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Libyan Nationals in the
United Kingdom:
Geo-Political Considerations
and trends in Asylum and Return

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LIBYAN NATIONALS IN THE UNITED KINGDOM: GEO-POLITICAL CONSIDERATIONS AND TRENDS IN ASYLUM AND RETURN

Abstract

This paper explores the evolving geo-political importance of Libya as a strategic partner for Britain and considers the way in which policies on migration have been used to cement the renewed relationship between the two countries. It considers in particular, the impact of the Memoranda of Agreement between the UK and Libya and the use of related readmission agreements to facilitate the return of Libyan nationals from the UK. It analyses some of the challenges facing Libyans seeking asylum and settlement in the United Kingdom and the prospect of their return to Libya in the light of the UK's domestic policies on asylum and security interests regarding the 'war on terror'. This study establishes a profile of Libyans currently in the UK and examines existing case law and Home Office guidelines to explain the conditions under which Libyans have been granted or refused asylum and subsequently removed from the UK to Libya. The main finding of this study is that the imperative of security cooperation has increased the likelihood that more Libyan migrants will be returned from the UK and this poses a worrying scenario, especially given Libya's record of refoulement and other human rights abuses. In the absence of a system for dealing with asylum inside Libya, returning Libyan nationals and transit migrants from neighbouring African countries are particularly vulnerable.

Key words: Libya, UK, European Union, asylum, return, readmission.

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INTRODUCTION

There are few statistics on migration between Libya and the United Kingdom. Italy has traditionally been the first port of call to Libyan asylum-seekers and others from Egypt, Niger and Sub-Saharan Africa who transit via Libya (Africa Research Bulletin 2006; Baldwin-Edwards 2005, Betts 2006, Hamood 2006, Messineo 2005). Today, the Italian island of Lampedusa is the initial destination for these Libyan and other migrants into Europe¹ and by contrast the 16,700 Libyan arrivals (2004) in the United Kingdom appears rather insignificant (Home Office 2006). Although numbers of Libyans entering the UK have increased by almost fifty per cent, the numbers seeking asylum, and thus most likely to be returned, in the event of a refusal, are few. Official statistics from the Home Office record that from 1997 to 2005 there have only been 1255 applications for asylum received from Libyan nationals; the largest number of 200 occurred in 2002 when total UK applications reached an all time high of 84,130 (Heath, Jeffries and Pearce 2006).

In spite of the small presence of Libyans in the country, migration has become an increasingly important theme in Libya's external relations with the UK. Over the past five years Libya has enjoyed a remarkable rapprochement with the UK and is now considered a valuable international partner for British interests in the Mediterranean and the Middle East. After a period of intense confrontation with the United Kingdom throughout the 1980s and 1990s, Libya began a programme to dismantle its nuclear programmes in 2003 and has since agreed to provide intelligence to the UK and USA and cooperate in the global campaign against terrorism (Reveron 2006). Libya's commitment to reform has been cited to justify closer diplomatic cooperation, as Tony Blair recommend in March 2004:

Libya's actions in the past have caused grief and pain to many individuals and families, which we cannot forget...But if change in Libya is real, we

¹ The Italian government has refused UNHCR access to the reception centre on Lampedusa on several occasions and actual statistics of migrants passing through are difficult to obtain, in part because of the rapid return of people to Libya and the lack of identification prior to return (Messineo 2005). The centre was designed to hold 160 people but more than 1,000 have passed through at a time. According to the European Parliament's own report on Lampedusa, the Italian authorities presented a configure picture of overall numbers of migrants passing through when it visited in 2005: *'The Italian authorities informed the MEPs that on the day of the visit there were 11 people at the centre. The delegation was surprised at this, as the figure did not in any way reflect the everyday reality of the Lampedusa centre. The Quaestor of Agrigento replied that on the previous day there had been 56 people. When asked how many had been present at the centre during the previous 96 hours, the authorities stated the number of arrivals as 200 on 21 August, 148 on 7 September and 29 on 11 September. This did not explain the total number of inmates during the days leading up to the MEPs' visit'* (European Parliament 2005:1).

should support it. It is the beginning of a process, and we should take it step-by-step. But I believe that a Libya free of WMD and with no links to terrorism is overwhelmingly in our interest and it is right to pursue this dialogue, and we will (Blair 2006).

Now migration also features along side a host of other areas of as a theme of policy cooperation between the two states, above all the fight against terrorism.²

Recent evidence for the evolving cooperation in the area of migration between Britain and Libya may be gleaned from two Memoranda of Agreement (MoU). The first was signed on 18 October 2005 on behalf of the UK Foreign Office and Libyan Ministry for European Affairs and aims to facilitate both the development of trade, processing of visas, and the deportation of nationals suspected of activities associated with terrorism (British Embassy Tripoli 2005; Foreign and Commonwealth Office 2005).³ Under this agreement, Libya has also provided assurances that persons returned would not be subject to abuse.⁴

The second was signed by former Prime Minister Tony Blair and President Muammar Gaddafi on 29 May 2007 during Blair's farewell tour to Africa and extends the notion of bilateral cooperation significantly. The one-page agreement records 'the desire of both sides to strengthen judicial co-operation, in the context of [their] increasing joint efforts in the field of justice and home affairs, and specifically of [their] recently enhanced co-operation on counter-terrorism' (BBC News 2007). It also sets out the basis for mutual legal assistance in the field of criminal law, mutual legal assistance in the field of civil and commercial law, and cooperation in the area of extradition, and prisoner transfer. While this agreement has generated controversy over the prospect of transferring the convicted Lockerbie bomber from Scotland to Libya (Mulholland 2007), at present, the scope of the MoU is limited to those under criminal investigation and extradition cases.

² For example, Libya and the UK have been cooperating in the case of Omar al Degahyes, a British national and former refugee from Libya who has been detained in Guantanamo Bay and threatened with deportation to Libya (Human Rights Watch 2007).

³ According to the Foreign Office, 'the MoU is a significant step towards making the Libyan market more accessible to British businesspeople and offers important assurances for the promotion of trade and investment between the two countries.' It also provides a mutual undertaking to consider most visa applications within one week and to consider issuing multi-entry visas. See. British Embassy Tripoli 2005.

⁴ This promise has recently been challenged by UK courts which contest Libya's declarations of reform On 27 April 2007, the Special Immigration Appeals Commission (SIAC) ruled against deporting two terrorism suspects to Libya despite promises of humane treatment from the Libyan government (Human Rights Watch 2007; SIAC 2007).

The rationale for these agreements is both context-specific and influenced by wider European trends, above all the expansion of readmission agreements and the establishment of large European Union programmes on return and border management.⁵ The common feature of the two Anglo-Libyan agreements is the degree to which they rely on cooperation from third parties to facilitate return and controlled entry to the European Union. In this, the above-mentioned accords are reminiscent of the fashion for readmission agreements which are valued by European Union institutions and implemented at the bilateral level by individual EU member states (Cassarino 2007). To date, Italy, Malta, and the UK have signed accords with Libya and Spain is also in the process of negotiating an agreement.⁶ While these agreements vary in scope, they share the characteristic of being informal declarations that provide a skeleton for further cooperation which have traditionally favoured the interests of the European signatory (Peers 2003).

This paper explores some of the challenges facing Libyans seeking asylum and settlement in the United Kingdom and considers the prospect of their return to Libya in the light of the evolving cooperation between the two countries. It begins with a brief review of the research context, namely the development of relations between the UK and Libya, before establishing a profile of Libyans currently in the UK. It then follows with an examination of the existing case law and guidelines to help to explain the conditions under which Libyans have been granted or refused asylum and subsequently removed from the UK to Libya. The third section examines the impact of the UK's domestic policies on asylum and security interests regarding the 'war on terror' for future asylum-seekers from Libya. I conclude that the imperative of security cooperation has increased the likelihood that more Libyan migrants will be returned from the UK, just as the bar for admission through asylum channels has been raised following Libya's readmission to the international community. The potential fall-out from the confluence of migration and security policies for returnees and non-Libyan migrants in Libya is particularly worrying.

⁵ The European Union has dedicated large sums over the period 2007-13 to address these two issues. The European Return Fund is funded up to €676 million to improve the management of the return of illegal migrants by encouraging co-operation with the countries of return while the External Borders Fund received €1 820 million to improve control efficiency at the external border of the EU.

⁶ Italy has signed two agreements on 13 December 2000 and 3 July 2003; and more recently a Memorandum of Understanding on 18/01/2006. Malta signed a bilateral agreement on police cooperation in 2001.

RESEARCH CONTEXT

The small number of Libyans in the UK also reflects the state of international relations between the two countries and the extreme difficulty of Libyans reaching this distant country. Not only is it hard for Libyans to reach the UK legally, but following the break in diplomatic relations between the two states for almost two decades, the presence of Libyans in Britain has not attracted the patterns of 'chain' migration that other European states have experienced. The United Kingdom officially broke off diplomatic relations with Libya in 1984 following the shooting of WPC Yvonne Fletcher outside the Libyan People's Bureau in Central London. The shooting of a police officer apparently from a diplomatic office, and the total lack of cooperation from the Libyans in assisting the subsequent investigation, led to considerable public resentment and polarised relations between the British and Libyan governments. Relations further deteriorated following the 1987 Eksund incident. The Eksund was a vessel bound for Ireland, which was intercepted by Irish and French authorities and found to contain large amounts of explosives,⁷ weaponry and money that had been supplied by the Libyan state and security forces.⁸ Although there had been other shipments to the IRA beforehand, this was by all accounts an overt expression of Libya's support of terrorism against Britain.

Relations between the United Kingdom and Libya became further strained followed the Christmas bombing of Pan Am Flight 103 over the Scottish border town of Lockerbie. All 259 passengers and crew were killed, as were 11 local residents on the ground. This act of terror led to a major international crisis involving several state parties since two thirds of the victims were American and 44 were British; moreover, the criminal investigations involved transnational and international agencies and jurisdiction over this matter remained with Scotland. During a series of protracted investigations, the Libyan government actively frustrated any attempt at cooperation with the British and American authorities. This continued for several years until November 1991 when the US Acting Attorney General finally issued warrants for the arrest of two Libyans, Lamem

⁷ The Eksund, was found to contain approximately 120 tonnes of weapons including semtex and more than 1,000,000 rounds of ammunition which was being smuggled to support the Provisional IRA's campaign of terror against the United Kingdom

⁸ Moloney (2003) claims that the Eksund shipment also contained military mortars. It is also estimated that Gaddafi gave the Provisional IRA the equivalent of £2 million along with the 1980s shipments.

Khalifa Fhimah and Abdel Basset Ali al-Megrahi, who were formally accused of placing a bomb on board the aircraft in Malta, and charged with murder.

As Gaddafi refused to hand over the suspects and comply with UN Security Council Resolution 731, the Security Council first imposed sanctions against Libya in March 1992 and again in November 1993 following the introduction of Security Council Resolution 883 which remained in force until 1999. During the period of sanctions,⁹ Libyan officials repeatedly maintained that a trial held under Scottish jurisdiction would be biased and refused to cooperate. This impasse was only broken when in August 1998 the UK and US governments agreed to allow the trial to be held in the Netherlands before an off-shore Scottish court.¹⁰ Finally, on 5 April 1999 Al-Megrahi and Fhimah were flown from Tripoli to the Netherlands where they stood trial. Their arrival promoted the suspension of the EU legislation that implemented the UN sanctions. Full diplomatic relations were resumed three months later following an agreement between the two governments when Libya accepted 'general responsibility' for the shooting of WPC Fletcher, issued a formal apology, and promised to pay compensation to the Fletcher family. The Libyan government also undertook to co-operate with and abide by the findings of the British police investigation into the shooting. This agreement paved the way for an exchange of diplomatic personnel. The first British Ambassador to Tripoli for 15 years arrived in December 1999 and a new Libyan Ambassador arrived in London in January 2001.

The Lockerbie trial began shortly after the resumption of diplomatic relations and on 31 January 2001 Al-Megrahi was found guilty and Fhimah not proven.¹¹ In the following months, trilateral talks were held to discuss how Libya could meet the Security Council's remaining requirements and ensure the lifting of

⁹ The following UN Security Council Resolutions instituted a series of sanctions against Libya: a) S/RES/731 (1992) 21 January 1992 Security Council condemning the destruction of Pan American flight 103 and Union de transports aeriens flight 772; b) S/RES/748 (1992) 31 March 1992 imposing an arms embargo and selective travel ban; and establishing a Security Council Sanctions Committee; c) S/RES/883 (1993) 11 November 1993 extending the travel ban and imposing financial sanctions; d) S/RES/1192 (1998) 27 August 1998 strengthening calls upon all states to cooperate with the initiative for the trial of the two persons charged with the bombing of Pan Am flight 103; e) S/RES/1506 (2003) 12 September 2003 Security Council lifts the sanctions measures set forth in paragraphs 4, 5 and 6 of its resolution 748 (1992) and paragraphs 3, 4, 5, 6 and 7 of its resolution 883 (1993) and dissolves the Committee established by paragraph 9 of resolution 748 (1992).

¹⁰ In order to bring about the possibility of a trial, and hence diplomatic resolution of the Lockerbie matter, it was necessary to introduce a further UN Security Council Resolution, 1192 (1998) on 27 August 1998 and amend Scottish and Dutch law, and introduce a new treaty between the Netherlands and the United Kingdom, *Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning a Scottish Trial in the Netherlands*, 18 September 1998, 38 I.L.M. 926 (1999)..

¹¹ 'Not proven' is a Scottish verdict given in cases where there is still some doubt as to the guilt of the defendant.

all remaining sanctions. During these talks, the United Kingdom emerged as the leading advocate for Libya and in August 2003 tabled a resolution recommending that the Security Council lift the remaining UN sanctions against Libya. That resolution was passed by the Security Council on 12 September 2003 and removed important travel restrictions on Libyan nationals.¹²

Since the lifting of UN sanctions against Libya, the nature of British-Libyan relations has shifted significantly to draw Libya into the circle of friendly nations. Diplomatic priorities have focused on the non-proliferation of nuclear weapons and engaging Libya in the global war against terrorism. Although the United Kingdom has expressed concerns about human rights violations in Libya and notes in particular restrictions on freedom of expression and assembly, the treatment of political prisoners, arbitrary detention and conditions in Libyan prisons (SIAC 2007), over the past three years, in particular, Libya has enjoyed a positive relationship with the United Kingdom. In 2004, Libyan Foreign Minister Abd al-Rahman Shalgam visited London and proved to a significant marker in UK-Libyan relations. Not only was it the first visit to the United Kingdom by a Libyan Foreign Minister since Gaddafi came to power but it paved the way for the first of two visits by former Prime Minister Tony Blair in March 2004 - the first visit by a British Prime Minister since 1943. During Blair's meeting with Gaddafi, the two leaders discussed initiatives to help Libya dismantle its nuclear weapons programme and in September 2004, Libya issued a formal declaration affirming that it was ending dismantling its nuclear weapons programme and sought British assistance in this endeavour. This declaration enabled the British government to press for the US to lift the remaining sanctions against Libya and engage the country in a new security compact that focused on European-Mediterranean cooperation in defence, justice and migration. It also opened the door to further controls on migration between the two countries and the possibility of returning Libyan nationals back to Tripoli.

Since 2004, Libya's geo-strategic importance to Britain has become more and more evident. Libya is an oil-rich state that has extensive relations with Sub-Saharan Africa and influence over Sudan and Algeria, two large states which have witnessed internal conflicts, and population movements (amid charges of genocide

¹² See: para 4 of UNSCR 748 (1992), UNSCR 883 (1993) and UNSCR 1506 (2003).

in the case of Sudan);¹³ both states are mineral-rich and reported centres of terrorist and Al Qaeda activity. Libya's geo-political interests also spill over into Egypt, Niger, and Chad and throughout the Middle East where Libya has recently been accused of supporting the armed rebellion in Sa'ada in northern Yemen.¹⁴ These realities, in addition to the fear of more states developing of Weapons of Mass Destruction (WMD), on the back of Libya's now dismantled programmes, pose a particular challenge to the United Kingdom as one of the leading actors in the war on terror, hence, the policy of engagement. The value-added of the new British-Libyan alliance includes the possibility that such engagement can be reproduced in current 'rogue' and enemy states where the threat to UK interests is high, in addition to Britain's significant commercial interest in Libya.¹⁵

The development of cooperation on asylum and migration management between the UK and Libya cannot be divorced from the above-mentioned geopolitical framework. Over the past five years the tendency to treat migration, traditionally an area of Home Affairs, in the context of the UK's external relations has complicated the task of assessing the actual impact that trans-national migration may have on domestic political agendas, national resources and public services. For this reason, evolving security framework must be taken into consideration when analysing the state of migration between Libya and the UK and the potential impact of the 2005 and 2007 Memoranda of Understanding on future waves of migrants, as discussed below.

LIBYAN MIGRANTS IN THE UNITED KINGDOM

The only statistics available on migration between Libya and the UK are from Home Office sources and present a limited picture of both regular migration, as identified through the International Passenger Survey and data provided by the

¹³ Although a UN Commission concluded that the government of Sudan did not pursue a policy of genocide in the Darfur region, the state is still being investigated by the Office of the Prosecutor of the International Criminal Court.

¹⁴ As a result, Yemen recently recalled its Ambassador. See: Mounasser (2007).

¹⁵ There is already a well established *British Business Group* in Libya and an emerging export market for UK goods. Visible UK exports to Libya in 2005 totalled £210.6 million and consisted largely of industrial machinery for the oil and gas sector. Invisible exports are estimated to double this amount. See: UK Trade and Investment (2007).

Research, Development and Statistics Directorate.¹⁶ There is no mention of information gathered from Eurodac sources.¹⁷

In terms of regular migration, the statistics record that not only are the numbers of Libyans reaching the UK growing, but there is increasing variety in the categories of Libyans admitted into the UK, as indicated in Table 1 below.

Table 1
Number and Types of Arrivals by Libyan Nationals in the United Kingdom in 2005

Total	16,700
Ordinary	5,350
Business	2,500
Students	2,900
Au Pairs	NA
Work Permit Holders + 12 Months	25
Work Permit Holders – 12 Months	10
Dependents	55
Admitted as a husband or Fiancée	15
Admitted as a Wife or Fiancée	35
Passengers in Transit	1030
Passengers Returning after a Temporary Absence	3290
Refugees Exceptional Leave cases and their Dependants	30
Others Given Leave to Enter	1460
Accepted for Settlement on Arrival	5
Passengers refused entry at port and subsequently removed	30

Source: Home Office 2006

These recent arrivals partially confirm broader migratory trends, elsewhere described in the context of differentiation i.e. varied groups of migrants, increasing feminisation of migration, and transnational flows as identified from multi-directional movements of people between sending and receiving states, as well as between receiving states and third countries (Castles, Crawley and Loughna 2003). Differentiation has been attributed to the globalisation of travel, the development of regional conflicts as a major push factor, and the weakening

¹⁶ See: Heath, Jeffries and Pearce (2006) *Asylum Statistics United Kingdom 2006*. Home Office Statistical Bulletin 14/06. 22 August 2006.

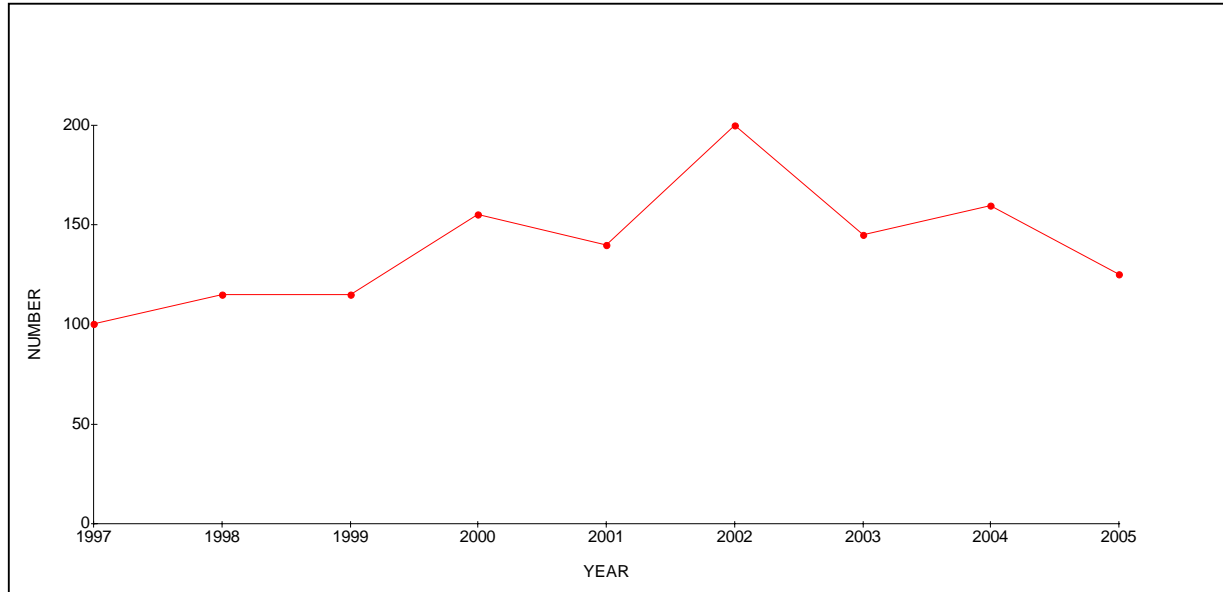
¹⁷ In 2000, the European Council passed a resolution creating Eurodac, a system for the comparison of fingerprints of asylum applicants and illegal immigrants which was aimed to facilitate the application of the Dublin convention regarding the determination of State responsible for examining the asylum application. See: Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention [Official Journal L 316 of 15.12.2000].

of colonial ties which has encouraged the settlement of new migrant groups in non-traditional countries of reception and settlement. From Table 1, it is evident that there is a range of migrants admitted into the UK, though there is little evidence of feminisation, as suggested by the categories of migrants 'admitted as a husband or fiancée' or 'admitted as a wife or fiancée'.

In terms of asylum, however, the picture is less attractive and defies the diversified pattern of arrivals through legal channels. The first point to consider is the relatively low number of asylum applications.

Chart 1

Numbers of Applications of Asylum received from Libyan nationals between 1997 and 2005



Source: Home Office 2006

While the number of applications has grown recently there is little variation in the type of asylum seeker recorded. Most Libyan asylum seekers in the UK are young males, even though the average age is relatively higher for this group than asylum seekers from other countries (Heath, Jeffries and Pearce 2006). In 2005, for example, out of 135 applications for asylum (excluding dependents), the vast majority of applicants were under 35 and were male. There is also an important gender dimension missing -- women barely feature in the asylum statistics provided by the Home Office and only a handful of unaccompanied minors have applied for asylum, on average only five per year. Arguably, few women are applying for asylum in the UK.

Second, the presence of Libyan asylum seekers in the UK case does not appear to reflect the new modalities of migration where states may simultaneously act as sending, receiving, and transit centres. For example, there is no mention of the presence of UK-bound Libyans in Lampedusa, although this may be a feature of the tightening of Italy's asylum policies, the rapid increase in returns to Libya, and the introduction of tough penalties for those returned Libya

(Hamood 2006, Human Rights Watch 2006b, Messineo 2005). There is also little evidence of Libyans in the UK having benefited from the development of alternative routes of entry created by smuggling networks in other South European states. Again, this may reflect the increasing attempts to regularise migration at source through bilateral agreements, such as the one signed between Italy and Libya in 2004, rather than a lack of smuggling activity even though the official statistics provided by the Home Office suggest that only very small numbers have been able to reach the UK independently; the largest number of arrivals by this method being just 30 overall (Heath, Jeffries and Pearce 2006). Unlike Algerians in the UK, there is virtually no record of Libyans arriving via a third country.

Third, as indicated in Table 2, the level of refusals is particularly high. Of the total 145 applicants in 2005, over 90 per cent were rejected (Heath, Jeffries and Pearce 2006). This figure stands above the average of 83 per cent in 2005 (Home Office 2006).¹⁸

Table 2

Initial Decisions on Applications Received for Asylum in the United Kingdom, Excluding Dependants, by Libyan Nationals in 2005

Total initial decisions	Recognised as a refugee and granted asylum	Not Recognised as a Refugee but granted humanitarian protection	Not Recognised as a Refugee but granted discretionary leave	Total refused	Refused asylum HP or DL after full consideration	Refused on safe third country grounds	Refused on non-compliance grounds
145	10	*	*	130	115	10	10

¹⁸ According to the Home Office just under a third (31 per cent) of the 25,710 applications in 2005 resulted in the granting of asylum (8 per cent), Humanitarian Protection or Discretionary Leave (12 per cent) or in appeals that were allowed by the IAA adjudicators (12 per cent) (Home Office 2006: 12).

The above findings raise further questions regarding the quality of applications submitted and the grounds for refusal and inform the context for an investigation into the manner in which unsuccessful asylum seekers have been returned. The Home Office data record that few applications were made at port rather than in country, suggesting that most asylum seekers came into the UK under a different status, quite possibly as students. The number of refusals (135¹⁹ in 2005) in contrast to the number of Libyans recorded in the UK and relative to the number of persons removed (30 in 2005) suggests that most Libyans have not been returned either voluntarily or forcibly but have remained in the UK. This finding is further supported by the evidence of 210 Libyan asylum seekers in the UK who were in receipt of support from the National Asylum and Support Services (NASS) at the end of 2005. Arguably, while few Libyans have managed to secure asylum status or benefit from humanitarian protection or discretionary leave, equally few have been removed, in spite of the emphasis on removals at the policy level.²⁰

From a review of the official data, the following facts complement the emerging picture of Libyan nationals in the United Kingdom:

- The vast majority of Libyans in the UK are students and business people;
- Most of those granted extensions to remain in the UK were students (950 out of 1340) but 100 Libyans were granted rights to settlement (Home Office 2006);
- The number of asylum applications from Libyans over the past ten years has risen but only slightly;
- The overwhelming majority of applications for asylum were submitted by Libyan nationals already present in the United Kingdom.
- The numbers of Libyan nationals who have been granted asylum are particularly low and are getting smaller;
- Current figures for those granted leave to remain and humanitarian protection record that successful claims have fallen to a trickle and are now estimated at 10 per year;

¹⁹ This figure excludes dependents.

²⁰ Home Office figures record few removals nationwide. In 2005, 13,730 principal asylum applicants were removed from the UK (including assisted returns and voluntary departures following enforcement action) while 2,905 principal applicants left under Assisted Voluntary Return Programmes run by the International Organisation for Migration (Home Office 2006: 15).

- The number of refusals has correspondingly shot up between 1997 and 2005, at least 125 Libyan nationals were removed from the United Kingdom;
- Like most new arrivals, those granted asylum or 'humanitarian protection' have been dispersed across the United Kingdom. The overwhelming majority of Libyans in the UK (125) were relocated to areas of North West England, a region which is economically troubled; none were settled in Greater London and only five sent to South East England;
- Five Libyan nationals were held in detention under Immigration Act powers in 2005 (Heath, Jeffries and Pearce 2006).

CASE LAW AND GUIDELINES ON GRANTING ASYLUM

The small number of Libyan asylum seekers in the UK raises the question, under what conditions are they being admitted to the UK and, further, why is the refusal rate proportionately so high? The existence of case law and policy guidelines produced by the Home Office offer some possible explanations for the above mentioned trends.

There have only been three 'starred determinations' (i.e. advisory cases) concerning Libyan applicants who have appeared before the UK's Asylum and Immigration Tribunal (AIT).²¹ However, these taken in consideration with the 'Country Determination Guidelines and the Operational Guidance Note' produced by the Home Office's Border and Immigration Agency provide a useful insight into the criteria for determining the granting of leave to Libyan nationals. The vast majority of claims for leave to remain in Britain have been made on the grounds that applicants have well-established fears that, should they be returned, they may suffer human rights violations and in particular mistreatment at the hands of the Libyan state authorities. In this context, the majority of applicants have cited their membership of, involvement with or perceived involvement with, political and Islamic opposition groups to substantiate their fears of victimisation by the Libyan state apparatus. In previous years, other applicants claimed that their membership of ethnic minority groups, above all the Berber communities, has left

²¹ ME ME (Risk - Failed Asylum Seekers - Hassan) Libya CG [2003] UKIAT 00200 2003 UKIAT00200E
 HH HH (Risk – Failed Asylum Seekers) Libya CG [2003] UKIAT 00202 HX/18773/03
 KK KK (Failed Asylum Seeker) Libya CG [2004] UKIAT 00151 Added to list 24.06.04

them equally vulnerable to abuse by the state and thus they too had human rights grounds for seeking asylum in the UK.

Human Rights Claims

The existing case law provides a series of standards for granting asylum and leave to remain to Libyan nationals. It also contains some general characteristics to suggest that English tribunals and the Home Office have taken a rather narrow interpretation of human rights claims made by Libyan applicants and that the bar for granting asylum claims remains extremely high. This is evident from the most widely reported ruling regarding a Libyan national, in the case of *ME (Libya) CG [2003] UKIAT 00200* (judgment given 17 December 2003) who eventually lost his claim for asylum in the UK.²²

Prior to *ME* there has been a decision in the case of *Hassan [2002] UKIAT 00062* which relied on documentation from the Foreign Office affirming that ‘anyone returned to Libya after an absence in excess of six months is subject to interrogation by the security authorities. Such people are routinely imprisoned by administrative order for “having shown disloyalty to the state”.’ Although the AIT recognised the authenticity of ME’s fears, it rejected his application for asylum on the grounds that Libya had since abandoned such practice.²³ It also noted that the applicant’s identity as someone who challenged the state by submitting a report to human rights groups abroad had not been exposed and that political opposition and membership of a group was not in itself sufficient grounds for granting asylum. In its conclusion the Tribunal noted that unsuccessful asylum seekers who had been returned to Libya were able to resume a life without fear of torture and thus insisted that claims made on the basis of persecution needed to be further qualified: ‘the bald assertion that any returned asylum seeker will be persecuted because they will be perceived as someone taking a stance against the government is wrong.’ For his part, the adjudicator provided his own qualification that ill-treatment was largely visited on those who had either been involved in or

²² ME was a medical practitioner who had been called upon to treat four prisoners, and in the course of their examination concluded that they had faced ill-treatment in prison. One of the prisoners died and the applicant’s colleague was asked to certify that the death had been as a result of natural causes. Instead, the doctor and his colleague submitted a truthful report to two human rights organisations, one in Switzerland and one in Holland. After two colleagues were arrested, the applicant fled the country and sought asylum in the UK.

²³ The Home Office records that ‘The Tribunal looked at the Dutch report on returnees of 2002, which stated that since 2002 the authorities no longer applied the six-month rule. The report also found that even if they were held it was only for a few days for interview. ..Length of absence abroad was not a determinative factor.’

were suspected of being involved in 'serious political activity' or were 'radical Islamic supporters'.

In 2004, the Tribunal further clarified what was meant by 'serious political activity' in *MA (Libya) [2004] UKIAT 00252* (judgment given 14 September 2004) but again left the door open to further interpretation. In *MA*, the Tribunal reinforced the findings of *ME* and noted that the act of seeking asylum does not in itself give rise to claims of persecution.²⁴ The adjudicator argued that *ME* referred specifically to those cases involving 'high degree activities' where claimants would be at risk. These activities were eventually defined by the Home Office to apply to certain types of opposition and in April 2007, the Home Office issued its own guidelines which further attempted to qualify what was meant by 'high-risk activities'.

The current advice from the Home Office is that given the degree of repression against dissenters, opposition political and Islamist activists, applicants who fall into such categories could be granted asylum in the UK.

'If it is accepted that the claimant has in the past been involved in opposition political activity or is a radical Islamic activist for one of the opposition political or Islamic groups mentioned above then there is a real risk they will encounter state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate' (Home Office 2007: 7).

Torture and Mistreatment in Prison

The most controversial issue for Libyan asylum-seekers and those seeking humanitarian protection regards concerns claims made on the grounds of mistreatment in prisons. Many applicants have argued in their requests for leave to remain and humanitarian protection that conditions in Libyan prisons are so poor that the act of return and imprisonment could fall under the Article 3 of the European Convention on Human Rights (ECHR) which addresses instance of torture and inhuman treatment. This view has been challenged by the Home Office which affirms the appalling state of Libyan prisons and notes that individual cases may give rise to a genuine claim of mistreatment under ECHR Article 3, and

²⁴ In 2005, a similar case was heard concerning AA, an asylum seeker from Zimbabwe whose request was granted even though the AIT did not find that in general, Zimbabwe was unsafe for returning asylum seekers.

similarly under Article 8 (the right to respect for his private and family life) for those with mental illness, but concludes that conditions in Libya are now unlikely to reach the threshold of Article 3 except for political prisoners (Home Office 2007: 11). For this reason the Home Office advises against granting Humanitarian Protection in such cases. The Home Office's view has been contested by human rights organisations which oppose the return of such categories of claimant on the grounds that Libyan prisons are still of a deplorable state and are sites where torture and mistreatment takes place (Amnesty International 2005; Human Rights Watch 2006a, 2006b, United States State Department 2007). The reports in July 2007 that followed the release of the five Bulgarian medics who had been sentenced to death and later imprisoned for allegedly infecting approximately 400 children with HIV, confirm the appalling state of Libyan prisons and the use of torture and other coercive measures to extract confessions.

Gender-Based Claims of Persecution

In other areas of human rights, however, the British authorities have been remarkably progressive, for example in their recognition of gender-based claims, which include victimisation at the hands of both state and non-state parties and the mistreatment of minors. While such cases previously fell outside the 1951 Refugee Convention, following the House of Lords 1999 ruling in *Shah and Islam*,²⁵ there is now a basis in English case law to support the claims of women alleging well-founded fear of persecution, whether they do or do not fall within the category of being members of a particular social group.

In its 2007 report, the Home Office noted that there was an increase in applications from Libyan females in particular who had made claims for asylum on the grounds of gender-based violations of human rights. The most common complaint was that they were or would be victims of mistreatment and feared

'being killed, at the hands of their family as the result of them having had an extra-marital affair, having been raped or suspected of

²⁵ This case concerned two Pakistani women who had been forced to leave their homes by their husbands and were at risk of being falsely accused of adultery in Pakistan. They claimed that they would be unprotected by the state and would face the risk of criminal proceedings for sexual immorality if they were forced to return to Pakistan. See. *R v Immigration Appeal Tribunal and another, ex parte Shah* (United Nations High Commissioner for Refugees intervening); *Islam and others v Secretary of State for the Home Department* (United Nations High Commissioner for Refugees intervening) HOUSE OF LORDS [1999] 2 AC 629, [1999] 2 All ER 545.

transgressing moral codes/family values more generally' (Home Office 2007: 8).

The Home Office also recognised claims may involve, or be made on the basis of, a fear of punitive detention (also known as 'social rehabilitation') by the state authorities which was a form of mistreatment. Given the prevalence of gender-based discrimination and the reluctance of Libyan state authorities to protect women in particular from harm, the Home Office guidelines provide a constructive approach to granting asylum in such cases, especially when internal relocation is not an option.

In addition, the UK has taken a more favourable position towards minors claiming asylum in their own right. As is the general rule, the Home Office recommended that minors who have not been granted asylum or Humanitarian Protection cannot be returned to Libya unless it can be proved that there are appropriate reception facilities and established levels of care. Given the admission that the UK authorities do not have 'sufficient information to be satisfied that there are adequate reception, care and support arrangements in place' (Home Office 2007: 12), the conclusion is that the UK will not return minors to Libya.

Berber and Minority Ethnic Groups

In the case of ethnic-based persecution above all Berbers who seek asylum on the grounds of fear of mistreatment by state authorities, the UK has, however, been considerably less permissive. Although the Berber communities have a long history of cultural denationalisation in Libya (Prah 2001), the UK authorities have concluded that their claims may not amount to persecution under the Refugee Convention. In its clearest statement regarding Libyan applicants, the Home Office recorded that:

'Though the Libyan authorities maintain control over all ethnic and tribal minorities in the country, membership of the Berber group and expressions of Berber culture do not cause any problems for those involved. Those who simply cite membership of the Berber group as the sole basis of their claim are therefore unlikely to encounter state-sponsored ill-treatment amounting to persecution within the terms of the

1951 Convention. The grant of asylum in such cases is not likely to be appropriate' (Home Office 2007: 8).

IMPLICATIONS AND FUTURE TRENDS

The difficulties Libyans face in receiving asylum status, and leave to remain in the UK, must be considered in light of the current direction of UK asylum and return policy, as well as against the backdrop of renewed UK-Libyan relations. Over the past fifteen years, the British government has introduced six acts on immigration and asylum²⁶ which have made the process of applying for asylum considerably harder for applicants. It has also recently proposed to deny refugees the possibility of indefinite protection, thus increasing the prospect of return.²⁷ Coupled with this, it has introduced stricter border controls by following the US model of fingerprinting all visa applications and carrying out electronic checks on people entering and leaving the country.²⁸ Under the 2004 Asylum and Immigration Act (Treatment of Claimants), it is now an offence for migrants to attempt to enter the UK without a valid immigration document unless the person can show a reasonable excuse or 'other defense' and there is further punishment for those who present forged documents. Although there has been a provision in the 1987 Immigration (Carriers' Liability) Act which penalises agents who facilitate the entry to the UK without valid travel documents and visas, the 2004 Treatment of Claimants Act now penalises applicants too. Many asylum-seekers, who cannot apply legally in the UK must now apply closer to home where it is often harder to demonstrate a well-founded fear of persecution.

Libyans seeking asylum and the right to remain in the United have been directly affected by the above mentioned developments. Although the number of Libyans removed from the UK is still relatively small, ²⁹ their return contributes

²⁶ These are: The Asylum and Immigration Act 1996, The Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and the Immigration, Asylum and Nationality Act 2006.

²⁷ Under the Immigration, Asylum and Nationality Act 2006, the UK government has signalled its intention to stop granting 'Indefinite Leave to Remain' to refugees, thus increasing the prospect of return.

²⁸ In 2000, the European Council passed a resolution creating Eurodac, a system for the comparison of fingerprints of asylum applicants and illegal immigrants which was aimed to facilitate the application of the Dublin convention regarding the determination of State responsible for examining the asylum application. See. Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention [Official Journal L 316 of 15.12.2000].

²⁹ The number of North Africans removed, however, is increasing. For example, in 2005, 510 Algerians were removed from the UK, including 270 asylum-seekers. Of these 240 were returned to Algeria, the rest to third countries.

towards the broader goal of meeting government targets and helps to legitimise populist claims that many claimants are 'bogus' and primarily interested in accruing benefits (Sales 2007). The net effect has been especially detrimental to vulnerable individuals and has undermined the principle of refugee protection by increasing destitution among asylum seekers and placing large numbers of individuals in detention (ECRE 2007). Future removals include unsuccessful Libyan asylum seekers who could be returned under the terms of the 2007 MoU (Home Office 2006).

For new asylum seekers, the picture is less bright. In recent years the UK has supported a Voluntary Repatriation Scheme coordinated by the International Organisation for Migration (IOM) which provides some financial assistance to those who have failed to settle in the UK and wish to leave the country permanently, however, British policy is now not simply aimed at coordinating removals but also containing potential asylum-seekers. If the 2006 Anglo-Algerian accord is an accurate indicator of the trend in migration controls between Libya and the UK, then one may expect a framework of formal reciprocal obligations, the introduction of standards on data protection, and instruments enabling travel documents to be issued as well as agreements on escorting and removing migrants.³⁰ In spite of the few removals to date; the direction is clearly towards a much more heavy-handed policy of removals.

The form of the recent MoU and basis upon which policy coordination has been laid introduces several additional sources of concern. Just as with the 2006 readmission agreement with Algeria, the 2007 MoU between the UK and Libya reflects a wider European tendency to regularise migration on the back of short informal declarations that contain several exclusion clauses and do not have parliamentary backing but make return as condition for further cooperation and aid (Cassarino 2007). However, while the British position bears some similarity to the agreements signed by Italy and Malta, and indeed the European Union's Community Return Policy, the MoU between Britain and Libya has significantly less legitimacy since Britain and Libya are currently outside the 'core' of the Euro-Mediterranean Partnership (Barcelona Process) and the Hague Programme on

³⁰ The Agreement on the Circulation of Persons and Readmission between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria, signed in London on 11 July 2006.

Freedom, Justice and Security in the European Union.³¹ Both have ring-fenced their concerns over the potential loss of sovereignty over migration and asylum issues: in the case of Britain this is illustrated by its 'opt-in' clause which permits selective engagement in European policies on Justice and Home Affairs; Libya is not a signatory to the Geneva Conventions, nor the Refugee Convention, has no formal relationship with the European Union and has no system for dealing with asylum. The development of their cooperation in these areas is thus not only based on an informal agreement but one that has less standing under EC law.

The MoU of May 2007 must also be examined in light of the UK's security interests and in particular the 'war on terror'. According to Michael Nguyen the UK has agreed to offer Libya security assurances and strengthen their mutual security relationship in an effort to encourage other countries to follow Libya's lead in abandoning its chemical and nuclear weapons programs (Nguyen 2006). Although the connection between migration and protection from Weapons of Mass Destruction (WMD) is not direct, the externalisation of migration policy as evidenced by the multiplication of enforcement initiatives in transit and source countries (patrols, interceptions, escort and return) is linked to the development of intelligence capacity which has been cited as the 'first line of defense against terrorism' (Reveron 2006). The introduction of counter-terrorism measures in the Immigration, Asylum and Nationality Act 2006, including a clause regarding the grounds on which the government can exclude people from asylum, further affirms the policy connection between security and migration which has Libya at the very core.

Finally, it is important to mention that the potential licence that the Anglo-Libyan agreement gives Libya to address its own vast migrant populations and indeed returning nationals. UN estimates for the number of legal immigrants in Libya stand at 617,536 (UN 2005) but there is little explanation given for such figures and others suggest that the number of non-Libyan nationals may be as

³¹ The objective of the Hague programme is to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need, to regulate migration flows and to control the external borders of the Union, to fight organised cross-border crime and repress the threat of terrorism, to realise the potential of Europol and Eurojust, to carry further the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications. According to the European Council, this is an objective that has to be achieved in the interests of European citizens by the development of a Common Asylum System and by improving access to the courts, practical police and judicial cooperation, the approximation of laws and the development of common policies.

high as 30 per cent (Andrijasevic 2006). The number of illegal migrants in Libya – many of whom could be classified as refugees according to the Convention (Betts 2006) -- range from between 750,000 to 1.2 million out of a total population of 5.8 million (European Commission 2005). It is this population which is especially at risk (Human Rights Watch 2006a). Although a signatory of the OAU Convention, Libya does not have an asylum system in place and treats asylum-seekers and refugees in the same vein as economic migrants (Hamood 2006). Having once welcomed economic migrants in the 1970s, Libya has been condemned recently for placing non-citizens in deplorable camps, subjecting thousands to long periods of detention where they have faced ill-treatment by enforcement officers, and for engaging in regular and large-scale forced migration and expulsions (Amnesty International 2004; Hamood 2006; Human Rights Watch 2006a, 2006b).

Libya's record on *refoulement* is particularly worrying. Between 2003-2005, Libya repatriated 145,000 people, including some refugees to Egypt, famine stricken Niger and war-torn Eritrea and was formally condemned by international monitoring organisations (Afrol News 2006; Amnesty International 2004; Hamood 2006; Human Rights Watch 2006b). There is evidence to suggest that the signing of additional bilateral agreements may precipitate further human rights violations against those returned to Libya.³² Potential risks including the prospect of ill-treatment and abuse during detention, removal to third countries, not to mention deaths³³ and injury in transit (UNESCO 2005), as was the case when Italy sent back thousands in 2004 and 2005³⁴ (Andrijasevic 2006; Betts 2006; Hamood 2006, UNHCR 2005).³⁵

³² Andrijasevic reports that according to NGOs, the signing of an agreement between Libya and Italy in August 2004 'led to widespread arrests in Libya of individuals from sub-Saharan Africa, and that 106 migrants lost their lives during subsequent repatriations from Libya to Niger.'

³³ Between 1 January 1993-10 April 2005 there were a reported 232 deaths as a result of crossings from Libya to Italy (UNESCO 2005).

³⁴ According to Messineo, 'many of those deported from Lampedusa to Libya in the past months were not even aware of the real destination of their flight and believed that they were being sent to "'another centre'" on mainland Italy to be "properly identified".' He claims that people were not identified before being returned. See: Messineo 2005.

³⁵ According to UNHCR, Libyan officials were flown to Lampedusa by the Italian authorities and were given access to Libyans seeking asylum (UNCHR 2005).

CONCLUSION

As more European states are calling upon Libya's support to manage irregular migration into the European Union, two essential questions need to be addressed: first, how will the 2007 declaration between Britain and Libya affect both future admissions and removals in the name of judicial cooperation; and, second, what impact will it have on Libya's domestic political situation? Several human rights organisations have already condemned the practice of readmission agreements with friendly states on the grounds that the policies are essentially tilted in favour of the European actor and that the agreements themselves are unbalanced, unequal, inhumane, and internally contradictory (Cassarino 2007, Peers 2003). In the case of Libya, however, the linking of migration to justice and home affairs, extradition and counter-terrorism introduces additional fears over the degree to which migrants, many of whom may have claims to asylum, will be protected as they seek to enter the United Kingdom and in the event of their return to Libya (Human Rights Watch 2007).

In spite of the small number of Libyan asylum-seekers in the United Kingdom, migration is now an instrumental hook that has helped to organise Britain's domestic and international interests around controls on asylum and border security. It has also been instrumental in fostering Libya's readmission to the international community. From the above discussion, there is little rationale for increased cooperation purely on the basis of migration between Libya and the UK. Indeed, even if other European states are directly affected by irregular migration via Libya, for the United Kingdom it is most of all Libya's geo-political value that is now the basis for much cooperation between the two countries.

For Libyan asylum-seekers trying to reach the UK, the recent rapprochement between Libya and the UK may reduce the likelihood that their claims will be accepted. There are many reasons for this, including the increasing restrictions that disable individuals from making asylum applications and the UK government's belief in Libyan claims of reform, as recently accepted by English case law and the Home Office. The fact that Libya's statements of goodwill have been dismissed by human rights authorities (including the Special Immigration Appeals Commission) does not seem to have tipped the balance in favour of applicants and the refusal rate is increasing. That said, there are still some notable exceptions that may benefit from the way in which British authorities have interpreted the human rights situation in Libya, above all female asylum-seekers;

one might expect a larger number of applicants in this category in the future. While few Libyans have been removed from the United Kingdom, the trend is to accelerate the practice of removals. In the absence of a system for dealing with asylum inside Libya, returning Libyan nationals and transit migrants from neighbouring African countries are especially vulnerable.

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