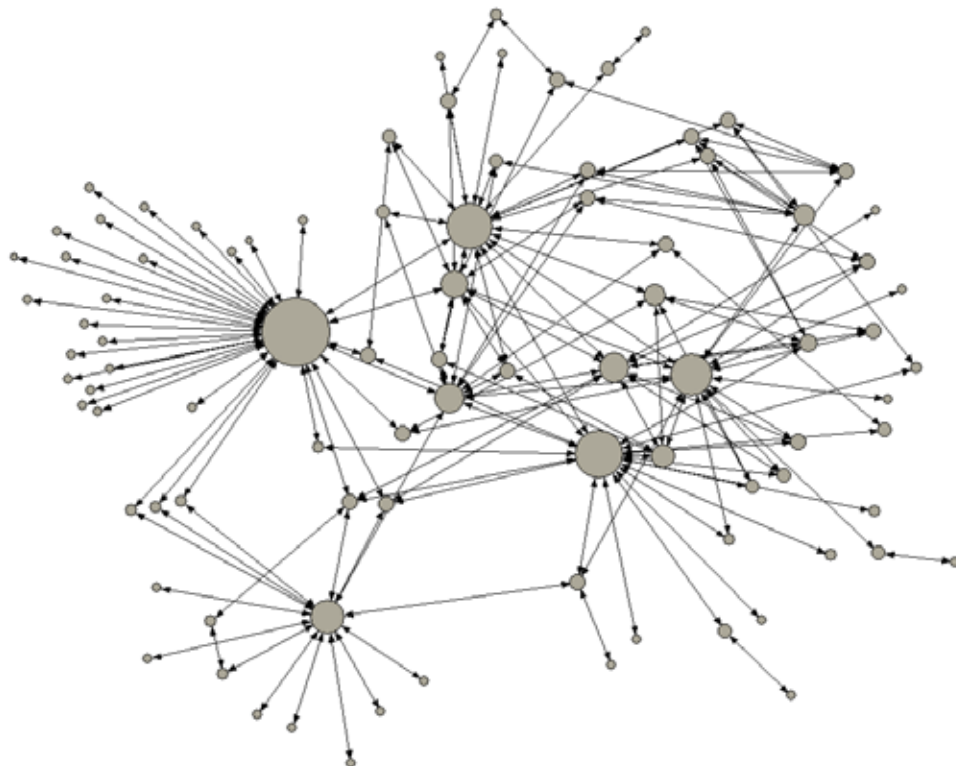


# Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area

Edited by Jean-Pierre Cassarino



Middle East Institute  
Special Edition *Viewpoints*



*The downfall of nations begins with the undermining of lawfulness, whether the laws are abused by the government in power, or the authority of their source becomes doubtful and questionable. In both instances, laws are no longer held valid. The result is that the nation, together with its “belief” in its own laws, loses its capacity for responsible political action; the people cease to be citizens in the full sense of the word.*

Hannah Arendt, *Essays in Understanding: 1930–1954*

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## INTRODUCTION

Readmission Agreements are a mechanism for countering illegal immigration. Such agreements involve reciprocal undertakings to return illegal residents (or irregular migrants) to their country of origin or transit. This special edition of MEI *Viewpoints* brings together extensive research on agreements between European and North African states. The following chapters explore what can be argued as the unbalanced costs and benefits for all parties. While the format of this collection is different from past editions of MEI *Viewpoints* and the essays explore the subject matter in greater depth, *Unbalanced Reciprocities* nonetheless builds on the three recently published volumes on Migration and the Arab World. And it represents MEI's continuing commitment to bring fresh issues and voices to the attention of our readers.

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*ABBREVIATIONS*

AMU	Arab Maghreb Union
EC	European Commission
ENI	Ente Nazionale Idrocarburi
EP	European Parliament
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European
HRW	Human Rights Watch
IOM	International Organization for Migration
MNC	Multinational Corporation
NAMC	North African Mediterranean Country
NGO	Non-governmental Organization
NOC	National Oil Corporation
ODA	Official Development Assistance
RCP	Regional Consultative Process
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

# Dealing with Unbalanced Reciprocities: Cooperation on Readmission and Implications

Jean-Pierre Cassarino

Over the last 15 years or so, policy-makers and government representatives have repeatedly referred to readmission in official discourses and statements. Readmission is the process through which individuals who are not allowed to stay on the territory of a country (e.g., unauthorized migrants, rejected asylum-seekers or stateless persons) are expelled or removed, whether in a coercive manner or not.

Just like deportation, readmission is a form of expulsion if we assume that “the word ‘expulsion’ is commonly used to describe that exercise of state power which secures the removal, either ‘voluntarily,’ under threat of forcible removal, or forcibly, of an alien from the territory of a State.”<sup>1</sup> Readmission has become part and parcel of the immigration control systems consolidated by countries of origin, transit, and destination. Technically, readmission as an administrative procedure requires cooperation at the bilateral level with the country to which the readmitted or removed persons are to be relocated. Readmission permeates both domestic and foreign affairs. Practically, it is aimed at the swift removal of aliens who are viewed as being unauthorized.

The practice of readmission, viewed as a form of expulsion, did not start fifteen years ago. Readmission is, in its various forms, perhaps as old as the exercise, whether soft or violent, of state sovereignty and interventionism designed to regulate the entry and exit of aliens. In the early 20th century, the principle of readmission, based on the obligation to take back one’s own nationals who are found in unlawful conditions, was expressed in various bilateral agreements in Western Europe, even if, as Kay Hailbronner has stressed, “representatives of some states voiced reservations about an absolute

1. Guy Goodwin-Gill, *International Law and the Movement of Persons between States* (Oxford: Clarendon, 1978), p. 201, cited in W. Walters, “Deportation, Expulsion, and the International Police of Aliens,” *Citizenship Studies*, Vol. 6, No. 3 (2002), pp. 265-292. See also Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Third Edition (Oxford: Oxford University Press, 2007).

duty to reaccept [their nationals].”<sup>2</sup>

Additionally, Aristide Zolberg shows that, as early as the 19<sup>th</sup> century, in the United States, “deportation did not constitute a punishment but was merely an administrative device for returning unwelcome and undesirable aliens to their own countries.”<sup>3</sup> This assumption holds true when it comes to explaining readmission as a form of police control exerted by national law-enforcement agencies or administrations to categorize aliens and citizens alike.

However, in today’s international relations, cooperation on readmission involves more than an “absolute duty” or a “mere administrative device.”

When dealing with readmission we have to take into consideration the fact that state-to-state cooperation is based on asymmetric costs and benefits, for it involves two contracting parties (i.e., the country of destination and the country of origin or transit) that do not necessarily share the same interests in pursuing cooperation. Nor do they face the same domestic, regional, and international implications.

Despite their being framed in a reciprocal context, readmission agreements, or treaties, contain mutual obligations that cannot apply equally to both contracting parties owing to the asymmetrical impact of the effective implementation of the agreements, and to the different structural institutional and legal capacity of both contracting parties for dealing with the removal of unauthorized aliens, whether these are identified as nationals of the contracting parties or as third-country nationals transiting through the territory of a contracting party. These are the main reasons for which I have argued that readmission agreements are characterized by unbalanced reciprocities.<sup>4</sup>

Admittedly, international relations abound with agreements based on asymmetric costs and benefits.<sup>5</sup> However, what makes cooperation on readmission quite extraordinary lies in the fact that, despite the aforementioned

2. Kay Hailbronner, *Readmission Agreements and the Obligation of States under Public International Law to Readmit their Own and Foreign Nationals*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, No. 57 (1997), [http://www.hjil.de/57\\_1997/57\\_1997\\_1\\_a\\_1\\_50.pdf](http://www.hjil.de/57_1997/57_1997_1_a_1_50.pdf).

3. Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), pp. 225-226.

4. Jean-Pierre Cassarino, “Informalising Readmission Agreements in the EU Neighbourhood,” *The International Spectator*, Vol. 42, No. 2 (2007), p. 182.

5. Charles Lipson, “Why are Some International Agreements Informal?” *International Organization*, Vol. 45, No. 4 (1991), pp. 495-538; Robert. O. Keohane, “Reciprocity in International Relations,” *International Organization*, Vol. 40, No. 1 (1986), pp. 1-27.



unbalanced reciprocities, the number of bilateral agreements linked to readmission has skyrocketed since the early 1990s. This sharp increase is also surprising when considering that readmission agreements only facilitate cooperation at the bilateral level. In other words, they are not a *sine qua non* when addressing readmission or removal.

This paradox deserves further attention, for it raises four questions regarding 1) the factors shaping the cooperation on readmission, 2) the patterns of cooperation sustaining states' *modus operandi*, 3) the effectiveness and utility of the cooperation on readmission, and 4) its impact on the conditions of readmitted aliens. The contributions contained in this volume address these questions, with specific reference to the Euro-Mediterranean context.

### *THE FACES OF COOPERATION ON READMISSION*

States differ markedly in terms of cooperation on readmission,<sup>6</sup> probably owing to the types of flows affecting their respective national territory. At the same time, however, the ways in which states codify their interaction over time play a crucial role in shaping their patterns of cooperation on readmission.

This assumption implies that state-to-state interaction, in its broadest sense, impacts on the nature of cooperative patterns and on states' responsiveness to uncertainties. Sometimes, they may reciprocally commit themselves to cooperating on readmission by concluding an agreement because both contracting parties view the formalization as being valuable to each other's interests, beyond the resilient unbalanced reciprocities that characterize the cooperation. Other times, however, they may decide to readjust their cooperation in order to "reduce the chance that either state will want to incur the costs of renegeing or be forced to endure an unsatisfactory division of

6. Readers will certainly note that the word "return" is not used in this volume as a synonym for readmission or removal, for it is viewed as being not only semantically misleading but also analytically biased. The use of "readmission" and "removal" is deliberate; it reflects the need for a critical approach to the current so-called "return policies" adopted by most EU Member States. These policies are primarily aimed at securing the effective departure of unauthorized aliens. In other words, they do not view return as a stage in the migration cycle. Nor do they consider reintegration. Although these policies are euphemistically named "return policies," they prioritize the removal of aliens out of the territory of destination countries, with or without explicit coercion, to another country which is not necessarily aliens' country of origin.

gains for long periods.”<sup>7</sup> Circumstances and uncertainties alike change over time, making flexible arrangements preferable over rigid ones.

In previous works,<sup>8</sup> I have explained that simply making an inventory of the standard readmission agreements concluded at the bilateral level in the Euro-Mediterranean area would not suffice to illustrate the proliferation of cooperative patterns on readmission, for these have become highly diversified as a result of various concomitant factors. I elaborate on this in the next sections.

### *THE STANDARD APPROACH*

Standard readmission agreements have been subject to various studies, above all by scholars in migration and asylum law<sup>9</sup> who, for example, stressed the reciprocal obligations contained in a readmission agreement as well as the procedures that need to be respected to identify undocumented persons (unauthorized migrants, rejected asylum seekers, stateless persons, unaccompanied minors) to subsequently remove them out of the territory of

7. Barbara Koremenos, “Contracting around International Uncertainty,” *American Political Science Review*, Vol. 99, No. 4 (2005), p. 551.

8. Cassarino, “Informalising Readmission Agreements in the EU Neighbourhood,” pp. 179-196. See also Jean-Pierre Cassarino, “The Co-operation on Readmission and Enforced Return in the African-European Context,” in Marie Trémolières, ed., *Regional Challenges of West African Migration: African and European perspectives* (Paris: OECD, 2009), pp. 49-72.

9. Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice*, (The Hague: Martinus Nijhoff, 1995); Kay Hailbronner, *Readmission Agreements and the Obligation of States under Public International Law to Readmit their Own and Foreign Nationals*; Bruno Nascimbene, “Relazioni esterne e accordi di riammissione” in Luigi Daniele, ed., *Le relazioni esterne dell’Unione Europea nel nuovo millennio* (Milan: Giuffrè editore, 2001), pp. 291-310; Martin Schieffer, “Community Readmission Agreements with Third Countries — Objectives, Substance and Current State of Negotiations,” *European Journal of Migration and Law* Vol. 5 (2003), pp. 343-357; Gregor Noll, “Readmission Agreements” in Matthew J. Gibney and Randall Hansen, eds., *Immigration and Asylum: From 1900 to present*, Vol. 2 (Santa Barbara: ABC-CLIO, 2005), pp. 495-497; Annabelle Roig and Thomas Huddleston, “EC Readmission Agreements: A Re-evaluation of the Political Impasse,” *European Journal of Migration and Law* Vol. 9 (2007), pp. 363-387; Florian Trauner and Imke Kruse, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*, CEPS Working Document No. 290 (Brussels: Center for European Policy Studies, 2008); Nils Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights* (Leiden: Martinus Nijhoff Publishers, 2009); Bjartmar Freyr Arnarsson, *Readmission Agreements: Evidence and prime concern*, Master Thesis in International Law (Lund: University of Lund, Faculty of Law, 2007).

a destination country.<sup>10</sup> Given the existence of a huge literature in migration law, the point here is not to elaborate on a legal approach to readmission agreements. Nevertheless, it is important to recall some essential legal aspects linked with states' accountability in the field of readmission.

When concluding a standard readmission agreement, the contracting parties agree to carry out removal procedures without unnecessary formalities and within reasonable time limits, with due respect of their duties under their national legislation and the international agreements on human rights and the protection of the status of refugees, in accordance with the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 protocol, the 1966 International Covenant on Civil and Political Rights, the 1984 UN Convention against torture, and more recently the 2000 European Charter on Fundamental Rights. All of these internationally recognized instruments oblige states not to expel persons (whether migrants or not) to countries and territories where their life or freedom would be threatened in any manner whatsoever.

Despite the letter of these agreements, various human rights organizations and associations in Europe and abroad have repeatedly denounced the lack of transparency that surrounds the implementation of readmission agreements and removal operations. Such public denunciations have not only questioned the compliance with the obligations and principles contained in bilateral readmission agreements, but also have led to growing public concerns regarding respect for the rights and safety of the expelled persons.

In fact, the willingness of a country of origin to conclude a readmission agreement does not mean that it has the legal institutional and structural capacity to deal with the removal of its nationals, let alone the removal of foreign nationals and the protection of their rights. Nor does it mean that the agreement will be effectively or fully implemented in the long run, for it involves two contracting parties that do not necessarily share the same interest in the bilateral cooperation on readmission. Nor do they face the same implications, as previously stated. These considerations are important to show that the conclusion of a readmission agreement is motivated by expected benefits which are unequally perceived by the contracting parties, on the one hand, and that the agreement's implementation is based on a fragile balance between the concrete benefits and costs attached to it, on the other.

10. Arnarsson, *Readmission Agreements: Evidence and Prime Concern*.

*THE FRAGILE BALANCE BETWEEN COSTS AND BENEFITS*

Whereas a destination country has a vested interest in concluding readmission agreements to facilitate the removal of unauthorized migrants, the interest of a country of origin may be less evident, above all if its economy remains dependent on the revenues of its (legal and unauthorized) expatriates living abroad, or when migration continues to be viewed as a safety valve to relieve pressure on domestic unemployment. This statement is particularly true regarding the bilateral negotiations on readmission between some EU Member States and countries in the South Mediterranean and Africa where economic and political differentials are significant. Special trade concessions, preferential entry quotas for economic migrants, technical cooperation and assistance, increased development aid, and entry visa facilitations have been the most common incentives used by the EU-27 Member States to induce countries in the South Mediterranean and Africa to cooperate on readmission.

However, experience has shown on various occasions that compensatory measures — which constitute a form of incentive — may not always induce a third country to conclude a standard readmission agreement. Moreover, even when a standard agreement is concluded, the high costs stemming from the implementation of the agreement make the extent of the actual cooperation highly uncertain. For a country of origin, such costs are not just financial. Nor do the costs stem only from the structural institutional and legal reforms needed to implement the cooperation. They also lie in the unpopularity of the standard readmission agreement and in the fact that its full implementation might have a negative impact on the relationship between the state and society in a country of origin.

*GRAFTING READMISSION ON TO OTHER POLICY AREAS*

If we follow the conventional wisdom, we may believe that states negotiate and conclude readmission agreements as an end in itself. However, as the contributions in this volume show, readmission agreements are rarely an end in itself but rather one of the many ways to consolidate a broader bilateral cooperative framework, including other strategic (and perhaps more crucial) policy areas such as security, energy, development aid, and police cooperation. Often, the decision to cooperate on readmission results from a form of rapprochement that shapes the intensity of the *quid pro quo*.

There are various examples which support this argument. In February

1992, Morocco and Spain signed a readmission agreement in the wake of a reconciliation process which materialized following the signing of the Treaty of Good-neighborliness and Friendly Cooperation on July 4, 1991. Morocco's acceptance to conclude this agreement was motivated by its ambition to acquire a special status in its political and economic relationships with the European Union.<sup>11</sup> Likewise, in January 2007 Italy and Egypt concluded a readmission agreement as a result of reinforced bilateral exchanges between the two countries. Such reinforced exchanges have allowed Egypt to benefit from a bilateral debt swap agreement, as well as from trade concessions for its agricultural produce and, additionally, temporary entry quotas for Egyptian nationals in Italy. Importantly, the rapprochement between Italy and Egypt was key to integrating the latter into the G14<sup>12</sup> while acquiring enhanced regime legitimacy at the international level. Similarly, the bilateral agreement on the circulation of persons and readmission concluded in July 2006 between the United Kingdom and Algeria, while still not in force, is not an exception to the rule. This agreement, limited to the removal of the nationals of the contracting parties, took place in the context of a whole round of negotiations, including such strategic issues as energy security, the fight against terrorism, and police cooperation. These strategic issues have become top priorities in the bilateral relations between the United Kingdom and Algeria, particularly following the July 2005 London bombings and the ensuing G8 meeting in Gleneagles that Algeria also attended.<sup>13</sup>

These few examples are important to show that the issue of readmission weaves its way through various policy areas. It has been, as it were, grafted on to other issues of "high politics," such as the fight against international terrorism, energy security, reconciliation process, reinforced border controls, special trade concessions, and, last but not least, the search for regime legitimacy and strategic alliances. It is this whole bilateral cooperative framework which secures a minimum operability in the cooperation on readmission more than the "reciprocal" and binding obligations contained in a standard readmission agreement. Policy-makers know that the reciprocal obligations contained in a standard readmission agreement are too asymmetrical to secure its concrete implementation in the long run. They also know that grafting the cooperation

11. El Arbi Mrabet, "Readmission agreements: The Case of Morocco," *European Journal of Migration and Law*, Vol. 5 (2003), pp. 379-385.

12. The first G14 meeting took place in L'Aquila (Italy) in July 2009. The G14 comprises the world's most wealthy and industrialized countries (G8) plus the G5, i.e., the group of emerging economies (Brazil, China, India, Mexico, and South Africa), and Egypt.

13. Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood."

on readmission onto other policy areas may compensate for the unbalanced reciprocities characterizing the cooperation on readmission or removal. It is because of this awareness, which arguably resulted from a learning process, that the web of readmission agreements has acquired formidable dimensions over the last fifteen years or so. However, this tells us just a part of the story.

### *THE DRIVE FOR FLEXIBILITY*

We have seen that cooperative mechanisms may be formalized, as is often the case, through the conclusion of standard readmission agreements if both contracting parties view this as being valuable to each other's interests. However, as mentioned before, we need to look beyond standard readmission agreements to provide a more complete picture of the various mechanisms and cooperative instruments that have emerged recently.

Under some circumstances, both contracting parties may agree to cooperate on readmission without necessarily formalizing their cooperation with a standard agreement. They may opt for different ways of dealing with readmission through exchanges of letters and memoranda of understanding or by choosing to frame their cooperation via other types of deals (e.g., police cooperation agreements, arrangements, and pacts).

The main rationale for the adoption of non-standard agreements is to secure bilateral cooperation on migration management, including readmission, and to respond flexibly to new situations fraught with uncertainties. Because of the uncertainty surrounding the concrete implementation of the cooperative agreement over time, states may want to secure their credibility through agreements "that include the proper amount of flexibility and thereby create for themselves a kind of international insurance."<sup>14</sup> With reference to the cooperation on readmission, this argument does not imply that states do not make any credible commitments when signing agreements. To the contrary, it is because of their search for credibility that they may opt for flexible patterns of cooperation when it comes to dealing with highly sensitive matters such as readmission or removal.

Credibility is a core issue in the cooperation on readmission, for it symbolically buttresses the centrality of the state and its law enforcement agencies in the management of international migration. The cooperation on readmission has often been presented by European leaders to their constituencies and

14. Koremenos, "Contracting around International Uncertainty," p. 562.

the international community as an integral part of the fight against illegal migration and as instruments protecting their immigration and asylum systems.

This cause-and-effect relationship, predicated by political leaders, shows to constituencies that governments have the *credible ability* to respond to and even anticipate shocks (e.g., mass arrivals of unauthorized migrants), because of the existence of specific mechanisms. However, shocks generate uncertainty which might, in turn, jeopardize the effective cooperation on readmission, particularly when it comes to addressing the pressing problem of re-documentation, that is, the delivery of travel documents or *laissez-passers* by the consular authorities of the third country needed to remove undocumented migrants. It is a well-known fact that the above-mentioned readmission agreement concluded in 1992 between Spain and Morocco has never been fully implemented. This agreement foresees the readmission of the nationals of the contracting parties as well as the third-country nationals. Diplomatic tensions between the two countries, particularly under the José María Aznar government (1996–2004), have hampered the bilateral cooperation on readmission. Thus far, Morocco's cooperation on the delivery of travel documents at the request of the Spanish authorities has been highly erratic.<sup>15</sup>

Changing circumstances may upset the balance of perceived costs and benefits and be conducive to defection. Because of the uncertainties surrounding the concrete implementation of a readmission agreement, various EU Member States have been prone to show some flexibility in readjusting their patterns of cooperation with some third countries in order to address the aforementioned problem of re-documentation and the swift delivery of travel documents or *laissez-passers*. The faster the delivery of travel documents, the shorter the duration of detention, and the cheaper its costs.

### *THE NON-STANDARD APPROACH*

Over the last decades, France, Greece, Italy, and Spain have been at the forefront of a new wave of agreements linked to readmission. They are *linked* to readmission in that they cannot be properly dubbed readmission agreements, in the technical sense. These agreements (e.g., memoranda of understanding, arrangements, pacts, and police cooperation agreements including a clause on readmission) are often based on a three-pronged approach covering 1)

15. Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood."

the fight against unauthorized migration, including the issue of readmission, 2) the reinforced control of borders, including *ad hoc* technical assistance, and 3) the joint management of labor migration with third countries of origin, including enhanced development aid. For example, this approach is enshrined in Spain's Africa Plan as well as in France's pacts on the concerted management of international migration and co-development.

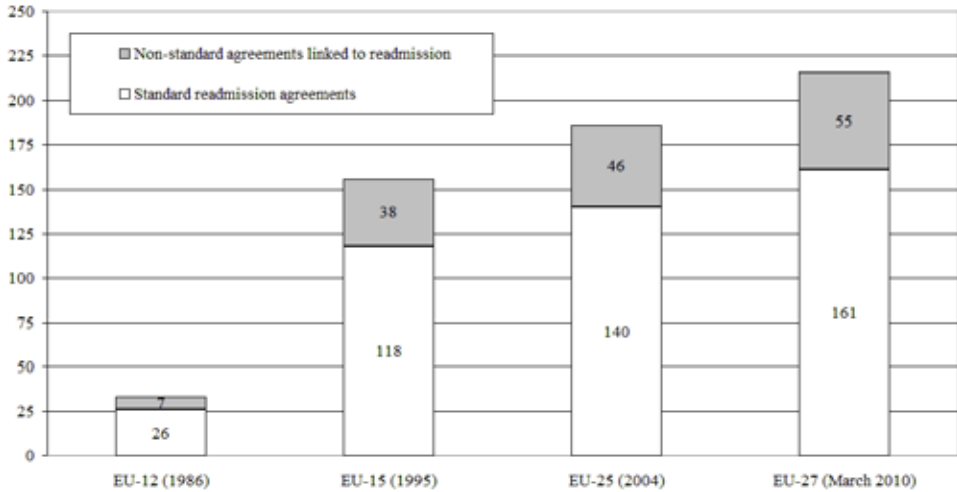
As mentioned earlier, circumstances change over time, and uncertainty might severely upset the fragile balance of costs and benefits linked to the bilateral cooperation on readmission. These non-standard agreements have been responsive to various factors. First, they tend to lower the cost of defection or renegeing on the agreement, for they can be renegotiated easily in order to respond to new contingencies. In contrast with standard readmission agreements, they do not require a lengthy ratification process when renegotiation takes place. Second, they lower the public visibility of the cooperation on readmission by placing it in a broader framework of interaction. This element is particularly relevant for emigration countries located in the South Mediterranean and in Africa, where the cooperation on readmission is politically unpopular and where governments are reluctant to publicize it. Under these circumstances, governments in emigration countries would become more acquiescent in cooperating in the framework of agreements *linked* to readmission while being, at the same time, in a position to publicly abhor the use of standard readmission agreements. Third, they allow for flexible and operable solutions aimed at addressing the need for cooperation on readmission. The agenda remains unchanged, but the operability of the cooperation on readmission has been prioritized over its formalization. Fourth, non-standard agreements linked to readmission are by their nature difficult to detect and monitor, for they are not necessarily published in official bulletins. Nor are they always recorded in official documents or correspondence.

There is no question that flexibility has acquired mounting importance in the practice of readmission over the last decade. Indeed, the graph below shows that the number of non-standard agreements linked to readmission concluded between the EU Member States and third countries has risen over the last decade, together with the increase in standard readmission agreements.

The reported growth in standard readmission agreements stems from the



**Graph 1: Known number of agreements linked to the readmission of third-country nationals concluded between the EU Member States and third countries (from the EU-12 to the EU-27)**



Source: Mirem, <http://www.mirem.eu/datasets/agreements/> (author's graph)

gradual enlargement of the European Union and from the fact that some third countries regarded the conclusion of such readmission agreements as a way of consolidating their relations with the European bloc. Third countries in Eastern Europe and the Western Balkans have had a concrete incentive to cooperate on readmission. Their option to cooperate could also be justified to their constituencies while referring to the expected, though unclear prospect of accession into the EU (e.g., Croatia, Ukraine, Moldova, Georgia, Serbia, Bosnia Herzegovina, and, more recently, Kosovo). Moreover, additional incentives included the possibility to benefit from preferential visa facilitation agreements.<sup>16</sup>

In contrast with countries located in Eastern Europe and the Western Balkans, third countries in the Mediterranean and in Africa have, from a general point of view, been involved in flexible arrangements aimed at cooperating on readmission (see Paolo Cuttitta's chapter). As previously mentioned, incentives to conclude (visible and unpopular) standard readmission agreements do not fully explain the proliferation of cooperative agreements linked to readmission, for they may not always offset the unbalanced reciprocities that characterize the cooperation on readmission.

The growing number of non-standard agreements has had a certain bearing

16. Trauner and Kruse, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*.

on the proliferation of agreements linked to readmission. Today, the web of bilateral agreements linked to readmission has grown considerably, involving more than one hundred countries throughout the world. Graph 2 schematically illustrates the bilateral agreements linked to readmission concluded between the 27 EU Member States plus Iceland, Norway, and Switzerland (depicted in blue), on the one hand, and third countries (in light green), on the other.<sup>17</sup>

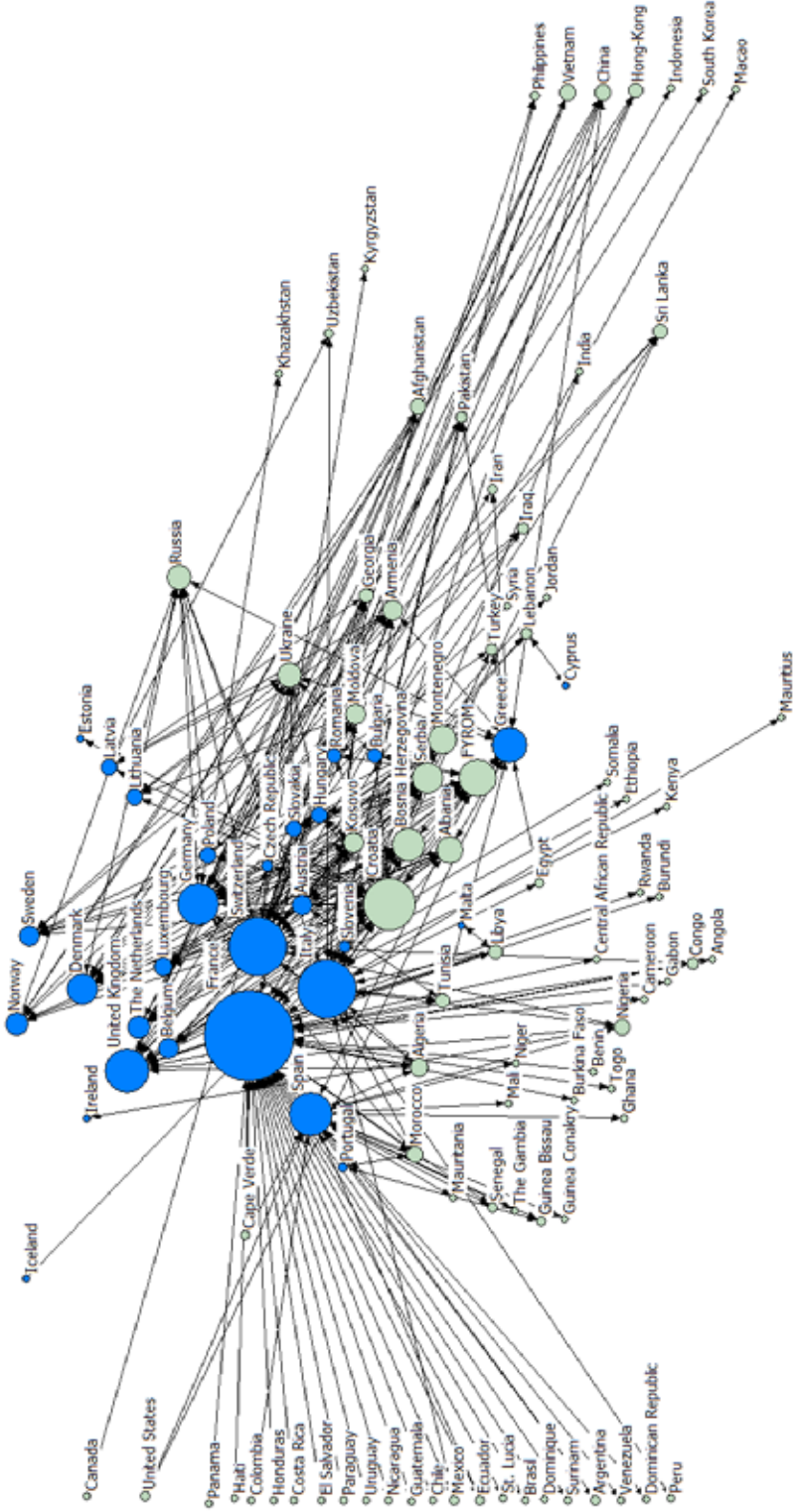
The size of each circle (or node) has been weighted with regard to the total number of bilateral agreements linked to readmission (whether standard or not) concluded between the two groups of countries. In other words, the bigger the circle, the denser the web of agreements linked to readmission in which each country is involved. Among the blue-colored 27 EU Member States (plus Iceland, Norway and Switzerland), Denmark, France, Germany, Greece, Italy, Spain, and Switzerland have been the most involved in bilateral cooperation on readmission. Clearly, their respective patterns of cooperation vary with the type of flows affecting their national territories, geographical proximity, the nature and intensity of their interaction (in terms of power relations) and, finally, with the third country's responsiveness to the need for enhanced cooperation on readmission.

Incidentally, Denmark and Germany — like Switzerland — tend to cooperate on readmission through the conclusion of standard agreements. This inclination may stem from the fact that their negotiations have been mainly concluded with third countries in Eastern Europe and the Western Balkans (mainly Serbia, Croatia, Bosnia Herzegovina, Macedonia, Albania, Moldova, Ukraine, and Kosovo) which, as explained earlier, have had a concrete incentive to cooperate on readmission and to formalize their cooperation while grafting it onto other strategic policy areas.

Conversely, Italy, Greece, France, and Spain have been confronted with the need to adapt their respective cooperative patterns, above all when it comes to interacting on the issue of readmission with some Mediterranean and African countries. Past experience has already shown that Mediterranean third countries have been less inclined to conclude standard readmission

17. For the sake of clarity, Graph 2 does not plot the numerous readmission agreements that have been concluded over the last decades, at a bilateral level, between the 27 EU Member States, Switzerland, Iceland, and Norway. Nor does it plot the growing number of agreements linked to readmission that third countries have concluded among themselves. Finally, Finland is not reported on Graph 2, for it has no known agreement linked to readmission with any third country, although Finland does practice readmission.

Graph 2: Known bilateral agreements linked to readmission, concluded between the 27 Member States, Switzerland, Iceland and Norway, on the one hand, and third countries, on the other, March 2010



Source: Mirem, <http://www.mirem.eu/datasets/agreements/> (author's graph)

agreements, or even to fully implement them when such agreements were concluded, owing to the potentially disruptive impact of their (visible) commitments on the domestic economy and social stability, and on their external relations with their African neighbors. At the same time, however, other factors have justified such *ad hoc* readjustments.

### *EXPLAINING PATTERNS OF COOPERATION ON READMISSION*

The practice of readmission is, as it were, yoked to complex contingencies. By practice, I mean that two states may decide to implement readmission without necessarily tying their hands with an agreement, whether standard or not. Under these circumstances, the practice may be viewed as being sporadic. What really matters is the assurance that the requested state (i.e., a country of transit or of origin) will be responsive to the expectations of the requesting state (i.e., a destination country). For example, a country of origin may agree to issue travel documents, at the request of a destination country, that are needed to expel or readmit undocumented migrants without necessarily having an agreement. The issuance of travel documents will be based on a form of tacit assurance that the requested country will be responsive.

The transition from *practice* to *cooperation* on readmission occurs, however, when the responsiveness to perceived exigencies has to be ensured on a more regular basis, not sporadically. A country of destination may seek to secure the regular responsiveness of its counterpart by concluding a treaty or a standard agreement based on reciprocal commitments and obligations to cooperate on readmission. At the outset, three interrelated factors may lead to the conclusion of readmission agreements at the request of a destination country.

The first factor pertains to *geographical proximity*. Countries sharing a common land or maritime border may have a higher propensity to cooperate on readmission. This assumption holds true in the case of Spain and Morocco which concluded a standard readmission agreement in 1992. Conversely, it is not explanatory in the case of neighboring Portugal and Morocco which, despite their common maritime border, have no bilateral standard readmission agreement. To account for this contrast we need to combine geographical proximity with other factors.

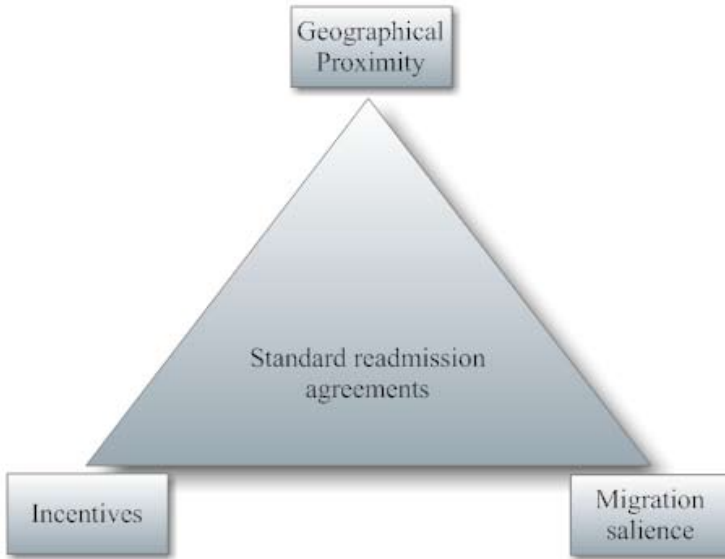
The second factor refers to *migration salience*. This reflects the extent to

which migration and mobility have become a salient component of the development of the bilateral relations between two countries. Migration, or the movement of people, has become over time a key feature of their historical relations. Migration salience may be observed in post-colonial regimes, where the mobility of people is part and parcel of the interaction between former colonial powers and their former colonies. It may also apply to two countries characterized by repeated exchanges of people and the presence of large émigré communities. If viewed as being significant in the negotiation process, migration salience might hinder the conclusion of a standard readmission agreement, for the unpopular conclusion of such an agreement would jeopardize the diplomatic relations between the two countries. In other words, migration salience may turn out to be detrimental to the conclusion of standard readmission agreements, let alone their concrete implementation.

The third factor pertains to *incentives*. Expected absolute and relative gains allow the unbalanced reciprocities characterizing the cooperation on readmission to be overcome. This has often explained the reasons for which various countries of origin and of transit in the Western Balkans and in Eastern Europe have had a vested interest to conclude readmission agreements at the request of EU Member States. Their responsiveness was conditionally linked with an array of incentives including, among others, visa facilitation agreements, trade concessions, preferential entry quotas for given commodities, technical assistance, and increased development aid. However, incentives do not always explain or secure cooperation on readmission in the long term. Under some circumstances, expected benefits might not always offset the costs of the cooperation on readmission. Costs are not only linked with the concrete implementation of the agreement and its consequences, but also with its unpopularity at the social level. Moreover, even when incentives were viewed, at a certain point in time, as being significant enough to cooperate on readmission, the (unintended) costs of the cooperation incurred by a country of origin or transit might eventually jeopardize the cooperative relationship and be conducive to renegeing. Incentives do not always offset the fragile balance of costs and benefits; above all, when migration salience might hinder the cooperation on readmission.

Arguably, none of the three factors described above could *individually* account for states' intervention in the field of readmission. Cooperation on readmission lies at the intersection of these three factors. Combined together, these factors delimit the boundaries of a *triangular domain* where the cooperation, based on a standard readmission agreement, is practicable and

where the significance of each of the three factors will be weighted against



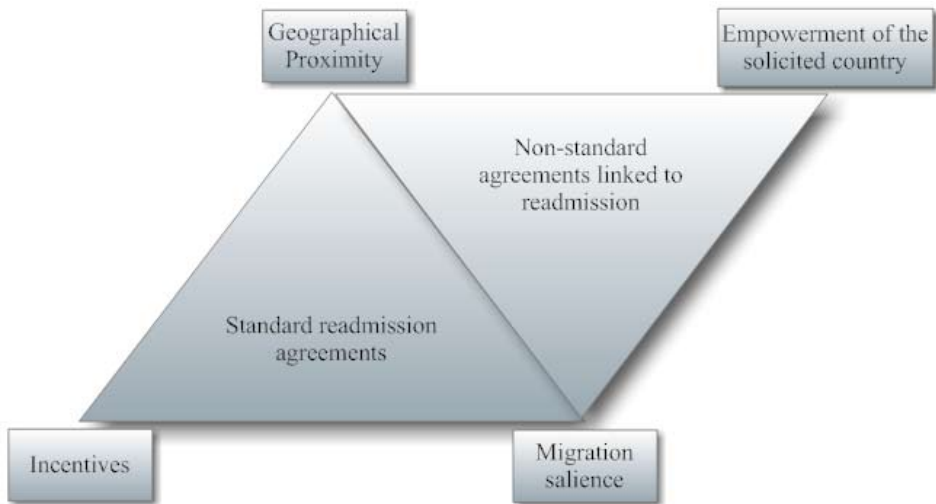
each other, over time and in an *ad hoc* manner.

However, this triangular domain provides an incomplete explanation when it comes to analyzing the emergence of non-standard agreements linked to readmission (e.g., memoranda of understanding, pacts, exchanges of letters, police cooperation agreement including a clause on readmission). The gradual importance that such agreements are acquiring at the bilateral level results from the consideration of a fourth factor that has emerged over the last few years prompting some EU Member States to adjust or even readjust their cooperative framework with some non-EU source countries. This readjustment was not only motivated by the need for flexibility with a view to securing the operability of the cooperation on readmission. It also stemmed from the perceptible empowerment of some source countries as a result of their proactive involvement in the reinforced police control of the EU external borders. Actually, with reference to the South Mediterranean, countries like Morocco, Algeria, Libya, Tunisia, Turkey, and Egypt have become gradually aware of their empowerment. Their cooperation on border controls has not only allowed these Mediterranean countries to play the efficiency card in the field of migration and border management, while gaining further international credibility and regime legitimacy; but it has also allowed them to acquire a strategic position in migration and border management talks on which they tend to capitalize. There can be no question that this perceptible empowerment has had serious implications on the ways in which the cooperation on readmission has been adaptively addressed,

reconfigured and codified, leading to the conclusion of (flexible and less visible) patterns of cooperation on readmission.

The combination of the four factors shown on the graph below allows the conclusion of agreements linked to readmission (whether standard or not) to be better explained.

Various case studies support the analytical relevance of the above diagram. To give just a few examples, France had to adjust its cooperative patterns on readmission with most North and West African countries as a result of this combination: First, because the management of labor migration has been part and parcel of France's diplomatic relations with these third countries.



The (visible) negotiation of an unpopular standard readmission agreement would have jeopardized France's relations with these countries (i.e., *migration salience*). Second, because the aforementioned third countries have acquired a strategic position through their participation in the reinforced control of the EU external borders and in the fight against illegal migration and international terrorism (i.e., *empowerment*). Bringing pressure to bear on these neighboring (and strategic) third countries to conclude a standard readmission agreement would have been difficult, if not counterproductive.

Conversely, France was in a position to negotiate standard readmission agreements with numerous Latin American countries, for their visible conclusion would not have significantly impaired bilateral relations, and because migration management does not constitute, for now, an issue of high politics in the relations between these geographically remote countries

and France (*migration salience* is not a significant factor). Under these circumstances, France reinforced its cooperation on the exemption of short-term visas to the nationals of cooperative Latin American countries (i.e., *incentives*) by means of bilateral exchanges of letters. Conversely, Spain has few readmission agreements with Latin American countries, probably owing to the fact that migration management constitutes an issue of high politics (i.e., *migration salience*) in the history of its bilateral relations with Latin American countries.

It is the combination of these four factors that seems to account for the increase in the number of agreements linked to readmission while at the same time explaining their diversity. However, there exist additional dynamics sustaining the proliferation of these agreements, despite the unbalanced reciprocities that characterize them. Other driving forces need to be considered to account for this paradox.

#### *THE DRIVING FORCES OF THE COOPERATION ON READMISSION*

I began by analyzing several patterns of cooperation on readmission by highlighting the broader strategic framework of interaction in which they are embedded and by identifying the key factors shaping at the same time their diversity. I also emphasized the fragile balance of costs and benefits linked with the cooperation on readmission and showed that states do not share the same interests in the cooperative agreement. They may expect to gain more through cooperation or to fare well compared with other states.

There can be no question that relative-gains-seeking can help explain the reasons for which two state actors cooperate on readmission. Such relative gains do motivate state actors to cooperate or not. However, this assumption does not necessarily mean that “relative gains pervade international politics nearly enough to make the strong realist position hold in general.”<sup>18</sup> There also exist “particular systems,”<sup>19</sup> shaped by beliefs, values, and dominant schemes of understanding that can have an impact on the conditions conducive to cooperation, as well as on states’ perceptions and change of behavior.

18. Duncan Snidal, “Relative Gains and the Pattern of International Cooperation,” *American Political Science Association*, Vol. 85, No. 3 (1991), p. 703.

19. John S. Dryzek, Margaret L. Clark, and Garry McKenzie, “Subject and System in International Interaction,” *International Organization*, Vol. 43, No. 3 (1989), p. 475.



The recognition of such systems is important insofar as it lays emphasis on the need to consider the existence of a causal link between beliefs and (perceived) interests, subjectivities, and priorities, as well as between values and policy agendas. The point is not so much to analyze the costs and benefits linked with the cooperation on readmission between two state actors (see Emanuela Paoletti's chapter). The main question lies in exploring the system whereby the cooperation on readmission has become more predictable over the last ten years or so. Investigating such a system, or "concourse structure," as described by John Dryzek *et al.*,<sup>20</sup> is key to understanding the overriding driving forces which have arguably contributed to the increase in the number of cooperative agreements linked to readmission, again despite the unbalanced reciprocities that characterize them.

### *EXPRESSIONS OF A "CONCOURSE STRUCTURE"*

The international agenda for the management of migration is a form of "concourse structure," assuming that it "is the product of individual subjects and, once created, provides a context for the further development of their subjectivity."<sup>21</sup> The reference to the management of international migration is today part and parcel of state officials' language and discourses. In a document of the International Organization for Migration (IOM), it is described as being based on a series of "common understandings outlining fundamental shared assumptions and principles [among state actors] underlying migration management."<sup>22</sup> The agenda is also aimed at creating state-led mechanisms designed to "influence migration flows."<sup>23</sup> However, its repeated reference implies much more than the capacity to influence migration flows.

Beyond their conflicting sovereign interests, countries of origin, transit, and destination share a common objective in the migration management agenda: introducing regulatory mechanisms buttressing their position as

20. Dryzek, Clark, and McKenzie, "Subject and System in International Interaction."

21. Dryzek, Clark, and McKenzie, "Subject and System in International Interaction," p. 502.

22. "International Agenda for Migration Management: Common Understandings and Effective Practices for a Planned, Balanced, and Comprehensive Approach to the Management of Migration" (Berne: International Organization for Migration, 2004), <http://apmrn.anu.edu.au/publications/IOM%20Berne.doc>.

23. John Salt, *Towards a Migration Management Strategy* (2000), p. 11; Report based on the Proceedings of the Seminar on "Managing Migration in the Wider Europe," Strasbourg, October 12-13, 1998 (Strasbourg: Council of Europe, 1998).

legitimate managers of the mobility of their nationals and foreigners. The dramatic increase in the number of agreements linked to readmission cannot be isolated from the consolidation of this agenda, at the regional and international levels.

The international agenda for the management of migration has gained momentum through the organization of state-led international consultations in various regions of the world. Such regular consultations, or regional consultative processes (RCPs),<sup>24</sup> were critical in opening regular channels of communication among the representatives of countries of destination, of transit, and of origin. Scholars have already analyzed the ways in which RCPs can be referred to as networks of socialization<sup>25</sup> or “informal policy networks”<sup>26</sup> between state representatives, establishing connections and relationships and defining roles and behaviors.

At the same time, RCPs have contributed to defining common orientations and understandings<sup>27</sup> as to how the movement of all persons should be influenced and controlled. Through their repetition, they have instilled guiding principles which in turn have been erected as normative values shaping how international migration should best be administered, regulated, and understood.

In addition to their recurrence, such intergovernmental consultations have gradually introduced a new lexicon including such words and notions as *predictability, sustainability, orderliness, interoperability, harmonization, root causes, comprehensiveness, illegal migration, prevention, shared responsibility,*

24. “While the first RCP was established in 1985, the majority of RCPs have emerged since 1995, often as a result of specific events or developments — for example, the fall of the Soviet Union, sudden major influxes of irregular migrants, and concerns over security linked to the events of 9/11” (IOM, source: <http://www.iom.int/jahia/Jahia/regional-consultative-processes>, accessed 10 December 2009). Major RCPs on migration include, among many others, the 2001 Berne Initiative, the 1991 Budapest Process, the 1996 Puebla Process, the 2002 5+5 dialogue on migration in the Mediterranean, the 2003 Mediterranean transit migration dialogue, the 2000 Migration Dialogue for West Africa, and the Global Forum on Migration and Development.

25. Colleen Thouez and Frédérique Channac, “Shaping International Migration Policy: The role of regional consultative processes,” *West European Politics*, Vol. 29, No. 2 (2006), p. 384.

26. Sandra Lavenex, “A Governance Perspective on the European Neighbourhood Policy: Integration beyond conditionality?,” *Journal of European Public Policy*, Vol. 15, No. 6 (2008), p. 940.

27. Amanda Klekowski von Koppenfels, “The Role of Regional Consultative Processes in Managing International Migration,” IOM Migration Research Series No. 3 (Geneva: IOM, 2001), p. 24.

*joint ownership, balanced approach, and temporariness.* There is no question that this lexicon, endorsed and used by governmental and intergovernmental agencies, among others, has achieved a terminological hegemony in today's official discourses and rhetoric as applied to international migration. It has also been critical in manufacturing a top-down framework of understanding while reinforcing, at the same time, the managerial centrality of the state and of its law enforcement bureaucracy.

This has had various implications. Perhaps the most important one lies in having built a hierarchy of priorities aimed at best achieving the objectives set out in the migration management agenda. The above lexicon was of course a prerequisite to giving sense to this hierarchy of priorities, for its main function is to delineate the contours of the issues which should be tackled first and foremost. As Robert Cox would put it, this hierarchy of priorities has gradually mystified the accountability of states through a process of consensus formation leading to the identification of top priorities and “perceived exigencies” while hiding others.<sup>28</sup>

The cooperation on readmission is perhaps the most symptomatic feature of this process of consensus formation and “shared problem perceptions”.<sup>29</sup> Today, it stands high in the hierarchy of priorities set by countries of destination, transit, and origin, whether they are poor or rich, large or small, democratically organized or totalitarian.

Readmission or removal has become a mundane technique to combat unauthorized migration and to address the removal of rejected asylum seekers. It is important to stress that cooperating on readmission does not only allow states to *show* they have the credible ability to prevent or respond to uncertainties, as mentioned earlier. It has also contributed, by the same token, to making their constituencies (more) aware of the presence of the sovereign within a specific territorial entity. In other words, keeping out the undesirables is not *only* a question of immigration control and the security agenda. It is also an issue closely linked with the expression of state authority and sanction, or rather with states' capacity of classifying aliens and citizens alike, as well as their rights and position in a territorialized society.<sup>30</sup> In this

28. Robert W. Cox, “Problems of Power and Knowledge in a Changing World Order” in Richard Stubbs and Geoffrey R.D. Underhill, eds., *Political Economy and the Changing World Order* (Oxford: Oxford University Press, 2006), pp. 39-50.

29. Sandra Lavenex and Nicole Wichmann, “The External Governance of EU Internal Security,” *Journal of European Integration*, Vol. 31, No. 1 (2009), p. 98.

30. Godfried Engbersen, “Irregular Migration, Criminality and the State” in Willem Schinkel, ed., *Globalization and the State: Sociological Perspectives on the State of the State*

respect, William Walters asks whether “the gradual strengthening of the citizen-territory link [has] less to do with any positive right of the citizen to inhabit a particular land, and more to do with the acquisition by states of a technical capacity (border controls, and so on) to refuse entry to non-citizens and undesirables.”<sup>31</sup>

Actually, the role of the state in protecting its citizens and in defending their rights and privileges has been linked with its capacity to secure its borders and to regulate migration flows. In a similar vein, the mass arrivals of unauthorized migrants, including potential asylum-seekers, has been interpreted as a threat to the integrity of the immigration and asylum systems in most Western countries. Most importantly, the use of such notions as “mixed flows,” “asylum shopping,” “bogus asylum-seekers,” “unwanted migrants,” “burden,” and “safe third countries” have started to shape more intensively public discourses, as well as the actions of governmental institutions, while implicitly depicting a negative perception of the claims of migrants and foreigners in general. Michael Collyer aptly explains how the establishment of a “security paradigm”<sup>32</sup> around migration has gradually consolidated a dominant discourse as applied to aliens, particularly undocumented migrants, who are referred to as invisible threats “who are to be found not in society but on the state’s territory.”<sup>33</sup>

There can be no question that the consolidation of a security paradigm has contributed to favoring the adoption of measures prioritizing the superior need to respond to perceived threats. This prioritization process, as shown by George Joffé, has led to the “implicit abandonment of the normative pressure for democratization and human rights observance among partner-states”<sup>34</sup> that was initially enshrined in the Euro-Mediterranean Partnership (EMP).

Restrictive laws regarding the conditions of entry and residence of migrants, asylum-seekers, and refugees, the reinforced controls of the EU external borders, and the dramatic expansion of the web of detention centres in and out of the EU territory illustrate the community of interests shared by

(Basingstoke: Palgrave MacMillan, 2009), pp. 166-167.

31. William Walters, “Deportation, Expulsion, and the International Police of Aliens,” *Citizenship Studies*, Vol. 6, No. 3 (2002), p. 267.

32. Michael Collyer, “Migrants, Migration and the Security Paradigm: Constraints and Opportunities” in Frederic Volpi, ed., *Transnational Islam and Regional Security: Cooperation and Diversity between Europe and North Africa* (London: Routledge, 2008), p. 121.

33. Collyer, “Migrants, Migration and the Security Paradigm: Constraints and Opportunities,” p. 130.

34. George Joffé, “The European Union, Democracy and Counter-Terrorism in the Maghreb,” *Journal of Common Market Studies*, Vol. 46, No. 1 (2008), p. 166.

countries of destination, transit, and origin.

This prioritization process has led to the flexible reinterpretation, if not serious breach, of internationally recognized standards and norms. The most emblematic case is perhaps the way in which the Italian-Libyan cooperation on readmission has developed over the last five years (see Silja Klepp's chapter). In April 2005, the European Parliament (EP) voted on a resolution stating that the "Italian authorities have failed to meet their international obligations by not ensuring that the lives of the people expelled by them [to Libya] are not threatened in their countries of origin."<sup>35</sup> This resolution was adopted following the action of the UN High Commissioner for Refugees (UNHCR) and various human rights associations denouncing the collective expulsions of asylum-seekers to Libya that Italy organized between October 2004 and March 2006 (see Emanuela Paoletti's chapter for further details about the collective expulsions).

A few years later, neither the April 2005 EP resolution, nor the intense advocacy work of migrant-aid associations, nor the action of the office of the UNHCR, have contributed to substantially reversing the trend. To the contrary, Italy has broadened and reinforced its bilateral cooperation with Libya in the field of readmission, raising serious concerns among human rights organizations and the UN institutions regarding the respect of the *non-refoulement* principle enshrined in international refugee standards, on the one hand, and the safety of the readmitted persons to Libya, on the other.

The reinforcement of the bilateral cooperation became perceptible in May 2009 when Italy set out to intercept migrants in international waters before they could reach the Italian coasts to subsequently force them back to Libya. Hundreds of would-be immigrants and asylum-seekers have been forcibly subjected to these operations. In September 2009, Human Rights Watch (HRW) published a detailed report<sup>36</sup> on the dreadful conditions and ill-treatment facing readmitted persons in Libya. Despite the ill-treatment evidenced in the HRW report, the European Council called on the then-Swedish Presidency of the European Union and "the European Commission to intensify the dialogue with Libya on managing migration and responding

35. European Parliament, *European Parliament Resolution on Lampedusa*, April 14, 2005, <http://www.europarl.europa.eu/sides/getDoc.do?jsessionid=8B5BEAAD5A39468ECA77F272A4E6D528.node2?pubRef=-//EP//TEXT+TA+P6-TA-2005-0138+0+DOC+XML+V0//EN>.

36. Human Rights Watch, *Pushed Back Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers* (New York: Human Rights Watch, 2009).

to illegal immigration, including cooperation at sea, border control and readmission [while underlining] the importance of readmission agreements as a tool for combating illegal immigration.”<sup>37</sup> This intensified dialogue has become part of the geographical priorities of the EU external relations listed in the December 2009 Stockholm program.<sup>38</sup>

The above case study shows that the need to respond to perceived threats does not only rest on operable means of implementation that are often antonymous to transparency and to the respect of international commitments. It also rests on the subtle denial of moral principles or perhaps on their inadequacy to judge what is right and wrong. Clearly, such a denial does not stem from the ignorance or failure to recognize the value of international norms relating to migrants’ rights, asylum-seekers, and the status of refugees. Rather, it stemmed first and foremost from the *prioritization* of operable means of implementation at all costs. In this respect, the interview made by HRW with Frontex<sup>39</sup> deputy executive director, Gil Arias Fernández, is telling:

Based on our statistics, we are able to say that the agreements [between Libya and Italy] have had a positive impact. On the humanitarian level, fewer lives have been put at risk, due to fewer departures. But our agency [i.e., Frontex] does not have the ability to confirm if the right to request asylum as well as other human rights are being respected in Libya.<sup>40</sup>

The most eloquent aspect of Arias Fernández’s statement lies perhaps in the subjective vision that the border has to be controlled in order to save the lives of those migrants seeking better living conditions in destination countries. The bilateral cooperation on readmission is viewed as the best solution to tackle the “humanitarian” crisis, regardless of whether the country where migrants are to be readmitted (i.e., Libya) already possesses the capacity to

37. European Council (2009a) *Brussels European Council October 29-30, 2009 Presidency Conclusions*, December 1, 2009, p. 12, [http://www.consilium.europocs/cms\\_dataa.eu/ued/docs/pressdata/en/ec/110889.pdf](http://www.consilium.europocs/cms_dataa.eu/ued/docs/pressdata/en/ec/110889.pdf).

38. European Council, “The Stockholm Programme — An open and secure Europe serving and protecting the citizens,” December 2, 2009, [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf).

39. Frontex stands for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, <http://www.frontex.europa.eu/>.

40. Human Rights Watch, *Pushed Back Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers* (2009), p. 37.

fully respect the fundamental human rights and the dignity of the removed persons. This declaratory statement induces us to understand that it is because of the right to protect life that power is exercised and rhetorically justified by the same token.

This subtle denial and its ensuing operable means of implementation have gradually contributed to diluting international norms and standards which had been viewed as being sound and secure.<sup>41</sup> It is reflective of the conflicting relationships between national interests and international commitments in which the removal of aliens is embedded. Lena Skoglund observed the same tension with reference to *diplomatic assurances against torture* whereby a state (e.g., a country of origin) promises that it will not torture or mistreat a removed person viewed as a security threat by the law-enforcement authorities of another state (e.g., a host country).<sup>42</sup>

The predominant search for operability does not only undermine human rights law. It may also alter the understanding of the notion of effectiveness. What is effective has become first and foremost operable, but not necessarily in full compliance with international standards. In this volume, Emanuela Paoletti clearly shows that, over the last few years, operability has become a top priority for Italy in its bilateral cooperation on readmission with Libya.

### *A SELF-FULFILLING SYSTEM OF REFERENCE*

The existence of a concourse structure, added to the consolidation of a security paradigm and its ensuing hierarchy of priorities constitute additional conditions fostering the expansion of the web of agreements linked to readmission. Of course, the use of the abovementioned lexicon has been instrumental in translating the need to cooperate on readmission into a top priority. Selfish relative gains could be overcome by the collective belief in common priorities allowing the centrality of the state to be buttressed.

At the same time, the mobilization of a technical expertise has played a key role in sustaining dominant schemes of interpretation as applied to international migration while legitimizing the prioritization of operable and cost-effective means of implementation in the field of readmission. The state

41. Ruth Weinzierl, *The Demands of Human and EU Fundamental Rights for the Protection of the European Union's External Borders* (Berlin: German Institute for Human Rights, 2007).

42. Lena Skoglund, "Diplomatic Assurances Against Torture — An Effective Strategy?" *Nordic Journal of International Law*, Vol. 77 (2008), p. 363.

has been but one actor in the consolidation process of the concourse structure described above. Through the selective allocation of public funds, some private think tanks have been subcontracted to deliver a technical expertise legitimizing a “form” of top-down knowledge about international migration and, above all, uncritically consolidating states’ hierarchy of priorities. Today, the production of knowledge about migration issues has become strategic, if not crucial, in political terms. By obstructing any alternative interpretation of a given problem, the production of a private expertise does not only pave the way for dealing with the problem, but it also strays from the cause of the problem and subtly justifies a unique technical solution as the lesser evil. Moreover, the emergence of a private technical expertise has contributed to the production of a dominant scheme of interpretation about the current challenges linked with the movement of people by serving policy-makers’ priorities without questioning their orientations.

Similarly, in the fields of the fight against unauthorized migration, detention, and readmission, private business concerns and large security corporations have been increasingly mobilized to arguably minimize the costs (and visibility) of removal and to maximize its operability. In this respect, Thomas Gammeltoft-Hansen explains that:

Today, the privatisation of migration control is far from limited to airlines or other transport companies. From the use of private contractors to run immigration detention facilities and enforce returns and the use of private search officers both at the border and at offshore control zones, to increasing market for visa facilitation agents, privatised migration control is both expanding and taking new forms.<sup>43</sup>

The outsourcing of migration controls to private contractors and multinational corporations (MNCs) in the security and surveillance sectors (e.g., EADS, Finmeccanica, Sagem Sécurité, G4S, Geo Group, to mention just a few) has gained momentum over the last ten years or so as a result of an amazingly lucrative business.<sup>44</sup>

Reasons accounting for the privatization and delegation of some regulatory

43. Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Offshoring and Outsourcing of Migration Control* (Aarhus: Aarhus University Press, 2009), p. 233.

44. Ben Hayes, *NeoConOpticon: The EU Security-Industrial Complex* (Amsterdam: The Transnational Institute, 2009), p. 12.



functions of the state are diverse. In a recent study, Michael Flynn and Cecilia Cannon show that large security companies have penetrated national migration control and surveillance systems in a number of countries around the globe, whether these are countries of destination or of origin, not only because they are purportedly responsive to cost-effectiveness, but also because their involvement enhances states' ability to respond quickly and flexibly to uncertainties and shocks.<sup>45</sup> The mobilization of private contractors does not question the managerial centrality of the state analyzed above; above all when considering that "the state in most instances retains close managerial powers or behavioral influence in terms of how privatized migration control is enacted and carried out."<sup>46</sup> What stands out, however, is the evidenced lobbying and leverage capacity that MNCs can use to shape policy-makers' perceived exigencies<sup>47</sup> as well as those of the public opinion. While being influential though not predominant in national systems, MNCs remain "masterless" in global systems, as Bruce Mazlish incisively wrote: "it is especially in the latter realm [i.e., the global systems] that our new Leviathans are most powerful."<sup>48</sup>

It could even be argued that a self-fulfilling system of reference is emerging whereby the interests of the private remain intertwined with those of the public to respond and legitimize the abovementioned hierarchy of priorities and its operable means of implementation. Incidentally, private security companies and MNCs do not only *deliver* a service which, being private, often remains beyond public purview, they are also proactive in developing "extremely close ties"<sup>49</sup> with decision-makers and government officials and in expanding strategic alliances with other key private actors or subcontractors. Clearly, further evidence is needed to understand the actual impact of these interconnections on policy options and priorities. There are forms of interference that neither affect decision-making processes and policy options, nor are they meant to do so substantially. However, some may entail the provision of information that policymakers value in their day-to-day tasks. Information provision, which often takes place through special advisory

45. Michael Flynn and Cecilia Cannon, *The Privatization of Immigration Detention: Towards a Global View*, Global Detention Project Working Paper (Geneva: The Graduate Institute, 2009).

46. Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Offshoring and Outsourcing of Migration Control*, p. 236.

47. Hayes, *NeoConOpticon: The EU Security-Industrial Complex*.

48. Bruce Mazlish, *The New Global History* (London: Routledge, 2006), p. 37.

49. Flynn and Cannon, *The Privatization of Immigration Detention: Towards a Global View*, p. 16.

committees, also implies how policy issues and exigencies can be perceived and dealt with. It is reasonable to assume that the participation of private contractors' staff in such committees, as evidenced by Ben Hayes (2009), may have contributed to consolidating the hierarchy of priorities mentioned above and its security paradigm, while making its means of implementation if not more practicable, at least more banal, thinkable, and acceptable.

## CONCLUSION

To understand where the significant increase in the number of cooperative agreements linked to readmission (whether standard or not) concluded between European and non-European countries lies today, one is obliged to take into consideration a series of cumulative factors. I explained how material and immaterial incentives, as well as migration salience, geographical proximity and changed power relations constitute key factors shaping states' variable capacities to deal with readmission. Additionally, the need for flexible arrangements, which are in some cases more a necessity than an option, has gradually led to the emergence of diverse cooperative patterns on readmission. It is precisely the combination of these factors that has been conducive to the expansion of the web of agreements linked to readmission.

At the same time, the consolidation of a dominant scheme of understanding as applied to the management of international migration has undeniably contributed to reifying the centrality of the state while legitimizing its modes of interventionism, its policy options, and a hierarchy of priorities. Without the existence of an unquestioned scheme of understanding or *doxa*, based on the use of hegemonic language and sustained by the repetition of regional consultative meetings (mobilizing state actors from countries of origin, of transit, and of destination), neither the unbalanced reciprocities inherent in the cooperation on readmission would have become less critical in the bargaining process, nor would the web of agreements have developed simultaneously at the global level.

Saying that readmission is weaving its way through various policy areas only partly explains the reasons for which it has continued to stand high in states' current hierarchy of priorities. Its prioritization is arguably linked with the growing awareness shared by all countries of migration that it allows their coercive regulatory capacity to be expressed when needed. For it not only categorizes, by means of legal provisions, the desirable and useful aliens, on the one hand, and the undesirable and disposable aliens, on the other, but also redefines the contours of a taken-for-granted sense of belonging and identity.

It is under these circumstances fraught with dominant subjectivities and commonplace ideas that the cooperation on readmission has been branded as the only technical solution able “to combat illegal migration.” It has been presented as a lesser evil able to tackle a common international challenge or threat while making states perhaps less careful about their own relative gains in the cooperation on readmission and undeniably far less sensitive to the reasons for which those who are viewed as illegal or undesirable left their homeland, let alone their dreadful conditions. Hannah Arendt wrote, with reference to some of the darkest times of Europe’s recent history, that “acceptance of lesser evils is consciously used in conditioning the government officials as well as the population at large to the acceptance of evil as such.”<sup>50</sup> I would add to Arendt’s argument that the reference to a lesser evil fosters consensus formation beyond national interests and subtly justifies, by the same token, the use of operable means that might weaken the enforceability of universal norms and standards on human rights without necessarily ignoring or denying their existence. In other words, the acceptance of the lesser evil filters and shapes our categories of thought. The Italian-Libyan pattern of cooperation on readmission, on which the authors focus extensively in this volume, is perhaps the most emblematic case.

It is against this background that the cooperation on readmission, as it stands now in international interaction, involves more than an absolute duty to re-accept one’s own nationals or a mere administrative device.

When faced with these conditions, one is entitled to wonder whether it is still reasonable to wallow in the denunciation of some states’ failure to fully respect their international commitments regarding the rights and human dignity of readmitted persons. To be sure, naming offenders is crucial. However, abuse and violations have become so glaringly obvious and arrogantly justifiable through the lens of the “lesser evil” that their public denunciation might lead to no concrete change, if not to the paradoxical acceptance of things as they are (“we cannot do otherwise”). Together with the denunciation of repeated violations, a thorough examination of dominant schemes of interpretation has to be provided in order to instill in the minds of officials and constituencies alike a sense of doubt and skepticism about the lesser evil and the drive for operability. This is what the authors set out to do by investigating what is really happening on the ground. In sum, the point is to understand.

50. Hannah Arendt, *Responsibility and Judgment* [ed. by Jerome Kohn] (New York: Schocken Books, 2003), pp. 36-37.

## Readmission in the Relations between Italy and North African Mediterranean Countries

Paolo Cuttitta

This chapter investigates how Italy has dealt with the readmission of unauthorized migrants in the framework of its bilateral relations with North African Mediterranean countries (henceforth “NAMCs”). This refers not only to removals from Italy but also to 1) removals carried out by North African countries on behalf of Italy, 2) removals carried out by NAMCs with the financial and technical support of Italy, 3) removals carried out by NAMCs as a result of Italian pressure, and 4) “push-back” operations aimed at intercepting migrants on the high seas and returning them to North African source countries.

### *A PLURALITY OF COOPERATIVE FRAMEWORKS ON READMISSION*

To date, Italy has signed several types of agreements dealing with the readmission of third-country nationals with Morocco (1998), Tunisia (1998), Algeria (2000), and Egypt (2007). No standard readmission agreement has been concluded so far with Libya (see Table 2).

In order to evaluate the effectiveness of Italian formal and informal readmission agreements, comprehensive data are needed. These include data on readmitting countries as well as on the nationalities of the migrants removed by the Italian law-enforcement agencies. Such data refer to both refusals at the border (or immediately after border crossing) and removals from Italian territory (including not only the total number of removal orders but also the number of effected removals). However, figures provided by Italian authorities are scarce or incomplete, and no detailed data on the last few years are available.

Some available data are presented in Tables 3, 4 and 5. Table 3 is based on

official data<sup>1</sup> that only refer to the number of effective removals compared with the total number of apprehended unauthorized migrants. These figures provide an overview of the effectiveness of readmission procedures with countries of origin. Table 4 is based on data reported by Caritas/Migrantes.<sup>2</sup> It has to be said that the data reported in Table 4 contrast with those reported in Table 3.<sup>3</sup> Table 5 is based on data of the Italian institution responsible for the audit of the state budget's management<sup>4</sup> and shows the effectiveness rate of detention for the purpose of expulsion.

In Italy, undocumented migrants cannot be readmitted or removed to a third country without the prior issuance of a travel document delivered by the consular authorities of the third country. If the redocumentation process cannot take place during the maximum period of detention, by law the migrant must be released. S/he is ordered to leave the country within five days, but most of these migrants probably remain irregularly. Italian Minister of Interior, Roberto Maroni, claimed that only 1,640 out of 4,474 detained migrants could be repatriated from January to April 2009, due to insufficient time to redocument them. In 2002, the maximum duration of detention was extended from thirty to sixty days. In order to speed up the redocumentation process, which requires cooperation with third-country authorities, the then-Prodi government (2006–2008) offered countries of origin technical assistance (e.g., computerized database systems for identity checks). In 2009, the Berlusconi government extended the maximum duration of detention from 60 to 180 days.

Next, let us examine the main agreements and patterns of cooperation on readmission and removals with reference to each North African Mediterranean country.

1. Ministry of the Interior, "The Status of Security in Italy" (Rome: 2007)

2. Caritas/Migrantes, *Immigrazione. Dossier statistico 2004* [Immigration. Statistical Dossier 2004], XIV Rapporto (Rome: Idos, 2004).

3. Lorenzo Coslovi and Flavia Piperno, "Forced Return and Then? Analysis of the Impact of the Expulsion of Different Categories of Migrants: A Comparative Study of Albania, Morocco and Nigeria," Centro Studi di Politica Internazionale Working Papers, No. 13 (2005) and Projet Mirem, <http://www.mirem.eu> report figures which differ from both the aforementioned. Coslovi and Piperno report figures related only to Morocco, while Projet Mirem reports figures regarding Morocco, Algeria, and Tunisia..

4. Corte dei Conti [Court of Auditors], "Relazione sul rendiconto generale dello Stato per l'esercizio finanziario 2004" [General Report on Fiscal Year 2004] Volume II, t. II (Rome: Corte dei Conti, 2005), p. 73, [http://www.corteconti.it/controllo/finanza\\_pubblica/bilanci\\_manovra\\_leggi/rendiconto\\_generale\\_2004/](http://www.corteconti.it/controllo/finanza_pubblica/bilanci_manovra_leggi/rendiconto_generale_2004/).

## MOROCCO

Italy and Morocco signed a readmission agreement in July 1998 which has not yet been ratified. Nonetheless, removals from Italy have been carried out *de facto* since then, leading to an increase in the number of removed Moroccan nationals following the signature of the agreement.<sup>5</sup> However, the effectiveness of the agreement never met the expectations of the Italian authorities owing to the slow redocumentation process of unauthorized migrants. Moreover, the Moroccan authorities lack an efficient computerized system for fingerprinting identification and can readmit just a small number of re-documented nationals at a time.

Because Morocco is not a last transit country for migrants *en route* to Italy, the readmission of third-country nationals from Italy (as well as the removal of third-country nationals from Morocco to its neighboring African countries) has had little importance in the relationships between the two countries.

## TUNISIA

Tunisia and Italy signed an agreement on both readmission and police cooperation in August 1998. The contracting parties committed to readmitting their own nationals as well as third-country nationals (with the exception of the nationals of the Arab Maghreb Union) who transited from their respective national territories. The agreement entered into force on September 23, 1999.

Since July 2000, joint border control operations have been coordinated by a liaison officer of the Italian Ministry of Interior based in Tunis. In December 2003, a new agreement reinforced the bilateral cooperation on “the control of vessels suspected of transporting illegal migrants.” Italy and Tunisia also decided to set up liaison offices in both countries.<sup>6</sup>

From 2003 to 2007, bilateral police cooperation between Italian and Tunisian

5. Coslovi and Piperno, “Forced Return and Then? Analysis of the Impact of the Expulsion of Different Categories of Migrants: A Comparative Study of Albania, Morocco and Nigeria,” p. 21.

6. Alessandro Pansa, “L’esperienza italiana nel contesto internazionale” [“The Italian Experience in the International Context”], *Convegno Internazionale per l’analisi dei procedimenti penali tenuti in Italia sulla tratta di persone* (Rome: Scuola Superiore Amministrazione dell’Interno, 2004).

law enforcement agencies resulted in several push-back operations carried out in international waters.<sup>7</sup> No information about the nationality of the removed migrants is available, raising concerns about 1) the ways in which asylum claims have been processed by the authorities and 2) about respect for the principle of *non-refoulement*.

Over 40,000 persons from over 50 countries (Tunisian nationals accounted for 30% of the total) were apprehended while trying to enter or leave Tunisia irregularly between 1998 and 2003.<sup>8</sup> Around 34,000 were apprehended in the following four years (from 2004 to 2007).<sup>9</sup> No data are available about the number and the nationalities of migrants who were actually removed from Tunisian territory. Arguably, many of them were brought from detention centers to the Saharan border and left there to their fate.<sup>10</sup>

Since 2004, Tunisia's role as a last transit country has declined. Nevertheless, the number of Tunisian migrants crossing the Mediterranean (mainly from Libyan coasts) remains significant.

The relatively high effectiveness rate of the removals of Tunisians seems to have decreased as the result of increasing arrivals (see Tables 3-5). From December 2008 to February 2009, the Lampedusa-based detention center was highly overcrowded; most inmates were Tunisian migrants. In January 2009, Italy and Tunisia signed a new police cooperation agreement, aimed mainly

7. Paolo Cuttitta, "Il controllo dell'immigrazione tra Nordafrica e Italia" ["Migration Control Between Northern African Countries and Italy"] in *Libro Bianco: I centri di permanenza temporanea e assistenza in Italia* [*White Paper: Detention Centers in Italy*], Comitato per la promozione e la protezione dei diritti umani [Committee for the Promotion and Protection of Human rights], <http://www.comitatodirittiumani.org>; Paolo Cuttitta, "The Changes in the Fight Against Illegal Immigration in the Euro-Mediterranean Area and in Euro-Mediterranean Relations," CHALLENGE Working Paper Month 24 (Brussels: Center for European Policy Studies, 2007), <http://libertysecurity.org/article1293.html>; Fulvio Vassallo Paleologo, "Obblighi di protezione e controllo delle frontiere marittime" ["Protection Norms and Sea Border Controls"] *Diritto immigrazione e cittadinanza* [Immigration and Citizenship Law], Vol. 9, No. 3 (2007), pp. 13-33; *Ansa*, "Immigrazione. Risolta vicenda peschereccio dirottato" ["Immigration: The Trawler Case is Solved"] July 19, 2007; *Ansa*, "Immigrazione: via a pattugliamento frontex tra Malta e Libia" ["Immigration: Green Light to Frontex Patrols Between Malta and Libya"], June 25, 2007.

8. Hassan Boubakri, "Transit Migration Between Tunisia, Libya and Sub-Saharan Africa: Study Based on Greater Tunis," Proceedings of the Regional Conference on "Migrants in Transit Countries: Sharing Responsibility for Management and Protection" (Strasbourg: Council of Europe, 2004), p. 92.

9. Hassan Boubakri (private communication).

10. Cuttitta, "Il controllo dell'immigrazione tra Nordafrica e Italia," ["Migration Control between Northern African Countries and Italy"], p. 183, <http://www.comitatodirittiumani.org>.

at speeding up the identification process and at facilitating removals from Italian detention centers.

## LIBYA

The expulsion of migrants is not a new issue in Libyan recent history. Libya has been an immigration country since oil was discovered there in the 1960s. Furthermore, migrants from both NAMCs and sub-Saharan countries were occasionally subject to collective expulsions and acts of mass violence<sup>11</sup> long before Libya decided to tighten migration controls in cooperation with Italy.

The continuous and systematic mass expulsions carried out since 2003 have been encouraged by Italian pressure. In 1998, the Italian government started negotiations on the joint management of migration flows. A police cooperation agreement was signed in December 2000, and an Italian investigation unit was established in Tripoli in May 2003.<sup>12</sup> Two months later, an executive agreement was signed, but its contents have never been made public.<sup>13</sup> Libyan authorities repatriated about 43,000 irregular migrants in 2003, 54,000 in 2004, and 47,991 in 2005. They were mainly nationals from sub-Saharan African countries and Egypt. Some were caught while trying to leave for Italy from Libya. Many others seemed “to have been arrested on a random basis.”<sup>14</sup> Until September 2004, all migrants repatriated by Libyan authorities had been apprehended on Libyan territory. Eventually, Libya agreed to readmit unauthorized migrants removed from Italy, although no standard readmission agreement has ever been signed.

In a span of sixteen months, Italy removed about 3,000 people (see Emanuela Paoletti’s chapter). Most of them were subsequently removed from Libya to neighboring countries. Removals from Libya continued even after Italy stopped removals in early 2006 as a result of strong criticisms from interna-

11. Olivier Pliez, “De l’Immigration au Transit? La Libye dans l’Espace Migratoire Euro-Africain” [“Transit of Immigration? Libya in the Euro-African Migratory Space”], in Olivier Pliez, ed., *La Nouvelle Libye: Sociétés, Espaces et Géopolitique au Lendemain de l’Embargo* [The New Libya: Society, Space and Geopolitics in the Aftermath of the Embargo] (Paris: Karthala, 2004), pp. 139-155.

12. On September 12, 2006 in Rome the Libyan and Italian governments agreed that a liaison officer of the Libyan ministry of interior would be dispatched to Rome.

13. The Italian minister of interior Pisanu declared that making public the contents of the agreement “would heavily damage its operability and effectiveness” (Camera dei Deputati 2003c).

14. European Commission, Technical Mission to Libya on Illegal Migration, November 27 –December 6, 2004 Report, No. 7753/05 (Brussels: European Commission, 2005), <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.



tional institutions and NGOs. According to Frontex,<sup>15</sup> 53,842 expulsions were carried out in 2006, whereas around 60,000 migrants were held in Libyan detention centers in May 2007. According to the International Center for Migration Policy Development,<sup>16</sup> in 2006, the number of migrants deported was 86,006 and 30,940 in 2007. In January 2008, Libyan authorities announced that they would “gather all foreigners illegally residing in Libya for immediate deportation,”<sup>17</sup> and in 2009, while launching a regularization program for foreign workers, the Libyan authorities declared that all irregular migrants would be repatriated upon conclusion of the procedures.<sup>18</sup> It should be stressed that not all migrants detained in Libya are actually expelled: many of them “are left in the desert within Libyan territory” or are sold to smugglers by the Libyan police.<sup>19</sup> Furthermore, Libyan authorities have not repatriated Eritrean and Somali asylum seekers in recent years (as they had done until 2004); many of them are kept in Libyan detention centers for years.

Following the 2003 agreement, two memoranda of understanding on police cooperation (dated February 6, 2005 and January 18, 2006), and additional agreements were concluded by Italy and Libya. Over the past few years, several migrant boats were reaccepted by the Libyan authorities from international waters.<sup>20</sup> The new police cooperation agreement dated December 2007 also foresees the joint patrolling of Libyan territorial waters. However, effective implementation started only in May 2009, nine months after Italy agreed to sign the Treaty of Friendship, Partnership and Cooperation. When the treaty was ratified (in February 2009), Libya agreed to sign an executive protocol to the 2007 agreement.

May 2009 marked a watershed in Italian-Libyan relations. Not only did the

15. Frontex, “Frontex-Led EU Illegal Immigration Mission to Libya May 28-June 5, 2007” (Warsaw: Frontex, 2007), p. 10, <http://www.statewatch.org/news/2007/oct/eu-libya-frontex-report.pdf>.

16. International Centre for Migration Policy Development, “Gaps & Needs Analysis Project Country Reports: Ethiopia, Kenya, Libya” (Vienna: 2008), p. 94.

17. Jamahiriyah News Agency: “Gathering foreigners illegally residing in Libya for immediate deportation,” January 16, 2008. <http://www.jananews.ly/Page.aspx?PageId=2564>.

18. Lorenzo Coslovi, “La regolarizzazione in Libia: verso una migliore gestione delle migrazioni?” [“Regularized Migrants: Towards Better Migration Management”], *Centro Studi di Politica Internazionale*, No. 7 (2009), p. 5.

19. Human Rights Watch, *Pushed Back Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers* (New York: Human Rights Watch, 2009), pp. 15, 70-73.

20. Fortress Europe, “Escape From Tripoli, Report on the Conditions of Migrants in Transit in Libya” (2007), <http://fortresseurope.blogspot.com>.

joint patrolling of Libyan waters begin, but Italy also started pushing back migrants in international waters to Libya. Italian law enforcement authorities no longer expel migrants who have already arrived on Italian territory, as they had from 2004 to 2006. Today, they intercept migrants on the high seas, take them aboard, and return them to Tripoli or Zuwahra, or hand them over to Libyan patrol boats after interception.<sup>21</sup> According to the UNHRC (2010), would-be asylum seekers and unaccompanied minors have been forcibly removed, without prior identification and without being given the possibility of claiming for asylum. Italy seems to have acted in breach of international law. Since being expelled to Libya in May 2009, numerous Eritreans and Somalis have lodged applications with the European Court of Human Rights against Italy.<sup>22</sup> The European Commission requested clarifications from Italy after 70 persons (thought to be Somali and Eritrean nationals) were pushed back on August 30, 2009. Nevertheless, Italian authorities kept on removing migrants to Libya, claiming that none of them has ever expressed the wish to apply for asylum.<sup>23</sup>

In recent years, Libya has also signed cooperation agreements on border controls with neighboring countries, such as Chad, Niger, Sudan, and Egypt. Furthermore, at the request of Italy, Libya signed a cooperation agreement with the International Organization for Migration (IOM) in 2005. The IOM Tripoli office has managed the 28-month Transit and Irregular Migration Management (TRIM) project, funded by the Italian government and the European Union. This project was aimed at providing unauthorized migrants living in Libya with the opportunity to return to Niger and Chad under the supervision of the UNHCR.

21. According to vice-minister of Interior, Alfredo Mantovano, eight operations were carried out and 757 migrants were pushed back from international waters to Libya from May 5 to August 30, See “Mantovano: 757 i respingimenti” [“Minister Mantovano: 757 Removed Migrants”], *Ansa*, September 22, 2009). *Fortress Europe* (2009) numbered, however, nine operations of this kind involving 898 persons during the same period.

22. *Hirsi and Others vs. Italy* (Application No. 27765/09), see UNHCR (2010).

23. Council of Europe (2010), “Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009,” CPT/Inf (Strasbourg: Council of Europe, April 28, 2010), <http://www.cpt.coe.int/documents/ita/2010-inf-14-eng.pdf>; Council of Europe, “Response of the Italian government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Italy from 27 to 31 July 2009,” CPT/Inf (Strasbourg: Council of Europe, April 28, 2010), <http://www.cpt.coe.int/documents/ita/2010-inf-15-eng.pdf>.

## EGYPT

Italian authorities often praise Egypt as the paragon of effectiveness in the fight against unauthorized migration. In recent years, thousands of Egyptian citizens have been readmitted to Egypt from Italy, while hundreds of transit migrants have been repatriated from Egyptian territory with the support of Italian authorities.

As regards transit migration, thousands of Sri Lankan nationals entered the Red Sea and reached the Mediterranean through the Suez Canal until 2002. Forty-seven ships with 3,842 passengers aboard arrived in Calabria and Sicily in 2001 and 2002.<sup>24</sup> On the basis of the police cooperation agreement signed in 2000, and upon further informal agreements concluded in 2002, an Italian liaison officer was dispatched to Egypt, enabling joint control of the Suez Canal to commence. Egyptian authorities confiscated the ships. Meanwhile, between 2003 and 2004, 524 passengers were forcibly returned to Sri Lanka on planes chartered by the Italian government.

As regards the readmission of Egyptian unauthorized migrants, the cooperation was considered satisfactory by the Italian authorities as early as December 2003, although no standard readmission agreements were signed at that time.<sup>25</sup> The number of Egyptians arriving irregularly by sea skyrocketed from 102 (2003) to 8,782 (2004) and 10,288 (2005), and then dropped to 4,478 in 2006. Until 2005, Egyptians had traveled first to Libya, and from there headed to Italy.<sup>26</sup> Entry restrictions and increased controls over Libyan border-

24. Alessandro Pansa, "L'esperienza italiana nel contesto internazionale" ["The Italian Experience in the International Context"], *Convegno Internazionale per l'analisi dei procedimenti penali tenuti in Italia sulla tratta di persone* [International Conference on the Analysis of Italian Legal Procedures Related to Human Trafficking], Scuola Superiore Amministrazione dell'Interno, Rome, 2004; Alessandro Pansa, "Le Proposte Del Governo Italiano A Livello Comunitario in Materia Di Immigrazione" ["The Proposals of the Italian Government out forward at an EU level on Migration Issues"], *Convegno SIDI "le migrazioni: una sfida per il diritto internazionale, comunitario e interno"* [SIDI Conference on "Migration: A Challenge for International, Community and National Laws"], Scuola Superiore Amministrazione dell'Interno, Rome, 2004), <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2005/maggio/pansa-conv-sidi.pdf>.

25. Chamber of Deputies, "Audizione del Direttore centrale dell'immigrazione e della Polizia delle frontiere del Ministero dell'interno, prefetto Alessandro Pansa" ["Hearing of the Director of Immigration and Border Agency of the Ministry of the Interior"], *Seduta del 3/12/2003* [December 3, 2003 Session], 2003, [http://www.camera.it/\\_dati/leg14/lavori/stenbic/30/2003/1203/s020.htm](http://www.camera.it/_dati/leg14/lavori/stenbic/30/2003/1203/s020.htm).

26. Sara Hamood, "African Transit Migration Through Libya to Europe: The Human Cost," *Forced Migration and Refugees Studies* (Cairo: The American University In Cairo,

lands generated an increase in the number of Egyptians leaving directly from Egyptian territory to reach Italy (i.e., without transiting through Libya).

In 2004 and 2005 many Egyptians were removed from Italy to Libya (their last transit country) and then from Libya to Egypt, whereas others were repatriated directly from Italy to Egypt. Data on the actual number of readmitted Egyptian nationals are scarce (see Tables 3 and 4). Hundreds of Egyptians were repatriated every year in the framework of bilateral police cooperation agreements. Cooperation with Egypt was considered “excellent” by the Italian authorities.<sup>27</sup> After Italy stopped deportations to Libya in 2006, Egyptians were repatriated directly from Italy to their home country. Egyptian police officers cooperated with their Italian counterparts on repatriation to organize charter flights.

In January 2007, Italy became the first EU Member State to sign a standard readmission agreement with Egypt. The treaty came into force on April 25, 2008. It foresees the readmission of the nationals of the contracting parties as well as the removal of third-country nationals.

## ALGERIA

The readmission of unauthorized Algerian nationals from Italy has been carried out for many years, although the effectiveness rate has been very low (see Tables 3-5). When Sardinia became a new landing point for an increasing number of migrants arriving from Algeria (see Table 1), Italy started (in 2000) to exert more pressure on Algeria to ratify a readmission agreement. This agreement entered into force on October 14, 2006. Given that unauthorized migration from Algeria to Italy has never gained momentum, thus far readmission has not been an issue of high politics in the bilateral relationship between Italy and Algeria.<sup>28</sup>

In recent years, Algerian authorities have also reinforced the surveillance system of their maritime borders with a view toward intercepting boats *en*

2006), pp. 26, 63-64, <http://www.migreurop.org/IMG/pdf/hamood-libya.pdf>.

27. Italian Embassy in Cairo, “La cooperazione tra i ministeri dell’interno italiano ed egiziano, Nota informativa,” [“Cooperation between the Italian and Egyptian Ministries of the Interior: Note”], October 9, 2007.

28. From 2000 to September 2007, about 40,000 foreigners were apprehended and 27,567 were expelled by the Algerian authorities, see Fortress Europe and Aracem, *Effetti collaterali. Rapporto sulle condizioni dei migranti di transito in Algeria [Side Effects: report on the Conditions of Transit Migrants in Algeria]* (2007), [http://www.programmaintegra.it/modules/dms/file\\_retrieve.php?function=view&obj\\_id=1486](http://www.programmaintegra.it/modules/dms/file_retrieve.php?function=view&obj_id=1486)

*route* to Italy and pushing back migrants to Algeria. It is uncertain whether such operations have been carried out in Algerian or in international waters. In June 2009, Algerian and Italian authorities initiated joint patrolling operations. On June 14, 2009, the Italian *Guardia di Finanza* and the Algerian navy intercepted a boat off the Algerian coast carrying with 150 migrants who were then sent back to Algeria.

In July 2009, Italy and Algeria signed a new agreement aimed at strengthening police cooperation through training programs and exchange of information.

### INCENTIVES AND REWARDS

Not only do NAMCs lack the necessary resources to tackle irregular migration effectively but they often lack willingness to cooperate on this issue. As mentioned in the introductory chapter of this volume, their unwillingness to cooperate in the long term stems from the fact that Morocco, Tunisia, Algeria, and Egypt have viewed migration as a safety valve to relieve pressure on domestic unemployment and as a source of external revenues for their respective economies. Nor do countries of transit have a stake in curbing irregular migration, for they too benefit from transit migration flows, whether these are legal or not.

Additionally, NAMCs may be reluctant to jeopardize their relations with neighboring countries by closing borders. This assumption applies particularly to Libya. Importantly, all NAMCs should not be viewed simply as emigration and transit countries. They are also destination countries *de facto*. Libya has been a destination country since the 1960s, whereas Morocco, Algeria, Tunisia, and Egypt have become immigration countries over the last decade.<sup>29</sup> The demand for cheap foreign labor in NAMCs may increase in the near future.<sup>30</sup>

29. North Africa has become a large migration area characterized by different migration patterns that cannot be reduced to the notion of “transit migration.” See Salvatore Palidda, “Le nuove migrazioni verso i paesi del nord-Africa e verso l’Europa” [“New Migration Flows towards North African Countries and Europe”], in ISMU. *Nono Rapporto sulle migrazioni* [Ninth Migration Report] (Milan: Angeli, 2003). See also Frank Düvell, “Crossing the fringes of Europe. Transit migration in the EU’s neighbourhood,” Working Paper No. 33 (Oxford: University of Oxford, Center on Migration, Policy and Society 2006).

30. Hein De Haas, “The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union,” Research Report (Oxford: International Migration Institute, 2007), <http://www.imi.ox.ac.uk/pdfs/Irregular%20migration%20from%20West%20Africa%20-%20Hein%20de%20Haas.pdf>.

Strong incentives had to be put forward in order to ensure the effective cooperation of NAMCs. These became all the more necessary as some NAMCs became aware of the conditions under which they could capitalize on the bilateral cooperation with their European neighbors. Incentives include various types of compensatory measures that are analyzed below.

### *ENTRY QUOTAS*

Legal immigration to Italy is regulated within the framework of a yearly quota system setting a ceiling to legal entries of foreign workers.<sup>31</sup> In 1998, the Italian center-left government decided to use entry quotas to exert leverage on major source countries. Since then, on a yearly basis, the government has fixed the maximum number of foreigners allowed to enter the Italian labor market. Shares of this quota system can be specifically reserved to nationals of cooperative third countries. The remaining shares are open to nationals of any third country.

Egypt obtained from Italian authorities a reserved share in October 2002, as a result of its decision to become more cooperative in the field of migration controls in the Suez Canal. The Italian government issued a decree rewarding Egypt with a share of 1,000 legal immigrants — 10% of the whole share granted to single countries. After Egypt cooperated on the readmission of Egyptian nationals from Italy in 2004 and 2005 (although no standard readmission agreement already existed at that time), the reserved share was further increased in 2005 and 2006, reaching the maximum amount ever allocated to a single country (7,000 legal entries). After the conclusion of its bilateral standard readmission agreement with Italy, the 2007 decree increased Egypt's share to the record number of 8,000.

Morocco and Tunisia are no exception to the entry quota system promoted by Italy. As a result of the conclusion of its bilateral readmission agreement on 6 August 1998, Tunisia benefited from a preferential treatment in terms of entry quotas for its own nationals. Italy reserved 1,500 entry visas for Tunisian workers. During the same period, Morocco was also granted a reserved share to reward its cooperation on readmission.

Entry quotas could be viewed as indicators of the effective implementation of bilateral readmission agreements, for their shares have varied substantial-

31. Paolo Cuttitta, "Yearly Quotas and Country-reserved Shares in Italian Immigration Policy," *Migration Letters* 5, No. 1 (2008), pp. 41-51.

ly over time. For instance, the Moroccan reserved share was halved in 2001, because the Italian government deemed the cooperation to be insufficient. In 2001, the provisions of the 1998 agreement regarding police equipment to be supplied from Italy to the Tunisian border police expired. Irregular arrivals from Tunisia started to increase. The reserved share for Tunisian citizens, which initially increased from 1,500 to 3,000, dropped to 2,000 (2002) and then to only 600 (2003). Later, a new Italian-Tunisian police cooperation agreement was signed on December 13, 2003, after Italy promised to increase the 2004 reserved share for Tunisian migrant workers. Six days after its conclusion, the Italian government increased the Tunisian share to 3,000 entry visas.

Algerian citizens were also granted a reserved share. The reserved share was not only a way of rewarding the ratification of the readmission agreement by Algeria in October 2006, but also an incentive to improve or ensure the effective bilateral cooperation in the field of readmission.

Clearly, as Libya is not an emigration country, such forms of incentives were not considered in the bargaining process to ensure the cooperation of the Libyan authorities. However, to reward Libya's reinforced cooperation, Italy granted a reserved share for Libyan nationals in 2010 amounting to 1,000 entry visas.

#### *CONDITIONAL DEVELOPMENT AID*

Development cooperation with Morocco and Algeria was resumed in 1998 (when the Italian-Moroccan readmission agreement was signed) and in 1999 (when the Italian-Algerian police cooperation agreement was signed) respectively. Italy and Egypt signed a debt swap agreement in February 2001, i.e., eight months following the conclusion of a bilateral police cooperation agreement. Consequently, the number of Italian development cooperation projects in Egypt has substantially increased.

The way in which Italy has conditionally linked development aid with the cooperation on readmission is quite emblematic in the case of Tunisia. In 1992-1993, Tunisia was at the sixth place in the list of the major recipients of Italy's official development assistance (ODA). A few years later, when migrant boats started to arrive to Sicily, Tunisia was downgraded in the above list.

Italian ODA granted to Tunisia is determined by a joint Italian-Tunisian

commission. From 1991 to 1998, the commission did not meet once.<sup>32</sup> However, on August 3-5, 1998, the commission resumed its works and established a new program offering Tunisia €108.44 million loans and €3.31 million grants for the period 1999–2001. The resumption of talks preceded the conclusion of the bilateral readmission agreement on August 6, 1998. Later, another €33 million loan and a €7.23 million grant were added, reaching a total amount of about €152 million. In 2001, the joint commission allocated €36.5 million loans and €71.75 million grants for the period 2002–2004, plus €6.42 million.

In 2004, the same commission allocated substantial financial resources (€179 million loans and €2.98 million grants) for the 2005–2007 period following the signature of the December 2003 police cooperation agreement.

There is no question that such financial incentives were conditionally linked with Tunisia's acceptance to take part in reinforced border and migration control in cooperation with Italy. This conditionality was not only conducive to the conclusion of the 1998 readmission agreements (based on a verbal note dated 1998) and of the 2003 police cooperation agreement. It may also have induced Tunisia to join the International Organization for Migration (IOM) in 1999 and to authorize the establishment of its Tunis-based office in 2001. Since its creation, the IOM office has developed projects co-financed by Italian public funds in such areas as the management of legal migration, economic development of Tunisian regions with high emigration rate, and the reinforced management of transit and irregular migration in Tunisia.

It has to be said that, since 2002, the need to tie development aid with bilateral cooperation on migration management gained further momentum when the Italian government voted in September 2002 a legal provision (law 189/2002) aimed at conditionally linking development assistance with effective cooperation on the fight against unauthorized migration. Cooperation and aid programmes are subject to reassessment if the relevant countries do not adopt appropriate measures.<sup>33</sup>

As far as the use of development aid is concerned, the Development Assistance Committee of the OECD called on Italy to further untie its assistance to Tunisia arguing that “moves towards a revision of Italy's untying policy to bring it in line with best practice at international level would undoubtedly

32. All Italian development cooperation projects were subject to cuts after 1992, but Tunisia was the most affected.

33. More recently, the principle of conditional development cooperation was confirmed by article 13 of law 69/2009.



add to the donor community's joint efforts towards a greater effectiveness of aid."<sup>34</sup>

*TECHNICAL ASSISTANCE, FINANCIAL ASSISTANCE AND TRAINING*

The Italian Ministry of Interior has supplied the law enforcement agencies of NAMCs with technical equipment and offered training programs for their border police officials. Furthermore, Italy has granted financial aid for “return flights,” and it has built (or offered its financial contribution for the building of) centers for the management of irregular migration flows.

Egyptian police officers have been offered training programs since 2004. Most of the activities took place in Italy. Furthermore, Egyptian police have been equipped with technical instruments for the detection of forged documents and with maritime vehicles to patrol maritime borders. A new patrol boat was handed over to Egyptian authorities after the signature of the January 2007 readmission agreement.

In 1998, Italy provided Tunisia with €20.7 million in technical equipment for the three-year period 1999–2001. The 1998 agreement also stated that the Italian government would contribute €260,000 to “the establishment of detention centers in Tunisia” in order to foster the repatriation of foreign migrants removed from Italy. This was the only provision of the agreement that Tunisia did not accept in the end, probably fearing Italian interferences in domestic questions such as the management of detention centers (including detention conditions) and the expulsion of migrants.

After the expiration of the 1998 agreement, a further €12.5 million worth equipment was supplied in 2002 and 2003 through development assistance. Further assistance to Tunisia (including training programs and technical equipment) was agreed upon by a meeting of experts held in Tunis in February 2007.

The Italian government has been providing training courses for Libyan border officers since 2004. From August 2003 to December 2004, Italy supplied Libyan authorities with technical equipment including night-vision devices, binoculars, all terrain vehicles (ATV), mattresses and blankets, life boats, and sacks for the transportation of corpses. During the same period Italy paid 50

34. Organization for Economic Co-operation and Development (OECD), “2004 DAC Peer Review of Italy” (Paris: OECD, 2004), pp. 38, 54, 58, <http://www.oecd.org/dataoecd/21/43/33954223.pdf>.

charter flights to remove 5,688 individuals from Libya to ten different countries.<sup>35</sup> No detailed information regarding the granting of technical equipment is available for the period 2005-2006, but on February 6, 2005 a memorandum was signed in Tripoli: Italy promised appropriate supply to Libyan authorities for the implementation of a reinforced border control system.

Italy also decided to finance the construction of three detention centers in Libya: between 2004 and 2005 €6.6 million were allocated for a center in Gharyan and €5.2 million for a center in Kufra, while another detention center was expected to be built in Sebha.<sup>36</sup> Following the election of the center-left Prodi government, the Italian authorities decided to change the use of the above centers. The center of Gharyan was opened in June 2007 as a training center for Libyan police officers, whereas the Kufra center was renamed as a border medical center, and the construction of the detention center in Sebha was given up.<sup>37</sup> However, for sovereignty reasons, the Prodi government made clear that the Libyan authorities would decide how to use the centers *de facto*.

In 2007, Italy supplied Libya with instruments for the detection of forged documents, five GPS-equipped ATVs, seven computers and seven satellite communication systems, as well as six patrol boats for use by Libyan border officers. The implementation of the 2007 agreement (providing for the creation of joint border patrols) was contingent on the conclusion of a Treaty of Friendship, Partnership, and Cooperation dated August 2008 and ratified by the Italian parliament in February 2009. The main provisions contained in the treaty are described below. It has to be stressed that Italy is the only EU Member State that managed to implement cooperative projects (co-financed by the EU) in Libya.

35. European Commission, "Technical Mission to Libya on Illegal Migration 27 November – 6 December 2004," Report 7753/05 (Brussels: European Commission, 2005), pp. 59-61, <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.

36. European Commission Report (2005), pp. 59; *Corte dei Conti* [Court of Auditors], "Relazione sul rendiconto generale dello Stato per l'esercizio finanziario 2005" ["Report on the State General Account for Fiscal Year 2005"], Volume II, t. II, (Rome: Corte dei Conti, 2006), p. 32, [http://www.corteconti.it/controllo/finanza\\_pubblica/bilanci\\_manovra\\_leggi/rendiconto\\_generale\\_2004/](http://www.corteconti.it/controllo/finanza_pubblica/bilanci_manovra_leggi/rendiconto_generale_2004/); Ministry of the Interior, "The Status of Security in Italy" (Rome: 2005), p. 43.

37. Chamber of Deputies (2007), "Risposta del sottosegretario Marcella Lucidi all'interpellanza urgente n. 2-00623 del 26 giugno 2007" ["Undersecretary Marcela Lucidi's reply to urgent convocation n. 2-00623 of June 26, 2007"], Seduta del 5/7/2007 [July 5, 2007 Session], [http://leg15.camera.it/resoconti/dettaglio\\_resoconto.asp?idSeduta=0184&resoconto=stenografico&indice=alfabetico&tit=00090&fase=00060](http://leg15.camera.it/resoconti/dettaglio_resoconto.asp?idSeduta=0184&resoconto=stenografico&indice=alfabetico&tit=00090&fase=00060).

Apart from the abovementioned TRIM project, the Italian Ministry of Interior has also contributed, with IOM, to another project aimed controlling borders named “Across Sahara,” by offering training programs to the Libyan police forces. When the project was initially carried out from December 2005 to December 2007, it predominantly promoted cooperative programs with Niger. Since 2007, it is aimed at promoting border cooperation with Algeria.

Other projects, funded by the European Union, were approved to support the management of Libya’s southern borders (“Prevention of irregular migration at Libya’s Southern borders” and “Management of irregular migration pressures in Libya”). The first project is aimed at improving the overall capacity of Libyan law-enforcement authorities, whereas the second fosters “the establishment of a system of assisted voluntary return ... and of resettlement.”<sup>38</sup> Finally, an additional EU-funded project called “Strengthening the capacity of Libyan authorities to prevent and manage irregular migration” has been launched. It is aimed at supporting legal, institutional and administrative reforms in Libya in order to improve the country’s capacity to manage its land and sea borders and to better deal with “irregular migrants stranded in the desert or at sea.”<sup>39</sup> Italy will hold the leadership of the project and will receive €4.5 million from the EU.

#### *POLITICAL SUPPORT AND TRADE PARTNERSHIP*

During the late 1980s, and as result of the embargo imposed on Libya by the United States, the European Union, and the United Nations, the Gadhafi regime became politically isolated. It oriented its influence to African with a view to consolidating new strategic alliances. This orientation was based on pan-African open-door policies towards sub-Saharan migrants, although Tunisian and Egyptian nationals remained subjected to occasional restrictive measures on the part of the Libyan regime. Later, Gadhafi opted for a policy of reconciliation with Western countries in order to counter the risks of American raids on his country and to claim the lifting of the embargos.

The possibility of cooperating on the fight against irregular migration soon became a factor of which the Libyan regime could take advantage in order to exert certain leverage on its European neighbors in order to induce them to

38. European Commission, “Annual Action Programme 2009 and 2010 Part 1 for the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum,” 2009.

39. European Commission (2009).

contribute to the lifting of the embargos. Such leverage became perceptible in its interaction with Italy. Gadhafi was suspected of voluntarily regulating the intensity of unauthorized migration flows to Europe by alternatively tightening and easing border controls.

*Vice-versa* Italy and the EU tried to make the lifting of European sanctions conditionally linked with Libya's willingness to combat irregular transit migration. In particular, Italy played a key role as mediator between Libya and the other Member States. In exchange for a reinforced Libyan involvement in the fight against irregular migration, Italy offered not only financial and logistical assistance, but also began to express support for the lifting of all sanctions against Libya.

When the first bilateral police cooperation agreement was concluded in December 2000, Italy intensified its diplomatic efforts to rehabilitate the Libyan regime into the international community.

Libya's cooperation on migration and border controls constituted only one of the other factors that led to the lifting of the embargo by the EU. Whereas the lifting of the UN and US sanctions against Libya was motivated by different factors,<sup>40</sup> the EU embargo was lifted when, in October 2004, Libya agreed for the first time to readmit unauthorized aliens from Italy.<sup>41</sup>

The gradual lifting of the sanctions against Libya was accompanied by a *rapprochement* with the West. In turn, this process has gradually reconfigured Libya's relations with its African neighbors, especially following its acceptance to reinforce the control of its southern borders.

It is noteworthy that the previously mentioned *rapprochement* occurred against the backdrop of repeated compensation claims by Libya against Italy stemming from the colonial period (1911-1943).

In 1998, the Italian government apologized for the atrocities committed by the former colonial regime in Libya and promised compensation. Libya not only requested the construction of a coastal highway as an initial compensatory measure, but conditioned the reinforcement of its police cooperation with Italy on a formal commitment by the Italian government to build the highway. Italian Minister of Foreign Affairs Massimo D'Alema (on Novem-

40. UN sanctions were removed in September 2003, after Libya agreed to compensate the families of the victims of the attacks on a US (1988) and a French (1989) airplane. US sanctions were lifted in April 2004 when Gadhafi promised to dismantle the country's weapons of mass destruction programs.

41. Another decisive step was Libya's decision, dated September 2004, to compensate for the 1986 bomb attack in a disco in Berlin.

ber 10, 2007 in Tripoli) and Prime Minister Romano Prodi (on December 9, 2007 in Lisbon) expressed this commitment, which was cemented by the signing of the August 2008 Treaty of Friendship, Partnership, and Cooperation.<sup>42</sup>

The treaty also foresees the strengthening of bilateral economic cooperation. Here it should be mentioned that Italian-Libyan relations have long been characterized by strong economic interests. When the embargo was enforced, Italy remained Libya's major trade partner. More recently, in 2004, following the visit of Italian Prime Minister Silvio Berlusconi to Mellitah (Libya), the biggest Mediterranean gas pipeline was opened to channel methane to Italy. The pipeline was built by the Italian public-owned oil company *Ente Nazionale Idrocarburi* (ENI), which is the exclusive partner of the Libyan National Oil Corporation (NOC), and manages the Mellitah extraction plant. ENI is expected to invest \$14 billion over the next ten years in the extraction of gas and oil in Libya. Its exclusive concession rights will not expire until 2047.

Italy has developed strong economic ties with all of the North African countries. Italy is Egypt's leading trade partner and one of the major trade partners of Tunisia, Algeria, and Morocco. Given the lack of transparency that surrounds the bilateral negotiations of agreements linked to readmission, it is difficult to ascertain whether there is a clear-cut cause-and-effect relationship between preferential trade concessions and cooperation on readmission. Nonetheless, one is tempted to think that these concessions may have had an impact on NAMCs' motivations to cooperate with Italy on the reinforced control of migration and borders, just as they may also have had a bearing on the way in which the bilateral cooperation has been configured to date. Thus the issue of readmission, and particularly states' propensity to cooperate at bilateral level, cannot be analyzed and understood without referring to a broader framework of interaction.

## CONCLUSION

For many years, NAMCs have cooperated with Italy on readmission while contributing to the establishment and expansion of a network aimed at regulating human movements in the Mediterranean. Whereas removals of unauthorized aliens to Libya (involving third-country nationals) were carried out

42. On the basis of this wide-ranging treaty, both countries agreed that Italy — or rather Italian private companies in the building sector — would build infrastructure in Libya in the amount of \$5 billion (\$250 million each year over a 20-year period).

for only sixteen months between 2004 and 2006, and were resumed in May 2009, removals to the other NAMCs (which applied predominantly to their own nationals) have never been interrupted, despite their having a low and erratic effectiveness rate, as reported on Table 3.

This chapter shows that the patterns of cooperation linked to readmission that Italy has developed over the last decade or so have become highly diverse. Cooperation is not only limited to the removal of unauthorized aliens from Italy, but also includes operations aimed at expelling aliens from the territories of NAMCs to other African source countries. It also encompasses operations aimed at pushing migrants from international waters back to NAMCs' territories.

In the same vein, the variety of patterns of cooperation linked to readmission is reflective of the fact that, for Italy, "the operability of the cooperation on readmission has been prioritized over its formalization," as mentioned by Jean-Pierre Cassarino in the introductory chapter. Moreover, it is perhaps for this reason that, despite low effectiveness rates, cooperation on readmission is and will continue to be viewed by the Italian authorities as a top priority, whether the bilateral pattern of cooperation is based on standard agreements or not.

Finally, the study shows that the responsiveness of NAMCs to Italy's call for enhanced cooperation in the field of migration and border controls was not only motivated by expected benefits or compensations, but also by the fact that the bilateral interaction has been embedded in a broader framework of interconnectedness on which some NAMCs have successfully capitalized.<sup>43</sup> Libya, as shown in the next chapter written by Emanuela Paoletti, is a case in point.

43. Jean-Pierre Cassarino, "Migration and Border Management in the Euro-Mediterranean Area: Heading towards New Forms of Interconnectedness," in *Med.2005 Mediterranean Yearbook* (Barcelona: Institut Europeu de la Mediterrània/Centro de Estudios y Documentación Internacional de Barcelona, 2005), pp. 227-231; Jean-Pierre Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Vol. 42, No. 2 (2007), pp. 179-196; Hein De Haas, "The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union."

**Table 1: Italy – Irregular migrants apprehended at Italian sea borders**

Region	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Apulia	28,458 (74.58%)	46,481 (92.96%)	18,990 (70.81%)	8,546 (42.43%)	3,372 (14.21%)	137 (0.95%)	18 (0.13%)	19 (0.08%)	243 (1.10%)	61 (0.30%)	127 (0.34%)	N.A.
Calabria	873 (2.29%)	1,545 (3.09%)	5,045 (18.81%)	6,093 (30.25%)	2,122 (8.95%)	177 (1.24%)	23 (0.17%)	88 (0.38%)	282 (1.28%)	1,971 (9.63%)	663 (1.79%)	N.A.
Sardinia	-	-	-	-	-	-	-	8 (0.04%)	91 (0.42%)	1,548 (7.57%)	1,621 (4.39%)	N.A.
Sicily	8,828 (23.13%)	1,973 (3.95%)	2,782 (10.38%)	5,504 (27.32%)	18,225 (76.84%)	14,017 (97.81%)	13,594 (99.70%)	22,824 (99.50%)	21,400 (97.20%)	16,875 (82.50%)	34,541 (93.48%)	N.A.
<b>Total</b>	<b>38,159</b> <b>(100%)</b>	<b>49,999</b> <b>(100%)</b>	<b>26,817</b> <b>(100%)</b>	<b>20,143</b> <b>(100%)</b>	<b>23,719</b> <b>(100%)</b>	<b>14,331</b> <b>(100%)</b>	<b>13,635</b> <b>(100%)</b>	<b>22,939</b> <b>(100%)</b>	<b>22,016</b> <b>(100%)</b>	<b>20,455</b> <b>(100%)</b>	<b>36,952</b> <b>(100%)</b>	<b>9,573</b> <b>(100%)</b>

Source: Table created by the author based on data from the Italian Ministry of the Interior.

**Table 2: Italy – Agreements linked to readmission signed with North African countries**

<b>Country</b>	<b>Type of Agreement</b>	<b>Place and date of signature</b>
Algeria	Police cooperation	Algiers, November 22, 1999
Algeria	Readmission	Rome, February 24, 2000
Algeria	Executive protocol	Rome, October 9, 2000
Algeria	Police cooperation	Algiers, July 22, 2009
Egypt	Police cooperation	Cairo, June 18, 2000
Egypt	Readmission	Rome, January 9, 2007
Libya	Police cooperation	Rome, December 13, 2000
Libya	Executive protocol	Tripoli, July 3, 2003
Libya	Police cooperation	Tripoli, December 29, 2007
Libya	Friendship, partnership and cooperation	Benghazi, August 30, 2008
Libya	Executive protocol	Tripoli, February 4, 2009
Morocco	Readmission	Rabat, July 27, 1998
Morocco	Executive protocol	Rome, June 18, 1999
Tunisia	Readmission and police cooperation	Rome, August 6, 1998
Tunisia	Police cooperation	Tunis, December 13, 2003
Tunisia	Executive protocol	Tunis, January 27, 2009

*Source: Table created by the author based on information drawn from various sources.*



Table 3: Italy – Irregular migrants apprehended and actually expelled, 1999 – 2006

	Morocco			Tunisia			Algeria			Egypt		
	Actually expelled	Apprehended	Effectiveness rate	Actually expelled	Apprehended	Effectiveness rate	Actually expelled	Apprehended	Effectiveness rate	Actually expelled	Apprehended	Effectiveness rate
1999	1,402	4,110	34.1%	1,405	2,419	58.1%	597	1,671	35.7%	N.A.	N.A.	N.A.
2000	2,370	7,109	33.3%	1,345	2,588	52.0%	757	2,328	32.5%	N.A.	N.A.	N.A.
2001	4,359	10,585	41.2%	1,854	2,976	62.3%	1,475	3,298	44.7%	N.A.	N.A.	N.A.
2002	4,662	11,757	39.7%	2,025	3,888	52.1%	1,448	3,995	36.2%	N.A.	N.A.	N.A.
2003	3,597	8,273	43.5%	1,604	3,140	51.1%	N.A.	2,568	N.A.	N.A.	N.A.	N.A.
2004	2,809	7,832	35.9%	1,356	2,871	47.2%	N.A.	2,138	N.A.	562	1,163	48.3%
2005	2,421	9,317	26.0%	991	3,199	31.0%	N.A.	2,366	N.A.	671	2,355	28.5%
2006	1,887	14,047	13.4%	688	5,205	13.2%	327	2,382	13.7%	N.A.	2,592	N.A.
Total	23,507	73,030	32.2%	11,268	26,286	42.9%	N.A.	20,746	27.9%	N.A.	10,230	26.5%

Source: Table created by the author based on data from the Italian Ministry of the Interior.

Note: This table does not include refusals of entry at the border.

**Table 4: Italy – Total number of migrants to be expelled and effective removals**

	2003		2004		2005	
	to be expelled	% of effective removals	to be expelled	% of effective removals	to be expelled	% of effective removals
Algeria	N.A.	N.A.	N.A.	N.A.	2,648	24.8%
Egypt	N.A.	N.A.	N.A.	N.A.	2,453	66.2%
Morocco	N.A.	45.9%	N.A.	38.5%	9,839	29.9%
Tunisia	N.A.	55.5%	N.A.	N.A.	3,782	33.8%

*Source: Table created by the author based on data from Caritas/Migrantes*

**Table 5: Italy – Total number of migrants held in detention centers and number of effective removals**

	2002			2003		
	Detainees to be expelled	Actually expelled	Effectiveness rate	Detainees to be expelled	Actually expelled	Effectiveness rate
Algeria	1,363	179	13.1%	753	146	19.4%
Egypt	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Morocco	3,256	809	24.8%	2,227	942	42.3%
Tunisia	1,898	993	52.3%	1,042	523	50.2%

*Source: Table created by the author based on data from the Corte dei Conti*

# Relations among Unequals? Readmission between Italy and Libya

Emanuela Paoletti

The literature on cooperation on readmission tends to assume that the agreements reached between destination and source countries are characterized by unequal relationships, for the parties involved do not share the same interests and implications in the cooperation.<sup>1</sup> A large body of literature has argued that developing countries cannot make meaningful choices because they are controlled, directly or indirectly, by external influences.<sup>2</sup> The dominant perspective in the scholarly debate is that the externalization of migration policies — defined as the process whereby the place where travelers are controlled shifts “from the border of the sovereign state into which the individual is seeking to enter to within the state of origin”<sup>3</sup> — is based on the subordination of the South.<sup>4</sup> In the specific European context, some scholars have suggested that by involving migrant-sending countries in the “struggle against migration,” the EU is devolving some of its responsibilities to them and, by implication, moving the complex task of managing migration outside the rule of law.<sup>5</sup> The corollary of this position is that the EU migration policies strengthen mainstream *realpolitik* accounts of power relations, for they continue to weaken the South. In this context, Keohane’s work on reciprocity and “relations among unequals” is particularly relevant for understanding emerging relations of power between the EU and its neighboring countries.

1. Jean-Pierre Cassarino, “Informalising Readmission Agreements in the EU Neighborhood,” *The International Spectator*, Vol. 42 (2007), p. 182.

2. Robert L. Rothstein, *The Weak in the World of the Strong* (New York: Columbia University Press, 1977), p. 9.

3. Elspeth Guild, “The Borders of the European Union,” *Tidsskriftet Politik*, Vol. 7 (2004), p. 34.

4. Chris Brown, *Understanding International Relations* (Basinstoke: Palgrave, 2001).

5. Elspeth Guild and Didier Bigo, “Le visa Schengen: expression d’une stratégie de ‘police à distance’ [“The Schengen Visa: An Expression of a Police Strategy at a Distance”], *Cultures et Conflicts*, Vol. 49 (2003); Andrew Geddes, “Europe’s Border Relationships and International Migration Relations,” *JCMS*, Vol. 43 (2005).

Within this overall trend, the non-standard agreements linked to readmission between Italy and Libya are insightful. Since it is a pioneering and relatively advanced example of cooperation in the European context, the issue of whether it is based on unequal reciprocity appears to be particularly pertinent. Therefore, the question that I shall address in this chapter is whether the Italian-Libyan agreements linked to readmission can be treated as an example of relations among unequals. In other words, does the selected case study reflect what Keohane calls “reciprocity in unequal obligations”?

This chapter is divided into four sections. First, I illustrate Keohane’s argument and define the relevant terminology. Second, I present a brief historical excursus of the Italian-Libyan agreements in order to set the scene for the third section, which is concerned with the types of agreements as such. In providing an historical overview of the “return flights” between October 2004 and March 2006, I will also elaborate on the criticisms that were leveled by a number of different international organizations against Italy and Libya.<sup>6</sup> The fourth section applies the concepts of reciprocity and relations among unequals, to the empirical analysis. By focusing on the costs and benefits in the Italian-Libyan patterns of cooperation on readmission in wider negotiations on migration, I analyze the overall bargaining dynamics and explore the extent to which there are power disparities. In the final section I conclude that the agreements epitomize a relation among unequals for Italy has higher obligations and costs than Libya. I will also argue, however, that this unbalance is recast in the *overall* bilateral agreements on migration that are best defined by Keohane’s notion of “diffuse” yet still unequal reciprocity.<sup>7</sup>

Before embarking on these tasks, it is important to stress the limitations of this chapter. First, I take great liberty in applying Keohane’s concept of reciprocity to a bilateral agreement. His analysis concentrates on multilateral frameworks. However, I have taken the view that utilizing the concept of reciprocity in this case study may help us appreciate the multifaceted nature of state interactions in relation to evolving migration dynamics. Second, in this chapter I refer to the Italian-Libyan non-standard agreements as the sum of the *informal* discussions on repatriation flights from Italy to Libya. This utilization transcends the standard meaning, for it does not imply that Italy and Libya have formally signed a standard readmission agreement in the

6. The analysis is based on official documents and semi-structured interviews conducted in Italy and Libya between 2006 and 2008. All the interviews are kept anonymous and the organizations where interviewees are based will not be disclosed.

7. Robert O. Keohane, “Reciprocity in International Relations,” *International Organization*, Vol. 40 (1986), pp. 1-27.

manner that other European and non-European countries have done with migrant-sending countries. Third, the empirical analysis centers on charter flights. These took place between 2004 and 2006 and were aimed at removing unauthorized aliens. In the conclusion I will link such agreements to the development in the collaborative arrangements in 2009.

### APPROACHING RECIPROCITIES

Keohane identifies two interrelated types of reciprocity:

I ... use *specific* reciprocity ... to refer to situations in which specified partners exchange items of equivalent value in a strictly delimited sequence. If any obligations exist, they are clearly specified in terms of rights and duties of particular actors. This is the typical meaning of reciprocity in economics and game theory. In situations characterized by *diffuse* reciprocity, by contrast, the definition of equivalence is less precise, one's partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded. Obligations are important. Diffuse reciprocity involves conforming to generally accepted standards of behavior.<sup>8</sup>

Put another way, while the first type refers to the interaction on one specific issue, the second refers to the ongoing discussion across a range of different issues for the sake of continuing satisfactory overall results. Depending on the extent to which exchange is equivalent, it is possible to identify three kinds of reciprocity. For purposes of clarity, I distinguish them in the following manner: (1) full reciprocity, (2) unequal reciprocity, and (3) non-reciprocity.<sup>9</sup> As concerns the first one, international relations literature has elaborated extensively on reciprocity and, more often than not, has defined it as an equivalent exchange. In quoting Gouldner, Keohane makes clear that “reciprocal behavior returns ill for ill as well as good for good: ‘people should meet smiles with smiles and lies with treachery.’”<sup>10</sup> However, he also observes that reciprocity applies to situations of “rough equivalence”:

Reciprocity can also characterize relations among unequals, for instance,

8. Keohane, “Reciprocity in International Relations,” p. 3.

9. I elaborated this three-fold categorization based on, but not strictly following, Keohane's work. Hence, responsibility for this clear-cut differentiation remains with the author.

10. Keohane, “Reciprocity in International Relations,” p. 5.

between a patron and his client, when there is little prospect of equivalent exchange. Patron-client relationships are characterized by exchanges of mutually valued but non-comparable goods and services.<sup>11</sup>

This second type of interaction refers to “reciprocity in unequal obligations” that is the “really distinctive feature of European vassalage”.<sup>12</sup> By contrast, “when we observe one-sided and unrequited exploitation, which cannot under any circumstances be considered an exchange of equivalents, we do not describe the relationship as reciprocal”.<sup>13</sup> Situations that lack a “rough balancing out” cannot be considered reciprocal and are defined in this chapter as non-reciprocal.

To assess the extent to which relations are based on reciprocity, Keohane examines obligations involving the duties of both parties. In a reciprocal interaction, “people should help those who have helped them, and people should not injure those who have helped them.” These norms “impose obligations.”<sup>14</sup> Obligations are important since they are indicators of the extent to which there is conformity to generally accepted standards of behavior.<sup>15</sup>

The next section examines the nature of reciprocity in the Italian-Libyan bilateral agreements linked to readmission and wider negotiations on migration by assessing the obligations of each party. Which of the three scenarios explained above best capture their interaction: full reciprocity, unequal reciprocity, or non-reciprocity?

### *BACKGROUND TO THE AGREEMENTS ON MIGRATION BETWEEN ITALY AND LIBYA*

The discussions between Italy and Libya on migration controls started in the late 1990s. On July 4, 1998, a “Joint Communiqué” was signed. The significance of this agreement derives from Italy’s formal acknowledgment of the suffering caused during the colonial period. In the period following the signing of the agreement, a number of meetings between Italian and Libyan authorities on migration-related issues, among other things, took place. This intense discussion led to the signing of the Memorandum of Intent in December 2000, which addressed drug-trafficking, terrorism, organized crime, and

11. Keohane, “Reciprocity in International Relations,” p. 6.

12. Keohane, “Reciprocity in International Relations,” p. 6.

13. Keohane, “Reciprocity in International Relations,” p. 6.

14. Keohane, “Reciprocity in International Relations,” p. 21.

15. Keohane, “Reciprocity in International Relations,” p. 21.

illegal migration. The agreement became effective after its ratification in the Italian Parliament on December 22, 2002.<sup>16</sup>

Between 2000 and December 2007, no formal agreements on migration were signed between the two countries. Nevertheless, the discussions on migration continued, and a set of concrete actions were implemented. Of particular relevance are the measures informally agreed, in Tripoli on July 3, 2003. Reportedly, the Italian Minister of the Interior and the Libyan Justice Minister, Mohammad Mosrati, reached an agreement involving, among other things, the exchange of information on migrant flows and the provision to Libya of specific equipment to control sea and land borders.<sup>17</sup> Two more recent agreements also deserve mention. On December 28, 2007, the two countries signed an agreement on the joint patrolling of coasts, ports, and bays in northern Libya to prevent people-smuggling.<sup>18</sup> On August 30, 2008, in a tent in Benghazi, Silvio Berlusconi and the Libyan leader Colonel Muammar Al Qadhafi signed an historic agreement, according to which Italy will pay \$5 billion over the next 20 years, nominally to compensate Libya for the “deep wounds” of the colonial past.<sup>19</sup> The agreement was the culmination of a tortuous ten-year long history of diplomatic exchanges, which included a number of formal and informal cooperative arrangements on a variety of issues, such as migration, culture, colonial issues, and joint-business ventures.

Overall, even though neither the Italian nor the Libyan government has disclosed detailed information on the measures agreed and implemented, it is possible to identify the main joint measures implemented so far:

1. Reception centers funded by Italy in Libya: Italy has financed the construction of camps intended to host migrants. On this issue, a statement by Undersecretary of the Interior, Marcella Lucidi, in July 2007 revealed that one center in Gharyan had already been handed

16. Bilateral Agreement on Counterterrorism, Organized Crime, and Illegal Immigration (December 2000).

17. House of Representatives, Seat No. 329, June 25, 2003, Hearing by Giuseppe Pisanu, Minister of Interior, [http://legxiv.camera.it/organiparlamentari/assemblea/contenitore\\_dati.asp?tipopagina=&source=&position=&Pagina=/\\_dati/leg14/lavori/stenografici/sed329/s060.htm](http://legxiv.camera.it/organiparlamentari/assemblea/contenitore_dati.asp?tipopagina=&source=&position=&Pagina=/_dati/leg14/lavori/stenografici/sed329/s060.htm).

18. Ministry of Interior, “The Libya-Italy Agreement on Patrol on December 29, 2007,” [http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/comunicati/0866\\_2007\\_12\\_29\\_I\\_contenuti\\_dellaccordo\\_con\\_la\\_Libia.html\\_8783098.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/comunicati/0866_2007_12_29_I_contenuti_dellaccordo_con_la_Libia.html_8783098.html).

19. Claudia Gazzini, “Assessing Italy’s Grande Gesto to Libya,” *Middle East Report Online* (2009), <http://www.merip.org/mero/mero031609.html>.



over to the Libyan authorities for police training purposes. The second center in Kufra was in the process of being built and was intended to provide health support to migrants. Lucidi also made clear that no other centers were to be built.<sup>20</sup> Importantly, during interviews with Libyan and Italian officials in Tripoli between 2007 and 2008, I was told that the centers were no longer intended for confining “illegal” foreigners, but rather for police training and providing humanitarian assistance;

2. Repatriations from Italy: As I will illustrate in detail, Italy financed the removal of over 3,000 migrants to Libya between October 2004 and March 2006;
3. Repatriations from Libya: Italy has been financing flights to repatriate unauthorized migrants from Libya to third countries.<sup>21</sup> It is uncertain whether this practice is still in force;
4. Coordinated Patrol Systems: Italy has repeatedly asked Libya to participate in joint patrols in the Mediterranean. Libya had refrained from taking part<sup>22</sup> until May 2009 when joint patrols resumed;<sup>23</sup>
5. Provision of Equipment: the non-standard bilateral agreement signed in July 2003 included, *inter alia*, assistance to strengthen the Libyan authorities’ ability to patrol land and sea borders. For example, on May 2005, the Italian Ministry of the Interior agreed to spend €15 million over three years to equip the Libyan police with the necessary means to combat irregular migration;<sup>24</sup>
6. Training program: the Italian-Libyan agreements signed in 2000 mentioned the cooperative arrangements to train police officers. Since then, the Italian government has co-funded and managed a

20. Chamber of Deputies Meeting of July 5, 2007, Response of the Secretary Marcella Lucidi urgent interpellation No. 2-00623, June 26, 2007, [http://leg15.camera.it/resoconti/dettaglio\\_resoconto.asp?idSeduta=0184&resoconto=stenografico&indice=alfabetico&tit=0090&fase=00060](http://leg15.camera.it/resoconti/dettaglio_resoconto.asp?idSeduta=0184&resoconto=stenografico&indice=alfabetico&tit=0090&fase=00060)

21. Human Rights Watch, “Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees,” Volume 18, No. 5(E) (2006), <http://www.hrw.org/reports/2006/libya0906/>.

22. Ferruccio Pastore, *Italian-Libyan Relations and Migration — How to Get Out of This Impasse* (Rome: CESPI, 2008).

23. Senate, 214th Assembly seat — verbatim May 25, 2009, p. 4, <http://www.senato.it/service/PDF/PDFServer/BGT/424000.pdf>

24. “L’ira di Gheddafi con Berlusconi: “Tratto solo con Pisanu” [“Gaddafi’s Wrath with Berlusconi ‘Section Only Pisanu’], *Il Corriere della Sera*, May 27, 2005, [http://www.corriere.it/Primo\\_Piano/Esteri/2005/05\\_Maggio/26/gheddafi.shtml](http://www.corriere.it/Primo_Piano/Esteri/2005/05_Maggio/26/gheddafi.shtml).

range of training courses for Libyan police staff;<sup>25</sup>

7. Exchange of intelligence information: a critical aspect of the bilateral collaboration focuses on the exchange of information on smuggling organizations. For this purpose, a representative of the Italian Ministry of the Interior is based in Tripoli and a liaison officer from the Libyan Ministry of the Interior is likewise located in Rome<sup>26</sup>;
8. Push-backs: According to the available records, this measure was first implemented between May 6–10, 2009 when 471 migrants intercepted on international waters were shipped to Libya by Italian police.<sup>27</sup> On July 1, 2009, 89 other foreign nationals were “pushed back” to Libya.<sup>28</sup> Importantly, this measure is not to be confused with joint patrolling since it does not appear that Libyan officials were aboard the vessels;
9. Cooperation with the International Organization for Migration (IOM): The IOM has implemented projects on migration co-funded by the Italian government. In particular, as part of the project “Across Sahara”, the IOM has collaborated with the Italian scientific police to organize activities such as workshops for police staff from Libya and Niger.<sup>29</sup>

In keeping with the aim of this chapter, I now turn to a detailed analysis of the non-standard agreements.

### *AGREEMENTS LINKED TO READMISSION*

The practice of readmitting unauthorized migrants to their alleged countries of origin has been widely employed by Italy as well as other European and non European countries.<sup>30</sup> To date, Italy has signed readmission agreements

25. European Commission, *Technical Mission to Libya on Illegal Migration 27 Nov 6–Dec 2004 Report*, 7753/05 (Brussels: European Commission, 2005), <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.

26. Emanuela Paoletti, “Agreements between Italy and Libya on Migration” in A. Phillips and R. Ratcliffe, eds., *1,001 Lights: the Best of British New Middle Eastern Studies* (Cambridge: Cambridge Scholars Publishing, 2009).

27. Senate, 214th Assembly seat - verbatim May 25, 2009.

28. Fortress Europe, “Respinti in Libia altri 89 migranti. Erano a 25 miglia da Lampedusa” [“Libya rejected 89 other migrants. They were 25 miles from Lampedusa.”], <http://fortresseurope.blogspot.com/2006/01/respinti-in-libia-altri-89-migranti.html>.

29. Ministry of the Interior, “59 Report on Information Policy and Security - 1st semester 2007.”

30. Statewatch, Readmission agreements and EC external migration law, No. 17 (2003),

with over twenty countries, including Albania, Algeria, Croatia, Georgia, Morocco, Moldavia, Nigeria, Serbia, Sri Lanka, Switzerland, Tunisia, Cyprus, Lithuania, Malta, Poland, Slovenia, Hungary, Bulgaria, and Romania.<sup>31</sup>

Repatriations represent a critical aspect of the Italian-Libyan collaboration on migration. Between October 2004 and March 2006, Italy organized charter flights from Sicily to Libya, transporting migrants who had recently arrived in Italy from the North African country. For our purposes, a historical excursus of these measures is instructive.<sup>32</sup>

From September 29 to October 3, 2004, 1,728 undocumented migrants reached the island of Lampedusa on 20 vessels that were sighted and rescued by the Italian police forces. On October 1, the Italian authorities ordered the removal of 90 foreigners from Lampedusa to Libya. The following day, three flights brought over 300 migrants and asylum-seekers to Tripoli. On October 3, two special Alitalia flights and two military planes deported another 400 people, and four days later, military planes removed still more.<sup>33</sup> As the Italian Government stated in its response to the appeal before the European Court for Human Rights, between September and October 2004, “1,153 foreign nationals — most of them of Egyptian nationality — were removed to Libya on 11 charter flights”.<sup>34</sup> Before the *Collegio per i Reati Ministeriali* (i.e., Italian Ministerial Tribunal), Alessandro Pansa added that the flights were directed to Albeida Airport in Libya so that the migrants could be transferred to Egypt.<sup>35</sup>

A few months later, a second wave of repatriations took place. On December 20, 2004, an Italian police press release reported that 200 unwanted Egyptian

<http://www.statewatch.org/news/2003/may/12readmission.htm>.

31. Caritas, *Summary — Statistical Dossier on Immigration*, XVI Report (Rome: Idos, 2006).

32. It is important to bear in mind, however, that this summary of the return flight practices which follows is by no means complete. Further, since it is based on a variety of sources of information, there may be some errors with regard to the numbers of foreign nationals removed to Libya. Hence, the figures I present have to be treated with caution. This sketchy picture may still provide an overall account of the different phases of the practice of organizing return flights. No other public source has documented it in its entirety. To be sure, Human Rights Watch (2006) does list the main repatriations conducted by Libya yet it has some gaps. For example, it does not mention the return flights in March 2006.

33. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 113.

34. Ministry of the Interior, “Immigrants: There Have Been No Mass Return, No One” (2004).

35. College for Ministerial Offences, “Report of Obtaining Information - Interrogation of Alessandro Pansa” (2006).

migrants coming from Libya had boarded a plane at Crotona Airport to Tripoli. According to the same source, these measures exemplified “the positive collaboration with Libyan authorities”<sup>36</sup>

A third series of repatriations was undertaken in March 2005. Between March 13–21, 1,235 migrants arrived in Lampedusa. Of them, 421 requested protection and were transferred to Crotona. Another 494 were expelled to Libya and 126 to Egypt.<sup>37</sup>

As the then-Italian Minister of the Interior Giuseppe Pisanu commented:

Once again, we are facing an attack conducted by criminal organizations that unremittingly exploits illegal migrants ... We will respond, as always, in a firm manner. We will provide the necessary assistance and necessary medical treatment and we will take back to the country of origin those that are not entitled to stay in Italy. The individual measures of repatriations are carried out in respect of national and international rules.<sup>38</sup>

Similarly, in April 2005, the Undersecretary at the Ministry of the Interior, Michele Saponara, claimed that the above-mentioned return flights took place with the consent of Libya and with respect for human rights laws as well as existing international laws.<sup>39</sup>

In October 2004 and March 2006, two Italian parliamentarians happened to be in the reception center at Lampedusa while the migrants were repatriated. One of the two provides an insightful account of their experience:

While we were in the center of Lampedusa, from some documents that we saw we realized that these people were collectively repatriated under the same name. We saw long lists repeating the same name. Hence, we believe that they were not properly identified. Moreover, these people were not given the possibility to apply for asylum ... We raised this issue during a parliamentary interrogation, asking the Government how it could send back to Libya people that had not been identified. The response was that those people had been identified. Yet, when we asked

36. State Police, “The State Police Repatriates about 200 Illegal Immigrants” (2004), <http://www.poliziadistato.it/pds/online/comunicati/index.php?id=622>.

37. College for Ministerial Offences (2006).

38. “Immigration: Pisanu, Firmly Against Yet Another Assault on the Coast,” *Ansa*, March 13, 2005.

39. Senate of the Republic, 776th Public Session, Report Summary and shorthand (2005), <http://www.tanadezulueta.it/html/modules/wfsection/article.php?page=1&articleid=52>.

if we could have the lists [with the names of those repatriated proving that they had been identified], we were told that for privacy reasons this request could not be met.<sup>40</sup>

The formal position of the Italian Ministry of Interior remains that the people removed to Libya had been individually identified.<sup>41</sup>

On May 12, 2005, over 800 people arrived at Lampedusa<sup>42</sup>, and two days later, an Alitalia flight carried 67 people from Lampedusa to Albeida in western Libya.<sup>43</sup> Significantly, on May 10 the Third Section of the European Court of Human Rights requested the Italian Government not to expel 11 immigrants who had appealed to the Court.<sup>44</sup> (The international pressure on Italy to halt the repatriations shall be explored further below).

A fifth series of return flights from Sicily took place between June and July 2005. On June 22, the Italian authorities removed at least 45 people to Libya.<sup>45</sup> Other sources report that on July 13, 64 Egyptians were transferred to Libya.<sup>46</sup>

Other flights from Italy to Libya were arranged in August 2005. On August 10, 2005, 65 migrants were put on an Alitalia flight to Libya.<sup>47</sup> Between August 21-27, 130 Egyptians arrived at Lampedusa and were transported first to Porto Empedocle and then to Catania Airport to be put on two military flights to Libya.<sup>48</sup> On August 31, another 165 Egyptians were taken from Lampedusa to Libya.<sup>49</sup>

40. Interview by author with Italian parliamentarian, Rome, July 2006.

41. Senate of the Republic (2005); Chamber of Deputies, report of the meeting of the Assembly, Seat No. 703 (2005), [http://legxiv.camera.it/chiosco.asp?source=&position=Organi%20Parlamentari\L'Assemblea\Resoconti%20dell'Assemblea&content=/\\_dati/leg14/lavori/stenografici/framedinam.asp?sedpag=sed703/s000r.htm](http://legxiv.camera.it/chiosco.asp?source=&position=Organi%20Parlamentari\L'Assemblea\Resoconti%20dell'Assemblea&content=/_dati/leg14/lavori/stenografici/framedinam.asp?sedpag=sed703/s000r.htm).

42. "Immigration: Stowaways Try to Flee Even to Lampedusa," *Ansa*, May 12, 2005.

43. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 110; "Immigration: De Zulueta Resumed Deportations from Lampedusa, Berlusconi Government Practice Illegal Expulsions," *Ansa*, May 20, 2005.

44. European Court of Human Rights, *Interim Measures Italy and EU Members States should stop deportations towards Libya* (2005), [http://www.fidh.org/article.php3?id\\_article=2419](http://www.fidh.org/article.php3?id_article=2419).

45. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 110.

46. "In 2005 More than Four Returns with the Charter," *Il Manifesto*, August 11, 2005, <http://www.meltingpot.org/articolo5826.html>.

47. *Il Manifesto* (2005); "Lampedusa Watching," *Arci* (2005), <http://www.tesseramento.it/immigrazione/documenti/index.php>.

48. "Immigration: CRP, Continued Deportations to Libya," *Ansa*, August 30, 2005.

49. *Ansa*, August 30, 2005.

Overall, Libyan authorities indicate that in 2005 the number of foreigners removed from Italy to Libya totaled 1,876.<sup>50</sup> A similar figure was confirmed by the European Committee for the Prevention of Torture. It documents that, in 2005, 21 flights were organized to remove 1,642 foreign nationals from Lampedusa to Libya and 221 from Crotona.<sup>51</sup> A report it published in 2007 clarifies that in 2006 only one repatriation flight took place.<sup>52</sup> In fact, on March 28, 14 people were removed to Libya.<sup>53</sup>

**Table 1: Number of foreign nationals removed from Italy to Libya**

2004	2005	2006	Total
1,153	1,876	14	3,043

*Note: The data presented in this table are sketchy and are likely to be incomplete. They are based on available data from various sources. More specifically, the figure for the year 2004 is mentioned in the written response of the Italian Government to the European Court of Human Rights and refers to the people readmitted in October 2004. The 2005 estimate was provided by the Libyan Government to Human Rights Watch (2006). For the year 2006 the source is the European Committee for the Prevention of Torture (2007).*

Different sources document that most of the foreigners removed to Libya were repatriated directly to third countries. A report by the European Parliament (EP) cites Libyan authorities saying “that the hundreds of illegal sub-Saharan migrants sent back to Tripoli by the Italian authorities in 2004 and 2005 have, in most cases, been repatriated to their countries of origin.”<sup>54</sup> Similarly, Human Rights Watch reports:

50. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 110.

51. European Committee for the Prevention of Torture, Report to the Government of Italy for the visit to Italy by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2005), <http://www.cpt.coe.int/documents/ita/2007-26-inf-fra.htm>.

52. “Immigration: From Lampedusa Repatriated Only 20 Egyptians,” *Ansa*, March 28, 2006.

53. European Committee for the Prevention of Torture (2007), p. 31.

54. European Parliament Delegation to Libya (2005), [http://www.europarl.europa.eu/news/expert/infopress\\_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default\\_de.htm](http://www.europarl.europa.eu/news/expert/infopress_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default_de.htm).

The quickest returns are of persons sent back from Italy because the Libyan and Italian governments have arranged their onward removal to countries of origin prior to their arrival. “This is arranged before they come [from Italy] so we do not hold them” said Hadi Khamis the director of Libya’s deportation camps. He explained: “They are not held in al-Fellah but sent right home.”<sup>55</sup>

Since March 2006, no further repatriations to Libya have been reported. However, official statements from the Italian Ministry of the Interior are ambiguous on this matter. Interestingly, in May 2006 during a visit to Lampedusa, the Undersecretary of the Interior, Marcella Lucidi, declared that there would “no longer be expulsions of immigrants to those countries that have not signed the Geneva Convention, and among them, Libya.”<sup>56</sup> Yet, shortly after this statement the Undersecretary was reported clarifying that the “expulsions” to Tripoli would “not be indiscriminate.”<sup>57</sup> Nonetheless, there is no evidence that expulsions from Italy to Libya continued after March 2006.

Notably, the return flights described above have been condemned widely. Italy has been criticized by the Council of Europe’s Committee for the Prevention of Torture, Amnesty International (AI), the UNHCR, the European Parliament and a group of Italian and Spanish NGOs. Italy has also been asked to justify the expulsions before the European Court for Human Rights and the Italian Ministerial Tribunal. Among the criticisms leveled, the most relevant ones for our purposes concern 1) the absence of a standard readmission agreement between Italy and Libya and 2) the Italian legal basis for conducting return flights. I now consider the responses provided by the Italian government on these matters and the institutional constraints Italy had to face.

Different positions have been taken by Italy as to the existence of the readmission agreements with Libya. An Italian official in Tripoli maintained

55. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 55.

56. “Minister of Social Affairs in Lampedusa. Polished, not give back the illegal immigrants who violate the Geneva Convention,” *La Repubblica*, May 25, 2006, <http://www.articolo21.info/notizia.php?id=3633>.

57. “*Il ministro delle Politiche sociali a Lampedusa. Lucidi, Interni: non ridaremo i clandestini a chi viola la convenzione di Ginevra*” [Visit of the Minister of Welfare to Lampedusa: Undersecretary Lucidi at the Ministry of the Interior declares: We will not return illegal migrants to countries that violate the Geneva Convention] *La Repubblica*, May 25, 2006, <http://www.articolo21.info/notizia.php?id=3633>.

that there are no readmission agreements between the two countries.<sup>58</sup> By contrast, a senior official at the Italian Ministry of Foreign Affairs that was involved in the negotiations of the Joint Communiqué in 1998 and of the Memorandum of Understanding in 2000 claimed that an Italian-Libyan readmission agreement had been agreed upon. During an interview, when I argued that no formal agreements on this matter have ever been discussed in the Italian Parliament, he responded that verbal agreements hold juridical value.<sup>59</sup>

The statements of the Italian Minister of the Interior show that the two countries agreed *informally* to undertake repatriations from Italy to Libya and from Libya to other countries. On September 17, 2004, Pisanu praised the agreements with Libya for succeeding in repatriating such a significant number of foreign nationals<sup>60</sup> and on September 27, 2004 he confirmed that Libya had already accepted the repatriation of 800 immigrants.<sup>61</sup> Moreover, on October 8, 2004 the Italian Minister of Interior reiterated before the Chamber of Deputies that:

The removals to Libya have been carried out on the basis of the agreements with the Libyan Government and they reflect the agreements already finalized with many third countries from the southern shore of the Mediterranean. However, the bilateral agreements between Italy and Libya cover neither the treatment of the foreigners expelled from Italy nor the modality of their expulsion to the country of origin. The agreements [...] concern the fight against illegal migration and human smuggling, as well as the provision of [technical] equipment and cooperation aimed at saving lives during the Mediterranean crossing.<sup>62</sup>

The same point was endorsed by other governmental officials. On October 14, 2004, appearing before the Senate, the former Undersecretary of the Interior, Alfredo Mantovano, made it clear that the expulsions to Libya were

58. Interview with an Italian government official in January 2007, Tripoli, Libya.

59. Interview with an Italian government official, February 8, 2007, Rome, Italy.

60. "Immigration: Pisanu, We are Working on Removing Embargoes Libya," *Ansa*, September 17, 2004.

61. Ministry of Internal Affairs, "Press Conference by Minister of the Interior Pisanu on Talks with Colonel Qadhafi," Press Release (2004), <http://www.interno.it/salastampa/discorsi/elenchi/articolo.php?idIntervento=294>.

62. Ministry of Internal Affairs, "*Immigrati: Non è stato eseguito alcun respingimento collettivo, nessuno*," October 8, 2004, <http://www.interno.it/salastampa/discorsi/elenchi/articolo.php?idIntervento=295>.



envisioned in the agreements with Libya.<sup>63</sup> During an interview with a high ranking official at the Italian Ministry of the Interior explained the reasons for their informality.

We had to address the issue of people dying off-shore [...] If one of our partners, and I don't necessarily want to say Libya, for its own reasons, is willing to have an agreement only if its items remain secret for a certain period of time, I much prefer to have this agreement, even if it is informal, instead of nothing at all. This is particularly the case when this could help save human lives and prevent unbalanced situations between countries of origin and of destination.<sup>64</sup>

Likewise, in a letter to Human Rights Watch, Giuseppe Panocchia, the Italian Foreign Ministry's representative, attested that the removals to Libya "are based on informal agreements developed in the course of diverse bilateral meetings at ministerial level."<sup>65</sup> Further, before the Ministerial Tribunal, Carlo Mosca stated that flights to Libya and the subsequent repatriations to Egypt took place with the consent of Libya but "in the absence of *formal* readmission agreements."<sup>66</sup> This position is consistent with the response of the Italian government to the European Court of Human Rights, which claims that "there is no agreement with Libya on readmission of illegal migrants."<sup>67</sup>

This leads to the second issue, concerning the admissibility of the return flights from the viewpoint of Italian legislation. The Italian government argued that the repatriations were lawful measures. In the formal response to the appeal before the European Court of Human Rights on the repatriations which occurred from September 29 to October 6, 2004, the Italian government clarified its position with regard to the *non-refoulement* principle and the nature of the cooperation with Libya. It argued that the return flights to Libya fall under the definition of "*respingimento*"<sup>68</sup> and is to be confused

63. Senate of the Republic, 675th Session Public Report, Summary and Shorthand (2004), <http://www.senato.it/service/PDF/PDFServer/BGT/119523>.

64. Interview by author with Italian government official, Rome, February 2007.

65. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 106.

66. Interrogation to Carlo Mosca before the Ministerial Tribunal. The text was provided by an Italian lawyer.

67. European Court of Human Rights, Third Section, Decision on the Admissibility [...] (2006), <http://docenti.unimc.it/docenti/francesca-de-vittor/diritto-dellimmigrazione/giurisprudenza/cour-europeenne-des-droits-de-lhomme-affaire-1>.

68. The word *respingimento* literally means "repulsing."

neither with “*refoulement*” nor with “expulsion.” “*Respingimento*” is defined in Articles 10 and 13 of the Unified Text on Immigration as a situation in which “the border police sends back foreigners crossing the borders without the necessary requirements for entry into the State’s territory as provided for in the Unified Text.” Simply put, the Italian government rejected the charge of breaking the *non-refoulement* principle by arguing that it had applied the principle of “*respingimento*.”

However, a number of observers have questioned the legality of such measures on human rights grounds. For instance, the UNHCR repeatedly lamented the fact that the Italian government did not take the necessary precautions to ensure that it was not sending back any *bona fide* refugees to Libya, which was not considered a safe country of asylum at the time.<sup>69</sup> The same organization also expressed deep regret “for the lack of transparency on the part of both the Italian and Libyan authorities.”<sup>70</sup> Likewise, Amnesty International expressed concern “that these people might be returned without an effective opportunity to apply for asylum.”<sup>71</sup> On the basis of the information available, the Italian government has never provided a list of the people repatriated from Lampedusa.<sup>72</sup>

In sum, the lack of clarity on the issue of the legality of the return flights from Italy to Libya and their sudden interruption in March 2006, despite the continuation of undocumented arrivals to Italy from Libya, demonstrates Italy’s ambiguous legal stance.<sup>73</sup> Correspondingly, the acceptance by Libyan authorities of the repatriations from Italy invites reflection on their position towards migration.

### COST-BENEFIT ANALYSIS

In order to unpack the give-and-take framework, and assess whether the Italian-Libyan interaction constitutes relations among unequals, I now move on to study the costs incurred and benefits accrued<sup>74</sup> by both countries as part

69. UNHCR, “Italy: UNHCR Deeply Concerned About Lampedusa Deportations of Libyans (2005),” <http://www.unhcr.org/news/NEWS/423ab71a4.html>.

70. UNHCR, “Italy: UNHCR Deeply Concerned about Lampedusa Deportations of Libyans,” March 18, 2005, <http://www.unhcr.org/news/NEWS/423ab71a4.html>.

71. Amnesty International, “Immigration Cooperation with Libya: the Human rights Perspective,” AI briefing ahead of the JHA Council, April 14, 2005, [http://www.amnesty-eu.org/static/documents/2005/JHA\\_Libya\\_april12.pdf](http://www.amnesty-eu.org/static/documents/2005/JHA_Libya_april12.pdf).

72. Interview with an Italian parliamentarian February 8, 2007, Rome, Italy.

73. Chiara Favilli, “What Ways of Concluding International Agreements on Immigration?” *Journal of International Law*, Vol. 88 (2005).

74. The literature on cost-benefit analysis is vast. However, for the purposes of consis-

of the wider agreements on migration.<sup>75</sup> By locating the agreements linked to readmission within patterns of diffuse reciprocity, I analyze how participants calculate benefits and costs of acting in accordance with, or against, common norms.<sup>76</sup> The analytical tools provided by Keohane illustrated above help answer one of the initial questions on the patterns of reciprocity between the two countries.

**Table 2: Cost-benefits analysis of agreements linked to readmission**

	<b>Costs</b>	<b>Benefits</b>
<b>Italy</b>	<ul style="list-style-type: none"> <li>- Faltering Libyan commitment;</li> <li>- Financial resources invested with limited removals;</li> <li>- Reputational cost resulting from the informality of the agreements.</li> </ul>	<ul style="list-style-type: none"> <li>- Formal support of Libya to collaborate on migration.</li> </ul>
<b>Libya</b>	<ul style="list-style-type: none"> <li>- To a limited extent, the informality of the agreements for credibility with the alleged human rights violations.</li> </ul>	<ul style="list-style-type: none"> <li>- Financial and material resources received from Italy;</li> <li>- Italian inclination to talk “at any cost”;</li> <li>- Reputational gain: Privileged position in the discussion with the EU and Italy.</li> </ul>

*Note: The table exclusively focuses on the costs and benefits as applied to the bilateral agreements linked to readmission that have been concluded between Libya and Italy.*

tency I focus on selected works from the regime literature Krasner (1995).

75. Ernst Haas, “Words Can Hurt You; or, Who Said What to Whom About Regimes,” in Stephen Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1995), pp. 23-59.

76. Donald Puchala and Raymond Hopkins, “International Regimes: Lessons from Inductive Analysis,” in Stephen Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1995), p. 90.

In agreeing to conclude such agreements, Libya reinforced its international standing. Its willingness to collaborate with the Italian government on migration issues was partly responsible for the reintegration of Libya into the international community. After decades of political insularity, such bilateral cooperation allowed Libya to portray itself as being at the forefront in the fight against irregular migration and international terrorism. To rephrase Lipson, complying with Italy's request provided Libya with a "reputational" gain.<sup>77</sup> The bilateral collaboration with Italy offered Libya "the opportunity to be seen to be cooperating in combating the smuggling of persons" and enhanced Libya's reputation as a responsible state.<sup>78</sup> Not surprisingly, the onset of the repatriations coincided with the lifting of the European embargo on Libya and the inauguration of a gas pipeline to Italy (see Paolo Cuttitta's chapter). Arguably, Italy's critical contribution to normalizing Libya's relations with the EU was rewarded with the Libyan concession of repatriating migrants who had just arrived in Sicily.

Libya's formal support for Italian initiatives to combat undocumented migration represents a time-specific benefit with limited resource costs given that the flights were funded by the Italian government. The limited cost derives, also, from a distinctive aspect of the repatriations. The migrants repatriated were not Libyan nationals.<sup>79</sup> Their flights simply transited through Libyan airports and from there they were directed to third countries. In other words, as the flights were sponsored by the Italian government and were not ultimately repatriating Libyan nationals, Libya had virtually no obligations. At the same time, it enjoyed significant rewards, specifically by repairing of its pariah image. In the light of the substantive Libyan interest in full rehabilitation within the international community, the benefits of compliance with the Italian requests on the return flights were higher than those posed by defiance.

More substantially, the centrality of migration in the bilateral discussion has furnished the northern-African country with satisfactory results in its overall interaction with Italy. Italy will talk at "any cost." This is due, in part, to the internal political and public pressure to address the alleged crisis of

77. Charles Lipson, "Why Are Some International Agreements Informal?" *International Organization*, Vol. 45 (1991), p. 510.

78. Jean-Pierre Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood," p. 183; Salvatore Colucello and Simon Massey, "Out of Africa: The Human Trade between Libya and Lampedusa," *Trends in Organized Crime*, Vol. 10 (2007), p. 83.

79. European Commission Report 7753/05, "Technical Mission to Libya on Illegal Migration 27 Nov – 6 Dec 2004 Report," <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.

Libyan migration.<sup>80</sup> Italy has made significant concessions that, as I argue below, outweigh its benefits from the bilateral collaboration. The increasing relevance of migration reinforced by the pervasive securitized discourse throughout Italy and Europe has reduced to zero the free-riding option for Italy in the cooperation with Libya. Crucially, Libya is aware of this and has successfully emphasized the perceived security benefits of tighter migration policies in order to advance its own agenda.

The main costs to Libya center on the agreements' informal nature. It is well known that the Libyan regime tends to prefer oral arrangements to written ones. As a representative of an international organization based in Tripoli pointed out:

The written contract does not have any value ... Here [in Libya] written agreements ... have limited value compared to the value that it has for us [in the Western world] ... The contract is actually seen as a way to cheat and not to protect ... In this clan-based society honor has a much bigger value than a piece of paper.<sup>81</sup>

The critical point here is that the Libyan tendency towards informality with Italy posed a relative cost for the Jamahiriya. The criticism from the international community *relatively* lessened the real improvement in its international status that Libya hoped to enjoy from the agreements. Whereas the flights were managed and financed by the Italian government, Libya's support for these practices was perceived to confirm its poor reputation on human rights. For example, the protests against Qhadafi during his visit to France in December 2007 were grounded on the regime's general repatriation practices and, more generally, on its continual infringements of human rights.<sup>82</sup> Hence, the regime's endorsement of the return flights may have had negative consequences for its overall foreign policy agenda. Yet, in broad political terms, it can be argued that the unclear nature of the agreements and the criticism directed to Libya with regard to human rights issues have not significantly affected Libya's behavior on migration and overall foreign policy interests.

80. Giuseppe Sciortino and Asher Colombo, *Immigrants in Italy* (Bologna: Il Mulino, 2004).

81. Interview by author with anonymous, Tripoli, January 2007.

82. Human Rights Watch, "Human Rights in Libya," *New Statesman*, January 14, 2008, <http://hrw.org/english/docs/2008/01/14/libya17732.htm>.

On the one hand, despite the persisting criticism illustrated above, the international community has increasingly sought to strengthen its ties with the Colonel. The meeting between then-US Secretary of State Condoleezza Rice and the Libyan Foreign Minister in Washington in January 2008 was not conditioned on the improvements in human rights.<sup>83</sup> In short, Libya's collaboration with Italy on the removal of undocumented migrants has not presented a significant obstacle to the pursuit of its interests.

On the other hand, however, international pressure has not encouraged Libya to change its policies. In fact, the number of migrants removed from Libya to third countries has increased over the recent years.<sup>84</sup> In pursuing and publicizing such actions, the Libyan regime has sought to convince Europe of its commitment to tackling migration and to raise concern over the far-reaching social, economic, and political problems that immigration poses to Libya.

Hence, in employing Keohane's terminology as defined at the beginning of this chapter, it appears that from the Libyan perspective the agreements linked to readmission and the wider negotiations on migration with Italy have involved limited obligation. Furthermore, they did not expose Libya to the threat of exploitation by Italy. Libyan compliance with the short-lived Italian requests to support repatriations has led to a positive pay-off in which the benefits outweighed the costs.

Let me now turn to Italy's cost-benefit analysis. One of Italy's major gains from the agreements is Libyan consent to collaborate on migration. Yet, this collaboration is more formal than *de facto*. The inability of the Italian government to reduce significantly unwanted migration from Libya and to convince the Libyan regime to fully respond to Italian requests sheds light on resilient constraints. The piecemeal willingness of Libya to uphold the bilateral collaboration on migration makes Italy dependent on its counterpart for the successful implementation of the cooperative arrangements. The non-unitary nature of the Libyan regime, and its multiple identities and interests epitomized by the double agenda illustrated above, impose significant limitations on Italy. Arguably, Libya's lack of sustained willingness to comply may be linked with Libyan police corruption. The recent report by Frontex (2007) observes that corruption may play an important role in the migratory situation in Libya.

83 Human Rights Watch, "Human Rights in Libya," *New Statesman*, January 14, 2008, <http://hrw.org/english/docs/2008/01/14/libya17732.htm>.

84 Libyan Ministry of Interior, *Collaboration on Security between Libya and Italy* (2007); Libyan Ministry of Interior, *Chart on the Deportation between 2000 and 2005* (2007).

As evident as it may seem, no matter what sophisticated equipment or advanced border management concept and system might be put in place, the existence of corruption will always undermine the implementation of an effective border guard response.<sup>85</sup>

Other commentators have argued that unwanted migration to and through Libya is not only tolerated but actually encouraged by the Libyan regime.<sup>86</sup> By officially supporting the fight against “illegal” migration while, in reality, tolerating smuggling networks, Libya reduces Italy’s potential gains. Libya’s corruption and double agenda impose substantial costs on Italy. The latter has invested significant resources and taken on new responsibilities to control migration from Libya, and yet has failed to obtain its desired outcomes, i.e., to bring under control irregular arrivals to Italy from Libya.

In addition, the informality of the agreements has created a further constraint on Italian action. Indeed, the Italian government was asked to justify the agreements before numerous international organizations. Presumably due to mounting international pressure, in March 2006 Italy interrupted the return flights. The short-term benefits of reducing undocumented migrants were overtaken by the costs of justifying ambiguous and controversial removal policies. Simply put, the reputational cost<sup>87</sup> resulting from the questionable nature of the agreements became too high. This may explain the sudden policy change during the Berlusconi government, which was confirmed by the subsequent Prodi government. However, as I discuss in the conclusion, the implementation of the push-backs from Italy to Libya in 2009 may potentially question this view.

The cost-benefit analyses for Italy and Libya set the framework for answering the question on mutual obligations and assess whether the Italian-Libyan non-standard agreements linked to readmission are based on reciprocity. The arrangements entailed obligations on both sides. The Italian government was expected to finance the flights from Italy to Libya and from Libya to third countries and the Libyan government was expected to allow the transit of such flights. Thus, the Libya’s task was limited compared to the Italian

85 Frontex, “Frontex-Led EU Illegal Immigration Technical Mission to Libya,” May 28–June 5, 2007 (Warsaw: Frontex, 2007), pp. 13-15, <http://www.statewatch.org/news/2007/oct/eu-libya-frontex-report.pdf>.

86 Ali Bensaad, “Journey to the Edge of Fear with the Illegal Immigrants of the Sahel,” *Le Monde Diplomatique* (2001), [http://www.monde-diplomatique.it/ricerca/ric\\_view\\_lemonde.php3?page=/LeMonde-archivio/Settembre-2001/0109lm16.01.html&word=libia](http://www.monde-diplomatique.it/ricerca/ric_view_lemonde.php3?page=/LeMonde-archivio/Settembre-2001/0109lm16.01.html&word=libia).

87 Lipson, “Why Are Some International Agreements Informal?”

commitment to manage the flights. Within the specific framework of the bilateral agreements, while Libya could free-ride without negatively affecting Italy, the opposite was not the case. As observed, Italian withdrawal would not, and did not, alter Libya's overall gain-loss balance. Indeed, Libya had limited obligations. Because of the negligible costs involved and the significant benefits, it had virtually no incentive to default. Consequently, the bilateral agreements exemplify a situation of imbalance that is at variance with the basic character of Keohane's reciprocity norm, under which obligations should be proportionate to the benefits enjoyed by both parties<sup>88</sup>. Hence, since there was little prospect of equivalent exchange the Italian-Libyan non-standard agreements linked to readmission can be defined as relations among unequals, with Italy being in the weaker position.<sup>89</sup>

Nonetheless, the appreciation of the broader agreements on migration may help recast such an imbalance and invite further reflection on the complex and diffuse reciprocity at work.<sup>90</sup> Indeed it has already been suggested that Italy adheres to such an imbalance in the bilateral agreement on migration with the expectation of larger gains in their overall political and economic relationship.<sup>91</sup>

## CONCLUSION

This chapter has focused on the implications of the bilateral agreements between 2004 and 2006 to critically examine the bilateral bargaining dynamics. Given the ongoing and complex nature of the Italian-Libyan agreements my conclusions are neither final nor comprehensive. For example, the recent developments may well challenge the idea that the two countries have failed to bring migration under control. Indeed, since May 2009 Italy has been pushing back boats with irregular migrants arriving from Libya that had been intercepted in either international or national waters. In reversing its long-standing stance, whereby push-backs and joint-patrolling were considered an infringement of its sovereign power, Libya has accepted boats with undocumented foreign nationals who had left from Libya.<sup>92</sup> Furthermore,

88. Keohane, "Reciprocity in International Relations," p. 6.

89. Keohane, "Reciprocity in International Relations," p. 6.

90. Keohane, "Reciprocity in International Relations," p. 8.

91. Roberto Aliboni, "Mediterranean Security and Co-Operation: Interest and Role of Italy and Libya," paper presented at the conference on Libya and Italy as a New Model for North-South Relations, Tripoli, Libya, April 14-15, 2002.

92. Senate of the Republic, 214<sup>a</sup> *Seduta Assemblea - Resoconto stenografico 25 maggio*



in concomitance with the implementation of the agreement in August 2008 and, *inter alia*, the beginning of the construction of the highway as “big gesture” to apologize for the colonial past, the arrivals of irregular migrants from Libya have decreased by 90% compared to 2008.<sup>93</sup> What, then, do the agreements linked to readmission, and concluded between 2004 and 2006, tell us about the broader and evolving collaborative arrangements between the two countries? Does the examination of the readmission agreements hold any relevance beyond the specificity of the selected bilateral case?

My empirical examination of the Italian-Libyan agreements linked to readmission reveals the existence of multiple equilibria which distinguish the dynamics in bilateral bargaining. As far as these agreements are concerned, it has been suggested that their informality have placed much greater political and financial costs on Italy than on Libya. The corollary of this assumption is that the cooperation on the charter flights aimed at removing unauthorized aliens from Italy to Libya constitutes a situation that Keohane defines as unequal reciprocity at the advantage of Libya. In the negotiations on migration, Libya is the most advantaged player who has to be induced to take part in the cooperation, while Italy has little choice but to cooperate with Libya.<sup>94</sup> In other words, the high cost of ensuring Libya’s commitment creates a situation of “vulnerability” for Italy.<sup>95</sup> The patterns of cooperation on readmission reflect relations among unequals where practitioners are, at various degrees, exposed to the danger of exploitation and uncertain arrangements. In other words, the agreements linked to readmission analyzed in this chapter, as well as the overall negotiations on migration, are based on exchanges of “mutually valued but non-comparable goods and services,”<sup>96</sup> whereby the behavior of each party is contingent on the prior steps of the other.

This chapter has not examined the more recent developments concerning the push back operations to Libya. Nor has it dealt with the broader framework of interaction in which the relations between Italy and Libya have developed to date. These elements are analyzed in the chapters written

2009, <http://www.senato.it/service/PDF/PDFServer/BGT/424000.pdf>.

93. Ministry of the Interior, “Illegal Immigration from Libya – Landings decreased by 90%” (2009), [http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/2100\\_500\\_ministro/0152\\_2009\\_09\\_09\\_brdo.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/2100_500_ministro/0152_2009_09_09_brdo.html).

94. Alexander Betts, *International Cooperation Between North and South to Enhance Refugee Protection in Regions of Origin* (Oxford: Refugee Studies Center, 2005), <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper25.pdf>, p. 45.

95. Robert O. Keohane and Joseph Nye, *Power and Independence, World Politics in Transition* (Boston: Little Brown and Company, 1977), pp. 13-15.

96. Keohane, “Reciprocity in International Relations,” p. 6.

by Paolo Cuttitta and Silja Klepp.

Rather, I sought to reflect upon power dynamics underlying the conclusion and implementation of the Italian-Libyan agreements linked to readmission. In so doing, I provided a tentative analytical framework which could be applied to other bilateral arrangements on migration. From a general point of view, it is possible to speculate that the increasing relevance of migration issues in the international arena may significantly affect the patterns of states' interdependence while offering an opportunity to rethink substantially the mainstream reading of North-South power relations. Admittedly, my hypothesis, which views migration as a source of soft power, cannot be tested with a single case study. Nonetheless, it invites more systematic research on the complexities and contradictions of evolving North-South relations.<sup>97</sup> It is unlikely that an analysis based on North-South polarization would thoroughly account for the complexities and tensions existing between the conclusion of bilateral agreements and their concrete implementation. The analysis of reciprocity and obligations provides a useful tool for probing beneath multifaceted and changing dynamics in which states cooperate or not. A thorough examination of migration, viewed from an IR perspective, may shed new light on global interdependencies and, more interestingly, on the magnitude of the changes affecting the international system.

97. James Rosenau, "The Complexities and Contradictions of Globalization," *Current History*, Vol. 96 (1997), pp. 360-364.

## Italy and its Libyan Cooperation Program: Pioneer of the European Union's Refugee Policy?

Silja Klepp

In recent years, the situation of migrants and refugees in the Mediterranean has become more critical. Possibilities of legally entering the territory of the European Union have become more restrictive following the implementation of the Schengen *acquis* and new visa regulations for non-EU nationals in the Mediterranean region. Irregular migration routes across the Mediterranean Sea from the African continent to Europe have been subject to reinforced controls. European countries located at the external borders have strengthened their cooperation with third-party countries of origin and of transit in order to curb unauthorized migration.

This chapter sets out to assess the ways in which the Italian and European cooperation with Libya on migration and border controls affect the conditions of migrants living in Libya, as well as refugee protection. It is argued that existing patterns of bilateral cooperation may have various consequences on the respect for refugee protection standards. By combining an empirical approach to border regions with a legal-anthropological perspective, this chapter discusses the emergence of new parameters as applied to refugee protection. In addition, it analyzes whether Italy's bilateral patterns of cooperation with Libya have had a bearing on the ways in which the European Union has shaped and configured its cooperation with Libya, at a supranational level, and whether it might influence the overall refugee protection system promoted at the EU level. The dynamic power relations that operate between actors on the ground in the border region, the Italian government, and the European Union are described.

The EU integration process is often conceptualized as a zero-sum game where decisional and operational powers are gradually relocated in a dualistic process between the European institutions and the Member States.<sup>1</sup>

1. Sabine Hess and Vassilis Tsianos, "Europeanizing Transnationalism! Provincializing Europe! Konturen eines neuen Grenzregimes! (Europeanizing Transnationalism! Provincializing Europe! Contours of a New Border Regime), in "Transit Migration Forschungs-

An approach that conceptualizes the EU integration process as a functional development, whereby the Member States and European institutions constitute the only powerful actors, cannot adequately grasp the intended and unintended effects of the policies implemented in the border regions. In this chapter, the ever-changing Mediterranean migration policy regime will be approached as a “multi-sited arena of negotiation.”<sup>2</sup> Accordingly, the inter-connections of local, national, and supranational actors are studied, acknowledging the complex character of plural legal orders.

I first discuss the development of the cooperation between Italy and Libya on migration control issues. Then, I assess the extent to which developments inherent in the bilateral cooperation between Libya and Italy may or may not affect policy measures adopted at the EU level. The impact of such cooperation on the conditions of migrants and refugees in Libya are illustrated with field data and interviews made with stakeholders and migrants in Libya.

### *THE ITALIAN-LIBYAN COOPERATION ON MIGRATION AND BORDER CONTROLS*

In recent years, the perception of Libya by European migration policy makers and the public has changed dramatically: from a former country of destination for migrants from Arab and sub-Saharan countries, Libya is now widely viewed as a transit country for African migrants and refugees<sup>3</sup> trying to reach Europe. Giuseppe Pisanu, former Italian Minister of the Interior, said in 2005 that “a million illegal migrants” are waiting to cross the Mediterranean from Libya to Italy.<sup>4</sup> This statement reflects the existence of a (perceived) threat that is often connected with the rising number of unauthorized migrants arriving on the coast of Sicily (the largest Southern Italian island).

gruppe,” ed., *Turbulente Ränder – Neue Perspektiven auf Migration an den Grenzen Europas* [New Perspectives on Migration in the Borders of Europe] (Bielefeld: Transkript, 2007), pp. 23-39.

2. Franz Von Benda-Beckmann, Keebet Von Benda-Beckmann, and A. Griffiths, “Mobile People, Mobile Law: An Introduction,” *Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World* (Aldershot: Ashgate, 2005), pp. 1-24.

3. In this chapter, the term “migrant” will be used as an umbrella term for labor migrants and refugees alike. According to the 1951 United Nations Convention Relating to the Status of Refugees, a refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country.

4. “In 2005 More than Four Returns with the Charter,” *Il Manifesto*, August 11, 2005, <http://www.meltingpot.org/articolo5826.html>.

**Table 1: Landings on Sicily and the minor Sicilian islands**

2000	2001	2002	2003	2004	2005	2006	2007	2008
2,782	5,504	18,225	14,017	13,594	22,824	21,400	16,875	32,000

Source: *Italian Refugee Council (CIR) and UNHCR.*

An estimated 10% of undocumented migrants currently living in Italy arrived by sea. The phenomenon of “overstayers,” i.e. migrants who stay on the territory of a destination country beyond the expiration of their entry visa, is much more significant.<sup>5</sup>

In addition, available statistics appear to be unclear when it comes to Libya’s migratory reality. Figures related to undocumented migrants in the country vary considerably. For instance, the 2005 report of the European Commission’s technical mission to Libya stated that “the Libyan authorities estimate the number of legal foreign workers at 600,000, whereas unauthorized migrants are estimated to number between 750,000 and 1.2 million.”<sup>6</sup> With a population of about 5.5 million inhabitants, it is clear that Libya, aside from being a transit country, remains mainly a country of immigration and destination.

Libya has no established regulatory or administrative system that identifies and protects refugees. Libya is the only North African country which is not Party to the 1951 Geneva Convention on Refugees and has no asylum system. In this respect, an official of the Libyan Ministry of Foreign Affairs said “if Libya offered asylum, asylum seekers would come like a plague of locusts.”<sup>7</sup> Despite the lack of a genuine asylum system, Libya hosts a large number of migrants originating in sub-Saharan Africa, namely Sudan, Eritrea, Somalia, and the Democratic Republic of Congo who are in need of protection.<sup>8</sup>

Since the late 1990s, Italy has promoted bilateral cooperation with Libya. Migration control became a key component of the bilateral cooperation. The first contacts were established in a sensitive policy context as Libya was

5. Caritas, “Summary – Statistical Dossier on Immigration,” XV Report (Rome: Idos, 2005).

6. European Commission, Technical Mission to Libya on Illegal Migration November 17–December 6, 2004 Report, 7753/05 (Brussels: European Commission, 2005), p. 58, <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.

7. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*, Volume 18, No. 5(E) (New York: Human Rights Watch, 2006), <http://www.hrw.org/reports/2006/libya0906/>.

8. Rutvica Andrijasevic, “How to Balance Rights and Responsibilities on Asylum at the EU’s Southern Border of Italy and Libya,” Working Paper No. 27, Center on Migration, Policy and Society (University of Oxford, 2006), p. 14.

regarded as a “rogue state” and sanctioned by the UN and the EU. Based on the special relationship of a common colonial history, and bounded by important economic ties, the talks progressed quickly. In December 2000, the first general agreement aimed at fighting terrorism, organized crime, and undocumented immigration was signed in Rome.<sup>9</sup>

In 2003 and 2004, additional bilateral agreements were signed and significant measures of cooperation were introduced under the presidency of Silvio Berlusconi. A program of charter flights financed by Italy to remove undocumented migrants to their home countries was implemented. Technical equipment and training programs were provided to better control the Libyan borders, including patrol boats and fingerprinting kits.<sup>10</sup> Likewise, the first construction of a camp for undocumented migrants financed by Italy was created in Gharyan, close to Tripoli. Additional camps were financed the following years, for example in Kufra and Sebah.<sup>11</sup> The detailed contents of the July 2003 agreement, which regulates the practical cooperation between the security forces of the two countries, remain beyond public purview. Furthermore, there are several informal agreements whose content is likewise uncertain.<sup>12</sup> Informality and secrecy surrounding the agreement have so far characterized the cooperation between Italy and Libya.

The first effects of the bilateral cooperation occurred in late 2004. Since October 2004, more than 4,000 third-country nationals have been removed from the Italian island Lampedusa to Libya.<sup>13</sup> Rising criticisms followed such removals. Various Italian and European NGOs and the European Parliament claimed that the Italian authorities failed to respect the fundamental rights of asylum seekers.<sup>14</sup> Moreover, thirteen NGOs appealed to the European

9. European Commission Report 7753/05 (2005), p. 58.

10. European Commission Report 7753/05 (2005), p. 59.

11. Andrijasevic, “How to Balance Rights and Responsibilities on Asylum at the EU’s Southern Border of Italy and Libya,” p. 9.

12. Paolo Cuttitta, “Il Controllo Dell’immigrazione tra Nordafrica e Italia” [“Migration Control between Northern African Countries and Italy”], in N. Denticò and M. Gressi, eds., *Libro Bianco: I Centri di Permanenza Temporanea e Assistenza in Italia* [White Paper: Detention Centers in Italy], Comitato per la promozione e la protezione dei diritti umani [Committee for the Promotion and Protection of Human Rights] (2006), <http://www.comitatodirritumani.org>.

13. Bernd Riegert, “Scharfe Kritik an Flüchtlingslagern auf Lampedusa” [Harsh Criticism of Detention Centers in Lampedusa], *Deutsche Welle*, September 23, 2005, <http://www.dw-world.de/dw/article/0,,1718149,00.html>.

14. European Parliament, Report of the EP Delegation to Libya, 2005, [http://www.europarl.europa.eu/news/expert/infopress\\_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default\\_de.htm](http://www.europarl.europa.eu/news/expert/infopress_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default_de.htm).

Commission to sanction Italy for having disregarded the interdiction of collective expulsions and for having violated the principle of *non-refoulement* of the 1951 Geneva Convention on Refugees. NGOs also underlined their concern that migrants detained in closed centers in Libya might become victims of human rights violations.<sup>15</sup>

The May 2006 government reshuffle that took place in Italy brought an end to the much criticized policy aimed at expelling third-country nationals to Libya. Nevertheless, cooperation in terms of border security and the financing of deportation flights and detention centers in Libya continued under the left-wing government headed by Romano Prodi. On his November 2007 visit to Tripoli, Italian Minister of Foreign Affairs, Massimo D'Alema, promised the construction of a highway and enhanced economic relations with Libya.<sup>16</sup> Against this background, a new agreement was signed on December 29, 2007, which, among other things, reinforced bilateral maritime cooperation.

Italy set out to induce Libya to become more cooperative on the control of maritime borders. It has to be said that Libya has been reluctant to tolerate foreign security forces on its territory. For this reason, the December 2007 agreement was viewed as a watershed. For the first time, a treaty allowed Italian boats to patrol in Libyan territorial waters. Joint maritime patrols of the Italian police and Libyan army were created. Such joint patrols allow the apprehension of migrants leaving the Libyan shores to then push them back to Libya. This cooperative agreement also resulted from informal negotiations between security experts and officials.

It was not before 2008 that bilateral relations gained further impetus when Silvio Berlusconi, the former and current Prime Minister of Italy, and Colonel Muammar Al Gadhafy signed a “friendship and cooperation agreement” (*Trattato di amicizia*) in Benghazi on August 30, 2008. The wide-ranging treaty was negotiated for years and was concluded to compensate Libya for the damage stemming from the Italian colonial period. Italy committed to paying \$5 billion over a 20-year period, including the construction of a long-demanded highway from Tunisia to Egypt. The amount allocated to Libya foresees investments in the building sector, as well as scholarships for Libyan students wishing to study in Italy. Additionally, Italy's national oil company, ENI, had its Libyan contract extended for another twenty-five years. Another

15. Andrijasevic, “How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya,” p. 11.

16. On October 16, 2007 a contract about the investment of \$27 billion in the Libyan oil sector was signed between the two national energy companies ENI (Italy) and NOC (Libya).

advantage stemming from the *Trattato di amicizia* lies in the fact that Article 19 states that the parties commit to reinforcing border controls in order to curb unauthorized migration.<sup>17</sup> On his visit to Benghazi, Berlusconi also pushed for the quick implementation of the December 2007 agreement which, as of 2008, was not fully implemented.

Such developments are illustrative of the secrecy that has gradually characterized the bilateral relations between Italy and Libya since the late 1990s to date. Despite growing criticisms from the Italian parliament and various NGOs concerned about the violation of human and refugee rights, collaboration has expanded rapidly. Secrecy and informality also allow the parliamentary control on the Italian cooperation policy with Libya to be circumvented. Under these circumstances, any step aimed at improving the conditions of migrants kept in detention in Libya and at monitoring the respect for their human rights might turn out to be difficult.<sup>18</sup>

### *LIBYA, ITALY, AND THE EUROPEAN UNION*

Having illustrated the cooperation between Italy and Libya on migration and border controls, I set out to investigate the extent to which it has had any impact on the ways in which the European Union has framed its bilateral policy with Libya. A report of the European Commission 2005 criticized the conditions in which migrants are detained in Libya and the arbitrariness of its detention system.<sup>19</sup> Furthermore the report acknowledged that there is no asylum system in Libya.<sup>20</sup> Despite these criticisms, the Commission recommended cooperation with Libya on migration issues, stating that there should be a change in Libya's refugee policy.<sup>21</sup> In its conclusions, the June 2005 European Council conditioned cooperation with Libya with the recognition of UNHCR, the principle of *non-refoulement* and the full respect for human rights.<sup>22</sup>

17. Tana de Zulueta, "Gaddafi Strips Off Diplomatic Fig Leaves," *The Guardian* (2009), <http://www.guardian.co.uk/commentisfree/2009/jun/11/gaddafi-libya-italy>.

18. Human Rights Watch *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006); Fortress Europe, *Frontiera Sahara. I Campi di Detenzione nel Deserto Libico* [Borderland Sahara. Detention Camps in the Libyan Desert], 2006, <http://fortresseurope.blogspot.com/2006/01/frontiera-sahara-i-campi-di-detenzione.htm>.

19. European Commission Report 7753/05 (2005), pp. 31-37.

20. European Commission Report 7753/05 (2005), p. 52.

21. European Commission Report 7753/05 (2005), p. 7.

22. Sara Hamood, "African Transit Migration through Libya to Europe: The Human Cost," Cairo: Forced Migration and Refugee Studies (Cairo: The American University in Cairo,



In June 2005, the Libyan-EU cooperation started on an operational basis while taking the 2005 Commission's report as a reference for future orientations and policy options. Institution building and training programs aimed at reinforcing border controls, along with the management of asylum were identified as key areas of cooperation.<sup>23</sup> Moreover, fora of discussion with Libya were introduced, such as the 5+5 Dialogue on Migration in the Western Mediterranean.<sup>24</sup>

In September 2006, Commissioner Frattini approved technical equipment worth €3 million to Libya.<sup>25</sup> In November 2006, the EU-Africa Ministerial Conference on Migration and Development held in Tripoli was a symbolically important step to reinforce the relations with Libya. When Libya freed the foreign doctors and nurses convicted in July 2007 of having infected Libyan children with HIV,<sup>26</sup> a new era began for EU-Libyan relations. In July 2007, official talks on a cooperation partnership started, covering various areas of mutual interest. The establishment of a system for the control of Libyan land and maritime borders, financed by the EU, was part of the partnership.<sup>27</sup>

On the formal political level, the developments of the cooperation on migration issues between Libya and the EU are still limited, however. It is once more the operational and practical component which seems to make headway, leaving the formal democratic decision making processes behind. Frontex, the European Border Agency based in Warsaw, which has been criticized for a lack of transparency and democratic accountability in its work on the European external borders,<sup>28</sup> has pushed in favor of wider cooperation programs with

2006), p. 74, <http://www.migreurop.org/IMG/pdf/hamood-libya.pdf>.

23. Hamood, "African Transit Migration through Libya to Europe: The Human Cost," p. 74.

24. Members are: Algeria, Libya, Mauritania, Morocco, Tunisia and France, Italy, Malta, Portugal, and Spain.

25. Paolo Cuttitta, "The Changes in the Fight Against Illegal Immigration in the Euro-Mediterranean Area and in Euro-Mediterranean Relations," Working Paper (Brussels: Center for European Policy Studies, 2007) <http://libertysecurity.org/article1293.html>.

26. The Libyan police in 1999 imprisoned 23 medical staff members working at the hospital. Gadhafy said the health workers had deliberately spread HIV among the children in the hospital at the behest of the CIA and Israel's Mossad. Except for five Bulgarian nurses and a Palestinian doctor, all other workers were immediately freed. After international protest they were released in July 2007.

27. "Libya, EU Start Talks on Cooperation Partnership," *Libyaonline*, 2007, <http://www.libyaonline.com/news/details.php?id=943> (accessed January 2007).

28. Sergio Carrera, "The EU Border Management Strategy FRONTEX and the Challenges of Irregular Immigration in the Canary Islands," CEPS Working Document No. 261 (Brussels: Center for European Policy Studies, March 2007), p. 4.

Libya. Deputy Executive Director of Frontex Gil Arias sent a letter to Libyan officials in May 2007 asking for Libya's cooperation in the framework of joint patrolling operations in the Mediterranean Sea.<sup>29</sup> This initiative resembled the one that Italy had already initiated with Libya. Actually, Frontex proposed to patrol in Libyan waters with a view to intercepting unauthorized migrants. The 2007 Frontex report on Libya is a follow-up to the 2005 report of the European Commission, and reasserted Libya's reluctance to become Party to the 1951 Geneva Convention on refugees.<sup>30</sup>

Clearly, the report produced by Frontex did not mention the human rights situation in Libya or the dreadful conditions faced by migrants in detention. Numbers and statistics on migrants deported and detained are extensively mentioned and final policy recommendations only call for an improvement of the cooperation.<sup>31</sup> The addendum to the report includes an impressive list of technical material required by Libya to improve its border management, including 10 ships, 12 reconnaissance aircrafts, 18 helicopters, 22 fully equipped command centers, 86 trucks, 100 rubber boats, 240 jeeps, and more. Libya never joined the patrolling operations promoted by Frontex in the Mediterranean in 2008 and 2009 and remained opposed to the possibility of extending such operations to its territorial waters. However, given the positive bilateral developments with Italy in the field of joint patrolling operations in the Libyan territorial waters, one is entitled to expect that similar operations will also take place at a European level. Former European Commissioner of Justice Franco Frattini and current Commissioner Jacques Barrot have stated repeatedly that a Libyan participation would be of great use.<sup>32</sup>

There can be no question that Italy has played a critical part in facilitating the emergence and consolidation of an EU-Libyan partnership. The country already improved its relations with Libya in the late 1990s when Libya was still a pariah state and has since fostered bilateral cooperation. In recent years the Italian governments proactively brought pressure to bear on the European Union to abolish the EU embargo on Libya — which was lifted in October

29. Frontex, "Frontex-Led EU Illegal Immigration Technical Mission to Libya 28 May–5 June 2007," (Warsaw: Frontex, 2007), p. 9, <http://www.statewatch.org/news/2007/oct/eu-libya-frontex-report.pdf> (accessed January 2008).

30. Frontex, "Frontex-Led EU Illegal Immigration Technical Mission to Libya 28 May–5 June 2007," p. 9.

31. Frontex, "Frontex-Led EU Illegal Immigration Technical Mission to Libya 28 May–5 June 2007," p. 19.

32 Meltingpot, "*Frattini: dal 2008 Frontex nelle acque libiche*" ["Frattini: From 2008 Frontex Operating in Libyan Territorial Waters"], <http://www.meltingpot.org/articolo11163.html>.

2004 — and to cooperate with the Libyan regime.<sup>33</sup> It could even be argued that Italy is acting as a forerunner of the European Union, not only in the field of migration controls but also in the ways in which cooperative agreements, at the European level, have been framed. For instance, cooperation programs and financial assistance were carried out before bilateral relations were formally established. Following the Italian model, the EU did not ask for legal guarantees, nor did it call for a concrete improvement of the situation of migrants and asylum-seekers in Libya as a prerequisite to cooperating with Libya.

The ways in which cooperative agreements have been framed also allowed for the consolidation of a migration control regime. For example, the German research group Transit Migration showed how a migration control regime, creating the hitherto unknown phenomenon of the “illegal migrant,” was established in Turkey by the European Union. Main actors were not official institutions of the EU, but international organizations (mainly UNHCR and IOM as well as NGOs), which were financed by the EU and which established a new discourse around the phenomenon of “illegal migration.” The research group identified a new policy culture of governing the external borders of the EU, whereby the knowledge of experts and technocrats plays a central role and where recommendations are based on a “multi-level-governance” in different formal and informal working groups.<sup>34</sup>

In a similar vein, as a result of the Italian-German Cap Anamur<sup>35</sup> case in summer 2004, a discussion around migrants, viewed as defenseless victims of smugglers, started to “humanitize” the problems at the external borders of the European Union. The Cap Anamur case was used by the Italian Min-

33. Cuttitta, “The Changes in the Fight Against Illegal Immigration in the Euro-Mediterranean Area and in Euro-Mediterranean Relations,” p. 178.

34. Sabine Hess and Serhat Karakayali, “*Die imperiale Kunst des Regierens. Asyldiskurse und Menschenrechtsdispositive im neuen EU-Migrationsmanagement*” [“The Imperial Art of Governing. Asylum Discourses and Human Rights Optionals in the New Migration-Management of the EU“], In Transit Migration Forschungsgruppe, ed., *Turbulente Ränder – Neue Perspektiven auf Migration an den Grenzen Europas* (Bielefeld: Transkript, 2007), p. 47.

35. Cap Anamur is a German humanitarian association which provides assistance to war victims. On June 20, 2004, a freighter of the Cap Anamur rescued a small boat full of sub-Saharan migrants, sinking in international waters between Malta and the Italian island of Lampedusa. Owing to diplomatic tensions between Germany, Malta, and Italy, the Cap Anamur boat was not allowed by the port authorities to dock in Malta or in Italy. Eventually, as the situation onboard deteriorated, the boat docked at Porto Empedocle in Sicily. The rescuers were arrested by the Italian authorities. The rescued migrants claimed asylum in Italy but their claims were all rejected. After a period of detention, they were removed to Ghana and Nigeria.

ister of Interior Giuseppe Pisanu and his German counterpart Otto Schily to introduce *Regional Protection Programs* (RPPs) at an EU level. RPPs were put forward in September 2005 by the European Commission in order to enhance the refugee protection capacity of both transit and source countries “by providing Durable Solutions (the three Durable Solutions being repatriation, local integration or resettlement in a third country.”<sup>36</sup>

RPPs were viewed by Schily and Pisanu as a “durable solution” to tackle the humanitarian problem of unauthorized migrants drowning in the Mediterranean.<sup>37</sup> The idea of RPPs was given major attention at the Stockholm program that was adopted at the December 2009 Council of the European Union.<sup>38</sup>

Meanwhile, Italy established a broad cooperation program “on the ground” with Libya and other North African countries by funding detention centers and organizing removal charter flights. In contrast with RPPs which are aimed at reinforcing the refugee protection capacity of countries of transit and of origin, among other things, the issue of refugee protection is not considered in the Italian framework of cooperation. As Andrijasevic states, the implementation of the cooperative programs with Libya is not aimed at transferring asylum systems outside the EU external borders, “rather [it] deprives asylum-seekers of the possibility to access the asylum determination procedure.”<sup>39</sup> The result is not the externalization of the asylum system through policy transfers of good practices in the field refugee protection, but its abandonment. Such developments might jeopardize the concrete application of refugee standards, including the respect for the principle of *non-refoulement*.

Ulrich Beck and Edgar Grande<sup>40</sup> describe the integration process of the European Union as a “*side-effect-regime*”(Nebenfolgeregime) whereby the process of Europeanization itself is defined by national and supranational institutions, leading often to unintended consequences. Beck and Grande view the integration process as an “*institutionalized improvisation*” that

36. European Commission, Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, 388 (European Commission, 2005a), p. 2.

37. Hess and Tsianos, “Europeanizing Transnationalism! Provincializing Europe! Konturen eines neuen Grenzregimes! Europeanizing Transnationalism! Provincializing Europe! Contours of a New Border Regime, in *Transit Migration Forschungsgruppe*,” p. 34.

38. European Council, “The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens,” December 2, 2009, p. 72, [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf).

39. Andrijasevic, “How to Balance Rights and Responsibilities on Asylum at the EU’s Southern Border of Italy and Libya,” p. 15.

40. Ulrich Beck and Edgar Grande, “*Das kosmopolitische Europa*” [“The Cosmopolitical Europe”] (Frankfurt am Main: Suhrkamp, 2004).

follows no master plan and becomes clear only in retrospect, but is the initiator of sometimes far-reaching decisions.<sup>41</sup>

This seems to be the case regarding the Italian-Libyan cooperative agreements and their impact on the overall European refugee protection system. Being driven by a process which has developed its own dynamics, beyond the purview of democratic institutions, the danger of exporting border control regimes to Northern Africa without setting European standards for human rights and refugee protection is high, as Cuttitta observes.<sup>42</sup> Consequently, the European Union is gradually abandoning its own aspiration of spreading human rights through cooperation with neighboring countries, a strategy that was enshrined in the Barcelona declaration adopted at the 1995 Euro-Mediterranean Conference. Especially in the Libyan case, which for several reasons (e.g. economic and political ones) is less open to a European influence than other North African countries, it is likely that European standards of cooperation will be weakened instead of positively influencing the human rights agenda of Libya. The “imperial character” that, according to some scholars, characterizes European migration policy towards third countries, might induce a backlash. It is not the European Union or Italy that seems to determine the conditions of that cooperation, but rather the Libyan government. It is unlikely that Libya will agree to make progress in the field of human rights observance and refugee protection as shown in the next section.

### *IN TRIPOLI*

In this section, I propose to connect the Italian and European policy on transit migration in Libya with my own research experience and fieldwork. The main purpose of my fieldwork in Tripoli was to explore the conditions faced by migrants and refugees in Libya. The point was to understand whether their conditions had changed since the implementation of the Italian and European cooperation programs and how migrants and refugees perceived any change in their living conditions in Libya.

Libya remains a tightly controlled country with very little room for criticism of the ruling government and its regime. It was clear from the beginning that studying the situation of migrants was a sensitive research issue in Libya.

41. Beck and Grande, “*Das kosmopolitische Europa*,” p. 62.

42. Cuttitta, “The Changes in the Fight Against Illegal Immigration in the Euro-Mediterranean Area and in Euro-Mediterranean Relations,” p. 199.

In Tripoli, migrants from sub-Saharan countries are visible all over the urban area. They clean pavements, work as informal street traders, or wait in certain places for occasional jobs to come up. Migrants from Arab countries are often employed in catering and services. They mainly work in the informal sector and have difficult access to legal employment. Most migrants, therefore, have irregular revenues. Social networks, based in general on contacts with compatriots and on religious affiliation, are of vital importance.

Given the difficulties in interviewing migrants in public spaces, I could start my fieldwork thanks to the assistance of a small Christian community in Tripoli which provided useful contacts with migrants. Visits and interviews in the segregated districts of Tripoli, where migrants and refugees from sub-Saharan countries mostly live, became possible. Later on, I could visit refugees outside Tripoli. The outskirts of the capital were occupied by various immigrant communities originating, in Sierra Leone, Cote d'Ivoire, and Nigeria, among others. Young men were living together, sharing two rooms. They were all educated; some of them had a university degree.

They came to Libya four years ago to escape war-torn areas. All of them were holders of an official letter from the UNHCR. This letter stated they were entitled to fair treatment and to the respect of their special need for protection. During the interviews, the respondents told me that the UNHCR letter was of no help when they were intercepted by the Libyan security forces. Daniel was in detention for more than a year, a few weeks before I met him. Only when he was brought to Sebah, a Southern city in the desert, did UNHCR manage to get him out of detention. He said that conditions in detention centers were dreadful and that violence by the Libyan guards was common and used in an arbitrary manner. There were regular cases of violence and torture against detainees, "they treated us like animals" he said again and again. Furthermore, overcrowding, poor hygienic conditions, and insufficient food were a problem. Daniel said that, for the whole period of his detention, he stayed together with around 80 other detainees in a 35 square meter room.

When talking about removals, the interviewees were convinced that migrants are regularly removed by plane by the Libyan authorities to other countries, but many of them are also brought to border regions in the desert. Indeed, there are reports by embassies from different sub-Saharan countries complaining that their nationals have disappeared during their removals.<sup>43</sup> The official number of 106 migrants' deaths, following Libyan

43. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers*

overland expulsions between October 2004 and March 2005, was denounced in a resolution of the European Parliament adopted in April 2005.<sup>44</sup> Recent reports seem to confirm that expulsions of unauthorized migrants from Libya have continued.<sup>45</sup>

Samuel said that his UNHCR letter was destroyed in front of him by a Libyan police officer. In his opinion, the official UNHCR letter is of no use for refugees in Libya. Liberian interviewees explained they did not feel safe in Libya anymore, as they live in fear of being detained and it gets harder and harder to find even an occasional job. They hoped to be resettled in a European country, through UNHCR resettlement programs, although these are implemented “only for individual emergency cases.”<sup>46</sup>

When I asked interviewees if they would cross the Mediterranean by boat, they rejected this option. They would not risk their life: “everybody knows how dangerous the journey to Italy is” they said. In their opinion, Italy puts pressure on Libya in order to control migrants. Whole groups of migrants are preventatively detained in Libya on the grounds that they want to cross the Mediterranean to Italy, even if this was not their intention.

As mentioned in the introduction, it is important to understand whether bilateral cooperation on the control of migration flows and borders may impact the conditions faced by the interviewed refugees.

Almost all the interviewees I met in Libya from sub-Saharan countries had experienced detention and imprisonment. A Nigerian man I met in a church died of tuberculosis shortly after his release from detention. I got to know him the evening of his release from prison. He was in very bad shape and said that for three days he had been drinking just salty sea water. He contracted an infection in the detention center, where contagious diseases are common.

Detailed information and numbers on detained immigrants in Libya are scarce or difficult to obtain. In June 2006, the Libyan authorities declared that “some 60,000 illegal migrants” were detained.<sup>47</sup> The interviews carried out in

*and Refugees* (2006), p. 56.

44. European Parliament, European Parliament Resolution on Lampedusa, April 14 2005, p. 2, <http://www.europarl.europa.eu/sides/getDoc.do?sessionId=8B5BEAAD5A39468ECA77F272A4E6D528.node2?pubRef=-//EP//TEXT+TA+P6-TA-2005-0138+0+DOC+XML+V0//EN>.

45. Fortress Europe, *Frontiera Sahara. I campi di detenzione nel deserto libico* [Borderland Sahara. Detention Camps in the Libyan Desert] (2009).

46. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 27.

47. Frontex, “Frontex-Led EU Illegal Immigration Technical Mission to Libya 28 May–5

Tripoli, as well the reports written by human rights organizations,<sup>48</sup> showed that detention in Libya is often characterized by violence, opacity as to who is detained and for how long, and by the absence of any judicial system for remedy based on Libyan law.

Concerning the impact of Italian policy on the situation of migrants in Libya, Amnesty International argued in April 2005 that there is an indirect connection between the Italian-Libyan bilateral agreements and the rising number of migrants placed in detention in Libya.<sup>49</sup> In a similar vein, members of the delegation of the European Commission who visited in December 2004 detention centers in Libya declared that “the majority of the people (mainly from Niger, Ghana, and Mali) seem to have been arrested the day before the experts’ visit.”<sup>50</sup> This statement echoes what a Liberian interviewed refugee said to me: “The Libyans want to show that they are doing something against migrants to satisfy the European countries which are important trade partners.”<sup>51</sup> Additionally, according to an assessment made by UNHCR, the Libyan government’s crackdowns and wide-scale imprisonment of migrants began soon after Italy opted to remove migrants to Libya. Subsequently, these were expelled from Libya to their countries of origin in autumn 2004.<sup>52</sup>

Dr. Miftah Shalgam, Ambassador of Libya to Malta, explained in an interview dated October 2007:

Before, we had this policy of seeing us as part of the Arab world and African continent... And we feel that these people are our neighbors, brothers, and sisters. We feel that when you have some wealth and you are in a good position, why not allow these people to stay sometime? We don’t need them, for that we can bring skilled labor from Asia or Philippines ... But these people are coming. And when they are coming we have traditions. When you have a guest, you cannot send a guest away; you have to feed them, at least for some time. In fact you are duty-bound to provide him with what he needs. At least, for some time. So these people

June 2007,” p. 10.

48 Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006).

49. Amnesty International, “Immigration Cooperation with Libya: the Human Rights Perspective,” [http://www.amnesty-eu.org/static/documents/2005/JHA\\_Libya\\_april12.pdf](http://www.amnesty-eu.org/static/documents/2005/JHA_Libya_april12.pdf) (accessed March 2007).

50. European Commission Report 7753/05 (2005), p. 31.

51. Interview by author with a refugee from Liberia, Tripoli, 2006.

52 Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (2006), p. 26.



are our neighbors. And when we were under colonial power we went to these countries. Libyans used to live in Chad, in Niger, in Egypt. So they received us, so maybe now it's our turn. It doesn't mean that we have a policy of welcoming them, but when they come you have to deal nicely, at least for some time, and then convince them to go. But now, under European pressure, we took some hard steps, some hard measures ... Under European pressure, because of immigration, Libya was taking some steps which it normally will not take. By forcing them, detaining them, and then trying to force them back. And this is because of the European pressure. Because we don't want our relations with Europe to suffer from this. But some times you end up doing something which you did not want to do ... We feel that it was creating a problem with our neighbors. Malta, Italy... Then we felt that we have to do something. Let us do something to convince them that we are doing our best.<sup>53</sup>

The Libyan ambassador emphasized that the patterns of cooperation with Italy and the EU did not only change the policy of Libya in the field of migration and asylum. According to him, it also affected Libyan customary law, which is based on the Muslim right to hospitality and assistance to the needy. He argued that, as a result of Italian and European policy pressures, these traditions could no longer apply to people originating in Libya's neighboring countries.

Of course, the Libyan ambassador's statement should be taken with caution. Libya has for many decades ordered the detention and expulsion of undesirable aliens, even when no "pressure" was exerted by the European Union and its Member States. What is interesting is the fact that current policy options are rhetorically justified and justifiable, in the above interview of the Libyan official, with reference to external forces that prompt Libya to behave coercively. However, most interestingly, is that this rhetoric also weaves its way into the discourse of some of the refugees I interviewed. For instance, Liberian interviewees in Tripoli accounted for Libya's restrictive immigration policy by referring to Italy's strong pressure exerted on Libyan authorities.

Some migrants I met have lived in Libya for many years and seemed to lead a well established life with a regular job. Astonishingly, they also did not see their future in Libya. An Eritrean woman, Nara, said:

53. Interview by author with Dr. Miftah Shalgam, Ambassador of Libya to Malta, Balzan, October 2007.

Today, I don't know anybody who wants to stay in Libya. Before, it was different, until some years ago Africans could earn some good money in Libya and then return to their families. Today, they don't find a job and have to fear detention. Some go back to their home countries. I cannot go back to Eritrea. I am planning to go to Italy.<sup>54</sup>

Like Nara, other migrants who lived in Libya for years also seemed to be worried about their future. As Nara, who had lost a sister crossing the Mediterranean Sea, most migrants are perfectly aware of the risk they face when they travel to Italy by boat. Nonetheless, they opt for the journey. "We feel trapped in Libya" was a sentence I heard several times talking to sub-Saharan migrants.

The changes in the lives of migrants in Libya in recent times studied against the background of the Italian and EU cooperation policy make visible that, from a humanitarian and a border security perspective, the bilateral and European cooperation policy is counterproductive: To escape the declining situation in Libya more, and not less, migrants are trying to reach the European continent through Italy. Landings were heavily rising from 2004 to 2008. These arrivals may stem from the restrictive immigration policies that Libya has adopted over the last few years as a response to its cooperation with Italy and the European Union. In January 2008, the Libyan government decided to summarily deport all undocumented aliens, including would-be asylum-seekers. Housing officials were also asked to pull down migrants' shelters in the suburbs of the capital and in other cities. One is prompted to wonder whether such measures have acquired more policy meaningfulness as a result of Libya's reinforced cooperation with the European Union, especially with Italy.

## CONCLUSION

Clearly, it is difficult to properly assess whether bilateral patterns of cooperation on migration and border controls have impacted on the adoption of restrictive policy options at a European level. Nonetheless, the fieldwork carried out in Libya, as well as the evidenced security paradigm that drives the cooperation with Libya, seem to support the argument that bilateral patterns of cooperation might impact on the ways in which the EU

54. Interview by author with an Eritrean woman, Tripoli, October 10, 2006.

refugee protection system is being framed and configured. However, such cause-and-effect relationships remain to be better explored, particularly regarding their implications for respect of the principle of *non-refoulement* enshrined in the 1951 Geneva Convention and in its 1967 protocol.

Cooperation is often accompanied by policy transfers that are expected to gradually improve the legal and technical capacity of recipient countries to manage migration flows (whether legal or not) and asylum. The research group “Transit Migration” observed this gradual process of policy transfer, or Europeanization, with reference to Turkish migration and border control systems, even if improvements started hesitantly.<sup>55</sup>

In the case of Libya, the resilience of bilateral patterns based on informal interaction shaped by short-term security concerns might qualify the impact of such policy transfers, as they might not be directly conducive to major improvements. For now, it seems unlikely that the situation of migrants and refugees in Libya will improve as a result of the reinforced patterns of cooperation. Moreover, the drive for flexibility and operability, which thus far has shaped the bilateral cooperation on migration between Italy and Libya, might be regarded by other European actors as a workable option to overcome Libya’s reluctance to improve its refugee protection standards and human rights observance.

55. Hess and Karakayali, “Die imperiale Kunst des Regierens. Asyldiskurse und Menschenrechtsdispositive im neuen EU-Migrationsmanagement,” p. 43.

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