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Policy Perspectives

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Islam and Tolerance in Wider Europe

- Europe's Transforming Identity
- Ethnic Relations in the Caucasus
- Political Ideology and Religious Tolerance in Russia
- Political Identity and Human Rights in Turkey
- Islam and Policy in Central Europe
- Lessons from the Post-War Balkans

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Policy Perspectives
**Islam and Tolerance
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Rutvica Andrijasevic

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The Southern Gate to Fortress Europe

Rutvica Andrijašević

Migrants behind barbed wire at the 'holding center' on the southern Italian island of Lampedusa ■ Matias Costa, Panos

It is the last day of August 2005 and on the airport runway in Lampedusa, a small Italian island situated south of Sicily, yet another deportation of 'undocumented' migrants from Africa and the Middle East is taking place. Two planes parked approximately twenty meters away from each other are waiting for passengers. A group of tourists pours out of the airport building and strolls toward the Air One airplane, an Italian tourist carrier. The adjacent Air Adriatic plane, a private Croatian air company, is boarded by a group of passengers walking in fixed formation. Four police officers (one in back, one in front, and one on each side of the procession) wearing civilian clothes and large black protection gloves lead the group of ten migrants from the detention camp to the airplane. The plane is parked only fifteen meters or so away from the barbed wire that separates the runway from the camp. From the perspective of an informed observer, the ordinariness of the event exacerbates its violence.

Seven groups of ten men are led to the plane. The migrants boarding the plane are all dressed the same: they wear dark blue sports trousers with a matching jacket and carry

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a white plastic shopping bag. Behind the barbed wire there are several hundred migrants seated in small groups on the soil. When the plane takes off most of them are on their feet, waving.

Earlier the same day another group of migrants is escorted by police from the detention center to the port just down the hill and transferred by a ferry operated by a company called Siremar, first to Porto Empedocle and then on to the detention center in the Southern Italian town of Crotone. This time, following a rigorous 20-minute march from the camp, the migrants were made to sit on the ground behind a large van while tourists boarded the ferry and enjoyed their last unperturbed glimpse of the town of Lampedusa. Dressed in the usual dark blue sport outfits and carrying white plastic bags, the migrants were transferred from the pier to an isolated space in the lower part of the ferry, while police blocked access to the port and prohibited any filming or photographing.

Between Libya and Sicily: The criminalization of migration

Positioned some two hundred kilometers south of Sicily and three hundred kilometers north of Libya, in 2004 the island of Lampedusa became the main point of arrival for boats carrying undocumented migrants and asylum seekers from Libya to Italy. The 'temporary stay and assistance center' (CPTA) in Lampedusa is one of eleven existing migration holding centers, most of which are located in the south of Italy. Migrants typically depart from Libya in overcrowded, makeshift boats and undertake the perilous sea journey which can last up to several weeks. Once in the Italian waters near Lampedusa, the boats are intercepted by Italian border guards and migrants are transferred to the Lampedusa holding center. After staying in the center for a period that usually varies between five and forty-five days, the majority of migrants are transferred to CPTAs in Sicily or southern Italy and others are expelled to Libya.

The Italian-Libyan partnership agreement initially signed in 2000 to fight terrorism, organized crime and illegal migration was extended in 2003 and 2004 to include a migration readmission agreement, training for Libyan police officers and border guards, and Italian-funded detention and repatriation programs for irregular migrants in Libya. The aim of these schemes is to deter irregular migration and prevent further migrant deaths at sea by combating smuggling networks. Paradoxically, research described here suggests that these policies may actually 'illegalize' the movement of certain groups of migrants, thereby increasing rather than decreasing the involvement of smuggling networks in human trafficking.

Due to pressure from the Italian government, the European Union (EU) lifted the arms embargo on Libya on October 11, 2004, allowing Libya to purchase (from Italy) technological surveillance equipment and speedboats, and run training programs initiated by Italian policemen. Only recently it has emerged (following the European Commission's report on its technical mission to Libya in December 2004) that Italy is moreover financing the construction of three detention camps in Libya as well as the deportations of 'irregular' migrants from Libya further to Sub-Saharan Africa and Egypt.¹ The deportation from Italy to detention camps in Libya followed the signing in August



The Italian navy arrests a group of migrants after intercepting their boat off Lampedusa ■ Matias Costa, Panos

2004 of an agreement between the two countries on combating illegal migration into the EU. Despite repeated European Parliament, UN Human Rights Committee, and NGO requests to make the agreement public, its contents continue to remain undisclosed.

In 2004, a total of 10,497 migrants, including 412 minors and 309 women, transited through the Lampedusa CPTA.² No official data is available on the Lampedusa migrants' countries of origin or reasons for migrating. While the United Nations High Commissioner for Refugees (UNHCR) points to the presence of refugees and asylum seekers fleeing persecution among those detained at Lampedusa as well as among those

expelled to Libya, the Lampedusa authorities refer to those held at their center as 'illegal migrants' and claim that there are virtually no asylum seekers present among migrants who depart from Libya. The authorities also assert that the majority of third-country nationals at the center are economic migrants of Egyptian nationality.³ However, data gathered at Lampedusa by Médecins sans Frontières and the Italian nongovernmental organization ARCI identifies the migrants' primary regions of origin to be the Middle East (Iraq and Palestine), Maghreb (namely from Morocco, Tunisia and Algeria), Horn of Africa (including Sudan), and Sub-Saharan Africa.⁴ Despite the continuity of migratory flows from North Africa to the south of Italy since the end of the 1990s, more consistent data on migrants' countries of origin and the nature of their journeys remains unavailable.



No information is available concerning the whereabouts of migrants and asylum seekers expelled from Lampedusa to Libya. Human Rights Watch believes that the majority are detained in Libyan detention camps, where migrants and asylum seekers in particular are often the victims of arbitrary detention, nonexistent or unfair trials, killings, disappearances and torture ■ Matias Costa, Panos

The detentions and deportations at Lampedusa came to the attention of the wider public in early October 2004, when more than one thousand ‘irregular’ migrants were expelled to Libya on military and civilian airplanes. These collective deportations occurred in a highly charged political atmosphere surrounding the proposal advanced by German Minister of Interior Otto Schily and Italian Minister Giuseppe Pisanu to establish refugee processing centers in North Africa. Apparently, Germany, Italy and the United Kingdom backed the project, while France and Spain were opposed. The proposal—initially put forward by the UK and rejected during the 2003 Thessaloniki Summit—envisioned the establishment of ‘regional protection zones’ and ‘transit processing centers’ located outside the external borders of the European Union.⁵ Under this proposal, asylum-seekers and refugees would submit their EU asylum claims and wait in these centers until their applications were processed.⁶ Even though the proposal for ‘processing centers’ was rejected by France, Spain and Sweden in October 2004, the EU informal Justice and Home Affairs Council considered five pilot projects proposed by the European Commission (EC) and co-funded by the Netherlands. These projects aim to upgrade existing ‘processing’ facilities and develop asylum laws in Algeria, Libya, Mauritania, Morocco and Tunisia.⁷

European governments in support of such schemes consider expulsions to Libya a necessary measure to counter ‘the emergency’ represented by the influx of boat-people from Libya and the urgent need to deter ‘a million’ waiting in Libya from reaching Italian shores.⁸ The European Commission claims that detention and deportation are indispensable measures for countering undocumented migration and ensuring a credible and effective Europe-wide immigration policy.

The Italian coastguard escorts migrants ashore off Lampedusa ■ Matias Costa, Panos



Available research and analysis raise serious doubts about the validity of these claims, however. Existing data shows that the majority of irregular migrants have entered Italy with a valid visa and become undocumented only after the visa expired or after they overstayed their residence permit. Only 10 percent of undocumented migrants currently residing in Italy entered the country ‘illegally’ by sea.⁹ Furthermore, Libya’s migrant population is made up primarily of labor migrants from neighboring African countries who have played a key role in Libya’s informal economy for several decades, while irregular migrants who transit through Libya on their way to Europe represent only a small segment of the country’s migrant population. In other words, reducing Libya’s current migratory patterns to an unprecedented surge of ‘illegal’ migration is erroneous and misleading (Pliez 2005). The use of terms by European politicians such as ‘the emergency’ recap the fantasy of ‘the invasion’ of Eastern Europeans into Western Europe following the fall of the Berlin Wall—now commonly referred to as ‘the invasion that never happened.’

Libya’s migratory reality is far from being, as suggested by the image of ‘a million illegal migrants’ sailing to Europe from Libyan shores, a country of emigration or a transit route for clandestine migrants from Sub-Saharan Africa to Italy. On the contrary, Libya is primarily a country of destination and immigration for the Maghreb (the region of Africa north of the Sahara desert and west of the Nile). Foreign nationals constitute approximately 25 to 30 percent of Libya’s total population. Large-scale economic and social development schemes in the 1970s, launched thanks to petroleum industry revenues, relied in the first instance on migrant laborers from Egypt. Egyptian nationals, employed mainly in the agriculture industry and education, constitute the largest migrant group in Libya today.¹⁰ Libya is home also to a large Maghrebi community from Morocco, Tunisia and Algeria,¹¹ and the country’s economic development relies on cheap and seasonal labor from the neighboring Niger, Chad and Sudan.¹² The influx of migrant workers from sub-Saharan states is prompted by Libya’s reorientation away from pan-Arab and toward pro-African policies¹³ and its active role in the foundation of the Community of Sahel-Saharan states (CEN-SAD), an economic project aimed at greater regional cooperation and integration via the free circulation of people and goods between member states.¹⁴ Migrant workers from Sudan, Chad and Niger, facilitated by Libya’s open border policy towards sub-Saharan Africa, are generally temporary and pendular laborers working in sectors such as agriculture, tourism and local trade rather than, as commonly assumed, the source of irregular migratory movement to Europe.¹⁵

Nevertheless, stoking the public’s fear of an immigrant invasion serves Italy’s political interests. Under discussion since 2002, Italy has failed to pass an organic law on the right to asylum along with most other European states, and is especially reluctant to admit asylum seekers and refugees onto its territory. A study of migratory patterns in 2004 indicates that refugees fleeing African conflicts in countries such as Sudan and Somalia are likely among the migrants who transit Libya.¹⁶ Because the Libyan government does not recognize asylum seekers and the authorities of the Lampedusa holding center allegedly classify the majority of migrants as Egyptians without investigating their nationality, there is no way to identify individuals who may be fleeing persecution.



NGOs claim that the signing of the bilateral agreement between Libya and Italy in August 2004 led to widespread arrests in Libya of individuals from sub-Saharan Africa and the death of 106 migrants during subsequent repatriations from Libya to Niger ■ Matias Costa, Panos



The existing data on the number of deportations from the detention centers further questions the argument that detention is indispensable to assure an

effective removal policy. A recent report shows that out of 11,883 irregular migrants detained in Italian ‘temporary stay and assistance centers’ in 2004, less than half were deported while the rest were released or escaped.¹⁷ As regards asylum seekers, the 9,019 asylum applications filed in Italy in 2004 translate into the country receiving roughly 16 asylum seekers per 100,000 inhabitants.¹⁸ Even if doubled, the total number of requests for asylum in Italy would be of 34 per 100,000—still far below the EU average of 60 asylum seekers per 100,000 inhabitants.¹⁹ While this increase is hypothetical, it helps illustrate the gap between asylum trends in Italy when compared with other EU countries and highlights Italy’s reluctance to assume its share of asylum responsibilities in Europe.

Over the past decade, European governments incapable of harmonizing a common or coherent immigration policy and faced with growing public intolerance toward largely Muslim economic migrants have increasingly invoked the alleged existence of an ‘asylum crisis’ and have substituted national asylum programs for formal immigration schemes.²⁰ The ‘asylum crisis’ strategy has proven successful in garnering public support for European governments to contract out their asylum responsibilities to less capable government structures in developing countries. While Europe’s actual asylum situation is certainly less acute now than in past decades and cannot be described as a crisis, Europe is experiencing a far less publicly visible ‘human rights crisis.’ Long-standing precepts of refugee protection in Europe have been seriously eroded, further exacerbating intolerance toward immigrants who are more frequently categorized as ‘illegal.’



In its 'Resolution on Lampedusa' in April 2005, the European Parliament called on Italy to refrain from collective expulsions, grant United Nations High Commissioner for Refugees access to the Lampedusa center, and guarantee the individual examination of asylum

- Matias Costa, Panos

As recent research on human trafficking has repeatedly shown, border controls, detentions and expulsion practices do not prevent people from moving from their countries of origin, nor from reaching Europe, but rather they increase the costs and dangers of migration. The EU's enlargement eastward has demonstrated that tightening border and visa controls enhances migrants' vulnerability and furthers the interests of smuggling networks. If arranging a visa is not cheap and easy, migrants are not able to access (even when available) formal governmental channels for migration.²¹ Instead, they resort to irregular channels that exploit migrants' legal vulnerability by charging higher fees for travel and documentation or profiting from migrant labor at various points during the journey.²² Stricter immigration controls aimed at preventing trafficking do not necessarily protect migrants from abuse but can increase the vulnerability of migrants to violence during travel while increasing the costs of 'doing business' for traffickers²³ and leaving ample space for third party profiteering and abuse.

European officials and civil society united in outrage

Since the much-publicized mass deportations, Lampedusa has been repeatedly denounced for alleged procedural irregularities and human rights violations. Consistent and numerous allegations of degrading treatment of third-country nationals in detention, difficulties for asylum seekers in gaining access to the asylum determination process, and large-scale expulsions to Libya prompted the European Parliament (EP), European Court of Human Rights (ECHR), and United Nations' Human Rights Committee (UNHRC) to call on Italy to respect the rights of asylum seekers and refugees to international protection and to refrain from collective expulsions²⁴ of asylum seekers and irregular migrants to Libya—a country that has no asylum system, has not signed the Geneva Convention on Refugees, and practices the kind of large-scale expulsions of undocumented migrants in which 106 people recently lost their lives.

No information is available concerning the whereabouts of migrants and asylum seekers expelled to Libya.²⁵ Human Rights Watch believes that the majority are detained in Libyan detention camps.²⁶ Investigations by Amnesty International (AI) document that the Libyan government engages in the incommunicado detention of migrants

and possible asylum seekers as well as suspected political opponents, torture while in detention, unfair trials leading to long-term prison sentences or the death penalty, and the ‘disappearance’ and death of political prisoners in custody. Migrants and asylum seekers in particular are often the victims of arbitrary detention, non-existent or unfair trials, killings, and disappearances and torture in the detention camps.²⁷ Once they are detained in Libya there is virtually no way for NGOs to assist them or verify the conditions of their detention and relative expulsion procedures. The Libyan detention centers are, in fact, almost inaccessible to international organizations or human rights groups. The UNHCR is unable to access people returned from Lampedusa to Libya, since it is impossible for the organization to operate according to its protection mandate in Libya. On January 20, 2005 as well as in successive open letters to the Council and the Commission,²⁸ Amnesty International urged the Commission to publicly distance itself from the actions of the Italian authorities and to carry out an independent investigation regarding Italy’s compliance with international legal obligations as part of the *EU acquis*.²⁹

NGOs claim that the signing of the bilateral agreement between Libya and Italy in August 2004 led to widespread arrests in Libya of individuals from sub-Saharan Africa³⁰ and the death of 106 migrants during subsequent repatriations from Libya to Niger.³¹ NGOs point out that the improvised identification of large numbers of migrants as Egyptians at the Lampedusa holding center is the basis for forced collective removals of migrants, first to Libya and later to Egypt, a country with which Libya collaborates on matters of illegal migration.³²

Nevertheless, collective deportations from Lampedusa to Libya resumed in March, April, and June 2005. By August 2005 mass deportations were conducted on a nearly weekly basis after the International Organization for Migration (IOM) signed an agreement with Libya aimed at deterring irregular migration from and into the country.³³ As deaths of migrants increased at sea during the crossover to Italy and in the desert as a consequence of deportations from Libya, social movements, several NGOs and European institutions mobilized in order to spread information and put an end to these collective deportations. La Rete Antirazzista Siciliana (The Sicilian Antiracist Network) video-recorded and circulated images of deportations at the Lampedusa camp,³⁴ and a number of activists organized a protest on April 2, 2005—the European Day for Freedom of Movement—in front of the offices of the Italian charter carrier Blue Panorama in Rome, which succeeded in halting the company’s deportation flights.³⁵ Following the October 2004 events, ten



An Italian coastguard vessel brings 202 migrants ashore in Santa Maria di Leuca after intercepting their boat
■ Matias Costa, Panos

European associations of NGOs working on migrant rights issues organized joint actions and filed a complaint with the European Commission against Italy's collective expulsions of migrants to Libya.³⁶ Moreover, Amnesty International urged the Commission on several occasions to halt the deportations and to investigate the detention practices of Italian authorities, while briefing Members of the European Parliament (MEPs) on the human rights situation of migrants and asylum-seekers in Lampedusa.³⁷

In its 'Resolution on Lampedusa' in April 2005,³⁸ the European Parliament called on Italy to refrain from collective expulsions, grant UNHCR access to the Lampedusa center, and guarantee the individual examination of asylum. On 15 and 16 September 2005, a delegation of twelve MEPs working with the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (LIBE) arrived at Lampedusa to assess the center's procedures, treatment of the detainees, and the overall running of the Lampedusa center. As regards the conditions of detention, the Lampedusa camp was denounced for inadequate accommodation, poor hygienic conditions, and the use of coercive and violent police methods toward migrants during police-run removal operations to Libya. The overcrowding of the center, which has a maximum legal capacity of 180 persons, is such that the average number of migrants detained during the summer months in 2005 was between 300 and 400 and sometimes reaching up to 1,000 persons.³⁹

Based on the evidence, ten European NGOs have taken legal action against the Italian Government, filing a complaint with the European Commission⁴⁰ and calling on the Commission to sanction Italy for:

- Violation of the right of defense and of all parties to be heard⁴¹ and hence the right to asylum as recognized by the Amsterdam Treaty
- Violation of the prohibition of torture and inhuman or degrading treatment, provided for in article 4 of the European Charter of fundamental rights and article 3 of the European Convention for the protection of human rights and fundamental freedoms⁴²



Intended to coincide with a high-level EU Justice and Home Affairs visit to Libya in June 2005, a coalition of 13 European NGOs⁴³ proposed to EU Member States and the Commission a number of core principles to be applied during migrant

The Lampedusa holding center does not fulfil its main functions: it facilitates only a nominal amount of expulsions and perpetuates ill-treatment rather than offering assistance. To ensure that detention procedures and practices are in conformity with existing domestic and international standards, one short-term objective would be to mandate an independent monitoring body to make regular, unrestricted and unannounced visits to the center

- Matias Costa, Panos

Migrants being photographed for identification purposes at L'Orizzonte refugee camp in Squinzano. Independent monitors are not allowed access to the Lampedusa holding center

▪ Matias Costa, Panos



repatriations to ensure that the policies fully respect the needs and dignity of individuals.⁴⁴ In the complaint filed with the European Commission concerning the expulsions from the Lampedusa holding center to Libya, the NGOs called on the Commission to sanction Italy for:

- Violation of the prohibition of collective expulsions provided for in article 4 of the 4th Protocol of the European Charter of Human Rights (ECHR) and Fundamental Freedoms, article II-19-1 of the Charter of Fundamental Rights, and article 13 of the International Covenant on Civil and Political Rights
- Violation of the *non-refoulement* principle⁴⁵ prescribed in article 33 of the 1951 Geneva Convention on Refugees and Article 3 of the Convention Against Torture⁴⁶



In its observations on Italy during the 85th Session of the UN Human Rights Committee in Geneva in November 2005,⁴⁷ the Committee raised the issue of the right to international protection and recalled the right of each person not to be expelled to a country where he/she might face torture or ill-treatment. Along similar lines, in its *Resolution on Lampedusa* the European Parliament called on Italy to refrain from collective expulsions to Libya and took the view that these expulsions constitute a violation of the principle of *non-refoulement*. The Parliament also called on Libya to allow access to international observers, halt the expulsions and arbitrary arrests of migrants, ratify the Geneva Convention, and recognize the mandate of the UNHCR.

Italian authorities have responded to allegations of collective expulsions by invoking article 10 of Law 189/2002 of the new Italian Immigration Act—in particular procedures regarding the refusal of entry (*respingimento alla frontiera*). The



A Kurdish couple with their baby just arrived by boat to Santa Maria di Leuca ■ Matias Costa, Panos

authorities claim that removals from the Lampedusa center are not expulsions but rather refusals of entry determined on an individual basis. An expulsion needs to be decided by the judge and prohibits entry into Italy for ten years, while a ‘refusal of entry’ is an administrative measure that does not ban the migrant from entering Italian territory in the future.⁴⁸ Irregular migrants reaching Lampedusa are served

refusals of entry and returned to Libya because they have transited Libya prior to reaching Italy. Italian authorities insist that the refusals of entry are determined on a case-by-case basis and that since the majority of migrants reaching Lampedusa are economic migrants rather than refugees, Italy is not in violation of the *refoulement* principle nor in breach of the Geneva Convention.⁴⁹ The Italian government has explained its refusal to disclose the content of the bilateral agreement with Libya by saying that making the agreement public would diminish the success of countering smuggling and trafficking networks responsible for organizing and profiting from irregular migration from Libya into Italy.

Italy is developing future detention and expulsion schemes in collaboration with the IOM, a key partner for both the Italian and Libyan governments.⁵⁰ Italy was scheduled to fund an IOM pilot project in Libya starting in August 2005.⁵¹ As far as Libya is concerned, following the agreement signed on August 9, 2005 for the opening of an IOM office in Tripoli,⁵² IOM and Libya defined a program of activities supporting the Libyan government in countering illegal migration and developing a long-term migration management approach under the *Programme for the Enhancement of Transit and Irregular Migration Management* (TRIM).⁵³

Who are the gate-keepers of Europe?

Current European discourse on Libya and the EU’s immigration policies of detention and removal of undocumented migrants points to a series of ongoing transformations in Europe. A sound understanding of the implications of these transformations is crucial for academics, activists and policymakers alike.

The proposal to establish extraterritorial migrant processing centers and the construction of Italian-funded detention centers on Libyan territory, deportations to and from Libya, and joint Italian-Libyan police patrolling of the Libyan coastline are all instances that de-localize the EU’s external border from South Italy into Libyan territory.

Consequently, they all challenge the idea of the EU's external border as a firm border between Italy and Libya and show that the southern EU border, rather than being a linear and stable geographical demarcation, is a discontinuous and porous space encompassing the area between southern Italy and Sub-Saharan Africa.

This reading of the border calls into question the common assumption that the state regulates people's entry/stay into its territory. States certainly play a crucial role but the example of current migration projects in Libya suggests that non-state actors such as the IOM partake, shape and determine state policy on migration. Questions arise regarding state sovereignty and the ways in which non-state actors regulate and manage a state's migratory movements—functions traditionally reserved for the nation-state.

There is currently wide consensus among scholars, activists and policy analysts that the tightening of immigration policies and strengthening of border controls has resulted in a reduction of legal channels for migration into the EU so that illegality has become a structural characteristic of modern migratory flows. From this perspective, detention camps for undocumented migrants in Italy (and in Europe) are not seen as institutions geared toward deportations, but rather sites producing the conditions of 'deportability' which function as filter mechanisms and allow states to selectively admit certain groups of migrants (Karakayali and Tsianos 2004, Mezzadra 2004). Effective scholarly scrutiny and policy interventions depend upon the further development of analytic frameworks better able to grasp the ways in which detention centers create and uphold conditions for the hierarchization of access to labor and citizenship in Europe.

Contracting out European sovereignty and human rights protection

The state practice of 'contracting out' also raises serious questions about IOM interventions and ability to adequately protect the rights of migrants on behalf of states. In the case of the repatriations of irregular migrants and asylum seekers expelled from the Lampedusa holding center, IOM and states cooperate in obstructing asylum seekers' right to asylum. Moreover, the fact that irregular migrants and asylum seekers are deported from Lampedusa without knowing that they are being transferred to Libya, that the removals are executed by force and that once in Libya migrants are again detained in police-guarded structures, raises serious doubts that the IOM-run repatriations from Libya can be identified as voluntary. When decisions to return are made under duress or as an alternative to state-run forced expulsions, 'voluntary' seems to designate an absence of viable options rather than a deliberate choice. IOM cannot be held responsible for the rule of law in the same way as sovereign states. However, in deporting irregular migrants and asylum seekers from Libya, IOM is to be seen as assuming joint responsibility for any violation of fundamental rights that asylum seekers and irregular migrants might suffer.

Furthermore, the current Italian–Libyan partnership on migration indicates a new reorientation of Libyan politics from a pro-African to a pro-European stance, with profound implications for Sub-Saharan migrants. Libya's consequential tightening of its borders with Sub-Saharan neighbors is likely to clash with the long-established principle of the free movement of people that has been a cornerstone of regional cooperation and integration in the Sahel-Saharan region. This shift could destabilize current political



The ruins of boats used by migrants on the clandestine journey from North Africa, dumped half-submerged in the harbor of Lampedusa ■ Matias Costa, Panos

relations between Libya and neighboring states and may further ‘illegalize’ movements of large groups of Sub-Saharan nationals.

Policy Recommendations: Legitimacy, transparency, accountability and in the management of state borders

Given the fact that available data regarding the detention and deportation of irregular migrants and asylum seekers in Lampedusa and Libya are often contradictory and incomplete, bilateral agreements on irregular migration remain undisclosed, and the European Union framework offers Member States wide discretion in applying restrictive exceptions in national legislation, clearly defined principles of legitimacy, transparency, and accountability are needed to guide the EU and Member States undertaking migration management partnerships with neighboring countries.

Legitimacy

Migration holding centers are instruments facilitating the effective repatriation of third-country nationals who have entered Italy illegally. The Lampedusa holding center does not fulfil its main functions, however: it facilitates only a nominal amount of expulsions and perpetuates ill-treatment rather than offering assistance. To ensure that detention procedures and practices are in conformity with existing domestic and international standards, one short-term objective would be to mandate an independent monitoring body to make regular, unrestricted and unannounced visits to the Lampedusa holding center. The closure of the Lampedusa holding center should constitute a longer term objective.⁵⁴ Since the Lampedusa holding center is classified as a clearing station, Italy is likely to disregard established minimum procedural and legal safeguards on return, removal and custody provided under the EU Return Directive. The closure of the Lampedusa holding center would prevent future procedural violations and ensure that the rights of migrants and asylum seekers are not sidestepped by the Italian authorities.

Transparency

Whether carried out by the Italian and Libyan states or by the IOM, policies and schemes countering irregular migration from and into Libya are all characterized by a lack of transparency. Independent access and the transparency of information, programs and agreements between Italy and Libya regulating migration management are needed before an accurate assessment can be made of the situation regarding detention, expulsion and asylum along the EU's southern border. Information regarding the number, frequency and destinations of the return flights from the Lampedusa holding center, the content of relevant Italy-Libya bilateral agreements and between Libya and the IOM, and the content of the contract for the TRIM Program cofunded by the EC must be made public in order to achieve a transparent EU policy on asylum and immigration.

Accountability

The EU must provide leadership and take a stand in upholding the protection of human rights within contexts of third-country partnerships on migration and asylum programs. Divergent interests between national and EU competencies over borders, asylum and immigration should not permit Member States to violate the principles of the EU Return Directive and disregard minimum safeguards on return. In cases where Member States or the EU 'contract out' migration management to the IOM, this must not exempt the EU, Italy or Libya from their international legal obligations under established norms prohibiting *refoulement* and protecting human rights.

The lack of safeguards and control mechanisms protecting the established human right to seek asylum and Italy's tendency to circumvent its responsibilities on matters of asylum require an intervention from the European Parliament. The EP is directly involved in the decision-making process on European asylum and immigration policy and should propose amendments to the Return Directive and the Action Plan on Libya requiring the observance of international human rights standards. In the absence of any EU monitoring mechanism in Libya, the EP should urgently visit those detention centers in Libya where detention and repatriation programs are funded by the EU and Italy. The EP's intervention would play a crucial role in achieving a transparent and democratic procedure working toward a common European asylum policy and help steer the debate away from a control-based and toward a rights-based approach.

Michael, age 32, who is Eritrean, lies in a bed in a converted church which serves as an immigration reception center. He arrived in Lampedusa after a three-day long journey in a small fishing boat and has been waiting at the church for his residence permit for eight months ■ Alfredo D'Amato, Panos





The implementation of detention and expulsion schemes that legalize migratory movements and erode the rights of migrants to seek asylum brings into question the political responsibility of all actors involved, whether they be governments, supranational bodies, or agencies. The Italian and Libyan governments, the European Union, and the International Organization for Migration all need to assume their share of responsibility for human rights violations resulting from the procedures and programs they implement both inside and outside the borders of the European Union.

Notes

- ¹ The European Commission report *Technical Mission to Libya on Illegal Migration 27 Nov - 6 Dec 2004* is found on <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.
- ² See European Parliament, *Report from the LIBE Committee Delegation on the Visit to the Temporary Holding Centre in Lampedusa*, EP/LIBE PV/581203EN, p.2.
- ³ Ibid., p.3.
- ⁴ See ARCI, *Il diario del presidio ARCI a Lampedusa*, 2005a; ARCI, *Lampedusa Watching*, 2005b.
- ⁵ The letter from British Prime Minister Tony Blair to the Greek presidency proposing transit processing centers can be downloaded at <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>.
- ⁶ For a brilliant analysis of legal and theoretical issues raised by transit processing centers and protection zones, see Noll 2003.
- ⁷ For a more in-depth overview of the events and actors, see Schuster 2005.
- ⁸ This number was provided by Italian Ministry of Interior G. Pisanu. See *il manifesto* 22nd April 2005, p.9 or <http://www.ilmanifesto.it/Quotidiano-archivio/22-Aprile-2005/art74.html>. (consulted on 25/04/2005).
- ⁹ Ministry of Internal Affairs, quoted in Cuttitta (2005)
- ¹⁰ Hamood, S., *African Transit Migration through Libya to Europe: the Human Costs*. The American University on Cairo, Forced Migration and Refugee Studies, 2006.
- ¹¹ Boubakri estimates that 2 to 2.5 millions foreigners live in Libya, or 25 to 30 percent of the country's total population, including approximately 200,000 Moroccans, 60,000 Tunisians and 20,000–30,000 Algerians. Boubakri, H. "Transit Migration between Tunisia, Libya and Sub-Saharan Africa: Study Based on Greater Tunis," Regional Conference *Migrants in Transit Countries: Sharing Responsibility for Management and Protection*, Council of Europe: MG-RCONF (2004)6e; p.2.
- ¹² Boubakri, H., *ibid.*, and Pliez, O., *ibid.*
- ¹³ Disappointed by the lack of support from Arab countries, isolation from the international community due to the bombings in 1998 of flights over Lockerbie in Scotland and in 1989 over Niger, and the

1992 UN Security Council arms embargo on Libya, Colonel Mu' ammar al-Qaddafi reoriented Libya's foreign policy away from Arab countries and toward its sub-Saharan neighbors.

- ¹⁴ Libya is a key member of the Group of Sahel-Saharan States and of the African Union. The Group is also known as CEN-SAD (the Community of states bordering the Sahara and the Sahel) and was established in 1998 in Tripoli. Its members are: Egypt, Djibouti, Libya, Morocco, Somalia, Sudan, Tunisia, Senegal, Eritrea, Chad, Central Africa, Gambia, Mali, Niger, Burkina Faso, Nigeria, Togo and Benin. The African Union was founded in 1999 by the Organization of African Unity, whose main objectives were to "rid the continent of the remaining vestiges of colonization and apartheid; promote unity and solidarity among African States; coordinate and intensify cooperation for development; safeguard the sovereignty and territorial integrity of Member States; and promote international cooperation within the framework of the United Nations." <http://www.africa-union.org/>.
- ¹⁵ Pliez, O. *ibid.*
- ¹⁶ Pliez, O. "La troisième migratoire, les conséquences de la politique européenne de lutte contre les migrations clandestines," paper written for Asia-Europe Foundation workshop *The Management of Humanitarian Aids and of Transnational Movements of Persons in the Euro-Mediterranean Area and in South-East Asia*, 2005.
- ¹⁷ The exact percentage is 48,1. Quoted in the 2005 report by Corte dei Conti available at <http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Controllo-/Documenti/Sezione-ce1/Anno-2005/Adunanza-c/allegati-d3/Relazione.doc>. (consulted on 12 September 2005)
- ¹⁸ Asylum levels in Italy are in fact among the lowest in Europe and in 2004 reported a fall of 26 percent, which is 5 percent above the average drop in EU asylum levels. These numbers are extrapolated from the UNHCR's 2005 report on *Asylum levels and Trends in Industrialized Countries 2004. Overview of Asylum Applications lodged in Europe and non-European industrialized countries in 2004*. Population data unit/PGDS: UNHCR Geneva. <http://www.unhcr.ch/statistics>.
- ¹⁹ This calculation does not take into consideration that out of 9,019 requests for asylum filed in 2004, only 781 were approved, i.e. the hypothetical increase calculated above concerns only requests for asylum rather than the allocation of actual asylum status.
- ²⁰ See for example Helton, A. and P. Birchenough (Kilpadi), "Forced Migration in Europe." *Fletcher Forum of World Affairs*, Vol. 20(2), Summer/Fall 1996, pp.89–100.
- ²¹ Anderson, B. and J. O'Connell Davidson, *Needs and Desires: Is there a Demand for "Trafficked" Persons?*, Geneva, IOM, 2003.
- ²² See for example research on trafficking in women in Europe including Andrijasevic, R. "La traite des femmes d'Europe de l'Est en Italie" *Revue européenne des migrations internationales*, Vol. 21(1), 2005, pp.155–175.
- ²³ Salt, J. and J. Stein, "Migration as a Business: The Case of Trafficking." *International Migration*, 35(4), 1997, pp.467–491.
- ²⁴ According to the European Court of Human Rights, collective expulsions are defined as "any measure by which foreigners are forced, due to their membership of a group, to leave a country, apart from cases in which this measure is adopted following and based on a reasonable and objective assessment of the specific situation of each of the individuals composing the group."
- ²⁵ The data provided by the Italian authorities specify that 1,153 migrants were returned to Libya between 29th September and 8th October 2004 and another 494 between 13th and 21st of March 2005 (EP/LIBE PV/581203EN, p.2). Italian authorities provide no data for later expulsions. The numbers reported here come from NGO sources.
- ²⁶ Human Rights Watch, World Report. Events of 2005, p.373.
- ²⁷ Amnesty International's report quotes testimonies of hundreds of Burkinabé nationals as well as several Eritrean and Nigerian migrants who were expelled from Libya to their country of origin after their documents and possessions were confiscated. They testified to having been detained in inhumane

conditions without adequate water, food or medical care. Amnesty International, *Libya: time to make human rights a reality*, 2004, AI INDEX MDE 19/002/2004.

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

²⁹ In particular with regard to Italy's obligation under articles 5 (information), 6 (documentation), 7 (residence and freedom of movement), 13 and 15 (material reception and health care) of the directive 2003/9/EC laying down minimum standards for reception conditions for asylum seekers.

³⁰ Amnesty International, "Immigration Cooperation with Libya: the Human rights perspective. AI briefing ahead of the JHA Council 14 April 2005." http://www.amnesty-eu.org/static/documents/2005/JHA_Libya_april12.pdf.

³¹ For a description of these expulsions and itineraries across the desert, see F. Gatti, *ibid.*, 2005b.

³² Requested on several occasions, the Italian authorities thus far not presented the list of expulsion orders from the Lampedusa CPTA. During their visit to the CPTA, the LIBE committee could not view the records of arrivals and departures since, the Italian authorities claim, they are not held at the center but at the offices of the Agrigento (Sicily) police.

³³ The International Organization for Migration (IOM), commonly mistaken for a branch of the United Nations or an humanitarian organization, has recently come under attack by NGOs including Amnesty International and Human Rights Watch for managing detention centers, running return programs for irregular migrants and asylum seekers, and implementing EU border-regimes. For a study of IOM's activities in Eastern Europe in the field of migration see my IPF research at <http://www.policy.hu/andrijasevic/>.

³⁴ The video entitled *Lampedusa Scoppia* can be downloaded at <http://www.ngvision.org/mediabase/487>.

³⁵ When Blue Panorama discontinued its operation of the deportation flights, the private Croatian company Air Adriatic (AA) took over the business. For a press briefing on activists' protests against Blue Panorama see <http://www.meltingpot.org/articolo5133.html>.

³⁶ The complaint and the accompanying dossier is available at <http://www.gisti.org/doc/actions/2005/italie/complaint20-01-2005.pdf>.

³⁷ An overview of Amnesty International's documents and reports is available at <http://www.amnesty-eu.org/>.

³⁸ P6_TA(2005)0138.

³⁹ This data was collected by ARCI (Associazione Ricreativa e Culturale Italiana), the Italian NGO that is the signatory of the complaint with the EC against Italy's collective expulsions, and presented to MEPs during their September mission. Since no official data exist so far, the ARCI dossier is a unique source of information regarding the numbers of migrants arriving via sea, those removed to other camps or to Libya, and the descriptions of police practices toward migrants. The data was gathered during a permanent monitoring exercise conducted by ARCI in Lampedusa during the months of June, July and August 2005. See <http://www.tesseramento.it/immigrazione/documenti/index.ph>.

⁴⁰ ANAFE – Association nationale d'assistance aux frontières pour les étrangers (France), Asociación 'Andalucía Acoge' (Spain), APDHA – Asociación Pro Derechos Humanos de Andalucía (Spain), ARCI – Associazione Ricreativa e Cultura Italiana (Italy), Asociación 'Sevilla Acoge' (Spain), ASGI – Associazione per gli Studi Giuridici sull'Immigrazione (Italy), Cimade (France), Federación des Asociaciones SOS Racismo del Estado Español (Spain), Gisti – Groupe d'information et de soutien des immigrés (France), and ICS – Consorzio italiano solidarietà. See footnote 14.

⁴¹ Given the short amount of time that elapsed between the arrival of the migrants and their deportation (at times as little as 24 hours), NGOs claim that it is unlikely that the CPTA authorities examined individually the cases of 1,000 people. Furthermore, they have been deprived of the right to file an appeal due to the decision by the Italian government to remove them.

⁴² Conditions of detention fall under the definition of "inhumane and degrading treatment."

⁴³ “Common Principles on the removal of irregular migrants and rejected asylum seekers,” August 2005 by Amnesty International, EU Office; Caritas Europa; Churches’ Commission for Migrants on Europe (CCME); European Council for Refugees and Exiles (ECRE); Human Rights Watch Jesuit Refugee Service–Europe (JRS); Platform for International Cooperation on Undocumented Migrants (PICUM); Quaker Council for European Affairs; Save the Children; Cimade (France); Iglesia Evangelica Espanola; Federazione delle Chiese Evangeliche in Italia (FCEI); and SENSOA (Belgium). The NGOs put these principles forward when the Commission Director General for Justice and Home Affairs visited Libya on June 22, 2005 in an attempt to launch cooperation on countering illegal immigration. The Commission nevertheless went ahead and drafted the EU return directive.

⁴⁴ These core principles are also to be applied in so-called transit, border and airport zones in the EU. They are: voluntary return should always be the priority; vulnerable persons should be protected against removal (children, seriously ill people, victims of trafficking and pregnant women); persons subject to a removal order should always have access to effective remedies; detention for the purpose of removal should be the last resort; the family unit should be strictly respected; independent monitoring and control bodies should be created; the use of force should comply with Council of Europe recommendations; re-entry bans should be prohibited; and a legal status should be granted to persons who cannot be removed.

⁴⁵ The *non-refoulement* principle has been reaffirmed by the EU as the cornerstone of refugee protection. It prohibits the forcible return of anyone to a territory where they would be at risk of serious human rights violations: “No contracting state shall expel or return (*refouler*), a refugee in any manner to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.” This principle makes reference to the lack of individual assessments and to the removal of persons to countries where there exists a serious risk to the physical integrity of those concerned (mentioned in article 19§2 of the European Charter).

⁴⁶ Libya lacks the minimum guarantees of refugee protection. Therefore, returning asylum seekers to Libya is in contravention with article II-19-2 of the European Charter of Fundamental Rights, according to which “No one may be removed, expelled or extradited to a State where there is a serious risk that they may be subjected to the death penalty, torture or inhuman or degrading treatment.” Italy’s obligation to *non-refouleur* to a country lacking minimum guarantees of protection is reinforced by the fact that Italy is a party to the 1951 Refugee Convention, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴⁷ See footnote 31.

⁴⁸ EP/LIBE PV/581203EN.

⁴⁹ The response by Alessandro Pansa, Director General of the immigration and border police of the Italian Ministry of Interior, delivered to the UN Human Rights Committee during its 85th Session on the 20th October 2005. Notes taken by Claire Rodier, GISTI. <http://www.migreurop.org/article909.html>.

⁵⁰ Since July 2000, Italy and Tunisia have been running joint ‘control activities’ off the Tunisian coastline. Italian police provide the training courses for Tunisian border guards. However, the Tunisian government rejected Italian funding for the establishment of detention centers, fearing Italian interference in Tunisia’s internal affairs. Cuttitta, P. ‘Delocalization of migration controls to North Africa,’ paper presented at the workshop *The Europeanisation of National Immigration Policies—Varying Developments across Nations and Policy Areas*, European Academy, 1–3 September 2005, Berlin.

⁵¹ While neither Italy nor the IOM have disclosed the content of the project, reports from NGOs and individual experts about the deportation from Lampedusa to Libya acquired nearly weekly regularity after the signing of the IOM-Libyan agreement, suggesting that the pilot project is a repatriation project or a so-called Assisted Voluntary Return (AVR) Program. This information was gathered by the author in Lampedusa during the Asia-Europe Foundation workshop *The Management of Humanitarian Aids and of Transnational Movements of Persons in the Euro-Mediterranean Area and in South-East Asia*, 28–30 August 2005, Lampedusa.

- ⁵² The cooperation between IOM and the Libyan Government was developed within the framework of the 5+5 Regional Dialogue on Migration. The 5+5 Dialogue is an informal forum on migration that brings together the Maghreb countries (Algeria, Libya, Mauritania, Morocco and Tunisia) and the countries of the 'arc Latin' (France, Italy, Malta, Portugal and Spain) to promote the prevention of irregular migration and trafficking in countries of origin, transit and destination. As a partner in the 5+5 Dialogue, IOM organized in cooperation with Libya's People's Committee for Public Security a training session for 100 Libyan officials and police representatives prior to the regional seminar on irregular migration in the western Mediterranean in Tripoli on 8 and 9 June 2004. The focus of the session was on border and migration management and on assisted voluntary return for irregular migrants in Libya. IOM, *Dialogue 5+5. Newsletter*, No. 1 issue, 2004.
- ⁵³ EC, *ibid.*, p.15.
- ⁵⁴ The majority of Italy's regions support the closure of the holding centers. In summer 2005, fourteen Provincial Governors and their representatives met at the forum *Mare Aperto* in Bari and drafted a document in which they commit to launching a political-institutional dialogue geared towards changing current Italian immigration law, closing the CPTAs, creating a comprehensive law on asylum, and doing away with administrative detention. The final document is available at <http://www.meltingpot.org/articolo5676.html>.

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Policy Perspectives: Islam and Tolerance in Wider Europe offers a refreshing new look at the complex interplay between religion, nationalism and expansionism in an increasingly globalized world, as revealed by a new generation of open society leaders working to build a more tolerant Europe. The authors are fellows and colleagues of the International Policy Fellowships program—an initiative of the Open Society Institute that has attempted to combat 'brain drain' while developing policy research capacities, initially in emerging democracies of the former Soviet sphere where concepts such as 'policy' and 'fellowship' were virtually untranslatable. Since its establishment in the late 1990s, some 250 of its fellows have grown into a network of open society leaders spanning more than 40 countries on nearly every continent.

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