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## **In the Face of Revolution: the Libyan Civil War and Migration Politics in Southern Europe**

*Cetta Mainwaring*

### **I. Introduction**

Revolutionary protests have spread across North Africa and the Middle East since what was dubbed as the ‘Arab Spring’ first erupted in Tunisia in December 2010. As these popular movements emerge with varying degrees of success across other countries, they have prompted new migratory flows out of the region. Those lucky enough to have the resources have secured air travel out of the region. Holiday makers, for instance, concluded their stays in Egyptian resorts prematurely, and chartered airplanes evacuated oil workers from their rigs in the Sahara Desert. However, in much larger numbers, others have been forced to make their way across land to neighbouring countries. A small fraction of those unable to secure air travel have chosen to board boats, especially from Libya and Tunisia, and made their way across the Mediterranean to Europe in search of security.

This chapter focuses on the migration implications of the revolutionary movements in North Africa. It assesses the European Union’s (EU) reaction to migration flows into the bloc, in particular from Libya. Although there has also been significant migration from Tunisia across the Mediterranean, Libya is arguably the most important departure point in terms of the volume of people leaving its shores for Europe, as well as the sensationalist rhetoric used by the besieged leader, Colonel Muammar Gaddafi, of unleashing Libya’s migrants into Europe.

This chapter demonstrates that the number of migrants fleeing the Libyan civil war across the Mediterranean is, in fact, only a small percentage of those leaving the country. Much higher

numbers have travelled to neighbouring countries, such as Tunisia and Egypt. Moreover, the level of immigration into southern Europe, as a result of this conflict, is not significantly different from that of previous years. Contextualising the migration in time and space, thus, begs the question of who gains from the rhetoric of ‘invasion’, and what such a response indicates about the state of the European Union. Although the assessment is a preliminary one, as the events in North Africa are still unfolding at the time of writing, the consequences of striking migration deals with dictators are a clear lesson to be learned from the current developments in the region.

First, the chapter frames these flows within a brief history of migration to and from Libya since the 1970s. It subsequently turns to examine how the southern EU member states of Malta and Italy responded to these migration flows, particularly during the last decade, and what role Libya played in these migration politics. Turning to the more recent impetus for migration, the Libya civil war, the chapter examines the number of migrants fleeing the country to Italy and Malta, in the context of broader migration patterns in the region. Finally, the chapter examines how the most recent immigration from Libya to southern Europe has affected migration politics within the European Union, and what these developments indicate about the bloc.

## **II. Libya: A brief migration history**

Libya has long been a destination country for African migrants, as well as an embarkation point for Maghrebis moving across the Mediterranean into Europe. With a population of only 6.2 million people, it has been vital for Libya to import labour to maintain its economic growth, especially in sectors such as construction and agriculture. For example, with the profits acquired in the wake of the 1973 oil crisis, the government recruited foreign nationals in order to bring ambitious infrastructure projects to fruition, subsequently adopting a ‘pan-African’ approach in the 1990s, which included an open-door migration policy to the south.

Immigration flows, thus, established themselves along traditional trade routes and networks that connect the country with Sub-Saharan ones.<sup>1</sup>

Coupled with these immigration flows into Libya, the early 1990s saw the emigration of Maghrebis from Libya and other North African states, who began crossing the Mediterranean irregularly on small boats in response to the introduction of new visa requirements in southern European countries, such as Italy and Spain. In the late 1990s, a significant convergence occurred between these patterns of mobility into and out of Libya, when Sub-Saharan Africans joined and eventually surpassed the number of Maghrebis migrating from Libya to Europe. As of 2005, the Libyan government estimated that there were between 1 and 1.2 million irregular migrants residing in the country, as well as 600,000 authorised migrants.<sup>2</sup>

In response, media accounts and other reports successfully whipped up a sensationalist frenzy on the topic of irregular immigration across the Mediterranean, claiming for instance that “[u]p to a million await calmer spring seas before risking their lives to cross the Mediterranean.”<sup>3</sup> Certain academics and non-governmental organisations (NGOs) disputed these assertions, presenting evidence that only a fraction of the migrants in Libya actually attempted to cross the Mediterranean, as many remained

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<sup>1</sup> de Haas, Hein, 2007: *The Myth of Invasion: Irregular migration from West Africa to the Maghreb and the European Union*, IMI Research Report. (Geneva: International International Organisation for Migration): 11-16; Human Rights Watch (HRW) (2006, September 12). *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*. Available at: <http://www.hrw.org/reports/2006/09/12/stemming-flow-0>.

<sup>2</sup> Ibid.

<sup>3</sup> Townsend, Mark: “Libya key transit for UK-bound migrants”, *Observer* (13 January 2008); see also Hart, Laurence, 2008, IOM representative in Libya, quoted by the BBC in *Destination UK*, Panorama (14 January 2008). For other such claims from the IOM, c.f. Düvell, Franck; Vollmer, Bastian, 2009: “Irregular Migration in and from the Neighbourhood of the EU: A comparison of Morocco, Turkey and Ukraine”, in: Clandestino Project, 2009: *Undocumented Migration: Counting the Uncountable. Data and Trends across Europe*: 8-9.

in Libya to work or return to their country of origin.<sup>4</sup> Their estimates of the number crossing the Mediterranean are thus much more modest. For example, the International Centre for Migration Policy Development estimated that around 100,000 irregular migrants crossed the entire Mediterranean each year,<sup>5</sup> while Frontex reported 90,243 doing so in 2008.<sup>6</sup>

### III. Across the Mediterranean: Malta and Italy

Across the Mediterranean Sea, Malta and Italy have viewed these flows of irregular migration largely as a ‘threat’, an ‘invasion’, and a ‘crisis’. EU membership has created a perverse incentive for this particular interpretation, as these countries have accused other member states of leaving them to bear the brunt of the so-called migration ‘burden’ in Europe. In order to gain political leverage, as well as financial and practical support, the two southern states have highlighted their perceived vulnerability in the face of irregular immigration. In Malta, the government emphasised the island’s small size and population, along with its high population density, to complete the image of a vulnerable

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<sup>4</sup> This is of course difficult to establish as migrants’ plans may change as new opportunities or limitations arise (see Düvell, Franck; Vollmer, Bastian, 2009, art.cit.: 16-17). Nevertheless, using indications such as the number of irregular migrants apprehended on the Mediterranean borders of countries such as Italy, Malta, and Spain, research has shown that most migrants in Libya do not continue on to Europe. de Haas, Hein, 2007, art.cit.:11-16; Cuttitta, Paolo, 2008: “The Case of the Italian Southern Sea Borders: Cooperation across the Mediterranean?”, in: Godenau, Dirk; Hernández, Vincent Manuel Zapata; Cuttitta, Paolo; Triandafyllidou, Anna; Maroukis, Thanos; Pinyol, Gemma (Eds.): *Immigration Flows and the Management of the EU’s Southern Maritime Borders* (Barcelona: CIDOB edicions).

<sup>5</sup> An estimation based on the apprehensions of irregular migrants in Spain, Italy, Libya and Algeria. Simon, Julien, 2006: “Irregular Transit Migration in the Mediterranean: Facts, Figures and Insights”, in: Sørensen, Nina (Ed.): *Mediterranean Transit Migration* (Copenhagen: Danish Institute for International Studies): 26-42.

<sup>6</sup> Frontex, 2008: “General Report 2008”: 12.

state.<sup>7</sup> In Italy, Prime Minister Silvio Berlusconi and his government exploited the arrival of migrants on the small island of Lampedusa. Although the arrivals on this Italian island are certainly a logistical difficulty affecting the small number of inhabitants, when interpreted as part of immigration to Italy as a whole, the numbers are much less noteworthy.

Indeed, contrary to the political rhetoric, the number of migrants entering Italy irregularly by sea was higher in the late 1990s than during the following decade. At this time, most arrivals were refugees fleeing the conflict in the Balkans across the Adriatic Sea to Italy's mainland eastern coast, rather than its southern islands. For example, in 1999, Italy apprehended 46,481 irregular migrants off the coast of Puglia. Subsequently, arrivals to the area decreased, while irregular arrivals from North Africa to the southern islands of Sicily and Lampedusa conversely increased. In Sicily, the arrivals peaked at 22,824 in 2005, accounting for 99.5 percent of all irregular migrants apprehended at sea borders that year.<sup>8</sup>

This reflects a decrease in overall unauthorised arrivals to Italy. Moreover, the percentage of irregular immigrants in Italy, who arrived in an unauthorised manner, is much smaller than the political rhetoric would lead one to believe. The vast majority of those in Italy irregularly had arrived legally and overstayed their visa or worked outside of its purview. Even in 2005, at the height

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<sup>7</sup> Mainwaring, Cetta, 2012 (forthcoming): "Constructing a Crisis: The Role of Migrant Detention in Malta", in: *Population, Space and Place*; Mainwaring, Cetta, 2011 (forthcoming): "Controlling Migration in the Mediterranean: Malta as the EU's new gatekeeper?", in: Doornik, Jeroen (Ed.): *The Future of European Migration Controls* (Chicago: Chicago University Press).

<sup>8</sup> Cuttitta, Paolo, 2008, art.cit.: 45-62; c.f. Cuttitta, Paolo, 2006: "The Changes in the Fight against Illegal Immigration in the Euro-Mediterranean Area and in Euro-Mediterranean Relations", *Challenge Liberty & Security Working Paper*: 2-3.

of the irregular immigration to Italy's islands, these arrivals made up only 14 percent of irregular migrants in Italy.<sup>9</sup>

In Malta, only a handful of irregular migrants arrived annually on the island before 2002, as the Armed Forces would aid those in distress in order to allow them to continue their journey to Italy. Moreover, those that did arrive on the island and applied for asylum became the responsibility of the office of the United Nations High Commissioner for Refugees (UNHCR) in Rome. However in 2002, Malta introduced a national Refugee Commissioner's Office to process asylum claims as part of the EU pre-accession process. This development coincided with a significant increase in the number of arrivals on the island, from 57 in 2001 to 1,686 in 2002.<sup>10</sup> The increase has been attributed to a shift in migration patterns, as they responded to increased controls on the West African coast and in the western Mediterranean.<sup>11</sup> After the initial increase in irregular immigration in 2002, the issue remained high on the political agenda in Malta, as irregular immigrants continued to arrive in relatively high numbers, peaking at 2,775 in 2008.<sup>12</sup>

The Maltese government's rhetoric on the issue of immigration centres around two interrelated points: the large number arriving in Malta relative to its population, and the limited space and resources to receive these arrivals. The number of irregular

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<sup>9</sup> Ibid.; The Clandestino project has also reported similar findings for other countries across Europe (see Düvell and Vollmer, 2009. Clandestino Project, 2009). This contradiction thus exists across the European Union as a whole, where the emphasis on controlling migration is placed at the southern (and eastern) external border of Europe, while most irregular migrants in the EU arrive through legal channels and subsequently overstay or violate the conditions of their visa.

<sup>10</sup> Mainwaring, Cetta, 2008: "On the Edge of Exclusion: The Changing Nature of Migration in Cyprus and Malta", in: *The Cyprus Review*, 20,2: 19-49.

<sup>11</sup> Lutterbeck, Derek, 2006: "Policing migration in the Mediterranean", in: *Mediterranean Politics*, 11,1: 59-82.

<sup>12</sup> Department of Information, 2009: "UN Working group has failed to appreciate scale of illegal immigration problem in Malta", Ministry for Justice and Home Affairs: Press Release, 23 January.

immigrants arriving on Maltese shores is in fact small in absolute terms. Nevertheless, the government argues that the impact of these arrivals is amplified due to the island's small population (411,452) and high population density (1,282 per square kilometre).<sup>13</sup> Comparisons based on population are made in order to argue, for example, that the total number of irregular migrants who arrived in Malta between 2002 and 2007 is equivalent to 1.2 million reaching the United Kingdom.<sup>14</sup>

The emphasis on the number of arrivals per capita is politically convenient, as it allows the government to maintain that it carries a disproportionate amount of the migration responsibility in Europe, an argument made especially vociferously at EU fora. It is also, however, somewhat misleading. Out of 51 industrialised countries surveyed by the UNHCR, Malta did indeed record the highest number of asylum applications per capita in 2008, and the second highest (after Cyprus) for the period of 2004 to 2009. However, calculating the number of asylum applications based on gross domestic product per capita results in a very different picture. Using this measurement, Malta ranked 24<sup>th</sup> for the period between 2004 and 2009, amongst the 44 industrialised states surveyed.<sup>15</sup>

Nevertheless, at least in rhetoric, Malta and Italy have viewed this southern back door as a weak point in national and regional border controls. Facing similar migration pressures to other southern European countries, and with minimal political clout, Malta championed an alliance, known as the Quadro Group, with Italy, Spain, and Cyprus in 2008. The aim of the group is to raise

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<sup>13</sup> As of 2008 (World Bank).

<sup>14</sup> See for example an article written by the Maltese Prime Minister: Gonzi, Lawrence, 2007: "Illegal Immigration: A Maltese View", in: *European View*, 5 (Spring): 41-45.

<sup>15</sup> UN Refugee Agency (UNHCR) (2009, March 24). *Asylum Levels and Trends in Industrialized Countries, 2008*. Available at: <http://www.unhcr.org/49c796572.html>; UN Refugee Agency (UNHCR) (2010, March 23). *Asylum Levels and Trends in Industrialized Countries, 2009*. Available at: <http://www.unhcr.org/4ba7341a9.html>.

awareness within the EU of the “challenges posed by illegal immigration and asylum” in the Mediterranean, with a specific focus to advocate for the reallocation of refugees within the EU, a revision of the Dublin II Regulation, the strengthening of Frontex, and the continued negotiation of multilateral and bilateral readmission agreements with third countries.<sup>16</sup> The Group’s focus is to shift responsibility for asylum and irregular immigration to other member states and to transit countries. It also ironically inverts previous rhetoric depicting the Mediterranean as Europe’s ‘soft, vulnerable underbelly’,<sup>17</sup> shifting blame northward to larger member states, for their perceived lack of interest in controlling southern EU borders.

Despite this alliance, tension between Malta and Italy remained high, especially with regard to the rescue of migrants at sea. An incident occurring in May 2009 is illustrative of this dynamic. A four-day standoff between Italy and Malta ensued when a Turkish cargo ship, the Pinar, came across two boats carrying 154 migrants and refugees who were in need of rescue, 45 nautical miles from Lampedusa. Having taken the migrants on board through coordination from Malta’s Armed Forces Operations Centre, the question arose as to whether the migrants should be taken to Lampedusa, which was geographically closer, or to Malta, in whose search and rescue (SAR) region they had been found. The Maltese government insists that in cases like these, where boats are found outside their territorial waters but inside their SAR region, their obligation lies only in coordination and irregular migrants should be taken to the nearest safe port. Italy, on the other hand, maintains that the coordinating state should receive migrants rescued at sea. In this case, the migrants and refugees

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<sup>16</sup> Quadro Group: “Cyprus, Greece, Italy and Malta Paper”, January 2009.

<sup>17</sup> Katrougalos, George; Lazaridis, Gabriella, 2003: *Southern European Welfare States: Problems, Challenges and Prospects* (Basingstoke: Palgrave Macmillan): 169; Haynes, Mike, 1999: “Setting the Limits to Europe as an ‘Imagined Community’”, in: Dale, Gareth; Cole, Mike (Eds.): *The European Union and Migrant Labour* (Oxford: Berg): 17-42.



remained on board the Turkish cargo ship with minimal provisions for their health and safety for over four days, until Italy capitulated and agreed to transfer them to their patrol boats.<sup>18</sup>

#### **IV. Looking South: Libya's Role in Migration Patterns and Politics**

Although such incidents caused diplomatic tension between Malta and Italy, both states long agreed that the real culprit was Libya.<sup>19</sup> Malta and Italy viewed Colonel Gaddafi as a liability, a leader unwilling to prevent irregular departures from his shores and to sign the kind of readmission agreements seen in West African countries, allowing EU member states such as Spain to return migrants to countries through which they have transited, but where they are not nationals.<sup>20</sup> Gaddafi also often stalled negotiations with European countries, using his strategic North African position and large oil reserves to increase his bargaining power.<sup>21</sup> However, in the wake of the Pinar incident and after years of negotiation, Italy managed to secure a Treaty on Friendship, Partnership, and Cooperation (2008), which ushered in joint operations to patrol Libya's maritime border. In return for

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<sup>18</sup> Ministry of Foreign Affairs, Malta: "Ministerial Statement regarding the immigrants who were rescued by the M/V Pinar-E off Lampedusa", Press Release (21 April 2009). For more detail on this legal dispute between Malta and Italy, see Klepp, Silja, 2011: "A Double Bind: Malta and the Rescue of Unwanted Migrants at Sea, a Legal Anthropological Perspective on the Humanitarian Law of the Sea", in: *International Journal of Refugee Law*, 23,3: 538-557.

<sup>19</sup> Grech, Herman: "Right back where they left", *Times of Malta* (25 July 2010); Interviews: government officials, 2008-2009.

<sup>20</sup> For a discussion on EU member states favouring informal readmission agreements see Cassarino Jean-Pierre, 2007: "Informalising Readmission Agreements in the EU Neighbourhood", in: *The International Spectator*, 42,2: 179-196.

<sup>21</sup> Paoletti, Emanuela, 2008: "A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU", in: *Agora Without Frontiers*, 13,4: 292-322.

Libya's cooperation in curtailing irregular immigration, Italy pledged \$5 billion in colonial reparations over the next 25 years.<sup>22</sup>

Although it did not include a formal readmission clause, the Treaty provided Libya with a large monetary incentive to increase patrols along its maritime border. The agreement also resulted in Italy returning boatloads of migrants and refugees to Libya from the high seas, without granting access to asylum. The UNHCR reported that Italy refused entry to at least 900 people after the agreement came into force in May 2009. Along with NGOs, it voiced its dismay at these events and pointed to Italy's contravention of the principle of non-refoulement and other international norms. These groups highlighted Libya's record of human rights' abuses and the lack of asylum legislation in a country that is not a signatory to the Geneva Convention. The grave consequences of denying access to asylum procedures in Europe became clear as reports emerged documenting the experiences of those returned to Libya, only to suffer at the hands of the Libyan authorities or to be repatriated to countries where their lives were in danger.<sup>23</sup>

Malta's own relationship with Libya has notably changed since it joined the EU. Despite persistent maritime disputes, Malta and Libya historically enjoyed good relations, as formalised in the 1984 Treaty of Friendship and Co-operation. Among other things, the Treaty allowed Maltese and Libyans to travel between the two countries without a visa, a practice that was upheld until 2004 when Malta joined the EU. Malta also previously acted as a mediator between the international community and the isolated Libyan state.<sup>24</sup>

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<sup>22</sup> "Italy to pay Libya \$5 billion", *New York Times* (31 August 2008).

<sup>23</sup> "UNHCR interviews migrants pushed back to Libya", UNHCR Briefing Notes (14 July 2009); Human Rights Watch (HRW) (2009, September 21). *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*. Available at: [http://www.hrw.org/sites/default/files/reports/italy0909webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/italy0909webwcover_0.pdf).

<sup>24</sup> "Libya's bridge to Europe", *Malta Today* (29 April 2009); Metz, Helen Chapin, 2004: *Libya* (Whitefish, MT: Kessinger Publishing) 230-32.

However, as Malta's political framework shifted to an EU context and there was simultaneously a *volte-face* in Libyan-EU (and Libyan-US) relations as the international community began to bring Libya into its fold, Malta's relationship with Libya ironically suffered. Although Maltese officials maintained that they continued to play an important role as a mediator between the EU and Libya,<sup>25</sup> the influx of migrants from Libya into Malta increasingly strained relations between the two countries. Frustration grew among the Maltese authorities and the wider public who believed that Gaddafi was turning a blind eye to migrants leaving Libya.<sup>26</sup>

However, the Italian-Libyan agreement and the associated 'push back' policy caused a 40 percent drop in migrant arrivals in Malta between 2008 and 2009,<sup>27</sup> and a further drop in 2010, when only 28 people arrived irregularly.<sup>28</sup> The Maltese government thus embraced and publicly supported Italy's Treaty of Friendship without reservation over human rights issues, having been unable to secure its own agreement with Libya despite its best efforts.<sup>29</sup> Indeed, government officials expected that the Libyan-Italian agreement would resuscitate negotiations for an EU-Libyan readmission agreement.<sup>30</sup>

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<sup>25</sup> For example, they organised a meeting in July 2005 on the issue of saving migrant lives in the Sahara Desert and in the Mediterranean Sea, which Libya allegedly only attended because it took place in Malta (Interviews: Permanent Secretary, MJHA, July 2006; Maltese Ambassador to Libya, July 2008).

<sup>26</sup> Interviews: government officials, 2006-2009.

<sup>27</sup> There were 1,475 arrivals in 2009, compared to 2,775 in 2008. National Statistics Office, "World Refugee Day 2010" (18 June 2010).

<sup>28</sup> "European Commission does not endorse push-back policy", *Times of Malta* (5 August 2010).

<sup>29</sup> Grech, Herman: "Right back where they left", *Times of Malta* (25 July 2010);

Interviews: government officials, 2008-2010.

<sup>30</sup> Interviews: government officials, 2008-2009.

## V. The Libyan Civil War: A New Impetus for Migration

This cooperation was, however, short-lived, being interrupted by the political unrest seen in Libya in 2011. Although protests against housing shortages and political corruption had already taken place in Benghazi earlier in the year, more widespread protest erupted in Libya on February 15<sup>th</sup>, 2011 against the 42-year rule of Muammar Gaddafi. Within a few days, anti-government forces took control of Libya's second largest city, Benghazi, 650 kilometres east of Tripoli. Establishing the National Transitional Council, the rebels made the port city their capital, and called for the removal of the Gaddafi regime from power and for democratic elections to be held.

Initially, the United Nations Security Council passed a resolution freezing the assets of Gaddafi and ten members of his inner circle, as well as restricting their travel (Resolution 1970, 2011). This initial resolution also referred the case to the International Criminal Court (ICC) for investigation. Based on evidence of attacks on unarmed civilians, the ICC issued arrest warrants for Gaddafi, his son, Saif al-Islam Gaddafi, and his intelligence chief, Abdullah al-Sanoussa.<sup>31</sup> On March 17<sup>th</sup>, the Security Council passed another resolution (1973, 2011), imposing a no-fly zone and permitting air strikes in order to protect civilians under attack. The North Atlantic Treaty Organisation (NATO) soon took command of coordinating the international coalition, maintaining the no-fly zone and carrying out air strikes.

Caught in the crossfire of this war are not only Libyans, but also the large migrant community in the country. The estimated 1.5 million Sub-Saharan migrant labourers in Libya quickly came under attack from both government and anti-government forces, often being perceived as mercenaries. Indeed, in the past as now, Gaddafi recruited foreign mercenaries (sometimes through force or deception)<sup>32</sup> from neighbouring countries, such as Chad.<sup>33</sup>

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<sup>31</sup> ICC: "Statement ICC Prosecutor Press Conference on Libya" (16 May 2011).

<sup>32</sup> Tesón, Nuria: "Mercenarios de 15 años", *El País* (25 February 2011).

Under attack, many migrants in Libya have attempted to flee the conflict. Despite European rhetoric of the ‘invasion’ into Europe, the vast majority of these migrants have travelled to neighbouring African countries rather than making the voyage across the Mediterranean Sea. As of July 5<sup>th</sup>, 612,872 migrants had left Libya since the war began. As the chart below depicts, 43 percent of these migrants fled across the border to Tunisia. A further 31 percent fled across the eastern border into Egypt and 12 percent across the south-western border into Niger. In total, 96.6 percent of migrants leaving Libya made their way to neighbouring African countries, often countries of their birth. In contrast, only 3.4 percent of these migrants (20,659) have arrived in the southern European countries of Malta and Italy.

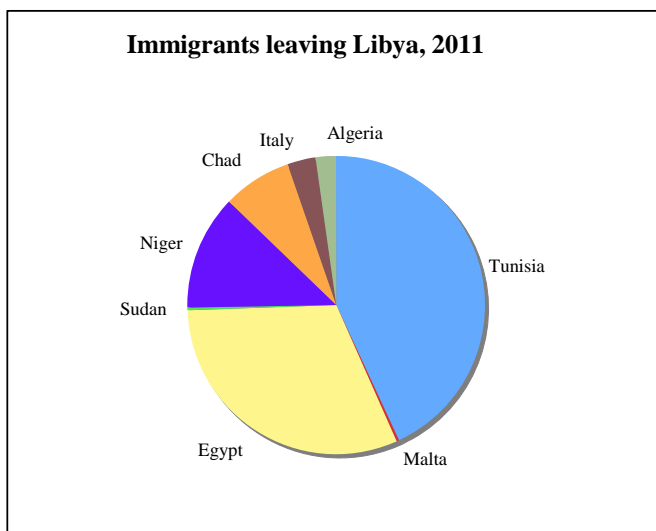


Figure 22.1: Immigrants leaving Libya in 2011  
*Source: Statistics are as of July 5<sup>th</sup>, 2011 and refer only to migrants leaving Libya. See IOM, “Overall cross-border movements on 5 July” (6 July 2011).*

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<sup>33</sup> Smith, David: “Has Gaddafi unleashed a mercenary force on Libya?”, *Guardian* (22 February 2011).

Nevertheless, and despite the fact that the volume is no different to the number of irregular immigrants arriving in previous years, the reaction by the European Union, especially its southern member states, has exaggerated and sensationalised the volume of immigration. For example, Robert Maroni, the Italian interior minister, has warned of a “biblical exodus”,<sup>34</sup> and Berlusconi referred to a “human tsunami” in Lampedusa.<sup>35</sup> Under attack, now from both European countries in the coalition and the Libyan Transitional National Council, Gaddafi has done little to quell these fears, threatening to “unleash an unprecedented wave of illegal immigration” into Europe.<sup>36</sup>

Such rhetoric echoes previous statements made by Gaddafi. In 2010, speaking at a ceremony in Rome while on an official trip to Italy to secure the € billion deal, Gaddafi said, “Tomorrow Europe might no longer be European, and even black, as there are millions who want to come in.... We don't know if Europe will remain an advanced and united continent or if it will be destroyed, as happened with the barbarian invasions.”<sup>37</sup>

This constructed invasion is highly problematic in multiple ways. First, it ignores the agency of migrants, and the complex decision-making involved in migration. Although Gaddafi has fallen out of favour with the international community as of late, the rhetoric surrounding the immigration from Libya now, as before, reifies the power of a dictator to single-handedly chart the course of migrants. It ignores not only the agency of migrants, but also the demand for migrant labour in Europe, which acts as a pull

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<sup>34</sup> Pop, Valentina: “EU ignores Malta on special status for refugees”, *EU Observer* (31 March 2011).

<sup>35</sup> “Berlusconi: ‘Human tsunami’ arraigining in Lampedusa”, *BBC* (10 April 2011).

<sup>36</sup> Hewitt, Gavin: “Europe is rocky shore for Europe’s boat people”, *BBC* (11 July 2011).

<sup>37</sup> “Gaddafi wants EU cash to stop African migrants”, *BBC* (31 August 2010).

Similarly, there are allegations that Gaddafi is detaining migrants in Libya to put on boats to send across the Mediterranean. Peregini, Christian: “Gaddafi ‘rounding up migrants’ on boats to unleash them onto Europe”, *Times of Malta* (9 March 2011).

factor. Moreover, it sensationalises the issue at hand, encouraging racist and xenophobic attitudes.<sup>38</sup>

## VI. Cracks in EU ‘Solidarity’?

Nevertheless, such rhetoric is politically convenient in adding political mileage to the interests of southern European countries. It depicts Malta and Italy as the gatekeepers and protectors of Europe against an exaggerated tide of migration. On the heels of this rhetoric, Malta requested that the EU activate a temporary protection mechanism provided for in a 2001 directive in the event of a “mass influx of displaced persons”.<sup>39</sup> Initially designed to manage the influx of Kosovan refugees, the directive would grant migrants fleeing Libya access to fast-track asylum processes across the European Union. However, without the political will to establish a precedent for this mechanism, which has yet to be activated, and due to the associated political difficulties of defining a ‘mass influx’, Malta’s request fell on deaf ears.<sup>40</sup>

Italy has also advanced a rhetoric of invasion and invoked calls for EU solidarity. For example, in February 2011, it joined with Spain, France, Cyprus, and Malta in calling on other EU countries

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<sup>38</sup> For example, in Malta, a poll conducted by the *Times of Malta* in 2005 revealed that 90 percent of respondents perceived an African or Arab neighbour to be undesirable Grech, Herman. “Are we Racist?” *Times of Malta* (20 August 2005); c.f. “Immigration is ‘national crisis’, 84% say”, *Malta Today* (5 April 2009). For a detailed account of the rise of the far right, spurred in part by the issue of irregular migration, Falzon, Mark-Antohny; Micallef, Mark, 2008: “Sacred Island or World Empire? Locating Far-Right Movements In and Beyond Malta”, in: *Journal of Contemporary European Studies*, 16,3: 393–406. For a discussion of the rise of racism and xenophobia in Malta and Cyprus, see Mainwaring, Cetta, 2008, art.cit.: 32-33.

<sup>39</sup> Council of the European Union, 2001: “Minimum standards for giving temporary protection in the event of a mass influx”, in: *Official Journal of the European Union*. L 212/12 (7 August).

<sup>40</sup> Pop, Valentina: “EU ignores Malta on special status for refugees”, *EU Observer* (31 March 2011).

to resettle the migrants arriving in these southern countries.<sup>41</sup> However, it did not support Malta's request to activate the 2001 directive, claiming there was no mass influx.<sup>42</sup> Instead, Berlusconi has resorted to other measures.

When faced with the arrival of 20,000 Tunisians fleeing the turmoil in their country, Berlusconi granted them temporary residence visas after transferring them from Lampedusa to overcrowded camps on the mainland.<sup>43</sup> These visas allowed the Tunisians to travel freely through the Schengen area. The colonial ties between France and Tunisia prompted many to move northwest towards the French-Italian border, attracted to the country by the language and kinship networks.<sup>44</sup>

In one of the most dramatic consequences of the migration from North Africa, Sarkozy sparked a diplomatic crisis within Europe when he closed the border between France and Italy in order to obstruct a train carrying Tunisian immigrants and activists at the end of April 2011. Accusing Italy of inflicting its immigrant problem onto other Schengen countries, France also refused to recognise the residence visas unless the Tunisians could provide evidence of finances that would sustain them for several months without employment.<sup>45</sup>

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<sup>41</sup> "Italia, Francia e Spagna all'Europa: 'Serve un fondo per gli immigrati'", in: *La Stampa* (25 February 2011).

<sup>42</sup> This may be due to the temporary status provided for in the directive that can be extended for up to two years, a length of time that could produce higher costs for the host state [Pop, Valentina: "EU ignores Malta on special status for refugees", *EU Observer* (31 March 2011)].

<sup>43</sup> Simultaneously, an agreement was reached with Tunisia to stop any new arrivals departing from Tunisian shores. In return for Tunisian cooperation, Italy pledged to provide assistance and technical support to Tunisia's security forces.

<sup>44</sup> "Italy strikes deal to limit mass migration", *Times of Malta* (6 April 2011).

<sup>45</sup> In both countries, Sarkozy and Berlusconi exploited the situation as a means of placating their domestic far-right constituencies ["France blocks Italian trains carrying migrants", *BBC* (17 April 2011); "France had right to halt migrant trains from Italy – EU", *BBC News* (18 April 2011)].



The EU supported France's closure of the border, maintaining that they had a right to do so temporarily in order to avoid disturbances to "public order".<sup>46</sup> Indeed, in response to the migration into southern Europe from North Africa, the EU has attempted to resolve the internal tension partially through the promotion of voluntary assistance between member states. As a result, over ten countries, including three non-EU states, pledged to resettle 323 migrants from Malta.<sup>47</sup> However, the Commission noted that these measures:

*"can only be resorted to in an ad hoc manner, and are entirely dependent on the will of Member States to voluntarily offer assistance – in whatever form – at a given point in time. This in turn exposes the EU to criticism and risks undermining the trust of the citizens in the EU".*<sup>48</sup>

In a thinly veiled reference to the Italian-French dispute, the Commission highlighted that a visa waiver could lead to large-scale irregular immigration or endanger security. The Commission proposed an amendment to the Visa Regulation that would allow the reintroduction of visa requirements for third country nationals under certain conditions. Along with this amendment was the suggestion of a:

*"mechanism...to allow the Union to handle situations where either a Member State is not fulfilling its obligations to control its section of the external border, or where a particular portion of the external border comes under unexpected and heavy pressure due to external events."*<sup>49</sup>

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<sup>46</sup> Ibid.

<sup>47</sup> Camilleri, Ivan: "323 migrants from Malta to be resettled in Europe", *Times of Malta* (12 May 2011).

<sup>48</sup> European Commission, 2011b: *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM (2011) 248 final* (Brussels: European Commission).

<sup>49</sup> Ibid.

Echoing the Commission, if rather more obliquely, the Council also suggested establishing a mechanism for the reintroduction of international border controls “in a truly critical situation where a Member State is no longer able to comply with its obligations under the Schengen rules”.<sup>50</sup>

In parallel to these efforts, both arms of the European Union have supported the strategy of externalizing border controls to countries outside the EU through so-called “mobility partnerships”, particularly to countries on the southern rim of the Mediterranean in this context. For example, the Commission stated that:

*“cooperation [with third countries] should also build on the principle of conditionality applied to migration issues in order to encourage effective commitment by our partners in preventing irregular migration flows, in managing their borders efficiently and in cooperating on the return and readmission of irregular migrants”.*<sup>51</sup>

Historically, such partnerships have been made both multilaterally and bilaterally, often between two states before the political climate would allow an agreement to be struck between the EU and a third country. Indeed, Italy’s 2008 agreement with Libya is an apt example as the bilateral agreement induced further cooperation between the EU and Libya. In June 2010, the Commission signed a Memorandum of Understanding with Libya, and a few months later, in October, signed a two-year agreement that included “cooperation on the management of irregular immigration flows, border control and security, regional and pan-African dialogue on refugees and international protection to

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<sup>50</sup> Council of the European Union, 2011: *European Council 23/24 June Conclusions, EUCO 23/11*, (Brussels: EU Council); c.f. *ibid.*

<sup>51</sup> European Commission, 2011b, *art.cit.*; c.f. European Commission, 2011a: *Communication: A dialogue for migration, mobility and security with the southern Mediterranean countries, COM (2011) 292 final* (Brussels: European Commission).

asylum seekers”.<sup>52</sup> As part of the deal, the EU dedicated €50 million for joint projects.<sup>53</sup>

The civil war that erupted in Libya just months later disrupted this cooperation. Nevertheless, on 17<sup>th</sup> June 2011, Italy, somewhat prematurely, signed a migration accord with the Libyan Transitional National Council. The Agreement is said to cover “cooperation in combating illegal immigration, including repatriation of illegal immigrants”<sup>54</sup> and is in line with the Council’s previously pledge to uphold any agreements made by Gaddafi.<sup>55</sup>

Despite these developments, migrants continue to flee from the war-torn country. These arrivals have rekindled the tension between Italy and Malta, to the detriment of the migrants travelling across the Sea. Thousands have drowned at sea,<sup>56</sup> and others have fallen victim to political wrangling between EU states. For example, on 10<sup>th</sup> July, a Spanish warship, operating under NATO command, rescued 111 migrants, including women and children, who were drifting at sea after their engine failed. Unable to repair their engine, they brought the migrants aboard the ship and travelled to Lampedusa, the closest port. The Italians refused them entry and directed them to Malta, whose Operations Centre had coordinated the initial rescue. The Spanish ship waited in Maltese waters as diplomatic talks took place between Malta, Italy and Spain. However, Malta refused to receive the migrants who were eventually disembarked in Tunisia on 16<sup>th</sup> July.<sup>57</sup>

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<sup>52</sup> Quoted in Camilleri, Ivan: “Libya, EU sign crucial accord”, *Times of Malta* (6 October 2010).

<sup>53</sup> Ibid.; “EU Commission in Libya for migration talks”, *Times of Malta* (4 October 2010).

<sup>54</sup> Ministry of Foreign Affairs, Italy: “Immigration: Frattini signs accord with Libyan NTC” (17 June 2011).

<sup>55</sup> “Italy signs migration accord with Libya rebels”, *Reuters* (17 June 2011).

<sup>56</sup> Fortress Europe estimates that 1,931 migrants have drowned in the first seven months of 2011. “Nearly 2,000 migrants believed to have died crossing the Med”, *Times of Malta* (16 August 2011).

<sup>57</sup> Sansone, Kurt: “Warship carrying migrants refused entry”, *Times of Malta* (15 July 2011).

These political disputes deny migrants access to European asylum processes. Instead, they are sent back to countries that are likely to have a much lower asylum capacity. Such political disputes are also certain to cause deaths at sea, as countries are slow to respond to migrants in distress for fear of setting political precedents.<sup>58</sup> Moreover, these incidents reflect a high degree of mistrust between member states and deep fissures in so-called EU ‘solidarity’.

## VII. Conclusion

The civil war in Libya brought about an end to Gaddafi’s cooperation in deterring migrants from leaving Libyan shores in the first place, but also in accepting the return of migrants intercepted by Italy and Malta on the high seas. Without this cooperation, the migration from Libya has struck at the heart of EU solidarity, revealing fractured relationships. In Malta, the government has renewed its criticism of other member states for not sharing the responsibility, especially after its calls to activate the EU-wide temporary protection mechanism were rebuffed. In Italy, the arrival of Tunisian migrants has caused a diplomatic standoff between the country and France, as Berlusconi facilitated their movement across the Italian-French border. This caused France to reinstate controls along its borders with Italy, signalling a significant breakdown in the cooperation and trust envisaged in the Schengen Agreement, in operation across Europe since 1995.

These developments indicate the fragility of EU solidarity, as well as the unlikelihood that a common European asylum system is achievable in the foreseeable future. With migration politics squarely focused on shifting the perceived burden to other member states and increasingly to non-member states, we can only expect

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<sup>58</sup> Recognising this trend, NGOs are launching an initiative whereby they would have a presence at sea in order to aid migrants in distress. “NGOs plan to help migrants at sea”, *Times of Malta* (21 July 2011).

that any harmonised European asylum system will be one of the lowest common denominator. Already, the EU provides perverse incentives to lower standards of reception: for example, the poor detention conditions in Malta and the inferior asylum system in Greece have resulted in other EU member states suspending the return of migrants and refugees who have travelled from these countries. Indeed, much of the EU asylum system, notably the Dublin II Convention, presupposes common and equal asylum systems across member states.

Moreover, the recent history of Libyan-EU relations highlights the dangers of striking deals with undemocratic states with opaque systems in order to control migration. International political judgement, in its fickle manner, has decided of late that Gaddafi is, after all, a dictator whose murderous actions against his own people can no longer be tolerated. However, mere months ago Gaddafi was entrusted with securing a section of the EU's southern border and given responsibility for the migrants and refugees returned from Italy, of whose ill fate we now know. This was done despite the clear abuse of human rights by the authorities within the country, as well as the absence of an asylum system. Ignoring these consequences, the Italians now have hastily secured a similar migration arrangement with the Transitional National Council, an enigmatic body that is still in its infancy. Such actions undermine the rhetoric of European values and continue to jeopardise access to asylum in Europe.