



UNITED NATIONS
UNIVERSITY

UNU - CRIS

COMPARATIVE REGIONAL INTEGRATION STUDIES



UNU-CRIS Policy Brief

No. 1

REGIONAL RESPONSES TO THE LIBYAN CRISIS

Authors:

Ademola Abass

Stephen Kingah

Sonja Nita

September 2011

The authors

Ademola Abass

Ph.D., International Law

Research Fellow and Head of the Peace & Security Program at UNU-CRIS (United Nations University Institute on Comparative Regional Integration Studies)

aabass@cris.unu.edu

Stephen Kingah

Ph.D., Law

Research Fellow at UNU-CRIS (United Nations University Institute on Comparative Regional Integration Studies)

skingah@cris.unu.edu

Sonja Nita

Researcher at UNU-CRIS (United Nations University Institute on Comparative Regional Integration Studies)

snita@cris.unu.edu

United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS)
Potterierei 72, 8000 Brugge, BE-Belgium
Tel.: +32 50 47 11 00 / Fax.: +32 50 47 13 09
www.cris.unu.edu

1. Introduction

The Libyan crisis, which began in February 2011, culminated in the collapse of the Qaddafi regime. On 24 August 2011, rebel factions eventually pushed into Tripoli, the Libyan capital, a development that many commentators believe marks the beginning of the end of the 42-years old regime. As at the time of writing, the whereabouts of Qaddafi remain unknown.

Libya is a country that enjoyed one of the highest Human Development Indices in Africa. Enormous proceeds from oil wealth allowed the Qaddafi regime to provide public services that can only be the envy of other African countries. Qaddafi and his family have ruled Libya as a personal fief since he came to power in 1969. They also had a strong and proven record of survival which, until the events of 24 August, led many to opine that the regime might yet survive to see another day. Responses to the events in Libya have varied. Western countries like the United States, the United Kingdom, France and most members of the North Atlantic Treaty Organization (NATO) condemned Qaddafi's use of brutal force to quell resistance to his rule. Presidents Obama, Sarkozy and Prime Minister Cameron have jointly justified the international action in Libya as one taken in order to protect the country's civilian population.¹ Some in the US Administration even started talking of Qaddafi as the "former

leader" of Libya before the regime collapsed.² Conversely, countries like Brazil, India, China, Russia³ and even Germany were reluctant towards international action in Libya, or, as with Germany, an outright refusal of involvement.⁴

Regional organizations are key actors in Libya.⁵ These are generally those that Libya is or not a member of. The latter include NATO, the Gulf Cooperation Council and the European Union (EU),⁶ while the former include the League of Arab States (LAS), the African Union (AU), the Union of the Arab Maghreb (UAM), the Organization for the Islamic Conference (OIC), the Common Market for Eastern and Southern Africa (COMESA) and the Community of Sahelo-Saharan States (CEN-SAD).

This note focuses on two main aspects of the international involvement in Libya, namely: the implementation of the no-fly zone and the treatment of refugees.

2. Use of no fly zone (NFZ)

The NFZ over Libya was first proposed by the UK's Prime Minister David Cameron. Initially there were mixed views about the proposal. The initiative was aimed at prohibiting Qaddafi from using air supplies to reinforce attacks on civilians especially in the Eastern parts of the

country. It was adopted by United Nations Security Council (UNSC) Resolution 1973.⁷

Previous NFZs have not been directly authorized via UNSC Resolutions but through extrapolation from other resolutions. These include Operation Northern Watch⁸ and Operation Southern Watch⁹ in North and Southern Iraq in the 1990s following the first Gulf War. In the case of Bosnia Herzegovina (UNSC Resolution 781) the objective was to prohibit military flights and ensure safe passage of humanitarian assistance. One of the critical aspects noted in previous NFZs has been the gap that can exist between the operational goal and strategic vision or political end-state of the NFZ.¹⁰ The operational dimension of the NFZ is actually very easy to deal with.¹¹ Reaching the political end state can be challenging.

Resolution 1973 made clear that states or groups of states in regional organizations or arrangements should take all necessary measures to protect the civilian population (paragraph 4). It singled out the important role of the League of Arab States (LAS) in maintaining international peace and security as pertains to Libya (paragraph 5). No mention was made of the AU. Also the Secretary General of the Arab League had to be informed of all the actions being taken by the states enforcing the NFZ.¹² Paragraph 6 provided for a ban on all flights in the Libyan airspace so as to protect civilians. But exceptions were made to the ban. These related to humanitarian flights and flights operated by

forces of the authorities enforcing the ban.¹³ Even if the wording of the resolution seemed clear it clouded the difficulties that would follow leading some observers to argue that the text was replete with handcuffs which NATO would either have to ignore or construe disingenuously.¹⁴

One of the main dangers associated with previous NFZs had been that of mission creep: averting mandate over-reach. Mission creep constituted one of the main challenges following the Bosnian NFZ in the 1990s as the civilian protection mandate gradually metastasized into bomb shelling.¹⁵ This is also how the Libyan campaign evolved as “all necessary measures” were later interpreted to mean the ousting of Qaddafi.

A few days following the adoption of Resolution 1973 UK and French forces began operations to enforce the NFZ. Subsequently, NATO took up the responsibility for the operations and has been the lead regional enforcing entity in the conflict. The pressure put to bear on Col Qaddafi by NATO has been considerable and the organization is determined that Qaddafi be out of power by the end of September 2011.¹⁶ It may seem that that goal has now been achieved.

The LAS on its part has simply been alluded by NATO and the coalition forces as a pretext to legitimize operations on the ground. The importance of the League was clearly evoked by the numerous references made to it in UNSC Resolution 1973. The League itself was one of

the foremost entities to demand the imposition of a NFZ on Libya. Its secretary general Amr Moussa said the NFZ demand had to be a preventive measure whose main goal is to protect Libyan citizens. This move was welcome by Western leaders. Moussa noted that the NFZ was the only way to protect people from Qaddafi's "disdainful" regime. He later declared that "The Arab League has officially requested the United Nations Security Council to impose a no-fly zone against any military action against the Libyan people." This announcement brought pressure on Western powers to act and also came as Qaddafi's forces had reclaimed the oil town of Ras Lanuf.¹⁷ The LAS took the decision after hours of meeting with 21 foreign ministers of the Arab nations. Libya was not invited as it had been suspended from the LAS. Moussa noted that the LAS would start working with the rebels of the Transitional National Council (TNC) based in Benghazi.

On its part the AU developed a road map for peace calling for a cease fire. The Union insisted on a cessation of violence.¹⁸ The AU's Peace and Security Council's road map for peace recognized the dangers posed by an unstable Libya for regional peace. It took the approach of creating a High Level Ad Hoc Panel composed of leaders of South Africa, Congo Brazzaville, Mali, Uganda, Mauritania and the AU Commission Chair.¹⁹ The group conducted a number of meetings and visited Libya. One of the distinguishing features of the AU approach unlike LAS's was to invite both parties to the

AU meetings on the crisis.²⁰ The approach of LAS was to invite only the rebels as represented by the members of the Transitional National Council. Members of the AU Ad Hoc Committee had planned to fly to Libya even before the bombing in March but their permission to travel was rejected.²¹ This rejection was contrary to the terms of Resolution of 1973. The hurdles notwithstanding the AU maintained a strong diplomatic front making efforts to engage other regional actors like the LAS, the EU and the OIC on a negotiated solution. However the rebels rejected this route and through continued attacks NATO forces rendered the AU plan moribund.²²

AU's opposition to military intervention was complemented by similar responses by Presidents Museveni (Uganda), Pohamba (Namibia) and Mugabe (Zimbabwe). Former African leaders also criticized the NATO actions highlighting the problems that the crisis will cause other African countries in terms of lost remittance from workers returning home and incidental hikes in unemployment.²³ What is more, while South Africa alongside Nigeria and Gabon voted for resolution 1973, President Jacob Zuma would later state that "As South Africa we say no to the killing of civilians, no to the regime-change doctrine and no to the foreign occupation of Libya or any sovereign state." Nigeria also slammed the NFZ on Libya. Foreign Minister Odein Ajumogobia criticized the international community for acting to impose a no-fly zone over Libya while falling short to

protect civilians in Ivory Coast.²⁴ Like the LAS the AU has also been very critical of the manner in which the NFZ has been enforced. AU Commission Chairman addressed a letter to the UNSC in which he noted that the actions of NATO forces were illegal and completely beyond the remit of the requisites of Resolution 1973.²⁵ The highest AU organ, the Assembly was even more forthright declaring in May 2011 that “the Assembly is of the well-considered view that the continuation of the NATO-led military operation defeats the very purpose for which it was authorized in the first place, i.e. the protection of the civilian population, and further complicates any transition to a democratic dispensation in Libya.”²⁶

The OIC expressed concern for civilian protection and also highlighted the need for an intervention to respect Libya’s sovereignty. It also agreed to send a fact finding mission to the country.²⁷ The critical issue for the OIC was balancing the protection of civilians with the complete rejection of an occupation force in Libya.²⁸ Individual OIC countries like the United Arab Emirates, Qatar and Lebanon became staunch supporters of actions against Qaddafi.²⁹

The EU’s approach to the crisis and especially with regard to the NFZ was initially timid and confused. Countries like Malta, Italy and especially Germany³⁰ expressed caution as to any military intervention in Libya. Whatever bold and decisive collective action that might

have been expected from the EU seemed to have been undertaken by its individual countries like UK, Denmark, France and Belgium. The lack of a common approach from the EU following the crisis left some suggesting that the Union remains irrelevant to important security matters.³¹

Even if Saudi Arabia was reticent on the issue of NFZ other GCC members were adamant in demanding an end to the Qaddafi regime. They noted that Qaddafi had lost reason in dealing with the crisis and that he had to step aside. They underscored his loss of legitimacy and the need for him to go.³² COMESA, UAM and CEN-SAD have been more passive on the developments in the country. In all these sub-regional bodies to which Libya belongs one key goal in the founding documents is to ensure regional peace and stability. But this is not transcribed into concrete actions or into the kinds of tools that can be used to achieve such a goal, including NFZ enforcement. On the contrary regional organizations and agencies to which Libya is not member have been the most vocal actors. Some of the reasons for this include economic and geo-political motives. Economically Libya is an important player in the international oil market and securing a friendly regime in Tripoli will be a worthwhile investment for stability in the international oil markets.

3. Treatment of refugees

Since February 2011, the crisis has forced thousands of people to flee the country by land, air or sea to seek safer haven. According to UNHCR data, by 9 May, a total of 751.207 people had crossed from Libya into neighbouring countries, including 267.197 Third Country Nationals (TCNs).³³ A breakdown for 9 May shows that out of the total number 365.070 have crossed the border to Tunisia, 270.839 to Egypt³⁴, 61.244 to Niger, 18.151 to Algeria, 23.513 to Chad and 2.800 to Sudan. In addition, a considerable number of Libyan nationals (estimates by UNHCR amount to 200.000 persons) are also internally displaced within the country.

Only around one percent of all people leaving Libya have actually come to Europe. This is in sharp contrast to the alleged “biblical exodus” that 1.5 millions migrants would invade Europe from Libya.³⁵ According to the International Organization for Migration (IOM), on 16 May, 10.946 arrivals from Libya were counted in Italy and 1.106 for Malta.³⁶ Other reported figures of people arriving at the Southern shores of Europe are often higher, because North African migrants are counted in general (and not only those arriving from Libya). Taking into account also arrivals from Tunisia, the total number of new arrivals in Italy since mid-January amounts to 34.460 people, among them 23.230 Tunisians and 11.230 other nationalities (including Nigerians, Eritreans, Ivoirians, Somalis and

Ghanaians).³⁷ However, refugees fleeing from conflict have so far been only a small proportion of all the people crossing the Mediterranean in search for greener pastures.³⁸

The EU’s response to Libyan refugees needs to be seen in this broader context of increased migration flows triggered by the “Arab Spring” in North Africa, in particular from Tunisia to Italy and Malta. Since the majority of North African migrants are considered “economic migrants”, the EU’s reaction consisted mainly in joint border operations (Frontex) and financial assistance through its migration-related funds.³⁹ Given that migrants from Tunisia (and other African countries) continued to arrive, Italy decided unilaterally to issue temporary residence permits to Tunisian migrants, which would allow them to move freely within the Schengen territory.⁴⁰ This prompted France to reintroduce internal border checks with Italy and triggered serious discussions on the modification of the Schengen rules both at EU and national levels.⁴¹

With regard to Libya the situation is slightly different because Libyans and TCNs arriving from Libya are considered (at least potential) refugees seeking international protection. In this situation, both Italy and Malta tried to invoke the EU Directive on Temporary Protection (2001), which aims to harmonize temporary protection for displaced persons in cases of mass influx on the basis of solidarity between Member States (MS).⁴² Both Italian foreign minister Franco Frattini and the Maltese MEP Simon Busuttil

called on the Commission to activate this mechanism to assure an equal distribution of refugees among Member States.⁴³ The request was however turned down on grounds that the situation did not really meet the criteria as laid down in the directive.⁴⁴

Instead, the European Commission provided financial and operational support to both sides of the Mediterranean. Through ECHO, the Commission has allocated around 70 million € in response to the humanitarian needs triggered by the Libyan crisis.⁴⁵ These funds support among others actions by UNHCR, IOM and other international partners to assist the people fleeing Libya (Libyans and TCNs), evacuate (and where possible repatriate) TCNs fleeing from Libya, contribute to the setting-up and management of border camps at the Tunisian and Egyptian borders with Libya etc.⁴⁶ Moreover, 10 million € were used for the reintegration of Chadian migrants returning to Chad. In addition, there are several migration-related funds available to EU Member States to deal with the recent human displacements: External Borders Fund (EBF), European Refugee Fund (ERF), Return Fund and Integration Fund. Emergency funding of 25 million € allocated under the EBF and ERF has been mobilized to support those Member States most exposed to increased migration pressure.⁴⁷ Moreover, the Commission announced to increase funding under the EBF for actions in the field of border management and visa policy in 2012.⁴⁸

This focus on enhanced border control and financial assistance should however not conceal that there are common rules on how to deal with refugees at EU level. In the framework of the Common European Asylum System (CEAS) EU Member States are bound to comply with the requirements laid down in different sources of EU asylum law. It is beyond the scope of this Policy Brief to assess whether Italy or Malta are complying with these rules. Finally, one possible way of coordinated action would have been through the recently established European Asylum Support Office (EASO).⁴⁹ In the case of Libya this was however not (yet) an option, because EASO became only fully operational on 19 June 2011. It remains to be seen in how far this new European agency will work in such situations since it explicitly refers to “support Member States subject to particular pressure on the asylum and reception system”.⁵⁰

The AU has launched several initiatives to contribute to the political solution of the Libyan crisis. While some of the provisions outlined in these proposals may refer to the protection of civilians and/or foreign nationals, it is not entirely clear if there has been any coordinated action at AU level to alleviate the fate of refugees fleeing from Libya.⁵¹ The 1969 OAU Refugees Convention⁵², a regional legal framework targeting the specific problems of refugees in Africa, does apply in principle. Whether it has been used by the respective AU Member States as a legal basis for granting

international protection to people fleeing from Libya needs careful examination elsewhere.⁵³

The OIC has launched various appeals to its member states to assist with the evacuation of displaced people fleeing from Libya into neighboring countries. On 1st March 2011, the Secretary General of the OIC, Prof. Ekmeleddin Ihsanoglu, called on member states to assist the Tunisian government by providing transport means to return displaced people to their countries of origin.⁵⁴ The OIC organized a fact-finding mission to assess the humanitarian conditions in the affected border areas with Egypt and Tunisia, which was the basis for further appeals and action. It also coordinated concrete evacuation operations and has been involved in the distribution of relief items to people in refugee camps at the Tunisian Libyan border.⁵⁵

CEN-SAD, LAS, UAM and COMESA have apparently not reacted in any coordinated manner to the refugee flows stemming from Libya. Within the CEN SAD the principle of free movement remains largely a paper objective and travel between the Member States is regulated primarily by bilateral agreements.⁵⁶ There is no indication of a common position or action in the case of refugees coming from Libya, which might not be surprising given the fact that Qaddafi himself has been the driving force behind this regional organization. The UAM also remains a rather dormant organization especially concerning the

movement of people which is regulated primarily through bilateral accords. COMESA has adopted concrete instruments on intra-regional migration, although they remain largely unimplemented. No regional instruments exist so far targeting refugees in particular and there have also been no signs of common action. The same seems to apply to the LAS, although Member States such as the United Arab Emirates have been particularly active in supporting concrete relief operations in Libya.⁵⁷

4. Policy implications and way forward

There is a strong disconnect between what is being done by the regions in which Libya is member and what could be done. This may be attributed to the fact that the regions themselves do not sufficiently collaborate on security, refugee issues and humanitarian matters. To avert possible duplication, it is vital for the UN to call for a meeting of all the regional entities in which Libya is member so that a clear regional response to the crisis can be adopted. This is because the crisis in the country cannot be solved in isolation to the problems faced by Tunisia, Egypt and Algeria. Second, on the security side, in future, the regional entities not participating in such a campaign on the NFZ should push the NATO members to be unambiguous on the link between the operational goals and the political end-state.

There are many equivocations on this nexus. Regional bodies like the AU and the LAS need to take a proactive stance on helping Libyans reach a political end-state. Moving forward attention has to be on the political vision. As at the time of writing it is clear that Qaddafi will be removed. But how will the millions of Libyans who revere him be accommodated into the new political realities? Unlike Egypt and Tunisia where there were political parties what is more common in the Libyan society are the tribes. Forging strong alliances between the tribal leaders and the new leaders of the TNC will be critical.

In terms of refugees, regional organizations in North Africa have not reacted in a coordinated manner. In the majority of cases (LAS, CEN-SAD, UAM and COMESA) this inability only reflects the general lack of common instruments to deal with migrants or/and refugees. Most of the Member States of these organizations are legally bound to various international refugee conventions (1951 Geneva Convention or 1969 OAU Convention), but there are no sub-regional

toolkits to commonly address a crisis of this kind. Regional bodies need therefore to establish mechanisms to allow for burden sharing and collective solutions to avoid protracted refugee situations.

The EU's limitation to enhanced border control and financial support reveals at least three major weaknesses in the way the EU generally deals with TCNs seeking protection. First, the existing legal framework is still incomplete and partly inefficient. There is currently no formula or mechanism to distribute protected persons within the EU ("burden sharing") or to jointly address resettlement of refugees from third countries. Second, it shows the lack of political will to make use of existing instruments (e.g. Temporary Protection) and act in the spirit of the Treaty ("Solidarity"). Last but not least, the current situation also unveils a fundamental paradox of the EU when dealing with people's movements, such as how to reconcile the aim of enhanced border control with assuring that asylum seekers have access to safe territory and asylum procedures.

¹ Barack Obama, David Cameron and Nicolas Sarkozy, "Libya's Pathway to Peace," *International Herald Tribune* (14 April 2011) (noting that although the goal of initial coalition action is not ousting of Qaddafi any deal that leaves him in power will be an invitation to chaos and that "in order for transition to succeed Qaddafi must go and go for good").

² Jeffrey Feltman, "Libya's Tale of Two Cities," *Politico* (3 June 2011).

³ Even Russia, initially very concerned about the military action in Libya is now supporting coalition forces in demanding that Qaddafi leave power : "G8 – Libye: La Russie favorable au depart du Kaddafi," *Jeune Afrique* (27 Mai 2011).

⁴ Philippe Leymarie, « Guerre en Libye: La 'furia' française » *Le monde diplomatique* (19 mars 2011).

⁵ Luk Van Langenhove, "The Upgrade of the EU in the UN and the Changing Nature of Multilateralism," *Europe's World*, 13 May 2011.

⁶ Though not a regional agency in the technical sense of the word the G8 has also been vocal on the events in Libya. The G8, though not technically a regional entity either under the GATT or the UN Charter has played a significant role because it was through the G8 that Russia publicly agreed that Qaddafi was no longer considered the legitimate ruler of Libya.

⁷ UN Security Council, *Security Council Approves No-fly Zone over Libya Authorizing all Necessary Measures to protect civilians by a vote of ten in favour and five abstentions*, 6498th Meeting SC/10200, 17 March 2011.

⁸ With the goal of protecting mainly the Kurds in Halabja area against Saddam Hussein's forces.

⁹ Having as the main objective the protection of the Shi'a Arabs in Southern Iraq from Hussein's forces.

¹⁰ Jeremiah Gertler, Christopher Blanchard, Stephen Daggett, Catherine Dale, Jennifer Elsea, Richard Grimmett, *No Fly Zones: Strategic, Operational and Legal Considerations for Congress* (Congressional Research Service, April 2011), at 2.

¹¹ Alexander Benard, "Lessons from Iraq and Bosnia on the Theory and Practice of No-Fly Zones," 27(3) *The Journal of Strategic Studies* (September 2004), 454-478, at 474.

¹² UNSC Resolution 1973: Paragraph 11.

¹³ UNSC Resolution 1973: Paragraph 7.

¹⁴ John Yoo and Robert Delahunty, "Mission Not Accomplished: Obama's Libyan Adventure is already a failure and will likely get worse", *Foreign Policy* (29 March 2011).

¹⁵ Lewis MacKenzie, "Libya would never be just a no fly zone," *The Globe and Mail* (9 March 2011).

¹⁶ « L'Otan se Donne jusqu' à en fin septembre pour faire tomber Kaddafi » *Jeune Afrique* (1 Juin 2011).

¹⁷ Colin Freeman, Nick Meo and Patrick Hennessy, "Libya: Arab League calls for United Nations No fly zone," *The Telegraph* (12 March 2011).

¹⁸ AU Press Release, The African Union Commission Chairperson Meets with a Delegation of Libyan Tribal Leaders, Addis Ababa, 26 May 2011.

¹⁹ AU Peace and Security Council, Communiqué of the 265th Meeting of the Peace and Security Council, PSC/PR/COMM.2(CCLXV), Addis Ababa, 10 March 2011.

²⁰ African Union, AU High Level Ad Hoc Committee on Libya Convened its 5th Meeting in Addis Ababa, 26 May 2011.

²¹ AU Peace and Security Council, Report of the Chairperson of the Commission on the Activities of the AU High Level Ad Hoc Committee on the Situation in Libya, Addis Ababa, PSC/PR/2 (CCLXXV), 26 April 2011.

²² « Libye: Zuma Piétine, les défections à Kaddafi se multiplient » *Jeune Afrique* (31 Mai 2011); « L'Union africaine peine à se faire entendre sur la Libye » *Jeune Afrique* (26 Mai 2011).

²³ Thirty Former African leaders and heads of regional institutions, Africa Forum, An Urgent Appeal on Libya, 25 May 2011.

²⁴ "Africa against Libya No fly zone," *News 24*, 22 March 2011.

²⁵ Letter addressed by AU Commission Chairman Jean Ping to the Security Council, 17 May 2011, S/2011/307.

²⁶ AU Assembly, Decision on the Peaceful Resolution of the Libyan Crisis: Enhancing Africa's Leadership, Promoting African Solutions, Extraordinary Session of the Assembly of the African Union on the State of Peace and Security in Africa, EXT/ASSEMBLY/AU/DEC/ (01.2011), Addis Ababa, 25 May 2011, at paragraph 5.

²⁷ OIC, Final Communiqué Issued By the Emergency Open Ended Ministerial Meeting of the OIC Executive Committee on the Alarming Developments in Libyan Jamahiriya, 19/03/2011, available at http://www.oic-oci.org/topic_detail.asp?t_id=5057

²⁸ OIC, Ihsanoglu Calls For Contact With The Libyan Transitional Council ... Welcomes Reform Initiatives In Saudi Arabia, United Arab Emirates, Oman, Morocco And Jordan, 19/03/2011, available at http://www.oic-oci.org/topic_detail.asp?t_id=5084

²⁹ Paul Taylor, "Special Report: The West's unwanted war in Libya," *Reuters*, 1 April 2011.

³⁰ Taylor, "Special Report: The West's unwanted war in Libya."

³¹ Doug Bandow, "Libya's Lesson for Europe," *Cato Institute*, 16 March 2011.

³² "GCC stands firm on Libya," *Khaleej Times*, 12 March 2011.

³³ UNHCR 2011, Update No. 24.

³⁴ Note that on 7 May Egypt has introduced visa requirements for Libyan nationals, reducing the number of official border crossings considerably, *UNHCR 2011, Update No. 24*.

³⁵ See Hein de Haas' blog of 13 April 2011 "Europe's tiny refugee burden: Putting the Libyan migration crisis into perspective", <http://heindehaas.blogspot.com/2011/04/europes-tiny-refugee-burden-putting.html> (accessed 20 May 2011).

³⁶ IOM External Situation Report, 17th May 2011.

³⁷ *Ibid.*

³⁸ See article by Antonio Guterres, United Nations High Commissioner for Refugees, in New York Times, http://www.nytimes.com/2011/05/10/opinion/10iht-edguterres10.html?_r=2&ref=global (accessed 10 May 2011).

³⁹ A joint Frontex operation called Hermes was launched on 20 February to strengthen sea patrols and prevent illegal landings on the coast, see Frontex website at: http://www.frontex.europa.eu/newsroom/news_releases/art96.html (accessed 20th July 2011).

⁴⁰ For a detailed discussion of the legality and compatibility of the Italian and French measures with EU legislation see Sergio Carrera et al. (2011), *A Race against Solidarity. The Schengen Regime and the Franco-Italian Affair*, CEPS Paper in Liberty and Security, April 2011.

⁴¹ On 26 July 2011 the European Commission announced in a written statement that both Italy and France have not infringed EU rules, but that “the spirit of the Schengen rules has not been respected”. The Commission is expected to soon present a proposal how to modify the Schengen rules and to clarify the conditions under which Member States are allowed to temporarily reinstate border controls. See “EU clears France, Italy over Schengen row”, EurActiv 26 July 2011.

⁴² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. This directive was developed in the context of human displacements caused by the former Yugoslavia wars between 1991 and 1995, but has never been used.

⁴³ Frattini criticizes EU for failure to assist Italy; Frattini and MEPs call for Implementation of Temporary Protection Directive and Mandatory Burden Sharing, Migrants at sea-blog at <http://migrantsatsea.wordpress.com/> 30th March 2011.

⁴⁴ According to a Commission official, the inflows of refugees to both Malta and Italy were not considered a „massive influx“ since the numbers of potential refugees were relatively small. See also article by Timothy J Hatton, who indicates that the “request was turned down by other countries and the European Commission as premature”, see “Refugees from North Africa: A case for cooperation?”, VoxEU.org, 2 May 2011.

⁴⁵ The EU as a whole has contributed over 150 million € in humanitarian assistance. A breakdown by country can be found at: http://ec.europa.eu/echo/files/aid/countries/libya_factsheet.pdf (accessed 22nd August 2011).

⁴⁶ Ibid.

⁴⁷ No number breakdown is available at the time of writing. European Commission MEMO/11/226, Brussels, 8 April 2011.

⁴⁸ It is stated explicitly that the recent events in the Mediterranean region are taken into account. Italy will therefore benefit from a significant increase of its allocation from 32 million € in 2011 to 52 million € in 2012. See EC Press release of 5/08/2011,

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/953&format=HTML&aged=0&language=EN&guiLanguage=en>

⁴⁹ For further information see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/415>

⁵⁰ Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 18 May 2010 establishing a European Asylum Support Office, Sect. 2 Art. 8.

⁵¹ The access to reliable and up-to-date information about possible common actions of the AU is very limited.

⁵² The Organization of African Unity (OAU) is the predecessor of the African Union (AU). It was established on 25 May 1963 in Addis Ababa, Ethiopia, and replaced by the AU in 2002. The text of the OAU Refugees Convention is available at: <http://www.au.int/en/content/oau-convention-governing-specific-aspects-refugee-problems-africa>.

⁵³ Today 45 Member States of the African Union have ratified or acceded to the OUA Convention, while 6 Member States have signed but not yet ratified (Djibouti, Madagascar, Mauritius, Namibia, Sao Tome & Principe and Somalia) and 2 Member States have neither signed, ratified or acceded to the Convention (Eritrea and S.A.D.R.).⁵³ It is therefore a crucial legal framework with regard to the Libyan crisis since all countries in the North African region including Libya are signatories to the OAU Refugees Convention. See detailed list on AU website (as of 01/02/2010) http://www.au.int/en/sites/default/files/6refugee_Problems_in_Africa_0.pdf

⁵⁴ OIC news item at: http://www.oic-oci.org/topic_detail.asp?t_id=4994&x_key= (accessed 10th June 2011).

⁵⁵ See news item “OIC begins repatriating displaced people on Libyan borders to their countries” at http://www.oic-oci.org/topic_detail.asp?t_id=5150&x_key= (accessed 10th June 2011)

⁵⁶ See Julien Brachet (2010), *Blinded by security. Reflections on the hardening of migratory policies in central Sahara*, IMI Working Paper 26, University of Oxford, October 2010, p.7 and 8.

⁵⁷ Gulf news 27 August 2011, <http://gulfnews.com/news/region/libya/uae-built-camp-to-aid-7-000-libyan-refugees-1.774762>