

A Rome Plan for the Mediterranean migration crisis

The case for take-back realism

20 June 2017



Palazzo Chigi – seat of the Italian prime minister

Needed: a humane border policy that works

The European Union urgently needs a credible policy on asylum and border management. It must combine effective control of external land and sea borders with respect for existing international and EU refugee law.

Such a policy must deter irregular migration of those who do not qualify for protection. It must treat asylum seekers respectfully. It must respect the fundamental norm of the *rule of rescue* - not to push individuals in need into danger - which is at the heart of the UN Refugee Convention (*non-refoulement*). Such a plan can replace the current Dublin procedures whose reform is currently being debated in the EU with no prospect for a successful outcome. What the EU needs instead is a Rome/Malta Plan for the Mediterranean: effective, humane, and politically viable.

This plan must also recognise a basic truth that holds for Italy and for other EU countries: EU countries are bad at returning third country nationals who do not qualify for protection. This is largely because most poor countries in the world have little interest in taking back their own citizens, who often send remittances. There is an urgent need for return realism.

Arrivals vs. returns in Italy and the EU

In recent years, the number of irregular arrivals via the sea to Italy has increased dramatically. This includes an ever increasing number of people saved from drowning off the coast of Libya and brought to Italy.

Table 1: Rescued/arrived in Italy by sea

	Arrivals
2010	4,400
2011	62,500
2012	13,300
2013	43,000
2014	170,100
2015	153,842
2016	181,436

Table 2: Rescued/arrived in Italy - first five months

	2015	2016	2017
January	3,528	5,273	4,467
February	4,354	3,828	8,972
March	2,283	9,676	10,802
April	16,056	9,149	12,943
May	21,232	19,957	23,070
Tot.	47,453	47,883	60,212

The growing number of people getting into small dinghies has also led to a rising number of people drowning.

Table 3: Deaths in the Central Mediterranean and in the Aegean

	Central Mediterranean	Aegean
2014	3,161	59
2015	2,869	806
2016	4,576	434
2017		
January	228	1
February	217	1
March	288	11
April	269	24
May	560	0

Out of the ten nationalities with the largest numbers arriving, six are from West African countries: Nigeria, Guinea, Cote d'Ivoire, Gambia, Senegal and Mali – all countries with low recognition rates when it comes to refugee status.

Table 4: Nationalities of arrival in Italy in 2016

Nigeria	37,551
Eritrea	20,718
Guinea	13,342
Cote d'Ivoire	12,396
Gambia	11,929
Senegal	10,327
Mali	10,010
Sudan	9,327
Bangladesh	8,131
Somalia	7,281

Table 5: Nationalities of arrival in Italy until end of May 2017

Nigeria	8,048
Bangladesh	6,352
Guinea	5,423
Cote d'Ivoire	5,142
Gambia	3,654
Senegal	3,555
Morocco	3,241
Mali	2,710
Sudan	1,840

None of the arrivals from West Africa get more than 3 percent refugee status (more get subsidiary or humanitarian protection, but the majority get no protection at all).

Table 6: Recognition rates for West Africans in Italy - 2016

	Refugee	Subsidiary	Humanitarian	No protection	Tot.
Nigeria	521	951	3,247	13,823	18,542
Gambia	228	246	2,413	5,833	8,720
Mali	62	1,579	1,667	3,859	7,167
Senegal	79	210	1,455	4,902	6,646
Cote d'Ivoire	115	215	924	2,654	3,908
Guinea	41	54	675	1,835	2,605

This stands in sharp contrast to recognition rates for people from Afghanistan, Syria, Iraq and Eritrea (who applied for asylum in lower numbers).

Table 7: Nationalities with high recognition rates in Italy – 2016

	Refugee	Subsidiary	Humanitarian	Rejected	Tot.
Afghanistan	381	3,729	47	126	4,283
Somalia	308	1,132	30	44	1,514
Syria	1,085	69	3	17	1,174
Iraq	227	653	36	50	966
Eritrea	214	230	17	136	597

Despite the fact that most West African asylum applications are eventually rejected after a very long procedure, both voluntary and forced returns to West Africa are very low.

Table 8: Returns of Western Africans from Italy – 2016

	Voluntary	Forced
Nigeria	45	120
Guinea	0	0
Cote d'Ivoire	5	5
Gambia	0	10
Senegal	20	50
Mali	0	0

As the number of Nigerians who get to Italy has increased, so has the number of Nigerians applying for protection.

Table 9: Nigerian asylum applications in Italy

	Asylum applications
2012	1,613
2013	3,519
2014	10,040
2015	18,174
2016	27,289

Although three out of four Nigerians do not get *any* form of protection, Italy is unable to return Nigerians to their country of origin.

Table 10: Forced returns of Nigerians from Italy

	Forced	Voluntary
2014	140	45
2015	170	40
2016	120	45

This is not only a problem for Italy. EU countries are in general not able to return large numbers of people who have no right to stay to their countries of origin unless they return voluntarily (with the Balkans being an exception). Look at France, Germany and Sweden:

Table 11: Total forced returns

	Italy	France	Germany	Sweden
2014	4,330	12,415	10,884	1,945
2015	3,655	12,325	20,888	2,545
2016	4,505	9,220	25,375	2,490

Table 12: Forced returns from Italy

	2014	2015	2016
Tunisia	1,130	810	1,110
Albania	745	775	740
Morocco	500	505	660
Egypt	1,020	535	635
Pakistan	20	125	170
Nigeria	140	170	120
Afghanistan	20	0	115
Moldova	100	85	80
Senegal	40	50	50
Georgia	70	65	40

Table 13: Forced returns from France

	2014	2015	2016
Albania	1,800	2,175	2,160
Algeria	970	1,125	1,105
Morocco	1,530	1,430	1,005
Tunisia	1,650	1,270	775
Kosovo	310	385	275
Ukraine	115	345	250
Senegal	415	435	230
Pakistan	450	425	205
China	330	240	175
Afghanistan	440	375	115

Table 14: Forced returns from Sweden

	2014	2015	2016
Albania	205	495	360
Somalia	45	30	235
Kosovo	120	165	150
Iraq	65	70	140
Afghanistan	100	45	110
Serbia	155	235	100
Georgia	75	140	80
Bosnia and Herzegovina	75	85	70
Russia	95	95	65
Macedonia	90	125	35

What is needed for a breakthrough: Day X for returns

How can the EU reduce the number of arrivals - and deaths - in the Central Mediterranean? The key lies in quickly processing asylum applications and in quickly returning those whose claims are rejected to their countries of origin. This requires fixing a date – a day X - from which countries of origin commit to help take back, and take back without delay all of their nationals who have arrived in Italy and do not get protection.

What would be the impact of such a policy on arrivals? They would fall sharply. Nigerians were the largest group of arrivals in Italy in 2016. The majority would be unlikely to risk their lives crossing the deadly Sahara, unstable Libya and the Central Mediterranean and spending thousands of Euros on smugglers when the probability of being returned to Nigeria within a few weeks of arrival in Italy is 80 percent.

Ensuring that Nigeria, Senegal and other countries take back their nationals who do not qualify for protection after an agreed date should be the chief priority in talks between the EU and African countries of origin – similar to the commitment Turkey made to take back without delay people who arrive in Greece after 20 March 2016.

The fundamental problem is one of incentives: African countries are wary of readmission agreements under which they would have to take back an unlimited number of their citizens who arrived in the EU in the past. This would also be extremely unpopular.

Specific "take back" agreements are needed between the EU and African countries of origin which focus only on those who arrive in Italy after these agreements enter into force. These agreements must lay out a strong case why this is in the interests of countries of origin, and offer access to annual quotas set in advance for regular and legal migration, including for scholarships and regular work migration.

Such agreements would have *no direct impact on current remittance flows*. They would offer the safe and legal passage these countries, and many migration experts, have long called for, so far without success. What is needed is a short, simple, statement of mutual commitments, similar to the EU-Turkey statement from 18 March 2016 or the two US-Cuba statements of 1994 and 1995:

Take back – Legal Access Statement

Fixes a date after which a country helps take its citizens back from Italy – Day X

Sets an annual contingent for regular safe and legal access for a number of citizens for a number of years in the future (some through a lottery, as in the case of the US and Cuba after 1994). An EU coalition of willing states commits to offer a set number of residence and work permits for workers/students from Nigeria/Senegal/Gambia for the next five years.

Supports internally displaced persons as well as refugee resettlement from the country via UNHCR.

The second key step: fast & quality asylum procedures in Italy

All this would require that there is an asylum system in Italy able to process all claims within a few weeks. Developing the ability to deal with claims *within four-six weeks*, while ensuring a high quality of decisions through quality control mechanisms and trained staff, competent interpreters and available legal aid, should be *the* top priority for Italy (and the EU) in the coming weeks. This is above all else a matter of resources and competent management.

Quick decisions and rapid readmission based on *EU Take-back Agreements* with African countries of origin would bring down sharply the number of people who stay in the EU after their applications are rejected. These will reduce the number of people arriving with little chance of receiving protection.

In this way, the number of irregular arrivals will become manageable – with less business for smugglers and far fewer deaths at sea. The aim is to reduce the number of all irregular arrivals by sea to below 100,000 (for an EU of over 500 million people) already in 2017.

Table 15: Irregular Mediterranean crossings to Greece and Italy

	Greece	Italy	Total
2011	57,000	64,300	121,300
2012	37,200	15,200	52,400
2013	24,800	45,300	70,100
2014	50,800	170,700	221,500
2015	885,400	154,000	1,039,400
2016	182,500	181,100	363,600

The third step: EU asylum missions replace Dublin

Almost all irregular arrivals to the EU at this moment reach the EU through Greece and Italy. EU asylum missions there would dramatically reduce the pressure on *all* other European asylum services as well. If such a plan were implemented there would also be no need for the doomed Dublin reform debates currently taking place in Brussels – Dublin would no longer be needed. A Rome/Valetta mechanism – based on EU asylum missions in border states, reformed relocation of those who are granted protection and EU readmission from these states – should replace the current Dublin system.

European leaders would thus demonstrate to their electorates that it is possible to control external sea borders without undermining the refugee convention. They should also simultaneously push forward the global debate on orderly transfers of refugees through resettlement. The only way to do so is to lead by example, building up EU capacity for resettlement as well boosting the UNHCR's capacity to do more. Then, coalitions of willing EU states should commit to resettle a significant number of refugees each year.

In recent decades, resettlement has never reached more than 100,000 a year in the whole world, and of these the US has taken the lion's share. With the US under Trump unlikely to continue to play this role, the EU needs to step up its efforts. Until now European states have not built up the bureaucratic machinery for large-scale resettlement. For this reason, pushing the EU to fully implement the resettlement provisions under the EU-Turkey statement (point 4) is vital and deserves to be an advocacy priority for human rights NGOs and refugee rights defenders.

ANNEX A: The US-Cuba statements of 1994 and 1995

US Joint Statement with the Republic of Cuba on Normalization of Migration September 10, 1994

Safety of Life at Sea

The United States and the Republic of Cuba recognize their common interest in preventing unsafe departures from Cuba which risk loss of human life. The United States underscored its recent decisions to discourage unsafe voyages. Pursuant to those decisions, migrants rescued at sea attempting to enter the United States will not be permitted to enter the United States, but instead will be taken to safe-haven facilities outside the United States. Further, the United States has discontinued its practice of granting parole to all Cuban migrants who reach U.S. territory in irregular ways. The Republic of Cuba will take effective measures in every way it possibly can to prevent unsafe departures using mainly persuasive methods.

Alien Smuggling

The United States and the Republic of Cuba reaffirm their support for the recently adopted United Nations General Assembly resolution on alien smuggling. They pledged their cooperation to take prompt and effective action to prevent the transport of persons to the United States illegally. The two governments will take effective measures in every way they possibly can to oppose and prevent the use of violence by any persons seeking to reach, or who arrive in, the United States from Cuba by forcible diversions of aircraft and vessels.

Legal Migration

The United States and the Republic of Cuba are committed to directing Cuban migration into safe, legal and orderly channels consistent with strict implementation of the 1984 joint communique. Accordingly, the United States will continue to issue, in conformity with United States law, immediate relative and preference immigrant visas to Cuban nationals who apply at the U.S. Interests Section and are eligible to immigrate to the United States. The United States also commits, through other provisions of United States law, to authorize and facilitate additional lawful migration to the United States from Cuba. The United States ensures that total legal migration to the United States from Cuba will be a minimum of 20,000 Cubans each year, not including immediate relatives of United States citizens.

As an additional, extraordinary measure, the United States will facilitate in a one-year period the issuance of documentation to permit the migration to the United States of those qualified Cuban nationals in Cuba currently on the immigrant visa waiting list. To that end, both parties will work together to facilitate the procedures necessary to implement this measure. The two governments agree to authorize the necessary personnel to allow their respective interests sections to implement the provisions of this communique effectively.

Voluntary Return

The United States and the Republic of Cuba agreed that the voluntary return of Cuban nationals who arrived in the United States or in safe havens outside the United States on or after August 19, 1994, will continue to be arranged through diplomatic channels.

Excludables

The United States and the Republic of Cuba agreed to continue to discuss the return of Cuban nationals excludable from the United States.

Review of Agreement

The representatives of the United States and the Republic of Cuba agree to meet no later than 45 days from today's announcement to review implementation of this Joint Communiqué. Future meetings will be scheduled by mutual agreement.

*US Joint Statement with the Republic of Cuba on Normalization of Migration
May 2, 1995*

The United States of America and the Republic of Cuba have reached agreement on steps to normalize further their migration relationship. These steps build upon the September 9, 1994 agreement and seek to address safety and humanitarian concerns and to ensure that migration between the countries is safe, legal, and orderly.

Humanitarian Parole

The United States and the Republic of Cuba recognize the special circumstances of Cuban migrants currently at Guantanamo Bay. Accordingly, the two governments have agreed that the process of humanitarian parole into the United States should continue beyond those eligible for parole under existing criteria. The two governments agree that if the United States carries out such paroles, it may count them towards meeting the minimum number of Cubans it is committed to admit every year pursuant to the September 9, 1994 agreement. Up to 5,000 such paroles may be counted towards meeting the minimum number in any one year period beginning September 9, 1995, regardless of when the migrants are paroled into the United States.

Safety of Life at Sea

The United States and the Republic of Cuba reaffirm their common interest in preventing unsafe departures from Cuba. Effective immediately, Cuban migrants intercepted at sea by the United States and attempting to enter the United States will be taken to Cuba. Similarly, migrants found to have entered Guantanamo illegally will also be returned to Cuba. The United States and the Republic of Cuba will cooperate jointly in this effort. All actions taken will be consistent with the parties' international obligations. Migrants taken to Cuba will be informed by United States officials about procedures to apply for legal admission to the United States at the U.S. Interests Section in Havana.

The United States and the Republic of Cuba will ensure that no action is taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally. Both parties will work together to facilitate the procedures necessary to implement these measures. The United States and the Republic of Cuba agree to the return to Cuba of Cuban nationals currently at Guantanamo who are ineligible for admission to the United States.

September 9, 1994 Agreement

The United States and the Republic of Cuba agree that the provisions of the September 9, 1994 agreement remain in effect, except as modified by the present Joint Statement. In particular, both sides reaffirm their joint commitment to take steps to prevent unsafe departures from Cuba which risk loss of human life and to oppose acts of violence associated with illegal immigration.

ANNEX B: Amsterdam on the Mediterranean – asylum decisions in 6 weeks

The Dutch asylum procedure combines significant speed with a very detailed, thorough assessment of facts and circumstances by interviewers and decision makers of the Dutch Immigration and Naturalization Service. Such a system is needed for asylum procedures at the EU's external borders. It can be either Italian (and supported and funded by the EU) or European.

Italy might call for, and the EU might offer to fund and manage, special EU RICs (Registration and Identification Centers) as a first pilot step towards a future common EU asylum and border management system. It should aim to emulate then: the Dutch 8-days asylum procedure.

The Dutch asylum procedure is laid down in the Aliens Act, the Aliens Decree (*Vreemdelingenbesluit 2000*), the Aliens Regulations (*Vreemdelingenvoorschrift 2000*) and the implementation guidelines of the Aliens Circular (*Vreemdelingencirculaire 2000*). The asylum procedure consists of a general asylum procedure of 8 processing days and an extended procedure. The time-limits in the 8-days procedure are short, both for the asylum office (IND) and the applicant's legal representative. Generally, the IND case workers has one day to complete the following steps: the first interview on the identity, nationality and itinerary; one day for the second interview on the substance of the application; and one day for the recommended decision. The decision maker has two days for the decision. The applicant's lawyer has one day for the 'corrections and additional information', as well as one day for the 'response'.

If no decision can be made in the general asylum procedure, the application is processed in an extended procedure for more complex cases. This procedure gives the IND a six months' time-limit, which can be further extended with another nine months, and a further extension of three months. Children younger than 12 years will always be referred to the extended procedure for a second interview on the substance.

A negative decision can be appealed before the District Courts. In the general asylum procedure the time-limit is one week and the appeal normally has automatic suspensive effect. When an application is deemed inadmissible or manifestly unfounded automatic suspensive effect is not granted. In those cases, an interim measure (*voorlopige voorziening*) can be requested. Pending this process the asylum seeker normally has the right to remain. In the extended asylum procedure the time-limit for the appeal is four weeks and the appeal has suspensive effect.

Before the asylum seeker who lodges an application enters the general asylum procedure, he or she is given a rest and preparation period of at least six day (art. 3.109 Aliens Decree). For unaccompanied minors this is, in practice, at least three weeks.

In the Dutch asylum procedure, the assessment of the asylum application is based on several IND-interviews with the applicant. These often take several hours. The interviews are conducted by an IND-interviewer who is assisted by a interpreter, if needed. Normally, the interviews take place in the 8-days general asylum procedure, through which most applications

are initially channeled.¹ Decisions in the 8-days procedure can be a rejection of the application or granting of international protection. In more complex cases, the case is referred to an extended procedure with extended time-limits. The IND can conduct, if this is deemed necessary, additional interviews with the asylum seeker.

Throughout the asylum procedure, i.e. both in the first stage and the appeal stage, the applicant is represented by an asylum lawyer. This is usually the same lawyer. This lawyer is appointed by the legal aid programme and his or her services are free of cost.

The rest and preparation period

Prior to the 8-days procedure the asylum seeker is given a rest and preparation period of at least six days. In the rest and preparation period asylum seekers receive information, including through the Dutch Council for Refugees, and a medical screening. The screening focuses on the ability of the asylum seeker to be interviewed in light of his medical condition and the ability to give an account in a coherent manner. The medical screening is performed by FMMU, an independent bureau for medical advice. In the closed border procedure the applicant may ask that the rest and preparation period be shortened. The asylum seekers receive information, including through the Dutch Council for Refugees.

The 8 day general asylum procedure

The time-limits in the 8-days procedure are short, both for the IND and the applicant's legal representative. In the general 8-day procedure, the lawyer can submit 'corrections and additional information' to the transcripts of the interviews, and, if the IND intends to reject the application, a 'response'. In the IND-decision this information must be taken into account. Although the lawyer can sit in during the IND interviews, in practice the applicant is not assisted by his or her lawyer. Instead, volunteers of the Dutch Council for Refugees can sit in and take notes, which are passed on to the lawyer.

The procedural steps are taken, in principle, on a day-to-day basis:

'Minus one day': The lawyer prepares the client for the 8 day procedure

Day 1: Interview on identity, nationality, itinerary, and documents, and transcripts

Day 2: Preparation for the interview (with legal representative)

Day 3: Interview on the substance, and transcripts

Day 4: Correction and additions of the transcripts of the interview with legal representative

Day 5: Intended decision

Day 6: Response (View – *Zienswijze*) with legal representative

Day 7 and 8, IND-Decision

In some cases, the general procedure can take more time (days), if needed. The circumstances to extend the procedure within the framework of the general 8-day procedure include sickness of interpreters, the asylum seeker or capacity. The general procedure can take up to 14 days. In practice, such extensions do not often take place.

¹ In March 2017, the procedure was amended. In Dublin-procedures ('track 1') and procedures with respect to manifestly unfounded applications ('track 2') the procedure is somewhat different. The general 8 days procedure remains the norm.

The IND decision-maker is responsible for the assessment of the asylum account in light of the situation in the country of origin. In this he relies on country guidelines, country of origin reports, information services, and an automated system with standard texts.

Generally, the decision-maker is not the same civil servant as the interviewer. The decision-maker usually drafts the intended decision and – if he does not already decide to grant international protection status – the final decision itself. If needed he should seek expert advice, for example on the country of origin, or cultural or medical aspects.

The lawyer is supported by an online up to date information service, operated by the Dutch Council for Refugees, which contains legislation, policy guidelines, country of origin information, case law and analyses. The information services also offer a limited e-mail and telephone service. A ‘documentalist’ of the Dutch Council for Refugees at the application centres can conduct quick legal or country of origin research for the asylum lawyer. These information services of the Dutch Council for Refugees are subsidized by the Dutch authorities.

Appeal and higher appeal

A negative decision can be appealed before the District Courts. In the general asylum procedure the time-limit is one week and the appeal normally has automatic suspensive effect. The court gives its judgment within four weeks after the appeal was lodged. According to the Dutch Aliens Act and in line with the EU asylum procedures directive (2013/32/EU), the District Court must conduct a thorough review, which is based on a full and ex nunc examination of the facts and points of law. This means that new evidence may be submitted in the appeal procedures. The applicant or the state may lodge a higher appeal based on specific grounds of law. The higher appeal does not have automatic suspensive effect.

Enforcement of negative decisions

Once an application is finally processed and rejected, the reception will be terminated. For certain categories of vulnerable asylum seekers there are some arrangements to stay in some form of reception for a longer period, but in other cases processed in the general 8-day procedure termination will take place after the period for departure of four weeks. In some cases detention can follow for the purpose of return. Cases of asylum seekers whose claims are rejected are referred to the Return and Departure Service.

SOURCES

Table 1: UNHCR

Table 2: UNHCR

Table 3: IOM

Table 4: UNHCR

Table 5: Italian Ministry of Interior

Table 6: Italian Ministry of Interior

Table 7: Italian Ministry of Interior

Table 8: Eurostat

Table 9: Italian Ministry of Interior

Table 10: Eurostat

Table 11: Eurostat/BAMF

Table 12: Eurostat

Table 13: Eurostat

Table 14: Eurostat

Table 15: UNHCR