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Regional Responses to Forced Migration: The Case of Libya

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Mission statement

The Migration Policy Centre at the European University Institute, Florence, conducts advanced research on global migration to serve migration governance needs at European level, from developing, implementing and monitoring migration-related policies to assessing their impact on the wider economy and society.

Rationale

Migration represents both an opportunity and a challenge. While well-managed migration may foster progress and welfare in origin- as well as destination countries, its mismanagement may put social cohesion, security and national sovereignty at risk. Sound policy-making on migration and related matters must be based on knowledge, but the construction of knowledge must in turn address policy priorities. Because migration is rapidly evolving, knowledge thereof needs to be constantly updated. Given that migration links each individual country with the rest of the world, its study requires innovative cooperation between scholars around the world.

The MPC conducts field as well as archival research, both of which are scientifically robust and policy-relevant, not only at European level, but also globally, targeting policy-makers as well as politicians. This research provides tools for addressing migration challenges, by: 1) producing policy-oriented research on aspects of migration, asylum and mobility in Europe and in countries located along migration routes to Europe, that are regarded as priorities; 2) bridging research with action by providing policy-makers and other stakeholders with results required by evidence-based policy-making, as well as necessary methodologies that address migration governance needs; 3) pooling scholars, experts, policy makers, and influential thinkers in order to identify problems, research their causes and consequences, and devise policy solutions.

The MPC's research includes a core programme and several projects, most of them co-financed by the European Union.

Results of the above activities are made available for public consultation through the website of the project: www.migrationpolicycentre.eu

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Introduction

The 2011 Libyan civil war, part of the wider Arab Spring, triggered considerable population displacements. These displacements included both Libyans and third-country nationals fleeing the country by land, air and sea. Data available for spring/summer 2011 shows that an estimated 1,128,985 people left Libya to seek shelter in Tunisia, Egypt, Niger, Algeria, Chad and Sudan as well as in Malta and Italy. Research has, thus far, mainly focused on the response of the international community (UNHCR and IOM, above all), the European Union and individual countries in dealing with large numbers of displaced persons (Kelly and Wadud 2012, Fargues and Fandrich 2012, Tucci 2012, Forced Migration Review 2012). Less attention has been given to those regional entities of which Libya has been a member. These include: the African Union (AU), the League of Arab States (LAS), the Community of Sahel Saharan States (CEN-SAD), the Arab Maghreb Union (AMU), the Common Market for Eastern and Southern Africa (COMESA) and the Organization for the Islamic Conference (OIC). The aim of this paper is, therefore, to shed light on the (actual and potential) role of these regional organizations in alleviating those fleeing from Libya.

The paper will be divided into five sections: First, it will outline the different movements and categories of refugees/migrants affected by the conflict. Second, it will briefly discuss the protection gaps of the international refugee regime (in particular the 1951 Convention) that became visible during the crisis. In the third part, different regional frameworks will be analyzed in order to find out whether: a) there are any regional migration or refugee instruments in place; and b) whether concrete action has been taken at the regional level. To complete the picture, the fourth section will look, instead, at those countries surrounding Libya and describe their reaction to the recent mass displacements by looking into their relations with Libya prior to the crisis. The last section will summarize the findings and frame key questions for future research.

The paper is mainly based on desk research including an analysis of legal texts (treaties, free movement or migration protocols, refugee conventions etc), policy documents, annual reports and strategy papers. Working papers, policy briefs, research reports, blogs and online media were also used as secondary sources.

The Libya crisis in context: Movements and categories of refugees/migrants

The Libya crisis, beginning in February 2011, culminated in the collapse of the Gaddafi regime, a regime which had ruled the country for 42 years. After a series of public demonstrations erupted against Muammar Gaddafi in Tripoli, protests quickly spread across the country, reaching the city of Benghazi, which became the opposition's stronghold and base for the National Transitional Council. The responses of the international community followed in March 2011 with a NATO intervention and a no fly zone (NFZ). It took, though, another five months before Gaddafi was ousted and Tripoli was captured by the opposition.

Since the beginning of the uprisings, the Libya crisis has forced thousands of people to flee the country by land, air or sea to seek for safer haven. According to IOM data, by 7 October 2011 around 721,772 non-Libyan nationals had fled the country (IOM, 2011b). A breakdown in table 1 shows that 229,514 of these crossed the border to Egypt, 313,414 to Tunisia, 82,935 to Niger, 13,962 to Algeria, 51,682 to Chad, and 2,800 to Sudan. The estimated number of those fleeing from Libya to Malta and Italy stood at about 27,465.

Libyan nationals also crossed the borders in large numbers, but according to IOM information they were, for the most part, short-term circular migrants, *inter alia*, buying goods or bringing their family to safe places. By the end of August 2011, only 4,500 of the 247,167 Libyans who had crossed the Egyptian border were reported to have stayed in the country for a longer period of time (IOM, 2012).

Of the 626,010 Libyans who had gone to Tunisia the great majority has apparently returned to Libya (Ibid.). Yet, one should not forget that a considerable number of Libyan nationals (UNHCR estimates are of 200,000 persons) were internally displaced within the country.

Only around one percent of those leaving Libya actually came to Europe. This is in sharp contrast to the feared “biblical exodus” and claims that 1.5 million migrants would invade Europe from Libya (de Haas, 2011). According to the IOM, 16 May, 10,946 arrivals from Libya were counted in Italy and 1,106 for Malta (IOM, 2011a). Other reported figures of people arriving on the southern shores of Europe are often higher, because North African migrants are counted in general and not only those arriving from Libya. Taking into account arrivals from Tunisia, the total number of new arrivals in Italy between mid-January and mid-May 2011 amounted to 34,460 people, among them 23,230 Tunisians and 11,230 other nationalities including Nigerians, Eritreans, Ivoirians, Somalis and Ghanaians (IOM, 2011a). However, only a small proportion of all the people crossing the Mediterranean in search of greener pastures have been refugees (Guterres, 2011).

The most immediate impact of this human displacement has been on neighbouring countries, primarily Egypt and Tunisia, which clearly bore the brunt of the refugee crisis as illustrated by the numbers above. Tunisia, for instance, opened its borders to all new arrivals, while Egypt only introduced visa-requirements for Libyans at a later point (7 May 2011), while allowing refugees and asylum-registered Libyan or third-country nationals to enter the country without any restriction. The most pressing issues were people’s basic needs (e.g. accommodation, food, clothing, and medical services) and durable solutions with regard to resettlement and repatriation. This has been particularly challenging since people leaving Libya had such very different profiles, including among others: (1) Third-country Nationals (TCNs), who resided in Libya, wishing to return to their countries of origin; (2) Libyan nationals fleeing persecution and violence; (3) Refugees or asylum seekers from third countries who have resided in and/or transited through Libya; (4) Individuals ineligible for international refugee protection; and (5) Individuals with specific needs e.g. women at risk, unaccompanied/separated children or trafficked persons (UNHCR, 2011). In addition, the situation in Libya has been particularly dangerous for Sub-Saharan migrant workers facing the risk of violent attacks because they were suspected of being mercenaries in Gaddafi’s pay.¹ While the existence of “black African mercenaries” remains subject to speculation, several violent outbursts against migrant workers from Eritrea, Somalia, Ethiopia or Sudan have been reported.²

It is also worth noting that the number of sub-Saharan migrants leaving Libya has been much smaller than the number of North African or South Asian migrants. This suggests that these migrants may be involuntarily stuck in the country and that it may be difficult to help them (Bonfiglio, 2011). Apparently this was the case with the Palestinians and the Sahrawians, who were not allowed to enter Egypt, Tunisia or former host countries because of a lack of recognized travel documents.

International responses and protection gaps

Those international organizations mainly responsible for providing support to the countries affected by the recent displacements (including Libya) were UNHCR and, to a lesser extent, the IOM.³ UNHCR is mandated to lead and coordinate international action for the protection of refugees and to supervise the

¹ Al Jazeera, 28 February 2011, at <http://english.aljazeera.net/news/africa/2011/02/201122865814378541.html>.

² See Hein de Haas’ blog from 21 February 2011 at <http://heindehaas.blogspot.com/2011/02/gaddafi-regime-fuels-racist-violence-in.html>.

³ The IOM has mainly been involved with evacuating third-country nationals from Libya and neighbouring countries (mainly Egypt, Tunisia and Niger). In joint cooperation, the IOM and UNHCR have also launched a so-called Humanitarian Evacuation Cell (HEC) to help decongest the Tunisian border with Libya. More information on IOM’s involvement in Libya can be found at: <http://www.migration-crisis.com/libya/main>.

application of the 1951 Refugees Convention and its 1967 Protocol.⁴ The 1951 Refugees Convention spells out who is considered a refugee and defines refugees' rights and obligations, as well as categories of people who do not qualify for refugee status. The most important provisions include the right to flee persecution, to seek and enjoy asylum and the *principle of non-refoulement*, i.e. countries are prohibited from returning refugees or asylum seekers to territories where their lives or freedoms are still threatened.⁵

At the time of writing, the Convention has 145 state parties around the world, including all 27 EU Member States, as well as those states surrounding Libya, excluding, however, Libya itself.⁶ Since the 1951 Refugees Convention contains a rather narrow definition of a refugee, UNHCR itself refers primarily to the 1969 OAU Refugee Convention as a legal basis for granting international protection to people fleeing Libya (UNHCR, 2011:2). However, UNHCR notes that a number of Libyan nationals may also fall under the 1951 Refugees Convention or other forms of subsidiary protection.

One of the major challenges is that most of those fleeing the conflict in Libya are technically not covered by the 1951 Refugees Convention. Libyan nationals might face difficulties in proving that they are at risk because of one of the five reasons (race, religion, nationality, membership in social group or political opinion) stated in the Refugees Convention. Furthermore, migrant workers from third countries are unable to claim protection under this instrument because the Refugees Convention is confined to "persons with a well-founded fear of persecution *only* in relation to their country of nationality" (Wood, 2012: 8, emphasis added).

The only international convention specifically targeting migrant workers, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, has two main pitfalls: first, it has not been ratified by any major destination country;⁷ second, and equally important, it provides rights for migrant workers only in the country of residence and does not address the issue of displacement (Wood, 2012: 9).

In addition to the specific conventions described above, broader international human rights law also provides protection from being returned to a situation where one's life would be at risk. But even though the principle of *non-refoulement* is recognized as customary (international) law, it is violated in all countries including in European Union Member States (Tucci, 2012).

We will, therefore, now turn to the regional level and try to assess whether regional or sub-regional instruments offer an alternative source of protection.

Regional responses

European Union

The EU's response to Libyan refugees (or absence thereof) needs to be seen in a broader context of increased migration flows triggered by the "Arab Spring" in North Africa, in particular from Tunisia to Italy and Malta. The initial arrival of around 6,000 "boat people" from Tunisia on the Italian island

⁴ Since the 1951 Refugees Convention was originally confined to Europe as a result of WWII, it was broadened by the 1967 Protocol making it universal in scope. The 1967 Protocol relating to the Status of Refugees is an independent legal document, though closely related to the 1951 Convention. The Protocol basically lifts the time and geographical limits of the 1951 Convention. For more information see UNHCR, Refugee Protection: A Guide to International Refugee Law.

⁵ Other rights include, among other things, access to national courts, free movement, right to seek employment and access to education, as well as social, economic and civil rights comparable to those of nationals in host countries.

⁶ For a detailed list of current states parties to the 1951 Convention and the 1967 Protocol see <http://www.unhcr.org/pages/49da0e466.html>

⁷ For a comprehensive analysis see Cholewinski, de Guchteneire and Pecoud (2009).

of Lampedusa in February 2011 generated two major EU reactions: First, a joint Frontex Operation called Hermes was launched 20 February to strengthen sea patrols and prevent illegal landings on the coast. Second, the possibility of financial assistance through the European Border Fund (EBF) was discussed at the EU level.

Given that migrants from Tunisia and other African countries continued to arrive, Italy decided unilaterally to issue temporary residence permits to Tunisian migrants, which according to the Italian authorities would allow them to travel freely in the Schengen area (Pascouau, 2011). As a consequence, in April 2011, France reintroduced internal border controls to prevent the entry of North African migrants arriving from Italy.⁸ This “Italian-French affair” caused a diplomatic row between the two countries and triggered discussions on the modification of the Schengen rules both at the EU and national level.

With regard to those fleeing from Libya, the situation was slightly different because Libyans and third-country nationals arriving from Libya were considered (at least potential) refugees seeking international protection; while most of the migrants coming from Tunisia were regarded as “economic migrants”, who could be send back to their countries. In this situation, both Italy and Malta tried to invoke the EU Directive on Temporary Protection (2001), which aims to harmonize temporary protection for displaced persons in cases of mass influx on the basis of solidarity between member states.⁹ Italian foreign minister, Franco Frattini, criticized the EU heavily for not assisting Italy, save with financial aid, and stated that in addition to funds it was necessary to: “invoke a European law clearly establishing the adoption of an extraordinary plan with any sudden influx of refugees toward one or more Member States, which includes the distribution of the refugees among Members within the temporary timeframe necessary to repatriate those who are not refugees, as in the case of the Tunisians, who are simply economic immigrants”.¹⁰ Maltese MEP Simon Busuttil argued along similar lines. He called upon the Commission “to activate the Solidarity Mechanism envisaged in EU law in cases of mass influx of displaced persons”(Ibid). The request was, however, turned down by member states and the European Commission on grounds that the situation did not really meet the criteria as laid down in the directive.¹¹

Instead, the European Commission offered financial and logistical assistance to evacuate and to repatriate third-country nationals to Libya and neighbouring countries, supporting the work of UNHCR and the IOM.¹² In addition, it allocated around 25 million Euros for 2011 under the External Borders Fund (EBF) and the European Refugee Fund (ERF).¹³ Another potential field of common action would

⁸ For a detailed discussion of the legality and compatibility of the Italian and French measures with EU legislation see Sergio Carrera et al. (2011), A Race against Solidarity. The Schengen Regime and the Franco-Italian Affair, CEPS Paper in Liberty and Security, April 2011.

⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

¹⁰ Frattini criticized EU for failure to assist Italy; Frattini and MEPs call for Implementation of Temporary Protection Directive and Mandatory Burden Sharing, Migrants at sea-blog at <http://migrantsatsea.wordpress.com/> 30 March 2011.

¹¹ According to a Commission official, the inflows of refugees to both Malta and Italy were not considered a “massive influx” since the numbers of potential refugees were relatively small. See also article by Timothy J Hatton, who indicates that the “request was turned down by other countries and the European Commission as premature”, see “Refugees from North Africa: A case for cooperation?”, VoxEU.org, 2 May 2011.

¹² According to a Commission Communication it has allocated 40 million Euro to evacuate and repatriate third-country nationals and provide assistance to those in need in Libya and neighbouring countries. See COM (2011) 292/3 Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions, A dialogue for migration, mobility and security with the southern Mediterranean countries.

¹³ These additional funds are available on the basis of concrete requests by Member States. See COM(2011) 292/3.

have been coordinated relocation and resettlement of refugees. EU Member States did support Malta in offering several hundred relocation places (Garlick and Van Selm, 2012: 21). The willingness to resettle refugees from North Africa was, however, much weaker since only 600 persons were collectively accepted by EU Member States as compared to 500 by Norway and 700 by the US (Ibid.).

The relatively weak response of the EU to migration from Libya and the refugee crisis should, however, not conceal that there are mechanisms in place to deal with such cases. First, since informal cooperation on questions of asylum started in the 1980s, the EU has developed a range of legal instruments in this field with the ultimate goal of creating a Common European Asylum System (CEAS).¹⁴ The most visible instrument is the Dublin II regulation (a second version of the 1990 Dublin Convention). This instrument determines which member state is responsible for examining an asylum application based on a hierarchical list of criteria.¹⁵ The major goal behind this regulation is twofold: (1) ensuring access of asylum seekers to one single procedure (“one Member State, one procedure”); and (2) preventing “asylum shopping” i.e. multiple claims are detected through the EURODAC system and consequently examined only once. Despite general appraisal by the European Commission, the Dublin Regulation does, however, display certain weaknesses. These include the so-called “asylum lottery” (recognition rates in EU Member States vary considerably) or the implementation deficits, which arise once agreement is reached on which country is responsible.¹⁶

EU Member States have, furthermore, to guarantee minimum standards as laid down in four major legal instruments: the Reception Directive (Council Directive 2003/9/EC)¹⁷; the Procedures Directive (Council Directive 2005/85/EC)¹⁸; the Qualifications Directive (Council Directive 2004/83/EC)¹⁹; and the Return Directive (Directive 2008/115/EC)²⁰. No in-depth analysis of these legal instruments can be given here. However, it is important to note that the countries which have to examine asylum claims lodged by refugees coming from Libya (Libyans or third-country nationals fleeing from Libya) are bound to comply with the requirements laid down in different sources of EU asylum law. Whether Italy or Malta, which were the major receiving countries in this regard, are complying with these rules, needs to be carefully examined elsewhere.

Second, the above mentioned Temporary Protection Directive is a potential instrument to deal with a sudden and massive influx of refugees. This directive was developed in the context of human displacements caused by the former Yugoslavia wars between 1991 and 1995, but it has never been

¹⁴ For more information on the establishment of the CEAS see:
http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm.

¹⁵ Council Regulation (EC) No. 343/2003 of February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

¹⁶ According to Francesco Maiani, 12 per cent of all applications gave rise to transfer request, only 50 per cent of these are, however, implemented, i.e. agreement is reached on the country to examine the asylum claim, but transfer of the asylum seekers is not carried out in the end. Anecdotal evidence shows that asylum seekers try to avoid the transfer, which might be an indication that the Dublin Regulation does work with regard to avoiding multiple claims, but not with applying respective criteria. Presentation of Prof. Francesco Maiani during Odysseus Summer School on EU Immigration and Asylum Law, Brussels 13 July 2011.

¹⁷ Council Directive 2003/9/EC of 27 January 2003 deals mainly with issues of information, documentation, freedom of movement, healthcare, accommodation, schooling of minors, access to the labour market and to vocational training. For a critical view on the Council Directive 2003/9/EC see: UNHCR, ECRE, Odysseus Network.

¹⁸ Council Directive (2005/85/EC) of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status.

¹⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

²⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals.

used. As mentioned earlier, the Temporary Protection Directive was not invoked in the case of Libya as it was not considered to be a massive influx of refugees.

Finally, one possible form of coordinated action would come through the European Asylum Support Office (EASO). In the case of Libya this was, however, not (yet) an option, because EASO only became fully operational 19 June 2011. It remains to be seen to what extent this new European agency will work in such situations since it explicitly refers to “support Member States subject to particular pressure on the asylum and reception system”.²¹

Regional Responses in North Africa

While the African Union (AU) was clearly involved in the political solution of the Libyan crisis (Abass *et al.* 2011), information on joint-action towards the Libyan displacements is limited. It is, however, important to bear in mind that the AU is mandated to become active in this field and that most of its members have acceded to its regional refugee convention. In order to complement the geographical and temporal limits of the 1951 Geneva Convention, the then Organization of African Unity (OAU)²² adopted, in 1969, a regional Convention targeting the specific problems of refugees in Africa.²³ The OAU Convention emerged in the context of African decolonization and independence movements, which were followed by massive displacement of people. It was jointly drafted with UNHCR and the purpose was to complement the 1951 Geneva Convention by providing regional solutions to the problem (Kneebone and Rawlings-Sanaei, 2007:6). With regard to the term “refugee”, the OAU Convention follows the general definition of the 1951 Geneva Convention (Art.1(1)) but broadens the scope by including an additional paragraph:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. (OAU Convention 1969, Art. 1(2)).

This broadening in scope illustrates the circumstances in which the Convention was adopted, namely liberation from colonial rule and the massive migrant flows arising hereof. Today 45 Member States of the African Union have ratified or acceded to the OAU Convention Six Member States have signed but have not yet ratified (Djibouti, Madagascar, Mauritius, Namibia, Sao Tome & Principe and Somalia), and 2 Member States have neither signed, ratified or acceded to the Convention (Eritrea and S.A.D.R.).²⁴

The OAU Convention displays two major differences as compared to its 1951 counterpart: first, all countries in the North African region *including* Libya are signatories to the OAU Refugees Convention. Second, its refugee definition is broader and can consequently encompass human displacements caused by general violence and conflict. Nonetheless, it also displays certain weaknesses. According to Wood (2012) refugees recognized under the OAU Convention may be denied access to durable solutions, such as resettlement, since this is only available to refugees under

²¹ Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 18 May 2010 establishing a European Asylum Support Office, Sect. 2 Art. 8.

²² The Organization of African Unity (OAU) is the predecessor of the African Union (AU). It was established on 25 May 1963 in Addis Ababa, Ethiopia, and replaced by the AU in 2002. The text of the OAU Charter is available at: <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>.

²³ The 1951 Geneva Convention was basically complemented by two major regional Conventions: the Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 (“OAU Refugees Convention”) and the Cartagena Convention (1984) which covers Central America, Mexico and Panama.

²⁴ See detailed list on AU website (as of 10 December 2012) <http://www.au.int/en/treaties>

the 1951 Convention. Second, it is not entirely clear how third-country nationals should be treated under this legal instrument.

As a regional organization, the Organization of the Islamic Conference (OIC) was among the first to respond to the needs of displaced people from Libya. It produced, in fact, regular situation reports long before the international humanitarian community started to do so (Shaw-Hamilton, 2012). It launched different appeals to its member states to assist with the evacuation of displaced people fleeing from Libya into neighboring countries. On 1 March 2011, the Secretary General of the OIC, Prof. Ekmeleddin Ihsanoglu, called upon member states to assist the Tunisian government by providing transport means to return displaced people to their countries of origin²⁵ The OIC also organized a fact-finding mission to assess the humanitarian conditions in affected border areas with Egypt and Tunisia: this proved the basis for further appeals and action. In addition, the OIC coordinated concrete evacuation operations and has been involved in the distribution of relief items to people in refugee camps at the Tunisian Libyan border.²⁶

In contrast, CEN-SAD, AMU and COMESA have apparently not reacted in a coordinated fashion to refugee flows from Libya. Within the CEN SAD the principle of free movement remains largely a “paper” objective and travel between the Member States is regulated primarily by bilateral agreements (Brachet, 2010). There is no indication of a common position or action in the case of refugees coming from Libya, which might be not surprising given the fact that Gaddafi himself had been the driving force behind this regional organization. The Arab Maghreb Union (AMU) also remains a rather dormant organization, especially concerning the movement of people, which is regulated primarily through bilateral accords. COMESA has adopted concrete instruments on intra-regional migration, though they remain largely unimplemented. No regional instruments exist so far targeting refugees in particular and there have also been no signs of common action.

Responses of neighbouring countries

In order to complement the picture, we will now turn to the individual responses of those countries neighbouring Libya. While the reactions of Tunisia and Egypt have been well documented (IOM 2011a, 2011b, 2012), less attention has been given to Libya’s remaining neighbours. It is important to note that while Libya itself was temporarily following a pro-regional approach, it later gave priority to bilateral agreements and a case-to-case policy (Di Bartolomeo *et al.* 2011:8).

Chad

An estimated 51,000 Chadians and 800 third-country nationals crossed the border to Chad during the crisis (see table 1). According to the IOM (2012:15), the first people fleeing across Libya’s southern border were registered at the end of March 2011.

Chad has a unique country profile as it bridges sub-Saharan and North Africa and east and west Sahel. Relations between Chad’s president Idriss Déby and Muammar Gaddafi’s were strong and personal. This is evident in the substantial Libyan military support, economic investment and political brokering of peace deals between Déby and various rebel movements in Chad, as well as between Chad and Sudan.²⁷ While at the start of the insurgency president Déby offered his political backing to Gaddafi, only belatedly has he aligned with Libya’s National Transitional Council (NTC). The NTC

²⁵ OIC news item of 3 March 2011 at <http://www.oic-oci.org/home.asp>

²⁶ See news items of 4 April 2011 “OIC begins repatriating displaced people on Libyan borders to their countries” at <http://www.oic-oci.org/home.asp>

²⁷ Ketil Fred Hansen, “Chad’s relations with Libya, Sudan, France and the US”, 15 April 2011, Norwegian Peacebuilding Resource Centre.

claimed that Chadian fighters supported Gaddafi militarily and encouraged racist attacks against black Africans and refugees, accusations, which were vehemently rejected by Chad. The fact is that Chadian nationals in Libya have been frequently perceived and treated as mercenaries, though the overwhelming majority has been residing there for years for purely economic reasons.

Niger

There was close and strong cooperation between Niger and Gaddafi's Libya. Gaddafi channelled tens of millions of dollars in investment and aid toward Niger, building roads, mosques, including the capital's main mosque, as well as the new seat of Niger's national assembly. Gaddafi also allowed more than 100,000 Nigeriens to work in Libya and their remittances were vital for Niger's economy. After the fall of Gaddafi, Niger represented a favoured refuge for his loyalists. In September 2011 the Nigerian government officially acknowledged receiving 32 Gaddafi loyalists, including relatives and military generals, not least Saadi Gaddafi, son of the former Libyan leader, who has been granted asylum on humanitarian grounds. The Nigerian government still, today, refuses Saadi Gaddafi's bilateral extradition to Libya, claiming that he would not receive a fair trial.²⁸

Sudan

Official figures indicate that 2,800 migrants crossed the border between Libya and Sudan. More than 1,800 Sudanese were directly repatriated by airplanes, coming principally from Tunisia and a smaller group crossed from Chad to reach their homes (IOM, 2012:15).

Relations between Gaddafi and successive regimes in Khartoum have been marked by political tension. While in early years Gaddafi was a close friend of the then Sudanese president Jaafar Nimeiri, he later became an enemy and tried to assassinate Nimeiri more than once. The current Sudanese president, Omer al-Bashir continued the hostility of his predecessor. He recently acknowledged that Sudanese weapons were smuggled through Egypt and reached Gaddafi's opponents west of the Libyan capital Tripoli.²⁹ Moreover, he claimed that the harm done by Gaddafi and his regime to Sudan was more destructive than the harm from colonialism.

Many Sudanese nationals started to go to Libya in search of work as long as a decade ago. However, they were always vulnerable to the political climate of bilateral/regional relations. In September 1995, for example, in retaliation for the Palestine Liberation Organization making peace with Israel, Gaddafi's government ordered more than 200,000 Sudanese nationals, working at that time in Libya, to leave the country within three months. This type of *ad-hoc* requests was reiterated and implemented many times afterwards.³⁰

Algeria

From the beginning of the uprising, Algeria witnessed considerable movements at its border with Libya. According to IOM information, the composition of the migrants (in the beginning mainly Egyptians and Asians) changed after the first month to include more Libyans and sub-Saharan Africans. Out of 13,962 persons leaving Libya and crossing to Algeria, around 88 per cent were third-country nationals and 12 per cent were Algerians (IOM, 2012: 13). Relations between Gaddafi's Libya and Algeria were generally positive, despite numerous diplomatic tiffs over regional political

²⁸ *Washington Post*, July 3, 2012- Niger resists Libyan demands for extradition of Moammar Gaddafi's playboy son http://articles.washingtonpost.com/2012-07-03/world/35489060_1_gaddafi-loyalists-saif-al-islam-gaddafi-moammar-gaddafi

²⁹ James Copnall, "Sudan armed Libyan rebels, says President Bashir", BBC, 26 October 2011.

³⁰ Libya Expels Guest Workers in Migration News, October 1995, Volume 2, Number 10.

alliances. Algeria supported Gaddafi against the rebels and, until quite late, refused to recognize the authority of Libya's new governing authority: Algeria's president Abdelaziz Bouteflika watched with alarm as autocratic regimes fell across the region during the Arab Spring. Algeria did not give refuge to Gaddafi himself, while it welcomed as refugees some surviving members of the Gaddafi's family including his widow, Safiya Farkash, the mother of seven of Gaddafi's eight biological children, as well as his daughter Aisha and his sons Muhammad and Hannibal³¹. The reasons it gave for this was humanitarian reasons.

Conclusions

The displacements from Libya have illustrated both the shortcomings and opportunities of international, regional and sub-regional arrangements in addressing large-scale and diverse displacements. With regard to the international refugee regime, the 1951 Refugees Convention clearly falls short when it comes to situations of general violence and very diverse categories of migrants and (potential) refugees. As illustrated by academics and practitioners alike, most of the people fleeing from the conflict were not covered by the Convention, either because of difficulties in establishing a link between a displaced person and one of the five stated grounds of persecution, or because they were third-country nationals falling outside the scope of the Convention.

Regional and sub-regional instruments appear, therefore, suitable in addressing existing gaps and they complement the international/global framework. With regard to the European Union, the picture remains, however, mixed. The EU's response to the increased refugee flows from Libya consisted mainly in financial and logistical assistance to the most exposed countries (both EU Member States as well as those countries bordering Libya). They also enhanced border controls by joint Frontex operations. This reaction reveals at least three major weaknesses in the way the EU deals with people seeking protection. First, the existing legal framework is still incomplete and partly inefficient. There is currently no formula or mechanism to distribute protected persons within the EU ("burden sharing") or to jointly address the resettlement of refugees from third countries. Second, it shows the lack of political will in making use of existing instruments (e.g. Temporary Protection) and in acting in the spirit of the Treaty ("Solidarity"). Last but not least, the current situation also unveils a fundamental paradox of the EU, while dealing with people's movements, not least how to reconcile the aim of enhanced border control with safe territory and asylum procedures for asylum seekers.

When turning to the regional organizations of which Libya has been a member, the picture is even more blurred. The OAU Convention has potential to adequately address conflicts such as the one in Libya since it contains a broader refugee definition. This is more suitable to an African context. It has also been ratified by a substantial majority of the African Union's Member States. As illustrated above, certain regional organizations such as the OIC and the LAS have become very active in immediate relief and support of people fleeing the country and also display the necessary networks and links to local communities. On the other hand, most regional organizations in North Africa have not reacted in a coordinated manner. In some cases (CEN SAD, AMU and COMESA) this inability reflects the general weakness of the organization and a lack of common instruments to deal with migrants or/and refugees. While most of the member states of these organizations are legally bound to different international refugee conventions (1951 Geneva Convention and/or 1969 OAU Convention), there are no sub-regional toolkits to address together a crisis of this kind.

The responses of neighbouring countries have shown that individual reactions to the increased migration and refugee flows may be explained through prior relations of a given country with the Gaddafi regime. Further research would be needed to assess the position of these countries in each regional organization and to find out whether they were opposed to acting together and preferred, instead, to act unilaterally.

³¹ "The Gaddafi clan: Where are they now" BBC, 20 October 2012.

Annex

Table 1. Persons fleeing from Libya by nationality and destination

1. Destination	2. Nationality	3. Total
4. Egypt	5. Egyptians	6. 143,514
	7. TCNs	8. 86,000
	9. Total	10. 229,514
11. Tunisia	12. Tunisians	13. 105,865
	14. TCNs	15. 207,549
	16. Total	17. 313,414
18. Niger	19. Nigériens	20. 77,818
	21. TCNs	22. 5,117
	23. Total	24. 82,935
25. Algeria	26. Algerians	27. 1,666
	28. TCNs	29. 12,296
	30. Total	31. 13,962
32. Chad	33. Chadians	34. 50,874
	35. TCNs	36. 808
	37. Total	38. 51,682
39. Sudan	40. Total	41. 2,800
42. Italy	43. Total	44. 25,935
45. Malta	46. Total	47. 1,530
48.	49.	50.
51. Total Arrivals		53. 721,772
52. Total TCNs		54. 311,770

Source: IOM (2011b)

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