

From commitment to practice: the EU response

Madeline Garlick and Joanne van Selm

The EU's response to boat arrivals from North Africa in 2011 indicates that more is needed to translate a commitment to solidarity from limited aid and statements of principle into practical reality.

Boat arrivals from North Africa over the past decade have carried thousands of North Africans and others to European shores, including asylum seekers fleeing persecution or serious harm, and people moving irregularly for other reasons. Annual arrivals from 2000-2008 had varied – peaking in 2008 at 39,000 – but had dropped dramatically to under 5,000 after the introduction of the Italian ‘pushback’ policy and increased cooperation with Libya.

From North Africa as a whole there were close to 59,000 total estimated arrivals in the EU in 2011. This involved 28,000 people fleeing Libya – less than 5% of the people displaced from there – as well as 28,000 Tunisians, most of whom neither requested nor needed protection, and some 1,500 from Egypt. Of those arriving from Libya, nationalities included Somalis, Eritreans, Nigerians, Ghanaians, Malians, Ivorians and citizens of other sub-Saharan African countries. By contrast, Tunisia and Egypt, at the peak of the outflows, had together hosted over half a million people in their territories, and allowed the provision of shelter and humanitarian assistance to these people pending evacuation or other solutions.

In spite of their relatively small scale, the arrivals in Europe, and the concern that more could come, prompted

intense discussions among EU Member States. These discussions focused on burden sharing, support – and stemming the flow. Political statements of solidarity with the affected countries outside EU borders were issued. The concrete support offered, however, was primarily financial and logistical, and less focused on direct responsibility sharing in the form of places in Member States for persons in need of protection.

The EU response

The EU's first step was to evacuate its own citizens from Libya. Its subsequent priorities were provision of humanitarian support and assistance in North Africa, addressing migratory movements towards the EU, solidarity with EU Member States (and other states in the region) facing possible arrivals, and the role of Frontex¹ in addressing the maritime border control.

EU Member States showed great readiness to provide significant financial and logistical support, notably to the humanitarian evacuation out of Tunisia and Egypt undertaken jointly by UNHCR and IOM for third-country nationals. However, the response in terms of addressing the possible, and actual, influx of people seeking protection in the EU seemed to reveal a certain disjuncture between alarmist

concerns and the reality, and between assertions of a coming invasion of migrants in Europe and the absence of collective measures in response.

The outflow from Tunisia largely involved people seeking migration opportunities. However, there was concern that the situation in Libya could trigger a very significant exodus. Bearing that in mind, there were calls not only for broad solidarity within the EU and with North African countries receiving people seeking protection but also for discussion of the possibility of using, for the first time, the 2002 EU Temporary Protection Directive. This Directive establishes a mechanism offering short-term protection to large groups of people, by suspending asylum procedures to avert excessive pressure on administrative structures.

The Directive contains no binding obligation for Member States to receive people admitted under temporary protection to other states. However, it represents a framework, in principle, for sharing the financial and potentially also the physical burden of protection. In the case of Libya, frontline Member States and UNHCR suggested that the possibility of employing the Directive should be on the table. However, several Member States opposed its use, largely due to the fear that it would become a 'pull factor' encouraging more people to head for Europe. Eventually, the limited numbers arriving meant that there was no need for its application. The apparent reluctance even to discuss it, for fear of attracting more arrivals, might raise questions about the realistic scope for the Directive's use in general.

Another important element in the EU's response to the crisis was deployment of the Frontex-coordinated joint border operation 'Hermes'.² This 12 million Euro operation, initially involving joint EU sea border patrols between Tunisia and Italy, was extended during 2011 to cover more of the Mediterranean, including between Southern European countries and Libya and Egypt. In addition to surveillance and interception of people suspected of attempting irregular entry to EU Member States, the operation aimed at locating and arresting those facilitating irregular movements. In its public statements, Frontex emphasised that the operation was successful not only in detecting and intercepting irregular movers but also in saving lives, through search-and-rescue actions at sea.

Resettlement and relocation

The EU also looked at what else could be done to support Italy and Malta, as well as Tunisia and Egypt, through measures beyond humanitarian aid. The European Commission pushed strongly for concrete solidarity, through relocation within the EU and resettlement from third countries. The response of Egypt and Tunisia had been generous. To sustain their political readiness to host the displaced, it was necessary to demonstrate that international help was available, and that the refugee situation would not become protracted, imposing long-term demands on local resources. UNHCR maintained that resettlement would be an important way to communicate Europe's support to the North African governments and to their citizens living in the border areas, thereby encouraging the provision of continued humanitarian or protection space.

The response to these calls was modest. EU Member States offered Malta several hundred relocation places. From UNHCR's perspective, while relocation as a sign of solidarity with Malta was welcome, this should not take precedence over resettlement from Tunisia and Egypt. It was noteworthy, however, that resettlement of refugees from Malta to the US, Canada and elsewhere far exceeded relocations on the basis of solidarity within the EU.

EU Member States also offered resettlement places for refugees from North Africa: nearly 600 refugees were accepted, as of early 2012, collectively by Sweden, Netherlands, Belgium, Finland, Ireland, Portugal and Denmark. Non-EU Member State Norway accepted nearly 500, only a slightly smaller number than the EU's collective total, while the US took approximately 700, and Australia 100.

The reluctance of EU Member States to undertake resettlement in significant numbers out of North Africa was attributable to various factors. Some appeared concerned that this was an inappropriate response to an emergency displacement situation, and that resettlement to the EU should be reserved for more strategic purposes – to resolve or alleviate situations of long-term or protracted displacement, for example, or to create 'protection space' in host countries who would be encouraged by the example of global responsibility sharing to maintain open borders and welcome refugees.

North Africa was such a situation in which resettlement could be used for these strategic reasons. A number of those displaced from Libya to Tunisia and Egypt were found, while being registered by UNHCR, to be among those whom UNHCR had previously registered as refugees or asylum seekers in Libya. By the beginning of 2011, despite significant official constraints on its activities, UNHCR had recorded some 8,000 mandate refugees and approximately 3,000 asylum seekers in Libya. Given Libya's refusal to grant these people any form of status or protection, resettlement to third countries was their only available solution, and UNHCR was in the process of submitting many for resettlement. The fact that many of them had moved into neighbouring countries, which were also unable to provide them with durable solutions, meant they were still just as much, if not more, in need of resettlement to address their long-term displacement.

Asylum and arrivals in Europe

With tens of thousands of Tunisian citizens arriving in Italy, primarily on the island of Lampedusa, over a few weeks – sometimes over 1,000 per day – the detention facilities and several other mainland centres for irregular migrants soon became vastly overcrowded. At some points, hundreds of Tunisians were sleeping outside on the streets of Lampedusa, sparking protests from the local community and strident reactions in Italian media. The official Italian response – to issue temporary residence permits to many of those who came – triggered sharp political reactions at European levels when it became apparent that many Tunisians were, in the absence of internal border controls, moving on from Italy to other countries, notably France.

Asylum seekers coming from Libya, however, faced other challenges in Italy. Entitled under Italian law to reception in open centres, there was initially insufficient space available in the islands or elsewhere, due to the presence of the Tunisian arrivals. However, regional authorities in Italy moved swiftly to provide the necessary housing for all those who claimed asylum. Transport was provided to move arrivals from the islands to open reception centres on the mainland, and asylum claims were registered from those who requested protection.

Initial arrivals in Italy from Libya included many people from countries where there is risk of persecution or serious harm. Somalis and Eritreans were among the most numerous in early months. However, around mid 2011, this pattern began to change. The arrival of significant numbers of Nigerians, Ghanaians, Malians, Ivorians

and Bangladeshis might have been seen to demonstrate that irregular immigrants could take advantage of conflict situations and breakdown of state border control. However, Italy and Malta, to their credit and in line with international and European law, continued to respect their obligations to admit those who claimed protection to their territories and asylum systems.

Malta's experience differed from that of Italy, in that arrivals were seen almost exclusively in the first four months of 2011. Some 1,500 people landed in that period, and almost all sought asylum – with a high percentage subsequently recognised as needing protection. Malta's initial call for relocation had been made in the expectation that these numbers would grow but, in the end, the influx was limited.

The progressive decline in arrival figures later in 2011 made the situation more manageable. Political support for continued openness to refugees was undoubtedly also shored up by Tunisia's readiness to accept back, under a specific re-admission agreement negotiated with Italy in early 2012, those of its nationals who had not claimed protection. Had the situation evolved differently, and had numbers of asylum seekers climbed or continued in the longer term, the consequences could have been considerable. Whether wider spill-over into other EU Member States might have motivated or enabled the EU or other individual states to develop contingency plans, the elements of a responsibility-sharing response in Europe or other measures remains an open question.

Failure to rescue at sea

UNHCR estimated that over 1,500 people drowned in the Mediterranean in the early months of 2011 – despite the heavy maritime traffic throughout that period. Why was it not possible to detect and rescue more of those who attempted the perilous voyage?

Loss of life at sea has long been a tragic result of maritime movements between North Africa and Europe. However, as many fled Libya, the greater numbers of those crossing – as well as the unseaworthy condition of many boats available in Libya at the time – contributed to a dramatic rise in the number of casualties.

The Council of Europe investigated one incident in which 63 people died out of 72 who had set off in a small boat from Libya in March 2011. The boat encountered problems shortly after departing Libya in an area in which a NATO sea operation was underway. It reportedly sent a distress signal that reached Italian coast guards and was shared with other military ships. Yet no rescue mission was launched, and none of the several air or sea vessels that encountered the boat during the two weeks in which it drifted was apparently able to assist. Under the international law of the sea, all ship captains are bound by the universal obligation to rescue those in distress at sea.

Another case highlighted the unresolved question of responsibility for disembarkation of those rescued or intercepted at sea. In this case, a Spanish military frigate taking part in the NATO operations rescued a group of people in distress, and reportedly attempted to disembark them in various countries, including in Europe, in fulfilment of the obligation to take rescues to a 'safe port'. However, after five days, the 106 people were disembarked in Tunisia. While the rescue itself was commendable, and in all probability saved the lives of those concerned, the lack of readiness on the part of EU states to allow the rescued people to disembark was clear. While the international obligation to rescue is widely accepted, states may take different views in particular cases about what constitutes the 'nearest safe port' in which the rescued people should be disembarked, and about the extent of obligations binding other concerned states under international search-and-rescue conventions. This becomes a complicating factor directly related to the question of which state should be responsible for long-term obligations to protect such people if they claim asylum, or for their removal if they have no legal right to stay.

Conclusion

The North African crises, and resulting movements within and beyond the region, brought to the fore many challenging questions which the EU has yet to resolve in building the Common European Asylum System, as well as in developing its cooperation with third countries on asylum and migration. The concept of 'solidarity' is a core part of those policies, yet responses to arrivals in Europe of people fleeing – in particular from Libya – did not demonstrate the EU's readiness to put in place responses, mechanisms and resources that could have assisted Member States under pressure. Fortunately for all concerned, overwhelming numbers did not come.

The EU's solidarity was expressed through financial and other support to the humanitarian effort. However, a chance was missed to demonstrate visibly its political commitment to sharing responsibility for refugee protection through relocation and a substantial resettlement effort. The EU's encouragement of states to respect fundamental rights, including to asylum and protection, is welcomed. However, more could be done in future to lead actively by example.

Madeline V Garlick garlick@unhcr.org is Head of Unit, Policy and Legal Support, in UNHCR's Bureau for Europe. Joanne van Selm jvanselm@gmail.com is an independent consultant working primarily on European refugee and migration issues. The views expressed here are those of the authors, and do not represent the position of the UN or UNHCR.

1. Frontex is the EU agency established in 2004 to coordinate and develop European border management. www.frontex.europa.eu

2. See <http://frontex.europa.eu/operations/archive-of-accomplished-operations/178>