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Meeting the challenges of irregular migration in the Southern Mediterranean: The EU-Libya cooperation

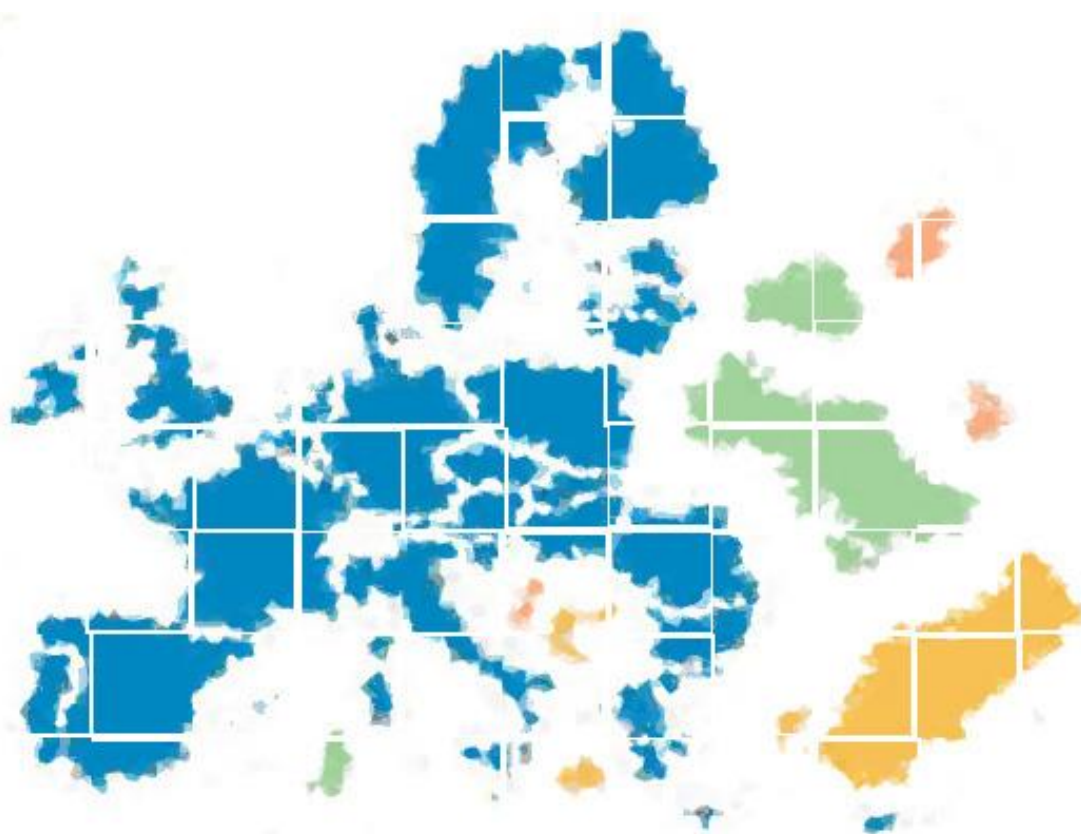
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Meeting the Challenges of Irregular Migration in the Southern Mediterranean: The EU-Libya Cooperation

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Csongor Kiss

Csongor Kiss studied International Relations and European Studies and received his MA degree from CEU in 2015. His academic interest lies in refugees and forced migration, particularly in the legal, political and social dimensions of refugee protection. His recent research project focuses on international cooperation in resettlement of refugees, addressing the question of norms and interests as motives for cooperating, and critically engages with the EU practice as a case study. Currently, Csongor is working with UNHCR in refugee protection.

Executive Summary

The deteriorating security conditions in Libya since June 2014 has had an overwhelmingly negative impact on the general security situation of the population, and Libya has become a major transit country in the Mediterranean for refugees, asylum seekers and economic migrants en route to Europe. While the country is on the edge of collapse, forced displacement in the Southern Neighbourhood is at an all-time high, and the number of deaths in the Mediterranean sea exceeds 3,400. This policy brief is intended to draw the attention of EU policymakers to the crucial importance of this issue and offers potential short- and long-term solutions.

The brief identifies the main challenges in terms of irregular migration to Europe by sea that mainly originate from Libya, and emphasizes the need for immediate action in the context of migration and asylum and the need to deeper integrate Libya into the southern dimension of the European Neighbourhood Policy in order to stabilize the country.

The brief recommends increased engagement by the EU in practical cooperation, such as search and rescue operations to prevent further loss of lives in the Mediterranean. It further calls for increased EU presence in Libya to enhance the country's border management, and for implementing measures in the country to enable safe access to protection. Furthermore, the brief calls for increased EU activity in resettlement to take a higher share of the burden of managing the massive displacement of people in the Southern Neighbourhood. It further calls for concerted efforts towards deepening the cooperation with Libya for more joint actions in the long-term, to meet the significant challenges of irregular and forced migration in the Southern Neighbourhood.

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I. The background of EU-Libya relations

Since the fall of the Gaddafi regime in 2011, the European Union has remained active in endorsing the democratic transition process in Libya. Over the last three years, the EU provided Libya with a comprehensive development package of projects with long-term perspectives. The most crucial issues to address remain to be security, migration, economic recovery, civil society, protection of vulnerable groups and the promotion of human rights.¹ However, in the absence of an Association Agreement² with the EU, Libya cooperates outside of most structures of the European Neighbourhood Policy (ENP). Nevertheless, it is eligible for funding under the new European Neighbourhood Instrument (ENI)³ and under thematic programmes such as migration and human rights.

In the sector of security the EU has established the "EUBAM Libya" in 2013 which aims to support the Libyan authorities in developing border management on land, sea and air borders. The mission is mainly composed of transferring know-hows, capacity-building and creating an Integrated Border Management (IBM) system in the long run.⁴ In the sector of migration, the EU is implementing programmes dealing with migration flows and assistance to migrants for a total of €30 million. The sector of economic recovery seeks to integrate former fighters and supports the access of quality education of all children. Furthermore, the EU funds activities in the areas of democratization, women's rights, media training, reconciliation and capacity-building related to the elections. Lastly, in protecting vulnerable groups the EU is developing effective protection systems for persons of concern for a total of €2.4 million.⁵

However, the deterioration of the security situation in Libya since July 2014 has led to the temporary relocation of all international presence in Libya and the assessment of the needs of the population in the current conflict between the Islamist and pro-government forces remains difficult. Libya is now facing grave security challenges undermining national reconciliation, political stabilization and democratic transition. Furthermore, the European Union

¹ Council Conclusions on Libya, Luxembourg, 20 October 2014.

² The EU may conclude with one or more third countries or international organizations agreements establishing an association involving reciprocal rights and obligations, common actions and special procedure. See Consolidated version of the Treaty on the Functioning of the European Union, Article 217.

³ 232/2014, Regulation of the European Parliament and of the Council of establishing a European Neighbourhood Instrument, Article I paragraph (1).

⁴ Factsheet on EU Border Assistance Mission (EUBAM) in Libya," European External Action Service, http://eeas.europa.eu/csdp/missions-and-operations/eubamlibya/pdf/factsheet_eubam_libya_en.

⁵ "ENP Package - Libya," European Commission, http://europa.eu/rapid/press-release_MEMO-14-228_en.htm. pdf.

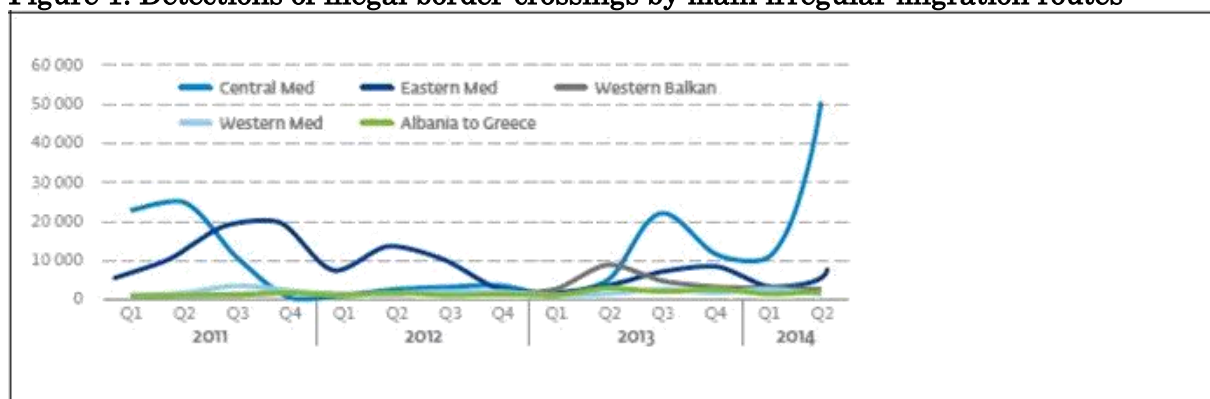
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condemned the instability in Libya a direct threat to the EU, highlighting concerns over terrorism, increased irregular migration and trafficking of illicit goods.⁶

II. Key challenges in the context of irregular migration

The continuing unrest in Libya has had an adverse impact on the general security situation of the population and migrants in the country, and Libya has become a major transit country in the Mediterranean for refugees, asylum seekers and economic migrants to Europe. UNHCR estimates that recent events have resulted in a mass displacement involving more than 393,400 people, however the calculation of the actual scale of displacement is problematic due to the pull out of international presence from Libya. UNHCR is also concerned about the welfare of some 37,000 refugees and asylum seekers stranded in conflict zones of whom the majority fled from the Syrian Arab Republic and Eritrea.⁷ Furthermore, the number of people who crossed the Mediterranean in 2014 is at an all time high, peaking at 207,000⁸ of which about 85% originate from Libya.⁹ The estimated number of people who have died or have gone missing en route to Europe in this year is about 3,400, and around 2,800 since the beginning of July.¹⁰

Figure 1. Detections of illegal border-crossings by main irregular migration routes



Source: Frontex FRAN Quarterly Report Quarter 2 April – June 2014.

⁶ Council Conclusions on Libya, 2.

⁷ "New displacement in east, south and west of Libya," UNHCR, <http://www.unhcr.org/5465ff2b9.html>.

⁸ "Focus on saving lives, says UNHCR, as numbers of people to the seas in search of asylum or migration passes 348,000 globally," UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=5481bf796&query=libya>.

⁹ UNHCR, Division of International Protection. Refugee Protection and International Migration: Trends August 2013 - July 2014 (November 2014), 9.

¹⁰ UNHCR, Central Mediterranean Sea Initiative (CMSI): Urgent and Collective Action Needed to Save Lives (December 2014).

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This policy brief identifies three key challenges in the context of irregular migration in the Southern Mediterranean and within Libya.

A. Lack of border security in Libya

The deterioration of the security situation in Libya left the country vulnerable to irregular border crossing and human trafficking, and the country remains a major hub for irregular migrants setting off to reach Europe by sea. The 'popularity' of this migratory route roots in the relative accessibility of small Italian islands, particularly Lampedusa, and the inability of Libyan authorities to halt irregular migrants departing from the country.

Furthermore, the lack of border control capacities of Libyan authorities facilitate the mass influx of irregular migration to the country mainly originating from the Sub-Saharan Africa (in particular Nigeria, Mali, Ghana and Gambia), East Africa (Eritrea, Somalia, Ethiopia and Sudan) and the Middle East (Syria, Iraq) as the country's inability to manage its borders creates a pull factor for migrants to enter the country with the intention to set off on hazardous journeys to Europe, often with the assistance of human smugglers.¹¹

B. Lack of safe access to asylum and protection in Libya

However, not all migrants and asylum seekers enter Libya aiming to reach Europe. Despite the fact that Libya is neither party to the 1951 Refugee Convention nor to the 1967 Protocol¹² and it lacks a functioning asylum system, it hosts high numbers of refugees and asylum seekers, mainly from Syria and Eritrea.¹³ Furthermore, the status of refugees and asylum seekers remains worrying due to the deteriorating security conditions and the recent pull out of international presence from Libya, which monitored and addressed the needs of persons of concern.

On the contrary Libya is considered as a relatively rich country in Africa with one of the highest GDP in the region due to its huge oil wealth, and the relatively good employment conditions create a favourable environment for migrant workers.¹⁴ Nevertheless, migrants enter the country mainly through irregular channels, therefore their security status remains uncertain, and the recent tensions in Libya exposed both migrants, refugees and asylum seekers to a dangerous situation trapping them in conflict areas. As a result of the increasing harassment and threats of violence towards these vulnerable

¹¹ Philippe Fargues and Sara Bonfanti, "When the Best Option is a Leaky Boat: Why Migrants Risk Their Lives Crossing the Mediterranean and What Europe Is Doing About It," Migration Policy Centre (2014): 7.

¹² 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

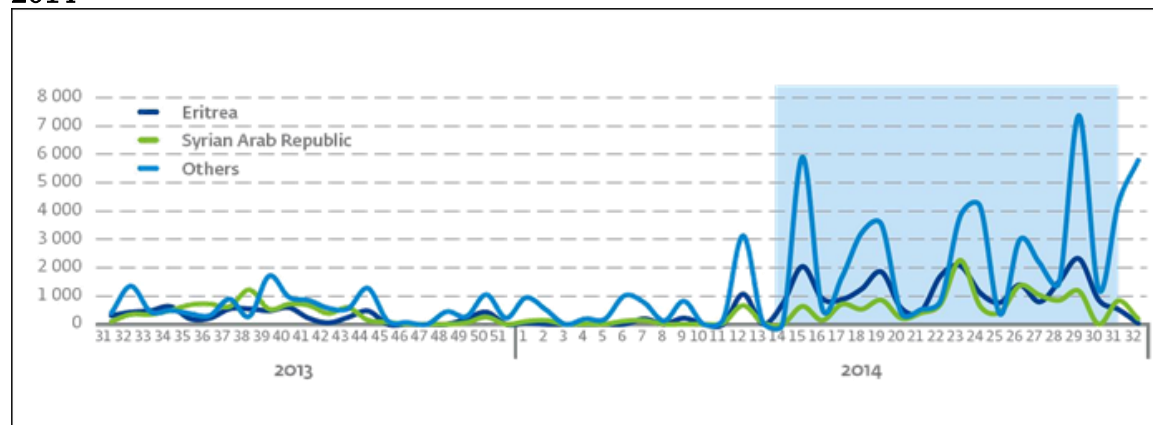
¹³"Focus on saving lives."

¹⁴ Altai Consulting, Mixed Migration: Libya at the crossroads. (November 2013), 72.

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people, the number of refugees, asylum seekers and migrants who take perilous journeys to Europe by sea has drastically increased.

Figure 2. Weekly Detections of irregular migrants illegally crossing the Central Mediterranean towards the EU. Blue shaded frame indicates the second quarter of 2014



Source: Frontex FRAN Quarterly Report Quarter 2 April – June 2014.

C. Limited search and rescue capacities of the joint EU naval operation

Following the aftermath of the Lampedusa tragedy in October 2013, the Italian government set up a search and rescue operation called 'Mare Nostrum'. UNHCR and other NGO's welcomed the establishment of the operation that rescued over 150,000 refugees, asylum seekers and migrants since its launch.¹⁵

However, as of 1 November 2014, the Italian government ended Mare Nostrum, increasing concerns among UNHCR and other NGO's arguing that it could heighten the risks of finding safety in Europe and lead to more refugees, asylum seekers and migrants perishing at sea.¹⁶ Concerns continue to rise as the European Union launched its new operation on 1 November 2014 carried out by Frontex called 'Joint Operation Triton'. As Triton is intended to focus on border control and monitoring in a very limited geographical scope, it does not substitute or replace the previous large scale Italian efforts in search and rescue¹⁷ leaving refugees, asylum seekers and migrants trying to find safety in Europe in an even more dramatic situation.

¹⁵ Central Mediterranean Sea Initiative.

¹⁶ Central Mediterranean Sea Initiative.

¹⁷ Frontex Joint Operation 'Triton' - Concerted efforts to manage migration in the central Mediterranean," European Commission, http://europa.eu/rapid/press-release_MEMO-14-566_en.htm.

III. Possible measures to meet the challenges

It may be concluded that the deteriorating situation in Libya is likely to prolong, and the key challenges identified in the previous section need to be addressed in a timely manner. Policymakers in Brussels should engage in developing measures to manage the protracted situation and alleviate the worsening conditions of refugees, asylum seekers and migrants in Libya.

Furthermore, with the implementation of a less ambitious naval operation in the Mediterranean, which focuses on border control rather than search and rescue, the dark picture of more lives lost in the Mediterranean is looming. This section aims to propose potential solutions for EU policymaking to manage, mitigate and eventually resolve the key challenges of irregular migration in Libya and in the wider geographical scope of the Southern Neighbourhood.

A. Recasting an effective joint EU search and rescue operation

First of all, the most 'feasible' measure is quite plausibly the recast of a joint EU search and rescue operation in the Mediterranean. As the efficiency of the Mare Nostrum - which saved more than 150,000 people - is beyond question, and as NGO's, including UNHCR, highly commended the operation, maintaining robust search and rescue activities are crucially important.

The framework for such an operation was already created by the launch of the Joint Operation Triton,. Therefore the question remains whether the EU could live up to international expectations of being a major humanitarian stakeholder in the Southern Neighbourhood and mantle the existing limited operation with geographically widespread search and rescue capacities.

However, several voices were raised against the operation condemning a supposed unintended pull factor for refugees, asylum seekers and migrants to set off to Europe.¹⁸ Nevertheless, creating means for preventing the loss of human lives in the Mediterranean should remain a short and medium-term key priority for the European Union in order to remain a credible partner to countries of transit in the Southern Neighbourhood, particularly to Libya. The absence of such measures would simply result in the EU turning its back on refugees, asylum seekers and migrants in a vulnerable situation, and thus the EU would cease to be an 'area of freedom, security and justice'.

B. Creating safe access to asylum

In terms of directly addressing refugees, asylum seekers and internally displaced persons in Libya, the EU should enhance the country's capacities

¹⁸ "UK axes support for Mediterranean migrant rescue operation."

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through increasing EU funds to the country allocated under its Regional Protection Programme¹⁹ in strong cooperation with key stakeholders such as UNHCR. These expanded technical and financial assistances could potentially contribute to improving the general protection condition of refugees through durable solutions (local integration, repatriation, and resettlement) and through establishing effective procedures for determining refugee status.

However, the EU should not limit itself to financial and technical assistance. As UNHCR highlights, local integration of refugees in Libya is generally not possible due to the deteriorating security situation and the prospects for voluntary repatriation is limited. Therefore, resettlement remains the main durable solution as a protection tool for the most vulnerable persons.²⁰ Resettlement of refugees from Libya to the EU may be carried out under the Joint Resettlement Programme, which the EU adopted in March 2012.²¹ To facilitate resettlement, the EU could increase its presence in the country focusing on capacity-building. Furthermore, extraterritorial processing of asylum claims could potentially prevent refugees and asylum seekers from resorting to services of human smugglers and to perilous journeys by sea to reach safety in Europe.

Conversely, the EU resettled only 11.9% (around 11,000 people) of the total number of resettled persons in the world,²² while the refugee population in the Southern Neighbourhood is at an all time high, exceeding more than 3,000,000 million people.²³ Therefore, the EU should consider increasing its involvement in resettlement within the framework of its Joint Resettlement Programme to demonstrate international solidarity and to strengthen its perception as a normative power which promotes human rights and the rule of law.

C. Incorporating Libya deeper into the southern dimension of the ENP

As it was previously highlighted in the first section, the cooperation between the EU and Libya is not bound by contractual arrangements as there is no Association Agreement in force. Negotiations over an EU - Libya Framework Agreement were suspended in 2011²⁴ and have not resumed ever since,

¹⁹ 181/2012/EU, Decision of the European Parliament and of the Council amending Decision 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows,' paragraph (5).

²⁰ UNHCR, "North Africa," UNHCR Global Appeal 2014-2015: Ensuring Protection for Persons of Concerns (2014),

²¹ 181/2012/EU, paragraph (1).

²² UNHCR, UNHCR Projected Resettlement Needs 2015," 20th Annual Tripartite Consultations on Resettlement, UNHCR (Geneva: 24-26 June 2014), 53-54.

²³ UNHCR, Global Trends Report 2013 (2014), 12.

²⁴ See further <http://ec.europa.eu/trade/policy/countries-and-regions/countries/libya/>.

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however Libya participates in the Barcelona Process as an observer.²⁵ Furthermore, the current security situation and the political instability in the country undermines any progress in integrating Libya deeper into the southern dimension of the European Neighbourhood policy.

Nevertheless, it is in the best interest of both the EU and Libya to resume talks within the framework of the European Neighbourhood Policy as soon as domestic circumstances allow. Concluding an Association Agreement with Libya could quite plausibly improve the political, economic and social situation of the country as well as create reciprocal rights and obligations in terms of human rights, democracy, economic development, regional cooperation and migration.²⁶ However, cooperation is likely to require greater differentiation from the EU, in order to respond to the needs and expectations of Libya while also safeguarding key EU strategic interests in the country. As soon as a more comprehensive cooperation is back on track, the EU should pursue the more-for-more principle, which was set out in a 2010 European Commission Communication on the European Neighbourhood Policy.²⁷ Applying the more-for-more approach, the EU would quite conceivably be able to develop deeper partnership and offer greater incentives to Libya which should, in return, take commitments towards democratic transition and reform, including free and fair elections, fight against corruption and democratic control over armed forces.

Furthermore, the EU will have to engage deeper in developing the border management of Libya through the 'EUBAM Libya' mission in order to effectively tackle human smuggling. Apart from the existing framework which supports the Libyan authorities mainly through the transfer of know-hows, the EU should consider creating monitoring mechanisms to better identify Libya's most urgent needs in securing the country's borders and to assess Libyan authorities' compliance with international legal obligations. However, increased border security should not undermine the EU's efforts to create a stable, safe country of asylum and under no circumstances should it prevent refugees and asylum seekers from accessing effective protection in the country.

IV. Conclusion and recommendations

This policy brief intends to highlight the key challenges in terms of irregular migration in the Mediterranean, particularly in Libya, and provide EU policymakers with possible solutions that could be implemented in an enhanced EU-Libya cooperation. It is without doubt that due to its current unstable situation, Libya should emerge as a key focus country for

²⁵ See "Barcelona Process," http://www.eeas.europa.eu/euro_med/barcelona_en.htm.

²⁶ See "Association Agreements," <http://eeas.europa.eu/association/>.

²⁷ COM(2010) 207 final, Communication from the Commission to the European Parliament and the Council on Taking Stock of the European Neighbourhood Policy, 2.

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policymakers both in the context of migration and asylum and the European Neighbourhood Policy.

In the short-term, policymakers in the European Union will have to reconsider the EU's current border security operation in the Mediterranean, particularly mantling it with a geographically widespread search and rescue element to prevent further lives perishing at sea. Furthermore, the need for deepening cooperation in the area of migration and asylum with major transit countries, such as Libya, is increasing. Policymakers should realize that Libya is likely to remain an unstable country of transit in the short-term. Therefore, deeper EU engagement in Libya is crucially important. Particularly, the EU should implement capacity-building measures in assisting border control and management in the country through the 'EUBAM Libya' while they should also consider equipping the mission with monitoring mechanisms.

Furthermore, as forced migration continues to be a key challenge in the Southern Neighbourhood, the EU should play a greater role in the protection of refugees and asylum seekers in Libya if it wants to reach its priorities, defined during the European Council meeting in June 2014, particularly to 'be a strong partner in the neighbourhood.'²⁸ Therefore, policymakers should consider creating means for implementing extraterritorial refugee status determination procedures. This would ensure safe access to asylum in Europe without forcing refugees and asylum-seekers to embark on perilous journeys by sea seeking protection. Moreover, the European Union should take a higher share of the burden in managing the massive displacement of people in the Southern Neighbourhood by significantly increasing the number of refugees and asylum seekers resettled under its Joint Resettlement Programme.

In the long-term, the EU should focus on incorporating Libya deeper into its Neighbourhood Policy. As soon as domestic circumstances in the country allow, the EU should rejoin negotiations over an Association Agreement which would undoubtedly enhance democratic transition, the rule of law, human rights and economic prosperity in the country. Furthermore, it would also integrate Libya into the region filling the last remaining geographical gap in the Southern Mediterranean partnership.

²⁸ Council Conclusion, Luxembourg, 26-27 June 2014, 20.

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