LEGON CENTRE FOR INTERNATIONAL AFFAIRS
AND DIPLOMACY

VICTIM OR VILLAIN: ITALY’S RESPONSE TO
THE INFLUX OF IRREGULAR MIGRANTS FROM
NORTH AFRICA?

BY

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DECLARATION

I hereby declare that, apart from the sources cited in this work which are duly acknowledged, this study is the result of an original research conducted under the supervision of Dr Amanda Coffie and that this research has not been presented either in part or in whole for any other purpose.

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Date………………………..
DEDICATION

This work is dedicated to the Almighty God who has brought me this far and my beautiful mother for her ever present support.
ACKNOWLEDGEMENTS

First and foremost, thanksgiving goes to the Almighty Father for granting me the grace to complete this dissertation.

Second, my deepest appreciation goes to my godfather, Rev. Jerry Tempong, for his advice and guidance throughout my course.

Finally, I am ever grateful to my supervisor, Dr Amanda Coffie, for her patience, guidance and invaluable advice throughout this dissertation.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>CIEs</td>
<td>Centre for Identification and Expulsion Stay and Assistance</td>
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<td>CPTAs</td>
<td>Centre for Temporary Stay and Assistance</td>
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<td>CPRTIs</td>
<td>Territorial Commission for the Recognition of International Protection</td>
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<td>EBF</td>
<td>External Border Fund</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECtHR</td>
<td>European Court on Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FRONTEX</td>
<td>European Agency for the Management of the External Borders of the Member States of the European Union</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<td>IOM</td>
<td>International Organisation for Migration</td>
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<tr>
<td>MRCC</td>
<td>Maritime Rescue Coordination Centre</td>
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<td>NAMCs</td>
<td>North African Mediterranean Countries</td>
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<tr>
<td>NTC</td>
<td>National Transitional Council</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>OMN</td>
<td>Operation Mare Nostrum</td>
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<tr>
<td>TCNs</td>
<td>Third Country Nationals</td>
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<tr>
<td>SAR</td>
<td>Search and Rescue</td>
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<tr>
<td>SBC</td>
<td>Schengen Border Code</td>
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<tr>
<td>SPRAR</td>
<td>Protection System for Asylum-seekers and Refugees</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UNHCR</td>
<td>Office of the United Nations High Commissioner for Refugees</td>
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ABSTRACT

The year 2011 witnessed a massive influx of irregular migrants from North Africa, using the central Mediterranean to cross into Europe. Libya, which had a Memorandum of Understanding with the southern European country Italy, suffered a civil crisis, creating a vacuum of authority, which failed to prevent journeys from the coasts of Libya into Italy. The Italian government on the other hand reacted by policing its waters to locate irregular sea migrants, sending boats back to places of departure, and ignoring distress calls made by migrants at sea. After several deaths and missing persons, the international community including European neighbouring states, protested against Italy’s responses, pointing out the humanitarian concerns they had caused. In 2013 Italy, through its Operation Mare Nostrum, decided to address the humanitarian concerns by rescuing irregular migrants and reducing deaths in the central Mediterranean. This however did not sit well with some EU neighbours who accused Italy of encouraging irregular migration into Europe. Italy as an EU member, is vilified unfairly for first honouring the wider European policy of controlling the European border and preventing irregular migration, and second, for dealing with the humanitarian emergency the European Union and the international community criticize Italy of. This dissertation outlines first and foremost, European policies towards irregular migrants from Libya as well as Italy’s independent responses in the period 2011 to 2014. Second, the study determines if Italy through its individual responses violated the human rights of irregular migrants from Libya. This is done by comparing the effect of Italy’s policies on irregular migrants to its regional human rights convention, the European Convention on Human Rights. The study, in conclusion, points out that though Italy through its individual responses had violated the rights of irregular migrants from North Africa, these policies were a wider representation of the EU and its member states. Thus, vilifying Italy individually for mistreating migrants during 2011 - 2014 was unjust. The study recommends a long term, well-thought solution and organized cooperation among EU member states and source and transit countries to better solve issues pertaining to irregular migration, especially, from North Africa.
CHAPTER ONE

RESEARCH DESIGN

1.1 Background to the Problem Statement

Irregular migration from Africa to Europe across the Mediterranean is no new phenomenon. Europe, for decades, has been the destination for most migrants from Africa in search of better employment opportunities, hopes for family reunions or simply fleeing harsh living conditions in their countries. North Africa not only serves as an entry and transit country for most sub-Saharan Africans but has a long standing history of sending migrants to Europe. Irregular migrants because of challenges associated with the regular means of travelling or the costly means of illegal travel such as the use of forged documents, resort to unseaworthy means of transport endangering their lives to clandestinely enter Europe.¹

To prevent migrants from the south of the Mediterranean from entering, Europe as a Union employs restrictive policies that range from internal border arrangements to external measures. The Schengen Borders Code (SBC) is one internal arrangement requiring members with external frontiers to perform border control activities.² Likewise external arrangements consist of joint border checks and patrols such as the European Agency for the Management of the External Borders of the Member States of the European Union (Frontex).³ The Union also cooperates with North African Mediterranean Countries (NAMCs) in projects such as the Global Approach to Mobility and Migration (GAMM). These policies however have failed to attain their objective of preventing and reducing considerably clandestine arrivals, rather irregular migrants and their facilitators have found alternative routes, further engendering the lives of undocumented sea migrants.

Italy, a southern Europe state, is one of the four countries – Greece, Spain, Malta – that face irregular migration pressures.⁴ Apart from efforts made in cooperation with the EU, Italy
employed other means such as the Friendship Agreement of 30th August 2009 with Libyan leader Muammar Ghaddafi since Libya had become the favoured point of departure. Some of the strategies under this agreement involved stopping migrants at sea and returning them to the place of departure (interception), the use of coastal patrols to stop journeys from taking place and Libya as a holding centre for returned migrants (externalization), all push-back polices. In 2011, the Arab Spring resulted in the on-going civil crisis in Libya. The death of Ghaddafi during the crisis created a vacuum of authority; increasing clandestine journeys across into Europe. Italy renewed the pact in 2012 with the then unofficially recognized authority, the National Transition Council (NTC), with the aim to stop smuggling operatives and prevent migrants from sea crossings into Europe.

Italy’s agreements with states like Libya sought to prevent an influx of irregular migrants from entering into Europe. These agreements are criticized by the International community including neighbouring EU states as violating the fundamental rights of irregular migrants, particularly in the event migrants are returned to unsafe places of departure such as Libya, with inadequate human rights provisions. Meanwhile the non-refoulement principle in Article 33 of the Geneva Refugee Convention forbids states from returning refugees or asylum-seekers to places where their lives and freedoms would be threatened as a result of their race, religion, nationality, membership of a particular group or political opinion. The principle includes persons for one reason or the other seeking entry into another state. It is captured in various regional, sub-regional, agreements such as the European Convention on Human Rights (ECHR) of 1950 also known as the Convention for the Protection of Human Rights and Fundamental Freedoms inspired by the Universal Declaration of Human Rights (UDHR) of 1948. The ECHR, a pre-requisite of EU member states provides minimum safeguards requiring parties take measures to effectively prevent human rights violations against vulnerable persons such as irregular migrants. The return process of irregular
migrants according to the ECHR should be carried out respecting fully the right to dignity of returnees, taking into account, inter alia, their age, sex, state of health, while coercive measures during expulsions should be kept to an absolute minimum. It is imperative to note that push-back policies are inconsistent with the non-refoulement principle which seeks first to prevent a person’s return to a place where he or she would face persecution, and to prevent the ill-treatment of persons. Italy, pushing back irregular migrants to Libya which lacks instituted migration protection policies is inconsistent with the non-refoulement principle.

In 2013, following the disasters in the Mediterranean, particularly the 366 African migrants including infants that drowned near the island of Lampedusa, Italy emerged with a Search and Rescue (SAR) initiative – Operation Mare Nostrum - attempting to solve the humanitarian concerns of the international community over its previous responses. Critics however have described operation Mare Nostrum (OMN or Mare Nostrum) as a continuous security operation, which merely “saves lives” neglecting the actual needs of migrants upon arrival at European shores. Other EU member states describe it as a pull-factor encouraging migrants to engender their lives; while advocates of the initiative dubbed it a model which the EU should emulate. This highlights contested views of Italy’s response to the influx of irregular migrants, particularly those travelling from Libya since its civil crisis in 2011. Due to this, it is important to determine if Italy, through its border policies, has violated the rights of irregular migrants by assessing its state policies with that of the broader regional EU policies. The study seeks to ascertain if Italy is vilified for rights violations without considering wider factors that may inform its policy responses such as the Union it is party to.

1.2 Statement of the Research Problem

The European Union, which is a regional bloc founded on human rights principles has made several provisions to ensure the protection of human lives, freedoms and equality. The
European Convention on Human Rights is one of the many human rights conventions governing and guiding member-states in decision-making to avoid rights violations. However, migration policies in Europe do not always consider the rights of migrants.

The EU has been criticized for supporting policies of member-states that violate migrant rights, a contrast to the founding principles of the Union. Italy, one of the countries at present addressing the increasing flow of irregular migrants is criticized for adopting push-back policies that infringe on migrants’ rights, yet, after rising concerns of deaths and criticism from the international community, Italy responded by setting up an initiative attempting to manage the humanitarian challenge as opposed to previous set policies. Mare Nostrum however is dubbed as a pull-factor by the same community that condemned previous restrictive policies and insists that Italy strengthens borders control to prevent crossings. For this reason, it is important to ascertain if indeed policies adopted by Italy breach the rights of migrants. The study further seeks to determine if the exclusive vilification of Italy is justified without considering Italy’s borders policies as a broader representation of the European Union.

1.3 Research Questions

Research questions guiding the study include:

1. How has Italy addressed the influx of irregular migrants since the Arab Spring?
2. Has there been a significant policy shift and does this new policy violate the rights of irregular migrants?
3. What has been the role of the European Union in shaping policies adopted by Italy that violate irregular migrants’ rights?

1.4 Objectives of the Study

The study seeks to
1. Ascertain border policies adopted by Italy since the Arab Spring in controlling the influx of irregular migrants from Libya.

2. Determine if Italy has significantly modified its border policies and if this policy violates the rights of irregular migrants.

3. Determine the European Union’s role in shaping border policies adopted by Italy that violate irregular migrants’ rights.

1.5 Scope of the Study

The study focuses on Italian border policies that dealt with the influx of irregular migrants from Libya since the Libyan crisis in 2011 till the end of Mare Nostrum in 2014. The study also seeks to compare Europe’s border policies with those of Italy since 2011 till 2014 to determine Europe’s role in shaping Italy’s policy responses.

1.6 Hypothesis

While Italy has significantly modified its border policies and has been accused of violating the rights of irregular migrants, this study contends that the shift is consistent with European Union’s policies on border protection.

1.7 Rationale of the Study

Italy is under pressure especially from northern European states to strictly control its borders, at the same time Italy has been criticized by the international community, including neighbouring EU countries for implementing strict policies without consideration for the fundamental rights of irregular migrants. This research, first, is to ascertain if Italy has indeed by its policy responses since the Libyan crisis of 2011 till 2014 violated the rights of migrants and if this is or otherwise a broader representation of European policies. Second, the study highlights the blame game that ensues among EU member states, particularly, in rescuing and hosting irregular sea migrants.
Confidently, the findings of this study will encourage the Union to collectively make more efforts to factor human-centered responses, not as written laws only but to act on them in dealing with irregular sea migrants. This research will also serve as existing knowledge for further research.

1.8 Conceptual Framework

This research adopts International Cooperation as its conceptual framework to analyze both Italy’s and the EU’s policy responses to irregular migration during the Arab Spring. According to Keohane, International Cooperation occurs when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination.\(^{15}\) The term policy coordination as used by Charles E. Lindbloom refers to an adjustment of a set of decisions such that the adverse consequences of any one decision for other decisions are, to a degree, and in some frequency avoided, reduced, or counter-balanced or overweighed.\(^{16}\) In this view states will alter policies when there is the need to coalesce with others to attain a common objective which eventually culminates in harmonizing domestic policies. Keohane also notes that to achieve shared objectives it is essential in cooperation to establish principles, norms, rules, and decision-making procedures that keep states in line, guiding state activities to successfully attain set objectives. Axelrod explains cooperation as an act that can only take place in a mixture of conflicting and complementary interests.\(^{17}\) Thus cooperation ensues as a response to divergent goals of actors as and when those goals are converged by emphasizing on the mutual gains actors stand to benefit by engaging in cooperation.

However, the concept of cooperation has its negative implications. In Keohane’s *After Hegemony: Cooperation and Discord in the World Political Economy* he acknowledges the shortcomings of cooperation. Though a valuable instrument in attaining collective goals, it is
a challenge regarding policy organization. For example, the realists view cooperation as a tool to further self-interest which usually poses as a hindrance to coherent policy organization. According to Axelrod, cooperation as an outcome of incompatible interests does not make it necessarily good from a moral point of view. He notes that in state cooperation, it can be designed to benefit a few parties at the expense of others highlighting the injustice of an imperfect world. Again this criticism supports the realist assertion of states using cooperation to further self-interest.

These criticisms notwithstanding, the current study adopts the concept for the following reasons. First, international cooperation helps the study to explain the necessity of joining forces and coordinating policies with regards to irregular migration. Since the act of migration is trans-national, it is imperative that in addressing issues and concerns that arise countries harmonize individual policies to attain solutions. Thus, Susan Martin notes that in solving migratory issues state cooperation is inevitable. This attests to Italy and the EU’s adoption of cooperation as a tool to address unauthorized entry into Europe among other internalized policies. Second, Cooperation defined by Keohane as an adjustment of policies enables the study to explain the coordination of policies made within the EU and its member states as well as between the EU, member states and NAMCs to prevent clandestine journeys in the central Mediterranean. Lastly, Cooperation as an outcome of conflicting interests enables the study highlight the varied national interests within European states that time and again serves as a challenge in achieving a common European policy to prevent irregular entry into Europe.

1.9 Literature Review

In “Policing Migration in the Mediterranean” Derek Lutterbeck notes the change in the significance of the Mediterranean from a militarized zone dividing the west and the east
during the Second World War to a sea experiencing security concerns involving irregular migration, smuggling of persons and trans-national terrorism. The sea dividing Northern industrialized well-developed countries from its Southern less-developed neighbours serves as a means for accessing better employment opportunities thus the inflow of irregular migrants from neighbouring poor countries to Europe. Due to this, southern European countries with the Union’s assistance have set up measures involving semi-militarized (the use of state police) and militarized (the use of air and naval forces and their logistics) to counter and prevent irregular migration and its effects. For instance, the Italian Police also considered partially as a military force, the Guardia di Finanza, has become one of the tools used to fight against clandestine movements since the 1990s.\textsuperscript{22} For militarized counter-acts, Lutterbeck notes the Italian Navy as the significant example since its role in the first Albanian refugee crisis.\textsuperscript{23} He further discusses how European states as a Union have coalesced with neighbouring source and transit countries in programmes such as the Euro-Mediterranean Partnership (EMP) to deter crossings. Other forms of cooperation have been bilateral, between member states and source or transit countries such as the various Italy-Libya arrangements. The arrangement involves repatriating migrants to Libya, intercepting migrants on the high seas by Italy-Libya joint patrols and with Germany’s assistance a pledge to establish holding centres in Libya.\textsuperscript{24} This pact however was contested by France, Spain and Sweden due to inadequate provisions made for persons in need of international protection.\textsuperscript{25}

Lutterbeck further argues that military counter-strategies have not achieved their goal but rather, triggered humanitarian challenges encompassing migrants opting for longer and unsafe routes since such routes are not policed, leading to drowning in addition to the growing market for people smugglers. According to Lutterbeck, intense patrols and interceptions have led to the operation of small gangs working from places of departure with groups in destination countries finding unidentified routes for clandestine travelling.
Consequently migrants pay higher fees because of increased monitoring at sea. Moreover changing migratory routes is noted by the author to first extend patrolling activities of destination countries, as Italy polices from the Adriatic area, Sicily expanding to Lampedusa. He also notes the human cost of diversifying migratory routes and concludes that even with these challenges the EU continues to opt for militarized measures in controlling clandestine crossings on the Mediterranean.

In Lutterbeck’s analysis of the adverse effect of border control policies by the EU and its member states, he fails to consider the importance of the incompatibility of individual policies adopted to address irregular migration. Therefore Italy in its quest to control irregular migration and secure the EU from clandestine entry is vilified for its efforts at times by the very Union it seeks to protect. This study seeks to determine whether criticisms leveled against Italy are justified concerning border policies it has adopted towards irregular migrants from 2011 to 2014.

In Thomas Spijkerboer’s article “The Human Costs of Border Control”, he argues that the border policy discussion on the intensification of the EU’s external border has only succeeded in leading irregular migrants to use alternative and increasingly dangerous routes. He observes that as Europe kept tightening its external frontiers, it did not achieve the desired results of decreasing arrivals rather it ensued in loss of lives. From 1990 to 2005, Spijkerboer observes through non-governmental organisations, the increasing number of lives lost as irregular migrants attempt to reach Europe. Spijkerboer argues about the relevance of lost lives pertaining to the EU’s consistent trend of external border regulation. According to the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts, states cannot be held legally responsible for fatalities that result indirectly from controlling their borders because border control, in itself, is not a wrongful act. According to Spijkeboer European states must safeguard human lives in their
jurisdiction by sanctioning authorized persons who breach human rights norms. Pertaining to border control, it is the responsibility of states to enact policies that consider minimizing the loss of lives. He reiterates that as states make policies based on the fact that human lives deserve to be preserved in other sectors, same should apply in migration. He then recommends that available and accessible information on border related deaths can shape decisions of European governments and the relevance of human cost should be considered in policy formulation.

Spijkeboer like Lutterbeck dwell on the harmful consequences of border control but delves into the aspect of human cost. Accordingly he cites Italy as one of the EU states that contribute to the human cost in the Mediterranean. EU member states respond to irregular migrant influxes by setting up restrictive border policies that risk the lives of migrants. However Italy's individual policies against irregular migration have been criticized by its own neighbours for violating human rights. In determining if Italy has indeed breached its regional human rights standards through its border policies, the study will ascertain if Italy should individually be held accountable for its actions, considering its national policies are consistent with the broader EU.

“Deterrence and Protection in the EU’s Migration Policy” by Anna Triandafyllidou and Angeliki Dimitriadi focus on the strategies Europe as a union adopts to manage irregular migration and pressure from asylum seekers. Triandafyllidou and Dimitriadi, study measures used in managing mobility within, across and outside the Union. The authors observe that adopted measures culminate in deterring migrants but not protecting their lives. Furthermore the Union struggles to acquire a sense of balance between deterrence and protection due to different policies adopted by member states. The authors suggest the Union considers deterrence as the optimal tool in protecting the lives of irregular migrants since they will be prevented from beginning the perilous journey in the first place however, the authors note
policies of deterrence rather violate migrants’ rights. Three spaces of control used by the EU for border control are indicated in the form of externalization, internal and external border surveillance and internal border management.\textsuperscript{31}

Externalizing the European border include partnership with eastern European and African countries to stop migrant movements since they serve as countries of origin and or transit. Externalization include compulsory readmission agreements leading to development aid or trade relations, short-term visa schemes or even visa-free travel for citizens of countries assisting with managing irregular migration.\textsuperscript{32} In readmission, irregular migrants rejected are repatriated to their countries of origin or places of departure blurring the line between deterrence and protection as some readmission countries fall short of human rights values.

The next space of control involves internal and external border surveillances by border patrols and digital and biometric technologies such as Frontex, among others to foster a common European policy on external border control integrated in Article 67 of the Treaty on the Functioning of the European Union (TFEU), ensuring the union’s safety as a demarcated space.\textsuperscript{33} With operations like Frontex, Europe contradicts its duty of rescuing migrants at sea as it fails to distinguish persons in need of international protection. Third is securing Europe’s external borders by controlling the borders of member states challenged with the freedom of movement due to employment, studies, tourism and relocation. One way is the Smart Border System (SBS) which takes fingerprints and biometric data of visa applicants and information on TCNs and visa-overstayers. These measures however, may obstruct freedom of movement within the EU, which is a key requirement for integration.\textsuperscript{34} To conclude, the authors reiterate the gap between the policy of deterrence and human protection. Deterrence restricts access to member states and is itself an inadequate measure for managing irregular migration and asylum.
The article points out that Europe fails to have a coherent migratory policy since member states implement differing policies but it fails to focus individually on EU states to determine the effectiveness or otherwise of their border policies. Singling Italy out the research seeks to examine its policies in tandem with the EU and its member states, determining the role of the Union in shaping Italian border policies to ascertain if Italy’s violation of migrant rights, when determined, is a broader representation of the Union or a sole act for which Italy is responsible for.

In Anna Triandafyllidou’s article “Multi-levelling and Externalizing Migration and Asylum: Lessons from the Southern European Islands”, she highlights the strategic importance of four southern islands - Canary Islands of Spain, Lampedusa of Italy, Malta, and Aegean Islands of Greece - to both irregular migrants and European states. These islands according to Triandafyllidou are “stepping stones” into Europe for migrants and at the same time serve as externalized borders for Europe. To achieve this, these islands engage in border checks and repatriations, that is, returning migrants to their places of departure. In this article, the author explains further externalization by classifying it into two categories namely gatekeeping and fencing.

Gate-keeping refers to restricted access via visa policies to Third Country Nationals (TNCs) and readmission procedures while fencing refers to the measures actively targeting illegal migrants in order to arrest and then expel them such as border checks, coast patrols, surveillances and the like. According to Triandafyllidou, the Union to prevent clandestine movement from extending to the north adopts measures of externalization such as the “first safe country” principle of Dublin II and III, where migrants are to apply for asylum in the country they first come ashore, which are mostly in southern European states. Southern European states also seeking to prevent the rising pressure of arrivals on its territory because they act as borders, further externalize to NAMCs. The practice of externalization raises the
The author’s argument of “a wider web of multi-level governance schemes that engage EU and non EU actors, at different combinations and for different types of policies”. The author then notes the challenge of externalization, that is, its inability to prevent irregular migration into Europe. Triandafyllidou explains through practical examples given on the four southern islands. For example, Triandyfillidou notes that fencing has led to migrants opting for alternative accessible routes. The author also notes the humanitarian challenges externalization poses to persons seeking and in need international protection.

Triandafyllidou in her article underlines the use of externalization both outside the EU and within. According to Triandafyllidou European member states often use southern European states as borders to prevent irregular migrants from entering. The article however fails to consider that in the North’s attempt to externalize to the South, countries like Italy are bound to adopt strict and severe border policies that may violate the rights of migrants in order to manage the flow of increasing irregular entrants. Thus the question arises, in the event that adopted policies violate human rights principles, should Italy take sole responsibility considering that the wider EU may inform border decisions it takes.

The article “Border Politics, Right to Life and Acts of Dissensus: Voices from the Lampedusa Borderland” by Raffaela Puggionia, adds to the border policy discourse on the role of public opinion in shaping decision-making. The author argues that in the International Community’s polemic against Italian border policies towards irregular migrants much attention has not been given to the public’s protests against the stringent decisions of their own officials. Puggionia notes the objections by Lampedusa inhabitants on the increasing border-related deaths at their shores due to the constant borderization of the isle, particularly, after the tragic event of the 366 drowned African migrants in 2013. Borderization refers to the various measures taken with the intent of keeping migrants out such as surveillances, holding centres among others. According to the author, the people of Lampedusa create a
dissensus, which is not a mere protest but a “manifestation of a distance” in opinions according to Jacques Rancière between the public and its officials. The author notes the effort by the people to radically change the status quo in Lampedusa. A protest where the people called on legislation to prioritize human life by acknowledging the importance of the equal right to life was intended to transform security concerns into a duty to render assistance to sea arrivals. Puggionia notes that the protests by the Lampedusa people is qualified as a dissensus because this time around objections to border-related decisions were not staged by irregular migrants but by the very people the Italian government seeks to secure.

This article highlights criticisms against Italy in its efforts to secure both its borders and the larger European frontier from the increasing arrival of irregular migrants. However it fails to consider the role the region as a union has in shaping Italian border policies that are every now and then criticized for breaching migrant rights. In this study, by determining if Italy has violated migrants’ rights, it will further uncover if the vilification of Italy concerning the rights of irregular migrants is justified, as its actions has been consistent with the EU policy of preventing irregular migration.

In Todd Landman’s article “Measuring Human Rights: Principle, Practice, and Policy” he notes that the international community has established standard human rights obligations states follow. According to Landman, there are increasing numbers of state ratification to internationally recognize human right conventions however states’ actions in reality contradict stipulated rights obligations. Academics, human rights practitioners, policy-makers and non-governmental organizations in order to improve and promote civil treatment of persons, attempt to determine existing gaps between “rights in principle” and “rights in practice”. According to Landman, human right is measured to determine the contextual description of violations for monitoring and documentation. Measuring rights also helps to classify different types of rights violations, to map and follow patterns of violations across
countries to perform secondary examinations explaining why violations occur, and to seek policy solutions to decrease chances of violations. Policy solutions can be attained through sanctions, conditionalities, amending institutions and practices, and by focusing domestic funds to promote rights on violators. Violation of irregular migrants’ rights can be examined through gathered international human rights laws with ideal standards on how such rights should be protected, while information and testimonies of the gathered, is reported through a standard pattern for accuracy.

Rights according to the author can be measured in principle as stated in national and regional documents, in practice as experienced in reality and from the outcomes of government policy. Landman explains this by measuring civil and political rights in countries using events-based data reporting descriptive and numerical summaries of violations, standards-based data of quantitative scales translated from events touching on how often, to what degree violations occur\textsuperscript{43} and survey-based data which asks standard questions from random samples\textsuperscript{44} to determine violations. Concluding, the author restates the importance to continue monitoring abuses, and conducting cautious documentations in order to efficiently examine different categories of human rights.

This article informs the study’s choice of the procedure to be used in comparing Italy’s response in curtailing irregular migration from 2011 to 2014 to its regional human rights standards, the ECHR. Thus, the use of events-based data covers the impact of Italian border policies on irregular migrants from Libya to Italy since the Arab Spring.

1.10 Sources of Data

Secondary sources of data were used in collecting data. Sources include data from books, articles, ranging from journals to in-depth newspapers articles, policy documents, reports and the ECHR convention documents for content analysis.
1.11 Research Methodology

The study used qualitative data collection method. This entails the use of secondary sources such as books, journals, newspapers and policy documents to obtain border policies implemented by Italy, the EU, its members-states and NAMCs to address irregular migration from 2011 to 2014. Also, data collected on Libya, gives an in depth understanding to the crisis and its effect on irregular migrants. Events-based data from reports, newspaper articles, journals and books is used to obtain the impact of Italian border policies from 2011 to 2014 on irregular migrants. A comparison of these policies to human rights standards applicable to irregular migrants crossing the central Mediterranean, in the ECHR, was used to answer the study’s questions such as whether Italy’s border policies were in violation of both the regional policy and or the rights of migrants.

1.12 Conceptual Definitions

The following definitions are chosen to explain the following concepts in this study:

Irregular migration: It is the clandestine and unauthorised movement, in this case the sea movement of persons from one country to another.\footnote{45}

Irregular migrant: Persons making unauthorised entry into Europe by use of the central Mediterranean. This includes refugees, asylum seekers, and economic migrants.

Push-Back Policy: Policies made by Italy that include stopping migrants at sea and landing migrants at shore for immediate returns, towing migrant boats to shores of departure, putting migrants onboard patrol boats and returning them to places of transit and using NAMCs to obstruct migrant movement into Europe.

Non-refoulement: Principle of prohibiting from returning migrants in need of international protection to places where their lives are threatened either due to their sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth or status.\footnote{46}
Smugglers: Persons who facilitate the transfer of irregular migrants by use of the Mediterranean in exchange for fees.

1.13 Chapter Arrangement

Chapter one provides the research design which includes the background to the problem statement, the problem statement, research questions, research objectives, scope of the study, hypothesis, rationale of the study, the theoretical framework, the literature review, sources of data, the research methodology, conceptual definitions and the organization of the study’s chapters.

Chapter two presents an overview of European policies employed to address irregular migration from North Africa and Italian policies adopted since 2011 till 2014 to control the influx of irregular migrants caused by the Arab Spring.

Chapter three focuses on a comparison of border policies adapted by Italy from 2011 to 2014 against its regional human rights convention, the ECHR, to determine if there has been a violation of rights and if Italy is solely responsible for rights violations. It also provides an account of operation Mare Nostrum, the reception of migrants during its implementation, and the experience of irregular migrants in Libya returned from Italy.

Chapter four presents the study’s findings, conclusion and recommendations.


3Ibid., p.154-155


7Ibid., p.9


16Ibid., p.51


18Keohane, R.O. After Hegemony: Cooperation and Discord in the World Political Economy, 50

19Axelrod, R & Keohane, R.O. Achieving Cooperation Under Anarchy: Strategies and Institutions, 226

20Ibid., p.246


23Ibid., p.65

24Ibid., p.72

25Ibid., p.73

26Ibid., p.77


28Ibid., p.136-137

29Ibid., p.138-139

30Ibid., p.131-134

31Triandafyllidou, A & Dimitriadi, A. Deterrence and Protection in the EU’s Migration Policy, 151

32Ibid., p.146-162

33Ibid., p.154

34Ibid., p.157-158

35Triandafyllidou, A. Multi-levelling and Externalizing Migration and Asylum: Lesson from the Southern European Islands, 7-22

36Ibid., p.9
37 Ibid., p.10
38 Ibid., p.20
41 Ibid., p.1154
43 Ibid., p.41
44 Ibid
45 International Organization for Migration, Key Migration Terms http://www.iom.int/key-migration-terms (accessed 02/09/2015)
46 The Refugee Convention of 1951 op.cit
CHAPTER TWO
EUROPE AND THE FIGHT AGAINST IRREGULAR MIGRATION

2.0 Introduction

The chapter presents an overview of adopted policies of the EU and its member states to address irregular migration from Libya. The chapter then presents strategies employed by the EU and Italy in efforts to control the inflow of irregular migrants from Libya before and after the Libyan civil crisis. It further highlights Italy’s response to the influx of irregular migrants from Libya since the Libyan crisis of 2011 to 2014, while noting the concurrent policies adopted by the EU and member states during this period.

2.1 An Overview of EU Border Policies towards Irregular Migrants from North Africa

The 1990s marked the gradual increase of African inflow into Europe. As Europe sought ways to reduce the inflow of African migrants through strict visa regulations like the Visa Information System, such actions resulted in migrants finding illegal ways to enter Europe by land, air or sea. Clandestine migration by sea to Europe, across the Mediterranean, eventually made North Africa Mediterranean Countries (NAMCs) the hotspots for departure. Thus, neighbouring European states realized the need to coalesce among themselves and with NAMCs to prevent irregular migrants from using unseaworthy boats to cross the Mediterranean into Europe. Some policy frameworks adopted by the EU and its member states to guide policies addressing clandestine crossings include the Tampere Program of 1999 to 2004, the Hague Program of 2005 to 2009 and the recent Stockholm Program of 2010 to 2014. These frameworks were implemented through the authorization of the Justice and Home Affairs also known as the Area for Justice, Liberty and Security.¹ The Justice and Home Affairs entail a broad grouping of policies which allows member states to cooperate and make legislative output.²
The Tampere Program like the Hague Program sought to join forces with NAMCs to prevent illegal migration, however, the former considered the fair treatment of irregular migrants while the latter focused on solutions for security issues raised by illegal migration such as trans-national terrorism, human trafficking among others.\textsuperscript{3} From these policy frameworks emerged initiatives such as Frontex, the Global Approach to Migration (GAMM) and the Common European Asylum System (CEAS). The Stockholm Program however, prioritized collaboration with southern Mediterranean countries above previous programs. Regarding illegal migration, it worked towards more suitable means for returning irregular arrivals through readmission procedures with transit and origin countries.\textsuperscript{4} The Stockholm framework also offered a more human-centric approach to dealing with irregular migrants particularly, the vulnerable among them.

Policies guided by the frameworks mentioned above include;

i. the European Neighbourhood Policy (ENP) of 2004 and the Barcelona Process established under the Tampere Program

ii. the Global Approach to Migration and Mobility (GAMM) of 2005 and the Common European Asylum System (CEAS) of 2006 under the Hague Program

iii. the Lisbon Treaty under the Stockholm Program

Policies created under one framework could function and go through modifications to be in accordance with other frameworks. These policies served as tools for cooperation between EU member states and eastern and southern Mediterranean countries. Their primary focus was on border management tasks such as police cooperation, return processes, economic programs and developmental aid with source and transit countries in order to deter clandestine migration.

\textbf{2.1.1 Cooperation with Libya}
On building cooperation with Libya, the EU made significant progress after EU sanctions were lifted from Libya in 2004. The then Barcelona Process, now Euro-Mediterranean Partnership (EMP) also known as EUROMED, provided the EU, its member states and third party countries access to bilateral arrangements through the Bilateral Action Plans.\(^5\) The Bilateral Action Plan with NAMCs such as Morocco, Algeria, Tunisia and Egypt was to expedite amicable state relations with the purpose of addressing issues concerning irregular migration. Libya on the other hand, had observer status during such meetings. Though, cooperation between the Union and the Jamahiriya was not always cordial, both parties managed to attain a consensus on issues pertaining to irregular crossings in the central Mediterranean. For instance, Libya, since it signed up to Operation Aeneas in 2004, which provides financial and specialized aid to countries of transit and origin to better control illegal migratory flows, received rationed funding from Europe.\(^6\) There was also a council agreement for the Council of Justice and Home Affairs to coalesce with Libya, to strengthen a “systematic operational cooperation between the respective national services responsible for sea borders,”\(^7\) by attaining a shared goal for sea operations through the deployment of vessels and aircraft contributed by EU member states. Under this initiative, the EU and its member states concentrated on training Libyan officials on suitable practices for handling repatriations of irregular migrants from Libya.\(^8\) Also, the EU and Libya, under the ENP, concerted efforts in the area of visa facilitation and readmission practices, whilst contributing funds and technical support through the “guidance program” signed on the 8\(^{th}\) of June 2009\(^9\) to assist in Libya’s developmental activities.

Due to complexities encountered in the cooperation process with Libya, most of the EU’s council decisions were not realized. Libya’s leader Ghaddafi felt these programs would interfere with Arab and African relations; moreover, he had little faith of the effectiveness of these programs benefitting Libya.\(^10\) The EU’s council decisions included strengthening
cooperation and Libyan capacity to protect refugees and controlling irregular migration according to international standards. Though Libya sometimes declined to engage with the EU in initiatives such as Frontex and other border management activities, Libya in 2008 opted for bilateral borders control activities with Italy.

2.2 Overview of Italian Border Policies towards Irregular Migrants from North Africa

Once a country of emigrants till the 20\textsuperscript{th} Century, Italy began experiencing migrant inflow in the 1970s due to its economic progress and open informal labour markets. Italy’s first official migration policy was instituted in the 1990s, a period that coincided with the increase of North African migrants, majority being Moroccans and Tunisians. North Africans were attracted by the informal labour needed in Europe, specifically Italy. Another factor contributing to the increasing inflow was the Moroccan tradition marrying their offspring to spouses from source countries.

One of the laws of this period was ‘The Martelli Law of 1989’ which main objective was to specifically deal with the increasing arrival of non-nationals. Another significant policy was the Turco-Napolitano Law of 1998 which focused on preventing illegal entry and integrating non-nationals into Italian society. A major preventive measure under this law sought the detention of undocumented foreigners for 30 days and later their expulsions without trial. Though the rights of non-nationals, particularly, the principle of non-discrimination was considered under this Law, in reality directives failed to protect immigrants, especially third country nationals subjected to discriminatory treatment based on their nationality.

The Bossi Fini Law of 2002 and the “Security Package” of 2008 were laws that directly addressed illegal migration. The Bossi Fini Law centered on coastal patrols, inspecting and seizing vessels suspected of transporting irregular migrants, and detaining persons believed to aid clandestine entrants. The Security Package was directed at criminalizing unauthorized
border-crossings punishable by a fine of between £5,000- £10,000\textsuperscript{19}, and a maximum of 6 months to a year of detention at Centres for Identification and Expulsion Stay and Assistance (CIEs) for foreign nationals.\textsuperscript{20} However in 2006 a collaboration with IOM (the Praesiduim Project), in Italy included giving medical aid, legal counseling on consequences of clandestine entry, identifying the vulnerable (victims of traffickers, unaccompanied minors, the disabled etc.), monitoring reception conditions and migrant treatment among others to entrants.\textsuperscript{21}

Since 1998, Italy, adopted measures in cooperation with NAMCs such as Morocco and Tunisia, and in the 2000s with Algeria, Egypt, and Libya to curtail clandestine crossings.\textsuperscript{22} Focusing on Libya, Italy and Libya engaged in a series of agreements before the significant pact of 2008. Though relations between both states was strained before due to Italy’s colonization of the Jamahiriya since 1911 till 1943, on the issue of irregular migration, Italy and Libya joined forces to deter journeys from Libya to Italy. On 13\textsuperscript{th} December 2000, both states signed the Memorandum of Intent to manage concerns of drug-trafficking, terrorism, organized crime and unauthorized migration.\textsuperscript{23} This included information gathering and sharing on changing practices of smugglers, favoured routes, and information on specialized groups forging documents for illegal travelling.\textsuperscript{24} To achieve this, the Italian Ministry of Interior was attached to the Italian embassy in Tripoli in 2003, consisting of the Department of Immigration and Border Police and Department of Criminal Police, which were to report organized crimes related to irregular migration while building holding camps in Libya to accommodate irregular migrants.\textsuperscript{25} In building holding camps in Libya, Italy since 2003 arranged to fund the Gharyan, Sebah, and Kufrah detention camps to house irregular migrants. In July of the same year unofficial arrangements were made between both states to assist Libya survey and patrol its land and sea borders.\textsuperscript{26}
As at October 2004 to March 2006, over 3,000 TCNs were returned by air to Libya from Italy.\(^\text{27}\) In addition, Italy funded the return of migrants to source countries from Libya, either by air or land. Between January 2003 and August 2006, about 8,899 persons were sent from Libya to countries of origin with Italian funding, however, since 2006, returns to Libya by flight have been stopped by pressure from the ECtHR and human rights organizations such as Amnesty International which question the legitimacy of these proceedings.\(^\text{28}\) Multilaterally, Italy financially supported the IOM by instituting on 9th August 2005 in Tripoli, to assist stranded migrants in Libya.\(^\text{29}\) These measures however, did little to reduce the number of arrivals. By 2006 more than 20,000\(^\text{30}\) (the highest since 2000) irregular migrants arrived in Italy.

By December 2007, Italy and Libya agreed to a joint patrol of the coasts and ports of Libya such that Italy was to offer 6 patrol boats to Libya with funding of £6 million allotted in January 2008.\(^\text{31}\) Three of the six boats under this agreement were delivered to Libya in May 2009.\(^\text{32}\) These joint patrol arrangements came into full effect during the 2008 agreement between Silvio Berlusconi and Muammar Ghaddafi. The construction of the detention centres in Gharyan, Sebah, and Kufrah was also ongoing in 2007, though later in July the Undersecretary of the Ministry of Interior announced that the Gharyan centre was to be used as a training centre for Libyan officials whilst one of the two centres in Kufrah was to be used as a health facility.\(^\text{33}\)

The significant agreement though, which earmarked the most active and effectual liaison between the heads of Italy and Libya began with the 30\(^\text{th}\) August 2008 “Friendship Agreement”. The agreement was later recognized by the Italian Parliament in 3\(^\text{rd}\) February 2009.\(^\text{34}\) In this agreement Libya willingly obliged to the demands of the then Italian government concerning irregular migration unlike similar agreements before it.\(^\text{35}\) Both leaders endorsed the agreement to expedite amicable relations during which Italy pledged
US$5 billion spread over 25 years among projects such as oil exploitation and building infrastructure to make amends for violations during the colonial period.\textsuperscript{36} This marked the first visit of Ghaddafi to Italy after Berlusconi’s trip to Tripoli since the beginning of his leadership in 1969. The pact made it possible to (between 6\textsuperscript{th} and 10\textsuperscript{th} May 2009) effectively intercept on the high seas about 471 irregular migrants who were shipped back to Libya by Italian police. Another 89 irregular migrants were pushed back to Libya in July 2009.\textsuperscript{37} During this agreement, arrivals in Italy (Sicily) reduced from about 36,951 in 2008 to about 9,573 in 2009 and about 4,406 in 2010.\textsuperscript{38} Italy experienced a 90\% drop in arrivals precisely from Libya that is about 3,185 in December 2009 compared to the previous year’s 31,281 in the same December.\textsuperscript{39} Return activities between Italy and Libya raised concerns such that the EU Commissioner on 15\textsuperscript{th} July 2009 on the request of the Office of the United Nations High Commissioner for Refugees’ (UNHCR) High Commissioner requested Italy to adhere to human rights norms regarding its return processes to Libya.\textsuperscript{40}

2.3 Europe’s Response to the Influx of Irregular Migrants from Libya

The year 2011 saw a rippling effect of uprisings against repressive leaders in the Middle East. In mid-February 2011, growing demonstrations and protests in Tripoli expanding to Benghazi demanded that Col. Ghaddafi step down as Libya’s leader making popular his opposition, the National Transitional Council (NTC). The IOM described the 42 year rule of Ghaddafi as one filled with inequality and bad human rights practices\textsuperscript{41} which led to the Libyan crisis. However, this statement may prove inadequate as Libya practiced direct democracy and an economic democracy where revenue acquired is used for social welfares such as free health and education benefits for all citizens.\textsuperscript{42} The Colonel’s refusal to step down eventually paved way for rebel hostilities and the NATO intervention. The Libyan crisis could however, have been avoided if, the Western countries that proposed military intervention at the time, had
backed the AU to exploit all appropriate avenues available in the negotiation process for a smooth transition as some AU member states had then suggested.43

In the end, the NATO-led intervention in March 2011 resulting in Ghaddafi’s death, exacerbating the instability in Libya, consequently, increasing an outflow of more than a million persons – about 400,000 Libyans and 700,000 non-Libyans into neighbouring NAMCs (Egypt, Tunisia, and Algeria) and Europe (Italy and Malta).45

Europe, because of its proximity to Libya experienced a daily arrival of boat people at its shores. The IOM in October 2011 estimated approximately 27,465 migrants – a percentage of 1% - making their way to Europe. Among those arriving in Europe, about 10,946 persons and 1,106 persons were reported to have arrived in Italy and Malta respectively.47 These numbers consisted mostly of foreign nationals in Libya.48 The foreigners in Libya mostly fled to Europe perhaps because of persecutions they faced as foreigners, since most were perceived as pro-Ghaddafi. There was also the fact that, most foreigners intended to transit to Europe but stayed on in Libya due to comfortable and available working conditions or probably because the south of Libya was blocked by ongoing rebel activities.

It is important to note that sometimes data of arrivals on Italian shores are more than what is stated because it includes migrants crossing from North Africa and not just from Libya.

2.3.1 The EU’s Response to the Influx of Irregular Migrants from Libya

In times of crisis, particularly in the event of civil unrest, international law obligates neighbouring countries serve as a haven for persons seeking protection from militarized conflicts. Europe’s fears of an “exodus” triggered emergency policy implementations by EU institutions and member states. As the EU already had in place collective asylum frameworks such as the Common European Asylum System (CEAS) coupled with external border provisions, it suggested member states address the current emergency as a Union.49
Initial responses adopted include intensifying border control policies and surveillances of Europe’s coasts. The 20th of February 2011, Frontex’s Joint Operation Hermes which was to end in 2012 was extended to monitor the Mediterranean. The Operation, which was called for by Italy, was to “assist Italy control vessels transporting irregular migrants”, “detect and prevent irregular border crossings to the Pelagic Islands, Sicily and mainland Italy”, screening intercepted migrants, and collating figures on arrivals, facts on route changes and other details for risk analysis. EU member states such as France, Germany, Denmark, Malta and Spain contributed experts, naval personnel, and aerial logistics to support the operation of which Italy played the supervisory role. A commission from the European Police Office (Europol) was tasked to assist Italy’s Guardia di Finanza in detecting smugglers passing off as irregular migrants upon disembarkation. The EU contributed about £30 million to facilitate Operation Hermes. Negotiations, between NAMCs particularly Libya, were scheduled to further plan for effective operations concerning joint patrols.

A significant act by the EU and member states was restricting internal movements between and among member states. The act of constricting internal movements was to prevent inland European states from external migrant pressures. Following this act, member states appealed for amendments to be made regarding the Schengen Border Code (SBC), and to expedite the ongoing proposal for modifying visa regulations, to obstruct the movement of irregular migrants within Europe. The diplomatic disagreement between France and Italy, where France blocked its borders not long after Italy temporarily admitted 30,000 Tunisian migrants, allowing them to access any neighbouring EU country, led to some modifications in the border code such as, introducing some level of internal restriction in the event of increasing external border crossings. This amendment is however, to be effected only on the grounds that a said member state can justify that there are possible internal threats to its public due to voluminous external border crossings. Another significant amendment subjects
member states which unsatisfactorily manage their external borders to internal border restrictions as and when evidence is found that the former’s actions are a possible threat to public security.

Finally, the EU and its member states agreed to initiate in December 2011, the Regional Protection Programme (RPP), to externalize to NAMCs the management of a refugee crisis, an initiative that prevents Europe from dealing with refugee crisis on its territory. It was further to see to the relocation of refugees into Europe and at the same time to promote capacity-building in terms of aid to source and transit countries.\(^{55}\) Thus, the EU Commission fused with the Office of the United Nations High Commission for Refugees (UNHCR) introduced RPP to first Tunisia, Egypt and then ultimately Libya. However, the program had little impact in resettling affected migrants into European Countries, as most countries were reluctant to host and attend to the needs of migrants. Among EU member states, eight pledged about 700 placements for affected migrants, though the UNHCR had estimated about 7000 persons in need of shelter from Libya and other affected Middle East countries.\(^{56}\)

2.3.2 Italy’s Response to Irregular Migrants from Libya in 2011 and 2012

After calling the increasing crossings of migrants from Libya a state of emergency, Italy wrote to the EU, appealing that Frontex further extend its coastal activities to border control, as well as the identifying and deporting of clandestine entrants.\(^{57}\) Italy, also sought for an effective and coherent asylum framework between member states by 2012, at the same time proposing that member-states consider the fair sharing of arrivals according to the EU’s principle of burden-sharing.\(^{58}\)

Italy, additionally called for the European Patrol Network (EPN) Hermes Extension 2011, a joint effort scheduled for June in February 2011, to operate in the central Mediterranean.\(^{59}\) Operation Hermes was to secure the EU’s external border in the central Mediterranean zone.
from migrants using Libya and Tunisia as transit hubs. Since the operation was requested by Italy, Operation Hermes was placed under Italian supervision to provide personnel, marine equipment, etc. to undertake the exercise. The specifics of Operation Hermes included:

- Gathering intelligence for analysis,
- Detecting the nationalities of migrants
- Predicting and preventing probable vulnerabilities faced at the external border and
- Repatriating migrants to their source countries.

Member states supporting the operation included France, Germany, Malta, Spain and Switzerland which was partaking for the first time. Due to the continuous numbers arriving in Italy, the operation which was scheduled to end in March, extended to August and expanded its patrol range to a wider zone than was previously required. It is also important to note, the operation was backed by other initiatives such as Frontex and Europol.60

Another act carried out was to ensure suitable accommodation for estimated arrivals. An estimated tens of thousands were expected to arrive in Italy, however, available housing could host about 7,000 – 8,000 persons. These reserved facilities were to be used as and when any person was in need of being housed.61 However, since these facilities were limited, it reduced access to housing provisions made for arrivals. Arrangements made also included housing migrants with resident permit holders, particularly, those staying on humanitarian conditions. Without a stay permit and evidence indicating that an irregular migrant was in need of protection, that migrant was likely set for deportation if he or she refused to voluntarily return. As of 31st July 2011 about 23,000 persons had been returned to Libya.62

On the 6th of April, municipalities, provinces, regions and the Italian government implemented a policy to ensure these divisions equally shared in the management of arrivals.63 These were the arrangements made for Italy’s estimated 50,000 TCNs from North Africa of which about 13,000 were returned to their places of departure.64
At the behest of Italy, the European Commission (EC) called for the principle of burden-sharing among member states. Italy, along with Malta called for the implementation of the EU Directive on Temporary Protection of 2001 to see to the relocation of irregular migrants after they have arrived at shore to promote burden-sharing. The directive offers displaced persons brief protection by member states in cases of an influx on the basis of solidarity between member states. This directive is implemented in the event that member states are confronted with an emergency situation such as an influx of irregular migrants into a particular member state due to its proximity to a conflict zone. The directive also ensures member states act promptly, showing solidarity by mobilising existing EU programmes reserved to address such emergencies. Moreover, it seeks to promote, on a voluntary basis and organized manner, the sharing of persons in need of international protection from receptive member states to others, as well as making sure that existing asylum procedures are not abused by authorities. A shortcoming however, with this directive is that in practice, member states may volunteer to partake in burden-sharing.

On 17th June 2011 Italy renewed cooperation with the NTC of Libya. The agreement, named the “Cooperation Accord”, was to revive and honour the previous agreement with Colonel Ghaddafi on the returns of irregular migrants without documentation. Thus, between January and July 2011, saw the return of about 13,000 irregular migrants. The Accord also obligated both parties to share information, importantly, about smuggling operatives and cooperation on readmission processes. By 3rd April 2012, an MoU was signed between Italy and the NTC to obstruct and decrease unauthorized departures. This offered Libyan police forces with training and technical tools for controlling Libya’s borders, proposed mechanisms for information sharing on irregular migrants and smuggling networks, and a proposed construction of a detention centre in Kufrah. It further stated the importance of having the support of the European Commission to revive the Kufrah holding camp.
2.4 Europe’s Response after Increasing Migrant Deaths in the Mediterranean

The Italy-Libya cooperation of 2011-2012 saw a decrease in the number of crossings, as according to the Italian Ministry of Interior, clandestine crossing from NAMCs on maritime routes to Italy in 2012 was less than about 10,000 compared to the peak in 2011 which was over 50,000. However, 2013 saw signs of increasing migrant journeys across the central Mediterranean with Italy facing sometimes daily arrivals. Nationals making these crossings are Eritreans, Syrians, Somalis, and sub-Saharan Africans. As Italian policies at the time still centered on strict border control, it is noted to have contributed to the deaths of many irregular migrants. It was estimated that around 31,000 persons reached Europe via the central Mediterranean between January 2013 and September 2013. Though there were many reported fatal tragedies along the Italian coast, the 366 sub-Saharan Africans who drowned at the coast of Lampedusa in October 2013 had a significant influence on Italy’s response towards irregular migrants from 2013 to 2014.

2.4.1 Italy’s Operation Mare Nostrum

The use of stringent border control policies and fewer efforts to engage in rescue operations have led to many sea deaths and missing migrants in the Mediterranean. More than about 500 persons were reported to have died or gone missing at sea in 2013, according to Fortress Europe. The Lampedusa incident in October 2013 caused an international uproar unlike previous disasters, perhaps, because this time women and children were involved. The nearness of the incident to the isle such that the migrants could have been rescued was another issue that emerged. This international protest, particularly, from the EU and member states, with less concerns raised by African Union member states, marked a shift in Italy’s border policies. Italy, hence sought to address the humanitarian concerns of its border policies with attempts to prevent irregular migration.
The “maritime response” known as Operation Mare Nostrum, “our sea” (hereinafter OMN or Mare Nostrum), was instituted in the leadership of Enrico Letta in October 2013 exactly two weeks after the drowning of the 366 migrants. Mare Nostrum, had two principle objectives, first, was to deter clandestine journeys into Europe by targeting human smugglers, and second, to rescue persons on unseaworthy transport on the high seas. Mare Nostrum was to patrol in a search area of 70,000 sq. Km in the Strait of Sicily, due to its presentation as a paramilitary exercise about 900 military were deployed, as well as 32 naval units and 2 submarines to run shifts in over 45,000 hours of active operation. With regards to personnel in Mare Nostrum, the Italian Navy, the Army, Air Force, Carabinieri, Guardia di Finanza, and the Coast Guard were all under the command of Italian Navy Operations, controlled by the Command in Chief of the Naval Squadron (CINCNAV) of Santa Rosa base, in Rome.

A more detailed composition of the operation involves:

i. An amphibious vessel with specific command and control features

ii. Medical and shelter facilities for the rescued

iii. One or two frigates and a two second line high seas units – either patrollers or corvettes – with wide range and medical care capabilities

iv. Helicopters onboard (to be deployed to Lampedusa or Catania)

v. A SAN MARCO Marine Brigade team in charge of vessels inspections and the safety of migrants onboard

vi. A Coastal radar network and Italian Navy AIS (Automatic Identification System) shore stations

vii. An ATLANTIC 1 Maritime Patrol Aircraft (MPA) based in Sigonella for Maritime Patrol

viii. An Air Force PREDATOR A+ based in Sigonella for maritime patrol
ix. One MM P180 aircraft equipped with Forward Looking Infrared (FLIR), based in Catania

x. An S-100 unmanned aerial vehicles onboard ITS San Guisto

xi. One Forward Logistic Site (FLS) in Lampedusa for logistical provision to units employed under Mare Nostrum.

xii. And aerial vehicles and helicopters unmanned, provided to the Carabinieri Corps by the Air Force till 23rd June of 2014.\textsuperscript{78}

Though OMN is a significant change of border policy to what Italy is used to, it is no novelty to the European coast. Mare Nostrum was authorized through activities of the Migration Flows Control (CFM)\textsuperscript{79} in already established operation Constant Vigilance. This operation run by the Italian Navy since 2004,\textsuperscript{80} was instituted to address the rising discourse on the indifference of Europe’s external border policies that cause migrants’ deaths. According to Cuttitta, there is no significant difference between Constant Vigilance and Mare Nostrum, but a matter of increment in quantity, funds and deployment of logistics. With regards to quantity, there was an increase in logistics supply for OMN compared to Constant Vigilance. In funding, 9.5 million Euros per month was given to OMN whilst Constant Vigilance received 1.5 million Euros per month. In deployment, that is, the space of operation, both operations cover the Strait of Sicily, however, OMN can extend searches into Libyan Search and Rescue (SAR) waters unlike its predecessor.\textsuperscript{81} Thus, activities carried out in OMN and Constant Vigilance involves both rescue and security missions in capacity.

In order to attain set objectives, it was necessary for the naval and air divisions under OMN to centre on improving maritime security in order to patrol sea routes, counter-act illegal activities, specifically human trafficking, and on the other hand tackle the humanitarian emergency in the central Mediterranean.\textsuperscript{82} Under this initiative, submarines were a means of gathering intelligence of vices happening at sea. It is imperative to point out that Mare
Nostrum was assisted by only one EU member (Slovenia) which lent a Navy patrol boat with 40 officers for rescues in December 2013. However, during the implementation of Mare Nostrum appeals were made to the EU and member states to financially assist the operation. The EU Commission therefore offered Italy £1.8 million from the emergency support budget under the European Border Fund (EBF), estimated to cover just about a month’s operating costs of the Mare Nostrum.  

2.4.2 EU Border Policies during 2013 to 2014

As Italy individually adopted measures to deal with the increasing number of deaths in the central Mediterranean, the EU and its member states concurrently made arrangements to fight illegal migration. The Union’s goal concerning illegal migration during the period between 2013 and 2014 included efforts to reduce in number the drowned and missing persons in addition to the long term goal of preventing clandestine journeys.

The EU in 2013 upon the appeals of Italy financially assisted Mare Nostrum with a sum of £1.8 million from the emergency actions under the EBF. In supporting the rescue mission, debate among member states particularly, the British government’s description of OMN as a pull-factor discouraged neighbouring states from supporting the initiative with the exception of Slovenia. The Union however, continued to run Frontex security coordinated activities, Operation Hermes and Aeneas, along the Italian coast. Both operations received an annual budget from member states of about £5 million.

The EU, to support the operations of Frontex, officially authorized European Border Surveillance System (Eurosur) in 2013, a testing project of Frontex since 2011. The operation was for information sharing among EU member states as well as with NAMCs on data such as vessels located at sea using unusual routes not conversant with normal maritime passages. Such vessels are likely trafficking illegal stock or migrants or both. In coordination with
Maritime Response Coordinated Centres (MRCCs), Eurosur seeks to prevent unauthorised crossings, cross-border crimes and crises situations at Europe’s external borders through intelligence sharing. In the beginning, the idea was met with resistance because of its inability to consider a people-centered stance, however, it became operational on December 2rd 2013, at the Southern and Eastern borders of Europe before expanding in December 2014.

Pressure from undertaking Mare Nostrum weighed on Italy such that, it called for assistance from the EU and other member states. The Frontex led Operation Triton to support Mare Nostrum, was suggested by the EU and member states, particularly, those which dismissed OMN as a pull-factor. The Operation Triton, implemented in November 2014, is a joint task to be run in a more restricted SAR area in the central Mediterranean compared to Mare Nostrum. About 21 EU member states originally joined the operation with Italy as the host state upon its request. Members contributed both personnel and logistics to facilitate tasks. A detailed composition includes about 65 guest officers and technical equipment entailing 4 fixed Wing Aircrafts, 1 Helicopter, 4 Open Shore vessels, 1 coastal Patrol Vessel, and 2 Coastal Patrol boats. For the operation to begin, funding of £2.9 million was accrued from the Internal Security Fund and the Frontex Agency as a monthly budget. Discussions among EU and member states at the time, focused on supporting the Frontex budget, gather funds purposely to maintain the monthly level of funding. According to the European Commission, Operation Triton is based on the specific request of the Italian government to support Italy’s national efforts in managing its coasts. Though Triton will engage in rescue activities, it will do so in a limited SAR zone, that is, in Italy’s territorial waters, which lessens the chances to save migrant lives in other SAR zones close to Italy.

Other long term goals suggested by the EU to curb irregular migration include an accessible means for asylum application. Thus, asylum seekers will be given access to visas to prevent them from entrusting their means of crossing to smugglers who engage them purposefully for
gains without considering their safety. Channels for irregularities such as sea crossings increase because of inaccessibility to legal means of travelling. The EU therefore, suggests a more open-door policy to save lives, however, a major concern of EU member states is mixed migration, where it is almost impossible differentiating between persons in need of international protection and economic migrants.

The suggestion of European burden-sharing as opposed to the practice of burden-shifting was also recognized during this period. Coastal EU states such as Italy complain of rescuing migrants with the limited resources they possess, and hosting them with limited reception facilities, making it difficult to properly care for guests. Yet, inland countries such as Germany and Switzerland also complain of receiving more applications from asylum seekers and experience about 90% of clandestine crossings through mainly land transports. It is known fact that often migrants entering Italy use it as a means to getting into more economically comfortable European states. Thus, the issue of burden-sharing among member states remains a debate.
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CHAPTER THREE

ITALY AS A VICTIM OR VILLAIN IN EUROPEAN BORDER POLICIES

3.0 Introduction

Chapter three presents a detailed account of the activities of Mare Nostrum and its aftermath on Italian shore pertaining to migrant reception. Further discussion on the experiences of irregular migrants in Libya, is made to understand the reason behind migrant crossings and criticisms levelled against Italy for breaching the non-refoulement principle. The chapter also compares the border policies of Italy since 2011 till 2014 to Italy’s regional human rights standard, the European Convention on Human Rights to determine if indeed Italy’s policies have been detrimental to irregular migrants.

3.1 The Opus and Achievements of Mare Nostrum

The maritime response of Italy in 2013 was estimated for its entire operation to save about 3,000 lives, however, the operation was found to have rescued that same number per week, since a trip by Italian vessels could disembark about 1000 migrants. In both 2011 and 2012, rescue missions undertook a total of 20 and 24 respectively, saving about 5,000 lives in both years; however 2013 alone undertook more than 90 rescue missions salvaging approximately 11,499 lives. The Italian Navy boasts of about 421 rescue operations while reports of more than a thousand migrants in January 2014 a day, attests to the increasing numbers risking their lives to cross into Europe. To appreciate more the maritime responsibility of Mare Nostrum, the search and rescue activities of the Italian vessel, the San Guisto, an amphibious assault carrier intended to transport military vehicles and armoury was documented in 2014.

The Italian Navy’s vessel had a captain and 300 crew members, comprising of sailors, marines, police, medical personnel, voluntary persons from international, national and non-
governmental organizations, and occasionally the media. The documentation covers a routine of the crew, which could rescue about 1,700 with one trip, with Eritreans and Syrians forming majority of rescued persons. Search and rescue activities the crew undertook on the vessel involved:

- Policing the high seas
- Locating migrant vessels for rescuing
- Processing migrants, that is, medical screening to determine health conditions
- Identifying migrants
- Recording accounts of journeys (to investigate human smuggling operations and for risk analysis)
- Sorting migrants in the garage of the vessel to await landing

In the vessel, migrants also underwent treatment if wounded or were quarantined if need be, particularly, migrants from Africa who may have communicable diseases like Ebola. Specific care was also given to the vulnerable among migrants, such as minors, by providing professionals from organisations like Save the Children to access information, support, and give legal counselling and cultural mediation for minors.

The San Guisto (Italian vessel) on the day of coverage, made three trips in about two days at sea. The first trip rescued around 103 African men. It is imperative to note that these illegal journeys were mostly by men however, increasing numbers of women and children have been observed embarking on sea journeys. A smaller vessel from the San Guisto was dispatched to transfer migrants from their dinghies into the vessel. The crew deployed for that rescue, had to be prudent in distributing life jackets, as most of these migrants cannot swim. After they were safely aboard the San Guisto, the African migrants went through the systematic stages outlined above.
The second alert was given later in the evening, a confirmation of the risks crew members face on the job. A Norwegian merchant vessel called on the San Guisto to recover salvaged migrants from sea. There were about 230 migrants of Syrian origin consisting of men, women and children on the Norwegian vessel. The third batch consisting of about 300 men, before boarding the San Guisto, were rescued by a navy frigate also belonging to the Italian Navy under Mare Nostrum. With these large numbers rescued, the crew and some migrants complained of heat, however both groups seemed to prefer the heat to the experience of drowned persons.

Mare Nostrum secondly, boasts of about 156,362 persons with about 9,300 migrants as the greatest figure salvaged per week during its functioning. A Naval base in Sicily, was known to single-handedly prevent approximately 52,000 persons from drowning, a total of half the migrants rescued during Mare Nostrum. Above all, the operation was seen to effectively track smugglers, such that about 366 smugglers were detained by Italian authorities, and are currently undergoing judicial proceedings. Monitoring and apprehending smugglers under Mare Nostrum was an arduous task, which took the use of submarines to gather evidence on smuggler’s activities through filming. The Italian police deployed from the Ministry of Interior obtained information from rescue missions assisting in the identification of smugglers or potential terrorists by interrogating migrants.

On the other side, the British government labels the operation as a migrant pull factor. The British government further blames Mare Nostrum as the cause of the more than 3,000 deaths reported in 2013. Statistics from UNHCR further buttresses the argument of the British government by indicating increasing numbers of crossings during Mare Nostrum. Frontex’s former Interim Executive Director Gil Arias affirmed the initiative as a pull-factor in 2014, by observing that smugglers exploited the operation by sending boats indiscriminately and at once, with little food, water and fuel, certain that migrants will be rescued by Italian
vessels. On the other hand, scholars like Patalano disagree, since events in Libya already drive migrants to the decision of sea crossing. Scholars like Cuttitta also raise concerns about the operation’s humanitarian services. He notes that interrogations by police centre solely on information that can assist apprehend smugglers, ignoring information on the dead and missing among salvaged migrants. A major concern also noted, is the operations inability to provide suitable reception conditions for rescued migrants, leading to congestion once disembarked.

3.1.1 Reception Conditions after Rescue

Rescued migrants upon entering Europe, are lawfully detained at Centres for Identification and Expulsion Stay and Assistance (CIEs). Migrants’ stay should last for 30 days at most however, migrants awaiting documentation for asylum processing can be detained for an additional 18 months. Even in such cases, there are no guarantees migrants will gain asylum documents and can be detained till expulsion. During Mare Nostrum, a major concern was hosting the salvaged, particularly the minors amongst them. In 2014, five out of the thirteen CIEs were functioning, the others closed down due to riots caused by migrants, neglect by management or mismanagement. In 2013, about 60,000 irregular migrants from NAMCs were detained in Italy. Detainees constituted both sea arrivals and immigrants who entered Italy legally but overstayed. The concentrating of both groupings in CIEs gradually promotes overcrowding and puts pressure on reception facilities. The inability of CIEs, such as those in Rome and Sicily, to house migrants due to overcrowding has led to migrants lodging the streets of Italy. Reports showed that by February 2014 about 3,000 migrants were occupying vacated buildings, informal squats known as “hotspots”, and the streets. Also, the laborious processes asylum seekers go through in order to access asylum protection when these sentiments have been expressed right from the beginning of their arrival, was another concern highlighted by the UNHCR’s Special Rappoteur to Italy in 2014.
Generally, Italian reception centres have been criticized for their unsatisfactory conditions. Revelations of African and Arab migrants undergoing demeaning treatment (lined up in mixed company, unclothed and being hosed with water)\textsuperscript{24} was captured in the media. Disturbing accounts of riots at detention centres, escapes, self-harm and suicide attempts have been reported. About 900 detainees were reported to have escaped from their centres in 2013, and in Ponte Galeria, a group of migrants sewed their lips in protest to poor conditions and delays in asylum documentation at the centre.\textsuperscript{25} Health workers at centres are also known to sedate migrants in order to calm violent situations which may often result in suicides.\textsuperscript{26} Again, complaints include using centres that provide asylum aid as crude detention centres. Reception centres such as the Contrada Imbriacola, are also forced, because of increasing arrivals, to operate as holding camps though lacking adequate facilities to act as such.\textsuperscript{27}

In spite of ongoing criticisms and reports, Italy has been quite progressive regarding the hosting of sea arrivals. Improvement on asylum applications and treatment of detainees at public reception centres was observed, as opposed to privately owned centres. The Italian government continues to stress on centres acting on set standards to ensure appropriate detention of migrants.\textsuperscript{28} The introduction of a triennial project from 2014 to 2016, to construct additional 8,000 Protection System for Asylum-seekers and Refugees (SPRARs) centres which will shelter specifically, migrants in need of international protection is underway.\textsuperscript{29} Territorial Commission for the Recognition of International Protection (CTRPIs) centres set up, have also received commendation from the UNHCR on their efforts in complying with the Qualification Directive (a directive addressing the effective applicability of asylum procedures to asylum seekers) which is appropriate for irregular migrants. Similarly, the Trapani Reception Centre for Asylum Seekers (CARA) was lauded for enhancing its reception conditions to suitably lodge and integrate its guests into society.\textsuperscript{30}
Furthermore, a CTRPI is to be established in Palermo to accommodate sea migrants rescued in Sicily.\textsuperscript{31}

\textbf{3.2 Detention Conditions in Libya}

In the practice of interception, migrants apprehended crossing to Europe, returned to places of departure, may encounter mistreatment particularly, in transit countries like Libya. Libya, without instituted human rights provisions especially, in its present state of chaos where two factions – the House of Representatives and the political group in Tripoli – struggle for leadership, poses harm to TCNs. Agreements between Libya and Italy ensure that irregular migrants captured at sea, be returned to Libya, which acts as a personal holding container for the whole of Europe. To facilitate such operations, Europe spends at least £12 million to assist with the rehabilitation of some centres in Libya, as well as supporting NGOs that assist these centres.\textsuperscript{32}

In Libya, detention centres are operated both by government and private groups. With the current situation in Libya, persons in charge of detention centres may be the militia, rebel groups or smugglers (these three groups can also be ascribed to a person).\textsuperscript{33} In Libya, no distinction is made between an economic migrant and persons seeking asylum, thus, detained persons are often denied access to courts, denied the right to challenge detention or expulsion verdicts, or detained for an unlawful period of time (could be years) without judicial review.\textsuperscript{34}

Though Libya has ratified to various human rights conventions, – such as the UN Convention Against Torture (CAT), the International Convention on Civil and Political Rights (ICCPR), and the Convention Governing the Specific Aspects of Refugee Problems in Africa – it has failed to ratify the Refugee Convention of 1951. As such, there is an inexistent asylum framework and an official disregard for the UNHCR in Libya.
Since the civil crisis, irregular migrants, particularly sub-Saharan Africans, are at a risk of being mistreated or have been. According to Libyans, foreigners during Ghaddafi’s reign were favoured by the former leader or were mercenaries belonging to him, therefore pro-Ghaddafi. This mistreatment is also extended to the detention centres. In 2013 reports of Libyan prisons and detention centres subjecting migrants to life threatening situations inconsistent with international standards, was discovered by U.S State Department. A report in 2013 by Human Rights Watch (HRW), to determine the detention conditions of irregular migrant’s, uncovered evidence of overcrowding, where 60 men and boys were cramped in a space of 30 square meters, leading to poor sanitary conditions such as blocked and overflowing latrines.

Some of these so called holding centres were in actual fact shipping containers, abandoned government offices, vacated veterinaries, schools and at times private houses. At these centres, migrants undergo series of abuse, among which being beaten with iron rods, sticks, rifle butts, cables, metallic wires, hose pipes among other items were disclosed. Guards in charge of centres are reported to burn persons with cigarettes, kick and punch persons in the torso, sometimes the head, give electrical shocks, hanging migrants upside down on trees, etc. Male migrants are likely to experience being stripped bare for occasional searches than women, however, women interviewed by HRW representatives reported intrusive searches conducted by guards. The use of abusive language; swear words, threats and racial insults by officials when addressing detainees were also disclosed.

Even though such events occur, Libya allows international and non-governmental organizations assist with health care services, sanitation, refugee registration and counselling of detainees from time to time, however, a concern is that it may not cut across all holding centres, particularly those operated by smugglers.
3.3 The European Convention on Human Rights

The callous repercussions of the Second World War prompted farsighted politicians of Europe in 1949 to draft a regional human rights treaty, guided by the 1948 United Nations Universal Declaration on Human Rights (UDHR), to strengthen freedom and democracy in European states, and to safeguard against repression and extremism,\textsuperscript{42} such as was witnessed in World War 2. The European Convention on Human Rights (hereinafter ECHR or the Convention) also known as the Convention for the Protection of Human Rights and Fundamental Freedoms, was created on 4\textsuperscript{th} November 1950 and implemented on the 3\textsuperscript{rd} of September 1953. The Convention is a standard, by which European states adhere to, in order to safeguard the rights and freedoms. It also ensures equality amongst persons in European jurisdiction. For the Convention to work, the European Court of Human Rights (ECtHR) was set up in 1959, to primarily interpret the Convention and ensure state adherence. Since its inception, the Convention has seen many amendments and additions. At present, it has 16 Protocols in addition to its main draft. It is important to note that interpretations and verdicts from the ECtHR are inconsistent due to these additional protocols.

The Convention, as mentioned before, not only protects the rights of European nationals but also foreigners within European jurisdiction who wish to enter into Europe. Primarily, jurisdiction refers to territory, as in land, but with the introduction of the principle of extraterritoriality, wherever a state holds effective control and pursues its foreign relations is that states jurisdiction.\textsuperscript{43} The central Mediterranean where Italian naval operations take place is therefore an area of control for Italy, of which it is responsible for.

For the purposes of this study, the minimum rights irregular migrants, entering Europe via the central Mediterranean, are to benefit according to the ECHR will be explained in simple terms. These provisions include;
1. The basic right to life, enjoyment and respect,

2. Prohibition of the use of unreasonable force by authorities to prevent irregular migrants,

3. The duty to save the lives of irregular migrants seeking entry,

4. Protection from torture and inhuman or degrading treatment or punishment,

5. The duty of authorities to detain irregular migrants lawfully without an unlawful extension of detention periods,

6. The right for irregular migrants to communicate with their consuls upon detention should be guaranteed,

7. The right to asylum and to challenge detentions or refoulement procedures through fair trials by the appropriate authorities

8. Authorities shall desist from collective expulsions

9. Authorities shall avoid discrimination against irregular migrants in authorising stays or expulsions on the basis of race, ethnicity, religious affiliations, or social or political affiliations.44

However, an essential provision made by the Convention requests that all domestic remedies in European member states be exhausted before reference to the Convention and its court is made.45 This perhaps, accounts for the Conventions inability to achieve strict compliance from member states. The Convention then serves as a guide and can only be enforced via its court, thus, the duty of preserving the rights of persons entirely dwells on member states because, they are present on the ground and in most cases, are able to prevent violations as well as to promptly remedy them.46

3.4 Comparison of 2011- 2014 Italian Policies to Human Rights Standards
Italy signed to the Convention in 1955 October 25th as one of the first ten member states to ratify the Convention. It has since been state party to the Convention and all its protocols with the exception of Protocol No. 12 (which expands the principle of non-discrimination), Protocol No. 15 (which offers measures to enhance the capacity of the Convention), and Protocol No. 16 (offering the possibility for domestic courts and tribunals to obtain advisory opinions from the ECtHR on questions pertaining to interpretation or application of the rights and freedoms stipulated in the ECHR). According to international law, a state party to a convention is bounded by its stipulations however; a signatory is not legally answerable or constrained by a convention if it has not ratified that convention. Then again, some conventions are regarded as customary laws thus, should be adhered to by all states whether ratified or not. These same declarations apply to member states that ratify or not to the ECHR, yet it is unclear if all principles stated in the Convention are universally applicable to all European states without ratification.

Italy’s initial EU collective response to irregular migration and as an individual state has continually been to deter migrants from beginning the risky journey in the first place. Yet, such policies remain futile as migrants keep crossing. At the same time, deterrent policies infringe on the human rights of migrants as persons first and second as migrants. For this reason, criticisms levelled against Italy on human rights violations informed a humanitarian approach (Mare Nostrum) to making border policies. This said policy also received criticisms because of its inability to primarily see to suitable reception conditions for rescued migrants. In order to determine these assertions, policies from 2011 to 2014 will be assessed using principles and stipulations applicable to the treatment of sea migrants to examine reported events of rights violations as a result of Italy’s policies. Articles 2, 3, 5, Protocol No. 4 Article 4 and Protocol No. 12, the extension of Article 14 will be used to assess Italy’s policies.
3.4.1 Policies of Interception and Push-Back versus Search and Rescue

The de facto agreements between Italy and Libya since 2000 till later accords, sought to return migrants to Libya and later to their source countries without screening to determine if migrants needed international protection. Through the policy of interception, which is stopping migrants at sea and returning migrants to the place of departure or simply ignoring to rescue them, the Italy-Libya agreements were able to reduce crossings. In so doing, their actions became detrimental to migrants such that their human rights were violated.

On the policy of interception, under the Italy-Libya accord, significant inadequacies by the Italian authorities on safeguarding the rights of irregular migrants were highlighted. An example was the 26th of March 2011 incident, when about 72 migrants in a dinghy from Tripoli journeyed towards Europe. Usually, with the right equipment, journeys from Libya to Italy should take about two to three days, however, since these boats are not seaworthy, lack a good compass for appropriate navigation and a trained captain, migrants find themselves manoeuvring the Mediterranean longer than is needed. Migrants in March 2011 travelling from Tripoli to Europe spent about 15 days at sea. In their distress they contacted a priest in Italy who in then alerted the proper authorities (the Italian Maritime Rescue Coordination Centre) for rescue.48 The Italian MRCC in turn signalled Malta MRCC and a NATO vessel in the area where the migrants were located at the time for rescue however, no attempt was made. Malta later explained that these migrants were not stranded in its search and rescue area hence, their inability to rescue them. On the 10th of April, the dinghy washed up on Libyan shore with 11 survivors however, a woman was later reported to have died on arrival to the Zliten coast and another passed during detention due to untreated wounds.49 Once ashore, migrants were seized by Libyan coast guards along with whatever personal belongings remained, then imprisoned without proper medical care, leading to the death of one migrant.50
In this case, the actions meted out to migrants by Italian authorities were inconsistent with the standards in Article 2, 3 and Protocol No.12. The right to life as stated in Article 2 is one of the two fundamental principles governing European states. It outlines the importance of protecting lives and stipulates exceptions by which the right to life can be taken. In simple terms, authorities are to first protect individuals from unlawful killings; this should consider threats posed by others or the environment. Article 2 instructs authorities to refrain from unlawful killings, which are stated in paragraph 2 of the article, to take steps in safeguarding life, especially that which results in the loss of life, and a duty to investigate suspicious deaths. In Article 3 lies the Prohibition of Torture, Inhuman or Degrading Treatment or Punishment which prohibits an affront to a person’s physical integrity through inflictions of pain and other acts that may cause severe mental suffering. It also forbids states and their agencies (whether acting in state capacity or of their own accord) from engaging in this breach of right. Thus, states are expected to ensure accessible processes by which complaints can be made and sanctions on responsible agencies can be administered. The Italian authorities’ inability to rescue migrants even when alerted violated the right to protecting lives as in Article 2. Furthermore, debating among themselves (Italy and Malta) which state was responsible for rescuing migrants resulted in ignoring the distress calls, and leaving migrants at the peril of nature’s elements without water, food and fuel. Such acts were a violation of Article 3, as they subjected migrants to an affront to their physical integrity. Both states explained that migrants were located in Libya’s search and rescue zone at the time however; counter arguments suggest that in Libya’s state of chaos at the time, it was left to its able neighbours to take up search and rescue missions.

Overall, Italy was found to have breached the non-discrimination principle of Article 14, expounded in the 12th protocol of the Convention. It prohibits the discrimination of persons based on their sex, race, colour, language, religion, political or social affiliation, national or
social origin, association with a national minority or other status. This means, persons should not be treated differently in a situation based on a particular characteristic possessed by such persons rather; all persons, regardless of what defines them should experience similar treatment in similar situations. Paragraph 2 of the 12th protocol further prohibits discrimination by authorities on any grounds such as mentioned above in paragraph 1 of Protocol No. 12. Italy’s decision not to rescue migrants so they could be screened to determine if any were in need of international protection violated the principle of non-discrimination. This is because distress calls made by migrants were ignored by Italian authorities who dismissed migrants as simply being ‘migranti’ (an Italian term making no distinction between an economic migrant, an asylum seeker or a refugee). During the assessment of the Hirsi Jamaa and others versus Italy case, it was established there was the need to protect a “de facto refugee” as a “de jure refugee”, since both categories share the same need for international protection, considering the events in Libya at the time. Therefore, a difference in treatment will end in refugees being subject to a discriminatory regime. Moreover, it is imperative to note that a refugee is not acknowledged as a refugee by recognition but because he or she is, a refugee. Thus, migrants who have not expressed wishes to be protected, upon realising that they are endangered, fall within this category. However, since Italy has not ratified to Protocol No. 12 it may not be legally answerable to it though, it remains a fact that its actions were inconsistent with the principle of non-discrimination.

Contrary to this, in 2013 and 2014 during Mare Nostrum, the operation not only adhered to the Convention of Search and Rescue but to most parts of Article 2, Article 3, and Protocol No. 12 of the Convention. The purpose of the operation itself, which is to salvage migrants’ lives in the Mediterranean, observes the stipulations in Article 2 of the ECHR. Moreover, as it salvaged lives, it prevented migrants from undergoing experiences that can be characterized
as torturous, inhumane, degrading or punishable treatment. This task of Mare Nostrum is also consistent with stated provisions in Article 3, as it discourages migrants from experiencing events that offends their physical integrity at sea. Also, considering the situation in Libya, returning migrants to a place where their lives are engaged amounts to subjecting migrants to torturous, inhumane, degrading or punishable treatment, which Mare Nostrum prevented by rescuing migrants. However, it is imperative to note that the challenge of Mare Nostrum officials ignoring investigations which may lead to knowledge of drowned or missing persons is incompatible with Article 2’s provision of the authority’s duty of investigating suspicious deaths.

In adherence with Protocol No. 12, Mare Nostrum rescued all persons found at sea regardless of their origin or status. Often, the nationality of migrants was used to determine their status as labour migrants, asylum seekers or refugees. Also, during Mare Nostrum, migrants were screened to determine those in need of protection. At the same time officials gathered information that may assist officials apprehend smugglers unlike previous policies. Allowing voluntary organisations assist with medical treatment, food and clothing among other supplies for rescued migrants, while providing additional care upon arrival for migrants with severe medical conditions, affirmed Italy’s determination to address the humanitarian concern in the central Mediterranean. It is further compatible with Article 3 particularly, and Protocol No. 12, because crew members meted out similar treatments to all rescued migrants. Upon being interviewed a Syrian migrant rescued, expressed gratitude to the Italian crew for being rescued. Such statements attest to the humanitarian nature of Mare Nostrum, and under this initiative, Italy can be said to have adhered to the appropriate principles applicable in such situations.
3.4.2 Policies of Reception and Detention

Usually, undocumented immigrants are held at detention centres to await deportation, but with the increase in sea arrivals, detention centres are being used frequently as reception centres, to house irregular migrants arriving from sea. The policy of reception normally deals with accommodating and caring for rescued migrants while they await decisions made by authorities to offer international protection or to expel them. Article 5, of the Convention states the right to liberty and security which ensures the safeguarding of an individual's physical liberty against arbitrary detention. It is not only applicable from the beginning of a person’s detention, but during the detention process till a verdict is given. Notably, it exists in tandem with the prohibition of discrimination however; there are exceptions to which it is lawful for a person to be detained. One of such is, “the lawful arrest or detention of a person, to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken, with a view to deportation or extradition”. Thus, it is lawful to detain irregular migrants upon entry to determine their fate; on the other hand, these actions must be carried out within certain provided stipulations to avoid violating the rights of irregular migrants. This includes detaining persons as a final resort, when all other alternatives have been exhausted; or an officially recognised detention for a reasonable period of time, with an independent scrutiny when further detention is necessary. Upon detention, migrants must be notified of the rights and provisions available to them in a language they can comprehend during which contact with their consuls should also be made to report the location detainees. Detaining of vulnerable persons (minors, pregnant or lactating women, the elderly and the disabled) should be avoided when possible, if not, such detention should be brief. Adults who are not parents of minors, example female adults and male minors or vice versa, should be separated at centres, also migrants should be allowed contact to any person
of their choice (lawyers, family members, NGOs or the UNHCR), to access medical care, an interpreter, and free legal aid.\textsuperscript{64}

Ever since 30\textsuperscript{th} September 2008, under the provisions of the Security Package, it was lawful to detain migrants indefinitely at the isle of Lampedusa till they were given asylum or deported.\textsuperscript{65} This event also witnessed delays in asylum processing, leading to overcrowding at reception centres such as the Contrada Imbriacola, one of the two centres in Lampedusa. It had the capacity to house 804 migrants but was accommodating up to about 1560 migrants.\textsuperscript{66} The delay in processing asylum documents by the Italian government was believed to have caused the violent episode of 20\textsuperscript{th} September 2011, where agitated Tunisian descent migrants set fire to a centre due to uncertainties of their fate.\textsuperscript{67} At the second reception centre, Loran, about 380 migrants lodged in a 180 capacity facility.\textsuperscript{68} The mattresses provided for migrants were in direct contact with the ground. Uncovered reports showed inadequate sanitary conditions, such as a five provisional unit which had 3 showers each, 3 toilets and 3 washbasins.\textsuperscript{69} Also, available for migrants were a landline for communication purposes, however, with the phone signal in the area being weak, migrants had little use for the line.\textsuperscript{70} There was also dangerous electrical circuiting in the building which posed as a risk while fire alarms at the centre were not functioning.\textsuperscript{71}

In Ponte Galeria’s largest CIE, there are no reports of overcrowding but a visit in 2012 by the non-governmental health organisation Medici per I Diritti Umani, reported the centre resembled a penal institution under surveillance from security personnel.\textsuperscript{72} Areas in the centre were demarcated by bar fences, and sanitation was in a deplorable state. For instance, toilets in the centre had no doors for privacy sake, whereas partitions in washrooms were done by large black garbage plastic bags.\textsuperscript{73} Migrants also complained about the lack of a heating system especially during the winter time. The centre was at the time, providing migrants with limited equipment for medical treatment besides the limited number of medical personnel.
available. For instance, the medical staff consisted of 2 female volunteer doctors, an oncologist and a gynaecologist in addition to the 6 member team provided to the centre.⁷⁴ There were also about 7 volunteer nurses in addition to the 5 nurses at the centre.⁷⁵ In view of these reports, it is evident that Italian authorities were in breach of the stipulations set in Article 5 however; Italy has defended its actions by stating that the said violations are as a result of the limited resources available, which cannot adequately meet the needs of the increasing number of irregular arrivals. Scholars like Cuttitta disagree with this assertion and have indicated that the action of detaining migrants in Italy, especially on the isle of Lampedusa, which causes overcrowding at centres is as a result of Italy’s persistent border policy to socially “borderize” the isle by concentrating entrants at the borders, preventing their entry into mainland Italy.⁷⁶

With Mare Nostrum, reception and detention conditions in Italy were revealed to be inadequate in accordance with international standards. During the period of Mare Nostrum, many people were salvaged, but the inability of the Italian government to establish suitable reception conditions resulted in concentrations and overcrowding at centres. Overcrowding and concentrating migrants at centres promotes limited staff and resources to guests, subjecting migrants to inhuman and degrading treatment. Taking health care for instance, the figures of irregular migrants arriving outnumber the available personnel. In order to control migrants, medical personnel resort to sedatives to calm down migrants which occasionally lead to suicide attempts. Also, reports of female and male migrants mixed up, or adults and minors who may not be parents of minors lodging together, is inconsistent with the detention principle of segregating men from women who are not spouses as well as minors from adults who are not their parents. Moreover, extending detainees’ detentions, by reason of limited functioning detention and reception centres, the increasing number of irregular arrivals tending to delay asylum applications and the fact that neighbouring EU member states have
chosen to ignore the emergency of the situation, promotes Italy’s violation of the principles in Article 3 and 5 of the Convention.

Such actions and more of Italian authorities have led to undignified treatment of persons, which violate Articles 3 and 5. However, occasionally some migrants have been allowed to cross the Italian border into neighbouring countries right after disembarkation, though this doesn’t happen often.

3.4.3 Policies of Expulsion and Readmission

Upon irregular migrants being intercepted at sea or disembarked ashore, entrants detained and denied asylum are returned to their place of departure, which could be a transit country (in this case Libya) or a source country. With the Italy-Libya accord, Libya gradually became a holding centre for Italy and Europe as a whole. According to the pact, Libya was duty-bound to coordinate its policies with that of Italy to assist Italy in repatriation processes. Under Article 4 of the 4th Protocol, in order to conduct appropriate expulsions and readmissions, the irregular migrant must have access to an effective remedy. The migrant also has the right to argue before a competent, impartial authority, represented by a legal aid and an interpreter if necessary, the claim of his or her life being at risk upon expulsion. Migrants also have the right under the Convention to argue their case by the ECHR under Article 34 of the Convention. The ECHR also clearly bans states from conducting collective expulsions.

In 2011, the Italian government expelled about 13,000 irregular migrants between January and July when the Libyan crisis was on-going. In the same year, the migrants from Libya who left only to drift at sea till they washed up back on the Libyan shore, amounts to a violation of Article 4 of Protocol No. 4. This is because, Italian authorities were obligated to intervene by rescuing migrants however, leaving them to return to a place which was
evidently a risk to their right to life, breached the principle of non-refoulement hence, Article 4 of Protocol No. 4.

In 2013 and 2014 however there was a general decrease in expelling irregular migrants to the northern part of Africa, in this case Libya. By the discretion of Italian authorities, these places were harmful to persons due to their race, religion, nationality, and membership to a particular social group or political opinion. Thus, in this period Italy was consistent with the non-refoulement principle and Article 4 of Protocol No. 4.
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80 Ibid

CHAPTER FOUR

4.0 Introduction

This chapter consists of the summary of findings, conclusions and recommendations of this study.

4.1 Summary of Findings

The Issue of Cooperation and Policy Incoherence in the EU

It has been observed that sea arrivals in Europe make up a lesser number, that is, about 10% of irregular migrants clandestinely crossing into Europe. Major clandestine journeys are by air, bus, and train especially, journeys to inland states that process more asylum applicants than southern states. Southern states like Italy are normally used as transits to more prosperous states like Germany and Switzerland. Thus, northern states are compelled to force the south to control their external borders and implement strict border policies.

However, with criticism about the humanitarian effects of such policies some European states attempt to address these concerns, such states have been left on their own. Calls by Italy to assist with burden-sharing fall on deaf ears as according to northern European states they have to deal with about 90% of clandestine migrants attempting to cross their borders. Southern European states themselves disagree when it comes to issues concerning which state should take up rescues, in which zone and the country to receive rescued migrants. Italy and Malta normally have diverging views on such issues, leading to migrant deaths. Due to varying interests within the EU, states like Italy have to now and then coordinate national policies that deal with irregular migration to be consistent with the broader EU policy. Often, these policies violate the rights of irregular migrants for which Italy is blamed when in fact; Italy is adhering to reactionary policies adopted by other EU member states.
The Smuggling Network of Operatives

Smuggling operatives facilitate irregular migration because using the sea is by far the cheapest way to cross into Europe. Smugglers are usually thought to be uneducated and uninformed; on the contrary, they are as knowledgeable of European policies as any other person. Through newspapers and any other media they can access information to ease their smuggling operations. Some are known to be multilingual; they therefore have a wider scope of gathering information on border policies. They function in a network, that is, from source countries, to transit countries and destination countries in order to effectively counter the efforts of officials. Employing deterrence policies, does not deter smugglers from organizing trips across the Mediterranean but increases the pricing of boat fees, which can range from £1000 upwards.

Smugglers awareness of the incoherence and disagreements among member states is used to their advantage. It is no wonder they are difficult to apprehend since they cooperate among themselves better than EU member states do, and are able to earn the trust of irregular migrants despite their callousness towards migrants. Italy, in order to track and arrest smugglers often resort to a security approach such as sea patrols and surveillances to track and apprehend smugglers through the use of military personnel and equipment. Such actions encourage restrictive policies since focus is shifted from saving lives, leading to the violation of rights of irregular migrants.

The Situation in Libya

Since the death of Colonel Ghaddafi, two main factions – House of Representatives in Tobruk and the Tripoli government - struggle to gain control of Libya. The instability caused by differences in tribe, religion and ideology developed into a state without a central
governing entity, a balance of power and a country where diverse rebel groups institute
decisions that bring about uncertainty among citizens in terms of who and what to follow.

Amid these, terrorists are taking advantage of the instability to facilitate their objectives. Moreover, these rebels are suspected to be involved in smuggling and trafficking persons using boat fees as funds for supporting their activities. However, the instability in Libya did not deter Italy from returning apprehended irregular migrants to Libya in 2011 and 2012. Italy’s response during this period not only breached the non-refoulement principle but endangered the lives of irregular migrants as their safety and care in Libya was uncertain, leading to the violation of irregular migrant rights.

Challenges and the Issue of “Grey Numbers” in Mare Nostrum

Though Italy’s adoption and implementation of Mare Nostrum helped save lives, like any other policy it had its share of challenges. Apart from serving as a pull-factor, during investigations among the migrants, Italian police avoided inquiring into deaths at sea and missing person which according to Cuttitta is inconsistent with the humanitarian approach adopted by Italy in Mare Nostrum. Death documentation is essential in order to account for migrant deaths and missing persons to determine the causes of deaths and establish policies and practices that will prevent such events from re-occurring. It is also essential for policy making sake to identify if there is a particular group facing such risks and to assist them. Moreover it is important for relatives to be notified of deaths to have closure or in some cases so inheritance proceedings can take place.

Information on deaths at sea and missing persons for documentation and analysis can accurately be given by rescue officials. However, the Italian police avoidance of such duties and not publicizing deaths, conflicts with the humanitarian approach the operation adopted at the same time, inconsistent with Article 2 of the ECHR, which requires officials to
investigate deaths. Another shortcoming incompatible with the ECHR’s provisions in Article 5 was the operation’s incapacity to suitably lodge the rescued, because of inadequate reception centres. However, Italy’s breach of Article 5 can somewhat be attributed to the unwillingness of neighbouring EU states. If the practice of burden-sharing could have been successfully carried out during Mare Nostrum, irregular migrants could have been well catered for as each member state would take on the number it could handle.

Challenges of the ECHR and the Ineffectiveness of its Court

The Convention, though safeguards the rights of persons, only plays a supervisory role to EU states. As mentioned before, states like Italy are primarily responsible for protecting the rights of persons to avoid threatening situations to persons and to remedy mistreatment. Often states fail to carry out verdicts by the European Court of Human Rights (ECtHR) upon breaching the ECHR, resulting in repetitive applications. The applications are complaints of a particular state’s inability to fulfil the verdict of which the Committee of Ministers is to supervise.

The fact that about 60% of repetitive cases are still unresolved in court indicates the Committee’s inability to see to this. Also because of the ever evolving nature of the Convention and its varied and demanding range of responsibilities states have to adhere to, it makes the principle unclear and at times difficult to comply with. Since EU member states fail to give prominence to the ECHR and its courts, the Union allows member states like Italy breach enshrined principles that violate irregular migrant rights. The fact that the Union fails to give the Convention the needed mandate so it can ensure the adherence and sanctioning of member states, encourages member states to violate the rights of irregular migrants, since member states are not held accountable for their actions.
4.2 Conclusion

Italy as a state is responsible for the welfare and security of its citizens. Concerns arising from economic costs, social instability, terrorism and communicable diseases influence restrictive policies towards the entry of irregular migrants. With the Libyan crisis, many persons were forced to decide to make the journey to Europe seeking first, for protection but the of adoption deterrence policies caused a humanitarian crisis which resulted in Italy’s breach of Articles 2, 3, 5, Article 4 of Protocol No. 4 and Protocol No. 12. Though the period of 2011-2012 made provision for human-centred initiatives, policies to discourage illegal journeys was the focus of the Italian government at the time and Europe as a union.

In 2013, Italy shifted its policy from securing Europe’s borders to safeguarding lives. This was as a result of the International Community’s vocal disapproval of Italy’s previous restrictive policies towards irregular migrants. Mare Nostrum was lauded for its ability to save over 100,000 lives. However, its inability to provide suitable shelter for migrants constituted a violation of the principles prohibiting torture, inhuman or degrading treatment or punishment, and most importantly, safeguarding the individual’s physical liberty against arbitrary detention. On the other hand, the challenge of temporary housing of irregular migrants could have been solved if the responses of European states had been congruent with Italy’s and it had not been side-lined to cater for the rescued alone. Thus, this study notes that examining Italy’s violations from the sole perception of a deliberate adoption of restrictive policies is restricted, because, it does not address Italy’s commitment and responsibility under the EU cooperation arrangement. As observed in this study, the regional policy of EU member states towards irregular migration often influenced Italy’s national policy on managing the inflow of irregular migrants. Therefore, Italy is a victim of circumstance, as wider factors such as the varying interests of neighbouring EU states inform its border policies that violate migrant rights. Then, it is undeserved to accuse Italy individually of
violating the rights of irregular migrants when, the Union itself often fails to address the issue of irregular migration from a humanitarian perspective.

In the case of Libya, persons in Libya will be forced to make the optimal choice of using the cheapest means of illegal entry into Europe (the sea route) to the best region of opportunities (Europe) through the nearest channel (Italy). Thus, it is important for the International Community, Europe, and Africa to acknowledge the gravity of the emergency, in order to formulate and implement coordinated, comprehensive and lasting remedies to reduce the human cost in the Mediterranean. In my opinion, irregular migration to Europe from North Africa cannot be prevented but minimized considerably if, stakeholders rather endeavour to minimize than deter, since the focus on prevention is one among many reasons why destination countries formulate deterrence policies. Policy-makers can hereby, attain effective migration policies over a prolonged period, through systematic policy-making instead of resorting to provisional policies which are most often reactions to irregular migratory concerns and are bound to have challenges that could lead to the loss of more lives. To attain effective policies, North African Mediterranean Countries and Europe, and especially Europe as a whole, must engage in activities that enhance cooperation.

4.3 Recommendations

Stakeholders should consider the suggestions below with regards to the issue of irregular migration and its minimization as well as the humanitarian concerns that arise.

To the International Community

It is clear that the International Community, being the United States and its western allies had erred in militarily intervening in the situation in Libya. The Security Council’s decision to assist in ousting Ghaddafi has caused more chaos and uncertainty in Libya to the extent
where no one is safe, particularly irregular migrants. In such civil uprisings, it would be best if NATO and its allies support the regional body, in which there is an uprising, instead of spearheading and facilitating military interventions. This is due to fact that, the regional body can better understand the intricacies of the situation, since they may share similar objectives and challenges, and can find feasible remedies with the support of other concerned states, together with international bodies like the United Nations. Preferably, the optimal choice will be to handle such emanating conflicts with as much precaution as possible, having in mind that a full-blown conflict will cause the displacement of people.

In the case of Libya, the comfortable living standards and the agreement between Libya and Italy deterred irregular migrants from crossing to Europe. With the removal of Ghaddafi, there was no impeding factor preventing journeys but rather a push-factor, which was the 2011 conflict. All the same, it is now the duty of the United States, Europe, and the UN to intervene by brokering a peace deal between the two factions in Libya. Perhaps, a peace-keeping team can be present in Libya while the peace deal is ongoing to ensure the protection of citizens and irregular migrants especially, as a short term solution, till a consensus between the two factions is established.

**To the EU and Member States**

It is known knowledge that the national interest of a state influences its foreign policy. In the issue of irregular migration, European states are likely to protect their citizens and prioritise their well-being over third country nationals, hence, policing borders to discourage illegal journeys. In order to minimize the numbers, European states must bring to an end the pointing of fingers and agree to practise the principle of burden-sharing among states. Also, European states should consider an initiative like Mare Nostrum, where Italy can play the supervisory role and can train others to do same, as suggested by Alessio Patalano. Europe
must abandon reactionary responses and opt for well-framed, long term, coherent decisions. It is in the best interest of Europe to enhance cooperation amongst themselves, and with transit and origin countries on journeys across the Mediterranean, in order to be a step ahead of smugglers. Europe should however, continue with investigations and information gathering to facilitate the apprehension of smugglers, that can be another angle of tackling the issue of irregular migration, since apprehended smugglers will serve as a scapegoat to other smugglers. Also, there should be thorough screening of rescued migrants when and if countries decide to act on the principle of burden-sharing so as to sift out possible threats to the public.

To Italy

The medium term solution to irregular migration across the Mediterranean, under the Mare Nostrum initiative, was a step in the right direction. Italy should continue to establish and improve reception centres and detention centres, by making them better suited for housing irregular migrants till the appropriate authorities decide their fate. The Italian government should review its detention policy of extensively detaining irregular migrants. Practising proper screening will alert authorities as to who may need international protection and speed up asylum documentation. It is important that existing legal frameworks and processes for acquiring asylum documentation be amended and fast-tracked, particularly with cases where arrivals may be in urgent need of such benefits.

Furthermore, since there are private detention and reception centres, there must also be the existence of working, independent, rights authorities put in place by the government, to monitor and serve as a watchdog to both public and private centres. This will create an accessible platform where, detainees can make complaints, complaints can be thoroughly investigated, and the appropriate sanctions be meted out. An important consideration is, Italy
must desist from repatriating irregular migrants to countries where their safety is not guaranteed, instead, it should make appeals on the ticket of trade or economic negotiations to the regional bodies where these transit and/or source countries are located, to take responsibility for their citizens. Undertaking these recommendations means Italy will be adhering to irregular migrant rights and will be in the good books of human rights advocates.

To Libya and Africa Union Member States

The African Union and its member states have been on the fence with regard to this issue for too long. Apart from Syrians, the rest found crossing to Europe are Africans, most coming from war torn countries. The AU must consider giving priority to irregular migration issues as it does with economic, trade, and other issues it perceives as urgent and crucial. African member states must take a critical look at the gravity of the emergency situation in the central Mediterranean, since the fundamental duty of a state should be safeguarding its citizens. The silence from African leaders in this situation, has led to the suggestion that, Africa must be heard commenting on this issue. In my opinion, Africa should not only be heard but be seen doing all it can to assist Europe remedy this situation.

First, African leaders must assist the West and other concerned states to broker peace between the two factions through the ongoing peace deal. The active involvement of stakeholders to expedite the mediation process may compel the two groups come to a consensus and work at stabilizing Libya, consequently, finding solutions to ridding its coasts off smugglers. Meanwhile, the AU must first, through summits, work at finding remedies that can stabilize the region economically to enhance living standards. There is also the need to assist member states quell internal uprisings when necessary, to minimize the numbers that will, for security reasons travel illegally towards Europe. African states should additionally,
put more efforts to hosting displaced citizens during such uprisings, to minimize considerably
the numbers who may want to make the journey across the Mediterranean.
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APPENDICES

APPENDIX I
Arrival of irregular migrants at Italian border, 1998-2013

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APPENDIX II

Interactive Map on Irregular Migration Routes and Flows in Africa, the Middle East, and the Mediterranean Region

Source: National Geographic Staff

http://news.nationalgeographic.com
APPENDIX III

Number of arrivals in Italy by sea since Operation Mare Nostrum

Source: Jeffrey Taylor (October 13, 2015)

http://news.nationalgeographic.com