Outsourcing Responsibilities
The recent revolts and subsequent political changes in North Africa led many to applaud a long awaited ‘Arab Spring’. The revolutionary spark of the Egyptian and Tunisian street has ignited uprisings in Bahrain, Jordan, Syria, Yemen, as well as Libya. But as supporters of anti-Gaddafi forces are cheering the rebels, not everybody is celebrating: Migrants, refugees and asylum seekers, especially from Sub-Saharan Africa, are bearing the brunt of the insecurity in Tripoli, Benghazi and other major cities. Foreigners who make it across the border to neighboring countries tell stories of rape, beatings and other gross human rights violations. During the first few days of the anti-

In this war, African migrant workers are perceived as representatives of the hated regime, which allegedly buys ruthless African mercenaries with its oil billions.

Gaddafi revolt alone, at least five Somalis and four Eritreans were killed by angry mobs. In this war, African migrant workers are perceived as representatives of the hated regime, which allegedly buys ruthless African mercenaries with its oil billions. Stories told by the fleeing refugees are shedding some new light on the human rights situation in Libya and are highlighting the shortcomings of the European Union’s migration policy.

Migrants Stranded in Libya
Even though these figures are likely to be overestimated, Libyan authorities state that between one and two million foreigners were staying in the country before the outbreak of the crisis. 360,000 people fled Libya during the first six weeks after fighting broke out. Male migrant workers, mainly from neighboring Tunisia and Egypt as well as from West Africa and South Asia, constitute the major group. Tens of thousands have already been repatriated with the assistance of the UN, the International Organization for Migration (IOM) and various governments.

Another group, however, consists of genuine refugees and asylum seekers. They have fled Somalia, Eritrea, Ethiopia or Darfur due to war, forced military conscription or political persecution. Given the situation in their countries this group will not be able to return home in the foreseeable future. Before the outbreak of fighting, UN Refugee Agency (UNHCR) had registered about 9000 refugees and 3700 asylum seekers in Libya. The real numbers however are likely to be higher, as many are in transit towards Europe and for various reasons decided not to seek assistance from the UN’s refugee agency.

With recent reports of ‘African mercenaries’ supporting Gaddafi’s army, migrants are coming under increasing threat. The fighting has only deteriorated their situation. While about 1,700 Somali and 900 Eritreans had fled Libya by the end of March, many refugees are still trapped in their homes, unable to leave towards Egypt or Tunisia. In addition, prisons have been bombed and burnt, including a detention centre in Misrata, where a large number of refugees who
have been returned by Italian authorities are being held in miserable conditions.

**Migration as a Libyan Foreign Policy Tool**

Historically, Libya has used migration as a foreign policy tool, both on the regional and the international levels. In order to meet labour demands in the education and agricultural sectors, Libya opened its doors to migrants from mainly neighboring Arab countries up until the late 1980s. This policy changed in the 1990s, when Arab governments backed a UN arms and air embargo against Libya. In return, Gaddafi expelled most Arab foreigners and welcomed Sub-Saharan migrant workers, in line with his approach of shifting from pan-Arab to pan-African policies. Starting in year 2000, the Libyan government once again changed its outlook and responded to growing resentments against immigrants and increasing racism by deporting large numbers of migrant workers back to their respective countries. These deportations also need to be seen in the context of the EU exerting increased pressure on Libya to halt migration flows towards the North, and initial Italian-Libyan agreements on fighting terrorism, organized crime and undocumented immigration. Estimates suggest that tens, even hundreds of thousands of workers were sent back to their respective home countries – often against their will. Thousands of these forceful deportations were financed by the Italian government.

**The Berlusconi-Gaddafi Handshake**

Trying to leave behind its image as a regional spoiler and “rogue state”, Libya from the early 2000s onwards started to cooperate more closely with European countries. Italy especially was at the forefront of embracing the Gaddafi regime. In year 2008 the Italian Prime Minister Silvio Berlusconi signed with Muammar Gaddafi the “Treaty of Friendship, Partnership and Cooperation Between the Italian Republic and the Great Socialist People’s Libyan Arab Jamhiriya.” Through this treaty, Italy committed to make funding of $5 billion available over the next 20 years for key infrastructure projects, in order to compensate Libya for the harm done by colonial rule. The treaty can be best understood in the light of mutual interests. Through this agreement, Gaddafi was able to present himself as having achieved moral victory over the country’s former colonizer. For Italy, the treaty brought clear strategic and economic benefits: Not only were the entire promised infrastructure projects to be carried out by Italian contractors - Berlusconi himself has referred to the purpose of the agreement as “less illegal immigrants and more oil”.

Prior to the Friendship Treaty, Libya and Italy signed several other agreements under Berlusconi’s presidency. Italy financed programs of charter flights to forcibly remove undocumented migrants from Libya to their home countries. It further provided Gaddafi’s regime with technical equipment and training programs to better control the Libyan border. Italy also built several camps for undocumented migrants across Libya. Human Rights Watch and Amnesty International have documented the appalling human rights conditions in these prisons. “Libyan authorities practice incommunicado detention of political opponents, migrants and possible asylum seekers, torture while in detention, unfair trials leading to long-term prison sentences or the death penalty, and ‘disappearance’ and death of political prisoners in custody. Migrants and asylum seekers in particular are often victims of arbitrary detention, inexistent or unfair trials, killings, and disappearances and torture in the detention camps.”

Many of these agreements have been reached in secrecy and without knowledge of the general
They conveniently ignore the dreadful human rights situation in Libya and do not aim at improving the situation and rights of refugees in Libya. Until today Libya is not a signatory of the 1951 UN Refugee Convention or its Protocol and does not officially recognize the presence of refugees on its soil. Human Rights Watch quotes an official in 2005 at the Libyan Ministry of Foreign Affairs, saying that “if Libya offered asylum, asylum seekers would come like a plague of locusts”.

Given the lack of protection, living conditions for Sub-Saharan refugees and asylum seekers in Libya are very poor. Refugees have been living in constant fear of being arrested by the Libyan police and returned back to their home countries against their will. Racist rhetoric against African migrants on behalf of authorities and members of society has led many to leave their houses only when absolutely necessary. They generally live ‘under cover’.

Despite this, Italy has forcibly removed thousands of migrants from Lampedusa to Libya since 2004, often - according to the European Parliament and numerous NGOs – violating the fundamental rights of these asylum seekers. Not only has Italy breached the principle of non-refoulement, it has also ignored warnings that deporting migrants and incarcerating them in closed detention centres in Libya puts them at substantial risk of human rights violations. As Amnesty International has indicated there is a direct connection between Italian-Libyan bilateral agreements and the rising number of migrants in detention in Libya. Refugees have been repeatedly reporting that they feel threatened and “trapped” in Libya. Once a migrant has been deported from an EU member state to Libya, s/he might be subjected to a chain-refoulement, possibly ending up in the very country from which they fled in fear of persecution. Gaddafi’s officials made it very clear that “Libya’s goal is to repatriate all illegal migrants we receive from Italy”.

With Libya aiming at stemming the flow of migrants across the Mediterranean, migrants feel ever more cornered and will try ever riskier ways to move from Libya to Italy. With a warming of EU-Libya relations, the situation for migrants in Libya has certainly not improved.

### …the EU next in line

Even if most agreements are made between Libya and individual EU member states, such as Italy, Malta or France, the EU is not a mere bystander: While the European Commission is negotiating a re-admission agreement with Libya it is - like Italy - accepting putting refugees at a significant risk of detention and refoulement. Within its current National Indicative Programme (NIP), migration and border control remain top priorities of the EU’s cooperation with Libya. Already in 2005, the European Commission criticized detention conditions in Libya and noted the absence of a functioning asylum system. Despite this criticism, the Commission recommended cooperation with the Gaddafi regime in order to change its refugee policy. This cooperation was supposed to be conditioned on the full respect for human rights, the principle of non-refoulement and the recognition of UNHCR. This conditionality, however, turned out to be mere fig-leaf: In July 2010, Human Rights Watch highlighted the plight of 245 Eritrean refugees who were detained in the Italian-financed detention centre in Misrata. Not only were these refugees severely abused, they were also facing deportation – a clear violation of the aforementioned principle of non-refoulement. In addition, there have been little improvements in terms of UNHCR’s recognition. Its role in providing protection in the country continues to be severely obstructed, even after its offices were re-opened after they were forced to close in 2010. While the EU is very keen on catching-up with Libyan cooperation agreements, it must
If the EU is interested in credibly promoting freedom and democracy, it needs to adhere to its responsibilities that it agreed to when signing international refugee and human rights conventions. These obligations do not stop at the EU’s borders. These responsibilities cannot be exported.

Time for a Re-assessment of European Migration Policy

The recent refugee crisis emerging from Libya and hundreds of asylum seekers drowning off the Italian coast has highlighted the lack of a common and holistic approach towards migration that goes beyond erecting fences and increasing border patrols. With state institutions collapsing in Libya, Europe has to be prepared for more refugees arriving at its Mediterranean shores.

Hence, it is time for the EU to re-assess its migration policies. As an immediate measure, the EU must keep escape routes for refugees fleeing violence in Libya open. The EU has a legitimate right to secure its borders, but it should not prevent refugees from seeking asylum in Europe. Secondly, it should resettle stranded refugees and asylum seekers who are unable to return home. In addition, the EU should suspend its treaties with Libya and revise its migration and re-admission agreements with other North African states. These agreements have to be subject to tangible improvements in human rights conditions and human rights monitoring. It is also time to re-discuss the Dublin regulations in order to halt deportations of migrants back the country where the asylum seeker first entered the EU, without considering the border state’s protection capacity. Finally, and as a sign of solidarity among member states, the EU should make use of its Temporary Protection Directive designed to harmonize temporary protection for displaced people in times of a “mass influx”.

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depriving asylum-seekers of their right to access European asylum determination procedures. Without proper democratic supervision, the danger of exporting border control regimes to Libya without setting European standards for human rights and refugee protection is very high: In September 2010, Libyan coast guards fired life ammunition at suspected boat migrants in order to prevent them from heading towards Italy. All this happened under the eyes of the Italian Guardia die Finanza (police force responsible for smuggling) who were on board the Libyan patrol boat, which was one of six vessels provided by Italy in 2009.

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In the 1980s and 1990s, countless East Germans were desperate to leave their homes for a better future in the West. Some were politically persecuted, or suffered because of
their religious beliefs, while others could not obtain life-saving medication without the right political connections. Many were simply looking for a better life. They set out in tiny dinghies to cross the Baltic Sea for Sweden and Denmark, were hiding in trucks to be smuggled into West Germany, or risked their lives trying to escape in air balloons. Each of these crossings was dangerous and many did not survive. Those who made it across the border were celebrated as heroes. One wonders why Africans trying to escape with similar desperation are seen as a “security threat”, “flooding Europe” in “biblical dimensions”… Within the first few days of April 2011 alone, nearly 500 Eritrean, Somali and other migrants drowned, trying to reach European shores. On what sort of threat analysis is a migration policy based that regards humanitarian disasters as an acceptable risk?

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Endnotes

1 Andrijašević, Rutvica (2006), How to Balance Rights and Responsibilities on Asylum at the EU’s Southern Border of Italy and Libya, Centre on Migration, Policy and Society, Working Paper No. 27, University of Oxford.
3 The principle of non-refoulement in international law forbids the expulsion of a refugee into an area where the person might be subjected to persecution.
6 Klepp (2010).