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Malta's migration governance and the task of managing external borders in the European Union context

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Abstract. In the last two decades, Malta has often maintained its humanitarian commitment to managing border and asylum procedures in the context of international conventions. This is particularly emphasized in relation to rescuing migrants and generally enhancing safety and security of border crossings. Though the smallest EU member state has initiated policies aimed at reducing illegal and unsafe crossings to its shores, the country still hosts the highest number of refugees per capita in the EU with 25.3 per cent of its population being foreign nationals. This paper examines the measures put in place by the Maltese authorities to manage the enormous inflow of migrants on its shores in tandem with the four pillars of European Agenda on Migration. It also interrogates the institutional means and structural capacity of Malta to ensure the efficient implementation of the European Border Surveillance system (EUROSUR) on the one hand or provide rights-based approach to migration and asylum on the other hand. Lastly, it identifies Malta's collaborative efforts with other countries in the last twenty years and peculiar challenges faced by the more exposed countries (i.e. Malta, Spain, Italy and Greece) in the course of countering irregular border crossings.

Introduction

Thousands of migrants have died or disappeared in the last twenty years while making attempts to reach European borders, seeking better opportunities and international protection (Laino, 2015). For instance, while crossing the Mediterranean Sea to reach European shores in 2016 alone, over five thousand refugees were reported to have died while 2,406 migrants lost their lives in 2022 according to estimations (Statista Research Department, 2023). In all, over 26,000 deaths have been recorded since 2014 (Sunderland, 2022; IOM, 2023) with 2023 recording the deadliest first guarter (between January and March) for migrant deaths in six years when over 400 migrants died while attempting to cross the Central Mediterranean, considered the most dangerous maritime crossing in the world (Statista Research Department, 2023) having several cases of missing boats with "no records of survivors or search and rescue (SAR) operations" (IOM, 2023). With unfavourable economic conditions, persecution, extreme poverty, perennial conflicts, ethnic cleansing, and rights violations in many African countries, as well as absence of meaningful safe and legal channels, many people are continually propelled to embark on irregular journeys despite the risks involved. Thus, uncontrolled arrivals of "irregular migrants" continue to trouble the EU particularly the more exposed countries like Malta, Spain, Italy and Greece.

In response, member states increased their efforts to address the issues surrounding migration. Also, the EU's efforts to control migratory flows through a variety of principles and



measures rooted in regional cooperation, include the creation of common border force and coastguard. Malta subscribes to the EU's shared immigration and asylum policy, but it lacks the institutional instruments and structural capacity to effectively manage the massive inflow of migrants and asylum seekers who arrive at its ports. Although the smallest EU member-state has, over the years, implemented policies intended to reduce unauthorized and dangerous border crossings to its shores in order to avoid being "submerged by migrants," the country still hosts the highest proportion of refugees per capita in the EU, with 25.3 per cent (137,376 people) of its population being foreigners.

This paper examines the measures put in place by the Maltese authorities to manage the enormous inflow of migrants on its shores in tandem with the four pillars of European Agenda on Migration. It also interrogates the institutional means and structural capacity of Malta to ensure the efficient implementation of the European Border Surveillance system (EUROSUR) on the one hand or provide rights-based approach to migration and asylum on the other hand. Lastly, the paper identifies Malta's collaborative efforts with other countries in the last twenty years and peculiar challenges faced by the more exposed countries (i.e. Malta, Spain, Italy and Greece) in the course of countering irregular border crossings from Sub-Saharan Africa.

The article proceeds from this introduction to the second section, focusing on the European agenda on migration and border control. It explores the steps taken by the EU to ensure a sustainable border management system through different legal instruments for the protection of external borders against trafficking in goods and people, illegal immigration, transnational crime, and terrorist-related threats as well as non-legitimate asylum seekers. The third section discusses the burden of mixed migration flows and border control in Malta and its limited capacity to provide reception and protection for disembarked migrants like other coastal states.

The fourth section enumerates varied measures, policies, and practices, under five thematic areas, that can facilitate a well-functioning migration and asylum system in Malta in collaboration with regional bodies and international organisations, prioritizing the human rights, safety, and lives of migrants across countries of origin, transit, and destination. Lastly, the concluding section establishes how Malta's burden of massive inflow of migrants can be significantly addressed through international cooperation and regional approaches. It emphasizes the strengthening of the SAR operation in the central Mediterranean with adequate support for humanitarian NGOs to ensure safe and timely disembarkation of every person rescued at sea in the context of a common and human rights-based arrangement.

The European Agenda on Migration and Border Control

In the European territorial space, issues around external borders became a priority with the removal of internal borders when free movement of people (citizens' work mobility) was highlighted as one of the 1957 Treaty of Rome's goals and amplified in the Schengen Agreement reached in 1985. In the last decade, particularly after the so-called 2015-2016 refugee crisis, the EU has taken steps to ensure a sustainable border management system through varied legal instruments for the protection of external borders against trafficking in goods and people, illegal immigration, transnational crime and terrorist-related threats as well as non-legitimate asylum seekers (Marenin, 2010). Such measures also aim at ensuring humanitarian and safe European migration policy or reforming the common European asylum system (Dumbrava, 2023) as well as how to effectively manage migration flows in a comprehensive manner.

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The Partnership Framework and the Valletta Action Plan constitute an essential part of this comprehensive approach to migration. Through such a complex and multifaceted response to control the flows of irregular migration, the EU developed a diverse set of technical, securitized, and traditional development measures and projects (Molenaar and El Kamouni-Janssen, 2017). These initiatives specifically aim to (a) enhance return policies and shelter in the region of origin; (b) combat human trafficking and smuggling networks operating out of Libva; and (c) address the fundamental causes of irregular migration.

In addition to supporting host countries that receive large numbers of internally displaced persons (IDPs) and refugees (Ministry of Foreign Affairs of the Netherlands, 2019), another comprehensive approach to migration management also targets the African region. This encompasses different measures such as creating the EU Emergency Trust Fund for Africa, opening up legal immigration routes, boosting the protection of migrants and asylum seekers through maritime operations, and enhancing return and readmission cooperation, among other things.

Arising from these responses about border control by EU institutions and governments are serious human rights concerns regarding violent pushbacks or summary deportations in spite of the EU pledge of full respect of fundamental rights while protecting its borders. For instance, it is argued that people's rights are often violated through the EU externalization policy by frustrating "the right of any person to leave a country" (Human Rights Watch, 2018), thereby undermining "the right to seek asylum" or by providing "support for abusive security or border forces" (Human Rights Watch, 2018) in the cause of collaborating with third countries. Also, the Council of Europe Commissioner for Human Rights has on different occasions, observed "Malta's failure to provide prompt assistance to migrants in distress in the central Mediterranean" (OHCHR, 2021) and multiple circumstances of pushbacks organised by the Armed Forces of Malta.

The "external dimension" of migration in relation to European external borders was a major focus of the Malta Declaration of February 2017 in dealing with the massive inflows of thirdcountry nationals and "the humanitarian issues that frequently arise as a consequence" (Borsacchi, 2017) particularly among Mediterranean EU Member States in the last decade. The European Immigration and Asylum Policy has evolved over the course of more than 20 years from many outstanding roadmaps, including the Conclusions of Tampere (1999), the Work Programme of The Hague (2004) and Stockholm (2009), and the European Agenda on Migration (2015). Overall, controlling the common EU external physical boundaries, which addresses all borderrelated issues through an integrated strategy, and a global policy addressing migration are the two independent but complimentary approaches that best define the EU policy.

While managing the inflow of migrants and asylum seekers, however, EU member-states have raised concerns about lack of respect for national sovereignty, lack of responsibility towards EU obligations or lack of solidarity among governments (Buscaini, 2018). Though member-states at the EU's external borders such as Malta and Italy depend on the collaboration with the Libyan Coast Guard, different NGOs and members of the European Parliament have equally advocated that the EU halts its cooperation with and funding of the Libyan Coast Guard which "result in the detention of migrants by Libyan authorities" (Laux, 2021) apart from violating EU law by financing the Libyan Coast Guard.

The effective management of the EU's 32,719 km long sea border, 12,033 km long land border, and 1,863 authorized Border Crossing Points (BCPs) (Frontex, 2019) is a challenging task, but it largely depends on coordinated action by Member States with strong support from the



European Commission. In addressing the challenges inherent in the implementation of migration and asylum policies, the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), with its four pillars- cooperation (transversal support), democracy, human rights and the rule of law- "proposes targeted measures and activities to enhance the capacity of member states to identify and address vulnerabilities throughout asylum and migration procedures" (Council of Europe, 2021). This is to ensure access to law and justice in practice, promotion of human rights, dignity, participation and diversity, the protection from exploitation, violence, abuse, and neglect as well as co-operation between migration and asylum authorities in Council of Europe member states.

The Burden of Mixed Migration Flows and Border Control in Malta

With the EU membership in 2004, the national borders of Malta were simultaneously redefined as external borders on the periphery of the Union (Mainwaring, 2014). The reality today is that Malta has, after its membership of the European Union, become a country of immigration as against being a country of emigration for several decades. This reality manifests in the presence of many EU and third country nationals in the country and given its proximity to North Africa, Malta experiences the inflow of refugees and asylum seekers, using irregular migration routes from the northern coasts of Africa and Turkey to reach Europe.

This has significant repercussions for the country with reference to international protection, migrant integration or return of failed asylum seekers as well as resources and accommodation logistics. Over the past years (since 2002), Malta has received an upward trend in the number of unaccompanied and separated children arriving by sea, as indicated by analysis of demographics of arrivals (IOM-UNHCR, 2014), causing tremendous pressure on the country's reception infrastructure and capacity for children. The EU member-states, particularly those receiving maritime migrants, have continued to face a significant difficulty in managing the arrivals of refugees and migrants at sea. Despite its modest size (landmass) and population, Malta has one of the highest rates of unauthorized immigration and the highest rates of refugees per capita in the EU, placing strain on the country's underfunded asylum system.

Consequently, the increase in migratory pressure has continued to generate public attitudes toward migrants in Maltese society. Apart from apprehension towards foreign people and cultures occasioned by homogenous identity, there exists social tension between the migrant communities and the Maltese largely driven by the "fear of invasion that plagues the Maltese historical memory" (Holicza and Stone, 2016). For many migrants (regular) however, Malta is a preferred "destination for employment, retirement, or studies, coupled with the Mediterranean climate and lifestyle" (IOM, 2016). This also explains the unusual increase in the foreign workforce on the islands in recent years.

Similar to other coastal States that bear an excessive amount of the pressure resulting from such maritime SAR operations, Malta's capacity to provide reception and protection for disembarked migrants has been a herculean task due to its limited material power, resources, and personnel, thereby "undermining their effectiveness both in qualitative and quantitative terms" (Eleonora and Luigi Gatta, 2020). As a result, migrants, especially those in vulnerable situations such as victims of trafficking, LGBTI migrants, children and survivors of sexual violence or torture face human rights challenges given the inability of the relevant authorities to accurately establish and evaluate their human rights protection needs. With regular financial and human resources support from European states, Malta can explore more rights-based methods for effectively

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managing mixed migration flows into the country by strengthening its border protection capacities through appropriate equipment infrastructure and surveillance means.

Policy measures towards a well-functioning migration and asylum system in Malta

The EU has strengthened external border control operations since 2016 as apparent in the activities of the European Border and Coast Guard Agency and Frontex. While this has limited migration to the EU significantly (Breines et al 2015) it has not stopped migrants from embarking on long and perilous journeys to reach Europe. Studies (Breines et al. 2015; Omilusi, 2023) have shown that Malta is rarely the intended final destination for irregular migrants given that many of them, who are frequently intercepted at sea by the Armed Forces of Malta, initially anticipated to land in Italy while the majority of them were unaware that Malta even existed before arrival.

Similarly, migrants on the move have little or no information about the nuances of asylum policy and practice in Europe before and during arrival given that "decisions about where to go are made *ad hoc* along the way" (Crawley and Sigona, 2016) based on information supplied by agents and smugglers. This section elaborates on some measures, policies, and practices under five thematic areas that can ensure a well-functioning migration and asylum system in Malta, prioritizing the human rights, safety, and lives of migrants across countries of origin, transit, and destination.

A more coordinated EU approach on disembarkation and solidarity mechanisms

In order to respect the fundamental rights of everyone involved and create a secure environment for asylum seekers and migrants, the EU's approach to disembarkation and solidarity mechanisms has to be more methodical and coordinated. For instance, reception centres in the front-line Member States have in reality turned into detention centres (European Council on Refugees and Exiles, 2021), thereby violating EU and international law regarding migrants and people seeking international protection. This is applicable to Greece, Italy, and Malta. It is frequently reported that the Maltese detention centres offer substandard living conditions and human rights abuse where migrants are "held in severely overcrowded conditions with little access to daylight, clean water, and sanitation" (Times of Malta, 2020) in some cases, for 18 to 25 months (Aditus foundation, 2022).

The systematic detention of asylum-seekers and migrants who arrive irregularly in Malta by boat has also been put under the spotlight with regards to solitary confinement, electrocution, denial or delay of medical care and physical torture as confirmed by European Union Agency for Asylum (The Times of Malta, 2021) against the Maltese authority's commitment to improve the quality of living conditions in the detention centres in the 2015 Strategy Document and the Detention Regulations. The practice of mandatory detention portrays all irregularly arriving migrants and asylum seekers as dangerous criminals and creates a feeling of fear and distrust against them from the Maltese general population.

Based on the recommendations made by a number of non-governmental organizations and international (European) agencies, the Maltese government should take drastic measures to guarantee humane living conditions for all migrants and asylum seekers in detention facilities and to provide adequate support for those with unique needs and vulnerabilities. More importantly, given that there may be no legal basis for the detention of many asylum seekers and migrants and the detrimental effects of prolonged detention on their mental and physical wellbeing, "the establishment of predictable and effective mechanisms for disembarkation and relocation of



asylum-seekers" (UNHCR, 2020) should be a priority for the government with the support of other EU countries.

In this context, "the Malta agreement," which was signed in 2019 by Malta, Italy, France, and Germany during an informal summit in Valletta, aims to create a predictable temporary solidarity mechanism. Reception and accommodation for asylum-seekers and refugees require proper management while international obligations regarding the rescue of persons in distress at sea and disembarkation points should be continually respected in terms of humane treatment and provision of humanitarian assistance by concerned coastal states, ship owners, governments, flag states, as well as other qualified authorities.

Mandatory detention of irregularly arriving migrants and asylum seekers in Malta, without genuine recourse to a court of law, contradicts international human rights law and should not be an "automatic legal consequence of a decision to refuse admission of entry or a removal order" (UNHCR, 2018). Also, the non-legally binding 'solidarity declaration' signed by 18 member-states of the Union in 2022 with regards to the relocation of asylum seekers arriving in Mediterranean countries, should be strengthened with more financial commitment and operational support for frontline states.

Considering its high population density and limited size, Malta should be a greater beneficiary of this 'solidarity declaration' having, at different times, prevailed upon other member-states to acknowledge the serious irregular immigration burden and other migration-related challenges it grapples with. This is where the twin resolutions of the Internal Security Fund and the updated Integrated Border Management Fund (IBMF) passed by the Parliament in 2021 to combat organized crime and improve member-states' border management capabilities would be of great help.

Assisted voluntary return activities.

For unsuccessful asylum seekers or other migrants who wish or need to return and reintegrate in their community of origin, Assisted Voluntary Return and Reintegration (AVRR) programmes are designed to facilitate such intention of a safe and dignified return. An effective EU system for returns, it is argued, can help promote safe legal pathways, especially for third-country nationals, by having a deterrent effect on unsafe and irregular migration. While the EU member-states are encouraged to set up return and reintegration counselling structures to promote voluntary return, awareness-raising information through standard means of communication should be designed and disseminated by countries of destination and concerned international organizations/agencies.

However, such counseling or awareness raising can only assist migrants in making an educated decision about their future when they understand their legal condition and alternatives. More importantly, the reintegration component of the AVRR programmes, which is a multidimensional and complicated process, requires the commitment and collaboration of civil society, governments, and other relevant partners/actors in countries of origin in order to deliver quality reintegration supports/investments in terms of access to vocational training, psychosocial counseling, start-up grants, and other livelihoods projects. It is contended that Assisted Voluntary Return (AVR) cannot be termed "voluntary" when offered to migrants in detention.

Malta has, for over two decades, closely partnered with the international lead agency for migration, International Organisation for Migration (IOM), in the return and relocation of failed asylum seekers. Of recent for instance, as part of a project financed by the EU Commission and



Malta, International Organisation for Migration (IOM 2023) facilitated the relocation of 14 asylum-seekers in 2022. Though aimed at incentivizing return and considered more humane, cheaper, and simpler than deportation or less politically costly, AVRR programme outcomes should be constantly evaluated by operating intergovernmental bodies and other stakeholders to establish their desirability or possible sustainability gaps and areas for improvement in implementation.

Coordinated awareness-raising campaigns in countries of origin, transit and destination.

Awareness raising campaign by civil society organizations, international organizations, and governments constitutes part of the many responses aimed at exposing the dangers of human smuggling and trafficking in persons and reducing irregular migration to Europe. It usually targets potential or actual migrants on the move with a view to promoting the use of regular migration pathways and local livelihood opportunities. Using various innovative communication approaches such as community conversation, mass media, infotainment programmes, peer-to-peer messaging and training, awareness raising initiatives can bring about change in behaviours, attitudes, and perception "so that potential migrants do not consider migration as the only option for decent livelihood" (Okutho, 2018). Rather than a one-off campaign, different awareness raising interventions though community engagement and advocacy should be a continuous event in both countries of origin and destination, and this is capable of countering misinformation by smugglers and facilitating safe migration decisions.

Institutional strategies to dismantle smuggling networks.

For several years, smuggling networks, often carried out by flexible criminal groups or individuals, have mostly used the three Eastern, Central and Western Mediterranean Sea routes in addition to the Atlantic route (Western African route) to bring migrants into the EU irregularly, challenging the integrity of international borders and posing a major security and humanitarian threat for the EU in recent times. In tackling areas of impunity for smugglers along smuggling routes, the EU has strengthened international cooperation with many countries of transit and origin, particularly in Africa. Some policy instruments adopted between 2015 and 2016 include the Migration Partnership Framework, the Valletta Action Plan and the European Agenda on Migration targeting cooperation with migrants' countries.

Within Malta's expansive SAR zone, the Armed Forces of Malta and the Malta Police Force are in charge of the practical and operational elements of border control, while the Ministry of Home Affairs and National Security is in charge of internal border control and irregular migration regulations. In recent years, Malta has in this regard cooperated with Italy and received assistance from other EU countries in carrying out its maritime patrols concerning search and rescue operations, training of Maltese personnel and intelligence sharing. Combating irregular migration, smuggling, and trafficking requires the cooperation of third countries and building their operational capacities in terms of anti-smuggling risk analysis, border control, return and readmission.

It is argued, especially by EU politicians and supported by a few studies (Deiana, Dehesri and Mastrobuoni, 2019), that existing major search and rescue (SAR) operations unintendedly boost migrant smuggling or "serve as pull factors for migrants" (Breines, M. et al 2015). Most studies (Arsenijevic, Marcel and Rony, 2017; Steinhilper and Gruijters, 2018; Cusumano and Villa, 2019; Rodríguez Sánchez, Rischke, Wucherpfennig and Iacus, 2022) however, found that "nongovernmental SAR operations do not correlate with the number of migrants leaving Libya by sea"



(Cusumano and Villa, 2019) and do not incentivize more crossings, affirming that the presence of NGO ships has little effect on migratory flows from Libya to Europe in the last decade.

Enhancing legal migration pathways (cooperation with third countries)

It is established that many asylum-seekers traveling to Europe from the Middle East and Africa rely on human smugglers who often provide migrants with false travel documents or arrange for transportation to assist them move across international borders illegally and many of them, in overcrowded and unseaworthy vessels. Promoting more legal and safe pathways for refugees to reach Europe and improving domestic asylum systems are central to effective management of irregular migration or the prevention migrant smuggling at sea rather than focusing on border control and deterrence.

Over time, restrictive visa policies make moving to Europe very challenging, especially for Africans. For instance, the legal pathway to Malta and its concomitant challenge can be explained in the number of foreign missions/embassies it has globally. The Island has a total of 35 diplomatic missions and 7 consulates abroad with only 4 Embassies, 1 High Commission and 2 consulates in Africa (Ministry for Foreign and European Affairs and Trade, personal communication, July 4, 2023). Opening up more possibilities of legal entry into the EU is, therefore, one of the approaches of discouraging asylum seekers and migrants from resorting to smuggling that is often aided by state officials, border guards and law enforcement officers. Exchange of data and best practices as well as factual and objective reports on migration-related issues should be embedded in partnership agenda with all actors and stakeholders with a view to engendering safe, orderly, and regular migration. The EU and its Member-States should also ensure that migration policies are country specific so that actual and real needs of migrants can be identified and addressed in each country, rather than dealing with Africa (with 54 countries) like one sovereign state.

In addition to creating seamless legal pathways through the embassies in countries of origin for potential migrants-which are presently in form of family reunification, high-skilled labour schemes or university students and staff exchange- migration to the EU can also be facilitated through other legal pathways such as humanitarian admission, resettlement mechanisms and other credible alternatives. These mechanisms are essential for migrants (refugees) who are not returnable due to conflict or whose life, health, safety, and liberty are at risk in the country where they have sought refuge. For Malta, family reunification is being encouraged as a legal pathway in recent years for beneficiaries of international protection "with reasonable prospects of permanent residence and stable resources which would enable him/her to maintain himself and his family members" (Identity Malta Agency, 2021).

Tackling the drivers (root causes) of irregular migration from Africa

Strategies designed to tackle migration 'root causes' should include adequate consultation with third countries and "the use of aid as an incentive for cooperation on migration management" (Schöfberger and Keijzer, 2018) considering that challenges such as irregular migration are transnational that require development cooperation. Such long-term, broad-based partnerships, in the context of the Joint EU-Africa Strategy, the Rabat Process, Khartoum Process (European Council, 2015) the EU Action Plan on the Central Mediterranean and Team Europe Initiatives, subject to unflinching commitment of all parties, can effectively tackle the complexities and challenges of irregular migration and contribute to better migration management. Suffice it to

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emphasize that these collaborative measures must take into consideration respect for human rights in accordance with national legislation, international laws, and the sovereignty of states.

Combating the root causes of northwards African migration or causing a reduction of migration flows to the EU can be facilitated by development assistance, economic cooperation, conflict prevention and trade expansion which are fundamental bases for economic prosperity or improvement in living standards. The massive outflow of migrants through irregular routes can be substantially reduced if African countries address the issues of corruption, poverty, youth unemployment, income inequality, environmental hazards, and avoidable conflicts. These measures will, as a matter of fact, encourage young people and potential migrants to explore economic opportunities and work in Africa in an enabling environment provided by national governments, rather than risking their lives through dangerous journeys in the Mediterranean Sea and desert.

Conclusion

While it is the obligation of the states to exercise their sovereign control through migration and border management policies for the purpose of regulating movements of people into their territories, it should be emphasized that such entitlement is not absolute because "it is restricted by a number of specific provisions of international law and human-rights obligations" (Grech and Wohlfeld, 2016). The slogan of "Malta is full" is common among Maltese which also reflects government's policy on migration and asylum in recent years. While this is understandable in view of its small size (both in landmass and population), a more humane, rights-based approach should be embedded in such policies with respect for humanitarian standards.

As a border state with strategic alliance with frontline member states in the Mediterranean Sea and other European countries, Malta has a key responsibility to maximally explore the Union's "internal solidarity" not only in border protection but in respect of transfer of migrants irregularly arriving the country (intra-EU relocation), and generally, as concerns the overall governance and management of migration and asylum. Migrants are human beings with inalienable rights, regardless of their immigration status- either documented or lawful- and the specific needs of those vulnerable situations should be addressed.

Being one of the primary disembarkation points for sea boat migrants - many of them after several attempts at crossing the central Mediterranean route- Malta's burden of massive inflow of migrants can be significantly addressed through international cooperation and regional approaches. The capacity of the SAR operation in the central Mediterranean should be strengthened with adequate support for humanitarian NGOs to ensure safe and timely disembarkation of every person rescued at sea in the context of a common and human rights-based arrangement.

The reality, however, is that as long as those socio-cultural and economic factors driving migration such as climate change, conflicts or demographic decline and labour force shortages are present, migration to Europe, either regular or irregular, is not likely to decrease in the near future. Similarly, much as those pull factors including job opportunities, political stability, quality education, individual freedoms, and better health care, are not replicated in countries of origin, young Africans for instance, will continually find Europe attractive. Finally, migration has the potential of benefiting both countries of origin and destination, if well managed, and shall continue to be an inevitable reality of the contemporary world.



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