

Towards a Bilateral Agreement

The European Council held an informal summit on February 3rd to discuss further measures on curbing the flow of migrants across the Central Mediterranean route. Before the Valetta summit, a wake-up call came from Joseph Muscat, Maltese PM, who underlined the urgency: *“Come next Spring, Europe will face a heavy influx of migrants through the Central Mediterranean (...) I see no way in which one single Member State can manage or absorb this further wave. Thus, the essence of the core principles of the European Union will be seriously tested unless we act now”*

Just before the summit, Italy and Libya signed a bilateral agreement in Rome (The Memorandum of Understanding) that aims to buttress the efforts of the Libya coast guard to curb the rise of irregular migration.

“The strategic objective is to help (African countries) control their external borders and to stop departures,” Angelino Alfano, Italian FM, said while declaring a new fund of €200 m to the Libyan National Government of Accord, with the intention of combating human-trafficking networks and establishing safe zones for refugees. *“African countries can request training and equipment to beef up border controls, with Libya, Tunisia, and Niger the three main partners for now,”* Alfano added.

It was first and foremost necessary to reinforce the UN-backed Libyan Government in order to embolden Libyan Coast Guard missions. There is overwhelming evidence that attempts in this regard may fizzle out when they exclude local communities. The EU is planning to grant maritime operations for local authorities which seemingly involves

the forcing of boats to return.

"We know that the Libyan government faces challenges but that's not a good reason not to engage," said Libyan PM Fayyez al-Sarraj.

At least for now, European efforts will only cover training and equipping the Libyan Coast Guard so as to increase search and rescue operations. To improve the situation, Member States will deliver economic assistance to local communities.

Nevertheless, as we have reported before, Maltese PM Muscat has proposed a Turkish-style deal with Libya on the readmission of migrants. Just a week later, the High Representative/Vice-President Federica Mogherini touched on this demand at a press conference. *"The two situations are completely different. The two main countries are completely different, the composition of the flow is completely different and the set of measures is completely different. So there is no comparison that can be done. The two things are completely distinct, one from the other."*

The Memorandum of Understanding, signed by Italian and Libyan authorities does not contain a readmission agreement like the Joint-Action Plan between Greece and Turkey. However, the Maltese PM asserts that a replication of this deal would be of utmost usefulness for the EU to stem the tide of irregular migration in the Central Mediterranean route. *"I will not abandon my aim, and I think that the replication of the Turkey agreement with North African countries, breaking the business model of the smugglers, should remain a firm goal of any realistic and*

sustainable migration policy," said Joseph Muscat in an interview two days ago.

The two organizations that have a significant role in the plan, UNHCR and IOM, underlined the insecurity in Libya in their joint statement: *"We believe that, given the current context, it is not appropriate to consider Libya a safe third country nor to establish extraterritorial processing of asylum seekers in North Africa."*

The completion of the controversial Maltese proposal will become clearer over time. If a readmission agreement similar to the Turkish case is reached, the way in which it is implemented is a point of curiosity due to the fundamental differences between the two contexts.

The Turkish Deal and Safe-Third Country Concept

In its 17 October 2015 Background Document, the European Stability Initiative begun its argument for lawfully restoring control in the Aegean by stating *"For a resolution of the Syrian refugee crisis in the Aegean, ESI proposes that Greece declares Turkey a 'safe third country'; that Turkey agrees to take back new migrants reaching Greece from its territory from a certain agreed date..."* This document would later become the basis of the Merkel-Samson Plan brokering a deal between the European Union and Turkey for the one-to-one readmission of Syrian refugees and migrants under temporary protection (the status of Syrian migrants in Turkey). An in-depth observation of the Merkel-Samson plan raises questions pertaining to the

machinations of EU refugee law. Along with the principle of “the first country of asylum,” the principle of “safe third country” is central to the Dublin Regulation. Ideally, the Dublin Regulation applies to Norway, Switzerland and EU Member States; however, for readmission between Turkey and the EU to suit a legal framework Turkey needed to be declared a safe third country (a country outside of the EU in which similar standards are met).

Having said this, it becomes imperative to clearly define what a safe third country is. In a Statewatch report, it is described as follows: *A ‘safe third country’ is a state through which a person fleeing from his or her country of origin has passed and where he or she could have found protection but has not done so. If this person applies for asylum in another state, the latter might consider his or her claim inadmissible and could decide to return the applicant to the ‘safe third country’ he or she had previously passed through. Therefore, the ‘safe third country’ concept implies that asylum seekers should claim asylum in the first ‘safe country’ they are able to reach.* Simply put, a safe third country must have an adept legal structure that is capable of covering all aspects of an asylum regime. As persons fleeing war or persecution with the inability to return home safely, refugees should be granted the minimum assurance of the right to live. The safe third country principal assists the EU in legally granting this assurance.

Libya, not a Safe Partner: Aid Groups Warned

Following the overthrow of former leader Muammar Gaddafi in 2011, the oil-rich North African country has

lacked political stability and has been beset by numerous local factions, allowing for human smuggling hubs to operate a ruthless and profitable trade with impunity. The Tripoli-based government that the EU intends to work with controls just a section of the sprawling country. Along with such insecurity, the proximity to European countries has made Libya a center for human smuggling.

There are also several concerns about the capacity and competence of Libyan authorities that are now expected to cooperate with European rescue missions. For instance, on 26 August 2016, gunmen attacked a charity-funded boat rescuing refugees, shooting at aid workers before boarding the vessel. In October 2016, German charity Sea-Watch announced that more than 20 migrants were feared to have died after armed men attacked an overcrowded dinghy during a rescue operation. While the operation continued, a vessel with the insignia of the Libyan Coast Guard approached and attempted to detach the motor. Moreover, a senior Libyan coast guard commander is closely linked to the human-trafficking business.

Additionally, there are significant concerns about the condition of Libyan detention centers. Migrants, including unaccompanied children in Libya, face the risk of being detained arbitrarily and indefinitely in the overpopulated detention centers administered by the state and militias. Many reports that they have been beaten, whipped, and tortured and mistreated in various forms. Health and hygiene conditions are also terrible in these overcrowded centers. *“Europe shouldn’t even think about migration cooperation arrangements with Libya if it results, directly or indirectly, in such shocking human rights violations,”* said Amnesty International Middle East and North Africa Deputy

Director Magdalena Mughrabi.

A possible readmission deal would mean returning people to the subpar conditions that they flee, as experts warn.

"Limiting departures from the Libyan coast simply means accepting and legitimizing the human suffering prevailing in Libya and pushing people back to conditions where migrants suffer arbitrary detention, torture, ill-treatment, unlawful killings, trafficking and enforced disappearance" reported UN Human Rights on Feb 3rd. *"Migrants in Libya are exploited as free labor and vulnerable to other forms of contemporary slavery; migrant women are at risk of rape and other sexual violence."* The Office also warned about the conditions of the detention centers that are *"severely overcrowded, without access to toilets or washing facilities, ventilation, food or clean water and they have no access to a legal process, lawyers or judicial authorities."*

A UNHCR Press Release iterated the same point: *"We believe that, given the current context, it is not appropriate to consider Libya a safe third country nor to establish extraterritorial processing of asylum-seekers in North Africa."* Aid groups are highly concerned about the capacity of Libyan authorities to secure centers that refugees can be gathered in after their asylum applications become inadmissible. *"Libya is not a safe place and blocking people in the country or returning them to Libya makes a mockery of the EU's so-called fundamental values of human dignity and rule of law,"* declared Doctors Without Borders (MSF in French).

Conclusions & Recommendations

Accepting Libya as a safe-third country, thereby pushing refugees back will definitely violate, as defined in international law, the principle of non-refoulement as *no one shall expel or return ("refouler") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to their life or freedom*. It is almost impossible to clearly differentiate between refugees and other immigrants (i.e. economic migrants). While the majority of those using the central Mediterranean route are asylum seekers, there is also a sizable portion of migrants using it to reach better economic opportunities in the EU. Moreover, if Greece, an EU member, does not have the proper infrastructure to adequately carry out asylum procedures, it is unrealistic to expect a country as fragmented as Libya to be able to do so in such a limited period.

Alternatively, Bosphorus Migration Studies proposes less breaching and more effective measures. Primarily, EU Member States should embrace the policy of resettlement and relocation under the Dublin Regulation. The lack of sharing burdens pushes Germany to take the aforementioned problematic measures which violate international law, namely the principle of non-refoulement. Additionally, current Frontex operations need to be reshaped to prioritize the lives of asylum seekers. This can be achieved through an expansion of Frontex's budget. Also, Frontex can be bolstered through constructive partnerships with more stable Northern African countries like Tunisia and Egypt.

Finally, member states should expedite the EU Trust Fund

to Africa which aims to provide better economic and social conditions. As a result, fewer people will endanger their lives in the Mediterranean. The precautionary measures mentioned above presents a more effective plan, compared to the latest proposal which threatens fundamental European values.