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**DISSERTATION TITLE: THE LIBYAN SLAVE TRADE: A STUDY ON THE
RESPONSIBILITY OF THE LIBYAN GOVERNMENT AND RELEVANT
REGIONAL AND INTERNATIONAL BODIES BASED ON INTERNATIONAL
STANDARDS**

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LIST OF ABBREVIATIONS

AU	African Union
CNN	Cable News Network
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court on Human Rights
EU	European Union
HRC	Human Rights Committee
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP'S	Internally Displaced Persons
IOM	United Nations International Migration Organisation
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NGO	Non-Profit Organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights

TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
USA	United States of America
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission in Libya
UNTOC	United Nations Convention against Transnational Organised Crime

CHAPTER I - INTRODUCTION

I. INTRODUCTION

Libya is a North African state well known for its advanced economy and oil industry. Having gained its independence from Italy in 1951,¹ Libya quickly became a country of interest to Western nations due to the oil reserves discovered in 1955.² The discovery of the oil reserves led to seven of the biggest global oil companies establishing wells in Libya, initially dominating the oil industry in the country. Despite that, King Idris al-Sanusi who was the Head of State at the time established the Libyan National Oil Company in 1963 and effectively regained control of the industry.³

With the largest oil reserves on the continent, Libya became the richest state in North Africa. In 2010, it was the state that had the highest GDP per capita in Africa of US\$ 29,173 PPP.⁴ As the oil industry grew, Libya experienced a high influx of migrant workers who sought after better economic circumstances. An estimate of 1.8 million migrant workers relocated to Libya in the years of its economic boom.⁵ Not only was the economy doing well, but Libya's crime rate was also low with only three homicides per 100,000 people.⁶

Nonetheless, due to political instability in 2011, the economy of Libya took a downward trajectory. Libya's annual production of 3 million barrels of oil reduced to less than 1 million.⁷ The crime rate in Libya significantly increased as a result of violent militia activity and an increase of arms in the state. The state experienced political unrest through protests and this led to a rise in human rights violations primarily linked to human trafficking, migrant smuggling and slave trade.⁸

¹ Ana Baldinetti 'Libya' in Suad Joseph (ed) *Arab Family Studies* (2018) 57 – 78 at 57.

² Enrica Oliveri Matricola *Libya Before and After Gaddafi: An International Law Analysis* (unpublished PhD thesis, Università Ca'Foscari Venezia, 2012) at 4.

³ *Ibid.*

⁴ Mohsin Khan and Karim Mezran 'The Libyan Economy after the Revolution: Still No Clear Vision' *Atlantic Council: Rafik Hariri Centre for the Middle East* (2014)

⁵ International Organization for Migration (IOM), *Libya Crisis: IOM's Health and Psychosocial Responses for Migrants*, available at <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/crisis/Libya-Crisis-Infosheet-EN.pdf> accessed on 21 February 2019 at 5.

⁶ European Institute for Crime Prevention and Control Affiliated with the United Nations (HEUNI) and United Nations Office on Drugs and Crime (UNODC), *International Statistics on Crime and Justice*, 2010, No. 64 at 11.

⁷ International Monetary Fund *Public Information Notice: IMF Executive Board Concludes the 2013 Article IV Consultation with Libya*, May 23 2013, PIN No 13/60 available at <https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn1360> accessed on 19 February 2019.

⁸ United Nations Support Mission in Libya (UNSMIL), United Nations Office of the High Commissioner (OHCHR), *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018.

It has been well documented by various regional and international human rights bodies, including the United Nations (UN), UN Support Mission in Libya (UNSMIL) and the International Organization for Migration (IOM), that a significant portion of immigrants in Libya are victims of human trafficking, extortion through smuggling in persons and slavery.⁹In the UNSMIL 2012 report, it was reported that the lack of legal recourse for migrants left them vulnerable to arrest, arbitrary detention, deportation and exploitation.¹⁰ In 2015, the same annual report by UNSMIL reflected that the situation for migrants continued to worsen through abusive detention conditions.¹¹

Despite consistent reports revealing the immigrant abuse situation in Libya, there has been a slow response in addressing these human rights violations by relevant international organisations. The concerned organizations include the UN, the African Union (AU), the European Union (EU) and the Libyan government itself. Most parties have maintained a complacent attitude towards these abuses and in certain instances, have caused matters to escalate.

This thesis submits that the aforementioned international and regional bodies and the Libyan government have failed their duty, under international law, to prevent the escalation of the slave trade in Libya. Further, the thesis concludes that the Libyan government is accountable in terms of the Responsibility to Protect doctrine and that all bodies are liable in terms of other relevant international and regional instruments. To support this submission, the paper will study the history of the slave trade in Libya as well as discuss the prevalence and forms of slavery in the country. Additionally, the paper will examine the international law provisions that govern this particular issue, the duty of states, regional and international bodies under international law, and the adequacy, or lack thereof, of any reactions of the duty bearing bodies, including the state of Libya.

⁹ UNHCR, *UNHCR Global Trends 2011: A Year of Crises*, 18 June 2012, IOM, *IOM Learns of 'Slave Market' Conditions Endangering Migrants in North Africa*, 11 April 2017, accessed on 6 February 2019 available at <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>, UN News Service, Security Council condemns reported slave trade of migrants in Libya, 7 December 2017, available at <https://www.un.org/press/en/2017/sc13105.doc.htm> accessed on 9 January 2019.

¹⁰ United Nations Security Council (UNSC), *Report of the Secretary-General on the United Nations Support Mission in Libya*, 30 August 2012, S/2012/675 at 61.

¹¹ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 26 February 2015, S/2015/144 at 49.

II. BACKGROUND

i. Libya's Rise to Unrest

The first government after independence was a monarchy under the rule of King Idris al-Sanusi. King Idris focused on eradicating Italian customs and reintroducing Libya's culture.¹² Unfortunately, this conversion delayed progression in education in the state and illiteracy levels were high. Over the next few years, the monarchy worked to improve these issues in Libya but the country's economy was still in its developmental stages.¹³ In 1955, the UN discovered oil reserves¹⁴ which led to Libya's economic boom.

In 1969, there was a military *coup d'état* led by Colonel Gaddafi, who overthrew the monarchy and became the Head of State.¹⁵ Libya had transitioned from a being a colony to a monarchy and then a dictatorship under Gaddafi's rule. Although Gaddafi's regime was authoritarian, he remained focused on strengthening the education sector and the economy of the state.¹⁶

One of the main causes of the instability of Libya's economy is the civil uprising that took place during the Arab Spring in 2011. The Arab Spring was an uprising movement that commenced in Tunisia and spread across North Africa and the Middle East. Many of these movements involved civilian protests against their current governments.¹⁷ The Libyan people protested against the dictatorship rule of Gaddafi in January of 2011.¹⁸ By February, different protesting groups had joined forces as the opposition and formed the Libyan National Council. Various Western states including France, Italy and Spain supported the opposition.¹⁹

The overthrowing of Gaddafi as head of state created a gap in the leadership of the state, which led to political instability.²⁰ Moreover, rebel groups gained more power and territory within Libya.²¹ The actions of the opposition soon turned violent. The opposition received arms through Egypt, a move which was

¹² Ana Baldinetti 'Libya' in Suad Joseph (ed) *Arab Family Studies* (2018) at 58.

¹³ *Ibid.*

¹⁴ Enrica Oliveri Matricola *Libya Before and After Gaddafi: An International Law Analysis* (unpublished PhD thesis, Università Ca'Foscari Venezia, 2012) at 3.

¹⁵ Ana Baldinetti 'Libya' in Suad Joseph (ed) *Arab Family Studies* (2018) at 58.

¹⁶ *Ibid.*

¹⁷ Farhad Khosrokhavar 'The Arab Revolutions and Self-Immolation' (2012) *Revue d'Etudes Tibétaines* 169 at 174.

¹⁸ Elvin Aghayev 'Analysis and Background of the "Arab Spring" in Libya' (2013) Vol 39 No. 1-2 *European Researcher* 193 at 194.

¹⁹ *Ibid* at 195.

²⁰ Tom Eaton 'Libya's War Economy Predation, Profiteering and State Weakness' (2018) *Middle East North Africa Programme* at 2.

²¹ *Ibid.*

supported by the United States of America (USA).²² As events unfolded, there were various reports of the opposition using these weapons on civilians.²³ Due to the escalating violence and the heavy civilian casualties in Libya, the UN Security Council (UNSC) passed a resolution for international intervention in Libya.²⁴ The North Atlantic Treaty Organization (NATO) led the intervention into Libya in line with the UNSC resolution and NATO forces entered Libya in March 2011.²⁵ Gaddafi was injured by NATO attacks but was eventually caught and executed by the opposition.²⁶ These contributing factors left Libya in a chaotic state as there was no legitimate government and clear leadership following his assassination.

These events exposed the state to several problems such as an increase in human rights violations, primarily linked to human trafficking of migrants across the border *en route* to Europe,²⁷ and the slave trade. Prior to the uprising, many migrants relocated to Libya to better their economic circumstances and work in the oil industry. These migrants were ‘migrant workers’ who had a different status from migrants that were fleeing conflict. According to the IOM, Libya had an estimated 2.5 million migrants before the crisis,²⁸ this is including the 1.8 million migrant workers.²⁹ Only 700 000 of those migrants were non-working migrants who were not in Libya for work, but rather as asylum seekers. The IOM estimated that the number of migrant workers who fled Libya in 2011 following the violence at 790 000.³⁰ In 2018, the IOM estimated 700 000 to 1 million non-working migrants to be in Libya.³¹ The Libyan sovereign border was already difficult to control before the uprising because of the vast desert, however, the lack of political control crippled it further and paved way for a bigger market for migrant smuggling into Libya *en route* to Europe.³²

²² Elvin Aghayev ‘Analysis and Background of the “Arab Spring” in Libya’ (2013) Vol 39 No. 1-2 *European Researcher* at 195.

²³ *Ibid* at 196.

²⁴ UNSC, *Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya]*, 17 March 2011, S/RES/1973(2011).

²⁵ Elvin Aghayev ‘Analysis and Background of the “Arab Spring” in Libya’ (2013) *European Researcher* at 196.

²⁶ *Ibid*.

²⁷ *Ibid* at 10.

²⁸ IOM, *Libya Crisis: IOM’s Health and Psychosocial Responses for Migrants*, available at <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/crisis/Libya-Crisis-Infosheet-EN.pdf> accessed on 21 February 2019 at 1.

²⁹ IOM, *Migrants Caught in Crisis: The IOM Experience in Libya*, 2012, at 5.

³⁰ *Ibid*.

³¹ Displacement Tracking Matrix (DTM), *Libya’s Migrant Report, Round 21 July – August 2018* (2018) 3.

³² *Ibid*.

ii. Slave Trade

Slavery is not a new phenomenon. It has existed throughout history for centuries with the earliest record of slave trade taking place in Egypt, as early as 15 BC. Egypt at the time engaged in the practice of enslaving non-Africans such as Arabs and Palestinians.³³ However, the general practice was for Africans to enslave one another.³⁴ The practice of slavery can be traced to civil unrest and conflict between various ethnic groups on the African continent. Many slaves were used for various purposes, the women, for instance, were used for domestic work whilst the men carried out work outdoors, or were exploited as soldiers.³⁵ The status of slaves differed from region to region, where some were seen as property for their entire lives and others could eventually gain the status of a relative of the family they were attached to.³⁶

Although the initial activities in slave trade involved Africans enslaving fellow Africans, the dynamics shifted in the 7th Century. Foreign parties such as the Europeans and the Arab Muslims began to engage in the trade of African slaves. At this point, these slaves were being sold in Africa and shipped to Europe and other states to serve as slaves.³⁷ This resulted in a high demand for slaves, which in turn created a dangerous environment for Africans. During the 15th to the 19th Centuries, 12 million slaves were traded across the Atlantic Ocean. Slave traders shipped slaves in inhumane conditions with little or no food and kept them in cramped spaces. Slaves in Africa were exploited to work on the production of goods and food for Africans. However, the Europeans and the Arabs utilised slavery to develop their communities, which deteriorated the way in which slaves were treated over the years as the demand for slaves grew.³⁸

In the mid-1800s, the United States, France and Britain outlawed slavery. By the 1930s, slavery in Africa was almost abolished. As a result, the slave trade drastically dropped. Be that as it may, this was not the end of slavery, as illegal slave trade still exists today.³⁹

Slavery in the 21st Century has become more advanced and less detectable. Migrant smuggling has transformed into a form of human trafficking in Libya. This has become a major concern, especially in Europe, which is struggling with a significant number of migrants trying to penetrate its borders by the

³³ DTM, *Libya's Migrant Report, Round 21 July – August 2018* (2018) 3

³⁴ Donald R. Wright 'Slavery in Africa' *Online Encyclopaedia*, accessed on 14 November 2018 available at <http://autocwww.colorado.edu/~toldy2/E64ContentFiles/AfricanHistory/SlaveryInAfrica.html>.

³⁵ In some regions such as in West and Central Africa, many were used as soldiers.

³⁶ Donald R. Wright 'Slavery in Africa' *Online Encyclopaedia*.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

sea.⁴⁰ The Migrant Crisis caused panic in Europe, some states increasing their bans on migrants and others limiting their migrant intake. For instance, in 2017 Germany decided to limit its annual intake of asylum seekers to 200 000.⁴¹ As a result, many migrants continue to remain in perpetual transit in Libya and their conditions in the country are atrocious.

Libya has become the main transit route for migrants on their way to Europe and as a result, Libya is also receiving a large influx of migrants. These migrants travel to Libya with the aim of being smuggled across the sea to Europe in the hope of securing greener pastures on the other side.⁴² Despite their intentions, in most cases, these migrants find themselves in a situation where they are detained unfairly, suffer abuse, malnutrition and sexual assault.⁴³ In the worst situations, they find themselves sold as slaves.⁴⁴ The slave trade in Libya was first publicly exposed in November of 2017 by a video clip broadcasted by CNN.⁴⁵ This has led to a massive public outcry by the international community.

In Libya, the line between human trafficking and smuggling has become blurred.⁴⁶ Two additional protocols to the United Nations Convention against Transnational Organised Crime (UNTOC) have defined trafficking in persons and migrant smuggling.⁴⁷ Smuggling in persons occurs when there is the 'procurement of illegal entry into a state where the person is neither a national nor resident, for the financial benefit of the smuggler'.⁴⁸ Trafficking in persons involves the recruitment, transporting or transferring persons through coercion, abduction or other means of force, with the intention of exploiting such persons.⁴⁹ Although both involve the acts of recruitment, movement and delivery of persons, what

⁴⁰ Eugene Quinn 'The Refugee and Migrant Crisis: Europe's Challenge' *An Irish Quarterly Review* Vol. 105 No. 419.

⁴¹ Melissa Eddy 'Germany's Angela Merkel Agrees to Limits on Accepting Refugees' *The New York Times* 9 October 2017 available at <https://www.nytimes.com/2017/10/09/world/europe/germany-merkel-refugees.html> accessed on 23 February 2019.

⁴² Alexandru Apetroe 'The European migration crisis. Which consequences affecting the stability of the European Union?' *Research Gate* (2016).

⁴³ Oxfam 'You Aren't Human Anymore' *Oxfam Media Briefing* 9 August 2017 at 1.

⁴⁴ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018.

⁴⁵ Nima Elbagir, Raja Razek, Alex Platt and Bryony Jones 'People for sale: Where lives are auctioned for \$400' *CNN* 15 November 2017 available at <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html> accessed on 15 November 2018.

⁴⁶ The Global Initiative against Transnational Organized Crime, *Responding to the Human Trafficking-Migrant Smuggling Nexus: With a focus in Libya*, July 2018 at 1.

⁴⁷ UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

⁴⁸ Article 3(a) of the UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

⁴⁹ Article 3(a) of the UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

separates the two is the willingness of the smuggled or trafficked to participate. Although aware of the risks and dangers human smuggling will expose them to, migrants take these risks but many do not anticipate that they will become victims of trafficking in persons.⁵⁰

iii. Legal Instruments

In December of 2001, the International Commission on Intervention and State Sovereignty (ICISS) published a report entitled 'The Responsibility to Protect'.⁵¹ It placed three main obligations on the international community, these were; the responsibility to protect, the responsibility to react and finally the responsibility to rebuild.⁵² The report put limitations on the use of military interventions and provided six requirements that need to be met before such action can be taken.⁵³ It provided that this form of intervention would only be an option where there is 'just cause, based on actual or anticipated mass suffering and evidence by large-scale loss of life'.⁵⁴ This form of intervention may only be used to put an end to human suffering.⁵⁵ The United Nations Security Council has the responsibility to intervene or authorise intervention in situations where international peace and security are threatened.⁵⁶

At the United Nations World Summit in 2005, global political leaders endorsed the new Responsibility to Protect doctrine as an instrument to 'govern international political behaviour'.⁵⁷ The doctrine provides a link between the sovereignty of a state and the protection of the human rights of its people. Should a state fail to carry out this responsibility, the onus then rests on the international community to assume a corresponding duty to protect the civilians from crimes against humanities, including the slave trade.⁵⁸ Slave trade has been defined by the Supplementary Convention on the Abolition of Slavery, the Slave

⁵⁰ The Global Initiative against Transnational Organized Crime, *Responding to the Human Trafficking-Migrant Smuggling Nexus: With a focus in Libya*, July 2018 at 1.

⁵¹ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, December 2001; see also Monica Serrano 'The responsibility to protect and its critics: Explaining the consensus' (2011) 3 *Global Responsibility to Protect* 425 at 437.

⁵² ICISS, *The Responsibility to Protect*, December 2001 at XI.

⁵³ *Ibid* at 32.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*; see also Monica Serrano 'The responsibility to protect and its critics: Explaining the consensus' (2011) 3 *Global Responsibility to Protect* 425 at 437.

⁵⁶ *Ibid* at 34.

⁵⁷ United Nations General Assembly (UNGA), *Resolution adopted by the General Assembly on 16 September 2005*, 24 October 2005, A/RES/60/1 at para 138 - 139.

⁵⁸ ICISS, *The Responsibility to Protect*, December 2001; United Nations approved the Convention on the Prevention and Punishment of the Crime of Genocide.

Trade, and Institutions and Practices Similar to Slavery of 1956. The 1956 Convention describes the slave trade to mean and include:

The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.⁵⁹

The definition of a crime against humanity has also been codified by the Rome Statute of the International Criminal Court (Rome Statute).⁶⁰ According to the Rome Statute ‘enslavement’ is a crime against humanity, ‘when committed as part of a widespread or systematic attack directed against [any civilian population]’.⁶¹

Most States accept the UN Universal Declaration of Human Rights (UDHR)⁶² as the cornerstone of international human rights. The UDHR broadly governs all international human rights matters. The AU, EU and the Libyan government have made references to the UDHR to address various human rights issues. Although not legally binding, some of its provisions have gained the status of *jus cogens*. *Jus Cogens*, which translates to “compelling law”, refers to international laws that are superior.⁶³ These laws are peremptory in nature and non-derogatory.⁶⁴ The articles that address slavery,⁶⁵ the right to life,⁶⁶ torture⁶⁷ and prolonged imprisonment⁶⁸ fall under *jus cogens*.

The European Convention on Human Rights (ECHR)⁶⁹ imposes duties and obligations on all member states of the EU to protect and promote human rights, including rights of migrants. The EU has a duty to ensure member states abide by these provisions.

⁵⁹ UN Economic and Social Council (ECOSOC), *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (The 1956 Convention)*, 7 September 1956.

⁶⁰ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6.

⁶¹ Article 7(1) of the Rome Statute.

⁶² UNGA, *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, 217 A (III).

⁶³ Kamrul Hossain ‘The Concept of Jus Cogens and the Obligation under the U.N. Charter’ *Santa Clara Journal of International Law* (2005) Vol 3 Issue 1 p72-98 at 73.

⁶⁴ Kamrul Hossain ‘The Concept of Jus Cogens and the Obligation under the U.N. Charter’ *Santa Clara Journal of International Law* (2005) at 73.

⁶⁵ Article 4 of UNGA, UDHR, 10 December 1948, 217 A (III).

⁶⁶ Article 3 of UNGA, UDHR, 10 December 1948, 217 A (III).

⁶⁷ Article 5 of UNGA, UDHR, 10 December 1948, 217 A (III).

⁶⁸ Article 9 - 11 of UNGA, UDHR, 10 December 1948, 217 A (III).

⁶⁹ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

The African Charter on Human and Peoples Rights (Banjul Charter) ⁷⁰ codifies the human rights duties and obligations of member states, including Libya.

III. RESEARCH QUESTIONS

This objective of this thesis is to investigate the accountability of the UN, EU, AU and the Libyan government in the perpetuation of the slave trade in Libya. As stated above, the research will examine the duties of these bodies, and the state of Libya, in accordance with relevant regional and international instruments and principles, including the Responsibility to Protect doctrine. The following questions will be addressed:

1. Did the AU, EU and UN have a duty to intervene in or prevent the human rights violations in terms of the applicable international standards?
2. Can the Libya government, AU, EU and UN be held accountable?
3. To what extent can the UN, EU, AU and the Libyan government be held accountable for the slave trade in Libya?
4. What recommendations may be made to improve the situation in Libya?

IV. RESEARCH METHODOLOGY

The dissertation will rely on the texts of legal documents. A variety of sources, which include both primary and secondary sources of data, will be referenced. The main sources of information will derive from relevant international law and national legislation.

The secondary sources will include texts, published articles and most importantly, official reports by various international bodies. This research paper will refer to legal textbooks, dissertations and theses by academics and legal experts. There will be articles from various national and international legal journals as well as newspapers. Papers presented at conferences will also be referenced. Desktop research will also be a useful research medium, particularly for sourcing international newspapers or journals, as well as for any other information that might not be easily found in printed literature.

⁷⁰ The Organization of African Unity (OAU), *African Charter on Human and People's Rights ('Banjul Charter')*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

V. LIMITATIONS

State sovereignty is a notion that has been entrenched in international law. In terms of this principle, the international community may not intervene with the internal affairs of another state. The principle of Responsibility to Protect permits the international community to intervene in the internal affairs of a state.

Similar to the principle of state sovereignty, Articles 2(4) and 2(7) of the UN Charter⁷¹ prohibit the UN and member states from using force or intervening in affairs of another state.⁷² Only the UNSC has the authority to decide whether such intervention is necessary in order to maintain international peace and security.⁷³ This decision must comply with the requirements provided for under Chapters VI to VII and XII of the Charter.⁷⁴

Although the UNSC has the authority to permit legal intervention in a sovereign state, the functioning of the UNSC may limit this authority. The research, however, will not address state sovereignty and neither will it discuss any procedural protocols for regional or international bodies in the application of laws.

VI. CHAPTER OUTLINE

This thesis will comprise of five chapters. Chapter one provides a background on the study, the questions that will be answered as well as research limitations.

Chapter II will provide an overview of the national, regional and international laws that will be considered throughout the study. It will also delve into international norms that are applicable in order to determine if the relevant bodies have complied with them.

Chapter III will focus on the Libyan government and the AU. It will examine the background of both parties' involvement in the violations, and what actions have been taken by them. An analysis of their duties under international law and liability in the slave trade crisis will be undertaken.

⁷¹ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

⁷² UN Charter.

⁷³ Article 24 of the UN Charter.

⁷⁴ Article 24 of the UN Charter.

Chapter IV will follow the same approach as the previous chapter with a focus on the EU and the UN. It will also consider the extent of the EU and the UN's responsibility towards the crisis in Libya.

Chapter V will provide an overall conclusion of the findings of the responsibility of each body. The chapter will then provide relevant recommendations.

CHAPTER II – INTERNATIONAL AND REGIONAL LAWS AND NORMS

I. INTRODUCTION

Although slavery had been practised from as early as 15BC, it was not until the 1900s that international provisions were adopted to abolish slavery and the slave trade.⁷⁵ As stated in chapter one, the slavery crisis in Libya emerged a result of the exploitation of migrants travelling through Libya. Today, various international standards exist to address the issue of slavery and migration.

To determine how the Libyan government, the AU, EU and the UN are accountable for crimes against humanity, this chapter will examine the international, regional and national conventions and norms that have been established to govern the subject of slavery. Furthermore, it will consider the international accountability mechanisms that have been established to determine the accountability of the Libyan Government, the AU, EU and the UN.

Additionally, the chapter will analyse the evolution of slavery and slave trade, as well as outline the definition of slavery in accordance with current international standards. With regards to crimes against humanity, international tribunals that have set compelling precedents will be studied. The International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC) have set guidelines for the interpretation of the notion of crime against humanity.

This chapter further addresses the doctrine of the Responsibility to Protect, which provides for state accountability and appropriate responses to states that are accountable for disregarding their duty.

II. SLAVERY AS A CRIME AGAINST HUMANITY

i. The definition of Slavery and the Slave Trade

a. The 1926 Slavery Convention

In 1920, following the atrocities of World War I (WWI), the League of Nations (The League) was established to ensure that global peace would be sustained by promoting friendly relations between states. The League was the first international body to draft and adopt conventions that solely governed the issue

⁷⁵ Donald R. Wright 'Slavery in Africa' Online Encyclopaedia.

of contemporary slavery.⁷⁶ Regardless of its challenges in peacekeeping, the League was successful in its impact on social, economic and humanitarian issues, including the area of slavery.⁷⁷

In 1922 the League adopted the Temporary Slavery Commission, and through this Commission, the first definition of slavery in an international agreement was developed.⁷⁸ The Commission enacted the 1926 Convention,⁷⁹ which stipulated the definitions for 'slavery' and 'slave trade'. It defined slavery as '...the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'⁸⁰ It then defined 'slave trade' to include;

...all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Prior to the establishment of the Temporary Slavery Commission, the term 'slavery' had not been defined. The development of this definition was therefore, a notable achievement for the League. Most importantly, it provided the foundation for the definition used to describe a slave today, that is, someone who is under the complete control of another, essentially as his/her 'property'.⁸¹

Although the Temporary Slavery Commission provided the foundations of defining slavery, it failed to establish practical ways in which slavery could be determined in different sovereign states as well as any mechanisms that could be consulted to evaluate and pursue allegations of slavery.⁸² In addition, a universal code to abolish slavery at an international level did not exist.

With the aim of addressing these issues, in the 1930s the League established Advisory Committees. However, the work of these Committees was limited as a result of confidentiality agreements signed by

⁷⁶ Kevin Bales and Peter T Robbins 'No One Shall Be Held in Slavery or Servitude: A critical analysis of international slavery conventions' (2001) 2(2) *Human Rights Review (HRR)* 18 at 22.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ League of Nations (The League), *Convention to Suppress the Slave Trade and Slavery (1926 Slavery Convention)*, 25 September 1926, 60 LNTS 253, Registered No. 1414.

⁸⁰ Article 1(1) of LON, 1926 Slavery Convention, Registered No. 1414.

⁸¹ Jessica Bell 'Contemporary Slavery and International Law' *Human Rights and Human Welfare*.

⁸² Kevin Bales and Peter T Robbins 'No One Shall Be Held in Slavery or Servitude: A critical analysis of international slavery conventions' (2001) 2(2) *HRR* 22.

states which effectively restricted transparency of the League's efforts. Consequently, the work that the League had set to accomplish suffered and by the start of World War II (WWII), these efforts halted.⁸³

b. The 1956 Slavery Convention

In 1945, the UN was established as a successor to the League of Nations. The UN upheld similar aims and objectives to the League, that is, to protect and promote peace and security amongst states. Through the UDHR⁸⁴ in 1948, the UN prohibited acts of slavery and states. The UDHR states that 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'⁸⁵ As stated earlier, this is one of the Articles in the UDHR that has received the status of *jus cogens*.

The UN established *ad hoc* committees to review the existing conventions that were drafted by the League. The *ad hoc* Committee of Experts on Slavery determined that the definition of 'slavery' provided by the 1926 Convention was sufficient.⁸⁶ Even so, the Committee deemed it necessary to expand on the issues addressed by the Convention and as a result, the Committee recommended a supplementary convention.⁸⁷

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery⁸⁸ of 1956 (1956 Convention) succeeded the 1926 Convention and provided a broader spectrum on the issue of slavery. The UN did not have the authority to confront issues of contemporary slavery until the 1956 Slavery Convention came into effect.⁸⁹

The 1956 Convention broadened the definition of slavery provided for by the 1926 Convention. The definition now included 'debt bondage, serfdom, the selling of women by their families for marriage, certain forms of abuse of women, and the buying and selling of children for labour or prostitution'.⁹⁰ It defined 'slave trade' as follows:

⁸³ Kevin Bales and Peter T Robbins 'No One Shall Be Held in Slavery or Servitude: A critical analysis of international slavery conventions' (2001) 2(2) *HRR* 22.

⁸⁴ UNGA, UDHR, 10 December 1948, 217 A (III).

⁸⁵ Article 4 of UDHR.

⁸⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Abolishing Slavery and its contemporary forms*, 2002, at 5.

⁸⁷ Kevin Bales and Peter T Robbins 'No One Shall Be Held in Slavery or Servitude: A critical analysis of international slavery conventions' (2001) 2(2) *HRR* 23.

⁸⁸ UN Economic and Social Council (ECOSOC), *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (The 1956 Convention)*, 7 September 1956.

⁸⁹ Jessica Bell 'Contemporary Slavery and International Law' *Human Rights and Human Welfare*.

⁹⁰ Article I of the 1956 Convention.

The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

In the 1926 Convention, the document implied that the purpose of conveying the slaves would be to use them as slaves at the point of destination.⁹¹ This definition by the 1956 Convention is more suitably applicable to contemporary forms of slavery. Contemporary slavery has branched out and is not limited to the idea of ownership, but includes broader forms of slavery including, forced labour and human trafficking. These definitions set out by the 1956 Convention are applicable to all member states of the UN, and this includes Libya.

ii. The Definition of a Crime against Humanity

Prior to its codification, the term ‘crime against humanity’ was first used in a joint declaration in 1915 between the French, British and Russian governments to condemn the actions of the Turkish government against the Armenians.⁹² The declaration referred to ‘crimes of Turkey against humanity and civilization’.⁹³ Thereafter, the term ‘crime against humanity’ again emerged during the Nuremberg Trials after World War II (WWII) and has since been codified by the Rome Statute in 2011.

As the first prosecutions of crime against humanity were pursued in the Nuremberg trials after WWII. At the time, the definitions of ‘a slave’ and ‘slave trade’ were provided for by the 1926 Convention.⁹⁴ The Nuremberg trials were a series of military trials in 1945-1946, facilitated by allied forces under international law, to prosecute major war criminals who committed atrocious crimes during WWII. To convene the trials, the allied forces established the International Military Tribunal (IMT), this tribunal was governed by the Charter to the IMT (IMT Charter).⁹⁵ The IMT Charter defined crimes against humanity as:

⁹¹ Article 1(2) of the 1926 Convention.

⁹² Department of State, France, Great Britain and Russia Joint Declaration, May 29 1915, available at https://www.armenian-genocide.org/popup/affirmation_window.html?Affirmation=160 accessed on 27 February 2019.

⁹³ *Ibid.*

⁹⁴ League of Nations (LON), *Convention to Suppress the Slave Trade and Slavery (1926 Slavery Convention)*, 25 September 1926, 60 LNTS 253, Registered No. 1414.

⁹⁵ UN, *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (‘London Agreement’)*, 8 August 1945.

...murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the state where perpetrated.⁹⁶

The criminal jurisdiction of the Tribunal overruled domestic law. This was applicable to every suspect whose crime fell into the definition of a crime against humanity, irrespective of their nationality and whether their state recognised the act as a crime.⁹⁷ The act in question must have been committed before or during the war, which limited the Tribunal's jurisdiction. On the other hand, it's clear that slavery was regarded as a crime against humanity even before the war.

After the IMT Charter, the UN attempted to codify 'crimes against humanity' in international law, and they established the International Law Commission (ILC) in 1947. The Commission was tasked to promote the progressive development of international law and its codification.⁹⁸ The ILC published a report based on the Nuremberg and Tokyo trials, both of which tried issues of crimes against humanity. The definition of a crime against humanity provided for by the ILC was similar to the one stipulated in the IMT Charter. However, instead of considering crimes committed 'before or during the war'⁹⁹ the ILC amended it to include crimes, 'in connexion with any crime against peace or any war crime.'¹⁰⁰ In their report to the UNGA, the ILC submitted that the reason for the inclusion of 'time of peace' was to ensure that crimes committed before the war were not exempt from prosecution.¹⁰¹ The ILC continued to develop the definition and eventually, in 1996 they defined crimes against humanity as crimes, 'when committed in a systematic manner or on a large scale and instigates or directed by a Government or by any organisation or group'.¹⁰² This definition was limited to the acts of groups and not individuals. Regardless of this, there continued to be uncertainty of the definition of crimes against humanity and its elements.¹⁰³

⁹⁶ Article 6(c) of the United Nations, London Agreement, 8 August 1945.

⁹⁷ Article 6(c) of the United Nations, London Agreement, 8 August 1945.

⁹⁸ Article 1 of the United Nations, *Statute of the International Law Commission (ILC Statute)*, 1947.

⁹⁹ Article 6(c) of the United Nations, *London Agreement*, 8 August 1945.

¹⁰⁰ Principle VI (c) of the International Law Commission, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, 1950.

¹⁰¹ The International Law Commission (ILC) 'Report of the International Law Commission to the General Assembly' (1950) Vol 2 *Yearbook of the International Law Commission* para 120 – 124.

¹⁰² Article 18 of 1966 Draft Code of Crimes Against the Peace and Security of Mankind.

¹⁰³ M. Cherif Bassiouni *Crimes Against Humanity in International Criminal Law* 2 ed (1999) 193.

The definition of crimes against humanity continued to evolve over the years. In 1993 the ICTY amended the definition of the IMT Charter and limited it to crimes committed during armed conflict.¹⁰⁴ However, in 1993 the ICTR expanded the definition. The tribunal required that the crime be a ‘systematic or widespread attack against any civilian population on national, political, ethnic, racial or religious grounds’.¹⁰⁵ This definition now covered crimes that were committed during the Rwanda Genocide, a massacre which was motivated by ethnic hatred.

The current definition of crimes against humanity was developed by the ICC in the Rome Statute in 1998.¹⁰⁶ The Rome Statute defines crimes against humanity as, ‘acts committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.¹⁰⁷ This definition is similar to that of the ICTR, except the ICC omitted the requirement that an act constitute an attack on ‘national, political, ethnic, racial or religious grounds’.¹⁰⁸ Unlike the previous definitions, the definition by the Rome Statute does not focus on the actor of the crime or the time at which the crime was committed, but rather focuses on the act that is carried out. Furthermore, unlike previous conventions, the Rome Statute provides a definition for each of the acts that may constitute a crime against humanity.¹⁰⁹

The definition is divided into two parts, the general elements and then the specific crimes.¹¹⁰ Before it can be proved that a specific crime is committed, the requirements for the general elements must be met. These

¹⁰⁴ Article 5 of the UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*, 25 May 1993.

¹⁰⁵ Article 3 of the UN Security Council, *Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)*, 8 November 1994.

¹⁰⁶ As stated in Article 7(1) – (2) of the Rome Statute

‘1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;’

‘2. (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;’

¹⁰⁷ Article 7 of the Rome Statute.

¹⁰⁸ Article 7(1) of the Rome Statute.

¹⁰⁹ Article 7(2) of the Rome Statute.

¹¹⁰ M. C. Bassiouni *Crimes Against Humanity in International Criminal Law* (1999) 202.

requirements stipulate that the crime must be an ‘attack’ that is ‘widespread or systematic’ that is ‘directed against any civilian population’ and there must be ‘knowledge of the attack’.¹¹¹

The most accepted definition of an ‘attack’ was determined by the ICTY. In the judgment of *Kunarac, Kovac and Vukovic Case (Kunarac Case)*¹¹² the court held that an ‘attack’ could be described as ‘a course of conduct involving the commission of acts of violence’.¹¹³ The Appeals Chamber of the ICTY then expanded this and held that armed conflict and an attack are two separate things, the attack itself may take place during the armed conflict. The appeals chamber further went on to refer to the Customary International Law position, that the attack may take place before, during and after the war.¹¹⁴ Therefore, an attack is a course of conduct involving the commission of acts of violence which take place before, during or after the war.

Regarding the requirement that the attack must be widespread or systematic, the ICTR and ICTY have come to similar conclusions about its interpretation. Both tribunals agree that ‘widespread’ refers to the large scale of the attack and takes into account the number of victims that have been affected.¹¹⁵ As for ‘systemic’, they refer to the organised nature of the armed attack.¹¹⁶ The ICTR further makes reference to ‘the improbability of their random occurrence’.¹¹⁷ The act need not comply with both, it must either be widespread or systematic. The ICTY added that there must be a pattern to the acts and the parties would have considered the consequences of their actions as they were being carried out. The Tribunal also declared that it is only the attack itself that must be widespread or systematic. A single act or a number of acts can still constitute a crime against humanity, provided it is not isolated.¹¹⁸

The attack must be ‘directed against any civilian population’. In *Prosecutor v. Jovica Stanišić and Franko Simatović*, the court held that this meant that the ‘civilian population were the primary objects of the attack’.¹¹⁹ In *Prosecutor v. Dusko Tadic*, the court stated that ‘any’ could include an attack against people

¹¹¹ Article 7(1) of the Rome Statute.

¹¹² Case IT-96-23 & 23/1 (*Kunarac Case*), Trial Chamber Judgement, 22 February 2001.

¹¹³ *Kunarac Case*, Trial Chamber Judgement, Para 415

¹¹⁴ *Kunarac Case*, Appeals Chamber Judgement, Para 86.

¹¹⁵ *Prosecutor v. Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu*, Case No. ICTR-00-56-A, Appeals Chamber Judgement, 11 February 2014, para. 260; *Prosecutor v. Jadranko Prlić*, Case No. IT-04-74-T, Trial Chamber Judgement, 29 May 2013, Para 41.

¹¹⁶ *Ndindiliyimana Case*, Appeals Chamber Judgement, para. 260; *Prlić Case*, Trial Chamber Judgement, Para 41.

¹¹⁷ *Ndindiliyimana Case*, Appeals Chamber Judgement, para. 260.

¹¹⁸ *Prlić Case*, Trial Chamber Judgement, Para 41 - 42.

¹¹⁹ Case No. IT-03-69-T, Trial Chamber Judgement, 30 May 2013, Para 964.

of the same nationality or different nationalities.¹²⁰ In the case of *In the Prosecutor v. Uhuru Muigai Kenyatta*, ICC defined a civilian population to be ‘groups distinguishable by nationality, ethnicity or other distinguishing features’.¹²¹ This broadens the scope of the civilian population to include the victim’s pre and post-war, as well as persons that might be involved in the armed conflict.

Finally, the act committed must be connected to the attack on the civilian population. In the *Kunarac Case*, the court held that it is not necessary that act of the accused take place at the same time as the attack, but the attack must be connected to the attack and may not be an isolated act.¹²² The ICTY, in *Prosecutor v. Milorad Krnojelac* further stated that an act can still be a part of the ‘attack’ even if the crime is committed several months after or several kilometres away.¹²³

Therefore, in order to prove that ‘slavery’ and ‘slave trade’ in Libya are crimes against humanity, the acts must meet these general requirements. If established as crimes against humanity, the question of whom is liable for the crimes arises. Additionally, it is vital to determine with whom the duty to act lies under the doctrine of Responsibility to Protect.

The Rome statute codified a definition of a crime against humanity for the international community, and yet, as the treaty body of the ICC, its jurisdiction does not extend to the entire international community. The ICC only has jurisdiction over acts committed on the territory of a party state¹²⁴ or if the crime was committed against the national of a party state.¹²⁵

Unfortunately, Libya is not a party state. This means meaning that in order for the ICC to have jurisdiction over the crimes committed against the migrants in Libya, the migrants would have to be nationals of party states. The top five migrant nationalities in Libya are nationals of Niger, Egypt, Chad, Sudan and Ghana.¹²⁶ Out of these, only Chad, Ghana and Niger are party states to the ICC. Therefore, the ICC would have jurisdiction only over crimes against humanity committed against migrants that come from those party states.

¹²⁰ Case No. IT-94-1-T, Trial Chamber Judgement, 7 May 1997, Para 619.

¹²¹ Case No. ICC-01/09-02/11, Pre-Trial Chamber II, 23 January 2012, para 110.

¹²² *Kunarac Case*, Appeals Chamber Judgement, Para 100.

¹²³ Case No. IT-97-25-T, Trial Chamber Judgement, 15 March 2002, Para 55.

¹²⁴ Article 12(2)(a) of the Rome Statute.

¹²⁵ Article 12(2)(b) of the Rome Statute.

¹²⁶ DTM, *Libya’s Migrant Report, Round 21 July – August 2018* (2018) at 4.

III. INTERNATIONAL AND REGIONAL STANDARDS FOR SLAVERY AND SLAVE TRADE

i. The United Nations

The UN has adopted various treaties that impose duties on states to protect human rights and prevent violations. States that are a signatory to these treaties are accountable to treaty bodies.¹²⁷ However, the enforcement of international law is a challenge even where a state violates its duty. Where the states are unwilling to observe their duties under treaties, it is difficult to ensure repercussions for non-compliance.

a. The International Covenant on Civil and Political Rights

In 1966, the International Covenant on Civil and Political Rights (ICCPR) came into effect. It is one of the fundamental instruments of international human rights law.¹²⁸ The ICCPR is vital not only in setting global standards for civil and political rights but, for the first time, it provided persons with entitlements that we now know to be human rights.¹²⁹

As a treaty, it has a binding effect on all state signatories, however, the domestication of the provisions at a national level depending on whether the state is a monist or dualist state. A monist state is where international law treaties are automatically incorporated into the domestic system, whilst in a dualist state, there is no such incorporation until it is done by a particular Act of legislation.¹³⁰ The ICCPR prohibits slavery and the slave trade.¹³¹ It further prohibits the act of servitude, which has a broader scope than slavery,¹³² and includes ‘economic exploitation, dominance exercised by one person over another and slavery-like practices’.¹³³ This provision is absolute and states may not implement national laws that limit this right.¹³⁴

¹²⁷ Sarah Joseph, Jenny Schultz and Melissa Castan *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2000).

¹²⁸ Linda Camp Keith ‘The United Nations International Covenant on Civil and Political Rights: Does It Make A Difference in Human Rights Behavior?’ (1999) Vol 36 No *Journal of Peace Research* 95 to 118 at 96.

¹²⁹ Vladislava Stoyanova ‘United Nations against Slavery: Unravelling Concepts, Institutions and Obligations’ (2017) Vol 38 No 3 *Michigan Journal of International Law (MJIL)* at 360 to 361.

¹³⁰ John Laws ‘Monism or Dualism’ (2000) 53e Année, No. 2, Numero special 2 *La Revue administrative* p18-22 at 18.

¹³¹ Article 8(1) of UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

¹³² Article 8(2) of the ICCPR

¹³³ S. Joseph, J. Schultz and M. Castan *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2000) 199.

¹³⁴ *Ibid* at 20.

The Human Rights Committee (HRC) is the UN body that supervises the implementation of the ICCPR by states.¹³⁵ It monitors the states and also provides interpretations of provisions in the ICCPR.¹³⁶ The HRC has adopted three main mechanisms to ensure that states are implementing the ICCPR.¹³⁷ The HRC reviews state reports and responds to them; makes general comments on states' interpretations of the ICCPR and hears claims of individuals against states. Individuals may make a claim against a particular state directly to the HRC provided that the state has ratified the First Optional Protocol to the ICCPR.¹³⁸ However, the Optional Protocol requires that a claimant exhaust all national remedies before pursuing relief from the HRC.¹³⁹

Although the UN has established various monitoring mechanisms to ensure the non-existence of slavery, success in their monitoring largely relies on the cooperation of regional bodies and states. Indeed, the ICCPR ensured that the abolition slavery was no longer a matter of state choice. It bestowed upon individuals the absolute right to protection against acts of slavery. It requires states to take active steps in the abolition of slavery.¹⁴⁰ Regrettably, the limitations of the ICCPR and the HRC are clear. A lack of resources, the significant dependence on state participation and Non-Governmental Organisations (NGOs) restrict their substantive and monitoring impact. Moreover, as is the case with international law, the implementation of the ICCPR is primarily a domestic matter.¹⁴¹

As a signatory to the ICCPR and its First Optional Protocol, Libya has the duty to ensure that slavery does not exist in the country. This also means that all persons within its jurisdiction may bring a claim against Libya before the HRC, this includes migrants. However, migrants may face challenges in bringing forward such a claim particularly in satisfying the requirement of exhausting national judicial remedies. In a state where persons are held in slavery or servitude, it is challenging for these victims to gain access to fair national remedies.

¹³⁵ Article 28 of the ICCPR.

¹³⁶ Article 40 of the ICCPR.

¹³⁷ Article 40 of the ICCPR.

¹³⁸ Article 1 of the UNGA, *Optional Protocol to the International Covenant on Civil and Political Rights (First Optional Protocol)*, 19 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

¹³⁹ Article 2 of the ICCPR.

¹⁴⁰ Article 2(1) - (2) of the ICCPR.

¹⁴¹ S. Joseph, J. Schultz and M. Castan *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2000) 9.

ii. The European Union

By the end of WWII, Europe had suffered one of the biggest genocides in history, the Holocaust. As a result, Europe needed to take measures to reinstate and enforce the values of human rights.

a. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an agreement between European states to protect human rights and fundamental freedoms in Europe. One of the main objectives behind the establishment of the ECHR was to prevent the repeat of human rights atrocities such as the German Holocaust.¹⁴² The European Court on Human Rights (ECtHR) implements and interprets the provisions of the ECHR. The court's decisions have binding authority over member states.¹⁴³

The ECHR provides that no one should be held in slavery or servitude.¹⁴⁴ The Convention differentiates between slavery and servitude by describing slavery as a when someone is 'owned' by another person, whilst servitude is described as when a person lives on the property of another and feels there is the impossibility of change to their situation.¹⁴⁵

The provisions in the Convention are similar to the stipulations in the instruments mentioned earlier in the chapter, however, some variations exist. The ECHR does not directly refer to migrants, asylum seekers or refugees, but it mentions 'aliens. The Fourth Protocol of the ECHR (Fourth Protocol) prohibits the collective expulsion of aliens.¹⁴⁶ The term 'alien' does not only apply to foreigners that are legally present on the territory of a state. In *Georgia v Russia (I)*, the ECtHR held that the terms also applied to –

all those who have no actual right to nationality in a State, whether they are merely passing through a country or reside or are domiciled in it, whether they are refugees or entered the country on their own initiative, or whether they are stateless or possess another nationality.¹⁴⁷

¹⁴² Bernadette Rainey, Elizabeth Wicks and Clare O'vay Jacobs, *White and Ovey: The European Convention and Human Rights* 7 ed (2017) 3.

¹⁴³ Amnesty International UK 'What is the European Convention on Human Rights' available at <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights> accessed on 4 January 2019.

¹⁴⁴ Article 4(1) of Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

¹⁴⁵ B. Rainey, E. Wicks and C. O'vay Jacobs, *White and Ovey: The European Convention and Human Rights* 7 ed (2017) 220.

¹⁴⁶ Article 4 of Protocol 4 of *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

¹⁴⁷ Para 168 of the *Case of Georgis v. Russia (I)* (Application no. 13255/07) (*just satisfaction*), ECLI:CE:ECHR:2019:0131JUD001325507, Council of Europe: European Court of Human Rights

Further, the court determined that ‘collective expulsion’ is when there is any measure taken by the authorities, compelling aliens as a group, to leave the country.¹⁴⁸ This is the case except where such a decision is made after there have been reasonable and objective examinations of each of the alien’s circumstances.¹⁴⁹ The Fourth Protocol places a duty on member states not to participate in collective expulsion of aliens.¹⁵⁰ This provision is clear however, the question arises as to whether the provision applies when migrants are expelled at sea. This also raises a question of the extent of accountability on the EU, considering that the acts of slavery are committed in Africa, and not on European territory.

b. The European Agenda on Migration

The Treaty on the Functioning of the European Union (TFEU) is a policy adopted by all states of the EU. Of relevance is Article 67 which states that member states shall have a ‘common policy on asylum, immigration and external border control’.¹⁵¹ This applies to all states excluding the United Kingdom, Ireland and Denmark, who may exercise discretion in the implementation of this article.¹⁵²

The EU acknowledged that the migration regulations that existed in European states prior to this common policy were subpar, and they agreed that the adoption of progressive provisions was required.¹⁵³ In establishing progressive immigration regulations, a priority of the EU was to ensure that Europe continues to be a safe haven for those escaping persecution.¹⁵⁴ The EU also aimed to maintain its high standards and reputation for having some of the best tertiary education institutions in the world.¹⁵⁵ The EU also considered their tourism industry, which they did not wish compromise.¹⁵⁶ Most importantly, the EU was committed to ensuring that Europe is prepared for unpredictable migration crises in the future.¹⁵⁷

In the formulation of the policy, the EU focused on the issue of migrant lives being lost at sea, particularly because at that time there had been many such deaths, resulting in washed up bodies depositing on

¹⁴⁸ *Vedran Andric v. Sweden*, 45917/99, Council of Europe: European Court of Human Rights, 23 February 1999.

¹⁴⁹ *Vedran Andric v. Sweden*, 45917/99, Council of Europe: European Court of Human Rights, 23 February 1999.

¹⁵⁰ Article 4 of Protocol 4 of *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

¹⁵¹ Article 67(2) of European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01.

¹⁵² European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*, 13 May 2015, COM (2015) 240 at fn 3.

¹⁵³ *Ibid* at 2.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid*.

¹⁵⁶ *Ibid*.

¹⁵⁷ *Ibid*.

European shores.¹⁵⁸ Secondly, the EU considered the dependence of migrants on smugglers and traffickers to smuggle them into Europe and the reluctance of migrants to consult institutions that have been established to assist them.¹⁵⁹ They further assessed how they will confront the high volumes of people migrating into Europe and how each EU state may contribute towards a long-term plan to ensure the EU is prepared in the future.¹⁶⁰

A solution to the migration crisis entailed that the EU assist African states that were producing the highest number of migrants, with their immigration control mechanisms.¹⁶¹ Consequently, there have been various agreements between African and European states, including between Libya and Italy.¹⁶²

iii. The African Union

a. The African Charter on Human and Peoples Rights

The African Charter on Human and Peoples' Rights (The Banjul Charter)¹⁶³ is implemented by the African Commission on Human and Peoples' Rights (African Commission). The Banjul Charter was established with the aim of creating an African approach to human rights, taking into consideration Africa's history and struggles. The African Commission works to promote and enforce human rights, it also oversees the interpretation and implementation of the Banjul Charter.¹⁶⁴

The Banjul Charter explicitly states that 'All forms of exploitation and of degradation of man particularly slavery, slave trade...shall be prohibited'.¹⁶⁵ It also seeks to protect asylum seekers such as those entering Libya in an attempt to reach Europe. It states, 'Every individual shall have the right, when persecuted, to seek and obtain asylum in other states in accordance with laws of these states and international law'.¹⁶⁶

¹⁵⁸ European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*, 13 May 2015, COM (2015) 240 at 3.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid* at 4.

¹⁶¹ *Ibid* at 5.

¹⁶² Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy (2008).

¹⁶³ OAU, *African Charter on Human and Peoples' Rights ('Banjul Charter')*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

¹⁶⁴ U. O. Umzurike 'The African Charter on Human and Peoples' Rights: Suggestions for More Effectiveness' (2007) Vol 3 Issue 1 *Annual Survey of International and Comparative Law (ASICL)* at 179.

¹⁶⁵ Article 5 of Banjul Charter

¹⁶⁶ Article 12(3) of the Banjul Charter.

Again, implementation is dependent on state laws, and this may cause a problem in states where the human rights infrastructure is severely lacking.

The Banjul Charter places an obligation on the African states to adopt legislative and other measures to give effect to the rights and duties of the Charter.¹⁶⁷ In line with this, the African Commission imposes four main core obligations on the states - to respect, protect, promote and fulfil.¹⁶⁸ States must ensure that domestic legislative provisions are adopted to enforce and protect these rights.

Finally, the Banjul Charter is to be interpreted in accordance with the UN Charter and the UDHR. This is to promote the harmonization of international law. Libya is a signatory to the Charter and therefore has a duty to implement it.

The provisions of the Charter are comprehensive and address a wide spectrum of human rights. Regardless, its implementation and enforcement remains to be a challenge. One of the main issues faced by the African Commission is that states ignore decisions made by the Commission.¹⁶⁹ Furthermore, the Commission is very slow in deciding cases and this causes a detrimental backlog.¹⁷⁰ However, the Commission is not the only body that monitors issues of human rights in the African region. The African Court on Human and People's Rights (ACtHPR) hears human rights claims. Unlike the Commission, a non-state party may not approach the court directly, unless their country laws stipulate that they can.¹⁷¹ Nevertheless, the court itself is lacking in various ways and fails to hear many cases, despite the high volume of human rights violations currently taking place in African states.¹⁷²

iv. International Norms and Doctrines

a. Responsibility to Protect

The doctrine of Responsibility to Protect, as mentioned above, was established in 2001.¹⁷³ It was developed following numerous international debates on the idea of 'right to intervention'. The right to

¹⁶⁷ Article 1 of the Banjul Charter.

¹⁶⁸ African Commission on Human and Peoples' Rights (African Commission), *Principles And Guidelines On The Implementation Of Economic, Social And Cultural Rights In The African Charter On Human And Peoples' Rights*, at 11.

¹⁶⁹ Magnus Killander 'The African Commission on Human Rights' in Manisuli Ssenyonjo (ed) *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples' Rights* (2012) p239.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid* at p240.

¹⁷² *Ibid.*

¹⁷³ ICISS, *The Responsibility to Protect*, December 2001.

intervention caused debates in circumstances where international intervention was authorised but was argued to be inappropriate. It was similarly challenged in situations where it was not authorised but argued to be necessary.¹⁷⁴ The shift from using ‘right to intervention’ to the ‘responsibility to protect’ places the focus on the civilians that need assistance.¹⁷⁵

For many years, the question of whether ‘state intervention’ is an infringement of ‘state sovereignty’ loomed over the international law realm. There are two forms of state sovereignty, internal and external sovereignty. Internal sovereignty is when the state has complete authority over the territory of that state.¹⁷⁶ External sovereignty is when a state is independent to other states, and not one state is above the other.¹⁷⁷

State sovereignty has been encoded by the UN Charter which prohibits the international community from using or threatening to use force against another state.¹⁷⁸ Moreover, it prohibits the UN from intervening in the internal affairs of states nor is a state required to submit matters to the UN for settlement. The interpretation of sovereignty is subject to Chapter VII of the Charter.¹⁷⁹ Despite this, there have been questions raised on the absoluteness of sovereignty especially where there is a need for humanitarian intervention, for example during the Rwandan genocide.

The Responsibility to Protect doctrine provides a change in the approach of intervention. The wording focuses more on the victims, rather than the international bodies that will be taking the action.¹⁸⁰ Moreover, it gives the state an opportunity to take action internally. It is based on the ideology that this responsibility lies first with the state as it is in the best position to make an informed decision on matters occurring within its jurisdiction.¹⁸¹ Only when states are unable or unwilling to address such matters, or if persons outside the state jurisdiction are in direct threat of adverse action, does it allow for the international community to intervene.¹⁸² Finally, as mentioned earlier, it not only establishes a

¹⁷⁴ Judith Raffelseder *The challenges and limitations of R2P’s applicability in the aftermath of the natural disaster in Myanmar* (Unpublished LLM thesis, University of Tilburg, 2011) at 13.

¹⁷⁵ *Ibid.*

¹⁷⁶ David A. Lake ‘The New Sovereignty in International Relations’ (2003) 5 *International Studies Review* 303 at 306.

¹⁷⁷ *Ibid.*

¹⁷⁸ Article 2(4) of the UN Charter.

¹⁷⁹ Article 2(7) of the UN Charter.

¹⁸⁰ ICISS, *The Responsibility to Protect*, December 2001 at 17.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

responsibility to protect but a further one to prevent any such abuses and the responsibility to rebuild after the incident.¹⁸³

As mentioned earlier, this doctrine was agreed upon by all heads of state in 2005.¹⁸⁴ They all agreed to take collective action in a timely and decisive manner if necessary, in line with Chapters VI and VIII of the UN Charter.¹⁸⁵ The UN clearly states that this doctrine only applies to four main crimes and one of these being the crime against humanity. As mentioned above, slavery is a crime against humanity according to the Rome Statute.

As a member state of the UN, Libya is one of the states that agreed to this doctrine. This means the responsibility to protect applies to the Libyan government, first and foremost. According to the first pillar, they have a responsibility to protect their own population from such a crime. If demonstrated that the government is unable or unwilling to take action to prevent this, it would then warrant for international intervention.

b. The Principle of Non-Refoulement

As has been shown by the various reports from the UN and other organisations, the migrants are the main subjects of the human rights abuses, including the slave trade. Considering that they are not nationals of Libya, the question is whether Libya has a duty to even accept these migrants and to protect them.

There are various reasons why people are travelling to Libya, and not all the migrants in Libya are there because they are fleeing from conflict. There are three categories of persons that flee to Libya: the purely economic migrants, mixed migrants who flee because of difficulties in their own states and are seeking a stable or better economic circumstance and finally asylum seekers who are looking to gain refugee status.¹⁸⁶ As a result, the manner in which a state is obliged to accept these different groups differs. It is then important to understand what the difference is between these categories of persons.

The IOM defines a migrant as a person;

¹⁸³ ICISS, *The Responsibility to Protect*, December 2001 at 17.

¹⁸⁴ UNGA, *Resolution adopted by the General Assembly on 16 September 2005*, 24 October 2005, A/RES/60/1 at para 138 - 139.

¹⁸⁵ UNGA, *Report of the Secretary General on the application of the responsibility to protect: the rendering of accounts in matters of prevention*, 10 August 2017, A / 71/1016-S / 2017/556 para 3.

¹⁸⁶ *Ibid.*

...who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.¹⁸⁷

From this definition encompasses a wide range of circumstances that these migrants could be in, and it is the individual circumstances that determine under what category each migrant falls. A migrant who has left voluntarily is generally seen as a person who leaves their country seeking better social or economic opportunities. They still have the protection of their state and they are able to return to their state if necessary.¹⁸⁸ The Convention and Protocol Relating to the Status of Refugees (Refugee Convention)¹⁸⁹ provides an international standard for the definition of a refugee. A refugee, also seen as an involuntary migrant, is a person who is fleeing their state for fear of being persecuted. In this case, they have no other option but to leave in order to protect their lives.¹⁹⁰ These people are normally fleeing from issues like war or internal conflict and this is the category that many of the migrants in Libya fall into.¹⁹¹ Finally, an asylum-seeker is similar to a refugee, they are seeking international protection but have not yet attained the status of a refugee. However, the state may not turn an asylum-seeker away until they have been examined in a fair procedure.¹⁹²

Therefore, in order for a migrant or an asylum-seeker to reach the status of a refugee, they need to meet certain requirements, on top of this, a refugee received the best protection out of all three. In order to ensure there, the Refugee Convention introduced the principle of non-refoulement. According to this principle, no contracting state may expel a refugee to where their life is in danger, even more, this principle is still open to asylum-seekers whilst they await recognition.¹⁹³

Looking at the definition provided, many of the migrants present in Libya fit the criteria of an 'asylum-seeker'. Despite this, in order to determine who is entitled to protection, the state would have to check

¹⁸⁷ The IOM 'Who is a Migrant' available at <https://www.iom.int/who-is-a-migrant> accessed on 24 March 2019.

¹⁸⁸ UNHCR, *A Guide to the International Refugee Protection and Building State Asylum Systems*, 2017, p17.

¹⁸⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

¹⁹⁰ Article 1 of the UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

¹⁹¹ IOM 'Key Definitions' available at <http://www.iom.int/key-migration-terms#Migrant> accessed on 13 December 2018.

¹⁹² UNHCR, *A Guide to the International Refugee Protection and Building State Asylum Systems*, 2017, p17.

¹⁹³ Article 33 of the UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

under what circumstances the migrant has come to Libya and if that person is entitled to refugee status or the status of an asylum seeker.

IV. CONCLUSION

It is clear through the history of Libya that there have been abuses against migrants in Libya since migrant workers have travelled to the country. These abuses have only increased over the years as the number of migrants has greatly increased.

All relevant human rights bodies condemn and criminalise the act of slavery. In terms of the Rome Statute, it is declared to be a crime against humanity. Despite Libya not being a party to the ICC, the fact that the group of persons facing the abuses are from countries that are party to it means the ICC still has jurisdiction over the matter. However, this would only become applicable at the moment that someone is apprehended and tried in court.

With regard to the doctrine of the Responsibility to Protect, it is important to determine to what extent the concerned human rights bodies and Libya had a responsibility to protect. The thesis will address this question.

The next two chapters will analyse the responses of the four bodies, starting with the Libyan government and then the AU. It will focus on how they reacted to the crisis, and how they should have reacted in terms of the international standards.

CHAPTER III – THE RESPONSIBILITY OF LIBYA AND THE AFRICAN UNION

I. INTRODUCTION

This chapter will examine the accountability of the Libyan government and the AU in the slavery crisis in Libya. This analysis will be based on the relevant international conventions, norms as well as definitions that were referred to in the previous chapter.

The Libyan government and the AU are the most relevant governing bodies in the slavery situation in Libya, and their reaction to the crisis is crucial. Although there have been several reports published about the existence of slavery in Libya, both the government and AU have not reacted with urgency.

Libyan law does not provide for any protection for migrants and therefore they are easily targeted for slavery. Despite numerous reports and international pressures on the Libyan government to enact legislation that will protect migrants, these urges have not been heeded to. To provide context and perspective on the current positions of the Libyan Government and AU, it is important to understand the background of the crisis and how it has evolved.

II. BACKGROUND

The rise in migration in Libya can be attributed to the Arab Spring that spread throughout the Middle East and North Africa.¹⁹⁴ The Arab Spring was an uprising movement that originated from a single act of protest by a Tunis vendor on 17 December 2010, who set himself on fire in front of the local governor's office.¹⁹⁵ He died less than a month later on 4 January 2011. His protest sparked mass opposition in Tunisia against the autocratic government that had ruled over the state for more than two decades.¹⁹⁶ Within a week of his death, the Tunisian government fell apart and the President went into hiding.¹⁹⁷ During the uprising, protesters took to social media to expose the crisis and subsequently the protests aroused global

¹⁹⁴ Erzsébet N. Rózsa 'The Arab Spring Its Impact on the Region and on the Middle East Conference' (2012) *Academic Peace Orchestra Middle East – Policy Brief* 1.

¹⁹⁵ Farhad Khosrokhavar 'The Arab Revolutions and Self-Immolation' (2012) *Revue d'Etudes Tibétaines* 169 at 174.

¹⁹⁶ Thessa Lageman 'Mohamed Bouazizi: Was the Arab Spring worth dying for?' 3 January 2016 available at <https://www.aljazeera.com/news/2015/12/mohamed-bouazizi-arab-spring-worth-dying-151228093743375.html> accessed on 9 October 2018.

¹⁹⁷ Hebert P. Bix 'North Africa-Middle East Uprising from Tunisia to Libya' (2011) *The Massachusetts Review (TMR)* 329 at 333.

interest. This, in turn, motivated the citizens of the surrounding states to also launch similar uprisings.¹⁹⁸ By 25th January 2011, 11 states had joined the uprising including Libya, Syria and Sudan.

The reasons for the uprising in these states varied. Some of the explanations given by the protestors were lack of democracy, human rights violations, the need for the improvement of living conditions and some were aiming to overthrow the ruling regime.¹⁹⁹ The effects of the uprising also differed from one state to another, depending on the reason of the uprising. There were three forms of activism that were initiated - the people fighting against government regimes, the people fighting against other civilians and finally the fight between the two regimes.²⁰⁰ Regardless, all states experienced high levels of displacement of their citizens.²⁰¹

As a result of the uprisings, many of the states found themselves facing civil war and many of the governments had to fight against insurgents within the state. Not only are the governments fighting against rebel groups, but the rebel groups are also fighting against each other for control over the states.²⁰² Out of the 50 million estimated migrants in the world, Syria remains the highest contributor. Syrians were once the largest number of migrants in Libya trying to crossover to Europe, however, over time they have diverted their travel route. Most of them are seeking refuge in Turkey, Lebanon, Jordan, Iraq and Egypt.²⁰³

There are three main routes to Europe by sea. These channels are the Western Mediterranean route to Spain through Morocco; the Central Mediterranean route to Italy through Libya and finally the Eastern Mediterranean route which is usually to Greece through Turkey.²⁰⁴ The Central Mediterranean route from Libya has become the busiest of them all.²⁰⁵ As a result of the instability in Libya, many migrants choose this route as it is easier to enter the state due to the lack of border security. The instability made it easier

¹⁹⁸ Amy Mitchell, Heather Brown and Emily Guskin 'The Role of Social Media in the Arab Uprisings' *Pew Research Centre*, 28 November 2012.

¹⁹⁹ Erzsébet N. Rózsa 'The Arab Spring Its Impact on the Region and on the Middle East Conference' (2012) *Academic Peace Orchestra Middle East – Policy Brief* 1.

²⁰⁰ Munir Hussain and Muhammad Kashif 'Arab Uprising 2011: Emergence of Extremism in Middle East and Its Regional Consequences' vol 14.2 *Alternatives Turkish Journal of International Relations* (2015) 29 at 30 to 33.

²⁰¹ Erzsébet N. Rózsa 'The Arab Spring Its Impact on the Region and on the Middle East Conference' (2012) *Academic Peace Orchestra Middle East – Policy Brief* 1.

²⁰² Elizabeth Ferris and Kemal Kirişçi *The Consequences of Chaos: Syria's Humanitarian Crisis and the Failure to Protect* (2016) Ch 1 15.

²⁰³ Catherine Bellamy, Simone Haysom, Caitlin Wake and Veronique Barbelet 'the lives and livelihoods of Syrian refugees: A study of refugee perspectives and their institutional environment in Turkey and Jordan' (2018) *HPG Commissioned Humanitarian Report* 1.

²⁰⁴ UNHCR, *Executive Summary of Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges*, (2017) 1.

²⁰⁵ Elizabeth Collette and Camille Le Coz 'After the Storm: Learning from the EU Response to the Migrant Crisis' *Migration Policy Institute Europe*, June 2018.

to evade the coast guards. This route is highly risky as it is also the most dangerous route out of the three.²⁰⁶ It has the highest number of missing and dead at sea migrants, in 2016 there were an estimated 4 500 deaths.²⁰⁷

The reasons for the high number of migrants entering state Libya vary. Some are there with the purpose of transiting to Europe, whilst others hope to improve their economic position by seeking employment opportunities in Libya.²⁰⁸ The categories of persons that flee to Libya may be identified as the purely economic migrants, mixed migrants who flee because of difficulties in their own states and are seeking a stable or better economic circumstance and finally, asylum seekers.²⁰⁹

The most prevalent migrants in Libya are from Niger, Egypt and Chad.²¹⁰ In most cases, these are pure economic migrants that have travelled to seek some form of economic gain.²¹¹ Over the years, this has changed significantly and the number of migrants travelling from West and Central Africa has also increased.²¹² However, it is strange to consider that many would flock to such a state for economic gain when the current state of the Libyan economy is dire.

This is not the first time migrants have travelled to Libya in the masses. Libya has always been a destination state for migrants. Immediately prior to the uprisings in 2011, it was estimated that there were about 1.3 million migrants in Libya.²¹³ Following the uprising protests which led to the downfall of Libyan president Colonel Muammar Gaddafi, the dynamics of people travelling to Libya changed.²¹⁴ In 2011, after Muammar Gaddafi was executed, the political situation in Libya was unstable. The UN High Commissioner for Refugees (UNHCR) and the IOM arranged for the evacuation of 143 000 migrants from Libya back to their countries of origin.²¹⁵ On the other hand, others saw this political unrest as an opportunity to exploit the weakened government. As a result of the current unrest, the border control and

²⁰⁶ UNHCR, *Executive Summary of Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges*, (2017) 1.

²⁰⁷ UNHCR, *Central Mediterranean Route Situation*, (2018) at 4.

²⁰⁸ UNHCR, *Mixed Migration Libya at the Crossroads* at 7.

²⁰⁹ *Ibid.*

²¹⁰ The Global Initiative against Transnational Organised Crime, *Responding to the Human Trafficking-Migrant Smuggling Nexus: With a focus in Libya*, July 2018 at 1.

²¹¹ DTM, *Libya's Migrant Report, Round 21 July – August 2018* (2018) 3.

²¹² UNHCR, *Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges*, (2017) 55.

²¹³ IOM, *Migrants Caught in Crisis: IOM experience in Libya*, 2012 at 5.

²¹⁴ *Ibid* at 14.

²¹⁵ IOM, *World Migration Report 2011: Communicating Effectively about Migration*, 2011 at 19.

the coast guards are not as efficient as they used to be, making it easier to enter the state and to eventually be smuggled to Europe.²¹⁶

III. LIBYA

i. The Conduct of the Relevant Government Bodies

The journey of migrants through Libya exposes them to a vicious cycle of abuse by the different government institutions. From the moment they enter the country, either through smugglers or on their own, they are placed in detention centres.²¹⁷ Libya does not have laws that differentiate between refugees, asylum seekers and migrants. As a result, all foreigners entering the country who do not possess valid immigration documentation are considered illegal migrants.²¹⁸

The migrants are kept in detention centres for months or they are gathered by smugglers to travel to their final destination by boat.²¹⁹ In most cases, these boats are not built for the high seas, and breakdown in the international waters.²²⁰ Once at sea, their fate depends on whether they are caught by the Libyan Coast Guard (LCG) or a Non-Governmental Organisation (NGO).²²¹ Being caught by the coast guard means a journey back to Libyan land where they are rebooked into detention centres.²²²

a. The Libyan Coast Guard

The migrant issues in Libya have been present for many years. The government has been in communication with the European countries about the issues years before the Arab Spring even broke out.

In 2008, Italy and Libya entered into an agreement whose terms stipulated that Italy would pay Libya US\$ five billion over a period of five years. In exchange, Libya would work to curb the arrival of migrants into Italy, by strengthening their coastal force through funding provided by Italy and then later on, the EU.²²³

The agreement was that the Libyan Coast Guard (LCG) would strengthen efforts to ensure that migrants

²¹⁶ IOM, *World Migration Report 2011: Communicating Effectively about Migration*, 2011 at 62.

²¹⁷ UNHCR, *Mixed Migration: Libya at the Crossroads* (2016) p88.

²¹⁸ *Ibid* at p17.

²¹⁹ Sudarsan Raghavan 'Migrants Braving Sea Crossing Face Abuse at the Hands of the Libyan Coast Guard' *The Washington Post* 11 July 2017 available at https://www.washingtonpost.com/video/world/migrants-braving-sea-crossing-face-abuse-at-hands-of-libyas-coast-guard/2017/07/11/db3a826a-65ae-11e7-94ab-5b1f0ff459df_video.html accessed on 25 March 2019.

²²⁰ *Ibid*.

²²¹ *Ibid*.

²²² *Ibid*.

²²³ Article 19 of the Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy.

that attempt to reach Europe are captured and returned to Libya. The LCG is under the authority of the Libyan Ministry of Internal Affairs. This bilateral agreement raised red flags for the UN. The UN Committee against Torture, in particular, was concerned that this agreement did not take into consideration the human rights of the migrants. The Committee recommended a revision of the agreement to reflect a human rights-centred approach.²²⁴ The agreement was not amended and after the Arab Spring uprisings broke out in 2011 and the country was unstable, the LCG was not able to operate effectively.

Soon after the uprisings, the number of migrants travelling the Central Mediterranean route to Italy began to increase again. As the number of migrants coming in from the Central Mediterranean routes grew, Libya began to work with the European states again in 2016.²²⁵ In 2017, Italy decided to revive its agreement with Libya. Italy invested funds to strengthen the LCG to ensure that the number of migrants leaving the Libyan coast was reduced.²²⁶

International human rights organization, Amnesty International, reported that they had documented ‘shootings, abandonment, beatings by the Libyan coast guard themselves as they were rescuing people.’²²⁷ In 2017, a video surfaced revealing members of the LCG whipping migrants in a boat.²²⁸ Beyond the allegations that the LCG were committing human rights abuses, this was the first visual evidence showing that the allegations were a reality. What then followed were various news reports of the LCG purposefully abandoning migrants at sea to drown, including a mother and child being abandoned on a small boat at sea.²²⁹

²²⁴ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 14.

²²⁵ Inter-Agency Regional Analysts Network, *Responding to the Migrant Crisis: Europe at a Juncture*, June 2016 at 15.

²²⁶ EuroNews ‘Italy-Libya Sign an Agreement to Curb Flow of Migrants to Europe’ *Euronews* 2 February 2017 available at <https://www.euronews.com/2017/02/02/italy-libya-sign-agreement-to-curb-flow-of-migrants-to-europe> accessed on 10 December 2018.

²²⁷ Henry Ridgwell ‘Migrant Arrivals in Italy Soar as Amnesty Warns of Libya Abuses’ *VOANews* 17 June 2016 available at <https://www.voanews.com/a/migrant-arrivals-italy-soar-amnesty-warns-libya-abuses/3381170.html> accessed on 25 March 2019.

²²⁸ Tom Kington ‘Video shows Libyan coastguard whipping rescued migrants’ *The Times* 14 February 2017 available at <https://www.thetimes.co.uk/past-six-days/2017-02-14/world/video-shows-libyan-coastguard-whipping-rescued-migrants-6d8g2jgz6> accessed on 25 March 2019.

²²⁹ Al Jazeera News ‘Libyan coastguard left refugees to die in Mediterranean: NGO’ *Al Jazeera News* 17 July 2018 available at <https://www.aljazeera.com/news/2018/07/libyan-coastguard-left-refugees-die-mediterranean-ngo-180717195213059.html> accessed on 25 March 2019, Juan Medina ‘Two migrants die on boat left adrift by Libyan coast guard: charity’ *Reuters* 17 July 2018 available at <https://www.reuters.com/article/us-europe-migrants/two-migrants-die-on-boat-left-adrift-by-libyan-coast-guard-charity-idUSKBN1K72HY> accessed on 25 March 2019.

In June of 2018, the United Nations identified six Libyan nationals suspected of being involved in human trafficking.²³⁰ One of the six people was a regional head of the LCG.²³¹ This severely compromised international confidence in Libya.

b. Abuses in the Detention Centres

As aforementioned, the Libyan government does not differentiate between illegal migrants and asylum seekers or refugees.²³² This has resulted in the perpetual abuse of migrants. Additionally, state immigration processes are applied inconsistently on migrants. Migrants may be arbitrarily detained for extended periods of time, some may be deported back to their states whilst others are kept in rotation from one detention centre to the next.²³³

The number of victims of human trafficking and slavery in Libya is unclear, however, it is estimated that the current number of migrants in Libya is about 670 000.²³⁴ It is this group of migrants that are trapped in Libya and exposed to slavery. Many of them remain detained in detention centres. In 2017, there were an estimated 20 000 migrants kept in detention centres.²³⁵ Today there is still an estimated 15 000 migrants in these detention centres.²³⁶ It is not clear how many detention centres are in Libya, but there have been various estimates ranging from 17 to 35, suggested by the UNHCR,²³⁷ the IOM and other NGOs.²³⁸

In terms of the structure of the state affairs, the General Directorate for Combatting Illegal Migration (DCIM) within the Ministry of Interior is mandated to supervise the state detention centres.²³⁹ However, due to the political circumstances of the country, there are certain areas in Libya that are still under the control of rebel groups, as a result, some of the detention centres are also under their control.²⁴⁰ A recent UNSMIL report to the UN Secretary-General shows that only around 6,000 of the 15,000 detained

²³⁰ Alessio Romenzi, 'As Security Council imposes sanctions on six human traffickers in Libya, UN chief calls for more accountability' *UN News*, 8 June 2018 available at <https://news.un.org/en/story/2018/06/1011751> accessed on 9 January 2019.

²³¹ *Ibid.*

²³² Article 19 – 20 of the Law No. (6) of 1987 on organising the entry, residence, and exit of foreigners in Libya.

²³³ Justice Without Borders for Migrants, *Libya: The Hounding of Migrants Must Stop*, October 2012 at 12.

²³⁴ Displacement Tracking Matrix, *Libya's Migrant Report*, July 2018 at 4.

²³⁵ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-bound Refugees and Migrants*, 2017 at 26.

²³⁶ Doctors without Borders *Refugees Returned to Crowded Detention Centers*, 23 January 2019

²³⁷ Ansa 'Up to 10,000 Migrants in 20 Centres Under the Sun, IOM Libya' *InfoMigrants* 3 July 2018, available at <http://www.infomigrants.net/en/post/10363/up-to-10-000-migrants-in-20-centers-under-the-sun-iom-libya> accessed on 26 March 2019.

²³⁸ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants*, 2017, MDE 19/7561/2017.

²³⁹ *Ibid* at 6.

²⁴⁰ Justice Without Borders for Migrants, *Libya: The Hounding of Migrants Must Stop*, October 2012 at 33.

migrants are under the control of the DCIM.²⁴¹ However, this information is not accurate as it is only based on the limited research that the UNSMIL was allowed to conduct. It is estimated that there are many more in DCIM detention centres.

The general condition of detention centres in the state is abysmal regardless of whether they are managed the *de jure* government or rebels. The UNSMIL reported that the detainees are often detained for long periods of time awaiting trial.²⁴² There are several cases of abuse reported in detention centres, including frequent beatings and rape.²⁴³ Detainees are forced to live in overcrowded spaces with no food or water, forcing migrants to drink water from toilets.²⁴⁴

Unfortunately, these are not the worst atrocities that are taking place within these detention centres. In 2017, American media house CNN released a video which revealed a human auction taking place in Libya.²⁴⁵ Although reports of slavery had been published before, the video prompted a reaction from the international community. The video did not reveal the locations of the slave markets. The narrative of the footage was that the enslaved migrants had been rescued from their smugglers and sent to detention centres where they were safe from this abuse.²⁴⁶ Contrary to this, there have since been many of testimonies collected by various institutions where the migrants attest to being sold from the detention centres.²⁴⁷ Amnesty International conducted interviews with 74 migrants in 2017 and some of the migrants shared the details of how they are sold from within the detention centres.²⁴⁸ One of the migrants being held in a state-controlled detention centre stated:

They are beating us here every morning, every evening. We don't eat, we catch diseases, there are lots of diseases here. Our relatives, our families don't know where we are. It's been more than six months, seven months now. They don't know if we are dead or still alive. They tell Europeans that they caught us on the

²⁴¹ UNSG, *UNSMIL: Report of the Secretary General*, 7 January 2019, S/2019/19, Para 31.

²⁴² *Ibid* at Para 33.

²⁴³ Refugees International, *'Death would have been better': Europe Continues to fail Migrants and Refugees in Libya*, April 2018.

²⁴⁴ *Ibid*.

²⁴⁵ Nima Elbagir, Raja Razek, Alex Platt and Bryony Jones 'People for sale: Where lives are auctioned for \$400' *CNN* 15 November 2017 available at <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html> accessed on 15 November 2018.

²⁴⁶ *Ibid*.

²⁴⁷ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants*, 2017, MDE 19/7561/2017.

²⁴⁸ *Ibid*.

sea and that's not true. They are selling us. They are running the prison and organising the departures for Italy.²⁴⁹

Others shared of the abuses they faced in these DCIM detention centres:

In prison they would hit us often. You see these marks? [He took his hat off to show big scars on both the right and left sides of his head.] They did it with a metallic net, rolled as a baton to hit me on the head. I fainted – I was told that others started crying and thought I was dead, because plenty of blood [was flowing] from my head. It was the only time I was beaten this way, but they beat me many other times. And they killed many boys, many... I saw many people dying in prison, either because they fell sick or were beaten... Guards were Libyan – they used to beat everybody, without a reason. Before entering the prison, police search you and take away all money, phone, everything. They asked me to call my family to ask for money, but I had lost all contacts so I never called. But I saw one boy in the prison – they gave him a phone to call the family, and they beat him with a metal stick while [he was] on the phone, on arms and everywhere... After five months I escaped with other people, but the guards started shooting and many were killed. I don't know how many were killed, but I saw some falling and screaming.²⁵⁰

Although there is no clear indication of how many state-run centres are partaking in this and how many migrants have been sold, it is clear that employees of the DCIM are involved. Others also shared how they are captured from the sea by the LCG and sold back to the detention centres.

ii. Liability of Libya

Through the various testimonies that have been shared by the migrants and the reports of the United Nations, it is evident that some of the Libyan officials are involved in these atrocities and are profiting from them.

From Libya's perspective, detaining these migrants for long periods of time without trial is in line with their national laws. As a dualist state, despite the Banjul Charter providing that all migrants have a right to be protected and seek asylum where they qualify for it,²⁵¹ the Libyan government has chosen to not incorporate this in their national laws. As stated previously, according to their national laws, there is no

²⁴⁹ Natalia Liubchenkova 'Migrants in Libya tell their stories' *EuroNews* 3 August 2017, available at <https://www.euronews.com/2017/08/03/migrants-in-libya-tell-their-stories> accessed on 27 March 2019.

²⁵⁰ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants*, 2017, MDE 19/7561/2017 at 31.

²⁵¹ Article 12(3) of the Banjul Charter.

difference between a migrant, asylum seeker and a refugee. The Libyan law stipulates that if anyone enters the country unlawfully, they may be detained for an undetermined period of time and they may be forced to carry out labour work.²⁵²

This law is detrimental for refugees and asylum seekers that travel to Libya to seek refuge. It prevents them from obtaining to necessary assistance that they require. The Libyan government *de facto* implements the principle of non-refoulement,²⁵³ but this only applies to ‘Eritreans, Ethiopians, Iraqis, Palestinians, Somalis, Sudanese of Darfuri origin and Syrians’.²⁵⁴ They have also allowed the UNHCR to provide these nationals with basic support. This is the extent of domestication of the UN Refugee Convention in Libya.

In May of 2018, the Attorney General’s Office of Libya released a statement claiming that they had issued arrest warrants for 205 individuals suspected of being a part of the illegal migration, human trafficking, slavery and rapes.²⁵⁵ However, since the report was made, there has not been a follow up by the office to identify the individuals or confirm whether they were arrested and how many have been arrested thus far. Libya has lost its credibility with the international community especially after many published reports of corruption within the government.²⁵⁶

Migrants are a very vulnerable group in Libya. Although some are only looking to make a better living for themselves, most are refugees and asylum seekers who have no choice but to leave their states in order to save their lives.

iii. Applicability of the Law

Libya is not a signatory to the Refugee Convention, and therefore the government is not bound by its provisions. However, as previously stated, Libya implements *de facto* the principle of non-refoulement,²⁵⁷

²⁵² Article 19 – 20 of the Law No. (6) of 1987 on organising the entry, residence, and exit of foreigners in Libya.

²⁵³ Article 33 of the UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

²⁵⁴ DTM, *Libya’s Migrant Report, Round 21 July – August 2018* (2018) 3.

²⁵⁵ British Broadcasting Station (BBC) ‘Libya migrants: Smuggling network arrest warrants issued’ *BBC*, 14 March 2018, available at <https://www.bbc.com/news/world-africa-43409878> accessed on 13 January 2019.

²⁵⁶ Guma El-Gamaty ‘Can Libya ever rid itself of corruption’ *The New Arab*, 17 May 2018 available at <https://www.alaraby.co.uk/english/comment/2018/5/17/can-libya-ever-rid-itself-of-corruption> accessed on 13 January 2019.

²⁵⁷ Article 33 of the UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

applicable only to some states.²⁵⁸ Consequently, migrants suffer discrimination also on the basis of nationality.

Additionally, Libya is not a party to the Rome Statute, and therefore cannot be held accountable by it. Nevertheless, as stated earlier, the heinous human rights violations in Libya are being committed by Libyans against foreigners. The ICC still has jurisdiction crimes committed against nationals of members of a state that is a party to the Rome Statute. African parties to the Rome Statute include Chad, Ghana, Niger and Nigeria.²⁵⁹ Migrants in Libya that are nationals of these countries are protected by the Rome Statute and their governments may bring claims against Libya before the ICC for the violations against their nationals.

The acts taking place in Libya against migrants have been determined to be acts of slavery by the UNSG. Nonetheless, for an act to be a crime against humanity, it must be an ‘act... committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.²⁶⁰

In terms of the *Kunarac Case*, acts of violence must be present to constitute an ‘attack’.²⁶¹ It is clear that there have been acts of violence committed, considering the testimonies of migrants that accuse officers of beating and torturing them in detention centres. But are the attacks ‘widespread’ or ‘systematic’? Despite the evidence of slavery taking place in Libya and the estimated 670 000 migrants in Libya, it is yet to be determined how many migrants are slaves.²⁶² Therefore, it is difficult to ascertain the number of migrants that are victims of slavery. However, the numerous testimonies collected from migrants in various detention centres, suggest that these attacks are widespread. In terms of the ‘systematic’ nature of the attacks, the organised manner in which the migrants are transferred from one place to another, and how they are sold in a repetitive cycle demonstrate that the trade is organised and systemic.

The migrants that are targeted are those held in the detention centres. The migrants are not involved in the conflict and are therefore civilians. Further, buyers are aware of where to participate in the trade, which suggests that there is structure and knowledge of the trade. The activities taking place in Libya meet the requirements of a crime against humanity.

²⁵⁸ DTM, *Libya's Migrant Report, Round 21 July – August 2018* (2018) 3.

²⁵⁹ *Ibid* at 4.

²⁶⁰ Article 7(1) of the Rome Statute.

²⁶¹ *Kunarac Case*, Trial Chamber Judgement, Para 415

²⁶² Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-bound Refugees and Migrants*, 2017 at 13.

Revealing the acts of slavery taking place in Libya as crimes against humanity is necessary to demonstrate the state duty to protect. As explained, the first tier of the doctrine of Responsibility to Protect requires the state to take reasonable measure to protect the persons within its territory against human rights violations.²⁶³ Only if a state is unwilling or unable to do so, international intervention is justified.²⁶⁴ Regardless of the current political state of Libya, the state has a *de jure* government. Should the government not be able to take the necessary action, they still have a duty to request international assistance. The government have been willing to work with UN agencies that are present in the country, however, the level of relief they can provide is limited by the lack of resources and the control of the Libyan government. The government has not allowed or requested assistance towards the detention centres, where many of the migrants claim to be subjected to slavery. The government also continues to fund the LCG despite the human rights abuse claims against them. Clearly, Libya's cooperation with the UN is not with the intention to eradicate slavery in Libya.

Aside from the arrest of the 205 persons that were suspected of participating in the slave trade,²⁶⁵ the Libya government has offered no follow up reports on the progress of the arrests. There have been no other significant steps taken by the government to ensure the elimination of the slave trade. As a signatory of the ICCPR, the government has failed to take measures to protect migrants in Libya. The state has failed to adopt law or policy reforms to ensure the protection of migrants, including asylum seekers and refugees. The facts provide a clear indication that the government is failing to protect those within their jurisdiction, in which case the international community has a right and responsibility to intervene, under the Responsibility to Protect doctrine.

IV. THE AFRICAN UNION

One of the main causes of the migrant crisis is the conflicts that are ongoing in Africa and the Middle-East. The AU has made efforts to reduce and end these conflicts through peacekeeping missions and other strategies. On Libya, the AU did not respond to the slave trade publications until the CNN video clip was broadcast.

²⁶³ ICISS, *The Responsibility to Protect*, December 2001 at 17.

²⁶⁴ *Ibid.*

²⁶⁵ BBC 'Libya migrants: Smuggling network arrest warrants issued' *BBC*, 14 March 2018, available at <https://www.bbc.com/news/world-africa-43409878> accessed on 13 January 2019.

In 2015, the Chairperson of the AU Commission (AU Chairperson) made a public statement on the migration crisis. She stated that while steps were being taken to control the situation, there was no quick solution to the problem.²⁶⁶ In 2017, following the exposure of the Libyan slave crisis, it was expected that the AU would be quick to provide some rapid relief. The AU Chairperson released a statement and highlighted the need for investigations to be carried out at once.²⁶⁷ The AU Chairperson deployed an envoy to engage with the government of Libya.²⁶⁸

Within days of the AU Chairpersons statement, an envoy was deployed to Libya.²⁶⁹ The Envoy consulted with the Libyan office of the President and Prime Minister of the *de jure* government, the Minister of Justice as well as the Office of the Attorney General.²⁷⁰ The envoy also inspected one of the state-run detention centres. She affirmed the mistreatment of the migrants as well as the auctioning of the migrants.²⁷¹ Following submission of a report to the AU by the envoy, the AU commissioner assured that the AU would work with the IOM in their Voluntary Humanitarian Evacuation of Migrants Plan, to ensure that more migrants that were in the state-run detention centres were repatriated to their countries of origin.²⁷² The AU soon devised a three-point plan, which involved the return of approximately 3 500 migrants from Libya. This initiative was criticised as there was an estimated number of 300 000- 400 000 migrants in Libya.²⁷³ The plans to rescue these migrants do not seem to have a significant impact on the migrants in Libya, whose total is estimated to be 670 000.²⁷⁴ Additionally, the AU Chairperson vowed to work with the Libyan government in shutting down some of the detention centres in Libya.²⁷⁵

²⁶⁶ EUObserver ‘No quick solution to migrant crisis, says African Union’ *euobserver* 22 April 2015 available on <https://euobserver.com/justice/128417> accessed on 10 December 2018.

²⁶⁷ Moussa Faki Mahamat ‘Statement of the Chairperson of the African Union Commission on the Plight of African Migrants in Libya’ 18 November 2017 available at <https://au.int/en/pressreleases/20171118/statement-chairperson-african-union-commission-plight-african-migrants-libya> accessed on 13 December 2018.

²⁶⁸ *Ibid.*

²⁶⁹ Special Envoy of the Chairperson of the AU Commission to Libya ‘Note to Editors : Update on the Visit of the Special Envoy of the Chairperson of the AU Commission to Libya and Subsequent African Union Efforts’ 2 December 2017 available at <https://au.int/en/pressreleases/20171202/note-editors-update-visit-special-envoy-chairperson-au-commission-libya-and> accessed on 29 March 2019.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ DTM, *Libya’s Migrant Report: Round 20 May – June 2018* at 3.

²⁷⁵ Special Envoy of the Chairperson of the AU Commission to Libya ‘Note to Editors : Update on the Visit of the Special Envoy of the Chairperson of the AU Commission to Libya and Subsequent African Union Efforts’ 2 December 2017 available at <https://au.int/en/pressreleases/20171202/note-editors-update-visit-special-envoy-chairperson-au-commission-libya-and> accessed on 29 March 2019.

The African Commission also issued a statement condemning these acts of slavery and promised to embark on a fact-finding mission.²⁷⁶ This mission is yet to be conducted and the Commission has received criticism for this. The AU-EU and UN Task Force led by the IOM did manage to return 20 000 migrants back to their states of origin within a month of the CNN broadcast.²⁷⁷ Another 5 200 were also returned with the help of the AU member states.²⁷⁸

Although the AU reacted soon after the headlines made waves, this was not the first time that there had been speculation of slave markets in Libya. And even in this case, there had been no urgent reaction from them.²⁷⁹ The AU continues to host workshops as well as discussions on how to solve the issues in Libya. However, it has not implemented effective strategies to reduce the flow of migrants into Libya or address the problem of slavery.

i. Liability of the African Union

The AU expressed intentions to protect the migrants in Libya, however, as seen above, the AU's efforts were minimal. According to the AU Constitutive Act,²⁸⁰ the AU has a duty to protect and promote human and peoples' rights in accordance with the Banjul Charter.²⁸¹ The Banjul Charter prohibits acts of slavery and slave trade²⁸² and the acts of slavery occurring in Libya constitute crimes against humanity, according to international standards. The Constitutive Act also confers the right on the AU to interfere in the internal affairs of a state where crimes against humanity are committed.²⁸³ This is subject to a decision by the General Assembly of the AU.²⁸⁴

The AU may take a decision to intervene with the decision of the Assembly or at the request of any member state.²⁸⁵ The AU is not required to seek the consent of the state concerned. This ensures rapid

²⁷⁶ *Ibid.*

²⁷⁷ IOM, *Voluntary Humanitarian Return flights resume January 1 as UN Migration Agency continues efforts to assist migrants in*, 3 January 2018.

²⁷⁸ European Commission, *Voluntary Humanitarian Returns from Libya Continue as Reintegration Efforts Step Up*, 9 April 2018.

²⁷⁹ Peter Fabricius 'Libya's Slave Trade Shocks the AU-EU into Action' 7 December 2017 *Institute for Security Studies (ISS)* Available at <https://issafrica.org/iss-today/libyas-slave-trade-shocks-au-eu-leaders-into-action> accessed on 13 December 2018.

²⁸⁰ Organization of African Unity (OAU), *Constitutive Act of the African Union*, 1 July 2000.

²⁸¹ Article 3(h) of the AU Constitutive Act.

²⁸² Article 5 of the Banjul Charter.

²⁸³ Article 4(h) of the AU Constitutive Act.

²⁸⁴ Article 4(h) of the AU Constitutive Act.

²⁸⁵ Article 4(h) of the AU Constitutive Act.

action by the AU where crimes against humanity are being committed.²⁸⁶ However, the AU is still accountable to the UN in these situations.²⁸⁷ Prior to any intervention, the AU is required to comply with the UN Charter and obtain consent from the UNSC.²⁸⁸

The AU has failed to take all necessary steps in order to be as effective as possible in ending the slave trade crisis in Libya. In addition to its abovementioned inadequacies, the AU has failed to request resources from African states to assist its efforts. Further, despite the opportunity to intervene in the affairs of Libya, the Assembly has failed to initiate that action. As a result, the AU has failed to carry out their duty as the regional body to ensure that peace and security are upheld.

Therefore, the AU has failed to fulfil the duty it has in terms of its Constitutive Act and the Banjul Charter to ensure that the human rights abuses were controlled or put to an end.

V. CONCLUSION

The Libyan government has a responsibility to stop the slave trade in Libya and the AU has a duty to intervene in the atrocities. Regardless of their public resolutions to react effectively, there has been minimal initiatives from both sides.

The Libyan government has been receptive to collaborating with UN agencies in the country, however, the government is not taking steps to enact migrant protective laws or policies. The government's efforts, including the arrest of the 205 people have not adequately addressed the slave trade in Libya.

The AU has collaborated with IOM, the UN and EU but it has not conducted any substantial investigations on the Libyan slave trade and they have not sought assistance from member states on the matter.

²⁸⁶ Para 1 – 6 of the OAU, *Declaration Of The Assembly Of Heads Of State And Government On The Establishment Within The OAU Of A Mechanism For Conflict Prevention, Management And Resolution*, 28 – 30 July 1993, AHG/DECL.3 (XXIX).

²⁸⁷ Para 16 of the OAU, *Declaration Of The Assembly Of Heads Of State And Government On The Establishment Within The OAU Of A Mechanism For Conflict Prevention, Management And Resolution*.

²⁸⁸ Article 39 of the UN Charter.

CHAPTER IV – THE RESPONSIBILITY OF THE EUROPEAN UNION AND THE UNITED NATIONS

I. INTRODUCTION

The European Union is a political and economic union between 28 European countries that, among other undertakings, have committed to protecting human rights in Europe.²⁸⁹ Unlike the AU, the EU is not a regional body. Through the years, as the number of migrants travelling to European states increased, the EU and various European states adopted new norms and laws to address the immigration situation. The EU has revised its strategy, from being tolerant and accommodating to migrants, to consolidating efforts to return them.

The United Nations was established to promote global peace and security and has been involved in peacekeeping in Libya since the time of the uprising. It is imperative to assess the work that the UN has done in Libya in order to determine if it has fulfilled its duty.

II. THE EUROPEAN UNION

i. Background

For decades, Europe has been a hub for refugees, asylum seekers and migrants escaping undesirable situations in their countries. For migration purposes, the European states are divided into arrival states, transit states and destination states.²⁹⁰ There is a larger financial burden on the coastal ‘arrival’ states due to the EU policy that requires that all asylum-seekers are processed in the first state that they arrive.²⁹¹ Prior to the migrant crisis, the EU was assisting Libya with attaining political stability and reintegration into international cooperation. However, when the flow of migrants from the Central Mediterranean route increased, the EU shifted its focus to devising strategies to prevent migrants from arriving in Europe.²⁹²

²⁸⁹ The European Union ‘The EU in brief’ *European Union* Available at https://europa.eu/european-union/about-eu/eu-in-brief_en accessed on 10 December 2018.

²⁹⁰ Alexandru Apetroe ‘The European migration crisis. Which consequences affecting the stability of the European Union?’ (2016) *ResearchGate* at 3.

²⁹¹ Elizabeth Collette and Camille Le Coz ‘After the Storm: Learning from the EU Response to the Migrant Crisis’ *Migration Policy Institute Europe*, June 2018.

²⁹² Council of the European Union, *Strategic Review on EUBAM Libya, EUNAVFOR MED Op Sophia & EU Liaison and Planning Cell*, 15 May 2017, 9202/17.

In 2013, the Italian Government adopted human rights initiatives to address human trafficking and smuggling.²⁹³ The strategy focused on a search and rescue plan for migrants and apprehending smugglers.²⁹⁴ Operation Mare Nostrum, which was administered by the Italian Navy, rescued 150 000 migrants in both international and Libyan territory²⁹⁵ and succeeded in apprehending 500 smugglers.²⁹⁶ Unfortunately, its success was short lived as it dissolved only a year after it had been operational. One of the reasons for its termination was that Italy was spending over five times the intended budget and this became a financial burden on the state.²⁹⁷

In 2015, Europe experienced the greatest influx of migrants that they had ever recorded.²⁹⁸ This was caused by the increase of instability in African states, the Middle-East and some parts of Asia. This resulted in the biggest crisis in Europe since World War II.²⁹⁹ In 2015, the IOM reported that the EU had received 1.3 million asylum-seeker claims, double the number of asylum seekers in 2014.³⁰⁰ At the beginning of the migrant crisis, the Eastern Mediterranean Route was the most popular and Greece received 850 000 migrants by the sea - over nine times the 77 000 that was received in 2014.³⁰¹ As a result of the instability in Libya, the Central Mediterranean route from Libya has become the busiest route to Europe by sea.³⁰²

The EU has been criticised by Amnesty International and other human rights organisations for not responding adequately to the crisis, and allegedly perpetuating the slave trade that has been exposed in Libya.³⁰³ The manner in which the EU has addressed the migrant crisis has varied over the years as the number of migrants grew. In the beginning, states like Germany were willing to accommodate migrants in their states. This relieved coastal states who were the point of entry for most migrants. However as

²⁹³ Emily Koller 'Mare Nostrum vs. Triton' (2017) *European Studies, The University of Toronto* at 1.

²⁹⁴ *Ibid.*

²⁹⁵ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 13.

²⁹⁶ Emily Koller 'Mare Nostrum vs. Triton' (2017) *European Studies, The University of Toronto* at 4.

²⁹⁷ *Ibid.*

²⁹⁸ Alexandru Apetroe 'The European migration crisis. Which consequences affecting the stability of the European Union?' (2016) *ResearchGate* at 1.

²⁹⁹ *Ibid.*

³⁰⁰ IOM, *2015 Global Migration Trends Factsheet*, 2015 at 9.

³⁰¹ *Ibid* at 12.

³⁰² UNHCR, *Executive Summary of Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges*, (2017)

1.

³⁰³ *Ibid.*

more migrants travelled into Europe, the states began to change their policies and adopted stricter criteria for immigration.³⁰⁴

The EU acted as a catalyst in ensuring European states pushed back on the migrants as pressure began to rise. For instance, when the number of migrants entering the Greek Islands through Turkey soared, the EU established a Memorandum of Understanding with Turkey. In this Memorandum, Turkey and the EU agreed that migrants arriving in the Greek Islands would be returned to Turkey. In turn, Turkey would receive funds from the EU to manage the migrant population. Further, the EU granted Turkish nationals visa-free travel to Europe.³⁰⁵ As the number of migrants entering Europe through the Central Mediterranean routes also increased, Italy signed an agreement with Libya. This agreement stipulated that the migrants arriving in Italy would be returned to Libya and Italy would invest funds to strengthen the Libyan Coast Guard and ensure that the number of migrants leaving the Libyan coast was reduced.³⁰⁶

This strategy was successful and the number of migrants dying at sea had subsided. More efforts were adopted. In 2015, from January to April it was estimated that 1 in 16 migrants died at sea, however after their emergency meeting wherein the council established a new operational plan, the number of deaths decreased to 1 in 427.³⁰⁷ This decrease in deaths was recorded between 27 April and 29 June, reflecting that the EU was acting quickly. Other EU states, including the UK who were not obliged to assist, participated in these efforts. Unfortunately, these initiatives were not maintained. By 2017, the deaths at sea had risen to 1 in 43 deaths and finally, in 2018 the Central Mediterranean route was reported to be the deadliest, with 1 in 18 deaths.³⁰⁸

As the migration crisis worsened in the EU, the EU drafted a migration plan that claimed to ensure that the EU would respond effectively and assist migrants. This was purported to be more than a migration

³⁰⁴ Elizabeth Collette and Camille Le Coz 'After the Storm: Learning from the EU Response to the Migrant Crisis' *Migration Policy Institute Europe*, June 2018.

³⁰⁵ Kondylia Gogou 'The EU-Turkey Deal: Europe's Year of Shame' *Amnesty International* available at <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/> accessed on 10 December 2018.

³⁰⁶ Anonymous 'Italy-Libya Sign an Agreement to Curb Flow of Migrants to Europe' *Euronews* 2 February 2017 available at <https://www.euronews.com/2017/02/02/italy-libya-sign-agreement-to-curb-flow-of-migrants-to-europe> accessed on 10 December 2018.

³⁰⁷ Amnesty International, *A safer sea: The impact of increased search and rescue operations in the central Mediterranean*, 9 July 2015, AI Index: EUR 03/2059/2015.

³⁰⁸ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 12.

deterrent strategy.³⁰⁹ The EU decided to adjust its Operational Plan for sea rescue in May of 2015. The Plan's budget was increased, the perimeter for sea rescue had widened and more states were donating ships and deploying members of their navies to help with a sea rescue.³¹⁰ The European States were not all affected in the same way.³¹¹ European states' responses to the migrant arrivals varied and there was considerable friction between the arrival and transit states.³¹² Some of the Europeans believed the cause of the crisis was the EU's lax border policies. Some European states began to consider leaving the EU, following the UK.³¹³

The EU external border control had established Operation Triton which was primarily for border control and surveillance, but they did eventually begin to help Italy with the search and rescue of migrants, on a smaller scale.³¹⁴ A year later, the EU also established a Navy plan, Operation Sophia, which was aimed at neutralizing trafficking and smuggling. However, The Operation's mandate has expanded.³¹⁵ In 2017, the EU aimed to extend Operation Sophia to train and equip the LCG in strategies to prevent migrants from reaching European territory.³¹⁶ This initiative was successful in decreasing the number of migrants to arrive in Europe. Whilst Operation Sophia rescued just over 2,000 migrants in 2018, the Libyan Coast Guard had greater success in intercepting over 14,000 migrants and returning them to Libyan soil.³¹⁷

In 2017, Italy entered into another agreement with the *de jure* government of Libya.³¹⁸ The objective of this memorandum was to finance and support the Libyan Ministry of Defence. This economic injection would provide finance and technological support to the LCG towards preventing 'illegal migration'.³¹⁹

³⁰⁹ European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*, 13 May 2015, COM (2015) 240 at 2.

³¹⁰ *Ibid* at 3.

³¹¹ Alexandru Apetroe 'The European migration crisis. Which consequences affecting the stability of the European Union?' (2016) *ResearchGate* at 3.

³¹² *Ibid*.

³¹³ Kate Lyons and Gordon Darroch 'Frexit, Nexit or Oexit? Who will be next to leave the EU' *The Guardian* 27 June 2016 accessed on 6 February 2019 available at <https://www.theguardian.com/politics/2016/jun/27/frexit-nexit-or-oexit-who-will-be-next-to-leave-the-eu>.

³¹⁴ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 14.

³¹⁵ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 14.

³¹⁶ *Ibid*.

³¹⁷ *Ibid* at 13.

³¹⁸ *Ibid*.

³¹⁹ Article 1(C) of the Libya-Italy Agreement.

This agreement was supported by the EU and endorsed in the Malta Declaration.³²⁰ The UN, however, submitted that it was concerned the agreement did not reflect a human rights-based approach.

Eventually, a Libya based human rights organisation instituted legal proceedings matter to contest the validity of the memorandum. The Tripoli Appeal's Court annulled the memorandum and it could not be enforced.³²¹ The government appealed the decision at the Supreme Court and the Court overturned the annulment.³²² This agreement permitted the Italian government to provide the LCG with boats, training and a radar system that would assist them to prevent migrants from crossing the sea. The number of migrants crossing the sea has reduced and the LCG has been successful in returning many migrants to Libya.

Not only did the Italian government extend assistance to the LCG, but it also introduced a Code of Conduct for the NGOs that were partaking in the search and rescues of migrants in the Mediterranean Sea.³²³ Some of the restrictions on the NGOs stipulated that they may not enter Libyan territory and they may not flag down a boat with migrants or smugglers.³²⁴ The UN stepped in to advise that this would harm the rescue efforts of the NGOs in the international waters,³²⁵ however, the EU and Italy argued that this Code was in compliance with international law. The EU continues to use several tactics to frustrate NGO efforts, including ordering that they do not interfere with the work of the LCG and even impounding their vessels.³²⁶ Libya supports these tactics and has declared that the issue is for the Libyan Navy to handle, and not NGOs.³²⁷ The government has further accused NGOs of aiding smugglers.

Although the initiatives of the EU to control migrations were successful in their initial stages, the inconsistency and negligent execution of implementation have resulted in ineffectiveness.

³²⁰ European Council, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017.

³²¹ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 15.

³²² Abdulkader Assad 'Supreme Court annuls verdict that suspended implementation of Italy-Libya MoU' *The Libya Observer* 26 August 2017, available at <https://www.libyaobserver.ly/news/supreme-court-annuls-verdict-suspended-implementation-italy-libya-mou> accessed on 11 January 2019.

³²³ UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 16.

³²⁴ European Union 'Code of Conduct for NGOs Undertaking Activities in Migrants' Rescue Operations at Sea'.

³²⁵ OHCHR, *Italy-EU Search and Rescue Code Could Increase Mediterranean Deaths, UN experts warn*, 15 August 2017.

³²⁶ The Local 'Italy seizes NGO boat that refused to take migrants to Libya' *The Local* 19 March 2018 available at <https://www.thelocal.it/20180319/italy-seizes-ngo-boat-proactiva-open-arms-libya-migrants> accessed on 11 January 2019.

³²⁷ DW 'Major NGOs halt refugee rescue operations off Libyan coast' *DW* 13 August 2017 available at <https://www.dw.com/en/major-ngos-halt-refugee-rescue-operations-off-libyan-coast/a-40072712> accessed on 11 January 2019.

ii. The Liability of the European Union

In 2011, the Parliamentary Assembly of the Council of Europe held passed a resolution on the interception of migrants, refugees and asylum seekers at sea:

[T]he Assembly calls on member states, when conducting maritime border surveillance operations, whether in the context of preventing smuggling and trafficking in human beings or in connection with border management, be it in the exercise of *de jure* or *de facto* jurisdiction, to: refrain from any practices that might be tantamount to direct or indirect *refoulement*, including on the high seas, in keeping with the UNHCR's interpretation of the extraterritorial application of that principle and with the relevant judgments of the European Court of Human Rights.³²⁸

Non-refoulement is an international principle in the Refugee Convention that prohibits contracting states from returning refugees and asylum seekers to states where they may be persecuted.³²⁹ According to the above resolution, the principle extends to the high seas.

As discussed earlier, the EU's human rights convention, the ECHR prohibits the collective expulsion of 'aliens'.³³⁰ According to the definition provided for by the ECtHR, this includes refugees and persons that have no right to nationality in the country.³³¹ 'Collective expulsion' has been described as any measure taken by the authorities, compelling aliens, as a group to leave the country.³³² The challenge is that many of the migrants do not arrive at their destination in European territory. They are often captured and returned to Libya either by the LCG, EU or Italian authorities. For purposes of the ECHR provision, it was therefore unclear as to whether this act of capturing migrants on the high seas and returning them to Libya constitutes collective action.

At the ECtHR, Italy³³³ and Greece³³⁴ submitted that these acts did not fall under the definition of 'collective action' as intended by the ECHR. The Court decided that the text of the Protocol did not

³²⁸ The Parliamentary Assembly of the Council of Europe, *The interception and rescue at sea of asylum seekers, refugees and irregular migrants*, 21 June 2011, Resolution 1821 at Para 9.4.

³²⁹ Article 33 of the UNGA, *Refugee Convention*.

³³⁰ Article 4 of Protocol 4 of *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

³³¹ *Cases of Georgia v. Russia (I)* at Para 168.

³³² *Vedran Andric v. Sweden*.

³³³ *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012.

³³⁴ *Sharifi and Others v. Italy and Greece*, Application no 16643/09, Council of Europe: European Court of Human Rights, 21 October 2014,

preclude extraterritorial application. The Court stated that it was vital to take into consideration the extraterritorial trails that migrants use to travel to Europe in order for the provision to be effective.³³⁵

The EU has a duty to ensure that the states comply with the provisions of the ECHR. Regrettably, EU has not only failed in its duty to prevent a state from protecting migrants but has been complicit in the interception of the migrants. Despite the EU's knowledge of the persecution migrants would be exposed to in Libya, it continued to fund the interceptions. The EU has substantially contributed to the escalation of violence suffered by these migrants in Libya.

III. THE UNITED NATIONS

i. Background

After the civil war in Libya, and considering the political instability in the state, in 2011 the UNSC passed a resolution establishing the UNSMIL.³³⁶ The main objective of UNSMIL was to safeguard a peaceful political transitional phase as well as stabilise Libya by restoring the political relationships, promoting the rule of law and promoting and protecting human rights.³³⁷

In order to guide and facilitate a peaceful transition, ensuring the promotion of human rights in the country was crucial. Unfortunately, human rights monitoring was not a part of the UNSMIL mandate they were limited to reporting on the violations. These reports revealed the deteriorating state of the treatment of migrants in Libya.

In 2012, the UNSMIL reported on the effects of the absence of a legal framework to protect refugees, asylum seekers and migrants.³³⁸ Migrants were arbitrarily arrested and detained, without legal recourse.³³⁹ Despite efforts of organisations like the IOM and the UNHCR to provide some humanitarian relief in the detention centres, the migrants inside were suffering immensely. Additionally, assistance was restricted as Libya's Ministry of Interior was unable to gain control over all the detention centres.³⁴⁰ By 2013,

³³⁵ *Hirsi Jamaa and Others v. Italy* at Para 178.

³³⁶ UN Security Council, *Security Council resolution 2009 (2011) [on the establishment of the UN Support Mission in Libya (UNSMIL)]*, 16 September 2011, S/RES/2009(2011).

³³⁷ *UNSC resolution 2009 [on the establishment of UNSMIL]* at Para 12.

³³⁸ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 30 August 2012, S/2012/675, Para 61.

³³⁹ *Ibid.*

³⁴⁰ UNSC, *2012 UNSMIL Report*, 30 August 2012, S/2012/675, Para 61.

UNSMIL reported that the situation in the detention centres controlled by the Ministry of Interior had continued to deteriorate but the Ministry of Justice did interject to improve conditions.³⁴¹ They also reported the adoption of a new law criminalising torture, enforced disappearances and discrimination³⁴² aimed at reducing the human rights abuses that the migrants were subjected to. Besides this, Libya had still not made any further reforms on its laws that specifically addressed the protection of migrants.³⁴³

In the following years, as the inflow of migrants increased, the Mission remained concerned about the inhumane conditions of the detention centres, as well as the lack of progress in developing a law to protect these migrants.³⁴⁴ In 2015, at the peak of the European migration crisis, the UNSMIL reported that the 2014 conflict in Libya had exposed migrants to more dire circumstances.³⁴⁵ Cases of arbitrary detention and abuse in detention centres had significantly increased.³⁴⁶ Additionally, this conflict depleted major state resources that had been allocated for border security, as a result, migrant smuggling into Libya became easier.³⁴⁷ During this time, different organs of the UN provided humanitarian assistance to the migrants, including 500 tons of food from the World Food Programme (WFP) and other supplies from IOM and UNHCR.³⁴⁸

In 2016, UNSMIL reported on the continual abuses in the detention centres and armed groups' frequent access into these centres.³⁴⁹ Torture and forced labour were rife.³⁵⁰ Regardless, the IOM and the UNHCR continued to provide humanitarian relief.³⁵¹ The IOM assisted in the facilitation of the safe return of over 20 000 migrants back to nine countries in Africa. The IOM further, continues to provide humanitarian relief through non-food items and basic commodities.³⁵² The UNHCR has provided health care services.³⁵³

³⁴¹ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 5 September 2013, S/2013/516, Para 41.

³⁴² *Ibid* at Para 42.

³⁴³ *Ibid* at Para 71.

³⁴⁴ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 5 September 2014, S/2014/653, Para 61-62.

³⁴⁵ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 26 February 2015, S/2014/653, Para 49.

³⁴⁶ *Ibid*.

³⁴⁷ *Ibid* at Para 62.

³⁴⁸ *Ibid* at Para 68.

³⁴⁹ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 1 December 2016, S/2016/1011, Para 41 - 42.

³⁵⁰ *Ibid*.

³⁵¹ UNSC, *2016 UNSMIL Report*, 1 December 2016, S/2016/1011, Para 64.

³⁵² *Ibid*.

³⁵³ *Ibid*.

In 2017, for the first time, the UNSMIL report officially confirmed the existence of slave markets and that women were being sold as sex slaves in Libya.³⁵⁴ It also explained in part, how the migrants were being intercepted by the LCG at sea and transferred back to these detention centres run by the Ministry of Internal Affairs.³⁵⁵ The team visited several of the state-run detention centres and confirmed that migrants were still being violated through acts of torture and various forms of sexual violence, including rape.³⁵⁶ UN agencies continued to provide humanitarian relief to Libya, however, the agencies themselves were underfunded.³⁵⁷ They had requested donations of US\$ 115 million but only secured US\$ 49.2 million, 28 per cent of what was needed.³⁵⁸ Regardless of the shortfalls, the UN agencies continued to provide urgent humanitarian relief and assistance, mostly through national counterparts.³⁵⁹

As a result of the many reports provided for by UNSMIL, the international community became aware of the human rights violations taking place in Libya.

ii. The Liability of the United Nations

As the only mission in Libya, and on a limited mandate, UNSMIL could not accomplish more than publishing reports and investigating possible human rights violations. Nevertheless, the reports provided greater insight into the reality of the state of migrants in Libya.

The UN, as a peacekeeping body, has the duty to ensure that international peace and security are maintained. In terms of the UN Charter, the UN must endeavour to prevent and remove any threats to peace, and this may be done by means of collective action.³⁶⁰ The UN has made concerted efforts to address the migrant crisis and slave trade by providing aid and other humanitarian support in Libya. Regardless, the human rights situation remains volatile. It is arguable though as to whether these efforts were adequate and the UN fulfilled its duties. For instance, the UN may be criticised for not directly intervening to confront the abuses occurring at detention centres or at sea.

³⁵⁴ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 22 August 2017, S/2017/726, Para 34.

³⁵⁵ *Ibid* at Para 36.

³⁵⁶ *Ibid* at Para 35.

³⁵⁷ *Ibid* at 62.

³⁵⁸ *Ibid*.

³⁵⁹ *Ibid* at 63.

³⁶⁰ Article 1 of the UN Charter.

It is clear that crimes against humanity are being committed in Libya and that the state is a party to these crimes. The UNSMIL is working on a limited mandate and is underfunded, rendering its efforts largely ineffective. The UN may intervene through the authority of the UNSC, however, this has not been done.³⁶¹

IV. CONCLUSION

The EU has acted contrary to international norms and its own policies in multiple instances. It has diverged from its plans to protect migrants and has instead adopted strategies that compromise the safety of migrants. The EU has had a profoundly negative impact on the migrant crisis by violating the principle of non-refoulement to protect its borders. As a result, the EU is accountable under international law for failing to fulfil its duty to protect human rights.

The UN, despite lack of resources, has provided more support to the crisis than all institutions that have been analysed in this thesis. Regardless, the UN is reliant on member state resources. The UN has undertaken to expand the mandate of UNSMIL in order to provide more humanitarian support. Unlike the other human rights bodies discussed, i.e. the AU and EU, UN has upheld its duty to protect and promote human rights through peacekeeping and transparent investigations in Libya.

³⁶¹ Article 41 of the UN Charter.

CHAPTER V – FINAL ANALYSIS AND RECOMMENDATIONS

I. FINAL ANALYSIS

This objective of this thesis was to determine, under international law, the liability of the Libyan government, the AU, EU and UN in the slave trade in Libya. The slave trade crisis in Libya has been extensively recorded and published by the UN Reports³⁶² as well as Amnesty International.³⁶³ Through these fact-finding reports, that include testimonies, as well as incriminating videos, it is evident that the slave trade exists in Libya. These international human rights organizations have published reports of torture, malnutrition, forced labour, unfair and prolonged detention and the slave trade.³⁶⁴ This paper examined the duties of the Libyan government as well as international and regional bodies to the victims of these human rights abuses.

The crime of slavery constitutes a crime against humanity, according to the definition provided for by the Rome Statute.³⁶⁵ In terms of the principle of the Responsibility to Protect, a state has a duty to protect its population from crimes against humanity.³⁶⁶ If a state fails to uphold this duty, the international community may intervene to protect the victims of crimes against humanity.³⁶⁷

The Libyan government has failed to implement its duty under the Responsibility to Protect. The efforts of the government against the slave trade have been minimal. Although the government has cooperated with UN agencies,³⁶⁸ it has failed to adopt and implements substantial laws, policies or strategies to ensure that the slave trade in Libya is abolished. The Libyan government's lack of commitment towards addressing the human rights violations in Libya, and the government's complicity in these abuses, transfers the responsibility on the international community to protect the migrants in Libya. Not only is the government liable to international human rights organizations such as the UN, but it is also accountable to individual states for committing human rights abuses against their nationals. However, as Libya is not

³⁶² UNSC, *2012 UNSMIL Report*, 30 August 2012, S/2012/675; UNSC, *2013 UNSMIL Report*, 5 September 2013, S/2013/516; UNSC, *2014 UNSMIL Report*, 5 September 2014, S/2014/653; UNSC, *2015 UNSMIL Report*, 26 February 2015, S/2014/653; UNSC, *2016 UNSMIL Report*, 1 December 2016, S/2016/1011; UNSC, *2017 UNSMIL Report*, 22 August 2017, S/2017/726.

³⁶³ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-bound Refugees and Migrants*, 2017.

³⁶⁴ *Ibid.*

³⁶⁵ Article 7(1) of the Rome Statute.

³⁶⁶ UNGA, *Resolution adopted by the General Assembly on 16 September 2005*, 24 October 2005, A/RES/60/1 at para 138 - 139.

³⁶⁷ ICISS, *The Responsibility to Protect*, December 2001 at 17.

³⁶⁸ Special Envoy of the Chairperson of the AU Commission to Libya 'Note to Editors : Update on the Visit of the Special Envoy of the Chairperson of the AU Commission to Libya and Subsequent African Union Efforts' 2 December 2017 available at <https://au.int/en/pressreleases/20171202/note-editors-update-visit-special-envoy-chairperson-au-commission-libya-and> accessed on 29 March 2019.

a state party to the ICC, state claims against Libya may only be brought before the ICC by states who are members of the Court.

The AU has taken initiative by collaborating with the UN to remove thousands of migrants from Libya, and also by deploying an envoy to Libya to investigate the human rights atrocities.³⁶⁹ However, the undertakings made by the AU to address the situation further have been redundant. The African Commission is yet to conduct investigations, for instance.³⁷⁰ The AU has also failed to seek assistance from member states and to take any further action to tackle the grim conditions in the detention centres.

Although the EU was not directly involved with the Libyan slave trade, the manner in which they reacted to the migrant crisis left migrants in a vulnerable position and susceptible to abuse. The EU funded the LCG whilst aware of the abuses the LCG commits against migrants.³⁷¹ They took direct steps to ensure migrants were returned to Libya by amending their migrant plan and banning NGOs from participating in sea rescues of migrants.³⁷² From these actions, it doubtful that the EU is devoted to providing assistance to Libya to alleviate the crisis. The EU is evidently most concerned with safeguarding its borders from migrants. It is not the duty of the EU to assist in the slave trade crisis however, the European states are liable the collective expulsion of aliens, against their own policies and international law.

With regards to the UN, although the UNSMIL's mandate only provided for analysing and reporting on the human rights situation in Libya, these reports formed the basis of many investigations in Libya. Compared to the other bodies, the UN has taken a greater initiative in addressing the issues of abuse of migrants in Libya. The UNHCR and the IOM have provided humanitarian relief to the migrants for years.

³⁶⁹ Moussa Faki Mahamat 'Statement of the Chairperson of the African Union Commission on the Plight of African Migrants in Libya' 18 November 2017 available at <https://au.int/en/pressreleases/20171118/statement-chairperson-african-union-commission-plight-african-migrants-libya> accessed on 13 December 2018.

³⁷⁰ Special Envoy of the Chairperson of the AU Commission to Libya 'Note to Editors : Update on the Visit of the Special Envoy of the Chairperson of the AU Commission to Libya and Subsequent African Union Efforts' 2 December 2017 available at <https://au.int/en/pressreleases/20171202/note-editors-update-visit-special-envoy-chairperson-au-commission-libya-and> accessed on 29 March 2019.

³⁷¹ Euronews 'Italy-Libya Sign an Agreement to Curb Flow of Migrants to Europe' *Euronews* 2 February 2017 available at <https://www.euronews.com/2017/02/02/italy-libya-sign-agreement-to-curb-flow-of-migrants-to-europe> accessed on 10 December 2018.

³⁷² UNSMIL, OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya* 18 December 2018 at 16.

They have physically investigated detention centres to monitored abuses consistently.³⁷³ Despite having an inadequate budget, they have stretched their resources to provide assistance.³⁷⁴

In light of the above, it is clear that all bodies may be held liable for the atrocities taking place in Libya. As their involvement and responsibilities vary, so does the degree of their liability in each case. Overall, all bodies must adopt more efficient strategies to end the crisis in Libya.

II. RECOMMENDATIONS

i. The Libyan Government

One of the drawbacks in the fight against migrant abuses in Libya is the absence of national legislation that governs and protects migrants specifically. Understandably, it would not be in Libya's interest to accommodate large numbers of purely economic migrants. On the other hand, there are many refugees and asylum seekers within the groups of people entering the country. These persons should be afforded a fair opportunity to apply for asylum and enjoy protection from persecution. It is recommended that Libya amend its laws, to ensure that refugees and asylum seekers are protected from automatic detention. Where a migrant is detained, the conditions of detention must be humane and in accordance with international standards.

It is also recommended that the government permits the UNHCR to establish stations closer to the borders to enable them quicker access to migrants crossing the borders. This may accelerate the sifting process to determine persons who genuinely seek asylum to escape persecution amongst the migrants.

Finally, in order to demonstrate good faith and regain the trust of the international community, it is recommended that the Attorney General's Office publish a report or release a statement on the progress of the 205 arrest warrants that were ordered. Furthermore, more efficient checks and balances to are needed to expose the government officials that may be involved in the crimes being committed. Those that are reasonably suspected of being involved should be on probation until cleared by authorities after transparent investigations.

³⁷³ UNSC, *2016 UNSMIL Report*, 1 December 2016, S/2016/1011, Para 64.

³⁷⁴ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 22 August 2017, S/2017/726, Para 62.

ii. The African Union

It is recommended that the AU ensures that the investigations promised by the African Commission are conducted speedily. Thereafter, the Commission needs to act quickly to ensure the Libyan authorities are reprimanded and held accountable.

The AU has been making strides to independently address issues in Africa to illustrate self-efficiency. It is recommended that they request assistance from member states. Member states may assist in terms of manpower, funding or volunteering to accommodate migrants from Libya. Through this collaboration, the AU may solve an African problem by African means as opposed to relying on aid from the West. The AU may approach the EU and UN for further assistance if these African efforts are exhausted.

Due to the political instability in Libya, it would be advised that the AU join the UNSMIL to request the UNSC to extend the Mission's mandate to a peacekeeping mission. As the AU is already currently cooperating with the IOM to rescue migrants from Libya, it is recommended that the AU seek more funding to help the IOM work quickly.

Finally, as the AU, UN and EU are aiming to work together to prevent the high levels of death at sea, it is suggested that the AU request the EU to lift the ban on NGO rescue missions at sea. It is clear that the EU does not wish to shelter more migrants. Arrangements may be made to return rescued migrants to African territory. However, instead of migrants being returned to Libya, they must be returned to other ports.

iii. The European Union

It is recommended that the EU stop funding the LCG. There are numerous reports that have exposed the abusive tactics of the LCG. The EU must stop funding them to prevent these atrocities and demonstrate good faith. The EU may continue to carry out its missions at sea by donating more boats to monitor slave trade and work with relevant NGOs.

Curtailing the work of the NGOs has increased the number of migrants dying at sea. The EU must lift the ban on NGOs to participate in rescue missions at sea.

iv. The United Nations

It is recommended that the UNSC take collective action and expand its UNSMIL mission in Libya to a peacekeeping mission. It would further be beneficial for the UN to engage member states to donate more resources towards the eradication of the slave trade in Libya.

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