU needs “to strike the right balance in its migration policy” it fails to do so, especially when one considers the aforementioned human rights commitments and obligations so evident in the EU’s constitutive document.

As a final example of this gap between the human rights rhetoric contained in the Treaty on European Union and the reality of the EU’s policy responses, one may refer to the most recent policy response by the EU in terms of the migratory flows resulting from the Syrian

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15 Ibid
conflict: the EU-Turkey Agreement\textsuperscript{16}. The Agreement has been met by strong criticism from human rights organisations, with Human Rights Watch Executive Director Kenneth Roth stating that the Agreement demonstrated “a disturbing disregard for international law covering the rights of refugees, asylum seekers, and migrants”\textsuperscript{17}. In particular, the Agreement establishes that “all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey”. This blanket provision drew significant criticism on the grounds that any person claiming asylum should have his/her claim assessed individually and that “EU and international refugee law requires that a claim for refugee status or subsidiary protection be given careful consideration, and that no one found to require such protection be forcibly returned.”\textsuperscript{18} Amnesty International likewise criticised the Agreement in severe terms claiming that the deal was a “historic blow to rights”\textsuperscript{19}. The UNHCR also expressed concern on the EU-Turkey Agreement while it was still being negotiated and warned that implementation needed to be monitored carefully upon its adoption\textsuperscript{20}. Having two of the largest international human rights NGOs articulate such strongly critical reactions and the UNCHR expressing its discomfort in more diplomatic language, must surely be a matter of concern for the EU given the ideals it professes to uphold and practice.

\section{Conclusion}

The increase in migratory flows does pose a challenge to the EU and its Member States. Dealing with mass influxes poses significant challenges in terms of logistics, management and integration amongst others. These are not insurmountable challenges. It is relevant to point out

\begin{itemize}
  \item[16] \url{http://europa.eu/rapid/press-release_MEMO-16-963_en.htm}
  \item[17] \url{https://www.hrw.org/news/2016/03/15/eu-turkey-mass-return-deal-threatens-rights}
  \item[18] Ibid
\end{itemize}
that “86% of the world’s forcefully displaced persons are hosted in developing countries. Jordan, for example, currently hosts 628,160 refugees from Syria alone.” Thus, the challenges the EU faces are not unique and should be placed in their proper context. In any event, these challenges cannot be used as reasons or excuses to engage in practices, which undermine human rights and human security. For an organisation founded on the ideals of human dignity and liberty this is simply both morally wrong and legally questionable. It also undermines the organisation by opening it up to accusations of hypocrisy and double standards. Insofar as the EU Member States are concerned, it is also pertinent to highlight that they are not only bound by the EU’s laws and policies but also by the rules of public international law.

The EU and its Member States must live up to their human rights commitments (at the regional and international levels) in their practice as well as in their rhetoric. One of the main reasons for the tragedies that the Mediterranean has witnessed in recent years, with thousands of migrants drowning at sea, is the lack of legal and safe avenues for entry into the EU. Creating such avenues would diminish the need for people fleeing from conflict and human rights abuses to use smugglers to enter the EU. Until such avenues are available, migrants will continue to resort to smugglers at great peril to their lives.

More generally, the EU needs to adopt policies with respect to both refugees and other types of forcefully displaced migrants which are guided primarily by human rights considerations. Failing this, the EU should consider revising the Treaty on European Union to replace the strong human rights commitments which it contains with a different discourse. In order to secure its reputation, the EU must practice what it preaches and not allow an increasing gap between what the aims it professes and its actual practices.

The Central Mediterranean Migration Route: Rise, Fall, and Rise Again

Dr. Derek Lutterbeck

Introduction

It has become common to divide the south-north migratory movements across the Mediterranean in recent years into three main routes. These being, the Western Mediterranean route, which leads from West African countries to Morocco, and from there to either mainland Spain or the Canary Islands. The Central Mediterranean route, which passes through Libya to either Italy or Malta, and which has been used by migrants from both West and East Africa. Finally, the Eastern Mediterranean route, which (in recent years) has led through Turkey and the Greek islands, and which has been used mainly by refugees fleeing from the civil war in Syria, but also by migrants hailing from other countries such as Afghanistan or Iraq. Even though all three routes have existed for the last two to three decades, their (relative) importance has varied considerably over time, depending —apart from the ‘pull factor’ exercised by the EU— on conditions in the countries of origin and transit, as well as migration control efforts in the countries of destination (and transit). The aim of this article is to explore the evolution of the Central Mediterranean route, where —after Italy— Malta has been the main entry point into the EU.

Rise of the Central Mediterranean Route

In contrast to both the Western and Eastern Mediterranean routes, which have been used by migrants seeking to enter the EU since the early 1990s, the Central Mediterranean route through Libya is of a more recent origin, dating back to around 2000. While there was some limited boat migration from North Africa across the Central Mediterranean
throughout the 1990s, the main country of departure during this period was Tunisia. At that time, migrants travelling along this route came mainly from North African countries, in particular Morocco and Tunisia itself. However, as Tunisian authorities began to clamp down on irregular migration from its shores, the migratory flows moved eastwards, with Libya becoming the main country of departure towards Europe in the Central Mediterranean area (Monzini, 2007).

Apart from stricter border controls enforced by neighbouring Tunisia, several other factors have contributed to the emergence of Libya as a key transit country for irregular migration towards the EU. First, there seems to have been a diversion effect not only from Tunisia, but also from the aforementioned Western Mediterranean route (which passes though Morocco to southern Spain or the Canary Islands), as evidenced by the growing number of West African migrants travelling through Libya. As Spain stepped up border controls along its southern frontiers, as well as its cooperation with the Moroccan government in immigration control, migrants coming from West African countries increasingly seemed to have chosen the Central, as opposed to the West Mediterranean, route. 22

Second, Libya has since the 1990s practiced an ‘open door’ policy towards sub-Saharan African countries, and given Libya’s considerable prosperity compared to other countries of the continent, it has long been an attractive destination for African migrants. Libya has thus traditionally hosted a relatively large immigrant population, which towards the end of Qaddafi’s reign was estimated to range between one and two million. While many of these migrants have been living and working in Libya for long periods of time, it appears that at least some of them at one point decided to undertake an onward journey to Europe. Moreover, the presence of large immigrant populations has, in itself, facilitated migration into and through Libya towards Europe (see below). Finally, Libya’s geographical features, especially its vast desert borders and long coast line, have been further factors contributing to the country’s role as a key migration hub. The considerable rise in boat

22 The decline in irregular migration along the West Mediterranean route from 2006 onwards has coincided with a steep increase in migration along the Central Mediterranean route.
migration from Libya is shown in Figure 1 below, with an increase from around 5,000 migrants in 2000 to almost 40,000 by 2008.

Figure 1: The Central Mediterranean Migration Route

Source: Frontex; author’s calculation based on media reports

It is noteworthy that Libya’s role, with regard to these migratory movements from the African continent to Europe, has almost exclusively been one of a country of transit (and destination), and not of origin. Even though in the aftermath of the overthrow of the Qaddafi regime in 2011 and the ensuing internal turmoil, a growing number of Libyans have fled the country, the large majority of these have left Libya by plane (often via neighbouring Tunisia) with valid travel documents and not by boat. Generally speaking, migrants travelling along this route have come from both the Horn of Africa (mainly Somalia and Eritrea) as well as West African countries, such as Nigeria, Ghana or Ivory Coast. Moreover, since 2013, refugees fleeing the Syrian civil war have accounted for a large part of migrants crossing the Central Mediterranean.

As the author (Lutterbeck 2013) has described elsewhere, the increase in irregular migration into and through Libya has gone hand-in-hand with —and has been facilitated by— the emergence and consolidation of relatively well organised migrant smuggling networks. In particular, for the crossing of the Sahara from Sudan or Niger to southern Libya, and the trip across the Mediterranean by boat to Italy or Malta, migrants have been resorting to human smugglers who have derived
a considerable profit from this activity. Even though these smuggling networks might not have been the highly sophisticated and professional transnational crime syndicates as which they are often depicted in public discourse, undeniably, migrant smuggling has become an increasingly organised and profitable business. Typically such smuggling networks are composed of individuals fulfilling different functions—brokers or intermediaries who ‘recruit’ migrants wishing to travel, owners of ‘safe houses’ where migrants are assembled before being transported, drivers, as well as individuals higher up in the hierarchy who ‘manage’ the smuggling process. As has also been shown by previous research, these migrant smuggling networks are often firmly embedded in the local economy of border areas, with numerous individuals deriving a profit from smuggling-related activities. In many cases, the smuggling networks have also been closely connected to Libya’s security structures, possibly at their highest levels, and Libyan security officers have directly benefitted from migrant smuggling. This may be in the form of taking bribes against turning a blind eye on irregular border crossings, or even through direct involvement in the transport of undocumented migrants into and from Libya (Lutterbeck, 2013).

The typical migrant smuggling pattern both in crossing the Sahara and the trip across the Mediterranean by boat has been roughly as follows: a first contact between migrants and smugglers is usually established through a ‘broker’ who is often of the same nationality as the migrants themselves. Brokers who offer a trip, are typically found in specific places, e.g. cafes or other meeting places where migrants congregate. The fact that Libya, as already mentioned, has traditionally had a relatively large immigrant population, has generally facilitated the establishment of contacts between migrants and smugglers (as well as irregular migration more generally). Once a price for the journey is agreed and payment is made, the migrants are taken to ‘safe houses’ where they must wait until the journey begins. For the sea crossing, these safe houses are usually located close to Libyan shores. Up until around 2009, by far the most important points of departure from Libya were the towns of Zuwarah and Zliten, both of which are located in the larger Tripoli area. The most commonly used boats for the crossings were fibreglass boats carrying around 30 passengers each, which most likely were fabricated in Libya for the sole purpose of transporting
migrants to Europe. The price for the trip by boat has varied according to the type of boat (and the place within the boat), but has usually hovered around 1,000 USD.

From the perspective of EU countries, the main problem in preventing irregular immigration across the Central Mediterranean from Libya, at least prior to mid-2009, was Libya’s refusal to cooperate in stemming the flow of migrants across the Mediterranean. Since around 2000, there has been some collaboration between the Italian and Libyan governments in preventing migration, and Italy has also provided Libya with material and technical assistance in this area (European Commission, 2004; Frontex, 2007; Human Rights Watch, 2006). Nevertheless, the Libyan government was generally considered to be turning a blind eye on the departure of irregular migrants from its shores, and many have—rightly—suspected the active involvement of at least some Libyan officials in the transport of migrants across the Mediterranean.

**The Italian-Libyan Agreement and the Decline of the Central Mediterranean Route**

A major turning point in irregular migration across the Central Mediterranean came in mid-2009 when the Italian and Libyan governments reached an agreement on cooperation in immigration control. This included a commitment on the part of Libya to enforce stricter controls along its coast, and to take back irregular migrants intercepted at sea (Human Rights Watch, 2009). As a result of this Italian-Libyan collaboration, and Italy’s controversial ‘push-back’ policy, irregular migration in the Central Mediterranean was reduced sharply. As shown by Figure 1 above, from 2008 to 2010 the number of migrants travelling along this route dropped from around 40,000 to less than 5,000.

One conclusion that can be drawn, from the sudden decline in boat migration from Libya towards Europe, after the Italian-Libyan agreement is that irregular migration from Libyan shores is a phenomenon that can indeed be controlled, if there is a (political) will to do so. In the past, the
Libyan leadership had usually exculpated itself from being responsible for irregular migration from its territory, arguing that its long coastline was practically impossible to monitor. However, if this had indeed been the case, the Italian-Libyan cooperation and stricter controls on the Libyan side would have hardly had such an immediate impact on the number of migrants seeking to cross. The almost instant decline in irregular migration after Libya’s policy shift can thus be seen as (further) evidence of Libyan authorities’—active or passive—implication in the transport of migrants from its shores, as mentioned above.

While after the launching of the Italian-Libyan cooperation irregular boat migration from Libya towards Europe declined sharply in numerical terms, several travel modalities also seem to have changed as a result of stricter enforcement on the Libyan side. First, the points of departure of the boats have shifted further east. Up to mid-2009, the large majority of migrants, as mentioned previously, left from the Libyan towns of Zuwarah and Zliten, both of which are located near Tripoli. Subsequently, however, many boats left Libya from towns located (much) further East, such as Misrata, Sirte or even Benghazi, most likely because controls in these more remote areas remained less strict. Second, there has been a change in the type of boats used. In 2009, the previously predominant fibreglass boats disappeared almost entirely, and the most widely used boats in 2009 and 2010 were large rubber dinghies carrying between 50 and 100 migrants. The shift from fibreglass boats to rubber dinghies has most likely also been a consequence of stricter monitoring on the Libyan side, as rubber dinghies (if they are deflated) are easier to transport and conceal, given that they can be inflated at the very last moment before departure.

Whereas within Libya itself, the points of embarkation have shifted further east, alternative routes from Libya through other North African countries towards Europe also seem to have emerged as a result of Libya’s crackdown on irregular migration. For example, there appears to have been a diversion from the Central to the Eastern Mediterranean route, with a growing number of migrants travelling from Libya to Egypt, from where the route to Europe continues to Israel, Lebanon, Syria and Turkey towards Greece.
Apart from these shifts, however, the basic modus operandi of migrant smuggling from Libya to Europe seems to have remained largely the same. Migrants who left Libya by boat in 2010 explained to this author that, as a consequence of stricter monitoring, it was generally more difficult to find boats to make the crossing and that much greater care had to be taken to avoid being arrested. Nevertheless, the ways in which the trip was organized was largely the same as previously. As during previous years, the trip was arranged through a broker (usually of the same nationality as the migrants), the migrants were kept in safe houses prior to departure, and also the price for the crossing remained roughly the same.

The Libyan ‘Revolution’ and the Re-emergence of the Central Mediterranean Route

The (dramatic) decline of the Central Mediterranean migration route through Libya, as a result of the Italian-Libyan cooperation in 2009/2010, was reversed almost equally rapidly by the popular uprisings of 2011, which ultimately led to the overthrow of the Qaddafi regime. With the eruption of the popular upheavals, during which European (and Western) countries generally expressed their support for the anti-Qaddafi rebellion, and even took military action to protect the Libyan population against the regime, the Italian-Libyan cooperation in immigration control was also suspended. This resulted in a renewed increase in boat migration from Libya towards Europe, which by 2011 had climbed to roughly pre-2009 levels. To be sure, the main impact of the Libyan crisis of 2011 on migratory patterns in the Central Mediterranean was a large outflow of migrants and refugees from Libya across the borders to neighbouring Tunisia and Egypt, but it also led to a renewed rise in boat migration from Libya towards Europe (IOM, 2011). Departures from Tunisia — which witnessed the first anti-regime uprising in the region— towards European countries and consisting mainly of Tunisian nationals, also increased in 2011, but this migratory movement practically subsided by 2012, as Tunisian authorities re-established control over the country’s borders.
Apart from the termination of the Italian-Libyan cooperation, several other factors have also contributed to the increase in seaborne migration from Libya, which after a short dip in 2012, rose dramatically to more than 150,000 by 2013. First, it seems that the Libyan regime not only terminated its cooperation in the sense that controls which had been enforced in 2009 and 2010 were lifted, and individuals previously arrested for migrant smuggling were released, but also actively began pushing migrants out of the country (Attir, 2012). Indeed, Colonel Qaddafi himself, in response to the air strikes launched by Western countries against his regime, declared he would ‘unleash an unprecedented wave of illegal immigration’ towards Europe. Many migrants who left Libya during the popular uprising, and who were interviewed by this author, spoke of Libyan police and military forces actively organising their journey by boat to Europe. The renewed increase in large boats carrying hundreds of migrants from 2011 onwards also testifies to the absence of border enforcement on the Libyan side and possibly also to the active involvement of Libyan officials in the transport of migrants across the Mediterranean.

Probably even more importantly, the growing internal instability within Libya, and the fact that Sub-Saharan migrants were often mistaken for pro-Qaddafi mercenaries, has made life for immigrants in Libya increasingly dangerous, thus creating an additional ‘push factor’ driving them out of the country. It seems that many African migrants who left Libya in 2011 had had no previous intention of leaving the country; they only got on a boat to Europe because they no longer felt safe in Libya. As explained by one Ethiopian migrant who had fled to Malta by boat with his family:

“We had no plans of coming to Europe. I was living in Libya with my family, and we were doing fine. But one day, some Libyans came to the place where we were staying and told us we could no longer stay here. Africans were being attacked all over Libya, and we were being threatened; we had no choice but to take a boat.”

24 Author interview with Ethiopian migrant, Malta, 5.7.2011.
According to some observers, another potential factor driving migration across the Central Mediterranean has been the maritime operations carried out in this area, first by Italy—the so-called *mare nostrum* operation—and subsequently, on a more limited level, by the EU border control agency FRONTEX. Some have argued that these maritime operations, rather than deterring migrants from seeking to cross the Mediterranean, were acting as a ‘pull factor’ in that (inevitably) they have facilitated migrants’ journey by boat. While it is difficult to verify this correlation, it seems clear that these maritime operations have entered the calculus of the migrant smugglers and have thus affected travel modalities across the Mediterranean. Officials involved in these operations have reported that the quality of boats and equipment used for transporting migrants have declined even further. Assuming that boats carrying migrants will be picked up at sea and brought to Europe anyway, migrant smugglers have been providing boats even less suitable for the crossing than previously and equipped with even less fuel and food supplies.

Arguably, the most important factor fuelling the steep rise in migration across the Central Mediterranean, however, has been the deterioration of the situation in many migrant sending countries. The most significant development in this respect in recent years has been the civil war in Syria, which too has been a consequence of the popular upheavals that have swept across the Arab world since 2011. As the deepening conflict has driven millions of Syrians from their homes, a growing number of them have sought to undertake the perilous journey to Europe via Libya, even though the large majority has sought refuge in neighbouring countries (in particular Turkey, Lebanon and Jordan). In 2013/2014 around a quarter of all migrants crossing the Central Mediterranean have been Syrians. The increasing repression in Eritrea seems to have been another push factor driving migration across the Central Mediterranean, in particular of young men escaping compulsory—and often practically unlimited—military service in the country.

While boat migration across the Central Mediterranean has risen to unprecedented levels, it should also be noted that in 2015 the Central Mediterranean route was overtaken by the Eastern Mediterranean route passing through Greece and Turkey. As can be seen from Figure 2 below,
in 2015 more than 800,000 migrants and refugees were intercepted along this route, more than five times the number of migrants travelling across the Central Mediterranean. In this respect as well, the deepening crisis in Syria has been a key factor, as the vast majority of migrants seeking to reach Europe via Turkey have been refugees fleeing the Syrian civil war. Moreover, it seems that the imposition of visa requirements for Syrians by many North African countries have made the journey via Libya increasingly difficult, thus leading many Syrian refugees to opt for the Eastern Mediterranean route instead. However, migration patterns in the Mediterranean remain highly volatile, and a shift back from the Eastern to the Central Mediterranean route can hardly be excluded. Indeed, as a result of the recent EU-Turkey agreement aimed at preventing migrants from reaching Greece via Turkey, the Central Mediterranean route might very well again become the most important gateway to the EU in the region.

Figure 2: Mediterranean Migration Routes in 2015
Irregular migrants travelling across the Mediterranean in 2015

Source: Frontex

As far as Libya is concerned, the currently most important challenge when it comes to controlling migration is not only the absence of functioning state institutions but also the fact that large parts of the country are now controlled by a multitude of militias with different political agendas. Even though in principle Libya has an internationally recognised government, the western part of the country including Tripoli
has come under the control of a rival (Islamist-leaning) government, and both governments have been sustained by different militias. Moreover, in the resulting chaos, Islamic State (IS) or DAESH also seems to have been able to gain a growing foothold in some areas of the country.

Little reliable information on the current migration situation in Libya is available at the time of writing, as the growing instability in the country has made research in this area increasingly difficult. Available accounts have highlighted the inability of Libya’s remaining official institutions to prevent irregular migration — even if they had the will to do so, they seem to entirely lack the necessary equipment for controlling the country’s borders. Moreover, Libya’s various militias now also seem to have emerged as important actors in the ‘migration businesses’. It is reported, for example, that Libyan militias have been raising funds by taking bribes from migrants and smugglers to allow them free passage, or by running migrant detention centres so as to create a ‘market’ for migrant smuggling. There are even indications that, not unlike the Qaddafi regime, Libyan militias might be using the ‘migration tool’ to put pressure on European countries by actively pushing migrants and refugees out of the country (Altai Consulting, 2015).

Death toll along the Central Mediterranean route

The Central Mediterranean route has not only gained notoriety because of the growing number of migrants and refugees travelling along this route but also because of the rising death toll of migrants who have perished on their way to Europe. Not only is the Mediterranean as a whole by far the most deadly migration border in the world, but of the three main routes across the Mediterranean, the Central Mediterranean one has accounted for by far the largest number of migrant deaths. While this area remains under-researched, it can be assumed that in recent years, several thousand migrants have drowned in the Mediterranean each year (Brian and Laczko, 2014). Needless to say, this has been the consequence of the long and perilous sea crossing, where weather conditions can change rapidly, as well as of the generally poor condition of the boats used for the journey.
Figure 3 below shows the number of migrant deaths along the three main Mediterranean routes during the first five months of 2016. As can be seen by far the largest number of migrants —more than 2,000— have died trying to cross the Central Mediterranean, even though around three times more migrants —150,000 as opposed to 45,000— have used the Eastern Mediterranean route during this period. Moreover, it also seems that this route is becoming increasingly deadly, despite EU countries maritime patrol activities. During the first five months of 2016, one in every 23 migrants is reported to have died along this route, whereas the ratio for previous years was 1/50 (GMDAC, 2016).

**Figure 3: Migrant Deaths in the Mediterranean, 1/1 – 31/5/2016**

Deaths of migrants according to route

Source: GMDAC

**Conclusions**

Even though of somewhat more recent origin than both the Western and Eastern Mediterranean routes, the Central Mediterranean migration route is nowadays one of the most important gateways for migrants and refugees seeking to enter the EU. And while its (relative) importance has varied considerably over time —and in 2015 was entirely overshadowed by the massive migratory movements along the Eastern Mediterranean route— it can be assumed that the Central Mediterranean route will
continue to play a key role when it come to migratory movements from the African continent to Europe. The continuous and ever growing instability in many migrant-sending countries—including Syria, Somalia or Eritrea— as well as the (increasing) turmoil in Libya itself, will have the effect that this route will continue to be used by large numbers of migrants and refugees. Apart from numbers, the dangerousness of the Central Mediterranean route will also continue to be an issue of key concern. Not only does the Central Mediterranean represent the most perilous crossing of the Mediterranean Sea, but the most recent figures seem to suggest that not even the EU’s maritime patrol efforts might have a significant impact in reducing the death toll in this part of the Mediterranean.

References


Migration in the Mediterranean: Is It a Security Threat?

Dr. Monika Wohlfeld

1. Introduction

The post-Arab Spring migration surge from and through the southern Mediterranean into the European Union has been accompanied by a rise in threat perceptions in the countries of destination. While viewing migration as a security issue is not new, migration is increasingly being referred to in one breath with terrorism and organised crime as a new security threat in the Euro-Mediterranean context. But is this an appropriate approach to the phenomenon of migration? Can migration be considered a security issue, in the same way that terrorism and organised crime are? What is the link between migration and terrorism and organised crime?

The essay will argue that it is incorrect and misleading to use the term migration while considering security challenges, and will consider other terms that can help us to understand aspects of migration that may be useful in formulating the claim that in some cases migration can be considered a security issue, relevant for national security and/or human security. It then asks the question ‘whose security’ is relevant in such a debate – the security of states or humans? Furthermore, the essay will explore the link of migration to terrorism and organised crime.

This essay focuses on the countries of destination and transit in the EU, as this is where the link between migration and terrorism and organised crime is increasingly highlighted. However, it is worth noting that the nature of the security discourse, which is associated with migration flows in the Euro-Mediterranean area, is Euro-centric. This discourse largely overlooks concerns and challenges to developing countries of origin and transit, which are in fact often also destination countries, as a big part of migration flows can be understood as South-South flows, rather than South-North flows.\footnote{IOM, 2014. South-South Migration. Partnering for Development.} This applies also to the Euro-Mediterranean context.
region, with countries such as Turkey, Lebanon, Jordan or Egypt hosting millions of migrants. The EU increasingly looks to countries on the southern shores of the Mediterranean for co-operation in stemming migration flows. This raises a variety of questions concerning human rights and human security issues. This however, deserves separate, more detailed treatment and will not be treated in this essay.

2. What is migration? What kind of migration is relevant for consideration of security?

Migration can be understood as the movement of people from one place to another. The International Organisation for Migration (IOM) defines migration as ‘The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.’26 It is thus a broadly understood phenomenon. While the majority of migrants migrate in search of work and economic and social opportunities, a certain percentage of migrants are people fleeing armed conflict, persecution, but also natural disaster and famine. These migrants may qualify for refugee status or other forms of protection. Some however may not be eligible for those. In fact, increasingly, we are observing mixed migration flows, in which it is becoming more and more difficult to determine the exact motivation and thus status for the migrants. All migrants, irrespective of their status, however, must be afforded human rights protection under international law.

The UN reports that the number of international migrants worldwide reached 232 million in 2013, up from 175 million in 2000 and 154


As for the European Union, EUROSTAT specified in 2014 that there were some 20 million non-EU nationals residing in the EU countries (making up 4% of its population). Thus, considering even the most recent wave of arrivals in the EU (more than one million in 2015, and close to 190,000 in 2016 until the month of May), the vast majority of migrants globally do not reside in European countries.

Significantly, polls indicate that populations tend to overestimate the numbers of immigrants in EU countries. A 2014 Ipsos Mori poll indicates that for example ‘in Italy the public thinks 30% are immigrants when it’s actually 7%; and in Belgium the public thinks it’s 29% when it’s actually 10%.

Human migration has taken place throughout history, it has at times been considered as a threat, but more often as an opportunity. In fact, migration is a phenomenon that must be understood in the context of the complex and interlinked flows of goods, finance and people. While global flows of goods and finance are supported and encouraged as part of a liberalist notion of development, commerce and security, the

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flow of people is increasingly being tackled with a variety of restrictive migration management policies that aim at curtailing it.

Under international law, states are entitled to control movement across their borders. It can be argued that ‘states use migration control measures to demonstrate their sovereign control over territory and to palliate public concerns that sovereignty is being undermined.’32 States determine who can enter and who can reside and work in their territories and do so, inter alia, through their migration management and border management policies. This entitlement to control who enters and who resides is restricted by a number of specific provisions of international law and human rights obligations. These human rights obligations have been described in detail in Dr. Omar Grech’s chapter in this book.

Furthermore, it is worth noting that not all types of migration are considered a threat and curtailed. For example, migration within the European Union and between developed countries is in general not at the focus of restrictive migration management and border management policies (although one must note occasional attempts by some EU countries to limit intra-EU migration and to weaken the so-called Schengen regime which allows for border-less travel within the EU).

Thus, using the term migration as a broad, generic term when referring to security threats, and listing migration alongside terrorism and organised crime is arguably incorrect and misleading because of the different nature of the phenomena. Furthermore, using this term in the above context has implications for the type of policies that are adopted to deal with migration flows, and consequently also for the situation of migrants while in transit or when arriving in destination countries.

This is not to deny that some aspects of migration flows could be understood as a security threat. The following section will explore the phenomena and terms at stake. The literature on the subject uses several different categories and terms for the type of migration that may cause

security challenges. The most useful term in this regard is unmanaged migration.33 While there are different types of unmanaged migration (such as regular but large scale migration), the most visible type of unmanaged migration is the so called irregular migration. (Irregular migration has also been called by various authors, undocumented migration34, unauthorized migration, clandestine migration35 and illegal migration36.) While the various terms used by scholars, policy-makers and media and listed above are similar, in that they refer to those migrants who are not authorized by countries of destination (and in some cases by countries of origin and transit), many reservations have been expressed about the impact these formulations may have on the perceptions of such migrants and on the consequences of such perceptions for policy-making and the welfare of migrants, inter alia. Furthermore, the term ‘irregular migration’, is not universally accepted, and not very precise (since it encompasses a variety of types of migrants). It is however used by organisations such as the International Organisation for Migration37 and the European Union38 and by a substantial part of literature on the subject.

Irregular migration is increasingly perceived by the governments and citizens of wealthier countries as a security threat. Papademetriou argues that ‘(n)o aspect of ... interdependence seems to be more visible to the publics of advanced industrial societies than the movement of people. And no part of that movement is proving pricklier to manage effectively, or more difficult for publics to come to terms with, than irregular (also known as unauthorized, undocumented, or illegal) migration’. 39 Indeed, recent polls also point to this: the Migration Observatory’s Report on public opinion on immigration in Britain suggests that publics distinguish between legal and illegal migration and that opposition to migration is often focused on illegal migration.40

IOM defines irregular migration as migration that takes place outside the regulatory norms of the sending, transit and receiving countries. Thus, ‘from the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.’41 These irregularities do not imply that irregular migrants committed criminal offences. In fact, international law protects irregular migrants from criminalization due to such irregularities42.

41 IOM, Key Migration Terms.
42 The 1951 Convention relating to the Status of Refugees specifically addresses the fact that refugees fleeing persecution often do not have the possibility to obtain the documentation necessary for an authorized entry. Article 31(1) of the Convention exempts refugees from penalization for irregular entry, if they are coming directly from a territory where they faced persecution and have presented themselves without delay to the authorities. See also chapter in this book by Dr. Omar Grech (p.44)
These irregularities do however create difficulties for migration management, including border management efforts. In the Euro-Mediterranean context, the sheer numbers of irregular migrants since 2011 and particularly since 2015, with many entering the EU without adequate documentation or with falsified documents, resulted in pressure on the border management services of EU countries. This was particularly difficult for those EU member states on the Mediterranean shores, responsible for management of external borders of the EU and indeed for examining applications for international protection lodged by third-country nationals or stateless persons under the Dublin III regulation. Breaches in applying this regulation became widespread in the more recent past. Indeed failures in assuring that standard procedures are followed when identifying and registering irregular migrants entering the EU became one of the biggest challenges in dealing with the migration flows.

Commentators argue that ‘the events of the past year [2015] have raised fundamental questions about the external border of the Union and whether the EU and its member states are capable of securing them.’43 The Frontex Risk Analysis for 2016 clearly indicates that the existing border management infrastructures are not adequate, and suggests that the current difficulties they experience could have been foreseen. Frontex writes that border management authorities are not equipped to deal with large flows, and have been under pressure for years.44 This leads to irregular migrants entering the EU along maritime borders doing so using services of criminal networks involved in smuggling operations, with an unknown proportion using their services in forging identity and travel documents. It also implies that for an unknown proportion of irregular migrants who entered the EU, authorities do not have information required to detect or investigate ‘serious criminal offences or even terrorist offences’45, as Frontex reports.

44 Frontex, Risk Analysis for 2016, p. 42.
45 Ibid., p. 43.
It has been noted that not only in the Euro-Mediterranean context but also globally, the numbers of irregular migrants have been growing. Authors point out that this is the result of three trends. The first one is increased mobility as a result of globalization, and advances in transport and communications, and indeed also the general growth of migration. The second one is the increasing limitation of legal migration possibilities, as governments respond by restrictions. The third is that there is substantial mismatch between the supply and demand sides for labour. The fourth is that large numbers of cases of irregular migration are increasingly understood as forced migration, often resulting from mass infringements of human rights and conflict, such as is the case in Syria, Libya, Iraq or the Middle East.

The actual numbers of irregular migrants globally can only be estimated. The IOM indicated in 2010 that ‘(t)he overwhelming majority of migration is fully authorized. Estimates, while not exact (...), suggest that only some 10–15 per cent of today’s ... international migrants are in an irregular situation.’\(^{46}\) The Clandestino project provides an estimate of the numbers of irregular migrants in the EU for 2008 as 1.9-3.8 million\(^{47}\). This estimate is used widely in relevant literature. With the EU population reported as 505.7 million\(^{48}\), the size of irregular migration does not really constitute the problem in itself. Rather, it is the trend of growing numbers of migrants overall and irregular migrants in particular, and the lack of clarity and control on who enters developed countries and stays in them and for what purpose. This aspect, associated with irregular migration, causes real or imagined threat perceptions. It is thus foremost a migration management failure.


3. **Whose security? States and Humans**

Even though ‘(t)he duality of threats, apparently caused by migration, to both national sovereignty and human security are largely reflected in much of the recent academic literature’\(^{49}\), the public debate on the migration-security nexus tends to focus on a variety of aspects related to national security, understood as the protection and promotion of the well-being of the citizens and legal residents of the State and its territory. As Khalid Koser argues, ‘the perception of migration as a threat to national security has certainly heightened in recent years, in part in response to the rapid rise in the number of international migrants (…) and especially of ‘irregular’ or ‘illegal’ migrants’.\(^{50}\)

Authors suggest that a securitization process of migrants and migration, especially irregular migration, takes place, increasing the perception of migration as a threat to national security.\(^{51}\) Securitization is understood as the process in which perceptions of security problems emerge and evolve. A number of authors indicated that migration, especially irregular migration, is one such securitized issue.

At the same time, the debate on migration and security reflects the general trend in security studies to move beyond the national security perspective to embrace a human security perspective. While the national security perspective focuses on border management challenges that may undermine a state’s sovereignty as well as migration’s real or imagined threats to the population of countries of destination, human security as an alternative approach to migration has placed the migrant as the referent object of threats. ‘The structural violence that causes

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many to migrate, the impact of deportation and detention policies and
the hazards to personal safety of migrants resulting from the increasing
reluctance of states to offer sanctuary to those genuinely in need are
just some of the aspects of the nexus between migration and human
security.’\textsuperscript{52} Arguably thus, from the human security perspective, ‘the
main imperative is not to curb migration by all possible means but
rather to prevent the loss of life in the Mediterranean, protect the
migrants against the human smugglers and ensure the rights of genuine
refugees.’\textsuperscript{53}

As Lutterbeck says, ‘(o)ne consequence of this growing preoccupation
in European countries with irregular migration and (supposedly)
related transnational challenges from across the Mediterranean has
been a considerable expansion and intensification of policing and law
enforcement activities in and across the Mediterranean sea. ..., this
has involved both an increasing deployment and upgrading of various
types of security forces involved in policing the Mediterranean, as well
as a considerable deepening of law enforcement co-operation between
countries north and south of the Mediterranean.’\textsuperscript{54}

Koser too argues that understanding migration as a national security
issue has consequences for the kind of policies that are used to counter
the threat. Thus, it is used to justify ‘greater surveillance, detention,
deportation and more restrictive policies’.\textsuperscript{55} This in turn has an impact
on the human security of migrants (by encouraging them to use more
dangerous routes, using migrant smugglers and human traffickers,
limiting the possibilities of reaching access to safe countries). Framing
migration as a security issue also affects publics in countries of
destination (by encouraging anti-immigrant tendencies), which in turn
also has an impact on the human security of migrants.

\textsuperscript{52} Thompson, ‘Frontiers and Threats…’.
\textsuperscript{53} Lutterbeck, p. 64.
\textsuperscript{54} Lutterbeck, p.60.
\textsuperscript{55} Koser, ‘When is Migration…’.
In fact, the two approaches (national security and human security) are often seen as standing in tension with each other. Thus, the debate centres on the question of whose security it is that we ought to be concerned about – is it really the security of states that should be the focus, or should we be studying the impact first and foremost on irregular migrants?

However, Kerwin argues pointedly that ‘(h)uman security is often set against the concept of national security, but the two need not be at odds. Properly crafted national security policies should further human security. However, the human security framework moves the migration discussion beyond national security’s narrow preoccupation with border control, detention, and the criminalization of migrants, and opens it to the conditions of insecurity that drive irregular and crisis migration. Human security also asks whether policies developed out of a misguided view of national security put people in less secure positions, like the hands of traffickers and smugglers.’

Thus, adequate migration management, including appropriate border management policies, would address national security problems while enhancing human security of the migrants. Such policies would have to be placed within a broader context of global co-operation on addressing the root causes of irregular migration. This is a rather complex task.

4. What are the links between migration and the phenomena of terrorism and organised crime?

The references to migration together with terrorism and organised crime presuppose that there are links between them. This section will explore these links.

Migration and terrorism

While there is no universally agreed upon definition of terrorism, generally speaking, it is possible to say that terrorism is “the use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.”

57 In the Euro-Mediterranean context, there has been a growth of terrorist organisations such as Al-Qaida and IS (Daesh) and upsurge of terrorist attacks and casualties of such attacks. The notion of ‘the war on terrorism’ and other so-called transnational threats has been linked by policy-makers to migration, especially irregular migration, as a consequence of 9/11 terrorist attacks and subsequent events.

While organisations such as IOM point out that terrorism and migration intersect, as they are relevant for migration management, border management efforts, and intelligence work, more populist statements leave no doubt about their understanding of a direct linkage between the two phenomena in the European Union. Politico, reporting on an interview with the Hungarian Prime Minister quotes him as saying that ‘...the factual point is that all the terrorists are basically migrants. The question is when they migrated to the European Union.’

60 News reporting in the wake of the Paris and Brussels terrorist attacks in 2015 and 2016 focused on the migration-terrorism nexus, pointing out that

the ‘migration crisis’ in Europe is turning into a security debate.\textsuperscript{61} In fact, most official documents are careful to use the term irregular migration rather than migration when speaking about the threat of infiltration of EU countries by terrorists. To provide some examples, a note from Europol to the Council of the European Union Standing Committee on Operational Cooperation on Internal Security identifies Greece and Italy, countries experiencing the largest influx of irregular migrants and refugees, as being more vulnerable to terrorist groups.\textsuperscript{62}

Literature and official statements indicate that there may be multiple ways in which irregular migration and terrorism intersect. These may be: 1. Purposeful infiltration of terrorists with irregular migration flows; 2. Radicalization of irregular migrants in their countries of destination, and consequent involvement in terrorism networks; 3. Funding for terrorist organisations being made available by organised crime networks involved in smuggling of irregular migrants, and 4. Radicalization of other terrorist groups in response to irregular immigration. Little solid data is available on these.

Concerning the first, some evidence exists. For example, the EU Frontex Agency Risk Analysis for 2016 notes that ‘The Paris attacks in November 2015 clearly demonstrated that irregular migratory flows could be used by terrorists to enter the EU. Two of the terrorists involved in the attacks had previously irregularly entered through Leros and been registered by the Greek authorities. They presented fraudulent Syrian documents


to speed up their registration process.\textsuperscript{63} This report highlighted that irregular migration has a security dimension, related to migration management, and in particular border management challenges.

The German Federal Criminal Agency (BKA) also published information, speaking in November 2015 of 10 cases of suspected terrorists among the close to a million of irregular migrants who entered Germany\textsuperscript{64}. By May 2016, the number of ongoing investigations into suspected terrorists entering Germany with irregular migratory flows was quoted as 40.\textsuperscript{65} Nevertheless, the press generally used this number to point to the link between migration and terrorism; in fact, the number reported is related to investigations rather than proven facts or convictions. Furthermore, as the head of the German police trade union indicated, it has to be kept in mind that the vast majority of irregular migrants has no link to terrorism (and many indeed are fleeing terrorism), and that the strategy of IS (Daesh) appears to be to discredit irregular migrants in order to create societal tensions in EU countries.\textsuperscript{66}

Concerning the second way in which the two phenomena may intersect, it must be noted that this is a problem of integration of ethnic and religious minorities in countries of destination rather than directly a problem of irregular migration and migration management. The third

\textsuperscript{64} Jörg Diehl, 2015. Migration und Terrorgefahr: Hunderttausende Flüchtlinge, zehn Verdächtige, Der Spiegel, 3 January. \url{http://www.spiegel.de/politik/deutschland/fluechtlinge-behoerden-kennen-nur-zehn-faelle-mut-masslicher-terroristen-a-1060674.html}
\textsuperscript{65} Der Spiegel, 2016. Sicherheitslage: Zahl der Ermittlungen gegen Flüchtlinge wegen Terrorverdachts steigt, Der Spiegel Online, 11 May. \url{http://www.spiegel.de/politik/deutschland/bundeskriminalamt-40-ermittlungen-gegen-fluechtlinge-wegen-terrorverdachts-a-1091730.html}
point of intersection is also not directly linked to irregular migration. Funding for terrorist organisations may be made available by organised crime networks involved in smuggling of irregular migrants. John Nomikos indicates that ‘illegal migration – through the connivance of transnational organised crime groups – contributes to the financing of terrorist organisations and to the exfiltration of their militants from conflict zones.’67 In a recent detailed report, however, Europol states clearly that ‘convergence between organised crime and terrorism in the EU seems a limited phenomena’68. In addition, irregular migrants are victims of organised crime networks, as argued below.

Finally, concerning the possibility of radicalization of other terrorist groups in response to irregular immigration, there seems to be no evidence on such linkage, although racist and xenophobic attacks of right wing groups on refugees and asylum seekers in a number of EU countries are on the increase. Here again, the victims are the migrants. A very detailed global study from 2015 by Bove and Boehmelt suggests that while immigration is a vehicle for terror moving from one country to another (in particular from terror-prone countries), immigration does not induce terrorism, and indeed overall terrorism levels tend to drop due to migration movements, through a ‘normatively positive effect’.69 The authors warn that ‘only a minority of migrants from high-terrorism states can be associated with increases in terrorism and not necessarily in a direct way. In a similar vein, our theoretical framework stresses the exploitation of migrants’ networks by terrorist organisations, which use migrant communities as a recruitment pool.’70 The authors also warn about drawing too close links between migration and insecurity and indicate that the perceived links have the effect of legitimizing the

70 Ibid.
implementation and enforcement of stricter laws and regulations. These in turn have an impact on human security of migrants.

Thus, while arguably there is an irregular migration-terrorism nexus, it is a complex relationship. Furthermore, the indiscriminate portrayal of migration and terrorism as being linked is not only misleading, but it also has the effect of enhancing efforts to clamp down on migration, especially irregular migration, often creating situations in which human rights of migrants are not respected. This raises questions about how international law pertaining to those who should be afforded protection, but also overall human security of migrants, especially irregular migrants, is implemented.

Migration and Organised Crime

There is no globally agreed upon definition of organised crime. The UN Convention Against Transnational Organised Crime (the Palermo Convention) does not provide a precise definition, but implies that ‘transnational organised crime’ encompasses profit-motivated serious criminal activities with international implications.\(^7\) Indeed, ‘definitions of what constitutes organised crime vary widely from country to country. Organised networks are typically involved in many different types of criminal activity spanning several countries. These activities may include trafficking in humans, illicit goods, weapons and drugs, armed robbery, counterfeiting and money laundering.’\(^7\)

In the context of this essay, it is important to distinguish between criminality and organised crime. That is, between individual criminal acts committed (such as theft or injury) and organised criminal activities (aimed at smuggling or trafficking of human beings, drugs, weapons and so on). While the debate in the Euro-Mediterranean area focuses


rather on perceptions of increasing criminality rates in EU countries due to the influx of irregular migrants (statistical information indeed does not suggest that the rates have increased disproportionately with the increased number of irregular migrants entering the EU\textsuperscript{73}), this aspect is not the key focus of this essay.

Literature and official statements indicate that there may be multiple ways in which irregular migration and organised crime intersect. These may be: 1. Purposeful infiltration of organised crime with irregular migration flows; 2. Exploitation of migrants’ networks by organised crime networks, with recruitment from migrant communities; 3. Organised crime networks involvement in smuggling of irregular migrants. Again, little solid data is available on these.

Concerning the first point, it has been suggested that ‘migration, legal or illegal, broadens the reach of existing criminal networks. Although most migrants, including many of those who enter their destination country illegally, are generally law abiding, among them are inevitably affiliates of a variety of criminal networks.’\textsuperscript{74} No clear data on numbers of affiliates of criminal networks among irregular migrants is available.

Exploitation of migrants’ networks by organised crime networks, with recruitment from migrant communities can be assumed. Again, no data is available. However, the aspect of victimization of migrants, especially irregular migrants, must be kept in mind. Furthermore, this too can be understood as a failure of integration policies and socialization efforts.

The main link between irregular migration and organised criminality is that of migrants having to use the services of smuggling networks for the purpose of entering the EU. Reportedly, the head of Europol indicated in 2015, that ‘Europe’s migration crisis is creating “an unprecedented


wave of criminality” as gangs across the continent converge around the “honey pot” of people-smuggling. As a recent in-depth report on human smuggling in the Mediterranean points out however, that although some of the smuggling networks are organised criminal structures, many are simply made of individuals from a particular community who form a loose chain that facilitates irregular mobility across border.

It is worth noting the discrepancy between the right to asylum or protection and strict migration management and border management practices are at the core of the existence of an international illegal market in smuggling of human beings. Nevertheless, criminality is often examined in isolation, without the caveat that people rightfully seeking asylum or protection in the EU do not have legal and safe means for entering the EU. A report by Europol and Interpol highlights that ‘more than 90% of the migrants coming to the EU are facilitated, mostly by members of a criminal network. These numbers are expected to increase in the future in response to control measures taken by countries along the migratory routes.’

Furthermore, it is important to note that by using the services of organised crime networks for the purpose of entering the EU is by itself not a criminal activity (whereas smuggling of humans is). The heightened efforts to assure border management and fighting irregular migration actually have the effect of pushing irregular migrants into seeking services of organised crime, and drive the prices for such services and risks that providers are willing to take. Indeed, the irregular migrants are victimized in the process.

It needs to be said clearly that irregular migrants are, generally speaking, not perpetrators but victims of organised crime and their human rights are abused at the hands of organised crime networks. Indeed, scores of irregular migrants drown while attempting to cross the Mediterranean Sea with the help of organised crime networks, who crowd people into unseaworthy vessels, often without anybody on board who can steer and navigate and with insufficient fuel for the journey. To provide more precise figures for drownings: ‘UNHCR’s latest figures show that some 1,000,573 people had reached Europe across the Mediterranean, mainly to Greece and Italy, in 2015. Of these, 3,735 were missing, believed drowned’\textsuperscript{78}. ‘IOM reports an estimated 189,414 migrants and refugees have entered Europe by sea in 2016 through 15 May, arriving in Italy, Greece, Cyprus and Spain. Deaths through 15 May this year stand at 1,357 on all Mediterranean routes, which is 24\% lower than last year’s total of 1,792, through the same period’\textsuperscript{79}, but is likely to increase during the summer months, also as a consequence of changing smuggling routes to the more dangerous Central Mediterranean route following the EU-Turkey agreement\textsuperscript{80}.

Indeed, efforts of the EU to combat the multi-billion Euro human smuggling industry\textsuperscript{81} are an appropriate response to this type of organised crime, even though they treat smuggling of migrants largely as a crime against the state rather crime against the migrants. However, the problematic aspect is that this clamping down on smugglers has an impact on the human security of irregular migrants. In the absence of


\textsuperscript{81} A report by Europol and INTERPOL provides the estimate of ‘yearly turnover of migrant smuggling results in an average USD 5 to 6 billion turnover in 2015’. Europol and INTERPOL, Migrants Smuggling Networks, p. 4.
legal channels of entering the EU, for the purpose of filing an application for asylum or protection, migrants find themselves forced to take more dangerous routes, pay higher costs, and endure more and longer hardship in countries of transit. The increasing numbers of drowned migrants on the Central Mediterranean route following the clamping down on the route from Turkey in 2016, with smuggling networks increasingly taking greater risks with the migrants’ human security and even lives, bears witness to this problem. Thus, any such efforts must take into account the vulnerability of the irregular migrants.

5. Conclusion

This essay asked the question whether migration could be understood as a security issue. It suggests that it is inappropriate and misleading to use the term migration and linking it to the threats of terrorism and organised crime. The essay asked which terms help us to understand which aspect of migration may be helpful in formulating the claim that in some cases migration can be considered a security issue, relevant for national security and/or human security. It suggested that it is unmanaged migration, and in particular irregular migration rather than migration overall, that may pose both national security and human security threats. While the two perspectives on migration and security (national security and human security) are often seen as contradictory, they can be brought together inter alia by adequate migration and border management policies, which take the human security of migrants into account.

The essay focused on exploring the links between migration as well as terrorism and migration and organised crime. It argues that while an irregular migration-terrorism-organised crime nexus exists, the labelling of migration as a security threat of the same kind as terrorism and organised crime results in increasing limitations, restrictions and controls that in turn have an impact on human security of irregular migrants. This affects their right to request asylum or protection as provided for by international law. It is not appropriate to link terrorism and organised crime, which require policies aimed at fighting these
security challenges or threats, with migration, which overall is a positive phenomenon, or even irregular migration, which requires policies aimed at managing it better.

In addition, labelling an issue a security threat has significant implications in term of laws, norms, policies and procedures. In the migration context, the label has been used to justify harsh and restrictive policies. These policies affect the migrant, resulting in asylum seekers not being able to access safe countries, in migrant smuggling and human trafficking and unsafe passages. They also contribute to growing anti-migrant tendencies. Such policies also result in a gap between the protection that migrants formally enjoy under international law (see chapter by Dr. Grech p.44) and the realities they experience as they travel and work across different countries. Consequently, one also has to note emerging differences between the interests of migrants and the states trying to control their movements but also between the interests of governments and civil societies in these countries. Authors suggest furthermore that ‘the construction of the migration question into a security threat not only bodes ill for refugee protection but also for the stability of hosting states.’

Public opinion and the changing political landscape in a number of EU member countries, in which right wing forces became stronger in the last number of years are likely to further impact on the balance of national security and human security approaches towards irregular migration. But the securitization of migration, especially irregular migration, poses significant consequences and hidden costs and creates a vicious cycle of supply and demand for security. Such processes serve short-term needs but arguably not the long-term interests of the developed countries of destination with respect to the preservation of human rights and liberal values.

In the Mediterranean, the complexity of the situation, characterized by sea borders, weak nation states and conflicts, and the recent surge in irregular migration and loss of human life make the issue particularly relevant. The current policies of the EU show how difficult it is to develop

82 Fakhoury, p. 11.
approaches that provide a balanced combination of national security and human security perspectives. 83 ‘There is scholarly consensus that [EU’s measures] have fallen short of striking a balance between states’ security and migrants’ rights.’ 84 Is it possible to reconcile the two perspectives in the Mediterranean? There is urgency to the question for Europe and the Mediterranean, as some argue that ‘Europe’s immigration nightmare is only beginning’, given the socio-economic gradient and the conflicts that ravage the region.

Apart from proper policies aimed at migration management, including border management, innovative, broad policies, aimed at toning down the aggressive public debate by presenting hard facts, and at working towards protecting human rights and human security of the migrants are needed, as well as global efforts aimed at addressing the root causes of irregular migration. Clearly, much work lays ahead in crafting appropriate migration management and border management efforts for the Euro-Mediterranean region embedded in such broad policies.

84 Fakhoury, p. 14.
The story of Aylan Kurdi

On September 2, 2015, an image of a three-year old Syrian boy washed up on the beach in Turkey, went viral, penetrating every Facebook feed, tweeted thousands of times, and finding its way on the front pages of tens of newspapers in a few hours. Aylan Kurdi instantly became a household name but more than that, the image became iconic in that in his forlorn death, Aylan became the representative of the larger human tragedy that the refugee crisis had become and which up till then, had not elicited the response one would expect from the largest refugee crisis in Europe since the Second World War. The image of the Syrian toddler was seen on twenty million screens in twelve hours, with initial postings by a handful of journalists going viral with 53,000 uploads per hour - nothing less than a social media storm (Ferguson, 2016).

A study by the University of Sheffield (2015) has documented how a single image transformed the debate on immigration, albeit temporarily. Consider the Twitter feed. For most of 2015, ‘migrants’ and ‘refugees’ had been on par in public opinion, accounting for the same volume of conversation over a 9 month period (5.2m against 5.3m). September 2nd and a new scenario is introduced. From 2 September the volume of tweets talking of ‘refugees’ becomes more than double that of ‘migrants’ (2.9m against 6.5m) with the ratio remaining unchanged for at least two months. Alternatively, consider Google search data. In the 24 hours after the story broke, top countries searching for Aylan Kurdi included a selection of European countries with the addition of Canada, Argentina and New Zealand. The top questions asked of Google ranged from “What happened to Aylan Kurdi?” to “What is causing the migrant crisis?” to “Why do Syrians leave Turkey?” In Germany people asked “How to volunteer to help migrants?” and “When is a refugee really
a migrant?” while in Italy, the top search was “How to adopt a Syrian orphan child?” but also “How many migrants are there in Italy?” The questions posted to Google in Hungary perhaps reflect the politically charged atmosphere that had developed as images of migrants marching across Europe filled screens in the previous weeks. People in Hungary asked, “How should a Christian respond to the migrant crisis?” but also “Is Budapest dangerous for tourists?”

The same study also underlines another aspect of the Aylan story, that which recounts the less than sympathetic international responses. There were attempts in the press and elsewhere to undermine the central message and this was mostly executed by painting Aylan’s family as undeserving, not the innocent victims that they were being depicted as. The father was portrayed as the boat’s driver and therefore a ‘people smuggler’, as having abandoned the boat and his family, and even as having organised the trip in order to get dental treatment. Other images, like those of former ISIS members arriving in Europe masked as refugees, would also hammer away at the burst of positive feeling towards refugees that had been unleashed by the Aylan images.

Finally, to what extent did the tragedy of Aylan have long-lasting consequences such as changes in public opinion towards asylum-seekers in the long term and changes to policy towards the crisis? It has to be borne in mind that the crisis had been building for years, as had the increase of deaths in the Mediterranean, while images of Syrian refugees carrying children on their shoulders marching through Europe had filled television screens in Europe since the spring.

The Sheffield study is also instructive here. The study, focusing mainly on the UK and Norway, argues that a shift in political discourse at the top levels was immediately visible but that asserting that the image had a lasting role is premature and likely flawed. In the UK, in the days following the emergence of the Aylan image, UK Prime Minister David Cameron and Scotland’s First Minister Nicola Sturgeon announced increases in assistance and on 4 September, two days after the image’s publication, Cameron announced that the UK would take 20,000 Syrian refugees over five years from camps in Syria, Turkey, Jordan and Lebanon. In the weeks that followed however, politicians
were already reneging on their promises. Cameron talked of the need not to be “overwhelmed” by refugees; a spokesman for Sturgeon, who had pronounced herself reduced to tears by the image, confirmed that there were no plans for preparations to offer a home for refugees as had been previously announced; while in Canada, Prime Minister Stephen Harper, vocally supportive of the plight of refugees following Aylan’s image, was found to be obstructing immigration officials from processing Syrian asylum claims. Moreover a YouGov report reported that only 9% of those who reported seeing the image stated that they believed more refugees should be allowed into the UK.

In Norway, a changed scenario is also visible directly following the publication of the image. An ad-hoc issue based social media group, a Facebook group known as Refugees Welcome to Norway (#RWTN) which had been launched some weeks prior to the tragedy, grew exponentially from a couple of hundred members to 90,000 almost overnight. It triggered the volunteering of masses of people, mostly young people who had hitherto not been engaged in any civic activity. Moreover, as the time coincided with the last phase of local government elections, right-wing parties took an incredible drubbing with the anti-immigration party, the Progressive Party, achieving its worst results in local elections in twenty-four years. Whether this was sustained, is however not clear.

**Media influence on Migration**

The story of Aylan Kurdi and the subsequent dramatic effects on public opinion, political rhetoric and political action may be an outlier. Undoubtedly few stories, or images, generate the seismic effects that this solitary image was able to create. That media shapes the way people engage with issues is however indisputable. The role of media in shaping social and political policy has been well researched (Dalton et al 1998, Domke et al 1998, Iyengar and Kinder 1987, Shah et al 2002). Agenda setting theory has long been seen to show that the salience of a story in the media is transferred to the attention and significance the audience attributes to it (McCombs, 1974). Moreover, with attribute
agenda setting or framing, the reader/viewer is provided with the actual raw material on how to think about an issue (McCombs and Ghanem, 2001). The media, as said, tells us not only what to think about but also to how to think about it. Hall (1975) argues newspapers ‘make the news meaningful’ as they shape both the salience and the valence of social and public policies for news consumers. To frame a story in one way and not another, Entman (1993) elaborates:

is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular definition of a problem, causal interpretation, moral evaluation, and/or treatment recommendation for the item described.

Moreover, we know that journalists personalise, emotionalise and dramatise news stories to optimise their accessibility as well as their impact (Zahabi-Bekdash, 2015). By doing so, journalists mould national and global narratives and consequently social and political judgments. Narratives are the shorthand to our being, they are the stories that humans use to understand their lives and the world around them, and to plan and justify their actions. Beach (2010) contends that societies create stories about everything ‘religion, politics, popular culture, regional identity, racial and ethnic identity, attitudes towards other members of the culture and towards minority members, and attitudes towards others’.

What is the literature on migration in the media able to tell us about the way that the media engages with migration? How are migrants, asylum-seekers, and refugees portrayed in the media? How is the discourse around migrants and refugees routinely constructed by media outlets? What terminology is employed? How are stories usually framed? It is clear that the answer to these questions has important consequences. It impacts on the way migrant and refugee roles are defined in society; it shapes public discourse on immigration and refugee policy, as well as impinges on the development and availability of social programmes for refugees. Not least, it affects the very social climate that refugees and migrants have to navigate in their life on an everyday basis (Steimel, 2009).
The World Migration Report (2011) which looks at how to communicate effectively about migration contends that few areas of public policy are subject to greater misrepresentation in public and political discourse, yet more influenced by public opinion, than international migration. It argues that despite the digital revolution providing multiplicity of outlets and avalanches of information, many remain poorly informed about the scale, scope and socio-economic context of migration.

Recent research shows that in most countries the story of migration is dominated by two themes – numbers and emotions (Ethical Journalism Network, 2015). At most times, coverage is politically led, taking cues from political leaders as they pronounce themselves on the issue. Coverage is also very frequently dominated by loose language, too often, words with clearly different meanings like migrant and refugee are used interchangeably, confusing the reader/viewer. Repeatedly, where refugee or asylum seeker would be the better label, news outlets opt for the word migrant, thus initiating a process of attributes that are incorrect and misleading. Talk of invasions and swarms are also common. At other moments, the Aylan story being a particular example, the story has been laced with humanity, empathy and the suffering of those involved.

This means that the media and subsequently public discourse too frequently simplifies the migration narrative, constructing refugees, either positively as passive victims who deserve protection, or negatively as undeserving active agents of violence, immorality and fraud (Zahabi-Bekdash, 2015). Steimel (2009) contends that this depiction of refugees is not new but is borne out by the extant research – refugees, she argues, have always occupied these two primary roles in news coverage: victims or evil-infiltrators/frauds. Pickering (2001) analysing news coverage on refugees and asylum seekers in Australia describes his findings thus:

Refugees and asylum seekers have been routinely constructed not only as a ‘problem’ population but as a ‘deviant’ population in relation to the integrity of the nation state, race and disease (2001: 169)
Gale (2004) however, also working on media coverage in Australia, found asylum seekers also positioned as victims. Researchers have noted that reference to migration in key destination countries, particularly in Europe, the United States and Australia are characterised by language such as illegal immigrants and associated with topics of criminality, security or border protection (Threadgold, 2009; Kim et al, 2011; Pickering, 2001). In the United States particularly, Hayes (2008) found that themes of law enforcement, security/terrorism, and the burden of illegal immigrants on social services, were found to be widely used in order to negatively frame immigration and immigrants. An interesting finding was discovered by Branton and Dunaway (2009) who analysed a dataset of 1,227 news stories on the topic of immigration published in California during a 12-month period. The analysis probed the rate of positive, negative and neutral coverage and observed that geographical proximity impacted significantly on how coverage of immigration was reported. The researchers found that the closer the proximity to the Mexican border, the more negative news coverage and opinion pieces tended to be.

Steimel (2009) examined top US newspapers’ coverage of refugees in American human-interest stories over a period of six months from September 2008 to March 2009. She found that as human-interest features, the stories provided a largely positive portrayal of individual refugees and their families and presented refugees (a) as prior victims; (b) as in search of the American dream; and (c) as unable to achieve the American dream. These discourses, she concluded, represented a narrative of escape, hope and then the harsh reality of settling in a country deeply affected by the economic crisis. She observed that only one of 54 articles which she identified as portraying refugees as prior victims, depicted refugees as possible threats and a national security concern through potential links to radical terrorist groups. Talking of young Somali refugees, the article describes them as targets for terrorist recruitment and goes on to observe a vote taken in Holyoke City Council to oppose a plan to resettle Somali refugees, contending they were a burden on schools and other services. Steimel however, found that positive depictions of refugees were by far the most dominant and often dwelled on the harrowing stories of victimisation and threats that
prompted them to leave. She argues that this is most likely explained however by her choice to focus entirely on human interest stories which by their very nature aim to personalise and emotionalise an event, issue or problem so that the audience can personally connect to the individual who represents the issue. It is difficult to present a fraud in a way which personally resonates with the audience and is much easier to capture a positive emotional connection when individual refugees are presented as victims in need of protection.

Finally, we will look at two very recent studies that have utilised advances in technology to analyse very large datasets in a more diverse number of selected countries. The first, by McAuliffe and Weeks (2015) is part of an Occasional Paper Series by the Australian Government and analysed media messaging within a set of print and online media comprising more than 500 million pieces in 10 nominated countries during the six-month period extending from 1 October 2013 to 31 March 2014. The study focused on five mainly migration origin countries: Afghanistan; Bangladesh; Pakistan; Sri Lanka and Vietnam, and five other destination countries: Canada; the Netherlands; Norway, Switzerland and the United Kingdom. The researchers aimed to create a baseline analysis on the thematic content of the media messages; the extent to which that coverage was favourable, unfavourable or neutral; as well as the level of contextual framing in which migration themes were reported.

‘Moving Stories, International Review of How Media Cover Migration’ (2015) was commissioned by the Ethical Journalism Network in response to the biggest mass movement of people around the world in recent history during the tumultuous year of 2015. It asked researchers to examine the quality of coverage and to highlight reporting problems and good work in a number of selected countries. Here as well, the review sought to bring to light similarities and differences in countries as diverse as Bulgaria and Brazil, Lebanon and South Africa, Italy and Turkey. The study reviews fourteen countries as well as provides a closer look at the view from Brussels.

Returning to the Australian study, the media content was first analysed by theme, identifying eight broad themes including, for example, asylum
seekers and refugees, irregular migration, and overseas workers. It was
then analysed in terms of tone of message (favourable/unfavourable/
neutral) and finally examined along four broad contexts. In the latter
phase, all media messages were divided according to whether they
fell within the socio-cultural (potential impact on social cohesion);
economic (boosting or posing a threat to jobs, housing, social benefits);
humanitarian (human suffering and assistance) or security (perception
of security threats) contexts.

The key findings (McAuliffe and Weeks, 2015) indicate a varied discourse
in print and online media in the different countries. Each country had
its own particular set of migration issues being discussed and this was
likely linked to a unique broader discussion or political cycle in each
country. Significantly, the key themes in destination countries differed
substantially to those in origin countries while coverage by theme, tone
and context differed significantly across the five origin countries. The
study also found that reporting was largely neutral but that where it was
not neutral, coverage was more likely to be negative. The predominant
frame, more so in countries of origin, was the humanitarian frame. The
UK and Switzerland were exceptional in that the economic frame was
the most significant. Irregular migration and people smuggling on the
other hand tended to be framed in a border/national security context
in all countries reviewed. A range of similarities and differences were
identified in the selected destination countries. In the latter, coverage
tended to be more polarised than in origin countries, with less neutral
reporting and more unfavourable reporting. The authors consider one of
the more stark findings to be the limited extent of favourable messaging
on migration across all destination countries, with unfavourable
coverage significantly outweighing favourable messages.

In the United Kingdom, the dominant theme in the period under
review was ‘immigration and immigrants’, accounting for more than
half of all stories. Moreover, commentary was driven by a discussion
on a more than expected rate of migration and top stories included
a government campaign that warned people in the United Kingdom
illegally to go home or face arrest as well as interviews and opinion polls
expressing concern about the lifting of controls restricting Romanian
and Bulgarian citizens in the United Kingdom. In Switzerland, against
a background of increasing arrivals of asylum seekers and migrants to the European Union, the Swiss media’s focus was mainly on the potential economic impact of immigration. Coverage of asylum seekers and refugees was balanced, most focusing on number of arrivals but also including favourable (requesting Europe to do more for Syrian refugees) and unfavourable (bogus asylum seekers, and asylum seekers contributing to crime) coverage. In Norway, in contrast, more than half of reviewed articles related to the theme of asylum seekers and refugees, prompting mostly neutral coverage. Government’s commitment to find accommodation for resettling refugees leads the favourable messages but the cost of resettling refugees and a triple murder committed by an asylum seeker contributed to negative sentiments.

The ‘Moving Stories’ study (2015), compiled at the end of 2015 following the Aylan wake-up call, paints a picture of journalists struggling to cover the humanitarian crisis which was unfolding professionally but often failing even in as simple an exercise as using the right terminology. A passionate debate on whether to use ‘refugee’ or ‘migrant’ crisis continues today with many outlets preferring the use of the term ‘migrant’. Perspectives were also found to be very contrasting and driven mainly by national, governmental and political policy objectives. The review contrasts the tone advocated by the German daily Bildt when it launched a high-profile campaign ‘We help’ with the negative accent of many media in the Western Balkans, Hungary and other East European countries where tens of thousands of refugees were met with barbed wire, barriers and physical abuse. The study contends that the more humane approach ushered with the Aylan Kurdi story was short-lived and media coverage focused on refugee numbers rather than human interest has returned.

To take a few examples related to Europe and the Mediterranean region. The review of the Bulgarian coverage is damning for Bulgarian media – it states that instead of mediating the conflicting opinions and providing balanced and reliable information, the mass media plunged into sensationalism. A brief content-analysis demonstrates a discourse dominated by national security, terrorism, disease and refugee camps. Moreover, unverified information frequently found its ways into headlines – one such example – ‘Islamic State floods Europe with
refugees’. In Italy, touched also by shipwrecks that led to more than 5,200 deaths (Jan-Aug 2015), the human side of the story attracted the greater media attention, with focus also on the rescue efforts. At the same time, there was no lack of alarmist discourse about immigration with the number of arrivals occasionally described as an ‘invasion’.

The study on coverage of the media in Turkey, home to the largest community of Syrians displaced by the ongoing conflict, is limited and based on two smaller reviews. Both find security issues dominating the media agenda. The research on the United Kingdom corroborates the findings of an earlier study by Threadgold (2009) as well as the Australian study mentioned above. It finds that the issue of immigration, for years ‘a toxic and divisive political issue’, became highly charged, volatile and polemic in the wake of the refugee crisis. The study underlines the rhetoric of negativity in the media and highlights what ‘Moving Stories’ describes as possibly the lowest point for British media coverage when in April 2015, the highest circulation tabloid ‘The Sun’ described migrants as ‘cockroaches’. For only a short period following the Aylan tragedy was a reframing discernible. Playing alongside the Mediterranean migration crisis in British media over the course of 2015 was a story closer to home - the situation in the makeshift camp of Calais as refugees and migrants waited for their chance to travel to the UK. To be noted however, are some rare examples of media criticising migration coverage with the Guardian taking the lead.

Finally a look at how the media in Lebanon addressed the crisis in 2015. The study contends that in Lebanon, migration can be nothing if not a meaningful story, with the small country hosting the largest number of refugees per 1000 inhabitants in 2014 - 257. A third of Lebanon’s population is estimated to consist of Syrian refugees. Abu-Fadil argues that the media in the country are covering a crisis well beyond the country’s capacity and that coverage offers a mixed bag including some good coverage that is not representative of the mainstream media. The author quotes from a project monitoring racism in Lebanese media released by the Maharat Foundation which finds that the media were somewhere in the middle on racism but that hard news stories tended to focus on “crime, violence, drugs, disruption of security and terrorism, or on analyses that characterised the stranger as not only different but
perspectives in a changing Mediterranean

as an element of instability and a threat”. The study concludes that the media landscape was a reflection of Lebanon’s complex makeup that creates a media discourse built on fear (Moving stories, 2015).

The above has provided some insight on the way the media engages with migration. The next section will look at how public opinion is divided on migration issues and probes the extent to which media can be said to play a role in the perceptions and attitudes which the public adopt towards migrants and refugees.

Public Attitudes towards Migration

Many factors are known to influence public attitudes towards a whole range of issues, and this includes public attitudes towards asylum and immigration. These factors are demographic (age, sex, race); economic (income); social and cultural (religion, media, information services, actual and perceived social norms, ethnicity, lifestyle); psychological (personality type); political (left wing/right wing ideologies) and geographical (location and proximity to immigrants) (Crawley, 2009).

It is also to be expected, that attitudes towards migration are shaped by the perceived extent of migration flows. In 2014, more than 276,000 migrants irregularly entered the EU, which represents an increase of 155% compared to 2013. In 2015, the International Organisation for Migration (IOM) estimates that 1,011,712 arrived in Europe through the Mediterranean with 3,695 dead or missing at sea. While the numbers for 2016 have fallen following agreements that the European Union has negotiated, they are estimated to account as of July 2016, to 239,923 arrivals by sea and to 2,933 dead or missing (IOM, 2016). The numbers are staggering with 2015 representing the largest wave of people on the move in Europe since the Second World War. They have been triggered by the war in Syria where the greatest number of refugees are coming from but are also swelled by conflict in Iraq and Afghanistan and in parts of North and Sub-Saharan Africa.

The discussion above has also identified an overall portrayal of migrants in the media in many societies, not least in Europe as the refugee crisis
How have public opinion and perceptions responded? The latest Eurobarometer poll by the European Union which was published at the end of February 2016 is highly instructive (Eurobarometer 2015, 84). In the poll, which was carried out across all EU member states and candidate countries in November 2015, at the height of the refugee crisis, the refugee crisis tops the list of concerns for EU citizens. Immigration is seen as the most important issue facing the EU by 58% of EU citizens. This represents a 20 point increase since the spring of 2015. Terrorism, mentioned by 25% of respondents, is a poor second. Indeed immigration concerns have been on the rise since the spring of 2013 and have been continuously increasing, gradually up until 2014, but by 14 points and 20 points in the spring and autumn of 2015 respectively. The concern with immigration is not uniform in all European states, with Estonia heading the group at 79%, Germany, Denmark and the Czech Republic at 74%, the UK at 61% and Spain at 39%. Only in Portugal however is the issue of immigration in second place. Moreover, this is the first time that an item not directly related to the economy has headed the list. Immigration is also seen as the main national problem in twelve member states where it was mentioned by more than half of the population.

Does immigration evoke positive or negative feelings? This is another question posed by the Eurobarometer survey. The majority of European citizens have negative feelings towards the immigration of people from outside the EU. The proportion of respondents with negative feelings has also increased since spring 2015 (59%) with unsurprisingly some of the Eastern European countries topping the list of critics (Slovakia, Latvia (86%); Hungary (82%); Czech Republic, Estonia (81%)). Countries were the majority of respondents take positive views of immigration from outside the EU are Sweden (70%), Spain (53%) and Ireland (49%). Negative views however have gained traction in 18 European countries.

Moreover, 9 out of every 10 Europeans say that they want the EU and/or their governments to take additional measures to fight the illegal immigration of people from outside the EU. More than two thirds
of Europeans are also in favour of ‘a common European policy on migration’ although this has lost ground since spring 2015.

Some observations about public opinion and perceptions about migration carried in the World Migration Report (2011) are also eye-openers. The report compiled by the International Organization for Migration, which is an extensive review of existing surveys globally, explores some of the more determining factors which are seen to influence public opinion and what lies at the core of prevailing negative sentiment. One of the most consistent findings in many polls is the over-estimation of the absolute number of migrants in a given country or region. Research findings also show that the way questions are worded and the respondents’ understanding of terminology determines favourable or unfavourable responses. The report underlines what has already been discussed, in that perceptions and opinions are “not static or formed in a vacuum” but are sensitive to socio-economic and demographic factors and may shift over time, particularly following increased interaction with migrants. Contextually, political turmoil, unemployment and economic recession are typically followed by politicians engaging in restrictive discourse and policy while the populist nature of migration debates in many parts of the world, is conductive to a climate in which migrants are seen as in some way responsible for the ills of society - unemployment, social burdens, security issues and lack of social cohesion.

In such a scenario, the role of the media is critical in both influencing and reflecting public opinion where media coverage has the potential to exacerbate what may be an already tense situation. Papademetriou and Heuser (2009) assert that the media has also a stake in reflecting debates and driving migration policy. This burdens the media with a unique responsibility to transmit accurate and balanced reporting even as it does so in partnership with relevant actors, particularly policy makers.

But as we have seen in the discussion above, accurate and balanced reporting is not the usual fare of media’s coverage of migration in particular. Notwithstanding the crucial role that the media is called to play in providing the information on which perceptions are formed and informed decisions are taken, and its ability to frame the debate in such
a way as to open up the discussion; too frequently, statistics, trends and analysis are selected to sensationalise or to drive an argument. Indeed, the IOM report (p 26) asserts that much migration-related media coverage tends to be: (a) episodic, that is related to a migration event and therefore prone to surges of coverage, usually of a negative nature; (b) with a focus on illegality, even though offending migrants may represent a minority of migrants; (c) an exaggeration of the facts; and (d) lacking context.

There are underlying reasons which drive media to cover migration in this way, not least the growing commercialisation and competition among media outlets which often lead to sensationalism. There is also a patent lack of reporters of migrant backgrounds who are frequently barred from mainstream newsrooms due to language competence and a perceived lack of understanding of societal norms. It has been also suggested that migration being a complex phenomenon, it is easier and more effective to focus on the negative stories, while reflection of the views of the perceived audience and/or owners of media outlets may also come into play (Chappell and Glennie, 2011).

Conclusion

Over the first decade of the 21st century and in the past few years since the upheaval in the Mediterranean, as migration flows across the Mediterranean and into Europe increased, migration has attracted greater media attention. As we have seen above, the salience of the migration story has also been transposed to the public perception with immigration topping the list of concerns of European citizens. Migration has also become increasingly politicised, becoming the rallying cry of the rising far-right but driven also by dehumanising language by mainstream politicians who feel that they can no longer allow the debate to be monopolised by the far right.

In all of this, the media is partly responsible. The European Commission (2011) has acknowledged that, “negative migrant stereotypes are a result, at least, in part, of negative press coverage” and has called for a more accurate, unbiased and realistic portrayal of migration. Even the
victim characterisation of refugees and migrants is not unproblematic argues Kapur (2002), creating what Zahabi-Bekdash (2015) calls vertical relationships of power in which refugees/migrants are “alienated, unable to integrate in the larger community, and stripped of their sovereignty, agency and ability to access discourses of power”.

So, how can the media be engaged to present a more balanced picture of migration and its impacts? Crucially, journalists need to be more attuned to weighing the impact of what they publish. Words matter. The right use of the terms employed is a mark of professional journalism. Conflating the terms migrant, refugee and asylum-seeker transmits poor understanding and contributes to misguided perceptions. That is not to say that journalists should engage in euphemisms. An honest debate on migration and its impact demands the use of straightforward and unambiguous language. A number of guidelines about how to talk about migration have been assembled by press councils and other organisations.

It would also be helpful for journalists to treat government and political rhetoric with caution, indeed it would benefit a more open debate, if this was also challenged and countered by other voices. Reporting that is fact-based and provides background and context will go a long way to displace unnecessary scaremongering and victimisation. A balanced act by the media would give voice to the migrant/refugee community but would also reflect the legitimate concerns of citizens. Migrants and refugees are not a homogenous body of people, stereotyping communicates just that. Avoidance of sensationalism, whether in word or image, creates a better climate for the debate to take place serenely and rationally. The most desirable debate is the one that is informed by research and in which facts and figures are not used selectively, where journalists refrain from playing the numbers game. Migrants and refugees in mainstream newsrooms could also provide a more balanced stance towards the issues surrounding migration but migrants and refugees can also use social and ethnic media to position themselves in the debate.

As migration in the Mediterranean continues and as Europe grapples with immigration as its main concern, the media’s voice can be more
than that of a mediating actor. It can be, as Papademetriou and Heuser (2009) advocate, an independent social actor that sets the agenda and drives immigration issues at the same time as reflecting the on-going debates in public and policy circles. For this to happen however, a robust change in the way that media engages with migration is in order.

Bibliography


Perspectives in a Changing Mediterranean


L. Pullicino, Migration in the Mediterranean: The Nexus with Media


Focal to the backdrop of maritime migration lie individuals attempting to flee war, persecution, or natural disasters as well as those seeking to circumvent migration and border controls, often in an attempt to improve their economic circumstances. In recent months, the European community has been faced with an unprecedented number of migrant arrivals. According to statistics compiled by the United Nations High Commissioner for Refugees, more than one million migrants reached Europe in 2015. They arrived in the greatest numbers from conflict zones such as Syria, Afghanistan and Iraq, but also from Kosovo, Nigeria and beyond. Europe has been struggling to deal with what has been labelled a ‘migration crisis’. As of August 2016, there have been more than 260,000 migrant arrivals by sea, nearly twice the number recorded by the same month of last year. These individuals are entitled to human rights protection irrespective of their classification as genuine asylum seekers or otherwise. This is the so-called ‘human factor’, encapsulating both human rights and humanitarian principles of protection.

85 Hereafter referred to as UNHCR.


The phenomenon of maritime migration calls for an equilibration of diverse and potentially conflicting interests, thus posing a conceptual challenge to States. Foremost among these, one finds: State sovereignty and principles of protection; the legitimate interests of States and the mandates of international law; jurisdictional notions and humanitarian considerations.

A reflection of these competing interests is found in the main branches of laws applying to maritime migration. In this way, the relevant legal regime in maritime migration scenarios is characterised by the interplay of various – and sometimes apparently conflicting – branches of international law, presenting both ‘opportunities’ for and ‘constraints’ upon State action.

This is evident in the three main branches of law regulating migrant and refugee law in the maritime realm:

- Migrant Smuggling Protocol
- Human Rights and Refugee Law

The United Nations Convention on the Law of the Sea\(^90\) provides States with jurisdictional powers – or opportunities for action – in the respective maritime zones adjacent to their coasts, together with the obligation to rescue those in distress at sea in article 98(1) LOSC\(^91\), a so-called constraint on State action. Controlling maritime migrant smuggling within the territorial sea falls within the parameters of article 19(2)(g) LOSC which prohibits any loading or unloading of any person contrary to \emph{inter alia} immigration laws and regulations of the coastal State. Furthermore, under article 33 of the same instrument, a coastal State may in its contiguous zone, exercise the control necessary to prevent and punish infringement of \emph{inter alia}, its immigration laws.


\(^91\) For further discussion on the humanitarian obligation to render assistance to persons in distress at sea, see pages 8 and 9 below.
thereby permitting specific measures to be taken in that zone in relation to the entry of migrants. As for the high seas, while the right of visit under article 110 does not specifically list the smuggling of migrants as an instance in which this right may be exercised, the right of visit is sometimes carried out in respect of ships engaged in the smuggling of migrants on the basis that these ships usually lack nationality. As for other grounds for enforcement action on the high seas, the LOSC merely lays the foundations for cooperation in the suppression of the slave trade, and even if one could assimilate migrant smuggling to slavery, effective enforcement action is minimal: the duty to ‘take effective measures to prevent and punish the transport of slaves’ is couched in terms as to oblige only the flag State. Despite the innate connection to maritime affairs, the LOSC fails to consider maritime migration in its provisions directly.

Aside from the Constitution of the Ocean, one finds the branch of law seeking to repress the smuggling of migrants, which is embodied in the

94 The reasons for this *lacuna* remain unclear. During negotiations at the Third United Nations Conference on the Law of the Sea in the 1970s, States may have been aware of problems associated with maritime migration in certain parts of the world such as for example Southeast Asia. A likely reason for the exclusion is that at the time of drafting of the LOSC, mass migration by sea was not considered to be the major problem it is today, thus the drafters may not have considered it sufficiently serious enough to warrant inclusion in the final text of the Convention. For a discussion on other possible reasons for this *lacuna*, see Richard Barnes, ‘The International law of the Sea and Migration Control’ in Bernard Ryan and Valsamis Mitsilegas (eds), *Extraterritorial Immigration Control – Legal Challenges* (Martinus Nijhoff 2010) 108.
**Migrant Smuggling Protocol,** the first attempt at a holistic regime to criminalise and regulate this type of organized crime.

Individuals thus transported to European shores are smuggled migrants; they are victims of one of the fastest-growing transnational organised crimes today. The European Police Office estimates that people smuggling operations facilitate over 90 percent of the migrant influx coming to the Europe. Smuggling, defined in article 3(a) of the Migrant Smuggling Protocol, involves the physical movement of persons across international borders on a payment-for-services basis.

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98 Hereafter referred to as EUROPOL.
99 Joint EUROPOL and INTERPOL Report (n 13) 4.
100 Recall that the term ‘smuggling’ is to be distinguished from ‘trafficking’. These terms are defined separately at international law in two separate Protocols, although they do have certain overlapping elements. See further Patricia Mallia (n 9) 9-11 and Tom Obokata, ‘The Legal Framework Concerning the Smuggling of Migrants by Land, Sea and Air under the UN Protocol on the Smuggling of Migrants by Land, Sea and Air’ in Bernard Ryan and Valsamis Mitsilegas (eds), *Extraterritorial Immigration Control – Legal Challenges* (Martinus Nijhoff 2010) 152-153.
101 Migrant smuggling is a highly lucrative business. In 2015, the esti-
In the context of the maritime sphere, individuals are assisted in their attempt to enter a State’s territory via the sea in a covert manner in violation of a State’s laws, evading detection by a State’s border control officials. In this way, the smuggling of migrants by sea constitutes a threat to maritime security, understood to include the preservation of territorial integrity and sovereignty of a State.

Irrespective of their consent however, these individuals are victims, forced to suffer deplorable treatment in life-threatening conditions. Even before departure, smugglers very commonly use violence in order to force migrants into unseaworthy boats. Once on board, the lack of space and poor hygiene creates appalling conditions, which favour the spread of disease. Furthermore, the lack of adequate food and water supplies leaves countless migrants to die of starvation and dehydration. Indeed, there is a growing awareness of the serious mate yearly turnover of migrant smuggling resulted in an average of 5 to 6 billion United States dollars. See Joint EUROPOL and INTERPOL Report (n 13) 4.


104 Ibid. See also Smuggling of Migrants by Sea 2011 Issue Paper (n 18) 30-31.

human rights implications of migrant smuggling. The Migrant Smuggling Protocol addresses these concerns by creating a framework for cooperation for the repression of the crime while ensuring the protection of victims and respect for their inherent rights. In this way, the Migrant Smuggling Protocol is the first instrument of its kind to recognise the multi-faceted nature of migrant smuggling, which also calls for protection of fundamental rights of the individual, thereby necessitating consideration of humanitarian principles of protection throughout operations to repress the crime.107 Alongside this, the Protocol provides a framework for interception of vessels reasonably suspected to be engaged in the smuggling of migrants.108

Part II of the Protocol lays out the general framework of permissible action at sea and preserves the supremacy of flag State jurisdiction. It ties in interception operations under the Protocol with the general rubric of the law of the sea, in particular, the LOSC provisions of articles 91, 92 and 94, which encapsulate the principle of exclusivity of flag State jurisdiction. In this way, the maritime provisions of the Protocol graft onto the Law of the Sea regime so that the lacuna in the international law of the sea is filled in a way that strengthens – rather than challenges – the principle of flag State exclusivity on the high seas.

Article 7, provides for the overriding duty to ‘cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.’ The recognition in the Protocol of the importance of international cooperation is focal to any effort aimed at curbing maritime migration and indeed, the online at https://www.amnesty.ie/wp-content/uploads/2016/05/Lives-Adrift-Refugees-and-Migrants-in-Peril-in-the-Central-Mediterranean.pdf 20.

106 See Tom Obokata (n 16) 153-157, 161-162
107 Note in this regard, the preamble, the general statement of purpose in article 2 and the safeguard clause in article 9(1) all referring to the humane treatment of migrants, full protection of their rights and the safety and humane treatment of all persons on board intercepted vessels.
108 For a description of ‘interception’ see inter alia: UNHCR ExCom Conclusion No 97 (LIV) ‘Conclusion on Protection Safeguards in Interception Measures’ (2003).
consequent humanitarian tragedy. This must exist between all the States involved, including that is, countries of departure, arrival, transit, origin, and destination.

A concretisation of the duty of cooperation is evident in the Protocol article 8 of which provides for enforcement action, including interception, by non-flag State actors. While the flag State remains the main actor in this regard, however, the problems of lack of action on the part of the flag State or failure to respond to requests for verification of registry and authorisation to board are minimised by article 8(4) that requires that any such requests must be considered and responded to ‘expeditiously’.109

This exercise of jurisdiction and control over vessels becomes increasingly significant from the point of view of humanitarian considerations since through such acts, obligations of human rights bind the intercepting State. To this end, it must be recalled that although the adoption of the Smuggling Protocol marked an important development in the suppression of migrant smuggling, it nevertheless must be supplemented by rules found in other international legal instruments since the legal responses found in the Protocol work within a broader legal framework involving obligations under the law of the sea, international human rights law and refugee law.110

A further development in the fight against the smuggling of migrants was the adoption of the United Nations Security Council Resolution 2240 (2015).111 Aimed at addressing the current migration crisis, the Resolution highlights the need to end the ‘recent proliferation of, and endangerment of lives by, the smuggling of migrants in the Mediterranean Sea, in particular off the coast of Libya’.112

109 This is an approach that has been adopted in other spheres, such as maritime drug smuggling and terrorism. The net effect of this may be an emerging definition of the concept of cooperation as compelling a response from the flag State should it choose not to take action itself.


111 UNSC Res 2240 (9 October 2015) UN Doc S/RES/2240, hereafter referred to as UNSCR 2240.

112 UNSCR 2240, Preamble.
In the wake of the tragic mass shipwrecks off the Libyan coasts in April 2015, the EU worked relentlessly towards finding a comprehensive solution to the growing migration problem in the Mediterranean.\textsuperscript{113} A possible way forward was the deployment of a military operation aimed at targeting vessels and other assets used by smugglers to transport persons from Southern Mediterranean shores.\textsuperscript{114} On 18 May 2015, the European Council adopted Decision 2015/778\textsuperscript{115} approved the Crisis Management Concept for Common Security and Defence Policy operation to identify, capture and dispose of vessels and other assets used or suspected of being used by migrant smugglers.\textsuperscript{116} SOPHIA\textsuperscript{117} commenced on the 25 July 2015, and was intended to have three phases of operation. The first phase included information gathering on migration networks and to patrol high seas in the Southern Mediterranean.\textsuperscript{118} The second phase includes boarding, searching, seizure and diversion of vessels suspected of being involved in smuggling of migrants on the high seas, in accordance with international law,\textsuperscript{119} as well as in the

\begin{itemize}
\item[113] The International Organization for Migration reports that the Mediterranean Sea has now become the world’s most dangerous destination for migrants. During the period between 2014 and 2015, over 7,000 migrants lost their lives in the Mediterranean. Migrant crossings continue to increase in 2016, where in the last 6 months; there have been over 200,000 migrant crossing with over 3,000 migrants reported dead or missing. See <http://missingmigrants.iom.int/mediterranean>.
\item[117] Originally named EUNAVFOR MED.
\item[118] Council Decision (CFSP) 2015/778, Article 2(a).
\item[119] Ibid, Article 2(b)(I).
\end{itemize}
territorial sea or internal waters with the consent of the coastal State or in accordance with any applicable Security Council Resolution.\textsuperscript{120} The third phase, which also requires Security Council authorisation, involves the adoption of the necessary measures against migrant smugglers vessels and related assets including disposing them or rendering them inoperable.\textsuperscript{121} UNSCR 2240 provided the EU which the necessary legal basis to conduct operations under the second phase of SOPHIA.

The Resolution binds States\textsuperscript{122} to support Libya in the suppression of migrant smuggling, and authorises them for a period of one year to inspect and seize vessels\textsuperscript{123} on the high seas, off the coast of Libya, when there are reasonable grounds ‘to believe or suspect that they are or will be used for the smuggling of migrants’.\textsuperscript{124} Such actions must be taken under conditions provided for by the applicable legal framework, including provisions of the LOSC and the Migrant Smuggling Protocol.\textsuperscript{125} In such types of operations, State naval forces operating on the high seas, off the coast of Libya shall distinguish between flagged and stateless vessels. Paragraph 5 of the Resolution authorises States to inspect a flagless vessel reasonably suspected of carrying out smuggling, in line with the right of visit under article 110 of the LOSC and article 8(7) of the Migrant Smuggling Protocol.\textsuperscript{126} The Resolution fails to elaborate on subsequent treatment of these stateless vessels, and whether this includes enforcement measures such as seizure or disposal. There has been much debate amongst academics about this issue. Some authors such as Churchill and Lowe insist that there ‘...is a need for some jurisdictional nexus in order that a State may extend its laws to those on a boarding stateless ship and enforce [its] laws against them.’\textsuperscript{127}

\textsuperscript{120} Ibid, Article 2(b)(II).
\textsuperscript{121} Ibid, Article 2(c).
\textsuperscript{122} Either acting alone or through regional organisations such as the European Union.
\textsuperscript{123} It is noteworthy that this applies irrespective of the size of the vessel as the Resolution makes it clear that these include inflatable boats, rafts and dinghies.
\textsuperscript{124} UNSCR 2240, Preamble.
\textsuperscript{125} Ibid.
\textsuperscript{126} See UNSCR 2240, para.5. See also page 4 above.
\textsuperscript{127} Robin Churchill and Vaughan Lowe, \textit{The law of the sea} (3\textsuperscript{rd} edn,
However other authors such as Rayfuse argue that the consequences of statelessness are so grave, that they may result in a stateless ship being ‘...arrested on the high seas and subject to the jurisdiction of any other state’.\textsuperscript{128} The present authors tend to agree with the latter position considering that once a vessel is stateless, it no longer enjoys the freedom of navigation or the protection of any State.\textsuperscript{129} Therefore, if upon inspection, it leads to the discovery that the stateless vessel is engaged in smuggling, it may be presumed that there is a right of naval forces to take action against that vessel including seizure and possible arrest of smugglers on board.

The situation is different in so far as flagged vessels are concerned. Paragraph 6 of UNSCR 2240, repeats the measure of inspection provided for in paragraph 5 in relation to stateless vessels.\textsuperscript{130} However, unlike the Migrant Smuggling Protocol, which provides a mandatory procedure to be followed in order to obtain flag State consent for an inspection,\textsuperscript{131} paragraph 7 of the Resolution allows inspection even without the consent of the flag State, provided good faith efforts to obtain such consent have been made.\textsuperscript{132} Furthermore, the Resolution appears to create a mechanism to regulate action beyond inspections taken under the auspices of paragraph 7, in other words where no flag State action has been forthcoming. The mechanism under paragraph 8 of the Resolution, allows the inspecting State to seize the vessel once inspection confirms that it has been used for smuggling, but also take further action including the seizure and disposal in accordance with applicable international law and with due consideration of the interests of any third parties who have acted in good faith.\textsuperscript{133} When carrying out activities under paragraph 7 and 8 of the Resolution,

\begin{flushleft}
\textsuperscript{129} See LOSC, Articles 91 and 92.
\textsuperscript{130} See UNSCR 2240, para.6.
\textsuperscript{131} See the Migrant Smuggling Protocol, Article 8(2).
\textsuperscript{132} Ibid, para.7.
\textsuperscript{133} Ibid, para.8.
\end{flushleft}
States are authorised ‘to use all measures commensurate to the specific circumstances’ in confronting migrant smugglers. The phrase arguably implies the possibility of using maritime enforcement measures against smugglers that involve the use of force. The Resolution appears to suggest that use of force could or should be used as a last resort and only if it is reasonable and necessary, and designed to protect ‘the safety of persons on board as an utmost priority and to avoid causing harm to the marine environment or safety of navigation.’\textsuperscript{134}

The UNSCR 2240 may be considered a positive step forward in the fight against migrant smuggling in the Mediterranean. Since its launch in July 2015, Operation SOPHIA has rescued more than 8,000 migrants, destroyed over 60 smuggling vessels and contributed to the detention of more than 40 persons suspected of human smuggling or trafficking.\textsuperscript{135} At the same time, the Resolution continues to receive criticism over its lack of clarity, in particular, the use of vague terms such as ‘reasonably grounds’ or ‘good faith efforts’.\textsuperscript{136} These expressions can be subject to various interpretations and may be a source of dispute amongst States. Furthermore, although UNSCR 2240 provides a possibility for States to fight smugglers in the territorial sea of Libya,\textsuperscript{137} this remains subject to the consent of Libya, which to date has not given such authorisation.\textsuperscript{138} Therefore according to UNSCR 2240, intervention remains limited to high seas; this may prove to be problematic considering that fighting

\textsuperscript{134} UNSCR 2240, para.10.
\textsuperscript{137} UNSCR 2240, para.2.
smugglers effectively also requires doing so in Libyan waters and from Libyan land.

The impact of UNSC 2240 shall be assessed in September 2016, when the United Nations Secretary General will provide the Security Council with a report on its implementation. The Report should address ways in which States have put into effect the authority granted by the Resolution. It is hoped that this assessment will also provide considerations for further resolutions.¹³⁹

The Human Element

Moving on to the so-called ‘constraints’ on State action, one finds obligations imposed by the LOSC.¹⁴⁰ As discussed above, most migrant sea crossings are organised by smugglers who usually transport migrants in overcrowded and unseaworthy vessels.¹⁴¹ As a result, distress at sea situations have regrettably become a regular occurrence resulting in numerous human tragedies and negatively affecting the safety of navigation.¹⁴² The LOSC imposes an obligation on States to protect human life at sea by ensuring that shipmasters of vessels flying their flag ‘proceed with all possible speed’¹⁴³ to the rescue of any person in distress at sea.¹⁴⁴ Therefore under international law, the duty to

¹³⁹  Ibid.
¹⁴⁰  Some of which have been referred to earlier in the article, see page 2 above.
¹⁴²  According to statistics compiled by the International Organization for Migration, more than 5,000 migrants were reported dead or missing in 2015. As of August 2016, the same Organization reports that already over 4,000 migrants have lost their lives. See http://missingmigrants.iom.int/
¹⁴³  LOSC, Article 98(1)(b).
¹⁴⁴  The duty to render assistance at sea has its origins in the need to protect seafarers’ lives at sea. When confronted with dangers at sea, seafarers turned to others navigating the oceans to provide aid. This usage developed into a well-established international customary rule covering all human life. The duty is codified in a number of international conventions most notably,
render assistance at sea is personally attributed to the shipmaster. This requirement to provide assistance to those in distress at sea extends to all persons, including migrants in need of assistance at sea. The duty is qualified in so far as such action may be reasonably expected of him. In order to render the duty more effective, the shipmaster’s obligation to render assistance is supplemented by the requirements of coastal States to promote search and rescue services.

The sheer magnitude of the migration by sea problem has placed considerable pressures on coastal State services as well as members of the maritime community, in particular shipmasters, who are increasingly asked to rescue persons in distress at sea. It is submitted that although LOSC provides a general basis for the execution of the duty to render assistance, it may no longer be adequate to deal with contemporary realities and challenges posed by the migration crisis. The implementation of the duty may face legal challenges relating to enforcement. Under article 98(1) of the LOSC, the implementation of the duty depends largely on the extent of its transposition into the domestic law of flag States. However, the Convention does not appear


145 LOSC, Article 98(1)(b). A shipmaster may be relieved of his or her duty to provide assistance at sea under certain circumstances, for example if a rescue at sea operation may endanger his vessel, passengers or crew.

146 LOSC, Article 98(2).

147 Recent developments such as increased tensions in Libya and Syria as well as the closure of the Italian *Mare Nostrum* operation have resulted in an increase in private vessels carrying out mass migrant rescue operations. In the past 2 years, more than 1,000 merchant vessels have been involved in rescue at sea operations assisting more than 50,000 migrants to safety. See International Chamber of Shipping, ‘Large Scale Rescue Operations at Sea – Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons’ 2nd edn, 2015, available at http://www.ics-shipping.org/docs/default-source/resources/safety-security-and-operations/imo-unhcr-ics-rescue-at-sea-guide-to-principles-and-practice-as-applied-to-refugees-and-migrants.pdf?sfvrsn=23
to entail any direct obligation of the shipmaster independent from domestic implementation measures. The enactment of legislation imposing criminal sanctions against shipmasters that fail to render assistance at sea would arguably be the best way to ensure enforcement of the duty. Certain States have enacted national laws to this effect; however this practice appears to be far from universal. Gallagher and David note that States of destination for migrants, as well as certain major shipping States are likely to oppose enacting such legislation, making it more difficult to enforce the duty. The obligation to render assistance may be further weakened by the fact that one third of seagoing vessels are registered in the so-called ‘flag of convenience States,’ which could be reluctant to impose legislative sanctions on shipmasters who fail to carry out their international obligations to assist at sea.

148 See Andreas Zimmermann (ed), The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary (Oxford University Press 2011) 823. This requirement may create certain challenges, as acknowledged by Barnes ‘…despite the importance…of this rule… it is commonly found to be absent from or only partially translated into, domestic law, and as a result this most fundamental of obligations is seriously undermined’. See Richard Barnes, ‘Refugee Law at Sea’ (2004) 53 International and Comparative Law Quarterly 47, 50.

149 See for example, Article 306(1) of the Malta Merchant Shipping Act (1973), Chapter 234 of the Laws of Malta which provides that: ‘The master or person in charge of a Maltese vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person who is found at sea in danger of being lost, even if such person be a citizen of a State at war with Malta; and if he fails to do so he shall for each offence be liable to imprisonment not exceeding two years or to a fine (multa) not exceeding one thousand units or to both such imprisonment and fine’.

150 See Anne Gallagher and Fiona David (n 18) 449 and Richard Barnes (n 10) 51.


Furthermore, even when the duty is properly enforced, the shipmaster will have to take into account practical challenges underlying a migrant rescue operation. Seafarers employed on merchant vessels are rarely experienced or trained to undertake large-scale rescue operations. Rescue efforts may take days to complete and their toll on a stressed crew may be significant. Furthermore, the shipmaster may be exposed to commercial and financial losses if providing assistance requires them to deviate from their commercial route in view of possible consequential costs and damages. The delay in the voyage may be increased due to the reluctance of coastal States to agree on the safest and the closest port to disembark migrants. This may lead to the vessel being stranded with desperate migrants, usually far larger than the crew, incurring costs and being exposed to risks that may even threaten the security and seaworthiness of the vessel as well as the safety of passengers and crew. These challenges may be further complicated by the shipmaster’s international responsibilities to protect the fundamental human rights of rescued persons at sea.

Complementing the LOSC obligation of States to render assistance to persons in distress at sea, are constraints found under other branches of law such as human rights, refugee law and humanitarian principles of protection, mainly, in this regard, the obligation of non-refoulement.

156 Discussed further below pages 10-13.
Let us recall a basic but fundamental point at this juncture: maritime migrant arrivals are composed of a mixed influx of individuals, made up both of genuine asylum seekers and so-called economic migrants. This point is not merely academic as it influences State policies and reactions to such arrivals. What these arrivals have in common however, is that they are PERSONS on the move. Unlike the case in other types of organised crime (such as narcotics trafficking), the subject of migrant smuggling is not a commodity but an individual, thereby importing principles of human rights, refugee and humanitarian law. In this light, international responses to this phenomenon must adopt a human-rights based approach, and not merely consider such principles of protection as an addendum to the main enforcement response framework.

All persons at sea have basic human rights under both general international law and regional instruments such as the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) if they are in the jurisdiction of a State Party to that instrument. Article 1 ECHR provides that ‘[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.’ Of direct concern in the maritime scenario is the protection against torture or inhuman or degrading treatment or punishment, guaranteed in Article 3.  

159 It would appear that the ECHR applies to all vessels registered in its State parties, wherever they are located on the world’s oceans. (It is noteworthy that two of the largest registries in the world; Malta and Cyprus are ECHR State Parties). Under article 91 of the LOSC, the flag State has exclusive jurisdiction over its registered vessels. A consequence of this is the control, which the flag State exercises over the vessel, its owners and the shipmaster. See LOSC, Article 94. However, in the light of ECHR State party obligations, they are not allowed to require persons falling under their jurisdiction to act in a manner in which is contrary to the human rights and fundamental free-
While all individuals enjoy human rights protection, a group of these individuals are entitled to a further umbrella of protection – under the label of refugee law, foremost amongst these being the right to seek asylum enshrined in article 14 of the Universal Declaration of Human Rights.160

The reference to ‘within the jurisdiction’ of the Contracting State Party, as noted in inter alia articles 1 and 3 ECHR, does not limit the application of the protection granted to merely a territorial ambit. On the contrary, as seen through the jurisprudence of the European Court of Human Rights161 and most notably in this specific regard, in the Hirsi case162 discussed below, human rights protection is activated whenever a State acts, both territorially and extraterritorially.

Still, the human element is plagued with pitfalls in that international human rights law does not address the crucial aspect of the implementation of the protected rights, such as the right to leave one’s country and apply for asylum. Coupled with this, most reactions to people flows have been unilateral or at best, regional in nature. To date, States have been unable to address the concept effectively in the international context.

doms enshrined in the Convention.
161 See for example Medvedyev and Others vs France App No 3394/03 (ECtHR, 29 March 2010). This case concerned an interdiction carried out by French authorities, of a Cambodian registered vessel suspected of drug trafficking to Europe. The Court held that French authorities had exercised full control over the vessel and its crew from the time of its interdiction in an uninterrupted manner. For this reason it was held that the applicants fell within the jurisdiction of France and Article 1 of the ECHR.
162 Hirsi Jamaa and Others v Italy (Judgment), (2012) Application No. 27765/09, 23 February 2012. This case concerned the interdiction of a smuggling vessel carrying eleven Somali and thirteen Eritrean nationals by Italian authorities. The smuggling vessel had departed from Libyan shores with the intention of reaching the Italian Coast. The Italian coast guard interdicted the vessel and the smuggled migrants were transferred on board Italian warships and eventually returned to Libya.
This has been made amply clear in recent history with respect to the principle of **non-refoulement**, the cornerstone of protection at sea. This principle finds its classical exposition in the Convention relating to the Status of Refugees (Refugee Convention)\(^{163}\) which provides protection for any person having the status of a refugee or seeking to attain that status; in other words, refugees and asylum-seekers. The Refugee Convention does not grant the right to asylum nor does it oblige a State to hear and process asylum claims. What it does do, in Article 33(1) is prohibit the expulsion or return (‘refouler’) of a refugee (or asylum-seeker) ‘in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’. It is generally accepted customary law status means that this is an obligation which may be imposed on any State irrespective of ratification of the Refugee Convention. It is also arguable that the principle is acquiring the status of a peremptory norm of international law.\(^{164}\)

The protection granted by this principle is obvious, however, there is the reality that a number of individuals suffering dire plight (such as those migrating due to natural disasters or famine, not to mention economic migrants) may not necessarily be able to demonstrate the well-founded fear of persecution required for the application of the Convention precisely because they fall outside the qualifying grounds listed in article 33(1). Furthermore, the Convention does not provide an answer for problems arising from situations of mass influx (such as boat arrivals), as it focuses rather on individually-targeted persecutions by an oppressive regime.

Further, problems have been encountered in the applicability and geographical operation of this principle. Similar to the extraterritorial application of the ECHR referred to above, the **non-refoulement principle** is not limited territorially. It is therefore applicable on the high seas

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164  UNHCR Executive Committee (ExCom), Conclusion No. 25 (XXXIII) – 1982, para. (b); See also: Hirsi Jamaa and Others v Italy (2012), Concurring Opinion of Judge Albuquerque, page 65.
(contrary to the holding of the majority of judges of the US Supreme Court in Sale v Haitian Centres Council\textsuperscript{165}) and indeed, wherever a State exercises effective control over a vessel. In this way, the physical act of interception by a State engages that State’s protection obligations in respect of those intercepted, irrespective of the location of that interception.

Therefore, when looking at the practical ramifications of the principle, this means that, on interception, migrants cannot be pushed back to a place of persecution or sent to a non-party State to the Refugee Convention without reviewing any asylum claims made on the intercepted vessel. A breach of the obligation would therefore occur if a State were to intercept and turn back a vessel to the borders of persecution (or non-Party State) without reviewing any asylum claims made on board the intercepted vessel. A status determination procedure is therefore necessary before any further action regarding return could be permitted at law. This is needed also because of the concern that immigration control and border control measures may not necessarily distinguish between genuine asylum seekers and other intercepted – or rescued – persons. Further, since status determination procedures are preferably carried out on land, disembarkation of all on board is necessary in order to validly and effectively carry out an identification process.

This position has been put beyond doubt by the first decision on interception at sea delivered by the Grand Chamber of the European Court of Human Rights. In Hirsi Jamaa and others v Italy interceptions and push-backs without a fair and effective screening procedure were held to constitute a serious breach of the ECHR and of the principle of non-refoulement.

This judgment addressed how States are to guarantee the fundamental rights of migrants at sea and presented human rights protection as an inherent corollary to State powers of interdiction. Turning on an interpretation of \textit{inter alia} article 3 ECHR (regarding the protection

\textsuperscript{165} Sale v Haitian Centers Council No.92-344, 1993 WL 211610 [21 June 1993]. This case concerned the legality of the United States interdiction programme, which involved Haitian refugees being sent back to their country.
from inhuman or degrading treatment or punishment), the judgment also clarified that *non-refoulement* is applicable irrespective of the classification of the particular act and therefore applies to States in both interception and rescue-at-sea scenarios. Once individuals were subjected to ‘the continuous and exclusive *de jure* and *de facto* control of the Italian authorities’, the nature and the purpose of the intervention were irrelevant.\(^{166}\) In this way, whatever the classification of the act, coming into contact with migrants on board a vessel calls for respect for human rights. In the immediate context, this means that post-rescue, individuals are not to be pushed back to a country where they risk being treated in violation of Article 3 ECHR, which protects against inhuman and degrading treatment or punishment.

The upshot of this for immediate purposes is that, with the clarification provided by this judgment, the principle of *non-refoulement* is not limited to the class of individuals termed asylum-seekers or refugees but rather, this principle affords protection to *all migrants*, due to its application in the context of Article 3 ECHR. In this way, this mainstay of international refugee law has found its way into the generally applicable realm of human rights law and applies to any and all persons who may be exposed to a real risk of torture, inhuman or degrading treatment or punishment should they be returned to a particular country.

Human Rights law provides a wider net of protection than Refugee Law – not only in the persons it addresses but also in the scope of its protection. This effectively removes the need for a status determination procedure because *all individuals on board and not only genuine asylum seekers* are entitled to protection under this article. Article 3, providing protection from return to a country where the individual may be subjected to torture, inhuman or degrading treatment or punishment, therefore provides an extension of the protection provided by refugee law and may indeed prove to be a more effective means of protection for asylum seekers. The problems outlined above regarding the limited grounds of applicability of the Refugee Convention are now inconsequential.

\(^{166}\) Para 81. Note also: *Medvedjev et al v France* 29 March 2010, para 67.
Perspectives in a Changing Mediterranean

Precisely due to this human factor, humanitarian and human rights considerations must shape any exercise concerning these vessels and, any border control exercise, rescue mission or decision to disembark individuals must be imbued with human rights safeguards.

Concluding Thoughts:

This brings us to a brief concluding consideration of how to achieve the elusive balance between the laws outlined above. That the human factor must be central to any effort to stem arrivals or control migrant smuggling is beyond any and all argument.

However, any effort undertaken alone without the cooperation of all international actors is doomed to fail. International cooperation is essential, not least owing to the transboundary nature of this phenomenon. But there is so much more to do than intercept or rescue desperate individuals from sinking boats. It requires engaging countries of origin and transit – not only for their cooperation in preventing boats from leaving their shores, but also for the betterment of conditions in those countries so that the necessity of cross-border movement in such manner will be lessened. It involves breaking the rings of organised crime in a manner which does not jeopardise the rights – indeed the lives – of individuals on board smuggling vessels regardless of their status. Indeed, efforts to combat migrant smuggling can in no way provide justification for circumvention of States’ obligations in the human rights field since any approach taken must be focussed on the human dimension of the phenomenon.

In this regard, in order to reduce the need for individuals to resort to smugglers:

- States need to look to the improvement of conditions in countries of origin;
- They need to at least consider the provision of legal opportunities for persons in need of international protection to reach European borders;
States must look towards the creation of a legal order that implements the responsibility to permit individuals to seek and enjoy asylum and is not geared towards keeping people out and the problem far away from European shores. Lastly, there must be an honest sharing of responsibility with regard to migrant arrivals.

Overall, there is the need for a concerted and concrete international effort based on a duty of cooperation among all stakeholders. The answer to the phenomenon is not to be found at the expense of any one State’s resources and security. The point to be highlighted here is that the obligation of cooperation in contemporary times should be put forward as an obligation, which has a specific legal content and imposes concerted action that goes beyond the mere good faith, good neighbourliness or courtesy. It is a distinct and independent obligation calling for a positive duty of action on the part of States and requires that the term ‘solidarity’ be removed from the realm of fantasy and into everyday State action.

It should be, on the strength of this obligation, that States perceive the problem of irregular migration as a common problem stemming from situations which are horribly wrong in other States. At all times, it should be recalled that responsibilities lie with all States concerned and not only with those facing a disproportionate influx of irregular migrants on their shores.
Tightening the EU’s External Borders: The Impact on Euro-Mediterranean Relations

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Introduction

In the past two years, the EU has been confronted with a massive flow of migrants and refugees across the Eastern and Central Mediterranean. To meet the challenge, various efforts were made to reinforce the Union’s external borders, more precisely those of the Schengen Area. The measures introduced are bound to affect Euro-Mediterranean relations or, as the EU sees it, relations with its southern neighbourhood. As I want to show in this paper, the results are mixed. Border tightening creates some new barriers between the Union and its neighbours but, as the EU soon realized, effective border management, whether on land or at sea, cannot be done alone. It requires some degree of cooperation with countries outside the Union. That can also entail a border opening. Migration policies often cut both ways – greater separation can be accompanied by new forms of proximity.167

The purpose of this article is to look at the situation more closely. It begins with a brief presentation of the core ideas underlying the Schengen Area

and the Common European Asylum System (CEAS). I then turn to the Central Mediterranean and show that even before 2015 the application of the Schengen and CEAS principles left much to be desired. A lack of uniform enforcement by the Italian authorities was the main problem. At sea, the situation was difficult as well. The stationing of EU ships in the Sicilian Channel did not stem the flow of migrants. On the contrary, the numbers increased continuously. Given the political chaos in Libya after 2011, there was no functioning authority to cooperate with. The EU acted alone and the results are unsatisfactory.

Things became more dramatic when the Aegean onrush began in August 2015. In the absence of EU solidarity, existing rules were once more poorly enforced, and new ones proved difficult to create. As compensation, the need to cooperate with countries outside the Union became evident. That was possible, because in contrast to Libya, Turkey has a functioning administration. The arrangement changed relations with Turkey, but because it was strictly bilateral, it did not impact upon Euro-Mediterranean relations as a whole. The avoidance of multilateral solutions by actors on both sides of the Mediterranean meant that existing regional organizations – unfortunately – were neither used nor strengthened.

**EU Border Policies**

The goal of the Schengen concept is to allow EU citizens to move freely across the Union. Implied is the abolition of internal border controls and their substitution by external controls or, more precisely, by the creation of an external border with an integrated and partially supranational character. For the crossing of the outer border, a number of rules were introduced. Europeans have to show valid travel documents, and the same applies to visa-free non-Europeans. Many non-Europeans, however, need Schengen visas. These are issued by the member states and tied to certain requirements.

Migrants and refugees are subject to the Dublin regulation. Among other things, the rule says that the country of first entry is responsible for registration and for handling asylum applications. If asylum is rejected,
the same country is also responsible for returns. Secondary movements within the EU are to be avoided. It follows that the migration burden rests largely with the country of first entry. This is the reason why the Dublin regulation is often characterized as a single-filter system.

Frontex is the EU agency mandated to assist member states in the management of the common external border. Although the institution has some supranational authority, its operational powers are limited. Maritime missions are an example. Frontex has practically no manpower or vessels of its own. For both it must rely heavily on national contributions. Its main duty is coordination.\textsuperscript{168}

The EU’s asylum policy, too, suffers from various weaknesses. CEAS is no more than a set of five principles (three directives and two regulations) meant to guide states in matters of asylum. Most are identical with those underlying the 1951 UNHCR convention.\textsuperscript{169} However, the implementation of directives and regulations by EU states differs considerably. To better apply the rules, the European Asylum Support Office (EASO) was set up a few years ago, with headquarters in Malta. However, as the name implies, its purpose, too, is primarily to support national efforts.\textsuperscript{170}

At airports, the arrangement has generally functioned. Although arrival controls are national, the concern with flight security has led states to strictly enforce the rules. Schengen visa regulations are mostly followed, and the identification of migrants and refugees is likely. It is true that some problems exist. Schengen overstayers are numerous, and forged documents are used by some. However, on the whole, the system’s performance explains why large migration movements are not by air. This is not self-evident, because in most cases, air tickets are significantly cheaper than the fees demanded by maritime migrant smugglers.

\textsuperscript{168} See \url{http://frontex.europa.eu/about-frontex/mission-and-tasks/}
\textsuperscript{169} See \url{http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm}
Still, terrorist attacks in France and Belgium led in two areas to a tightening of EU borders. All passengers (including EU citizens) entering the Schengen Area must now have valid passports. Furthermore, on April 14 of this year the EU Parliament approved a directive permitting the collection and use of airline passenger data. Since both measures affect EU and non-EU citizens alike, travellers from Mediterranean countries are not subject to special discrimination. There is no specific neighbourhood effect.

The situation at the EU’s maritime borders is very different. Here the Schengen system has never functioned properly. A first reason for this, as I will show, is that sea borders raise practical control problems that land borders do not know.171 A second reason is that some of the Schengen rules are inadequate and need amending, mainly the Dublin first country principle which puts a disproportionate burden on peripheral states like Italy and Greece. Nevertheless, a third and often major reason is that many existing rules are inadequately applied. Border tightening, therefore, has much to do with improved enforcement. Given these difficulties, the system failed under ordinary conditions, and it nearly collapsed under the extraordinary circumstances prevailing in the second half of 2015. The weaknesses are showing most glaringly along the blue borders of the Mediterranean, at sea and on land.

**Maritime Border Dilemma**

For years, the Central Mediterranean was the main maritime migration route to Europe. Thousands of boat people crossed the Sicilian Channel, and Italy was their first country of arrival. The large majority were sub-Saharan Africans using Libya as a transit country.172 The chaos prevailing after Gaddafi’s fall made it particularly easy for migrant smugglers to operate. The sea passage to Europe can be very dangerous

171 For a general discussion of the issue see Joe Borg, “Maritime Governance,” in *Mediterranean Perspectives on International Relations*, Mediterranean Academy of Diplomatic Studies (MEDAC), University of Malta, Msida 2009, pp. 135-142.
however. Although the Italian Coast Guard, assisted by the Guardia di Finanza and the Italian Navy, ran regular rescue operations, there were many accidents and numerous victims.

A particularly tragic accident, with nearly 400 victims, happened in October 2013 off Lampedusa. As a consequence, the Italian government decided to put the navy in charge and to create an operation called ‘Mare Nostrum’. Its core consisted of amphibious war ships capable of rescuing large numbers of migrants. The operation functioned throughout all of 2014, but the financial burden was heavy. Italy decided to request EU help, which was forthcoming. Beginning in November 2014, Frontex stepped in and organized Operation ‘Triton’. Ships from various Schengen countries began to cruise close to Libyan territorial waters, picking up an ever larger number of migrants. Italian arrivals increased fourfold within a year, from 40,000 in 2013 to 170,000 in 2014.

Although the number of victims grew as well, both Mare Nostrum and Triton were increasingly seen as humanitarian ventures, as massive search-and-rescue (SAR) operations. It was certainly how migrants and migrant smugglers perceived them. For both groups the presence of a sizeable fleet ready to intercept migrant boats was inviting and became a pull factor. Small wonder then, that the number of crossings increased.

The influence on internal Libyan politics may have been negative as well. It is entirely possible that the growth in human trafficking, by strengthening the position of smugglers, hindered efforts to unite and

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174 Malta profited from the presence of Mare Nostrum and Triton. Given its huge SAR zone inherited from the British, Malta’s Coast Guard was up to 2013 regularly involved in SAR operations and the country ended up with the highest per capita proportion of asylum seekers in the EU. That changed with the presence of military vessels. To this day, they take migrants directly to Italian ports.

175 The impression was reinforced by the presence of an increasing number of non-governmental SAR vessels. By the summer of 2016 ships of six different groups were active: MOAS (Italian), Médecins sans Frontières (international), SOS Méditerranée, Sea-Watch, Sea-Eye and Jugend Rettet (all German).
pacify the various Libyan factions. Frustrating the business of migrant smugglers, by contrast, could serve both Libya and the EU. That is why in October 2015 the EU created Operation ‘Sophia’. Running under the umbrella of its Common Security and Defense Policy (CSDP) the main purpose is to fight migrant smuggling. The mission’s mandate was widened in June 2016 but is still limited to operations outside territorial waters. The results – as arrival figures indicate – are disappointing.176

It goes to show that, seen as a whole, the impact of EU efforts in the Central Mediterranean was ambivalent, if not counterproductive. Initiatives meant to tighten the EU’s external sea borders had either no effect or, worse, ended up by opening them. The dynamics unleashed became self-defeating. Not that this led to a general worsening of the EU’s relations with its Mediterranean neighbours, but at least at sea, it demonstrated the Union’s impotence in matters of border management.

Compensating on Land?

Given the mixed EU results at sea, it would be logical to compensate on land. However, that was not simple either, because Italy’s application of the Dublin regulation was anything but systematic and effective. More arrivals were bound to make things worse. Disembarkation was usually unproblematic; the difficulties began after. The Dublin first country rule demands systematic registration, fingerprinting, and the possibility of filing asylum applications. For the procedures to function, migrants have to remain under governmental control and stay in one place. That happened only in part. Thousands managed to leave the reception facilities without going through proper procedures. Rules were not enforced, and neither EASO nor Frontex were in a position to help at that time.

The failure had a number of causes. The division of labour among national but also among international agencies was often unclear. Some simply failed to do their jobs. There were numerous loopholes, and migrants learned how to take advantage of them. Economics also

played a role. Italian farmers, especially in southern Italy, are ready to hire cheap irregular labor, and migrants are eager to work. Another factor is that Italy, a country with 60 million inhabitants and many humanitarian organizations can more easily absorb irregulars than smaller states are able to.

It is also true that Italy, like all peripheral EU members, perceived the Dublin regulation as unfair and was not unhappy to see migrants end up in other Schengen states. Francophone Africans tended to head for France or Belgium, Anglophone Africans for the UK. Others crossed into Switzerland, Austria, Germany, or Sweden. Not having been registered, migrants could not easily be returned to Italy, and with some luck, they were able to apply for asylum in the country of their choice. Secondary movements, also known as asylum shopping, became frequent. An informal relocation process was at work. The Dublin single filter idea was paralleled by an all-European multi-filter system.

Although the number of Italian arrivals increased in 2014 and 2015, the situation was not overly dramatic. It was clear, however, that at some point the Schengen system needed proper enforcement or, as an alternative, that the Dublin first country rule had to be redefined. That proved to be difficult. It was easier, the EU discovered, to organize a fleet at sea than to tighten borders on land.

The impact on Euro-Mediterranean relations was once again mixed. Since most migrants arriving were sub-Saharan Africans, Italy’s flawed performance did not directly impact its neighbours. It is true that some North Africans were among the arrivals, but this did not influence, let alone worsen, relations between the EU and the region as a whole. However, the limits of the EU’s land and sea capacities to manage its external borders were here for all to see. As far as the EU’s common foreign policy was concerned, that was not exactly a favourable development.

**Rebuilding National Borders**

During the first half of 2015, the Central Mediterranean was still the dominant migration route. That changed in August, when the dynamics
shifted to the Eastern Mediterranean. The region had always witnessed a certain flow of migrants, but as far as the EU was concerned, it was of secondary importance. That was no longer so during the second part of 2015. The number of arrivals jumped to 107,000 in August, climbed to 212,000 in October, and even in December reached 109,000. All told, 856,000 boat people made it to Greece in 2015; in Italy, it was a mere 154,000. The massive flow to Greece continued in early 2016. After 125,000 arrivals in January and February, the seven month total was roughly one million.\textsuperscript{177}

If Italian border management was unsatisfactory, the situation in Greece was clearly worse. The country was simply overrun. The Schengen external border remained wide open, at sea and on land. The rules were hardly applied at all. The border needed fixing in the Aegean and on the mainland, but that was easier said than done.

The situation in the Eastern Mediterranean differs in numerous respects from that of the Central Mediterranean. Syria, one of the neighbouring states, has been involved for five years in a brutal civil war among untold religious and civil factions, producing millions of refugees. Half of them have lived in Lebanon and Jordan for years; the other half went to Turkey, a country at war with its Kurd minority. The EU’s eastern neighbourhood is fragmented and unstable. If you add Israel and Palestine, the picture is even worse.

Maritime geography differs, too. In the Aegean, numerous Greek islands are within sight of the Turkish coast, making crossings relatively short and much less dangerous than in the Central Mediterranean. Most boat people land unhindered on the shores of Greek islands. The coast guards of both Turkey and Greece are present, but given the short trips, their role is much less important than between Libya and Italy. There is no need to mount operations on the scale of Mare Nostrum and Triton.

In the Aegean, the business of migrant smugglers is therefore not influenced by the presence of large rescue fleets. If smuggling functions and the maritime door to Schengen remains open, it is primarily a

\textsuperscript{177} See my website www.blue-borders.ch
consequence of calculated Turkish inaction. There is no failed state in the Aegean comparable to Libya.

What aggravated the situation further was the fact that relations between Greece and Turkey have traditionally been cool. Although both are NATO members, several issues remain unsettled. Some maritime borders in the Aegean are in dispute, and the Cyprus issue is unsolved, to mention only two. Cooperation is the exception rather than the rule.

On land, the door was open, too. The reception of refugees and migrants in Greece has always been subject to criticism, and it got worse. What helped was that most migrants, like those arriving in Italy, did not intend to stay. They wanted to leave Greece as quickly as possible and head for Central and Northern Europe. That proved to be difficult. Greece has no common borders with Schengen states. To get to Germany, migrants have to cross several non-EU Balkan countries; this makes for a long, poorly coordinated, and often inhumane trip. Eventually, and egged on by Austria, the Balkan states affected decided to close their borders. Migrants were then stranded at the Greece-Macedonia border.

Given the massive numbers arriving in Germany, Angela Merkel’s government occupied centre stage. At home, Merkel practiced something like an Open Door policy and expected EU cooperation. Her famous ‘we can handle this’ presupposed a combination of national and supranational action. That was not what happened. Narrow national interest prevailed in many Schengen countries. Hungary built a fence to block migrants from entering via Serbia and even extended it to neighbouring Croatia, an EU member. Austria, too, followed a purely national course. It introduced border controls and added a numerical ceiling on asylum applications. Bavaria tended in the same direction, hurting Merkel in her own party and in the country as a whole. The pressures were immense. In September, Germany herself had to request EU permission to temporarily control its borders. Although possible under the Schengen Code and approved by the Commission, the result
was anything but ideal. The idea of a borderless Schengen Area suffered a major blow.\textsuperscript{178}

It was also a blow to Syrian refugees fleeing, after all, from a country in the EU’s Mediterranean neighbourhood. Thousands were stopped at the national borders of EU members like Hungary and Austria and, as a consequence, of non-EU states like Serbia and Macedonia. Ironically, and as few would have expected, it was the rebuilding of borders within the Union that affected the Mediterranean neighbourhood. But once more, the impact was not on the area as a whole. As said, a truly regional approach was missing.

**EU Border Agenda**

The pressure on the Berlin government was immense. Angela Merkel had to take some hard decisions, and her best ally was Jean-Claude Juncker. As early as May 2015, the Commission formulated a ‘European Agenda on Migration’. At first it was of a relatively general nature but when the situation worsened it grew more concrete.\textsuperscript{179} Two points meant to alleviate the situation in Greece and Italy became central – the creation of ‘hotspot’ reception centres and the establishment of an EU-wide relocation mechanism for migrants bound to get asylum. The two issues are intimately interrelated: There can be no relocation without functioning reception centres, and, vice-versa, reception centres cannot function without relocation.

Later on the Commission proposed two more projects. The first aimed at strengthening CEAS implementation by upgrading EASO. A report by some MEPs even suggested outright centralization of asylum


\textsuperscript{179} For the original version of 13 May 2015 see \url{http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf}
A second proposal submitted in December aimed at converting Frontex into a full-fledged European Border and Coast Guard. A modest step in this direction had been taken when a Frontex mission named ‘Poseidon,’ for years active in the Aegean, was upgraded to become ‘Poseidon Rapid Intervention.’ More important was a decision taken in March of 2016 to cooperate with NATO. Its units were able to operate in Turkish waters. Frontex vessels could not.

The Commission approach contained supranational elements and was meant to strengthen the Union. Purely national solutions, so the prevailing opinion in Brussels and Berlin, would not work. Primary responsibility lay with the EU. The idea of outsourcing border management to neighbouring countries was initially not one of the priorities.

As said, implementation proved to be difficult. There was an embarrassing lack of solidarity, and where action was forthcoming, it proved to be late and slow. NATO cooperation was an exception. The first ship headed for the Aegean within 24 hours after the decision was announced. But that says nothing about effectiveness. The joint operation’s mandate was limited to observation and did not include interception or returns. Neither was the focus on fighting migrant smugglers. The contribution was modest. The hotspots, too, got a slow start. They were barely functional when needed most, and to this day, relocation has hardly got off the ground.

All told, the EU strategy to tighten the outer Schengen borders existed on paper but not in reality, and the failure went hand in hand with the rebuilding of national borders. National unilateralism triumphed. And it


was exactly this failure that made the help of neighbours so important. The Germans, because they were abandoned by their European partners, saw the need for a Mediterranean partner most clearly. In the Aegean theatre, the obvious choice was Turkey.

**Closing and Opening Borders with Turkey**

The EU-Turkey arrangement had a number of dimensions. For the Merkel government, stopping the migrant smugglers was a top priority. As mentioned, the Greek Coast Guard plus Frontex and NATO were unable to do it. But Turkey, with functioning governmental machinery, had the necessary capacities. That would take the pressure off Greece and ultimately reduce the flow of migrants into Germany. To further alleviate the burden on Greece, the Turks agreed to a migrant/refugee swap: Migrants without a chance for asylum would be returned, and for each person taken back, the EU would resettle Syrians (with UNHCR assistance) from Turkish camps. Since those returned would be non-Syrians, the arrangement might deter migrants from outside the Syrian-Iraq war zone.183

As a consequence, not all Mediterranean nationals were treated alike. For migrants from states like Algeria or Morocco the doors were shut, while for Syrians they were opened. Some Syrians were already in Greece waiting for an asylum decision; others might profit from the return/resettlement swap. But the door was also opened for Turks, potentially at least. Visa-free entry into the Schengen Area, on the EU-Turkey agenda for years, became an important negotiating topic. European borders, it follows, were closed for some and opened for others.

Not everyone was happy. The arrangement was criticized as one-sided and morally questionable. Turkey was seen to profit more than the EU, and basic human rights were not fully respected. Critics argued that Turkey was not a safe third country and that the return agreement was therefore problematic. Even before the attempted military coup of June

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15, many felt that the deal ignored Erdogan’s questionable fight against Kurds, parliamentarians, journalists, and academics. The massive arrests following the failed coup made things even worse. Co-opting neighbours to manage the external borders of Schengen had its price.

Whatever the pros and cons, arrival numbers dropped after 20 March 2016, when the deal entered into force. In the first three months, 150,000 boat people had arrived; in April, the number was down to 3,650. In May, a mere 1,465 crossed the Aegean, and there were no victims at all. Maritime outsourcing seemed to work. On the Greek islands, the situation became less dramatic.\(^{184}\)

It was on the Continent that the pressure was now felt. Because the Balkan route was closed, 54,000 migrants were stranded in Greece. In earlier days, there would have been ways to circumvent the Dublin regulation, but that changed. The migrants were put in camps and had to follow proper registration procedures. Since most of them were Syrians, they tended to apply for asylum. Some of the Schengen rules were finally enforced. Relocation was meant to follow but, as we know, is still not functioning as planned.

The impact of the Union’s deal with Turkey on Euro-Mediterranean relations was here for all to see: To control its maritime borders, the EU needed the help of neighbours. It also showed that some were willing to cooperate, although after hard bargaining and at a considerable price. As a result, the Schengen external borders were both closed and opened. Some Balkan neighbours were also ready to help. They did so by closing their borders, but the action was unilateral and without a negotiated arrangement. The EU and Germany, although not happy at first with this neighbourly assistance, profited in the end.

**Tightening the Libyan Border?**

We have seen that in the Central Mediterranean the EU’s maritime strategy was anything but successful. Operation Triton is a massive SAR venture that – unwillingly – entails an opening rather than a

\(^{184}\) See [www.blue-borders.ch](http://www.blue-borders.ch)
tightening of borders. Operation Sophia, primarily meant to combat migrant smuggling, has failed to reach its goal as well. The smugglers are as active as ever. At heart, the difficulties are political. Libya is a failed state. A central government with a functioning administration, including an effective police force and a competent coast guard, has yet to be rebuilt. In the absence of a new government, any EU effort at border management is bound to be problematic or, worse, ineffective.

The United Nations has tried to help with the formation of a unified government. On 17 December of last year, after long and difficult negotiations, the United Nations Support Mission in Libya (UNSMIL) managed to set up a Government of National Accord (GNA) headed by Fayez al-Sarraj.185 Four months later, at the end of March 2016, Sarraj and his cabinet arrived in Tripoli by sea, took over some public buildings, and started efforts to reconcile the various factions. Whether they will succeed is yet uncertain.

But let us assume that the GNA becomes the dominant force and is at some point ready to deal with the EU. The Italian and German Ministers of the Interior, Alfano and de Maizière, have announced that in such a case they would like to see a Turkey-like agreement.186 That, they expect, would terminate migrant smuggling and could be combined with some sort of return/resettlement deal.187

The plans of Alfano and de Maizière face various obstacles. As mentioned above, the new government would have to possess the necessary administrative tools. After five years of civil war, that will take some time. It is also conceivable that close EU cooperation might be opposed by some political groups and could weaken the GNA. It

186 The announcement was reported by ANSAmed on 21 April 2016; see http://www.ansamed.info/ansamed/en/news/sections/politics/2016/04/21/eu-turkey-deal-should-be-repeated-with-libya-alfano_0db10045-549a-4bbe-b864-3d12ac3883b1.html
187 Alfano reiterated the idea on 22 August 2016; see http://www.lapresse.it/migranti-alfano- accordo-con-turchia-andrebbe-replicato-in-libia.html
is no surprise, therefore, that Sarraj’s reaction was negative. The new Libyan government, he stated, would not agree to such a deal. The externalization ideas of the two EU ministers are premature, to say the least.

Another plan mentioned by de Maizière is to organize large ‘off-shore’ reception camps, either in the Maghreb or in the Sahel region. The camps, similar to those housing Syrian refugees in the Levant, would be run by the UNHCR. But that idea, too, is not very realistic. No self-respecting African state is willing to play doorkeeper for Europe. The UNHCR, too, opposed the plan immediately.\(^{188}\)

The ‘Australian model’ is another form of outsourcing favoured by some. The idea is popular in nationalist circles. Frauke Petry, the leader of Germany’s AfD (Alternative für Deutschland) is one of its proponents.\(^{189}\) But she is not alone. Even Austrian Foreign Minister Sebastian Kurz sees it as a possible solution.\(^{190}\) After all, if Australia manages to isolate boat people on foreign islands, why should the EU not do the same?

The problems are multiple. The critique is massive, even in Papua New Guinea (PNG) to which one of the islands belongs. A local court has ruled that the arrangement is intolerable. As a result, Australia has come under pressure to close its PNG camp.\(^{191}\) The situation in Europe is even less favourable. It is inconceivable that a Euro-Mediterranean neighbour like Tunisia would agree, for instance, to run a camp on one of the Kerkennah islands. The choice of EU islands is equally unlikely. It is pure fantasy to believe that the governments of Italy, Greece, or Malta would be ready to run internment camps on Pantelleria, Milos, or Gozo.

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If islands are out of the question, why not use ships? The concept, also referred to as ‘floating hotspots’, has its main supporters in the Italian government. On a visit to Catania Interior Minister Angelo Alfano mentioned the idea to EU Commissioner for Migration Avramopoulos. According to Alfano such hotspots would handle registration and fingerprinting, an idea that Avramopoulos considered interesting and worth studying.\(^{192}\) The proposal is not entirely unrealistic; it might function on large Triton ships. But it would hardly work on smaller vessels used by the Italian Coast Guard, the Guardia di Finanza and the various NGOs. And it could most certainly not be implemented on merchant ships.

There are humanitarian objections as well. The Italian Bishops Conference fears that such ships might turn into floating detention centres with no proper handling of asylum applications.\(^{193}\) Human rights groups also warn that the scheme might be tied to collective returns. The fear is not unreasonable because such measures, also known as ‘push-backs’, are part of both the Australian Model and the Austrian Foreign Minister’s plans. Italy practiced push-backs same some years ago based on a ‘Treaty of Friendship’ signed in 2008 between Prime Minister Berlusconi and Libya’s Colonel Gaddafi. The Italian navy, at that time, returned intercepted migrants directly and collectively to Libya. The practice ended in 2012 when the European Court of Human Rights declared push-backs as illegal.\(^{194}\) It is unlikely that any government of the Euro-Mediterranean region would again cooperate in a push-back scheme.

Given the various difficulties associated with outsourcing, more direct and aggressive forms of action are demanded by some. Migrant

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\(^{192}\) See [http://corrieredelmezzogiorno.corriere.it/catania/cronaca/16\_apricie\_27/migranti-proposta-alfano-realizzare-hotspot-mare-e0d33f0a-0c90\_11e6-bf5b-962968293f6d.shtml](http://corrieredelmezzogiorno.corriere.it/catania/cronaca/16\_apricie\_27/migranti-proposta-alfano-realizzare-hotspot-mare-e0d33f0a-0c90\_11e6-bf5b-962968293f6d.shtml)


\(^{194}\) For the ECtHR judgement in the case of ‘Hirsi vs. Italy’ see [http://hudoc.echr.coe.int/eng#{“dmdocnumber”:“901565”,”itemid”:“001-109231”}](http://hudoc.echr.coe.int/eng#{“dmdocnumber”:“901565”,”itemid”:“001-109231”})
smugglers, so one idea, have to be stopped with military means by widening the mandate of operation Sophia. EU naval units should be allowed to enter Libyan territorial waters, to cruise along the Libyan coast and, if necessary, to operate on land. That, of course, raises questions as well. Interventions of this type violate Libyan sovereignty, and neighbouring states, the Arab League or the Organization of African Unity, might protest. Efforts to legitimize the effort by obtaining UN support would most certainly fail.

Some experts suggest the use of clandestine means, of operating with the help of Special Forces already on the ground. Sent by some Western countries to assist local militias in their fight against IS terrorists, these units could, at some point, be used to stop the migrant smugglers. The strategy might work should IS become a serious threat to Libya and its neighbours. It might then even be supported, as in Syria and Iraq, by other Arab states. For the moment that is not the case. It is also possible that an intervention of that kind might run into difficulties with local strongmen like General Hafter. European forces would then become embroiled in internal squabbles and fight on several fronts. The price for the elimination of migrant smuggling might be very high.

The conclusions are sobering – both outsourcing and direct military action confront serious difficulties and are unlikely to succeed. Many

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196 The United States have in the meantime admitted their involvement that, for months, was denied. See http://www.bbc.com/news/world-africa-36941934

would have a clearly negative impact on neighbourhood relations. It is thus fair to assume that for the near future the unsatisfactory situation at Schengen’s southern sea border will persist. To keep the problem within limits it is advisable, as said, to compensate on land by finally tightening the Italian border. It is true that during the summer of this year some improvements have occurred, but much remains to be done. Hotspots have to become more efficient, existing rules have to be enforced, and relocations and returns have to function.

The instruments to better manage returns exist. For some years already the EU has pursued what it calls a Global Approach to Migration and Mobility (GAMM). As part of the policy it promotes Dialogues for Migration, Mobility and Security that can entail Mobility Partnerships with individual countries. As far as the Mediterranean is concerned, the programs are part of the EU’s Neighbourhood Policy, also known as EUROMED. Actual Mobility Partnerships have been concluded with Morocco, Tunisia, and Jordan. Frontex, to organize Joint Return Operations, has entered into similar agreements with states inside and outside the Mediterranean region.

Individual Schengen countries are doing the same. Switzerland, for instance, has signed what it calls a Migration Partnership Agreement with Tunisia. As part of the deal Tunisia was willing to take back several thousand nationals that crossed the Sicilian Channel in early 2011 when the government, during the revolution, was unable to control its borders. Similar readmission agreements, as Lisa Watanabe shows, have become rather common. Although critics see the various deals as one-sided, the result is often a combination of border closing and border opening.

199 See http://frontex.europa.eu/operations/return/
Conclusions

What then, seen as a whole, was the impact on Euro-Mediterranean relations of the various EU efforts? The answer, as usual, is somewhat complicated. Only one thing is crystal clear – the impact was neither regional nor multilateral. But it could have been. In 1995, the Euro-Mediterranean Partnership (EMP) was founded in Barcelona. It was upgraded in 2008 to become the Euro-Mediterranean Union (EMU). The purpose of both forums, as their names suggest, is to bring the two sides of the Mediterranean closer together and to look for regional solutions. The arrangement, also known as the Barcelona Process, is meant to transcend unilateral or bilateral politics and to put relations between the EU and its southern neighbours on a multilateral footing.202

The EU has made no use of this possibility, it avoided regional multilateralism. Instead its approach was bilateral or unilateral. The Libya actions are unilateral, the Turkey deal is bilateral, and the same is true for the various mobility partnerships. EU policies were not meant to have a uniform impact on the entire region – and they did not. There was no general closing or opening of Mediterranean borders. The focus was on specific problems, countries and solutions. The overall result, therefore, is rather traditional. Diversity triumphs over unity.

As said, things could have been different. As part of the Barcelona Process there were discussions on a possible Charter of Security. Many ideas were floated. Malta’s Stephen C. Calleya, an academic specialized in Mediterranean relations, proposed the creation of a Mediterranean early warning mechanism accompanied by a Euro-Mediterranean

202 Stephen C. Calleya, “From the Euro-Mediterranean Partnership to the Union of the Mediterranean”, in Mediterranean Perspectives, op. cit., pp. 15-34;
Coastguard Agency (EMCA). To manage the present migration problems multilaterally both could have been useful with the effect of promoting Euro-Mediterranean relations. But the Charter was never written.203

The idea has not entirely died. The EU Commission’s proposal for the creation of European Border and Coast Guard (EBCG) opens the door for cooperation of this kind. The new agency, among other things, is meant to coordinate border operations between member states but is also empowered “to launch joint operations with neighbouring third countries”.204 That would make it possible to organize multilateral border control operations with Mediterranean neighbours. A step in this direction is the joint effort of Greek, Turkish, and NATO vessels in the Aegean. Few details are known about the mission, but within certain limits, the experiment seems to function.

The lack of enthusiasm in Brussels for regional solutions is not entirely surprising. The Barcelona Process has gone on for years with disappointing results. The political landscape of the Mediterranean is highly heterogeneous, state interests vary enormously, and conflicts are frequent. Even sub-regional solutions are difficult to obtain.205 It is unlikely, for instance, that Morocco, Algeria, Tunisia or Egypt would agree to joint coast guard operations, although the necessary capabilities are available.

But problems exist on the EU side as well. Even if Brussels had tried to organize a regional effort, some members might have blocked the idea. As we have seen, unilateralism has also spread inside the Union. It shows when states like Hungary build border fences, when the Austrians impose a numerical ceiling on asylum applications, or when relocation is opposed by the Visegrad states. For joint Euro-Mediterranean action,

both sides of the sea must be ready to cooperate. It takes two to Tango! In 2015 and 2016 this was impossible.

This is not to say that the EU could (and should) not have done more on its own. For five years the Syrian war has produced millions of refugees. It would have been entirely possible during this period to run, with the help of the UNHCR, a generous resettlement program relieving the pressure on Lebanese, Jordanian, and Turkish camps. The gradual and well-organized arrival of Syrians at airports and in harbours would have alerted European public opinion to the plight of people in their not too distant neighbourhood. The impact on Euro-Mediterranean relations could have been positive. The action might possibly have helped to prevent an uncontrolled exodus. As NGOs and EU parliamentarians have demanded for years, Europe should have opened legal channels for regular migration long ago. The idea is now contained in the EU’s Migration Agenda, but it comes late and does not enjoy a high enough priority.
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MEDAC was established in 1990 pursuant to an agreement between the governments of Malta and Switzerland. The Academy is currently co-funded by the Swiss Agency for Development and Co-operation (SDC) and the Ministry of Foreign Affairs of Malta. The Geneva Graduate Institute of International and Development Studies (HEID) was among MEDAC's first foreign partners. More recently in 2009, MEDAC concluded an agreement with the Federal Republic of Germany, represented by the Foreign Office, in turn represented by the German Academic Exchange Service (DAAD) and established a German Chair in Peace Studies and Conflict Prevention.

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