CENTRAL EUROPEAN UNIVERSITY
CENTER FOR POLICY STUDIES

OPEN SOCIETY INSTITUTE

RUTVICA ANDRIJASEVIC

How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya

2005/2006

CPS INTERNATIONAL POLICY FELLOWSHIP PROGRAM

RUTVICA ANDRIJASEVIC

How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya

Introduction

During the last year the temporary holding center for irregular migrants in Lampedusa, Italy's southernmost island, has been repeatedly denounced for instances of procedural irregularities and alleged human rights violations. Lampedusa 'temporary stay and assistance centre' (CPTA) came to a larger public attention in the Fall of 2004 when Italian authorities expelled more than thousand undocumented migrants to Libya on military and civil airplanes. Numerous and consistent allegations of degrading treatment of third-country nationals in detention in the holding centre, the difficulty in gaining access to the asylum determination process and the large scale expulsions to Libya, brought Lampedusa to the attention of European and international institutions. The European Parliament (EP), the European Court of Human Rights (ECHR) and the United Nations' Human Rights Committee (UNHRC) all called on Italy to respect asylum seekers and refugees' right to international protection and to refrain from collective expulsions[1] of asylum seekers and irregular migrants to Libya, a country that has no asylum system and has not a signed the Geneva Convention on Refugees.

Positioned some two hundred kilometres south of Sicily and three hundred kilometres north of Libya, the island of Lampedusa became in 2004 the main point of arrival for boats carrying undocumented migrants and asylum seekers from Libya to Italy. A total of 10 497 migrants, 412 of whom were minors and 309 women, transited through the Lampedusa CPTA in 2004.[2] Migrants commonly depart from Libya in overcrowded makeshift boats and undertake a perilous sea journey which can last up to several weeks. Once in the Italian waters near Lampdesa, the boats are intercepted by Italian border guards and migrants transferred to the Lampedusa holding centre. After staying in the holding centre for a period that varies usually between five and forty-five days, the majority of migrants are transferred to CPTAs in Sicily or southern Italy and others are expelled to Libya.

No official data is available on the countries of origin or reasons for migrating for migrants detained in the CPTA of Lampedusa. The UNHCR points to the presence of refugees and asylum seekers among those detained in the CPTA as well as among those expelled to Libya. The authorities of Lampedusa CPTA refer to all third-country nationals held in the centre as 'illegal migrants' and claim that there are nearly no asylum seekers present among migrants who depart from Libya. The authorities assert also that the majority of third-country nationals are economic migrants of Egyptian nationality.[3] The data gathered in Lampedusa by the Italian NGO ARCI and the Médecins sans Frontières identify instead Middle East (Iraq and Palestine), Maghreb, Horn of Africa (including Sudan) and Sub-Saharan Africa as migrants' regions of origin.[4] More consistent data on migrants' countries of origin and the nature of their

[1] According to the European Court of Human Rights, collective expulsions are defined as "any measure by which foreigners are forced, due to their membership of a group, to leave a country, apart from cases in which this measure is adopted following and based on a reasonable and objective assessment of the specific situation of each of the individuals composing the group".
[2] See European Parliament, *Report from the LIBE Committee Delegation on the Visit to the Temporary Holding Centre in Lampedusa*, EP/LIBE PV/581203EN, p.2.
[3] Ibid., p.3.
[4] See ARCI, *Il diario del presidio ARCI a Lampedusa,* 2005a; ARCI, *Lampedusa Watching*, 2005b.

journeys remain however unavailable in spite of the continuity of migratory flows from north Africa to the south of Italy since the end of the 1990s.

The CPTA in Lampedusa is one of eleven existing holding centres, most of which are located in the south of Italy. CPTAs are instruments for the detention of undocumented migrants pending expulsion and their function is to ensure effective functioning of expulsion procedures. Identified as complementary, detention and expulsion of undocumented migrants are crucial pillars of Italy's politics towards irregular migration. In the effort to control undocumented migratory flows from Africa into its territory, Italy established a collaboration on illegal migration with Libya, its southern Mediterranean neighbour. Initially signed in 2000 as a general agreement to fight terrorism, organized crime and illegal migration, in 2003 and 2004 Italian-Libyan partnership extended to include a readmission agreement, training for Libyan police officers and border guards, and Italy-funded detention and repatriation programmes for irregular migrants in Libya. The aim of these schemes is to deter irregular migration and to prevent further migrants' deaths at sea by combating smuggling networks.

This paper presents an overview of events and policies implemented in Lampedusa and Libya respectively and outlines the contentions surrounding these policies. Using the material provided by the Italian authorities, European institutions and the NGOs, the paper further examines the schemes developed by the Italian and Libyan Governments, the European Union and the International Organization for Migration (IOM) as main actors involved in implementing immigration-related programmes and polices in Lampedusa and Libya. A methodological note is necessary here. The data available on measures regarding detention and deportations of irregular migrants and asylum seekers in Lampedusa and Libya are often contradictory and incomplete. In the case of Lampedusa, scarce information provided by Italian authorities was lately supplemented by data gathered by the European Parliament, the NGOs and journalists. When it comes to Libya, the content of agreements, whether between the Italian and Libyan Governments or between the latter and the IOM, remain undisclosed. Hence, rather than offering an exhaustive description of legislative acts the first two sections of the paper make use of the legislative framework as a way of contextualizing the main procedures and policies carried out in Lampedusa and Libya.

Having examined, in the first two sections of the paper, the contentions surrounding Italy's alleged violation of the right to asylum, the *non-refoulment* principle and the prohibition of collective expulsions, the following two sections bring into focus the data on migratory patterns into and from Libya that put into question a number of assumptions that inform Italian Government's detention and deportation policies. The third section engages the images of emergency and mass-influx of undocumented migrants commonly summoned by the Governments and the media to portray migratory flows from Africa and show that these images produce an erroneous representation of contemporary Mediterranean migration and conceal Italy's reluctance to assume its share of asylum responsibilities within the European Union (EU).

Italy's policies of detention and deportation and Libya's enhancement of border control in particular towards its Sub-Saharan neighbours are examined in section four in relation to their function in deterring irregular migration and combating smuggling

networks. The analysis undertaken in this section suggests that these policies might yield paradoxical effects such as 'illegalizing' the movement of certain groups of migrants and increasing rather than decreasing the involvement of smuggling networks.

Italy's implementation of policies and schemes that increase migrants' and asylum seekers' vulnerability and hamper the right of the latter group to access the asylum procedure raises the issue of the European Commission's (EC) responsibility and the EU's commitment to the protection of refugees. The return of undocumented migrants from the EU Member states and the collaboration with Libya on matters of irregular migration will soon be regulated by the EU Return Directive and the Libya-EU Joint Action Plan. These instruments set out to provide a minimum set of procedural and legal safeguards for the return, removal and custody of third-county nationals residing illegally in EU Member States and limit the EU's involvement in the detention facilities in Libya to the provision of heath care and services rather than support of return schemes. The analysis in section five of the Return Directive and the Action Plan, as well as of the EC-funded IOM programmes in Libya raise the issue of whether or not the Commission is contracting out of its responsibilities over migration and asylum matters and whether the Return Directive and the Action Plan leave too large a space for the Member states to circumvent the EU framework and apply restrictive exceptions.

Since the EU return directive and the joint Action Plan are new instruments and still to be finalized, the last section of this paper outlines a number of policy recommendations that would strengthen the Commission's credibility regarding its monitoring responsibility and the EU's commitment to refugee protection. Given the current lack of safeguards and control mechanisms on return, and on EU cooperation with Libya, the recommendations point to the role of the European Parliament in promoting a credible and effective framework for the protection of asylum seekers. This paper recommends that transparency, accountability and legitimacy are key principles that should guide the European Union's partnership with its neighbour states in the field of asylum, borders and immigration.

1. Lampedusa holding centre: detention and the right to asylum

Lampedusa holding centre is located on the airport of Lampedusa next to the runway to which it has direct access.[5] Surrounded by barbed wire and metal grilles, the centre is composed of four prefabricated containers designated to host 186 people.[6] In the words of Italian officials the centre is a 'temporary stay and assistance centre' functioning as a 'clearing station' and an 'initial assistance' centre for undocumented migrants after they have disembarked on the island.[7] Its function as a 'clearing station' consists in redirecting migrants and asylum seekers within the shortest

[5] CPTA has a direct access to the runaway. For a more detailed description see Andrijasevic, R, 'Lampedusa in Focus: Migrants caught between the Libyan desert and the deep sea', *Feminist Review* no. 82, 2006, pp. 119-124.

[6] 186 places are centre's legal capacity. See Corte dei Conti, *Programma controllo 2004. Gestione delle risorse previste in connessione con il fenomeno dell'immigrazione*, 2005, p. 103.

[7] Amnesty International, *Italy: Temporary stay – Permanent rights: the treatment of foreign nationals detained in 'temporary stay and assistance centres' (CPTAs)*, 2005, p. 34.

necessary time to other CPTAs in Italy or returning them to the country of last transit, usually Libya. The 'initial assistance' stands for the emergency health care, clothing and food that undocumented migrants and asylum seekers are provided with during the period they are held in the CPTA awaiting transfer/removal. The CPTA is mainly active between April and October, when the weather conditions permit sea travel from Libya to the south of Italy.

As instruments for the detention of irregular migrants and asylum seekers, CPTAs were established under 'Turco-Napoletano' law with the purpose of administrative detention of third country nationals pending expulsion from Italy.[8] Asylum seekers, as well as migrants who have been served an expulsion order, are detained in CPTAs if they present an asylum application after having received an expulsion or refusal of entry order and/or if their appeal is at the final stage and they are awaiting the court's decision on the appeal. The maximum period of detention for both groups is sixty days.[9] The CPTAs however do not cater primarily to asylum seekers. The so-called 'Bossi-Fini' law amended the detention regulations set by 'Turco-Napoletano' law and established 'identification centres' as specific centres for the detention of asylum seekers.[10] While detention of asylum seekers cannot be carried out with the sole purpose of examining their application, it is nevertheless mandatory in cases when asylum seekers present their application after being arrested for entering or attempting to enter the country illegally, and/or residing in Italy in an irregular situation.[11] An asylum seeker can be held in an identification centre for a maximum of 30 days.[12] The Italian Government is currently in the process of establishing 'polifunctional' immigration centres to carry out administrative and juridical functions of both CPTAs and identification centres.

[8] Law 40/1998, later merged into Legislative Decree No 286 of July 1998. Decreto Legislativo 25 luglio 1998, n. 286 – *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*.

[9] The legal procedure for the asylum seekers detained in identification centres and CPTAs is the same. In both cases asylum seekers fall under the fast-track procedure. The fast-track or simplified procedure was set up by 'Bossi'Fini' law and it supplements the ordinary procedure, now reserved only for those asylum seekers who have entered Italy legally.

[10] The Bossi-Fini law (Law 189/2002 of July 2002) tightened significantly the Italian immigration policy. It reduced from 15 to 5 the number of days irregular migrants have at their disposal to leave Italy once they have been issued with an expulsion order; increased from 30 to 60 the days irregular migrants can be held in a detention centres; and doubled the number of years (from 5 to 10) during which those issued with an expulsion order are banned from entering Italy. The Law set out that those served with an expulsion order are to be detained in the CPTAs prior to the forcible escort to the border instead of receive the injunction to leave the county and being expected to leave the country on their own without being detained in the CPTAs. It reinforced the expulsion methods and introduced the mandatory removal via forcible escort that prior to this law reform was optional and applied only when there was a concrete risk of a third country national disobeying the expulsion order.

[11] The Provincial Police Authority may however request detention in order to: verify or determine asylum seeker's nationality or identity if they have no identification papers or travel documents or if they have produced false papers on arrival; check the claims on which the asylum seeker's application is grounded; and bridge the gap for those asylum seekers awaiting the outcome of the procedure for entry to the country.

[12] The 30 days comprise 20 initial days with possible 10-day extension by the judge. For the CPTAs the maximum period of detention of 60 days involves the initial 30 days with a possible extension for other 30 with judicial approval.

Throughout 2004 and 2005, the holding centre of Lampedusa was denounced for the lack of access to the asylum procedure. European NGOs[13] have drawn attention to the failure of the centre's authorities to provide information about the possibility of claiming asylum and to guarantee individual examination of asylum through in-depth interviews that assess asylum seeker's individual circumstance. Migrants and asylum seekers, the NGOs remark, have no effective access to an interpreter, are often identified by staff not qualified as interpreters[14] by the use of improvised identification procedures in which the migrant's nationality is determined on the basis of their skin colour and facial characteristics.[15] Since migrants and asylum seekers are deprived of the freedom of movement, are allocated phone-cards only on a sporadic basis, and whose lawyers reside in Sicily, some 200km north of Lampedusa, the NGOs have argued that migrants have no effective access to legal aid.[16]

The lack of proper interpretation and legal services, the difficulty experienced by MPs, UNHCR[17] and NGOs in obtaining the permission to access the CPTA,[18] and the withdrawal of information explaining the reasons for detention, leave migrants and asylum seekers with little possibility to defend themselves and/or appeal. The difficulty of accessing the asylum procedure puts asylum seekers in a legally extremely vulnerable position since they can be served the refusal of entry order. This in turn constitutes the legal basis for their expulsion from Italy or for subsequent detention in a CPTA, as they have already received a refusal of entry order prior to presenting their asylum application. Lack of in-depth individual assessment, serving of refusal orders to potential asylum seekers and their subsequent collective expulsion to Libya are reasons which had NGOs to argue that Italy is in breach of the Geneva Convention's *non-refoulement* principle.

---

[13] For the list of NGOs see footnote 26 and 50.

[14] During their visit to the Lampedusa CPTA, the delegates of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) observed that the interpreters work from Arabic and English and not from French. Since many migrants and asylum seekers in Lampedusa CPTA seem to originate from Maghreb and sub-Saharan African countries and are French speaking, the lack of adequate interpretation makes it difficult to access the right information and/or state their circumstances. See European Parliament, EP/LIBE PV/581203EN.

[15] See 'Complaint against the Italian government for violation of European Community Law', 20 January 2005. The complaint and the accompanying dossier are available at http://www.gisti.org/doc/actions/2005/italie/complaint20-01-2005.pdf

[16] An undercover journalistic inquiry found out that the difficulty of making phone-calls is due to the fact that the phone-boot is regularly out of order and that contrary to the *Charter of the rights and obligations of detained immigrants* from 30 August 2000 stipulating that migrants should be given a telephone card worth 5 euros every 10 days, the phone-cards are not distributed but rather sold by the 'dealers' inside of the camp for the amount thee times higher than cards original value. See Gatti, F. 'Io, clandestino a Lampedusa', *L'espresso* 6 October 2005a.

[17] Following the signing of the Asylum agreement between Italian Ministry and the UNHCR, which comes into effect on the 1st March 2006, UNHCR will be able to set its office on Lampedusa together with IOM and Italian Red Cross.

[18] The listing of who can access the CPTAs is provided under the provisions of the article 21 of DPR 394 of 31 august 1999. According to Italian legislation the MPs have the right of entry to CPTAs and to all place of detention in Italy. To UNHCR staff can, with the authorization of the Ministry of Interior, access the CPTAs anytime and speak in private with the third country nationals who request such encounter. However, in March 2005 while 180 undocumented migrants and asylum seekers were being expelled to Libya on airplanes, the UNHCR requested immediate access to the Lampedusa CPTA but its request got denied. During the same period two Italian senators, Mrs. Chiara Acciarini and Mrs. Tana de Zulueta were permitted to access the CTPA only the second day of their arrival to the island and then only to the part of the CPTA with the offices and could therefore not assess the conditions of detention not talk to the migrants.

The NGOs also gathered evidence of the arbitrary detention and degrading treatment of third country nationals in the Lampedusa centre. ARCI, an Italian NGO that between June and October 2005 undertook independent monitoring on Lampedusa maintains that a very small number of migrants and asylum seekers are served an expulsion or refusal of entry order. This puts into question the legal basis of detention since migrants and asylum seekers are nevertheless detained in the CPTA for a period between 25 and 45/50 days awaiting their transfer to another CPTA or removal to Libya (ARCI 2005).[19] The amount of time that migrants and asylum seekers spend in the CPTA of Lampedusa is not officially recorded as detention meaning that, once they have been moved to another CPTA, migrants and asylum seekers can still be detained for the maximum period allowed. Minors and pregnant women are held, as ARCI reports, with male adults and no special assistance is provided to them.[20] The centre is permanently overcrowded[21] and the detention conditions degrading: there is for example, no access to the proper health assistance[22] and the hygienic conditions are substandard.[23] In addition to the denunciation of the use of force during the removal operations, recent journalistic sources have also disclosed the abuse of migrants while in detention by law enforcement officers.[24] These removals are often carried out by use of force, especially when migrants are reluctant to board the plane and attempt to run away, and by coercive methods such as the use of plastic handcuffs.[25]

---

[19] ARCI compiled a dossier containing information as to numbers of migrants arrived via sea, those removed to other CPTAs or to Libya, and the descriptions of police practices towards migrants. Since little official data is available so far, the dossier presented to the MEP delegation during their September visit, is a unique source of these kind. See Arci, ibid., 2005b.

[20] ARCI reports that many minors have been wrongly identified as adults. ARCI also expressed concern that, after been held in detention for 5 days, between 9th and 18th August 2005 only a part of unaccompanied minors were transferred to another CPTA while the rest was presumably expelled to Libya. ARCI's data called attention to an alarming irregularity: after having been released from CPTA of Lampedusa, minors were reassigned to the reception centres of 'Casa Amica' in Agrigento (Sicily) and/or 'Association Three P' in Licata. In Licata, they stay for an extremely short period of time –at times only 24 hours—and from there they are all transferred to Milan following Association's declarations that they have contacted minors' parents or friend, all oddly residing in Milan. This operations occured, ARCI refers, without authorization or knowledge of the competent juridical authorities. Arci, ibid., 2005a.

[21] The four prefabricated containers, each with 40 beds, are insufficient for all the migrants. Made for 180, but accommodating commonly for 300 to 400 migrants between spring and autumn months, with occasional 'peaks' of over 1000 migrants in the summer, results in the majority sleeping on the sleeping mats on the floor in the corridors or on the ground outside.

[22] Only in case of urgent and life-threatening cases, migrants are brought to the local health-centre; all others are treated by Médecins sans Frontières (MSF – Doctors without borders) directly at the pier or in the camp by a doctor and a nurse. The MSF, the Italian office of the well-known humanitarian medical aid agency which assisted more than 10,000 people at the center of Lampedusa between September 2002 and December 2003, was refused access to any CPTAs from 19 April 2004 onwards following the publication of their highly critical report on the detention and health conditions in Italian CPTAs entitled Centri di permanenza temporanea e assistenza: autonomia di un fallimento; Sinnos editrice, 2005.

[23] The CPTA that accommodates on average 400 migrants has about 10 toilets and as many showers and sinks, alimented exclusively by sea water. Since the centre is not connected to the sewage, the toilets are frequently clogged and they overspill to the floor and the outside.

[24] This includes physical abuse, humiliation and racist remarks. See Gatti, ibid., 2005a and the video from inside the camp by Italian undercover journalist Mauro Parissone.
Http://euobserver.com/22/20167 (consulted on 16/11/2005).

[25] ARCI dossier demonstrates that police use physical force to carry out deportations, especially when migrants resist deportation or attempt to run away, and that the sign of physical injuries does not

On the basis of gathered data ten European NGOs have taken legal actions against the Italian Government, filed a complaint with the European Commission[26] and called the Commission to sanction Italy for:

- Violation of the right of defence and of all parties to be heard[27] and hence the right to asylum as recognised by the Amsterdam Treaty
- Violation of the prohibition of torture and inhuman or degrading treatment, provided for in article 4 of the European Charter of fundamental rights and article 3 of the European Convention for the protection of human rights and fundamental freedoms[28]

In the complaint of the 20 January 2005 as well as in successive open letters to the Council and the Commission,[29] Amnesty International urged the Commission to publicly distance itself from the actions of the Italian authorities and to carry out an independent investigation regarding Italy's compliance with international legal obligations as part of the EU *acquis*.[30]

Italian authorities confirm the NGOs' data on the 350-400 daily average presence in the Lampedusa CPTA, the case of overcrowding of up to 1000 people during the summer months and the presence in the CPTA of women and minors. Their position diverges though on other points raised by NGOs. Even though there are cases when the third-country nationals are detained up to 60 days, the Italian authorities maintain that in most cases migrants' stay at the CPTA does not exceed four to five days. They state that the majority of detained migrants are Egyptian nationals and that nationality is determined on the basis of their physical characteristics and accent, as well as by a short individual interview, to which everyone is entitled. As explained by the Italian authorities, if migrants do not come forward to request asylum they are immediately repatriated to Libya or to their country of origin.[31] Those who however do request asylum are moved to the Crotone CPTA, on the Italian mainland. The authorities state also that the majority of third-country nationals arriving from Libya are not asylum seekers but rather economic migrants.

---

prevent the police from carrying on the removal. The Sicilian Antiracist Network video-recorded and circulated images of deportations at the Lampedusa camp. Since police prohibits filming or photographing, this material represents one of the few visual evidences of the deportations in Lampedusa. See *Lampedusa Scoppia* at http://www.ngvision.org/mediabase/487

[26] ANAFE - Association nationale d'assistance aux frontières pour les étrangers (France), Asociacion 'Andalucía Acoge' (Spain), APDHA - Asociación Pro Derechos Humanos de Andalucía (Spain), ARCI - Associazione Ricreativa e Cultura Italiana (Italy), Asociaciòn 'Sevilla Acoge' (Spain), ASGI - Associazione per gli Studi Giuridici sull'Immigrazione (Italy), Cimade (France), Federación des Asociaciones SOS Racismo del Estado Español (Spain), Gisti - Groupe d'information et de soutien des immigrés (France), and ICS - Consorzio italiano solidarietà. See footnote 15.

[27] Given the short time elapsed between the arrival of the migrants and their deportation (at times as little as 24 hours), NGOs claim that it is unlikely that the CPTA authorities examined individually the cases of 1000 people. Further, they have been deprived of the right to file an appeal due to the decision by the Italian government to remove them.

[28] Conditions of detention fall under the definition of 'inhumane and degrading treatment'.

[29] AI letter to JFS Commissioner Franco Frattini, dated 21 March 2005 (B456); and AI appeal to the EU regarding expulsions from Italy to Libya, dated 28 June 2005 (B472)

[30] In particular with Italy's obligation under articles 5 (information), 6 (documentation), 7 (residence and freedom of movement), 13 and 15 (material reception and health care) of the directive 2003/9/EC laying down minimum standards for the reception conditions of asylum seekers.

[31] EP/LIBE PV/581203EN, p.3.

Despite the denial by the Italian government that human rights violations take place in Lampedusa holding centre,[32] the United Nations' Human Rights Committee expressed concern about the conditions of detention and procedures in Lampedusa CPTA, calling on Italy to keep the Committee closely informed about the ongoing administrative and judicial inquiries on matters of detention conditions, procedural irregularities and collective deportations to Libya.[33] Given the seriousness of the numerous allegations raised by NGOs, a delegation of twelve MEPs, part of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (LIBE) of the European Parliament, arrived to the island of Lampedusa on 15th and 16th September 2005 in order to assess the identification and removal procedures, the treatment of the detainees and the running of the CPTA. This visit was preceded by the EP's *Resolution on Lampedusa* in April of the same year, in which the EP called on Italy to guarantee the individual examination of the requests for asylum and grant UNHCR free access to the Lampedusa CPTA. As for the European NGOs, the EP called on the European Commission to ensure that the Member States comply with their obligations under the EU law and that the right of asylum is respected in the EU.[34]

2. Libya and the case of collective expulsions

Between October 2004 and March 2005, Italian authorities returned more than 1500 irregular migrants and asylum seekers to Libya from Lampedusa holding centre. The biggest operation took place between the 1st and 7th of October 2004, four days before the EU lifted its eight-year-long arms embargo on Libya on 11th October 2004. During those six days, a total of 1153 irregular migrants and asylum seekers were expelled to Libya. The operations continued throughout Spring and Summer with expulsions of another 494 people in March, 150 in May, 45 in June and 65 in August 2005. No information is available concerning the whereabouts of migrants and asylum seekers expelled to Libya.[35] Human Rights Watch believes that the majority has been detained in Libyan detention camps.[36]

The expulsions from the Lampedusa CPTA to Libya are part of Italian-Libyan collaboration on matters of irregular migration regulated though a bilateral agreement signed in Tripoli in August 2004. While the content of the agreement is still undisclosed despite solicitations from the European Parliament, UN Human Rights Committee and various European NGOs, the EP believes that the agreement requires Libyan authorities to supervise irregular migration within and into its territory and

[32] See Italian Ministry for Foreign Affairs' written reply prepared for the 85th session of the UN Human Rights Committee. Ministry for Foreign Affairs, Interministerial Committee of Human Rights, *Reply to List of Issues (CCPR/C/84/L/ITA) (Relating to CCPR/C/ITA/2004-5)*, U.N. Human Rights Committee 85th Session, Geneva 17 October – 3 November 2005.
[33] CCPR/C/ITA/CO/5 dated 28th October 2005.
[34] European Parliament, *European Parliament Resolution on Lampedusa*, 14th April 2005, P6_TA(2005)0138.
[35] The data provided by the Italian authorities specify that 1153 migrants were returned to Libya between 29th September and 8th October 2004 and another 494 between 13th and 21st of March 2005 (EP/LIBE PV/581203EN, p.2). Italian authorities provide no data for later expulsions. The numbers reported here come from NGO sources.
[36] Human Rights Watch, World Report. Events of 2005, p. 373.

commits them to readmit migrants returned by Italy.[37] Next to the bilateral agreement signed in 2004, Italy and Libya also signed in 2000 in Rome an agreement to fight terrorism, organized crime, drugs traffic and illegal migration. In September 2002 in Tripoli an operational agreement also led in July 2003 to the establishment of a permanent liaison on organized crime and illegal migration between Italian police officers and Libyan Security General Directorate.[38] The collaboration between Italy and Libya extends beyond expulsions from Lampedusa holding centre and includes the construction of detention centres and the development of return schemes in Libya. In 2003 Italy financed the construction of a camp for illegal migrants in the north of the country (Gharyan) close to Tripoli. For the 2004-2005 period Italy allocated funds for the realization of two more camps: one in the city of Kufra located in the south-east close to the border with Egypt and Sudan, and the other in city of Sebha in the south-west of Libya.[39] In 2003 and 2004 Italy also financed a programme of charter flights for the repatriation of irregular migrants from Libya. A total of 5688 migrants were repatriated on 47 charter flights to Egypt, Ghana and Nigeria as main destinations.[40]

Future detention and expulsion schemes are being developed in collaboration with IOM, a key partner for both Italian and Libyan governments.[41] Italy was scheduled to fund an IOM pilot project in Libya starting in August 2005.[42] As far as Libya is concerned, following the agreement signed on the 9th August 2005 for opening of an IOM office in Tripoli,[43] IOM and Libya defined a programme of activities with the

[37] EP, P6_TA(2005)0138. Moreover, journalistic sources specify that the agreement requires Libya to increase control over its borders in the Saharan region. See Gatti, F., ibid., 2005b.

[38] European Commission, *Report on the Technical Mission to Libya on Illegal Immigration*, 2005, pp. 58-59.

[39] In spite the fact that the Italian MPs requested detailed information about the location of the camps in Libya and the amount of funding, the Italian Government confirmed and disclosed the position of the camps only recently in the report by the Italian Audit Court. The amount allocated for the construction of the camps remains however still unknown but according to the EC report the funding is classified as humanitarian support. EC, ibid., p. 59.

[40] Other destinations were Mali, Pakistan, Niger, Eritrea, Bangladesh, Sudan and Syria. EC, ibid., pp. 61-62.

[41] Since July 2000, Italy and Tunisia have been running joint control activities of Tunisian coastline. Italian police provides training courses for Tunisian border guards. Tunis rejected the Italian funding for the establishment of detention centres in Tunisia since the government feared Italy's interference into matters of domestic affairs. Cuttitta, P. 'Delocalization of migration controls to North Africa', paper presented at the workshop *The Europeanisation of National Immigration Policies – Varying Developments across Nations and Policy Areas*, European Academy, 1-3 September 2005, Berlin.

[42] While neither Italy nor IOM have disclosed the content of the project, the reports from NGOs and individual experts that the deportation from Lampedusa to Libya acquired nearly a weekly regularity after the signing of IOM-Libyan agreement suggest the pilot project to be a repatriation project or a so-called Assisted Voluntary Return (AVR) Programme. These information where gathered by the author in Lampedusa during the Asia-Europe Foundation workshop *The Management of Humanitarian Aids and of Transnational Movements of Persons in the Euro-Mediterranean Area and in South-East Asia*, 28-30 August 2005, Lampedusa.

[43] The cooperation between IOM and Libyan Government was developed in the framework of the 5+5 Regional Dialogue on Migration. As an informal dialogue on migration, 5+5 Dialogue is a forum that bring together the Maghreb countries (Algeria, Libya, Mauritania, Morocco and Tunisia) and the countries of the 'arc Latin' (France, Italy, Malta, Portugal and Spain) to promote the prevention and fight against irregular migration and trafficking in countries of origin, transit and destination. As a partner in the 5+5 Dialogue, as preceding the regional seminar on irregular migration in the western Mediterranean in Tripoli on 8 and 9 June 2004, IOM organized in cooperation with Libya's People's Committee for Public Security a training session for 100 Libyan officials and police representatives.

aim of supporting the Libyan Government to counter illegal migration and develop a long-term migration management approach. Under the *Programme for the Enhancement of Transit and Irregular Migration Management* (TRIM), IOM will be responsible for:

- Labour selection programmes for migrant workers in order to supply Libya's labour demand;
- Information campaigns to warn potential migrants about the dangers of irregular migration;
- Improvement of services (such as heath care) and conditions of detention for irregular migrants in detention centres in Libya;
- Development of an Assisted Voluntary Return Programme (AVR) and Reinsertion programme aiming to return irregular migrants in Libya to their countries of origin;
- Strengthening of cooperation on irregular migration between origin and destination countries.[44]

NGOs claim that the signing of the bilateral agreement between Libya and Italy in August 2004 led to widespread arrests in Libya of individuals from sub-Saharan Africa,[45] and that 106 migrants lost their lives during subsequent repatriations from Libya to Niger.[46] NGOs point out that due to the improvised identification practices in Lampedusa CPTA migrants and asylum seekers are at risk of being expelled to a country with which they have no relationship. The improvised identification of large numbers of migrants as Egyptians, NGOs claim, is at the base of forced collective removals of migrants first to Libya and later to Egypt with whom Libya collaborates in matters of illegal migration.[47] The NGOs and activists have hence pressured air carriers to refuse to expel migrants from the Lampedusa holding centre to Libya.[48]

Evidence gathered by Amnesty International (AI) points further to the risk that removed asylum seekers and irregular migrants face in Libya. As AI documented, the Libyan State practices incommunicado detention of suspected political opponents, migrants and possible asylum seekers, torture while in detention, unfair trials leading

---

The focus of the session was on border and migration management and on assisted voluntary return for irregular migrants in Libya. IOM, *Dialogue 5+5. Newsletter*, n. 1 issue, 2004.

[44] EC, ibid., p. 15.

[45] AI, 'Immigration Cooperation with Libya: the Human rights perspective. AI briefing ahead of the JHA Council 14 April 2005'.
Http://www.amnesty-eu.org/static/documents/2005/JHA_Libya_april12.pdf

[46] For a description of these expulsions and the itineraries across the desert see F. Gatti, ibid., 2005b.

[47] Requested on several occasions, the Italian authorities have so far not presented the list of expulsions orders from the Lampedusa CPTA. During their visit to the CPTA, the LIBE committee could not view the records of arrivals and departures since, the Italian Authorities claim, they are not held at the centre but at the offices of the Agrigento (Sicily) police.

[48] Alitalia, the Italian national air carrier, and AirAdriatic (AA), a private Croatian air carrier, are currently the two main companies that are removing migrants from Lampedusa CPTA to Libya or to other CPTAs in mainland Italy such as the one in Crotone. Previously, also the Italian charter carrier Blue Panorama was taking part in the removals and expulsions, but has retracted from it following the pressure from the NGOs and the protest a number of activist organized on 2nd of April 2005 --the European Day for Freedom of Movement-- in front of company's offices in Rome. In Croatia, Amnesty International Croatia has urged AirAdriatic to cease the deportation flights to Libya and appealed to AA to respect international human rights conventions.

to long-term prison sentences or the death penalty, and 'disappearance' and death of political prisoners in custody. Migrants and asylum seekers in particular are often victims of arbitrary detentions, inexistent or unfair trials, killings, and disappearances and torture in the detention camps.[49] Once migrants and asylum seekers are detained in Libya there is virtually no way for NGOs to assist them or verify the conditions of detention and the relative expulsion procedure. The Libyan detention centres are in fact almost inaccessible to international organizations or human rights groups and UNHCR is unable to access people returned from Lampedusa to Libya since it cannot operate its protection mandate in Libya.

In light of gathered data on current removal practices, a coalition of 13 European NGOs[50] proposed to the Member States and the EU a number of core principles to be applied during the repatriations in order to ensure that the policies fully respect the needs and dignity of individuals.[51] In the complaint filed with the European Commission concerning the expulsions from Lampedusa holding centre to Libya, the NGOs called onto the Commission to sanction Italy for:

- Violation of the prohibition of collective expulsions provided for in article 4 of the 4th Protocol of the European Charter of Human Rights (ECHR) and fundamental freedoms, and article II-19-1 of the Charter of Fundamental Rights and article 13 of the International Covenant on Civil and Political Rights
- Violation of the non-refoulement principle[52] prescribed in article 33 of the 1951 Geneva Convention on Refugees and Article 3 of the Convention against Torture[53]

---

[49] Amnesty International's report quotes testimonies of hundreds of Burkinabé nationals as well as several Eritrean and Nigerian migrants who were expelled from Libya to their country of origin after their documents and possessions were confiscated. They testified to having been detained in inhumane conditions, including lack of water, food and medical care. Amnesty International, *Libya: time to make human rights a reality*, 2004, AI INDEX MDE 19/002/2004.

[50] 'Common Principles on removal of irregular migrants and rejected asylum seekers', August 2005 by Amnesty International, EU Office; Caritas Europa; Churches' Commission for Migrants on Europe (CCME); European Council for Refugees and Exiles (ECRE); Human Rights Watch Jesuit Refugee Service –Europe (JRS); Platform for International Cooperation on Undocumented Migrants (PICUM); Quaker Council for European Affairs; Save the Children; Cimade (France); Iglesia Evangelica Espanola; Federazione delle Chiese Evangeliche in Italia (FCEI); and SENSOA (Belgium). The NGOs put these principles forward as the Commission Director General for JHA visited Libya on 22 June 2005 in order to start the cooperation on countering of illegal immigration and the Commission went ahead to draft the EU return directive.

[51] These core principles are to be applied also in so-called transit, border and airport zones in the EU. They are: voluntary return should always be the priority; vulnerable persons should be protected against removal (children, seriously ill people, victims of trafficking and pregnant women); persons subject to a removal order should always have access to effective remedies, detention for the purpose of removal should be the last resort, family unit should be strictly respected; independent monitoring and control bodies should be created; use of force should comply with Council of Europe recommendations; re-entry ban should be prohibited; and a legal status should be granted to persons who cannot be removed.

[52] The *non-refoulement* principle has been reaffirmed by the EU as the cornerstone of refugee protection. It prohibits the forcible return of anyone to a territory where they would be at risk of serious human rights violations: "No contracting state shall expel or return (*refouler*), a refugee in any manner 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". This principle makes reference to the lack of individual assessments and to the removal of persons to countries where there exists a serious risk to the physical integrity of those concerned (mentioned in article 19§2 of the European Charter).

Italian authorities have responded to the allegations of collective expulsions by invoking article 10 of Law 189/2002 and in particular the procedures regarding the refusal of entry (*respingimento alla frontiera*). The authorities claim that removals from the Lampedusa CPTA are not expulsions but rather refusals of entry on individual basis. An expulsion needs to be decided by the judge and prohibits entry into Italy for ten years while a refusal of entry is an administrative measure that does not ban the migrant from entering the Italian territory in the future.[54] Irregular migrants reaching Lampedusa are hence served refusals of entry and returned to Libya as they have transited Libya prior to reaching Italy. Italian authorities insist that the refusals of entry take place on a case by case basis and that since the majority of migrants reaching Lampedusa are economic migrants rather than refugees, Italy is in no violation of the *refoulement* principle or in breach of the Geneva Convention.[55] The Italian Government has explained its refusal to disclose the content of the bilateral agreement with Libya by saying that making the agreement public would diminish the success of countering smuggling and trafficking networks responsible for organizing and profiting from irregular migration from Libya into Italy.

In its observations on Italy during its 85th Session in Geneva in November 2005[56], the UN Human Rights Committee, raised the issue of the right to international protection and recalled the right of each person not to be expelled to a country where he/she might face torture or ill-treatment. Along similar lines, in its *Resolution on Lampedusa* the European Parliament called on Italy to refrain from collective expulsions to Libya and took the view that these expulsions constitute a violation of the principle of *non-refoulement*. EP also called on Libya to allow access to international observers, halt the expulsions and arbitrary arrests of migrants, ratify the Geneva Convention and recognize the mandate of the UNHCR.

3. Misrepresentation of migratory flows to Italy

The Italian Government considers the detentions in the Lampedusa CPTA and the successive expulsions to Libya to be indispensable measures for countering the emergency caused by the mass-influx of people from Libya and deterring 'a million illegal migrants' from waiting on Libyan shores and crossing over to Italy.[57] At a first glance, the image of 'a million illegal migrants' might express the Italian State's difficulty in managing large-scale migration from the South. The expression,

[53] Migrants and asylum seekers are deported to Libya, the country lacking minimum guarantees of protection. This is in contravention with the article II-19-2 of the European Charter of Fundamental Rights, according to which "No one may be removed, expelled or extradited to a State where there is a serious risk that they may be subjected to the death penalty, torture or inhuman or degrading treatment". Italy obligation to *non-refouleur* to a country lacking minimum guarantees of protection is reinforced by the fact that Italy is a party to the 1951 Refugee Convention, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[54] EP/LIBE PV/581203EN.

[55] The response by Alessandro Pansa, the Director general of the immigration and border police of the Italian Ministry of Interior delivered to the UN Human Rights Committee during its 85th Session on the 20th October 2005. Notes taken by Claire Rodier, GISTI. Http://www.migreurop.org/article909.html

[56] See footnote 32.

[57] This number was given by Italian Ministry of Interior G. Pisanu. See *il manifesto* 22nd April 2005, p. 9. Http://www.ilmanifesto.it/Quotidiano-archivio/22-Aprile-2005/art74.html (consulted on 25/04/2005)

however, merits a more serious consideration because it brings together a number of misconceptions that inform Italy's migratory policies: it inflates the numbers so as to produce the imagery of invasion, assumes that the entries via the Italian southern border constitute the majority of Italy's undocumented migrants and conveys the image that the bulk of migratory flows in and through Libya is of clandestine nature and geared towards Europe.

As for the migration from Eastern Europe during the 1990s –to which the scholars now refer as 'the invasion that never took place'[58]— so for the current migration to Italy via Libya. The reference to the magnitude of migratory flows invokes the fantasy of invasion from the South. The existing data offer however a different image of migratory flows towards Italy. The recent report from the Italian Ministry of Internal Affairs indicates that the majority of third country nationals residing illegally in the country have reached Italy neither via sea nor having crossed its borders undocumented. They have on the contrary, entered the county at its land borders with a valid entry clearance and have become undocumented either once their visa expired or after they overstayed their permit of residence. According to the same source, only 10% of undocumented migrants currently residing in Italy entered the country 'illegally' via its sea borders.[59]

The arrival of circa 10500 migrants and asylum seekers to the island of Lampedusa in 2004 certainly represents a heavy load for a small island of 20km² with a population of 5500. Yet, if we exaggerate the numbers and assume for analytical purposes only that all of 10500 migrants are asylum seekers, this would certainly provoke a sharp increase in numbers of asylum seekers and refugees in Italy from 9019[60] to more than its double. What might appear at a first glance as a worrisome perspective needs to be viewed in proportion to the national population size. The 9019 applications filed in 2004 translate roughly to Italy receiving 16 asylum seekers per 100,000 inhabitants.[61] Even if doubled, the total number of requests for asylum in Italy would be of 34 per 100,000 and hence still remain below the EU average of 60 asylum seekers per 100,000 inhabitants.[62] While this increase is a hypothetical one, it is nevertheless useful as to illustrate the gap between asylum trends in Italy and other EU countries and to point to Italy's reluctance in taking on its share of asylum responsibilities within the EU.

An example of this reluctance is the earlier discussed fact that the Italian authorities maintain that migrants arriving from Libya to Lampedusa are economic migrants rather than asylum seekers and refer to all of them as illegal migrants. Since the

[58] Simoncini, A., 'Migranti, frontiere, spazi di confine. I lavoratori migranti nell'ordine salariale', *altreragioni*, pp. 29-45, 2000.
[59] See Caritas/Migrantes, *Immigrazione. Dossier Statistico* 2005. Edizioni IDOS, Roma, 2005.
[60] Data from Italian Ministry of Interior, Http://www.cir-onlus.org/Statisticheitalia.htm (consulted 10 December 2005).
[61] Asylum levels in Italy are in fact among the lowest in Europe and in 2004 reported a fall of 26%, which is 5% above the EU average. These numbers are extrapolated from the UNHCR's 2005 report on *Asylum levels and Trends in Industrialized Countries 2004. Overview of Asylum Applications longed in Europe and non-European industrialized countries in 2004*. Population data unit/PGDS: UNHCR Geneva. http://www.unhcr.ch/statistics
[62] This calculation does not take into consideration that out of 9019 requests for asylum filed in 2004, only 781 were approved. The readers are hence asked to bear in mind that a hypothetical increase calculated above concerns only requests for asylum rather than the allocation of the asylum status.

Libyan government does not recognize the category of asylum seekers and since the authorities of Lampedusa CPTA allegedly fail to investigate migrants' nationality and classify the majority as Egyptians, there is no record which would permit a systematic identification of migrants' countries of origin. If such a record was available, it would indicate that refugees are indeed part of migratory flows that transit Libya. This can be seen clearly in the case of Malta where the majority of new arrivals in 2004 were from the conflict affected countries of Eritrea, Ivory Coast, Sudan and Somalia.[63]

Libya's migratory reality is far from being, as suggested by the image of 'a million illegal migrants' on Libyan shores, a country of emigration or a transit route for clandestine migrants from Sub-Saharan Africa to Italy. On the contrary, Libya is in first place a destination country and the major country of immigration in the Maghreb. Foreign nationals constitute approximately 25 to 30% of Libya's total population. Large-scale economic and social development schemes in the 1970s, launched thanks to the revenues from the petroleum industry, relied in the first instance on migrant labourers from Egypt. Egyptian nationals, employed mainly in the agriculture industry and education, constitute today the largest migrant group in Libya.[64] Libya is home also to a large Maghrebi community (Morocco, Tunis and Alger) [65] and the country's economic development relies on the cheap and seasonal labour from the neighbouring countries of Niger, Chad and Sudan.[66] Since the 1990s, labour migrants from neighbouring African countries have been a key factor in Libya's economic growth. The influx of migrant workers from sub-Saharan states is prompted by Libya's reorientation from pan-Arab to pro-African policy[67] and its active role in the foundation of the Community of Sahel-Saharan states (CEN-SAD) which, as an economic project grounded in the free circulation of people and goods between its member states, is oriented towards regional cooperation and integration.[68] Migrant workers from Sudan, Chad and Niger are generally present in the Libyan Saharan

[63] Pliez, O. 'La troisième migratoire, les conséquences de la politique européenne de lutte contre les migrations clandestines', paper written for Asia-Europe Foundation workshop *The Management of Humanitarian Aids and of Transnational Movements of Persons in the Euro-Mediterranean Area and in South-East Asia*, 2005.

[64] Hamood, S., *African Transit Migration through Libya to Europe: the Human Costs*. The American University on Cairo, Forced Migration and Refugee Studies. 2006.

[65] Boubakri estimates that 2 to 2.5 millions of foreigners live in Libya, namely 25 to 30% of the country's total population. Out of this there are approximately 200 000 Moroccans, 60 000 Tunisians and 20 000 – 30 000 Algerians. Boubakri, H. 'Transit Migration between Tunisia, Libya and Sub-Saharan Africa: Study Based on Greater Tunis', Regional Conference *Migrants in Transit Countries: Sharing Responsibility for Management and Protection*, Council of Europe: MG-RCONF (2004)6e; p. 2.

[66] Boubakri, H., ibid., and Pliez, O., ibid.

[67] Disappointed by the lack of support from the Arab countries, the isolation from the international community due to the bombings in 1998 of flights over Lockerbie in Scotland and in 1989 over Niger, and the 1992 UN Security Council arms embargo on Libya, Colonel Mu'ammar al-Qaddafi reoriented Libya's foreign policy from Arab towards its sub-Saharan neighbours, and hence from pro-Arab to pro-African policy.

[68] Libya is a key member of the Group of Sahel-Saharan States and of the African Union. The Group also known as CEN-SAD (the Community of states bordering the Sahara and the Sahel) was established in 1998 in Tripoli. It members are: Egypt, Djibouti, Libya, Morocco, Somalia, Sudan, Tunisia, Senegal, Eritrea, Chad, Central Africa, Gambia, Mali, Niger, Burkina Faso, Nigeria, Togo and Benin. African Union was founded in 1999 by the Organisation of African Unity whose main objectives were to 'rid the continent of the remaining vestiges of colonization and apartheid; to promote unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of Member States and to promote international cooperation within the framework of the United Nations'. http://www.africa-union.org/

border areas where they work in sectors such as agriculture, tourism and local trade. These labour migrations, facilitated by the open border policy towards sub-Saharan Africa are of temporary and pendular character rather than, as commonly assumed, the source of irregular migratory movement to Europe.[69]

Inflating the numbers relative to the migratory flows to Italy from Libya, as some politicians and mass-media have done, results in an erroneous and misleading representation of Libya's migratory history and of the contemporary migration in the Mediterranean area. Images such as a 'million illegal migrants' produce and manipulate the fear of invasion through a distorted account of migratory patters in Libya and conceal Italy's reluctance to admit asylum seekers and refugees to its territory and, atypically for an EU state, its failure to pass an organic law on the right to asylum that has been under discussion since the 2002.

4. The production of illegal migration

Much attention has been given to collective expulsion of third country nationals from Lampedusa CPTA to Libya in terms of the 'externalisation' of asylum. Externalisation stands for the propensity of several EU Member States to establish centres for processing asylum applications outside the EU's external borders. In fact, the expulsions to Libya occurred in a highly charged political atmosphere surrounding the proposal to set up refugee processing centres in North Africa.[70] Initially put forward by the UK and rejected during the 19-20 June 2003 Thessaloniki European Council, the proposal envisioned the establishment of 'Regional Processing Areas' (RPAs) and 'Transit Processing Centres' (TPCs) located outside the external borders of the EU.[71] Under this proposal, promoted some months earlier by Denmark,[72] RPAs were to be located in the zones of origin of refugees as a means of strengthening reception capacities close to the areas of crisis. On the other hand, the location of TPCs closer to EU borders was envisioned as centres where asylum seekers and refugees were to submit their asylum claims and await the result of their applications for asylum in the EU. France, Spain and Sweden rejected the proposal for refugee processing centres. Nevertheless, in October 2004, the month of the largest collective expulsions from Lampedusa CPTA to Libya, the informal EU Justice and Home Affairs Council considered the implementation of five pilot projects with the aim of upgrading the existing detention facilities and developing asylum laws in North-West

[69] Pliez, O. ibid.

[70] The countries proposed by the UK were: Albania, Croatia, Iran, Morocco, northern Somalia, Romania, Russia, Turkey, and Ukraine. British proposal was influenced by the so-called 'Pacific Solution' implemented by Australia. Having come to public attention in Europe following the MS Tampa incident in 2001, Australian model is based on systematic removal of boat arrivals to Nauru and Papua New Guinea islands, both outside Australian territory and jurisdiction. There migrants claims are processed under preclusion of ordinary juridical control and await the outcome of their application in the detention camp. For PM Tony Blair's 10 March 2003 letter to the Greek Presidency, see http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf

[71] The proposal, advanced by German Minister of Interior Otto Schily and Italian Minister Giuseppe Pisanu, was supported by Germany, Italy and United Kingdom (UK) and rejected by France and Spain.

[72] During the Danish presidency during the second half of 2002, the 'reception in the region' was identified as a priority in the area of asylum and migration. In Noll, G. 'Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones', in *European Journal of Migration and Law* 5, 2003, 303-341.

Africa. Proposed by the EC and co-funded by the Netherlands, the pilot projects targeted Algeria, Libya, Mauritania, Morocco and Tunisia.[73]

On the basis of this chronology of events, it is tempting to identify the collective expulsions from Lampedusa to Libya in terms of the externalisation of asylum. The fact that third-country nationals are precluded from presenting asylum claims, removed from Lampedusa to Libya and then most likely placed in the detention facilities financed by the Italian Government, might indeed seem to constitute the externalisation of asylum. The idea of externalisation presupposes however that asylum seekers and refugees are relocated to facilities where they are granted protection and where they can access the asylum determination procedure. Since the external processing centres do not yet exist and since Libya in practice has no refugee policy, Italy's expulsion of third-country nationals to Libya constitutes a retraction of the right to asylum rather than its externalisation.[74] As such, the policy of expulsions carries the risk of turning out to be counterproductive. Whereas the expulsions are carried out as a deterrent for undocumented migration, the obstacles to filing an asylum request are likely to increase irregular migration. In fact, those who would otherwise seek asylum might become irregular migrants due to the effective impossibility in accessing the asylum procedure.[75]

The deterrence of unwanted migration from Africa, the core element of Italian-Libyan cooperation on irregular migration, extends further to border guard training and the supply of devices and equipment requested by the Libyan authorities to achieve a better control of the country's sea and land borders, in particular those with Sub-Saharan Africa.[76] These measures are *inter alia* geared towards combating the smuggling of migrants and preventing further loss of lives at sea due to boats' overcrowding and smugglers' negligence. While well intended, the idea of strengthening border controls in order to prevent smuggling and trafficking in migrants can yield paradoxical consequences. Libya's open border policy towards sub-Saharan Africa and in particular towards Chad, Niger and Sudan is a key point in the regional integration of Sahelian Africa. Following the EC's technical mission to Libya, experts confirmed that many migrants from Chad, Niger and Sudan settled in the southern cities of the Libyan desert without intention to transit further to Europe.[77]

---

[73] The Commission denied that these pilot projects are directly linked to plans to create EU reception centres in North Africa. Antonio Vitorino, Justice and Home Affairs Commissioner, declared however that "in the short term the Commission could envisage the possibility of setting up humanitarian reception centres in the countries bordering the Mediterranean." EUOBSERVER, 4th October 2004 .

[74] The danger of this happening was foreseen by Gregor Noll in his brilliant piece on legal and practical issues raised by the idea of external processing where he argues that the proposal to establish processing and protection centres outside the EU represents a serious threat to the existing institution of asylum and that these are likely to result in ending of legal and factual protection for certain groups of people. See footnote 73.

[75] Current research on migration on Libya confirms these claims. See Hamood, S. ibid., pp. 33-46.

[76] Libya is often characterized as lacking a comprehensive strategy on migration and border management and the migration into and via Libya is outlined as a negative effect of Libya's open-border policy towards sub-Saharan Africa. Within this framework, the recent deportations from Libya to Maghreb countries and sub-Saharan Africa funded by the Italian Government have been seen as a step forward in establishing a migration management system in Libya. What these practices disregard however is that in Libya deportations as state policy have been in place since 1966 and hence well before Lampedusa became the main point of entry into Italy for migrants departing from Libya. See Pleiez, O., ibid.

[77] EC, ibid., p. 39.

Strengthening the control at the border between Libya and its sub-Saharan African neighbours is likely to create obstacles to the free movement of people and illegalise the seasonal labour migration in the region.[78]

The case of the EU's enlargement eastward showed that tightening of border and visa controls enhances migrants' vulnerability and feeds into smuggling networks. As research on the demand for the labour of trafficked migrants' has shown, if arranging a visa is not cheap and easy migrants will not be able to access (even when available) the formal governmental channels for migration.[79] Instead, they will resort to irregular channels that in turn take advantage of migrants' legal vulnerability, whether by charging higher costs for travel and documents or profiting from their labour at various points of the journey.[80] Stricter immigration controls aimed at preventing trafficking do not necessarily protect migrants from abuse but might foster migrants' vulnerability to violence during travel, increase the costs of 'doing business' for traffickers[81] and leave ample space for third parties' profiteering and abuse.

The little data available from Libya confirms these findings. Following the signing of the bilateral agreement between Italy and Libya in August 2004, journalistic sources reported that Libyan authorities targeted sub-Saharan Africans with arrests, detentions and deportations.[82] These allegations were confirmed by the EC's technical mission to Libya during which experts verified that recent arrests and detentions were often of arbitrary nature and affected migrants from Niger, Ghana and Mali who have been working in Libya for more than a decade.[83] The operations of repatriation, currently the main focus of Libyan authorities especially in the south of the country, are organized by the state or at times requested by migrants who prefer to pay for their own return rather than remain detained for an indeterminate period of time. Italian journalist Fabrizio Gatti who travelled with returnees on a lorry from Libya to Niger via the desert, reported that these returns expose migrants to various type of abuse. These vary from financial profiteering (following the increase in arrests and expulsions third parties who organize travel have allegedly tripled the price of the journey out of Libya), theft (third parties steal migrants' belongings and leave them in the desert), labour exploitation (migrants who run out of money during the journey get stuck in various settlements in the desert they their work under harsh conditions in exchange for food and shelter), and death (caused by overcrowding in lorries or lack of water).[84] While more substantial figures on the impact of current immigration

[78] See Maccanico, Y. 'The European Commission Technical Mission to Libya: Exporting Fortress-Europe', *Statewatch bulletin*, vol. 15 no. 2, March-April 2005.
[79] Anderson, B. and J. O'Connell Davidson, *Needs and Desires: Is there a Demand for "Trafficked" Persons?*, Geneva, IOM, 2003
[80] See for example the research on trafficking in women in Europe Andrijasevic, R. 'La traite des femmes d'Europe de l'Est en Italie' *Revue européenne des migrations internationals* Vol 21(1), 2005, pp. 155-175.
[81] Salt, J. and J. Stein, 'Migration as a Business: The Case of Trafficking'. *International Migration,* 35(4), 1997, pp. 467-491.
[82] Gatti, F. ibid., 2005b.
[83] In their report, the EC experts state that the reasons for arrests and repatriations carried out by Libyan authorities are unclear and arbitrary. Although migrants were in an irregular legal situation they were holding regular jobs and some were holders of identity cards issued by private Libyan companies. See EC, ibid., p. 31-35.
[84] Libyan authorities confirmed that 106 migrants died during an expulsion operation in 2004. Basing his inquiry on the data from Red Crescent, Gatti claims that at least another 70 men and women died in the desert as result of unsafe conditions. Gatti, F. ibid., 2005b.

policies on migrants' lives in Libya are still missing, the data gathered so far suggest that the measures geared towards curbing irregular migration are likely to increase migrants' vulnerability and the involvement of third parties due to the rise in profit to be made from smuggling activities.[85]

The conditions of 'illegality' are however not produced only as a result of expulsions to or tightening of immigration control in Libya. While most of the attention so far has been paid to the implications of collective removals from Lampedusa to Libya, the fact that the majority of the irregular migrants and asylum seekers are transferred from Lampedusa CPTA to other Italian CPTAs went overlooked. This continuous detention follows the logic intrinsic to CPTAs' constitution, namely that detention is indispensable to ensure an effective removal policy. The data that appeared in the report from Italy's Audit Court undermine the argumentation that CPTAs are a key means for effective functioning of expulsions. The report shows in fact that out of 11883 irregular migrants detained in Italian CPTAs in 2004, less than half were deported while the rest escaped or were released after the expiration of the maximum detention period.[86] Since the majority of migrants are actually released from the CPTAs after they have been served a removal order, scholars have suggested we view detention camps not as institutions geared towards deportations but rather as sites that on the one hand, function as a filter mechanism for the selective inclusion of certain groups of migrants and on the other, produce 'illegality' and hence the condition of 'deportability'.[87] This reasoning is of great relevance in particular for the asylum seekers transferred from Lampedusa CPTA to another Italian CPTA: asylum seekers' detention becomes in fact mandatory only after they have been served a refusal of entry order in Lampedusa.[88] Moreover, once released from a CPTA with the order to leave Italy, asylum seekers find themselves in an irregular situation: if they overstay the period of five days within which they must leave the country, they are susceptible to incarceration on the basis of having committed an offence by failing to observe the expulsion order.[89]

As research has shown in several instances, border controls, detentions and expulsion practices do not prevent people from moving from their countries of origin, nor from reaching Europe, but rather they raise the costs and dangers of migration. The alarmist portrayals that invoke the image of a massive influx of undocumented entries from Libya to Italy hinder a correct understanding of existing migratory patterns and the

---

[85] On this topic see Koslowski, R. 'Economic Globalization, Human Smuggling, and Global Governance', in D. Kyle and R. Koslowski' (eds.), *Global Human Smuggling. Comparative Perspectives*, Baltimore and London, The John Hopkins University Press, 2001, pp. 337-358.

[86] The exact percentage is 48,1. Quoted in the 2005 report by Corte dei Conti. http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Controllo-/Documenti/Sezione-ce1/Anno-2005/Adunanza-c/allegati-d3/Relazione.doc

[87] Karakayali, S. and V. Tsianos,'Wilde Schafsjagd in Aigais und die transnationalen "mujahideen". Rastanski Lojia Über Grenzregime an der Südostgrenze Europas', *Springerin* n. 4, 2005; and Mezzadra, S. (ed), *I confini della libertà*. DeriveApprodi, Roma, 2004.

[88] A deportation order is served to those applicants whose application has been rejected. The applicant can appeal within 15 days but this does not suspend the deportation order even though the *Prefetto* might authorize the applicant to remain in Italy until the outcome in the appeal. In case, the applicant is deported before presenting the appeal, he/she has the right of appeal from abroad via Italian diplomatic representations.

[89] See International Federation for Human Rights (FIDH), *Italy. Right of Asylum in Italy: Access to procedures and treatment of asylum-seekers. Report. International Fact-finding Mission*. No. 419/2, June 2005, p. 19

responsibility of the states in reducing legal channels of migration and impeding access to asylum so that in contemporary times illegality has become a structural characteristic of migratory flows.[90]

5. Renounced Responsibilities: the EU framework

As well as being matters for Italy's national legislation and initiative, the return of illegal third-country nationals from Lampedusa holding centre and the collaboration with Libya on migration issues are also regulated by the EU framework. The EU Directive on Return and the Action Plan on Libya, both still to be finalized, are part of the agenda to establish a comprehensive Community policy on immigration and asylum. The EU Return Directive provides a minimum set of procedural and legal safeguards for third-county nationals residing illegally in EU Member States concerning their return, removal and custody.[91] Once in force, by prioritising voluntary return over forced removal, by providing for a right to an effective judicial remedy with suspensive effect against return decisions and removal orders, and by limiting the use of temporary custody to the cases that present the risk of absconding, the Directive would legally oblige the authorities of the Lampedusa holding centre to revisit their removal practices in accordance with the standards set by the EU. However, it is very likely that the Directive will not affect the situation and procedures in Lampedusa given the fact that the Lampedusa holding centre has a special status, namely, that of a clearing station.[92] In fact, according to the Article 2.2. of the Return Directive, the Member States are not obliged to apply the directive to the third-country nationals who have been refused entry in a transit zone of a Member State. Classifying Lampedusa holding centre as a clearing station therefore circumvents the Return Directive and relieves Italian authorities of the obligation to bring removal practices in Lampedusa in line with common EU standards.[93]

The discussions between the European Union and Libya regarding migration management have intensified throughout 2005 and are currently directed towards drawing a Joint Action Plan.[94] Developed under the framework of the external

---

[90] Mezzadra, S. *Diritto di fuga. Migrazioni, cittadinanza, globalizzazione*, Verona, Ombre corte, 2001.

[91] European Commissions, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

[92] AI, *Temporary stay – permanent rights*. Ibid., Appendix 2.

[93] I thank Daphné Bouteillet-Paquet, JHA Executive Officer from Amnesty International EU Office for bringing this point to my attention.

[94] The history of discussion between EU and Libya goes as fellows: in November 2002, the Council considered it essential to initiate cooperation with Libya on migration. In May 2003, the Commission organized an exploratory mission to Libya to assess the interest of Libyan government in developing a cooperation. The Council decided, on 16 June 2003, to organize a follow up technical mission. Postponed until the Council agreed on 11 October 2004 to embark upon a policy of engagement with Libya, the technical mission was carried out between 28 November and 6 December 2004. On the basis of the recommendations contained in the report of the technical mission released in April 2005, draft operational Council conclusions were drawn and later discussed by the High Level Group on Asylum and Migration in 20 May, by the JHA Counsellors on 23 May, and by the Permanent Representatives Committee on 26 May 2005. The outcome of this process is the *draft Council conclusions on initiating dialogue and cooperation with Libya on migration issues* (9413/1/05 REV 1). Many of the measures outlined in the Annex are taken up by the Libya-EU Joint Action Plan that at this point is still being drafted and therefore not public.

dimension of the common European asylum and immigration policy laid out by the Hague programme with the aim of integrating asylum into EU's external relations with third countries, the cooperation between the EU and Libya is geared towards defining operational measures to counter illegal migration. The Joint Action Plan that is currently being drafted outlines *inter alia* the enhancement of border control at Libya's sea, southern land and air borders, training of Libyan law enforcement officers including a thematic programme on asylum, refurbishment of detention camps and dialogue with main countries of origin as the main components of the EU-Libyan partnership.[95] Given the fact that Libya does not have a functioning asylum system in place and that it is not party to the Geneva Convention, the Action Plan proposes to limit the EU's intervention as far as detention centres are concerned to the provision of health care and advice and to postpone assistance for return operations until conditionality requirements ensuring adequate protection of refugees are met by Libya.[96]

Despite the evidence of grave human rights violations in Libya, suggesting that Libya falls short of conditionality requirements, and prior to the EU's outlining of the conditions for the formalised cooperation in the field of return, Italy financed construction of detention camps in Libya and a program of charter flights for the repatriation of illegal migrants from Libya. In funding the construction of detention camps and carrying out repatriation flights in Libya, Italy circumventing of EU's framework on immigration and asylum. This however does not exempt the EU from its responsibilities on the matter. The EU Return Directive and the Action Plan on Libya are both new instruments and both need to be finalized. Despite ample evidence of procedural irregularities and allegations of collective expulsions from Lampedusa holding centre, the Commission's Proposal for a Return Directive gives Member States the possibility of not applying the Directive in transit zones. In a similar manner, the EU also went ahead to develop cooperation on irregular migration with Libya despite evidence of grave human rights violations in Libya, no guarantee of refugee rights in Libya and no official recognition of UNHCR protection mandate. Moreover, while the draft of the Action Plan specifies that no EU funding will be provided for return until the conditionality requirements are met, it does not mention any limitations to be imposed on bilateral agreements on return such as the one between Italy and Libya.

The EU Return Directive and the Action Plan both strengthen Member States' discretion and leave ample space for the states, in this case Italy, to apply the exception.[97] The wide discretion available for the application of restrictive exceptions, and the Commission's position on the case of Lampedusa that Italy's compliance with its international obligations is a matter not to be decided by the Commission but by

[95] The Joint Action Plan is still in it draft form. Nevertheless, the combined information for the Action Plan (draft as at September 2005) and the Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues (9413/1/05 REV 1) offer an outline of the main points and suggest the priorities likely to be included in the final Action Plan.

[96] In accordance with the Council conclusions in November 2004, any cooperation is conditional upon full respect for human rights, respect for democratic principles, the rule of law and the demonstration by those countries of a genuine commitment to fulfil international obligations towards refugees.

[97] Thierry Balzacq and Sergio Carrera identify large margin of exception as one of the reasons for low convergence of Communitarian policies on migration, borders and asylum. In Balzacq, T. and S. Carrera. *Migration, Borders and Asylum. Trends and Vulnerabilities in EU Policy*. CEPS: Brussels, 2005.

Italy itself under its national law, undermines the credibility of the Commissions' monitoring responsibility and the EU's commitment to protect refugees.

The issue of the Commissions' responsibility as far as the right of asylum is concerned is further raised by its co-financing of the TRIM programme in Libya.[98] Under the TRIM Programme, developed and implemented by the IOM, the Commission is funding IOM to improve the services and conditions of detention for irregular migrants in detention centres in Libya,[99] to develop a so-called Assisted Voluntary Return Programme (AVR) and Reinsertion programme to support irregular migrants in Libya in returning to their countries of origin, and to strengthen cooperation on irregular migration between origin and destination countries.[100] Contrary to its commitment not to assist Libya financially with repatriations, the Commission is *de facto* funding a return scheme for the repatriation of irregular migrants and asylum seekers from Libya via its collaboration with the IOM. Similar to Italy's expulsion of irregular migrants and asylum seekers to Libya and Libya's delegation of detention and repatriations matter to IOM, the Commission also contracts out to IOM its responsibility over migration and asylum matters. Yet, contracting out the responsibility for detention conditions and repatriations to IOM does not relieve either the EU, Italy or Libya from their international legal obligations under norms prohibiting *refoulement* and norms protecting human rights.[101]

Contracting out also raises the question of responsibility as regards IOM's interventions. In the case of the repatriations of those irregular migrant and asylum seekers who have initially been expelled from Lampedusa holding centre, IOM makes itself complicit in obstructing asylum seekers' right to asylum. Moreover, the fact that irregular migrants and asylum seekers are deported from Lampedusa without knowing that they are being transferred to Libya, that the removals are executed by force and that once in Libya migrants are again detained in police-guarded structures, raises serious doubts that the IOM-run repatriations from Libya can be identified as voluntary. When the decisions to return are made under duress or as an alternative to state-run forced expulsions, 'voluntary' seems to designate an absence of viable options rather than a deliberate choice. IOM cannot be held responsible for the rule of law in the same way as sovereign states. However, in deporting irregular migrants and asylum seekers from Libya IOM is to be seen as assuming joint responsibility for any violation of fundamental rights asylum seekers and irregular migrants might suffer.

---

[98] A sum of 2.000.000,00 EUR has been allocated by the Commission under the 2004 budget for the AENEAS Programme. See Annex 1 of the Communication from the Commission to the European Parliament and Council. Thematic Programme for the cooperation with third countries in the area of migration and asylum. COM(206) 26 final dated 25 January 2006.

[99] The degree of IOM's involvement with detention camps in Libya remains to be seen. IOM's involvement with the matter of reception centres in the north Africa dates back to 2002 when IOM, UNHCR, the European Commission, the Netherlands and Denmark met in an informal meeting to discuss the UK proposal for 'in the region and off-shore processing' and drafted a memorandum that set a number of practical, legal and financial issues concerning the external processing. IOM has already managed off-shore processing detention centres, such as the one set by the Australian authorities on Nauru island, for which it came under attack by Amnesty International and Human Rights Watch, and urged to stop arbitrary detention and impingement of migrants' right to seek asylum. IOM is currently also responsible for realization of two large new camps for irregular migrants in Ukraine, one of the potential countries to host EU's Regional Protection Programme.

[100] EC, ibid., p. 15.

[101] Even though Libya is not a signatory of 1951 Geneva Convention, Libya has ratified the respective 1969 OAU Convention on protection on refugees.

6. Conclusions

In the attempt to control the influx of 'irregular' migrants and asylum seekers to Italy via Libya, the Italian government developed a number of schemes within and beyond its state borders. In the holding center situated on the island of Lampedusa, Italy's southernmost island and the most frequent point of arrival in 2004 for boats departing from Libya, Italian authorities implemented detention and large-scale expulsion schemes that according to the NGOs affected irregular migrants and asylum-seekers alike. In order to control the migratory flows prior to migrants reaching its territory, Italy strengthened its collaboration on illegal migration with Libya by signing a readmission agreement, refurbishing several detention facilities and funding a repatriation scheme for irregular migrants in Libya. Libya on its part increased internal checks on specific groups of migrants, in particular those originating from Sub-Saharan states, a practice resulting in arbitrary detentions and unsafe repatriations in which more than one hundred people lost their lives.

Despite the Italian Government's denial that any human rights violations are taking place in the Lampedusa holding center, the European Parliament and the United Nations' Human Rights Committee (UNHRC) expressed concern about the conditions of detention in the centre. The EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE) visited the Lampedusa holding center in September 2005 and assessed the detention conditions, the running of the CPTA and the treatment of migrants. Both the European Parliament and the UNHRC called on Italy to guarantee the individual examination of asylum and to refrain from collective expulsions of undocumented migrants and asylum-seekers to Libya. The European Parliament stated that these expulsions constitute a violation of the principle of *non-refoulement* that prohibits the forcible return of anyone to a territory where they might be at risk of serious human rights violations. To expel asylum seekers from Italy to Libya implies returning them to a country which does not recognize the mandate of the UNHCR, has no asylum system, is not a signatory of the Geneva Convention and in which, as NGOs documented, irregular migrants and asylum seekers are at risk of arbitrary detentions, unfair trails, disappearance and torture while in detention.

The procedural and legal safeguards for the return, removal and custody of third-country nationals residing illegally in EU Member States and the collaboration with Libya on matters of illegal migration are about to be regulated through the EU Return Directive and by the Libya-EU Joint Action Plan. The Directive prioritizes voluntary return over forced return, introduces the suspension against a return decision and/or a removal order, and limits temporary custody to those situations where there is a risk of absconding. The Action Plan, on the other hand, proposes to postpone EU assistance for return schemes for undocumented migrants in Libya until the Libyan Government demonstrates full respect for human rights and democratic principles, and a commitment to fulfil its international obligations toward refugees.

Potentially instruments that would oblige Italian authorities to revisit their detention and removal practices, the EU Return Directive and the Action Plan both still to be finalized leave at this stage too ample a space for the Member States to apply restrictive exceptions and to develop bilateral partnerships. Since the directive exempts the Member States from applying the minimum procedural and legal

safeguards for the return, removal and custody to a transit zone, Italian authorities do not hold the obligation to revisit their removal practices in the Lampedusa holding center so as to bring them in line with the common EU standards. Similarly, the scope of Member States' interventions regarding funding of return schemes for irregular migrants in Libya is not contemplated by the Action Plan which hence imposes no limitations on repatriation programs for irregular migrants in Libya, such as those funded by Italy in 2003 and 2004. Wide powers are being left to the Member States to apply exception and develop bilateral partnerships, which in combination with the funding allocated to the IOM for a programme geared *inter alia* towards developing a repatriation scheme in Libya, undermines EU efforts to achieve a common framework on asylum and immigration, and thereby improve its credibility on refugee protection.

Scholars and policy analyst have approached the issue of detention and repatriation programmes outside EU borders in terms of the externalization of asylum. What this paper suggests however is that the implementation of detention and repatriation programs in Libya, especially when considered together with the expulsions from Lampedusa, do not actually relocate the asylum procedures outside the EU external borders but rather deprive asylum-seekers of the possibility to access the asylum determination procedure. This violation of the right to asylum is concealed by the imagery invoked by the politicians and the media of an impending mass arrival of undocumented migrants from Libya to the Italian shores. This imagery distorts the reality of migratory movements from Sub-Saharan Africa into Libya, which is an established part of Libya's seasonal labour migration rather than a source of irregular migration into Europe. While producing an erroneous representation of migratory flows in the Mediterranean region, the imagery of impending mass arrival also conceals Italy's reluctance to admit asylum seekers into its territory and its unwillingness to assume its share of asylum responsibility in the EU.

Current Italian-Libyan partnership indicates a new reorientation of Libyan politics from a pro-African to a pro-European stance. This change in political balances, accompanied by Libya's tightening of border controls towards its Sub-Saharan neighbours is likely to clash with the principle of free movement of people that is a cornerstone of regional cooperation and integration in the Sahel-Saharan region. This shift could destabilize the current political balances between Libya and its neighbouring states, and may consequently 'illegalize' movements of large groups of Sub-Saharan nationals.

The implementation of detention and expulsion schemes that illegalize migratory movements and impinge upon migrants' right to seek asylum brings into question the political responsibility of all actors involved, whether they are Governments, supranational bodies or agencies. The Italian and Libyan governments, the European Union, and the International Organization for Migration all need to assume their share of responsibility for the violations of rights that asylum seekers and irregular migrants might suffer as a result of the measures and programmes they implement inside the EU and outside its borders.

7. Policy Recommendations

Given the fact that data available on measures regarding detention and deportations of irregular migrants and asylum seekers in Lampedusa and Libya are often contradictory and incomplete, that bilateral agreements on irregular migration remain undisclosed and that the European Union's framework leaves large discretion for the Member States to apply restrictive exceptions, this paper recommends transparency, accountability and legitimacy as key principles to guide Member States agenda and EU's partnership with neighbouring states in the field of asylum and immigration.

Transparency:
Developing a correct assessment of the situation regarding detention, expulsion and asylum at the EU's southern border is contingent upon gaining access to and rendering transparent the information, programmes and agreements that regulate repatriations of irregular migrants and asylum seekers in Lampedusa and Libya. Whether carried out by the Italian and Libyan states or by the IOM, a lack of transparency is common to the policies and schemes countering irregular migration from and into Libya. Information regarding the number, frequency and destinations of the return flights from Lampedusa CPTA, the content of the bilateral agreements between Italy and Libya and between Libya and IOM, and the content of the contract for the TRIM Programme co-funded by the EC must be made public in order to achieve a transparent Community policy on asylum and immigration.

Accountability:
With regards to the partnership with third countries in the area of migration and asylum, the EU must provide leadership in terms of human rights protection. The divergent interests between national and EU competencies over borders, asylum and immigration should not leave member states with ample space to apply the exception that, as in the case of the EU return directive, would result in the disregard of even the minimum safeguards on return. In cases where either the EU or states contract the IOM this does not exempt the EU, Italy or Libya from their international legal obligations under norms prohibiting *refoulement* and norms protecting human rights. Even though IOM cannot be held responsible for the rule of law in the same way as sovereign states, it must assure that its programmes do not impinge upon the right to seek asylum and must be held accountable for any violations that might occur as result of its actions.

The lack of safeguards and control mechanisms ensuring the right to seek asylum and Italy's tendency to circumvent its responsibilities on matters of asylum require an intervention from the side of the European Parliament. With the co-decision on asylum and immigration, the EP is directly involved in the decision-making process and needs to propose amendments to the Return Directive and the Action Plan on Libya with the objective of achieving observance of human rights and international standards. In the absence of any EU monitoring mechanism in Libya, the EP should urgently visit those detention centres in Libya where implementation of detention and repatriation are funded by the EU and Italy. The EP's intervention would play a crucial role in achieving a transparent and democratic procedure as regards to a common asylum policy and would steer it towards a rights- rather than a control-based approach.

Legitimacy:
Holding centres are instruments aimed at facilitating an effective repatriation of third-country nationals who have entered Italy illegally. Lampedusa holding centre does not fulfil its main functions: it facilitates only a nominal amount of expulsions and it perpetuates ill-treatment rather than offering assistance. In order to ensure that detention procedures and practices are in conformity with the existing domestic and international standards, a short-term objective is to mandate an independent monitoring body to make regular, unrestricted and unannounced visits to Lampedusa holding centre. The closure of Lampedusa holding centre should constitute a long-term objective.[102] Since Lampedusa holding centre is classified as a clearing station, Italy is likely to disregard the set of minimum procedural and legal safeguards on return, removal and custody provided under the EU Return Directive. The closure of the Lampedusa holding centre would prevent future violation of procedures and assure that migrants and asylum seekers rights are not sidestepped by the Italian authorities.

[102] The majority of Italy's Regions stand for the closure of the holding centres. In summer 2005, fourteen Provincial Governors and their representatives met at the forum *Mare Aperto* in Bari and drafted a document in which they commit to launching a political-institutional dialogue geared towards changing current Italian immigration law, closing the CPTAs, creating a comprehensive law on asylum, and doing away with the administrative detention. The final document is available at http://www.meltingpot.org/articolo5676.html

References:

Amnesty International, *Italy: Temporary stay – Permanent rights: the treatment of foreign nationals detained in 'temporary stay and assistance centres'* (CPTAs), 2005.

Amnesty International, *Libya: time to make human rights a reality*, 2004, AI INDEX MDE 19/002/2004.

AI EU Office, *A letter to Franco Frattini, Commissioner for Justice, Freedom and Security*, Brussels, 21st March 2005, B456, www.amnesty-eu.org

AI EU Office, *Amnesty International Appeal to the European Union Regarding Expulsions from Italy to Libya*, Brussels, 28th June 2005, B472, www.amnesty-eu.org

AI EU Office, *Immigration Cooperation with Libya: the Human rights perspective. AI briefing ahead of the Justice and Home Affairs Council, 14 April 2005*. Brussels, http://www.amnestyeu.org/static/documents/2005/JHA_Libya_april12.pdf

Anderson, B. and O'Connell Davidson, J., *Needs and Desires: Is there a Demand for "Trafficked" Persons?*, Geneva, IOM, 2003.

Andrijasevic, R, 'Lampedusa in Focus: Migrants caught between the Libyan desert and the deep sea', *Feminist Review* no. 82:1, 2006, pp. 119-124.

Andrijasevic, R. 'La traite des femmes d'Europe de l'Est en Italie' *Revue européenne des migrations internationals* Vol 21(1), pp. 155-175, 2005.

ARCI, *Il diario del presidio ARCI a Lampedusa*, 2005a,
http://www.tesseramento.it/immigrazione/documenti/index.php

ARCI, *Lampedusa Watching*, 2005b,
http://www.tesseramento.it/immigrazione/documenti/index.php

Balzacq, T. and Carrera, S. *Migration, Borders and Asylum. Trends and Vulnerabilities in EU Policy*. CEPS: Brussels, 2005.

Boubakri, H. 'Transit Migration between Tunisia, Libya and Sub-Saharan Africa: Study Based on Greater Tunis', Regional Conference *Migrants in Transit Countries: Sharing Responsibility for Management and Protection*, Istanbul 30 September – 1 October 2004, Council of Europe: MG-RCONF (2004) 6e.

Caritas/Migrantes, *Immigrazione. Dossier Statistico* 2005. Edizioni IDOS, Roma, 2005.

Commission of the European Communities, Proposal for a Directiove of the European Parliament and of the Councic on common standards and procedures in Member States for returning illegality staying third-country nationals. Brussels.

Commission of the European Communities, Communication from the Commission to the European Parliament and the Council. Thematic programme for the cooperation

with thirds countries in the areas of migration and asylum. Brussels, 25th January 2006, COM(2006) 26 final.

Corte dei Conti, *Programma controllo 2004. Gestione delle risorse previste in connessione con il fenomeno dell'immigrazione*, 2005
http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Controllo-/Documenti/Sezione-ce1/Anno-2005/Adunanza-c/allegati-d3/Relazione.doc

Council of the European Union, Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues, Brussels, 27th May 2005, 9413/1/05 REV 1.

Cuttitta, P. 'Delocalization of migration controls to North Africa', paper presented at the workshop *The Europeanisation of National Immigration Policies – Varying Developments across Nations and Policy Areas*, European Academy, 1-3 September 2005, Berlin.

Doctors without Borders (MSF), *Centri di permanenza temporanea e assistenza: autonomia di un fallimento*, Sinnos editrice, 2005.

European Commission, Communication from the Commission to the European Parliament and Council. Thematic Programme for the cooperation with third countries in the area of migration and asylum, COM(206) 26 final, Brussels, 25 January 2006.

European Commission, *Report on the Technical Mission to Libya on Illegal Immigration*, Brussels, 2005.

European Parliament/LIBE, *Report from the LIBE Committee Delegation on the Visit to the Temporary Holding Centre in Lampedusa*, EP/LIBE PV/581203EN.

European Parliament, *European Parliament Resolution on Lampedusa*, 14th April 2005, P6_TA(2005)0138.

Gatti, F. 'Io, clandestino a Lampedusa', *L'espresso*, 6th October 2005a.

Gatti, F. 'Nel deserto fra Libia e Niger', *L'espresso*, 24th March 2005b.

Hamood, S. *African Transit Migration through Libya to Europe: the Human Costs*. The American University on Cairo, Forced Migration and Refugee Studies. January 2006.

Human Rights Watch (HRW), *World Report. Events of 2005*. Http://hrw.org/wr2k5/

International Federation fir Human Rights (FIDH), *Italy. Right of Asylum in Italy: Access to procedures and treatment of asylum-seekers. Report. International Fact-finding Mission*. No. 419/2, June 2005.

International Organization for Migration (IOM), *Dialogue. 5+5 Newsletter*, N. 1 issue, 2004.

Karakayali, S. and Tsianos, V. 'Wilde Schafsjagd in Aigais und die transnationalen "mujahideen". Rastanski Lojia Über Grenzregime an der Südostgrenze Europas', *Springerin* n. 4, 2004.

Koslowski, R. Economic Globalization, Human Smuggling, and Global Governance, in David Kyle and Rey Koslowski Éds., *Global Human Smuggling. Comparative Perspectives*, Baltimore and London, The John Hopkins University Press, 2001, pp. 337-358.

Maccanico, Y. 'The European Commission Technical Mission to Libya: Exporting Fortress-Europe', *Statewatch bulletin*, vol. 15 no. 2, March-April 2005.

Mezzadra, S. (ed), *I confini della libertà*. DeriveApprodi, Roma, 2004.

Mezzadra, S. *Diritto di fuga. Migrazioni, cittadinanza, globalizzazione*, Verona, Ombre corte, 2001.

Ministry for Foreign Affairs, Interministerial Committee of Human Rights, *Reply to List of Issues (CCPR/C/84/L/ITA) (Relating to CCPR/C/ITA/2004-5)*, U.N. Human Rights Committee 85th Session, Geneva 17 October – 3 November 2005

Noll, G. 'Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones', in *European Journal of Migration and Law* 5: 303-341, 2003

Pliez, O. 'La troisième migratoire, les conséquences de la politique européenne de lutte contre les migrations clandestines', paper written for Asia-Europe Foundation workshop *The Management of Humanitarian Aids and of Transnational Movements of Persons in the Euro-Mediterranean Area and in South-East Asia*, 28-30 August 2005, Lampedusa.

Salt, J. and Stein, J. 'Migration as a Business: The Case of Trafficking'. *International Migration,* 35(4), 1997, pp. 467-491.

Simoncini, A. 'Migranti, frontiere, spazi di confine. I lavoratori migranti nell'ordine salariale', *altreragioni*, pp. 29-45, 2000.

UNHCR, *Asylum levels and Trends in Industrialized Countries 2004. Overview of Asylum Applications longed in Europe and non-European industrialized countries in 2004*. Population data unit/PGDS, UNHCR Geneva, 2005
http://www.unhcr.ch/statistics