
The Obligations of Transit Countries in Controlling Irregular Immigration through Their Borders^(*)

**Dr. Zaid A. Zaid
Assistant Professor
Collage of Law- Sharjah University**

Abstract

The paper intends to examine and analyse the difficulties encountered by transit States in their attempt at controlling the phenomenon of illegal immigration. As a case study it examines policies, measures and steps as well as the international efforts adopted or taken by the Libyan authorities and evaluates their effectiveness in controlling illegal immigration. The paper also discusses the international obligations and duties (whether emanating from conventional or customary international law) and consequent responsibility of the transit state in controlling and preventing irregular (illegal) immigration. It examines international instruments relating to States' obligations in controlling their borders and preventing acts (especially illegal immigration activities) committed through their border that cause harm to other states. The paper will conclude with highlighting some good practice measures and some recommendations for improving boarder control measures.

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1. Introduction

The UN Secretary-General Kofi Annan has said,

“[t]here is abundant evidence that migrants, and in particular migrant women and unaccompanied children, are often denied access to health and education; subjected to physical, psychological, and sexual abuse; prevented from reuniting with their families, and detained and deported in conditions that violate international human rights standards and make them vulnerable to networks of smuggling and trafficking in persons.”⁽¹⁾

The paper intends to examine and analyse the difficulties encountered by transit States in their attempt at controlling the phenomenon of illegal immigration. As a case study it examines policies, measures and steps as well as the international efforts adopted or taken by the Libyan authorities and evaluates their effectiveness in controlling illegal immigration. The paper also discusses the international obligations and duties (whether emanating from conventional or customary international law) and consequent responsibility of the transit state in controlling and preventing irregular (illegal) immigration. It examines international instruments relating to States obligations in controlling their borders and preventing acts (especially illegal immigration activities) committed through their border that cause harm to other states. The paper will conclude with highlighting some good practice measures and some recommendations for improving boarder control measures.

2. Preliminary Remarks

The appearance of the term “illegal immigration” has sparked an argument as to the use of the term “illegal” and its interpretation in the field, causing it to be controversial and subject to criticism. In order to

(1) <http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId=>.

avoid getting in the details of this argument, this paper will use the alternative and more accepted term “irregular immigration”.⁽¹⁾

Some authors and politicians mistakenly make a link between irregular immigration and crime. Although some cases of irregular migration and international crime committed by networks of traffickers and smugglers irregular migration is a totally different and independent phenomenon.⁽²⁾ The tightening of migration restrictions combined with the need of many people to migrate have created a niche which was soon filled by networks of traffickers and smugglers who did not hesitate to exploit desperate immigrants, commit international crimes and make a massive illegal profit.

Migration has been one of the essential features of mankind since its first birth. Mankind has migrated during the nomadic way of life and migrated during the building of big cities and civilisations. With the birth of modern States and the evolution of the concept of sovereignty, both migration and frontiers control have become more problematic. In the twentieth century, due to the shortage of labour after the two World Wars, countries like France, Germany and Britain welcomed migrants from different parts of the world to participate in the reconstruction of their infrastructures and economies. As a result a huge influx of migrants sought refuge in European countries. Yet the flow of migrants grew bigger by the day as the gap between rich and poor countries widened.

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- (1) This study agrees with the objection that the use of the term “illegal” immigrant is wrong as there is no illegal human but there is an illegal process of migration.
 - (2) This study agrees with the objection that it will be essential to reconsider the link between illegal immigration and organised crime. Exaggeration in the media of such a link might mislead the policy makers and misdirect them in their efforts to address the problems. The would-be migrant should not be considered as a criminal but as a victim of the traffickers. Migrant trafficking is a reality that seems to be attractive to organised crime because of the alleged low risk of sanctions compared to other penalties, such as for drug smuggling or illegal trade. It is important that law makers should try to increase such penalties to an extent that is an adequate deterrent to perpetrators. Where necessary, national legislation should be amended to ensure that people smuggling and trafficking in human beings are recognised as crimes and those proper mechanisms for migrants in need of protection are established in accordance with international standards.

This caused receiving countries to see such flow of immigrants as a threat, and therefore tried to introduce border control measures. These measures, nevertheless, seemed to have been insufficient to control and prevent the continuous flow of irregular immigrants. To realise their dreams of a better life in destination countries, irregular immigrants have used every conceivable way, including entry through dangerous routes by using the services of smugglers. This has resulted in dramatic situations - often resulting in death or serious injuries during horrendous illegal journeys or other desperate acts. Ships transporting migrants are sometimes overcrowded and present serious dangers to their passengers.⁽¹⁾ Controlling persons trying to use illegal entry or residency means has recently become much more difficult because it entails dealing individually with persons trying to avoid detection and/or mislead the authorities⁽²⁾ especially those who use ingenious and sophisticated ways to circumvent the law.⁽³⁾

People migrate today for many reasons: the desire for a better living standard, searching for better opportunities, seeking safety, escaping the scourge of war, avoiding persecution, violence, poverty, environmental disasters or human rights violations. However, although economic factors still seem to be the principal motive for immigration modern trends of migration are deeply rooted in and cannot be separated from economic, legal and social issues.

In addition to economic disparity between States, it is found that one of the major reasons for the abnormal growth of the phenomenon of irregular immigration is the policy changes in some States especially in Europe. Tighter border control has led to even “regular” migrants being subject to complicated conditions that become increasingly more

(1) International Convention for the Safety of Life at Sea, 1 November 1974, chapter V Reg. 10 Entry into force 25 May 1980; Pugh, M. 2004, drowning not Waving: Boat People and Humanitarianism at Sea, op cit, p. 22.

(2) Freeman, G. 1994, Can Liberal States Control Unwanted Migration? *Annals of the American Academy of Political and Social Science*, vol. 534, Strategies for Immigration Control: An International Comparison, pp. 17-30, p. 17.

(3) Ibid.

difficult. Restrictions on legal entry, strict visa regimes and carrier sanctions, have caused a considerable proportion of migrants to seek illegal ways of travelling, often using long, indirect and dangerous routes.

3. Domestic affairs, Sovereign Powers and Limitations

3.1 Absolute Sovereignty v. Relative Sovereignty

Sovereignty has two Aspects: Internal and External. Internal Aspects (Territorial Sovereignty or Domestic affairs)⁽¹⁾ is concerned with the sovereign and jurisdictional powers and competences which every state has within its territory. That is to say each State has the exclusive sovereign and jurisdictional power to prescribe and enforce its law and regulations over and within its territory. This also means that the States are the master of their own destiny in economic, legal, political and all other affairs. In return for this power other States has the duty of non-intervention in the domestic affairs of other States which is a fundamental principle in International Law.⁽²⁾ External aspects (Sovereignty, Independence and the capacity to enter into relationship with

(1) *Island of Palmas Case* (1928) 2 RIAA, 829. The court stated that Sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular state. to the exclusion of any other State. See also, *Custom Regime between Germany and Austria Case* [1931] PCIJ Rep. Ser. A/B No 41.

(2) See for instance, *Status of Eastern Carelia Case* [1923] PCIJ Rep. Ser. B, No 5. *Military and Paramilitary Activities In and Against Nicaragua (Merits)* Case Nicaragua v. USA (1986) ICJ Rep. 14. The contras were acting outside US territory and the ICJ in its final decision by 12 to 3 votes took the view that the USA: by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted against the Republic of Nicaragua, in breach of its obligations under customary international law not to intervene in the affairs of another State; The Court also found US in breach of other five counts including, being in breach of its obligations under customary international law not to violate the sovereignty of another State; and in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce; . Art. 2(7) of UN Charter also disallows UN intervention in matters which are essentially within the jurisdiction of any states.

other states)) entail several principles including: Sovereign Equality between States;⁽¹⁾ Peaceful Co-existence,⁽²⁾ and Observance of International Duties and Obligations in good faith.⁽³⁾

The question is, Is Sovereignty absolute and unlimited? Born in the sixteen Century, sovereignty was seen as an absolute set of powers in the hand of the sovereign.⁽⁴⁾ However, no sooner has the twentieth century loomed over, with all its multilevel inter-state relationships in all fields and the proliferation of international and regional organisations as well as the growing network of international collaboration agreements between States, than momentous pressure caused sovereignty to retreat from its absolute conception into a moderate relative conception.⁽⁵⁾ That caused States to rethink not only the stand from which they direct their interrelationship with other states but also how they direct activities within their own territories without incurring liability in case such

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- (1) UN Charter, Art. 2(1) states The Organisation is based on the principle of the sovereign equality of all its members. UN Special Committee on Principles of International Law Concerning Peaceful Relations and Co-operation among States, stated in 1964 that All States enjoy sovereign equality. As subjects of international law they have equal rights and duties, [and therefore,] a) *States are juridically equal*; b) *Each State enjoys the rights inherent in full sovereignty*; c) *Each State has the duty to respect the personality of other States*; d) *The territorial integrity and political independence of the State are inviolable*; e) *Each State has the right freely to choose and develop its political, social, economic and cultural systems*; f) *Each State has the duty to comply fully and in good faith with its international obligations, and to live in peace with other States*.
 - (2) UN Charter, Preamble, Art. 2 (1, 2, 3 & 4).
 - (3) Art. 26 of the 1969 Vienna Convention on the Law of Treaties, states, Every treaty in force is binding upon the parties to it and must be performed by them in good faith.; The principle of good faith is also enumerated in a number of cases as a fundamental principle of the Law of Treaties. E.g. *Case Concerning Rights of Nationals of the US in Morocco* (1952) ICJ Rep., p. 212.
 - (4) Brierly, J. L., *The Law of Nations*, Clarendon Press, Oxford, 1963, p. 47; De Lupis, Ingrid Detter, *International law and the Independent State*, 2nd ed., Gower, Aldershot, 1987, p. 3; Walzer, Michael, *Thick and Thin, Moral Argument at Home and Abroad*, University of Notre Dame Press, London, 1994, pp. 77-79.
 - (5) Larson, Arthur, Jenks, C. Wilfred, et al., *Sovereignty with the law*, Dobbs Ferry, NY, Oceana, 1965, p. 11; Sahovic, Milan and Bishop, William W., *The Authority of the State: Its Range with Respect to Persons and Places*, in Sorensen, Max, *Manual of Public International Law*, Macmillan, London, 1968, p. 311.

activities caused damage or injury in or to the territory or population of another state.⁽¹⁾ This gained further momentum in the second half of the twentieth century when problems relating to regular and irregular migration have peaked to unprecedented levels.

3.2 Responsibility of States corresponding to its domestic law and regulations

State Responsibility is the liability of one or more States for conduct in breach of international law causing injury to one or more other States or their nationals. The International Law Commission (ILC) has been trying very hard to finalise the Substantive law that governs aspects of State responsibility. This has resulted in many draft articles the latest of which is ILC (2001) Draft Articles entitled “Responsibility of States for Internationally Wrongful Acts”.⁽²⁾ This draft Articles was taken on board by the UN General Assembly which has invited comments on

(1) See for instace, *Trail Smelter Arbitration* (1938 and 1941) 3 RIAA, p. 1905. A Tribunal was set up to “finally decide” whether the Smelter should be required to cease operation and hence cease causing damage in Washington. The Tribunal found that under the principles of international law, as well as of the law of the United States, no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence. <http://www.unescap.org/DRPAD/VC/document/compendium/int7.htm>, accessed on 20.12.2007; Stockholm Declaration on the Human Environment 1972: 11 ILM (1972), p. 1416. Principle 21: States have, , the sovereign rights to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. Principle 22: States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction. See also, Custom Regime between Germany and Austria Case [1931] PCIJ Rep. Ser. A/B No 41. Wimbledon Case [1923], PICJ Rep, Series A, No 1.

(2) The main feature of this draft articles is that it differentiates between ordinary and serious breach of International Law. According to Part II, chapter III (in particular Art. 40), serious breach of international law is (1) a breach by a State of an obligation arising under a peremptory norm of general international law; and (2) it involves a gross or systematic failure by the responsible State to fulfil the obligation.

them by States.⁽¹⁾ Although the ILC draft Articles are not yet in force, they have a high authoritative value due to customary status of some of its provisions and prominence of the ILC and International scholars who participated in their preparation. According to ILC draft Articles (2001) There is an internationally wrongful act of a state when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.⁽²⁾ There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character,⁽³⁾ i.e. regardless of whether such obligation stems from conventional or customary law origin. The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.⁽⁴⁾ Therefore, failure of the State to enact domestic law and/or regulations or to take necessary internal measures cannot be used as justification for a States failure to perform its international obligations.⁽⁵⁾ It is not clear whether responsibility of States

(1) Upon recommendation by the ILC, The UN General Assembly, in resolution 56/83 of 12 December 2001 took note of the articles on responsibility of States for internationally wrongful acts, commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, and decided to include in the provisional agenda of its fifty-ninth session, in 2004, an item entitled "Responsibility of States for internationally wrongful acts". The UN General Assembly, in resolution 59/35 of 2 December 2004, again commended the [Articles] and requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles, as well as to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard. It further requested the Secretary-General to submit this material well in advance of the sixty-second session and decided to include in the provisional agenda of its sixty-second session (2007) an item entitled "Responsibility of States for internationally wrongful acts". See http://untreaty.un.org/ilc/summaries/9_6.htm, accessed on 21.12.2007.

(2) ILC draft Articles, Art. 2.

(3) ILC draft Articles, Art. 12.

(4) ILC draft Articles, Art. 3.

(5) For instance, Draft Declaration on Rights and Duties of States 1949, Art. 13, states Every State has the duty to carry out in good faith its obligations arising from treaties and other =

in international law is based on objective approach (strict or risk approach regardless of any question of fault or intention) or subjective approach which requires an element of fault. The majority of scholars agree with the former and others advocate the latter, but the moderate view is that it depends on the nature of the breached obligation.⁽¹⁾ A State will only be liable for acts which can be attributed to it.⁽²⁾ That is to

= sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty. The Vienna Convention on the Law of Treaties (1969), Art. 27 states A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In *Free Zones of Upper Savoy Case* [1932], PCIJ Ser. A/B, No. 46, 167; 6 AD 362, the PCIJ stated that It is certain that France cannot rely on her own legislation to limit the scope of her international obligations. In *Alabama Claims Arbitration, UK v. USA*, the Tribunal rejected the British argument stating that, the Government of Her Britannic Majesty cannot justify itself for a failure in due diligence on the plea of insufficiency of the legal means of action which it possessed. Similar rulings were made in the *Serbian Loans Case* [1929], PCIJ Ser. A. No 21. In the *Exchange of Greek and Turkish Populations Case*, Advisory opinion, PCIJ (1925), issues relating to Art. 18 of the Treaty of Lausanne the parties undertook to introduce in their respective laws such modification as may be necessary with a view to ensuring the execution of the present Convention, The Court commented that, This clause merely lays stress on a principle which is self-evident according to which a State which has contracted valid international obligations is bound to make in its legislation such modification as may be necessary to ensure the fulfilment of the obligations undertaken. Cf. *Anglo-Norwegian Fisheries Case* (1951) ICJ Rep., p.116.

- (1) *Cair Claim* (1929) RIAA 575, heard by the French-Mexican Commission. Verzijl was in favour of the objective responsibility of the state stating that a state is responsible for all the acts committed by its officials or organs which constitute offences from the point of view of the law of nations, whether the official or organ in question has acted within or exceeded the limits of his competence [provided that] they must have acted at least to all appearances as competent officials or organs, or they must have used powers or methods appropriate to their official capacity. In the *Corfu Channel (Merits) Case* (1949) ICJ Rep. 4, the ICJ stated, It cannot be concluded from the mere fact of the control exercised by a state over its territory and waters that that state knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof. The ILC Draft Articles do not provide clear assistance regarding the objective or subjective approaches; However, Art. 39 states, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity to whom reparation is sought. This approach finds support in the *LaGrado Case* (Germany v. US), 40 ILM 1069 in which the ICJ recognised that the conduct of the claimant state could be pertinent in determining the extent of reparation due. The concept of serious breach (Art. 26, 40 and 41), and elements of attribution (Art. 4-9 and 11) tilt the approach of ILC draft towards objective responsibility.
- (2) ILC draft Articles, Arts. 4-8.

say a State is responsible for the conduct of its organs and/or officials who exercise an element of governmental authority or are controlled by the State including the executive, the legislative and judicial organs and officials whether they are acting within or in excess of their capacity.⁽¹⁾ A State is not liable for all private actions of its nationals.⁽²⁾ However, the state will be liable if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of official authorities and in circumstances such as to call for the exercise of those elements of authority.⁽³⁾ The state can also incur responsibility if it did not exercise due diligence where and when there is such a duty.⁽⁴⁾ Regarding State responsibility for the treatment of aliens there are two views regarding the Standard of Treatment: Minimum International Standard,⁽⁵⁾ (which is based on well recognised international human right standards) and National Treatment Standard (which is based on treating foreigners in the same manner as the State treats its own nationals).⁽⁶⁾ States can avoid liability if it has a ground for Preliminary objections including: (1) Non-compliance with the rules concerning

(1) Ibid.; see also, *Cair Claim* (1929), loc. Cit.; *Union Bridge Company Claim US v. Great Britain* (1924) 6 RIAA 138; *Youmans Claim US v. Mexico* (1926) 4 RIAA 110.

(2) ILC draft Articles, Arts. 9 & 11.

(3) ILC draft Articles, Art. 9; See footnote 2, p. 4.

(4) E.g., the duty to protect premises belonging to diplomatic missions.

(5) In the *Neer Claim US v. Mexico* (1926) 4 RIAA 60, the Commission unanimously held (first) that the propriety of governmental acts should be put to the test of international standards, and (second) that the treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether the insufficiency proceeds from deficient execution of an intelligent law or from the fact that the laws of the country do not empower the authorities to measure up to international standards is immaterial. In *Roberts Claim, US v. Mexico* (1926) 4 RIAA 77, the Commission stated That the test is broadly speaking, whether aliens are treated in accordance with ordinary standards of civilization. We do not hesitate to say that the treatment of Roberts was such as to warrant an indemnity on the ground of cruel and inhumane imprisonment.

(6) Art. 9 of the Montevideo Convention on the Rights and Duties of States 1933 which states: Foreigners may not claim rights other than or more extensive than those of the nationals.

nationality of claims, (2) Exhaustion of Local Remedy, (3) Waiver, and (4) Unreasonable delay and Improper behaviour of the injured alien.⁽¹⁾

4. International Obligations and Duties v. Domestic law and Regulations for Controlling Immigration

International obligations and duties of states stem from Conventional and Customary origin. In the field of immigration although obligations stemming from customary international law are fewer than those stemming from international conventions and treaties both are insufficient to control the growing problem of irregular immigration. In general States have the obligation to enact their domestic law, regulations, policies and measures in a way that do not violate Human Rights⁽²⁾ and applicable conventions. Examples of principles and rights found in such instruments can be found in the principle non-discrimination, prohibition of inhumane treatment, prohibition of undue or arbitrary detention, principle of non-refoulement, prohibition of torture, prohibition of unlawful deportation, protecting Migrant workers and their families, “the right to freedom of movement and residence within the borders of each state”,⁽³⁾ “the right to leave any country, including [ones] own, and to return to [ones own] country”,⁽⁴⁾ and “the right to seek and to enjoy other countries asylum from persecution”.⁽⁵⁾

Nevertheless, the power of the state to protect its national security is a central attribute of sovereignty, and is widely adopted in State

(1) ILC draft Articles 2001, Arts. 44-45.

(2) International Covenant on Economic, Social and Cultural Rights (1966), Art. 2; International Covenant Civil and Political Rights (1966), Art. 2; see also, McCorquodale, R and Simons, P, Responsibility beyond Borders: State Responsibility for Extraterritorial Violations By Corporations of International Human Rights Law, 70(4) MLR (2007), pp. 598-625.

(3) Article 13(1) of the Universal Declaration of Human Rights (1948-1950).

(4) Article 13(2) of the Universal Declaration of Human Rights (1948-1950).

(5) Article 14(1).

practice.⁽¹⁾ States, therefore, have wide discretion in deciding policies relating to admission, residence, expulsion or naturalisation for non-citizens.⁽²⁾ Subject to international legal rules and principles every state has the authority to determine and regulate the entitlement to and requirement of its nationality,⁽³⁾ and the entry and movement of persons across its borders and through its territory. While states are obliged to accept their own citizens, admitting aliens to enter their territories is the prerogative of their governmental authorities.⁽⁴⁾ That is why most, if not all states have introduced policies and procedures to monitor and control immigration flow.⁽⁵⁾ Taking into account economic, political, ethnic and social factors, policies and measures introduced by states for the control of entry, residency and nationality vary from simple policies and measures to very complicated forms of quota system as well as establishing common programme of management that control the flow and/or composition of migrants.⁽⁶⁾

Domestic immigration law and regulations are usually territorial by their nature. However, due to either failure of such laws and regulations or shifting the blame, States are now increasingly pressing towards a projected enforcement of their domestic immigration laws beyond their borders, to prevent all forms of illegal entries. For instance, traditionally international law give states the right to control ships sailing under their flags, stateless ships, and any ship entering their territorial waters.⁽⁷⁾

(1) IOM, International Dialogue on Migration, International Legal Norms and Migration Analysis No. 3, UN Publication, p. 56.

(2) IOM, International Dialogue on Migration, International Legal Norms and Migration Analysis No. 3, UN Publication, p. 56.

(3) Aleinikoff, A. & Chetail, V., Migration and International Legal Norms, TMC Asser Press, The Hague (2003).

(4) United Nations, Department of Economic and Social affairs, World Economic and Social Survey 2004, op cit, p. 11.

(5) Ibid, p. 69.

(6) Ibid.

(7) IOM, International Dialogue on Migration, International Legal Norms and Migration Analysis, loc cit.

States power is also exercised against persons and organisations that attempt to transport migrants in violation of their law.⁽¹⁾ A well designed network of bilateral and multilateral international agreement can enable States to apply certain reciprocal enforcement measures of their law outside their territories.

The concern of various countries regarding the phenomenon of irregular immigration has led to the enactment of regulations and policies and the creation of new bodies to deal specifically with this issue. However, dealing with the issue of irregular immigration has resulted in tightening entry, visa and residency control, revisiting security measures, and introducing new offences and stronger penalties concerning illegal entry into their territories. However, governmental authorities were so over-occupied by national security issues that most international agreements and treaties relating to irregular immigration were mainly focused on the security issue at the expense of other factors such as the economic, development and humanitarian aspects.

In general, it is important to note that internal laws and regulations as well as policies and measures relating to migrants should comply with international human rights standards. In particular, states must insure that migrants receive the same treatment as nationals in the following:

- The right to life and security of person, including freedom from arbitrary arrest or detention;
- Protection against arbitrary or unlawful interference with privacy, family, home or correspondence;
- Equality before the courts;
- The right to choose a spouse, to marry, and to establish a family;

(1) United Nation Convention on the Law of the Sea 1982 (UNCLOS) Article 98; United Nations Convention against Transnational Organised Crime, 9 January 2001, 55th Session, UN, Doc.A/Res/55/25, 40ILM 335 (2001). Shipmasters have a duty under international law to rescue persons on ships in distress on the high seas, and states have a duty to adopt legislation that prescribes penalties for shipmasters who violate the duty to rescue. United Nations Convention on Maritime Search and Rescue 1970, chapter 2.1.10, entry into force on 22 June 1985.

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- Freedom of thought, opinion, conscience and religion;
 - The right to retain language, culture and tradition; and,
 - The right to transfer money abroad.⁽¹⁾

In addition to the above, and so long as they are complying with, national security, public safety, public order, public health, morals, the rights and freedoms of others, migrants must also enjoy other rights including,

- The right to leave the country;
- The right to freedom of expression;
- The right to peaceful assembly;
- The right to own property individually or in association with others;
- Liberty of movement and freedom to choose their place of residence within the borders of the country.⁽²⁾

Furthermore, States should, as much their resources enable them, protect the rights of migrants to:

- Work,
- Just and favourable working conditions,
- Establish trade unions,
- Social security,
- Adequate standard of living,
- Highest attainable standard of health,
- Education, and
- Participation in cultural life.⁽³⁾

At the international level, the UN have tried to balance the harsh policies introduced by some countries by introducing appropriate

(1) [http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId =](http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId=), [Accessed on 22.12.2007].

(2) [http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId =](http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId=), [Accessed on 22.12.2007].

(3) [http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId =](http://www.energyofanation.org/7d00b32b-a738-4a71-9ccf-2117fc9bbb64.html?NodeId=), [Accessed on 22.12.2007].

conventions to protect the fundamental rights of those who are considered irregular immigrants. The General Assembly also proposed a high-level dialogue to deal with migration and development. This original approach is meant to focus on the provision of means to support development of the countries of origin in the hope that development project will eventually reduce the need for regular as well as irregular immigration. The EU, being a major receiver of irregular immigration, has dealt in several ways and stages with the issue of irregular immigration, ranging from tightening border controls and entry visa and residency requirements as well as attempting to cooperate with third countries. However, the policy of strengthening of controls seemed to have lead to more attempts at irregular entry, thus increasing the risk of having to deal with irregular migrants.⁽¹⁾

Other organisations, governmental or non-governmental, have addressed the issue by suggesting solutions or providing assistance to States in this regard. For instance, International Organisations and NGO, such as the UN,⁽²⁾ Global Commission on International

(1) For instance, the EU has adopted common visa and return migration policies. Beside security measures, the EU has also addressed the issue in terms of management of existing immigrants inside its borders through various treaties including the Budapest Process in 1991, the Maastricht Treaty in 1992 and the Amsterdam Treaty in 1997.

(2) For instance. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, (ICWM), General Assembly Resolution 45/158 of 18 December 1990, and entered into force on 1 July 2003. To date, it has been ratified or acceded to by the following twenty-one States: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay. The entry into force of the Convention will reinforce and complete a series of other measures already taken by the United Nations to ensure adequate protection of all migrant workers and their families. One of the ICWMs provisions is to ensure that the fundamental human rights of irregular migrants are secured at the same time, and hence advocates action to prevent and eliminate illegal labour migration. It also takes care to ensure that the fundamental human rights of irregular migrants are secured at the same time. See, Department of Economic and Social Affairs, Population Division, Press Release POP/844 Number of world migrants reaches 175 million mark; Office of the High Commissioner for Human Rights, Fact Sheet No. 24, The Rights of Migrant Workers. Another example is, the 2nd Committee (Economic and Financial) of the General Assembly passed a resolution to be formally adopted on 23 December 2003, which decided that in 2006 the high-level dialogue of the General Assembly would be devoted

Migration (GCIM),⁽¹⁾ International Organisation for Migration (IOM),⁽²⁾ Global Migration Group (GMG)⁽³⁾ and Amnesty International, have numerous efforts in highlighting:

- = to international migration and development. The purpose of the dialogue was to evaluate several features and the connections between international migration and development. United Nations, General Assembly, Resolution 58/208 of 23 December 2003.
- (1) GCIM was established in Geneva, by 32 countries and by the EU, including 19 commissioners appointed by the UN Secretary-General under UN protection. Migration, an interconnected world: New directions for action, Report of the GCIM (2005) (online) at: <http://www.queensu.ca/samp/migrationresources/reports/gcim-complete-report-2005>, accessed on 12/11/2005. In its Report, presented to the UN Secretary-General on 5 October 2005, the GCIM pertinently mentioned that the international community had failed to benefit from the full potential of migration and had not dealt appropriately with the opportunities and challenges it presented. The report gives a broad study of key global policy issues in the field of international migration, and presents six “Principles for Action” and thirty-three recommendations. The first four of these principles refer to national and regional policies, the fifth underlines the need for multilateral agreements, and the sixth refers to the United Nations role. Global Commission on International Migration (GCIM) Report of the Migration in an Interconnected World: New Directions for Action, Summary of Proposed Principles for Action and Recommendations (online) Available at: <http://www.gcim.org>, accessed on 12/5/2006. The Commission invites the UN to make available a global migration facility to coordinate and harmonise the actions that several international institutions are carrying out and implementing in order to manage migration flows. The report also sheds light particularly on a number of difficulties encountered by migration policies in several countries highlighting in particular the negative aspect of restrictive admission policies
 - (2) (IOM) in migration issues, this institution organised its first international Dialogue of Migration in November 2001. Eighty-second Session held in November 2001, the Council, through Resolution No. 1055 (LXXXII) of 29 November 2001.
 - (3) GMG is an inter-agency group, together with heads of agencies, which supports the wider purpose of all related international and regional instruments and standards relating to migration, and the provision of more logical and powerful leadership to improve the overall effectiveness of the United Nations and the international community’s policy and response to the opportunities and challenges presented by international migration. The GMG consists of 10 members as follows: International Labour Organisation (ILO), International Organisation for Migration (IOM), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Department of Economic and Social Affairs (UNDESA), United Nations Population Fund (UNFPA), Office of the United Nations High Commissioner for Human Rights (OHCHR), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Office on Drugs and Crime (UNODC), World Bank. The main purpose of the GMG is to establish a comprehensive and coherent approach in the overall institutional response to international migration, to provide direction and leadership and team efforts in a system-wide context and to promote
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- The difficulties encountered by migration policies in several countries in particular the negative aspect of restrictive admission policies;⁽¹⁾
- Lack of appropriate policies and the need for greater international cooperation;
- The need to understand and revisit the existing international legal framework relevant to migration management;⁽²⁾
- Underlying the fundamental concern to protect the human rights and dignity of migrants;⁽³⁾
- Lack of binding force to ensure respect for migrants rights;⁽⁴⁾
- Migration management systems should not ignore the fundamental rights of migrants,⁽⁵⁾ which must include and avoid violation of human rights,⁽⁶⁾ workers rights or the rights of refugees.

= interest, dialogue and debate on migration-related issues, including trade and development aspects, with governments, employers and workers organisations and civil society. The GMG is developing a programme of work to focus its attention on priority migration issues that would benefit from more vigorous inter-agency consultation and collaboration. Office of the United Nations High Commissioner for Human Rights.

- (1) *Ibid.*, For example, it underlines the contradictory nature of the position of some nations which, though not being in need of an immigrant workforce, are adopting for reasons of security, extremely restrictive admission policies.
- (2) This is for the purpose of eventual amendment or adoption of new laws, in the absence of the adequate legal tools to address this phenomenon, *Ibid.*
- (3) In June 2003 the IOM stated that: "Underlying all that the IOM does is the fundamental concern to protect the human rights and dignity of migrants." See "Note on IOM Strategy: Current and Future Migration Realities and IOMs Role". The International Organisation for Migration (IOM) and Human Rights Protection in the Field: Current Concerns, Submitted by Human Rights Watch IOM Governing Council Meeting 86th Session, November 18-21, 2003, p. 2.
- (4) An IOM official underlines the weakness of his organisations agenda, stating that it is not legally binding on the IOM to ensure respect for migrants rights. *Ibid*; the absence of a formal mandate limits an eventually effective and active role for the organisation. IOM policy on "Effective Respect for Migrants Rights" states: "In International law, protection is based on a mandate, conferred by treaty or customs, which authorises an organisation to ensure respect of rights by states". *Ibid.*,
- (5) *Diasporas, new stakeholders in development?*, at: [http:// www.iom.int/en/know/dialogue](http://www.iom.int/en/know/dialogue), accessed on 23/2/2005.
- (6) *World Migration 2003*, Chapter 1, p. 22; See The International Organisation for Migration (IOM) and Human Rights Protection in the Field, the 84th Session of the IOMS Governing Council, p. 3.

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- Urgent need to ratify relevant international conventions such as the Convention on the Rights of Migrants in October 2003.⁽¹⁾
 - The need to support all related international and regional instruments and standards relating to migration, and
 - The provision of more logical and powerful leadership to improve the effectiveness of the UN and the international community's policy and response to the challenges presented by international migration.⁽²⁾

5. Controlling Immigration: Policies, Measures and Steps taken by Libya

Libyan population is estimated as 5.5 million inhabitants.⁽³⁾ The main sources of the estimated 600,000 regular workers in the country are from Egypt, Tunisia and sub-Saharan countries⁽⁴⁾ Although Libyan authorities recognise that it is difficult to know the exact number of irregular immigrants who have entered the country,⁽⁵⁾ it is estimated that between 75,000 and 100,000 foreign nationals enter the country every year.⁽⁶⁾ Non-Libyan citizens, represent at least 20%, but more significant is the fact that, in some areas, the number registered is more than 50% of the total number of inhabitants in Libyan territories.⁽⁷⁾ Although the issue of irregular immigration was not a high priority for Libya the abnormal growth of this phenomenon which has caused internal

(1) See Global Campaign for Ratification of the Convention on the Rights of Migrants (online) Available at <http://www.migrantsrights.org/index.htm>, accessed on November 12, 2005. See also <http://www.unesco.org/most/migration/convention/>

(2) Office of the United Nations High Commissioner for Human Rights.

(3) Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, 2005, *World Population Prospects: The 2004 Revision*, United Nations, New York.

(4) European Commission: Technical Mission to Libya on illegal immigration, op cit. p. 12.

(5) Ibid.

(6) This information was given to the researcher by the General Administration of Archives and Communications of the Libyan Ministry of Justice.

(7) Ibid.

problems in recent years as well as the repetitive demands from some neighbouring countries caused Libya to reconsider its position and to put it high in its priorities.

The Mediterranean coasts with its “hot points” of irregular immigration, present the main source of difficulties for most of the Mediterranean countries including Libya, which has been targeted by migrants seeking European destinations. Yet, because of its geographical position and its economic wealth, Libya has not only been used as a transit country but also has become an attractive option to be a receiving country⁽¹⁾ for regular as well as irregular migrants. Geographically, because of its extended borders, it is almost impossible for Libya⁽²⁾ by its own to control its long coasts and borders.

Irregular migrants entering Libya are classified into two type: the first includes those who possess valid travel documents but use illegal

(1) With the increase in the flow of irregular immigrants from sub-Saharan countries, Libya found itself an easy target for a huge number of irregular immigrants to Italy or the EU. However, there is great potential for Libya to become an immigrant country if it does not find a solution to this problem. High oil revenues and low population renders Libya as having one of the highest per capita incomes in Africa. Libya depends primarily on the petroleum sector, which represents practically all export earnings and about one-quarter of Gross Domestic Product (GDP). In addition to the primary sources, Libya has also developed alternative sources such as agriculture and tourism.

(2) With approximately 1,800 kilometres of coastline and a total area of 1,760,000 square kilometres, Libya is the fourth largest country in Africa. Thanks to its privileged position, Libya is on the one hand within easy reach of the north Mediterranean countries and on the other linked to the North African and sub-Saharan countries. Libya - Country study, Available at Area Handbook, Washington, DC: Federal Research Div., Library of Congress, US Dept. of the Army, 1987. Approximately 4,400 km of its border is shared with six countries. It is significant that a third of this amount (1,500) is with the sub-Saharan countries of the Sudan, Chad and Niger. Libya also shares borders with Algeria and Tunisia in the west, the Mediterranean in the north, Egypt and Sudan in the east, and Chad and Niger in the south. However, a substantial area of Libya is what can be considered as wasteland, since it lies within open permeable desert land. Because of such geographical features, an increasing number of “illegal” immigrants from sub-Saharan Africa are apprehended when attempting either to enter Libya or to cross it illegally on their way to the Mediterranean. Libya - Geography (online) Available at www.mongabay.com, accessed on 12/11/2004.

means to enter Libya. They can eventually obtain a green card provided they find work within three months of entry.⁽¹⁾ The second includes irregular migrants who do not possess any documentation. This is the category of people that the authorities seek to apprehend and deport, although obtaining a pass (*laissez-passer*) document from some embassies often proves difficult.⁽²⁾

As Libya has not suffered from many migration problems and as irregular immigration is a recent phenomenon, there has been no specific law dealing with the phenomenon of irregular immigration in Libya. However, there are some legislations relating to the broader migration issues, including Law No 18 of 1980 (relating to granting Libyan nationality to Arab people wishing to apply for citizenship and residence in Libya),⁽³⁾ Law No 4 of 1985, Law No. 6 of 1987 (relating to valid visa for foreigners to enter, reside in and leave Libya.)⁽⁴⁾ and its amendments in Law 2 of 2004 (relating to irregular migration, in particular the smuggling of migrants by any means, as well as creating, supplying or

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- (1) Initially this type of migrant is issued with a red card valid for three months (renewable once for the same period) and once a proper work contract is drawn up, they can subsequently obtain a green card permit. It is apparently quite easy for any small businessman to produce an employment contract without meeting formal requirements. Upon producing a health certificate and a tax and social insurance certificate, the green card is issued. The existence of these different cards is not profitable since in practice there is no automatic control of these cards; this is done during inspection checks by the police.
 - (2) To illustrate the problem encountered by the Libyan authorities some examples are stated by Brigadier Ali Said, Director of Immigration Intelligence and Public Security during an interview with him. He mentioned that among the persons likely to be detained, those from Somalia, Eritrea or Ethiopia, who present themselves as refugees, are difficult to deport to their countries. Neighbouring countries such as Chad, Sudan and Niger can refuse to allow return through their countries, despite the fact that some migrants have been caught while crossing these countries. Libyan officials have suggested that such countries should accept repatriation and should contribute financially to the deportation by special flights.
 - (3) Art. 1 and 2 of Law No 18 of 1980, Relating to the Provisions of Nationality Law. However recently Libya suspended the laws governing the naturalisation process for foreigners, Art. 3 of Law No 18 of 1980.
 - (4) Violations might result in a prison sentence with no fixed duration and a minimum fine of 1,000 Libyan dinars. After August 2005 an additional entry requirement was introduced, obliging people to carry 500 Libyan dinars (approximately \$400) to cover their expenses during their stay in Libya. Article 19 after 2004 amendment.

carrying false travel or identification documents);⁽¹⁾ and Peoples General Committee Decision No 229/2005 relating to Re-Regulating the sector of safeguarding the coasts and safety of the seaports up to 12 nautical miles from the baseline.⁽²⁾

5.1 The Main Features of Libyas Policy towards Migration:

5.1.1 The main Libyan policies during the last thirty years have been a pan-Arab policy⁽³⁾ and a pan-African policy,⁽⁴⁾ as long as immigrants are regular.⁽⁵⁾ However, being influenced by the abnormal growth of the phenomenon of irregular immigration, the Libyan policy has been steered to be based on consensual agreements with European countries.

5.1.2 Libyan current policies are based on tightening borders control, making amendments to immigration law and regulations, co-operating with African and European countries affected by the phenomenon of irregular immigration, and inviting non-governmental organisations as well as governmental bodies to monitor its

(1) Such activities are punishable by a minimum of one years imprisonment and a fine of no less than 1,000 Libyan dinars, Art. 19.

(2) People's General Committee Decision No 229/2005 relating to regulation of safeguarding the coasts and safety of the seaports (Available in Arabic).

(3) Since the 1970's and for ideological considerations, Libya has opened its frontiers mainly to the citizens of its neighbouring Arab countries. This pan-Arab stance was pursued for nearly two decades until the end of 1989. Although the special relationship with Arab countries has been "watered down" since the end of the eighties, it did not cease to exist.

(4) A new orientation was sought however by the Libyan leadership, who engaged in developing policies beneficial to African countries. In fact, Africa became the central point in Libyan policy orientations. Accordingly, the African option of Libya has undergone considerable development. All these changes came about for several different reasons, such as the interaction of domestic, regional and international factors as well as the emergence of global terrorism, the huge presence of migrants in Libya and the economic factors which have affected the whole world, as well as the increase of poverty in sub-Saharan countries, have all led to inflows of immigrants towards Libya. However, since 2000, the Libyan authorities have adopted a varying policy on the issue of immigration; the pan-African policy became obsolete, representing a burden and a serious danger to the country's stability.

(5) Sawani, Y. (2003), Africa in Libyas Foreign Policy: History, Ideology and Realism, A Paper presented at Codesria 30th Anniversary North Africa Conference, Cairo.



efforts. In order to avoid conflict between its own interests and the concerns of its neighbours, Libya has always relies on the (1974) United Nations Charter on Economic Rights and duties of States, which provides that, “each state possesses the sovereign and inalienable right to choose its own economic, social, political and cultural systems according to the will of its people without internal or external intervention, coercion or threat in any form.”⁽¹⁾

5.1.3 Migrants who enter the country using illegal means or routes, once identified, are deported and sent back to their countries of origin.⁽²⁾

5.2 The Main Features of the Libyan Efforts and Measures relating to Controlling Irregular Migration:

5.2.1 Internally, Libya has been developing its own deportation and/or return migration policy targeting foreigners residing irregularly in the country.⁽³⁾ Persons concerned are held in specific centres while waiting processing travel documents by the embassies of their countries of origin or until they are released with a temporary residence permit. In practice, the top priority of the Libyan authorities include targeting and investigating agents and traffickers behind the illegal operations leading to irregular immigration, as well as inspecting suspected companies and conducting information analysis by the Directorate of Passports and Nationality and Public Security.⁽⁴⁾

(1) See Article 1 of the UN Charter of 1974.

(2) See the Declaration of the Minister of Interior and Public Security on meeting with ad hoc delegation in Libya. The Figure below, which is based on Report submitted to Minister of Interior and Public Security of Libya by Public Security Department on 16/3/2004, shows the numbers of irregular immigrants who were sent back to their countries of origin by the Libyan Authority, in the period from 1/1/2005 to 17/12/2005:

Type of Exile	Number
Voluntary	12,020
Compulsory	32,375
Total	44,395

(3) Ibid.

(4) European Commission, Technical Mission to Libya on Illegal Immigration, loc. cit.



5.2.2 To combat irregular immigration Libya has introduced several changes⁽¹⁾ in its legal and migration administrative system, including:

- The 2004 amendments to Law 6 of 1987, which introduced tighter penalties on irregular residence in and passage through Libyan territories as well as penalties for human smuggling.⁽²⁾
- The most important new legislation is the Peoples General Committee Decision No 229/2005 relating to Re-Regulating the sector of safeguarding the coasts and safety of the seaports up to 12 nautical miles from the baseline.⁽³⁾ However, considering the budget for this, there are limits on the capacity and ability of the concerned administrative organ to properly carry out its tasks. The main tasks of this organ, include: (1) “to detain and arrest people suspected of contravening laws, making decisions and regulations related to the implementation of the law”; (2) establishment and control of maritime check points and territorial waters, and combating the activities of smugglers and criminals and illegal activities including irregular migration; and (3) rescuing people and vessels in distress, which is the humanitarian aspect of the organs functions.⁽⁴⁾

(1) For instance seven branch offices were established. These branches are: Al Batnane, covering Umsaad and Tobruk, Al Jabal Al Akhdar covering Al Bidha and Darnah, Benghazi, Al Khaleej covering from Al Heecha to Ras Lanuf, Al Mergeb (from Musrata, Zliten, Al Khumess), Tripoli, Al Fara AlGharbi (Alzawiah to Zuwarah). Article 4 of the Peoples General Committee Decision, no. 229/ 2005; See also Article 1 of the Peoples General Committee Decision no. 125/2005.

(2) Such activities are punishable by a minimum of one years imprisonment and a fine of no less than 1,000 Libyan dinars, Art. 19. Actions taken against foreigners and smugglers who violate the legislation, include a prison sentence of more than a year, and a fine of more than 2,000 Libyan dinars, Para A, B, and C, Art. 19 of the law of 2004 regarding amendment of some provision of Law 6/1987. To enforce this law, Libya has created a new unit for administration and enforcement, and has launched campaigns in the media to warn those who facilitate illegal immigration.

(3) See footnote. 1, p. 16.

(4) Ibid, Para. 2 and 3.

- Establishing detention camps as a key component to enforce return migration policy which have been criticised by some human rights organisations and groups including ECRE.⁽¹⁾
- The question of refugees has been put on the agenda of a Libyan special commission which will report its recommendations to the legislators.

5.2.3 The Libyan authorities are closely involved in taking all measures to stopping the numerous attempts made daily by migrants trying to land on the shores of Libyan maritime boundaries,⁽²⁾ including planning to establish more than 100 checkpoints along the 2,000 miles of its southern border;⁽³⁾ launching intensive campaigns since 2004 warning against the risks and penalties of entering Libya irregularly.⁽⁴⁾

5.2.4 At the international level Libya declared its commitment to work with its neighbours to address the issue of human tragedies in the Mediterranean and in the desert, to initiate dialogue and cooperation with European and African countries of and to

(1) "Detention should only ever be used as a last resort where non-custodial measures have been demonstrated not to work on an individual basis. Minors should never be detained and those who have suffered trauma should get special consideration". European Council on Refuge and Exile (ECRE), an umbrella organisation of 68 refugee-assisting member agencies in 25 countries working towards fair and humane policies for the treatment of asylum Official site (online) Available at: www.ecre.org, accessed on 22/11/2006; see also Muala, N. & Harby, C. 2004, Immigration Asylum and Detention and ECHR, Progress on the Rights of Asylum Seekers in the New EU Area of Freedom, Justice and Security, Research Paper on Advice on Individual Rights in Europe (AIRE).

(2) Some figures can be quoted to show the extent of the internal efforts of the Libyan authorities to fight irregular immigration effectively. For example, in 2003, Libya repatriated 43,000 illegal immigrants of various nationalities, which is a substantial number in comparison with the actual presence of illegal immigrants as a whole. Nevertheless, a year later, this number reached 54,000, witnessing a significant increase in nationals originating from sub-Saharan African countries. During a visit to Libya for the purposes of this study the researcher witnessed the arrest of 460 people who had tried to cross to Europe by boat. They were intercepted by the maritime Libyan Guards in Zowara sea port.

(3) See the << you need title of the article >>> Brussels Journal (online), Available at <http://www.brusselsjournal.com/about>, accessed on 22/2/2006.

(4) Through the Libyan Ministry of Justice and General Security, The Police and Community, Programme on TV, Special Series on 27/12/ 2006.

establish shared policies with other States to combat the phenomenon in irregular immigration.⁽¹⁾ Libya has also taken steps to cooperate with international organisations including UN, EU,⁽²⁾ and International Organization for Migration (IOM). This resulted in the following:

Concluding international agreements,⁽³⁾ leading to some good and effective⁽⁴⁾ collaborative effort to combat irregular migration.⁽⁵⁾

(1) Ibid.

(2) Cooperation between Libya and the EU is quite recent because of the internationally imposed embargo, which lasted more than ten years from 1992 until 2003. The UN Security Council imposed sanctions on Libya in 1992 to press Tripoli to hand over two suspects wanted for the 1988 bombing of a US Pan American Airways airliner over Lockerbie, Scotland. The Council suspended (but did not lift) the sanctions against Libya in April 1999 after the Libyan government handed over the suspects for trial in a special court. Eventually the court found one of the two suspects guilty. The sanctions were lifted in August 2003 when Libya accepted responsibility for the bombing and agreed to a \$2.7 billion settlement. See, Mateos, E. 2005, *Libya Return to International Scene Profiles*, Mediterranean Politics, vol. 10, no. 3, 439 - 445, p. 439. Council of the European Union, Brussels, 27 May 2005, doc no: 9413/1/05 REV 1, stated, "There is a need for a comprehensive and integrated approach to migration in the Mediterranean which encompasses dialogue and cooperation with Libya, other Mediterranean partners as well as with the main African countries of origin and transit". See also, the Conclusions of the Justice and Home Affairs Council on 2-3 June November 2002; European Commission, Technical Mission to Libya on Illegal Migration, Report, loc. cit.; Press Release, 2664 The Council meeting, Justice and Home Affairs, Luxembourg, 2-3 June, 2005; European Council on Refugees and Exiles, ECRAN Weekly Update, Outcome of JHA Council on 2-3 June, Available at: http://www.ecre.org/policy/eu_developments.shtml, Accessed on 22/2/2006; First recommendation of the Report on the Visit of an ad hoc delegation to Tripoli, Libya on 4 to 6 December 2005, op. cit. 16.

(3) However, most of these agreements are mainly focused on fighting the threat of global terrorism rather than treating the issue of irregular immigrants specifically.

(4) Between 2002 and 2004 arrivals of illegal migrants via the sea to Italy were reduced by 40 per cent, through expulsion back to Libya. According to a report, both Libya and Italy need to collaborate on illegal immigration and find a solution to a problem that does not simply concern Italy and Libya but the whole of Europe and Africa.

(5) Italy has already provided Libya with patrol boats, night vision goggles, communications equipment and Land Rovers. See Informal letter from Foreign Ministry of Italy to Libyan Authority by Libyan Office in Rome regarding the flow of irregular immigration to Italy, letter No 2/2/13 on 27/9/2005. Libya, however, requires more financial and technical support from the EU in the form of radar, night-vision equipment, bullet proof patrol boats and aircraft, see the Technical Mission to Libya on Illegal Immigration 2004, *loc. cit.*

For instance; Libya has signed several collaboration agreements with its neighbours (e.g., Italy)⁽¹⁾ concentrating mainly fighting terrorism, organised crime, drug trafficking and irregular migration. Another example is the agreement between Libya (and other Maghreb countries) and Italy concerning return irregular migrants to their country of origin and the establishment of detention camps in Libya and joint patrols in the Libyan territorial waters as well as providing Libya with some technical and training support.⁽²⁾

5.2.4.1 Faced with criticism from European countries Libya on several occasions stated that it is determined to cooperate with its neighbouring countries⁽³⁾ but argued and insisted that with its limited resources it will not be able on its own monitor its long maritime borders properly.⁽⁴⁾

5.2.5 Libya has contributed to efforts aiming at concluding an agreement on rescue at sea and in the desert, as well as adoption of a joint action plan for cooperation on migration issues.⁽⁵⁾

5.2.6 Joint recognition between Libya and the EU that the issue of irregular migration is a common problem requiring a clear and

(1) For instance, a series of collaborative efforts ensued between Libya and Italy, starting in 2000 at ministerial level then continued in 2002 by the High-Level Libyan-Italian Committee. In 2003 an operational agreement was signed. In 2004, technical, political and operational several meetings were held culminating in summits between the political leadership of the two countries.

(2) European Parliament, Delegation for Relations with the Maghreb Countries and the Arab Maghreb Union (including Libya), Third European Parliament/Libya Interparliamentary Meeting 17 to 20 April 2005, Tripoli (Libya), Report by the Delegation Chairman, Luisa Fernanda Rudi?beda, (online), Available at www.europarl.eu.int/meetdocs/2004_2009/documents/cr/569/569969/569969en, accessed on 12/1/2006. Memorandum from the Italian Foreign Ministry to its counterpart Libyan Foreign Ministry through the diplomatic channel and regarding the flow of illegal immigration to Italy Ref. no 2/2/13/2110, Libyan Embassy archives in Rome.

(3) See for instance, www.eubusiness.com/afp/051125161028, Accessed on 5-3-2006.

(4) Statement by Mr Suleiman Alshawmi, Secretary for Foreign Affairs at the General Peoples Congress of Libya during his introduction of delegation of the ad hoc European Parliament on their visit to Tripoli, Libya on 14 to 16 December 2005; See also Report on the visit of an ad hoc delegation to Tripoli, Libya on 4 to 6 December 2005.

(5) European Council on Refugees and Exiles, ECRAN Weekly Update, Outcome of JHA Council on 2-3 June, Available at: http://www.ecre.org/policy/eu_developments.shtml, Accessed on 22/2/2006..

genuine political commitment from all parties in order to find a common solution.⁽¹⁾

5.2.7 The Libyan collaboration with the IOM is hoped to result in many projects⁽²⁾ including, assisted voluntary return, implementation of migration stabilisation measures in countries of origin, management of transit migration and information campaigns in countries of origin directed at potential irregular migrants, as well as sustainable reintegration programmes for irregular migrants in Libya, and income-generating projects for potential migrants in neighbouring countries.⁽³⁾ Other projects include a programme of operations called Transit and Irregular Migration Management (TRIM);⁽⁴⁾ and, training courses regarding irregular migration

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- (1) Report on the Visit of an ad hoc delegation to Tripoli, Libya on 4 to 6 December 2005, op cit, p. 10/17.
 - (2) IOM also plans to support consolidation of the Libyan institutional capacity for effective migration management, in particular in the areas of border management, assisted voluntary returns, irregular migrants and capacity building of relevant government entities. However, during the 84th Session of the IOMS Governing Council, Human Rights Watch, who was invited as observers, made a statement where they urged IOM to respect its stated principles by guaranteeing that policies and practices conform to international human rights norms. IOM granted Human Rights Watch observer status in 2002 for Council meetings. Representatives from Human Rights Watch attended the December 2002 Governing Council meeting (84th Session), and, with Amnesty International, issued a joint statement December 2002.
 - (3) On August 2006, the Libya signed a Memorandum of Understanding with the IOM to establish the presence of the migration agency in Libya, by setting up a Tripoli office in April 2006. The agreement included provision on “the rights of migrants, international migration law, and technical assistance and capacity building for migration management”. as a consequence Italian authorities have agreed to finance pilot projects for IOM in Libya relating to professional training courses for police in Libya, including the fight against traffickers, assistance and protection of victims, identification of illegal immigrants, and an evaluation of international protection and respect for human rights. IOM Press Briefing Notes, “Libya-IOM Opens Office in Tripoli,” April 25, 2006, Available at <http://www.iom.int/en/news/PBN250406.shtml#item2>, as of April 28, 2006; IOM Press Briefing Notes, “IOM and Libya Sign Agreement,” August 9, 2005, (online), Available at <http://www.iom.int/en/news/PBN090805.shtml>, accessed on March 10, 2006; Letter to Human Rights Watch from the Italian Foreign Ministry, May 30, 2006; IOM, Migration Initiatives Appeal 2005, p. 26; Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, The Global Approach to Migration One Year On: Towards a Comprehensive European Migration Policy, Brussels 30/11/2006.
 - (4) IOM, Migration Initiatives Appeal 2005, p. 26.

and human trafficking offered at the Police Academy in Tripoli in 2004.⁽¹⁾

5.2.8 Libya has also maintained active contacts with international human rights and migration organisations to ensure that its policies do not violate human rights law, particularly the repatriation programme. The main criticism of Libyan policies by human rights organisations has been the use of detention camps as an instrument to control irregular immigration.

5.2.9 At the regional level, Libya has been part of various international processes and dialogues to help it envisage adequate responses to the challenges caused by irregular immigration; for instance, Libya has always been very keen to participate in, the 5 + 5 Dialogue⁽²⁾; the Barcelona Process; and neighbouring regional conferences relating to migration control.

5.2.9.1 Regarding the Barcelona Process⁽³⁾ Libya was present at an International Conference on Migration in Barcelona, in 1999 based on a special invitation by the Presidency. Libya expressed its keen interest in becoming an active member of the Process. However after debates on the issue, it was decided that the Libyan full memberships of the Barcelona Process require two conditions: (1) that UN Security Council sanctions should be

(1) IOM opened an office in April 2006 in Tripoli following the signing of an agreement in August 2005 between Libya and IOM, see the official site of the IOM (online), Available at: www.old.iom.int, accessed on 22/11/2006; Andrjasevic, R. 2006, How to Balance Rights and Responsibilities on Asylum at the EUs Southern Border of Italy and Libya, Centre on Migration, Policy Society, Working Paper no. 27, pp. 1-44, p. 12.

(2) The 5 + 5 Dialogue was proposed initially by the French President François Mitterrand at the beginning of the 1980s. The idea was re-launched by the Italian Prime Minister, Bettino Craxi, and the Spanish Prime Minister, Felipe Gonzalez, in the second half of the decade. The initiative involves 10 countries around the Western Mediterranean: Mauritania, Morocco, Algeria, Tunisia, Libya on the southern shore and Portugal, Spain, France, Italy and Malta on the northern shore Midea, European Institute for Research on Mediterranean and Euro-Arab Cooperation with the support of the European Commission, Dialogue 5+5 Western Mediterranean, January 2004 (online) Available at: <http://www.midea.be/?page=2&lang=en&doc=1443>, accessed on 10/8-2005.

(3) See Xenakis, D. 1998, The Barcelona Process: Some Lessons From Helsinki, Department of Political Studies, University of Catania, Working Paper no.17.98.

lifted and (2) Libya should accept the entire Barcelona acquis.⁽¹⁾ As the first condition was beyond Libyas control Libya has been given only an observer status in the Euro-Mediterranean Partnership and can also attends the Foreign Affairs Ministerial meetings, which are considered high-level political dialogue meetings, and the Euro-Med Committee.⁽²⁾ However, the EU clearly wishes to see full Libyan participation.⁽³⁾ The Barcelona Process is composed of three pillars; (1) a political and security partnership, (2) an economic and financial partnership and (3) a cultural and human affairs partnership.

5.2.9.2 The 5+5 Dialogue,⁽⁴⁾ initiative has aimed at establishing a framework for dialogue and cooperation amongst member countries to tackle issues, such as, security and stability, economic integration and regional migration control through

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- (1) Third Euro-Mediterranean Conference of Foreign Ministers, Stuttgart, 15-16 April 1999. The Political Committee of the Fifty Second Session, in its report to the Assembly of the Western Europe Union on 20 June 2006 stated that: "Libya is still reluctant to commit itself to the acquis of the Barcelona Process, because it is worried that by adhering to this process, it will wheel in the Trojan horse of economic and political reform that it is unwilling to introduce. Furthermore, Colonel Gaddafi profoundly disagrees with the EUs policy on the Israeli-Palestinian conflict and also wants to play the role of crucial third party between the EU and the African countries", see Security and Stability in the Mediterranean Region, Report submitted to Assembly of the Western Europe Union Interparliamentary European Security and Defence Assembly, Fifty Second Session, 20 June 2006, Recommendations, para 40, Document A/1939.
 - (2) Hauser, G. 2005, The Mediterranean Dialogue - A Transatlantic Approach, University of Koln, Germany, p. 21.
 - (3) "Libya should be further encouraged to join the Barcelona Process, because this would give a better framework for EU-Libya relations to develop and also in order for Libya to receive aid via the MEDA programme rather than merely through ad hoc financial instruments which may be more difficult to achieve". See, Report on the Visit of an ad hoc delegation to Tripoli, Libya on 4 to 6 December 2005, (online), Available at http://cerium.ca/impression.php3?id_article=2044, accessed on 20/3/2006. The Council stated that: "The full integration of Libya into the Barcelona Process is the overall objective of the EUs policy of engagement with that country. Participation in this Process, and subsequent progression towards the conclusion of an Association Agreement, remain dependant on Libyas readiness to accept the Declaration and the Barcelona acquis in full and unconditionally. Consultations on this matter and on other outstanding issues are continuing". Council of the European Union, 15 July 2005, Presidency Conclusions, Euro-Med Report, Brussels, 10255/1/05, REV 1.
 - (4) See footnote 1, p. 21.

multilateral and regional collaborative approaches⁽¹⁾ and regular and informal consultation processes. It further aims at achieving a real and positive impact on countries of origin, transit and destination economically and socially, as well as⁽²⁾ discussing and defining a common position on the regions migratory issues in homogeneous geographical context in which to advance the aims of collaboration and integration.⁽³⁾

5.2.9.3 Libya has also participated with more international and regional efforts aiming at controlling irregular immigration, including:

- **International Conference on Migration, Italy (2006)**⁽⁴⁾ addressed the issue of migration from an ethical perspective.⁽⁵⁾ It highlighted the value of a person as a human resource for the receiving country as an important factor in the development of the targeted country as well as a positive answer to the development of the country of origin.⁽⁶⁾ The cultural and civilizational aspects brought by migrants to and their effect in the receiving countries.
- **Euro-African Conference on Migration (Rabat) 2006**:⁽⁷⁾ the main concerns of this conference include: developing effective solidarity,⁽⁸⁾ the fight against irregular migration, smuggling and traffick-

(1) The group was initially called “4 + 5”. It became “5 + 5” when Malta joined the initiative in the second conference, held in Algeria in 1991.

(2) See World Migration, Costs and Benefits of International Migration, IOM, 2005, vol. 3, World Migration Report Series, 2005.

(3) Unfortunately, the 5 + 5 Group did not go beyond a certain number of meetings at ministerial level; the aftermath of the Gulf War, the Algerian crisis and the international isolation of Libya following the Lockerbie case, are among the factors that contributed to the progressive abandonment of an initiative that if continued would have lead to real success.

(4) “Migration and Dignity: Europe and Africa together for a Mediterranean Migration Policy”, held in Italy (Pozzallo) on 13-14 March 2006. International Conference on Migration and Dignity, Italy/ Pozzallo, 13-14 March 2006.

(5) Remarks of Mr Brunson McKinley, Director General of International Organisation for Migration at the Conference, Pozzallo, Sicily, Italy 13-14 March 2006, p. 3.

(6) See the Secretary-General, Message to the Conference, op. cit., Chapter 4, Note. 730.

(7) Foreign Affairs Ministers as well as those responsible for migration and development and delegates from many other countries met on July 10th and 11th 2006 in Rabat, to engage in discussions about migration and development.

(8) All of these representing the essentials of sustainable development and security for all - will a durable solution to the managing of migratory flows be capable of being developed. See, Statement by Amnesty International at the Occasion of the Ministerial EU-African Conference on Migration and Development, Rabat, 10-11 July 2006.

ing in human beings⁽¹⁾ and the root causes of irregular migration,⁽²⁾ as well as the problem of brain-drain as it deprives developing countries from benefiting from highly skilled people. This can be achieved through training, cooperation and pre-empting illegal movements by using an early warning system similar to the European model.⁽³⁾ However, unfortunately, Rabat Conference was in fact “a failure and misunderstanding”.⁽⁴⁾ This is because a substantial part of the plan of action adopted at the Rabat Conference concentrates on oppressive measures.

- **Euro-African Conference on Migration (Tripoli) 2006,**⁽⁵⁾ the main points addressed include the following:
 - addressing the root causes of irregular immigration⁽⁶⁾ by elimination of poverty, enhancing development and providing development aid,⁽⁷⁾ encouraging and promoting of Foreign Direct Investment in order to generate employment and reduce migration outflow;

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- (1) In respect of cooperation in the fight against illegal immigration, the Conference emphasised the implementation of several points, including “cooperating logistically and financially for the voluntary return of migrants in transit countries”, Ibid, Para 3, p. 3.
 - (2) It addressed the difficult balance between the fight against irregular migration, smuggling and trafficking in human beings and respecting the fundamental rights and dignity of migrants. The participants also recognised that the migratory flows originate from several parameters, economic or social, inherent to the native, transit and receiving societies. Furthermore, the participants also recognised that the migratory flows originate from several parameters, economic or social, inherent to the native, transit and receiving societies See, Cardinali, M. 2006, Ministerial Euro-African Conference on Migration and Development, Final Declaration and Final Plan, (online), Available at www.belgium.iom.int/index.asp?Selecte, 1&News_ID=490&sm=46 - 77k, accessed on 20/12/2005.
 - (3) Professor of International Law at Lund University, Sweden, expert on refugee law and human rights law.
 - (4) Ibid.
 - (5) This Conference was convened for Ministers responsible for migration and development and Foreign Affairs Ministers. Participants in the Senior Officials session included experts in migration from African and EU countries and the AU Permanent Representative Committee (PRC), Africas Regional Economic Communities (REC), AU and EU Commissions, as well as a limited number of selected UN agencies, international organisations and NGOs specialising in matters of migration and development. Decision Assembly/AU/ Dec.125(VII).
 - (6) Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006, p. 5.
 - (7) Speech by the Development Commissioner Louis Michel during the Conference; Speech by the EU Justice Commissioner Franco Frattini at the Conference; African proposal presented to the Conference.

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- creating an enabling environment in the countries of origin through good governance and respect for the rule of law, elimination of corruption, and promotion and protection of human rights;⁽¹⁾
 - promoting concrete and tailor-made policies and reforms to address skills shortages caused by brain-drain;⁽²⁾
 - implementation and non-discriminatory application of core human rights instruments was discussed;⁽³⁾
 - Sharing information and exchanging best practices;⁽⁴⁾
 - Enhancing regular migration opportunities and provide smoother regular migration flows;⁽⁵⁾
 - extending support to developing projects in countries of origin and transit, to reduce the outflow of irregular migration, to support return and readmission of irregular migrants to their country of origin⁽⁶⁾ and to combat irregular migration, migrant smuggling and trafficking in human beings by criminal organisations and to offer protection and rehabilitation to the victims of trafficking.⁽⁷⁾

(1) Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006.

(2) For example France, United Kingdom and Germany; See for this purpose in Chapter 3 of this study on State Practice.

(3) Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006, op. cit., Para 5, p. 8.

(4) Ibid, Para 8, p. 10.

(5) Ibid, Para 6, p. 9.

(6) This is within the context of existing agreements, instruments and arrangements and bilateral and multi-lateral agreements, Ibid.

(7) Joint Africa-EU Declaration on Migration and Development, loc. cit.; the aim here is To enhance efforts to criminalise trafficking and smuggling in national legislation, to combat criminal organisations and to punish the perpetrators involved in smuggling and trafficking of human beings, as well as to offer protection and rehabilitation to the victims of trafficking, in particular by implementing the relevant protocols of the UN Convention on Transnational Organised Crime

5.3 Critical Assessment of Libyas Efforts and Measures:

- Libya still suffers from insufficiency in organisational ability and management skills that are needed to deal effectively with the migration problems. For instance, “it only deploys two patrol boats supplied by Italy on its 2,000 km coastline. Cooperation is therefore imperative and in Libya’s interest as well”.⁽¹⁾
- Libya has recently met with considerable criticism from human rights organisations and from the European Parliament regarding some incidents of human rights violations; for instance
 - The European delegates noted that Libya did not have any specific procedure for asylum seekers;
 - Libya has not ratified the Geneva Convention on refugees status; and
 - The absence of a cooperation protocol with the local office of the UNHCR.⁽²⁾
 - In the rush to sort out the abnormal escalation of migration problems caused by large flow of migrants and deported irregular migrants from other countries such as Italy,⁽³⁾ Libya has created a volatile detention camps to accommodate migrants, refugees and asylum seekers. According to recent reports, conditions in the detention centres and the treatment of migrants therein are appalling.⁽⁴⁾

(1) Ibid.

(2) Ibid, p.17.

(3) Many have been compulsorily repatriated on planes financed by the Italian government to countries where their lives are at risk. In April 2004, for instance, the European Parliament called upon Italy to stop deporting irregular immigrants to Libya, arguing that Libya did not have a proper asylum system nor any effective refugee protection, and that migrants in Libya were held in camps in unacceptable conditions. Lutterbeck, D. 2006, Policing Migration in the Mediterranean, Mediterranean Politics, vol.11, no.1, pp. 59-82, p. 62.

(4) This has been exacerbated by the fact that Libya has not signed the Geneva Convention on the rights of refugees. Report of the Members of the European Parliament on Libya, op. cit., p. 11.

6. Conclusion, Good Practice & Recommendations

The measures, efforts, policies and regulations that have, so far, been adopted by States and international organisations seem to be insufficient to control irregular migration. Irregular migration is a global phenomenon, and therefore it needs to be tackled primarily at international level as well as at regional and national levels. Therefore, a global balanced and comprehensive approach aiming at short, mid term and long term goals to confront this problem is urgently needed. The international community should engage in a thorough and objective debate about the consequences of irregular migration and work on effective and feasible international collaborative measures for its prevention. However, in order to solve migration problems, the root causes (economic, social, political, etc.) leading to irregular migration should be seriously addressed and tackled by applying holistic and comprehensive approach.

- Development should be given highest priority. In addition to UN good efforts in enhancing development, rich countries targeted by migrants should seriously participate in solving development problems in poor countries of origin by providing all types of support and bridging the economic gap between rich and poor countries.⁽¹⁾ Projects such as the micro-credit programme,⁽²⁾ might be a good start, however, other equally effective projects should also be considered.
- Receiving countries should provide means by which regular migration is encouraged and irregular migration discouraged.
- It is vital that States should introduce in their internal law and regulations sufficient safeguards for the protection of human

(1) Such as providing more contribution to the economic development of the developing countries providers of irregular migration.

(2) The programme has been recognised as a successful and popular method in the ongoing fight against poverty, allowing its beneficiaries to borrow at bank rates and start small businesses.

rights and dignity of regular and irregular migrants, refugees and asylum seekers.

- Serious bilateral and multilateral dialogues should take place between all concerned parties in the Mediterranean area (including the UN, EU, AU and MAU) to adopt and take serious steps to implement guidelines for coherent and coordinated policies and measures to solve irregular migration problems.
- States efforts should not exclusively be based on national security considerations, neglecting other factors affecting irregular migration: this would produce a distorted and deficient solution. It is very likely that strengthening control based on one single factor will lead to exacerbate the problem rather than confining it.

Libya should establish proper and more comprehensive legislation and enact clear rules that deal with irregular migration. Prospective law and regulations should criminalise trafficking and smuggling and provide adequate punishments and penalties against the perpetrators of these crimes. Libya should provide sufficient safeguards for the protection of human rights of migrants and the victims of trafficking by signing UN Conventions, bringing its internal legislation in line with applicable international rules and principles and taking serious actions necessary for the protection of human rights. Libya should be encouraged by the international community to join and be a full member of the Barcelona Process, without any unreasonable conditions imposed on it. Libya as well as other countries should use effective media campaigns to highlight the dangers of migration using illegal means.

There are positive and negative impacts for the countries receiving immigrants. The receiving countries usually benefit from cheap and skilful labour who can further contribute to their economic development. Such countries, however, are likely to suffer from the uncontrollable problems of irregular migrants who might negatively affect their culture, demography and economy.

It is obvious that certain policies or procedures are more likely to be fruitful than others, and the extent to which these measures are implemented depends on such factors as the perception of the state for the need to increase the protection of its frontiers, financial constraints and human resources.

As there is a duty to rescue people in danger when travelling by sea, rescued migrants may frequently fear returning to their home States and may have a valid claim to non refoulement under the Refugee Convention or other human rights instruments.⁽¹⁾

The economic development disparities between States complicate the various attempts to develop multilateral strategies in order to relieve international tensions arising from uncontrolled migration.⁽²⁾

When it comes to forced resettlement and urbanisation, a myriad of problems relating to aspects of security arises from international migration.⁽³⁾

Further Comments on Libyan efforts on illegal immigration 5 + 5 dialogue

Briefly, the intention of the first group is to find urgent solutions to prevent and control illegal immigration while ignoring the human phenomenon.⁽⁴⁾ Conversely, the second pole is more concerned with the development of internal economic structures, which might help prevent immigration by the mass of disillusioned citizens, and prevent its borders being used as crossing points to the EU.

(1) Aleinikoff, A. & Chetail, V. 2003, *Migration and Legal Norms*, op cit, p. 35.

(2) Puka, N. & Graham, D. 1998, *Redefining Security; Population Movement and National Security*, Praeger Publishers, UK.

(3) Ibid; Article 1(2) chapter 2 of the Charter for Economic Rights and Duties of States, General Assembly Resolution No 3281(XXIX), 29th Session, Supp. No. 31(1974)50, states that "each state possesses the sovereign and inalienable right to choose its own economic, social, political and cultural systems according to the will of its people without internal or external intervention, coercion or threat in any form whatsoever".

(4) *World Migration, Costs and Benefits of International Migration*, op. cit., p. 12.

Some of the proposals were to “reinforce research for a better understanding of source and transit migration in the Maghreb so as to improve knowledge of this issue and to enable enhanced joint management of the phenomenon”,⁽¹⁾ research into the main causes of the appearance of the phenomenon of illegal immigration as well as regular exchange of documentation, surveys and information aimed at a better understanding of the phenomenon of migration flows.⁽²⁾

Combating migration by using illegal means by “1:- Develop[ing] mechanisms to combat rings engaged in illicit migration, and trafficking in human beings, and provide appropriate assistance to the victims of such offences. 2:- Consolidat[ing] technical cooperation in particular in the area of training and reinforce the border control capabilities of countries on the Southern shore of the Western Mediterranean region”.⁽³⁾ This is in addition to taking “Appropriate development steps by supporting in particular the comprehensive development efforts undertaken by countries of the South in depressed areas with a high migration potential, so as to take preventive action against illegal migration by deterring potential candidates to migration”.⁽⁴⁾

To facilitate the dialogue three major themes⁽⁵⁾ were proposed⁽⁶⁾ including: (1) joint management of the movement of people and the necessary reinforcement of human exchanges, focusing on the fight against trafficking of human beings;⁽⁷⁾ (2) the rights and duties of migrants and their integration into the host societies; and (3) migration and joint approaches to development, involving the exchange of information about multilateral actions to combat poverty and local

(1) Tunis Declaration, 16-17 October 2002, Section A, Para 4.

(2) Ibid., Para 5.

(3) Ibid., Section B, Para 7.

(4) Tunis Declaration, Migration and Co-Development, Section C, Para 11.

(5) In Rabat on September 15th and 16th, high level experts met to prepare the upcoming Rabat Conference.

(6) The Proposals of Rabat Conference, Translated from French into English for the purpose of this study.

(7) Ibid.

development measures in regions with a high migration potential, especially in cooperation with migration associations.⁽¹⁾

Information exchange and the establishment of schemes for joint risk analysis, joint training of border guards, anti-forgery cooperation; combating of smuggling and trafficking on the basis of the Palermo Protocols, police cooperation and harmonisation of legislation on sanctions;⁽²⁾ measures to combat the exploitation of migrants and trafficking victims; awareness raising campaigns, fostering more realistic expectations among potential migrants; cooperation on the return and readmission of migrants to countries of origin, including joint measures to verify the identity of irregular migrants; visa matters, including regional harmonisation of visa policies and document security; establishment of priority areas and assistance needs by the Mediterranean partner countries to tackle irregular migration.⁽³⁾

The discussion also recognised the root causes of migration as being economic, security, environmental, demographic, political, social and conflict issues. The participants underlined the need for strengthened synergies between migration and development policies and strategies. They recognised that long-term strategies addressing the root causes, including a reduction of the economic-development gap between European and Arab countries, are also necessary.

To improve migration management, fight irregular migration, implement return policies, and formulate efficient policies linking migration and development.

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- (1) It represents an interesting platform for work on practical solutions. The participant countries in the MTM Dialogue are as follows: Algeria, Austria, Belgium, Cyprus, Czech Republic, Denmark, Egypt, France, Germany, Greece, Ireland, Italy, Lebanon, Libya, Malta, Morocco, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden, Switzerland, Syria, Tunisia, Turkey and United Kingdom and Australia as observers. World Migration 2005, Costs and Benefits of International Migration, International Organisation for Migration (IOM), vol. 3, IOM World Migration Report Series, 2005; see also www.icmpd.org.
 - (2) See Palermo Conventions High Level Political Signing Conference Continues Hearing Statements on Combating Transnational Organisation Crime, 30 December 2000.
 - (3) Final statement by the Chair of the Conference, Informal meeting on a Reinforcement of the Inter-governmental Dialogue on Transit Migration over the Mediterranean, op. cit., para. 7.

SECI regional centre has been established as a permanent means for information sharing and as an operations centre to combat trans-border crime.⁽¹⁾

Can lead to concrete results, such as: (i) exchange of experience and information, especially in relation to document security and organised crime; (ii) concrete technical support and assistance; (iii) targeted training, including language; (iv) continued dialogue on a bilateral as well as multilateral level to address migration-related issues; (v) awareness raising and information campaigns; (vi) development and support assistance.⁽²⁾

The establishment of a common electronic registration system for convicted facilitators, including fingerprints and photos, deemed necessary as one important tool in the global combat against facilitated illegal immigration; the benefit of common analysis and assessment of the gathered intelligence at a centralised level was also stated.⁽³⁾

International Conference on Migration, Italy (2006)⁽⁴⁾ addressed the issue of migration from an ethical perspective.⁽⁵⁾ It highlighted the value of a person as a human resource for the receiving country as an important factor in the development of the targeted country as well as a positive answer to the development of the country of origin.⁽⁶⁾ The cultural and civilisational aspects brought by the immigrants raises awareness and comprehension of the diversity of the world.

(1) See ICPD Web site, www.icmpd.org/default.asp?nav=about-25k, accessed on 12/6/2006.

(2) Ministry of Foreign Affairs of the Republic of Slovenia, Dialogue on Mediterranean Transit Migration (MTM), Conclusions by Chair, p.3.

(3) Ibid.

(4) “Migration and Dignity: Europe and Africa together for a Mediterranean Migration Policy”, held in Italy (Pozzallo) on 13-14 March 2006. International Conference on Migration and Dignity, Italy/ Pozzallo, 13-14 March 2006.

(5) Remarks of Mr Brunson McKinley, Director General of International Organisation for Migration at the Conference, Pozzallo, Sicily, Italy 13-14 March 2006, p. 3.

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smuggling and trafficking in human beings by criminal organisations and to offer protection and rehabilitation to the victims of trafficking.⁽¹⁾

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