

STUDY

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Challenges Presented by Migration and Refugees from a Euro-Mediterranean Perspective



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Challenges Presented by Migration and Refugees from a Euro-Mediterranean Perspective

ABSTRACT

There are opportunities for cooperation in the field of border management, migration and refugee protection among member states of the Union for the Mediterranean (UfM) during the European Parliament's presidency of the Parliamentary Assembly of the Union for the Mediterranean (PA-UfM). There needs to be greater trust and confidence among these states in order to achieve such objective. UfM member states participate in a range of related initiatives in their various regions with states outside the UfM. These need to be accommodated. UfM member states share an international legal basis applicable to the field which may usefully be built upon. UfM member states widely affirmed political commitment to this foundation in the 2018 UN Global Compact for Safe, Orderly and Regular Migration and its counterpart for Refugees.

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List of abbreviations

| | |
|---------|---|
| AFSJ | Area of Freedom, Security and Justice |
| AMU | Arab Maghreb Union |
| ARCP | Arab Regional Consultative Process |
| AU | African Union |
| CAT | Convention against Torture |
| CEAS | Common European Asylum System |
| CED | Convention against Enforced Disappearance |
| CEN-SAD | Community of Sahel-Saharan States |
| CMR | Centre for Migration Law, Radboud University Nijmegen (NL) |
| Comesa | Common Market for Eastern and Southern Africa |
| CSCM | Conference on Security and Cooperation in the Mediterranean |
| EAM | European Agenda on Migration |
| EC | European Community |
| EEC | European Economic Community |
| ENI | European Neighbourhood Instrument |
| ENP | European Neighbourhood Policy |
| EP | European Parliament |
| EU | European Union |
| EUTF | EU Emergency Trust Fund |
| Frontex | European Border and Coast Guard Agency (Frontières extérieures) |
| GAM | Global Approach to Migration |
| GAMM | Global Approach to Migration and Mobility |
| GCM | Global Compact on Migration |
| GCR | Global Compact on Refugees |
| ICCPR | International Covenant on Civil and Political Rights |
| ILO | International Labour Organization |
| IOM | International Organization for Migration |
| LAS | League of Arab States |
| OHCHR | Office of the High Commissioner for Human Rights |
| PAFoM | Pan-African Forum on Migration |
| PAM | Parliamentary Assembly of the Mediterranean |
| PA-UfM | Parliamentary Assembly Union for the Mediterranean |
| RCC | Regional Cooperation Council |

| | |
|-------|--|
| REA | Regional Economic Area |
| SA | Stabilization and Association |
| SOLAS | International Convention for the Safety of Life at Sea |
| TCN | Third Country Nationals |
| UfM | Union for the Mediterranean |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| UNODC | United Nations Office on Drugs and Crime |
| UNRWA | United Nations Relief and Works Agency for Palestine |
| VHR | Voluntary Humanitarian Return |

Executive summary

The European Parliament holds the presidency of the Parliamentary Assembly of the Union for the Mediterranean (PA-UfM) in 2018-2019. One of the priorities is to achieve cooperation in the field of border management, migration and refugee protection. Among Union for the Mediterranean (UfM) member states there is substantial migration including a refugee protection component. They are also subject to substantial levels of migration and refugee arrivals from third countries. Common challenges and opportunities arise for all of them though cooperation may require greater trust and confidence.

The Syrian crisis, which commenced in 2011, has resulted in over 5 600 000 people fleeing that country and seeking protection elsewhere, mainly in UfM member states. This has given new impetus to cooperation in refugee protection among UfM member states and a recognition of the need to share responsibilities.

Leaving aside for the moment the humanitarian crisis, which the Syrian conflict has unleashed, migration among and to UfM member states tends to be safe, orderly and largely regular (section 1). Terrible as the human rights consequences are of trafficking and smuggling in human beings, numerically these account for a very small percentage of migration affecting the UfM. Nonetheless, UfM member states must be vigilant in countering trafficking in human beings (a shared commitment under the Palermo protocols). Social and political perceptions of border management, migration and refugee protection are often out of step with the realities (section 2). All too frequently in EU UfM member states migration is perceived as a threat against which state authorities ought to take action. While refugees are generally perceived as meriting protection, public concerns about whether the institution of asylum is being abused exist.

UfM member states share a strong commitment to international law through their signature and ratification of conventions. Many of these international conventions have relevance for border management, migration and refugee protection. This includes four human rights conventions, the UN Protocols against trafficking and smuggling of human beings, two ILO conventions and three conventions, which provide for refugee protection. This strong international legal framework has been solemnly reaffirmed by UfM member states, which signed the Global Compact for Safe, Orderly and Regular Migration and its sister compact for Refugees (sections 2 and 3). There have been many political initiatives among UfM member states, third countries and regional organisations. However, there is a tension between those initiatives in which the EU is involved which usually have a focus on combating irregular migration through border management and those without an EU presence, which generally aim to reduce visa and border related obstacles and facilitate migration. This difference of perspective complicates cooperation. As the African Union rolls out its free movement and passport initiative to transform the continent into an area of free movement with a common passport (planned for 2020), EU interests based on strong border management among African states may need to be adapted.

Progress towards cooperation in the field will need to be founded on trust and confidence among the member states. All parties will need to be respectful of the policy objectives of UfM member states in their regional venues and settings. A good foundation for practical recommendations, which fulfil this requirement, are the international commitments of the UfM member states (section 4). It would be advisable for the PA-UfM to establish unit and monitoring mechanisms to collect and compare all the policy initiatives of UfM member states in the field and report to the Plenary annually on progress. This would allow states to understand the challenges facing them in respect of policy coherence in the field. Focussing on existing common commitments in the international legal framework can assist in sidestepping tensions among policy initiatives (Section 4). A focus on implementation and monitoring of the international framework within the UfM could provide useful added value.

Introduction

Migration and refugee protection are issues of high political salience among member states of the Union of the Mediterranean (UfM)¹. However, there are many asymmetrical challenges affecting UfM member states differently. Trust and confidence across the region urgently need to be developed to address these challenges in a realistic and reasonable manner and to recognise opportunities for the future. This trust and confidence must include everyone: elected representatives of all the UfM member states, their executives, their people and the many migrants and refugees who live among them (whether they are nationals of UfM member states or not). For the purposes of this study we use the definition of a migrant, shared by the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) and the International Organisation for Migration (IOM), as someone who has moved from one state to another irrespective of the length of time or the purpose of the movement².

Among the key means to develop trust and confidence are:

- Acknowledgement that border management, migration and refugee protection and management are all matters of shared responsibility in the UfM;
- Transparency in law and practice enables states to trust one another and to have confidence in procedures in sensitive fields;
- Publicly accessible and reliable information, including statistics which facilitate common understandings of issues and their importance;
- Compliance with internationally established human rights standards to which UfM member states have bound themselves; this will assist in building trust among states regarding the treatment which their citizens will encounter when on the territory of the other;
- Ensuring that all people are protected from human trafficking and smuggling and have access to safe, orderly and regulated forms of transport when travelling for legitimate purposes; this will diminish sources of friction among states;
- Full compliance with state obligations to provide protection to refugees including their reception while their claims are being processed; this is necessary to comfort states that their neighbours are not seeking to 'off-load' unwanted refugees onto them through unacceptable practices encouraging onward movement;
- Acceptance that migration is largely a normal activity across the Euro-Mediterranean region (and an integral part of tourism) the vast majority of which is safe, orderly and regular and contributes to prosperity, stability and cooperation; this will assist UfM member states to find common ground.

The purpose of this study is to provide recommendations for the PA-UfM during the European Parliament's presidency, which will contribute to achieving the trust and confidence, which are so clearly needed

¹ The PA-UfM consists of 280 members: 132 EU members (83 members from the 28 EU national Parliaments - three from each Parliament, except for the UK, which has two - and 49 members from the European Parliament), eight members from new European Mediterranean partner countries (two for each delegation from Albania, Bosnia and Herzegovina, Monaco and Montenegro), 130 members from the ten countries on the Southern and Eastern shores of the Mediterranean (Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey), and 10 members from Mauritania. Syria was suspended in 2011. All references to Syria will be in square brackets to indicate this.

² The OHCHR definition is here: 'Principles and Guidelines on Human Rights at International Borders', p. 4, fn. 2, https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf (accessed 22 January 2019). The IOM definition can be found in the following website: <https://www.iom.int/who-is-a-migrant> (accessed 22 January 2019). IOM's definition is wider to include internally displaced persons.

among the elected representatives to achieve cooperation. It contributes to the work of the PA-UfM standing committee on political affairs, security and human rights.

This study consists of four substantive chapters as follows:

- An overview of the main migratory and refugee flows affecting UfM member states;
- A review of political perceptions of the migration and refugee challenges of the UfM member states (including a review of the adoption of the UN Global Compact for Safe, Orderly and Regular Migration as it affects them);
- An outline of the shared international legal framework which applies to all, most or some UfM member states and an overview of the existing initiatives in which UfM member states participate which have a migration or refugee protection element;
- Recommendations in key areas of migration and refugee protection: (1) visas and extraterritorial policies; (2) border management; (3) migration including short stay, long stay for economic purposes, students and family reunification; (4) access to the territory for refugee protection and its content; (5) expulsion policies, procedures and efficiency; (6) general recommendations which include institutional arrangements.

Migration is a complex phenomenon which is comprised of a number of steps by which states seek to regulate and manage it. In order to understand the trade-offs which states may make with one another in this area, and options for cooperation and action, it is critical to understand each part. First, states seek to manage migration through visa requirements and extraterritorial policies to enforce them. The migration-related objective of this step is to move management 'up-stream' into countries from which the potential destination state fears irregular migration. By subjecting all nationals of certain countries to visa requirements, which must be completed before those nationals depart towards the destination state, states intend to diminish the number of nationals coming from that country who are suspected of seeking to overstay their permission or otherwise harm the destination state. However, visa obligations are generally unpopular with the public which must obtain them and state authorities often seek their abolition. Recent examples of this is the EU-Turkey Statement 2016 where the EU undertook to remove mandatory visa requirements on Turkish nationals in return for new Turkish measures to deter Syrian refugees (and others) from leaving Turkey to go to the EU, and the African Union's 2018 initiative to abolish visa requirements for citizens of African countries travelling within the continent (section 3).

Border controls follow on from visa and extraterritorial measures as it is at border crossing points where most people arrive. Border controls generally divide people into three categories: citizens who have a right to enter the state and so are subject to a very light control; foreigners who have a visa and so can be subject to a light control as they have already been vetted by the state, and migrants who do not have (or do not need a visa) where the border is the first place where they are subject to a control. The purpose of border controls on persons is to ensure that migrants seeking to enter a state fulfil the conditions for entry and are not a security risk. However, Frontex, the EU's external border agency, states that every EU border guard has only 12 seconds to make a decision on the admission³. Border controls can be circumvented by people arriving at places where border guards are not present. Sometimes this is accidental – pleasure craft get blown off course, border crossing points are not staffed etc. But other times it is intentional – people take unregulated boats under cover of darkness and seek to avoid border controls. Normally, this is because such people believe that they will be refused admission if they encounter a border control. These clandestine border movements are the subject of friction among states though they are usually of fairly

³ Frontex, 'Twelve Seconds to Decide', January 2015.

limited scale⁴. However, exceptions do occur such as in 2015 when Frontex counted almost 2 000 000 such border crossings, mainly from Turkey to the Aegean islands. This resulted in the EU-Turkey Statement 2016 whereby Turkey undertook to prevent irregular departures from its shores.

The third step is after entry into the host state. National law of the destination state determines what a migrant can and cannot do and how long he or she can stay in the state. This is a matter of state sovereignty. But it is only activated when the migrant is on the territory of the destination state. States are not generally entitled to apply their national laws to people who are living in other countries.

As an exception to the rule of national sovereignty as regards admission and stay, anyone who has a well-founded fear of persecution, torture or enforced disappearance in the country they have come from must be permitted to remain in the host state (Section 3). These people are refugees and entitled to protection under international law⁵. This means that they cannot be sent to a country where there is a risk of persecution, torture or enforced disappearance. If the state determines that the claim is well-founded, then it must normally give durable protection to the refugee. If it determines that the person does not need international protection, then the person is not a refugee and can be treated as a migrant. A source of friction in UfM member state relates to refugees who have fled the state where they fear persecution, torture or enforced disappearance but have had an opportunity to seek protection in another state. However, instead of staying in that state, they move on to another UfM member state and seek protection there. The legal question is whether these refugees would in fact be safe in the first state to which they fled. The political question is: which state should be responsible for caring for these refugees? This issue was also at the centre of the EU-Turkey Statement 2016.

The final step of migration management is what to do with migrants who do not or no longer fulfil the conditions to remain in the country. A migrant only becomes irregularly present as a result of the law of the destination state. The doctrine of state sovereignty permits states to allow any migrant to stay on their territory should they wish to do so. But if a state does not wish to permit the migrant to remain it will need to ensure the migrant's departure, usually to his or her country of origin but sometimes to a third country (if that third country is willing to receive the migrant). For states, the easiest and cheapest means of getting rid of migrants they do not want is to order them to leave and for them to comply. But if they do not leave, the state must decide whether to expel them and if so to what country. The EU calls this procedure return, some other countries call it deportation, the UN uses the term 'expel' (see Article 14 of the International Covenant on Civil and Political Rights (ICCPR)). In states where there are good statistics, it appears that most migrants who are expelled, arrived regularly in the state and then failed to comply with the state's conditions⁶. This may mean that there has been a failure of visa, extraterritorial measures and/or border controls. But it also means that generally it was not a failure of border surveillance which resulted in the presence of unwanted migrants.

Expulsion is expensive and time consuming. It is also a potential source of conflict among states. Without a specific agreement, most states will not accept migrants who are not their nationals to be expelled to their territory. The EU has been very active in seeking agreements to permit this kind of expulsion and its financial participation in the expulsion of migrants of various nationalities from Libya to Niger in 2018 is an example of this approach.

Some states, relying on their interpretation of international law, will only admit their nationals who are being expelled from another country, if the person has expressed his or her wish to return home. This interpretation is a matter of frustration on the part of some UfM member states which have a different

⁴ Frontex indicates that in 2017 there were 204 719 illegal border crossings between border crossing points. Frontex, 'Risk Analysis for 2018', February 2018.

⁵ Applicable to all UfM member states.

⁶ Eurostat, 'Statistics on Enforcement of Immigration Legislation', June 2018.

reading of international law, one which permits them to expel migrants to their country of nationality which is obliged to admit them. One of the ways around this friction is to negotiate readmission agreements, which specifically recognise the right to expel an unwilling migrant to his or her state of nationality. The EU has done this with some UfM member state and where possible has also included the right to expel non-nationals of the destination state who arrived in the EU through that state. The available literature appears to indicate that the EU and its Member States are the biggest negotiators of readmission agreements⁷. However, there is reluctance among some UfM member state to enter into readmission agreements in general and agreements covering non-nationals in particular.

Addressing border management, migration and refugee protection in a coherent manner requires a clear overview of what it is, as set out above. Cooperation requires compromises and trade-offs which can only be achieved where there is an understanding of the subject. The PA-UfM is a particularly important venue for confidence and trust building in the field as its composition includes elective representatives of many states whose migration and refugee protection policies affect one another. Trust and confidence make possible greater regional cooperation to address some of the common challenges, such as hosting refugee populations from recent armed conflicts or finding common approaches to migration, which are consistent with regional border and migration policies.

⁷ Jean-Pierre Cassarino, 'Informalising readmission agreements in the EU neighbourhood'.

1 Overview of the main migratory and refugee flows in the UfM member states

1.1 Overview of the main migratory and refugee flows in the UfM member states

Central to our approach in this study is acknowledging the need to foster greater confidence among the elected representatives in the PA-UfM and the UfM. Indeed, the field of migration and asylum has been the focus of tension and frictions over more than twenty years. Finding tools to achieve better understanding leading to trust is a necessary prerequisite for cooperation. One important tool is accurate information and statistics of the highest quality and standards so that misinformation – leading to fears and concerns and in some cases xenophobic sentiments – is avoided. The opportunities for cooperation within the UfM member states in this field depend on understanding the political and human challenges posed by migration and refugee movements to the relevant states and acknowledging that these challenges are asymmetrical. For example, when it comes to refugees, UfM member states in the Southern Mediterranean, notably Turkey, Lebanon, Jordan and Egypt, host the majority of Syrians who have left their country while UfM member states in Central and Eastern Europe host few.

This section presents an overview of migration and refugee movement in and among UfM member states based on the highest quality sources. These include Eurostat, Frontex, UN population, IOM and UNHCR⁸. The real scale of the issues needs to be properly measured before proposing practical cooperation. The objective is to place in context questions about the various positions of UfM member states as regards border management, migration (including irregular migration) and refugee protection. It is important to highlight at the outset that there are weakness in the coverage of available statistics, very good for some states but virtually non-existent for others.

The categorisation of countries as being of origin, transit or destination is somewhat out-dated. To a large extent, most countries can be both origin and destination, if not also transit states. For example, the UK or Germany, countries that are often referred to as destinations, are amongst the twenty top countries of origin of migration in the world (we will return to this below).⁹ The number of migrants depends on the category examined. We follow the classification consistent with the explanation in the introduction: visas and border management, migration, asylum and irregular migration (also see the recommendations in section 4).

1.2 Key findings

- Short term migration accounts for the large majority of total migration; long term migration accounts for only a small percentage of populations of most UfM member states;
- As a result of the Syrian crisis, refugees in some UfM member states (in particular Lebanon) account for substantial percentages of the population. Most Syrian refugees are now in Turkey, Lebanon, Germany and Jordan. Egypt also hosts an important number of refugees;

⁸ Available statistical information is not always consistent. Where differences appear these are included in footnotes. This is also an indication of the need for better and more consistent statistical information.

⁹ UK with 4 900 000 and Germany with 4 200 000. United Nations, International Migration Report 2017, Highlights, ST/ESA/SER.A/404, p. 13.

- Available information indicates that pressures at UfM external borders are asymmetrical; according to Frontex, 306 904 064 passengers entered the EU in 2017 (a year-on-year increase of 4.6 %). The percentage of those who were refused entry was only 0.06 % (183 548 in total);
- Trafficking and smuggling, while high in the media and political agenda in some UfM member states, represents a minor percentage of migration in the region which is primarily through regular channels;
- Yet, the Mediterranean Sea continues to be the most deadly border crossing place in the world mainly as a result of unseaworthy boats used to make the crossing.

1.3 Visas and border management

The Mediterranean border is the world's deadliest. 33 761 migrants have been reported dead or missing there between 2000 and 2017¹⁰. Several scholars have pointed to the EU's visa and borders policy as one of the reasons for this enormous number¹¹. Yet, refusal of visas and at borders is low.

Visa requirements among UfM member states are not harmonised. The EU requires visas of some UfM member states' nationals but not others. It also has a complex system of visa requirements and visa waiver agreements with non-UfM member states. The non-EU UfM member states also have a variety of visa requirements or visa-free regimes for citizens of other UfM countries, but also for those of third countries. These visa requirements are frequently determined by their agreements with regional bodies to which they are associated. For instance, the African Union project to abolish all visa requirements for citizens of the continent's states travelling within the continent affects all UfM member states which are AU members (see section 3). There is already a degree of visa-free reciprocity among UfM member states for example among EU states or between Algeria, Morocco and Tunisia¹². However, visa requirements are still substantial for nationals of some countries; for instance Egypt requires visas of all nationals of African states¹³.

For the EU, a country is placed on the mandatory visa list for short stays after an assessment of the following criteria: (a) illegal immigration, (b) public policy and security, (c) economic benefit, in particular in terms of tourism and foreign trade, and (d) the Union's external relations with the relevant third country, including, in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity¹⁴. For UfM member states, criterion (d) is particularly important as a consideration (regional coherence in the context of external relations). The EU Member States¹⁵ issued a total of 14 652 724 uniform short stay visas in 2017¹⁶. The refusal rate is 8.2 %. While the EU requires passengers to obtain a visa before travelling, some UfM member states permit passengers to purchase visas on arrival (for example Turkey). This reduces waiting times and friction around visa issuance and the

¹⁰ P. Farghes, 'Four Decades of Cross-Mediterranean Undocumented Migration to Europe. A Review of the Evidence', IOM, Geneva, 2017.

¹¹ T. Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control', *European Journal of Migration and Law*, No 20(4), 2018, pp. 452-469; T. Last, T. Spijkerboer and O. Ulusoy, 'Deaths at the Borders: Evidence from the Southern External Borders of the EU', *Revue Hijra*, No 1, 2016, pp. 5-23.

¹² See Henley Passport Index available here: <https://www.henleypassportindex.com/passport>

¹³ Africa Development Bank Group, Africa Visa Openness Report 2018, p. 24 available at:

https://www.visaopenness.org/fileadmin/uploads/afdb/Documents/VisaOReport2018_R15jan19.pdf (accessed 23 January 2019).

¹⁴ Article 1, Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

¹⁵ Those which participate in the Schengen Area.

¹⁶ All statistics are from the European Commission.

possibility of travel. EU visa rejection rates have been rising for nationals of a number of UfM member states (Algeria, Egypt, Jordan, Lebanon, Mauritania, Morocco, Syria¹⁷, Tunisia and Turkey).

Smooth and un-problematic border crossing is normal at the external borders of the EU UfM member states. According to Frontex, 306 904 064 passengers entered the EU in 2017 (a year-on-year increase of 4.6 %). A total of 183 548 were refused entry – a refusal rate of approximately 0.06 %. All passengers are subject to a border control, whether they present EU passports or not. In the EU, the number of individuals using forged documents at external borders, detections of illegal stay and expulsion decisions have all dropped since 2016. According to Frontex, out of the total of border refusals, most affected Russians¹⁸ on the Polish-Belorussian border¹⁹. Generally, most refusals took place at land borders (84.4 %) with air borders being second (12.9 %). Refusals at sea borders constitute a minority of 4.7 %²⁰. So while the Mediterranean sea may be dangerous for a small number of migrants, those who arrive regularly are rarely refused entry.

1.4 Regular migration in the UfM member states

Regular migration in the UfM member states is the norm. In the case of the EU, its 28 Member States issued 3 100 000 first residence permits to non-EU citizens in 2017²¹. Residence permits are issued to migrants staying three months or more, mainly for work, family reunification, study or refugee protection. 2017 was the year where EU states granted the most first residence permits since 2008. Three aspects are revealed by a closer analysis of the available statistics.

| Reason | Year | | | | | | | | | |
|-----------------------|--------------|--------------|--------------|--------------|--------------|-----------|-----------|-----------|-----------|-----------|
| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
| Total | 2,534,671(d) | 2,344,803(d) | 2,473,018(d) | 2,176,844(d) | 2,096,623(d) | 2,356,451 | 2,325,977 | 2,622,022 | 3,019,276 | 3,132,972 |
| Family Reasons | 684,924(d) | 661,608(d) | 774,519(d) | 719,365(d) | 671,055(d) | 671,572 | 680,388 | 760,231 | 778,337 | 830,636 |
| Education reasons | 455,702(d) | 504,384(d) | 510,499(d) | 492,938(d) | 454,299(d) | 463,943 | 476,845 | 525,858 | 499,397 | 530,113 |
| Remunerated activites | 786,892(d) | 648,588(d) | 791,461(d) | 523,862(d) | 480,958(d) | 534,214 | 573,321 | 707,632 | 854,558 | 1,009,264 |
| Other | 607,153(d) | 530,223(d) | 396,539(d) | 440,679(d) | 490,311(d) | 686,722 | 595,423 | 628,301 | 886,984 | 762,959 |

Table 1. Number of first residence permits granted in the EU by reason 2008-2017. Own elaboration with data from Eurostat²².

First, the majority of residence permits – a third – are granted for employment reasons. Second, eight Member States alone granted close to 88 % of all residence permits: Poland, Germany, the UK, France, Spain, Italy, Sweden and the Netherlands, in that order. Third, the non-EU states of the UfM are far from being the top recipients of residence permits in the EU, the number being just over 530 000 in 2017 (17 % approximately). Finally, Ukrainian citizens alone receive more first residence permits (662 000) than nationals of Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, the Palestinian Authority, Syria²³, Tunisia, Turkey and Mauritania combined.

When it comes to non-EU UfM member states, there are no available statistics on the number of first residence permits granted in 2017. In order to determine the number of foreign nationals residing in

¹⁷ Syria suspended its membership of the UfM on 1 December 2011.

¹⁸ 44 973.

¹⁹ FRONTEX, European Border and Coast Guard Agency, Risk Analysis for 2018, Warsaw, p. 21.

²⁰ FRONTEX, European Border and Coast Guard Agency, p. 21.

²¹ Eurostat, Residence Permits Statistics, October 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics_explained/index.php/Residence_permits_statistics#First_residence_permits_an_overview

²² Data from Eurostat available here: <https://ec.europa.eu/eurostat/documents/2995521/9333446/3-25102018-AP-EN.pdf/3fa5fa53-e076-4a5f-8bb5-a8075f639167> (last accessed on 24 January 2019).

²³ Syria suspended its membership of the UfM on 1 December 2011.

individual countries, it is however possible to rely on IOM, UNHCR, UNRWA and UN data²⁴. This data includes refugees and thus is relevant for this section and the following one. The four non-EU UfM countries with the largest foreign populations are Turkey, Jordan, Lebanon and Egypt. This is mainly a result of the Syrian crisis which has resulted in an outflow of refugees. In Turkey by December 2018, there were 4 750 000 resident foreigners. Out of them, more than 3 600 000 are Syrians who have been granted temporary protection status. There are another 368 000 asylum-seekers and refugees mainly from Afghanistan, Iran and Iraq. Finally, the remaining 850 000 is composed of migrants with a wide range of nationalities²⁵.

In Jordan, there are 3 200 000 foreign residents out of which 2 900 000 are refugees mostly from the Palestinian Authority (more than 2 000 000) and from Syria (more than 650 000)²⁶. In Lebanon the situation is similar. There are 1 900 000 foreign residents out of which 1 600 000 are refugees mostly from the Palestinian Authority (450 000) and approximately 1 000 000 from Syria²⁷. Finally, in Egypt, the number is close to 500 000 out of which half are refugees, mostly from Syria (more than 130 000)²⁸. In the case of Israel, the number of migrant workers in the country is of 93 000 as of 2018²⁹.

1.5 Refugee protection in the UfM member states

Eurostat offers clear information on refugee protection in EU states³⁰. First, the number of people applying for refugee protection in the EU was close to 705 000 in 2017. This constitutes a significant drop from the 1 300 000 applicants in both 2015 and 2016. In turn, 538 000 people were granted a refugee protection status in EU states in 2017. Second, whilst Syrian nationals continue to be the first group of asylum seekers, their number fell from 335 000 in 2016 to 102 000 in 2017. The other four most important nationalities are: Iraqis, Afghanis, Nigerians and Pakistanis³¹. Third, most applications are registered in only eight EU Member States, which account for 82 % of the total: Germany (198 000), Italy (127 000), France (91 000), Greece (57 000), UK (33 000), Spain (30 000), and Sweden and Austria (22 000 applicants each).

There are no consolidated statistics on refugee applications in the non-EU UfM member states. However, there is data on the overall number of refugees. Many of these refugees are in protracted situations and it is unlikely that they will be able to return to their home states soon. According to the UNHCR³², Turkey would, for the fourth consecutive year, continue to be the country in the world hosting the largest number of refugees in 2017 with 3 500 000. Lebanon, with close to 1 000 000 refugees (excluding those from the Palestinian Authority), Germany with 970 000, and Jordan with 691 000 (excluding those from the Palestinian Authority), would be fourth, sixth and tenth at global level respectively in terms of the number

²⁴ United Nations, International Migration Report 2017, Highlights, ST/ESA/SER.A/404.

²⁵ IOM, Migrant's presence monitoring, situation report December 2018, available at:

http://www.turkey.iom.int/sites/default/files/Turkey_Sitrep_12_Dec_18.pdf (last accessed 24 January 2019).

²⁶ UNHCR, Jordan Fact Sheet, February 2018, available at:

https://reliefweb.int/sites/reliefweb.int/files/resources/FactSheetJordanFebruary2018-FINAL_0.pdf (last accessed 24 January 2019).

²⁷ UNHCR, Vulnerability assessment of refugees in Lebanon 2018, available at:

<https://data2.unhcr.org/en/documents/download/67380> p 1 (accessed 24 January 2019).

²⁸ UNHCR Egypt, Monthly Statistical Report as of 30 October 2018, available here: <https://view.joomag.com/monthly-statistical-report-october-2018/0094631001541930563?short> (last accessed 24 January 2019).

²⁹ Data for the second quarter of 2018 published in Hebrew by the Population, Immigration and Borders Authority and available here: https://www.gov.il/BlobFolder/generalpage/foreign_workers_stats/he/q2_2018.pdf (last accessed 24 January 2019).

³⁰ Eurostat, 'Asylum Statistics', 18 April 2018, https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics (last accessed 24 January 2019).

³¹ In order of numerical importance.

³² UNHCR, 'Global Trends. Forced Displacement in 2017', 25 June 2018, <https://www.unhcr.org/5b27be547.pdf> (last accessed 24 January 2019).

of refugees they host³³. Most refugees in the four countries come from Syria. Egypt also hosts more than 130 000 Syrian refugees³⁴. According to UNHCR, the conflict in Syria, now approaching its ninth year, continues to be the largest in the world³⁵. Whilst an estimated 23 000 Syrians returned to their country in 2018, many are not - or not yet - able to return³⁶.

Finally, UNHCR statistics do not include 5 000 000 Palestinian refugees, as they are covered by United Nations Reliefs and Works Agency for Palestine's mandate (UNRWA). Palestinian refugees are the second largest refugee population in the world, and are mostly resident in Jordan (which hosts many more Palestinian than Syrian refugees), the Gaza Strip, the West Bank, Lebanon and Syria³⁷.

1.6 Irregular migration in the UfM member states

Irregular migration is the small exception to the rule of regular migration that takes place among and to UfM member states. This does not change the fact that the Mediterranean is the world's deadliest sea border³⁸. However, when it comes to the EU, those trying to enter irregularly are often refugees who are subject to entry requirements (such as visas) that they cannot fulfil³⁹. It is therefore possible that a percentage of those apprehended while crossing the EU's borders irregularly may be refugees since many come from countries such as Syria, Iraq or Afghanistan, which have substantial asylum recognition rates in the EU⁴⁰.

Despite these considerations, the number of irregular border-crossings in 2017 was the lowest in the EU since 2013, dropping from 511 000 to 204 000 as compared with the previous year⁴¹. This decrease was most clear in the Eastern and Central Mediterranean routes, as defined by Frontex, (180 000 to 42 000, and 181 000 to 118 000 respectively), with an increase in the Western Mediterranean route (10 000 to 23 000).

When it comes to smuggling, the European Union considers that, despite the significant decrease in the number of irregularly arriving migrants, smuggling remains a profitable criminal activity⁴². According to experts, the smuggling business seems to proliferate as a consequence of two policy choices: the introduction of visa requirements – for those who were previously exempted – and the erection of barriers along routes used by migrants⁴³. In turn, when it comes to trafficking, it is important to highlight that a large percentage of the identified victims in the EU are EU citizens (around 45 %). The remaining 55 % includes nationals from non-EU UfM member states, in particular from Albania, Morocco and Turkey. The total number of registered victims in 2016, the last year where data is available, was 11 385⁴⁴.

³³ UNHCR, Forced Displacement in 2017, p. 3.

³⁴ Information available at UNHCR: <https://data2.unhcr.org/en/situations/syria> (accessed 24 January 2019).

³⁵ UNHCR, 'Global Appeal. 2019 Update', 2018, available at:

https://reliefweb.int/sites/reliefweb.int/files/resources/Global_Appeal_2019_full_lowres.pdf (last accessed 21 January 2019), p. 119.

³⁶ UNHCR, 'Global Appeal. 2019 Update', p. 125.

³⁷ UNRWA, 'In Figures', June 2017, available at:

https://www.unrwa.org/sites/default/files/content/resources/unrwa_in_figures_2017_english.pdf (last accessed 21 January 2019).

³⁸ Farghes, Four Decades of Cross-Mediterranean Undocumented Migration to Europe.

³⁹ V. Moreno-Lax, 'Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law', Oxford University Press, Oxford, 2017, p. 100.

⁴⁰ Frontex, European Border and Coast Guard Agency, Risk Analysis for 2018, Warsaw, p. 16.

⁴¹ Frontex, Risk Analysis for 2018, p. 18.

⁴² Europol, European Migrant Smuggling Centre, Two Years of EMSC. Activity Report Jan 2017-Jan 2018, 2018.

⁴³ Farghes, Four Decades of Cross-Mediterranean Undocumented Migration to Europe, pp. 1 and 12.

⁴⁴ European Commission, Data collection on trafficking in human beings in the EU Final report – 2018, Brussels, 2018, pp. 12-13.

In 2017 EU expulsion decisions mostly affected Moroccans, Ukrainians, Albanians, Iraqis, Pakistanis, Afghanis and Algerians in that order⁴⁵. The number of non-EU citizens found to be irregularly residing in the EU went down by 37 % when compared with 2016. Finally, the EU-Turkey Statement continued to be implemented and by February 2018, 12 476 Syrian refugees had been resettled to an EU state⁴⁶.

There are some important lessons from this data. Concerning the EU, it can be said that the proportion of migrants in an irregular situation is only 2.5 % of the migrant population⁴⁷. Second, when the total number of first residence permits issued in 2017 (3 100 000) is compared to the irregular border crossings (204 000), the later only just exceeds 6 %. Again, many of those irregularly crossing an EU border may be entitled to refugee protection⁴⁸.

Non-EU UfM member states also face challenges of irregular migration. Morocco, for instance, recently announced the regularisation of approximately 50 000 irregularly resident migrants⁴⁹. Morocco is a clear example of a country with a growing presence of migrants⁵⁰. Algeria has between 25 000 and 100 000 irregularly present migrants. A possible regularisation procedure has been on the agenda since 2017 although it has not yet taken place⁵¹. In Israel, plans to deport around 30 000 irregularly present migrants, mostly Sudanese and Eritreans, were stopped in 2018⁵². In Egypt, the response to irregularly present migrants has been more restrictive and includes detention (including of minors) for a potentially indefinite period⁵³. This shows a variety of approaches that non-EU UfM member states take, from regularisation to detention.

The African Union (AU) adopted in January 2018 its free movement of persons Protocol⁵⁴. The Protocol, which will enter into force when ratified by 15 Member States, will facilitate migration in the region through the opening of legal paths for migration for all nationals of African countries (including some UfM member states). This project will reduce irregular migration on the continent not only by eliminating irregular border crossing through the creation of a right to cross borders for all citizens of African states but also by introducing a right of residence and exercise of economic activities for such persons in any African country.

⁴⁵ Eurostat, Statistics on enforcement of immigration legislation, June 2018.

⁴⁶ European Commission, EU-Turkey Statement. Two Years On. April 2018, available here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf (accessed 23 January 2019).

⁴⁷ Eurostat, Migration and Migrant Population Statistics, March 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics#Migrant_population:_almost_22_million_non-EU_citizens_living_in_the_EU The number of migrants in an irregular situation subject to an expulsion order was of 516 115 in 2017. See Eurostat, Statistics on enforcement of immigration legislation, June 2018.

⁴⁸ Fargues, Four Decades, p. 37.

⁴⁹ Ministry of Culture and Communication, Morocco, Interior Ministry: 'About 50 000 Migrants Benefited from Regularization of their Status', 8 November 2018, available at: <http://www.maroc.ma/en/news/about-50000-migrants-benefited-regularization-their-status-interior-ministry>

⁵⁰ M. Berrianea, H. de Haas and K. Natter, 'Introduction: revisiting Moroccan migrations', The Journal of North African Studies No 20 (4), 2015, pp. 503–521.

⁵¹ J. Ben Yahia, 'Algeria's Migration Policy Conundrum', Institute for Security Studies, 4 July 2018, available at: https://issafrica.org/iss-today/algerias-migration-policy-conundrum?utm_source=BenchmarkEmail&utm_campaign=ISS_Today&utm_medium=email

⁵² R. Ziegler, 'Benjamin Netanyahu's U-turn: no redemption for asylum seekers in Israel', The Conversation, 9 April 2018.

⁵³ Global Detention Project, Immigration Detention in Egypt: Military Tribunals, Human Rights Abuses, Abysmal Conditions, and EU Partner, Global Detention Project 2018.

⁵⁴ Protocol to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment, adopted by the thirtieth ordinary session of the Assembly, Addis Ababa, Ethiopia, 29 January 2018.

1.7 Root causes of migration

The idea of 'root causes' has gained political purchase, notably in some EU circles. Those advocating for the use of this concept argue that the lack of development in certain countries causes emigration. Thus, the argument goes, an increase in development assistance should decrease emigration. Yet the concept of root causes has been strongly criticised by numerous academics.

The EU has allocated new and substantial financing to address the root causes that allegedly lead to migration. These include the European Union Emergency Trust Fund (see section 3) for stability and to address root causes of irregular migration and displaced persons in Africa (EUTF for Africa)⁵⁵, the European Fund for Sustainable Development⁵⁶, and the EU's new Consensus on Development⁵⁷ — a framework adopted in 2017 to guide the EU's development policy and shape its work on the Sustainable Development Goals until 2030. Critics of the root cause theory point to three problems. First, authors such as Carling rejects 'root causes' – a concept he considers as 'analytically weak and politically problematic' – in favor of the idea of migrants' aspirations and the ability that migrants have of realizing those aspirations⁵⁸. Carling argues that policy interventions are more useful when migrants are offered foundations for hope in the host society so that they decide to stay (e.g. more jobs, less repression, better standards of living) than when they aim to deter migration by making it harder, thus trying to block people from leaving (p. 24). Second, scholars such as Hein de Haas argue that poverty reduction does not decrease emigration. On the contrary, his work shows that development first increases emigration from poor countries. This is the result of the relationship between development and people's rising aspirations (and opportunities) to emigrate. This is particularly so, according to de Haas because of continuing labour demand in many European countries⁵⁹. Third, a 2018 report for the Rabat Process (see section 3) shows that it is not possible to distinguish between root causes of regular and irregular migration. Migrants take into consideration complex sets of factors when deciding whether to emigrate, that go well beyond a simplistic desire to escape from poverty⁶⁰. Further another recent report states that 'Policy makers searching for short-term victories may need to be open to the idea of working with, rather than against, migration trends. Where migration has become a well-established strategy...achieving a complete and quick reversal of this dynamic is unlikely, and efforts to do so may do more harm than good. Instead, looking for ways to facilitate safe and legal migration, particularly at the regional level, may offer a more realistic solution'⁶¹.

⁵⁵ Information about the fund is available here: https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en (accessed 24 January 2019).

⁵⁶ Information about the fund is available here: https://ec.europa.eu/europeaid/sites/devco/files/efds-report_en.pdf (accessed 24 January 2019).

⁵⁷ Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, The New European Consensus on Development. Our World, Our Dignity, Our Future', Brussels, 7 June 2017, available at: https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf (last accessed 24 January 2019).

⁵⁸ J. Carling, 'How Does Migration Arise?' in IOM, Migration Research Leaders' Syndicate. Ideas to inform international cooperation on safe, orderly and regular migration, IOM, Geneva, 2017, pp. 19-26, at 21-22.

⁵⁹ H. de Haas, 'Turning the Tide? Why Development will not Stop Migration', Development and Change No 38 (5), 2007, pp. 819-841. See also: L. Mously Mbaye, 'Supporting Communities under Migration Pressure', in IOM, Migration Research Leaders' Syndicate. 'Ideas to inform international cooperation on safe, orderly and regular migration', IOM, Geneva, 2017, pp. 91-96.

⁶⁰ L. Bacon and N. Robin, State of the art. The root causes of irregular migration in the region of the Rabat Process, ICMPD, May 2018, available at: https://www.rabat-process.org/images/TM-root-causes/EN_Study_State-of-the-art.pdf (accessed 24 January 2019).

⁶¹ S. Fratzke and B. Salant, 'Moving Beyond "Root Causes", The Complicated Relationship between Development and Migration', Migration Policy Institute, Policy Briefs, January 2018, p. 2.

1.8 Conclusions

Accurate statistics can help enhance confidence among the elected representatives in UfM member states. Knowledge and transparency regarding all types of migration in the region can inform the public and political leaders. When public and political perceptions are far from the reality, ill-considered policy choices are likely to result. Elected leaders must provide leadership to their publics and counter inaccurate and inflammatory rhetoric that propagates false information and unsubstantiated statistics. In these times of fake news and manipulation of social media, elected representatives have a solemn duty to rely only on accurate information produced by reputable sources particularly in this sensitive area. Migration and refugee protection present both opportunities and challenges. But these are asymmetric in UfM member states – in particular refugee protection in the wake of the Syrian crisis. Irregular migration, as measured by neutral standards, has decreased in 2017 and should not be the only, or the main, focus of bilateral and multilateral efforts in the UfM.

2 Political perceptions in the UfM member states

This section provides a bird's eye view of political perceptions of migration and refugee challenges in UfM member states. As the discussions in 2018 leading to the adoption of the Global Compact on Migration (GCM) have shown, political and social perceptions of migration and refugee protection issues vary from UfM country to country (see below). It is symptomatic that the Global Compact on Refugees (GCR), adopted by the UN General Assembly on 17 December 2018, gathered more support and was less controversial (with 181 votes in favour, two against - the United States of America and Hungary - and three abstentions). These results indicate the variety of approaches that need to be accommodated in the UfM member states.

2.1 Key findings

- The political salience of migration and refugee protection is higher in some EU Member States than in most of their partners in the UfM;
- Migration and refugee protection are the subject of much misinformation across the UfM member states leading to unsubstantiated concerns and in some cases fears;
- Populations of states with significant emigration tend to be more favourable to migration than those without;
- Border management, migration and refugee protection are not inevitably sources of friction among states as the UN's GCM and GCR revealed;
- Yet, the process of adoption of the UN's GCM and CCR has shown substantial schisms across the UfM (more in the EU than elsewhere among UfM member states).

2.2 Public perceptions among the citizenry

Political perceptions about migration not only vary enormously but are often dissociated from statistical realities. In order to foster confidence among UfM member states, policy choices need to be based on the best available empirical evidence and not on misrepresentations of reality.

The way empirical evidence is presented, or whether it is available at all, also has an influence on how citizens perceive migration. For example, according to Eurobarometer, citizens of all EU states – except Croatia, Estonia and Sweden – largely overestimate the proportion of the population who is a migrant. In 19 countries, this overestimation is at least twice the actual migrant population of the country⁶². This also affects non-EU UfM countries, like Turkey, where respondents estimated the foreign population in 2018 to be 32 % when the actual number was 6 %⁶³. This is important because in those states where people do not overestimate the number, the public tends to have more positive views on migration⁶⁴.

According to the Report Public Opinion, a Eurobarometer survey in April 2018, Europeans believe migration is the most important issue the EU faces⁶⁵, although at national level this concern drops to the third place overall⁶⁶. A very large number (85 %) consider that additional measures should be taken when it comes to irregular migration⁶⁷, with 79 % thinking the EU should be more involved in helping Member

⁶² European Commission, 'Special Eurobarometer 469. Report Integration of immigrants in the European Union', April 2018, p. 21.

⁶³ Ipsos Mori, 'Perils of Perception Survey 2018', p. 28.

⁶⁴ Eurobarometer 469, 'Report Integration of immigrants in the European Union', p. 23.

⁶⁵ Standard Eurobarometer 89, 'Report Public opinion in the European Union', Spring 2018, p. 25.

⁶⁶ Ibid., p. 19.

⁶⁷ Standard Eurobarometer 89, 'Report: The views of Europeans on the European Union's priorities', Spring 2018, p. 42.

States to secure their external borders⁶⁸. This might have to do with the fact that the general population also largely overestimate the number of irregularly present migrants residing in their country, in comparison with the statistics from Frontex and Eurostat on the subject. This is particularly the case in countries along the Mediterranean coast: Italy, Greece, Cyprus, Spain and Malta in that order⁶⁹. At the same time, a majority of Eurobarometer respondents (48 %) consider that 'immigrants contribute a lot' to their respective country⁷⁰.

When it comes to non-EU UfM member states the picture is quite complex. Israel and Montenegro, for example, are among the ten countries in the world which are the least accepting of migrants. People in Bosnia and Herzegovina, Egypt, Jordan, Lebanon and Turkey also have a negative perception. By contrast, citizens of Albania, Tunisia, Morocco and Mauritania have a positive view of migration. The reasons for these differences are complex and might be related to the large number of refugees that some countries have received, or which have transited through their territories, since the outset of the Syrian conflict⁷¹. For example, when asked about the relationship between refugees and the economy, more Bosnians and Montenegrins considered refugees as having a negative (44 % and 37 % respectively) rather than a positive impact for the economy (15 % and 12 % respectively)⁷².

2.3 Perceptions at state level

Good empirical evidence would, in theory, not only affect perceptions of the general public but also those of policy-makers. During the last few years however, the EU has often framed migration in the Mediterranean as a crisis and this has made it difficult to develop new responses⁷³. Indeed, since 2016 the EU Commission has referred to a 'new normal' where external migratory pressure will continue along the Southern border⁷⁴. However, as shown in the previous chapter, this may not be the case as the statistics show a clear decrease in 2017. Thus the importance of using updated empirical evidence is critical. Moreover, while human trafficking is a matter of grave concern in terms of human rights, it represents a very small part of the migration picture⁷⁵.

Perceptions about migration have also affected UfM member states' stance on the GCM. In the EU, diverse far right groups and political parties mobilised to oppose the Compact ahead of its adoption and to present it as an instrument enshrining the right to migrate as a fundamental one⁷⁶. The European Commission attempted to dispel these fallacies in a fact sheet press release in November 2018⁷⁷. By that time however, it was difficult to build a strong counter-narrative in favour of international cooperation on migration. The decision by the Austrian government, which held the EU's presidency in the second semester of 2018,

⁶⁸ Special Eurobarometer 474, 'Report: Europeans' perceptions of the Schengen Area', June-July 2018, p. 7.

⁶⁹ Eurobarometer 469, 'Report Integration of immigrants in the European Union', p. 5.

⁷⁰ Standard Eurobarometer 89, Report European citizenship. Spring 2018, p. 69.

⁷¹ N. Esipova, J. Fleming and J. Ray, 'New Index Shows Least-Most-Accepting Countries for Migrants', 23 August 2017, Gallup, available at <https://news.gallup.com/poll/216377/new-index-shows-least-accepting-countries-migrants.aspx> (accessed 23 January 2019).

⁷² Regional Cooperation Council, 'Balkan Barometer 2017', Sarajevo, available at:

https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2017.pdf, p. 85 (last accessed 23 January 2019).

⁷³ A. Geddes and L. Hadj-Abdou, 'Changing the path? EU migration governance after the "Arab spring"', Mediterranean Politics No 23, 2018, pp. 142-16, at 143.

⁷⁴ Commission Communication, 'Establishing a new Partnership Framework with Third Countries under the European Agenda on Migration', Strasbourg, 7.6.2016 COM(2016) 385 final, p. 5.

⁷⁵ UNODC, Global Report on Trafficking in Persons 2018, Vienna, 2018.

⁷⁶ K. Newland, 'An Overheated Narrative Unanswered: How the Global Compact for Migration Became Controversial', Migration Policy Institute, Commentary, December 2018.

⁷⁷ European Commission, Fact Sheet, 'What is the Global Compact for Safe, Orderly and Regular Migration?', Brussels, 14 November 2018.

to oppose the Compact was a decisive moment after which various other governments announced their opposition to the Compact. Interestingly enough, in the final vote endorsing the Compact in the General Assembly on 19 December 2018, only the Czech Republic, Hungary and Poland voted against (together with Israel and the United States). Austria, Bulgaria, Italy, Latvia and Romania abstained. The European Union endorsed the Compact in its capacity as an observer in the UN General Assembly.

In Belgium, the Prime Minister had to resign when the governing coalition split over the Compact thus taking down his government. Migration also seems likely to be an important issue in the up-coming European elections in May 2019, with several far right wing political parties positioning it very high on their agendas.

Regarding non-EU UfM member states, Morocco has been a staunch supporter of the process, hosting the special conference in Marrakesh in December 2018 where the GCM was adopted (in advance of the UN General Assembly vote). In turn, Israel voted against the Compact with the Prime Minister citing the need to 'protect our borders against illegal infiltrators'⁷⁸, a term often used in Israel to refer to refugees, mostly from Eritrea and Sudan⁷⁹. Algeria abstained in the vote. All other non-EU UfM member states voted in favour of both Compacts.

In Algeria, political debate on migration has been framed in securitarian terms. Among other reasons, security aspects were mentioned by the Ministry of Interior for abstaining in the GCM vote⁸⁰. Other senior officials have presented negative views on migrants as being the 'source of crimes and drugs'⁸¹. In that regard, the UN Special Rapporteur on Migration, Felipe González, has criticised alleged collective expulsions to Niger of which 17 000 are claimed to have occurred in 2018⁸². The UN Committee on Migrant Workers has also expressed concern over the lack of a clear prohibition on collective expulsion in Algeria's migration law.

The Syrian crisis has had an important impact on other UfM member states, particularly those which host the largest numbers of refugees. These are Turkey, Jordan and Lebanon. According to some academic surveys, public attitudes towards refugees in Turkey have remained fairly stable⁸³. In Jordan, an analysis of newspaper headlines indicates that the emphasis has been on the suffering of refugees (and migrants) in Europe suggesting that Jordan should be more generous⁸⁴. A similar picture emerges from the literature

⁷⁸ The Times of Israel, 'Netanyahu: Israel won't sign global migration pact, must protect its borders', 20 November 2018.

⁷⁹ R. Ziegler, 'Benjamin Netanyahu's U-turn: no redemption for asylum seekers in Israel', The Conversation, 9 April 2018.

⁸⁰ Sputnik, 'Alger énumère les points qu'il refuse dans le pacte de Marrakech sur les migrations', 17 December 2018, available at: <https://fr.sputniknews.com/international/201812171039334563-alger-reserves-pacte-migrations-onu-marrakech/> (accessed 23 January 2019).

⁸¹ Y. Allouche, 'Algeria's anti-immigrant hysteria is hiding government failings', The New Arab, 13 July 2017, available at: <https://www.alaraby.co.uk/english/comment/2017/7/13/algerias-anti-immigrant-hysteria-is-hiding-government-failings> (accessed 23 January 2019).

⁸² UN News, 'Algeria must stop arbitrary expulsion of West African migrants in desert: UN migration rights expert', 11 October 2018, available at: <https://news.un.org/en/story/2018/10/1022832> (accessed 23 January 2019).

⁸³ S. Yitmen and M. Verkuyten, 'Positive and negative behavioural intentions towards refugees in Turkey: The roles of national identification, threat, and humanitarian concern', Journal of Community & Applied Social Psychology No 28(4), 2018, pp. 230-243; F. Ghosn, A. Braithwaite and T.S. Chu, 'Violence, displacement, contact, and attitudes toward hosting refugees', Journal of Peace Research NO 56(1), 2019, pp. 118-133.

⁸⁴ A. Haider and S. Olimy, 'The Representation of Laji'een (Refugees) and Muhajireen (Migrants) in the Headlines of Jordan News Agency (PETRA)', International Journal for the Semiotics of Law-*Revue internationale de Sémiotique juridique*, 2018, pp. 1-32; J. Fleming et al., 'Migrant Acceptance Index: A Global Examination of the Relationship Between Interpersonal Contact and Attitudes toward Migrants', *Border Crossing* No 8(1), 2018, pp. 103-132; N. Khouri Accad, 'Critical Reflection on Our Responses to the Syrian Crisis: Attitudes, Labels, and a Parable', *Transformation* No 35(2), 2018, pp. 133-139.

on Lebanon though this conclusion is not consistent across academic studies⁸⁵. The importance of leadership has been the focus of attention in some studies on Lebanon, in particular the impact of some political leaders' rhetoric which has stoked anti-refugee sentiment. There is also an indication in the relevant studies that public perceptions are not consistently positive⁸⁶.

One factor in attitudes towards migration in UfM member states seems to be whether the state has been the subject of large and recent emigration giving rise to a significant diaspora groups abroad. Where this is the case, attitudes tend to be more favourable to the benefits of migration. Where there has been little outward migration in living memory from a country the opposite tends to occur⁸⁷.

The Moroccan government which hosted the Marrakesh GCM conference, has increased its engagement with migration issues. This is not only due to its large diaspora and its cooperation with the EU and its Member State authorities (see section 3), primarily Spanish ones, on migration matters but also due to the increasing number of immigrants who reside in the country. A regularisation programme took place in 2018 to provide a residence status to those irregularly in the country.

Other non-EU UfM member states include Albania, which signed the Compact enthusiastically⁸⁸ and which has a large number of emigrants abroad⁸⁹. Egypt, likewise, has a large emigrant population and has signed both Compacts. Yet, Egypt seems favourable to an EU initiative to reach an agreement to prevent the departure of potential migrants from its shores, because it is seen by the Egyptian government as an 'opportunity for increased foreign aid and employment opportunities'⁹⁰. Tunisia also signed both Compacts and has a large emigrant population. The sensitivity of the public to migration is also revealed by the cold reception that the Tunisian authorities gave to the EU's approach in the summer of 2018 that it should host a disembarkation platform for asylum seekers⁹¹.

⁸⁵ M. Dellas, 'Strangers in a strange land: visualizing Syrian refugees in US, Canadian, and Lebanese newspapers', (Doctoral dissertation), 2018; B. Savun and C. Gineste, 'From protection to persecution: Threat environment and refugee scapegoating', *Journal of Peace Research* No 56(1), 2019, pp. 88-102.

⁸⁶ A. Braithwaite *et al*, 'Violence and the perception of risk associated with hosting refugees. *Public Choice*', 2018, pp. 1-20.

⁸⁷ F. Ragazzi, 'A comparative analysis of diaspora policies', *Political Geography* No 41, 2014, pp. 74-89; A. Bielenberg, *The Irish Diaspora*, Routledge, 2014; N. Mai, 'The Albanian diaspora-in-the-making: media, migration and social exclusion', *Journal of Ethnic and Migration Studies* No 31(3), 2005, pp. 543-561.

⁸⁸ IOM, Press Release, 'Defending Migrants Rights and Dignity in Albania for 25 Years', 21 December 2018, available at: <https://www.iom.int/news/defending-migrants-rights-and-dignity-albania-25-years> (last accessed 23 January 2019).

⁸⁹ K. Barjaba and J. Barjaba, 'Embracing Emigration: The Migration-Development Nexus in Albania', *Migration Policy Institute*, 10 September 2015.

⁹⁰ G. Tsourapas, 'Egypt: Migration and Diaspora Politics in an Emerging Transit Country', 8 August 2018, *Migration Policy Institute*.

⁹¹ B. Fox, 'EU lowers its ambitions on African migration control', *Euractiv*, 6 November 2018,

<https://www.euractiv.com/section/development-policy/news/eu-lowers-its-ambitions-on-african-migration-control/> (accessed 23 January 2019); L. Lixi, 'After Revolution, Tunisian Migration Governance Has Changed. Has EU Policy?', 18 October 2018, *Migration Policy Institute*, <https://www.migrationpolicy.org/article/after-revolution-tunisian-migration-governance-has-changed-has-eu-policy> (accessed 23 January 2019).

2.4 Conclusions

The position of UfM member states on the UN's adoption of the Compacts reveals schisms across the region. While on the whole the UfM member states were in favour of the Compacts, the divisions in the EU were the most radical, a matter for internal EU reflection. The EU Member States have a wide diversity of perspectives on migration which are revealed in the difficulties not only in forming a common position on the UN's GCM but also on internal EU legislation. In the EU, Member States are having difficulty finding agreement on modification of their immigration and refugee protection rules because of differences in perspective on almost every aspect. Notwithstanding existing EU legislation, progress towards more harmonisation and closer cooperation have been difficult to achieve.

In the non-EU UfM member states, there are also different attitudes. The big hosting states for Syrian refugees appear, from the available academic studies, to be maintaining a fairly positive approach to refugees with the possible exception of Lebanon. By contrast, those states which were caught up as transit states for the refugees crossing across Europe in 2015 and 2016 are more likely to have negative attitudes. Generally, however, UfM member states which have a history of emigration tend to have a more positive outlook on migration than those which do not.

3 Overview of existing initiatives in the region on refugee and migration protection

3.1 Introduction

In this section we examine the engagements and relations among UfM member states and third countries in respect of border management, migration and refugee protection from two perspectives: law and politics. The existing international legal framework within which UfM member states operate includes numerous conventions and agreements with consequences for border management, migration and refugee protection. All UfM member states (except the Palestinian Authority) have signed and ratified the most significant of these. Other conventions enjoy a lower level of ratification by UfM member states. This international legal framework has recently been reinforced by political commitments which most UfM member states have given to the Global Compacts on Migration and Refugees. Both Compacts affirm the solemn commitment of the states which voted for them to comply fully with their international human rights obligations as contained in the UN legal framework⁹².

In order to provide a clear overview of existing initiatives in the UfM, we will first set out this legal framework. We will continue by describing the main political initiatives in which EU UfM member states participate regarding border management, migration and refugee protection. We will first look at EU related or started initiatives and then analyse those where only non-EU UfM member states are parties. We set the initiatives out in chronological order with a brief outline of when they were established, the membership and objectives. There is a clear difference between these initiatives. Where the EU and its Member States are involved, controlling borders and combating irregular migration are important objectives. In those where the EU and its Member States are absent, achieving free movement and facilitating migration are important objectives. The regional commitments of all UfM member states need to be accommodated.

Since its inception, a number of UfM member states have become EU Member States. The enlargements of 2004, 2007 and 2013 brought into the EU the following UfM member states: Bulgaria, Croatia, Cyprus, Malta and Romania. This had consequences regarding the independence of their law and policy in the field of border management, migration and refugee protection. This is because the widening of competences of the EU in 1999 (the creation of the Area of Freedom, Security and Justice (AFSJ)) took borders, migration and refugee protection into the EU sphere and limited Member State powers.

The Syrian conflict starting in 2011 has created over 5 600 000 refugees mainly hosted in the surrounding countries. This has brought a sense of urgency to the issue of cooperation on refugee protection to many UfM member states. However, the way forward to achieve cooperation is far from clear. One mixed policy and legal initiative specifically addressing this crisis, the EU-Turkey Statement 2016, engaged two UfM partners (Turkey and the EU) in a programme to reduce the movement of Syrian refugees (and others) from Turkey to the EU (specifically Greece). The parties sought to use a wide tool kit of border and migration measures (as well as very substantial financial assistance) to stabilise refugee movements in the Eastern Mediterranean. According to the EU Commission's assessment, the initiative has been very successful in diminishing the numbers of arrivals of Syrian refugees (and others) from Turkey into the EU. As an

⁹² GCM, paragraph 15: 'The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families'.

important part of the deal, the EU undertook to abolish mandatory visa requirements for Turkish nationals coming to the EU at the latest by the end of June 2016 (with some provisos)⁹³. As of January 2019, this had not yet happened.

3.2 Key findings

- There is a wide range of legal agreements and policy initiatives on border management, migration and refugee protection among UfM countries together, severally and with third countries and regions which have substantial overlaps and tensions;
- The international legal framework for UfM member states is established by UN agreements which have provisions relevant to border management, migration and refugee protection. Political commitment to this legal framework was reaffirmed by most UfM member states on signature of the GCM and GCR;
- There is a highly variable geometry of state and regional participation in political initiatives on borders, migration and refugee protection among UfM member states;
- Confidence and trust among the UfM partners are critical to achieving any progress in this field but resolving tensions between the border management, migration and refugee protection aims of EU-related initiatives and non-EU UfM ones may not be easy;
- More coherence in policy for border management, migration and refugee protection among the UfM member states would be desirable.

3.3 Existing legal frameworks on migration among UfM member states

The international commitments of UfM member states under UN and ILO conventions are a strong source of common obligations and a starting place for cooperation. This is notwithstanding that not all states are parties to all agreements. Here is an overview of those commitments, their relevance to the subject and the state of signature and ratification. The UN human rights conventions are a strong source of shared values and undertakings among UfM member states. The conventions set out applicable standards for all states in their treatment of people, including migrants and refugees. Cooperation on border management, migration and refugee protection among UfM member states could usefully start from their shared existing legal commitments. This is an already-existing and stable legal basis for cooperation.

General (with Migration Relevance)

3.3.1 UN Convention on the Elimination of all Forms of Racial Discrimination - 1965

This human rights convention has been signed and ratified by all UfM member states (except the Palestinian Authority). It defines racial discrimination as any distinction or other preference based on race, colour, descent, or national or ethnic origin which has the effect of nullifying or impairing enjoyment of other human rights on an equal footing. While it does not apply to distinctions between citizens and non-citizens or provisions on nationality, citizenship or naturalisation, those provisions must not discriminate against any particular nationality. It does cover the treatment of migrants and refugees.

⁹³ EU-Turkey Statement, 18 March 2016, available here: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 23 January 2019).

3.3.2 UN International Covenant on Civil and Political Rights - 1966

This human rights convention has been signed and ratified by all UfM member states (except the Palestinian Authority). It confirms the inherent dignity of all human beings and prohibits torture, inhuman or degrading treatment or punishment. It includes the right to liberty of the person and recognises the family as the natural and fundamental unit of society. It confirms the right of all people to leave any state as well as the right to return to one's state. It requires the rights to be contained in law and remedies to be provided. It also prohibits discrimination on a wide range of grounds in the delivery of the rights.

3.3.3 The UN Convention on the Rights of the Child - 1990

This convention has been signed and ratified by all UfM member states (except the Palestinian Authority). The principle of the best interests of the child is established here as the overarching consideration in respect of all actions about minors. It prohibits arbitrary detention of children and requires states to provide them with education.

3.3.4 The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - 1990

This convention is specifically about the human rights of migrant workers and their family members. It brings together human rights from all the other UN conventions and applies them specifically to the situation of migrants. It is divided into the rights of legally present migrants and those of irregularly present migrants. It has not been ratified by any EU state but has been signed and ratified by Albania, Algeria, Bosnia-Herzegovina, Egypt, Morocco, Syria⁹⁴ and Turkey.

Relevant Non-Human Rights Conventions

3.3.5 The ILO Migrant Workers Conventions 97 (1949) and 143 (1975)

All UfM member states are members of the ILO (and committed to take account of its recommendations) but not all have ratified the two migrant workers' conventions. The two conventions establish the rules under which migrant workers recruited in one state should be treated in the state where they work. Convention 97 includes free and accurate information for migrants, non-discrimination in wages and benefits, social security and trade union activities, and modalities on recruitment. Convention 143 deals with migrants in abusive situations and requires equality of treatment in wages, social security and other benefits. Less than half of UfM member states have ratified both conventions⁹⁵.

3.3.6 UN Protocols against Smuggling and Trafficking of Human Beings - 2000⁹⁶

These two protocols to a UN convention against transnational organised crime set out definitions of trafficking in human beings and smuggling. They are generally referred to as the Palermo Protocols. They require states to take action against both trafficking and smuggling of human beings. They recommend

⁹⁴ Syria suspended its membership of the UfM on 1 December 2011.

⁹⁵ Convention 97 has been ratified by Albania, Algeria, Bosnia and Herzegovina and Israel and, among EU states, by Belgium, Cyprus, France, Germany, Italy, Netherlands, Portugal, Spain, Slovenia and the UK. Convention 143 has been ratified by Albania, Bosnia and Herzegovina and, among EU states, by Cyprus, Italy, Portugal, Sweden and Slovakia.

⁹⁶ UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000, available at:

<https://www.refworld.org/docid/479dee062.html> (accessed 23 January 2019).

action to protect victims of trafficking. They have been signed (and mainly ratified) by all UfM member states (except the Palestinian Authority).

Refugee Protection

3.3.7 UN Convention Relating to the Status of Refugees - 1951

The key international instrument which defines and protects refugees is the UN Convention relating to the status of refugees 1951. It has been ratified by most UfM member states. It has a 1967 protocol which lifts a temporal and territorial restriction to Europe. This protocol has not been ratified by all UfM member states. The cornerstone of the convention is the right of anyone who is a refugee within the definition of the convention to protection from refoulement (return to a country where he or she fears persecution in accordance with the convention)⁹⁷. The UfM member states which are not signatories are Jordan, Lebanon, the Palestinian Authority and Syria⁹⁸. Turkey and Monaco have retained the territorial limitation by not signing the protocol. This limits the convention's application to European refugees only.

3.3.8 UN Convention against Torture - 1984

The UN Convention against Torture (CAT)⁹⁹ was opened for signature in 1984. Article 3 contains a prohibition on refoulement of any person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture (as defined in the convention). All UfM member states have ratified the convention (except the Palestinian Authority). There is no exception to the obligation on parties to refrain from sending a person to a state where there is a risk of torture (or onward refoulement to such a state).

3.3.9 UN Convention against Enforced Disappearance - 2007

The UN opened for signature the International Convention for the Protection of All Persons from Enforced Disappearance in 2007. Article 16(1) provides that 'no State Party shall expel, return ("refoul"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance'. Non-EU UfM state signatories are: (ratified) Albania, Bosnia and Herzegovina, Montenegro, Morocco and Tunisia; (signed but not yet ratified): Lebanon and Monaco. Almost all EU UfM member states have signed the convention already and many have ratified it. Those which have done neither are: Estonia, Hungary, Latvia and the UK.

3.3.10 Supervision and Debate

Each of the human rights conventions establishes a system of supervision by a Treaty Body. Where states have notified acceptance, the Treaty Body is also competent to receive and determine individual complaints against that state. The Palermo Protocols are supervised by the United Nations Office on Drugs and Crime (UNODC), whilst the ILO conventions by the ILO itself. The Refugee Convention is the responsibility of UNHCR. The Conventions against Torture and Enforced Disappearance, similarly to the other human rights conventions, create Treaty Bodies responsible for their supervision. These Treaty Bodies have dispute determination powers where states have notified their acceptance.

⁹⁷ There are limited exceptions to the non-refoulement obligation of signatory states. A. Duffy, 'Expulsion to face torture? Non-refoulement in international law', *International Journal of Refugee Law* No 20(3), 2008, pp. 373-390.

⁹⁸ Syria suspended its membership of the UfM on 1 December 2011.

⁹⁹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at:

<https://www.refworld.org/docid/3ae6b3a94.html> (accessed 23 January 2019).

3.4 The EU and UfM member states: Initiatives on Borders, Migration and Refugee Protection

UfM member states are involved in a substantial number of policy initiatives which include a border management, migration and/or refugee protection dimension. We will set these out in chronological order in two parts: EU related and non-EU related. We will also indicate the parties and a brief outline of the content of each initiative. Some of the initiatives have been more sustained than others. The key seems to be whether the initiative has been able to become institutionally embedded.

3.4.1 Barcelona Process

This process, commenced by a conference in Barcelona in 1995, established a Euro-Mediterranean Partnership and had three objectives: (1) Definition of a common area of peace and stability through the reinforcement of political and security dialogue (Political and Security Basket); (2) Construction of a zone of shared prosperity through an economic and financial partnership and the gradual establishment of a free-trade area (Economic and Financial Basket); and (3) Rapprochement between peoples through a social, cultural and human partnership aimed at encouraging understanding between cultures and exchanges between civil societies (Social, Cultural and Human Basket). It was composed of the 15 EU Member States of 1995, the European Council and the European Commission, plus Croatia, Cyprus, Malta, North Macedonia and Turkey. Also part of the Process were Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria (currently suspended), Tunisia and the Palestinian Authority. The Barcelona process was re-launched in 2008 as the Union for the Mediterranean, which is an intergovernmental institution. Apart from the EU 28 Member States the following are also members: Albania, Algeria, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Mauritania, Monaco, Montenegro, Morocco, the Palestinian Authority, Syria¹⁰⁰, Tunisia and Turkey.

3.4.2 Joint Africa-EU Declaration on Migration and Development (The Tripoli Process)

The Tripoli Process was established in 2001 as a series of high-level political meetings where binding decisions could be pursued or followed up. The process has become part of the broader Joint Africa-EU Strategic Partnership. The Tripoli process is concerned with nine areas of discussion including human rights, brain drain, irregular migration, development, management, opportunities for regular migration, peace and security, protection of refugees and sharing of best practices. All EU Member States as well as Algeria, Egypt, Mauritania, Morocco and Tunisia are part of it.

3.4.3 European Neighbourhood Policy (ENP)

This initiative commenced in 2003 following the policy-setting speech of then-EU Commission President Romano Prodi¹⁰¹. The objective was to establish a new framework with the EU's Eastern and Southern neighbouring states which would result in the sharing of the EU's internal market but not its institutions. The gradual inclusion of free movement of persons was envisaged. The UfM member states which are part of ENP are Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria¹⁰² and Tunisia. Formal legally-binding agreements were settled with most of these states (except Syria) on which Action Plans for cooperation have been built. These are not legally binding and use positive conditionality to make progress including on the fight against irregular migration. The Commission provides regular progress

¹⁰⁰ Syria suspended its membership of the UfM on 1 December 2011.

¹⁰¹ R. Prodi, 'A Wider Europe – A Proximity Policy as the Key to Stability', Speech delivered on 5 December 2002, 6th ECSA World conference on Peace, Stability and Security, Brussels.

¹⁰² Syria suspended its membership of the UfM on 1 December 2011.

reports on implementation of the Action Plans, which include updates on the fight against irregular migration. As part of the ENP, mobility partnerships, a tool of the Global Approach to Migration and Mobility (see below) with ENP countries, have been agreed in a non-legally binding form to facilitate labour migration. Morocco, Tunisia and Jordan have such agreements. These mobility partnerships also have a strong focus on enhanced border control. The EU has engaged in dialogues on migration, mobility and security with Algeria and Lebanon¹⁰³.

3.4.4 The Global Approach to Migration and Mobility (GAMM)

In November 2005, the European Commission proposed to approach migration as a global phenomenon with a special emphasis on Africa and the Mediterranean countries¹⁰⁴. Later, in December 2005, the European Council adopted the Global Approach to Migration (GAM) with priority actions focusing on both regions. As part of this approach, there was to be increasing dialogue and cooperation with neighbouring countries covering the entire Mediterranean region¹⁰⁵. Later, in 2011, the European Commission revised the GAM into the Global Approach to Migration and Mobility (GAMM). This added the word 'mobility' to incorporate a broader concept than migration which would include short-term visitors, tourists, students, researchers, business people or visiting family members¹⁰⁶.

The GAMM, and before it the GAM, constitute the overarching framework of EU external migration and asylum policy. It defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on four priorities¹⁰⁷, including combating irregular migration and the external dimension of asylum¹⁰⁸. It is embedded in the EU's overall external action, including development cooperation. Within the GAMM a regional dimension for policies is also encouraged. This has included initiatives such as the Rabat Process (see below).

3.4.5 The Euro-African Dialogue on Migration and Development (the Rabat Process)

In 2006 the Rabat Process was started based on the understanding that Spain and Morocco should not be left alone to bear responsibility for managing migration routes from Africa and that there was a need for a coordinated answer from various states. This has created a regional migration dialogue venue where the EU states, Algeria, Morocco, Mauritania and Tunisia are partners. From 2015, the Rabat Process (as well as the Khartoum Process) has been incorporated into the Valletta Framework (see below).

The Rabat Process has five objectives: addressing development and migration; enhancing legal migration and mobility; ensuring protection and asylum; making border management effective against smuggling and trafficking of persons, and irregular migration; and, finally, increasing capacities for expulsion and readmission¹⁰⁹.

¹⁰³ Commission Communication, A dialogue for Migration, Mobility and Security with the Southern Mediterranean Countries, Brussels, 24.5.2011, COM (2011) 292 final.

¹⁰⁴ Commission Communication, Priority actions for Responding to the Challenges of Migration: First Follow-up to Hampton Court, Brussels, 30.11.2005, COM (2005) 621 final.

¹⁰⁵ Presidency Conclusions on the Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean, European Council, Brussels, 15-16 December 2005.

¹⁰⁶ Commission Communication, The Global Approach to Migration and Mobility, Brussels, 18.11.2011, COM (2011) 743 final, p. 3.

¹⁰⁷ These are: better organising legal migration, and fostering well-managed mobility; preventing and combatting irregular migration, and eradicating trafficking in human beings; maximising the development impact of migration and mobility; and promoting international protection, and enhancing the external dimension of asylum.

¹⁰⁸ This means encouraging states outside the EU to take responsibility for refugee protection.

¹⁰⁹ <https://www.rabat-process.org/en/about/rabat-process/333-rabat-process> (accessed 23 January 2019).

3.4.6 Parliamentary Assembly of the Mediterranean - 2006

The Parliamentary Assembly of the Mediterranean (PAM) was established in 2006 as successor to the Conference on Security and Cooperation in the Mediterranean (CSCM) established in 1990. It is currently composed of elected representatives of nine EU parliaments¹¹⁰, as well as Albania, Andorra, Bosnia and Herzegovina, North Macedonia, Monaco, Montenegro, Serbia (Northern Partners), Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey (Southern Partners) and new partners, Mauritania and San Marino. The general secretariat is in Malta. Its mission is to assert the centrality of the Mediterranean area and reaffirm the key role of its Members in addressing their common and shared concerns through a forum that has been specifically created to serve that purpose. The 3rd Standing Committee Dialogue among civilisations and human rights has three special task forces, the third of which is charged with migration (which includes forced migration).

3.4.7 Joint Africa-Europe Strategy: EU-Africa Partnership on Migration, Mobility and Employment - 2007

The EU-Africa Partnership on Migration, Mobility and Employment is linked to the Tripoli Process. This follows the Joint Africa-Europe Strategy adopted at the second EU-Africa Summit, which took place in Lisbon in December 2007. This partnership is a formal channel for the EU and states on the African continent to work on issues of common strategic importance including migration, mobility and employment. The current focus in the area of migration is on six areas: trafficking, irregular migration, remittances, diaspora, mobility and labour migration, and international protection. Algeria, Egypt, Mauritania, Morocco and Tunisia are part of this process.

3.4.8 Regional Cooperation Council (RCC) - 2008

The RCC is a regional cooperative framework for countries in Southeast Europe which aims, in accordance with its statute, to guide, monitor and support cooperation in South East Europe¹¹¹. The RCC is the successor of the Stability Pact for South Eastern Europe. Participants include the EU, as well as several member states of the EU individually, the Council of Europe and other countries outside Europe including Canada and the United States – as well as international financial institutions and other international organisations. Non-EU UfM member states include Albania, Bosnia and Herzegovina and Montenegro. One of its objectives is to remove obstacles to the movement of people, students, researchers and workforce for which it has already started negotiations on a mutual recognition agreement on professional qualifications for selected professions¹¹².

3.4.9 EU-Horn of Africa Migration Route Initiative (The Khartoum Process)

The Khartoum Process was established in November 2014 and is intended to be a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe. The only non-EU UfM member states which participate are Egypt and Tunisia. It is a consultation framework aimed at: 'establishing a continuous dialogue for enhanced cooperation on migration and mobility; Identifying and implementing concrete projects to address trafficking in human beings and the smuggling

¹¹⁰ Croatia, Cyprus, France, Greece, Italy, Malta, Portugal, Romania and Slovenia.

¹¹¹ Statute of the Regional Cooperation Council (RCC), Sarajevo, 25 April 2013.

¹¹² Regional Cooperation Council, Multi-annual Action Plan for a Regional Economic Area (REA), June 2018,

<https://www.rcc.int/pubs/63/brochure-implementation-of-the-multi-annual-plan-for-a-regional-economic-area-map-rea> (accessed 23 January 2019).

of migrants; giving a new impetus to the regional collaboration between countries of origin, transit and destination regarding the migration route between the Horn of Africa and Europe¹¹³.

The partnership encourages the implementation of various declarations and agreements including the Tripoli Declaration on Migration and Development; the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children; and the Ouagadougou Declaration and Plan of Action for Promotion of Employment and Poverty Alleviation. This process is also part of the EU-African Union (AU) cooperation which includes Algeria, Egypt, Mauritania, Morocco and Tunisia.

3.4.10 The Valletta Process

The Valletta Process, initiated by a summit on migration in 2015, brought together European and African leaders in an effort to strengthen cooperation and address the current challenges and opportunities of migration¹¹⁴. The Process produced an Action Plan adopted at the summit, based on the existing mechanisms of the Rabat Process, the Khartoum Process and the Joint EU-Africa Strategy to monitor implementation¹¹⁵. This process includes the EU Emergency Trust Fund (EUTF) for Africa which has a global budget of EUR 4.1 billion and the objective for the (so-called) 'North of Africa window' to contribute to safe, secure and legal migration from, to and within the region and to support a migration governance approach based on human rights¹¹⁶. In addition to the EU, Algeria, Egypt, Morocco and Tunisia participate. According to the European Commission's communication of 16 May 2018¹¹⁷, this fund has been used to evacuate 1 152 persons from Libya to Niger of which only 108 have been resettled out of Niger subsequently, though the Commission states that there have been pledges for 2 681 places. The EUTF has also been used for other actions in the North Africa Region like the IOM Voluntary Humanitarian Return (VHR) programme in Libya¹¹⁸.

3.4.11 EUROMED Migration IV - 2016

Based on the GAMM, as well as other EU agendas on migration, the objective of the EUROMED Migration IV is to strengthen the dialogue and cooperation on migration, mobility and international protection with a number of countries, as well as to implement evidence-based and coherent migration and international protection policies by also providing capacity building. Besides the EU, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority and Tunisia participate (the participation of Syria is currently on hold). The implementing partner of this project is the International Centre for Migration Policy Development.

¹¹³ <https://www.khartoumprocess.net/about/milestones> (accessed 23 January 2019).

¹¹⁴ <https://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/> (accessed 23 January 2019).

¹¹⁵ There are five objectives: address the root causes of irregular migration and forced displacement; enhance cooperation on legal migration and mobility; reinforce the protection of migrants and asylum seekers; prevent and fight irregular migration, migrant smuggling and trafficking in human beings; work more closely to improve cooperation on return, readmission and reintegration.

¹¹⁶ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eutf-noa-reg-18042018.pdf> (accessed 23 January 2019).

Few Member States have offered to open any serious channels for legal migration.

¹¹⁷ Commission, Progress Report on the Implementation of the European Agenda on Migration, Brussels, 16.5.2018 COM(2018) 301 final.

¹¹⁸ https://ec.europa.eu/trustfundforafrica/region/north-africa_en (accessed 23 January 2019).

3.4.12 The EU-Turkey Statement 2016: a Mixed Legal and Policy Initiative

The EU-Turkey Statement of 18 March 2016 is a hybrid initiative which includes only two UfM members, the EU and Turkey. The Statement is exclusively migration and refugee protection oriented. It was designed to deal with the humanitarian crisis of the movement of mainly Syrian refugees from Turkey to the EU in 2015-2016. Its provisions include:

- All new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 will be returned to Turkey;
- For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU;
- Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU;
- Once irregular crossings between Turkey and the EU are ended or have been substantially reduced, a Voluntary Humanitarian Admission Scheme will be activated;
- The EU will, in close cooperation with Turkey, further speed up the disbursement of the initially-allocated EUR 3 billion under the Facility for Refugees in Turkey. Once these resources are about to be used in full, the EU will mobilise additional funding for the Facility up to an additional EUR 3 billion to the end of 2018;
- The EU will lift mandatory visa requirements for Turkish citizens at the latest by the end of June 2016 (subject to provisos);
- The EU and Turkey will work to improve humanitarian conditions inside Syria¹¹⁹.

The Statement is an interesting example of approaching migration and refugee protection issues from a multifaceted perspective. The EU objective of slowing and stopping the movement of Syrian refugees (and others) into the EU from Turkey was prevalent. To achieve the objective, a fairly complex resettlement arrangement was put in place which complemented a commitment to return all migrants, whether refugees or not, who arrive irregularly on the Greek Islands from Turkey. The Turkish interest was met through a commitment to very substantial financial assistance and the lifting of the mandatory visa requirement on Turkish nationals within a specific time frame. This time frame has not been successfully met and the EU is still reviewing the conditions for the lifting of the visa requirement¹²⁰. This Statement has been controversial among scholars not least as when tested before the EU's Court of Justice, that court found that it did not have competence to interpret the statement as it was not adopted in accordance with requirements laid down in the Treaties establishing the functioning of the EU¹²¹. According to the European Commission, the Statement has been successful in reducing irregular migration flows from Turkey to the EU. However, by February 2018, only 12 476 Syrian refugees had been resettled to an EU Member State¹²².

¹¹⁹ <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> accessed 19 January 2019.

¹²⁰ http://europa.eu/rapid/press-release_MEMO-18-3407_en.htm accessed 19 January 2019.

¹²¹ S. Peers, 'The final EU/Turkey refugee deal: a legal assessment', EU Law Analysis, 18 March, 2016; T. Spijkerboer, 'Bifurcation of people, bifurcation of law: Externalization of migration policy before the EU Court of Justice', Journal of Refugee Studies No 31 (2), 2018, pp. 216-239. Case T-192/16 *NF v Council* ECLI:EU:T:2017:128; appeal held to be manifestly inadmissible by the CJEU Case C-208/17 ECLI:EU:C:2018:705.

¹²² European Commission, EU-Turkey Statement. Two Years On. April 2018, available here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf (accessed 23 January 2019).

3.5 Non-EU UfM member states Initiatives on Border Management, Migration and Refugee Protection

There are a number of initiatives related to border management, migration and refugee protection among non-EU UfM member states and their neighbours. There is some overlap among these initiatives in terms of membership. There are many regional organisations which are relevant. The largest is the African Union (AU). Most of the regional organisations address border management and migration in formal agreements among their partners which aim to facilitate migration. The AU's 2016 project to assure free movement, residence and economic migration as an entitlement for nationals of all African states across the continent is the most recent example. The following outlines the initiatives including non-EU UfM member states in chronological order.

3.5.1 The League of Arab States (LAS)

The LAS was created on 22 March 1945 in order to promote the common interests of the participating states, coordinate their policies and strengthen their ties. It is composed of 22 states including UfM members Algeria, Egypt, Jordan, Lebanon, Mauritania, Morocco, the Palestinian Authority, Syria¹²³ and Tunisia.

The first LAS agreement which affected migration was the Agreement of Economic Unity of 3 June 1957. According to Article 1 of the agreement, one of the aims is to guarantee free movement of people as well as freedom of residence, work and employment. Many other declarations, charters and agreements regarding different aspects of freedom of movement for Arab citizens have also been adopted in the last decades. The implementation of such initiatives has varied enormously from country to country. Several bilateral agreements have been signed¹²⁴. In September 2014, the Arab Regional Consultative Process (ARCP) was established. It had its first meeting in April 2015. The ARCP issued a declaration on irregular migration across the Mediterranean, where the ARCP stated that there was '[a] need to provide the necessary support for life-saving operations of irregular migrants across the Mediterranean'¹²⁵. The League also has initiatives to combat human trafficking, including the 2006 Model Law to Combat the Crime of Trafficking in Persons, which was adopted by the Councils of Arab Ministers of Justice and of the Interior, and which is intended to help states to adopt legislation in the area¹²⁶.

3.5.2 Arab Maghreb Union (AMU) - 1989

The AMU was established in 1989 with the aim to create a region of economic and political integration in the Maghreb. The UfM member states participating are Algeria, Mauritania, Morocco and Tunisia. Its founding Treaty established, among its objectives, in Article 2 the progressive realisation of free movement of people¹²⁷. However, no specific agreement on free movement of people has been signed and the organisation has suffered from political paralysis¹²⁸.

¹²³ Syria suspended its membership of the UfM on 1 December 2011.

¹²⁴ UN and IOM, '2015 Situation Report on International Migration, Displacement and Development in a Changing Arab Region', IOM, Beirut, 2015, pp. 104-110.

¹²⁵ ARCP, Statement of The First Meeting of Arab Regional Consultation Process on Migration concerning Victims of Irregular Migration across the Mediterranean, April 2015.

¹²⁶ UN and IOM, 2015 Situation Report in a Changing Arab Region, Beirut, 2015, pp. 104-110.

¹²⁷ Treaty establishing the Arab Maghreb Union, Marrakech, 17 February 1989.

¹²⁸ T. Abderrahim and F. Aggad, 'Starting afresh: The Maghreb's relations with sub-Saharan Africa', European Centre for Development Policy Management, April 2018.

3.5.3 Common Market for Eastern and Southern Africa (Comesa) - 1994

Comesa was formed in December 1994. Out of the UfM member states only Egypt and Tunisia participate. There are two main legal instruments: the Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements, and the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. Neither Egypt nor Tunisia have ratified either¹²⁹.

3.5.4 Community of Sahel-Saharan States (CEN-SAD) - 1998

The CEN-SAD was established on 4 February 1998 in Tripoli, Libya. Egypt, Mauritania, Morocco and Tunisia are state parties together with 25 other African States. Article 1 of the Treaty establishing the CEN-SAD incorporates a reference to the elimination of 'all obstacles to unity among Member States' by 'facilitating free movement of persons' and 'ensuring freedom of residence, employment, ownership and economic activity'. The implementation of this objective has yet to be achieved¹³⁰.

3.5.5 AU Migration Policy Framework for Africa - 2006

This policy adopted on 25 – 29 June 2006 in Banjul in Gambia¹³¹ has been superseded by the free movement-passport project (see below). The Migration Policy Framework identified nine key thematic migration issues with sub-themes and made policy recommendations. The migration policy framework provided as sub-themes a) Labour Migration, b) Border Management, c) Irregular Migration, d) Forced Displacement, e) Human Rights of Migrants, f) Internal Migration, g) Migration Data, h) Migration and Development, and i) Inter-State co-operation and partnerships. It also highlighted other social ramifications of migration including migration and health, environment, gender or conflict.

3.5.6 Pan-African Forum on Migration (PAFoM) - 2015

The PAFoM was established in 2015 as a platform to facilitate dialogue on migration and enhance free movement of people and integrated border management, among others. All AU states participate. The last meeting, under the theme of 'harnessing the benefits of Free Movement of persons regime for sustainable development in Africa', took place in Djibouti in November 2018¹³².

3.5.7 AU Free Movement Protocol and Passport Initiative - 2016

On 27 July 2016 the AU at its Summit in Kigali launched the African Union Free Movement and Passport project. This project is based on the Protocol on Free Movement of Persons in Africa, as envisioned by the 1981 African Charter on Human and Peoples' Rights and the 1991 Treaty establishing the African Economic Community (Abuja Treaty). The Protocol was adopted in January 2018 and is in the process of being signed and ratified¹³³. The Protocol provides for free movement of persons, a right of residence and a right of establishment on the continent¹³⁴. This is to be achieved in three phases: first the abolition of all visa

¹²⁹ For more information visit: <https://www.uneca.org/pages/comesa-free-movement-persons> (accessed 23 January 2019).

¹³⁰ See United Nations Economic Comission for Africa, <https://www.uneca.org/pages/cen-sad-free-movement-persons> (accessed 23 January 2019).

¹³¹ African Union, Migration Policy Framework for Africa and Plan of Action (2018 – 2030), Addis Ababa, May 2018.

¹³² More information available here: <https://www.iom.int/pan-african-forum-migration> (accessed 23 January 2019).

¹³³ So far Rwanda has ratified the Protocol and 32 states have signed it: https://au.int/sites/default/files/treaties/34244-sl-protocol_to_the_treaty_establishing_the_african_economic_community_relating_to_free_movement_of_persons_right_of_residence_and_right_of_establishment.pdf (accessed 23 January 2019).

¹³⁴ Article 2, Protocol to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment, Addis Ababa, 29 January 2018.

requirements and a right of entry for all citizens of AU states to the territory of one another; secondly, a right of residence anywhere on the continent; and, thirdly, a right of establishment (the right to take up and pursue self-employed economic activities). Article 10 of the Protocol provides that the member states shall adopt a document called an African Passport. The African Passport initiative has the objective of easing free movement of people. The first passports were issued at the AU Summit 2016 to a number of heads of state. It is planned that the passports will become available to citizens of AU states by 2020¹³⁵. UfM member states which are part of the AU are Algeria, Egypt, Mauritania, Morocco and Tunisia.

The AU passport and free movement project builds on a number of sub-regional free movement regimes, including Comesa, CEN-SAD and AMU, by creating one coherent regime for the continent.

3.5.8 African Migration Observatory - 2018

The establishment of the observatory was decided at the thirty-first ordinary session of the Assembly of the African Union, which took place on 1-2 July 2018 in Nouakchott, Mauritania. The African Migration Observatory will be hosted in Rabat, Morocco. It aims at collecting information on migration flows, promoting migration management between African countries as well as facilitating coordination.

3.6 Conclusions

UfM member states share a strong international legal framework which is relevant to border management, migration and refugee protection. This framework is composed of UN human rights conventions, anti-trafficking and smuggling Protocols, ILO conventions and UN refugee protection conventions. It has multiple international supervisory mechanisms mainly limited to each convention or protocol. This international legal framework has been reaffirmed by the 2018 political commitment of most UfM member states to the Global Compacts on Migration and Refugees.

Initiatives in the field of migration and refugee protection among and with UfM member states are multiple and have very different aims. Some UfM member states such as Israel participate in very few. Others like Tunisia and Morocco have intense dialogue and are included in almost all initiatives. Further, the treatment of border management, migration and refugee protection is very differently addressed depending on whether the EU and its Member States are involved. When they are, there tends to be a strong border control component aimed at combating irregular migration. While there is often a commitment to create legal pathways for migration to the EU, the EU Member States rarely deliver on this undertaking. For instance, the Mobility Partnership between the EU and Morocco in 2013¹³⁶ intended to create more opportunities for Moroccans to work in the EU. However, according to Eurostat, while first residence permits issued to Moroccan nationals to carry out remunerated activities in the EU in 2013 numbered 19 064, but in 2016 the number had dropped to 10 341. The EU-Morocco Mobility Partnership seems to have diminished rather than enhanced economic mobility between Morocco and the EU. Where the EU and its Member States are not involved, the initiatives tend to have as objectives the abolition of obstacles to migration and the dismantling of border controls, though realisation is sometimes lacking. Before cooperation among UfM member states on border management, migration and refugee protection can be effectively achieved, these differences in approach must be addressed.

¹³⁵ A. Latif Dahir, 'The African Union will unveil the design for a single passport for all Africans this year', Quartz Africa, 7 January 2019.

¹³⁶ European Commission, Migration and Mobility Partnership signed between the EU and Morocco, Press Release, Brussels, 7 June 2013, http://europa.eu/rapid/press-release_IP-13-513_en.htm (accessed 23 January 2019).

4 Policy recommendations

4.1 Introduction

Border management, migration and refugee protection are fields where there is a shortage of trust and lack of confidence among governments and parliaments in the UfM member states. Without trust and confidence, it is difficult to achieve practical cooperation, particularly in respect of issues which are politically sensitive. As is apparent from the preceding sections, there has been a very wide range of political initiatives on border management, migration and refugee protection since 1995. These initiatives have incorporated a kaleidoscope of EU and non-EU UfM member states in a widely diverse manner. For example, Morocco and Tunisia have been very consistent participants while Israel is rarely involved. When the EU and its Member States are not involved, initiatives with third states and regional organisations tend to have as objectives the abolition of visa requirements, the lightening of border controls and the facilitation of migration. By contrast, when the EU and its Member States are involved, combating irregular migration tends to be an important objective.

The landscape of migration and refugee protection in many UfM member states changed dramatically with the Syrian conflict. From 2011, the political turmoil in Syria has resulted in an outflow of 5 600 000 refugees from that country according to UNHCR. They are primarily hosted in Turkey (home for 3 500 000 Syrian refugees), Jordan and Lebanon¹³⁷. Egypt also hosts more than 130 000 Syrian refugees, according to UNHCR¹³⁸. The Syrian refugee crisis has affected UfM member states quite differently, from those which have received virtually no refugees to others which host substantial numbers. Notwithstanding requests from the major hosting states for re-settlement of Syrian refugees from their territory, UNHCR announced that only 149 179 Syrian refugees have been resettled between 2014 and 2018¹³⁹. These variations have political consequences in terms of achieving cooperation among the UfM member states in the field of border management, migration and refugee protection.

Yet, most migration between and to UfM member states takes place in a safe, orderly and regular manner. As outlined in section 1, the percentage of irregular migration as a total of migration is small among the UfM member states. For instance, in the EU, only 2.5 % of third country nationals are ever treated as residing irregularly. Yet, irregular migration is a hot issue in some UfM member states. It is important to remember the scale of the issue. Compared to regular migration and the Syrian refugee crisis, this is a relatively minor issue statistically, no matter how political salient it may be. Further, pressure in pursuit of migration objectives by richer states in the UfM on poorer states can result in the de-legitimatisation of the political leaders and elected representatives of those poorer ones, if they are perceived by their own people as failing to protect their interests.

Trust and confidence are prerequisites for cooperation among UfM member states regarding border management, migration and refugee protection. This cooperation must be built on a strong foundation, which can be found in the international conventions, which the states have signed and ratified. As set out in section 3, there are six human rights and refugee conventions, which all UfM member states (except the Palestinian Authority) have signed and ratified¹⁴⁰. All of them contain provisions which are important

¹³⁷ Information available at: <https://www.unrefugees.org/emergencies/syria/> (accessed 23 January 2019).

¹³⁸ This data is valid as of 30 November 2018. See, UNHCR, 'Egypt. Monthly Statistical Report', 2 December 2018, <https://data2.unhcr.org/en/documents/download/67194> (accessed 23 January 2019).

¹³⁹ Information available at: https://data2.unhcr.org/en/situations/syria_durable_solutions (accessed 23 January 2019).

¹⁴⁰ UN Convention on the Elimination of all forms of Racial Discrimination 1965; International Covenant on Civil and Political Rights 1966; UN Convention on the Rights of the Child 1990; Palermo Protocols against Smuggling and Trafficking of Human Beings 2000 (this is not a human rights convention); UN Convention on the Status of Refugees 1951 (though not its 1967 Protocol); UN Convention against Torture, Inhuman and Degrading Treatment 1984.

regarding states' laws and policies on border management, migration and refugee protection. These are consistent, shared legal commitments to which states have voluntarily bound themselves. They provide a stable and coherent basis for cooperation. They also have the benefit of UN Treaty Bodies, which carry out regular reviews of state compliance with their commitments, and they form the basis of the UN's peer-to-peer Universal Periodic Review. These legal obligations have recently been reinforced, for those UfM member states which voted for them, by the political commitment to uphold all human rights of migrants contained in the Global Compact on Migration and in the Refugee Convention in the Global Compact for Refugees.

The Recommendations set out below are built on this strong political and legal foundation. They include institutional and practical recommendations to implement and monitor cooperation in this field.

4.2 Visas and extraterritorial controls

- Mandatory visa requirements are unpopular with most people who have to fulfil their conditions. The lifting of visa requirements is usually a political 'win' for the authorities which negotiate it. Regional bodies are well placed to pursue **visa liberalisation** among their members¹⁴¹. UfM member states could investigate moving towards visa liberalisation among themselves as well.
- **Visa refusals** can be a source of friction between states particularly when the numbers are high. One way to reduce that friction is by ensuring legal redress so that those refused a visa have an opportunity to appeal against the decision. UfM member states should introduce legal redress mechanisms for visa refusals if they do not already have such mechanisms in place.
- **Extraterritorial border-related controls at sea** can be controversial. In Europe, the practice of pushing back little boats to their port of departure to prevent their passengers arriving elsewhere has been condemned in some circumstances by the European Court of Human Rights. UfM member states should review their border control practices to avoid these human rights violations.

4.3 Border procedures

- **Assistance among border guards** to improve border management can lead to a reduction in mistrust among states as regards border crossing. As such, these actions can be valuable. However, cooperative operations among border guards must be human rights compliant. Any training which is provided (or paid for) by border guards to their colleagues in other states must include human rights as a core element. In particular, border management procedures must comply with refugee protection obligations.
- UfM member states should review their legislation to ensure that **border procedures** are inscribed in law which is accessible to all migrants and refugees. Avoiding arbitrary decision-making at borders can foster trust and confidence among states.
- As in respect of visa refusals, so too **refusals of entry** are less politically controversial where the person refused entry is entitled to a right of appeal. UfM member states should review their laws and practices to ensure that legal redress is available.

¹⁴¹ The African Union has launched its visa-free passport project aiming for visa free travel for African citizens in Africa by 2020. Y. Kazeem, 'The African Union has launched its visa-free passport but it won't make travel easier for Africans yet', Quartz Africa, 18 July 2016, <https://qz.com/africa/734839/the-african-union-has-launched-its-passport-but-it-wont-make-travel-better-for-africans-yet/> (accessed 23 January 2019).

- UfM member states **are committed to the elimination of racial discrimination**. States should establish permanent monitoring mechanisms to ensure that in the exercise of border powers no discrimination occurs on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. UfM member states are committed, both legally and politically, to full respect for the human dignity of people including in all state border control actions.
- **Discrimination on the basis of nationality** is part of border controls, but UfM member states should ensure that this discrimination is justified and not arbitrary.
- UfM member states are committed to securing the **liberty of all persons**, including for migrants¹⁴². They should review their legislation to ensure that any border control procedures, which result in the **deprivation of liberty** of a migrant, are fully consistent with their commitments. Detention must only be used as a final resort and subject to strict legality, necessity and proportionality requirements.
- UfM member states are parties to the UN Convention on the Rights of the Child which prohibits the unlawful or **arbitrary detention of children**¹⁴³. States should review their detention practices with a view to ensuring that migrant and refugee children are not held in detention.

4.4 Migration

- **Irregular migration** is an exception to the rule of safe, orderly and regular migration in and between UfM member states. Irregular migration is often the result of refugees fleeing turmoil and civil war who are unable to fulfil ordinary requirements like possession of passports and visas. UfM member states should review their laws and practices to ensure that refugees are not treated as irregular migrants.
- **Short stay migration** enables cultural exchange and people-to-people contact, which can foster tolerance. UfM member states should put in place procedures to facilitate **access to the territory** for short stay migrants.
- **Migration for studies, research and cultural exchanges** can enhance knowledge and respect among people. UfM member states should ensure that their visa and immigration rules and practices foster and facilitate this kind of migration.
- Regional bodies in which UfM member states participate could pursue multilateral agreements guaranteeing non-discrimination for students in the area of **tuition and other fees**.
- All UfM member states are members of the International Labour Office and are committed to its decent work agenda. In pursuit of this objective, UfM member states should take care that migrant **researchers** are able to enjoy the same the working conditions and wages as their national counterparts.
- UfM member states recognise that **the family is the natural and fundamental group unit of society**¹⁴⁴. Sometimes, families are divided by borders and need state approval to cross those

¹⁴² Article 9(1) ICCPR: 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.

¹⁴³ Article 37(b) Convention on the Rights of the Child: '(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'.

¹⁴⁴ Article 23(1) ICCPR: '1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.

borders in order to live together. UfM member states should ensure that their immigration laws and rules are designed to facilitate family life including as regards the definition of eligible family members for entry. UfM member states should seek to eliminate or reduce to the minimum possible all fees, time limits and other obstacles to family reunification.

- UfM member states should ensure that **admitted family members** have access to employment under the same conditions as their sponsor.
- UfM member states are free to determine the volume of **economic migration** as they consider appropriate. Where they admit migrants to their labour markets they should ensure that they are entitled to equal treatment in working conditions and wages (including dismissal). This is a requirement in (most of) the Euro-Mediterranean Agreements and is found in the earliest of the European Economic Community (EEC) Maghreb agreements dating from 1976. It is also a component of the ILO's decent work agenda.
- UfM member states should take account of the ILO recommendations, in particular that migrant workers should be **free to change employers** after two years' employment¹⁴⁵.
- UfM member states should seek to ensure that their rules relating to **regulated professions** are able to accommodate reasonable requests for accreditation by migrants within strict time limits not exceeding six months.
- UfM member states can benefit from the opportunities which business expansion through migration for self-employed activities can bring. **Liberalisation of self-employment** has been a tool frequently used by some UfM member states to foster harmonious migration (cf EU Albania Stabilisation Agreement, 2006, Article 50(4)) and is a core component of the AU's free movement and passport initiative. Regional bodies to which UfM member states belong could promote this kind of migration arrangement.
- **Integration** is an important component of migration policy. Security of residence is an essential element for successful integration of long-term migrants. UfM member states should consider introducing in their laws provisions for migrants to obtain permanent and durable residence after no more than five years residence on their territory.
- Migrant workers frequently go home at the end of their employment. UfM member states should encourage this **return migration** by ensuring that all their contributory social benefits can be exported to their country of origin when they leave. UfM member states should not make deductions for cost of living differentials. For instance, such a right is found in the earliest of the EEC Maghreb agreements dating from 1976.

4.5 Refugee protection

- As signatories to the Refugee Convention, the Convention against Torture and the Convention against Enforced Disappearance, UfM member states acknowledge that **non-refoulement** is a state obligation in international law. No person must be returned to a country where his or her life or physical integrity is endangered as a result of persecution, torture, inhuman or degrading treatment or punishment or enforced disappearance.
- UfM member states should ensure that their border procedures provide for the right to arrive and enter the state for the purpose of **seeking asylum** in accordance with their legal commitments under the Refugee Convention, the Convention against Torture and the UN Convention against

¹⁴⁵ ILO, Recommendation 6(a) R151 Migrant Workers Recommendation 1975.

Enforced Disappearance.

- UfM member states should review their laws and practices to ensure that no person seeking international protection is made subject to **criminal or civil sanctions** for crossing their borders.
- Consistent with their international obligations, UfM member states should review their laws and practices to make sure that every person who arrives at their borders and seeks asylum has a **consideration of his or her claim** on the merits of the case. UfM member states should pay special attention to the needs of victims of torture, women in vulnerable situations (for instance at risk of trafficking) and minors.
- There are many refugees currently resident in UfM member states. Many of these refugees are in protracted situations and unlikely to be able to return to their home states soon. UfM member states should encourage, through their laws and practices, all such persons to take **employment or engage in self-employment** to enable them to be self-reliant.
- The children of refugees, like all other children, need education. UfM member states are committed, under the Convention on the Rights of the Child, to providing children with education. To fulfil this commitment UfM member states should ensure that all resident children are admitted to their **education systems** with the option of being provided with education of equal quality in their home language.
- **Registration of births, deaths, marriages and divorces** are of utmost importance for refugees. UfM member states should arrange the incorporation of these persons into their national registration systems so that children's parentage is officially recognised (for instance for inheritance purposes), the marital status of refugees is clear permitting remarriage in the event of divorce and establishing death for all official purposes.

4.6 Expulsion

- No one likes being **expelled** from a state. For states, forced expulsion is expensive and time consuming. Expulsion practices can also be potential sources of conflict among states, particularly where the numbers become significant. UfM member states should review their laws and practices to ensure that expulsion is undertaken only as a **last resort** after a full consideration of the merits of the individual's claim to remain on the territory.
- Where used as a last resort, UfM member states should make sure that their expulsion procedures allow migrants **time to collect their belongings**, settle any outstanding wages claims, sell their property and send their goods to their state of origin or destination.
- UfM member states, consistent with their commitment to rule of law, should ensure that any decision to expel an individual must be reasoned, carry a **right of appeal to a judicial authority** carrying automatic suspension of the expulsion decision.
- When expulsion is carried out as a last resort, or when return is voluntary UfM member states can enhance sustainable return through the use of reintegration programmes. Such programmes need to be monitored and regularly evaluated in order to make sure they fulfil their function and support the returnees.

4.7 General

- UfM member states, in pursuit of implementation of the UN Convention on the Elimination of Racial Discrimination and their commitments in the GCM, should take action to counter **racism and xenophobia** against migrants. This could include effective civil and criminal penalties against persons who commit racist or xenophobic acts and the support of civil society groups, which seek to educate the public to diminish racism and xenophobia.
- UfM member states should enhance their capacity to collect and disseminate **accurate statistics** on migration in line with the GCM. This can facilitate better policy-making within the region.
- UfM member states should support policy dialogue across borders to ensure that **public and political perceptions** about migration are fair and accurate and facilitate mutual understanding and respect.
- The PA-UfM should establish a **unit responsible for collecting and summarising** all initiatives entered into by its states in the field of border management, migration and refugee protection. The unit could be responsible for reporting to the plenary once a year on the initiatives, including a summary, the parties and the content of each initiative.
- The PA-UfM should create a **monitoring mechanism** relating to border management, trafficking and smuggling, migration and refugee protection initiatives to which states have associated themselves with the sole duty to examine the coherence and relevance of the initiatives. This is different from the unit mentioned above, which would be administrative only. The monitoring mechanism would include members of the PA-UfM and be competent to make value judgments and assessments.
- The PA-UfM should appoint a **sub-committee** responsible for preparing an annual report to the plenary on border management, trafficking and smuggling, migration and refugee protection cooperation, which has taken place over the year and its coherence with the GCM and GCR.
- The PA-UfM could push for the establishment of a peer-to-peer **review mechanism** to give UfM member states the opportunity to present their progress on achieving shared responsibility in the field of border management, migration and refugee protection consistent with their international legal and political commitments.

These recommendations are designed to enhance UfM member states' compliance with their existing legal and political commitments in respect of border management, migration and refugee protection. Taking these commitments as the basis can promote confidence and trust among UfM member states. Recognising their strong shared legal and political foundation will help UfM member states to work together in this area.

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