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DRAFT REPORT

with a proposal for a European Parliament recommendation to the Council on the ongoing negotiations on the EU-Libya Framework Agreement (2010/2268(INI))

Committee on Foreign Affairs

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on the ongoing negotiations on the EU-Libya Framework Agreement (2010/2268(INI))

The European Parliament,

– having regard to the proposal for a recommendation to the Council by Ana Gomes on behalf of the S&D Group on the ongoing negotiations on EU-Libya Framework Agreement (B7-0615/2010),

– having regard to the General Affairs and External Relations Council conclusions of 15 October 2007 on opening discussions for a Framework Agreement between the EU and Libya, as well as the European Council conclusions of 18-19 June and 29-30 October 2009 on migration-related policies,

– having regard to the ongoing negotiations between the EU and Libya on a Framework Agreement,

– having regard to the HIV Action Plan for Benghazi, launched in November 2004,

– having regard to the current EU-Libya practical cooperation on migration and to the Migration Cooperation Agenda signed by the Commission and Libya on 5 October 2010,

– having regard to the Universal Declaration of Human Rights of 10 December 1948,

– having regard to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees,

– having regard to several human rights instruments that Libya has signed, such as the International Covenant on Civil and Political Rights (1970), the International Covenant on Economic, Social and Cultural Rights (1970), the International Convention on the Elimination of All Forms of Racial Discrimination (1968), the Convention on the Elimination of All Forms of Discrimination against Women (1989), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989), the Convention on the Rights of the Child (1993) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2004),

– having regard to the African Union Convention governing the specific aspects of refugees in Africa of September 1969,

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to its resolutions of 18 January 2007 on the death sentence imposed on medical personnel in Libya[1] and of 17 June 2010 on executions in Libya[1],

[1] OJ C 244E, 18.10.2007, p. 208.

– having regard to Rule 121(3) and Rule 97 of its Rules of Procedure,

– having regard to the report of the Committee on Foreign Affairs (A7-0000/2010),

A. whereas despite the persisting dictatorial rule, Libya has expanding commercial and political relations with EU Member States and plays a role as a partner for the EU in the Mediterranean region and in Africa, across a wide range of issues with an impact on security and stability, notably migration, public health, development, trade and economic relations, climate change, energy and cultural heritage,

B. whereas several EU Member States have close relations with Libya, with national companies and banks serving as a vehicle for Libyan financial investment in Europe, and whereas on 30 August 2008 Italy signed a Friendship Agreement with Libya governing relations in various fields, including cooperation on managing migration and financial reparations for war and colonial rule; whereas on 9 November 2010 the Italian Parliament asked the Government to revise this Treaty,

C. whereas the EU-Libya Framework Agreement currently under negotiation covers a wide range of areas, from strengthening political dialogue to managing migration, developing trade and economic relations, energy security and improving cooperation in different sectors,

D. whereas respect for human rights, democracy and the rule of law, as well as opposition to the death penalty, are fundamental EU principles; whereas Parliament is strongly committed to the universal abolition of the death penalty and has repeatedly urged the revocation of the death sentences and release from prison of the five Bulgarian nurses and the Palestinian doctor who were imprisoned in Libya for several years, besides condemning executions of Libyan and non-Libyan citizens which have taken place in Libya,

E. whereas Libya has not ratified the 1951 UN Convention on Refugees, but has ratified the African Union Convention governing specific aspects of refugee problems in Africa, Article 8 of which underlines, that this Convention shall be a complement in Africa of the 1951 UN Convention on Refugees and that its Members should cooperate with the UNHCR,

F. whereas Article 19(2) of the Charter of Fundamental Rights of the EU bans any removal, expulsion or extradition to a state where there is a serious risk of people being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment,

G. whereas Libya was elected to the UN Human Rights Council and has ratified several human rights instruments and whereas, as a consequence, Libya has specific international legal obligations to respect human rights, but, despite enjoyment of some economic and welfare benefits due to the State's distribution of the national income, Libyans and foreigners in Libya do not enjoy most civil and political rights, namely freedom of expression, assembly and association, the right to a fair trial, labour rights, women's rights and free elections, and whereas cases of arbitrary detention, torture, involuntary disappearances and discrimination against migrants often occur,

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[1] P7_TA(2010)0246.

H. whereas the exercise of State power in Libya is not anchored in the rule of the law or in democratic accountability and has led to arbitrary and unpredictable behaviour regarding foreign persons and interests, such as recently occurred with a Swiss businessman and foreigners executed for common criminality, whose identity was not disclosed,

1. Addresses, in the context of the ongoing Framework Agreement negotiations, the following recommendations to the Council:

   (a) Urges the Council to disclose to Parliament the full mandate given to the Commission to negotiate a Framework Agreement between the EU and Libya, in accordance with Article 218(10) TFEU, which states that Parliament shall be immediately and fully informed at all stages of the procedure;

   (b) Urges the Council and the Commission to persuade Libya to ratify the Geneva Convention on Refugees of 1951 and its 1967 Protocol and to adopt asylum legislation that recognises refugees' status and rights accordingly; also recommends offering assistance to Libya to implement this Convention;

   (c) Urges the Council and the Commission to request that the Libyan authorities sign a Memorandum of Understanding granting UNHCR a legal presence in the country, with a mandate to exercise its full range of access and protection activities;

   (d) Urges the Council to cease pursuing a readmission agreement with Libya, as sending individuals back to a country with a record of continuous human rights violations and the use of the death penalty would be in breach of EU legal obligations;

   (e) Calls on the Council to offer refugees identified through UNHCR in Libya a programme of resettlement in EU Member States;

   (f) Calls on the Council and the Commission to propose assistance to Libya and UNHCR aimed at addressing the problem of trafficking of human beings in the region, with special attention to the protection of women and children, including assistance to integrate legal migrants and to improve conditions for migrants found illegally in the country;

   (g) Urges the Council to persuade Libya to accept a moratorium on the death penalty and to call on the Libyan authorities to release statistics on all persons executed in Libya since 2008 and to divulge the identity of the persons concerned and the charges on which they were convicted;

   (h) Calls on the Council to insist on the inclusion in the Framework Agreement of a clause on the International Criminal Court, leading Libya to consider ratifying the Rome Statute;

   (i) Calls on the Council to propose to Libya cooperation on programmes to strengthen regional synergies on sustainable development and environmental matters, such as climate change, water scarcity and desertification;

   (j) Calls on the Council and the Commission to fully inform Parliament on what is being

sought by the EU on 'nuclear cooperation' with Libya under the 'Energy' chapter in the Framework Agreement negotiations, including all political and security implications;

(k) Considers that the Framework Agreement should include assistance on institutional capacity building, as a means to strengthen civil society, support modernisation, encourage democratic reforms, independent media and an independent judiciary, and support other efforts to open up space for business, academia, NGOs and other Libyan stakeholders;

(l) Calls on the Council and Commission to encourage Libya to facilitate the visits of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on freedom of expression, as well as the Working Group on enforced and involuntary disappearances and the Working Group on arbitrary detentions, as requested in the recent Universal Periodic Review on Libya;

(m) Calls on the Council to ensure that Schengen visas for Libyans are issued without unnecessary delays and to persuade the Libyan authorities to facilitate visas for Europeans residing or conducting professional activities in Libya;

(n) Recommends the establishment of an EU Delegation in Tripoli as soon as possible.

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the Governments of the Member States of the European Union.

DRAFT EXPLANATORY STATEMENT

Europe cannot ignore Libya, nor be indifferent to the country's evolution. Libya is strategically important for the EU, located on the southern shore of the Mediterranean and participating in the 5+5 dialogue. As a member of the African Union, Libya shares with the EU an interest in implementing the Joint Africa-EU Strategic Partnership and in promoting sustainable development in Africa. Libya plays a role in regional and global security, including in countering the spread of extremism and in maritime governance. With 6 million nationals, Libya holds the largest proven oil reserves in Africa and is Europe's third largest supplier of total EU imports of energy (oil and gas). Economic interdependence is a fact: the EU is the first trading partner for Libya, covering almost 70% of its total trade in 2009. Libya is also a key country of transit for migrants and refugees seeking to reach Europe. Europe and Libya share an interest to preserve the common cultural heritage. Several EU Member States have intense relations with Libya, with many companies and banks serving as vehicles for Libyan financial interests in Europe. At least two EU Member States have recently signed agreements with Libya: France, in 2008, on cooperation on civil use of nuclear power; Italy, in 2009, a Friendship, Partnership and Cooperation Treaty.

In 2007 EU and Libya signed a Memorandum of Understanding which sealed the release of 5 Bulgarian nurses and one Palestinian doctor in detention in Libya and launched the Benghazi Action Plan to assist Libya in dealing with HIV-AIDS. Negotiations for a Framework Agreement started in 2008, on the basis of a mandate given by the EU Council to the Commission. The European Parliament, despite the powers conferred to it in the Lisbon Treaty, was not yet given access to the contents of such a mandate.

The shedding by Libya of its nuclear programme in December 2003 and its acceptance to pay reparation for victims of the Lockerbie and UTA terrorist attacks had a decisive impact in bringing the country back from the pariah and sponsor of terrorism status which had led it into isolation, UN sanctions (trade, arms and civil aviation embargos) and American bombing of Tripoli and Benghazi in 1986.

Because of its dependency on oil and gas exports, Libya is seeking to develop its international relations, having invested heavily in Africa (its relations with the Arab world are fraught with contradictions) and in international organisations. Modernising and diversifying its economy will demand a more favourable business and investment environment. However, the major political reforms that such an environment will require are unlikely, while autocratic exercise of the State power persists in Libya.

For over forty years, Libya has been ruled by a dictatorial regime in which power is concentrated in one man, Colonel Khadafy, the longest serving African and Arab leader. Libyans enjoy free education and healthcare and subsidised housing, benefitting from some degree of social distribution of the oil income. But, despite the GDP growth rates, development falls behind other oil-rich countries and Libya is one of the less diversified economies in the region, foreign investment remaining at the mercy of the unpredictable decisions of the ruler.

The Libyan people do not enjoy basic human rights and freedoms, despite the fact that their State has specific international obligations to respect human rights, having been recently

elected to the United Nations Human Rights Council and having ratified a number of legally binding international instruments.

Capital punishment is regularly carried out. At least five European nationals (the Bulgarian nurses) were on death row in recent years. 18 people were executed in 2010, several being foreigners, but their identities, nationalities and charges were not disclosed by the Libyan authorities.

State power not anchored in the rule of the law, nor on democratically accountable institutions, has led to arbitrary and unpredictable behaviour regarding foreign persons and interests in Libya, such as recently occurred with a Swiss businessman. Libyans and foreigners living in Libya do not enjoy most civil and political rights, namely freedom of expression, assembly and association, fair trial, labour rights, women's rights, free and fair periodical and universal elections, with cases of arbitrary detention, torture and involuntary disappearances often occurring.

Libya needs foreign labour. Almost 2 million foreigners – i.e. equivalent to one third of nationals – work in Libya. However, discrimination targeted against migrants is widespread, Libya not recognising a particular status to people legally working in the country, nor facilitating their remittances. Women migrants are particularly often victims of discrimination, exploitation and human trafficking.

Libya also does not have an asylum law, therefore not legally recognising the need to protect people escaping persecution. Nevertheless, despite not having signed the UN Convention on Refugees of 1951, but having ratified the African Convention on the Protection of Refugees, Libya allowed the UNHCR to operate in the country for several years, but recently abruptly determined the closure of its office. This is a source of major concern for the European Parliament, as per its resolution of 17 June 2010.

Libya's Constitution states that 'the extradition of political refugees is prohibited'. However Libya has repeatedly returned people found illegally in the country to their countries of origin, disregarding serious risks to their lives. Prior to the closure of the UNHCR office in Tripoli, there were 8950 refugees and 3680 asylum-seekers registered in Libya. Most originate from Eritrea, Iraq, Somalia, Sudan, Ethiopia and Chad. Around 3700 are Palestinian refugees.

The EU has requested a 'readmission agreement' as part of the Framework Agreement, but Tripoli has no intention to accept it. Given the systematic disregard for human rights in Libya and the persistence of torture and death penalty, it is unconscionable that the Council and the Commission seek such an agreement to return people forcibly to Libya.

Such is, however, the practice of Italy under the Friendship Agreement, in breach of EU legal obligations. Italian supported Libyan patrols in the Mediterranean fighting clandestine migration have reduced the number of migrants arriving in Italy, at the cost of human rights: in 2009 nearly 1000 persons were returned to Libya by Italy, after being rescued or intercepted at sea; according to the Italian Interior Minister, in the first 3 months of 2010 there was a 96% drop in arrivals compared with 2009. A recent incident (September 12, 2010) illustrated how migrants' lives are put at risk: an Italian fishing boat off the Libyan coast was shot at by a Libyan patrol using a vessel donated by Italy. Libya apologised, but the Italian Interior Minister suggested that the Libyans 'perhaps...mistook the fishing boat for a boat with illegal migrants...' as if, in that case, it would be justified to shoot.

Following international protests over the prospect that Libya was returning hundreds of refugees/migrants to Eritrea last June, the Libyan authorities decided to release all illegal persons (numbering in the thousands) in the country's 18 migrants detention centres – where living and health conditions were generally appalling - giving them a 3 months deadline to legalise their presence in the country. Given, however, the shortage of jobs and legal avenues, most of these people are barely surviving in the streets, many seeking repatriation.

Governance in Libya is poor and state and civil institutions are extremely weak. The judiciary and media are not independent. However, in the last years there were attempts to strengthen administrative capacities, create a more favourable environment for business and open up some political space for civil society.

EU-Libya cooperation can make a difference in helping strengthen Libyan capacities. A successful example is the Benghazi Action Plan, through which Libya achieved remarkable improvement in medical and scientific capacities to deal with HIV-AIDS, saving children and adults affected. Libyans appreciate the results and expressed the wish to extend such cooperation with the EU to the treatment of other infectious diseases and other medical centres. EU Member States should be encouraged to provide healthcare assistance to Libyan patients, including facilitating temporary treatment in specialised institutions in Europe.

Most of the challenges faced by Libyan development can only be addressed in a context of regional cooperation, given the interdependence of managing migration and fighting climate change and desertification. By acting in isolation, Libya has aggravated some of these problems, as with the Great Man Made River, which is depleting irreplaceable aquifers. The EU must encourage Libya to establish regional synergies to tackle threats which have serious implications beyond Libya.

The Framework Agreement currently under negotiation between the EU and Libya may be useful to give strategic direction and structure the development of existing relations, while ensuring that they are conducted in full respect for European values and principles and will foster EU common interests. The bilateral agreement for French-Libyan cooperation in civilian nuclear power must be assessed to ensure that it complies with EU commitments and IAEA principles to fight nuclear proliferation and guarantee security. And as for the Italian-Libyan Friendship Treaty, the Italian Parliament has on November 9, 2010, called for its revision to ensure that it complies with Italian international obligations and Constitution, namely in what concerns the right to asylum and the right to life.

The European Parliament should recommend that negotiations with Libya be reviewed by Council and Commission, essentially along the following lines:

- Ensure that Libya will sign with the **UNHCR an 'accord de siege'** and insist on Libya's ratification of the **1951 Geneva Convention**.

- Insist that Libya adopts a **moratorium on the death penalty**.

- Engage Libyan authorities on the prospect of accepting jurisdiction of the **International Criminal Court.**

– It is absolutely unacceptable that Council and Commission go on seeking a **'readmission agreement**' with Libya. This goes against EU cores values and the EU Charter of Fundamental Rights. Efforts to externalise migration flows management cannot include EU tolerance for 'push back' practices or any other endangering the lives of migrants/refugees.

– The EU should encourage and assist Libyan authorities to **improve the status of legal migrants,** provide migrants with access to resident permits and **fight trafficking of human beings**. Assistance for the improvement of centres for people found illegally in the country must be a priority for the EU.

– Council and Commission should engage Libyan authorities on discussions about the main **human rights problems**, namely urging revision of the legislation that restricts rights of expression, association and assembly; release of prisoners held without due process; investigations on torture or ill-treatment of prisoners, exploitation and sexual abuse of refugees, asylum-seekers and migrants, as well as accountability for disappearances, extrajudicial executions and corporal punishments such as flogging and amputation; ceasing all forcible expulsions of refugees or migrants to countries where they risk persecution; account and provide redress for families of persons who disappeared or were killed in custody, such as the Abu Selim prison victims; repeal all discrimination against women, such as laws on marriage, divorce, sexual relations outside marriage and inheritance; and fight impunity, namely holding security forces accountable and submitting the Internal Security Agency to judicial oversight.

In conclusion, Libya's strategic importance combined with the many challenges it poses, underline the need for a comprehensive EU policy towards Libya. The EU needs to engage with Libya across a broad range of issues. This Framework Agreement must also be a substantive tool to promote the rule of law, respect for human rights, protection of migrants and refugees and sustainable development in Libya.