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INTRODUCTORY NOTE TO UNITED NATIONS SECURITY COUNCIL RESOLUTIONS 2240, 2312 & 2380

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[October 9, 2015] [October 6, 2016] [October 5, 2017]

Introduction

In response to the large number of irregular migrants crossing the Mediterranean Sea from Libya to southern Italy, frequently using overcrowded, unseaworthy vessels, and often facilitated by migrant smugglers, on October 9, 2015, the United Nations Security Council (UNSC) adopted Resolution 2240.[1] This resolution authorizes member states to intercept, inspect, and seize vessels suspected of being used to smuggle migrants or to traffic persons. Initially limited to one year, these measures were renewed through two further UNSC resolutions on October 6, 2016,[2] and October 5, 2017.[3]

Background

Irregular migration from the Middle East and Africa to Western Europe has been a major issue of concern and contention for European governments, as well as regional and international organizations, for some time. In recent years, the number of irregular migrants, most of them refugees fleeing from the conflicts in Syria, Afghanistan, Iraq, Sudan, South Sudan, and the Horn of Africa, or from untenable situations in countries of first asylum such as Jordan, Lebanon, and Turkey, has grown significantly. In the absence of legal avenues of migration and efficient, large-scale resettlement programs, many migrants are left with little choice but to resort to the offers made by smugglers, who promise to take migrants illegally across land, sea, and air borders against payment.[4]

Seeking to maximize their financial or other material profits, smugglers frequently show disregard for the lives, safety, and vulnerability of migrants. Instances of abuse, exploitation, and maltreatment of migrants are not uncommon and sometimes the smuggling of migrants transcends into situations of trafficking in persons, where migrants are transported, transferred, held captive, etc., by force, coercion, or deception for the purpose of exploitation.[5] While the obstacles to reach Europe safely are getting higher and legal avenues smaller, the market for migrant smugglers has grown exponentially, and so have the dangers associated with methods to smuggle migrants to Europe clandestinely, cheaply, and in large numbers. The International Organization for Migration (IOM), estimates that in the 2017 calendar year, 3,116 migrants died in the Mediterranean trying to reach Europe, down from 5,143 deaths recorded in 2016 and 3,775 a year earlier.[6]

The so-called Central Mediterranean route, which leads from Libya, sometimes Egypt, to southern Italy, has been the most common way to smuggle migrants to Western Europe in recent years. The Italian island of Lampedusa, one of the most southerly points of the European Union, located 200 miles north of Tripoli, has gained particular notoriety for witnessing large numbers of irregular migrant arrivals and, tragically, large numbers of deaths among those crossing the Mediterranean, trying to find safety and a better life in Europe. The number of deaths on the Central Mediterranean route increased considerably in 2016 after several Eastern European countries adopted measures to close borders and deny entry to irregular migrants moving from Turkey to Greece, through the Balkans, to Western Europe. The (sometimes severe) measures implemented in order to "close the Balkans route" have displaced migration flows to the Mediterranean routes and pushed many migrants into the hands of smugglers. According to IOM, 4,581 people died on the Central Mediterranean route in 2016, up from 2,877 a year earlier.[7]

It is on this background that in October 2015 the UN Security Council concerned itself with the question of how to stop the smuggling of migrants from Libya and develop mechanisms to save lives at sea. This move did not occur in a vacuum as several other international instruments and regional initiatives previously sought to accomplish similar goals. Chief among those is the UN Protocol against the Smuggling of Migrants by Land, Sea, and Air,[8] which

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supplements the Convention against Transnational Organized Crime.[9] This Protocol, which counts some 150 states parties worldwide, seeks to criminalize the smuggling of migrants, enhance international cooperation, and protect the basic rights of smuggled migrants. Similarly, its "sister treaty," the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[10] seeks to prevent and combat exploitation for a range of purposes. Trafficking frequently involves victims who are vulnerable migrants in an irregular situation. Of further importance in this context are the Convention and Protocol relating to the Status of Refugees[11] and the various instruments concerning the law of the sea, especially those provisions aimed at enhancing the safety of migrants at sea and intercepting vessels suspected of smuggling migrants.[12] Regional organizations, especially the European Union and its agencies, have developed a range of other frameworks and operational missions to rescue smuggled migrants and deter and intercept smuggling ventures, which are not further discussed in this introductory note.

Content

Acknowledging existing international frameworks and regional initiatives, deploring the loss of life and endangerment of smuggled migrants, and emphasizing the respect for the human rights of migrants, UNSC Resolution 2240 of October 9, 2015, authorizes the use of additional measures "to put an end to the recent proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya."[13] The key features of this resolution are the authorizations of member states and regional organizations (such as the European Union) (1) to inspect vessels on the high seas off the coast of Libya that they suspect are being used for smuggling or trafficking from that country,[14] and (2) to seize vessels that are confirmed as being used for one of these purposes.[15] These measures may also be carried out in territorial waters, provided that the authority for them is granted through a UNSC resolution or consent by the coastal state concerned.

These authorizations were called for by the European Union to legitimize the second phase of the European Union's naval operation, known as "Operation Sophia." First launched in April 2015 by EUNAVFOR Med, the European Naval Force Mediterranean, Operation Sophia serves to identify, capture, and dispose of vessels and "enabling assets" used or suspected of being used to smuggle migrants or traffic persons along the Central Mediterranean route. The second phase of this Operation, which commenced on October 7, 2015—two days before UNSC Resolution 2240—extended the initial mandate to the boarding, searching, seizing, and diverting on the high seas of vessels suspected of being used for smuggling or trafficking. It is this expanded mandate that necessitated authorization by the UN Security Council. Initially limited to a period of one year, the authorizations granted by Resolution 2240 were renewed for a further twelve months by UNSC Resolution 2312 on October 6, 2016, and again on October 5, 2017, through Resolution 2380. The subsequent resolutions did not materially change the content of Resolution 2240.

The authorization to inspect vessels reasonably suspected of smuggling migrants or trafficking persons from Libya is qualified by the requirement that member states and regional organizations "make good faith efforts to obtain the consent of the vessel's flag State prior to inspected the vessel."[16] The authorizations to inspect, seize, and dispose vessels further need to be exercised "in accordance with applicable international law with due consideration of the interests of any third parties who have acted in good faith."[17] Further limitations on the authorizations stem from the requirements to keep flag states informed of any actions taken against their vessels, to comply with international human rights and refugee law and provide for the safety of persons on board these vessels, and to respect relevant rights and obligations under the law of the sea.[18]

The remaining paragraphs of Resolutions 2240 (2015), 2312 (2016), and 2380 (2017) call on member states and regional organizations to enhance their efforts to criminalize and investigate smuggling and trafficking within the scope of the Smuggling of Migrants and Trafficking in Persons Protocols, and to provide regular reports to the Security Council about any actions undertaken in exercise of the resolutions.[19] The Secretary-General has a mandate to prepare annual reports about the implementation of the resolutions, in particular with regard to the use of the authorizations granted by them.[20] These reports, which were submitted to the Security Council on September 7, 2016, and September 7, 2017, give some insight into the operation and effectiveness of the resolutions.[21]

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Effect

In his reports, the Secretary-General outlines the full range of measures adopted to prevent and combat the smuggling of migrants across the Mediterranean and provides some details about the use of the authorizations granted in Resolutions 2240 (2015) and 2312 (2016). The authorizations to inspect and seize vessels on the high seas off the coast of Libya were first used by the EU military operation on July 9 and 18, 2016, against two unflagged vessels suspected of engaging in smuggling or trafficking. Within one month of apprehending the first of these vessels, 241 further vessels had been seized and 84 persons suspected of being involved in the smuggling of migrants had been arrested by Italian authorities.[22] The 2017 report does not contain any data for the use of the authorizations in 2016–17.

While the reports of the Secretary-General outline in some length the myriad operations, policy initiatives, training, and regional and bilateral measures aimed at stemming the flow of irregular migrants to, through, and from Libya, and highlight some of the achievements made during the reporting periods, they also raise a number of concerns stemming from the European Union's efforts to control its external borders more tightly. As early as September 2016, for instance, it was noted that irregular departures from Egypt and Algeria to Italy were increasing since it had become more difficult to smuggle migrants through Libya. More launches of smuggling ventures from Tunisia and Turkey to Italy have also been observed.[23] Importantly, pointing to the high numbers of migrant deaths on the Central Mediterranean route, the reports stress that efforts to inspect and seize vessels off the coast of Libya along with other national efforts "have not resulted in an immediate improvement in the situation."[24] It has also been noted that the complexity of the problem has grown along with the diversity of nationalities smuggled across the Mediterranean and that more and more migrants from West African nations were smuggled alongside people from other parts of Africa and the Middle East.[25]

Instability and political crisis in Libya further complicate international efforts to halt the smuggling of migrants and protect the lives of smuggled migrants. Although the internationally recognized Government of Libya is obtaining greater aid and assistance from the European Union, it does not have control over the whole territory of Libya, especially the areas around Tripoli from where many migrant smuggling journeys depart. The treatment of irregular migrants by Libyan officials, the escalating force used by Libyan authorities to stop smuggling ventures and seize vessels, and the appalling conditions in the facilities used to accommodate and detain irregular migrants in Libya give rise to serious concerns about the safety of migrants in Libya. These were further fueled by reports in late 2017 that smuggled migrants in Libya were exploited, led into situations of trafficking, and, in some cases, sold as slaves by their smugglers. The Secretary-General, echoing observations made by other UN agencies, further notes that Libya is not a party to the Refugee Convention, has no cohesive legal framework in migration management, including smuggling and trafficking, and is not a place to which migrants intercepted and rescued at sea can be returned safely.[26]

The latest report of the Secretary-General also expresses criticism about suggestions made by some officials in Europe that search and rescue missions operated in the Mediterranean by nongovernmental organizations (NGOs) would fuel the smuggling of migrants and act as a further pull factor for irregular migration to Europe. The report rebuts these suggestions, stressing the need for strictly evidence-based approaches and the paramount importance of saving lives, a goal to which the efforts by NGOs undoubtedly contribute.[27]

Conclusion

The myriad measures that have been instituted—not just in the Mediterranean—to tighten and in some cases close and fortify borders and deter and detain irregular migrants have not been met by much success. Efforts to intercept and seize vessels carrying irregular migrants do little to change the push and pull factors of international migration and fail to address the causes of displacement. The available evidence shows that, at best, such measures shift irregular migration to new routes and methods; at worst, they lead people, whether they are willing or forced, to move into dangerous and clandestine avenues of migration and into the hands of smugglers and traffickers. The suffering associated with these crimes is likely to persist, if not increase, so long as states worldwide ignore the realities of refugee flows and other forms international migration.

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It is for these reasons that UN Security Council Resolutions 2240 (2015), 2312 (2016), and 2380 (2017) and the subsequent reports of the Secretary-General call on member states to show respect for the lives, safety, and rights of smuggled migrants and explore the full range of options to create legal avenues of migration. The migrant smugglers' business model, notes the Secretary-General, "is based on meeting the demand for crossing into Europe by asylum seekers, refugees, and migrants. As controls tighten and in the absence of commensurate safe and regular pathways, irregular crossings become more difficult, leading to a growing market for the services of smugglers. An increase in demand can therefore be expected."[28]

Current efforts by the international community to develop global compacts on refugees and migration provide a unique opportunity to address the phenomena of smuggling of migrants and irregular migration more strategically and fairly. The long-term goal must be to enhance human mobility and manage migration sustainably. "Only with improved migration governance—international cooperation for regular and safe migration pathways, and protection sensitive entry procedures—can we better respond to the needs of those making these perilous journeys."[29]

ENDNOTES

1 S.C. Res. 2240 (Oct. 9, 2015).

2 S.C. Res. 2312 (Oct. 6, 2016).

3 S.C. Res. 2380 (Oct. 5, 2017).

4 *Cf.* Protocol Against the Smuggling of Migrants by Land, Sea and Air, art. 3(a), Nov. 15, 2000, 2241 UNTS 507 [hereinafter Smuggling of Migrants Protocol].

5 *Cf.* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3(a), Nov. 15, 2000, 2237 UNTS 319 [hereinafter Trafficking in Persons Protocol].

6 IOM, Missing Migrants: Tracking Deaths Along Migratory Routes (Jan. 1, 2017), *available at* https://missingmigrants.iom.int/region/mediterranean.

7 *Id.*

8 Smuggling of Migrants Protocol, *supra* note 4.

9 Convention Against Transnational Organized Crime, opened for signature Dec. 15, 2000, 2225 UNTS 209.

10 Trafficking in Persons Protocol, *supra* note 5.

11 *Convention Relating to the Status of Refugees*, opened for signature July 28, 1951, 189 UNTS 150 (referred to in the text as "Refugee Convention"); *Protocol Relating to the Status of Refugees*, opened for signature Jan. 31, 1967, 606 UNTS 267.

12 *See also* Smuggling of Migrants Protocol, *supra* note 4, arts. 7–9.

13 S.C. Res. 2240 pmbl. (Oct. 9, 2015).

14 *Id.* ¶ 7.

15 *Id.* ¶ 8.

16 *Id.* ¶ 7.

17 *Id.* ¶ 8.

18 *Id.* ¶¶ 9–13.

19 *Id.* ¶¶ 15–17.

20 *Id.* ¶ 18.

21 United Nations Security Council, *Report of the Secretary-General Pursuant to Security Council Resolution 2240 (2015)*, UN Doc S/2016/766 (Sept. 7, 2016) [hereinafter Resolution 2240 Report]; United Nations Security Council, *Report of the Secretary-General Pursuant to Security Council Resolution 2312 (2016)*, UN Doc S/2017/761 (Sept. 7, 2017) [hereinafter Resolution 2312 Report].

22 Resolution 2240 Report, *supra* note 21, ¶¶ 14–15.

23 *Id.* ¶ 4.

24 *Id.* ¶ 3.

25 Resolution 2312 Report, *supra* note 21, ¶ 10.

26 *Id.* ¶¶ 6, 40–47.

27 *Id.* ¶ 5.

28 Resolution 2240 Report, *supra* note 21, ¶ 6.

29 Resolution 2312 Report, *supra* note 21, ¶ 56.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2240*
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United Nations S/RES/2240 (2015)

Security Council

Distr.: General
9 October 2015

Resolution 2240 (2015)

Adopted by the Security Council at its 7531st meeting, on 9 October 2015

The Security Council,

Recalling its press statement of 21 April on the maritime tragedy in the Mediterranean Sea,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

Recalling that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, sets out the legal framework applicable to activities in the ocean,

Reaffirming also the United Nations Convention against Transnational Organized Crime (UNTOC Convention) and its Protocol against the Smuggling of Migrants by Land, Air and Sea, as the primary international legal instruments to combat the smuggling of migrants and related conduct, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC Convention, as the primary international legal instruments to combat trafficking in persons,

Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognise that they are distinct crimes, as defined by the UNTOC Convention and its Protocols, requiring differing legal, operational, and policy responses,

Deploring the continuing maritime tragedies in the Mediterranean Sea that have resulted in hundreds of casualties, and *noting with concern* that such casualties were, in some cases, the result of exploitation and misinformation by transnational criminal organisations which facilitated the illegal smuggling of migrants via dangerous methods for personal gain and with callous disregard for human life,

Expressing grave concern at the recent proliferation of, and endangerment of lives by, the smuggling of migrants in the Mediterranean Sea, in particular off the coast of Libya and *recognizing* that among these migrants may be persons who meet the definition of a refugee under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto,

* This text was reproduced and reformatted from the text available at the United Nations website (visited December 20, 2017), https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2240(2015).

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Emphasizing in this respect that migrants, including asylum-seekers and regardless of their migration status, should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable, *stressing also* the obligation of States, where applicable, to protect the human rights of migrants regardless of their migration status, including when implementing their specific migration and border security policies,

Reaffirming in this respect the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability,

Further recalling the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue,

Expressing further concern that the situation in Libya is exacerbated by the smuggling of migrants and human trafficking into, through and from the Libyan territory, which could provide support to other organised crime and terrorist networks in Libya,

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Underlining the primary responsibility of the Libyan Government to take appropriate action to prevent the recent proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking through the territory of Libya and its territorial sea,

Mindful of the need to support further efforts to strengthen Libyan border management, *considering* the difficulties of the Libyan Government to manage effectively the migratory flows in transit through Libyan territory, and *noting* its concern for the repercussions of this phenomenon on the stability of Libya and of the Mediterranean region,

Welcoming support already provided by the most concerned Member States, including Member States of the European Union (EU), taking into account inter alia the role of FRONTEX and the specific mandate of EUBAM Libya in support of the Libyan Government, and by neighbouring States,

Acknowledging the European Council statement of 23 April 2015 and the press statement of the African Union Peace and Security Council of 27 April, which underlined the need for effective international action to address both the immediate and long-term aspects of human trafficking towards Europe,

Taking note of the Decision of the Council of the European Union of 18 May 2015 setting up 'EUNAVFOR Med' which underlined the need for effective international action to address both the immediate and long-term aspects of migrant smuggling and human trafficking towards Europe,

Taking further note of the ongoing discussions between the EU and the Libyan Government on migration related issues,

Expressing also strong support to the States in the region affected by the smuggling of migrants and human trafficking, and *emphasizing* the need to step up coordination of efforts in order to strengthen an effective multidimensional response to these common challenges in the spirit of international solidarity and shared responsibility, to tackle their root causes and to prevent people from being exploited by migrant smugglers and human traffickers,

Acknowledging the need to assist States in the region, upon request, in the development of comprehensive and integrated regional and national strategies, legal frameworks, and institutions to counter terrorism, transnational

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organised crime, migrant smuggling, and human trafficking, including mechanisms to implement them within the framework of States' obligations under applicable international law,

Stressing that addressing both migrant smuggling and human trafficking, including dismantling smuggling and trafficking networks in the region and prosecuting migrant smugglers, and human traffickers requires a coordinated, multidimensional approach with States of origin, of transit, and of destination, and further *acknowledging* the need to develop effective strategies to deter migrant smuggling and human trafficking in States of origin and transit,

Emphasizing that migrants should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable,

Bearing in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat migrant smuggling and human trafficking, to investigate and punish perpetrators, to identify and provide effective assistance to victims of trafficking and migrants and to cooperate to the fullest extent possible to prevent and suppress migrant smuggling and human trafficking,

Affirming the necessity to put an end to the recent proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking of persons in the Mediterranean Sea off the coast of Libya, and, for these specific purposes, acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya, which undermine further the process of stabilisation of Libya and endanger the lives of thousands of people;

2. *Calls on* Member States acting nationally or through regional organisations, including the EU, to assist Libya, upon request, in building needed capacity including to secure its borders and to prevent, investigate and prosecute acts of smuggling of migrants and human trafficking through its territory and in its territorial sea; in order to prevent the further proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking into, through and from the territory of Libya and off its coast;

3. *Urges* Member States and regional organisations, in the spirit of international solidarity and shared responsibility, to cooperate with the Libyan Government, and with each other, including by sharing information about acts of migrant smuggling and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya, and rendering assistance to migrants and victims of human trafficking recovered at sea, in accordance with international law;

4. *Urges* States and regional organisations whose naval vessels and aircraft operate on the high seas and airspace off the coast of Libya, to be vigilant for acts of migrant smuggling and human trafficking, and in this context, *encourages* States and regional organisations to increase and coordinate their efforts to deter acts of migrant smuggling and human trafficking, in cooperation with Libya;

5. *Calls upon* Member States acting nationally or through regional organisations that are engaged in the fight against migrant smuggling and human trafficking to inspect, as permitted under international law, on the high seas off the coast of Libya, any unflagged vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organised criminal enterprises for migrant smuggling or human trafficking from Libya, including inflatable boats, rafts and dinghies;

6. *Further calls upon* such Member States to inspect, with the consent of the flag State, on the high seas off the coast of Libya, vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organised criminal enterprises for migrant smuggling or human trafficking from Libya;

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7. *Decides*, with a view to saving the threatened lives of migrants or of victims of human trafficking on board such vessels as mentioned above, to authorise, in these exceptional and specific circumstances, for a period of one year from the date of the adoption of this resolution, Member States, acting nationally or through regional organisations that are engaged in the fight against migrant smuggling and human trafficking, to inspect on the high seas off the coast of Libya vessels that they have reasonable grounds to suspect are being used for migrant smuggling or human trafficking from Libya, provided that such Member States and regional organisations make good faith efforts to obtain the consent of the vessel's flag State prior to using the authority outlined in this paragraph;

8. *Decides* to authorise for a period of one year from the date of the adoption of this resolution, Member States acting nationally or through regional organisations to seize vessels inspected under the authority of paragraph 7 that are confirmed as being used for migrant smuggling or human trafficking from Libya, and *underscores* that further action with regard to such vessels inspected under the authority of paragraph 7, including disposal, will be taken in accordance with applicable international law with due consideration of the interests of any third parties who have acted in good faith;

9. *Calls upon* all flag States involved to cooperate with respect to efforts under paragraphs 7 and 8, and *decides* that Member States acting nationally or through regional organisations under the authority of those paragraphs shall keep flag States informed of actions taken with respect to their vessels, and *calls upon* flag States that receive such requests to review and respond to them in a rapid and timely manner;

10. *Decides* to authorise Member States acting nationally or through regional organisations to use all measures commensurate to the specific circumstances in confronting migrant smugglers or human traffickers in carrying out activities under paragraphs 7 and 8 and in full compliance with international human rights law, as applicable, *underscores* that the authorizations in paragraph 7 and 8 do not apply with respect to vessels entitled to sovereign immunity under international law, and *calls upon* Member States and regional organisations carrying out activities under paragraphs 7, 8 and this paragraph, to provide for the safety of persons on board as an utmost priority and to avoid causing harm to the marine environment or to the safety of navigation;

11. *Affirms* that the authorisations provided in paragraphs 7 and 8 apply only with respect to the situation of migrant smuggling and human trafficking on the high seas off the coast of Libya and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, including the general principle of exclusive jurisdiction of a flag State over its vessels on the high seas, with respect to any other situation, and *further affirms* that the authorisation provided in paragraph 10 applies only in confronting migrant smugglers and human traffickers on the high seas off the coast of Libya;

12. *Underscores* that this resolution is intended to disrupt the organised criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law;

13. *Emphasises* that all migrants, including asylum-seekers, should be treated with humanity and dignity and that their rights should be fully respected, and urges all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable;

14. *Urges* Member States and regional organisations acting under the authority of this resolution to have due regard for the livelihoods of those engaged in fishing or other legitimate activities;

15. *Calls upon* all States, with relevant jurisdiction under international law and national legislation, to investigate and prosecute persons responsible for acts of migrant smuggling and human trafficking at sea, consistent with States' obligations under international law, including international human rights law and international refugee law, as applicable;

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16. *Calls* for Member States to consider ratifying or acceding to, and for States Parties to effectively implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

17. *Requests* States utilising the authority of this resolution to inform the Security Council within three months of the date of adoption of this resolution and every three months thereafter on the progress of actions undertaken in exercise of the authority provided in paragraphs 7 to 10 above;

18. *Requests* the Secretary-General to report to the Security Council eleven months after the adoption of this resolution on its implementation, in particular with regards to the implementation of paragraphs 7 to 10 above;

19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authority provided in this resolution for additional periods;

20. *Decides* to remain seized of the matter.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2312*
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Security Council

Distr.: General
6 October 2016

Resolution 2312 (2016)

Adopted by the Security Council at its 7783rd meeting, on 6 October 2016

The Security Council,

Recalling resolution 2240 (2015) and Presidential Statement 2015/25,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

Welcoming the Secretary-General's report S/2016/766,

Recalling that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, sets out the legal framework applicable to activities in the ocean,

Reaffirming also the United Nations Convention against Transnational Organized Crime (UNTOC Convention) and its Protocol against the Smuggling of Migrants by Land, Air and Sea, as the primary international legal instruments to combat the smuggling of migrants and related conduct, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC Convention, as the primary international legal instruments to combat trafficking in persons,

Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognize that they are distinct crimes, as defined by the UNTOC Convention and its Protocols, requiring differing legal, operational, and policy responses,

Deploring the continuing maritime tragedies in the Mediterranean Sea that have resulted in thousands of casualties, and *noting with concern* that such casualties were, in some cases, the result of exploitation and misinformation by transnational criminal organizations which facilitated the illegal smuggling of migrants via dangerous methods for personal gain and with callous disregard for human life,

Expressing grave concern at the ongoing proliferation of, and endangerment of lives by, the smuggling of migrants in the Mediterranean Sea, in particular off the coast of Libya and *reiterating* that among these migrants may be persons

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who meet the definition of a refugee under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto,

Emphasizing in this respect that migrants, including asylum seekers and regardless of their migration status, should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable, *stressing also* the obligation of States, where applicable, to protect the human rights of migrants regardless of their migration status, including when implementing their specific migration and border security policies,

Reaffirming in this respect the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability,

Further recalling the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue,

Expressing further concern that the situation in Libya is exacerbated by the smuggling of migrants and human trafficking into, through and from the Libyan territory, which could provide support to other organized crime and terrorist networks in Libya,

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Underlining the primary responsibility of the Government of National Accord to take appropriate action to prevent the recent proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking through the territory of Libya and its territorial sea,

Mindful of the need to support further efforts to strengthen Libyan border management, *considering* the difficulties of the Government of National Accord to manage effectively the migratory flows in transit through Libyan territory, and *noting* its concern for the repercussions of this phenomenon on the stability of Libya and of the Mediterranean region,

Welcoming ongoing support by the most concerned Member States, including Member States of the European Union (EU), taking into account inter alia the role of FRONTEX and the specific mandate of EUBAM Libya in support of the Government of National Accord, and by neighbouring States,

Acknowledging the European Council Conclusions of 20 June 2016 and the press statement of the African Union Peace and Security Council of 16 February 2016 which underlined the need for effective international action to address both the immediate and long-term aspects of illegal migration and human trafficking towards Europe,

Taking note of the Decision of the Council of the European Union of 20 June 2016 to extend the mandate of 'EUNAVFOR Med Operation Sophia and to expand it, including capacity-building assistance and training to the Libyan Coastguard and Navy in law enforcement at sea, in particular to prevent human smuggling and trafficking,

Taking further note of the ongoing discussions between the EU and the Government of National Accord on migration-related issues,

Expressing also strong support to the States in the region affected by the smuggling of migrants and human trafficking and *emphasizing* the need to step up coordination of efforts in order to strengthen an effective multidimensional

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response to these common challenges in the spirit of international solidarity and shared responsibility, to tackle their root causes and to prevent people from being exploited by migrant smugglers and human traffickers,

Acknowledging the need to assist States in the region, upon request, in the development of comprehensive and integrated regional and national strategies, legal frameworks, and institutions to counter terrorism, transnational organized crime, migrant smuggling, and human trafficking, including mechanisms to implement them within the framework of States' obligations under applicable international law,

Stressing that addressing both migrant smuggling and human trafficking, including dismantling smuggling and trafficking networks in the region and prosecuting migrant smugglers, and human traffickers requires a coordinated, multidimensional approach with States of origin, of transit, and of destination, and further *acknowledging* the need to develop effective strategies to deter migrant smuggling and human trafficking in States of origin and transit,

Emphasizing that migrants should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable,

Bearing in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat migrant smuggling and human trafficking, to investigate and punish perpetrators, to identify and provide effective assistance to victims of trafficking and migrants and to cooperate to the fullest extent possible to prevent and suppress migrant smuggling and human trafficking,

Reaffirming the necessity to put an end to the ongoing proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking of persons in the Mediterranean Sea off the coast of Libya, and, for these specific purposes, acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya, which undermine further the process of stabilization of Libya and endanger the lives of hundreds of thousands of people;

2. *Reiterates its calls* on Member States acting nationally or through regional organizations, including the EU, to cooperate with the Government of National Accord and with each other, including by sharing information to assist Libya, upon request, in building needed capacity including to secure its borders and to prevent, investigate and prosecute acts of smuggling of migrants and human trafficking through its territory and in its territorial sea; in order to prevent the further proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking into, through and from the territory of Libya and off its coast;

3. *Urges* Member States and regional organizations, in the spirit of international solidarity and shared responsibility, to cooperate with the Government of National Accord, and with each other, including by sharing information about acts of migrant smuggling and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya, and rendering assistance to migrants and victims of human trafficking recovered at sea, in accordance with international law;

4. *Urges* States and regional organizations whose naval vessels and aircraft operate on the high seas and airspace off the coast of Libya, to be vigilant for acts of migrant smuggling and human trafficking, and in this context, *encourages* States and regional organizations to increase and coordinate their efforts to deter acts of migrant smuggling and human trafficking, in cooperation with Libya;

5. *Calls upon* Member States acting nationally or through regional organizations that are engaged in the fight against migrant smuggling and human trafficking to inspect, as permitted under international law, on the high seas off the coast of Libya, any unflagged vessels that they have reasonable grounds to believe have been, are

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being, or imminently will be used by organized criminal enterprises for migrant smuggling or human trafficking from Libya, including inflatable boats, rafts and dinghies;

6. *Further calls upon* such Member States to inspect, with the consent of the flag State, on the high seas off the coast of Libya, vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organized criminal enterprises for migrant smuggling or human trafficking from Libya;

7. *Decides* that, for a further period of twelve months from the date of adoption of this resolution to renew the authorizations as set out in paragraphs 7, 8, 9 and 10 of resolution 2240 (2015) and otherwise reiterates the content of those paragraphs;

8. *Reaffirms* that the authorizations provided in paragraphs 7 and 8 of resolution 2240 (2015) apply only with respect to the situation of migrant smuggling and human trafficking on the high seas off the coast of Libya and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, including the general principle of exclusive jurisdiction of a flag State over its vessels on the high seas, with respect to any other situation, and that the authorization provided in paragraph 10 in resolution 2240 (2015) applies only in confronting migrant smugglers and human traffickers on the high seas off the coast of Libya;

9. *Underscores* that this resolution is intended to disrupt the organized criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law;

10. *Emphasizes* that all migrants, including asylum seekers, should be treated with humanity and dignity and that their rights should be fully respected, and urges all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable;

11. *Urges* Member States and regional organizations acting under the authorizations referred to in paragraph 7 of this resolution to have due regard for the livelihoods of those engaged in fishing or other legitimate activities;

12. *Calls upon* all States, with relevant jurisdiction under international law and national legislation, to investigate and prosecute persons responsible for acts of migrant smuggling and human trafficking at sea, consistent with States' obligations under international law, including international human rights law and international refugee law, as applicable;

13. *Calls* for Member States to consider ratifying or acceding to, and for States Parties to effectively implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

14. *Requests* States utilizing the authority of this resolution to inform the Security Council within three months of the date of adoption of this resolution and every three months thereafter on the progress of actions undertaken in exercise of the authority provided in paragraph 7 above;

15. *Requests* the Secretary-General to report to the Security Council eleven months after the adoption of this resolution on its implementation, in particular with regards to the implementation of paragraph 7 above;

16. *Expresses* its intention to continue to review the situation and consider, as appropriate, renewing the authority provided in this resolution for additional periods;

17. *Decides* to remain seized of the matter.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2380*
[October 5, 2017]

United Nations S/RES/2380 (2017)

Security Council

Distr.: General
5 October 2017

Resolution 2380 (2017)

Adopted by the Security Council at its 8061st meeting, on 5 October 2017

The Security Council,

Recalling resolution 2240 (2015), resolution 2312 (2016) and Presidential Statement 2015/25,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

Welcoming the Secretary-General's report S/2017/761,

Recalling that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, sets out the legal framework applicable to activities in the ocean,

Reaffirming also the United Nations Convention against Transnational Organized Crime (UNTOC Convention) and its Protocol against the Smuggling of Migrants by Land, Air and Sea, as the primary international legal instruments to combat the smuggling of migrants and related conduct, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC Convention, as the primary international legal instruments to combat trafficking in persons,

Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognize that they are distinct crimes, as defined by the UNTOC Convention and its Protocols, requiring differing legal, operational, and policy responses,

Deploring the continuing maritime tragedies in the Mediterranean Sea that have resulted in thousands of casualties, and noting with concern that such casualties were, in some cases, the result of exploitation and misinformation by transnational criminal organizations which facilitated the illegal smuggling of migrants via dangerous methods for personal gain and with callous disregard for human life,

Expressing grave concern at the ongoing proliferation of, and endangerment of lives by, the smuggling of migrants in the Mediterranean Sea, in particular off the coast of Libya and reiterating that among these migrants may be persons

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who meet the definition of a refugee under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto,

Emphasizing in this respect that migrants, including asylum seekers and regardless of their migration status, should be treated with humanity and dignity and that their rights should be fully respected, and urging all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable, stressing also the obligation of States, where applicable, to protect the human rights of migrants regardless of their migration status, including when implementing their specific migration and border security policies,

Reaffirming in this respect the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability,

Further recalling the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue,

Expressing further concern that the situation in Libya is exacerbated by the smuggling of migrants and human trafficking into, through and from the Libyan territory, which could provide support to other organized crime and terrorist networks in Libya,

Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

Underlining the primary responsibility of the Government of National Accord to take appropriate action to prevent the recent proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking through the territory of Libya and its territorial sea,

Mindful of the need to support further efforts to strengthen Libyan border management, considering the difficulties of the Government of National Accord to manage effectively the migratory flows in transit through Libyan territory, and noting its concern for the repercussions of this phenomenon on the stability of Libya and of the Mediterranean region,

Welcoming ongoing support by the most concerned Member States, including Member States of the European Union (EU), taking into account inter alia the role of FRONTEX and the specific mandate of EUBAM Libya in support of the Government of National Accord, and by neighbouring States,

Acknowledging the European Council Conclusions of 23 June 2017 and the press statement of the African Union Peace and Security Council of 16 February 2016 which underlined the need for effective international action to address both the immediate and long-term aspects of illegal migration and human trafficking towards Europe,

Taking note of the Decision of the Council of the European Union of 25 July 2017 to extend the mandate of EUNAVFOR Med Operation Sophia until 31 December 2018,

Taking further note of the ongoing discussions between the EU and the Government of National Accord on migration-related issues,

Expressing also strong support to the States in the region affected by the smuggling of migrants and human trafficking and emphasizing the need to step up coordination of efforts in order to strengthen an effective multidimensional response to these common challenges in the spirit of international solidarity and shared responsibility, to tackle their root causes and to prevent people from being exploited by migrant smugglers and human traffickers,

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Acknowledging the need to assist States in the region, upon request, in the development of comprehensive and integrated regional and national strategies, legal frameworks, and institutions to counter terrorism, transnational organized crime, migrant smuggling, and human trafficking, including mechanisms to implement them within the framework of States' obligations under applicable international law,

Stressing that addressing both migrant smuggling and human trafficking, including dismantling smuggling and trafficking networks in the region and prosecuting migrant smugglers, and human traffickers requires a coordinated, multidimensional approach with States of origin, of transit, and of destination, and further acknowledging the need to develop effective strategies to deter migrant smuggling and human trafficking in States of origin and transit,

Emphasizing that migrants should be treated with humanity and dignity and that their rights should be fully respected, and urging all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable,

Bearing in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat migrant smuggling and human trafficking, to investigate and punish perpetrators, to identify and provide effective assistance to victims of trafficking and migrants and to cooperate to the fullest extent possible to prevent and suppress migrant smuggling and human trafficking,

Reaffirming the necessity to put an end to the ongoing proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking of persons in the Mediterranean Sea off the coast of Libya, and, for these specific purposes, acting under Chapter VII of the Charter of the United Nations,

1. *Condemns* all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya, which undermine further the process of stabilization of Libya and endanger the lives of hundreds of thousands of people;

2. *Reiterates* its calls on Member States acting nationally or through regional organizations, including the EU, to cooperate with the Government of National Accord and with each other, including by sharing information to assist Libya, upon request, in building needed capacity including to secure its borders and to prevent, investigate and prosecute acts of smuggling of migrants and human trafficking through its territory and in its territorial sea; in order to prevent the further proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking into, through and from the territory of Libya and off its coast;

3. *Urges* Member States and regional organizations, in the spirit of international solidarity and shared responsibility, to cooperate with the Government of National Accord, and with each other, including by sharing information about acts of migrant smuggling and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya, and rendering assistance to migrants and victims of human trafficking recovered at sea, in accordance with international law;

4. *Urges* States and regional organizations whose naval vessels and aircraft operate on the high seas and airspace off the coast of Libya, to be vigilant for acts of migrant smuggling and human trafficking, and in this context, encourages States and regional organizations to increase and coordinate their efforts to deter acts of migrant smuggling and human trafficking, in cooperation with Libya;

5. *Calls upon* Member States acting nationally or through regional organizations that are engaged in the fight against migrant smuggling and human trafficking to inspect, as permitted under international law, on the high seas off the coast of Libya, any unflagged vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organized criminal enterprises for migrant smuggling or human trafficking from Libya, including inflatable boats, rafts and dinghies;

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6. *Further calls upon* such Member States to inspect, with the consent of the flag State, on the high seas off the coast of Libya, vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organized criminal enterprises for migrant smuggling or human trafficking from Libya;

7. *Decides* that, for a further period of twelve months from the date of adoption of this resolution to renew the authorizations as set out in paragraphs 7, 8, 9 and 10 of resolution 2240 (2015) and otherwise reiterates the content of those paragraphs;

8. *Reaffirms* that the authorizations provided in paragraphs 7 and 8 of resolution 2240 (2015) apply only with respect to the situation of migrant smuggling and human trafficking on the high seas off the coast of Libya and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, including the general principle of exclusive jurisdiction of a flag State over its vessels on the high seas, with respect to any other situation, and that the authorization provided in paragraph 10 in resolution 2240 (2015) applies only in confronting migrant smugglers and human traffickers on the high seas off the coast of Libya;

9. *Underscores* that this resolution is intended to disrupt the organized criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law;

10. *Emphasizes* that all migrants, including asylum seekers, should be treated with humanity and dignity and that their rights should be fully respected, and urges all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable;

11. *Urges* Member States and regional organizations acting under the authorizations referred to in paragraph 7 of this resolution to have due regard for the livelihoods of those engaged in fishing or other legitimate activities;

12. *Calls upon* all States, with relevant jurisdiction under international law and national legislation, to investigate and prosecute persons responsible for acts of migrant smuggling and human trafficking at sea, consistent with States' obligations under international law, including international human rights law and international refugee law, as applicable;

13. *Calls* for Member States to consider ratifying or acceding to, and for States Parties to effectively implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

14. *Requests* States utilizing the authority of this resolution to inform the Security Council within three months of the date of adoption of this resolution and every three months thereafter on the progress of actions undertaken in exercise of the authority provided in paragraph 7 above;

15. *Requests* the Secretary-General to report to the Security Council eleven months after the adoption of this resolution on its implementation, in particular with regards to the implementation of paragraph 7 above;

16. *Expresses* its intention to continue to review the situation and consider, as appropriate, renewing the authority provided in this resolution for additional periods;

17. *Decides* to remain seized of the matter.

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