



The Central Mediterranean Route: Proposals for a more effective strategy to combat people smuggling

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Key Points

- The naval mission of the EU will barely reduce the demand for people smuggling – at best, it will do little more than change the routes taken by refugees.
- The first countries of reception for refugees, in particular Jordan and Lebanon, and the United Nations agencies working there (UNHCR and WFP) should as a matter of urgency be equipped with more resources to enable them to cope with the refugees coming from Syria. This is the only way to prevent the refugee camps from becoming mere transit points; the additional billion euros promised by the EU will be insufficient to meet the task.
- An extension of the jurisdiction of the International Criminal Court to include offences of organised crime might have a deterrent effect on potential smugglers in the long term.
- Claims for asylum and the permanent resettlement options available to refugees and migrants must be managed uniformly across Europe. The harmonisation and uniform implementation of asylum rights offer the only prospect for a successful quota regulation for the distribution of refugees and asylum seekers.

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Summary

Mass migration is here to stay. The movement of refugees across the Mediterranean will remain at its current high level in the coming years. A military mission of the European Union will only marginally reduce people smuggling across the Mediterranean because it fails to address the demand for such smuggling. The crisis starts long before refugees pile into boats on the beaches and in the ports of the Maghreb; any move to tackle the causes of refugee movements requires the strengthening of the weak states involved. On the other hand, the European states can do more to criminalise people smuggling and to reduce the incentives for onward migration beyond the safe non-EU member states by harmonising the application of rights of asylum in the EU.

1. Introduction and categorisation

According to the most recent statistics of the International Organization for Migration (IOM), in 2015 over 1,003,000 people undertook the perilous journey across the Mediterranean in the hope of a better life in Europe. This journey was the most popular single channel for illegal entry to the European mainland.¹ The demand for smuggling via over what has become known as the central Mediterranean route has increased dramatically since 2011, following the political crisis in Libya. Not only has the number of migrants and refugees increased, the cost per head for the trip has also gone up – making it a lucrative business for traffickers.² While migrants and refugees are legally distinct groups, from the point of view of combating people smuggling this distinction is not relevant. The European Union has faced the challenge of dealing with swelling refugee and migrant numbers for some years, a problem which has been aggravated by the political upheavals following the Arab Spring. After hundreds of people had been rescued from the sea within a few months in 2013, and media images of overloaded refugee boats had brought the attention of the world to the misery unfolding in the Mediterranean, the Italian government decided in October 2013 to set up the mission *Mare Nostrum*. On 1 November 2014 this was succeeded by the European Union's operation *Triton*, which however had a narrower mandate to monitor coastal water rather than saving lives on the high seas. Moreover, it was equipped with merely a third of the funds previously assigned to *Mare Nostrum*. Due to its restricted budget and limited mandate, *Triton* was unable to handle the rising numbers of migrants and refugees and prevent a human catastrophe on the high seas.

The inadequacy of the mission was starkly highlighted on 19 April 2015 when, in spite of a rescue attempt, between 400 and 700 people died on a single crossing.³ The conservative-leaning Economist weekly subsequently labelled the refugee crisis a political and moral scandal.⁴ Little has happened since then to stem the flow of migrants: the European border control agency FRONTEX estimates that over 170,000 people made their way into Europe via the central Mediterranean route in 2014 alone.⁵ In 2015 these figures grew exponentially. In response to the humanitarian disaster unfolding in the Mediterranean, European leaders convened an emergency summit on 23 April 2015, where a greatly expanded naval mission was agreed upon.

In spite of this resolution, the past few months have shown that not all parts of Europe are equally committed to achieving a common European regulation and that societies across Europe have so far failed to agree on a shared response to the growing challenge. Greater unity is emerging with a shift of the focus: from the question of how to deal with the refugees once they have set foot on European soil to the issue of fighting

Triton was unable to prevent the humanitarian disaster on the high seas.

The first signs of a new European unity are emerging with the intensification of efforts to criminalise people smuggling.

to smuggling gangs and those networks which play a significant role in encouraging migration via the Mediterranean. With this, a different approach has been chosen both politically and legally, away from political security measures and towards an intensified effort to prosecute the people smugglers. This does not absolve the EU from its duty to find a common strategy and measures to actively manage migration. But, at least as far as combating the symptoms of illegal migration is concerned, the first signs of a new European unity are emerging with the intensification of efforts to criminalise people smuggling and the crackdown on smuggling gangs.

For illegal people smuggling to be tackled effectively, first acute measures must be taken against the existing smuggling networks. In addition, preventive measures must, however, be put in place – in the longer term – to reduce the demand for people smuggling. The following section identifies the various shortcomings of the current EU mission to combat people smuggling. We then go on to propose steps for amend and reinforce of the applicable legal framework.

2. Critique of the EU mission to combat illegal people smuggling.

With the number of deaths occurring in the passage over the Mediterranean having reached unprecedented levels since the start of 2015, European governments are coming to realise that the crisis cannot be solved relying on of the states bordering the Mediterranean alone. The April 2015 summit marked a turning point in the efforts to rescue refugees in the Mediterranean: extra funds have been allocated and the rescue mission has been expanded. The German armed forces have now also contributed a frigate and a tender to the *European Union Naval Force - Mediterranean* (EUNAVFOR MED) mission. In addition to as rescuing shipwrecked migrants, the mission is gathering information on smuggling networks. The second phase of the mission was launched in October 2015 by the EU's Political and Security Committee (PSC) and, in addition to putting ships on the water, a further intention is to hand over suspected smugglers to the competent prosecuting authorities. In a third phase it is also planned to destroy the boats on foreign territory before they even put to sea.⁶

The military elements of the fight against people smuggling are moving at a snail's pace and are barely practicable.

It is hardly surprising that, for a long time, the purely military elements hardly got off the drawing board, and, even after its official launch, the signs of an actual mission are few and far between.⁷ The idea of sinking the boats used by the smugglers already before they are deployed to cross the Mediterranean is plausible but barely practicable. For this to be put into practice, the boats would have to be unambiguously identified and clearly distinguishable from other civilian ships – for instance, fishing trawlers or small freighters. Since the boats in question are not laid down expressly for the purpose of smuggling but are only appropriated for that reason, the whole endeavour is a recipe for error and confusion. Moreover, the boats would have to be thoroughly searched for passengers prior to their destruction. It is virtually impossible in practical terms to distinguish the smugglers from the smuggled, and accepting that smugglers may be killed is both legally and socially problematic – after all, whilst they are criminals, they are not combatants. What makes the task even more difficult is the fact that the boats are hardly ever found at the quay or raised up on sandbanks in isolation. This means that it would only rarely be possible for the vessels identified as smuggling boats to be sunk by the on-board weaponry of European navies, meaning that ultimately soldiers would always have to be deployed to be sink or destroy the boats.

At the same time, the international legitimacy of such a mission is, to say the least, questionable: the sinking of boats is possible, if at all, only in port and thus on the territory of sovereign states. However, to obtain state consent for to this kind of intervention – one only has to look at Libya – is not very likely to be forthcoming. Nor is the alternative, i.e. a mandate authorised by the UN Security Council currently a realistic one. It can be argued that the increasing pressure of migration is a challenge for the European welfare system at a time when inequality is anyway on the rise. Yet, to assess this pressure as a threat to international peace and security as would be required for such a mandate under Article 39 of the UN Charter, would be stretching the truth to breaking point. It was for this reason that Security Council resolution 2240 (2015) authorised Member States to intercept ships off the Libyan coast, in the event of a concrete suspicion of migrant smuggling.⁸ However, the approval of a broader mandate from Security Council members with conservative inclinations when it comes to matters of international law (China) and the “disrupter” of the international order (Russia) is unlikely to be forthcoming. More realistic would be a mandate based on the international legal concept of the responsibility to protect, which would however be limited only to the humanitarian protection of the refugees rather than the control of the escape routes. But this would not be necessary: Even today, all ships are committed to carrying out maritime rescue operations, regardless of whether the refugees knowingly or deliberately put themselves in harm’s way. At the end of the day, the question of how much effort to invest in maritime rescue operations in the Mediterranean is of a purely political and moral nature.

A military mission is committed to maritime rescue operations but can do nothing to reduce the demand for people smuggling.

Above all, however, a military mission can do nothing to influence the demand for people smuggling. In other words: As long as the number of refugees fleeing across international borders remains stable at over 13 million⁹, the illegal smuggling business in the Mediterranean will continue to boom. If demand continues or even grows further, a military mission would ensure only that the smugglers would look for other transit routes. It is also due to these arguments that scepticism with regard to the feasibility of a military mission element is justified. What would make more sense would be a strategy to deprive the smugglers of the income generated by their work. This of course requires legal ways of making the crossing.

Illegal migrants by country of origin ¹⁰		
	2013	2014
Syria	25,546	79,169
Eritrea	11,298	34,586
Unknown Sub-Saharan Africa ¹¹	N N	26,341
Afghanistan	9,494	22,132
Kosovo	6,357	22,069

In some countries, economic growth – and not crises – is leading to an increase in migrant numbers.

Such a mission is problematic also for political reasons. The demand for the dangerous journey across the Mediterranean is being nourished by two factors. First of all, numerous conflicts and acts of repression by authoritarian regimes have swollen the refugee flows from the arc of crisis from the Sahel to the Middle East. The war in Syria and Iraq has turned millions of people into refugees. Political repression in Eritrea has been forcing tens of thousands to flee for many years, and the wars in Mali, the Central African Republic and Libya are also contributing to the increase in the number of refugees. A second reason appears paradoxical at first glance: Africa is currently experiencing unprecedented economic growth, which is in turn leading to an infor-

The Mediterranean mission would divert the stream of refugees to those countries that are particularly ill-equipped to handle such large numbers of refugees.

mation and mobility revolution by stealth on the continent. This means that larger numbers of people are now able to finance their migration to Europe and take control of their own destinies. It therefore follows that a large proportion of the migrants are qualified and ready to take risks, i.e. are precisely those people who ought to be essential to progress and economic growth in their countries of origin.

These conditions are not going to change in the foreseeable future. What is instead emerging is a long-term and growing refugee and migration movement towards Europe. However, the political solutions promoted thus far are not equal to the challenges described here. The currently planned military aspects of the Mediterranean mission would not cut to the roots of the migration movement but would instead divert the stream of refugees which is already in full flood to those countries that are particularly ill-equipped to handle such large numbers of refugees. In addition to Lebanon, this also affects the states of the Sahel, from Ethiopia to Mali. In the worst case scenario, this might trigger processes of disintegration in these countries, thereby adding in the medium term to the swelling ranks of the refugee movements heading northwards.

Escaping from this dilemma requires a revision of the existing legal instruments and the current political approach. To this end, further measures must be taken to reduce the demand for channels of illegal migration and to render the business model of the people smugglers obsolete.

3. Steps to reduce the demand for people smuggling

Claims for asylum must be uniformly interpreted within Europe and finally resolved in the countries of origin.

To reduce the demand for people smuggling as a means of illegal migration, claims for asylum must be uniformly interpreted within Europe and finally resolved in the countries of origin. Only when illegal entry is not worthwhile and asylum procedures (including deportations) are consistently enforced will it be possible to stop people with no prospect of asylum from attempting to enter Europe illegally. At the same time, measures under criminal law to combat people smuggling must be extended and more legal channels of immigration created in order to make the market for illegal immigration less attractive.

Another reason why people smuggling is flourishing, is the fact that the legal status of migrants cannot be determined until they have entered the European Union. To obtain a visa and thereby to enter the European Union legally is however virtually impossible for most refugees. Instead of limiting itself to monitoring activities on the high seas and reinforcing the EU's external borders, the EU must create opportunities to resolve possible claims for asylum or refugee status prior to the entry, legal or illegal, of the claimants. This would admittedly require massive increases in the staff in the visa departments of the embassies of the EU Member States and – where necessary – the establishment of additional visa offices in transit countries. It would also require greater consistency in the deportation of those who have arrived without a valid residence permit. These measures would significantly reduce the overall costs of migration. In addition, fewer migrants would be placed at risk by illegal immigration.

When it comes to the issue of the rights of refugees, note must also be taken of a difference between the definition of the term "refugee" as used by the African Union and that of the EU. Whilst European law takes its cue from the definition of the Geneva Conventions by recognising only those people as refugees who are exposed due to their race, religion, nationality, political convictions or membership of a parti-

The definition of the term “refugee” by the African Union extends far beyond that of the EU.

The unclear legal status of refugees is additionally contributing to the increasing demand for people smuggling.

The focus must be on legal recourse against smugglers and not the punishment of migrants.

cular social group to actions that are “so serious by their nature or repetition that they represent a grievous breach of fundamental human rights”,¹² The Refugee Convention of the African Union of 1969 (adopted from the Organisation of African Unity, OAU) in addition explicitly recognises conflicts and a general situation of violence in the countries of origin as legitimate reasons for migration, based on which refugee status may be granted.¹³ It therefore follows that migration – including economic migration which is currently being hotly debated in Europe – is in principle consistent with the asylum principles applied by the AU. This may cause people to leave their country in the assumption that they will be recognised as refugees, although this is not the case in Europe. Legal channels of entry to Europe remain closed to them under these circumstances, which in turn fuels the demand for smuggling. Admittedly, the legal practice within the jurisdictions of the AU and the EU is already converging under customary law, with the effect that some states now also recognise economic refugees. The practice is however inconsistent: The UN High Commissioner for Refugees (UNHCR) argues that people who flee from war, fear persecution by non-state actors such as rebels or are merely striving to improve their living conditions and whose home state is either unable or unwilling to protect them are to be considered refugees. Since, however, the interpretation of the right of asylum is a matter for the respective nation states, in practice a narrow definition is generally applied by the EU Member States and refugee status is not granted. However, this can only be finally verified once the claimant has entered the EU, with the effect that the lack of clarity in the legal status further contributes to the rising demand for smuggling. By reversing the argument it can be seen that uniform pan-European rules for the granting of refugee status must be applied so that targeted incentives can be created to control migration and, in the long term, to reduce the demand for smuggling.

Whereas no common solution is as yet emerging with regard to the immigration regulations for migrants on which the simplification of legal immigration might be based, support for the intensification of the fight against the smuggling gangs is growing. In the Protocol against the Smuggling of Migrants by Land, Sea and Air to the Convention of the United Nations against Transnational Organised Crime of 2000, the contracting states undertook to criminalise the smuggling of migrants.¹⁴ In Germany the smuggling of foreigners is governed by article 96 (1) of the Residence Act (AufenthG). What is important is that the focus is explicitly on legal action against the smugglers and not on the punishment of migrants. Whereas, as stated above, the EU mission to combat illegal people smuggling aims to dismantle networks and prevent smuggling, this kind of approach to criminalise smuggling will make it possible to bring the smugglers more consistently to justice, thereby destroying the market for illegal immigration. Such a change of perspective, according to which migration is no longer addressed in terms of security policy and the focus is instead switched to the prosecution of smuggling as a punishable act of organised crime, appears to offer some prospect of success. For the purpose of implementing and enforcing the Protocol against the Smuggling of Migrants by Land, Sea and Air in the signatory states, efforts should be made to establish a monitoring mechanism – for example, in the form of regular progress reports and fact-finding missions. The treaty would gain even greater clout if cross-border law enforcement cooperation could be stepped up or the possibilities for direct international prosecution were expanded. In the long term, an extension of the mandate of the International Criminal Court (ICC) to cover offences of organised crime could be envisaged. For this purpose, Germany could join forces with its European partners to request that the Secretary-General of the United Nations convene a review conference of the Rome Statute. In the face of continuing criticism of the work of the ICC, obtaining the two-thirds majority of the contracting states required for an extension of the

mandate would in all likelihood not be easy. And yet, such an attempt could promote cooperation between the states concerned in matters of organised crime.

4. Recommendations for action

Not least due to its humanitarian responsibility, a coordinated response from the EU to an immigration situation which has in some cases spiralled out of control is overdue. There can be no doubt that the best way of dealing with the crisis in the Mediterranean would be the much-advocated elimination of the reasons for flight. However, this will be possible, if at all, only to a very limited extent and only in the long term: a successful strategy for the stabilisation of Mali and Libya and peace in Syria would be important steps in this direction. An end to oppression and the introduction of a minimum level of fundamental freedoms coupled with accountable governance in many countries in Africa and the Middle East might also reduce the migration pressure. Moreover, transit countries would have to be supported in the enforcement of existing legislation to control migratory movements on the African continent and beyond. What this assessment already shows is that European policy will have to adapt in the long term to the reality of migration pressure at the current level at the very least.

A military mission to intercept ships on which refugees can embark on their journey across the Mediterranean offers little prospect of success above and beyond direct maritime rescue. This is not to say that military means do not have a role to play in the solving the refugee crisis - on the contrary. The approach currently under discussion is not the most promising. It is in this spirit that the following recommendations for German and European policy outline some short and longer-term approaches to overcoming the crisis:

1. The German armed forces can rise to the direct humanitarian challenge posed by shipwrecks by joining a European mission in the Mediterranean. The participation of the German armed forces in EUNAVFOR MED sends an important political signal to the southern European allies to the effect that the northern EU states are taking the crisis in the Mediterranean seriously. Conversely, providing for and accommodating Mediterranean refugees remains a problem even after their rescue from the sea; the southern EU states often give the impression of being overwhelmed. Conditions conducive to human dignity must be put in place and maintained in the reception stations. It is for this reason that the German government should lobby for an institutionalised burden-sharing arrangement by which states which themselves take in only very limited numbers of refugees offer personnel and financial assistance to those states in the firing line to help them create humane conditions in the reception stations.
2. The refugee crisis does not begin with the attempt to cross the Mediterranean but long before. It therefore follows that a military approach will only make sense if it also begins earlier. In geographical terms this means that tackling the causes of flight should not begin in the Mediterranean, but instead in the Sahel region. To this end, the German government should show greater willingness to participate in UN peace operations in the region. This must also mean providing robust troop contingents of the appropriate size. In this context, the Department of Peacekeeping Operations of the United Nations (DPKO) quite rightly regards the provision of helicopter units, drones and aircraft by the European nations as a matter of urgency.

European policy must be ready to face migration pressure at a continuously high or even increasing level in the long term.

To this end, the German government should show greater willingness to participate in peace-keeping missions of the United Nations in the region.

One of the main tasks is to improve the dire conditions in the refugee camps around the civil war regions in Syria and Iraq.

3. Moreover, one of the main tasks is to tackle the dire conditions in the refugee camps around the civil war regions in Syria and Iraq. Both the World Health Organization and the High Commissioner for Refugees of the United Nations have repeatedly stated that more financial resources are needed if the refugees are to be given a decent standard of care. If the living conditions even in the refugee camps of international organisations are unfit for human habitation, it does not come as a surprise that these camps are becoming more transit stations for onward smuggling. The EU has already provided \$1 billion for better funding of the Office of the High Commissioner for Refugees of the United Nations (UNHCR) and the World Food Program (WFP). Even though these additional funds may have warded off a major crisis in the camps, the organisations remain structurally underfunded. The German government should not just provide more funds on an ad-hoc basis; it should also come up with an additional half a billion euros per year over the next five years in order to offer the UNHCR and the WFP greater planning security.
4. The distribution of refugees among the European host countries also requires a quick and fair solution. States which complain of creaking social care systems should take a look at Lebanon: In this small country there are currently more than 230 refugees from Syria for every 1,000 Lebanese.¹⁵ Where the European partners are refusing to accept more refugees on the basis of a seemingly or actually limited capacity to absorb them, solutions must be found in the spirit of equitable burden-sharing within the European Union. Over the years, the southern European States – especially Italy – have rightly complained about the lack of solidarity shown by their northern neighbours. In the face of the immense increase in the numbers of refugees, Germany is now in turn lamenting the lack of support from other EU states. The only way out of this dilemma will be to implement a long-term distribution system according to defined criteria. Member States which do not want to participate in such a system must at least consent to indirect involvement. The payment of compensation along the lines of the Dublin Regulation would be one conceivable option. Germany could also encourage states which take in only very few refugees to deploy greater numbers of personnel in the FRONTEX missions and in the provision of logistical support in the reception camps.
5. For the purpose implementing and enforcing the Protocol against the Smuggling of Migrants by Land, Sea and Air, efforts should be made to establish a monitoring mechanism and cross-border law enforcement cooperation should be expanded. Moreover, it should be assessed whether an extension of the jurisdiction of the International Criminal Court to cover acts of organised crime might lend the instrument greater clout. If this is to be achieved, a more precise distinction must be drawn between smugglers and those who aid and abet escapees: nobody who helps people escape from direct repression in states such as Eritrea or from the war in Syria should be criminalised. On the other hand, anyone who arranges people smuggling between safe states should be punished more severely. After all, once people have fled their homelands to escape from physical danger and political persecution, the responsibility lies with the international community and the first host country.

For the purpose of implementation and enforcement of the Protocol against the Smuggling of Migrants by Land, Sea and Air, efforts should be made in the context of the United Nations to establish a monitoring mechanism.

- 1| IOM, *Missing Migrants Project*, <http://missingmigrants.iom.int/en/mediterranean-update-1-january-2016>; UNHCR, *The Sea Route to Europe*, <http://www.unhcr.org/5592b9b36.html>.
- 2| http://www.handelsblatt.com/politik/international/wachstumsmarkt-menschenschmuggel-sos-europa-das-perfide-geschaeft-der-schlepper/v_premium_not_allowed/11358152.html. *The costs of the crossing vary enormously depending on the selected route and the provision of extra services, such as life jackets. A crossing in an inflatable boat from Libya to Italy currently costs \$ 1000-2000, whereas the use of a freighter may cost up to \$8,000 per person.* <http://www.globalinitiative.NET/Download/global-initiative/global%20Initiative%20-%20Migration%20from%20Africa%20To%20Europe%20-%20May%202014.pdf>.
- 3| *Europe's Boat People. For those in peril*, in: *The Economist*, 25 April 2015, p. 18-21.
- 4| Cf. Cover story, *The Economist*, 25 April 2015.
- 5| FRONTEX, *Central Mediterranean Route*, <http://frontex.europa.eu/trends-and-routes/central-mediterranean-route/>.
- 6| *Bundeswehr Online, the mission of the German armed forces in the Mediterranean*, http://www.einsatz.bundeswehr.de/portal/a/einsatzbw/!ut/p/c4/LYuxDYAwDARnYYG4p2MLoEEOeZAVJ0HBgMT-0pEBf3emeZmrLfmV0JiWz0kJTKr1_nH8CFkg-2d6GHO2C6q9gLxyu9txKTQquoP6tpCRm0ARUOuL-QfXgJ-yA!/.
- 7| *The Guardian, EU Launches Operation targeting Libyan Smugglers*, <http://www.theguardian.com/world/2015/oct/07/eu-hopes-to-begin-arresting-libyan-smugglers>.
- 8| *UNSC Resolution 2240(2015)*, <http://www.un.org/press/en/2015/sc12072.doc.htm>
- 9| *This figure does not include the separately-listed Palestinian refugees, who are overseen by the United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA) and who number more than five million according to current estimates of the United Nations.*
- 10| FRONTEX, *Annual Risk Analysis 2015, Warsaw, 2015*, p. 57.
- 11| *The reference here is to refugees whose origin can be narrowed down to sub-Saharan Africa but whose actual nationality cannot be conclusively determined.*
- 12| *EU Directive 2004/83/EC, section 9 (1a).*
- 13| Cf. Art. I (2) of the African Union Convention on Refugees: *"The term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."* http://www.au.int/en/sites/default/files/Convention_En_Refugee_Problems_in_Africa_AddisAbaba_10September1969_0.pdf. However, Eritrea, as one of the most significant countries of origin of refugees, is one of the three Member States of the AU which have not signed the document.
- 14| Cf. Art. 6 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, <http://www.un.org/Depts/german/uebereinkommen/ar55025anlage3.pdf>.
- 15| UNHCR, <http://www.unhcr.ch/presse/nachrichten/artikel/981e02d70ca1b1956da4259443052f05/eine-million-syrische-fluechtlinge-im-libanon-2.html>.

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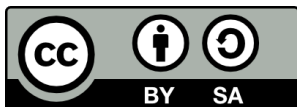
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