FORENSIC OCEANOGRAPHY
MARE CLAUSUM

Italy and the EU's undeclared operation to
stem migration across the Mediterranean

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ACRONYMS AND ABBREVIATIONS

ECtHR	European Court of Human Rights
GNA	Libyan Government of National Accord
IOM	International Organization for Migration
IMRCC	Italian Maritime Rescue Coordination Centre
ITCG	Italian Coast Guard
LYCG	Libyan Coast Guard
MRCC	Maritime Rescue Coordination Centre
MSF	Médecins Sans Frontières / Doctors Without Borders
OHCHR	Office of the United Nations High Commissioner for Human Rights
SAR zone	Search and Rescue zone
SW	Sea Watch
SOLAS	International Convention for the Safety of Life at Sea
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	Office of the United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

In an attempt to stem migrant crossings of the Mediterranean into Europe, Italy and the EU have enacted an undeclared operation, which we term *Mare Clausum*. This operation has deployed two complementary actions: first, rescue NGOs have been criminalised with the intention of limiting their activities so that they do not disembark migrants on European shores; second, Italy and the EU have tasked and enabled the Libyan coast guard to intercept and pull back migrants to Libya through political agreements, the provision of material and technical support, and coordination mechanisms. This report shows that Italy and the EU have come to exercise both strategic and operational control over the Libyan Coast Guard, which has been made to operate *refoulement by proxy* on behalf of Italy and the EU. This policy has been implemented with full knowledge of the Libyan Coast Guard's violent behaviour and the detention and inhumane treatment that awaited migrants upon being returned to Libya.

Still from a video reconstruction of the Sea Watch vs Libyan Coast Guard case by Forensic Oceanography and Forensic Architecture, May 2017.

On 6 November 2017, the rescue NGO Sea Watch (SW) and a patrol vessel of the Libyan Coast Guard (LYCG) simultaneously directed themselves towards a migrants' boat in distress in international waters. The boat, which had departed from Tripoli a few hours earlier, carried between 130 and 150 passengers. A confrontational rescue operation ensued, and while SW was eventually able to rescue and bring to safety in Italy 59 passengers, at least 20 people died before or during these events, while 47 passengers were ultimately pulled back to Libya, where several faced grave human rights violations – including being detained, beaten, and sold to another captor who tortured them to extract ransom from their families.

To reconstruct the circumstances that gave rise to this particular incident however, this report argues it is also necessary to understand the policies that shaped the behaviour of the actors involved, and the patterns of practices of which this event was only one

particular instantiation. Before arriving on the scene, the LYCG liaised with the Maritime Rescue Coordination Centre of the Italian Coast Guard, which informed them of the presence of the boat in distress. The *Ras Jadir* - the patrol vessel of the LYCG that engaged in reckless behaviour and thus contributed to the death of several passengers -was one of the four patrol boats that had been donated by Italy to the LYCG on 15 May 2017,

in presence of the Italian Minister of Interior. On board that vessel on the day of the lethal events, eight of the 13 crew members had received training from the EU's anti-smuggling operation, EUNAVFOR MED.

Italian Interior Minister Marco Minniti in front of the *Ras Jadir* (648), 15 May 2017.Reuters, Ismail Zitouny.[1]

Based on these elements, this report argues that the incident is paradigmatic of the new, drastic measures that have been implemented by Italy and the EU to stem migration across the central Mediterranean. This multilevel policy of containment operates according to a two-pronged strategy which aims, firstly, to delegitimise, criminalise and ultimately oust rescue NGOs from the central Mediterranean; and at the same time, to provide material, technical and political support to the LYCG so as to enable them to intercept and pull back migrants to Libya more effectively. This undeclared operation to seal off the central Mediterranean is what we refer to as *Mare Clausum*.

While in our report "Blaming the Rescuers", released in June 2017,[2] we have analysed in detail the targeting of rescue NGOs, here we focus instead on the second aspect of this strategy. We show that through policy agreements and multiform support to the LYCG, Italy and the EU have come to exercise both strategic and operational control over the LYCG. In this way, the LYCG has been made to operate *refoulement by proxy* - the sending back of migrants to a territory in which their lives are at risk undertaken by Libyan agencies acting under the control and direction of Italian and EU authorities, in contravention to one of the cornerstones of international refugee law, the principle of *non-refoulement*.[3]

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1   Aidan Lewis and Steve Scherer, 'Italy tries to bolster Libyan coast guard, despite humanitarian concern', Reuters, 15 May 2017, https://uk.reuters.com/article/uk-europe-migrants-libya/italy-tries-to-bolster-libyan-coast-guard-despite-humanitarian-concern-idUKKCN18B2EN

2   Charles Heller and Lorenzo Pezzani, 'Blaming the Rescuers', June 2017, https://blamingtherescuers.org/

3   According to Article 33(1) of the 1951 Refugee Convention (CSR51): "No contracting State shall

The report relies on new findings generated through extensive interviews with state officials, rescue NGOs, and migrants, as well as newly accessed official reports, statistical analysis and cartographic and spatial reconstruction methods. It has been produced by *Forensic Oceanography* – a research project directed by Charles Heller and Lorenzo Pezzani and affiliated with the Forensic Architecture agency at Goldsmiths (University of London) that specialises in the use of forensic techniques and cartography to reconstruct the conditions that lead to deaths at sea.

The report is divided in three main sections. It first analyses the **policies** through which Italy and the EU have sought to entrust the Tripoli-based Government of National Accord (GNA) in Libya with the patrolling of their maritime frontier; it then reconstructs the particular **patterns** of practices that emerged throughout 2017 as a result of these policies, before returning in detail to the **case** of Sea Watch vs Libyan Coast Guard.

POLICIES

In the Policies section, we analyse the policies, imposed by Italy and the EU on the Tripoli-based government in Libya, that have led to the practice of *refoulement by proxy.* Faced with persistently high numbers of migrant arrivals on Italian shores, as of 2016 onwards Italy and the EU have attempted to re-establish the practices of externalised border control that had seen Gaddafi's Libya function as a border guard for Italy and the EU. However, after the practice of directly returning to Libya migrants intercepted on the high seas was found to be illegal by the European Court of Human Rights in 2012, Italy and the EU have instead entrusted the Libyan Coast Guard with the task of intercepting and pulling migrants back to Libya.

While since **Autumn 2016** the EU, through its EUNAVFOR MED operation, had begun **training of LYCG personnel** – 188 of which participated in this program to date,[4] in 2017, Italy took the lead in implementing substantial new steps in this policy refoulement by proxy with full EU support and financial contributions.

On 2 **February 2017**, Italy signed a **"Memorandum of Understanding"** with the Government of National Accord (GNA) of Libya "on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security".[5] This Memorandum, with at its core, the aim of "stemming illegal

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expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

4   As of 21 August 2017, EUNAVFOR MED has further been assigned the task of monitoring the activities of the LYCG and Navy – a task which we should note implies a hierarchical power relation. Monitoring is considered as "an essential component of the Libyan maritime capacity building programme", by helping to "define future training requirements, and helps the LCG&N to define its equipment (including assets) shortfalls and requirements" (EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p.3). The monitoring task was assigned to EUNAVFOR MED by the Council Decision of July 2017 and agreed with the Libyan authorities within an additional Annex to the 2016 Memorandum of Understanding. See EUNAVFOR MED Op SOPHIA - Six Monthly Report 1 June - 30 November 2017, 22 December 2017.

5   Memorandum of understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf An English translation of the "Memorandum" is available here: https://

migrants' flows", received full EU Council support the very next day in the Malta Declaration adopted on 3 February 2017.[6]

Official Twitter account of the Italian embassy in Libya, showing the patrol vessels arriving in Tripoli, 5 May 2017.[7]

In **May 2017** Italy provided the Libyan navy and LYCG with **four fast patrol boats**, with a further six boats to be delivered in the following months.[8] These assets substantially increased the operational capacity of the LYCG.
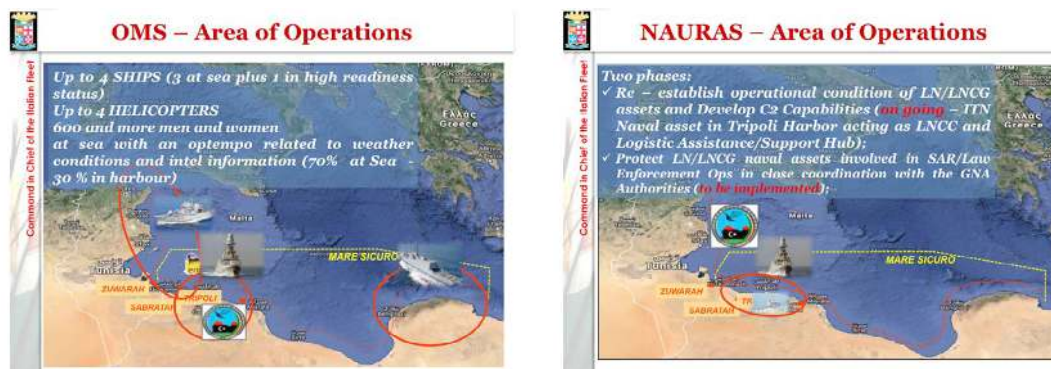
Power point slides by the Italian Navy on Operation Mare Sicuro, Shade Med briefing, Rome, 23 November 2017.

On **2 August 2017**, a decisive step was achieved in the Mare Clausum operation when the Italian Parliament approved the extension of the **Mare Sicuro operation**, to provide "support to the Libyan security forces in their activities against irregular migration and human smuggling by deploying aerial and naval means and supporting Intelligence, Surveillance and Reconnaissance capabilities."[9] We show that the Mare Sicuro ships

www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf

6   Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017, www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/#

7   https://twitter.com/ItalyinLibya/status/860452910517415937

8   Italian Ministry of Interior, *Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica*, 21 April 2017, www.interno.gov.it/it/notizie/contro-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica; *Minniti in Libia: fronte comune contro il traffico di migranti*, 16 May 2017, www.interno.gov.it/it/notizie/minniti-libia-fronte-comune-contro-traffico-migranti. Three more patrol boats were handed over in February 2018, see http://www.ilsole24ore.com/art/mondo/2018-02-24/libia-e-niger-bilancio-dell-italia-e-l-eredita-il-prossimo-governo--212523.shtml?uuid=AEwxvQ6D&refresh_ce=1

9   *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica (DOC CCL, n.2)*, 28 July 2017, www.camera.it/_dati/

and aircrafts operating off the coast of Libya have played a decisive role in facilitating LYCG interception, while the communication equipment onboard the Italian naval ships docked in the port of Tripoli has been used by the LYCG to coordinate their operations at sea. An Italian judge has gone as far as to affirm that the coordination of rescue operations by Libya, is *"essentially entrusted to the Italian Navy, with its own naval assets and with those provided to the Libyans"*.[10]
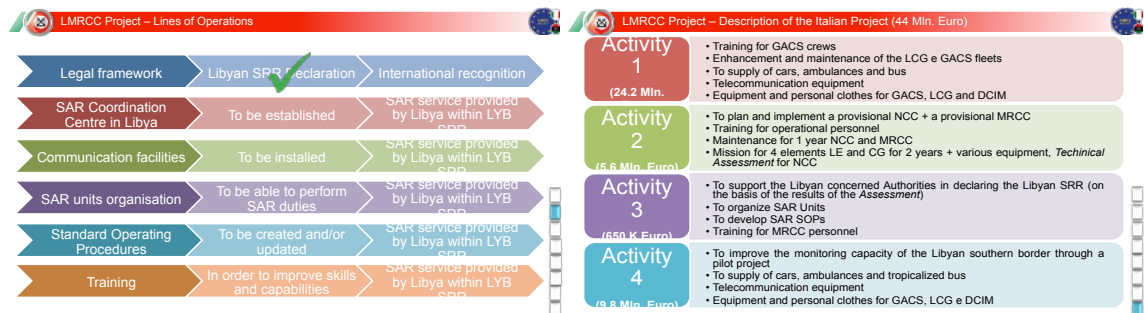
Power point slides of the Italian Coast guard presentation "Libyan Maritime Rescue Coordination Centre Project", Shade Med briefing, Rome, 23 November 2017.

On **10 August 2017,** the Libyan authorities in Tripoli announced that they had (unilaterally) **declared the Libyan Search and Rescue (SAR) zone** and threatened any rescue NGOs that dared to enter it. This declaration was one of the planned outcomes of an EU-funded project implemented by the Italian Coast Guard. While the Italian Coast Guard project foresees the LYCG MRCC as being fully operational only in 2020, all Italian and European state actors have acted *as if* it already was, so as to frame LYCG interception operations as rescues.

As a result of these policy agreements and multiform support and coordination, Italy and the EU re-established the LYCG, which, until then, had neither been able or willing to intercept migrants leaving Libyan shores. Through these combined measures, Italy and the EU have exercised *strategic control* over the LYCG, which has *operated as their proxy*, to intercept migrants - more than 20,000 in 2017 alone[11] - and bring them back to a country in which they would be subjected again to extreme forms of violence and exploitation.

While the horrific conditions migrants face in Libya have been well documented over several years by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets,[12] and Italy's Deputy Minister for

leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

10 The same judge has further affirmed in relation to the Open Arms case that the intervention by the Libyan patrol vessels happened "under the aegis of the Italian navy ships present in Tripoli". In: Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, Decreto di convalida e di sequestro preventivo, 16 April 2018. See also: Marina Petrillo and Lorenzo Bagnoli, 'The Open Arms case continued: new documents and Malta', 12 April 2018, Open Migration, https://openmigration. org/en/analyses/the-open-arms-case-continued-new-documents-and-malta/

11 The IOM has been collecting data on "rescues" operated by the LYCG since 2016, http://www. globaldtm.info/libya/

12 See Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.am-nesty.org/en/documents/mde19/7561/2017/en/, p.56, for full list, to which we should add the recent report by the Office of the United Nations High Commissioner for Human Rights in

Foreign Affairs, Mario Giro, admitted on 6 August 2017 that "taking them [migrants] back to Libya, at this moment, means taking them back to hell",[13] **Italy and the EU have continued to implement their policy of *refoulement by proxy* with full knowledge of its human implications.**
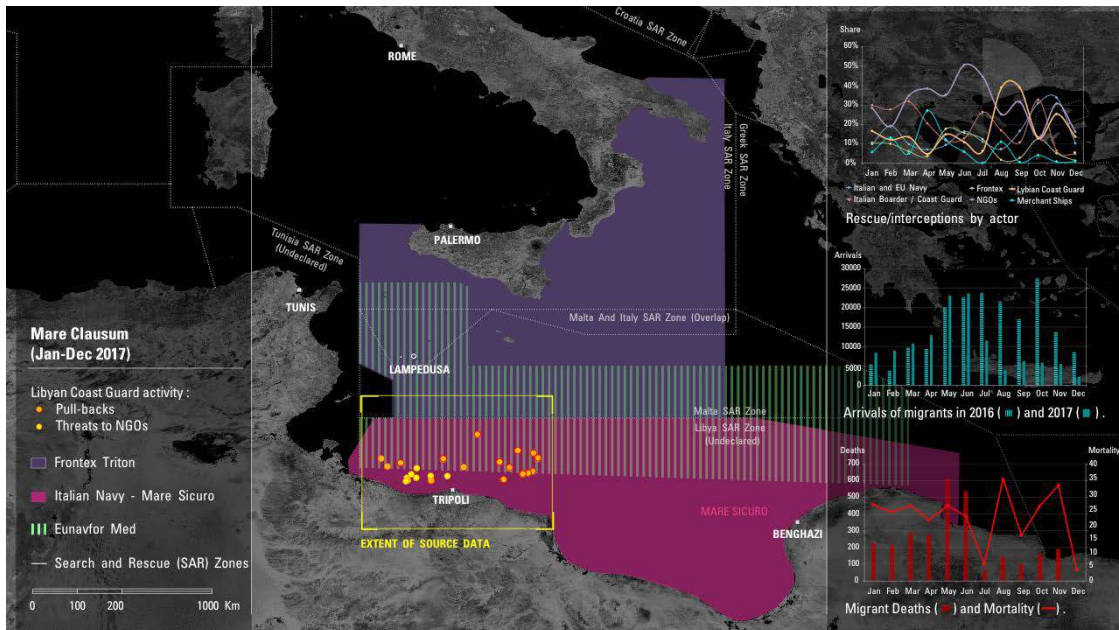
Synthetic figure of operations and migratory trends in the central Mediterranean, 2017. Figure by Forensic Oceanography. Statistical analysis by Gian-Andrea Monsch, GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

PATTERNS

In the Patterns section, we demonstrate that these policies led to substantial operational shifts at the maritime frontier. The Italian and EU campaign of delegitimisation and criminalisation of rescue NGOs found its counterpart in the practices of the LYCG at sea, with LYCG patrol boats increasingly threatening with violence the NGO vessels operating off the Libyan coast. As a result, the number of NGO vessels decreased starkly, and those that remained active were forced to operate further from the coast.


On 15 August 2017 a vessel of the LYCG threatened Open Arms' vessel Golfo Azzurro while the latter was located 27 NM off the Libyan coast. REUTERS/ Yannis Behrakis.[14]

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cooperation with the United Nations Support Mission in Libya, 'Abuse Behind Bars: Arbitrary and unlawful detention in Libya', April 2018, http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf

13   Marco Menduni, 'Giro: "Fare rientrare quelle persone vuol dire condannarle all'inferno"' , La Stampa, 6 August 2017, http://www.lastampa.it/2017/08/06/italia/cronache/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-allinferno-SXnGzVlzftFl7fNGFCMADN/pagina.html

14   Yannis Behrakis, 'Spanish migrant rescue ship threatened by Libyan coastguard: witness',

At the same time, the LYCG interceptions were dramatically stepped up – with the LYCG intercepting and pulling back 20,335 people over 2017.[15] As a result of these combined trends, 2017 saw a dramatic *inversion* in the roles of NGOs and the LYCG: while in 2016 the former became the number one Search and Rescue actor, by August 2017 *the LYCG intercepted more migrants than anyone else rescued*,[16] and the rate of interceptions by the LYCG has grown even higher in the first months of 2018. We further show that there is a statistical correlation between the higher rate of interception by the LYCG and the higher migrant mortality rate – a measure of the danger of crossing – observed in the second half of 2017 and early 2018.
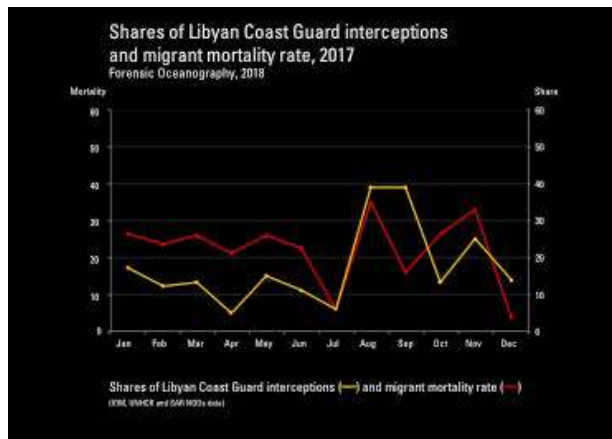
Migrant mortality and share of interception by the LYCG, January 2017-March 2018. Forensic Oceanography figure, statistical analysis by Gian-Andrea Monsch, based on Italian Coast Guard, IOM and UNHCR data.

While very little is known of the conditions in which more than 20,000 people were pulled back to Libya over 2017, we analyse 16 pull-back incidents, most of which could be documented only thanks to the presence of the few remaining NGOs. In most cases, the IMRCC, after having been informed of the presence of a boat in distress, transferred this information to the LYCG, which claimed the coordination of SAR operations, and NGO vessels were asked to stand-by. In this way, the IMRCC contributed to migrants being intercepted and brought back to Libya. In three documented instances, on 27 September, 11 October and 15 December 2017, we recorded *operational instructions* given by the Italian Navy to the LYCG to intercept migrants, all the while refraining from rescuing the migrants itself.

The distinct and recurrent operational patterns we document demonstrate the widespread and systematic - rather than episodic - nature of these events, which indicate they are the outcome of a well-defined strategy. These incidents demonstrate that the LYCG has effectively implemented the practices demanded of it by the different policy agreements the Tripoli-based government signed with Italy and the EU, and that Italian actors have coordinated and directed the LYCG's interceptions, thereby operating *refoulement by proxy*.

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15 August 2017, Reuters, https://www.reuters.com/article/us-europe-migrants-libya-ngo/spanish-migrant-rescue-ship-threatened-by-libyan-coastguard-witness-idUSKCN1AV20Q

15   IOM DTM Libya data for 2017, http://www.globaldtm.info/libya/

16   Qualculation by Gian-Andrea Monsch, Researcher at Fors, University of Lausanne, for Forensic Oceanography based on Italian Coast Guard and IOM data.

Migrants being intercepted by a Libyan coast guard vessel on 27 September 2017, with the Italian warship Andrea Doria in the background; the migrants were handed the life jackets by the Italian Navy before they were intercepted. Filmed by Vice News.[17]

As a result of the *Mare Clausum* operation at sea, which was also combined with Italy's direct negotiations with tribal leaders and militias on firm land,[18] crossings dropped in summer 2017: July saw a reduction in arrivals of 51% in relation to the previous year, August 82%.[19] As more migrants were contained in Libya, they experienced even *worse* conditions than before, in particular in increasingly overcrowded detention centres.[20] This was acknowledged on **14 November 2017** by the **UN High Commissioner for Human Rights**, who, after a visit of detention centres in Tripoli, stated: *"The increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants. Our monitoring, in fact, shows a fast deterioration in their situation in Libya."*[21]

CASE

Finally, in the Case section, we reconstruct in detail the Sea Watch vs Libyan Coast Guard incident, in which the policies and operational patterns described above converge. Using the material recorded by audio and visual devices onboard the Sea Watch vessel, and through spatial modelling methodologies developed by Forensic Architecture, we reconstruct the events in far greater detail than any other interception by the LYCG. By documenting the violence exercised by the LYCG, this incident brings the dramatic effects of Italy and the EU's policy of *refoulement by proxy* into sharp relief.

This report demonstrates the alarming extent to which Europe has been outsourcing its human rights violations. While this policy has temporarily succeeded in stemming crossings, this has been at a far too high human cost, and by acting in violation of the principle of non-refoulement.

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17   VICE News, 'Italy is paying Libya to intercept migrants on the Mediterranean', 25 October 2017, https://news.vice.com/en_us/article/ned4dg/ italy-is-paying-libya-to-intercept-migrants-on-the-mediterranean

18   For a summary, see Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, 50.

19   Our calculation based on data collected by the UNHCR, http://data.unhcr.org/mediterranean/regional.html

20   IOM DTM Libya data for 2017, http://www.globaldtm.info/libya/

21   OHCHR, 'UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity', 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

We call upon Italy and the EU to immediately end their policy of refoulement by proxy, and suspend collaboration with LYCG for as long as the latter is responsible for grave violations. Rescue activities must be used to save lives, not as a cover-up for border control. Inasmuch as the LYCG do perform rescue operations in the future, they must not be allowed to disembark migrants on Libyan territory, where migrants' lives are endangered. Italy should further end the criminalisation of rescue NGOs, whose humanitarian activities are partly filling the lethal rescue gap left by states. Instead of seeking to contain migrants at all cost, Italy and the EU must embark on a fundamental re-orientation of the EU's migration policies to grant legal and safe passage to migrants. Only in this way, will the smuggling business, the daily reality of thousands of migrants in distress, and the need to rescue them, finally come to an end.

INTRODUCTION

On 6 November 2017, the rescue NGO Sea Watch (SW) and a patrol vessel of the Libyan Coast Guard (LYCG) simultaneously directed themselves towards a migrants' boat in distress in international waters. The boat, which had departed from Tripoli a few hours earlier, carried between 130 and 150 passengers. A confrontational rescue operation ensued, and while SW was eventually able to rescue and bring to safety in Italy 59 passengers, at least 20 people died before or during these events, while 47 passengers were ultimately pulled back to Libya, where several faced grave human rights violations – including being detained, beaten, and sold to an other captor who tortured them to extract ransom from their families.

To reconstruct the circumstances of this particular incident however, this report argues it is also necessary to understand the policies that shaped the behaviour of the actors involved, and the patterns of practices of which this event was only a particular instantiation. Before arriving on scene, the LYCG liaised with the Maritime Rescue Coordination Centre of the Italian Coast Guard, which informed them of the presence of the boat in distress. The *Ras Jadir*, the very patrol vessel of the LYCG that engaged in reckless behaviour and thus contributed to the death of several passengers, was one of the four patrol boats that had been donated by Italy to the LYCG on the 15 May 2017, in presence of the Italian Minister of Interior. On board that vessel on the day of the events, 8 out of the 13 crew members had received training from the EU's anti-smuggling operation, EUNAVFOR MED.

Based on these elements, this report argues that this incident is paradigmatic of the new, drastic measures that have been implemented by Italy and the EU to stem migration across the central Mediterranean. **This multilevel policy of containment operates according to a two-pronged strategy which aims, on the one hand, to delegitimise, criminalise and ultimately oust rescue NGOs from the central Mediterranean; on the other, to provide material, technical and political support to the LYCG so as to enable them to intercept and pull back migrants to Libya more effectively. This undeclared operation to seal off the central Mediterranean is what we refer to as *Mare Clausum*.**

While in our report "Blaming the Rescuers", released in June 2017,[22] we have analysed in detail the targeting of rescue NGOs, here we focus instead on the second aspect of this strategy. **We show that through policy agreements and multiform support to the LYCG, Italy and the EU have come to exercise both strategic and operational control over the LYCG. In this way, the LYCG has been made to operate *refoulement by proxy* - the sending back of migrants to a territory in which their lives are at risk undertaken by Libyan agencies acting under the control and direction of Italian and EU authorities, in contravention to one of the cornerstones of in**

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22   Charles Heller and Lorenzo Pezzani, 'Blaming the Rescuers', June 2017, https://blamingtherescuers.org/

ternational refugee law, the principle of *non-refoulement*.[23] This policy has been implemented with full knowledge of the LYCG's violent behaviour and the fate of detention and subjection to inhuman treatment that awaited the migrants returned to Libya.

The report relies on new findings generated through extensive interviews with state officials, SAR NGOs, and migrants, as well as newly accessed official reports, statistical analysis and cartographic and spatial reconstruction methods. It has been produced by ***Forensic Oceanography*** – a research project affiliated to the Forensic Architecture agency at Goldsmiths (University of London) that specialises in the use of forensic techniques and cartography to reconstruct the conditions that lead to deaths at sea.

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23   According to Article 33(1) of the 1951 Refugee Convention (CSR51): "No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

POLICIES

In this section, we discuss the overall policies, imposed by Italy and the EU on the Tripoli-based government in Libya, that have led to the practice of *refoulement by proxy* **- the sending back of migrants to a territory in which their lives are at risk undertaken by Libyan agencies acting under the control and direction of Italian and EU authorities.**

We first discuss the initial development of Italy and the EU's cooperation with Libyan actors to stem crossings between 2000-2010 through a multilevel policy of containment involving different forms of *refoulement*. In particular, we discuss *territorial refoulement*, practised during 2004-5 through air deportations from Italy to Libya of migrants who reached Italian soil, and *direct refoulement*, undertaken in 2009 by Italian ships on the high seas by directly intercepting migrants and returning them to Libya.

We then show that this form of externalised border control was thrown into crisis after the Gaddafi regime was toppled in 2011, which left Italian and EU authorities without a stable state in the country capable of implementing their policy of outsourced border control. Furthermore, the form of refoulement that had proven central to stemming crossings in 2009 – direct refoulement on the high seas – was no longer possible to implement after the 2012 landmark "Hirsi" ruling by the European Court of Human Rights, in which it found this practice as illegal and condemned Italian authorities.

Finally, we analyse in detail the return to externalised border control which Italy and the EU resorted to as of 2016 onwards in the face of persistently high numbers of migrant arrivals on Italian shores, relying this time on *refoulement by proxy* operated by the Libyan coast guard on behalf of Italy and the EU on both the high seas and in Libyan territorial waters.

Concerning the present practice of refoulement by proxy, we underline the centrality of the multiform support provided by Italy and the EU to the weak and fragmented Libyan government and militias with the explicitly-stated aim to "stem crossings".[24] In particular, for the interception and return of migrants to Libyan territory, Italy and the EU have been cooperating with the Libyan Coast Guard (LYCG), a fragmented institution partly controlled by militias that are known to have engaged in criminal activities. While this support has been often framed in official documents as "assistance",[25] we demonstrate that the LYCG's activities were

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24   See article 1a of the Memorandum of Understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf. An English translation of the "Memorandum" is available here: https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf

25   While we will observe this framing in a number of policies put forth by Italy and the EU throughout this section, the framing of Italian support to the LYCG as assistance instead of coordination is well illustrated by the Italian Navy's response to an article which had precisely described this relation as one of coordination by the Italian Navy. See Ilaria Sesana and Duccio Facchini, 'ProActiva, la vera notizia è che l'Italia coordina i libici', Altreconomia, 28 March 2018, https://altreconomia.it/

practically non-existent prior to Italy and the EU's provision of funding, assets, training, and logistical support. Furthermore, Italy and the EU have deployed their warships off the coast of Libya and even within Libyan territorial waters, constituting a substantial naval presence that has consistently provided crucial information to LYCG assets and even directed them to pull back migrants. **Without Italy and the EU's agreements with the Tripoli-based Libyan government, and without the provision of multiform support, coordination and instructions, the LYCG would not and could not have operated migrant interceptions on the scale that has been observed between 2016 and 2017 and continues at present.**

For these reasons, we argue that through specific policy agreements, which involve a highly imbalanced relation with their Libyan counterparts, Italy and the EU have exercised *strategic control* over the LYCG. These agreements contain explicit indications and set a clear framework within which the LYCG can (and must) operate as a proxy for Italian and EU authorities to pull back migrants. While these operations are framed as rescue operations, they amount to actions that would be judged illegal if carried out by Italian authorities directly, as they involve the return of migrants – including asylum seekers – to a country where they persistently face inhuman and degrading treatment.

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proactiva-italia-coordina-libici/. "l'ufficio stampa dello Stato Maggiore della Difesa spiega che l'attività di coordinamento svolta dalle unità italiane presenti in Libia avviene "nell'ambito delle attività previste dal Decreto missioni approvato dal Parlamento italiano il 17 gennaio 2018". Nello specifico, la "Missione bilaterale di *assistenza e supporto* in Libia" prevede in effetti tra i suoi obiettivi quello di "assicurare *assistenza e supporto* addestrativi e di mentoring alle forze di sicurezza libiche per le attività di controllo e contrasto all'immigrazione illegali, dei traffici illegali e delle minacce alle sicurezza della Libia". Nel testo, però, non si parla esplicitamente di coordinamento. Inoltre, lo Stato Maggiore della Difesa spiega che Nave Capri è -di fatto- una "nave officina" il cui compito è il ripristino e la messa in efficienza del naviglio della Guardia Costiera e della marina libica. "Il personale di bordo interviene direttamente nella riparazione e nella manutenzione del naviglio libico –spiegano dallo Stato Maggiore della Difesa-, ma al tempo stesso effettua attività di addestramento e mentoring a favore dei meccanici libici. Nave Capri non ha *nessun ruolo di coordinamento* dei salvataggi" (our emphasis).

2000-2010: ITALY AND THE EU'S FIRST PHASE OF EXTERNALISED BORDER CONTROL IN LIBYA

On **6 May 2009** three ships from the Italian customs police (Guardia di Finanza) halted a boat carrying 231 migrants (191 men and 40 women) that had left Libya heading for the Italian coast. It was stopped approximately 35 miles south of Lampedusa on the high seas, in the Maltese SAR zone. The passengers were taken on board the Italian vessels and returned to Libya without identification and assessment of their asylum claims. This event, in relation to which the landmark "**Hirsi**" judgement was delivered by the ECtHR on 23 February 2012,[26] was only one among many other similar cases of push-backs between 6 May and 6 November 2009. During these six months, 834 persons were diverted to Libya in the framework of the joint police operations established by Italy and Libya on the basis of the Treaty of Friendship and related technical protocols, which we summarise below.

These push-back incidents represented the culminating point of Italy and the EU's attempts to close off the central Mediterranean frontier. **This section of the report reconstructs the emergence and evolution of these policies from their beginnings in the early 2000s to their apex in 2010. Tracing this longer trajectory of collaboration between EU, Italian and Libyan authorities is essential to understand the current policy of** *refoulement by proxy***, which is at the core of our report.**

The origins of Italian-EU cooperation with Libya

These policies first emerged in response to an increase of migrant crossings from North and Sub-Saharan Africa via the central Mediterranean at the turn of the century.[27] As Hein de Haas has demonstrated in his land-mark article "The Myth of Invasion", the attitude of the Libyan authorities played an important role in this increase in arrivals.[28] While until 2000, the Gaddafi regime actively sought to recruit migrant workers from Sub-Saharan African countries as part of its diplomacy in the region and for the crucial role they played in the Libyan economy, regime-fuelled riots against black Africans in Libya in 2000 resulted in a splintering of migrants' trajectories throughout other North African countries as well as an increase in crossings from Libya.[29]

In response, Italy and the EU implemented multiple policies aiming to stem migrant crossings, such as readmission agreements with countries of origin and a number of border control operations – led by the Italian border police and Navy, but also by Frontex, the European Border Agency.[30] **At the core of these measures, was the**

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26   Mariagiulia Giuffré, 'Watered-down Rights on the High Seas: Hirsi Jamaa and Others v Italy', 2012, *International and Comparative Law Quarterly,* 61(3)*.*

27   See the work of Philippe Fargues, in particular: Philippe Fargues and Sara Bonfanti, Migration Policy Centre, EUI, 2014 'When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it', 2014, Migration Policy Centre, European University Institute, http://cadmus.eui.eu/handle/1814/33271. See also Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

28   Hein de Haas, 'The Myth of Invasion: the inconvenient realities of African migration to Europe', 2008, *Third World Quarterly,* 29(7).

29   Gerasimos Tsourapas, 'Migration diplomacy in the Global South: cooperation, coercion and issue linkage in Gaddafi's Libya', 2017, Third *World Quarterly',* 38(10).
30   Emanuela Paoletti, 'Migration Agreements between Italy and North Africa: Domestic Imperatives versus International Norms', 19 December 2012, http://www.mei.edu/content/

POLICIES

collaboration between Italy and Libya. Italy's aim was to replicate with Libya a model of cooperation that it had started developing together with Albanian authorities as of 1997. In order to stem crossings from former-Yugoslavia and Albania at the time, Italy had successfully negotiated the implementation of joint patrols within Albanian territorial waters to push-back migrants who sought to cross the sea.[31] However achieving similar results in **the central Mediterranean required years of negotiation between Italy, the EU and the Gaddafi regime, and a process of trial and error in policies of containment**.[32]

As Tsourapas notes, from the early 2000s onwards, Libya adopted the position of a transit country for sub-Saharan migrants, and used this position within its diplomatic relations,[33] with Gaddafi tellingly declaring in June 2002 that "no North African state wishes to guard the gates of Europe for free, as our region is invaded by sub-Saharan migrants".[34] Initially, the Gaddafi regime sought to use migration control to bargain for the lifting of economic sanctions imposed upon Libya in response to the Lockerbie events of 1986. This coincided with the progressive implementation of the EU's Dublin Convention, which decreed that asylum seekers' first country of entry into the EU would be responsible for processing their asylum claims, and thus made coastal states such as Italy reluctant to see migrants landing on their shores.[35] This strengthened Italy's resolve to stem migrants' crossings.

A first agreement to establish cooperation between Italy and Libya had been reached in July 1998, between the then Italian Minister of Foreign Affairs Lamberto Dini and the Libyan leader. On **4 July 1998**, they signed a **"Joint Communication"**, as well as a **"Verbal Process"** in which they affirmed their "intention to cooperate" towards "the prevention of and fight against illegal immigration".[36] The second Italian-Libyan written agreement that mentions migration, signed on **13 December 2000**, was a general agreement to combat terrorism, organized crime, drug trafficking and illegal

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migration-agreements-between-italy-and-north-africa-domestic-imperatives-versus. On border control, see Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

31   Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield. For other trajectories of policy transfer in the field of interdiction at sea, see Itamar Mann, 'Dialectic of Transnationalism: Unauthorized Migration and Human Rights, 1993-2013' *Harvard International Law Journal,* p.54.

32   The policies have been reconstructed in detail both by academics – see Emmanuela Paoletti, from which this background section draws – and multiple human rights organisations. Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford; Gerasimos Tsourapas, 'Migration diplomacy in the Global South: cooperation, coercion and issue linkage in Gaddafi's Libya', 2017, Third *World Quarterly',* 38(10).

33   Gerasimos Tsourapas, 'Migration diplomacy in the Global South: cooperation, coercion and issue linkage in Gaddafi's Libya', 2017, Third *World Quarterly',* 38(10).

34   Gaddafi quoted by Reuters June 24 2002, in Gerasimos Tsourapas, 'Migration diplomacy in the Global South: cooperation, coercion and issue linkage in Gaddafi's Libya', 2017, Third *World Quarterly',* 38(10).

35   Guild, Elspeth 'The Europeanisation of Europe's Asylum Policy', 2006, *International Journal of Refugee Law* 18(3-4), p.630–651.

36   Verbal Process, 4 July 1998, http://www.airl.it/accorditrattati1.php, in Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford, p.14.

immigration. This so-called "**Memorandum of Intent**", which came into effect follow-ing its ratification by the Italian Parliament on **22 December 2002**, contains a dedicat-ed paragraph on migration, calling for cooperation between the two countries' police forces in the fight against "illegal immigration" and for the exchange of information on the modus operandi of illegalised migrants and smugglers.[37]

In February 2003, Italy established a permanent liaison with Libya on organized crime and irregular migration. The Italian Minister of Interior told the Italian parliament in June of that year that, after long and complex negotiations, an agreement with Libya had been reached on concrete initiatives for joint control of land borders, controls at sea, and for the development of a common investigative activity on criminal organizations involved in migrant trafficking.[38] While the text of this agreement, which was finally signed on **3 July 2003** in Tripoli, has never been made public, it reportedly involved, among other things, the exchange of information on migrant flows and the provision to Libya of specific equipment to control sea and land borders.[39]

In **August 2004**, then-Italian Prime Minister Silvio Berlusconi visited Tripoli and held a well-publicised five-hour meeting with Gaddafi, during which **Italy agreed to provide training, technology and equipment to help Libya curb irregular immigration**.[40] While its details remain unknown, according to a European Parliament resolution, **the agreement is thought to have given the Libyan authorities "the task of supervis-ing migration and to commit them to readmitting people returned by Italy"**.[41]

The EU also sought to increase its collaboration with Libya in the wake of the lifting of economic sanctions and the arms embargo, for which Italy had actively campaigned.[42]

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37   Memorandum of Intent, 13 December 2000, as discussed in Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford, p.14.
38 Intervention of then-Minister of the Interior Giuseppe Pisanu in the House of Deputies, June 25, 2003, available at http://www.governo.it/sezioni/ministro/intervistadiscorso.php?idarticolo=157 as of March 7, 2006., in Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).

39   Ministero dell'Interno, (2003), Comunicato Stampa del 3.07. 2003, Firmata dal Ministro dell'In-terno Pisanu un'intesa operativa con la Libia sulle modalità pratiche della collaborazione per la lottaall'immigrazione clandestina, Availble online at: http://www.interno.it/salastampa/comunicati/elenchiviminale/comunicato.php?idcomunicato=353; Parlamento Italiano, (2003), Seduta n. 329 del 25 giugno 2003, Informativa urgente del Governo sulla politica in materia di immigrazione, Available online at: http://www.anolf.it/audizioni_parlamento/audizione_parlamento_pisanu_25_06_2003.htm. Both quoted in Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford, p.14.

40   Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refu-gees', September 2006, Volume 18, No.5(E).

41   European Parliament resolution on Lampedusa, April 14, 2005, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0138+0+DOC+XML+V0//EN quot-ed in Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).

42   Human Rights Watch notes that in mid-2003, shortly before Italy was due to take the helm of the EU Council presidency, it launched a campaign to convince other EU member states of the need to remove the arms embargo against Libya, as weapons were necessary to combat African irregular migration. Faced with lacklustre European support, Italy went so far as to threaten a unilateral lifting of economic sanctions against Libya. Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).. See also Gerasi-mos Tsourapas, 'Migration diplomacy in the Global South: cooperation, coercion and issue linkage

On **11 October 2004** - the very day the sanctions were lifted - the Council of the European Union agreed to embark on a policy of engagement with Libya on migration matters, and decided to send a technical mission there to examine arrangements for combating illegal migration.[43] At a meeting on **2-3 June 2005**, the EU Justice and Home Affairs Council endorsed a Council Conclusion on cooperation with Libya on migration issues, indicating a willingness to move ahead on a series of ad hoc measures, including reinforcing systematic co-operation between the respective national services responsible for sea borders, and developing common Mediterranean Sea operations involving the temporary deployment of EU Member States vessels and aircraft.[44] The ad hoc measures also included sending EU immigration liaison officers to Libyan seaports and the Tripoli airport, and training Libyan officials on immigration controls, asylum issues, and best practices for removal of illegal immigrants.[45]

As the above shows, a growing number of policy agreements concerning migration were signed with Libya between 2000 and 2004. While the EU took part in this process and developed its own collaboration with Libya, Italy remained at the forefront of actual *implementation* of joint measures aiming to stem crossings, as retrospectively admitted by the European Commission.[46] **Together, these agreements constitute a multilevel policy of containment operating before, at, across, and after the border.[47] The measures include repatriation flights from Italy to Libya, and from Libya to third countries, the funding of detention camps for migrants in Libya, the provision of specialised equipment to aid Libyan patrols of sea and land borders, the training of police staff, and the sharing of intelligence on smuggling networks. In addition, Italy and the EU pushed Libya, along with other North African countries, to draft more restrictive migration legislation, criminalising unauthorised movement.[48]**

in Gaddafi's Libya', 2017, Third *World Quarterly',*38(10).
43 Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).
44 Council of the European Union, 2664th Council Meeting, Justice and Home Affairs, Luxembourg, 2-3 June 2005, 8849/05, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/85255.pdf, as of March 7, 2006, quoted in Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).
45 Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).
46 "In the area of migration, the European Commission has financed a few projects, *mostly implemented by the Italian Ministry of the Interior*, the International Organisation for Migration and the UN High Commissioner for Refugees, using the successive thematic instruments (AENEAS and 'Thematic Programme on Migration and Asylum')", 'European Neighbourhood and Partnership Instrument: Libya: Strategy Paper & National Indicative Programme 2011-2013', 2011, http://eeas.europa.eu/archives/docs/enp/pdf/pdf/country/2011_enpi_csp_nip_libya_en.pdf, p.12. This same document summarises the limited collaboration over the decade: "Since 2005, the EC has implemented limited technical assistance projects in the field of migration, mainly through the thematic programmes (AENEAS until 2007 and the 'asylum and migration' programme thereafter)."
47 While joint measures by Italy and Libya to contain migrants have mostly remained confidential, a number of important outcomes have been summarised by Paoletti based on a range of sources: Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford, p.14. On the multilevel policy of containment (or "four-tier access control model", in the language of the EU Presidency), see Chapter Two of Violeta Moreno-Lax, Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law, 2017, Oxford Studies in European Law, Oxford University Press.
48 See Carim (Consortium pour la Recherche Appliquée sur les Migrations Internationales),

Territorial refoulement through air deportations

The most emblematic dimension of this cooperation, and certainly the one with the most concrete and debated effects in terms of containment, were the re-patriation flights from Italy to Libya, and from Libya to third countries, which began to be implemented as of 2003.[49] From October 2004 – that is, soon after the August 2004 meeting between Berlusconi and Gaddafi - through March 2006, an estimated 3,043 migrants, who had landed in Sicily from Libya, were sent back to Libya,[50] and multiple sources confirm that most of these foreigners were then repatriated to third countries.[51] Furthermore, Libya carried out a significant number of repatriations of migrants arrested on Libyan territory.[52]

The return flights operated from Italy were widely condemned, with Italy criticized by the Council of Europe's Committee for the Prevention of Torture, Amnesty International, the UNHCR, the European Parliament and a group of Italian and Spanish NGOs. Italy was also asked to justify the expulsions before the European Court for Human Rights and the Italian Ministerial Tribunal.[53] Broadly, this criticism concerned the absence of legal basis and safeguards for these flights, and their violation of the principle of non-re-foulement, since, as the UNHCR repeatedly lamented, the Italian government did not take the necessary precautions to ensure that it was not sending back any *bona fide* refugees to Libya, which was not considered a safe country of asylum.[54] In this sense, this practice can be described as a sort of *territorial refoulement*, that intervenes to push back people *after* they had reached Italian territory and despite the absence of a formal readmission agreement signed between the sending and receiving country.

'CARIM: Profil Migratoire: Libye', June 2011, European University Institute http://cadmus.eui.eu/bitstream/handle/1814/22438/Migration%20profile%20FR%202011%20Libye%20with%20links.pdf?sequence=2

49 This practice has been analysed both by academics and human rights organisations, with Paoletti's research providing again the most comprehensive overview. Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=

50 Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=

51 A European Parliament (EP) report in 2005 cites Libyan authorities as saying "that the hundreds of illegal sub-Saharan migrants sent back to Tripoli by the Italian authorities in 2004 and 2005 have, in most cases, been repatriated to their countries of origin.", European Parliament Delegation to Libya, 2005, http://www.europarl.europa.eu/news/expert/infopress_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default_de.htm in Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=

52 See Carim (Consortium pour la Recherche Appliquée sur les Migrations Internationales), 'CARIM: Profil Migratoire: Libye', June 2011, European University Institute http://cadmus.eui.eu/bitstream/handle/1814/22438/Migration%20profile%20FR%202011%20Libye%20with%20links.pdf?sequence=2; European Commission (EC), 2005,'Technical Mission to Libya on Illegal Immigration:27 Nov-6 Dec 2004:Report'. Doc. N. 7753/05 www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf

53 Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=. See also Human Rights Watch, 'Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees', September 2006, Volume 18, No.5(E).

54 UNHCR, "Italy: UNHCR Deeply Concerned About Lampedusa Deportations of Libyans", 2005, http://www.unhcr.org/news/NEWS/423ab71a4.html in Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=.

Direct refoulement on the high seas

While Italy was not legally condemned for its practice of expulsion by air, it did face strong international criticism and mounting legal and political pressure, and ultimately paused the repatriation flights in early 2006.[55] It is in the aftermath of this pivotal moment, when Italy's practice of territorial refoulement **had been limited, that it sought to focus instead on** direct refoulement **on the high seas**. The patrolling off the Libyan coast remained difficult to implement however, with Italian officials repeatedly lamenting the lack of collaboration by their Libyan counterparts in this matter.[56] This was precisely one of the key domains on which the next sequence of agreements would focus, as the crossings peaked again at the end of 2007.[57]

On **29 December 2007**, Italy and Libya signed an **agreement on the joint patrolling of coasts**, ports and bays in northern Libya to prevent irregular migration.[58] Italy also committed itself to providing **six patrol boats to Libya**, and in January 2008 the Italian Parliament approved the allocation of over €6 million for the Guardia di Finanza, the Italian customs police, to execute the agreement.[59] Shortly after, a **friendship and co-operation treaty** with long-lasting effects – as it continues to offer a frame of reference to this day - was signed during a visit by Berlusconi to Libya on **31 August 2008**, the text of which was eventually publicly disclosed in October 2008,[60] and approved by the Italian Parliament on 3 February 2009.[61] Framed as reparations for the damaging

55 Emanuela Paoletti, 'Relations Among Unequals? Readmission between Italy and Libya', 2010, Middle East Institute, http://www.mei.edu/content/relations-among-unequals-readmission-between-italy-and-libya?print=

56 Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford.

57 See Philippe Fargues and Sara Bonfanti, Migration Policy Centre, EUI, 2014 'When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it', 2014, Migration Policy Centre, European University Institute, http://cadmus.eui.eu/handle/1814/33271

58 Ministero dell'Interno, Amato: via libera dell'Europa per la fornitura alla Libia di un sistema di sorveglianza elettronica delle frontière, 18 September 2007, http://www.interno.it/mininterno/export/sites/default/it/sezioni/, in Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford.. Article 2 of the Agreement is worth quoting at length: "Italy and the "Great Socialist People's Libyan Arab Jamahiriya" undertake to organise maritime patrols using six ships made available on a temporary basis by Italy. Mixed crews shall be present on ships, made up of Libyan personnel and Italian police officers, who shall provide training, guidance and technical assistance on the use and handling of the ships. Surveillance, search and rescue operations shall be conducted in the departure and transit areas of vessels used to transport clandestine immigrants, both in Libyan territorial waters and in international waters, in compliance with the international conventions in force and in accordance with the operational arrangements to be decided by the two countries." Quoted in Hirsi Jamaa and Others v. Italy, App. No. 27765/09 Eur. Ct. H.R. (2012) and Itamar Mann, 'Dialectic of Transnationalism: Unauthorized Migration and Human Rights, 1993-2013' Harvard International Law Journal, p.54.

59 Senato della Repubblica, (2008), 281a Seduta pubblica resoconto sommario e stenografico, 26 February 2008, http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=15&id=298782, in Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford.

60 Treaty of Friendship, 31 August 2008, http://www.istitutospiov.it/sites/default/files/articolo/Trattato%20di%20Amicizia,%20Partenariato%20e%20Cooperazione%20tra%20la%20Repubblica%20Italiana%20e%20la%20Grande%20Giamahiria%20Araba%20%20Libica%20Popolare%20Socialista/testo_trattato_it_lib.pdf

61 Ministero degli Esteri, (2009) Dal Parlamento: Via libera definitiva del Senato alla ratifica ed

effects of colonisation, Italy pledged to pay US$5 billion over 25 years in infrastructural projects, in exchange for privileged access to resources, such as oil, and collaboration in the "fight against illegal immigration". Article 19 of the treaty specifically calls for the implementation of the December 2007 agreement (joint patrolling) as well as the realisation of a satellite surveillance system along Libya's Southern border.[62]

Italy's Prime Minister Silvio Berlusconi is greeted by Libya's leader Muammar Gaddafi in Benghazi August 30, 2008. Reuters.

On **4 February 2009** Italy and Libya signed an Additional Protocol to the December 2007 agreement, further specifying the modality of support and collaboration between Italy and Libya in the fight against illegal migration:

> "The two countries undertake to organise **maritime patrols with joint crews**, made up of equal numbers of Italian and Libyan personnel having equivalent experience and skills. The patrols shall be conducted in Libyan and international waters under the supervision of Libyan personnel and with participation by Italian crew members, and in Italian and international waters under the supervision of Italian personnel and with participation by the Libyan crew members. **Ownership of the ships offered by Italy**, within the meaning of Article 3 of the Agreement of 29 December 2007, **shall be definitively ceded to Libya**".[63]

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esecuzionedel Trattato Italia-Libia Esteri, 4 Febbraio 2009, http://www.esteri.it/MAE/IT/Approfondimenti/2009/02/20090204_DalParlamento_ViaLibera.htm

62 Natalino Ronzitti, The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New prospects for cooperation in the Mediterranean?', 2009, Documenti IAI, Instituto Affari Internazionali, http://www.iai.it/sites/default/files/iai0909.pdf Emanuela Paoletti, 'A Critical Analysis of Migration Policies in the Mediterranean: The Case of Italy, Libya and the EU', RAMSES Working Paper 12/09, April 2009, European Studies Centre, Oxford. Article 19 of the Treaty is worth quoting at length: "Collaborazione nella lotta al terrorismo, alla criminalità organizzata, al traffico di stupefacenti, all'immigrazione clandestina
1. Le due Parti intensificano la collaborazione in atto nella lotta al terrorismo, alla criminalità organizzata, al traffico di stupefacenti e all'immigrazione clandestina, in conformità a quanto previsto dall'Accordo firmato a Roma il 13/12/2000 e dalle successive intese tecniche, tra cui, in particolare, per quanto concerne la lotta all'immigrazione clandestina, i Protocolli di cooperazione firmati a Tripoli il 29 dicembre 2007.
2. Sempre in tema di lotta all'immigrazione clandestina, le due Parti promuovono la realizzazione di un sistema di controllo delle frontiere terrestri libiche, da affidare a società italiane in possesso delle necessarie competenze tecnologiche. Il governo italiano sosterrà il 50% dei costi, mentre per il restante 50% le due Parti chiederanno all'Unione Europea di farsene carico, tenuto conto delle intese a suo tempo intervenute tra la Grande Giamahiria e la Commissione Europea.
3. Le due Parti collaborano alla definizione di iniziative, sia bilaterali, sia in ambito regionale, per prevenire il fenomeno dell'immigrazione clandestina nei Paesi di origine dei flussi migratori."

63 Additional Protocol to the December 2007 agreement between Italy and Libya, 4 February 2009. Quoted in Hirsi Jamaa and Others v. Italy, App. No. 27765/09 Eur. Ct. H.R. (2012) and Itamar Mann, 'Dialectic of Transnationalism: Unauthorized Migration and Human Rights, 1993-2013' *Harvard*

At a ceremony in the Italian port of Gaeta on the 15 May 2009, Interior Minister Roberto Maroni presented Libya with three patrol boats.

The promised patrol vessels were handed over to Libyan officials in May 2009,[64] which is also when the joint patrols began, inaugurating the practice of *direct refoulement* on the high seas. This practice resulted in the "Hirsi" incident and other instances of pushbacks which led to the return of 834 migrants back to Libya. While repeatedly condemned by human rights organisations which argued these pushbacks constituted violations of international law and denounced the inhuman conditions migrants faced in Libya,[65] together, these measures resulted in a dramatic drop in crossings from Libya. Italy hailed the joint patrolling of the Strait of Sicily as a great achievement of its diplomacy,[66] while Frontex pointed to the availability of Libya to "accept the repatriation of illegal migrants" as one of the factors that more than others had strengthened "the deterrent effect of joint operations" in the region.[67]

We can thus see a steady progression between 2000 and 2009, in terms of cooperation between Italy, the EU, and Libya, with Italy taking a leading role in implementing the externalisation of border control in Libya and in the Mediterranean Sea. Through diplomacy, funding, and the handing over of equipment, Italy could outsource the control of its external border. The results across different levels of cooperation were significant: thousands of migrants were expelled on repatriation flights from Italy to Libya, as well as from Libya to third countries, at least six detention camps for migrants in Libya were built with Italian funds, several

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International Law Journal, p.54.

64 BBC News, 'Libya given migrant patrol boats', 15 May 2009, http://news.bbc.co.uk/2/hi/europe/8051557.stm

65 Amnesty International, 'Libya/Italy: Bilateral cooperation should not be at the price of human rights', (Index: MDE 19/017/2010), 27 August 2010, https://www.amnesty.org/en/documents/MDE19/017/2010/en/; Amnesty International, 'Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta; (Index: REG 01/004/2010) 14 December 2010, https://www.amnesty.org/en/documents/REG01/004/2010/en/; Human Rights Watch, Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers, 21 September 2009, https://www.hrw.org/report/2009/09/21/pushed-back-pushed-around/italys-forced-return-boat-migrants-and-asylum-seekers

66 Ministero dell'Interno. 2011. *Relazione sull'attività delle Forze di polizia e sullo stato dell'ordine e della sicurezza pubblica e sulla criminalità organizzata (anno 2009)*. Roma: Senato della Repubblica, Camera dei Deputati, in Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

67 Frontex. 2010. *Annual Risk Analysis*, Warsaw, quoted in Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

millions of Euros were spent on providing specialised equipment to aid Libyan patrols of sea – including at least six patrol vessels from Italy received during this period - and land borders, the training of police, and the sharing of intelligence on smuggling networks.[68] Through these concrete measures, Italy, despite keeping a preponderant role in the design and implementation of the overall strategy, thus put the burden of control on Libya. As the *territorial refoulement* of migrants from Italy to Libya by means of repatriation flights between 2004-5 was met with overwhelming criticism from the human rights community, Italy shifted to a practice of *direct refoulement* on the high seas. As is the case today, this 2009 policy of containment was implemented in full knowledge of the grave violations that migrants faced in Libya, as argued by the ECtHR in its *Hirsi* judgement.[69] Regardless of the human cost of these policies, by the eve of the Arab uprisings, after years of diplomacy, Italy seemed to have found the formula to effectively control migrant flows via Libya. However, soon after Italian and EU policy makers celebrated their victory, this policy of externalisation collapsed.

2011-2015: THE CRISIS OF EXTERNALISATION AND A NEW PHASE OF TURBULENCE AT THE MARITIME FRONTIER

Just as it seemed to have definitely succeeded, the policy of externalisation of border control led by Italy and the EU in Libya was undermined by three major processes: (i) the fall of the North African regimes that had implemented Italy and the EU's policies of externalisation and the continued weakness of the post-Gaddafi government; (ii) the destruction during the 2011 revolution and military intervention in Libya of the equipment that had allowed Libya to control its borders; and (iii) the ECtHR's Hirsi judgement that condemned Italy's push-back policy.

The downfall of Europe's gate keepers

First of all, the Arab uprisings led to the **fall of the two regimes** that had functioned as the pillars of Italy and the EU's policies of externalisation in the central Mediterranean: the Ben Ali regime in Tunisia, and the Gaddafi regime in Libya.[70] As NATO started a military intervention against the Libyan regime, Gaddafi threatened to "open the gates" and started to use sub-Saharan migrants as weapons of war, rounding them up and sending them off across the sea.[71] After he was killed, on 20 October 2011, the weak and fragmented political landscape in Libya – which has since disintegrated as a unitary

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68 For specifics on camps and patrol boats, see: Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

69 Hirsi Jamaa and Others v. Italy, App. No. 27765/09 Eur. Ct. H.R. (2012), p. 37: "Relying on these conclusions and the obligations on States under Article 3, the Court considers that by transferring the applicants to Libya, the Italian authorities, in full knowledge of the facts, exposed them to treatment proscribed by the Convention."

70 For background concerning these shifts, see our reports and articles. Charles Heller and Lorenzo Pezzani, 'The Left-To-Die Boat Case', April 2012, https://www.forensic-architecture.org/case/left-die-boat/; Charles Heller and Lorenzo Pezzani, 'Ebbing and Flowing: The EU's Shifting Practices of (Non-) Assistance and Bordering in a Time of Crisis', January 2016, http://nearfutureonline.org/ebbing-and-flowing-the-eus-shifting-practices-of-non-assistance-and-bordering-in-a-time-of-crisis/; Charles Heller and Lorenzo Pezzani, 'Death by Rescue: The Lethal Effects of the EU's Policies of Non-assistance', April 2016, https://deathbyrescue.org/

71 Gaddafi had warned the EU on two occasions that he would cease all cooperation with European

state - has been a major obstacle to the re-imposition of externalised border control.

Italy and the EU did manage to quickly re-establish readmission and other cooperation agreements with the transitional government in Tunisia, which led to a rapid drop in crossings by Tunisian nationals, as migrants were intercepted again by the Tunisian state apparatus - which was left largely intact despite the revolution, and were being swiftly deported back if they succeeded in slipping through.[72] In Libya, Italy and the EU lost no time either: in **April 2012 Italy signed a Memorandum of Understanding** which provided for the exchange of liaison officers, a readmission agreement, training activities for the Libyan police and the recovery of detention centres.[73] In parallel, the EU's border assistance **EUBAM Libya** operation was launched on the **22 May 2013**.[74] However, since 2011, **the lack of a unitary government capable of exerting effective control over Libyan territory and effectively implementing a unitary strategy has meant that, until very recently, Italy and the EU have been unable to re-impose their policies of externalisation in Libya**.[75]

After the interim National Transitional Council (NTC) declared that the country had been liberated in October 2011, elections were held in July 2012 to form a General National Congress (GNC). However, the country remained highly divided between factions vying for power, and following increasing violence spreading across the country as of 2013, Libya descended into full civil war in 2014. **Since the summer of 2014, political power has been mainly split between two rival governments**: the Government of National Accord (GNA), which is based in Tripoli and led by Prime Minister al-Sarraj; and the House of Representatives based in Tobruk under the control of general Khalifa Haftar.[76] On the ground, several types of actors vie for power: armed militias, "city-states", and tribes.[77] It is revealing of this deeply fragmented and volatile context that

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states in attempts to control migration should these states continue their support of the rebellion against his regime. Gaddafi first announced this intention to European representatives in Tripoli on 17 of February 2011. Later he reasserted that Europe would be invaded by thousands of people if he were to lose power. See "Libya threatens to stop help on illegal EU immigration", 21 February 2011, http://www.eubusiness.com/news-eu/libya-unrest.8p5/ and "Kadhafi: "J'en appelle à la France", Le Journal de Dimanche, 6 March 2011, http://www.lejdd.fr/International/Afrique/Actualite/Exclusif-L-interview-integrale-accordee-par-Mouammar-Kadhafi-au-JDD-278745/

72 Campesi summarises: "The Government of Italy reached initial informal agreements for cooperation on border control with the Tunisian transitional government by April 2011, which they later consolidated in March 2012 with the signing of a memorandum of understanding. The aims of these agreements were the repatriation of the Tunisians arriving on Italian soil and the rapid recovery of police cooperation, with the providing of technical equipment and training to the Tunisian National Guard". Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

73 Giuseppe Campesi, 'Italy and the Militarization of Euro-Mediterranean Border Control Policies', in Borroughs Elaine, Williams Kira (eds.), 2018, *Contemporary Boat Migration: Data, Geopolitics and Discourses*. London: Rowman & Littlefield.

74 Council of the European Union, European External Action Service, *EUBAM Libya Initial Mapping Report Executive Summary,* Brussels, 18 January 2017, http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf

75 Claudia Gazzini, 'Libya: no political deal yet', International Crisis Group, 11 May 2017, https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libya-no-political-deal-yet

76 Mattia Toaldo and Mary Fitzgerald for European Council on Foreign Relations, 'A Quick Guide to Libya's Main Players', 15 Jun 2016. http://www.ecfr.eu/mena/mapping_libya_conflict

77 Mattia Toaldo and Mary Fitzgerald for European Council on Foreign Relations, 'A Quick Guide to

on 25 January 2017, the EUBAM Libya delegation reported to the European External Action Service that **"due to the absence of a functioning national Government, genuine and legitimate state structures are difficult to identify in particular, given the dynamic and ever changing landscape of loyalties"**.[78]
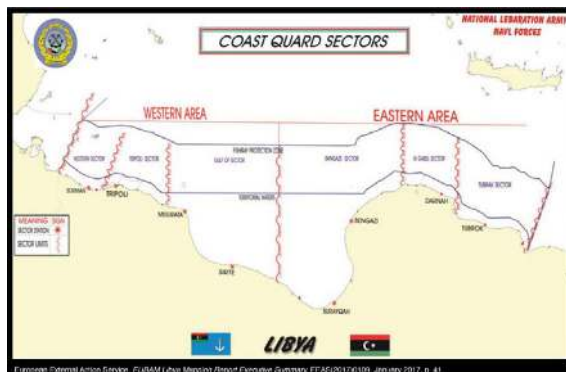
Map of Libyan Coast Guard sectors.[79]

This fragmentation has also affected the LYCG. The LYCG – formally known as the Libyan Coast Guard and Port Security, is part of the Libyan Navy, officially within the Ministry of Defence.[80] However, as a UN Panel of experts has underlined in June 2017 **"neither the coastguard nor the navy has been notified to the Committee [established pursuant to resolution 1970 (2011) concerning Libya] as part of the security forces under the control of the Government of National Accord"**.[81] Furthermore, while the LYCG is technically made up of six sectors which should be coordinated by the national command located in Tripoli, in practice, since 2011, the **LYCG command in Tripoli has little control over the different sectors**, all of which, as we will see in more detail further on, have progressively been **infiltrated to different degrees by militias**. The division of the country into two competing governments also effects the LYCG, since after 2014, the units in the Eastern area report to the Parliament based in Tobruq and thus do not fall under the LYCG command in Tripoli.

Libya's Main Players', 15 Jun 2016. http://www.ecfr.eu/mena/mapping_libya_conflict

78   Council of the European Union, European External Action Service, *EUBAM Libya Initial Mapping Report Executive Summary,* Brussels, 18 January 2017, p. 2. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf

79   Council of the European Union, European External Action Service, *EUBAM Libya Initial Mapping Report Executive Summary,* Brussels, 18 January 2017, p. 2. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf

80   Council of the European Union, European External Action Service, EUBAM Libya Initial Mapping Report Executive Summary, Brussels, 18 January 2017, p. 40. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf. As summarized by EUBAM-Libya's report, the LYCG is responsible for exercising the sovereignty and law enforcement within Libyan waters, with duties including "surveillance of the national waters, controlling and combating any illegal activities at sea (smuggling, illegal migration, pollution, fishing, etc.), Search and Rescue (SAR), as well as relations and cooperation with other national and international agencies." Council of the European Union, European External Action Service, EUBAM Libya Initial Mapping Report Executive Summary, Brussels, 18 January 2017, p.40. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf

81   UN report by Panel of Experts on Libya published 1 June 2017, para 152. http://undocs.org/S/2017/466

Destroyed border control equipment

Furthermore, the strategy of externalisation in Libya faced a **second** issue: much of **the equipment that had been handed to Libya for it to implement externalised border control had been damaged or destroyed** during the 2011 war. LYCG vessels were involved in combat against NATO forces and targeted by them as enemy naval assets.[82] Italian technicians, part of the Italian customs police (Guardia di Finanza) visited the port in Tripoli between the 19 and 21 November 2012 to assess the condition of the remaining four patrol vessels out of those that had been given by Italy to Libya, and found them in need of important maintenance, for which they would be subsequently sent to Italy and Tunisia where they were kept until 2017.[83] The LYCG's Operations Room in Tripoli had its communication and radar equipment destroyed during the revolution, which has meant that as recently as February 2018, as acknowledged in a EUNAVFOR MED monitoring report, *"in the Operations Rooms ashore, the lack of effective and reliable communication systems **hampers Libyan capacity for the minimum level of execution of command and control**, including that necessary to coordinate SAR/SO-LAS events".*[84] As such, even if Italy and the EU had succeeded in mustering renewed support from the weak and fragmented political actors in Libya, **the post-Gaddafi body of the LYCG no longer possessed the operational means to implement the externalised border control policy** that had been established until then.

A sunken Libyan Navy vessel in Tripoli harbour, 2012.[85]

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82   For example, during the evening of 28 March 2011, a U.S. Navy P-3C Maritime Patrol aircraft, a U.S. Air Force A-10 Thunderbolt attack aircraft and the guided-missile destroyer USS Barry (DDG-52) engaged the Libyan Coast Guard vessel Vittoria and two smaller crafts, which were firing indiscriminately at merchant vessels in the port of Misrata. See Joint Task Force Odyssey Dawn Public Affairs, "US Navy P-3C, USAF A-10 and USS Barry Engage Libyan Vessels", 29 March 2011, http://www.africom.mil/getArticle.asp?art=6347&lang=0

83   Italian Senate, Documento XXXVIII - Relazione sull'attività delle Forze di polizia, sullo stato dell'ordine e della sicurezza pubblica e sulla criminalità organizzata. XXXVIII, n. 1 - TOMO II - Rel attività Forze di polizia, stato ordine e criminalità organizzata, anno 2012, http://www.senato.it/service/PDF/PDFServer/DF/301487.pdf. Council of the European Union, European External Action Service, EUBAM Libya Initial Mapping Report Executive Summary, Brussels, 18 January 2017, p. 43. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf. See also Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.14.

84   EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p. 26.
     85   Ingilizce Haberler, 'Libya asks Turkish Navy's cooperation after months of civil war', Turkishny, 1 June 2012, http://www.turkishny.com/english-news/5-english-news/76616-libya-asks-turkish-navys-cooperation-after-months-of-civil-war

With limited assets, dysfunctional communication and remote sensing equipment and institutionally weak, the LYCG appears to have been barely functional until 2016. Furthermore, intercepting migrants does not seem to have been the LYCG's priority – since the country faced many other pressing issues, as underlined by the Spokesperson of the LYCG. While no complete data for interceptions by the LYCG between 2011 and 2015 has been made available to us, according to a EUNAVFOR MED report the LYCG intercepted only 800 migrants over 2015,[86] an extremely low share of 0.5% of the 153,143 people who were either rescued or intercepted that year. The near-inexistent operational capacity of the LYCG until the end of 2015 also emerges from interviews with rescue NGOs and the Italian coast guard, who observed that over this time, interceptions were limited and the LYCG were infrequently called upon by their Italian counterparts to operate "rescue". In fact, Italian Interior Minister recalls that prior to 2017**, "when we said we had to relaunch the Libyan coastguard, it seemed like a daydream".[87]**

The Hirsi judgement: finding direct refoulement on the high seas illegal

Third and finally, the push-back policy received a decisive blow on the **23 February 2012** when the ECtHR passed its judgement in *Hirsi*.[88] In this judgement, the court found that even though the migrants had been intercepted on the high seas, because the vessel that intercepted them was Italian, Italy had exercised "effective control" over the migrants, and as a result the latter were under Italian jurisdiction.[89] Italy, the court argued, had violated the principle of *non-refoulement* by sending intercepted migrants back to a country in which their lives would be at risk. **This judgement was thus another crucial reason for the discontinuation of the policy of *direct refoulement* on the high seas.**

Italy and the EU's (failed) attempts to re-impose migration control before and after Libya

The 2011 fall of the North African regimes that operated as Europe's deputy border guards as well as the banning of the pushback practices resulting from that cooperation allowed migrants to cross the central Mediterranean in greater numbers again. In order to stem arrivals, Italian and EU authorities tried out successive strategies, which, because of the near disintegration of the Libyan state, had to mostly intervene in the countries and areas around Libya.[90] This meant that

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86 EUNAVFOR MED Op SOPHIA - Six Monthly Report 1 June - 30 November 2017, 22 December 2017, p.3. We should note that while the data collected by Mark Micallef appears to indicate a slightly higher number of interceptions over that time, these remained very low. 'The Human Conveyor Belt: trends in human trafficking and smuggling in post-revolution Libya', March 2017, The Global Initiative Against Transnational Organized Crime, p.49, http://globalinitiative.net/wp-content/uploads/2017/03/global-initiative-human-conveyor-belt-human-smuggling-in-libya-march-2017.pdf

87 Politico, 'Italy's Libyan 'vision' pays off as migrant flows drop', 10 August 2017. https://www.politico.eu/article/italy-libya-vision-migrant-flows-drop-mediterranean-sea/

88 *Hirsi Jamaa and Others v* Italy (27765/09), European Court of Human Rights, Grand Chamber, Judgment, Strasbourg, 23 February 2012, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-109231%22]}

89 Mariagiulia Giuffré, 'Watered-down Rights on the High Seas: Hirsi Jamaa and Others v Italy',2012, *International and Comparative Law Quarterly,* 61(3).

90 "No one was really convinced that a real operation could be carried out in Libya. The idea was to intervene in neighbouring countries, since the mainstream understanding was that Libya was

efforts focused mainly on instituting successive rings of control *before* **Libyan territory – along the desert routes originating in Sub-Saharan Africa – as well as** *after* **Libya – on the high seas beyond Libyan territorial waters.[91] While we have analysed these policy shifts that unfolded between 2011 and 2016 in our previous reports, it is useful to outline them briefly here since their failure to stem crossings provides the context for the current shift towards a new wave of policies of externalisation in Libya and the practice of refoulement by proxy.**

The first responses targeted the maritime frontier, where a number of operations and strategies were deployed to stem arrivals. Italy and the EU resorted to what we have elsewhere referred to as ***practices of non-assistance*** - the abstaining from rescue by state vessels deployed at sea epitomised by the 2011 "left-to-die boat case".[92] As these practices came under strong criticism, and in the wake of the 3 October 2013 shipwreck near Lampedusa and the public outcry it caused, Italy did attempt to break with its reluctance to carry out rescue between 2013-2014 by launching the humanitarian and security **"Mare Nostrum"** operation, that deployed Italian warships close to the Libyan coast with the priority of saving lives at sea.[93] The operation however was blamed by Italian and by EU politicians as a "pull factor" for people to cross the Mediterranean. As a result, Mare Nostrum was terminated, and replaced by the more limited Frontex border control operation called **"Triton"**.[94] As we have demonstrated in our *Death by Rescue* report, through this policy shift, Italy and the EU operated a veritable ***policy of non-assistance*** through which they aimed to deter migrants.[95]

After the lethal consequences of this policy of retreat were revealed – and tragically exemplified by the 12 and 18 April 2015 shipwrecks which cost the lives of more than 1,200 people, rescue NGOs attempted to fill this gap in rescue, while Italy and the EU redeployed their operations at sea through several anti-smuggling and border control operations, but in a way that prioritised the security aims over that of rescuing migrants in distress. The Italian Navy launched the **"Mare Sicuro"** operation on **12 of March 2015,**[96] and the EU launched a novel **anti-smuggling military operation** on **22, June 2015**: **EUNAVFOR MED**.[97] Through these operations, **European and Italian military**

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structurally unstable, and so all efforts would end up wasted," Minniti was quoted as saying in Politico, 'Italy's Libyan 'vision' pays off as migrant flows drop', 10 August 2017, https://www.politico.eu/article/italy-libya-vision-migrant-flows-drop-mediterranean-sea/

91 These policy shifts and their human consequences have been analysed in detail in our previous articles and reports, see in particular Charles Heller and Lorenzo Pezzani, 'Ebbing and Flowing: The EU's Shifting Practices of (Non-) Assistance and Bordering in a Time of Crisis', January 2016, http://nearfutureonline.org/ebbing-and-flowing-the-eus-shifting-practices-of-non-assistance-and-bordering-in-a-time-of-crisis/

92 Charles Heller and Lorenzo Pezzani, 'The Left-To-Die Boat Case', April 2012, https://www.forensic-architecture.org/case/left-die-boat/
93 See ANSAmed, 'Immigration: Italy launches Mare Nostrum, 400 more saved', 15 October 2013, http://www.ansamed.info/ansamed/en/news/sections/generalnews/2013/10/15/Immigration-Italy-launches-Mare-Nostrum-400-saved_9466386.html

94 Charles Heller and Lorenzo Pezzani, 'Death by Rescue: The Lethal Effects of the EU's Policies of Non-Assistance', 18 April 2016, https://deathbyrescue.org/

95 Charles Heller and Lorenzo Pezzani, 'Death by Rescue: The Lethal Effects of the EU's Policies of Non-Assistance', 18 April 2016, https://deathbyrescue.org/

96 Ministero Della Difesa, 'Operazione Mare Sicuro (OMS)', http://www.marina.difesa.it/cosa-facciamo/operazioni-in-corso/Pagine/MareSicuro.aspx

97 Depending on operational phases, EUNAVFOR MED has deployed close to the Libyan coast five to nine ships belonging to twenty-two different countries on a rotational basis. Press Release 01/05

and policing missions came to constitute once again a significant naval presence off the coast of Libya, that, as we shall see later, would prove essential to the implementation of the cooperation agreements with the LYCG.
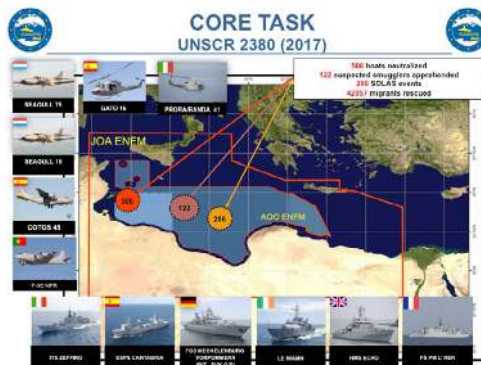
Power point slide showing EUNAVFOR MED's operational zone and deployed assets,
Shade Med briefing, Rome, 23 November 2017.

The other main area of intervention aimed at stemming arrivals on Italian shores, was the re-imposition of **policies of externalization** to contain migrants *before* they could even enter Libya. Italy took on a leading role in this respect, in particular through the so-called **"Khartoum Process",** which had already been initiated through a high-level meeting between the EU and 28 African states in **November 2014** and was dedicated to managing the movements of migrants coming from the Horn of Africa.[98] This process was further consolidated at the EU's **Valleta Summit** in **November 2015**, which resulted in the creation of the **EU Trust Fund for Africa** (EUTF)**,** through which the EU could channel funding to origin and transit countries to stem illegalised migration.[99] The EUTF would prove a crucial mechanism to fund the EU's projects in Libya over 2016-7.

This new wave of externalisation achieved its first tangible results in terms of stemming crossings into the EU in response to the increasing arrivals across the Aegean over 2015, when more than 800,000 people landed on Greek shores. The crisis that these arrivals caused for EU member states led them to negotiate an **EU-Turkey "deal"** on **18 March 2016**, which has at its operational core Turkey agreeing to take back all illegalised migrants arriving on Greek shores after the 20 March 2016. Following this agreement, the implementation of new border control operations in the Aegean

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"EUNAVFOR MED Force Fully Operational", European Union External Action, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/press-releases/20150728_en.htm and "European Union Naval Force – Mediterranean Operation Sophia", European Union External Action, http://www.eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf. European External Action Service (EEAS), EUNAVFOR MED Op SOPHIA - Six Monthly Report 22 June - 31 December 2015, 28 January 2016, p.11. Released by WikiLeaks https://wikileaks.ch/eu-military-refugees/EEAS/EEAS-2016-126.pdf

98 Khartoum Process, 'Milestones', 2016, European Union and International Centre for Migration Policy Development (ICMPD), https://www.khartoumprocess.net/about/milestones. For a critical discussion see Statewatch, "The 'Khartoum Process': beefing up borders in east Africa", 7 October 2015, http://www.statewatch.org/news/2015/oct/khartoum-process.htm
and ARCI, 'Diplomatie italienne avec l'Erythrée : sur le dos des migrants ?', *Mediapart,* 12 August 2015, https://blogs.mediapart.fr/migreurop/blog/120815/diplomatie-italienne-avec-lerythree-sur-le-dos-des-migrants

99 European Council, 'Sommet de La Valette sur la migration, 11-12/11/2015', November 2015, http://www.consilium.europa.eu/fr/meetings/international-summit/2015/11/11-12/

Sea and the blocking of the possibilities of onward movements for who succeeded in arriving on Greek shores, the migrants' crossings of the Aegean dramatically dropped.[100]
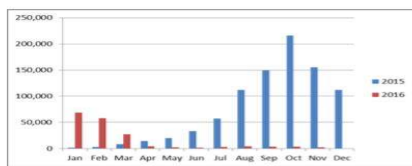

Figure 1. Arrivals Eastern Mediterranean 2015-2016 (Source: Frontex – data up to November 2016)
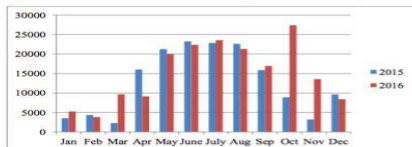
Figure 2. Arrivals Central Mediterranean 2015-2016 (Source: Italian Ministry of Interior - Total 2015: 153,842 Total 2016: 181,436)

Arrivals in the Eastern and Central Mediterranean compared in a communication by the EU Commission and the High Representative in January 2017.[101]

The impact of the EU-Turkey deal importantly seemed to show the path to follow to stem crossings, and became a model the EU sought to replicate elsewhere.[102] After the sealing of the Aegean route, policymakers - with renewed confidence in policies of externalisation - returned their attention to the Central Mediterranean, which saw increasing crossings in 2016 and became again the main maritime entry point to Europe for illegalised migrants.[103] The pressure to seal off the central Mediterranean route increased in parallel to a deepening political crisis in Europe, with the rise of the far-right, the crisis of Schengen and events like Brexit in the headlines.

Taking stock of the failure of the policies adopted since 2011 to deter migrants from crossings in the central Mediterranean and considering the success of the EU-Turkey deal, the only solution appeared to be to re-engage substantially with all actors in Libya in order to re-impose the multilevel policy of containment that had proven effective in the past. Engaging again with what was left of the Libyan coast guard – ill-equipped, as fragmented as the Libyan political landscape and partly operated by militias – would be central to this policy. But, as *direct refoulement* on the high seas had been condemned as illegal by the European Court of Human Rights in 2012, Italy and the EU would need to adopt a new strategy of *refoulement by proxy.* In this, Italy and the EU's strategy in Libya corresponds to a broad trend which has been well identified by Violeta Moreno-Lax and Mariagiulia Giuffré: following the crisis of policies of deterrence, we are seeing the return to

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100 Maria Giulia Giuffre, 'From Turkey to Libya: The EU Migration Partnership from Bad to Worse', Eurojust, 20 March 2017, http://rivista.eurojus.it/from-turkey-to-libya-the-eu-migration-partnership-from-bad-to-worse/

101 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, The European Council and the Council, 'Migration on the Central Mediterranean route: Managing flows, saving lives', Brussels, 25.1.2017 JOIN(2017) 4 final, 25 January 2017, p.4, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf

102 Maria Giulia Giuffre, From Turkey to Libya: The EU Migration Partnership from Bad to Worse Eurojust, 20 March 2017, http://rivista.eurojus.it/from-turkey-to-libya-the-eu-migration-partnership-from-bad-to-worse/

103 Summarizing the trends observed over 2016 in its 2017 Annual Risk Analysis report, Frontex noted that: "the Central Mediterranean saw the highest number of migrant arrivals ever recorded from sub-Sahara, West Africa and the Horn of Africa (181,459 migrants, an increase of 18% compared with 2015). Frontex, 'Risk Analysis for 2017', https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf

strategies of outright containment but with a *"deputational twist"*, "consisting in the inducement by countries of destination of countries of transit, so that the latter exert the necessary control in the former's stead and/or for their benefit".[104] In the process, the aim is "to eliminate any physical contact" between migrants and the authorities of would-be destination States, so as to "sever any jurisdictional link with EU countries, in an attempt to elude any concomitant responsibility". [105]

2016-2017: MARE CLAUSUM: RE-IMPOSING EXTERNALISATION IN LIBYA, CLOSING OFF THE CENTRAL MEDITERRANEAN

To close off the central Mediterranean route, drastic new measures would be needed. As in the past, they would be articulated as **a multilevel policy of containment** spreading across land and sea through successive rings of border control, detention and deportation. **At the maritime frontier, we can see a two-pronged strategy at play: on the one hand the delegitimisation, criminalisation and ultimately ousting of rescue NGOs; on the other, the stepping up the collaboration with the LYCG so as to enable and direct them to intercept and pull back migrants more effectively.** As we will see clearly in the patterns section, both these dimensions are operationally linked, since for the LYCG to intercept migrants effectively, the same migrants should not be rescued by NGOs before they are caught. **This undeclared operation is what we refer to as *Mare Clausum*.** While in our report "Blaming the Rescuers", released in June 2017,[106] we have analysed in detail the targeting of rescue NGOs, here we focus instead on the second aspect of this strategy. **We show that through policy agreements and multiform support to the LYCG, Italy and the EU have come to exercise both strategic and operational control over the LYCG. In this way, the LYCG has been made to operate *refoulement by proxy* on behalf of Italy and the EU.**

A militia-infiltrated Libyan coast guard to re-establish and coordinate

As documented above, it had proven extremely challenging for Italy and the EU to re-engage with the LYCG following the fall of the Gaddafi regime. From 2011 to 2016, the LYCG was extremely weak operationally, **due to the lack of functioning assets and equipment, as well as institutional weakness.** Furthermore, **by the time Italy and the EU sought to engage with the LYCG, it had come to integrate volatile militias involved in criminal activities**, a phenomenon which has affected all governmental institutions in post-Gaddafi Libya. As long-term Libya researchers Mark Micallef and Tuesday Rietano, summarises, "Libya lacks a central government with sufficient control over the security apparatus, or the capacity and reach to govern its borders. (...) Security – including the functions of the national military, police, coastguard

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104 Violeta Moreno-Lax and Mariagiulia Giuffré, The Rise of Consensual Containment: From 'Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows, 31 July 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331, 3.
105 Violeta Moreno-Lax and Mariagiulia Giuffré, The Rise of Consensual Containment: From 'Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows, 31 July 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331, 3.

106 Charles Heller and Lorenzo Pezzani, 'Blaming the Rescuers', June 2017, https://blamingtherescuers.org/

and customs – is provided by an ever-changing spectrum of politically allied militia groups".[107] The involvement of militias within post-Gaddafi state institutions has been a means to attempt to co-opt militias in the aim of regaining control over them, and the Libyan territory. [108] Militias however continue to maintain significant autonomy even within state institutions, and continue to be involved in the illicit activities that have emerged within Libya's war economy. According to Amnesty International, this process did not immediately affect the LYCG, "as it had not historically been perceived as prestigious or lucrative; instead, most of the militias sought to gain control of strategic locations on land, including the airports, which had the benefit of facilitating control of the smuggling".[109] However, once large-scale migration movement gained momentum as of summer 2013, "militia members turned their attention to the control of the coast".[110]

While according to Mark Micallef, militias came to be involved to different degrees in all sectors of the LYCG, including Tripoli, this has reached a particularly high level in Zawiya, as detailed in a UN report by the **Panel of Experts on Libya published** 1 June 2017, documenting trends over several years.[111] The UN **Panel of Experts on Libya indicated that** Abd al-Rahman Milad, also known as "al-Bija", a notorious militia leader involved in a number of illicit activities "is the **head of the Zawiya branch of the coast guard**. He obtained this position thanks to the support of Mohammad Koshlaf and Walid Koshlaf. Both had leverage over the coast guard hierarchy, according to internal sources in the coast guard." [112] Al-Bija gained control over the best equipped unit on the Western coast, since, as Nancy Porsia has noted, it remained until the 2017 hand-over of patrol vessels to the Tripoli sector, the only one that still possessed several functioning small patrol vessels and rigid hulled inflatable boats (RHIBs).[113] As a result, as Micallef and Rietano note, up until summer 2017, al-Bija ran "the most successful maritime crew with the highest interception rate of migrant boats all coastguard units operating in western Libya." [114] We should note that despite the well-documented

107 Tuesday Reitano and Mark Micallef, 'The anti-human smuggling business and Libya's political end game', 18 December 2017, Institute for Security Studies, p. 5, https://issafrica.org/research/north-africa-report/the-anti-human-smuggling-business-and-libyas-political-end-game. See also F. Mangan and C. Murtaugh, 'Security and justice in post- revolution Libya: where to turn?', United States Institute of Peace, September 2014, https://www.usip.org/publications/2014/09/security-and-justice-post-revolution-libya

108 Hanspeter Mattes, "Rebuilding the national-security forces in Libya", *Middle East Policy Council*, 2014, www.mepc.org/rebuilding-national-security-forces-libya
109 Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, p. 34, https://www.amnesty.org/en/documents/mde19/7561/2017/en/
110 Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, p. 34, https://www.amnesty.org/en/documents/mde19/7561/2017/en/

111 UN report by Panel of Experts on Libya published 1 June 2017, p. 133. http://undocs.org/S/2017/466
112 UN report by Panel of Experts on Libya published 1 June 2017, p. 133. http://undocs.org/S/2017/466
113 Nancy Porsia, 'Human Smuggling from Libya Across the Sea, 2015-2016', June 2017, https://blamingtherescuers.org/assets/annexes/Porsia_Human_Smuggling_in_the_Central_Mediterranean.pdf
114 Tuesday Reitano and Mark Micallef, 'The anti-human smuggling business and Libya's political end game'18 December 2017, Institute for Security Studies, p. 5, https://issafrica.org/research/north-africa-report/the-anti-human-smuggling-business-and-libyas-political-end-game . See also F Mangan and C Murtaugh, Security and justice in post- revolution Libya: where to turn?, United States Institute of Peace, September 2014, https://www.usip.org/publications/2014/09/security-and-justice-post-revolution-libya

involvement in criminal activities of this sector, six members of the LYCG of Zawiya would be trained by EUNAVFOR MED as of 2016.[115]

What has also been extensively documented is the LYCG involvement in criminal activity and violent and dangerous behaviour. In particular, as a result of the incorporation of militias, the LYCG's intervention has simultaneously conflicted with and embedded within the smuggling business. While the LYGC has sought to demonstrate its effectiveness in intercepting migrants to tap into the opportunity for EU financial and political support, LYCG units such as those in Zawiya have also received payment by smugglers and militias to let boats pass, and officials may receive payment for the release from detention centres of intercepted migrants.[116] As a lieutenant in one of the militia group has told Mark Micallef in 2016: **'Right now, in Libya, you are either in the smuggling business or in the anti-smuggling business'**.[117] The ambivalent role played by Libyan officials in relation to smuggling is no secret and has been also documented by Frontex early on. While not referencing explicitly the LYCG, in its Biweekly report internally released on the 31 March 2016, Frontex noted that:

> "Gathered information suggests that **high ranking officers from different military branches are involved in the smuggling of irregular migrants** from the west coast of Libya towards Italy. The information collected suggests that military officers between the ranks of Lieutenant and General are involved at different stages of smuggling people from Libya to Italy. Moreover, information regarding the identification of law enforcement officers involved in the smuggling of migrants from Libya to Italy was also obtained during the interviews." [118]

At sea, the **LYCG has further performed interceptions using aggressive and dangerous behaviour, which have threatened both the lives of migrants and rescue NGOs**. The LYCG of Zawiya, is reported to have removed the engine of boats seeking to pass without payment, leaving the boats adrift.[119] The beating of migrants with ropes during interceptions is routine,[120] and several LYCG units have been implicated in

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115 EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, annex B.

116 See the long term research of Nancy Porsia's, who has contributed to several of our report, Mark Micallef's report "The Human Conveyor Belt" referred to throughout our report, Office of the United Nations High Commissioner for Human Rights, *"Detained and dehumanised" Report on human rights abuses against migrants in Libya, 13 December 2016* , p. 19-20, www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf*, and* Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, p. 34, https://www.amnesty.org/en/documents/mde19/7561/2017/en/ .

117 Tuesday Reitano and Mark Micallef, 'The anti-human smuggling business and Libya's political end game', 18 December 2017, Institute for Security Studies, p. 9, https://issafrica.org/research/north-africa-report/the-anti-human-smuggling-business-and-libyas-political-end-game

118 Frontex, JO EPN Triton, Biweekly Analytical Update, no 4, 14-27 Mar, 31 March 2016, p. 3. This same analysis is also included in Frontex, *Africa-Frontex Intelligence Community Joint Report 2016*, April 2017, p. 18. http://frontex.europa.eu/assets/Publications/Risk_Analysis/AFIC/AFIC_2016.pdf

119 Nancy Porsia, 'Human Smuggling from Libya Across the Sea, 2015-2016', June 2017, https://blamingtherescuers.org/assets/annexes/Porsia_Human_Smuggling_in_the_Central_Mediterranean.pdf

120 Bel Trew and Tom Kington, "Video shows Libyan coastguard whipping rescued migrants", *The Times*, 14 February 2017, https://www.thetimes.co.uk/article/video-shows-libyan-coast-guard-whipping-rescued-migrants-6d8g2jgz6. See also Nancy Porsia, "The kingpin of Libya's human trafficking mafia", *TRT World*, 22 February 2017, http://www.trtworld.com/magazine/the-kingpin-of-libyas-human-trafficking-mafia-301505

incidents with SAR NGOs over 2016 and 2017, as we will discuss in more detail in the next section.[121] While the LYCG units of Zawiya have often been singled out in relation to criminal activity and aggressive behaviour, the Tripoli units of the LYCG have been involved in many of the incidents that we documented for 2017.

Despite - and partly in response to – the fragmentation of the LYCG, its lack of equipment, criminal activity and violent behaviour, successive measures were taken by Italy and the EU as of 2016 to try to re-establish a functioning institution that could pick up the interceptions operated in the past. It is clear from the following policy measures that the paramount aim of Italy and the EU has been enabling them to step up interceptions once again, while ending their criminal activities and violent behaviour has not been a priority.

Italy and the EU's multiform support to the Libyan coast guard

The rationale for supporting the LYCG is clearly outlined in a joint EU Commission and High Representative document published on **25 January 2017**. It is worth quoting at length a passage that sets the tone for the developments to come over 2017**:**

> "To effectively cope with this current situation, part of the answer must lie in the Libyan authorities preventing smugglers from operating, and for the Libyan Coast Guard to have the capacity to better manage maritime border and ensure safe disembarkation on the Libyan coast. Of course, the Libyan authorities' effort must be supported by the EU and Member States notably through training, providing advice, capacity building and other means of support. Working together in their respective zones and within their respective mandates, Sophia and Triton could focus on anti-smuggling activities and support to search and rescue operations further out at sea and specialise in monitoring, alerting the Libyan authorities and combating traffickers. Recognising the central role that the Libyan Coast Guard should play in managing the situation, building its capacity is a priority, both in terms of capabilities and equipment needs." [122]

Considering that "Libya lies at the crossroads of the Central Mediterranean route and represents the departure point for 90% of those seeking to travel to Europe", the joint document proposed a multilevel strategy to **increase the support to the Libyan Coast Guard and Navy consisting in training, the provision of patrolling assets, assisting Libya in declaring a search and rescue area and establishing a Maritime Rescue**

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121 We have discussed incidents over 2016 in our 'Blaming the Rescuers' report. On 17 August 2016, MSF's vessel Bourbon Argos was attacked while it was located 24 nautical miles north of the Libyan coast. On 9 September 2016, the crew of a speedboat belonging to the NGO Sea-Eye was also arrested by the LCG after it entered territorial waters near Zawiya. Finally, on 21 October 2016, the LCG of Zawiya violently interrupted a rescue operation Sea-Watch was conducting 14.5 NM from the coast, boarding the overcrowded rubber boat and beating people, causing panic and a rupture in the boat. Over 150 people ended up in the water; of which Sea-Watch rescued 124 people and recovered four corpses.

122 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, The European Council and the Council, 'Migration on the Central Mediterranean route: Managing flows, saving lives', Brussels, 25.1.2017 JOIN(2017) 4 final https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf

**Coordination Centre. These are some of the main activities that would be imple-
mented by Italy as of 2016, and accelerated over 2017.**

EU training of the Libyan coast guard

Limited EU **training of the LYCG** had begun already in 2014 through the **EUBAM
Libya** mission,[123] but was stepped up in 2016. On **20 June 2016** the European Coun-
cil decided to launch a **new training program to be implemented by EUNAVFOR
MED**, which considers "a capable and well-resourced Libyan Coastguard who can […]
prevent irregular migration taking place from their shores" critical to its exit strategy.[124]
A couple of months after the signature of **Memorandum of Understanding** with the
Libyan authorities on the **23 August 2016,** training of the LYCG and Navy[125] began
for 78 trainees on board EUNAVFOR MED assets and with teams from UNHCR as well
as Frontex in charge of specific modules.[126] As of January 2018, 188 Libyan personnel
have undergone training.[127] According to EUNAVFOR MED's 2018 monitoring report of
the LYCG and Navy, while 81% of the personnel having received training are employed
in the Tripoli area, mainly as patrol boat crews, 18.5% of the personal trained belonged
to other sectors of the LYCG: Al Hamidiya, Abou Kammash, Gasr Garabulli, Misratah,
Sabratha and Zawiya. We should note that six members of the LYCG of Zawiya, which
as we have seen have been repeatedly involved in criminal activities, are recorded to
have been trained by EUNAVFOR MED.[128] While EU institutions' reiterated claims that
these training activities would have a "substantial focus on human rights and inter-
national law"[129] and would "enhance protection of and respect for human rights",[130]

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123 Council of the European Union, European External Action Service, *EUBAM Libya Initial Mapping
   Report Executive Summary,* Brussels, 18 January 2017, p. 42. http://statewatch.org/news/2017/feb/
   eu-eeas-libya-assessment-5616-17.pdf
124 European External Action Service (EEAS), *EUNAVFOR MED Op SOPHIA - Six Monthly Report 22
   June - 31 December 2015*, 28 January 2016, p.3. Released by Wikileaks https://wikileaks.ch/eu-mili-
   tary-refugees/EEAS/EEAS-2016-126.pdf
   125 European External Action Service (EEAS), 'Operation SOPHIA: signed the agreement on
   Libyan Coast Guard and Navy Training', 23 August 2016, http://eeas.europa.eu/archives/csdp/
   missions-and-operations/eunavfor-med/news/20160823_en.htm
126 European External Action Service (EEAS), *EUNAVFOR MED Op SOPHIA - Six Monthly Report 1st of
   January - 31 October 2016*, 30 November 2016, p.14. Released by Wikileaks https://wikileaks.ch/
   eu-military-refugees/EEAS/EEAS-2016-126.pdf
127 As of 21 August 2017, EUNAVFOR MED has further been assigned the task of monitoring the
   activities of the LYCG and Navy – a task which we should note implies a hierarchical power relation.
   Monitoring is considered as "an essential component of the Libyan maritime capacity building
   programme", by helping to "define future training requirements, and helps the LCG&N to define its
   equipment (including assets) shortfalls and requirements" (EUNAVFOR MED Op Sophia - Monitor-
   ing of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p.3). The
   monitoring task was assigned to EUNAVFOR MED by the Council Decision of July 2017 and agreed
   with the Libyan authorities within an additional Annex to the 2016 Memorandum of Understanding.
   See EUNAVFOR MED Op SOPHIA - Six Monthly Report 1 June - 30 November 2017, 22 December
   2017.
128 See EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017
   - January 2018, 9 March 2018, p.21. EUNAVFOR MED, *Operation SOPHIA: new training modules
   for the Libyan Coastguard and Navy arranged in Italy*, 18 September 2017, https://eeas.europa.eu/
   headquarters/headquarters-homepage/32315/node/32315_en
   129 European Union External Action, 'EUNAVFOR MED Operation Sophia starts training of Libyan
   Navy Coast Guard and Libyan Navy', 27 October 2016, https://eeas.europa.eu/node/13195_en
130 European Commission, 'Report from the Commission To the European Parliament, the European
   Council and the Council: Progress Report on the European Agenda on Migration', 15 November
   2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agen-
   da-migration/20171114_progress_report_on_the_european_agenda_on_migration_en.pdf

Frontex documents released following a FOIA request suggest that this is far from being their priority.[131] As we will show in relation to the Sea Watch vs LYCG incident, the training of the LYCG has not prevented the most dangerous and unprofessional behaviour.

2017: Italy takes the lead with full EU backing

Despite the training efforts in 2016, however, the results achieved by the LYCG in terms of interceptions remained limited until 2017. In fact, the training was received critically by the LYCG, with the Spokesman of the Libyan Navy, Brigadier-General Ayoub Qasims stating that "Libya's Navy and Coast Guard do not want training, we have training expertise, and we want the EU to provide technical equipment and to pay for the burden Libya has been shouldering for so long now".[132] Italy's increasing engagement over 2017 delivered beyond these expectations. As in the past, Italy's policies have been led in tandem with those of the EU, oscillating between mutual support, rivalry, and coaxing. Italy's efforts were deeply shaped by EU pressure and the prospect of national elections in March 2018. In this context, the appointment of **Marco Minniti as Italy's Interior Minister** on **12 December 2016** had a decisive impact. Minniti's role in the strengthening of the Italy-Libya collaboration cannot be overstated. As he himself stated, while most actors before him mainly sought to work around Libya, considering that working with Libya was too challenging, Minniti directly engaged with the situation in Libya, reaching tangible results.[133]

Italy-Libya Memorandum of Understanding

On the **2 February 2017**, Italy signed a **"Memorandum of Understanding"** with the National Reconciliation Government of Libya "on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security".[134] At its core, is the **aim of "stemming illegal migrants' flows"** ("arginare i flussi di migranti illegali") (article 1a). Within this frame, Italy committed to provide "support and financing to development programs in the regions affected by the illegal immigration phenomenon within different sectors", and "**to provide technical and technologic support to the Libyan institutions in charge of the fight against**

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131 Access Info Europe, 'Disclosed documents reveal that EU training of Libyan Coast Guard makes negligible reference to human rights protection', 30 November 2017, https://www.access-info.org/article/30058

132 'Navy spokesman: Operation Sophia is propaganda; Italy wants to have more time to continue stealing Libya's resources and smuggling its fuel', Libya Observer, 24 August 2016, https://www.marsad.ly/en/2016/08/24/navy-spokesman-operation-sophia-propaganda-italy-wants-time-continue-stealing-libyas-resources-smuggling-fuel/

133 "No one was really convinced that a real operation could be carried out in Libya. The idea was to intervene in neighbouring countries, since the mainstream understanding was that Libya was structurally unstable, and so all efforts would end up wasted," Minniti said. "When we said we had to relaunch the Libyan coastguard, it seemed like a daydream." in Politico, 'Italy's Libyan 'vision' pays off as migrant flows drop', 10 August 2017, https://www.politico.eu/article/italy-libya-vision-migrant-flows-drop-mediterranean-sea/

134 Memorandum of understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf. An English translation of the "Memorandum" is available here: https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf

illegal immigration, and that are represented by Defence Ministry border guard and the coast guard and Interior Ministry competent organs and departments" (Article 1b and c). Furthermore, the Memorandum contains commitments to complete the "land borders' control system of south Libya", foreseen by the 2008 Treaty of Friendship; financing detention centres; supporting international organizations operating in Libya "to continue the efforts aiming to return migrants to their countries of origin" (article 2).[135]

We should note how closely the Memorandum echoes the EU's 25 January 2017 Joint Communication in terms of multilevel measures of containment. In turn, these exact same measures were reiterated by the EU Council the very next day in the **Malta Declaration** adopted on **3 February 2017**.[136] "Determined to take additional action to **significantly reduce migratory flows along the Central Mediterranean route**", the members of the Council declared they would "**step up our work with Libya** as the main country of departure as well as with its North African and sub-Saharan neighbours". They further reiterated their support to Italy, stating that **"the EU welcomes and is ready to support Italy in its implementation of the Memorandum of Understanding signed on 2 February 2017 (...)**". We can thus see at this point considerable convergence between Italian and EU priorities. The Italian authorities would implement this agreement with strong EU support – including funding – in the following months.

Italian patrol boats for the Libyan coast guard

While as we have indicated, the limited assets available to the LYCG did not enable it to carry out interceptions effectively, between April and May 2017 Italy provided the Libyan navy and LYCG with "patrolling assets", namely four fast patrol boats, with a further six boats to be delivered in the following months.[137] These vessels had initially been donated by Italy to Libya during Gaddafi's rule, but were amongst the assets damaged by the 2011 military intervention and sent back to Italy or Tunisia to be repaired.[138] As Amnesty International has reported, the patrol boats were

135 The Memorandum further reaffirms the adherence of the parties to past agreements "including the Treaty of Friendship, Partnership and Cooperation signed in Benghazi on August 302008 (and in particular article 19 of the same Treaty), the Tripoli Declaration of January 21 2012 and other agreements and memorandums signed on the subject."
136Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017, www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/#
137 Italian Ministry of Interior, *Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica*, 21 April 2017, www.interno.gov.it/it/notizie/contro-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica; *Minniti in Libia: fronte comune contro il traffico di migranti*, 16 May 2017, www.interno.gov.it/it/notizie/minniti-libia-fronte-comune-contro-traffico-migranti. Three more patrol boats were handed over in February 2018, see http://www.ilsole24ore.com/art/mondo/2018-02-24/libia-e-niger-bilancio-dell-italia-e-l-eredita-il-prossimo-governo--212523.shtml?uuid=AEwxvQ6D&refresh_ce=1
138 Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, 37, "Migranti, Minniti: dieci motovedette alla Libia entro giugno", Euronews, 21 April 2017, it.euronews.com/2017/04/21/migranti-minniti-dieci-motovedette-alla-libia-entro-giugno; "Minniti ad Abu Sittah consegna altri due pattugliatori ai libici", Analisi difesa, 16 May 2017, www.analisidifesa.it/2017/05/minniti-ad-abu-sittah-consegna-altrui-due-pattugliatori-ai-libici/, Council of the European Union, European External Action Service, EUBAM Libya Initial Mapping Report Executive Summary, Brussels, 18 January 2017, p. 40-43. http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf; Ministero dell'Interno, "Minniti in Libia:

handed over to the LYCG in two ceremonies, the first in the port of Gaeta in Italy on 21 April 2017, the second in the port of Abu Sittah in Libya on 15 May 2017, during which Italian Minister of Interior Marco Minniti was present. Despite this happening only days after a widely publicised incident in which the LYCG violently interrupted a rescue operated by the NGO Sea Watch, intercepting the migrants under the threat of a gun and pulling them back to Libya, during the ceremony **Minniti praised the "motivation and resolve" of the patrol boats' crews, thus providing political legitimisation to the LYCG's violent behaviour that would only worsen in the following months**.[139]

Official Twitter account of the Italian embassy in Libya, showing the patrol vessels arriving in Tripoli, 5 May 2017;[140] Italian Interior Minister Marco Minniti in front of the *Ras Jadir* (648), 15 May 2017. Reuters, Ismail Zitouny.[141]

As described in an earlier chapter of this report, the Bigliani class patrol boats offer considerable capacity and continued to operate the most missions over the following period (approximately 75%)[142] since they are fit to operate in rough seas. The delivery of additional capacity assets to Tripoli has significantly shifted the balance of LYCG activity towards the Tripoli sector. As we will see in the patterns section, these were involved in a number of cases of pull-back.
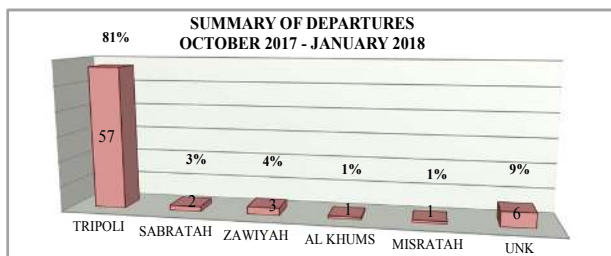
Summary of Libyan coast guard patrolling missions by sector, October – January 2017. EUNAVFOR MED, 2018.[143]

fronte comune contro il traffico di migranti", 18 May 2017, http://www.interno.gov.it/it/notizie/minniti-libia-fronte-comune-contro-traffico-migranti

139 "Min #Minniti to the patrol boats crews: impressed by your motivation and resolve. We trust you efforts and professionalism. #Libya", Twitter, 15 May 2017, https://twitter.com/ItalyinLibya/status/864131903602995201 quoted in Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/ , p.37.

140 https://twitter.com/ItalyinLibya/status/860452910517415937

141 Aidan Lewis and Steve Scherer, 'Italy tries to bolster Libyan coast guard, despite humanitarian concern', Reuters, 15 May 2017, https://uk.reuters.com/article/uk-europe-migrants-libya/italy-tries-to-bolster-libyan-coast-guard-despite-humanitarian-concern-idUKKCN18B2EN

142 EUNVAFOR MED notes that during this reporting period October 2017 to January 2018 "approximately 75% of LCG&N missions operated with "Bigliani class" patrol boats". EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p. 5.

143 EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p. 11.

Tallinn: EU political support and funding for Italy's Mare Clausum operation

Despite the application of new measures, crossings continued unabated over the spring and into the summer of 2017. On **22-23 June 2017** the European Council highlighted that **"training and equipping the Libyan Coast Guard is a key component of the EU approach and should be speeded up"**.[144] On **30 June 2017**, the **Italian Minister of Interior sounded the alarm** in a letter addressed to the President of the Council of Ministers, the Estonian Minister of Interior and to the Commissioner for Migration and Home Affairs, alerting them that the situation in Italy would soon no longer be sustainable.[145] Italy further warned that their infrastructure was reaching breaking point and threatened to divert vessels of other countries carrying migrants to disembark in other European ports.[146] On **6 July in Tallinn**, several Ministers expressed their rejection of Italy's proposal. **Instead, they appear to have sought to consolidate Italy wavering acceptance to control migrants after their arrival on Italian shores[147] in exchange for a stepping up of the measures that would prevent migrants from ever succeeding in doing so. The Tallinn meeting was important in terms of guaranteeing full EU support to the two dimensions of Italy's undeclared Mare Clausum operation.**

On the one hand, the Ministers offered their support to Italy's targeting of rescue NGOs. In conclusion to the Tallinn meeting, they issued a joint press release, in which they "welcomed the initiative of the Italian authorities to ensure that the NGO vessels involved in Search and Rescue (SAR) activities operate within a set of clear rules to be adhered to, in the form of a code of conduct to be urgently finalised by the Italian authorities". In its 4 July Action plan, the EU Commission had suggested that code should be drafted "in consultation with the Commission". Both EU ministers and the Commission thus brought their support to the code of conduct through which Italy sought to limit rescue NGOs' activities. The implementation of this code of conduct, which legal scholar Violeta Moreno-Lax has described as "nonsensical", "dishonest" and "illegal",[148] would **lead to a major standoff between rescue NGOs and Italy in the following weeks, which saw the number of civilian rescue vessels halved.**

On the other hand, the ministers meeting in Tallinn further confirmed their support to "increase(ing) engagement with Libya and other key third countries"– in particular **"continuing to enhance the capacity of the Libyan Coast Guard",**

144 European Council and Council of the European Union, 'European Council conclusions, 22-23/06/2017', 23 June 2017,www.consilium.europa.eu/en/press/press-releases/2017/06/23-euco-conclusions/

145 European Union, Informal meeting of Justice and Home Affairs ministers Press statement following discussions on Central Mediterranean, 6 July 2017, https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=634c4931-662c-11e7-941c-005056bc530c

146 Georgi Gotev, 'No new measures to help Italy adopted at Tallinn ministerial meeting', EU-RACTIV.com with AFP, 7 July 2017, https://www.euractiv.com/section/global-europe/news/no-new-measures-to-help-italy-adopted-at-tallinn-ministerial-meeting/

147 See the press release: "Ministers of Interior also affirmed their full support to Italy in implementing an effective migration policy, reducing pull factors, securing 100% identification, registration and fingerprinting of all migrants, guaranteeing quick identification of those in need of protection and rapid returns of those who do not apply or are not granted international protection. Ministers welcomed the commitment reaffirmed by the Italian Minister of Interior to fully implement the current asylum acquis and return policies. Ministers committed also to take all steps needed to guarantee that all those eligible from Italy are relocated." https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=634c4931-662c-11e7-941c-005056bc530c

148 Violeta Moreno-Lax, "Nonsensical", "Dishonest", "Illegal": the 'Code of Conduct', July 2017, https://sea-watch.org/en/nonsensical-dishonest-illegal-the-code-of-conduct/amp/

and **"continuing to encourage the North Africa partners, notably Tunisia, Libya and Egypt to formally notify their SAR areas and establish MRCCs".** To this end, they committed themselves to "stepping up coordination and delivery of all the elements contained in the Malta Declaration" by consolidating **funding for the various initiatives outlined therein. Additional funding had been proposed in the Action Plan presented by the Commission on 4 July 2017, in particular to "further enhance the capacity of the Libyan authorities through a €46 million project prepared jointly with Italy".[149] In the wake of Tallinn, on the 28 July 2017, this funding was allocated through the EU Trust Fund for Africa to "reinforce the integrated migration and border management capacities of the Libyan authorities",** focusing in **particular on the LYCG.[150]**

While the program also contained a measure for "strengthening the operational capacity of the Libyan border guards along the southern borders", it mostly focused on the maritime frontier and detailed a number of key measures that would be funded. In particular:
**(1) "Strengthening the operational capacities of the Libyan coastguards" by supporting "training, equipment (rubber boats, communication equipment, lifesaving equipment), repair and maintenance of the existing fleet";
(2) Setting up of "basic facilities in order to provide the Libyan coast guards with initial capacity to better organise their control operations", by equipping the coast guards "with the necessary tools to coordinate maritime operations;
(3) Conducting "feasibility studies for two fully-fledged control facilities in Tripoli" that would "involve the full design of an Interagency National Coordination Centre", and "assistance to the authorities in defining and declaring a Libyan Search and Rescue Region with adequate Standard Operation Procedures".[151]**

While most of the funding came from EU funds, a substantial part of the project components would be implemented by Italy. According to Amnesty International,[152] the Italian government also provided part of the necessary funding, which, according to the legal NGO ASGI, was illegally diverted from a special development aid "Africa fund" worth 200 million euro.[153] For example, according to official documents accessed by ASGI, a 2.5 million euro grant from this fund was approved in August 2017 for the maintenance of Libyan boats and the training of Libyan crews.[154] Overall, we can see that the EU and Italy's migration-related funding to Libya substantially increased over 2016 and 2017.

149 European Commission - Press release, 'Central Mediterranean Route: Commission proposes Action Plan to support Italy, reduce pressure and increase solidarity', Strasbourg, 4 July 2017, http://europa.eu/rapid/press-release_IP-17-1882_en.htm

150 European Commission - Press release, 'EU Trust Fund for Africa adopts €46 million programme to support integrated migration and border management in Libya', Brussels, 28 July 2017, http://europa.eu/rapid/press-release_IP-17-2187_en.htm

151 European Commission - Press release, 'EU Trust Fund for Africa adopts €46 million programme to support integrated migration and border management in Libya', Brussels, 28 July 2017 http://europa.eu/rapid/press-release_IP-17-2187_en.htm

152 Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.45

153 Law no. 232, 11 December 2016, Article 1 c.621 https://www.esteri.it/mae/resource/doc/2017/02/decreto_africa_0.pdf

154 Italian Ministry of Foreign Affairs, Director General for Italians abroad and migration policies, Decree 4110/47 of 28 August 2017, www.asgi.it/wp-content/uploads/2017/11/Allegato_2.pdf ;

Mare Clausum in full force: seizing the Iuventa, deploying Italian warships in Libyan waters

In the wake of the Tallinn meeting the pace of institutional developments dramatically increased, and as we will show in the section dedicated to patterns, so did the evolution on the ground. On **2 August 2017, the motorboat Iuventa of the German rescue NGO "Jugend Rettet" was seized by the public prosecutor in Trapani** under suspicion of 'assistance to illegal migration' and collusion with smugglers. The seizure, which has been one of the peaks of the campaign of criminalisation of rescue NGOs, came only days after the NGO, along with several others, refused to sign a 'code of conduct' imposed by Italian authorities, claiming that the latter would have threatened their rescue activities. Despite the accusations being baseless, as we have demonstrated elsewhere, the Iuventa has remained under custody of the Italian police in the port of Trapani ever since.[155]

Power point slides of Italian Navy on Operation Mare Sicuro, Shade Med briefing, Rome, 23 November 2017.

On the very same day, **the Italian Parliament approved the participation to a new "international military mission in support of the Libyan Coast Guard".[156]** This operation, formally launched in response to a request from the Libyan government in a letter sent by President Serraj on the 23 July 2017, aims at **"providing support to the Libyan security forces in their activities against irregular migration and human smuggling by deploying aerial and naval means and supporting Intelligence, Surveillance and Reconnaissance capabilities."[157]** This mission came to supplement the

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see also Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), *Depositato il ricorso di ASGI contro lo sviamento di 2,5 milioni di euro dal c.d. Fondo Africa*, 14 November 2017, www.asgi.it/asilo-e-protezione- internazionale/libia-italia-ricorso-fondi-cooperazione/

155 Charles Heller and Lorenzo Pezzani, 'The Iuventa Case', https://blamingtherescuers.org/iuventa/

156 While in all of the documentation produced by the Italian government this mission is not assigned a specific name, in some press communications by the Italian Ministry of Defence, as well as in official documents produced by Italian judges, this mission is referred to as "Nauras". See for instance: http://www.marina.difesa.it/conosciamoci/press-room/comunicati/Pagine/2017_169.aspx As of January 2018, some of the tasks assigned to this mission have been subsumed into a new "bilateral mission of assistance and support in Libya". See: *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia a missioni internazionali da avviare nell'anno 2018 (DOC CCL, n.3)*, 28 December 2017

157 *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica (DOC CCL, n.2)*, 28 July 2017, www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

already mentioned Mare Sicuro operation, which in 2017 involved up to **4 warships and 5 aerial assets** to monitor and ensure maritime security in the Central Mediterranean.[158] In addition to the tasks already performed by Mare Sicuro, the new mission's objectives include, notably, the "protection and defence of means belonging to the Libyan Government of National Accord tasked with controlling and countering illegal immigration". In order to achieve this aim, the Italian parliament has authorised the presence of **one or more assets taking part in Mare Sicuro within "Libyan internal and territorial waters controlled by the Government of National Accord, in order to support Libyan naval assets".**[159] On **4 August 2017, the first Italian warship, the Borsini (P491) arrived in the port of Tripoli.**[160]

As we will see in the patterns section, the **Mare Sicuro ships and aircrafts operating off the coast of Libya** have played a substantial role in providing **"Surveillance and Reconnaissance capabilities"**[161] – one of the aims of the operation – to the LYCG, and then **coordinating and instructing their assets to intercept the detected migrants' boats.** A report compiled by the Italian government on **28 December 2017** details more precisely the tasks which have been carried out by the Italian personnel and assets present **on Libyan territory – including Libyan ports.** According to this document, they have conducted activities:

- **"for the repair of terrestrial, naval and aerial assets, including the infrastructures they rely upon, with a view to supporting the fight against illegal migration, conducting SAR operations and enhance territorial control;**
- **to establish a Liaison Navy and Communication Centre (LNCC),** *initially on-board*, **for the cooperation and coordination of the joint activities of the Libyan Coast Guard and Navy, with a view to carrying out their Command and Control (C2) tasks and maintain an adequate Maritime Situational Awareness to fight illegal migration;**
- **to provide expert advice and capacity building for the activities of control and fight of illegal migration as well as to conduct SAR operations."**[162]

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158 *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionali (DOC CCL, n.1)*, 14 January 2017, http://www.senato.it/service/PDF/PDFServer/BGT/1000608.pdf

159 *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica (DOC CCL, n.2)*, 28 July 2017, www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf. It is interesting to note that the report explicitly states that the support is directed at "specific Libyan forces" within "territorial waters controlled by the Government of National Accord", thereby acknowledging the fact that the latter's control extends only over a limited portion of Libyan territory and that there are other armed forces operating therein.

160 Mohammad Al Araby, 'Italian ship arrives in Tripoli port despite threat', , Al Arabiya.net, Friday, 4 August 2017, http://english.alarabiya.net/en/News/middle-east/2017/08/04/Italian-ship-arrives-in-Tripoli-port-despite-threat.html

161 *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica (DOC CCL, n.2)*, 28 July 2017, www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

162 *'Analytic report on the ongoing international military missions and on the state of the development cooperation to sustain peace and stabilization processes'*, 28 December 2017, http://www.senato.it/service/PDF/PDFServer/BGT/1063681.pdf (our emphasis). The same document also confirms that the Italian customs police (Guardia di Finanza) has contributed to the training of 39 Libyan militaries in Gaeta and the repair and return of four patrol boats.

The role of the successive Italian naval ships – since 8 August 2017 the *Tremiti*, since December the *Capri,* and since the end of March 2018 the *Caprera* – which have been docked in the port of Tripoli appears pivotal. According to the already mentioned Italian report, the ships have been **"docked in the port of Tripoli with onboard materials, equipment and a technical team" dedicated to the refurbishment of Libyan Navy and Coast Guard units**.[163] Various press report have confirmed that the Italian Navy has contributed to the repair and maintenance of Libyan assets, such as the Ibn Ouf, which was visited at Tripoli's naval base on 11 January 2018 by the Libyan Presidency Council head Faiez Serraj with Italian ambassador Giuseppe Perrone.[164]

However, it emerges from converging sources that these ships also have another crucial purpose: they constitute the "Liaison Navy and Communication Centre (LNCC)", which, as indicated above, has supported the "coordination of the joint activities of the Libyan Coast Guard and Navy". This is confirmed by EUNAVFOR MED's March 2018 report, which describes an Italian "Naval Liaison Communication Centre located on board the Italian warship moored in Tripoli".[165] During a phone interview we conducted, Brigadier Masoud Abdel Samad, Head of the International Cooperation Office of the Libyan Coast Guard, also confirmed that, for example when the LYCG has an asset on the high seas, and face difficulties in communicating with it, the LYCG uses the communication equipment on board the Italian Navy's maintenance ship.[166] **Without the communication equipment on board the Italian ships, the LYCG would not be in the conditions to coordinate their operations at sea.**

The crucial function of the Italian naval ships docked in the Tripoli harbour has recently been revealed by an Italian judge who has reconstructed a near pull-back incident occurred on 15 March 2018 and involving the NGO rescue ship Open Arms, which we will discuss in detail further below. While **in official documents the Italian government has framed its contribution in terms of "assistance" and "support" to Libyan actors rather than control or coordination,**[167] from this reconstruction it emerges clearly that **the Navy ship present in the port of Tripoli is functioning as a communication and coordination centre providing a decisive contribution to the LYCG's command and control capabilities.**[168] **The Italian judge has gone as far as to affirm that the coordination of rescue operations by Libya, is "essentially entrusted to the Italian Navy, with its own naval assets and with those provided to the Libyans".**[169]

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163 The Italian report also reveals that since 13 November 2017 a technical team of the Italian Air force has refurbished an unspecified number of C-130H planes as well as the infrastructures of the Mitiga airport near Tripoli.

164 Vanessa Tomassini, 'Serraj visits Libyan naval ship fixed by Italians', Libya Herald, 13 January 2018, https://www.libyaherald.com/2018/01/13/serraj-visits-libyan-naval-ship-fixed-by-italians/

165 EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p.26.

166 Interview conducted by the authors by phone on 23 March 2018.

167 The framing of Italian support to the LYCG as assistance instead of coordination is well illustrated by the Italian Navy's response to an article which had precisely described this relation as one of coordination by the Italian Navy. See Ilaria Sesana and Duccio Facchini, 'ProActiva, la vera notizia è che l'Italia coordina i libici', Altreconomia, 28 March 2018, https://altreconomia.it/proactiva-italia-coordina-libici/.

168 Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, Decreto di convalida e di sequestro preventivo, 16 April 2018.
     169The same judge has further affirmed in relation to the Open Arms case that the intervention of

Declaring Libya's Search and Rescue zone

A week after the extension of the Mare Sicuro operation into Libyan territorial waters, another crucial component of Italy and the EU's refoulement by proxy strategy was established, if only temporarily. On **10 August 2017**, the **Libyan authorities in Tripoli announced that they had (unilaterally) declared the Libyan Search and Rescue (SAR) zone and threatened rescue NGOs that would enter it**. In a press conference, General Abdelhakim Bouhaliya, Commander of the Tripoli naval base, said that Libya had "officially declared a search and rescue zone", and that "no foreign ship [had] the right to enter" the area without authorisation from the Libyan authorities. Libyan navy spokesman General Ayoub Qassem said the measure was aimed against "NGOs which pretend to want to rescue illegal migrants and carry out humanitarian actions".[170] Following the Libyan declaration, Angelino Alfano, Italy's foreign minister, told La Stampa, an Italian newspaper that Libya's actions meant that "balance is being restored in the Mediterranean".[171] Italian officials do seem to have been disturbed by the threats to NGOs that accompanied the declaration of the Libyan SAR zone -while these were not condemned, the Italian coast guard "warned" rescue NGOs, such as MSF, about the risks associated with these publicly issued threats.[172]
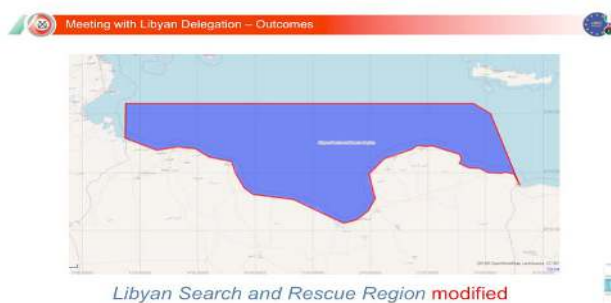
Power point slides of the Italian Coast guard presentation "Libyan Maritime Rescue Coordination Centre Project", Shade Med briefing, Rome, 23 November 2017.

Formally, it was Libyan authorities who declared "their" SAR area, which, as we will see in the patterns section, they came to consider and aggressively defend as if it was Libyan sovereign territory. This stands in marked contrast to what a SAR zone really is. SAR regions extend over the high-seas, which are governed by the principle of *shared* sovereignty and freedom of navigation. A SAR zone does not give any sovereign rights to the corresponding coastal state, but competence over a specific activity- the coordination of rescue. While the Libyan government thus used the declaration of the SAR zone to unduly affirm its exclusive control over the maritime area off the coast of Libya, as we have noted above, **the declaration of the Libyan SAR zone has been a constant preoccupation of European and Italian policymakers, and a cornerstone of their strategy of refoulement by proxy**. **The logic of policy makers appears to**

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the Libyan patrol vessels happened "under the aegis of the Italian navy ships present in Tripoli". In: Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, Decreto di convalida e di sequestro preventivo, 16 April 2018. See also: Marina Petrillo and Lorenzo Bagnoli, 'The Open Arms case continued: new documents and Malta', 12 April 2018, Open Migration, https://openmigration.org/en/analyses/the-open-arms-case-continued-new-documents-and-malta/

170 eNews Channel Africa (ENCA), 'Libya navy blocks foreign ships from migrant 'rescue' zone', 10 August 2017, https://www.enca.com/africa/libya-navy-blocks-foreign-ships-from-migrant-rescue-zone

171 Eurobserver, 'Italy backs Libya as NGOs chased out of Mediterranean', 14 August 2017, https://euobserver.com/migration/138736

172 Eurobserver, 'Italy backs Libya as NGOs chased out of Mediterranean', 14 August 2017. https://euobserver.com/migration/138736

have been the following: for LYCG to intercept migrants with impunity, these interceptions had to be framed as rescues operated by the LYCG. Towards this, the LYCG had to be granted all the attributes of a functioning coast guard body – including a SAR zone and a functioning Maritime Rescue and Coordination Centre (MRCC). The different stages in the process aiming to realise these inextricable objectives have been summarised by Italy in a **communication to the International Maritime Organisation** dated **15 December 2017**.[173] Already on **4 August 2016**, in a jointly signed letter by the EU Commission and EEAS, the Italian Coast Guard was instructed to assume responsibility for leading a project to **establish a Libyan Maritime Rescue Coordination Centre** and **support the Libyan authorities in identifying and declaring their Search and Rescue Region**. The imperative of both these endeavours and to support Italy financially in implementing them was reiterated in the EU's Joint Communication of 25 January 2017.[174] On 12 June 2017, the EU Commission notified the Italian Coast Guard of the award of the grant "Assessment of the Libyan Coast Guard legal framework and capability in terms of SAR Services", with an amount of **44 million Euros**, as indicated in the ITCG's Shade Med briefing on the 23 November 2017. Part of this project, as explicitly described to the IMO, is to **"support and assist the relevant Libyan authorities in identifying and declaring their Search and Rescue Region"** and drawing up "a detailed project based on the assessment, aimed at **establishing a fully operational Maritime Rescue Coordination Centre."** [175]
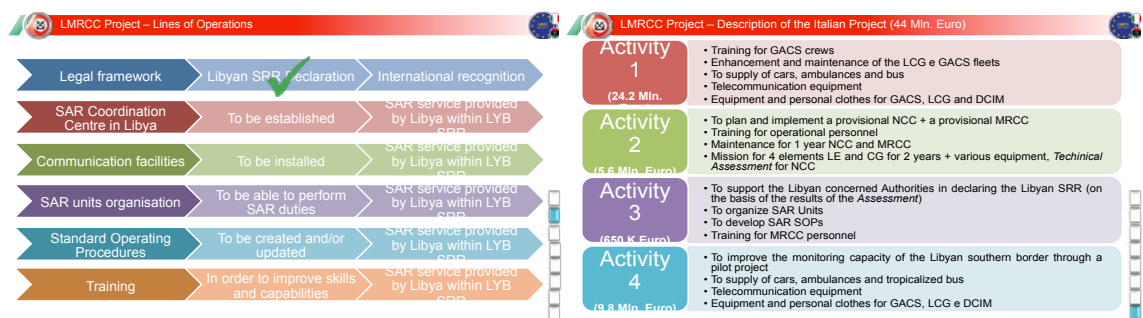
Power point slides of the Italian Coast guard presentation "Libyan Maritime Rescue Coordination Centre Project", Shade Med briefing, Rome, 23 November 2017.

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173 International Maritime Organisation, Sub-Committee on Navigation, Communications and Search and Rescue (NCSR): Further Development of the Provision of Global Maritime SAR Services, Libyan Maritime Rescue Coordination Centre Project, Submitted by Italy, 15 December 2017.

174 "Building the capacity of the Libyan Coast Guard aims, as a long-term objective, to a situation whereby the Libyan authorities can designate a search and rescue area in full conformity with international obligations. In this perspective, the EU is providing financial support to the Italian Coast Guard to assist the Libyan Coast Guard in establishing a Maritime Rescue Coordination Centre, a prerequisite for efficiently coordinate search and rescue within Libyan search and rescue zone, in line with international legislation." European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, The European Council and the Council, 'Migration on the Central Mediterranean route: Managing flows, saving lives', Brussels, 25.1.2017 JOIN(2017) 4 final, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf

175 International Maritime Organisation, Sub-Committee on Navigation, Communications and Search and Rescue (NCSR): Further Development of the Provision of Global Maritime SAR Services, Libyan Maritime Rescue Coordination Centre Project, Submitted by Italy, 15 December 2017.

On **10 July 2017**, the President of Libyan Ports & Maritime Transport Authority informed the International Maritime Organization that the Libyan government considered the Tripoli Flight Information Region (as adopted by the International Civil Aviation Organization) to be identical to the Libyan Search and Rescue Region." This would be the basis for Libya's 10 August unilateral declaration, which was not fully recognised and communicated by the IMO according to the process established by the SAR Convention.[176] In fact, the IMO Secretariat received on **10 December 2017** an official communication from the Government representative of Libya, to withdraw their 10 July 2017 notification on the Government's designation of the Libyan SAR zone. A new declaration was submitted by Libya on the 14 December 2017. **To this date, the Libyan SAR zone has not been internationally recognised, as** acknowledged by Frontex Director Fabrice Leggeri himself.[177] **Most importantly, the LYCG is far from operating an effective MRCC and being able to "arrange that their search and rescue services are able to give prompt response to distress calls", as expected of the state responsible for a given SAR zone under rule 2.1.8 of the SAR Convention, nor does it have "adequate means for communication with its rescue units and with MRCCs in adjacent areas" (rule 2.3.3).** As we have see above, the institutional and technological limitations of the LYCG are far from allowing for this, which is admitted even by a high ranking Libyan official such as Commodore Toumia, who during an evaluation meeting with EUNAVFOR MED concerning the LYCG's activities, admitted that **"their capacities ashore in the LCG&N Operation Rooms does not allow properly carrying out the institutional tasks as MRCC".**[178] In fact, the Italian Coast Guard project foresees the LYCG MRCC as being fully operational only in 2020.[179] **Despite this, all European state actors operating at sea have acted *as if* Libya had a recognised SAR zone within which, with the support of Italy and the EU, it was able to coordinate rescue activities.**

Mare Clausum's effects: migrants' crossings drop

While we will describe the patterns of practices that emerged as a result of the policies described above, we should note already here that they led to a **striking drop in crossings: July saw a reduction in arrivals of 51% in relation to the previous year, and by August this reduction had reached 82%.**[180] Crossings picked up again and were partly diverted to other areas of departure over the following months, but have remained low to this day. **Mare Clausum had achieved its desired effects – stemming crossings at all costs. This drop corresponds to the timing of the stepping up of Italy's and the EU's multiform support to the LYCG, which led to a strong increase in the LYCG's rate of interceptions.**

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176 Once determined, the declaration of a SAR zone must be communicated to the IMO which 'shall notify' all other States Party to the SAR Convention (rule 2.1.6 SAR Convention). Then, the coordinates of the SAR zone are published in the Global Integrated Shipping Information System (GISIS).

177 During a recent hearing, Leggeri stated that "Je ne considère pas comme acquise la zone SAR de la Lybie" in European Parliament, LIBE: Committee Meeting, 27 March 2018, http://web.ep.streamovations.be/index.php/event/stream/20180327-0900-committee-libe; see also Barbara Spinelli, 'Themis, la nuova missione di Frontex, restringe il limite operativo delle responsabilità italiane', 27 March 2018, http://barbara-spinelli.it/2018/03/27/themis-la-nuova-missione-frontex-restringe-limite-operativo-delle-responsabilita-italiane/

178 EUNAVFOR MED Op Sophia, Monitoring of Libyan Coast Guard and Navy Report October 2017, January 2018, 9 March 2018, annex C.

179 Italian Coast guard presentation "Libyan Maritime Rescue Coordination Centre Project, Shade Med briefing, Rome, 23 November 2017.

180 Our calculation based on data collected by the UNHCR, http://data.unhcr.org/mediterranean/regional.html
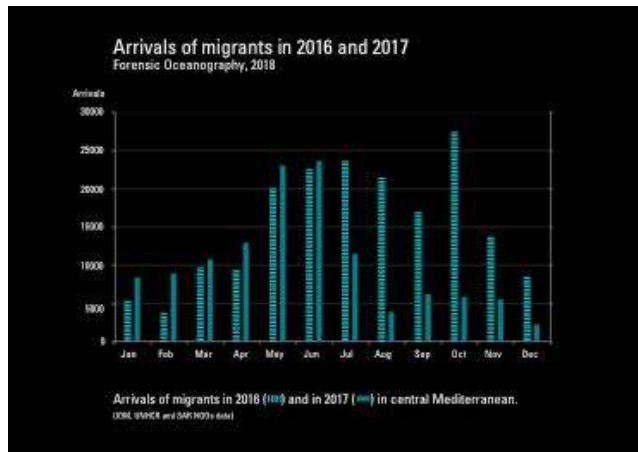
Arrivals of migrants in Italy 2016-2017. Forensic Oceanography, based on UNHCR data. Statistical analysis by Gian-Andrea Monsch, design by Samaneh Moafi.

This drop also appears to be the result of Italy's diplomacy on firm land, where it engaged directly with tribal leaders and militias – in particular in the smuggling hub of Sabratha – to stem crossings, the details of which have yet to emerge.[181] While the Italian government denied having struck a deal with smugglers, as researcher Mark Micallef notes, it is a fact that "Sabrathan militias that are widely known to have run a major human smuggling operation abruptly halted their activities and instead turned to policing, sanctioned by institutions that fall under the internationally recognised GNA."[182] This abrupt change in the dynamics however stoked rivalries between militias in Sabratha, which clashed over the summer,[183] also contributing to the sudden drop in crossings that was observed at the time. The practices of Libyan actors on sea and on firm land, shaped by Italy and the EU's multilevel policy of containment, converged to lead to the drop in crossings observed in Summer 2017.

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181 Amnesty International (2017) has provided a good summary of the few elements which have come to light. "Throughout 2017, Italy has increasingly engaged in co-operation with local authorities and tribal leaders and informal groups in Libya, not all under the control of the Government of National Accord, thereby sidestepping the government, to halt the flow of refugees and migrants to Europe". While the Italian Minister of Interior Marco Minniti first met in Rome with tribal leaders from the South of the country to pressure them to control the southern border, over the summer he further met a number of mayors of Libyan towns, pledging to support the mayors by creating new economic opportunities in their territories "if they help us in the fight against smuggling of human beings and in the management of migration from central Africa". Finally, a breakthrough came after, according to a number of corroborated media reports, Italy struck a deal involving representatives of the Libyan Government of National Accord and the Anas Debashi and Brigade 48 militias, which controlled Sabratha and the smuggling business in the coastal town from which most migrants were departing. As Amnesty summarises, "At a meeting in Sabratha, the militias committed to preventing migrants from attempting the crossing, while the Italian authorities committed to provide them with equipment, boats and salaries channelled through the Government of National Accord. The militias would be formally integrated into the ranks of the Libyan Government of National Accord as a result of the negotiations." Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, 50.

182 Tuesday Reitano and Mark Micallef, 'The anti-human smuggling business and Libya's political end game' 18 December 2017, Institute for Security Studies, https://issafrica.org/research/north-africa-report/the-anti-human-smuggling-business-and-libyas-political-end-game

183 Reuters, 'Civilians among dozens of casualties from clashes in Libyan smuggling hub', 2 October 2017, World News, Reuters, https://www.reuters.com/article/us-libya-security-sabratha/civilians-among-dozens-of-casualties-from-clashes-in-libyan-smuggling-hub-idUSKCN1C7242

From the analysis of the evolution of policies above, we can see that 2017 saw a dramatic acceleration of Italy and the EU's collaboration with Libyan actors to stem migrant crossings, in particular in terms of the implementation of several levels of cooperation aiming to re-establish the LYCG. Several political agreements have been signed establishing Italian and EU support for the LYCG to fulfil this aim. Italy and the EU's support has included training, funding, the handing over patrol assets, military presence offering logistical, communication, and maintenance support, assistance in the processes aiming to establish a Libyan SAR zone and a functioning MRCC. To the effect of conducting maritime security operations and providing support to the LYCG, Italy and the EU have also deployed military personnel on Libyan territory and developed a substantial naval presence in the waters off the Libyan coast. Through these combined measures, Italy and the EU have exercised *strategic control* over the LYCG, which has *operated as their proxy*.

Without this multiform Italian and EU support, the LYCG could not have increased substantially its interceptions – which were almost non-existent before 2016. Over 2017 alone, instead, more than 20,000 people have been intercepted at sea and brought back to a country in which they would be subjected again to extreme forms of violence and exploitation.[184] Despite difficult access to Libya, these conditions have been well documented over several years by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets, exposing the widespread human rights violations committed against refugees and migrants by Libyan state actors as well as armed groups, criminal gangs and militias.[185] These conditions have been acknowledged by leading European politicians, such as **the French President Emmanuel Macron, who denounced the practices of "slavery" in Libya brought to light by CNN as a "crime against humanity";**[186] **while the** Italian Minister of Interior, Marco Minniti, admitted on 15 August 2017 that "there is an issue of primary importance, and that is the issue of the living conditions of those who are saved by the Libyan Coast Guard and taken back to Libya."[187]

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184 The IOM has been collecting data on "rescues" operated by the LYCG since 2016, http://www.globaldtm.info/libya/

185 See Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.56 for full list, to which we should add the recent report by the Office of the United Nations High Commissioner for Human Rights in cooperation with the United Nations Support Mission in Libya, 'Abuse Behind Bars: Arbitrary and unlawful detention in Libya', April 2018, http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf
186Philippe Wojazer, 'France calls UN Security Council meeting over Libya slave auctions', 22 November 2017, France 24, http://www.france24.com/en/20171122-france-calls-un-security-council-meeting-libya-slave-auctions-macron

187 This appears to indicate, as Amnesty has concluded, that the Minister, albeit conscious of the situation in the detention centres, was nonetheless implementing a strategy under which "the outsourcing of border control functions to the LYCG would take place before any action to address human rights violations suffered by refugees and migrants in Libya". Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.58. Original quote in Italian: "Nel momento in cui dovesse stabilizzarsi il dato dell'azione di controllo delle acque territoriali libiche da parte della guardia costiera, si pone una questione di grandissimo rilievo, e cioe' il tema delle condizioni di vita di coloro che vengono salvati dalla guardia costiera e riportati in Libia. Come voi sapete questo e' l'assillo personale mio, ed e' l'assillo dell'Italia." https://video.repubblica.it/cronaca/

Days earlier, Italy's Deputy Minister for Foreign Affairs, Mario Giro, had put this plain words, admitting that "taking them [migrants] back to Libya, at this moment, means taking them back to hell".[188] **However, neither the horrific conditions to which migrants are routinely subjected to in Libya nor the LYCG's documented involvement in criminal activities – including migrant smuggling, human trafficking, the selling or renting of captured migrants to third actors to perform forced labour – has led EU institutions and member states to disavow their policy of *refoulement by proxy*, which has continued to be implemented.**

As opposed to condemning these policies, on the eve of the European Council's 14 and 15 December 2017 meeting, the Commission celebrated the drop in crossings observed over the year.[189] In the agenda for the Council's meeting, Italy's policy in Libya was once again hailed as the model:

> "the EU can only tackle illegal migration effectively with the full involvement of Member States and by the coordinated use of EU and Member States means and instruments; no Member State can deal with this common challenge on its own, but decisive action by lead Member States, backed by the EU and assistance from other Member States, has proven to be effective in stemming illegal migration flows to Europe, as shown most recently with Italy's role concerning Libya"[190]

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migranti-minniti-condizioni-di-chi-e-riportato-in-libia-sono-mio-assillo/282714/283328

188 Marco Menduni, 'Giro: "Fare rientrare quelle persone vuol dire condannarle all'inferno"' , La Stampa, 6 August 2017, http://www.lastampa.it/2017/08/06/italia/cronache/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-allinferno-SXnGzVlzftFl7fNGFCMADN/pagina.html

189 European Commission, 'Commission contribution to the EU Leaders' thematic debate on a way forward on the
external and the internal dimension of migration policy', 7 December 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_communication_on_commission_contribution_to_the_eu_leaders_thematic_debate_on_way_forward_on_external_and_internal_dimension_migration_policy_en.pdf

190 European Council, 'Leaders' Agenda: Migration: way forward on the external and internal dimension', December 2017, www.consilium.europa.eu/media/32083/en_leaders-agenda-note-on-migration_.pdf

PATTERNS

The policy developments analysed in the previous section had a dramatic impact on the practices of actors at sea, which we analyse here. The multiform support provided by Italy and the EU throughout 2017 to re-establish the LYCG produced its desired effect. With the equipment given by Italy in spring, the support provided by an Italian Navy ship deployed inside Libyan territorial since August, and the unilateral declaration of Libya's Search and Rescue (SAR) zone by the Tripoli-based Government of National Accord (GNA) in the same month, the LYCG was able to substantially expand its interception operations at sea and thereby contribute to the aim of "stemming crossings" emphasised in several agreements between Italy and the EU and the GNA.

As we have shown in the policy section, the other key dimension of the undeclared *Mare Clausum* operation has targeted rescue NGOs. The Italian and EU campaign of delegitimisation and criminalisation of rescue NGOs found its counterpart in the practices of the LYCG at sea, with LYCG patrol boats increasingly threatening with violence the NGO vessels operating off the Libyan coast. As a result, the number of NGO vessels decreased starkly, and those that remained active were forced to operate further from the coast. As a result of these trends, 2017 saw a dramatic *inversion* in the roles of NGOs and the LYCG: while in 2016 the former became the number one Search and Rescue actor, by August 2017 *the LYCG intercepted more migrants than anyone else rescued*.
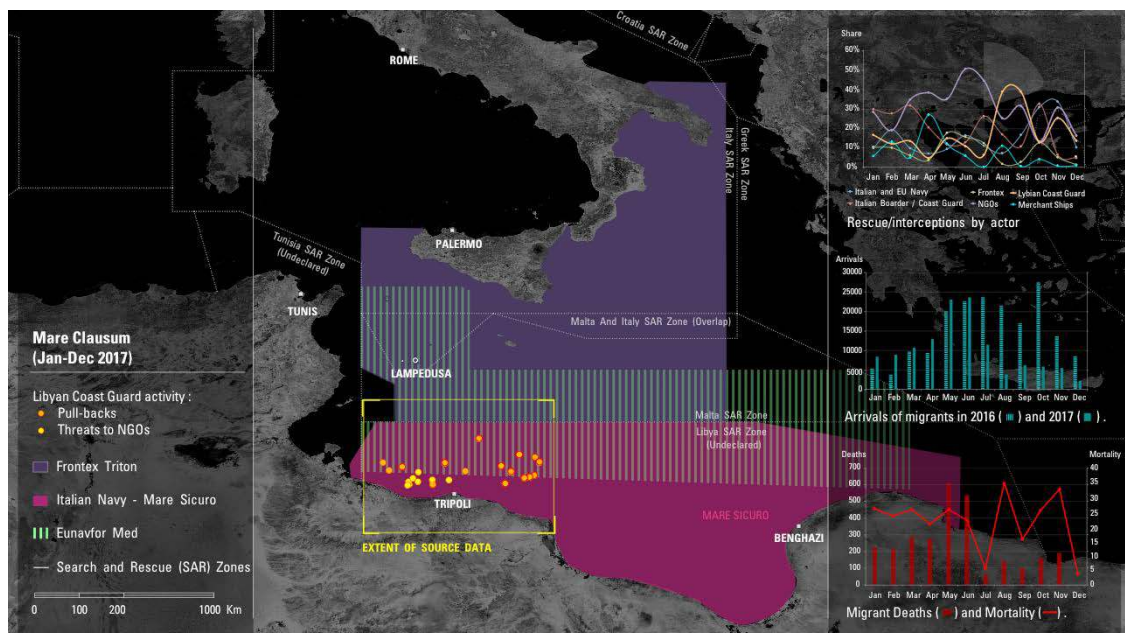
Synthetic figure of operations and migratory trends in the central Mediterranean, 2017. Figure by Forensic Oceanography. Statistical analysis by Gian-Andrea Monsch, GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

Over 2017, the LYCG intercepted and pulled-back 20,335 people. In this section, we analyse 16 pull-back incidents, most of which could be documented only thanks to the presence of the few remaining NGOs. What these incidents show is the distinct role of the Italian Maritime Rescue Coordination Centre (IMRCC) and

the Italian Navy in coordinating and directing LYCG interceptions. In most cases, the IMRCC, after having been informed of the presence of a boat in distress, transferred this information to the LYCG which claimed the coordination of SAR operations, and NGO vessels were asked to stand-by. In this way, the IMRCC contributed to migrants being intercepted and brought back to Libya - a place where they face multiple forms of inhumane treatment. In three documented instances, on 27 September, 11 October and 15 December 2017, we recorded *operational instructions* given by the Italian Navy to the LYCG to intercept migrants, all the while refraining from rescuing the migrants itself. The distinct and recurrent operational patterns we document demonstrate the systematic, rather than episodic, nature of these events, which indicate they are the outcome of a well-defined strategy. These incidents demonstrate that the LYCG has effectively implemented the practices demanded of it by the different policy agreements the Tripoli-based government signed with Italy and the EU, and that Italian actors have coordinated and directed the LYCG's interceptions, thereby operating *refoulement by proxy*.

DRIVING RESCUE NGOS OUT OF THE CENTRAL MEDITERRANEAN

As described in our "Blaming The Rescuers" report,[191] rescue NGOs had experienced occasional confrontations with the LYCG already in 2016, but these remained sporadic due to the LYCG's still limited range of action. However, as the latter's means and assertiveness grew over summer 2017, and especially after the unilateral declaration of the Libyan SAR zone on 10 August 2017, incidents involving LYCG's threats to, and harassment of, rescue NGOs increased dramatically. These incidents have multiplied in parallel to the legal and political attacks from the Italian authorities, which, by praising the LYCG instead of critiquing its violent behaviour have de facto legitimised its tactics. A few of these incidents, compiled in the database of the Search and Rescue Observatory for the Mediterranean (SAROBSMED), deserve mention to indicate the increasingly tense and dangerous climate in which rescue NGOs have been operating.

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191 Charles Heller and Lorenzo Pezzani, 'Blaming the Rescuers', June 2017, https://blamingtherescuers. org/
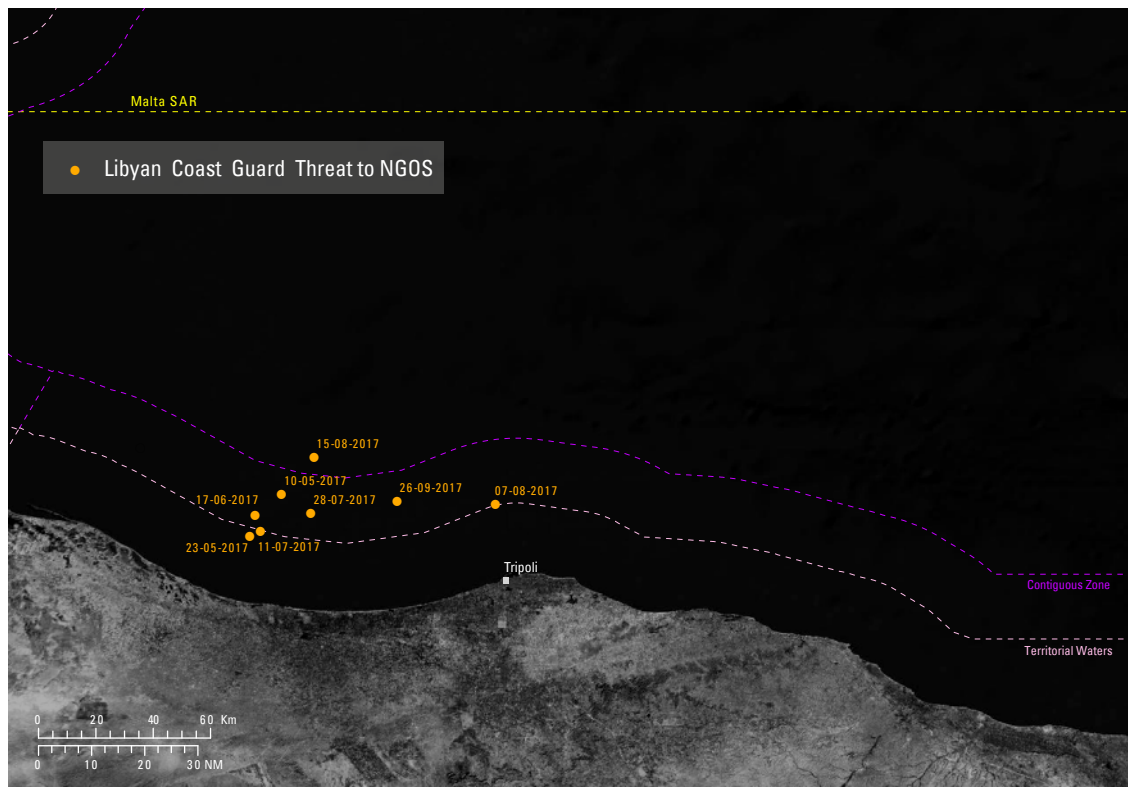
Cases of threats to NGOs by the Libyan Coast guard, summer 2017. Figure by Forensic Oceanography based on SAROBSMED data. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

On **10 May 2017**, the LYCG interrupted a rescue that the NGO ship **Sea Watch** was initiating 20 NM from the Libyan coast by coming dangerously close with its patrol boat. The Sea-Watch vessel retreated immediately, but could witness the LYCG stopping the migrants' boat under the threat of a gun, intercepting and pulling back the migrants to Libya.[192] A few days after this incident the Italian Minister of Interior, Marco Minniti, visited Tripoli for the handover ceremony of four more Italian patrol vessels to the LYCG, similar to the one used in this incident. Despite the broad ripples that the incident created, Minniti did not express any criticism of the LYCG behaviour and rather stated he was "impressed" by the "motivation and resolve" of the patrol boats' crews.[193]

On **23 May 2017**, during the simultaneous rescue of several boats undertaken by **SOS Méditerranée**'s ship *Aquarius* **15 NM** from the Libyan coast, the LYCG approached the

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192 Sea-Watch, 'Libyan navy is risking lives of Sea-Watch crew and refugees during illegal return operation', 10 May 2017, https://sea-watch.org/en/libyan-navy-is-putting-sea-watch-crew-and-refugees-into-danger-during-an-illegal-return-operation/; Sea-Watch, 'Sea-Watch demands independent investigation of the illegal return of an overcrowded wooden boat', 11 May 2017, https://sea-watch.org/en/pm-sea-watch-demands-independent-investigation-of-the-illegal-return-of-an-overcrowded-wooden-boat/. See also Amnesty International, *Italy: Refugees and Migrants in the Central Mediterranean, Cutting the Lifelines,* 22 May 2017, https://www.amnesty.org/download/Documents/EUR3063192017ENGLISH.pdf

193 "Min #Minniti to the patrol boats crews: impressed by your motivation and resolve. We trust you efforts and professionalism. #Libya", Twitter, 15 May 2017, https://twitter.com/ItalyinLibya/status/864131903602995201 quoted in Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.37.

boats in distress, firing gunshots in the air.[194] Two men, wearing uniforms and armed, stepped onto one of the rubber boats, stole the passengers' phones, money and other belongings. As gunshots were again fired in the air, more than 60 terrified passengers jumped into the water – luckily wearing life jackets the NGO had already distributed to them, and the NGO was able to rescue them.

On **17 June 2017**, the NGO Proactiva **Open Arms** had been instructed by Italian Maritime Rescue Coordination Centre to cooperate with the LYCG in a rescue operation. After the NGO had deployed its RHIBs, the LYCG started shooting into the air with their fixed machine guns. The LYCG later apologised over radio, explaining that had mistaken the NGO RHIBs for those of militias. While the LYCG had intercepted the boat, they transferred its passengers to the rescue NGO as there were medical cases on board. The eleven rescued passengers described being robbed of their belongings, beaten and threatened.

On **11 July 2017**, at approximately 15 NM off the Libyan coast, a vessel that appeared to be from the LYCG approached the vessel of the NGO **SOS Méditerranée** at high speed and with threatening behaviour, forcing the NGO to temporarily interrupt its rescue operation to prevent an incident.

On **28 July 2017**, a LYCG vessel approached the ships of the NGOs **Jugend Rettet** and **Open Arms** while they were conducting training for rescue activities approximately 18 NM off the Libyan coast. The armed crew on board pointed their guns towards the NGOs, requesting them via radio to "stay away from the area".[195]

On **7 August 2017**, the crew of the **Open Arms** was threatened by the LYCG while it was searching for vessels in distress 13 NM off the Libyan coast, North of Tripoli. The LYCG vessel was the Bigliani class vessel *Sabratha* (654) - one of the assets handed over by Italy in May 2017. In a radio communication recorded by the NGO, the LYCG ordered the rescue NGO not to enter Libyan territorial waters, and to proceed north, accusing them of cooperating with smugglers, and threatening to shoot at them were they to return.

Still from the Open Arms video recording of LYCG threatening Open Arms on 7 August 2017.[196]

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194 Medecins Sans Frontieres (MSF), 'MSF accuses Libyan coastguard of endangering people's lives during Mediterranean rescue', 24 May 2017, MSF, http://www.msf.org/en/article/msf-accuses-liby-an-coastguard-endangering-people%E2%80%99s-lives-during-mediterranean-rescue

195 https://mobile.twitter.com/openarms_fund/status/890981405886476288/video/1?utm_source=f-b&utm_medium=fb&utm_campaign=openarms_fund&utm_content=890981405886476288

196 Proactiva Open Arms Org, 'Incidentes en el Mediterraneo Central – Agosto 2017, You Tube, 9

On **15 August 2017** – just days after the Libyan authorities unilaterally declared a Libyan SAR zone – a vessel of the LYCG threatened **Open Arms'** vessel Golfo Azzurro while the latter was located 27 NM off the Libyan coast. The incident was documented in detail by a Reuters journalist.[197]

A Libyan coast guard vessel chases away former fishing trawler Golf Azzurro of the Proactiva Open Arms rescue charity in the Western Mediterranean Sea August 15, 2017. REUTERS/Yannis Behrakis.

The LYCG first asked the Golfo Azzurro via radio whether it had "permission by Libyan Authorities to sail in their economic waters". The rescue NGO responded that it was sailing in international waters, where no permission is required, and under coordination of Italian Maritime Rescue Coordination Centre. The LYCG then threatened the NGO to target it if it did not direct itself to the port of Tripoli. As the rescue NGO refused, the LYCG continued its threats: *"you are in **our waters**, you have to take orders from us now. If you don't comply I will shoot at you".* Finally, the Golfo Azzurro was told to leave and was followed by the LYCG vessel while heading north. In response to this incident, Luigi Manconi, head of the Italian Senate committee for Human Rights, stated on National television: *"Life for NGOs is becoming dangerous. There is a strategy of dissuasion and intimidation, and strong pressure by the Libyans in order for (NGOs) to stop operating at sea".*[198]

On **26 September 2017**, the LYCG threatened the crew of the rescue NGO **Mission Lifeline**, and the rescued migrants it had on board. While the NGO was conducting a rescue operation 19nm off the Libyan coast, it was approached by a LYCG vessel that fired warning shots and boarded the NGO's vessel without the consent of its captain, demanding that the rescued migrants be handed over to the LYCG. During this interaction, which was video recorded, a LYCG officer can be heard yelling as he boards the NGO vessel "**This is our territory**".[199] After tense negotiations, the LYCG left, threatening however to sink the rescue NGO if they were to re-enter "their waters".

August 2017, https://www.youtube.com/watch?v=3bW3eD5C4EQ&utm_source=sendy&utm_mediu m=email&utm_content=newsletter&utm_campaign=newsletter

197 Yannis Behrakis, 'Spanish migrant rescue ship threatened by Libyan coastguard: witness', 15 August 2017, Reuters, https://www.reuters.com/article/us-europe-migrants-libya-ngo/ spanish-migrant-rescue-ship-threatened-by-libyan-coastguard-witness-idUSKCN1AV20Q

198 Quoted in Yannis Behrakis, 'Spanish migrant rescue ship threatened by Libyan coastguard: witness', 15 August 2017, Reuters, https://www.reuters.com/article/us-europe-migrants-libya-ngo/ spanish-migrant-rescue-ship-threatened-by-libyan-coastguard-witness-idUSKCN1AV20Q

199 ''Stop! Go back!' - Libyan coastguard board migrant rescue ship', Reu- ters Video, 27 September 2017, https://in.reuters.com/video/2017/09/27/ stop-go-back-libyan-coastguard-board-mig?videoId=372615842

Still from a video shot by Lifeline crew showing a Libyan coast guard vessel boarding the *Lifeline* and demanding that it hand over rescued migrants, 26 September 2017.[200]

As these cases show, the LYCG has increasingly come to consider the unilaterally declared Libyan SAR zone as **"its own territory"**, a territory which it is ready to defend against NGO "intrusion" at all cost, including the blatant violation of the principle of freedom of navigation which governs the high seas. In response, the Italian Coast Guard has limited itself to warning NGOs "about security risks associated with threats publicly issued by the Libyan Coast Guard against humanitarian vessels operating in international waters".[201] Italian and EU authorities have not only refrained from condemning this illegal behaviour,[202] they have endorsed it, for example with Italy's minister of Foreign Affairs declaring that by claiming "those waters" which had become no one's property, Libya was simply "re-establishing the balance of power".[203]

We can thus see a clear escalation in the targeting of rescue NGOs by the LYCG, which parallels the campaign of delegitimisation and criminalisation led by the Italian authorities over Summer 2017. As a result, most rescue NGOs reluctantly decided to stop or suspend their activities.[204] This decrease in rescue NGO presence left the maritime space off the Libyan coast clear for the LYCG to intercept migrants and pull them back to Libya with impunity. Statistical data shows a dramatic *inversion* in the roles of NGOs and the LYCG: while in 2016 the former became the first Search and Rescue actor, as of August 2017, *the LYCG intercepted more migrants than anyone else rescued*. Such was the aim and effect of the undeclared *Mare Clausum* operation.

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200 Steve Scherer, 'Rescue ship says Libyan coast guard shot at and boarded it, seeking migrants', 26 September 2017, https://www.reuters.com/article/us-europe-migrants-libya-ngo/rescue-ship-says-libyan-coast-guard-shot-at-and-boarded-it-seeking-migrants-idUSKCN1C12I4

201 Andrew Rettman, 'Italy backs Libya as NGOs chased out of Mediterranean', 14 August 2017, EU Observer, https://euobserver.com/migration/138736

202 A notable exception is provided by German Chancellor Angela Merkel's reported comments to Libyan Prime Minister Fayez al-Sarraj during a December 2017 meeting, requesting that the LYCG not hinder NGO vessels engaging in rescue activities. https://twitter.com/RegSprecher/status/938804207888621568

203 Alfano: ⬜Ora Tripoli controlla quelle acque c'è più equilibrio nel Mediterraneo⬜, 13 August 2017, La Stampa, www.lastampa.it/2017/08/13/italia/ora-tripoli-controlla-quelle-acque-c-pi-equilibrio-nel-mediterraneo-deCXVWjuyXEFBOpkK8SF5M/pagina.html,

204 While the Italian campaign of criminalisation led to the seizure of one ship in August 2017 (the Iuventa of the German NGO Jugend Rettet) and a second in March 2018 (the Open Arms of the Spanish NGO Proactiva), between 12 August and 4 September 2017 four different NGOs (MSF, Save the Children, Sea Eye and MOAS) were forced to suspend their rescue activities in the Mediterranean because of the LYCG's threats.
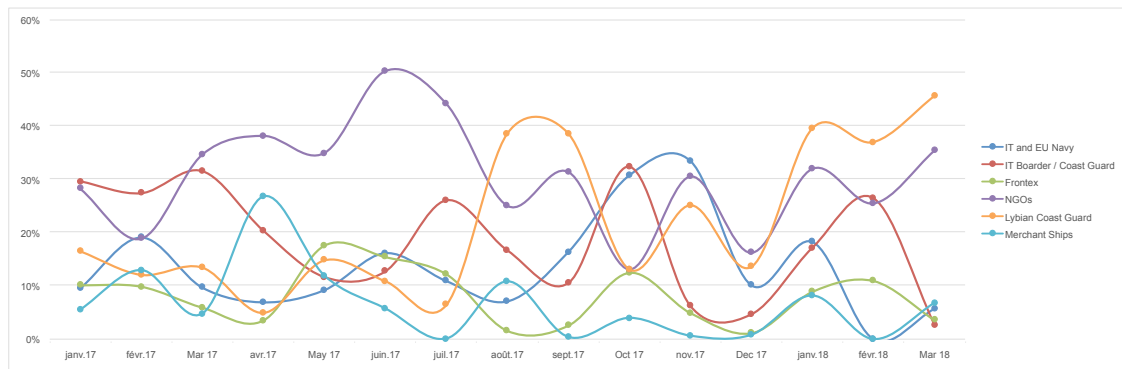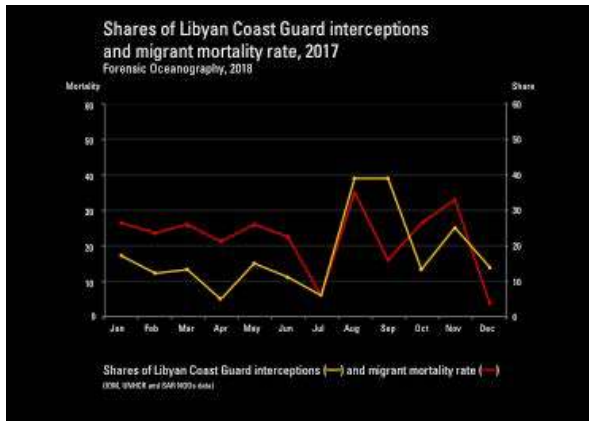
Share of rescues and interceptions per actor, January 2017-March 2018. Forensic Oceanography figure adapted from MSF, statistical analysis by Gian-Andrea Monsch, based on Italian Coast Guard and IOM data.

EXPANDING LIBYAN COAST GUARD INTERCEPTIONS UNDER EU COORDINATION

Simultaneously to the fall in the number of rescue NGOs present at sea, the LYCG's operational capacity grew dramatically as a result of the multiform support received from Italy and the EU in the previous months. The LYCG expanded its interception activities ever further from the Libyan coast, and its rate of interception increased exponentially: while in 2015 the LYCG had intercepted and returned to Libya only 800 people, representing 0.5% of all rescued or intercepted migrants, this ratio grew to 11% in 2016 and 18% in 2017.[205] The increase is even more impressive when considering only the second half of the year, with a peak of 39% in August and September 2017. The rate of interceptions by the LYCG grew even higher in the first months of 2018. We should note that there is a statistical correlation between the higher rate of interception by the LYCG and the higher migrant mortality rate – a measure of the danger of crossing observed in the second half of 2017 and early 2018. While not statistically significant, this correlation is corroborated by the LYCG's dangerous behaviour leading to deaths, which we observe in our case analysis.[206]

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205 Qualculation by Gian-Andrea Monsch, Researcher at Fors, University of Lausanne, for Forensic Oceanography based on Italian Coast Guard and IOM data.

206 The correlation analysis has been produced by Gian-Andrea Monsch, Researcher at Fors, University of Lausanne, for Forensic Oceanography based on Italian Coast Guard, IOM and UNHCR data. This analyses uses Pearson'R correlations to evaluate the bivariate relationship between the mortality rate of migrants (hereafter MMR) and the share of interceptions of the Libyan Coast Guard (hereafter LYCG). The analysis shows that MMR and LYCG are positively correlated for the year 2017 (0.37) as well as for 2017 and the first three months of 2018 (0.46). Two caveats: First, we cannot generalize these results to other time periods as the results are not statistically significant: For the 2017 data, there is a 24% propensity that we cannot reproduce this correlation in other years. However, this result might very well be due to the small number of cases available. If we add only the first three months of 2018, the mentioned propensity goes down to 9% (which can be accepted as significant for a sample with only 15 observations). It seems thus plausible to suggest that if we can observe this trend over a longer period, we would get a statistically significant result (below the 5% benchmark). Second, this analysis does not provide a proof for a causal relationship as we cannot control for the influence of other factors that might increase the mortality rate.

Migrant mortality and share of interception by the LYCG, January 2017-March 2018. Forensic Oceanography figure, statistical analysis by Gian-Andrea Monsch, based on Italian Coast Guard, IOM and UNHCR data.
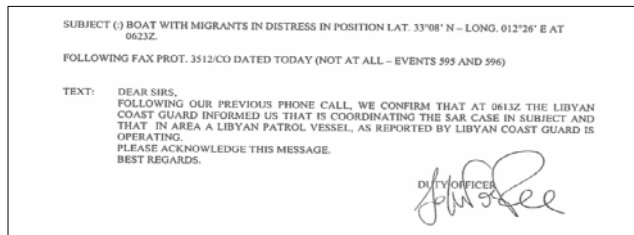
While the LYCG intercepted and returned to Libya 20,335 people over the course of 2017 according to IOM data,[207] in general little is known about these events and the fate of the migrants, and state actors have not accepted to disclose the information we requested. However, in a few cases the presence at sea of rescue NGOs or journalists has allowed us to obtain more information. The reconstructions of these interceptions offer crucial insights into how the policies of collaboration between EU and Italian actors and the LYCG have manifested on the ground, revealing consistent operational patterns. What the analysis of these trends clearly indicates is that Italian and EU state actors have actively sought to prevent European vessels – state or NGO – from rescuing migrants, and have instead provided instruction and undertaken coordination with the LYCG to do so instead, thereby operating a form of *refoulement by proxy*.

Most of the cases of interception analysed here refer to events occurring after late September 2017, when the practice of *refoulement by proxy* had already been consolidated, resulting in migrants being brought back to Libya. Before turning to these, however, we look to incidents that occurred in the previous months. Here **we can observe the emergence of certain tactics to sideline NGOs and expand the share of LYCG interceptions**, even if these did not always result in the migrants being brought back to Libya. **Two main operational shifts stand out in particular: first, outsourcing the coordination of rescue activities to the Libyan coast guard; and second, keeping European vessels on standby.**

Outsourcing the coordination of rescue activities to the Libyan coast guard

The **10 May 2017** case involving the rescue NGO **Sea Watch** is one of the first recorded examples in which the coordination of a SAR event was transferred from the Italian MRCC to the LYCG. The Italian MRCC, which had initially received the distress call and requested Sea Watch to intervene, subsequently informed them that at 06.13 UTC the LYCG had assumed the coordination for this case (see email).

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207 http://www.globaldtm.info/libya/

SUBJECT (:) BOAT WITH MIGRANTS IN DISTRESS IN POSITION LAT. 33°08' N – LONG. 012°26' E AT 0623Z.

FOLLOWING FAX PROT. 3512/CO DATED TODAY (NOT AT ALL – EVENTS 595 AND 596)

TEXT: DEAR SIRS,
FOLLOWING OUR PREVIOUS PHONE CALL, WE CONFIRM THAT AT 0613Z THE LIBYAN COAST GUARD INFORMED US THAT IS COORDINATING THE SAR CASE IN SUBJECT AND THAT IN AREA A LIBYAN PATROL VESSEL, AS REPORTED BY LIBYAN COAST GUARD IS OPERATING.
PLEASE ACKNOWLEDGE THIS MESSAGE.
BEST REGARDS.

DUTY OFFICER

Email from MRCC Rome to Sea Watch confirming hand-over to LYCG.

Following this communication, the LYCG patrol boat *Al Kifah* (206) interrupted the rescue operation that had already been started by Sea Watch, coming dangerously close to their vessel. Sea Watch retreated immediately, but could witness the LYCG stopping the migrants' boat under the threat of a gun, and pulling back the migrants to Libya.[208] **This incident represents an early case in which we can observe practices that would be further systematised over the following months, in particular the transfer of SAR coordination to the LYCG resulting in the interception and pull-back of migrants to Libya, despite the presence of a European vessel that could have rescued the passengers and brought them to a place of safety.**

Libyan coast guard cutting off Sea Watch on 10 May 2017, Sea Watch bridge video; Libyan coast guard intercepting vessel, Der Spiegel.

The cases reported by NGOs in the database compiled by the Search and Rescue Observatory for the Mediterranean (SAROBSMED) on the basis of reports by rescue NGOs, shows that **over Spring and Summer 2017 the transfer of SAR coordination was progressively systematised, through trial and error, into a new pattern of practice.** This practice takes place in a grey area of the international legislation on maritime search and rescue, which assigns the responsibility of a given Search and Rescue (SAR) operation to the first Maritime Rescue and Coordination Centre (MRCC) receiving information of a situation of distress, while also acknowledging the possibility, under certain circumstances, for this first MRCC to hand over the coordination of rescue activities to another SAR authority. While generally possible, however, **the legitimacy of the LYCG claiming, and of the Italian MRCC handing over, the coordination of**

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208 Sea-Watch, 'Libyan navy is risking lives of Sea-Watch crew and refugees during illegal return operation', 10 May 2017, https://sea-watch.org/en/libyan-navy-is-putting-sea-watch-crew-and-refugees-into-danger-during-an-illegal-return-operation/; Sea-Watch, 'Sea-Watch demands independent investigation of the illegal return of an overcrowded wooden boat', 11 May 2017, https://sea-watch.org/en/pm-sea-watch-demands-independent-investigation-of-the-illegal-return-of-an-overcrowded-wooden-boat/. See also Amnesty International, *Italy: Refugees and Migrants in the Central Mediterranean, Cutting the Lifelines,* 22 May 2017, https://www.amnesty.org/download/Documents/EUR3063192017ENGLISH.pdf . Finally, see the recording of the events from aboard the LYCG vessel in a Spiegel documentary, 'Sea Watch gegen libysche Küstenwache', 14 May 2017, http://www.spiegel.de/video/sea-watch-gegen-libysche-kuestenwache-video-99011605.html

a SAR event is highly questionable owing to the absence of a functioning Libyan MRCC, which is a prerequisite in the relevant legislation. The highly unprofessional and aggressive behaviour of the LYCG make the conferment or claim of the role of "On Scene Coordinator" (OSC), the actor responsible for the co-ordination of rescue activities on the ground, just as problematic.

Beyond the question of the legitimacy – and legality – of the transfer of SAR coordination to the LYCG for the reasons evoked above, what needs to be highlighted in this context is that **the transfer of SAR coordination to the LYCG is what allows these interceptions and pull-backs to be disguised as routine rescue activities.** As the 10 May incident indicates, these interceptions often happen under the threat of violence. That the LYCG has to threaten migrants with a gun indicates clearly that such an operation cannot be qualified as "rescue". Migrants know that all too well, as they are aware of the violence they will face at the hands of the LYCG and in Libyan detention thereafter. **By definition, the LYCG *cannot* adequately complete rescue activities – which end only once migrants are brought to a place of safety – as long as migrants are brought back to Libya** - a country at war, in which their rights and lives are systematically violated. The assumption or handover of coordination of rescue activities to the LYCG thus fundamentally conflicts with the imperative to grant migrants the right to seek international protection and to disembark in a place of safety. **By accepting to hand over the coordination of rescue activities to the LYCG, the Italian MRCC and other European state actors, effectively deny all these issues. Not only are they legitimising the LYCG by treating it *as if* it would be any other coast guard agency; they are also effectively tasking them to intercept migrants seeking international protection, and to pull them back to Libya where their lives are at risk, in other words operating *refoulement by proxy*.**
Keeping European vessels on stand-by

Connected to the handing over of rescue coordination to the LYCG, **the second operational shift concerns the growing tendency by the Italian Maritime Rescue Coordination Centre (IMRCC) to order European vessels – whether NGO or Navy ships – to stand by until the arrival of LYCG assets** to pull migrants back to Libya. We have analysed three episodes occurring in August and September 2017 in which the rescue NGO SOS Méditerranée was involved. While these events did not result in the migrants being pulled back in the end, they are indicative of the progressive systematisation of this pattern.

On the **27 August 2017**, the IMRCC directed the *Aquarius* vessel of SOS Méditerranée towards a vessel in distress. However, as it approached, the rescue NGO's crew was contacted again by the IMRCC and told it should wait for the LYCG's arrival. One hour and a half after establishing visual contact and after SOS Méditerranée expressed its concern for the migrants' increasingly urgent condition, the Aquarius received the go-ahead from MRCC Rome to conduct the rescue operation.

On the **14 September 2017**, the IMRCC informed SOS Méditerranée of the presence of a vessel in distress 12 NM off the Libyan coast but it did not request the NGO's assistance, it claimed, the LYCG was on its way and had assumed coordination of the operations. The LYCG arrived on the scene more than two and a half hours after the first alert. Seeing that the migrants' boat had taken in water, the LYCG requested the NGO to proceed with the rescue, which it did four hours after the initial alert, with the boat now 25 NM off the Libyan coast.

On the **25 September 2017**, the IMRCC informed SOS Méditerranée of the presence of a vessel in distress 25 NM north of the Libyan city of Sabratha but that the NGO's assistance was not required because the LYCG was on its way and had assumed coordination. Faced with the lack of response to repeated telephone calls to the LYCG, the NGO finally got permission to operate the rescue.

While ultimately these three cases did not result in the migrants being pulled back, the stand-by imposed on the NGO ship delayed the rescue by several hours. This increased the risk to the passengers, since overcrowded vessels can capsize at any moment, and injuries and deaths also routinely occur from passengers' exposure to the mixture of water and fuel and adverse elements. NGOs were faced with a dilemma: obeying the orders of the Italian MRCC meant increasing the risk of death and of *refoulement* for the migrants they aimed to rescue. In the following months, several incidents were recorded in which this would be the outcome.

REFOULEMENT BY PROXY IN FULL FORCE

As of the end of September 2017, the practice of refoulement by proxy had been consolidated. We now turn to several cases of interception and pull-back by the LYCG which were documented through the presence of NGOs or journalists, and which shed crucial light on how this practice has been implemented.
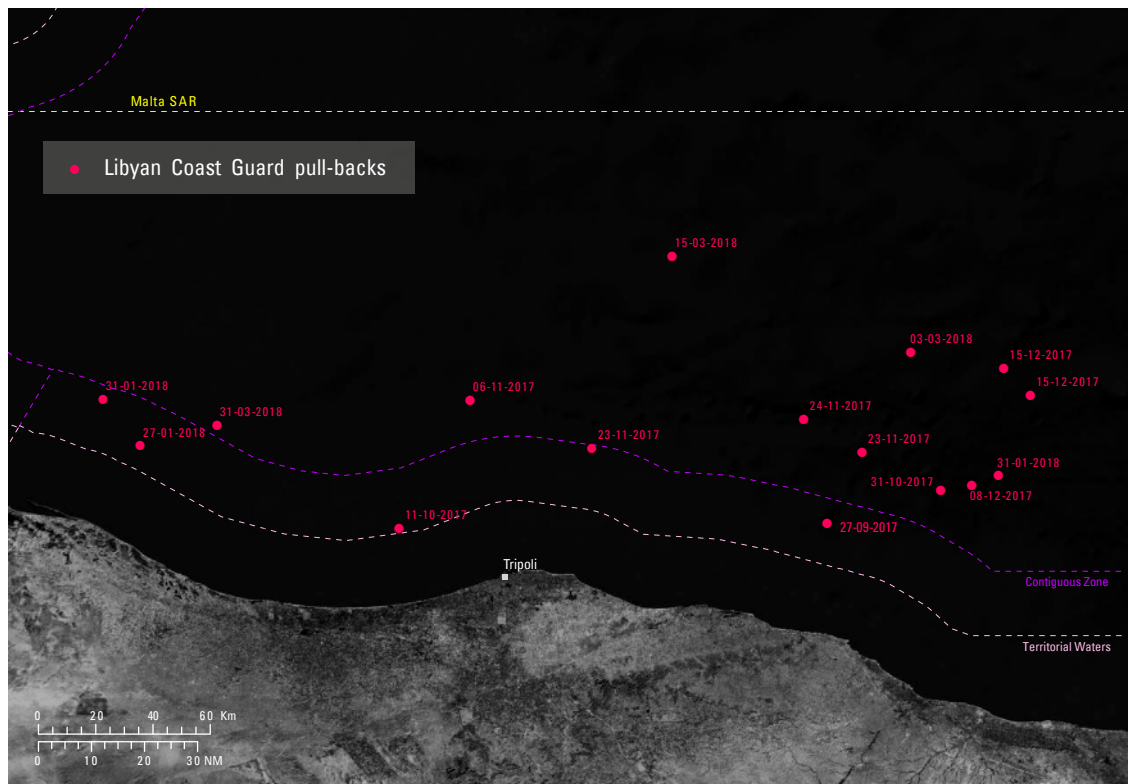
Cases of pull-backs by the Libyan Coast guard, summer 2017 – March 2018. Figure by Forensic Oceanography based on SAROBSMED data. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

27 September 2017 case
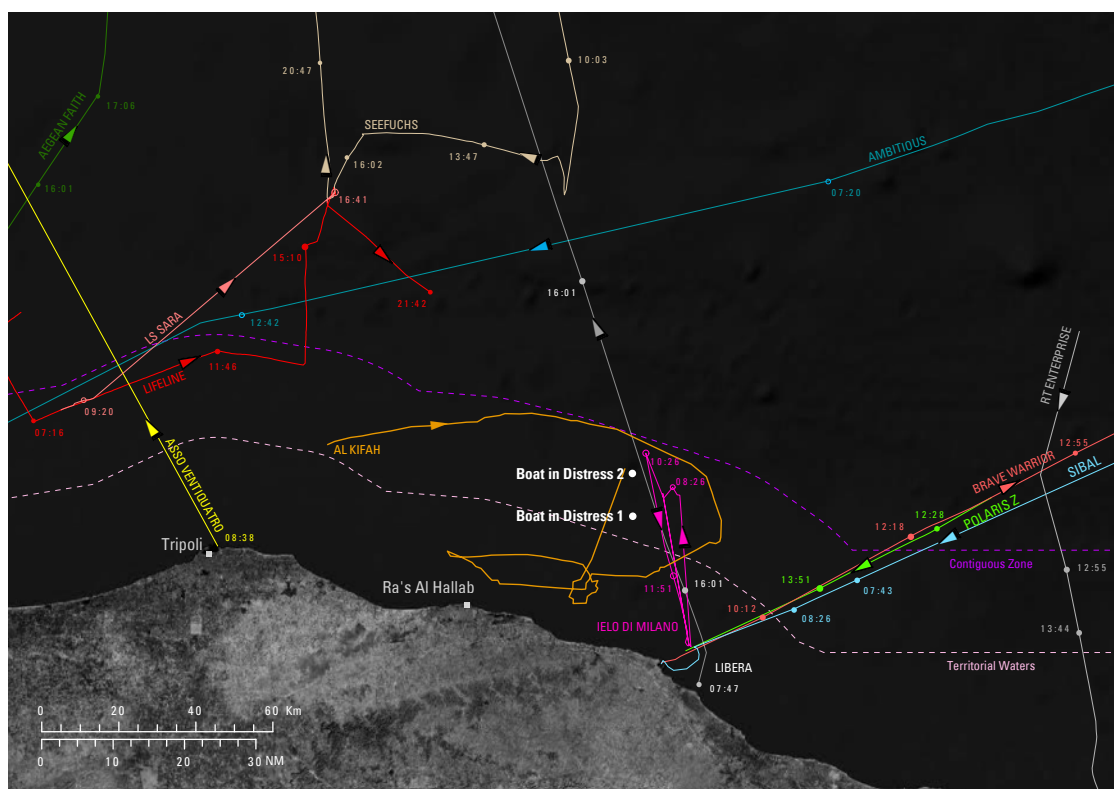
AIS map of the 27 September 2017 pull-back case. Figure by Forensic Oceanography. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

On **27 September 2017**, two boats carrying migrants were pulled back to Libya despite an **Italian Navy warship, the *Andrea Doria***, being located nearby and providing minimal rescue measures. These events were witnessed and documented by Isobel Yeung, a journalist for *Vice News*, who was on board the **LYCG vessel *Al Kifah*** that operated the interception.[209] This account of events is also partly confirmed by a press release from the Italian Navy itself.[210] That morning, as the captain of the *Al Kifah* describes in the video, he received **two distress notifications from the Italian warship *Andrea Doria***, part of the Italian operation Mare Sicuro, providing the position of the distressed boats, some 20 NM off the coast Libya. These positions were shown in the Vice video written onto a paper by the LYCG. The video also shows the track of the LYCG vessel, which appears to have been on patrol at the limit of the 24 NM during the night, then headed back to patrol towards the Libyan coast, before heading straight back out after having received the Italian Navy's instructions. As the map of the events shows, the LYCG's track and the positions written down by the LYCG correspond, confirming that this was the location of interception. The AIS data indicating ship positions at the time of events further shows that there were several merchant ships in the area that could

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209 VICE News, 'Italy is paying Libya to intercept migrants on the Mediterranean', 25 October 2017, https://news.vice.com/en_us/article/ned4dg/italy-is-paying-libya-to-intercept-migrants-on-the-mediterranean

210 Ministero Della Difesa, 'Difesa - Marina Militare: unità della Guradia Costiera libica effettua prima operazione di salvataggio dopo le verifiche di efficienza', 27 September 2017, https://www.difesa.it/SMD_/Comunicati/Pagine/guardia_costiera_libica_prime_operazioni_salvataggio.aspx

have been diverted to rescue the migrants, as well as the rescue NGO vessels Lifeline and Seefuchs. These do not appear to have been informed of the presence of the migrant boat in distress.

Video still showing the trajectory of the Libyan coast guard vessel indicated on its screen on 27 September 2017, and coordinates of boats in distress written down by the Libyan coast guard. Filmed by Vice News.

Video still showing the migrants being intercepted by Libyan coast guard vessel on 27 September 2017, with the Italian warship Andrea Doria in the background; Intercepted migrants on the deck of the Libyan coast guard vessel, equipped with the life jackets baring the insignia of the Italian Navy. Filmed by Vice News.

When the LYCG reached the location, the Italian warship had already been there for some time, refraining from rescuing the passengers but nevertheless providing life vests to them. **The Italian military had thus waited for the Libyan Coast Guard to arrive to intercept and pull the migrants back to Libya.** As the captain on board the LYCG vessel explains in the Vice video, after the interception, the life jackets would be handed back to the Italian Navy. According to the ITCG's response to our request for information concerning this incident, **213 migrants were intercepted from these two boats and** Isobel Yeung reported that the migrants were brought to the Tajoura Detention centre in Tripoli. We should note that this event is not listed in the IOM's database, and neither was it mentioned on the Facebook page of the Libyan coast guard and Navy.

In this incident, we thus see that the Italian Navy jeopardised the migrants' lives by abstaining from performing rescue and only offering minimal assistance until the LYCG arrived on the scene. The Italian Navy coordinated the activities of the LYCG to prioritise the interception of the migrants by the LYCG and their being pulled back to Libya.

11 October 2017 case
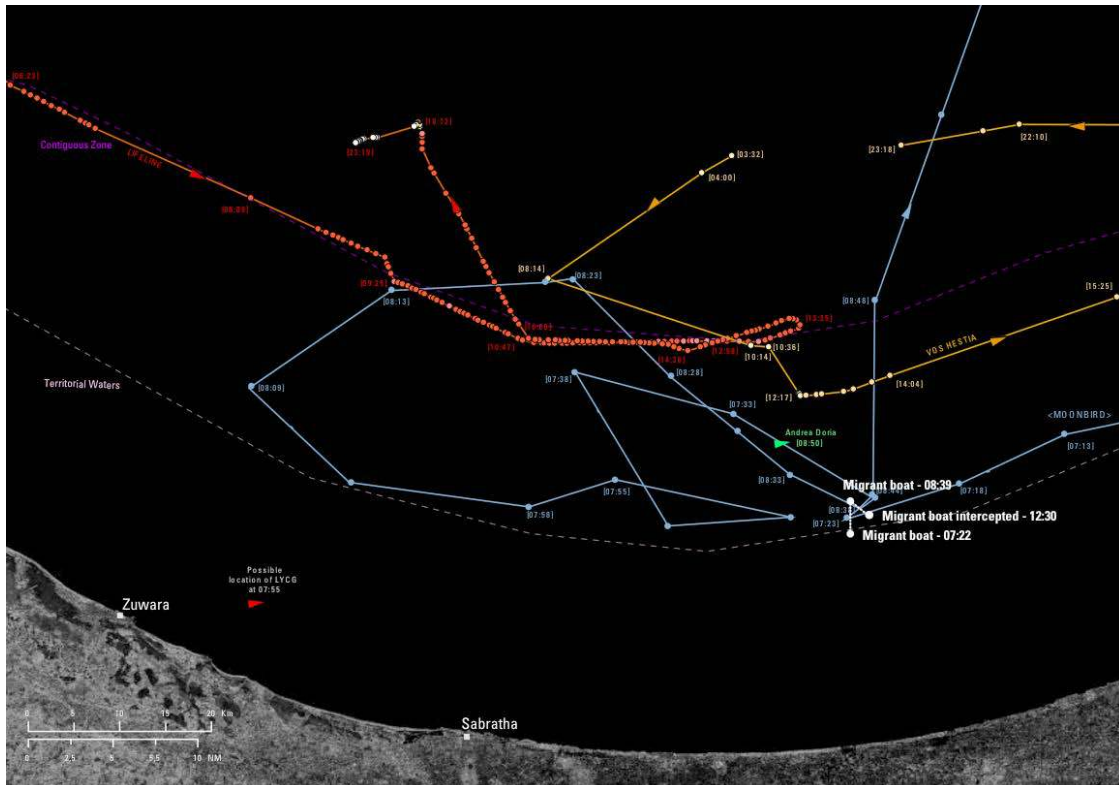
AIS map showing the 11 October 2017 pullback case. Figure by Forensic Oceanography. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

On **11 October 2017**, a boat carrying approximately **154 people** left the Libyan coast in the early morning. **Some of its passengers would be pulled back by the Libyan coast guard despite the presence of several SAR NGOs, as well as European warships, in the vicinity**. The following account is based on a sighting by the *Moonbird* civilian aircraft, which has been deployed to detect migrants in distress, information provided by one of the SAR NGOs in the vicinity, as well as information gathered from the LYCG.

Photograph of the migrants' vessel taken at 07:22 UTC by the *Moonbird*.

At 07:22 UTC the *Moonbird* spotted a white rubber boat with approximately 160 people on board 12.8 NM off the Libyan coast, in position 33°01'N 012°50'E. It noted in its logbook that the passengers were wearing distinctive orange and yellow lifejackets – which are uncommon - and waving lifebuoys, and that the boat appeared to be drifting without the force of its engine. It further noticed an Italian helicopter in vicinity flying

towards the boat. At 07:30, the Moonbird notified the Italian Maritime Rescue Coordi-
nation Centre (IMRCC). Soon after detecting the migrants' boat, the Moonbird noticed
the Italian Navy vessel *Andrea Doria* (D553), which was taking part in operation Mare
Sicuro, within Libyan territorial waters.
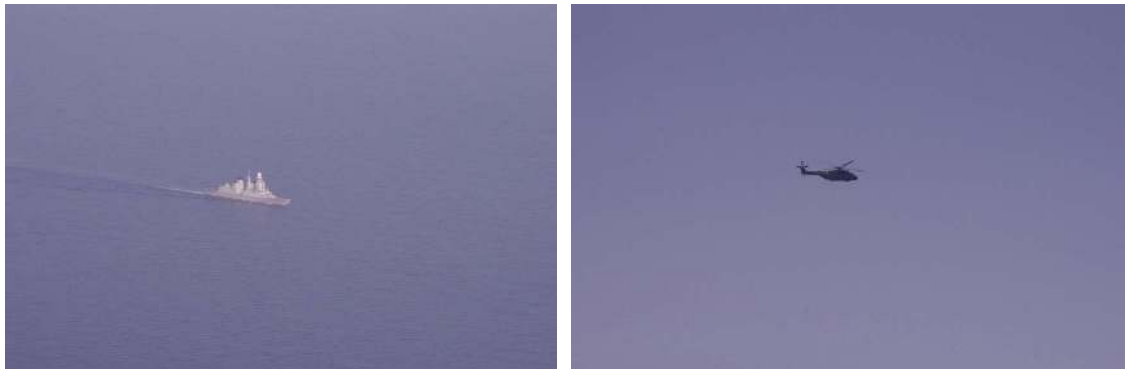
Italian Navy's *Andrea Doria* and its helicopter, photographed by *Moonbird*.

At 07:55 the **Moonbird overheard the *Andrea Doria* contacting the LYCG vessel *Al
Kifa* via radio**. While only fragments of this communication were recorded by the crew
of the *Lifeline*, a rescue NGO which was heading towards the vessel in distress, the
crew of the Moobird registered in its logbook the **Italian warship requesting the LYCG
to proceed to the position of the migrant boat**. The LYCG reported that its vessel *Al
Kifa* was currently 30.5NM away from the target, and estimated its time of arrival to be
in about 2h. During this communication, the Andrea Doria indicated it was located only
12.9NM away from the boat in distress.

At 08:23, the *Moonbird* also informed the *Vos Hestia* vessel of the NGO Save the Chil-
dren, in position 33°15'N 012°33'E. The *Vos Hestia* confirmed it had been assigned by
MRCC Rome to rescue the vessel in distress and estimated its arrival to 2h. At 08:39
the *Moonbird* established an updated position for the rubber boat which had drifted
North and was now 14.5 NM off the Libyan coast, in position 33°03'N 012°50'E, which
the *Moonbird* provided to MRCC Rome, also informing the Italian coast guards of the
different vessels present in the area and concluding its message with the following:
"Please assure migrants get rescued to safe harbour and country according to Intl. Law.
Moonbird. Over".
At 08:29 the *Moonbird* overheard once again the *Andrea Doria* communicating with the
LYCG, demanding LYCG to approach with maximum speed. This request was reiterated
at 08:50, when the *Andrea Doria* communicated to the LYCG: **"We are waiting for you
to perform interception".** Just after determining the position of the *Andrea Doria* at
08:50 in 33°06'N 012°46'E, the *Moonbird* had to return to Malta as it was running out
of fuel.

While limited by the absence of the civilian aircraft, the unfolding of the subsequent
events can be reconstructed by combining several converging sources: AIS vessel
tracking data, which shows that the *Vos Hestia* remained at a distance after the on-
scene command had been assumed by the Libyan coast guard; information released
by the Italian coast guard; and Facebook posts by the Libyan coast guard and Navy
containing photographs and a video of the event.

In summary, what emerges from these sources is that the *Andrea Doria* approached the
migrants' vessel but remained at a distance, deploying only a RHIB. As the LYCG pulled

the migrants' boat towards its patrol vessel, some of the passengers started jumping towards the Italian RHIB because they knew they would be returned to Libya otherwise. Evidence of this unfolding of events is provided in response to our request for information from the Italian Coast Guard concerning this incident, which indicates that at approximately 12:30 in position LAT. 33° 02'N LONG. 012° 51'E, 42 people fell into the water from the vessel of the LYCG and the *Andrea Doria* intervened to rescue them. The Libyan Navy's Facebook post referring to the 11 October incident reported that **40 people were taken to Italy, while the remaining 100 passengers were brought to Libya**, disembarked in Tripoli and brought to a detention centre. Finally, in a Facebook post concerning the 6 November 2017 incident involving Sea Watch, the LYCG posted images that clearly refer to the 11 October 2017 case. Even though the images' metadata has been modified and their resolution is poor, the life vests of distinctive colour, as well as the unfolding of events they record – the *Andrea Doria* in the distance and the passengers seeking to reach the Italian RHIB – indicate that they in fact document the October event.

Photographs published by the Libyan Navy and coast guard showing the unfolding of the 11 October 2017 interception and rescue.

Still from a video published by Lcna Libya also documenting the unfolding of the 11 October 2017 interception and rescue.[211]

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211 Available at: https://www.youtube.com/watch?v=p7jt1pOUC2A, also posted on the Facebook page of the Lybian Navy: https://www.facebook.com/CoastGuardly/videos/1545094545578237/?hc_ref=ARS8yj8R-MvpGxOtqVWs6D34GgxQxQAKMJBcD2hjC3MkJmN5MKHhONhqHs6dQ4XTn-Y&-fref=gs&dti=540266522813704&hc_location=group

Screen shot of a Libyan Navy Facebook post describing the events, 12 October 2017.

In this event, we can see once again that the Italian Navy jeopardised migrants' lives by abstaining from performing rescue while it was the closest asset. It coordinated the activities of the LYCG so that they would intercept the migrants and pull them back to Libya. Only as a result of the migrants desperately trying to escape Libyan captivity by swimming towards the Italian vessel were some of the passengers rescued by the Italian Navy. The events recorded on the 27 September, 11 October and, as we will see, on the 15 December 2017, are noteworthy insofar as those cases offer unequivocal evidence of the *instructions* provided by the Italian military to the LYCG, offering rare insight into the level of coordination of, and command over, the LYCG exercised by the Italian Navy. While the documentation available for these cases is *exceptional* as it hinges on the chance of an NGO asset overhearing radio communication, it records practices that probably took place in several other subsequent cases discussed below without being recorded.

31 October 2017 case

On **31 October 2017**, the vessel *Aquarius* of **SOS Méditerranée** was alerted by MRCC Rome to two boats in distress with some 200 people on board approximately 34 NM from the Libyan coast. The Libyan Coastguard however assumed on scene command and the Aquarius was forced to stand by as the passengers were pulled back despite the presence of the Italian warship *Andrea Doria* and a military helicopter, which we can see on the horizon in the photograph taken from SOS Méditerranée's deck and posted on its twitter account. No details concerning the circulation of information between Italian and EU actors and the LYCG has been disclosed. According to the Libyan Navy Facebook post, the passengers were brought back to the Tajoura detention centre.

Photograph taken by the crew of the Aquarius showing the Andrea Doria in the background.

23 November 2017 case

On the **23 November 2017**, two boats located approximately 24 NM off the Libyan coast were intercepted and pulled-back to Libya despite the presence of the vessel of the rescue NGO **Open Arms**. The rescue NGO had been requested by MRCC Rome to direct itself towards a first vessel in distress, but was then directed towards a second boat, with which it established visual contact at 07:25. At 07:41 Open Arms contacted MRCC Rome for an update, and was told that the LYCG was taking charge of the first boat in distress and that the LYCG's vessel *Sabratah* was directing itself towards its position. Between 08:00 and 08:30 the crew of the Open Arms brought on board the passengers of the second boat, and then directed its RHIBs towards the first. However, at 08:40 MRCC Rome requested Open Arms to remain at a distance from the boat in distress. At 09:09 MRCC Rome informed Open Arms that the vessel had been intercepted by the LYCG and communicated a new position for a third boat, specifying that the LYCG was also involved in this event, and again requested the Open Arms to stay within visual distance of the boat, and to update MRCC Rome on the situation. At 08:45 Open Arms established visual contact and informed MRCC Rome. At 08:55, the crew of the Open Arms saw the LYCG vessel approaching the boat, and MRCC Rome requested the Open Arms to remain in its position. The LYCG contacted the Open Arms via VHF radio, requesting that it remain at a distance of 6 NM. Open Arms observed as the LYCG brought all passengers up to its deck and headed back towards Libya.

23 November 2017 photograph posted on Twitter by Open Arms indicating it had rescued a first boat pictured here and was directing itself towards a second. On the horizon, the shape of what appears to be a military war ship is visible.

24 November 2017 case

On **24 November 2017**, a boat was intercepted and pulled-back despite the presence of the *Aquarius*, the boat of the rescue NGO **SOS Méditerranée**.[212] At dawn, the Aquarius spotted a first boat in distress in international waters east of Tripoli, 25 NM from the coast. Soon after a second boat was spotted. The Aquarius was ordered to remain on 'standby' by MRCC Rome, with the coordination of the two "rescue" operations having been assigned to the LYCG. During the four hours of standby the weather conditions deteriorated, further increasing the risk of shipwreck. The crew of the Aquarius kept at a distance, in accordance with the instructions received from the Italian authorities and for security reasons due to the presence of the Libyan units. They witnessed the interception of these two boats in distress in international waters, with the Aquarius' offer of assistance being declined by the Libyan Coast Guard.

8 December 2017 case

On **8 December 2017**, the *Aquarius* of **SOS Méditerranée** witnessed the interception of a boat in distress in international waters, 35 NM from the Libyan coast waters East of Tripoli, by a vessel marked as the Libyan coastguard.[213] According to the rescue NGO, the vessel had been spotted and identified by a military aircraft part of the EUNAVFOR MED operation and an Irish warship part of the same operation was present during the interception. The NGO had been requested to direct itself towards the vessel in distress. However, as it approached the distress position, the Aquarius was overtaken by the faster EUNAVFOR MED ship. The Navy ship then slowed down and let an approaching LYCG vessel take over and reach the rubber boat. By the time the Aquarius arrived on the scene the LYCG had already initiated the interception of the rubber boat. MRCC Rome informed the rescue NGO that the LYCG was assuming coordination for the "rescue" – and the NGO could observe from its bridge the LYCG intercepting the boat. The Aquarius stayed on standby, as did the European navy ship, and its offer of assistance was declined by the LYCG, which instead requested it to move away from the area. That day, the LYCG announced on Facebook that it had rescued 209 migrants on two boats, who were brought to detention centres in Tripoli, while the Italian coast guard mentioned the figure of 260 people.

Photograph of the Libyan coast guard interception posted on Twitter by SOS Méditerranée, 8 December 2017.

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212 SOS Mediterranee, 26 November 2017, 'Dramatic week in the Mediterranean: More than 800 people rescued by SOS MEDITERRANEE, whilst crew witnesses interceptions at sea by the Libyan Coast Guard', http://old.sosmediterranee.org/dramatic-week-in-the-mediterranean-more-than-800-people-rescued-by-sos-mediterranee-whilst-crew-witnesses-interceptions-at-sea-by-the-libyan-coast-guard/?lang=en
213 SOS Mediterranee, 11 December 2017, 'Mediterranean crossings continue through the winter- 450 survivors safe aboard Aquarius en route to a port of safety', http://old.sosmediterranee.org/mediterranean-crossings-continue-through-the-winter-450-survivors-safe-aboard-aquarius-en-route-to-a-port-of-safety/?lang=en

15 December 2017 case
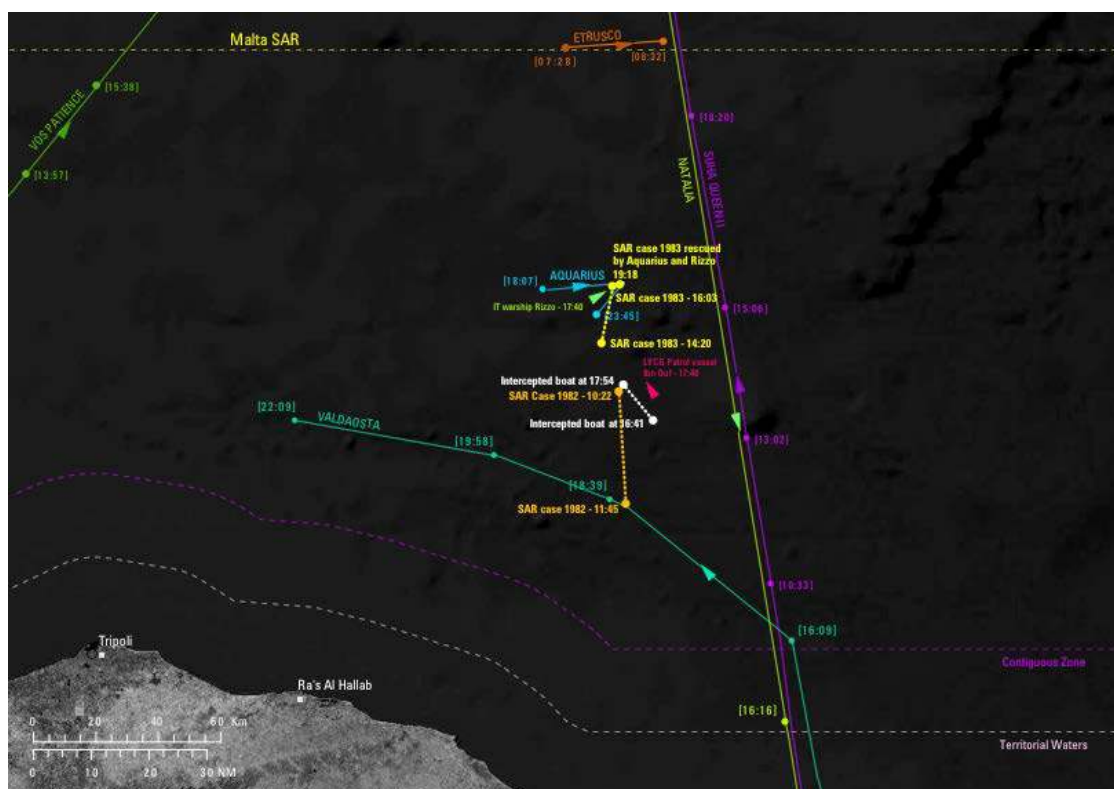
AIS map of the 15 December 2017 pullback case. Figure by Forensic Oceanography. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

A similar pattern was documented on **15 December 2017**. That day, Fabio Butera, a journalist on board the *Aquarius* vessel of **SOS Méditerranée**, recorded the communication leading to an **interception of two boats carrying 262 migrants** which were pulled back to Libya by the LYCG, under the coordination of the Italian Navy. The following chain of events relies on the report provided by Fabio Butera and AIS data analysis, as well as news and Facebook reports.

At 11:53 UTC, the Aquarius received a distress signalisation from MRCC Rome, concerning the SAR event **1982**, from which MRCC Rome had received a distress call at 10.12 UTC, and instructed the NGO to direct itself towards the migrants' boat position in 33°31′N 014°43′E. At 12:35 UTC MRCC Rome called again to provide additional information concerning the boat, which had been sighted at 11:45 UTC in position 33°15′N 014°44′E by a **helicopter of the Italian Navy belonging to the *Rizzo* warship**, deployed as part of the Mare Sicuro operation. MRCC Rome added as well that the LYCG were in operation 30 NM south of the position of the boat. **While the exact position of the Rizzo at the time is not known to us, from the operating patterns of the Italian Navy observed by rescue NGOs, it is probable that it was within a radius of 35 NM from its helicopter, and its high speed of 27 kn would have enabled it to reach the migrants' boat in one to two hours.[214] AIS data we have analysed also shows that several merchant vessels were transiting in the area at the time and could have been called upon to divert their course and operate rescue.**

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214 Ministero Della Difesa, 'Rizzo Luigi', www.marina.difesa.it/uominimezzi/navi/Pagine/RizzoLuigi.aspx

At 13:35 UTC MRCC Rome informed the NGO that, according to information received from other assets in the area, the **Libyan Navy vessel *Ibn Ouf***, operating under the LYCG, was directing itself towards the boat in distress and would reach it within approximately one hour. At 15:37 UTC, MRCC Rome informed the Aquarius that the LYCG had assumed coordination of case 1982, and directed the NGO to another vessel in distress, case **1983**, located some 30 NM north of case 1982 in position 33°38'N 014°40'E – as detected at 14:20 by the Italian Navy helicopter. MRCC Rome requested the NGO to direct itself towards the new target to support in the rescue coordinated by the Italian Navy ship Rizzo, which had assumed On Scene Command for this case. The fact that the Rizzo assumed On Scene Command confirms again the Italian ship's proximity to the area in which these different SAR cases were being declared.

At 16:03, the Aquarius established radio contact with the Rizzo's helicopter, which provided the exact coordinates of the boat in distress in position 33°46'N 014°42'E. While the NGO vessel directed itself to the position, as of 16:30 it could **overhear the communication between the *Rizzo* (communicating as "Charlie") and the *Ibn Ouf* (communicating as "Bravo")**, which was recorded by a journalist present onboard, Fabio Butera. While the vessels involved in this communication identified themselves using these pseudonyms, their identity is evident as they were the only assets detected on the Aquarius' radar, and their radio communication was clearly audible. Finally, the accent of the actors communicating leaves little doubt as to their Italian and Arabic origin.

At 16:41 the crew of the Aquarius heard the Italian Navy providing the LYCG the coordinates of a vessel in distress in position 33°27'N 014°49'E, and requesting that it intercept the vessel:

> Charlie: Bravo this is Charlie. **You have to go in this position** 33°27'N 014°49'E.
> Charlie: Ok in this position 33°27'N 014°49'E there is your contact. You find the contact in that announced position. Over.
> Charlie: Bravo this is Charlie. Please, please confirm me that you are going on the last position I gave you.
> Bravo: Charlie this is Bravo.
> Charlie: Bravo, please, confirm me when you find the rubber boat in the last position I gave you.
> Bravo: Ok. I will give you information about the rubber boat when I have found.

At 17:40 The Aquarius heard the LYCG calling the Italian Navy ship in position 33°45'N 014°41'E, while the LYCG reported its position in 33°32'N 014°48'E. At 17:54 the Aquarius heard the Rizzo informing the LYCG of an updated position for the rubber boat in position 33°32'N 014°44'E, 3/4NM west of the LYCG's position at the time. At 18:12 The Aquarius reported to MRCC Rome on the VHF communication between "Bravo" and "Charlie", and the returns concerning these vessels on its radar.

At 19:18, in position 33°46.4'N 014°43.2'E the Aquarius finally reached the boat towards which it had been directed, identified as SAR event 1983, and conducted the rescue operation in collaboration with a RHIB of the Rizzo. All passengers were brought safely on board the Aquarius. However, according to a Facebook post by the LYCG, **262 migrants from two different boats in distress – most certainly including the one described in the communication between the IT Navy and LYCG – were intercepted by the LYCG** and brought back to Tripoli, where they arrived the following day and were brought to a detention centre. Their arrival was photographed and reported by Reuters journalists.

Intercepted migrants dissembarking from the Ibn Ouf, 16 December 2017. Reuters/Ismail Zitouny.[215]

One of the survivors whose testimony was recorded on video by journalists present at disembarkation, described having contacted the Italian coast guard, but that their boat, which was taking in water, soon ran out of fuel and began to drift. The LYCG intercepted them in the end.[216]

In this incident, we see once again an Italian warship taking an active role in detecting migrants in distress and passing on the information to the LYCG, co-ordinating and instructing their asset to intercept the migrants. While the exact location of the Italian warship is unknown, it was certainly close and fast enough for it to have been able to rescue the passengers before they were intercepted by the LYCG. Furthermore, the vessels of a rescue NGO and merchant ships could also have been called upon. Instead, interception by the LYCG was privileged.

27 January 2018 case

On **27 January 2018**, the *Aquarius* of SOS Méditerranée was once again witness to a pull-back by the LYCG more than 15 NM off the Libyan coast.[217] In the evening, the Aquarius had received instructions from MRCC Rome to search for a boat in distress in international waters west of Tripoli. The boat was spotted at 15 NM off the Libyan coast four hours later. While the NGO's team was less than 100m from the boat in distress and ready to intervene, a LYCG vessel approached and ordered the NGO to leave the area. The LYCG did not immediately perform the rescue, first escorting the Aquarius away from the scene. The Aquarius was informed by MRCC Rome that the LYCG had assumed "on scene command" of this operation, and was asked to comply with their instructions. At a distance, over the radio, the crew of the Aquarius could follow communication saying that the LYCG had intercepted two rubber boats.

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215 Reuters, 'Libyan coast guard rescues more than 250 migrants trying to reach Italy', 16 December 2017, https://www.reuters.com/article/us-europe-migrants-libya/libyan-coast-guard-rescues-more-than-250-migrants-trying-to-reach-italy-idUSKBN1EA0EQ
216Ruptly, 'Libya: Libyan Coastguard rescues hundreds of refugees near coast of Algarabolli', You Tube, 16 December 2017, https://www.youtube.com/watch?v=4XZ2AakPb_k
217SOS Mediterranée, 'Tragic day for Aquarius in the Mediterranean: A fatal shipwreck and new interception of migrant boat by Libyan Coast Guard', 28 January 2018, http://sosmediterranee.org/tragic-day-for-aquarius-in-the-mediterranean-a-fatal-shipwreck-and-new-interception-of-migrant-boat-by-libyan-coast-guard/?lang=en

31 January 2018 case

On the **31 January 2018**, Open Arms witnessed another pull-back. At 5:50 am, Open Arms received a call from MRCC Rome regarding a boat in distress, but indicating no position. Following MRCC Rome's instructions, the rescue NGO headed to the north of Tripoli, waiting for further information and/or updates. However, 1 hour later, Open Arms was approached by a LYCG vessel and requested to leave the area via radio communication. At 08:12 MRCC called again Open Arms concerning another boat in distress, 63 NM east of Open Arms' position, towards which the NGO directed itself. However, at 09:30 MRCC called again, informing the crew that an airplane had established visual contact with a black rubber boat 40 NM off Libyan coast, 48 NM from Open Arms' position at that time, but that the LYCG would assume the coordination of the operation and its vessel "Gamines" would reach the rubber boat within the next 2 hours. However, after the NGO approached the position of the boat and lowered its RHIBs shortly after 10:00, all the crew on board the RHIBs could see was a smoke column and the LYCG vessel leaving the scene with the migrants on board. In this incident, the NGO was provided with contradictory and erroneous instructions that ultimately enabled the LYCG to pull-back the passengers to Libya.

Remains of migrants' vessel set on fire and LYCG vessel departing the scene with the intercepted migrants on deck. 31 January 2018, Photographs by Open Arms.

31 January 2018 case 2

Also on the **31 January 2018**, the rescue NGO Sea Watch witnessed an incident in which passengers in distress – possibly belonging to several boats - were partly rescued by the Italian coast guard (ITCG) and partly by the LYCG. According to the account provided by Sea Watch's head of mission during this event, in the morning hours Sea Watch was informed about a SAR case and headed towards that position. However, when the NGO got closer to the indicated position near the 24 NM limit, it saw that the ITCG had a vessel on scene. Contacted by radio, the ITCG explained that it had no visual on the migrants' boat yet, and the NGO thus set a wider search range. However, informed again about the boat by MRCC Rome, Sea Watch returned to the previous position, only to find the ITCG close to a LYCG vessel, each with passengers onboard, before heading in the opposite direction. Over radio, the ITCG confirmed that migrants had been taken on both vessels. In a post by the Libyan Navy, LYCG confirmed to have intercepted several boats on the 31 January 2018. The conditions of these interceptions and the possible collaboration of the ITCG vessel remain to be clarified.
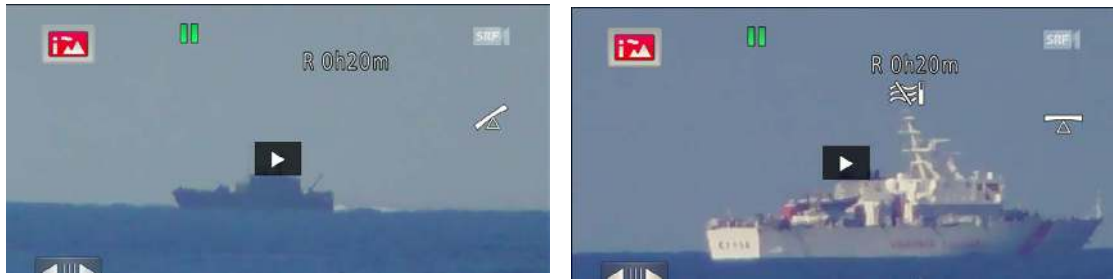
LYCG and ITCG vessels recorded in close proximity through Sea Watch's video camera on
31 January 2018.

3 March 2018 case

On **3 March 2018**, the *Aquarius* witnessed another pull-back. While it had been direct-
ed by MRCC Rome to the East of Tripoli, when it arrived at the position indicated by a
EUNAVFOR MED aircraft 42 NM from the Libyan coast, it witnessed the LYCG in the
process of intercepting the migrants.

15 March 2018 case
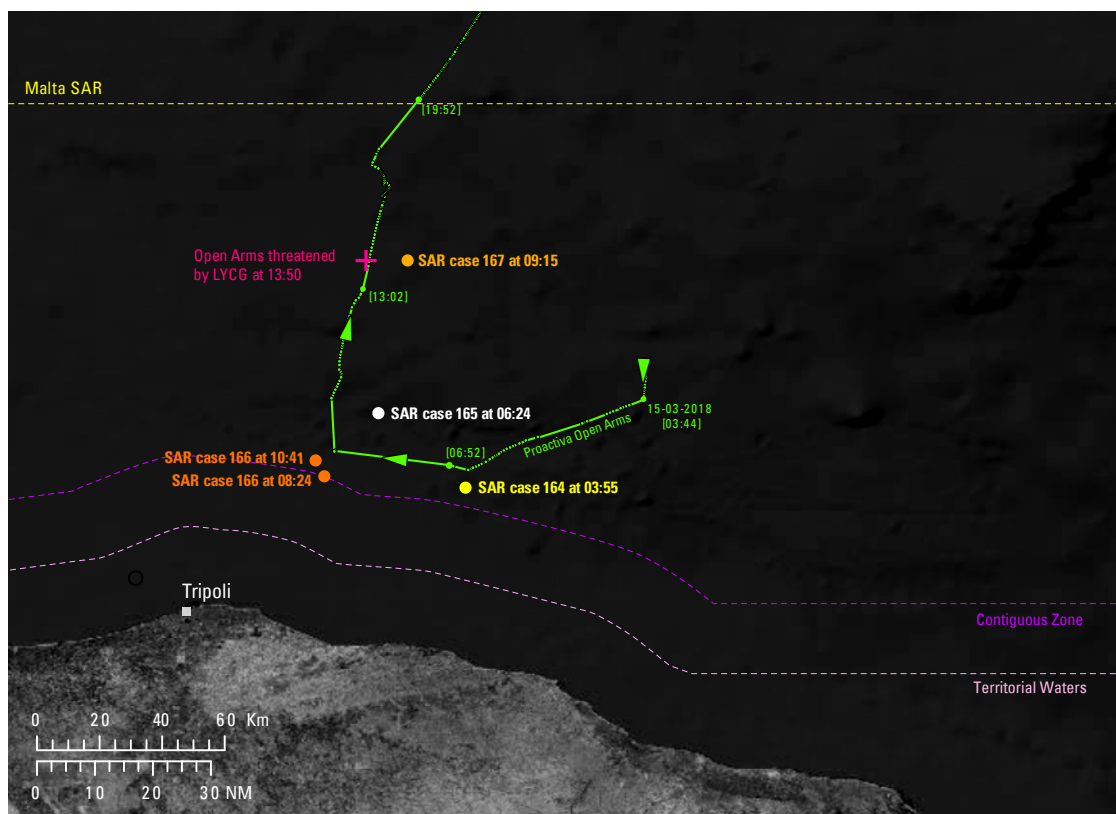
AIS map of the 15 March 2018 near pull-back case. Figure by Forensic Oceanography. GIS analysis
by Vanessa Guglielmi, design by Samaneh Moafi.

On **15 March 2018**, the rescue NGO Proactiva **Open Arms** succeeded in averting a
case of pull-back, but as a result the NGO was later criminalized and its ship seized by
the Italian judiciary. **Despite the pull-back not materialising, this incident provides
crucial insights into the collaboration between the European state actors, in par-
ticular the Italian Navy, and the LYCG**. For the reconstruction of this case, we rely on

two orders produced by the Italian judiciary as well as Open Arms' internal logbook. While there are some discrepancies between these sources, the overall sequence of events is quite consistent and together they provide a coherent reconstruction of the main chain of events.

At 4:21 in the morning, the **Operations Centre of the Italian Navy (CINCNAV)** informed the Italian MRCC that a **military drone taking part in the EUNAVFOR MED** operation had spotted a dinghy 40 NM North-East of Tripoli. It also mentioned that it had informed the crew of the **Italian Navy ship *Capri* docked in Tripoli as part of the extension of the Mare Sicuro operation**. At 4:50, MRCC Rome communicated the position of the migrants' boat to the Open Arms and requested it to proceed to assess the situation. It also informed the LYCG, and asked what they intended to do. At 5:37 the crew of the **Capri informed MRCC Rome that the patrol boat *Gaminez* of the LYCG was about to leave the port of Tripoli to reach the migrants' boat** and was ready to assume responsibility for the rescue. MRCC Rome responded that the Open Arms, as well as the commercial vessel *Sound of Sea*, were also navigating towards the boat.

At 6:46 the LYCG communicated to MRCC Rome, who passed on the message to the Open Arms, that it was formally assuming responsibility for this SAR event, and that it requested the NGO to stay out of sight of the migrants. The LYCG also called the Open Arms via VHF radio, asking to report to them if any boat was spotted. Between 7:20 and 7:57, **two more migrants' boats were spotted by an Italian Navy helicopter under EUNAVFOR MED**. Shortly after, the **LYCG communicated to MRCC Rome that it was taking responsibility also for these two other boats and asked again that NGO vessels keep out of sight**. Open Arms told MRCC Rome that it would continue searching for the three boats to assess their conditions. At 9:26, the Open Arms informed MRCC Rome that it had spotted one of the three migrants' boats. The LYCG was not responding to their calls and the boat was taking in water, making the distress situation particularly dangerous. Open Arms thus initiated the rescue operation and then directed itself to the next target, while the LYCG was intervening in another SAR event. Here the logbook of the Open Arms reports that a fourth boat in distress had been spotted and then rescued by them shortly before 11:00, while the document of the Italian judiciary makes no mention of this event.

Around 14:00, the RHIBs of the Open Arms found the third (or fourth) boat in distress and started normal rescue procedures. Shortly after they had finished handing over life vests and taken some of the migrants onboard, **the LYCG patrol boat *Ras Jadir* arrived on scene and the situation became immediately very tense**. The LYCG crew stopped the Open Arms RHIBs and started to threaten them if they did not hand the migrants over to them. It then went to retrieve an empty rubber boat that was drifting nearby and used it to try to approach the migrants' boat, which had in the meantime resumed navigation to escape. While the LYCG did manage to take some of the migrants onboard its vessel, these people managed to flee by jumping in the water and reaching Open Arm's RHIBs.

Hectic communication took place throughout this confrontational event, with the Open Arms pressing its emergency anti-piracy button SSAS (Ship Security Alert System) and asking for MRCC Rome's help, and the latter redirecting their requests to their flag state's MRCC (Spain). MRCC Rome also requested at least twice the intervention of the Italian Navy to protect the NGO's safety, but they refused claiming that they could not interfere with the operations of a sovereign state's assets. Meanwhile, however,

the Italian Navy ship Capri continued to operate as a crucial and active relay of information between Italian and Libyan authorities to facilitate the interception, with the pre-trial investigating judge of Sicilian town of Catania going as far as to affirm that **the intervention of the Libyan patrol vessels happened "under the aegis of the Italian navy ships present in Tripoli"**.[218] In the end, the Open Arms managed to rescue all migrants of this last boat, with embarkation ending around 5:30. The whole confrontation with the LYCG lasted for 3.5 hours.

On the following day, a stand-off ensued between the Open Arms and the Italian MRCC regarding the disembarkation point of the rescued migrants. As the ship was finally granted access to the port of Pozzallo in the early morning of 17 March, it was seized by the Italian police and two members of its were crew accused of "aiding and abetting

illegal migration" as well as "criminal conspiracy". The boat was released only one month after the events, but the two crew members still remain under investigation.[219]

In this incident, we see once again how Italian and EU naval assets were used to detect migrants' boats and pass on the information to the LYCG for interception. This incident further provides unique insight into the role of coordination and direction played by the Italian Navy ship in Tripoli harbour in relation to LYCG assets.

31 March 2018 case

On the **31 March 2018,** the *Aquarius* of **SOS Méditerranée** was involved in a partial pull-back some 23 NM from the Lybian coast.[220] The NGO had been requested by MRCC Rome to direct itself towards a boat with an estimated 120 people. While the Aquarius arrived on the scene first, at approximately 11:00, its crew was informed by MRCC Rome that the LYCG would coordinate the rescue, and that the *Aquarius* should standby and not engage. However, as the NGO witnessed a deterioration in the situation, with the overcrowded rubber boat taking in water, it negotiated with MRCC Rome, LYCG headquarters and the LYCG vessel on its way to the scene, to allow the Aquarius to stabilise the situation by giving out lifejackets to all people on board, and to assess their medical conditions. While doing so, the MSF nurse on board the *Aquarius* fast speed rescue boat (RHIB) identified 39 medical and vulnerable cases – including one newborn, pregnant women, children and their families – who were evacuated to the *Aquarius*. However, at 13:52 the Aquarius was ordered to move away from the scene by the LYCG, leaving dozens of people still on the rubber boat. At 14:09 these remaining passengers were pulled-back by the LYCG.

The cases and trends analysed here demonstrate that after summer 2017 saw an escalation in the criminalisation of rescue NGOs by the Italian authorities, and increasing threats by the LYCG, the number of NGO vessels and their contribution

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218 Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, Decreto di convalida e di se-questro preventivo, 16 April 2018

219 Tribunale di Ragusa, Ufficio del Giudice per le Indagini Preliminari, Decreto di rigetto di richiesta di sequestro preventivo, 27 March 2018
220 Medicins Sans Frontieres (MSF), 'Mediterranean: MSF Evacuates 39 Vulnera-ble People From Packed Rubber Boat', 1 April 2018, http://www.msf.org/en/article/mediterranean-msf-evacuates-39-vulnerable-people-packed-rubber-boat

to rescue activities substantially diminished. In parallel, with the multiform support and coordination offered by Italy and the EU, the LYCG's interception activities expanded dramatically, with the LYCG intercepting 39% of all rescued or intercepted migrants in the months of August and September 2017, and 20,382 migrants over the year as a whole according to IOM data.

While most of these interceptions could not be documented, through the reports conveyed thanks to the presence of NGOs and journalists, we can observe the emergence of a new pattern of practices emerging over the summer. Through these practices, the ITCG and Navy sought to confer onto interception activities the appearance of rescue, while operating *refoulement by proxy*. Over the autumn and winter months, these patterns were consolidated and became routine. In three documented instances, on the 27 September, 11 October and 15 December 2017, the Italian Navy gave clear *operational instructions* to the LYCG to intercept migrants, while refraining from doing so itself. While these cases are *exceptional* in that they offer rare documentation of instructions, they probably record *normal* practice. After all, the stated political aim for the EU and Italy is to help their Libyan counter parts prevent illegalised migration from Libya. In this sense, the coordination and command which these cases document, and which is rarely recorded, is the unsurprising outcome of this policy at the level of practice. While operational instructions provided by the Italian Navy were not recorded in the other cases we have analysed, it is thus highly probable that it did occur without being recorded by NGOs or journalists.

Almost all cases (with the exception of the 27 September case), document the *coordination* between the ITCG and LYCG, within which, the role of the Italian MRCC has been highly ambivalent. While there is no evidence that the Italian MRCC intentionally privileged interceptions by the LYCG with the purpose of facilitating pull-backs to Libya, de facto it consistently did so when transferring the coordination of SAR operations to the LYCG and when asking NGO vessels to stand-by. By collaborating with the LYCG *as if* it was a normal coastal state, and discarding the well-known fact that Libya is at war and that the migrants being intercepted are brought back to a place where they face multiple forms of inhuman treatment, the Italian MRCC has contributed to this practice of refoulement by proxy and to the overall political aim of stemming migrants' crossings to Europe.

What this section clearly demonstrates is that, after Italy and the EU achieved *strategic control* through policy agreements with Libyan authorities and the multiform support they provided, this translated into *operational control* at the level of practices through logistical support, coordination and instructions, which goes far beyond the mere "assistance" admitted by Italian and EU authorities.

FACING WORSENING CONDITIONS OF DETENTION AND VIOLENCE IN LIBYA

While we have documented here only a small share of the incidents in which 20,335 people were intercepted and pulled-back to Libya over 2017, with varying degrees of available evidence, even more challenging is knowing precisely the fate of all the pulled-back passengers after they were returned to Libya. The terrible conditions they faced is however well established by a number of sources.

Migrants who have crossed the sea are well aware of what their fate would have been if they had been intercepted by the LYCG and returned to Libya. This was clearly expressed by the survivors of the 6 November 2017 "Sea Watch vs Libyan Coast Guard" case, which we will address in the next section. After having arrived safely in Italy, K. said: **"The Libyan people, when they rescue, they take you to prison. They never take you back to your country. They will put you in prison and ask you to pay a lot of money to leave".[221]** This description was echoed by several other survivors we interviewed. Asked what they thought would happen to them should they have been returned to Libya, another survivor answered: **"I would have been molested and abused. There is no human rights and the place is not safe because there is no government. Maybe I would be dead by now".[222]** All these forms of ill-treatment were, as we will further detail in the Case section, the ultimate fate of several of the migrants who were pulled back by the LYCG during the 6 November 2017 incident. **The pulled-back survivors we could speak to were detained, beaten, sold to another captor, and tortured to extort money from their families, who could not pay.**

The fate of these survivors is in no way exceptional. That **the subjection of intercepted migrants to multiple forms of violence is the norm**, is corroborated by numerous testimonies of **"reattempters"** – migrants who, having attempted the crossing at least once, finally succeed in crossing after another attempt. In 2017, the humanitarian organisation Doctors Without Borders (MSF) interviewed 70 such migrants after they were rescued onboard the *Aquarius* and the *Prudence*. **Of the 70 people who had been pulled-back at least once,[223] 19 (27%) had experienced violence during the interception, and 39 (56%) experienced violence, torture, or other ill-treatment in the place they were taken to upon arrival in Libya.[224]** The multiple forms of inhuman treatment migrants are subjected to by Libyan state actors as well as armed groups, criminal gangs and militias after being returned to Libya has further been documented by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets.[225] Speaking at the UN Human Rights Council, on 11 September 2017, the **UN High Commissioner for Human Rights** denounced the **"horrific abuses migrants face after being intercepted and returned to Libya."[226]**

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221 Interview conducted by Julian Koeberer, April 2018.

222 Interview conducted by Julian Koeberer, April 2018.

223 Amongst these, 60 had been intercepted once (86%), seven twice (10%), and three of them three times or more (4%).

224 MSF 2017 data shared with the authors.

225 See Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, https://www.amnesty.org/en/documents/mde19/7561/2017/en/, p.56 for full list, to which we should add the recent report by the Office of the United Nations High Commissioner for Human Rights in cooperation with the United Nations Support Mission in Libya, 'Abuse Behind Bars: Arbitrary and unlawful detention in Libya', April 2018, http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf

226 Human Rights Council, 36th session, *Opening Statement by Zeid Ra'ad Al Hussein, United Nations*

As we have shown in the policy section, Italian and EU policy makers have implemented their policy of refoulement by proxy in *full-knowledge* of the inhuman treatment migrants would be subjected to as a result. But we should further underline that as a result of the multilevel policy of containment implemented by Italy and the EU, the conditions intercepted migrants faced in Libya were made even *worse* than before. This is clearly indicated by the increasing number of detained migrants in Libya – who were estimated by the IOM to be 20,000 people in October 2017. [227] Those who were returned after the Summer of *Mare Clausum*, faced even more extreme overcrowding in detention centres as a result of Italy and the EU's policies. In a public statement issued on 14 November 2017, shortly after UN human rights monitors had visited four DCIM detention centres in Tripoli, the **UN High Commissioner for Human Rights** stated that:

> **"The increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants. Our monitoring, in fact, shows a fast deterioration in their situation in Libya."[228]**

High Commissioner for Human Rights, 11 September 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041

227 IOM DTM Libya data for 2017, http://www.globaldtm.info/libya/. While the IOM's assessments of detention centres are not continuous, and thus does not allow to have an overall picture of the evolution of the number of detained migrants over time in each detention centre, calculating a mean based on its assessment of several centres showed a clear increase in the number of migrants per detention centre between August and November 2017.

228 OHCHR, 'UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity', 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

CASE

THE SEA WATCH VS LIBYAN COAST GUARD CASE - 06.11.2017

On **6 November 2017**, the rescue NGO Sea Watch (SW) and the Libyan Coast Guard (LYCG) were involved in a confrontational rescue operation of a migrant boat carrying between 130 and 150 people. While SW was eventually able to rescue and bring to safety in Italy 59 passengers, at least 20 people died before or during these events, while 47 passengers were ultimately pulled back to Libya where several faced grave human rights violations.

The operational patterns described in the previous section converge here in a single, poignant episode that brings the dramatic effects of Italy and the EU's policy of *refoulement by proxy* into sharp relief and offers a unique insight into the violence exercised by the LYCG on their behalf. With the conflicting logics of rescue and interception we see at play, this event demonstrates precisely why *Mare Clausum* has always been a two-pronged strategy: it is only if rescue NGOs have been expelled from the maritime space off the coast of Libya that the LYCG can intercept migrants undisturbed. Here the LYCG's interception and pull-back was interrupted by Sea Watch's commitment to save lives.

Two factors have converged in allowing us to document this case and its aftermath in unprecedented detail. *First*, thanks to the SW vessel having on board multiple audio and visual recording devices, this case could be documented in far greater detail than many others of interception and pull-back by the LYCG. *Second*, while it is usually extremely difficult to document the fate of migrants who have been returned to Libya, in this case, thanks to the bond that connected some of the passengers who finally managed to reach Italy with those captured by the LYCG, the latter could be traced and contacted, and they could tell about the violence they were subjected to upon being returned to Libyan soil.

The following account of the events is based on testimonies from survivors, the crew of Sea Watch, Italian coast guard, and Libyan coast guard. It further relies on a range of evidence provided by Sea Watch, including audio recordings of all communication that took place on SW's bridge, video footage recorded by several cameras positioned on the SW ship and its RHIBs, log books and distress signals received. We have further analysed AIS vessel tracking data. Despite the near complete refusal to respond to our and parliamentary requests for disclosure addressed to Italian and EU actors – the Italian coast guard and Navy, Frontex, and EUNAVFOR MED – we have accessed a leaked EUNAVFOR MED internal report, containing important information. All these elements have been combined, in collaboration with Forensic Architecture, to create a coherent picture of events

Departure

According to several survivors, the migrants' boat had left from the area of Tripoli around midnight Libyan time, thus **22:00** UTC on 5 November 2017. E, one of the last passengers to enter the boat, counted around 150 people on board. All other survivors concur with similar range of people, which is also common on board this type of boat.

Despite clear visibility due to the moonlight, the boat did not cross any vessel during the night, although passengers reported seeing unidentified lights in the distance. That night, as accounted for by AIS vessel tracking data, the Sea Watch 3 vessel was navigating off the Libyan coast, just outside of the 24 NM limit marking Libya's contiguous zone, waiting for the next migrant boat to rescue. At around **3:00** am, the crew on duty saw on its radar screen the detected returns of two large ships heading towards the Libyan coast. As these were not accounted for by AIS vessel tracking data, which most civilian ships are required to emit, the Sea Watch crew believed them to be military — either part of EUNAVFOR MED, the EU's anti-smuggling operation, or of Italy's Mare Sicuro operation, which has provided support to the Libyan coast guard in intercepting migrants.
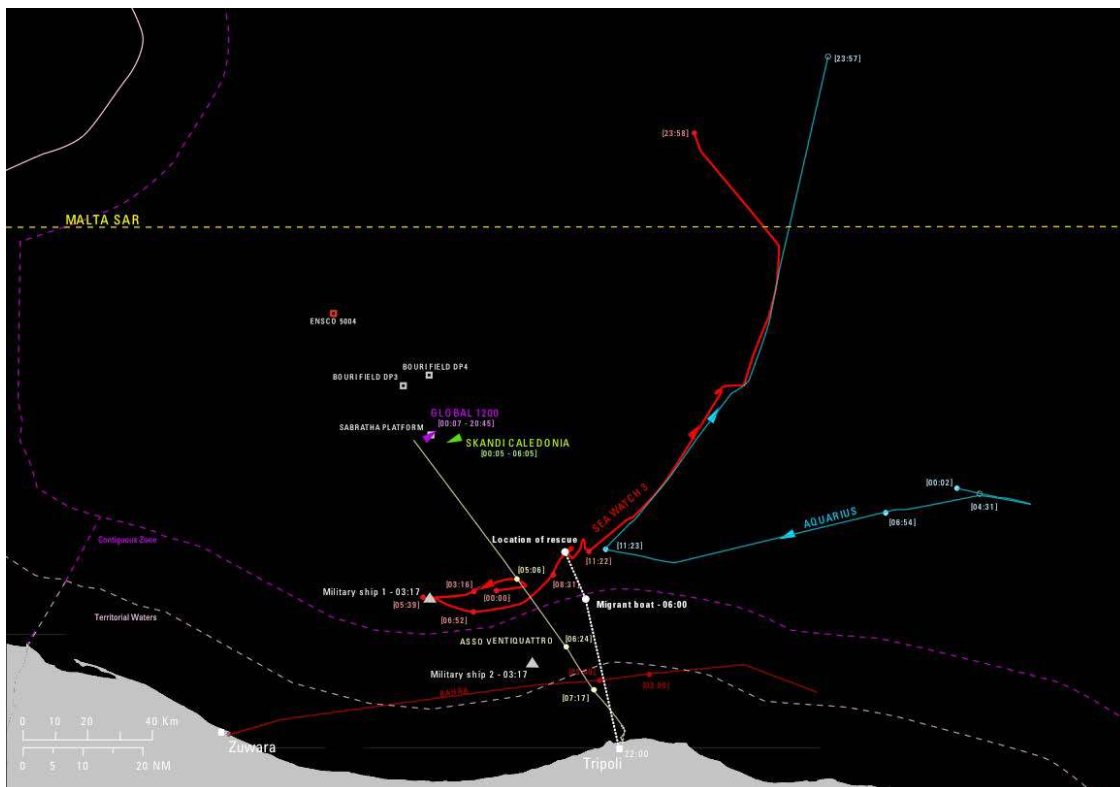
Synthetic map of the 6 November 2017 events on the basis of georeferenced positions and AIS data. Figure by Forensic Oceanography. GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

Message sent by SW's bridge to the Moonbird civilian aircraft concerning the warships detected on its radar at 03:17.

Distress Call

The survivors recounted how, as the migrants' boat advanced, the sea became rougher, and their boat began taking in water. Some of the passengers recalled that they contacted the Italian coast guard for help via satellite phone.

The audio recording of SW's bridge communication indicates that at **05:53** and **06:01**, SW received a distress Inmarsat signal which the Italian coast guard addressed to all ships transiting in the area, indicating no specific position but that the vessel had departed from Tripoli. SW adapted its course immediately.
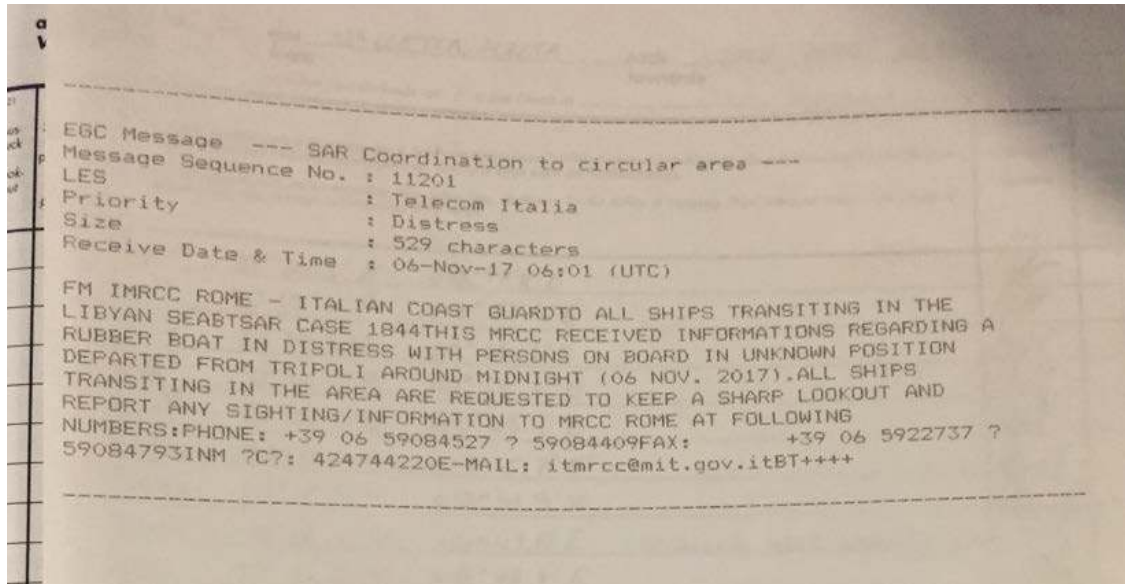
Inmarsat distress signal received by Sea Watch at 06:01.

The Italian coast guard also informed their Libyan counterparts, who had a vessel on patrol off the coast of Tripoli, as reported by Brigadier Masoud Abdel Samad, Head of the International Cooperation Office of the Libyan Coast Guard, who was present in the LYCG's operation room in Tripoli during the events. In an interview we conducted over the phone, he explained that MRCC Rome requested support for the SAR event:

> "This distress signal came from MRCC Rome. (…) Our boat was at sea, because we were patrolling in the early morning off the coast of Tripoli. (…) When we received the distress signal, we sent it to our Coast Guard unit, which was close to the position we had from the Italian coast guard."[229]

While, as we have noted in the policy section, we know that the Italian navy ship *Tremiti* had been docked in Tripoli harbour since 8 August 2017 and that its communication equipment was regularly used during this time by the LYCG to communicate with their assets on the high seas, neither the Italian Navy nor the LYCG have disclosed whether or not this was used during this event.

Both SW and the LYCG were thus both requested by MRCC Rome to direct themselves towards the boat in distress, despite the recurrent tensions between the LYCG and rescue NGOs which, as we have seen, had only increased after the Libyan authorities had unilaterally declared "their" Search and Rescue zone on the 10 August 2017.
Through the satellite phone provider, the Italian coast guard were soon able to determine the boat's location at **6:00** in the morning, which is the only georeferenced position we possess for the migrants' trajectory prior to rescue, and, as documented

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229 Interview conducted on 10 November 2017.

by the audio recording on SW's bridge, was passed on to SW at **6:31**. The Italian coast guard also warned Sea Watch that the LYCG were present within a 9 NM radius from the migrants' boat, and that Sea Watch should proceed with caution. At 06:44 the Italian coast guard sent out a Hydrolant signal to all vessels in the area with the vessel's exact coordinates. At **07:34** SW received a call on VHF radio channel 16 from the LYCG, in which the only words that could be made out clearly were "Go out", repeated several times in the aggressive tone that has often characterised the LYCG's communication towards rescue NGOs. SW however confirmed it was proceeding towards the position of the migrants' boat, as per MRCC Rome's instructions towards the position of the migrants' boat.

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EASTERN MEDITERRANEAN SEA.
LIBYA.
DNC 08, DNC 09.
VESSEL, NUMEROUS PERSONS ON BOARD, REQUESTING ASSISTANCE
BETWEEN TRIPOLI (32-53-14N 013-11-29E) AND
33-00-00N 013-00-00E. VESSELS IN VICINITY REQUESTED
TO KEEP A SHARP LOOKOUT, ASSIST IF POSSIBLE.
REPORTS TO MRCC ROME, INMARSAT-C: 424744220,
PHONE: 3906 5908 4527, 3906 5908 4409,
FAX: 390 6592 2737, 3906 5908 4793,
E-MAIL: ITMRCC@MIT.GOV.IT.


( 060644Z NOV 2017 )
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Hydrolant distress signal sent out to all vessels in the area at 06.44.

Approaching the Scene

As the SW vessel approached the rescue scene, the sources of evidence for the unfolding events grow exponentially. SW's vessel is equipped with seven wide-angle cameras, mounted on the mast and deck, which are constantly recording. Two additional GoPro cameras are mounted on SW's rigid hull inflatable boats – or RHIBs. By triangulating visual data from these cameras, as well as from another located on the LYCG vessel, Forensic Architecture was able to generate a dynamic model of the scene, which could further be cross referenced with other sources of evidence to reconstruct with precision the unfolding of the entire confrontational rescue operation, and its dire consequences, as they unfolded.

As Sea Watch approached the position provided for the boat in distress, its crew could see other vessels through their binoculars, and later recorded in the video footage.
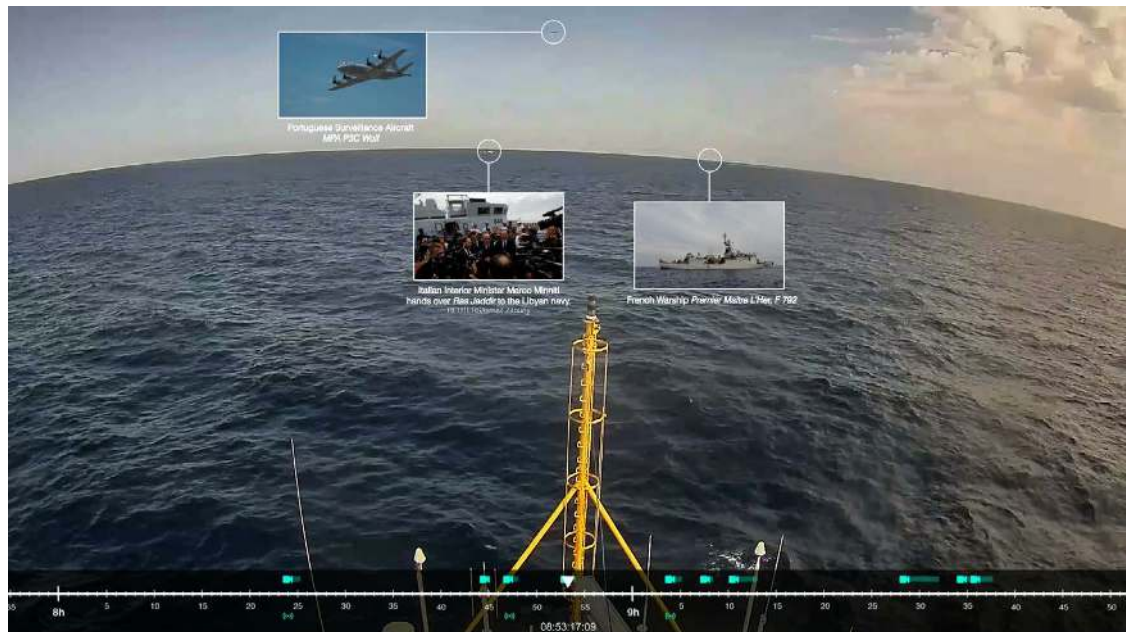
Video image recorded by Sea Watch's mast camera as it approached the location of the migrants' boat showing the assets in vicinity. Video reconstruction of Sea Watch vs Libyan Coast Guard case by Forensic Oceanography and Forensic Architecture, May 2017.

As confirmed by EUNAVFOR MED's internal report of the events, these consisted of a **French military warship taking part in the EUNAVFOR MED operation,** *Premier maître L'Her* (hull number F 792) which would always remain at a distance but contribute one of its RHIBs to the rescue; a **Portuguese patrol aircraft, the MPA P3C** *Wolf*, also part of the same operation; and the **LYCG patrol vessel** *Ras Jadir*, bearing the hull number 648. This vessel was one of the four patrol boats of the Bigliani class returned to Libya by Italy's Minister of Interior Marco Minniti on 17 May 2017. As indicated by its internal report, 8 out of the 13 crew members present on board the LYCG vessel during this incident had been trained by EUNAVFOR MED. Later an **Italian Navy helicopter** *SH90* **part of the Italian Mare Sicuro operation** would also arrive on scene. While not mentioned in EUNAVFOR MED's report, and not visible on any of the footage we have examined, through our investigation we have learned that at 08:50 the **Frontex's surveillance aircraft Osprey 01** flew over the SAR event, transmitting live video footage to Frontex HQ in Warsaw and Rome. Despite our requests, this footage has not been released to us. Frontex communicated with the Italian MRCC who responded that no further involvement of Osprey 01 was required. The Frontex aircraft thus left the area and proceeded towards Lampedusa.

Italian Interior Minister Marco Minniti speaks to the media after handing over boats that were repaired in Italy, to the Libyan navy at Tripoli naval base, Libya, May 15, 2017. REUTERS/Ismail Zitouny

Italian Interior Minister Marco Minniti in front of the *Ras Jadir* (648), 15 May 2017. Reuters, Ismail Zitouny [230]

At **8:24** Sea Watch informed the Italian Coast Guard of the presence of different vessels by calling its Maritime Rescue Coordination (MRCC) centre in Rome:

> 8:24:03: SW3: good morning sir. I just want to inform you that we are close to the position of the refugee boat but we can't see it. There is a Libyan Coast Guard ship and a French Army ship around and an airplane but we have no visual on the boat.

The Italian coast guard responded:

> 8:25:19: MRCC: Ok. So Sir, I think that the boat with the migrant [is] proceeding towards north. Proceed towards north to intercept the target.

Despite the presence of the LYCG ship, the Italian coast guard thus confirmed once again its instructions to SW to proceed with the rescue.

Passengers Overboard

In SW's bridge communication and video footage, as of **8:05**, the Portuguese aircraft is recorded to have been circling several times back to the area. This appears to correspond to the time around which the migrants' boat's back tube deflated, leading passengers located in the back to fall overboard. At least 20 people were unable to swim back to the boat. The boat's motor also stopped at around the same time. E. described this tragic moment as having occurred just as the Portuguese aircraft was circling over them.

> E: (...) we are shouting for the plane, and the plane go closer to us on the water, but they can't come down to come and rescue us. (...)
> CH: After how much time did it come back?
> E: Just for a while, it left, let me see, two minutes' time when it left, before it come

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230 Aidan Lewis and Steve Scherer, 'Italy tries to bolster Libyan coast guard, despite humanitarian concern', Reuters, 15 May 2017, https://uk.reuters.com/article/uk-europe-migrants-libya/italy-tries-to-bolster-libyan-coast-guard-despite-humanitarian-concern-idUKKCN18B2EN

> back, and when, when it come back, we are still on top of water, because the boat is still going ma-ma [imitating the sound of a motor]. (...) When it's coming back for the third time, it did not see us on the water again. What he seeing is people little, little, our heads, because we are inside the water already. That is when it throw the lifejackets. (...) And later we see Sea Watch coming. And Libya is coming too.

E. showing a picture of a military aircraft resembling that which circled around them.

According to E., the boat deflated after the Portuguese aircraft circled around two times, and just before it sent down the life jackets. This timing of events is corroborated by other survivors. K., interviewed by the crew of Sea Watch, recalled that when the boat capsized they saw a plane, and that this occurred some thirty minutes or one hour before the vessels of Sea Watch and the LYCG arrived.

In SW's video footage, at **8:45** we can see the military aircraft circling back towards the migrants' boat and throwing down to the passengers life jackets and an inflatable raft. The plane also marked their exact location with smoke floats. While the photographs taken by the Portuguese aircraft, which would provide definitive evidence to corroborate the timing of these events, have not been released to us, it appears that the boat deflated and many people drowned just before this time. This timing is corroborated by the analysis of wind and current data provided by Oceanographer Richard Limburner, which indicates that since both wind and currents were weak at the time of events, the migrants' boat could not have drifted without a functioning motor over a long distance, and it thus must have deflated and its motor stopped functioning close to the time and location of rescue.

Analysis of 6 November 2017 wind and currents by Richard Limburner

Contested Coordination

Having seen the position, both SW and LYCG vessels sped up to arrive on scene first. At 08:47 UTC the French war ship located at a distance from the migrants' rubber boat called SW3 on VHF channel 16 to offer their support towards the rescue operations.

> 8:47:28: FWS: Sea Watch, Sea Watch this is French warship on channel one two. Do you read me over?
> 8:47:32: Joe: This is Sea Watch 3 on one two. Read you clear. (...)
> 8:47:47: FWS: I would have to know your intention and I am ready to help you if necessary.
> 8:47:54: Joe: Sir, We will proceed to the target and we will call if we need assistance over.
> 8:48:00: FWS: Ok sir. Standby on channel one two.

Later during the rescue, the French warship would contribute one of its RHIB to the rescue. Shortly afterwards the French warship would contact the LYCG seven times offering support, without receiving a reply.

According to the 1979 International Convention on maritime search and rescue, "when rescue units are about to engage in search and rescue operations, one of them should be designated on-scene commander as early as practicable and preferably before arrival within the specified search area" (5.7.1). The Convention further specifies that "the appropriate rescue co-ordination centre or rescue sub-centre should designate an on-scene commander. If this is not practicable, the units involved should designate by mutual agreement an on-scene commander" (5.7.2).

EUANVFOR MED's internal report stated that, "based on the information provided by the LCG Point of Contact (POC), the Libyan Patrol Boat was tasked by the Libyan Operation Room as "On Scene Coordinator"". Brigadier Samad of the LYCG confirmed to us that "the LYCG was first in the area" and that, when called by MRCC Rome's officer on duty, he confirmed that "the LYCG will conduct the operation and assume OSC". However, SW, who, following the Italian coast guard's instructions, had directed itself towards the location of the boat in distress, was already fulfilling some of the tasks associated with the role of "On Scene Coordinator" (OSC), such as communicating with all actors on scene and coordinating their action to ensure the most effective results. As it approached the boat, SW was never informed by the Italian MRCC or the LYCG about the assignment to or claim of this role by the LYCG, and SW and the LYCG were thus left to resolve their conflicting imperatives of rescue and interception on their own while the operation was already underway.

At **09:04**, the LYCG finally established radio contact with SW:

> 09:04:05: LYCG: Sea Watch. This is Libyan coast guard. Over.(...)
> 09:04:15: Joe: Libyan Coast Guard this is Sea Watch 3 calling on 16. Over.
> 09:04:20: LYCG: Sea Watch. Now 16. Channel 16. Over.
> 09:04:25: Joe: I read you on 16. Go ahead.
> 09:04:34: LYCG: Sea Watch. This is Libyan coast guard. We are now responsible for this rescue. Over.
> 09:04:42: Joe: Negative. We have orders from MRCC. We will continue rescue.
> 09:04:51: LYCG: Thank you, thank you over.

Despite the lack of confrontation in this communication, the logics of rescue and interception would prove irreconcilable.

A Dangerous Rescue

The LYCG vessel circled around the migrants' rubber boat, and, according to several survivor testimonies, were not immediately seeking to assist the passengers in distress, taking pictures and cursing at them instead. Meanwhile, SW saw unattended people scattered in the water requiring immediate assistance, and lowered its two inflatable boats. The crew on board the RHIBs began pulling people out of the water at **09:04**. Considering that the LYCG had not deployed its own inflatable boat, which a spokesperson later claimed was dysfunctional,[231] it is probable that without SW's intervention many more people would have drowned.
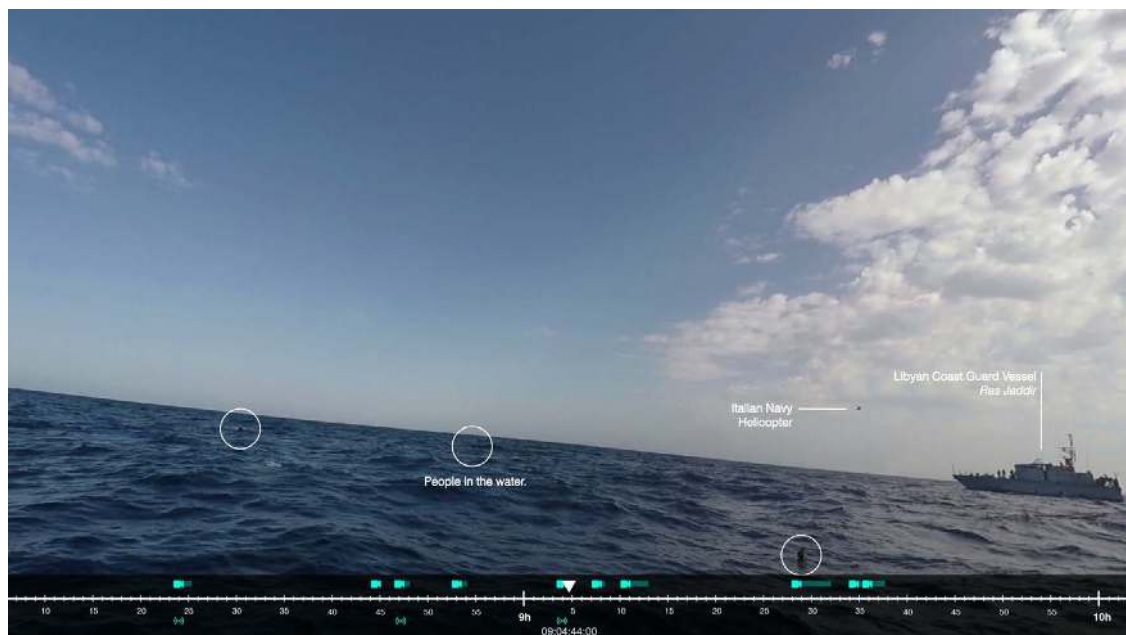
Video image recorded by Sea Watch RHIB as it approached migrants overboard and unattended to by the Libyan coast guard. Video reconstruction of Sea Watch vs Libyan Coast Guard case by Forensic Oceanography and Forensic Architecture, May 2017.

At **09:07**, the Italian SH90 Navy helicopter, which EUNAVFOR MED's report confirmed to be part of the Italian Mare Sicuro operation, contacted SW offering assistance and requesting that SW send its RHIB near the migrants' boat:

> 09:07:46: Italian Helicopter: Sea Watch, Sea Watch. Italian Helicopter.
> 09:07:49: Pia: Italian Helicopter go ahead.
> 09:07:52: Italian Helicopter: Sea Watch this is Italian Helicopter. We have a life raft. We are afraid if we launch a life raft near the position of the rubber boat that the people try to get there and fall into the water. Please send your Rhib to assist and once you are there we can launch our life raft.

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231 Steve Scherer and Aidan Lewis, 'Exclusive: Italy plans big handover of sea rescues to Libya coastguard', 15 December 2017, Reuters, https://www.reuters.com/article/us-europe-migrants-libya-exclusive/exclusive-italy-plans-big-handover-of-sea-rescues-to-libya-coastguard-idUSKBN1E91SG

> 09:08:16: Pia: Copy that. The Rhib will take people out of the water and goes closer to boat and ship. Over.

While the LYCG pulled over the migrants' boat, using a dangerous manoeuvre that risked making the deflated and unstable boat capsize at any moment, and began taking people on board, SW's RHIBs thus started to rescue those in the water. However, as had already happened during the 11 October 2017 incident involving the Italian Navy, some of the intercepted migrants, fearing their treatment in the hands of the Libyan coast guard and in Libyan camps thereafter, attempted to reach the RHIBs of the European NGO instead. The video footage shows a dramatic point of tension. In this moment, the distance between Africa and Europe is only as far apart as that between the Libyan CG and the SW vessels. In an increasingly chaotic situation, with several people in the water simultaneously needing help urgently, one person drowned, despite the SW crew's best efforts.

Video image recorded by Sea Watch RHIB as it approached migrants attempting to swim towards it after having been intercepted by the Libyan Coast Guard. Video reconstruction of Sea Watch vs Libyan Coast Guard case by Forensic Oceanography and Forensic Architecture, May 2017.

Just before **09:30**, while the SW crew was busy trying to rescue people, the video footage shows the LYCG beginning to throw objects at the NGOs RHIB operators, thus effectively hindering the rescue operation. This aggression forced the SW RHIBs to retreat. As a result, a second person was left to drift and slowly died.

Leaving the Scene

By **09:30**, there were almost no migrants left in the rubber boat. On the deck of the patrol vessel, the LYCG attempted to regain control over the captured passengers by cordoning them off with a rope and repeatedly beating them. Despite this, some migrants still attempted to escape. Unable to establish order, the video shows that at **09:36** the LYCG increased the patrol boat's speed to rapidly leave the scene.

The Libyan patrol vessel leaving at full speed despite having a person hanging on the side of the boat. Photograph by Lisa Hoffmann.

Seizing his last chance, one more passenger desperately jumped overboard. The LYCG departed despite him still hanging on the ladder outside of the ship. Only after the Italian military helicopter repeatedly radioed the LYCG vessel to stop, did the crew slow down and pull the person on board. The violence and carelessness exercised by the LYCG had become so excessive, that even the Italian military, which has on other occasions rather facilitated and supported the LYCG's activities, had to try and contain it.

Aftermath

Despite the interference by the LYCG during this confrontational rescue event, SW succeeded in rescuing 59 people and brought them safely to Europe, and also recovered the body of a dead child belonging to one of the survivors. However, more than 20 people died, before and during the rescue, a figure which is corroborated by the sighting of 22 dead people in the water by the Italian Helicopter at 09:15:05, which it communicated via radio to SW. As the LYCG faded into the distance with 47 intercepted migrants on board, their fate of detention and violence in Libya was clear to all actors involved in the events.

Intercepted survivors disembarking from the Ras Jadir in the port of Tripoli, 6 November 2017.[232]

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232 Available at: https://www.youtube.com/watch?v=Vro7f_LkXWw

CASE

In April 2018, nearly six months after the events, as we complete our reconstruction, we finally establish contact with the survivors who were pulled-back to Libya. Upon arrival, they were held captive in Tripoli's Tajoura detention centre for one month in cells with hundreds of people and given scarce food or water. They describe being beaten three to four times a week by Libyan guards armed with ropes and pipes. While some of the survivors were released and deported to their countries of origin, others were sold to a captor. He tortured them to extract ransom from their families, who were unable to pay. The survivors we spoke to eventually escaped their captivity and remain in hiding in Libya, where they fear being kidnapped or imprisoned again.

6 November Facebook post by the Libyan Navy accusing Sea Watch of having disrupted the SAR operation and led to the loss of 5 peoples' lives.

After the Sea Watch vs Libyan Coast Guard incident, the Libyan Navy posted on its Facebook page a report of the events in which it accused Sea Watch of disrupting the work of the Coast Guard, thereby leading to the death of five migrants. Our reconstruction reveals a very different picture of events.

During this confrontational rescue situation, no competent and recognized rescue coordination centre defined critical responsibilities of on-scene command and gave clear instructions in advance, which should have happened according to the 1979 SAR Convention. This led to a predictably tense SAR event in which the logics of rescue and interception violently rubbed against each other. The assets present on scene could not come to a mutual agreement as to which one would act as on-scene command, in the absence of clear instructions by a competent SAR coordination authority.

Caught in the middle, the migrants themselves did all they could to reach SW's RHIBs and to avoid being sent back to the country they had fled and in which their lives were at risk – Libya. The SW's crew was placed in an extremely difficult situation, in which it faced dilemmas. If it approached the migrant boat to rescue people in the water and save them from imminent drowning, it risked leading more people to risk their lives by jumping into the water. However, many more of the people scattered in the waters around the rubber boat would have died had SW RHIBs not been present. **The LYCG failed in many ways to perform the tasks associated with its claimed responsibility of on-scene commander (it did not answer communication, it did not coordinate with the different actors involved in the SAR event to prioritize the rescue of passengers in distress, and it did not perform practices that were necessary to save the most lives possible); a failure which was recognised by the LYCG in a meeting with EUNAVFOR MED, when Commodore Toumia admitted**

that "the professional behaviour of his commanding officers is not adequate" and that "their capacities ashore in the LCG&N [LYCG & Navy] Operation Rooms does not allow properly carrying out the institutional tasks as MRCC".[233] Beyond its demonstration of incompetence, carelessness, and violence, the LYCG also actively hindered SW's rescue activities. SW on the contrary assumed all the tasks associated with the responsibility of On Scene Commander, and carried out the operation with professionalism, despite the horrific situation in which it found itself.

Beyond the responsibilities involved during the rescue operation itself, the evidence suggests that military ships were in the vicinity of the migrants' boat several hours before, that they had received several distress signals sent to all vessels in the area, and that these ships could have rescued the passengers before the rubber boat deflated and more than 20 people drowned. While we do not know the exact location of these ships in the hours before the rescue began, and what their activities were at the time, it remains highly possible that their lack of intervention was another case of dangerous stand-by, similar to those we have described in the patterns section, through which they sought to enable the LYCG to intercept the migrants instead.

The exact instructions given by European actors to the LYCG – whether the Italian coast guard or the different military operations deployed in the central Mediterranean and the particular ships in the vicinity – remain to be disclosed as well. **What the available evidence clearly indicates, however, is that Italy and the EU are responsible for *equipping* the Libyan coast guard (the patrol boat used in this incident was given by Italy), *training* the Libyan coast guard (the EUNAVFOR MED report revealed that 8 out of the 13 crew on board the LYCG vessel had been trained by EUNAVFOR MED in the past), *and coordinating* with the Libyan coast guard (as the communication between the Italian and Libyan coast guard indicates) with the explicit aim of intercepting and containing migrants on Libyan shores – and that this multiform support and collaboration was implemented with full knowledge of the LYCG's violent behaviour and of the fate of detention and subjection to inhuman treatment that awaited the migrants returned to Libya.**

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233 EUNAVFOR MED Op Sophia, Monitoring of Libyan Coast Guard and Navy Report October 2017, January 2018, 9 March 2018, annex C3

ACKNOWLEDGEMENTS

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