

EU Policies on Mixed Migration Flows in the Mediterranean Sea

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Abstract

The tragic deaths of over 300 people off the coast of Lampedusa in 2013 and many other incidents involving migrants from Middle East and North Africa (MENA) crossing the Mediterranean in order to seek refuge in Europe has led to a European Union (EU) level debate on asylum policies and how to deal with irregular migration. However, no concrete policy has been agreed since the tragic events at Lampedusa in 2013 and continuous crossings that have resulted in many more deaths.

This background brief provides an overview of the existing EU policies on asylum seekers and in addressing irregular migration and some of the actions which the relevant Member States take when confronted with continuous flows of irregular migrants. This brief concludes that the EU should delink the rescue of irregular migrants from security concerns, provide a legal basis which offers protection to irregular migrants, and create a transparent working environment in which member states are better able to support each other when dealing with such events.



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EU Policies on Mixed Migration Flows in the Mediterranean Sea

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Introduction

In October 2013, a boat with around 500 migrants sank off the coast of Lampedusa. More than 300 people died, which triggered a strong call for action from European leaders and the public to prevent this tragedy from happening again. This event and many other incidents involving migrants from Middle East and North Africa (MENA) crossing the Mediterranean in order to seek refuge in Europe has led to a debate on an EU level regarding asylum policies and how to deal with irregular migration. However, while debates continued, no concrete policy was agreed upon, and one year later, in September 2014, another 500 migrants drowned in their attempt to cross the Mediterranean Sea.

This background brief gives an overview of existing EU policies on asylum seekers and in addressing irregular migration and some of the actions which the relevant Member States take when confronted with continuous flows of irregular migrants.

Please note that this paper uses the term “irregular migration” rather than “illegal migration” throughout. Irregular movement by sea is commonly understood to refer to travel involving unauthorized departure or arrival by sea. Documents by the EU use the term “irregular” and “illegal”. However, since the term “illegal” is considered to have a negative connotation, NGOs and other stakeholders in this field prefer the term “irregular”.

In order to understand the issues which arise in the Mediterranean, one has to look at the numbers and scope of irregular migration. Arrivals

by sea into the EU have increased significantly in 2014: 75,000 people arrived in Spain, Greece, Italy and Malta in the first half of 2014, whereas 60,000 migrants and refugees arrived in the whole of 2013. Italy received the highest number with 64,000 in the first half of 2014. The Central Mediterranean route had the largest percentage of all detections of irregular crossings of EU external border, namely 40,304 in 2013 which amounted to 38 per cent of the total detections. Most boats departed from Libya and Egypt. The main nationalities of the refugees and migrants entering the EU through this route have been Eritrean, Syrians and Somalians (Italian Council for Refugees, 2014). This route is the deadliest in the world. The Strait of Sicily is a small, easily navigable area, between Tunis and Lampedusa, covered through the Search and Rescue Zones of Malta, Italy, Tunisia and Libya. This stretch of the Mediterranean is anything but a deserted area with a high number of commercial fleets, and military and maritime surveillance vessels. For many migrant boats, however, it has become a deadly trap. The number of migrants who have died at the sea frontiers of the EU is high but unknown, as are the identities of many (Grant 2011). The International Organisation for Migration (IOM) estimates that from 1988 to 2013 about 15,000 people died, trying to cross the southern Mediterranean border through irregular means (International Organisation for Migration, 2014:92). Figures which are available should be treated with caution, because estimates tend to be based on media reports, on detection levels, or on the accounts of survivors of a particular incident. No precise statistical accounting is possible and actual figures may be higher.

Currently, Italy hosts over 108,000 migrants who arrived by sea, far more than any country in the region. Greece has nearly 15,000, while some 1,800 are in Spain and around 300 in Malta (Africa Research Bulletin 2014). The two most obvious reasons for migration from Africa are the socioeconomic gap between Africa and Europe and conflicts in several African countries. However, the reasons for irregular migration are actually quite complex. Failing states, authoritarian regimes, and war-torn regions have all contributed to the outflows of people from the Middle East and Africa

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to Europe (Demmelhuber 2011). Persons entering the EU in an irregular manner are not a homogenous group with transit migrants, labour migrants, and refugees being the most relevant sub-groups (ibid.). Since the EU is one open area of free movement, some countries control sections of the EU's external borders on behalf of others.

When discussing irregular migration one cannot exclude the issues of rising sentiments against immigrants and the rise of the far-right/anti-immigration parties. These developments are fuelled by the Euro zone crisis and the raft of austerity measures that came into place to address the debt crisis. High unemployment rates, a fall in living standards and the fear of immigrants and asylum seekers have contributed to many voters shifting their support to anti-immigrant, far-right and fringe parties in many EU Member States. This has become obvious both at a national level and at the EU level, reflected in the latest European elections in May 2014. From the Sweden Democrats to the True Finns, from Marie Le Pen's National Front in France to Golden Dawn in Greece, anti-immigrants sentiments have been whipped up by these parties capitalising on the insecurities felt by the electorate.

On the question of how the EU should approach this problem of irregular migration in the Mediterranean, there is considerable discord, dividing those who believe far more needs to be done to prioritise the saving of lives, from those who fear any shift in emphasis away from border enforcement will only encourage people trafficking and a steady flow of irregular migrants into European shore. Instead of facilitating legal ways for refugees to travel safely to Europe, the EU increasingly expects its neighbours in the Middle East and North Africa to prevent people from reaching its borders, leaving many in a state of limbo. While the EU has the right to control its borders, this author believes that the security imperatives should not override the human rights commitments which are founding principles of the EU. Furthermore, all EU Member States are committed to certain international conventions. The most important ones in the refugee and asylum context being the Human Rights

Convention of the United Nations (UN), and especially the 1951 Geneva Convention on Refugees and its 1967 New York Protocol. Article 1 of the Convention defines a refugee as someone who is outside her/his country of habitual residence and who has left this country due to a fear of persecution (Hatton 2009). Article 33 provides that a person cannot be forcibly returned to a territory where he or she may be at risk of persecution; this is called the non-refoulement principle (ibid.).

Access to the EU's Territory

Primarily because of the terrorist attacks on the USA in 2001, in Madrid in 2004 and in London in 2005, measures to prevent irregular migration have become stricter. This has worsened the situation for genuine asylum seekers. The EU Member States adopted security measures, which led to an increasingly restrictive interpretation of the right to access the asylum system and state territory of the EU (Peers & Rogers 2006). A corollary of restricting legal migration and tightening access to Europe is that irregular migration has increased significantly. For instance, the imposition of visa requirements on nationals of refugee-producing countries puts asylum-seekers in the situation of having to resort to irregular forms of migration to enter the EU first and seek protection. The European Council on Refugees and Exiles (ECRE) highlights also that the only way for people fleeing for their lives to attempt to come to Europe is through the use of organised crime groups. This is further underlined by the requirement for Airport Transit Visas, which are used to prevent asylum applications at airports from persons in transit towards further destinations. However, it also should be borne in mind that the EU has to keep a balance: while guaranteeing respect for fundamental freedoms and rights, it has to take a joint approach to cross-border problems such as irregular migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof.

On the basis of the Stockholm Programme (2009-2014), Strategic Guidelines for Legislative and

Operational Planning in the Area of Freedom, Security and Justice have been defined in June 2014 during the European Council meeting. While assuring the EU's commitment in the areas of migration, asylum and border management, there is no mention of any further concrete initiatives in these fields to address the challenges that arise due to the growing number of conflict areas all over the world. Furthermore, the Council has no answers to the recurring requests for EU solidarity by Italy which is currently facing unprecedented high migration pressure at its sea borders (Italian Council for Refugees 2014).

According to Basaran (2014: 366) the problem is not geography or a lack of capacities, as often described in EU debates, but disagreements over the sanctioning of rescue. In 2011, the unpopular case of a "left-to-die boat" occurred - the boat "returned" after fourteen days adrift in the Strait of Sicily with only eleven of seventy-two passengers surviving the ordeal. Testimonies of survivors confirm encounters with military helicopters, ships and fishing vessels, but nobody came to their rescue. No one bothered even to inform the maritime authorities. This case that came into light was not a unique case. There seems to be a tendency to turn away from boats with irregular migrants, even if the boat is in real distress, in order to avoid costly investigations, detention or possible prosecution (see chapter "The Principle of Non-Refoulement and Push-Backs"). This is contrary to the principle of non-refoulement which all EU Member States are committed to. The signatories are obliged to check if an irregular migrant is in need of international protection. Furthermore, a person cannot be repatriated to a country in which she/he might face persecution. The so called push-backs adopted by the EU are a violation of the principle non-refoulement; it is also a violation of the human rights of migrants sent back to the country from which they started their journey without an assessment of their protection needs. Despite the fact that there is a legal duty to provide assistance at sea, over the last decades an increasing number of laws, regulations and practices on national, regional and international levels have effectively discouraged rescue at sea (ibid.).

Task Force Mediterranean

As already mentioned, the tragic event at the Strait of Sicily in October 2013 has led to a reinvigoration of debates on saving lives at sea. A few weeks after this incident, the European Commission, the European Parliament and the European Council released statements on the need to prevent these tragedies from happening again. The Justice and Home Affairs (JHA) Council proposed the set-up of the Task Force Mediterranean to identify solutions to avoid such tragedies. Subsequently, there were two meetings, on 24 October 2013 and 20 November 2013, with all Member States, the European External Action Service and various EU Agencies, including the European Asylum Support Office (EASO), European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Europol, European Maritime Safety Agency (EMSA) and the Fundamental Rights Agency (FRA).

The meetings resulted in a Communication identifying five areas of action. The first action point is to look into cooperation with third countries to strengthen capacities in managing mixed migration flows, for example through Mobility Partnerships agreement. The second action point is on regional protection, resettlement and reinforced legal avenues to Europe. Existing Regional Protection Programmes should be strengthened and reinforced and new ones established. Another action proposed in this area is the expansion of resettlement programmes. The third action point which addresses the fight against trafficking, smuggling and organised crime, should mainly be supported through EUROPOL and inter-agency cooperation. Fourthly, Frontex and inter-agency cooperation should assist in border surveillance, in order to enhance the protection and saving of the lives of migrants in the Mediterranean. And the last action point is aimed at the assistance and solidarity with EU Member States dealing with high migration pressure, for instance through funding and assistance by EASO (European Asylum Support Office) and Frontex (European Commission 2013: 2f).

The Communication underlines three co-supportive agendas for addressing the issue of tackling tragedies at sea: a Prevention agenda, a Security agenda and a Rescue agenda. The prevention agenda seeks to prevent migrants from reaching the coast. Its aim is to provide incentives to migrants to use legal routes, and at the same time to deter migrants from boarding vessels operated by human smugglers in the first place, and attempting to come to Europe through irregular means. This agenda is addressed primarily through cooperation with third countries, alternative legal migration routes and by deterrence through border surveillance. The security agenda is focused on the fight against smuggling, trafficking and organised crime and to increase border surveillance. However, the rescue agenda of the Communication, focusing on saving lives at sea is hardly discussed. No specific area is dedicated to rescue at sea. The word “rescue” appears only in 2 of the 38 action points (points 1.9 and 3.8). The Communication states that in order to increase operational and coordination capacities for rescue missions, there is a need to strengthen Frontex, complemented by technological fortification through EUROSUR (European Asylum Support Office 2014 & see chapter “Frontex and EUROSUR”). This indicates that there is a strong tendency to prevent people from reaching Europe in an irregular manner. It has to be highlighted that many of the proposals outlined in the Task Force Mediterranean continue with current policies of prevention, security and rescue, increasing operational capacities of Frontex and the Member States, supplemented by border surveillance technologies.

The following paragraphs outline the main policies and approaches of the areas addressed by the Task Force Mediterranean.

Frontex and EUROSUR

In 2004, the European Border Management Agency, Frontex, was founded by the EU. It is a “European attempt to implement the EU’s ‘integrated border management system’ in terms of its external dimension” (Demmelhuber, 2011: 817). Frontex coordinates joint operations among

EU Member States, liaises with non-EU countries to prevent irregular migration to the EU (see chapter “Cooperation with Third Countries”) and focuses on inter-agency cooperation. Frontex aims at strengthening the coordination and cooperation between Member States in their border management, in the training of national border guards and joint return operations, and carrying out intelligence services with regard to new migration routes and human traffickers’ networks.

Detections of irregular border crossing along the EU’s external borders increased by 48 per cent in 2013 against the 2012 figure — from 72,500 to 110,000 approximately. While the annual increase is significant, it was lower than the 141,000 reported during 2011 because of the ‘Arab Spring’ (Frontex 2014: 54). Since its founding in 2004, Frontex has established itself as the key coordination body in the Mediterranean and has coordinated close to fifty sea operations. During this period its budget has increased exponentially from 6 million Euros in 2004 to 94 million Euros in 2013 (Basaran 2014: 371).

Frontex claims that improved maritime border cooperation has had measurable results in reducing people smuggling and preventing the loss of lives at sea. However, the United Nations High Commissioner for Refugees (UNHCR) has criticized state policies which led to asylum seekers coming via the sea being ‘interdicted, intercepted, turned around, ignored by passing ships, shot at, or denied landing’ (Grant 2011: 141). Other reports indicate that on various missions on intercepted boats Frontex staff failed to check if there were people falling under the non-refoulement rule of the UN Convention and Protocol Relating to the Status of Refugees (1951; Protocol 1967 & Demmelhuber 2011).

Another point of criticism is the lack of transparency on various levels. This is an issue in regard to pre-operational risk analysis and the evaluation reports on various missions, which are not made accessible to the public. There is also a low degree of transparency when it comes to Frontex’ reports to the European Parliament. Although the European Parliament was involved in

setting up the agency, it only receives information relating to Frontex's finances but not on operational matters. There is no institutionalised mechanism for Parliament's oversight of the operational activities of Frontex (Ifantis 2012: 43).

In order to strengthen Frontex's operations, the European Border Surveillance System (EUROSUR) was founded. The EUROSUR System came (partly) into force in December 2013. It is a surveillance and data-sharing system which uses satellites and drones to monitor the high seas and the North African coast. "EUROSUR is a multipurpose system to detect and prevent cross-border crime (...), as well as to contribute to saving migrants' lives at the external borders of the Schengen area" (European Commission, 2013: 1). It follows an inter-agency approach and cooperates for example with the European Maritime Safety Agency and the EU Satellite Centre (European Commission 2013). Moreover, all national authorities (e.g. border guard, police, navy, coast guard) are required to cooperate and coordinate via national coordination centres and Frontex (Italian Council for Refugees, 2014: 34). The estimated costs for EUROSUR amount to 244 million Euros (2014-2020). The costs are fully covered by existing EU programmes under the current and next multi-annual financial framework of the EU (European Commission 2013). Although European policymakers claim that the technology will make a contribution to saving migrant lives on the sea, sceptics say that EUROSUR is still primarily focused on preventing migrants reaching Europe. There is a need to re-prioritise and to put humanitarian concerns at the forefront of EUROSUR's operations (Shenker 2013).

Another important development is the implementation of the External Sea Border Surveillance Regulation, in May 2014. It provides the legal framework for activities of sea surveillance, in particular on disembarkation, search and rescue operations and provisions related to the respect of fundamental human rights and the principle of non-refoulement (Italian Council for Refugees 2014: 35).

Operation "Mare Nostrum"

The "Mare Nostrum" project was an Italian military and humanitarian mission which was launched by the Italian Ministry of Defence in October 2013. It was created in the aftermath of the Lampedusa tragedy which left over 300 migrants dead and was operating in the Channel of Sicily. Its aim was to strengthen surveillance on the high seas and search and rescue activities as well as to identify smugglers and traffickers (Italian Council for Refugees 2014: 105). The operation had cost over 9 million Euros a month and involved about 920 officers from the Navy, Custom police, Army, Air Force, Coast Guards, and other stakeholders working in the field of migration. A number of Navy vessels and helicopters with infrared equipment were deployed for the Operation (Asylum Information Database, 2014: 46). No other EU Member State except Slovenia had participated in this operation to support the Italian efforts. However "Mare Nostrum" did receive about 30 million Euros of funding from the European Commission after the Lampedusa tragedy (Nelsen 2014).

From January 2014 to October 2014 142,085 persons have been rescued under the "Mare Nostrum" operation (Italian Council for Refugees 2014: 105). The operation had a broad support by the public and political opinion in Europe. Nevertheless, it was not integrated into the EU framework, despite former Commissioner Malmström's and the Italian Government's call to integrate the operation. This reveals the security centred approach of the EU and a lack of solidarity. "The Council has practically ignored the recurring requests for EU solidarity by Italy currently facing unprecedented high migration pressure at its sea borders" (ibid. p.30). The operation represents a cultural shift with respect to the push-back policy adopted in 2009 by the Italian authorities (see chapter "Cooperation with Third Countries) and which was condemned by the European Court of Human Rights in the Hirsi decision: a large number of Eritreans and Somalis fleeing Libya were returned to Libya without any examination of their protection needs. It was found that this was a clear violation of the principle of non-refoulement.

However, due to the lack of support by the EU and its Member States and the launch of the joint Frontex operation “Triton”, Italy ended “Mare Nostrum” at the end of October 2014. The absence of practical support to Italy from other EU Member States, except for Slovenia and the unheard call to step up financial contributions, led to the Italian government's decision to discontinue Mare Nostrum.

While Mare Nostrum operated in international waters, “Triton” which began its operation on 1st November 2014, is more limited since it is only active within 30 miles off the Italian coast. The operation has a budget of 2.9 million Euros per month, a third of the “Mare Nostrum” operation. Frontex plans a monthly deployment of two ocean patrol vessels, two coastal patrol boats, two aircrafts and a helicopter. In order to support the Italian authorities in collecting information on the people-smuggling networks operating in Libya and other countries, Frontex will also deploy 5 debriefing teams to Italy (Frontex 2014). However, there has been manifold criticism by NGOs, UN human rights groups as well as commercial shipping industry regarding “Triton” since its primary focus is on border control. The International Chamber of Shipping states that “it will clearly be much more difficult for merchant ships to save lives at sea without the adequate provision of search and rescue services by EU Member States. Moreover, whenever a ship performs its legal and humanitarian obligations, it will continue to be incumbent on EU Member States to ensure that those who are rescued can be readily disembarked at the next port of call, even when they may lack documentation” (Quoted in: ECRE 2014).

[UNHCR and the European Council on Refugees and Exiles \(ECRE\)](#) have also repeatedly expressed their objection over the ending of “Mare Nostrum” without an adequate European rescue initiative to replace it. The Italian Council for Refugees has raised its concerns too: “We agree that rescue at sea in the channel of Sicily should be considered a European responsibility and the Italian efforts under the ‘Mare Nostrum’ operation should be supported by other Member States and the

European Commission. For the moment, the ‘Frontex plus’ (now “Triton”) plan does not appear to go into this direction as its predominant aim is strengthening border control and surveillance” (quoted in: *ibid.*).

However, there were also criticisms from another direction: The UK Foreign Office announced beginning of November 2014 that they will not support or participate in any future search and rescue operations to prevent migrants and refugees drowning in the Mediterranean, claiming that such operations encourage more people to attempt the dangerous sea crossing and lead to more deaths. But the UK government seems to stand quite alone with their announcement that search and rescue operations are a “pulling factor”, encouraging economic migrants to come to Europe (Nelsen 2014). The British Refugee Council chief executive, Maurice Wren, opposes this, by stating that: “The British government seems oblivious to the fact that the world is in the grip of the greatest refugee crisis since the Second World War. People fleeing atrocities will not stop coming if we stop throwing them life-rings; boarding a rickety boat in Libya will remain a seemingly rational decision if you’re running for your life and your country is in flames. The only outcome of withdrawing help will be to witness more people needlessly and shamefully dying on Europe’s doorstep” (Quoted in: ECRE 2014). The announcement by the UK has however also intensified discussions on the responsibility to ensure search and rescue of migrants in the Mediterranean, and other related issues on tackling human trafficking, etc.

Enhancing Legal Migration Routes to Europe

In order to understand the relevance of this chapter, it is important to highlight that apart from resettlement, there are no other legal ways for asylum seekers to enter the EU territory to file a claim. Resettlement is defined by UNHCR as “the selection and transfer of refugees from a state in which they have sought protection to a third country that admits them – as refugees – with a permanent residence status”. Although resettlement is considered a very durable solution, it is also at the same time a limited option as the

numbers are quite low, for example in 2014, the EU collectively resettled approximately 7,500 persons (European Resettlement Network 2015). UNHCR (2014c) is concerned that making legal departure from countries of origin more difficult will feed into the smuggling and trafficking networks, as they will become the only option for access to the EU's territory. To be able to make any real headway on the issue of sea crossings, a credible alternative must be offered to the people before they embarked on this dangerous journey. Legal channels will help to fight abuses and irregular migration.

According to numerous NGOs, and also the UNHCR and ECRE, the most straightforward option is to establish Protected Entry Procedures (PEPs). This would allow an individual to approach the authorities of a potential host country outside its territory, in order to claim international protection and be granted an entry permit in case of a positive response to that claim (ECRE 2014). The Commission (2014b: 7) recognizes that PEPs “could complement resettlement, starting with a coordinated approach to humanitarian visas and common guidelines.” Only Bulgaria, The Netherlands and Spain have incorporated some form of PEPs in their national legislations. Austria and Denmark abrogated the PEPs with the argument that the administrative and economic burden on the single Member States was too high. Belgium, Germany, Ireland, Italy, Luxembourg and Portugal authorise entry in exceptional cases and in an informal fashion. It has to be borne in mind that it is not easy to evaluate the practical implementation of PEPs as applicants are accessed from abroad. While PEPs present a risk of arbitrariness, they are flexible and could be used in various situations, such as to allow the safe and legal entry of refugees and people in need of protection (ECRE 2014). In this regard, UNHCR has stressed that PEPs and humanitarian visas should be reconsidered as “potential means to ensure people at risk can be identified outside the EU, and granted visas by Member States on a voluntary basis, to facilitate their travel to safety in Europe” (Italian Council for Refugees 2014: 38f).

The currently negotiated Directive on students, researchers and other groups could also make an important contribution with clear admission rules and status (European Commission 2013: 13). This is strongly supported by UNHCR, and the UNHCR (2014d) has called on Member States to do more to facilitate private sponsorship schemes and family reunification.

The global commitment of the EU for resettlement and humanitarian admissions of refugees reached 15,000 in 2014, which is a significant increase from 4,930 in 2012. However, while the absolute numbers have increased, the number of Member States participating in the resettlement remains limited (European Commission, 2014d: 5).

The Principle of Non-Refoulement and Push-Backs

The Geneva Convention defines the principle of non-refoulement, which “(...) prohibits contracting states from expelling or returning (French, *refouler*) a refugee 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” (Pirjola 2009: 354).

Unpopular cases like the “Cap Anamur” (2009) have led to a small change when it comes to refoulement, particularly in Italy. However, there are still cases, mainly in the Spanish enclaves Ceuta and Melilla as well as in Greece where local authorities had taken a harsh stance to push back irregular migration by deporting irregular migrants from the country without granting them the right to file an asylum claim.

The case of “Cap Anamur” highlights the problems which may occur during a rescue at sea. In 2004, the German flagged vessel Cap Anamur rescued 37 people who were in distress between Libya and Italy. When the vessel requested permission to dock in Sicily, it was denied. The captain and first officer of the vessel were detained and the vessel seized under charges of aiding irregular immigration. A lengthy trial went on for over three years and even though all defendants were eventually acquitted, the case demonstrated that

rescue at sea arising out of humanitarian reasons may still make one end up on the wrong side of the law. This case has served as a deterrent and a warning for seafarers against rescuing people in distress, since they might risk similar legal issues. In order to avoid crime by association, costly investigations and possible prosecutions, many seafarers turned a blind eye to boats with irregular migrants in distress, leaving them to their fate at sea (Basaran 2014: 374). Rescue at sea becomes an operation that small fishing boats and even larger commercial vessels simply cannot afford to get involved. The “Cap Anamur” case highlights how national and international law, can be selectively undermined (targeting irregular migrants only) through a system of legal sanctions. Anti-smuggling legislation can be used to sanction rescue, even though rescue is firmly anchored in national and international legislation (ibid. p.377).

In October 2013, Spanish authorities decided to re-install the razor wire on the Melilla fence and add “anti-climb” mesh to prevent irregular migration into Spanish territory. Push-backs are carried out also in these areas. An unpopular incident occurred in February 2014, when approximately 300 persons near Ceuta tried to enter Spain. When the migrants tried to cross the sea, the Spanish Civil Guard started to fire into the air. When authorities realised that some migrants succeeded to enter the Spanish territory they began firing rubber bullets and teargas which led to the drowning of 15 persons. The Spanish Civil Guard’s reaction was considered unnecessary and excessive. The 23 migrants who managed to enter Spain were collectively expelled to Morocco in violation of the national legislation, and international and EU law. This action has been condemned by several NGOs and by Amnesty International as these persons were under Spanish control and jurisdiction as they had been apprehended by the Spanish Civil Guard officers (Italian Council for Refugees 2014: 96).

Ceuta and Melilla are becoming large detention centres where migrants are obliged to remain during either the eviction proceedings or asylum-seeking procedure. Asylum seekers are subjected to exceptional measures, for example the ban on

freedom of movement, which is an unprecedented step backwards for the Spanish international protection regime. Despite the legal framework against this practice and criticisms by the European Ombudsman, the UNHCR and the Special Rapporteur on Racism and Xenophobia, this situation persists. This is pushing asylum seekers to withdraw their asylum application, while others put their lives at risk by trying to cross the Strait of Gibraltar (Italian Council for Refugees 2014: 97).

The issue of push-backs has also been associated with Frontex and border guards of the respective countries. There were various reports showing that interceptions by border patrols took place in international waters (Demmelhuber 2011: 818). The boats were then escorted back to the state where they started their journey. This happened without any screening to check whether some of persons on board would fall under the ‘non-refoulement rule’. Irregular migrants were then deported to countries considered as de facto safe third countries. This procedure is in breach of international and European law, since the respective authorities are obliged to check if each single migrant is in need of international protection. An important aspect of ensuring protection-sensitive border management is providing training to border guards and other authorities. Fundamental rights, refugee law and the international legal search and rescue regime in accordance with the Frontex Regulation should be the keystone of this training (Italian Council for Refugees 2014: 116).

Cooperation with Third Countries

Cooperation with countries of origin or of transit is a cornerstone of the EU’s policy regarding irregular migration. The cooperation with third countries has also been referred to as an externalisation of borders since most assessments of the EU’s external migration policies show that they are dominated by the EU Member States’ interest in securing external borders and controlling immigration into EU territory (Wunderlich 2013). The partial externalisation of EU migration policy through ‘non-arrival measures’ enjoys strong support among EU decision makers.

Since 2005 the Global Approach to Migration and Mobility (GAMM) is the overarching framework of the EU external migration and asylum policy. GAMM defines how the EU should conduct its policy dialogue and operational cooperation with third countries in the area of migration and mobility and is embedded in the EU's foreign policy framework, including development cooperation. The GAMM is implemented through several political instruments, such as:

1. bilateral and regional policy dialogues and action plans,
2. legal instruments: visa facilitation and readmission agreements,
3. operational support and capacity-building through EU agencies such as Frontex and EASO (European Asylum Support Office) and technical assistance facilities (European Commission 2014a).

In order to promote policy dialogue and operational cooperation with partner countries Mobility Partnerships (MPs) have been implemented. MPs bring together various bilateral/multilateral projects. So far, MPs have been concluded with seven countries: Moldova (2008), Cape Verde (2008), Georgia (2009), Armenia (2011), Morocco (2013), Azerbaijan (2013) and Tunisia (2014). Discussions on a MP have begun with Jordan in December 2013 (European Commission, 2014a).

The EU adopted a "take it or leave it" approach during the negotiations of the MPs. There was little room for the third-country's government to influence the content of the MP. Nevertheless, the Council acknowledged that visa facilitation agreements are an important incentive for third countries to sign readmission agreements (Reslow 2012: 398). However, there were also countries such as Senegal who refused to sign up to MPs as they see the EU's approach to migration as a cynical approach to extend border control further away from the EU by giving competences to third countries (ibid., p.403).

Another policy of cooperation and partnership with third countries is addressed through Regional Protection Programmes (RPPs). The incentive of

RPPs is that third countries shall adopt or amend their national asylum legislation, conforming to international standards, such as the Geneva Convention, and the enhancement of reception and admission standards (Italian Council for Refugees 2014: 58). Since 2011, the EU has been implementing RPPs for North African countries, focusing on Libya, Tunisia and Egypt (European Commission 2014a: 7).

Due to the increasing number of organised crime groups which operate in countries of origin/transit to facilitate irregular migration to the EU, 'irregular migration' has been identified as one of the EU Crime Priorities under the EU Policy Cycle for Organized and Serious International Crime 2014-2017. There is a need to obtain a better picture of the situation in neighbouring countries of transit, therefore the establishment of networks of Liaison Officers in Libya and Turkey dedicated to irregular migration is an important step (European Commission 2014c: 16f).

Libya plays a key role in the EU's cooperation with third countries because it is a major transit point into EU territory by sea and one of the main corridors for sub-Saharan African migration to Europe. Some estimates dating to the early 2000s claim that close to 80,000 migrants were reaching Southern Italy and Malta every year, with the majority starting their journey from the Libyan coast (Torresi 2013: 650). To understand the nature of the cooperation of the EU and its Member States (mainly Italy) and Libya one has to go back to the year 2008, when the "Treaty of Friendship, Partnership and Cooperation" was signed by Silvio Berlusconi and Colonel Gaddafi. Libya agreed to tighten controls over its territorial waters and accept the return of migrants who tried to cross the Mediterranean. This was the cornerstone of push-backs policy by the Berlusconi government. Irregular migrants were directly ferried back to Libya without assessment of refugee status. After criticism from UNHCR and Amnesty International this practice was suspended and after the fall of Colonel Gaddafi, the treaty was cancelled in February 2011. However, during 2012, the then Italian Minister of Foreign Affairs, Mr. Terzi, announced that a new agreement had been

discussed and negotiated with the new Libyan government. In July 2013, Italian Prime Minister Letta met his Libyan counterpart in Rome to discuss further cooperation between the two countries, which was to include a continued partnership regarding migration issues (ibid. p.653).

Since the fall of Colonel Gaddafi, the EU has supported Libya in the areas of migration, border management and international protection, in spite of the difficult security and political situation. In May 2013 the Council decided to provide further assistance towards the development of an integrated border management system in Libya which was established within the framework of the EU Border Assistance Mission in Libya (European Commission 2014d).

The effective use of EUROSUR was also an important cornerstone in cooperation with third countries. The EU has implemented projects to enable non-EU states to tap into the system. For instance, one of the EU funded projects in North Africa is the “Southern Mediterranean Border Surveillance Network”, which aims to increase the capacity of the authorities of the North African countries to tackle irregular migration and human trafficking by strengthening their border surveillance systems. Specifically, the programme aims to help Algeria, Egypt, Libya and Tunisia to set up technical systems that will allow them to inform each other and the EU Member States (in particular Cyprus, France, Greece, Italy, Malta and Spain) about “illegal or suspect activities” and to organise a coordinated response (Amnesty International 2014).

The incorporation of security policies and Justice and Home Affairs (JHA) cooperation in EU foreign policy is aimed at creating a buffer zone. “(...) [C]ooperation in JHA provided a more stable ground for cooperation in Euro-Mediterranean affairs, in particular in the EU’s quest for extending its governance beyond its own borders and to establish a policy space that encompasses the actors, rules and practices that relate to the EU’s efforts to protect its citizens from a wide range of internal and external threats” (Demmelhuber 2011: 816). However, this cooperation also acted as a

tool to lay the ground for an ex-territorial border management strategy in order to tackle irregular migration in the countries of origin or transit right away – no matter whether these third countries share a common understanding of freedom, liberty, and security or whether these ‘non-arrival measures’ are in line with international and European law. Demmelhuber (2011: 819) was critical towards this policy and felt that “(...) the mandatory cooperation with authoritarian elites, in order to embark on ‘non-arrival measures’, has become a win-win-situation for the incumbent regimes to increase their grip on power.”

Fight against Human Trafficking

Article 3 of the Palermo Protocol (United Nations High Commissioner for Human Rights 2000) defines trafficking in human beings as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Human trafficking is a complex transnational phenomenon which is rooted in poverty, lack of democratic structures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of employment opportunities and access to education, child labour and discrimination (European Commission 2012). This explains why the victims of human trafficking are often the most vulnerable in society – the poor, the minorities, women and children. The majority of reported victims from non-EU countries are from Nigeria, Vietnam, Ukraine, Russia and China (ibid.).

The EU's approach towards the trafficking of human beings encompasses law enforcement, prevention and victim support. The EU recognises

trafficking in human beings as a violation of human rights: Article 5(3) of the EU Charter on Fundamental Rights prohibits trafficking in human beings. There are numerous treaties and legal documents which give the EU competence to act in response to human trafficking. For instance, the Treaty on the Functioning of the EU situates the EU's power to act on trafficking in relation to its nature as a migratory phenomenon and a cross-border crime. In addition, Directive 2004/81/EC gives the legal basis for granting residence permits to non-EU victims of trafficking (and smuggling) – however, only in cases where the victim cooperates with the authorities (European Migration Network 2014: 9). Another legal tool is Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The Directive went into force in April 2013 and focuses on human rights and on the victims. It not only focuses on law enforcement but also aims to prevent crime and ensure that victims of trafficking are given an opportunity to recover and to reintegrate into society (European Commission 2012).

Trafficking in human beings is also addressed in a number of external relations instruments, for example the annual progress reports on candidate and potential candidate countries, the roadmaps and action plans regarding visa liberalisation dialogues with third countries, the Country Strategy Papers and programmes of the European Neighbourhood Policy. It is also addressed in bilateral Action Plans. Moreover, the Commission has appointed an EU Anti-trafficking Coordinator (EU ATC) who started work in March 2011 (ibid.). The EU ATC is to improve coordination and coherence amongst EU institutions, its agencies, Member States and international actors in implementing EU legislation and policy against trafficking in human beings. The EU ATC has a key role in coordinating the work of relevant JHA agencies in this area, such as EASO and Frontex (European Migration Network, 2014: 14). Frontex trains national border authorities in how to detect, identify and engage with victims of trafficking. Further, Frontex's role includes to detect other types of illegal cross-border activities, including drug trafficking. Most of the drugs seizures in the

EU were in the Western Mediterranean area (Frontex 2014: 18).

Another relevant point is the EU “Strategy towards the Eradication of Trafficking in Human Beings 2012-2016” which is also strongly supported by the EU ATC. The aim of this EU Strategy is to develop an EU-wide system for the collection and publication of data. The Commission liaises with national rapporteurs or equivalent mechanisms to ensure the collection of comparable and reliable data (Eurostat 2013: 16).

The Commission currently funds a project that will develop guidelines to better identify victims of trafficking in human beings in 2014. It should help practitioners to identify victims, especially victims of human trafficking for sexual exploitation and labour exploitation, removal of organs and child victims of trafficking (European Commission 2012).

As already mentioned, one of the aims of the Task Force Mediterranean is to strengthen the fight against trafficking and smuggling of human beings and criminal networks through a better inter-agency cooperation and encouraging Member States to systematically provide relevant information to Europol (Italian Council for Refugees 2014: 32).

However, it has to be highlighted that UNHCR (2014a: 4) stresses that the fight against trafficking should not only be rooted in criminal law but should follow a fundamental rights based approach in order to avoid the fragmentation of trafficking victims' rights. Moreover, at first sight the distinction between acts of human trafficking and rescue appear to be obvious. Anti-trafficking laws demonstrate the difficulties of setting an impermeable boundary between humanitarian acts and criminal acts, which results in a dichotomy between protection and criminalization of humanitarian acts. This contrariness was also highlighted in the “Cap Anamur” case which was outlined in the chapter “The Principle of Non-Refoulement and Push-Backs”.

The European Commission proposes the full implementation of the Trafficking Directive,

continuing the Anti-Trafficking Coordinator position, and a post 2016 strategy covering prevention, assistance, return and reintegration, and consideration for criminalisation of the use of services of victims of trafficking.

Despite all the efforts of the EU to tackle trafficking in human beings and organised crime, the question remains how effective those policies are, especially in light of the recent events. At the end of 2014/beginning 2015, three so called “ghost ships” were discovered in the Mediterranean within a few weeks. The ships originated from Turkey, were abandoned by the crew and left on autopilot on a collision course towards the Italian coast. Out of the roughly 1,500 people rescued by the Frontex operation “Triton”, almost all were Syrians. An Italian official said that the traffickers used cargo vessels at the end of their life, and then put hundreds of people on board, each of them paying up to \$6,000 for the crossing, which is roughly three times the rate for a place on an inflatable dinghy departing from North Africa (Hooper 2015). This equates to a profit of around \$2-3 million per ship, depending on the vessel's size. This new strategy of smuggling people into the EU highlights more starkly than before the people-smugglers’ response to the latest change of policy. “It is pure moral blackmail. Frontex and the Italian authorities can either take charge of the ship – or bear the responsibility for the deaths of hundreds of people” (ibid.).

Conclusion

Despite of the number of people saved due to rescue operations in the Mediterranean, it is evident that these policies have so far not succeeded in reducing the death toll and the constant flow of refugees into Europe. The death toll at European borders seems to be incessantly increasing. It has become obvious that saving lives at sea is not simply a question of enhancing rescue efforts, but requires the elimination of sanctions for rescue at sea, since sanctions counter the proper functioning of the international rescue regime. UNHCR calls for an effective search-and-rescue system. This system should include arrangements for the disembarkation of those

rescued at a safe place and an early identification of those in need of international protection, humane treatment and prevention of refoulement, as well as access to fair and efficient asylum procedures.

Without question the EU has the right to embark on controls of its external borders. But the EU is obliged to conduct border controls without threatening fundamental elements of international law and European law (such as the Charter of Fundamental Rights of the European Union). Some of the policies in place show that in trying to improve (border) security, freedom may have been compromised. It speaks for itself that immigration and asylum are included with internal security matters and are not associated with the protection of fundamental rights as part of the same political approach. Some scholars argued that “Linking immigration with security, and separating it from the protection of rights, sends the wrong political message” (Sepi 2010: 80). Rescue of migrants at sea has to be separated from border security concerns. Intercepting boats with potential irregular migrants in international waters does not turn them automatically into illegal migrants due to circumstantial evidence. Tough security policies have not solved, just changed, and complicated the dynamics of irregular human movement. Resolving the tension between preventing arrivals and protecting migrants and refugees on their journeys is essential (Grant 2011: 141). Current deficit in EU policies show that there is a need to create a legal basis which offers protection to irregular migrants, in adherence to international law and EU law, e.g. the principle of non-refoulement. More transparency is also required, in particular in the network of relations that the EU struck with third countries and the bilateral agreements signed between EU Member States and transit countries and countries of origin.

The alleged lack of solidarity among EU Member States has also become a point of contention. For instance, Italian Prime Minister Renzi's call for the EU to address the migrant crisis by investing in border control agency Frontex and in the UN to intervene in Libya to manage the flows of refugees, remained unheard (Africa Research Bulletin: 2014).

The call to support the Italian Government in dealing with the high migration pressure due to Italy's geographic position has so far not yield any robust response from the EU.

In conclusion, one can say that there is the need for more concerted action in the Mediterranean by the EU and its Member States. This has been highlighted again with the recent development of the abandoned cargo ships with migrants on board. To address this issue of dangerous crossings by sea, efforts to rescue people at sea and stepping up legal alternatives to dangerous voyages are required. UNHCR (2015) supports this strongly by stating: "Without safer ways for refugees to find safety in Europe, we won't be able to reduce the multiple risks and dangers posed by these movements at sea." To increase resettlement in

the EU would be one of possible legal ways. Another one, completely unexplored option, would be family reunification as a protection tool. UNHCR (2014b) promotes this strongly, stating that "field research has demonstrated that family reunification and presence of family members is a key driver to facilitate the successful integration of beneficiaries of international protection present in the EU." However, with current sentiments against immigration and migrants in Europe, these measures may not be fully supported and comprehensive EU policies towards dealing with irregular migration and asylum seekers may still be some distance away.

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