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EUROPE'S BOAT PEOPLE:
MARITIME COOPERATION
IN THE MEDITERRANEAN

Michael Pugh

INSTITUT
D'ETUDES
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UNION DE L'EUROPE OCCIDENTALE



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Europe's boat people: maritime cooperation in the Mediterranean

Michael Pugh

**Institute for Security Studies
Western European Union**

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Director: Nicole Gnesotto

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Michael Pugh is Reader in International Relations, University of Plymouth, United Kingdom, and was a senior visiting fellow at the Institute for Security Studies of WEU from May to August 1999. He completed this study at the Copenhagen Peace Research Institute. He edits the journal *International Peacekeeping* (London), and has written on civil-military relations and maritime security issues.

Preface

Immigration is certainly not a risk in itself: European countries need the contribution made by immigrant workers, and it is desirable that Europe's doors remain open in a concerted, controlled way. On the other hand, illegal immigration presents a double risk to the stability of European countries and the security of the clandestine immigrants, who often undertake this adventure at the risk of their lives.

This *Chaillot Paper* looks at the question of 'boat people' in Europe, a recurring phenomenon in Europe for the last few years in the Mediterranean in particular, off the coasts of France, Italy and Spain. In addition to a lack of legal and political rulings on the status of these clandestine seafarers, there are often human tragedies that the European democracies are powerless to prevent.

Michael Pugh, Reader in International Relations at the University of Plymouth and an Institute senior visiting fellow in 1999, is without doubt one of the specialists best qualified to analyse this phenomenon of boat people, a problem that is dealt with in the western Mediterranean by the navies of the countries concerned. These of course have a long tradition of giving help at sea and assistance to the civil authorities, and are linked by many bilateral and multinational cooperative agreements. However, the rise in the number of refugees at sea that can be expected, in the context of the development of the European Union's common security policy, calls for a strengthening of cooperation among European navies on the one hand and with those of countries to the south of the Mediterranean on the other. That is the central argument of this *Chaillot Paper*, in which Michael Pugh also aptly demonstrates that the boat people issue is essentially one of humanitarian crisis management, and is not a question of a direct military threat to the security of European countries.

Nicole Gnesotto
Paris, July 2000

Introduction

The aim of this study is to offer a new perspective on the potential for maritime cooperation in the Mediterranean, thereby adding to our conceptualisation of security and perhaps contributing to policy development. This study focuses on maritime cooperation in coping with 'boat people' as an aspect of the new European security agenda. It concerns the burgeoning issue of seaborne migrants and refugees in the Mediterranean. Particular attention is paid to potential cooperation in the western Mediterranean (from approximately westwards of a line drawn from the south of the Adriatic Sea to the Gulf of Gabès). This is not to deny the importance of the eastern Mediterranean, but here there are complicating factors, such as Greco-Turkish relations and the Middle East peace process, that cloud the prospects for maritime cooperation. There are perhaps stronger foundations for maritime cooperation between France, Italy and Spain (participants in the European Maritime Force, EUROMARFOR, along with Portugal) on the one hand, and southern Mediterranean states on the other.

It has been a combination of two different sources in the central and western Mediterranean – the collapse of Yugoslavia and consequent refugee outflows across the Adriatic, and economic migration affecting the Maghreb and Spain – that has caused special concern about boat people in recent years. This should not be regarded as a narrow, technical problem of interest only to maritime specialists. The complexity of legal and political dimensions that arise from protecting and regulating civilians at sea intersects with several broader concerns of scholars and European policy-makers. Indeed, the issue exemplifies the connections across European Union policy pillars. Maritime cooperation as an aspect of security policy cannot be divorced from international law, from justice and home affairs or from the diplomacy of the Euro-Mediterranean Partnership (EMP). Nevertheless, the central question may be formulated as follows: can maritime cooperation be enhanced in Mediterranean waters in matters that

are not strictly military in character, such as coping with seaborne migrants and refugees?

The argument to be advanced is that the most promising normative way of responding to migrants and refugees would be to encourage a functional welfare approach. Civil authorities and coastal communities have incentives to employ a functional approach to welfare and good governance at sea, although such issues are not first-order problems for national military defence establishments. The problems are essentially civilian in nature: part constabulary, part economic and part human welfare. Maritime cooperation in this field is not designed to meet military threats to national sovereignty. This is not to deny that our definition of security has changed. It has certainly broadened to encompass such challenges as environmental change and transnational organised crime. But the use of military assets has to be carefully tailored for non-military roles. In the Mediterranean context, where sensitivity to interventionism is acute, it is especially important to put some distance between 'welfare' and 'warfare'. As Javier Solana noted when he was NATO Secretary-General, 'most security challenges in the Mediterranean arise from worsening socio-economic conditions and fragmentation, not from military risks'.¹ An exclusively strategic view of sea power as an expression of national status or global hegemony is therefore inappropriate. It has to be linked to 'projects which have a direct socio-economic impact on the populations concerned'.²

The current political and security environment makes maritime cooperation an appropriate mechanism for dealing with the boat people issue in the Mediterranean for four main reasons.

First, multinational maritime cooperation is inherently feasible and, what is more, Western European maritime forces have had valuable experience of coordination and cooperation in maritime missions. These have been distinct from high intensity Cold War strategic deterrence operations, and have included mine countermeasures operations in the Persian Gulf and

¹ Javier Solana, speech at Centro Militare di Studi Strategici, conference on 'The Future of NATO's Mediterranean Initiative', Rome, 10 November 1997.

² Abdelwahab Biad, 'Security and Co-operation in the Mediterranean: a southern viewpoint', in Roberto Aliboni, George Joffé and Tim Niblock (eds.), *Security Challenges in the Mediterranean Region* (London: Frank Cass, 1996).

sanctions enforcement in the Adriatic Sea. But some members of WEU have also benefited from existing frameworks of cooperation, such as EUROMARFOR, which has an explicit mandate to address issues relating to maritime policing, humanitarian assistance and disaster relief missions at the lower end of the spectrum of risks. Whilst these forces are unlikely to be used *as formations* to respond to 'boat people', in terms of experience and maritime institution-building Europeans have an opportunity to deepen the modalities of cooperation at sea that would address transnational security issues such as coping with seaborne migrants and refugees.

Second, the flight of refugees and migrant smuggling is a humanitarian issue, not least because hundreds of people are lost at sea every year. At a minimum the boat people issue entails consideration of maritime regulation and safety of life at sea. As an aspect of good governance at sea, at a time when the demands on ocean management are growing, international regulation also invites cooperation on such issues. As Susumu Takai notes, the law of the sea places international duties on states as well as conferring rights, and there has been more emphasis on management than unconstrained *mare liberum*.³ The latest manifestation of this appears in Protocol 1 of the 1999 draft Convention Against Transnational Organized Crime. This calls upon parties to: 'consider entering into bilateral or regional agreements to facilitate cooperation in applying appropriate, efficient and effective measures to prevent and suppress the smuggling of migrants by sea'.⁴

Third, although the boat people issue may be localised in certain parts of the Mediterranean, refugees and migrants affect all members of the EU. There are vital distinctions to be made between refugees, asylum seekers and illegal migrants, but together they place strains on domestic services and aid agencies, complicate economic planning and development and are vulnerable to predatory crime networks. Since the issue is transnational and global it requires international cooperation and coordination between

³ Susumu Takai, 'Legal Aspects of Ocean Peace Keeping: A New Idea of CBMs', in Takai (ed.), *Ocean Governance and OPK*, Thirteenth International Symposium Proceedings (Tokyo: National Institute for Defense Studies, 1998), p. 7.

⁴ *Draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime*, GA A/Ac. 254/4/Add. 1/Rev. 1, 13 May 1999, Art. 7, para. 14.

enforcement agencies both within and across national frontiers. But whereas the development of free movement within Europe has been a feature of European integration, particularly since the 1985 Schengen agreement, external controls have been a jealously guarded prerogative of member states. There has been no common European refugee or migration policy and no shared responsibility for refugees. However, the Amsterdam Treaty envisages a common policy that would move the asylum and refugee components of Justice and Home Affairs (JHA) from the Third Pillar to the First Pillar of the EU framework (the European Community), to be dealt with by the Commission. Some governments, notably the Italian, have been pressing for a common immigration policy, and the special summit of the European Council of Ministers meeting in Tampere in October 1999 discussed these issues for the first time. It agreed to promote a Common European Asylum System on the basis of the Geneva Refugee Convention, and to seek ways of managing migrant flows.⁵ It is thus also reasonable to anticipate a degree of cooperation in *implementing* a common policy that would inevitably involve maritime forces.

Fourth, the EMP's approach to Mediterranean security issues, including its Guidelines for a Charter for Peace and Stability as outlined at the Ministerial Conference in Stuttgart in April 1999, provides a viable framework of cooperative security into which maritime cooperation could be inserted, including the use of navies in civilian protection roles. It can be coordinated and managed cooperatively through diplomatic partnership, as in the EMP process (which is analysed later). The political conditions for cooperation are emerging and the Charter will probably emphasise a 'building-block' method by which cooperation can begin at low levels, perhaps bilaterally or subregionally in recognition of the diversities that inhibit multilateralism. The maritime cooperation envisaged in this paper would also conform to the EMP's global and consensual approach to security, so as to avoid direct challenges to the core political interests of states.

In sum, the perceived need to strengthen the maritime regime and implementation of a future common migrant/refugee policy may be creating a dynamic in which maritime (including naval) cooperation merits serious

⁵ Presidential Conclusions, Tampere European Council meeting, 15-16 October 1999.

attention from a policy perspective. Europeans and their southern Mediterranean partners will have to foster appropriate political agreements, construct institutional mechanisms and harmonise practices in order to deal with such transnational issues.

A functional welfare approach

For sound intellectual reasons, too, the subject justifies study because of the contribution it can make to the theory of transnational security.⁶ Much has been written about the global refugee and migrant crisis on the one hand, and maritime policing and multinational naval operations in benign environments on the other. Virtually nothing exists that links the two. Moreover, the literature on refugees and migrants as a security issue needs updating in the light of conflict in the Balkans and migratory pressures across the Mediterranean. In terms of theory the issue of maritime forces and boat people presents conceptual difficulties. Are boat people a security threat? Does an emphasis on policing ignore underlying causes? The argument of this paper is that an appropriate response to people on the move is not to be achieved simply by creating or adjusting inputs to security in order to improve outputs. It requires thinking about people on the move as an issue of human welfare, and recognition that enforcement and assistance address only the symptoms of problems in the international system.

Firstly, our perception of the boat people issue will have a significant bearing on the ability of maritime authorities to limit any dysfunctional aspects of their operations. The neutral term 'issue' has been chosen deliberately in order to avoid stigmatising refugees and migrants as simply 'a problem' rather than a manifestation of systemic features of world politics. Of course the *issue* is 'problematic' for all parties, and there are practical problems for maritime forces in operating in a grey zone of law

⁶ In this context, see Alessandro Politi, 'European security: the new transnational risks', *Chaillot Paper 29* (Paris: Institute for Security Studies of WEU, October 1997).

enforcement and assistance to human beings at sea. However, discourses that include refugees and irregular migrants together with terrorists, saboteurs and drug traffickers as wholly undesirable, or categorise them merely as ‘a problem’ and ‘a threat’, ignore the complexities of the issue. It is not even accurate to regard people who are travelling on the high seas as having an ‘illegal migrant’ status. Until they cross into another state’s jurisdiction, they are subject to the jurisdiction of the state of their own citizenship and of the boat’s registration, and only become ‘illegal’ by definition of the receiving state’s controls.⁷ We might reasonably conclude, then, that maritime authorities are being asked to cope with effects of structural conditions in the international system which they can hardly be expected to correct. But at the very least, maritime cooperation, especially in its military aspects, should avoid becoming part of deeper problems and reject hostile perceptions of boat people.

Secondly, a functional welfare approach can provide a useful starting point for considering the response at the level of policy implementation. The potential for maritime cooperation is more likely to be developed if coping with the movement of people is distanced from military-strategic considerations and regarded as a transnational welfare issue. ‘Transnational welfare’ implies maximising economic and social welfare across state boundaries. As David Mitrany has argued, institutions are often created to promote human welfare around particular functions that cannot be provided by states alone. In the maritime context it means developing the common interests of coastal communities and domestic maritime authorities in order to nurture cooperative habits (through systemic communities of technical experts for example), to improve social and economic welfare, and thereby reduce conflicts.⁸ It may be objected that a functional welfare approach to maritime cooperation that attempts to distance the issue from geostrategic concerns and high-level diplomacy represents a contradiction. However, the ‘securitisation’ of issues, a process identified by the ‘Copenhagen school’,⁹

⁷ NATO’s new Strategic Concept avoids besmirching the travellers themselves. It refers (para. 24) to the destabilising impact of ‘uncontrolled movement of large numbers of people, particularly as a consequence of armed conflicts’.

⁸ See, for example, David Mitrany, *The Functional Theory of Politics* (London: Robertson, 1975).

⁹ Especially in Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner, 1998).

can create a dynamic that adds to instability. This is especially the case if they are militarised or at least closely linked to military responses. The answer lies largely in how the security components are conceived, politicised and managed. The components are clearly linked, but this does not mean that they all have to be conceived or handled in the same way. Security may be indivisible, but there is more than one way to skin a cat. In this respect a welfare functional approach to 'people on the move' would signal strongly that the issue can be politicised as one of common humanitarian concern rather than as representing an alien threat. The risks of confrontation might thus be mitigated.

Thirdly, the implementation of policy has to be sensitive to the functional and welfare aspects of the issue, especially when military assets are employed to enforce controls or assist people in distress. The use of military assets for enforcement and assistance is often politically and ethically controversial – however beneficent and humanitarian the intention may be. This paper contends that it would be helpful to build in to maritime cooperation the concept of 'military assistance to the civil authorities' (MACA). As practised in the United Kingdom, this comprises two elements of relevance to our discussion: (a) support to civilian powers in law enforcement when they are unable to maintain good order in coastal waters and surrounding seas, and (b) assistance to the civil community in search and rescue and other civil emergencies. It involves either low-intensity enforcement to ensure compliance by civilians with regulations, or assistance to civilians in distress.¹⁰ In broad terms, MACA can serve as a guide for naval forces engaged in civil law enforcement or relief work in the western Mediterranean.

The main body of the paper extends the argument in four ways which correspond to the four chapters, before the conclusion. The first demonstrates the feasibility of maritime cooperation within a MACA, functional framework. The second examines the particular situations and divergent responses of three European Mediterranean states – France, Italy and Spain. The third considers the need for a concerted implementation of a

¹⁰ The MACA concept is explained in Naval Staff Directorate, Ministry of Defence, *British Maritime Doctrine*, 2nd edn, BR 1806 (London: Stationery Office, 1999), pp. 219-21.

common European refugee and migration policy. Finally the study considers the EMP process as the viable framework for Euro-Mediterranean maritime cooperation.

Chapter One

EUROPEAN MARITIME COOPERATION

The maritime environment is a particularly appropriate sphere for European security cooperation on welfare issues. Naval and other maritime establishments are clearly an important part of the control mechanisms for responding to migrants and refugees. Navies have traditionally employed their assets to promote welfare at sea, and this provides a basis for functional cooperation. The sea is also an environment in which WEU members have had significant cooperative operational experience.

I.1 Environment and experience

To begin with, the conception of the sea as a public area open for movement, trade and resources remains intact and continues to be protected by international law – in spite of the impulse to territorialise it and the jurisdictional areas enshrined in the UN Convention on the Law of the Sea (UNCLOS). Indeed, balancing out the interests of coastal states and ‘commoners’, at a time when demands on the maritime environment have increased, has generally resulted in non-confrontational management of the oceans.

Broadly speaking, maritime politics are amenable to cooperation. Disputes at sea generally do not have the same potential to escalate as land disputes unless entangled with sovereignty claims over islands. The absence of habitation and the relatively low political profile of maritime interests results in low domestic investment in the maritime environment. Correspondingly, most maritime claims are settled by agreement, not by adjudication. Even then, arbitration courts tend to be very flexible about state practice.¹¹ When disputes do escalate they tend to lead to diplomatic

¹¹ M. D. Evans, *Relevant Circumstances and Maritime Delimitation* (Oxford: Clarendon, 1989), p. 241.

and legal solutions or, as in the Aegean between Greece and Turkey, to policies of abstention.¹²

As studies of maritime coercion, policing and diplomacy emphasise, notably those by James Cable and Ken Booth, maritime forces have important attributes denied to forces on land. They are less constrained by issues of territorial sovereignty than land forces. Maritime forces, including maritime patrol aircraft, also offer mobility, versatility and accessibility, to deserted coastal areas for example.¹³ It is not the high intensity operations potential of warships that is relevant here, but rather their less well recognised functional welfare attributes, including advantages in multinational cooperation and coordination. This is not to say that multilateral responses to situations are always more useful or cost-effective. But there are potential benefits over unilateralism deriving from the value-added options of saving money by making use of divisions of labour and comparative advantage, by developing common stakeholding, by camouflaging self-interest in a cloak of legitimacy and by paying premiums for future support on other issues.¹⁴

For the most part there is unlikely to be a great cultural leap in adjusting to civilian welfare environments. Navies already engage in a wide variety of MACA tasks.¹⁵ Moreover, personnel have a standard requirement to cope

¹² Greece and Turkey abide by a 6-mile rule, and abstain from exercising the right to enclose islands within 24 miles of the mainland in a 12-mile limit. Faraj Abdullah Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea* (Oxford: Oxford University Press, 1993), pp. 269-70.

¹³ An historical incident in the Adriatic of great contemporary relevance is assessed by Erwin A. Schmidl, 'The International Operation in Albania, 1913-14', *International Peacekeeping*, vol. 6, no. 3, Autumn 1999, pp. 1-11. See also the standard texts: James Cable, *Gunboat Diplomacy, 1919-1991: Political Applications of Limited Naval Force*, 3rd edn, (Basingstoke: Macmillan, 1994); Ken Booth, *Law, Force and Diplomacy at Sea* (London: Allen & Unwin, 1985).

¹⁴ See Stephan De Spiegeleire, 'From mutually assured debilitation to flexible response: a new menu of options for European crisis management', in Guido Lenzi (ed.), *WEU at fifty* (Paris: Institute for Security Studies of WEU, 1998), pp. 22-4.

¹⁵ Naval units are commonly engaged in resource protection, regulatory work and law enforcement. In some states, including Ireland, New Zealand and Uruguay, navies in peacetime are essentially dedicated to MACA tasks. In others, notably Argentina, Canada, India, Japan, Russia, Taiwan and the United States, separate organisations have been created. Perhaps the most sophisticated civilian organisation in Europe is the Swedish coastguard. It has aircraft for surveillance, using remote sensing equipment, over 100 vessels (a third of which are specifically intended for pollution abatement). In

with emergencies on board ships and deal with safety of life at sea. European navies are trained to common standards in disaster relief at the United Kingdom's sea training establishment in Devonport. Indeed, the widespread criticism in the Turkish press of the Turkish military's performance during the Anatolian earthquake emergency of August 1999 demonstrated that a rare inability to adjust to MACA situations can damage the image of a military institution. It is nevertheless important to marry an MACA-type concept to military-civil structural coordination for two reasons. First, it institutionalises respect for the values of both military and civilian sectors, acknowledging, also, the capacities of the military and the rights of the civilian. Second, the involvement of naval forces in matters as innocent as pollution control can be read as politically weighted by observers abroad. Ships in government service can be suspected of engaging in strategic intelligence gathering or surreptitious exercising. Without a highly visible and assiduously promulgated welfare ethic, the use of military assets has the potential to make such issues appear as threats to national sovereignty.

In addition to combining forces in order to meet common threats, seafaring nations have cooperated to develop the maritime regime and foster good governance at sea. At the military level, for example, they have concluded Incidents at Sea Agreements (INCEAs). At non-military levels they have institutionalised bilateral or trilateral maritime cooperation on customs, pollution control, drug interdiction and search and rescue (SAR). For example, the RAMOGE agreement of 1976 (derived from the towns St Raphaël, Monaco, Genoa) supports transnational cooperation on maritime protection between France, Monaco and Italy. French and Spanish authorities have also been negotiating joint maritime safety measures (*Plan Lion* in the Mediterranean and *Plan Biscaye* in the Atlantic).¹⁶

Similar bilateral arrangements have been negotiated for dealing with seaborne migrants and refugees. Italy's bilateral agreement with the Albanian authorities is designed to control harbours and coasts, and to deter unauthorised migration by sea. An exchange of diplomatic notes on 25

Denmark, by contrast, it is the Navy that enforces sovereign jurisdiction except for fishing in Danish waters.

¹⁶ Information provided by Préfecture Maritime de la Méditerranée, Toulon, for developments up to June 1999.

March 1997, followed by a protocol of 2 April, authorised ships of the Italian Navy, *Guardia di Finanza* and the *Capitanerie di Porto* to patrol international and territorial waters with two Albanian officials on board.

This arrangement permits:

‘stopping in international waters and deviating towards Albanian harbours of ships flying the Albanian flag or of ships in any way ‘connected’ with the Albanian State, and stopping in Albanian territorial waters of ships flying whatever flag which are transporting Albanian citizens having avoided controls on the Albanian territory by local authorities.’¹⁷

An Italo-Tunisian agreement is less specifically directed and involves Italy in subsidising Tunisian maritime capabilities as part of a package of trade and aid measures. From Italy’s point of view this appears to have worked satisfactorily in reducing the number of unauthorised migrants from Algeria, Egypt and sub-Saharan Africa who use Tunisia as a transit point.

Of course these bilateral and trilateral arrangements have not involved the joint control of forces, but rather the coordination of policy and national responses. The establishment of a coherent command and control structure, common doctrines and compatible rules of engagement, interoperable communications, acquisition and sharing of intelligence, and so on, are significant challenges to integration among maritime authorities. These technical issues can be overcome to some extent by the development of common standards and procedures, such as NATO’s *Naval Manoeuvring Instructions*, common communications gateways and common training programmes. In all these respects, the key to minimising technical difficulties is political agreement about the desirability of jointly concerted missions. As discussed below, this has so far been limited in the context of European integration.

Up to a point, the character of ships as self-sustained, autonomous units under national strategic control actually facilitates participation in

¹⁷ Divisione Assistenza ai Profughi, Direzione Generale dei Servizi Civili, *Richiedenti asilo dal 1990 al 1998*, Rome, 11 March 1999.

multilateral operations. Each unit has an independence that enables it to be inserted or withdrawn from a mission with relative ease. Moreover, distinctive levels of national commitment can often be accommodated in risk hierarchies, in the way that Spain and Germany were allotted non-enforcement tasks during WEU/NATO embargo operations in the Adriatic from 1992 to 1996.¹⁸ Dysfunctionalism sets in, however, when a division of labour becomes problematic because too many special interests have to be met, when contributors behave unpredictably or operating standards and Rules of Engagement (ROE) are not compatible.

Nevertheless, the experience of west European maritime forces in constabulary and peace support missions involving WEU has been significant, albeit institutionalised only in a skeletal way.¹⁹ A mine countermeasures force, with ships from Belgium, France, Italy, the Netherlands and the United Kingdom, operated under WEU auspices during the latter part of the Iran-Iraq War and provided protection to merchant ships in the Persian Gulf. The incentive was essentially protection of oil supplies in what was known as ‘the Tanker War’, and to counterbalance a Soviet presence.

More impressively, in 1990 WEU undertook coordination of the maritime embargo against Iraq after the invasion of Kuwait, establishing a Maritime Interdiction Force. WEU Chiefs of Defence Staff met in Paris (for the first time since 1954) and meetings were held in the Gulf between the naval commanders. However, role differentiation came close to being dysfunctional, with a forward battle group of ships from Australia, Canada, the United Kingdom, the United States and later the Netherlands, plus a mine countermeasures force operating in the north of the Gulf, and a WEU force in the less risky patrol ‘boxes’ to the south and in the Red Sea or

¹⁸ Eric Grove, ‘Maritime Monitoring: a Contribution to UN Peacekeeping and Enforcement’, in John B. Poole and Richard Guthrie (eds.), *Verification 1995: Arms Control, Peacekeeping and the Environment* (Boulder, CO and Oxford: Westview/VERTIC, 1996), pp. 297-302.

¹⁹ Individual WEU members have operated in *ad hoc* Petersberg-type tasks outside the NATO framework on several occasions, including the Multilateral Force of British, French and Italian warships off Beirut in 1982–84, and the assistance to Egypt of European minehunters in the Gulf of Suez in 1984. See Michael Pugh (ed.), *Maritime Security and Peacekeeping* (Manchester: Manchester University Press, 1994), pp. 258-67.

Mediterranean. Subsequently, in April 1991 WEU was involved for the first time in a humanitarian operation by coordinating the United Kingdom-Netherlands Amphibious Force and other European support to the Kurds of northern Iraq in Operation SAFE HAVEN.²⁰

The Europeans failed to gain political consensus for a humanitarian evacuation operation from Dubrovnik in 1991. But, no doubt emboldened by its surprising degree of (even limited) success in the Persian Gulf, WEU took up the challenge of monitoring UN sanctions in the Adriatic against former Yugoslav countries, conducted as Operation SHARP VIGILANCE from July 1992. This time, WEU operated to a common set of ROE, though derived from those of Supreme Allied Commander Europe (SACEUR), and the frigates from Belgium, France, Portugal and Spain were led by an Italian flagship and used a joint supply vessel. However, because NATO's standing naval forces were also present, and WEU's distinct command not only duplicated NATO operations but complicated coordination, the forces were combined on 15 June 1993 under SACEUR and commanded from Naples by Commander Allied Naval Forces South (COMMNAV SOUTH). In effect, WEU depended heavily on the NATO command infrastructure. From 17 April 1993, when the UN Security Council extended the mandate to prohibit all merchant ships from entering the territorial waters of Serbia-Montenegro (except in emergency), WEU and NATO maritime forces undertook intensive challenging, boarding and inspection tasks. Role differentiation, however, became even more pronounced, almost to a dysfunctional level, with some national contingents refusing to do more than monitor commercial shipping, and the United States supporting gun-running to non-Serb parties. All the same the coordination of ships from France, Greece, Italy, Spain and Turkey among the Europeans was a remarkable achievement.

It was partly due to a maritime impetus, indeed, that WEU developed an operational capability with a Planning Cell, Situation Centre, satellite data interpretation facility and training exercises. The Petersberg Declaration of June 1992 established that WEU should be able to undertake tasks that fall outside the high-level deterrence and high-intensity warfare entailed in obligations under Article V of the modified Brussels Treaty. Accordingly,

²⁰ Gordon Wilson, 'WEU's operational capability – delusion or reality?', *op. cit.* in note 14, pp. 53-5.

WEU produced a catalogue of generic contingencies for WEU deployments that were to include tasks that are obviously relevant to maritime cooperation: humanitarian and rescue operations, peacekeeping and crisis management, including peacemaking. The Petersberg Declaration also gave point to the allocation of multinational forces *available* to WEU and NATO. A naval component among these forces, the European Maritime Force (EUROMARFOR), is discussed below. But of more than passing relevance to this study is the fact that WEU's competence has embraced the mounting of civilian law enforcement, as well as naval, missions. WEU and its Associate Partners in Central and Eastern Europe contributed to customs patrols on the River Danube as part of the sanctions regime. It also responded to the EU's request to reform the police in the city of Mostar in Bosnia–Herzegovina after the Dayton Agreement, and has continued to provide a Multinational Advisory Police Element in Albania following Operation ALBA (April to August 1997).²¹ The former policing missions were organised under the WEU Council and were quite distinct from the Adriatic deployments; it does not necessarily signify that the two kinds of operation could be easily brought together in maritime law enforcement and assistance.

If Europe's operational potential is only slowly realised, then the importance of a functional, building-block approach within Europe (not to mention across the Mediterranean) will be accentuated. It also suggests that one should look closely at political-military formulations that come under the generic title of flexibility or 'variable geometry'. This could mean accepting the need for *ad hoc* coalitions, case-specific lead states (states that provide political leadership and a decision-making or operational infrastructure) and constructive abstention (acceptance by states that, without contributing themselves, a decision commits the institution).²² The penalty for not tailoring responses more effectively are obvious: fragmentation of policies, unpredictability of response, time spent gathering a coalition, unevenness of

²¹ See Stefano Silvestri, 'The Albanian Test Case', *The International Spectator*, vol XXXII, no. 3/4, July–December 1997, pp. 87-98; Georgios Kostakos and Dimitris Bourantonis, 'Innovations in Peacekeeping: The Case of Albania', *Security Dialogue*, vol. 29, no. 1, March 1998, pp. 49-58.

²² On these issues, see Antonio Missiroli, 'Enhanced cooperation and flexibility in the second pillar: an obstructed path?' and Sophia Clément, 'WEU and South-Eastern Europe', *op. cit.* in note 14, pp. 35-50, 98-108.

resource provision and risk that the framework institution will be marginalised further. However, the benefits of a variable geometry approach are that it may enhance the practical aspects of cooperation among local partners and demonstrate by example that a European security identity is progressing. In this context, then, we can examine the maritime cooperation represented by EUROMARFOR and its relevance to welfare issues.

I.2 EUROMARFOR

This maritime institution can certainly be considered as offering a nucleus for operational capabilities, though its political intent has been stronger up to now than its military content. Indeed EUROMARFOR was not called upon for Operation ALBA and the likelihood of its use independent of NATO may not be very high. However, it has been considered as a contribution to the development of a European security and defence identity both within and outside NATO. Conceived as a non-standing but pre-structured force, it is 'answerable' (meaning 'available') to WEU, and thus to the EU. It can be used by NATO or requested to act by international organisations such as the UN or OSCE.²³

Its greatest benefit has been in structuring cooperation between the naval forces of France, Italy, Portugal and Spain for Petersberg contingencies. Founded in Lisbon in May 1995, the Force is not restricted to the Mediterranean, though this is its privileged zone of interest. Adverse publicity surrounded its development because there was no consultation with states to the south of the Mediterranean, where in some quarters it was initially given a cool reception as perhaps having a potential for intervention. But there has been no sustained protest and there is little evidence these days that southern Mediterranean states are particularly worried by it. In principle, the Force is also dedicated to promoting stability, cooperation, transparency and mutual understanding by supporting the NATO and WEU Mediterranean dialogues and the objectives of the

²³ See, Eric Grove, 'A European navy: a new horizon or false dawn?', *Jane's Navy International*, vol. 101, November 1996, p. 16.

Barcelona process. Its exercises have been open to southern Mediterranean observers.

The intention is to be able to operate on five days' notice for crisis management missions, including peace support operations. But the tasks relevant to the present discussion are at the lower end of the risk spectrum, of the kind that in theory the EU should have least difficulty in embracing:

- humanitarian, disaster relief, search and rescue;
- evacuation;
- maritime policing;
- sea control including quarantine, embargo and sanctions enforcement.

It is directed and coordinated by a ministerial-level committee of Chiefs of Defence Staff and foreign ministry officials. The force command is held on a one-year rotation among the participants. Since the first exercise, EOLO '96, the navies have exercised once or twice a year using NATO procedures. It can benefit from common training and sometimes common equipment. The EUROMARFOR commander can call upon an aircraft carrier, three destroyers, three amphibious landing ships, seven frigates, four minehunters, two support ships, two submarines and two maritime patrol aircraft.²⁴ On paper it is thus a force with clout, providing a core of maritime collaboration for the tasks envisaged. What is not clear, however, is its adaptability to tasks that do not require defensive capabilities or firepower, and whether it could develop special techniques for dealing with humanitarian crises in relatively benign environments. It would make sense for EUROMARFOR to develop interoperability for low-level capabilities, and promote the necessary linkages with civil maritime forces to deal with MACA situations involving numbers of civilians.

Indeed, one of the challenges confronting a harmonised European approach is that law enforcement and welfare at sea involve a kaleidoscope of authorities, so that coordination is often difficult and bureaucratic. National provisions vary, making the development of systemic transnational communities problematic, too. In France the Navy combines military, police

²⁴ EUROMARFOR, 'The European Security and Defence Identity is Already a Reality at Sea', Rome, 1998.

and civilian responsibilities, through the *Préfet Maritime* system, which integrates the capabilities of a range of French maritime organisations (to be discussed in detail in the third section below). However, in most cases naval forces do not initiate law enforcement but are asked to assist civil authorities. This is true of the US Navy, for example, which is not entitled to make decisions about law enforcement but can only support the US Coast Guard (USCG). Spain and Italy also exemplify such a model of naval support to other agencies which have prime responsibilities.

In sum, whilst its higher military capabilities might give rise to unrealistic expectations, and in coping with boat people it would have little utility as a formation, EUROMARFOR can represent a core of European maritime cooperation of more than symbolic importance. In terms of value added, it reinforces existing interoperability in southern Europe, develops practice in the command of multinational forces and perhaps has psychological value in inducing confidence among a systemic maritime community. Cooperation on functional welfare is well within its scope and it could develop experience that would underpin an EMP regime for dealing with seaborne refugees and migrants, as will be analysed in the fifth section.

We have seen in this section that maritime cooperation is both inherently feasible and becoming institutionalised in Europe. However, it is also subject to the limits of political disagreement over the future security structure of Europe. Institutional reform may be a partial answer, but in the next decade or so it seems likely that flexibility and enhanced cooperation on low-risk security issues with a non-military component will have increased salience. EUROMARFOR is already an expression of variable geometry. Its participants could give closer attention to welfare which is significant for security in its broadest sense in the Mediterranean. In this respect we will now consider the significance of seaborne migrants and refugees for European maritime authorities.

Chapter Two

PEOPLE ON THE MOVE

The case for functional maritime cooperation on welfare issues is underlined by the significance of boat people in global migration patterns. A variable geometry framework is also indicated by the phenomenology of seaborne refugees and migrants, and their differential impact on Mediterranean states. Before turning specifically to this pattern, however, preliminary clarification on three points is necessary concerning universal security aspects of people on the move.

First, the refugee/migrant phenomenon is often considered a risk to societies, inducing real or perceived instabilities in the communities that migrants leave, transit or gravitate towards.²⁵ In particular, the security risk is commonly understood to mean that an unregulated intake of immigrants is undermining national identities and/or jeopardising a relatively prosperous Western way of life. Following the work of Buzan, Wæver and de Wilde, whether or not an actual security risk exists, the fact that it is perceived as such raises it on to a security agenda.²⁶ The issue has the potential to create tensions between states, which could contribute to a broader picture of a strategic threat. Growing demographic pressures in the southern Mediterranean, disparities in wealth between North and South and tighter controls on legal migration and asylum are seen as likely to

²⁵ Martin O. Heisler and Zig Layton-Henry, 'Migration and the links between social and societal security', in Ole Wæver, Barry Buzan, Morton Kelstrup and Pierre Lemaitre, *Identity, Migration and the New Security Agenda in Europe* (London: Pinter, 1993), p. 157.

²⁶ Groups in society may present it as such for political advantage, in ways that buttress xenophobic perceptions in Western Europe of huge numbers of aliens threatening social stability. Perceptions are determined by several factors, such as ease of integration, competition for jobs, the size of the migrant minority and political opportunities for racist parties. See Ghada Karmi, 'Migration and Xenophobia in the Mediterranean', paper presented at EuroMeSCo Annual Conference, London, 16 May 1998; Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner, 1998).

contribute to international tensions.²⁷ Moreover, a paradoxical and reciprocal relationship exists between movement, controls and evasion. The near hysteria over refugees has meant that at the same time as the refugee crisis came to the boil in Kosovo, the United Kingdom was enacting legislation designed to deter entry.²⁸ As Catherine Wihtol de Wenden points out, such restrictions in prosperous part of the world on both asylum seekers and migrants have a considerable impact on how people move.²⁹ The greater the denial of legitimate migration, the more pressing the dynamics of illegal migration, the more lucrative the trafficking and, correspondingly, the greater the demand for policing. However, in purely economic terms, the global division of labour offers incentives, both to provide and to exploit cheap, peripheral labour. Migrant labour contributes significantly to southern European economies. For this, some form of regulation of the movement is desirable and inevitable, though, as Ghada Karmi indicates, the humanitarian and welfare aspects of the issue tend to get neglected compared with the rigorous imposition of controls.³⁰

Second, apart from additional protection afforded by the law of the sea, the mode of travel does not endow seaborne refugees and migrants with special legal or political status compared with people who travel by land or air. The hardships are not necessarily greater and their socio-political importance is no different. The main reason for distinguishing them is their requirement for special assistance and regulatory provisions by state authorities. Moreover, while the travellers are at sea, state authorities and the merchant shipping industry are virtually the only sources of action. Humanitarian NGOs tend to be 'landlubbers'.³¹

²⁷ In fact, the OECD's monitoring network has detected a slowing down of legal migration inflows since 1993, though irregular migration has been of increasing concern to OECD states. OECD-SOPEMI, *Trends in International Migration: Annual Report 1998* (Paris: OECD, 1998), p. 15.

²⁸ Tony Kushner and Katherine Knox, *Refugees in an Age of Genocide: Global, National and Local Perspectives* (London: Frank Cass, 1999).

²⁹ Catherine Wihtol de Wenden, *L'Immigration en Europe* (Paris: La documentation Française, 1999), p. 77, and *Faut-il ouvrir les frontières?* (Paris: Presses de Sciences Po, October 1999), p. 17.

³⁰ The Maghreb states have called for a 'Migrants' Charter', see Karmi, op. cit. in note 26.

³¹ Exceptionally, in the late 1970s and early 1980s a committee led by Bernard Kouchner of Médecins sans Frontières sent a medical support ship, *L'île de lumière*, to the

Third, distinctions are made in law and policy between two broad categories of people on the move: (a) refugees recognised in the 1951 Geneva Convention who may then seek formal asylum status; and (b) migrants, often referred to as ‘economic migrants’, who have either legal and regulated status or unregulated status. These broad divisions do not account for the wide variety of people on the move, such as internally displaced persons. The UNHCR has in fact taken to using the phrase ‘people of concern’ to embrace those for whom it is both formally responsible under the Convention and others for whom it may have a mandated responsibility (such as returnees).³² However, these distinctions may be less important for maritime cooperation, given that safety at sea is paramount and the difficulty in designating travellers at sea as ‘illegal migrants’. Other distinctions such as that between criminals and victims may be more important.

Although the geographical impact of boat people varies considerably, as the Mediterranean case studies later demonstrate, Europe is affected because the boat people issue is a global phenomenon.

II.1 Global significance

The boat people issue is commonly perceived to have reached crisis proportions. The UN High Commissioner for Refugees (UNHCR), the International Organization for Migration and other international bodies have sounded alarm bells about the volume of refugees and unregulated migration throughout the world for many years. The warnings have grown louder since the early 1990s as belligerents in civil conflicts have deliberately forced civilians to migrate in order to gain strategic advantages. Largely as a consequence of internal wars, the numbers of refugees and

assistance of Vietnamese boat people. A coalition led by the Centri Sociali del Carta di Milano, with international participation, founded the Pact of Valona in December 1998 to promote justice for illegal migrants in the Mediterranean and counter ‘fortress Europe’ policies. See www.sherwood.it/valona/patto_fr.htm.

³² See the glossary for a full list of terms. See also UNHCR, *1998 Global Report* (Geneva: UNHCR, 1999).

internally displaced have doubled (at a conservative estimate) since 1990.³³ At the same time, demographic pressures in poor countries have become increasingly evident. Estimates for the Maghreb area alone suggest a population increase from 65 million to 84 million between 1998 and 2010.³⁴ The causes of population movement are varied and complex,³⁵ but trends in the dispersal of boat people clearly affect Europe and its neighbours.

It is therefore useful to indicate some of its main features here. First, the numbers involved are significant. In modern memory, the phenomenon is indelibly linked with the huge exodus from Indo-China, especially after the communist victory in Vietnam in 1975 and the subsequent repression of Hoa Chinese. The United Kingdom was particularly affected because Hong Kong became a major destination, but the seaborne exodus affected all parts of the world, and confronted general shipping, government vessels and coastal authorities with a human tragedy at sea on a large scale. Analysts estimate that in the 1970s and 1980s between 125,000 and 250,000 Indo-Chinese boat people died at sea, the victims of robbers, storms, inadequate navigation and unseaworthy craft.³⁶ Large numbers undertaking seaborne migration have taxed coastal state authorities since then. The United States, for example, has had a long experience with intrepid navigators from the Caribbean. The US Coast Guard's biggest single operation in its history has been the interception of Haitians, including 34,000 intercepted in a six-month period after the coup against Jean-Bertrand Aristide.³⁷ From Cuba, the USCG intercepted 38,560 people in the year after August 1994 when the Cuban authorities ceased forcibly attempting to prevent departures.³⁸ To put the Mediterranean situation in perspective, the USCG intercepted 288,000

³³ The UNHCR estimated that persons requiring assistance by 1997 numbered about 22.7 million, of whom 13.2 million were refugees. UNHCR, *The State of the World's Refugees: A Humanitarian Agenda* (Oxford: Oxford University Press, 1997).

³⁴ Ghada Karmi, op. cit. in note 26.

³⁵ For a useful discussion of the phenomenon, see Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 2nd edn. (Basingstoke: Macmillan, 1998).

³⁶ Op. cit. in note 28, p. 309. See also Alex Cunliffe, 'The Refugee Crisis: A Study of the UNHCR', *Political Studies*, vol. 43, 1995, pp. 278-90.

³⁷ Cited by Gary W. Palmer, 'Guarding the Coast: Alien Migrant Interdiction Operations at Sea', paper for *Connecticut Law Review Conference on Immigration Law*, 4 April 1997, p. 14.

³⁸ Cited in *ibid.*, p. 18.

migrants and refugees in the period 1980 to 1998.³⁹ This represents an annual rate comparable perhaps to the number of boat people who arrived in Europe annually in the peak years of 1991 and 1997–99.

The boat people phenomenon is also significant to Europe because of the growing geographical ambitions of migrants. This is notably true of Chinese migrants, but also of Tamils and others. To reach Australia, for example, relatively wealthy Asians use fishing boats and ships carrying 50 or more people and may pay up to \$US40,000 for the boat and \$US3,725 per person. Between August 1998 and May 1999, 21 boats carrying over 400 Asians, sometimes dumped on remote reefs and beaches, were detained in Australia.⁴⁰ China is now a major source of illegal migrants into Europe and North America, and an estimated 20,000 arrive by sea each year in the latter, most having chartered voyages in cargo or fishing boats whose ‘controllers’ have been known to incite violence in order to create the necessity of an emergency rescue.⁴¹ Chinese and others arrive in Europe from many parts of the world. For example, 21 men from India, Pakistan, Iraq and Rwanda were rescued from the seas around Nissiros in the Aegean when their boat sank in January 1999.⁴²

Smuggling and trafficking in people has thus become big business on a global scale. The phenomenon is closely linked with transnational crime

³⁹ USCG, Director of Operations Capability Directorate, *21st-Century Hemispheric Maritime Security: A USCG Deepwater Vision*, Washington, DC, 15 September 1998, p. 40.

⁴⁰ Michael Richardson, ‘Australia Takes Steps to Halt Illegal Immigrants’, *International Herald Tribune*, 18 May 1999, p. 2. A 30-metre fishing boat carrying some 140 Iraqis with two Indonesian crew was intercepted off the north-west coast of Australia in August 1999, Darren Gray, ‘Boat People Taken to WA’, *The Age* (Melbourne), 16 August 1999.

⁴¹ A boat carrying 286 Chinese reached Long Island in June 1993 and some managed to swim ashore. Others were denied asylum hearings even when caught while walking through the surf to shore because for asylum purposes US sovereign territory is only solid ground on the US mainland, thereby excluding Guantanamo Bay in Cuba and US-flagged vessels. The difficulty of interception at sea is compounded by the uncertainty of flagging. The Chinese government does not always recognise the boats as registered in China; see op. cit. in note 37, p. 22. In July 1999 Canada arrested a ship off Vancouver Island carrying 122 Chinese migrants, *International Herald Tribune*, 22 July 1999, p. 4.

⁴² *The Guardian*, 7 January 1999, p. 13.

which can exert particular leverage when people depend on sea transport. The extent of this is difficult to measure with precision, but there can be little doubt that organised criminal networks are an 'important mediator of immigration in Europe', controlling fraudulent documentation and exercising control over routes and transport.⁴³ The UN Centre for International Crime Prevention estimates that as many as 4 million illegal migrants are moved by traffickers each year, generating annual earnings of US\$5-7 billion.⁴⁴ The criminal networks usually charge migrants and refugees exorbitant fares and protection money, and they may blackmail boat people into engaging in criminal activities in the destination country. A large boat of illegal Chinese migrants can be worth US\$6 million, with some migrants paying US\$30-45 thousand each to reach the United States.⁴⁵ In this respect, sea crossings offer major opportunities to exploit migrants and refugees through the ownership of boats, employment of crews with experience and use of couriers or guards at ports. Of course the cost to travellers also acts as a form of control on the numbers able to afford passage.

On arrival, many refugees and migrants are vulnerable to blackmail and extortion. They have few possessions and limited means of support. Their status is illegal or subject to costly and lengthy administrative and legal processes, and they may be socially outcast in host communities. Detailed studies of Albanians in Italy and Greece suggest that the perceived links between illegal migration and crime is false or exaggerated as a consequence of selective policing, and breeds media attention and xenophobia.⁴⁶ Nevertheless, the crime networks organising migration are

⁴³ The phrase is from Christian Joppke, 'International Migrations Forum: A Tentative Summary', *European University Institute Review*, November 1998, pp. 13-14.

⁴⁴ G. Gunnatilleke, *Summary of the report of the rapporteur: international cooperation in fighting illegal immigration networks*, IOM seminar on International responses to Trafficking in Migrants and the Safeguarding of Migrant Rights, Geneva, 26-28 October 1994, cited by Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Interregional Crime and Justice Research Institute, UN Office at Vienna, *Global Programme against Trafficking in Human Beings*, February 1999.

⁴⁵ Op. cit. in note 39, p. 40. Cf. the combined voluntary contributions of the United States and Japan, US\$1,225,000, to the UN Centre for International Crime Prevention.

⁴⁶ CSS-CEMES, *Albanian Immigration to Italy. A 'Criminal' Invasion?*, Ethnobarometer, working paper no.1, October 1997; Fakiolas, 'Migration from and to Greece during the

certainly involved in drug trafficking, gun running and the kidnapping of women and girls for prostitution. For the Albanian, Kosovar, Montenegrin and Turkish criminal organisations, the 1990s were a bonanza for preying on refugees from the Yugoslav wars and Albanian instability, and for exploiting Kurds and people from the Indian subcontinent in transit.⁴⁷ Some observers have argued that trafficking in people has become more lucrative than trafficking in goods, and even in drugs.⁴⁸

Last but not least, the phenomenon is significant because boat people constitute an issue for humanitarianism. The majority of USCG interdictions are triggered as search and rescue missions, mostly on the high seas, and the USCG often has to destroy boats at sea because they present risks to shipping. Many of the vessels have no, or only limited, navigation aids or charts, and have unreliable engines and steering, and little by way of safety equipment. Conditions for long voyages are often insanitary and there are fire risks associated with cooking in the open.⁴⁹ Similar predicaments confront European authorities. On the relatively short voyages in the Adriatic, *scafisti* have deliberately thrown people overboard in order to slow down pursuit operations. One of the most shocking incidents in the 1990s occurred as a consequence of a collision between the Italian vessel *Sibilla*, which was enforcing an immigration blockade, and an Albanian refugee ship in the Strait of Otranto that resulted in 187 deaths.⁵⁰ Subsequently, in May 1999 a collision between a motorised rubber dinghy and a *Guardia di Finanza* patrol boat resulted in the deaths of three adults and two children from Kosovo.⁵¹ A few incidents such as these are highly publicised, but

last four decades', cited in Russell King, Theodoros Iosifides and Lenio Myrivili, 'A migrant's story: from Albania to Athens', *Journal of Ethnic and Migration Studies*, vol. 24, no. 1, 1998, pp. 159-75.

⁴⁷ Briefing by Mrs Sadako Ogata, UNHCR, to the Security Council, New York, 5 May 1999, www.unhcr.ch/refworld/unhcr/hcspeech/990505.htm.

⁴⁸ See Stefano Silvestri, 'The Albanian Test Case', *The International Spectator*, vol. 32, no. 3/4, July–December 1997, p. 89. The illegal traffic to Australia is also associated with crime: Michael Richardson, 'Australia Takes Steps to Halt Illegal Immigrants', *International Herald Tribune*, 18 May 1999, p. 2.

⁴⁹ Op. cit. in note 39, p. 40.

⁵⁰ Stephen Weeks, 'Albania angered by sinking', *The Guardian*, 31 March 1997, p. 10.

⁵¹ Annalisa Fantini, 'Collisione nel canale d'Otranto, è strage', *Il Messaggero*, 28 May 1999, p. 4, and 'I kosovari ora accusano: "Speronati dai finanzieri"', *Il Messaggero*, 30 May 1999, p. 8. A ship carrying Romanies sank in August 1999; although 69 were

hardly a voyage occurs in European waters without loss of life, disease or severe debilitation. In the January 1999 Nissiros incident cited above, 10 men died. In the western Mediterranean the number of migrants drowned in the 1990s has been reported as being in the region of 600 or 1,000.⁵² A more precise set of figures for the later 1990s, compiled by the Spanish Ministry of the Interior, might put the figure somewhat lower (see Table 1).

Table 1 Shipwrecks and deaths in Spanish waters

	1996	1997	1998	1999 ¹	Totals
Wrecks	4	3	24	7	38
Drowned or disappeared ²	31	61	75 ³	10	177 ³
Corpses recovered	10	24	32 ³	5 ³	71 ³
Rescued	34	18	155	67	274

Notes

¹ As of 31 May.

² Based on information supplied by occupants.

³ Not including bodies recovered in Moroccan jurisdictional waters.

Source: Ministry of the Interior, Madrid.

The vital point is that such statistics reflect a hidden human tragedy on a scale that is largely overlooked by humanitarian organisations, governments and international agencies alike. Perhaps as many as 500 boat people are lost at sea in the Mediterranean every year.

It should also be recognised that enforcing regulations confronts the crews of government vessels with moral dilemmas, and in some situations with psychological stress for which they may need training, preparation and post-incident counselling. Efforts to interdict can further endanger overloaded and unseaworthy craft and their passengers. Moreover, the criminal operators and illegal migrants are not always distinguishable. Whereas an enforcement agency may be granted ROE that permit firing across the bows of sanctions-running cargo vessels, for example, a show of force against boat people would require captains to suppress humanitarian considerations.

rescued by a passing ship, at least 17 were drowned, '17 Gypsies Drown', *International Herald Tribune*, 24 August 1999, p. 4.

⁵² Mary M. Crain, 'New North African Immigration to Spain', *Middle East Report*, Summer 1999, p. 23; L'Espagne veut faire de Gibraltar la "porte blindée" de l'Europe', *Le Monde*, 2 June 1999.

In any case interception must be undertaken within the legal obligation to assist civilians in distress at sea, not with a view to increasing that distress. Finally, it may be stressful for crews to undertake forcible returns, even with due regard to the safe passage of returnees, when expected by government policy – as the Italian government required for Albanian refugees in the second half of 1991 and the Reagan and Clinton administrations required for Haitian boat people after May 1992.⁵³

II.2 Mediterranean boat people

Refugees and migrants are nothing new in the Mediterranean Sea. Facilitating unregulated migration has been one of its historical uses. But attempts to regulate the modern phenomenon were addressed with increasing urgency in the 1990s by states bordering the Mediterranean, and it is now also an area of policy development in the European Union.

Quantifying the scale of the issue is problematic. Records are available for the number of legal migrants, formal asylum seekers, those granted temporary protection status and those formally evacuated from conflict areas. But by definition, illegal migrants are clandestine, seeking to avoid regulation and control by state authorities, referred to in France as *sans papiers*. Also, the number who fail to arrive safely can only be estimated. Interceptions and detentions, which in Spain number approximately 1,500 a year, can only be a rough indicator. Estimates of the number of illegal migrants living in Spain (whatever form of travel) has ranged widely but is probably about 200,000.⁵⁴ The number of refugees reaching Italy and Greece is also only approximate because large numbers have chosen unregulated or clandestine methods of arrival. It is impossible, therefore, to provide an

⁵³ Screening of Haitians for claims to asylum has led to disturbances on board USCG cutters. Executive Order 12807 of 23 May 1992 eventually enabled the US government to repatriate Haitians without opportunity to claim refugee status, arguing that the US *non-refoulement* obligations under the 1951 Geneva Convention did not apply outside US sovereign territory (which was narrowly defined). *Humanitarian Assistance Missions: Migrant Operations Handbook* (Washington, DC: Department of Defense, n.d.).

⁵⁴ Isabel Bodega et al., 'Recent Migration from Morocco to Spain', *International Migration Review*, vol. 29, no. 3, 1995, p. 805.

accurate figure of the proportion of Mediterranean refugees and 'illegal' migrants who have travelled by boat since 1990. A figure of 80-100 thousand arriving by boat can be estimated for the decade for Italy.⁵⁵ If we assume that the number of intercepted seaborne migrants entering Spain can be doubled to account for undetected arrivals (say 3,000 a year since 1996), and a similar number allowed for Greece, then an estimate for the EU countries of the Mediterranean in the decade would probably be in excess of 180,000.⁵⁶ Estimating the number of sea voyages also has to take account of the fact that Turkey, Malta and Cyprus are transit points, and individuals may make more than one voyage in the course of a migration. One cannot doubt, at any rate, that in recent years a significant proportion of migrants and refugees reaching the northern Mediterranean states altogether, and probably the majority arriving in Italy, have been boat people.

The main routes are:

- from the Maghreb direct to the southern coast of Spain, or via Melilla and Ceuta;
- from Turkey to Greece or Sicily;
- from the south-eastern Adriatic coast to Italy, and especially Puglia;
- from Egypt (or the Maghreb via Tunisia) to Sicily or mainland Italy, sometimes via Malta.

Greece, Italy and Spain are not necessarily the final destinations, of course, and most people then move on to Austria, Germany, Switzerland and the Benelux countries in particular. A trend in the late 1990s, however, was for Italy and Spain to become places of residence.

⁵⁵ Based on Ministry of Interior, Divisione Assistenza ai Profughi, Direzione Generale dei Servizi Civili, 'Richiedenti asilo dal 1990 al 1998', Rome, 11 March 1999; Ferruccio Pastore, *Conflicts and Migrations: A Case Study on Albania*, CeSPI occasional paper, (Rome: CeSPI, March 1998); and estimates by the UNHCR and CIR for Kosovo refugees.

⁵⁶ To put the arrivals 'problem' into perspective, French consulates abroad refuse 500,000 visas each year, and the number of asylum seekers rejected in 1997 was 20,055 compared with 4,112 accepted. Catherine Wihtol de Wenden, 'Notes sur les visas de circulation', paper presented at EuroMeSCo Annual Conference, London, 16 May 1998.

The main problem for the southern EU states has not been the relative size of the foreign population but the rapid and uncontrolled increases affecting particular regions at a time when they have been attempting to develop free movement *within* the EU and control regimes to regulate access from outside. Indeed, it is the poor countries nearest to conflict that sustain the biggest asylum influxes (for example, Guinea hosting refugees from Liberia and Sierra Leone). The number of migrants and refugees has not, for the most part, dramatically altered the balance of ethnicity in the populations of European states over the long term. In Greece, Italy and Spain the foreign population, excluding naturalised persons, is only about 2 per cent compared with France (6 per cent), Germany (8 per cent), Belgium (over 9 per cent) and Switzerland (over 16 per cent).⁵⁷ Apart from Switzerland, these are relatively small proportions when contrasted to the 20 per cent increase in Albania's population within a few months as a consequence of the Kosovo exodus.⁵⁸ The distribution of Yugoslav asylum seekers by June 1998 was also uneven, with Switzerland and Germany taking large proportions.⁵⁹ However, Italy has also seen increases. In 1997 there were 1,872 asylum applications. This figure increased to 10,512 in 1998 as the civil war in Kosovo intensified.⁶⁰ Thousands more were in transit, did not file asylum applications, or were granted temporary protection status (TPS).

II.3 Italy and the Adriatic waves

The maritime organisations of Italy have borne the brunt of seaborne refugees from political instability and conflict in the 1990s because Albania has been both a source since the collapse of communism and a transit point for Yugoslavian outflows. Like Greece, Italy has also experienced steady migrant arrivals from all parts of the developing world, replacing the labour lost through traditional mass emigration and sustaining agriculture and low-

⁵⁷ Op. cit. in note 29, p. 11.

⁵⁸ Of the 986,979 refugees estimated by the UNHCR to have fled Kosovo, only 80,000 were officially relocated to other, wealthier states. Interview with Sadako Ogata, 'Un retour massif ne serait pas une bonne chose', *Le Figaro*, 10 June 1999, pp. 1, 4.

⁵⁹ Monthly Asylum Applications Lodged in Europe, www.unhcr.ch/statist/euro/text.htm.

⁶⁰ Ministero di Interio, Divisione Assistenza ai Profughi, Direzione Generale dei Servizi Civili, 'Richiedenti asilo dal 1990 al 1998', Rome, 11 March 1999.

paid sectors of the economy. But whereas the bulk of migration into Greece has been localised to going and froing across the common, now militarised, border with southern Albania, in 1996, Italy had about a million registered emigrés from outside the EU,⁶¹ and between 600,000 and a million who were estimated to have no regular status. Italy has a relatively porous coastal frontier of some 7,400 miles, and a difficult policing task. Boat people often cross the short distance from Albania in small rubber dinghies with outboard motors that can elude patrols and make fast getaways. Voyages from Turkey and the Middle East are in larger ships, but people are transferred while still on the high seas, to *carrette del mare*, smaller boats often in poor shape that may have to be rescued by the authorities.

Quite apart from seasonal fluctuations relating to weather and sea conditions in the Adriatic, the political developments in the area have created a surge-like phenomenology. Periods of relative stability have alternated with periods when the Italian authorities were all but overwhelmed. Statistics for Adriatic boat people in different phases of the Albanian and Kosovo crises illustrate the surges encountered by Italy.

- In March and August 1991 two waves of forced migrants (23,000 and then 20,000) left the Albanian port of Durres for the Apulian coast.
- In March 1997 boats from Vlores and Durres arrived, and in May from Shkoder, bringing a total of 16,798 for the first half of the year.
- From 1 January to 1 June 1999 about 14,000 Kosovar refugees arrived from Montenegro and Albania independently of the HEP.⁶²
- During one weekend at the end of May 1999 some 5,500 Kosovar and Romany boat people were estimated to have landed in Puglia across the Strait of Otranto from Albania (Durres, Vlores) and Montenegro.⁶³
- In one week in July 1999 over 1,200 Romanies fleeing persecution by Albanian Kosovars, arrived in Puglia from Montenegro, leading the president of the Puglia Regional Council to describe the influx as 'putting his community under siege'.⁶⁴

⁶¹ Op. cit. in note 27, p. 31.

⁶² Approximate figure estimated by UNHCR and Consiglio Italiano Rifugiati (CIR), Rome. As regards HEP, see below.

⁶³ 'Allarme profughi, 5,500 sbarchi in Puglia', *Corriere della Sera*, 31 May 1999, p. 4.

⁶⁴ Philp Willan, 'Italy bars the refugee route for fleeing Kosovan Gypsies', *The Guardian*, 22 July 1999, p. 17.

The main Italian maritime authorities responding to this have been the Navy, customs (*Guardia di Finanza*), coastguard (*Guardia Costiera*), port authority (*Capitaneria di Porto*), *Carabinieri* and police. For the Italian Navy, assistance to the civilian authorities in monitoring and intercepting illegal trafficking of all kinds, and controlling refugees and migrants in particular, has been a new experience in MACA, but one for which it clearly has the resources. Two contextual complications should be mentioned. Although the Navy and *Guardia di Finanza* undertake the major activities, they do not have overall coordinating responsibilities as the *Préfet Maritime* does in France. Fragmentation, sometimes institutional competition, has made responses less coherent and effective than could otherwise be the case. Second, domestic migration and asylum policy has sometimes lacked consistency. This is understandable to some extent, because immigration and asylum were not really practical or political issues for Italy until the 1990s.

Indeed both Italy and Greece have adopted controversial, *ad hoc*, emergency measures. Greece expelled thousands of Albanians between January 1991 and August 1994. Italian policy has been relatively flexible on temporary work permits, and the first Albanians to arrive in 1991 were granted extraordinary permits as ‘workers’. But people in a second influx were repatriated through economic incentives and coercion. The outflow from Bosnia-Herzegovina in 1992 then led to the introduction of Law 39/92 offering temporary protection status on humanitarian grounds. TPS is cheaper than supporting asylum seekers in the short term and offers refugees more immediate benefits: it enables people to seek work and does not confine them to camps. This achieves one of the surreptitious goals of TPS – discouraging asylum applications – but it creates a tension because it is more difficult to uproot refugees after they have begun to integrate into local communities. Subsequently the rate of inflow decreased. But new controls on movement, including the seizure of over 100 boats by the Albanian police in Vlores in 1996, spurred gangs to become better organised and more expensive (‘fares’ reached US\$450-750 for passages from Vlores to Brindisi).⁶⁵ With the economic crisis and violence in Albania in 1997, Italy passed an emergency decree granting a stay of 60 days, renewable by 30

⁶⁵ Pastore, op. cit. in note 55.

days, to 'Albanian citizens . . . in need of humanitarian assistance and protection, when in their country of origin they would be exposed to a serious threat to life or physical integrity'. As Ferruccio Pastore indicates, this was partly designed to authorise the police to deport Albanians who were not in this or other exempted categories.⁶⁶

This was part of a multifaceted approach to reduce the outflow that included Operation ALBA and a diplomatic offensive towards Albania to achieve control over exit points. The latter led to a series of cooperative agreements involving the Italian Ministry of Defence and the *Guardia di Finanza*. However, these placed the Italian maritime authorities in the difficult position of coping with a humanitarian issue by instituting a blockade and turning back boatloads of migrants even in Albanian territorial waters. In this situation, a collision such as the *Sibilla* incident was hardly surprising. The UNHCR was highly critical, arguing that: 'There must be a possibility for these people to reach safety and have their protection needs assessed and appropriately met. Interdiction and compelled return preclude this'.⁶⁷

Subsequently, TPS was granted to Albanian refugees from Kosovo, but revoked as an option for Romanies fleeing atrocities perpetrated by Kosovo Albanians in July 1999, on the grounds that it would be 'a mistake' to regard as refugees a minority driven out of a country 'where there is an international contingent [KFOR] present'.⁶⁸ The difficult situation confronting Italy should not be underestimated. Like that of most other states, Italy's initial response to the Kosovo crisis was to support the maintenance of people in the vicinity of the conflict by contributing funds, food and emergency supplies to the UNHCR, ECHO and local governments running camps and facilities in Albania, Macedonia and Montenegro.⁶⁹ When this proved inadequate, Sicily played host to nearly 10,000 evacuees in well-appointed camps under the HEP scheme for Kosovo. But the unregulated arrival of refugees and migrants placed great strains on the authorities in Puglia where camps run by NGOs were barely sufficient. Nor

⁶⁶ Ibid.

⁶⁷ 'UNHCR position on developments in Albania', Press release, Geneva, 27 March 1997.

⁶⁸ Op. cit. in note 64.

⁶⁹ Divisione Assistenza ai Profughi, Direzione Generale dei Servizi Civili, 'Italia: Assistenza Umanitaria ai Profughi dal Kosovo', Rome, 13 May 1999.

can one doubt the general political and social tolerance with which the arrivals of boat people throughout the 1990s have been met. The position with Kosovars was eased considerably with the returns that began in June 1999, but the problems of trying to combine welfare with enforcement made it imperative for Italy to internationalise its burden whilst safeguarding relations with the UNHCR and Security Council in dealing with refugees.

The policy implies a strong push for maritime cooperation in multilateral forums. For example, the Italian government took a lead in setting up a working group of the EU General Affairs Council in December 1998 to study the prevention and control of clandestine migration, and was instrumental in adding the 'uncontrolled movement of large numbers of people' to the risks listed in NATO's new Strategic Concept.⁷⁰ In the light of the contrasting experiences in Operation ALBA and the fragmented, nationalised approaches to humanitarian aid on the borders of Kosovo, Italian policy-makers also believe that the NATO framework should be adapted to construct a civil-humanitarian dimension, as is already the case with WEU. Obviously Italy, like other countries in the Mediterranean, has special requirements to be met, but any evolution in multilateralism is inevitably bound to require transnational cooperation in the employment of maritime resources.

II.4 Fortress Spain?

A rather different set of issues concerns policy-makers in Spain, and the Aznar government has been able to take a tougher stance on frontier protection than the D'Alema government in Rome. In contrast to Italy, Spain feels the effects of illegal migration rather than refugees from conflict, though some asylum seekers have been fleeing from violence in Algeria and sub-Saharan Africa. The relatively steady, if steadily increasing, regulatory and enforcement issue of illegal migrants is complicated by the fact that, of all European states, Spain has land frontiers, namely the enclaves of Ceuta

⁷⁰ See also Alessandro Lang and Bruno Nascimbene, 'Italy's Participation in EU Immigration and Asylum Policy', *The International Spectator*, vol. XXXII, no. 3/4, December 1997, pp. 45-63.

and Melilla, in an area that is not integral to Europe and not considered as a potential part of the EU. Specifically, the enclaves also complicate relations with Morocco in terms of cooperation over migrants. This may explain, at least in part, why the Aznar government has attempted to take a robust view of its frontiers and safeguard them in a way that Italy finds rather more problematic in confronting refugees.

Boat people may have a shorter distance to travel than those crossing the Adriatic (12 n miles at the narrowest point from the Maghreb to Gibraltar), but the currents are treacherous and the cheapest form of travel is in *pateras* – low-lying, fragile barques that are difficult to detect. As already indicated in Table 1, hundreds have died *en route* to the southern coastal area between Cadiz and Malaga. The Spanish Maritime Safety and Rescue Agency (SASEMAR), a private but government-funded service, has only been in operation since 1993, and its statistical records concerning SAR missions may reflect both its increased capability and greater awareness of its facilities among seafarers.⁷¹ But the fastest *rate* of growth in emergency responses has been for the category labelled ‘others’. This refers to barges, warships and *pateras*. Since the first two are not really a problem, it is reasonable to assume that the number requiring rescue reflects the incidence of *pateras* carrying migrants (Table 2).

Table 2 Emergency responses by SASEMAR according to type of craft

	1996	1997	1998	Increase 1996-98 (per cent)
Merchant ships	253	312	317	25.3
Fishing boats	598	665	682	14.0
Recreational craft	800	947	1,099	37.4
Others	86	171	212	146.5
Totals	1,737	2,095	2,310	33.0

Source: data supplied by SASEMAR.

The numbers of craft being intercepted and people being detained by the *Guardia Civil* also show some increases in 1998. Final figures for 1999,

⁷¹ Ministry of Public Works, Infrastructure, Transport and Communications, *Spanish Plan for Maritime Search and Rescue and Pollution Control, 1998–2001* (Madrid: Dirección de Marina Mercante, 1998).

which will include the easier crossings of summer, are likely to be comparable (see Table 3).

Table 3 Interceptions and detentions at sea recorded by Spain

	Number of <i>pateras</i> and other craft intercepted	Persons detained
1996	339	1,573
1997	399	887
1998	557	2,995
1999 (to 31 May only)	137	800

Source: Ministry of the Interior, 'Note on illegal immigration on boats to the coast of Spain', 1996-31 May 1999, General de Extranjeria, Madrid.

The fact that Ceuta and Melilla are transit points means that interception and detention can occur on land to a much greater extent than in Italy's case. The enclaves have Centres of Refugees and Migrants where, if asylum is refused, applicants are either expelled or admission to Spain is granted with TPS for humanitarian reasons (allowing work and a three-year residents' card). The two enclaves are vulnerable to penetration, and had a rate of illegal crossing at 30-40 a day. In 1999 the *Guardia Civil* cut this to a handful a month by erecting a double fence around Melilla (Ceuta's is to be strengthened) and using EURODAC computerised fingerprint identification. The enclaves are not part of the Schengen area, but Spain has EU approval, though not financial support, for these measures.

The largest group of legally resident migrants in Spain is from Morocco – approximately 140,000 out of 700,000 at the end of 1998. The other important non-EU groups are from Peru, Ecuador, Dominican Republic and Central and Eastern Europe. Most expulsions also affect Moroccans, then Algerians and Central and East Europeans. Moroccans are estimated to be the main group of illegal residents (many working in the tobacco fields around Caceres, and on building sites around Barcelona and Madrid). Indeed, because Spain needs such labour it signed a labour agreement with Morocco on 1 October 1999 which promises to produce a better management of migration and provides equal rights and social benefits to temporary non-seasonal workers and for their integration into Spanish

society after four years.⁷² It would be misleading to suggest that Spain is currently experiencing a massive influx of 'illegals' from Africa and the Maghreb, since the fastest growing illegal sector is believed to be the transpyrenean influx of migrants from Romania, Poland, South-Eastern Europe and Russia, and most Moroccans aim for family connections in France (where there are more than in the rest of Europe), Holland, Belgium, Germany and Italy.⁷³

Although fencing off Ceuta and Melilla is clearly directed against illegal migrants, the other major Spanish 'fortification', known as *Plan Sur*, has been rationalised as an attack on crime. Criminal activity includes not only drug and weapons smuggling, terrorism and prostitution, but money laundering by expatriate British citizens who take up residence on the Costa del Sol. The maritime component of *Plan Sur*, however, certainly contributes to a frontier mentality in conceptualising Mediterranean security. The heart of the plan is an integrated surveillance system of fixed and mobile radar and infrared and thermal imaging systems that will detect low-lying *pateras* and then direct visual responses electronically. New command and control systems include an analysis centre at Algeciras that will cut reaction times for fast patrol craft and helicopters. *Plan Sur* effects a much-needed overhaul of the coastguard organisation but also amounts to a revolution in the coastal role of the *Guardia Civil*, a force with military functions under the Ministry of the Interior. The projected cost of 415 million euros is large enough to be the focus of political opposition on the grounds that it is an elephantine technical fix applied to issues that can only be tackled socially and politically.

At the same time, however, the fortress stance is offset by a spectrum of other measures. Spain does not depend on a national solution, but also seeks multilateral cooperation, including maritime cooperation (with Portugal, France and the United Kingdom) to combat crime, and encourages cooperation within the EU and with source countries. It has formally

⁷² Arezki Daoud, 'Europe May Redefine its Immigration Policies: Major Labor Agreement Signed by Spain and Morocco', *The North African Journal*, 67, 19 October 1999, www.north-africa.com/archives/docs/101999B.htm.

⁷³ Bernabé López-García, (ed.), *Atlas de la Inmigración Magrebi en España* (Madrid: Taller de Estudios Internacionales Mediterráneos, Universidad Autónoma, 1996), appendix, p. 3.

supported the Italo-Austrian proposal to outlaw trafficking in people, and supports a common European policy that will de-criminalise illegal migration. The Spanish parliament is also considering a law that will protect victims of trafficking if they cooperate with the authorities to combat Mafia networks. Like France, Spain has worked on a co-development programme to stimulate economic development in southern Mediterranean states. At a bilateral level, Spain has readmission agreements with Algeria and Morocco, and has offered assistance to Morocco (which requires boats, surveillance, radio, command systems and logistics). Relations with Morocco have pivoted on the Moroccan claim to the enclaves, which Spain regards as a non-negotiable issue. However, concern about migrants and refugees is now a matter of debate in Morocco itself because people from West Africa and the Democratic Republic of Congo use the country as a transit point. Spain also promoted an EU Action Plan in mid-1999, directed at migration from Morocco, using the EU's greater economic leverage.

II.5 France and the *Préfet Maritime* system

In contrast to Greece, Italy and Spain, France is not an initial destination for many seaborne migrants and refugees, unless by commercial ferry, since there are easier ways to get into the country. Because of the distance of the transmediterranean sea passage, most boat people reach France via the island of Lampedusa and then Sicily and Italy, or via Spain (sometimes through Gibraltar, Ceuta or Melilla). However, France has created an interesting model for coordinating 'actions of the state at sea' that would facilitate a response to any seaborne migration. France has a unique structure for maritime governance in a realm notorious for fragmentation of responsibility.

The origins of this prefecture system for the sea actually go back to Napoleonic times, but it was revived in response to the *Torrey Canyon* oil pollution disaster of 1967. At that time, responsibilities for the sea were divided between four main institutions and 10 government departments. After debating whether to establish an equivalent of the US or Swedish coastguards, a more appropriate and cheaper alternative was decided upon.

A decree of March 1978 for coordinating the state's action at sea placed the power of coordination in the hands of three regional supremos (and others for France overseas) who have direct responsibility to the Prime Minister.⁷⁴ To avert rivalry between existing institutions, the logical officer for the new post was the most powerful. The three *Préfets Maritimes* (*PréMars*) of Metropolitan France are the naval commanders-in-chief based in Cherbourg, Brest and Toulon. They have the authority of the Government to administer the law, defend sovereign rights and interests, maintain public order and safeguard people and property, with the power to regulate movement (Article 1). The *PréMars* are assisted at state level by the Secretariat-General for the sea (which also reports directly to the Prime Minister and helps define maritime policy, coordinates emergency plans and participates in national and international regulations of the sea).⁷⁵ They can take all initiatives necessary to coordinate ministries and their resources. Specialised administrations remain competent in the exercise of their own specific functions, namely: *Affaires maritimes* for traffic surveillance, fisheries, SAR; *Douanes* for illegal immigration, and the flow of people, goods and currency; the *Gendarmerie nationale* for conduct of sea users (such as speeding water skiers and power boats); *Sécurité civile* for the safety of personnel in the maritime approaches; and the *Société nationale de sauvetage en mer* for lifeboat work. The establishment of a headquarters division in each prefecture under a senior naval officer and with representatives from the other administrations ensures coordination and *pluridiscipline* on a daily basis. Each functional organisation retains its primary responsibilities but has the opportunity to ask the *PréMar* for assistance, just as the *PréMar* has the duty in a crisis to requisition and command resources from wherever they are needed.

The system conforms to the strongly statist traditions of France and appears to contradict the philosophy behind MACA in the relationship between military and civilian power. The *Préfet Maritime* is a naval officer with wide-ranging powers for conducting all state action at sea, whereas the MACA concept is designed to underpin the primacy of civilian control and responsibility. In France the configuration of MACA at sea can look like 'civil aid to the military authorities' and imply, for instance, an absence of

⁷⁴ 'Décret no. 78-272, 9 mars 1978, relatif à l'organisation des actions de l'Etat en mer'.

⁷⁵ Secrétariat Général de la Mer, 'The State's action at sea', Paris, n.d.

parliamentary involvement in a crisis. But it does not simply equate to a militarisation of civilian roles. The French structure is designed to give primacy to the *coordination* of assets and not to a military ethic or to the promotion of political security issues (except in the case of warlike threats). ROE are decided by the Prime Minister's Cabinet and an order to open fire has to come directly from the Prime Minister, as it did before the Navy opened fire on Spanish fishing vessels off Gascony in 1983. As in Spain and Italy, the politico-security culture allows a greater degree of interpenetration of civil and military personnel, resources and action than in the United Kingdom and other states of northern Europe. The British concept of MACA obviously entails special organisational arrangements, but its distinctive feature is the primacy of a civilian ethic. In the context of re-conceptualised security issues, in which military and civilian responses to crisis operations are increasingly integrated, one might look to some kind of solution that marries the structural and ethical approaches. Non-military security issues require military assistance and authoritative coordination of assets; military forces require non-military skills and an ethic that treats certain kinds of security issue as a matter of common welfare.

In conclusion, a variable geometry within a policy of maritime cooperation is suggested by the phenomenon of seaborne refugees and migrants in the Mediterranean. It poses different problems for different states in Europe. France and Spain have no major influx of seaborne refugees, but Spain does have a steady stream of seaborne migrants. Both have, or are developing, institutional mechanisms to govern their sea space and coastal approaches more effectively. Italy and Greece have had a prolonged humanitarian refugee crisis, punctuated by surges, throughout the 1990s. Spain, Italy and Greece have had a history of emigration, especially to the New World, and have had to adapt to a growth in legal and illegal economic immigration. Not surprisingly, perhaps, they have run into difficulties with domestic opinion, humanitarian agencies and operational management. All the same, Italy's leadership on refugee and migration issues has given it a more prominent voice in welfare security matters internationally. All these European states bordering the Mediterranean support greater European burden-sharing on the issue of refugees, and support international measures to crack down on the smuggling of people whilst decriminalising the migrants themselves. It is to this wider policy debate in Europe and

developments in international law, both seemingly edging maritime authorities towards greater cooperation, that we can now turn.

Chapter Three

EUROPEAN POLICY AND INTERNATIONAL LAW

Interesting developments are occurring, both in European migration and asylum policy and in international law, which are likely to require enhanced maritime security cooperation. Member states of the EU have long resisted the development of a common European policy on migrants and refugees, and there is some way to go before they yield control over matters relating to Justice and Home Affairs. Nevertheless, the logic of a free internal market, the evolution of a Common Foreign and Security Policy and the implications of the Amsterdam Treaty suggest that the issue will move increasingly from a purely intergovernmental framework to a concerted or even Community one. At the same time, international law is developing to combat transnational organised crime – with specific attention to trafficking in people. It may be some time before the new Convention Against Transnational Organized Crime comes into force, but the law promotes cooperation between states' enforcement agencies. Of course the logic of maritime security cooperation in such welfare fields does not depend on making migration and asylum policy *communautaire*; it can occur within an intergovernmental framework. But the logic of cooperative mechanisms becomes even more irresistible if Europe moves further from a purely intergovernmental approach. Moreover, CFSP cannot avoid crossing all European pillars, and the migration and asylum issues can hardly be isolated from foreign policy. The purpose of this section, then, is to highlight these influences that will affect maritime security cooperation.

III.1 European migration and asylum policy: from intergovernmental to transnational?

Whereas the goal of free movement of citizens within Europe has featured prominently in European integration, external controls have been a closely guarded prerogative of member states. Across Europe, however, efforts to

promote neo-liberal economic integration have been accompanied by states individually tightening the rules of immigration. For example, Italy has devised its first comprehensive set of rules for dealing with migrants and refugees, to be realised by a council (on which UNHCR would have permanent representation). An important part of the legal consolidation will be Framework Law 40/98, which is designed to plan immigration on a three-year basis with quotas – though one unsought consequence of such tighter controls will be the redefinition, and probably the increase, of the component of illegal and clandestine immigration.

The formation of norms will certainly prove difficult on account of divergent national interests, and many observers are sceptical about the calls by the then European Commissioner Emma Bonino and others for a common policy with binding commitments that will manage the issue.⁷⁶ To date there is no European migration or asylum policy and no shared responsibility for refugees. However, a sectoral and purely reactive approach to migration has been shown to be deficient and, as migration is a transnational issue, it is hard to see how there can be a purely national or fragmented approach to the questions it poses. The institutional commitments otherwise entered into by EU states and the external shocks of refugee crises reverberating through Europe have brought member states into a new, proactive alignment. As with other aspects of CFSP, the intergovernmental framework is having to accommodate transnational welfare issues that were formerly treated as areas of domestic competence.

The Maastricht Treaty institutionalised intergovernmental cooperation in Justice and Home Affairs. Members agreed to consult and coordinate policy in various sectors including asylum issues, controls on the EU's external borders and unauthorised immigration from third countries. The Amsterdam Treaty, however, lifted barriers to *communautarisation* and relocated the issues of asylum, expulsion and freedom of movement from the Third Pillar to the First Pillar, to be dealt with by the Commission.⁷⁷ The 1985 Schengen *acquis* is integrated into the EU framework (with an opt-out protocol for the United Kingdom, Ireland and Denmark). For the first time, too, a special

⁷⁶ Emma Bonino, remarks at conference on 'The Global Refugee Crisis: A European Agenda for the 21st Century', ECHO and UNHCR, 20 May 1999, Brussels.

⁷⁷ For further discussion of the Schengen, Dublin and Amsterdam provisions, see *op. cit.* in note 29, pp. 27-33.

summit of the European Council of Ministers met in Tampere in October 1999 to discuss JHA issues (asylum, immigration, crime and legal cooperation). The Commission has five years from January 2000 to produce a plan to systematise policy formation, which it wants to foster partly because it is an unavoidable component of regulating the internal market. As considered next, in regard to asylum, Europe has been discussing a common policy on the treatment of refugees.

Asylum policy

The EU is committed to respecting existing international conventions regarding refugees and asylum. From the earliest days of the Community, member states agreed to ensure that refugees received the most favourable possible treatment,⁷⁸ but EU states seem more interested in developing a common view on expediting returns and curtailing asylum than anything else. The 1990 Dublin Convention provided that the first state of entry had the responsibility to take people back and deal with asylum requests in order to stop secondary movement and avoid the situation where a person refused asylum in one country but moving to another could then be sent back to where he/she was refused. However, the Dublin Convention fails to deal with people who are accorded TPS.

A form of triage was instituted for dealing with war refugees in the 1990s. Rather than cope with mass movements out of unstable regions, states in Western Europe have encouraged the majority of refugees to remain as 'displaced persons' in the vicinity of the conflict. Here they are provided with camps, varying degrees of protection and humanitarian assistance. Under pressure from the policies of funding (and potential host) states when refugees left Iraq in 1991, the UNHCR accepted protection of people close to conflict with the rationalisation that the eventual aim was not to resettle them but to return them to their homes.⁷⁹ The EU General Affairs Council meeting of 26 January 1998 adopted *in loco* protection as a general

⁷⁸ Alessandro Lang and Bruno Nascimbene, 'Italy's Participation in EU Immigration and Asylum Policy', *The International Spectator*, vol. XXXII, no. 3/4, December 1997, p. 49, note 12.

⁷⁹ Michael Pugh and Alex Cunliffe, 'The Politicisation of the UNHCR in former Yugoslavia', *Journal of Refugee Studies*, vol. 10, no. 2, 1997, pp. 134-53.

principle, but this proved completely inadequate for the war in Kosovo, just as it had been for the wars in former Yugoslavia from 1991. Once again there were limited means to deal with refugees in the region. The European Council failed to agree on burden-sharing or a common status for the refugees: responses were essentially national. A minority of refugees was assisted to leave for host countries through the Humanitarian Evacuation Programme (HEP), but more left the region on their own initiative and in unregulated fashion, leading to the boat people crisis in the Adriatic.

On the other hand, the European Commission would also like to see refugees getting the same chances wherever they relocate.⁸⁰ Minimum standards are a community competence but to date there is no common policy. Members exercise control over migration requirements and procedures, even if there has been some effort to concert policy on expulsions and combating illegal migration. In December 1998 the Council agreed on an Action Plan, which entailed developing a plan for common minimal norms for asylum procedures within two years of the Amsterdam Treaty coming into force.⁸¹ The EU Home Affairs Ministers meeting in the JHA Council of 28 May 1999 reaffirmed the policy of providing protection for refugees close to a conflict zone but also agreed, after initiatives from the Netherlands government and UNHCR, to lay down common standards regarding educational, employment, accommodation and medical facilities. The varying reception of Kosovars who left the region depended on where

⁸⁰ Kosovars, like Bosnians before them, were not given Geneva Convention Status but remained in relative safety under other forms of status. France considered that persecution by non-state actors was not covered by the Geneva Convention and so invented 'territorial asylum'. Switzerland had over 200,000 Kosovars by the beginning of 1999. The Minister of Justice argued that the country was 'being submerged by refugees', and a referendum approved a policy of *refoulement* of asylum-seekers within 24 hours if they had no identity papers. As opponents of the new rules pointed out, Serbian authorities had confiscated or destroyed the papers of Albanian Kosovars. Jean-Claude Buhner, 'L'afflux de réfugiés kosovars pèse sur la politique d'asile en Suisse', *Le Monde*, 13-14 June 1999, p. 5. The UNHCR's view is that the right to asylum must be upheld, and that states lacking resources to provide asylum should be assisted. Remarks by Mme Sadako Ogata at conference cited in note 76.

⁸¹ 'Plan of Action of the Council and Commission concerning the optimal modalities for putting into place the provisions of the Amsterdam Treaty relating to the establishment of an area of freedom, security and justice, adopted 3 December 1998'(199/C 19/01), *Official Journal of the European Communities*, 23 January 1999.

they arrived, with the Netherlands believed to be offering superior accommodation. In addition, the EU Commission was asked by the Council meeting at Tampere in October 1999 to meet the demand for burden-sharing, particularly from Italy, by creating financial reserves to assist states in cases of mass influx.⁸²

Migration policy

As regards migration, this is clearly an inter-pillar, and not just a JHA issue, because EU plans would include economic development and security in the countries of origin. As a consequence of the December 1998 Action Plan, operational cooperation against clandestine immigration networks is to be improved. The Plan stressed additional transnational police/customs cooperation and, without specifically mentioning military forces, includes 'other concerned authorities to prevent and combat criminality.'⁸³ Axiomatically, this extends to navies and other military forces controlling the maritime environment. On Italy's prompting a High Level Working Group (HLWG) of the EU General Affairs Council was established to study how best to achieve this. The HLWG has committees developing Action Plans for Albania, Morocco, Somalia, Sri Lanka and Iraq-Turkey. Work was suspended because of the Kosovo situation but progress was presented to the EU Special Heads of State meeting in Tampere in October 1999. The HLWG is also working on a multilateral readmission agreement, on which the Commission claims competence.⁸⁴ Readmission agreements are currently bilateral and were 'invented' by Germany to deal with Central and Eastern Europe. Italy's agreements with Slovenia, Albania and Tunisia are effective. An EU Action Plan for Morocco was in train in mid-1999.

In general, since the end of the Cold War, German governments have been rather more successful in engaging the EU in an *Ostpolitik* on migration than France, Italy and Spain have in fostering a *Sudpolitique*. For example,

⁸² Op. cit. in note 5.

⁸³ 'Plan of Action of the Council and Commission'(199/C 19/01), para. 39, *Official Journal of the European Communities*, 23 January 1999.

⁸⁴ On readmission policies see Ferruccio Pastore, 'L'obbligo di Riammissione in Diritto Internazionale: Sviluppi Recenti', *Rivista di Diritto Internazionale*, LXXXI, no. 4, 1998, pp. 968-1021.

the EU has invested 15.4 million euros through the PHARE programme in Poland and the Baltic in supporting the control of movement of people. By contrast, EU political and economic investment for regulating Mediterranean migration has been left largely to bilateral arrangements. It has gone little further than trying to exert a common approach by inserting a clause into a proposed trade package between the EU and Egypt, and a seminar in Malaga (24-25 June 1999), organised by Spain with ODYSSEUS funding, which had representation from the interior ministries of Albania, Algeria, Italy, Morocco and Tunisia. The EU pays even less attention to other regions, such as China, as an expanding source of migration. It has been identified as a potential partner but does not figure in an HLWG Action Plan.

Finally, it is worth stressing that the European Commission distinguishes between migrants as victims on the one hand, and networks of organised crime on the other. Both within the EU and beyond (in the UN and Inter-Governmental Council on Migration), there is increasing acknowledgement that illegal migration should be de-criminalised, and that states should cooperate to tackle the smuggling networks as part of a concerted attack on transnational organised crime. This will certainly give greater powers to maritime authorities in dealing with the issue. The Tampere Council meeting called for closer technical cooperation among border services, *'especially on maritime borders'*.

III.2 International law: protection and criminality

EU policy on this issue has been to abide by international law and influence its evolution. It is absolutely essential, however, that maritime cooperation abides by the requirements of the whole body of customary and treaty law as it affects the operations of maritime forces and the protection of seaborne migrants and refugees. Knowledge of, and adherence to, legal requirements may also go some way towards reassuring the EU's Mediterranean partners that this maritime welfare function has collective benefits and is not part of a West European fortress-building enterprise. Refugees and migrants who take to the sea qualify for legal protection through various general instruments and customary practice relating to: human rights law, the

international humanitarian law of armed conflict, refugee law, international criminal law and the law of the sea. The last of these, the law of the sea, has particular significance because it qualifies boat people for protection that is additional to provisions available to persons remaining on land. Maritime authorities, then, need to cooperate within the legal frameworks outlined below.

Human rights law

None of the human rights conventions and treaties makes special provision for boat people. But nor are they denied protection under such instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and conventions designed to prevent trafficking in women and children, slavery and forced labour, degrading treatment and the abuse of migrant workers and their families.

International humanitarian law

As civilians, seaborne refugees and migrants may be subjects of the international humanitarian law of armed conflict (IHL). Civilians are covered by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949). This also contains provisions regarding the treatment of shipwrecked persons and others in grave danger, and covers protection 'against pillage and ill-treatment'. But IHL is not so much concerned with the rationale for the movement of civilians as with their status *vis-à-vis* armed conflict and their designation as protected persons or vessels.⁸⁵ The *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* reaffirms that passenger vessels engaged in carrying only civilian passengers, medical ships and small craft engaged in rescue have

⁸⁵ Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge: Cambridge University Press for the International Institute of Humanitarian Law, 1995), Part VI, 160, p. 41.

protected status. It also uses the phrase ‘parties to the conflict’, thus encompassing sub-state actors in civil conflicts who, it can be assumed, are subject to the general provisions. In any event, the law of armed conflict does not exclude seaborne refugees and migrants from protection.

Refugee law

The provisions of the 1951 Geneva Convention Relating to the Status of Refugees, and the 1976 Protocol, are clearly applicable. These endow a person fleeing from political or other kinds of persecution with rights. A refugee may not be expelled to a frontier or territory where his/her life or freedom would be threatened. This would be *refoulement* and to engage in it might render a state responsible for injuries caused by acts or omissions that violate human rights. By the same token refugees seeking asylum have to demonstrate that they have good grounds to fear persecution based on race, religion, nationality, social group or political opinion. However, it has been international practice to recognise temporary refuge for humanitarian reasons in extreme and exceptional circumstances where there is an imminent danger to life, including of course flight from conflict. Maritime commanders are sometimes in a position to decide on this.⁸⁶

International criminal law

One of the most significant developments affecting maritime enforcement is the criminalisation of smuggling of persons. This is addressed by the 1982 UN Convention on the Law of the Sea (UNCLOS), by EU laws and national legislation. In European states, the 1985 Schengen accord also makes airline and shipping firms liable to penalties for carrying persons without proper documents, and states must maintain an associated database of undesirables, illegal migrants and unsuccessful asylum applicants.

⁸⁶ In the United States, commanders are required to decide whether temporary refuge is applicable, but termination is decided by a higher authority. See *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations*, (Newport, RI, 1997), p. 3 (7).

Especially relevant to maritime cooperation is Protocol 1 of the UN draft Convention Against Transnational Organized Crime that was adopted by the UN General Assembly in December 1999. Based on Italian and Austrian proposals, incorporating interim measures adopted by the International Maritime Organisation and supported in the drafting stage by the United States and Canada, it criminalises the smuggling of persons and illicit traffic in, and transport of, migrants by land, air and sea.⁸⁷

Under the Protocol, action against suspect vessels can be taken in international waters. However, the Protocol does not equate smuggling to piracy, since it views the flag state as having primary authority and obligation. In this respect the enforcement provisions thus follow the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It permits interdiction (boarding, inspection, appropriate action) of suspects in international waters by any vessel in government service, on the confirmation of registry and authorisation of the flag state, including conditions relating to the use of force.⁸⁸ Intercepting authorities must abide by conditions imposed by the flag state (regarding the use of force, for example), and must take into account the safety of life at sea and the security of the vessel and its cargo. The Protocol also builds on the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, and conventions for the protection of women and children.

Several difficulties in the Protocol may be noted. First, it does not address the issue of refugees, but simply reiterates states' obligations under the 1951 Convention on Refugees, noting that the Protocol does not prejudice the protection afforded by those instruments. The final version of the Preamble is likely to include reaffirmation of the principle of free movement.

⁸⁷ See, *inter alia*, *Proposal for prohibition of illegal trafficking and transport of migrants*, GA A/AC.254/4/Add.1; International Maritime Organization, *Interim Measures Against Trafficking of Persons by Sea*, Maritime Safety Committee, MSC/Circ.896; *Revised draft United Nations Convention Against Transnational Organized Crime*, GA, A/AC.254/4/Rev. 3, 19 May 1999; *Draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime*, GA A/AC. 254/4/Add. 1/Rev. 1, 13 May 1999.

⁸⁸ Italy and Austria had proposed a universal right to stop and search traffickers in international waters, but the United Kingdom and stalwarts of the freedom of the seas objected to this.

However, the Protocol also reaffirms the sovereignty of states over immigration flows and includes a US proposal (Art. 15), for facilitating the return of smuggled migrants. This may contribute to a suspicion that an unstated aim of the Protocol is to increase controls over the movement of people – thus reinforcing the restrictive trends in Western states since the mid-1970s.⁸⁹ Second, there has been dispute over the terminology. The English word ‘smuggling’ rather than ‘trafficking’, is used in the Protocol. Smuggling has been defined as the ‘intentional procurement for profit [such as benefits expected from the migrant’s future participation in criminal activities] of the illegal entry of a person into and/or residence of a person in a State of which the person is not a national or a permanent resident’, Art. 2, (a), (d). By contrast, trafficking has been defined as ‘the recruitment, transportation or receipt of persons through deception or coercion for the purpose of prostitution, other sexual exploitation or forced labour’.⁹⁰ Thus smuggling based on procurement has a broad application that could encompass non-coercive acts, and may signify willingness on the part of those being exploited. The scope of the Protocol is limited to acts ‘when committed in the context of organised crime’, Art. 5 (1). But the Protocol may contribute to an association in the popular mind that conflates migrants and refugees with illegal activity. Moreover, in practice the distinction between victims and criminals may not be easy to draw. Third, a significant loophole in the Protocol is the lack of provision for persons who are temporarily seized (under arrest) and perhaps taken to a port for processing. Fourth, the Protocol does not reiterate the International Collision Regulations (COLREGS) and Art. 98c of UNCLOS, which require vessels to render adequate assistance after a collision. This has had relevance in the Adriatic, where two major collisions have resulted in boat people being lost.

⁸⁹ See Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993); Martin O. Heisler and Zig Layton-Henry, ‘Migration and the links between social and societal security’, in Ole Waever, Barry Buzan, Morton Kelstrup and Pierre Lemaitre, *Identity, Migration and the New Security Agenda in Europe* (London: Pinter, 1993), pp. 148-66; Frances Nicholson and Patrick Twomey (eds.), *Refugee Rights and Realities* (Cambridge: Cambridge University Press, 1999).

⁹⁰ Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, United Nations Interregional Crime and Justice Research Institute, UN Office at Vienna, ‘Global Programme against Trafficking in Human Beings’, February 1999, p. 6.

Nevertheless, the Protocol is a measure that attempts to distinguish between boat people who cannot be designated as 'illegal' on the one hand, and criminal networks that exploit them on the other. It is accompanied by a global programme against trafficking in human beings launched by the UN Centre for International Crime Prevention in Vienna. Field projects are to be carried out in selected countries with a view to coordinating the various roles of the victims, destination countries and countries of origin.⁹¹ For maritime authorities, then, the responsibilities for intercepting boats in the context of transnational crime will certainly grow.

Law of the sea

In addition to legal provisions for refugees crossing land, seaborne persons have special protection, depending on the conditions of their passage. The 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation covers hijacking and violence within the territorial waters of a single state.⁹² Some incidents of migration may contravene its provisions. The protection of distressed persons at sea is also provided for in the Geneva Convention on the High Seas of 1958, in UNCLOS, and in the London Convention on the Safety of Life at Sea (SOLAS) of 1974 *et seq.* Masters of ships are obliged to respect and assist people and vessels in distress or in danger of being lost anywhere at sea, to take speedy rescue action, broadcast warnings of danger and not to undertake action that would jeopardise the safety of lives at sea, in so far as they can do so without seriously endangering their ship, crew or passengers.⁹³ Nor, in general, can ports and harbours be denied to vessels in distress. Such provisions are commonly written into national law and military handbooks, even when states have not signed such conventions. There are penalties in national law for failure to comply.⁹⁴

⁹¹ Ibid.

⁹² Op. cit. in note 19, pp. 82-3.

⁹³ UN Convention on the Law of the Sea, 1982, Art. 98.

⁹⁴ Although, for instance, the United States is currently not a signatory to UNCLOS, US Navy Regulations of 1990, Art. 0925, requires commanding officers to render assistance to any person found at sea in danger of being lost. This includes provision for entering into foreign territorial waters without coastal state permission in situations

Of course, what constitutes ‘distress’ may be a moot point, since, for example, a group of determined people who have set out on a risky voyage in a substandard vessel may not be easily recognised as being in a condition of ‘distress’. Pirates in the South China Sea have been known to use ‘distress’ as a subterfuge to lure rescuers into a trap. But masters and commanders are advised to err on the side of humanitarianism, as illustrated by the case of Captain Balian, commander of the USS *Dubuque*, who was convicted by court martial for failing to effect sufficient assistance to persons in distress.⁹⁵

In conclusion, it is vital for the components of maritime cooperation to have a common understanding of the law as it affects the regulation of seaborne migrants and refugees. Source countries may express little concern about the departure of their nationals on risky voyages, but they have occasionally been sensitive to the treatment of boat people by enforcement agencies and host governments (as evidenced by Albanian protests over the *Sibilla* incident). In addition, the creeping systematisation of European policy and the corpus of international law applicable to boat people implies that maritime cooperation should be structured on the basis of functional welfare

where the location of distressed persons or vessels is ‘reasonably well-known’. Op. cit. in note 86, p. 3 (3).

⁹⁵ In June 1998 the *Dubuque* encountered 80 Vietnamese boat people in the South China Sea. Balian determined the level of assistance on the basis of the seaworthiness and adequacy of propulsion of the vessel – and physically prevented the boat people from climbing aboard his warship. He provided emergency supplies and steering instructions, but only 52 persons were subsequently found alive 18 days later in the Philippines. In this case, the boat people had not sought asylum and the rules governing refugees were not applicable. Lt Martin A. Harry, ‘Failure to Render Aid’, *Proceedings*, US Naval Institute, February 1990, pp. 65-8.

and MACA rather than as part of an inevitable confrontation with the source states. Enforcers can demonstrate that military/naval forces are employed in an MACA role and comply with international law as it affects Mediterranean boat people. The W/EU can also make serious efforts to assert the welfare and economic dimensions of regulating movement by promoting development and stability in source states, in the way that Italy has attempted in Albania, and not simply by relying on legal controls. The next dimension of the issue to be examined is precisely transmediterranean cooperative security on maritime issues.

Chapter Four

TRANSMEDITERRANEAN MARITIME COOPERATION

Responses to boat people cannot be divorced from the wider processes in transmediterranean relations, and notably the Euro-Mediterranean Partnership (EMP). The issue has caught Europe unprepared and could become a confrontational problem between Mediterranean states. That is why the ‘partnership spirit’ that inspired the EMP may be useful in tackling the boat people issue in a cooperative fashion. This section sets out to argue that functional welfare cooperation would contribute to a ‘building-block’ approach to cooperative security relations in the Mediterranean. The term ‘building-block’ is used in the EMP and in Europe’s defence policy, and indicates a way of thinking about security in a relatively fragmented political environment⁹⁶ that seeks bottom-up, often localised, cooperation on matters that do not trespass on core strategic attitudes and interests. It also reflects the EU’s own limited competences in this field.

IV.1 EMP and the security dialogues

For the most part, EU–Mediterranean relations are shaped bilaterally, but the EMP process, instigated at Barcelona in 1995, is commonly perceived as introducing a multilateral dimension. Here the notion of ‘partnership-building’ has replaced ‘confidence-building’ in recognition of the politico-economic priorities and, as Claire Spencer argues, the dangers in discourse structuring around military concepts formulated to regulate relations between actual or potential enemies, such as confidence-building measures.⁹⁷ The partnership aims to: establish a common area of peace and stability, promote democracy and respect for human and social rights, foster sustainable social and economic development, and take up the struggle

⁹⁶ See Stephen Calleya, *Navigating Regional Dynamics in the Post-Cold War World: Patterns of Relations in the Mediterranean Area* (Aldershot: Dartmouth Press, 1997).

⁹⁷ Claire Spencer, ‘Building Confidence in the Mediterranean’, *Mediterranean Politics*, vol. 2, no. 2, Autumn 1997, p. 24.

against poverty. As reflected in President Jacques Chirac's call for a goodwill heads of state summit on the Mediterranean when France holds the EU Presidency in the second half of 2000,⁹⁸ momentum has developed mainly because the EU is an established institution that can address core economic and political matters in its foreign relations.

Although EMP's security dimension has been more modest than its ambition to develop a free trade area by 2010, after the Cologne Declaration of the European Council of June 1999, security issues will inevitably become an increasingly stronger component of relationships. In any case, so far, attempts to develop a culture of dialogue in the Mediterranean have made progress in three areas relevant to cooperation on seaborne migrants and refugees.

First, the EU Mediterranean partners have a common interest in regulating the movement of people, in part because they cast trafficking in migrants and refugees as a dimension of transnational crime, which is linked to drugs and arms trafficking. As an aspect of the political and security issues mentioned in the Barcelona Declaration, it is a core feature of the partnership. A meeting of experts in The Hague in March 1999 led to a frank exchange of views on migration and human interchange. They noted that in the short and medium term, pressures leading to migration from the southern and south-east Mediterranean into Europe, and from sub-Saharan Africa into North Africa, were unlikely to diminish. On the one hand it was agreed that illegal immigration should be opposed in a spirit of cooperation in the light of 'the need for a generally restrictive immigration policy by receiving countries.' On the other, they considered that the EU had a responsibility to combat racism and xenophobia, and to target development policies and stimulate trade and economic transition. It was agreed that specific projects could be fostered covering: the improvement of statistical data, creation of academic networks on the subject, more employment opportunities in the region and technical assistance between the partners in dealing with illegal immigration.⁹⁹

⁹⁸ 'Le temps des initiatives en Méditerranée', *Le Monde*, 28 August 1999, p. 3.

⁹⁹ Conclusions of the Euro-Med Experts Meeting on 'Migration and Human Exchanges', The Hague, 1-2 March 1999. See www.euromed.net/documents/01031999.eng.htm.

Second, the Euro-Mediterranean Conference of Foreign ministers in Stuttgart in April 1999 approved a set of guidelines for a Charter for Peace and Stability, to be formally adopted 'when political circumstances allow'.¹⁰⁰ The partners envisage an evolutionary development of (a) intensified political dialogue, (b) partnership-building measures, (c) good-neighbourly relations and regional cooperation, (d) preventive diplomacy, crisis management and post-conflict rehabilitation. The guidelines foresee a political rather than legal document that can be adopted by consensus. The partners seek to implement the principles of the Barcelona Declaration, recognising the indivisibility of security, acknowledging the comprehensiveness of security in its economic, social, cultural and human aspects, and relying on instruments of cooperative security. Specific objectives, relevant to functional welfare, include measures to deal with organised crime, drug trafficking, clandestine migration and trafficking in human beings. Mechanisms include dialogue and information exchange (through task groups, round tables and workshops for specific topics), and partnership-building measures to foster good-neighbourly relations (through networks, bilateral accords and transnational projects). Although the provision for joint action modalities is to be developed at a later stage, the guidelines represent an evolving framework that could clearly encompass tangible forms of functional welfare and MACA measures. In fact, fleshing out suggestions for inclusion, the foreign ministers of the Mediterranean Forum and also a EuroMeSCo working group have pinpointed potential cooperation on maritime issues including: technical assistance and information for safety at sea, management of the marine environment and sea resources, organisation of constabulary measures and collaboration in emergency assistance.¹⁰¹

Third, a strong element of welfare and MACA is built into the EMP process through a pilot project to deal with disaster prevention, mitigation and management, under the coordination of Italy and Egypt, as an initial step towards a Euro-Mediterranean system of civil protection. Planning

¹⁰⁰ 'Chairman's Formal Conclusions', Third Euro-Mediterranean Conference of Foreign Ministers, Stuttgart, 15-16 April 1999, para. 11.

¹⁰¹ See 'Oral Conclusions of the Sixth Regular Meeting of the Ministers of Foreign Affairs of the Mediterranean Forum', Malta, 4-5 March 1999, mimeo; and Roberto Aliboni, 'Building blocks for the Euro-Mediterranean Charter on Peace and Stability', *EuroMeSCo Paper* 7, January 2000.

commenced with a meeting in 1998 attended also by Algeria, Austria, Cyprus, Denmark, Finland, France, Greece, Israel, Jordan, Lebanon, Malta, Morocco, Portugal, Spain, Sweden, the Netherlands, Tunisia, Turkey, the UK and the European Commission. A budget of 770,610 euros was set aside for training and information courses in the management of natural and man-made disasters which are split into two seven-day courses, each hosted by an EU and a Mediterranean partner state. Courses in 1999 covered earthquakes, flash floods and forest fires – with future provision for exchanges of experts, the networking of civil protection schools and technical assistance. Interestingly, the project included special provision for an ‘exploratory technical overview’ on short-term maritime risks by high-level experts to be presented to the steering committee at the end of 1999.¹⁰² If this kind of activity were to include a MACA dimension, it might provide a bridge to the consideration of military matters that have been consciously left out of EMP, but which cannot be neglected, as Martin Ortega argues, if peace and stability is its goal.¹⁰³

Other forums that would complement this have been in progress. In the same vein of cooperative security, WEU’s Mediterranean Group began a security dialogue in 1992 that now includes the partner states Algeria, Egypt, Israel, Jordan, Mauritania, Morocco and Tunisia. Its aims have so far been modest, based on the seven principles of: regularity and stability, transparency, confidence-building, conflict prevention, sufficiency of conventional forces, peaceful settlement of conflicts and non-proliferation of weapons of mass destruction. Reaching beyond dialogue and achieving more tangible outcomes has been limited. WEU’s Mediterranean partners have attended specially-tailored transparency-building meetings, observed CRISEX exercises and visited WEU’s satellite centre in Torrejón. Members of the partners’ armed forces have attended several seminars organised by the WEU Institute for Security Studies. Since an Italian initiative in December 1998, consideration has also been given to how the WEU

¹⁰² ‘Conclusions of the 1st Meeting of the Steering Committee of the Pilot Project for the “Creation of a EMP System of Prevention, Mitigation and Management of Natural and Man-made Disasters”’. See www.EMP.net/political-security/Disaster_Management.htm.

¹⁰³ Martin Ortega, ‘Military Dialogue in the Euro-Mediterranean Charter: An Unjustified Absence’, *The International Spectator*, vol. XXXV, no. 1, January-March 2000.

dialogue can enhance the Barcelona process in anticipation of a request from the EU.

Dialogues in themselves are building-blocks that can promote habits of exchange and mutual reassurance. NATO's Mediterranean Dialogue (with Egypt, Israel, Jordan, Mauritania, Morocco and Tunisia) began in 1995 with the stated aim of creating an understanding of NATO's policies and obtaining a better appreciation of the security interests and perceptions of the countries involved.¹⁰⁴ This was given added impetus at the NATO Madrid summit of July 1997 and in NATO's new Strategic Concept of April 1999, and has involved visits by parliamentarians of the dialogue countries to NATO headquarters, the opening of courses to dialogue partners at the NATO Defence College in Rome and its School in Oberammergau, and observation of NATO exercises. But southern Mediterranean states remain sensitive to interventionism and perceived US/NATO hegemony. As a RAND study argues, NATO's approach to the dialogue should avoid perpetuating underlying assumptions that the Mediterranean is a hostile place and an 'arc of conflict'.¹⁰⁵ However, notwithstanding the existence of military confidence-building measures sought by Egypt, particularly, and Western allies in the Gulf,¹⁰⁶ the so-called 'soft' security measures favoured by the RAND report also have to avoid perpetuating the assumption that what was good for East-West relations (military transparency, confidence-building measures and arms control) will also be good for the Mediterranean. In the Maghreb, particularly, such approaches could produce a mismatch between the structure of the discourse and the needs of a challenging economic and social situation.

The foregoing analysis indicates that different, low-level security initiatives, a relatively modest investment, can pay dividends. Stephen Jermy has advanced the notion of cooperative security measures that, by seeking to instigate cooperation, provide a means of filling the gap where the politico-military security climate is non-confrontational but lacking the preconditions for

¹⁰⁴ J. Nordam, 'The Mediterranean dialogue: Dispelling misconceptions and building confidence', *NATO Review*, vol. 45, no. 4, July/August 1997, pp. 25-7.

¹⁰⁵ F. Stephen Larrabee, Jerrold Green, Ian O. Lesser, and Michele Zanini, *NATO's Mediterranean Initiative: Policy Issues and Dilemmas*, RAND Report, MR-957-IMD, 1998.

¹⁰⁶ Mohammed Kadry Said, 'Confidence Building Measures: a practical approach', paper contributed to the EuroMeSCo Working Group on the Charter, October 1999 (mimeo).

collective security.¹⁰⁷ They would have the advantage of being subordinate to, but supporting, other security objectives, such as economic development, and be amenable to a variable-geometry approach to crises. Focusing on transnational welfare issues, employing navies in MACA roles, would clearly fall within this rubric. These roles can include humanitarian assistance, pollution control, fishery protection, combating transnational organised crime.

IV.2 Transnational welfare security

Several developments pointing to the particular relevance of maritime cooperation also have the potential to shift from enforcing national interests to sustaining international regimes based on multilateral rather than unilateral solutions. In addition to the agreements mentioned earlier, significant multilateral maritime developments have encompassed a welfare dimension. For example, the Barcelona Framework Convention for the Protection of the Mediterranean Sea Against Pollution has been described by David Attard as a model for implementing environmental treaty frameworks, bringing together states that had never previously cooperated.¹⁰⁸ The SAR Hamburg Convention provides a legal basis for cooperation on maritime welfare. For some years Italy and Malta have conducted SAR exercises in the Mediterranean. They were held under PfP auspices in 1995, but after Malta pulled out of PfP the Maltese government labelled the 1996 operation as an EMP exercise. For Operation CANALE in 1999, France joined for the first time, and Arab states were also invited to participate. Egypt has, in fact, conducted SAR and disaster relief exercises with Italy and the United Kingdom.¹⁰⁹

¹⁰⁷ Stephen Jermy, 'Mediterranean Security, the Maghreb and Europe – an opportunity for cooperative security measures?', *Plymouth International Paper* no. 13 (Plymouth: Plymouth International Studies Centre, 1999), p. 22. Jermy points out, however, that although the intent of cooperative security measures is not confidence-building, they would almost certainly have this positive spillover effect (pp. 26-7).

¹⁰⁸ David Attard, 'Environmental/Economic Diplomacy: some observations with special reference to the Mediterranean', op. cit. in note 96, pp. 50-51. However resource disputes, including fishing, which also lie behind outstanding delimitation disputes, require urgent attention, though are unlikely to lead to strategic conflict.

¹⁰⁹ Cited in op. cit. in note 106.

Further, as Carlos Echeverria has demonstrated, most Mediterranean states have also played significant roles in peacekeeping or peace support operations, notably Egypt, Jordan and Morocco in Bosnia-Herzegovina.¹¹⁰ Egypt has longer experience than any of the permanent five members of the UN Security Council, having been involved in ten or so operations, mainly in Africa but including a battalion in the Balkans. Indeed, in 1996 the Egyptian foreign minister supported the notion of Arab participation in peace support operations as a model for transmediterranean cooperation.¹¹¹ Lessons relevant to functional welfare may be drawn from this, even if these more military types of activities are not themselves initial building-block material. First, it can be argued that the political risks of cooperation in UN peace support operations have been generally acceptable to many states because the UN provides an imprimatur of legitimacy. The same might also be developed for any W/EU operation with an EMP input. As we have already argued, WEU functions that will be acquired by the EU are staked on contingencies at the level of disaster relief and humanitarian operations. Second, such operations are run on the basis of variable geometry (with all its drawbacks). But the fact that states can choose to make small contributions and participation in such operations is unlikely to undermine core national interest. For peacekeeping in consensual environments the forces are not at great risk and demands on fighting abilities are negligible. Obviously these parameters change significantly for missions in unstable and hostile environments, where there are much greater political and operational risks for participants. Cooperative training without commitment to operations, as Jermy suggests, might be a way of enhancing operational capital through shared doctrine and transfer of skills.¹¹²

The potential for greater security cooperation among non-allied states through the medium of peace support operations has achieved some success

¹¹⁰ See Carlos Echeverria, 'Cooperation in peacekeeping among the Mediterranean armed forces', *Chaillot Paper* 35 (Paris: Institute for Security Studies of WEU, February 1999); Michael, Pugh, 'Maritime Peace Support Operations in the Mediterranean', *Mediterranean Politics*, vol. 2, no. 3, Winter 1997, pp. 1-19.

¹¹¹ Amre Moussa, cited in WEU Assembly Document 1543, 'Security in the Mediterranean Region', Report submitted on behalf of the Political Committee by Mr de Lipkowski, Rapporteur, 4 November 1996, p. 15. The Italian Minister of Defence, Beniamino Andreatta, made similar comments at the RAND/CeMiSS conference on 'The future of NATO's Mediterranean Initiative', Rome, 10-11 November 1997.

¹¹² Op. cit. in note 107, p. 25.

in Central and Eastern Europe through NATO's Partnership for Peace programme. However, the political and strategic context in the Mediterranean is not ripe for PfP replication. PfP meets a special situation because there was already an element of coordination among the states of Central and Eastern Europe (under the USSR), and they were subsequently hopeful of joining the Western club through a trial scheme. Although some southern Mediterranean states might not be averse to the peacekeeping model, its perceived control and selective use by the rich and powerful might fuel domestic political opposition on the grounds that it has become a form of gunboat diplomacy. Even Morocco, which broadly accepts EUROMARFOR and has been invited to observe its exercises, has criticised the delusion that peace and security in the Mediterranean can be maintained 'simply by bringing some kind of policeman into the region'.¹¹³ Positive spillover into military security issues will be dependent on favourable political calculations and economic incentives. Moreover, in the maritime sphere the potential for participation is severely asymmetrical on account of European/NATO preponderance. Within the region, multinational maritime operations have been conducted overwhelmingly by European and extra-regional states (though Egypt has been heavily involved in the BRIGHT STAR and CLEOPATRA series of exercises). It is one thing to send a small number of troops to a consensus-based peacekeeping operation, quite another to participate in naval task groups in contested environments. In the latter situation, the capacity, training and equipment currently tells against the southern/eastern Mediterranean states.

However, in non-contested environments, and in roles that involve the protection of boat people, through, for example, the unobtrusive cooperative monitoring of sea lanes, the prospects are more promising. Exchanging information on illicit trafficking of all kinds does not, of course, imply joint operations, military or otherwise. But southern and eastern Mediterranean states do have basic territorial patrol capabilities that could be enhanced for MACA in cooperative responses to welfare issues.¹¹⁴

¹¹³ General Abdelhak El Kadiri, of the Moroccan Higher National Defence Council, cited in WEU Assembly Document 1543, *op. cit.* in note 111, p. 37.

¹¹⁴ For instance, Algeria: 3 frigates, 24 patrol and coastal combatants, 11 minewarfare and some 30 coast guard vessels; Egypt: 6 frigates, 43 coastals, 10 minewarfare, 19 naval helicopters. Israel: 55 coastals and 40 inshore patrol vessels, Jordan: 5 inshore patrol vessels; Lebanon: 14 inshore patrol vessels; Libya: 2 frigates, 36 coastals, 30 naval

In conclusion, the EMP process seems to provide an overarching security framework for the Mediterranean, within which the fragmented security interests of Mediterranean states could be fostered at the level of welfare security through MACA functions, especially if the EMP Charter is finally agreed upon and developed. This could obviously include seaborne refugees and migrants. As the Italy-Albania agreement indicates, even the volatile security situation of South-Eastern Europe does not rule out cooperative security measures. But the phenomenologies of seaborne movements in the eastern Mediterranean, Adriatic and Maghreb/Mashraq areas have different requirements that would suit *ad hoc* arrangements.

Several promising routes to transmediterranean cooperative security might be investigated. One is to persist with bilateral measures which, like the Italy-Malta exercises, might become the basis of a wider network. Another is through the EMP pilot scheme for disaster management, perhaps using lower spectrum elements of EUROMARFOR training in humanitarian contingencies. Another would be through the W/EU and in particular through the good offices of the High Representative for the CFSP, and in the context of the CFSP's 'common strategy' on the Mediterranean that the EU Vienna ministerial meeting of December 1998 decided should be undertaken by member states.¹¹⁵ An interlocking information exchange, training, exercising and evaluation could be undertaken within the framework of the projected EMP Charter, whilst the operational coordination of particular missions could be undertaken by a lead state with access to W/EU resources.

helicopters; Morocco: 1 frigate, 26 coastals; Syria: 2 frigates, 27 coastals, 29 naval helicopters; Tunisia: 23 coastals. *The Military Balance 1996/97*, (Oxford: Oxford University Press for the International Institute for Strategic Studies, 1996).

¹¹⁵ Vienna European Council, Presidency Conclusions, 11-12 December 1998, paras. 74, 116.

Conclusion

This study has advanced the argument that the issue of seaborne refugees and migrants needs to be addressed by maritime establishments as a functional welfare dimension of Mediterranean security. There is a strong theoretical basis for considering a functional rather than military security approach. Boat people do not challenge critical military-strategic interests. The level of activities required for the welfare of coastal communities, constabulary enforcement and humanitarian assistance requires a military assistance to the civil authorities (MACA) approach. Moreover, the phenomenon is globally significant and has profound causes that maritime forces cannot fix by technical cooperation and enforcement alone. Therefore, their activities have to be concerted with other policies that address economic disparities, human rights abuse and political instabilities within communities and states. One must also accept that in many instances the UNHCR is the most appropriate agency to coordinate and guide activities for coping with refugees and displaced people.

However, maritime forces need to address the issue before it increases in significance as economic and demographic strains are experienced in the international system. In addition, trafficking in people has become a global business, with estimates of as many as four million people being involved annually (in all modes of transport). Whatever the global figure may be, perhaps 25-50 per cent are moved by sea, where there are no fences or stationary guards and where makeshift transport can be arranged without resort to regular commercial carriers. The Mediterranean Sea is a major transit route, comparable to the Caribbean, and it has clearly caused difficulties for some regional authorities – notably in the Adriatic. Navies are therefore implicitly concerned and able to contribute.

In the wake of the Amsterdam Treaty, a discernible trend has also occurred in Western Europe's response to the issue, in spite of resistance by states to yielding intergovernmental competence in Justice and Home Affairs. Common procedures for asylum and action plans for migration are beginning to gain momentum and are likely to become future implementation issues, and maritime forces will not escape the effects of

any moves towards *communautarisation* of policy designed to regulate people on the move. In addition, the humanitarian dimension needs attention. International law and practice presumes that safety at sea applies just as much to boat people as it does to anyone else; yet hundreds are lost annually in tragedies hidden from media view. Further, the law seems set to acknowledge that criminalising migrants is not an answer. Boat people are not necessarily committing an illegal act by sailing on the high seas. By contrast, measures to combat transnational organised crime, which includes trafficking in people, will give new powers to maritime forces to intercept suspect boats on the high seas.

We have also seen that in transmediterranean security relations rhetoric and ambition have rarely been matched by concrete measures, largely because of the political fragmentation and asymmetry of interests in the Mediterranean region. Nevertheless, a more optimistic political climate emerged in the course of 1999, and within the proposed Charter of Peace and Stability, a development framed by the EMP, cooperative maritime measures might be attempted. The Charter would offer an opportunity gradually to establish transmediterranean maritime cooperation. Within the EMP, states and their maritime authorities can develop a functional welfare approach in their policies and programmes that would mitigate symptoms of the deeper problems. The issue of maritime refugees is felt more acutely on Mediterranean shores than elsewhere in Europe, and maritime cooperation, under EU auspices, may become more evident in the Mediterranean. This could serve as a platform for further developments as follows:

- Within the new Common European Security and Defence Policy, the lower spectrum of naval capabilities of the kind relevant to coping with boat people might be given greater prominence. At a strategic level it has been suggested that supply services and naval bases in Europe could be rationalised, fleet auxiliaries developed as a common European service, a European mine countermeasures capability formed, and a European Combined Joint Task Force HQ ship acquired on a common basis.¹¹⁶ But at more modest operational levels, too, responses to low-risk security

¹¹⁶ Timothy Garden, 'The Problems of European Coordination', in Gordon Wilson (ed.), 'European force structures', *Occasional Papers* 8 (Paris: Institute for Security Studies of WEU, August 1999), pp. 46-8.

issues could be concerted for contingencies in the humanitarian and MACA spectrum. WEU already has a mandate and contingency planning framework for this level, which the EU could draw upon. In particular, common principles and guidelines governing naval MACA might be elaborated in unclassified form, drawing upon a range of institutional cultures – much as the UN’s Civilian Police organisation has produced common guidelines for the motley forces that participate in its missions.

- Obviously, coastal states face distinctive problems to do with their legal rules and enforcement capabilities, and the scale and routes taken by migrants at any given time. Within the second pillar of the EU, the principles of variable geometry and constructive abstention would apply under certain conditions, so that a Baltic state, for example, would not obstruct an activity in the Mediterranean that held little attraction for it. Operation ALBA has provided an example of an *ad hoc* coalition of interested parties that is relevant to dealing with seaborne refugees.
- All the same, maritime forces face common problems in responding to seaborne refugees and migrants. These concern detection, monitoring of approaches and coasts, establishing jurisdiction, obtaining evidence of offences, dealing with criminal elements, rescuing people from unseaworthy vessels, coping with psychological stress among crew as well as boat people, medical problems (including the potential spread of disease to crews), providing assistance and coordinating with other services.¹¹⁷ Apart from undertaking specific operations in cooperation, maritime forces in the Mediterranean could certainly work together in the classroom, in training and exercising to build up a common level of expertise and best practice.
- In terms of coordination, the French *Préfet Maritime* system has advantages in securing good governance at sea, and perhaps a politically diluted form might be considered at a more general level within W/EU. For example, individual units of EUROMARFOR might be able to call upon civilian forces available from southern European states, and in certain circumstances civilian agencies might apply to EUROMARFOR units for assistance in an MACA role.
- The EU may have difficulty in reaching common asylum and migration policies, but in international forums the EU could promote the

¹¹⁷ Op. cit. in note 39.

decriminalisation of migrants and foster their protection from abuse by traffickers. Furthermore, a common understanding among maritime forces of the legal and practical implications of interception will be essential. If interdiction on the high seas is expected under the terms of Protocol 1 to the Convention Against Transnational Organized Crime, how will 'non-criminal' travellers be dealt with? For states bent on curbing asylum and migration, the US policy of interception and 'turning back' as far out to sea as possible is one answer. But this involves the legally dubious argument that the *non-refoulement* obligations of Article 33 of the Geneva Convention do not apply outside the sovereign territory of the United States. This is interpreted in such a way as to deny asylum requests on board US ships, in territorial waters or on US bases overseas. In its draft stage the Protocol does not cover temporary detention of migrants and their transfer to a port. EU member states will need to decide whether the interception of traffickers gives *carte blanche* to blockade 'non-criminal' migrants.

- The EMP Charter for Peace and Stability will offer a general political framework for transmediterranean cooperation. Within the Barcelona process generally, the most appropriate strategy for maritime cooperation is a building-block approach. In this respect the pilot project for disaster management noted in the previous section might serve as a model in programme and procedure, with, for example, joint coordination by a European and a non-European state. On the basis of an exploratory technical report on short-term maritime risks by the EMP steering committee, an EU-funded pilot scheme, either growing out of or running parallel to the disaster management system noted, could be instituted. Both could be used for SAR. SAR has the potential to offer reassurance in seaborne refugee crises, which in turn might lead to transparency about naval MACA activities and reassurance about the purposes of EUROMARFOR and other multinational forces. However, given the particularities of the legal situation and the EU's political wrestling over JHA, a separate arrangement might be preferable. Best practice could be adopted, and information exchange, training, exercising and evaluation could be undertaken on that basis. Transnationalism can develop in 'professional systemic communities', through dialogues and cooperative measures between customs officials, traffic and port management authorities, enforcement agencies, SAR organisations and naval establishments.

In conclusion, the pressures for naval forces to engage in good governance and welfare activities may grow because of requirements to manage issues that arise beyond territorial waters. This will involve sustainable inspection deployments and a measure of visible authority which only naval vessels can provide, given that civilian policing authorities are, in most cases, confined to territorial jurisdictions. People will continue to take flight and move by sea without regard to visa or other bureaucratic requirements. It is sensible to avoid militarising and ‘securitising’ this as a ‘threat’ – in reality the issue is one of human welfare. In this respect, the most appropriate framework for organising and developing maritime cooperation for MACA, particularly in the western Mediterranean, is the Euro-Mediterranean Partnership, which, through a proposal for a Charter for Peace and Stability and the Euro-Med Disaster Management Project, has already laid down the political and practical foundations.

Abbreviations and Glossary

CECMED	<i>Commandant en Chef, Méditerranée</i> [France]
CFSP	Common Foreign and Security Policy [EU]
CIR	<i>Consiglio Italiano Rifugiati</i> [Italian Refugee Council]
CJTF	Combined Joint Task Force(s)
COLREGS	Convention on International Regulations for Preventing Collisions at Sea, 1972
ECHO	European Commission Humanitarian Office
EU	European Union
EUROMARFOR	European Maritime Force
EuroMeSCo	Euro-Mediterranean Study Commission [network of foreign policy institutes]
EMP	Euro–Mediterranean Partnership [the Barcelona Process]
FAWEU	Forces answerable to WEU
HLWG	High Level Working Group on Migration [EU]
HEP	Humanitarian Evacuation Programme, for Kosovo
IHL	International Humanitarian Law
IMO	International Maritime Organisation
INCSEA	Incidents at Sea Agreement
IOM	International Organization for Migration
JHA	Justice and Home Affairs Council [EU]
MACA	military assistance to the civil authorities
MAPE	Multinational Police Advisory Element [Albania]
NGO	non-governmental organisation
OECD	Organisation for Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
PfP	Partnership for Peace
PSO	peace support operation
RAMOGE	Pollution control agreement between France, Monaco and Italy.
RoE	rules of engagement
SAR	search and rescue
SASEMAR	<i>La Sociedad Estatal de Salvamento y Seguridad Marítima</i> [Spanish Maritime Safety and Rescue Agency]
SOLAS	Convention on the Safety of Life at Sea, 1974 <i>et seq.</i>
SOPEMI	<i>Système d'observation permanente des migrations</i> [OECD]
STANAVFORMED	Standing Naval Force Mediterranean [NATO]
TPS	temporary protection status is protection on humanitarian grounds afforded to foreign nationals, such as refugees fleeing from conflict, with the aim of eventually returning them to their place or region of origin
UNCLOS	UN Law of the Sea Convention, 1982
UNHCR	UN High Commissioner for Refugees
USCG	United States Coast Guard

asylum seekers	persons who make a formal claim for asylum under the Geneva Convention through national asylum laws, within a host state, on the borders of a state, at port of entry or in diplomatic premises abroad
boat people	a colloquial term for persons, whether refugees or migrants, who journey by sea without adherence to the regulatory maritime regime regarding, for example, the seaworthiness of vessels and safety of life at sea
<i>carrette del mare</i>	Italian term for craft of opportunity used by boat people, literally 'sea cart'
<i>clandestini</i>	Italian term for persons who seek to enter a country by avoiding processes of frontier regulation and control, or to remain in a country contrary to rules authorizing entry
economic migrants	persons who seek residence and/or work outside their own state and whose actual or assumed motives are economic, rather than political, a formula used to distinguish them from refugees
illegal migrants	unregulated economic migrants who seek to enter a state, often in clandestine fashion, or to remain in a country contrary to rules that governed their legal entry
internally displaced	persons who are forced, sometimes by conflict, to move to another part of their country or find themselves in a new political entity carved out of their country
legal migrants	persons who have undergone administrative processes that equip them with permits to enter the destination state, normally prior to travel but in some circumstances migrants are regularized retrospectively
<i>pateras</i>	Spanish term for boats typically used by migrants from the Maghreb, about 40-foot long and low in the water
<i>Plan Sur</i>	Spanish plan for an integrated system of external surveillance of illegal migrants
<i>PréMar</i>	<i>Préfet maritime</i> [France]
refugees	persons seeking safety and protection from persecution or conflict as recognized in the 1951 Geneva Convention, the OAU Convention or UNHCR Statute, and those with humanitarian or temporary protection status
returnees	persons who are returned to their place of origin and are of concern to the UNHCR for up to two years
<i>sans papiers</i>	migrants without regulated status
<i>scafisti</i>	Italian term for masters and operators of clandestine boat services or migration networks who exploit refugees and migrants for payment, in cash or services, from <i>scafo</i> meaning 'hull'
smuggling of persons	procurement for profit or advantage of illegal entry of non-nationals into a state

trafficking in persons recruitment, transport or receipt of persons through coercion or deception for forced labour or sexual exploitation

Bibliography

- Aliboni, Roberto, 'Building blocks for the Euro-Mediterranean Charter on peace and Stability', *EuroMeSCo Paper 7*, January 2000
- Aliboni, Roberto, George Joffé and Tim Niblock (eds.), *Security Challenges in the Mediterranean Region*, London, Frank Cass, 1996
- Asmus, R., A. S. Larrabee and I. O. Lesser, 'Mediterranean security: new challenges, new tasks', *NATO Review*, no. 3, 1996
- Attard, David, 'Environmental/Economic Diplomacy: some observations with special reference to the Mediterranean', in Stephen Calleya (ed.), *Economic Diplomacy in the Mediterranean*
- Bin, Alberto, 'NATO's contribution to enhanced cooperation in the Mediterranean', *NATO Review*, vol. 46, no. 4, Winter 1998
- Booth, Ken, *Law, Force and Diplomacy at Sea*, London, Allen & Unwin, 1985
- Bodega, Isabel, et al., 'Recent Migration from Morocco to Spain', *International Migration Review*, vol. 29, no. 3, 1995
- Borgese, Elisabeth Mann, *Ocean Governance and the United Nations*, Halifax, Centre for Foreign Policy Studies, Dalhousie University, June 1995
- Buzan, Barry, Ole Wæver and Jaap de Wilde, *Security: a New Framework for Analysis*, Boulder, CO, Lynne Rienner, 1998
- Cable, James, *Gunboat Diplomacy, 1919-1991: Political Applications of Limited Naval Force*, 3rd edn, Basingstoke, Macmillan, 1994
- Cable, James, 'Naval Humanitarianism', *International Relations*, vol. 12, no. 1, April 1992
- Calleya, Stephen C. (ed.), *Economic Diplomacy in the Mediterranean*, Mediterranean Academy of Diplomatic Studies, University of Malta, March 1999
- Calleya, Stephen C., *Navigating Regional Dynamics in the Post-Cold War World: Patterns of Relations in the Mediterranean Area*, Aldershot, Dartmouth, 1997
- Castles, Stephen and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 2nd edn, Basingstoke, Macmillan, 1998
- Crain, Mary M., 'New North African Immigration to Spain', *Middle East Report and Information Project*, vol. 29, no. 211, 1999
- CSS-CEMES *Albanian Immigration to Italy. A 'Criminal' Invasion?*, Ethnobarometer, working paper no.1, October 1997
- CSS-CEMES *The Reaction of the Albanian populations of Albania and Macedonia to the situation in Kosovo* (from Giles de Rapper), Ethnobarometer, report, April 1998
- Cunliffe, Alex, 'The Refugee Crisis: A Study of the UNHCR', *Political Studies*, vol. 43, 1995
- D'Abadie, Damian Sanges, 'The EU after Amsterdam: Still towards the Mediterranean?', *Mediterranean Politics*, vol. 3, no. 3, Winter 1998
- Danese, Gaia, 'Le Politiche Migratorie Nazionali Nella Prospettiva Della Comunitarizzazione: I casi della Francia e della Spagna', Centro Studi di Politica Internazionale Rome, CeSPI, February 1999
- Echeverria, Carlos, 'Cooperation in peacekeeping among the Euro-Mediterranean armed Forces', *Chaillot Paper 35*, Paris, Institute for Security Studies of WEU, February

- 1999
- Edis, Richard, 'Does the Barcelona Process Matter?', *Mediterranean Politics*, vol. 3, no. 3, Winter 1998
- Eekelen, Willem van, 'WEU and the Gulf Crisis', *Survival*, vol. 32, no. 6, November/December 1990
- Evans, Tony, 'The Political Economy of Universal Human Rights', paper at International Studies Association Conference, Washington DC, February 1999
- Grove, Eric, 'The Birth of a West European Navy?', *Naval Forces*, vol. 9, no. 1, 1988
- Grove, Eric., in John B. Poole and Richard Guthrie (eds.), 'Maritime Monitoring: a Contribution to UN Peacekeeping and Enforcement', *Verification 1995: Arms Control, Peacekeeping and the Environment*, Boulder and Oxford, Westview/VERTIC
- Grove, Eric, 'A European Navy: new horizon or false dawn?', *Jane's Navy International*, vol. 101, November 1996
- Gunnatilleke, G., *Summary of the report of the rapporteur: international cooperation in fighting illegal immigration networks*, IOM seminar on International responses to Trafficking in Migrants and the Safeguarding of Migrant Rights, Geneva, 26-28 October 1994
- Haines, S. W., 'The Maritime Domain: Security, Law Enforcement and Control Requirements in Offshore Zones', *Naval Forces*, vol. 10, no. 4, 1989
- Hampton, Jamie (ed.), *Internally Displaced People: A Global Survey* London, Earthscan, 1998
- Harry, Lt Martin A., 'Failure to Render Aid', *Proceedings*, US Naval Institute, February 1990
- International Institute of Humanitarian Law, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Louise Doswald-Beck (ed.), Cambridge, Cambridge University Press, 1995
- Jerry, Stephen, 'Mediterranean Security, the Maghreb and Europe – an opportunity for cooperative security measures?', *Plymouth International Paper*, no. 13, Plymouth, Plymouth International Studies Centre, 1999
- Jones, P., 'Maritime Confidence Building Measures in the Middle East', in Fred Tanner (ed.), *Arms Control, Confidence-Building and Security Cooperation in the Mediterranean, North Africa and the Middle East*, Malta, Mediterranean Academy of Diplomatic Studies, 1994
- Joppke, Christian, 'International Migrations Forum: A Tentative Summary', *European University Institute Review*, November 1998
- Kadry Said, Mohammed, 'Confidence Building Measures: a practical approach', paper contributed to the EuroMeSCo Working Group on the Charter, October 1999 (mimeo)
- Karmi, Ghada, 'Migration and Xenophobia in the Mediterranean', paper at EuroMeSCo Annual Conference, London, 16 May 1998
- Keohane, Robert O. and Joseph S. Nye jr (eds.), *Transnational Relations and World Politics*, London, Harvard University Press, 1971
- King, Russell, Theodoros Iosifides and Lenio Myrivili, 'A migrant's story: from Albania to Athens', *Journal of Ethnic and Migration Studies*, vol. 24, no. 1, 1998
- Knudsen, Olav. F., 'Cooperative Security in the Baltic Sea Region', *Chaillot Paper* 33, Paris, Institute for Security Studies of WEU, November 1998
- Kushner, Tony and Katherine Knox, *Refugees in an Age of Genocide Global, National and*

- Local Perspectives*, London, Frank Cass, 1999
- Lang, Alessandro and Bruno Nascimbene, 'Italy's Participation in EU Immigration and Asylum Policy', *The International Spectator*, vol. 32, no. 3/4, December 1997
- Larrabee, F. Stephen, Jerrold Green, Ian O. Lesser and Michele Zanini, *NATO's Mediterranean Initiative: Policy Issues and Dilemmas*, RAND Report, MR-957-IMD, 1998
- Lenzi, Guido, 'WEU and Security in the Mediterranean: Achievements and Prospects', paper at 2nd regional Symposium for Navies of the Mediterranean-Black Sea Area Countries, Venice, 13-16 October 1998
- Lenzi, Guido, 'The Emergence of a European security and Defence Identity: WEU's Operational Contribution', paper at conference on Changing Structure of Euro-Atlantic Security and the Middle East', Begin-Sadat Center for Strategic Studies, Tel Aviv University, 25-27 January 1999
- Lenzi, Guido (ed.), *WEU at fifty*, Paris, Institute for Security Studies of WEU, 1998
- Loescher, Gil, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Oxford, Oxford University Press, 1993
- López García, Bernabé (ed.), *Atlas de la Inmigración Magrebi en España*, Madrid, Taller de Estudios Internacionales Mediterráneos, Universidad Autónoma, 1996
- Mitrany, David, *The Functional Theory of Politics*, London, Robertson, 1975
- Nicholson, Frances and Patrick Twomey (eds.), *Refugee Rights and Realities*, Cambridge, Cambridge University Press, 1999
- Nordam, J. 'The Mediterranean dialogue: Dispelling misconceptions and building confidence', *NATO Review*, vol. 45, no. 4, July/August 1997
- Ortega, Martin, 'Military Dialogue in the Euro-Mediterranean Charter: An Unjustified Absence', *The International Spectator*, vol. XXXV, no. 1, January-March 2000
- Oxford Refugee Studies Programme, *Forced Migration Review*, Oxford, published triennially
- Palmer, Gary W., 'Guarding the Coast: Alien Migrant Interdiction Operations at Sea', paper for Connecticut Law Review Conference on Immigration Law, 4 April 1997
- Pastore, Ferruccio, *Conflicts and Migrations: A Case Study on Albania*, occasional paper, Rome, CeSPI, March 1998
- Pastore, Ferruccio, 'L'obbligo di Riammissione in Diritto Internazionale: Sviluppi Recenti', *Rivista di Diritto Internazionale*, anno LXXXI, no. 4, 1998
- Pastore, Ferruccio, 'Verso una Politica Migratoria Comune? Le prospettive di applicazione del nuovo titolo IV TCE tra interessi nazionali ed interesse comune europeo', Rome, CeSPI, March 1999
- Politi, Alessandro, 'European security: the new transnational risks', *Chaillot Paper 29*, Paris, Institute for Security Studies of WEU, October 1997
- Pugh, Michael (ed.), *Maritime Security and Peacekeeping*, Manchester, Manchester University Press, 1994
- Pugh, Michael, 'Maritime Peace Support Operations in the Mediterranean', *Mediterranean Politics*, vol. 2, no. 3, Winter 1997
- Pugh, M. 'Policing the Seas: The Challenge of Good Governance', in Gert de Nooy (ed.), *The Role of European Naval Forces after the Cold War*, The Hague, Netherlands Institute of International Relations and Kluwer Law International, 1996
- Spencer, Claire, 'Building Confidence in the Mediterranean', *Mediterranean Politics*,

- vol. 2, no. 2, Autumn 1997
- Spencer, Claire, 'Partnership-building in the Mediterranean', *The International Spectator*, vol. 34, no. 4, October-December 1999
- Silvestri, Stefano, 'The Albanian Test Case', *The International Spectator*, vol. 32, no. 3/4, July-December 1997
- Takai, S. (ed.), *Ocean Governance and OPK*, Thirteenth International Symposium Proceedings, National Institute for Defense Studies, 1998
- Tanner, Fred (ed.), *Arms Control, Confidence-Building and Security Cooperation in the Mediterranean, North Africa and the Middle East*, Mediterranean Academy of Diplomatic Studies, University of Malta, December 1994
- Tanner, Fred, 'The Euro-Med Partnership: Prospects for Arms Limitations and Confidence Building after Malta', *The International Spectator*, vol. 3, no. 2, 1997
- Tanner, Fred, 'Joint Actions for Peace-building in the Mediterranean', *The International Spectator*, vol. 34, no. 4, October-December 1999
- Wæver, Ole, Barry Buzan, Morton Kelstrup and Pierre Lemaitre, *Identity, Migration and the New Security Agenda in Europe*, London, Pinter, 1993
- Wihtol de Wenden, Catherine, 'Notes sur les visas de circulation', paper at EuroMeSCo Annual Conference, London, 16 May 1998
- Wihtol de Wenden, Catherine, *L'Immigration en Europe*, Paris, La documentation Française, 1999
- Wihtol de Wenden, Catherine, *Faut-il ouvrir les frontières?*, Paris, Presses de Sciences Po, October 1999