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Università degli Studi di Milano
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Traces Of Mobility

# MIGRATION FROM LIBYA BETWEEN EXTERNALISATION POLICIES AND THE EXPLOITATION OF MIGRANTS

2017 | 2025

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› On the cover: photo by Giovanni Diffidenti, Libya 2012, "Dopo l'approdo" project

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# FOREWORD

This report was commissioned by ASGI as part of the research project "Traces of Mobility, Violence and Solidarity. Reconceptualizing Cultural Heritage through the Lens of Migration", funded by the Fondazione Compagnia di San Paolo in collaboration with the Volkswagen Foundation. The project brought together early-career and senior researchers from the University of Milan, Goldsmiths, University of London, The American University in Cairo and the University of Jendouba, and focused on two main areas: the analysis of forms of integration within migration systems in the Mediterranean, and the public and memorial dimensions of forced migration in the region. Although the research groups carried out original empirical research — published in a collective volume available on https://milanoup.unimi.it — it was considered useful to provide an overall picture of the geo-temporal context that has characterised maritime migration along the Central Mediterranean route in recent years (from 2017 to 2025), with particular reference to departures from Libya towards Italy. The period was not chosen at random. It follows a decade (which I would conventionally place between 2010 and 2018) during which the initial phases of the externalisation of Europe's borders through agreements with third countries — most notably the specific clauses contained in the 2008 Treaty of Friendship between Italy and Libya — had effectively closed off the Mediterranean migratory space. This space subsequently reopened with the return of war to the region, particularly the conflicts in Syria and Libya, and the onset of the years that came to be referred to in Europe as the "migration crisis" or "refugee crisis" (2014–18). The increase in migration flows linked to this instability was subsequently brought under control through the agreement between Europe and Turkey in 2016 and the agreement between Italy and Libya in 2017, ushering in a new phase in the externalisation process itself. It therefore became important to ask: a) what effects these agreements had produced, both in terms of migration flows and within the Libyan context itself (particularly the agreement concerning the Central Mediterranean); b) what assumptions underpinned these migration policies and how they shaped the system for controlling migration flows; c) what the human costs of these control systems were, and upon whom those costs ultimately fell. In very broad terms, this report clearly highlights a number of specific dynamics that emerged in response to this framework: an initial shift in departures towards Tunisia following the tightening of controls in the Libyan area; a subsequent strengthening of migration control policies in Tunisia and the resulting refocusing on Libya; and, in Libya itself, not the dismantling of migration trafficking networks through these agreements, but rather their reinforcement, with the emergence of dynamics closely linked less to transit migration flows than to the operation of black markets in irregular migration (through the expansion, reproduction or transformation of trafficking networks). Rather than significantly affecting the overall volume of migration flows — which are shaped by other dynamics, since their root causes remain unaddressed and are more heavily influenced by broader international developments such as the war in Sudan and the resulting destabilisation of the Sahel region between Sudan and Chad — these policies have instead produced various effects of route substitution, as well as the creation and attraction of new migration routes. The assumption underpinning these policies — centred

on intensifying cooperation, for the purpose of migration control, with governments or centres of power (as in Libya) located at the points of departure for maritime migration — was that these actors themselves played an active role, either as facilitators or direct organisers, on their own behalf or on behalf of third parties, of what has repeatedly been described as uncontrolled, large-scale and orchestrated immigration. However, the pursuit of agreements within a framework aimed at co-opting these centres of power — whether directly or indirectly through the governments of transit countries — has not reduced migration flows, but rather contributed to fuelling them. In addition, the authoritarian turn taken by these structures and governments — entrusted with carrying out highly repressive actions against migrants and asylum seekers — has likewise been reinforced. Unlike the period between 2014 and 2018, however, these dynamics have not become the subject of widespread public scrutiny, as the political forces that positioned themselves as guarantors of the effectiveness of the migration policies in place are themselves now bearing their unintended consequences.[1] The highly politicised and securitised rhetoric surrounding maritime migration that characterised the period between 2014 and 2018 has not disappeared; rather, it remains as a silent but legitimising backdrop to the current period, ready to be reactivated or invoked in response to particular emergencies, whether real or manufactured.

**Luca Ciabarri**
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University of Milan

1. In addition to this dossier, a broader analysis of these dynamics for the period up to 2018 can be found in L'imbroglio mediterraneo by Luca Ciabarri. Le migrazioni via mare e le politiche della frontiera (Milan, 2020), and for the subsequent period in the project's final publication, Traces of Migration in the Mediterranean. Memory, violence and solidarity (https://milanoup.unimi.it). The project is currently developing a Digital Archive of Forced Migration in the Mediterranean, which will soon be available at the following address: https://digital-archive-tracesofmobility.unimi.it.

# PRELIMINARY REMARKS

This report aims to provide an analytical tool for understanding the transformations of the Libyan route in the period 2017–2025: the evolution of the routes, the geography of the detention centres, the economic logics of migrant smuggling, and the concrete repercussions of the externalisation policies negotiated by Italy and the European Union.

Thanks to the research work conceived by lawyers Salvatore Fachile and Federica Remiddi, members of ASGI, and developed by Dr. Elisa Terzoli, this report also represents an account of years of fieldwork, of cases handled, and of dynamics observed along the Libyan route through the Sciabaca & Oruka project, born from the conviction that the law can and must be an instrument of change. Over the years, ASGI has stood alongside migrants before national, European and international courts, has documented pushbacks and arbitrary detentions, and has asked those Courts to ascertain the Italian State's responsibility for the violence perpetrated or facilitated along the migratory routes of the Mediterranean.

Strategic litigation entails a partially fragmented knowledge of the mechanisms that govern, and often distort, migratory flows and institutional responses. Bringing this knowledge together systematically, in dialogue with academic research, is an operation that makes it possible both to strengthen the effectiveness of legal action and to restore to public debate a more grounded and complex reading of phenomena too often reduced to slogans.

In its first part, the report reconstructs the transformations of migratory flows from Libya in the period 2017–2025: the evolution of the routes, the modes of travel, and the data on arrivals and on the nationalities involved. At the centre of the analysis are the Libyan detention centres, the economic logics that govern them and the crucial and co-responsible role of Italian and European funding to the Libyan Coast Guard in consolidating an apparatus of systematic exploitation of people on the move. The second part examines the framework of international responsibilities, reconstructing the International Criminal Court's interest in the crimes committed in Libya and analysing the possible profiles of Italian co-responsibility, both at the level of State responsibility and at that of individual criminal responsibility. Finally, the report presents the multilevel national, European and international initiatives activated to assert such responsibilities, ranging from compensation for damages to entry visas, and extending to the recognition of the residual obligations of rescue at sea.

What emerges forcefully from the research, and what ASGI finds confirmed in its own litigation experience, is the direct connection between the political choices of European governments and the violence suffered by migrants along the route. The funding and legitimisation of the Libyan Coast Guard, the systematic interception of people on the move, the detention in inhumane conditions: all of this does not happen despite European policies, but to a large extent thanks to them. To name this responsibility, to document it, to bring it before the judges is the very purpose of Sciabaca & Oruka's work. This report is one of the building blocks on which that responsibility can be constructed.

ASGI thanks the University of Milan, Professor Luca Ciabarri and Dr. Elisa Terzoli for the valuable work carried out, in the conviction that litigation and research, when they engage in dialogue, produce extremely powerful tools for the protection of human rights.

**ASGI** – Associazione per gli Studi Giuridici sull'Immigrazione

# CHAPTER ONE
# TRANSIT MIGRATION FROM LIBYA, 2017–2025: AN OVERVIEW

In this first section, the report aims to analyse the transformations affecting migration flows from Libya in recent years, highlighting their close dependence on Italian and European policies aimed at externalising migration control, strengthened by the 2017 Italy–Libya Memorandum of Understanding and still fully in operation today. Following an examination of the most recent developments in the routes involving the North African country and the methods of travel, it was considered appropriate to focus attention on one of the most significant and well-known dangers faced by migrants along the Central Mediterranean route: detention in Libyan centres. The aim is to demonstrate how this system of arbitrary detention, both in so-called "formal" and "informal" detention centres, is itself a consequence of a mechanism that has developed and become entrenched through European funding. It is argued that these centres represent the clearest manifestation of the current organisation of Libyan criminal networks, which, although they emerged in the context of the country's profound political and military instability, have been significantly strengthened by the financial support and political recognition provided by Italy and the European Union. This support has, in fact, encouraged the intensification of the systematic exploitation of the vulnerabilities of people on the move, leading to the development of genuine profit-driven models, which are examined in this study. The third section provides an overview of the most recent Italian and European policy decisions concerning the management of migration flows originating from Libya, revealing a clear trend towards strengthening the operational capacity of the Libyan Coast Guard (GCL or LCG) to return migrants to detention centres characterised by systematic torture and exploitation. In this regard, the section also highlights specific concerns relating to certain Italian funding calls directed at NGOs for the implementation of various projects within these centres. Although framed as humanitarian assistance, these initiatives have in practice amounted to structural support for the Libyan detention system. Finally, this first chapter introduces the challenges surrounding efforts to combat human trafficking and migrant smuggling, once again highlighting how Italian and European support policies have, in practice, contributed to legitimising the principal actors involved in these phenomena, which are endemic to the Libyan migration context.

## 1. The Latest Developments in Migration Towards and from Libya

The migration dynamics affecting North Africa, rooted in forms of mobility that already existed in the pre-colonial era, have long positioned Libya as a strategic hub and major migration corridor within the region. However, over the past decade, numerous changes have transformed both the nature and the scale of migration flows directed towards and through the country, with increa-

singly complex and organised transit routes emerging.[1] At present, the migration route that passes through Libya and continues by sea towards Europe, known as the Central Mediterranean Route (CMR), constitutes one of the main points of entry to the European continent, as well as one of the most critical in terms of humanitarian concerns and international security.[2]

As already noted, Libya's strategic geographical position, with its 1,770 kilometres of Mediterranean coastline and borders with six African countries, together with a range of historical factors[3], has made it a key migration hub for thousands of people from sub-Saharan Africa, the Horn of Africa and the Middle East. The political instability that followed the fall of the Gaddafi regime in 2011 further reinforced the country's role as a migration hub, creating a context of instability that facilitated the emergence of transnational criminal networks involved in human trafficking.[4] These organisations have, in fact, been able to take advantage of Libya's institutional vacuum to develop a system of exploitation capable of generating profits estimated at hundreds of millions of euro each year, turning the vulnerability of migrants into one of the most lucrative illicit activities in the Mediterranean basin.[5]

The trend in these migration flows is, however, shaped by a combination of internal and external factors: Libyan policies of openness or closure towards sub-Saharan Africa, the attractiveness of the Libyan labour market, security conditions within the country, as well as conflicts and humanitarian crises in the countries of origin of migrants and refugees.[6] Among the external factors,

1. Mixed Migration Centre, *Crossing borders, building livelihoods. The insecure economic lives of migrants in Libya,* July 2024, available at Crossing borders, building livelihoods | Mixed Migration Centre, p. 22.
2. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, 20 March 2025, available at Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel | Mixed Migration Centre, p. 14, which notes that the CMR has experienced significant fluctuations in recent years (peaking in 2016 with 181,436 crossings, falling to 11,471 in 2019, rising again to over 100,000 in 2022 and reaching 157,651 in 2023). However, although the number fell by 60% in 2024, with 65,251 crossings, it nevertheless remains the busiest irregular maritime route to Europe.
3. L. Ciabarri, *Oltre la frontiera Europa: ascesa e declino della rotta migratoria Libia-Lampedusa e forme di mobilità dal Corno d'Africa (2000-2009)* [Beyond Europe's Border: Rise and Decline of the Libya–Lampedusa Migration Route and Forms of Mobility from the Horn of Africa (2000–2009)], in *Antropologia, No. 15 (2013): Migrazioni e Asilo Politico*, 31 October 2013, available at https://www.ledijournals.com/ojs/index.php/antropologia/article/view/185, concerning Gaddafi's so-called "African policy" relating to the Libyan labour market and the regime's international isolation at the time when externalisation policies began.
4. M. Herbert, *Deporting to danger,* in *Global Initiative Against Transnational Organised Crime*, May 2025, available at: How potential US migrant expulsions to Libya could feed into the country's criminal economy and instability' | Global Initiative, pp. 4, 5.
5. A. Gaspardo, *Quanto costa la rotta africana per i migranti: un viaggio di speranza e sfruttamento* [How Much the African Migration Route Costs Migrants: A Journey of Hope and Exploitation], in *Geopop*, 16 April 2025, available at Quanto costa la rotta africana per i migranti: un viaggio di speranza e sfruttamento, where it is stated that "the industry built around the exploitation of migration flows" generates revenues of more than €6 billion per year and permanently employs over 40,000 workers, who earn an average annual salary of EUR 150,000. See also K. Luyten, *Il favoreggiamento della migrazione irregolare da parte delle reti criminali* [Facilitation of Irregular Migration by Criminal Networks], in *Servizio di Ricerca del Parlamento europeo*, January 2025, available at: Il favoreggiamento della migrazione irregolare da parte delle reti criminali, which is estimated to generate profits of between EUR 4.7 billion and EUR 6 billion per year.
6. M. Toaldo, *Migrations through and from Libya: A Mediterranean Challenge,* in *IAI Working Papers 15*, May 2025,

the policies adopted at both the European and Italian levels have played, and continue to play, a central role in the systematic structuring of migrant exploitation within the Libyan context. Although armed groups undoubtedly took advantage of the widespread instability that followed the fall of the Gaddafi regime, using it to establish control over migrant smuggling within their respective areas of influence, it was the externalisation policies adopted by European governments, and by Italy in particular, that ultimately consolidated the economic and organisational models employed by the traffickers. These policies, in fact, encouraged those involved in migrant smuggling to operate within state security institutions and to profit not only from facilitating sea crossings, but above all from preventing them, thereby reinforcing a structured system of capture and detention within the territory.[7]

That said, despite the numerous documented risks and abuses, the migrant population in Libya has reportedly continued to grow since 2024.[8] Specifically, between August and October 2025, the estimated figure stood at approximately 928,839 individuals, representing an 18% increase compared with the same period of the previous year.[9]

## 1.1 Arrivals in Italy

In response to the growing migratory pressure on the Italian coastline from Libya, particularly from 2014 onwards[10], the two States signed a Memorandum of Understanding in 2017, formally aimed at reducing arrivals. In the summer of that same year, a sudden reduction in the number of recorded landings was observed.[11] However, this decrease was not attributable to any strengthening of the operational capacity of the Libyan Coast Guard (LCG), but rather to the fact that militia leaders in the coastal cities of western Libya had been approached by officials from Tripoli

available at: Migrations Through and From Libya: A Mediterranean Challenge, p. 3.

7. W. Lacher, J. Tubiana, *The extortion state: how the EU helps Libya to turn migrants into cash',* in *Le Monde diplomatique,* September 2025, available at 'The extortion state: how the EU helps Libya to turn migrants into cash', by Wolfram Lacher & Jérôme Tubiana (Le Monde diplomatique – English edition, September 2025)
8. M. Shenawy, *The Number of Migrants in Libya is Growing Despite Serious Threats They are Exposed to'*, in *Organised Crime and Corruption Reporting Project*, 22 May 2025, available at The Number of Migrants in Libya is Growing Despite Serious Threats They are Exposed to | OCCRP
9. Displacement Tracking Matrix (DTM) – IOM, *Libya — Migrant Report 59 (August–October 2025),* 22 December 2025, in Libya — Migrant Report 59 (August–October 2025) | Displacement Tracking Matrix, p. 5, which notes that this has been a steadily increasing trend since December 2023. For the previous quarter, see the Displacement Tracking Matrix (DTM) - IOM, DISPLACEMENT TRACKING MATRIX (DTM) - IOM, *Libya — Migrant Report 58 (May - July 2025),* 7 October 2025, available at Libya — Migrant Report 58 (May – July 2025) | Displacement Tracking Matrix p. 5: as of July 2025, the estimated migrant population in Libya stood at approximately 894,890 individuals.
10. M. Toaldo, *Op. cit.,* p. 3; K. Kuschminder, *Once a Destination for Migrants, Post-Gaddafi Libya Has Gone from Transit Route to Containment',* in *Migration Policy Institute – Migration Information Source,* 27 August 2020, available at Article: Once a Destination for Migrants, Post-Gaddafi Libya Has Become a Way Station for Would-Be Mediterranean Crossers, migrationpolicy.org (freely translated): "From 2014 to 2017, according to UNHCR, 625,000 migrants arrived in Italy by sea, mainly from Libya, with a peak of 181,000 migrants in 2016. In 2018, following the agreement between Italy and Libya, this number fell to 23,000 arrivals, and in 2019 to just 11,000."
11. UNHCR, *Italy Sea Arrivals Dashboard – December 2017*, 11 January 2018, available at : Document – Italy Sea Arrivals Dashboard – December 2017

and by Italian representatives to prevent sea departures in exchange for formal recognition as units of the state security forces.[12]

From a purely quantitative perspective, the reduction in arrivals continued in 2018[13] and became even more pronounced in 2019[14], appearing to represent a statistical success of the agreement signed two years earlier. However, from 2020[15] onwards, the number of arrivals gradually began to rise again, reaching approximately 31,000 in 2021[16], 53,000 in 2022[17], 52,000 in 2023[18], and 41,000 in 2024.[19] The 40% increase in arrivals from Libya recorded in April 2025 compared with the same period the previous year[20] confirms that externalisation policies are in fact producing effects contrary to their original intentions, ultimately encouraging criminal networks to maintain steady sea departures to consolidate their position as recognised and funded interlocutors of European governments.[21]

According to data updated to September 2025, 47,799 people arrived in Italy by sea in 2025, of whom 43,901 (88%) had departed from Libya.[22] More specifically, during the period from July to September 2025, approximately 17,008 individuals reportedly departed from Libya to Italy.[23]

12. W. Lacher, J. Tubiana, *Op. cit.*
13. UNHCR, *Italy Sea Arrivals Dashboard – December 2018*, 11 January 2019, available at Document – Italy Sea Arrivals Dashboard – December 2018, according to which, in 2018, 56% of sea arrivals (12,977 people) departed from Libya, compared with 91% the previous year.
14. UNHCR, *Italy Sea Arrivals Dashboard – December 2019*, 21 January 2020, available at Document – Italy Sea Arrivals Dashboard – December 2019, which reports that only 4,122 arrivals from Libya were recorded.
15. UNHCR, *Italy Sea Arrivals Dashboard – December 2020*, 28 January 2021, available at the link Document - Italy Sea Arrivals Dashboard - December 2020, which notes that the number remained relatively "low" (approximately 14,000 people) because, in 2020, 43% of sea arrivals in Italy still originated primarily from Tunisia, compared with 38% from Libya.
16. UNHCR, *Italy Sea Arrivals Dashboard – December 2021,* 14 February 2022, available at *Document – Italy Sea Arrivals Dashboard December 2021*, according to which 2021 saw approximately 67,000 sea arrivals in Italy overall, not only from Libya, marking the highest number of arrivals in the previous four years.
17. UNHCR, *Italy Sea Arrivals Dashboard – December 2022*, 26 January 2023, available at Document – Italy Sea Arrivals Dashboard December 2022, reporting a total of 105,131 sea arrivals.
18. UNHCR, *Italy Sea Arrivals Dashboard – December 2023*, 13 March 2024, available at : Document – Italy Sea Arrivals Dashboard December 2023.
19. UNHCR, *Italy Sea Arrivals Dashboard – December 2024*, 11 April 2025, available at : Document – Italy Sea Arrivals Dashboard December 2024.
20. *Note from Italian delegation: External dimension of migration - Libya*, 5 June 2025, available at Statewatch | Note from Italian delegation: External dimension of migration - Libya, which states that 93% of crossings along the Central Mediterranean route originated from the Libyan coast.
21. W. Lacher, J. Tubiana, *Op. cit.;* on the effects of externalization on migrants' human rights, see also a very recent report by the Special Rapporteur on the matter: *Report of the Special Rapporteur on the human rights of migrants, Gehad Madi, A/80/302*, 4 August 2024, available at: A/80/302 General Assembly
22. Mixed Migration Centre, *Quarterly Mixed Migration Update: North Africa Q3 – 2025*, in *MMC North Africa,* 22 October 2020, available at Quarterly Mixed Migration Update | Mixed Migration Centre; UNHCR, *EUROPE SITUATIONS: DATA AND TRENDS - ARRIVALS AND DISPLACED POPULATIONS – SEPTEMBER 2025, 21* November *2025,* available at Document - EUROPE SITUATIONS: DATA AND TRENDS - ARRIVALS AND DISPLACED POPULATIONS - SEPTEMBER 2025.
23. Mixed Migration Centre, *Quarterly Mixed Migration Update: North Africa Quarter 3 – 2025, Op. cit.*, which reports an 8% decrease compared with the April–June 2025 period.

For an even more recent "snapshot", it is reported that, as of 29 December 2025, out of approximately 66,208 total arrivals,[24] as many as 58,147 individuals were recorded as having departed specifically from Libya.[25]

It is abundantly clear that Libya still represents the main departure point for those undertaking the Central Mediterranean route.[26] The projection of 55,000 total arrivals in Italy from the North African country by the end of 2025, put forward by the Director of the *DataLab* at the Istituto per gli Studi di Politica Internazionale (ISPI)[27], has been exceeded. Leaving aside the so-called "Tunisian interlude", which mainly affected the origin of arrivals in 2023[28], there has never truly been any real decrease in landings originating from Libya.[29]

## 1.2 The main migration routes to Libya

Among the various routes used by migrants to reach Libya, two main corridors have become established over time. Their persistence, despite repeated attempts at dismantlement, demonstrates the ability of criminal networks specializing in the exploitation of migrants to adapt to geopolitical changes, thereby ensuring the continuity of their illicit activities.

The route linking East Africa to Libya through the Kufra region in the south-east has historically recorded significant flows, which, however, declined from 2017–2018 onwards due to border security operations and the dismantling of certain Eritrean smuggling networks.[30] Moreover, in more recent years[31], both the conflict in Sudan and European funding provided to the violent Sudanese Rapid Support Forces (RSF) for the specific purpose of border control reportedly con-

24. UNHCR, *Operation Data Portal for the Situation Regarding Sea Arrivals in Europe,* available at https://data.unhcr.org/en/situations/europe-sea-arrivals/location/24521
25. UNHCR, *Italy Weekly Snapshot (22–28 December 2025),* available at https://data.unhcr.org/en/documents/details/120377.
26. Frontex, *EU external borders: Irregular crossings fall by 20% in the first half of 2025,* 10 July 2025, available at EU external borders: Irregular crossings fell by 20% in the first half of 2025, which reports an 80% increase in arrivals in Libya during the first quarter of 2025 compared with the same period of the previous year.
27. F. Baraggino, *Sbarchi di migranti dalla Libia: +87% nel 2025. I dati di Frontex e il "calo" che non è mai esistito* [Migrant arrivals from Libya: up 87% in 2025. Frontex data and the 'decline' that never happened], in *Il fatto quotidiano,* 10 July 2025, available at Sbarchi di migranti dalla Libia: +87% nel 2025. I dati di Frontex e il "calo" che non c'è mai stato.
28. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, pp. 11, 15: in 2022, the general strengthening of controls by the Libyan authorities prompted many smugglers to move to the Tunisian coast, resulting in a higher number of departures from Tunisia than from Libya in 2023. However, in 2024 Tunisia intensified the systematic expulsion of migrants towards Algeria and Libya, thereby reducing pressure on its own coasts and shifting attention back to Libyan embarkation points.
29. F. Baraggino, *Op. cit.*
30. R. Horsley, *LIBYA: Hybrid Human Smuggling Systems Prove Resilient,* in *Global Initiative Against Transnational Organized Crime,* September 2024, available at Rupert-Horsley-Libya-Hybrid-human-smuggling-systems-prove-resilient-GI-TOC-September-2024.pdf, p. 24. P. 25: despite the conflict that erupted in Sudan in April 2023, the number of Sudanese nationals along this route reportedly remained low.
31. However, reports to this effect date back as early as 2019: D. Solomon, *'EU fund accused of financing massacres in Sudan',* in *FUF (The Swedish Development Forum),* 4 July 2019, EU fund accused of financing massacre in Sudan – FUF.se

tributed to the slowdown and displacement of these flows.[32] The route linking West Africa to Libya through the desert region of Fezzan in the south-west also experienced a contraction from 2018 onwards, due to the tightening of controls in Niger and the extreme conditions along the route.[33] However, first and foremost, the restrictions introduced by several West African countries are reportedly not applied systematically and therefore do not constitute a substantial obstacle to migration flows.[34] Moreover, in response to such restrictions, smugglers commonly diversify their strategies by using, for example, Algeria as an alternative point of entry[35]: indeed, the use of this route tends to intensify precisely as crossing through Niger becomes more difficult.[36] Moreover, although it did not produce an immediate increase in the number of sub-Saharan Africans in transit in 2024[37], the repeal of the anti-smuggling law in Niger at the end of 2023 nonetheless reportedly triggered the reactivation of routes through the country, which smugglers considered well established and ready to become operational again.[38] This scenario highlights a long-term criminal entrepreneurial strategy capable of maintaining latent logistical infrastructures and reactivating them at the appropriate moment. Thus, in a survey conducted between January and October 2025 on a sample of 27,058 people in transit, 42% stated that they had passed through Niger, 20% through Sudan, 19% through Egypt and 13% through Chad[39]: many of the migrants encountered in southern Libya reportedly chose the Niger route because it was less controlled by security forces and often less expensive.[40]

32. L. Gambardella, *I soldi dell'Ue e dell'Italia per fermare i migranti in Sudan finiti a chi oggi massacra i civili* [EU and Italian funds intended to stop migrants in Sudan ended up with those who are now massacring civilians], in *Il Foglio*, 30 October 2025, at the following link: I soldi dell'Ue e dell'Italia per fermare i migranti in Sudan finiti a chi oggi massacra i civili | Il Foglio; D. Prestigiacomo, *Come l'Ue e l'Italia hanno finanziato la guerra in Sudan (per fermare i migranti)* [How the EU and Italy financed the war in Sudan (to stop migrants)], in Europa Today, 28 April 2023, at the following link: https://europa.today.it/attualita/fondi-ue-italia-guerra-sudan.html.
33. R. Horsley, p. 25: in this context, many migrants from West Africa reportedly continued attempting the sea crossing via Tunisia.
34. *Ibid*., p. 26.
35. A. Malakooti, *The Political Economy of Migrant Detention in Libya*, in *Global Initiative Against Organised Crime*, April 2019, available at globalinitiative.net/wp-content/uploads/2019/11/Final-Report-Detention-Libya.pdf, p. 46: access reportedly takes place in particular through the cities of Ghat, in the south, and Ghadames, further north.
36. *Ibid*., p. 56.
37. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 15.
38. R. Horsley, *Op. cit.*, p. 25.
39. Displacement Tracking Matrix (DTM) – IOM, *Libya — Migrant Report 59, (August–October 2025), Op. cit.*, p. 16. A minority had transited through or originated from Algeria (3%), Tunisia (2%) or a combination of other countries (1%). Among migrants originating from West Africa, 92% entered Libya through Niger, followed by Algeria (6%), Chad (2%) and other countries (<1%). Migrants originating from Central Africa arrived predominantly through Chad (97%). By contrast, migrants originating from East Africa and the Horn of Africa reached Libya mainly through Sudan (82%), with a smaller percentage transiting through Egypt (7%). Fifty-five per cent of migrants originating from South Asia transited through Turkey, while 43% of migrants from the Middle East reached Libya through direct flights from their countries of origin.
40. R. Horsley, *Op. cit.*, p. 26.

## 1.3 "Hybrid journeys" and the new departure ports

In recent years, the adaptability of criminal networks has led to the emergence of a new form of migrant smuggling: the so-called "hybrid journeys". Indeed, during the period 2022–2023, most migrants heading towards Europe, predominantly Egyptian, Syrian, Bangladeshi and Pakistani nationals[41], entered Libya irregularly via commercial flights arriving at Benghazi Benina Airport, which is controlled by the Libyan Arab Armed Forces (LAAF) and has become the principal hub linking air arrivals to onward departures by sea.[42] Benina Airport is reportedly preferred over those of Misurata or Tripoli because of the greater predictability of controls and the relative stability of the surrounding area compared with the western part of the country.[43] Since lawful entry through permits issued by the Libyan Ministry of Labour is highly restricted, migrants generally arrive at the airport without official documents[44], an irregularity reportedly exploited by the LAAF by requiring the purchase of a sort of "security clearance" costing approximately USD 500.[45] This practice already points to corruption that is not occasional, but rather systemic, involving state or para-state apparatuses as well. From this point of arrival within Libyan territory, migrants reportedly meet the representatives of the agency or the contact who organized the journey, before being transferred to the western coastal areas controlled by the Government of National Unity (GNU), from where they can embark for Europe.[46]

This new method of exploiting migration flows has reportedly also affected the geography of departures towards Europe. For example, the port of Tobruk, in the eastern part of the country, assumed a particularly prominent role throughout 2022, accounting for approximately 25% of all departures from Libya.[47] However, this trend came to an end in July 2023 following the total suspension of departures from the area ordered by the Deputy Minister of the Interior of the Government of National Stability (GNS).[48]

Faced with this obstacle, smugglers quickly reorganized their activities, redirecting both air and sea flows towards the western coast. For this reason, as well as due to the strengthening of controls by the Libyan Coast Guard along the eastern coast[49] in 2024 and the increase in extortion

41. *Ibid*., p. 5, according to which the four nationalities associated with this type of migration accounted for three quarters of arrivals in Italy during 2023.
42. *Ibid.*
43. *Ibid.,* pp. 10 -11.
44. *Ibid*., p. 9.
45. *Ibid.,* p. 14, which reports that in many cases migrants reportedly travelled using only this "document", while others stated that they landed at Benina without any documents at all, disembarked in a military wing of the airport, and were then clandestinely transferred to other areas without any paper trail being created.
46. *Ibid*., p. 5.
47. *Ibid.,* p. 13.
48. *Ibid*., p. 5. P. 16: this crackdown reportedly also affected the size of the vessels heading towards Italy. Indeed, between April 2022 and June 2023, departures from the eastern coast were reportedly characterized by large human "cargoes", often exceeding 400 people, with groups of 200–300 migrants being fairly common. Following the Tobruk crackdown, however, a significant decrease in the size of the "cargoes" was reportedly recorded, another indicator of the organizational capacity of smuggling networks.
49. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 15, which reports the existence of a new partnership between the Libyan Coast Guard

along the coastal highway[50], the western side has reportedly now become the most active area for sea departures[51], particularly from the ports of Zawiyah[52], Sabratha[53] and, above all, Zuwara.[54] The latter, already known for maritime smuggling, had seen a collapse in human trafficking following a 2015 initiative by the local community[55]; however, such trafficking reportedly resumed in 2021 due to changes within the local security forces.[56] Despite an attempt by the *Western Border Criminal Investigation Division*[57] to restore order in 2022, by mid-2023 the most established and experienced smuggling networks had resumed operating with relative freedom. Combined with the disruption of departures from Tobruk, this led to a sharp increase in departures from Zuwara, which is now the principal point of embarkation for migrants heading to Europe.[58]

## 1.4 The nationalities involved and the cost of the journey

The distribution of the nationalities of migrants coming from Libya largely depends on the dyna-

(LCG) and the Turkish Navy, the latter reportedly having positioned itself in the area around Al Khoms specifically to hand intercepted migrants over to the LCG.

50. *Ibid.*
51. R. Horsley, *Op. cit.,* pp. 19 ff. P. 11: smugglers reportedly began offering, as part of the original travel "package", transportation by minibus or taxi to the ports of western Libya.
52. A. Fill and F. Moresco, *Dinamiche di traffico di esseri umani in Libia: analisi e spunti critici* [Human trafficking dynamics in Libya: analysis and critical insights], ASGI, 18 February 2021, available at: Dinamiche di traffico di esseri umani in Libia: analisi e spunti critici - Asgi.
53. A. Camilli: *Riprendono le partenze dalla Libia e i naufragi: 34 morti in due giorni* [Departures from Libya and shipwrecks resume: 34 dead in two days], in *Internazionale*, 6 November 2017, available at: Riprendono le partenze dalla Libia e i naufragi: 34 morti in due giorni - Annalisa Camilli - Internazionale.
54. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642,* 30 August 2024, available via the Document Viewer, p. 3.
55. R. Horsley, *Op. cit.,* p. 22.
56. *Ibid.*: specifically, this refers to the arrest of police chief Emad Abza.
57. This refers to the armed group previously known as the "*Masked Men*", established in 2013 by young people from Zuwara with the aim of operating as vigilantes/a voluntary police force against human traffickers. Their violent approach, the presence of numerous Salafists among their members, and the fact that they were perceived as a radical and unworkable body that further undermined security in Zuwara led to their decline by mid-2018, when the official police force (the Zuwara Security Directorate) regained control over local security: R. Farrah, *Zuwara's civil society fight against organised crime* in *Global Initiative Against Transnational Organised Crime,* December 2021, available at Zuwara-PB-web.pdf; R. Horsley and J. Gerken, *Libya: Stability fuels rebound in human smuggling,* in *the Global Initiative Against Transnational Organised Crime,* July 2022, available at https://globalinitiative.net/analysis/human-smugglingtrafficking-ecosystems-north-africa-sahel, states that the above-mentioned attempt to fill the vacuum left by Abza's arrest reportedly consisted in the arrest of an Egyptian intermediary and, above all, in the subsequent declaration that this move formed part of a broader campaign against human trafficking.
58. S. Gatti, *A Lampedusa sbarcano 238 migranti soccorsi in mare da guardia di finanza e frontex* [A total of 238 migrants rescued at sea by the Guardia di Finanza and Frontex land in Lampedusa], in *Gaeta.it*, 20 July 2025, available at A lampedusa sbarcano 238 migranti soccorsi in mare da guardia di finanza e frontex - Gaeta; IOM-UNHCR, *Migrant and Refugee Movements through the Central Mediterranean Sea in 2023 - Joint Annual Overview 2023*, 20 June 2024, available at: Document - Migrant and refugee movements through the Central Mediterranean sea - Joint Annual Overview 2023, according to which departures involving large fishing vessels capable of transporting 300 or more people had become established there.

mics of the criminal market that has developed around migration. Smuggling networks have, in fact, developed a sophisticated segmentation of their "clientele" based on vulnerability, financial means and available diaspora networks, factors that are closely linked to the migrant's country of origin. Interception rates at sea also vary according to migrants' origin: different nationalities involve different smuggling networks and costs charged, and therefore, ultimately, different profit opportunities arising from interception.[59]

The migrant population present in Libya is heavily concentrated among a limited number of nationalities, with a clear predominance of nationals originating from sub-Saharan Africa. As of October 2025, 84% of the migrants recorded within the territory originated from four States: Sudan (36%), Niger (20%), Egypt (19%) and Chad (9%)[60], a concentration determined above all by Libya's strategic position between the Mediterranean and the Sahel, combined with well-established diaspora networks. With specific reference to the nationalities of those arriving in Italy from Libya, as of 19 October 2025, there was a prevalence of nationals originating from Bangladesh (30%), Egypt (13.7%), Eritrea (12.9%), Pakistan (6.8%) and Sudan (5.7%)[61]; overall, during the second half of 2025, the percentages remained substantially similar.[62]

Bangladesh, therefore, represents the principal country of origin of migrants reaching Italy via the Central Mediterranean Route (CMR)[63], with 94% of them reported to have transited through a Middle Eastern country, predominantly Turkey and/or the United Arab Emirates[64], on a tourist visa before entering Libya.[65] This prevalence is reportedly linked to the relative financial means of this group and to the existence in Bangladesh of a well-established system of private debt

59. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.,* p. 15.
60. Displacement Tracking Matrix (DTM) – IOM, *Migrant Report 59 (August–October 2025), Op. cit.*, p. 6; Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 15: the number of Sudanese nationals continued to increase as a result of the ongoing conflict (during the second half of 2024, many war refugees crossed Chad and Niger in order to reach Libya); by contrast, migrants originating from the other neighbouring countries tend mainly to move for seasonal migration purposes.
61. UNHCR, *Operation Data Portal for Europe Sea Arrivals Situation, Op. cit.*
62. Displacement Tracking Matrix (DTM) – IOM, *Europe – Mixed Migration Flows to Europe, Quarterly Overview (April–June 2025),* August 2025, available at DTM Europe Mixed Migration Flows to Europe_Q2.pdf: Bangladesh (30%), Eritrea (18%), Egypt (13%), Pakistan (6%), Ethiopia (5%).
63. Libya Review, *Libya Route Favoured by Asian Migrants to Europe,* 5 January 2024, available at Libya Route Favoured by Asian Migrants to Europe - LibyaReview; A. Puglia, *Rahim's tale: 'In Libya we spent 14 terrible months*', in *InfoMigrants*, 31 July 2025, available at Rahim's tale: 'In Libya we spent 14 horrible months' - InfoMigrants: In 2025, the share of arrivals also increased compared with the same period in 2024 and, as of 29 July 2025, 11,693 Bangladeshi nationals had reportedly landed on the Italian coast.
64. Displacement Tracking Matrix (DTM) – IOM, *Libya — Migrant Report 57 (March–April 2025), Op. cit.*, p. 17. Specifically, 44% of Bangladeshi nationals reportedly transit through Turkey, 17% first through the United Arab Emirates and then Turkey, 12% first through the United Arab Emirates and then Egypt, 7% directly from Bangladesh, with the remaining 20% consisting of various routes including one or a combination of the following countries: Egypt, Jordan, Qatar, India, Saudi Arabia, the Syrian Arab Republic, Turkey, Tunisia and/or the United Arab Emirates.
65. M. Morad, *L'emigrazione dei bangladesi in Italia: storia, cause e rotte* [The emigration of Bangladeshis to Italy: history, causes and routes], in *Fondazione Oasis*, 20 March 2024, available at: L'emigrazione dei bangladesi in Italia: storia, cause e rotte.

and usurious practices that facilitate the financing of the journey. [66]

The link between nationality and profit margins is further illustrated by the spike in arrivals of Pakistani nationals during the first half of 2023, correlated with the expansion of networks offering "hybrid packages"[67] characterised by high fees[68], thereby demonstrating the ability of criminal organizations to adjust prices according to migrants' financial means. However, these arrivals declined sharply from July 2023 onwards, following the intensification of enforcement measures against smuggling networks in Pakistan, implemented after a shipwreck in June of the same year that claimed the lives of numerous Pakistani nationals, and the disruption of departures from the previously mentioned port of Tobruk.[69]

Although estimates of the overall cost of the journey to Europe remain subject to a degree of uncertainty[70], owing both to the fragmented nature of the available sources and to variations in price depending on nationality, travel conditions, additional services[71], the port of departure[72]

66. EUAA, *Bangladesh: Country Focus – August 2025,* July 2025, via the link to the COI Report – Bangladesh: Country Focus, p. 99; ARCI, *Rapporto di ricerca COI Realizzato dall'Ufficio Immigrazione di ARCI nazionale* [COI Research Report produced by the National ARCI Immigration Office], 18 June 2024, available at Bangladesh-Informazioni sulla riscossione violenta dei crediti in Bangladesh-AGGIORNAMENTO 2024.docx; M. Ricca, T. Sbriccoli, M. Ricca, T. Sbriccoli, *Shylock del Bengala, Debiti migratori, vite in ostaggio e diritto d'asilo* [Shylock of Bengal, Migratory Debts, Lives Held Hostage and the Right to Asylum], in CALUMET – intercultural law and humanities review, 2/2016, at the following link: Microsoft Word - Ricca - Sbriccoli Shylock del Bengala.docx.
67. According to R. Horsley, *Op. cit.,* p. 12, in some cases, no documentation was reportedly prepared and migrants were allegedly taken directly from the aircraft at Benina Airport without passing through any immigration controls.
68. *Ibid.* states that this also reportedly reflects the ability of transnational networks to ensure journeys with a high likelihood of success, as indeed confirmed by the low number of arrests of Pakistani nationals in Italy.
69. *Ibid.*; see paragraph 1.3. of this work
70. State Police, *Contrasto al traffico di migranti dalla Rotta libica. La Polizia di Stato chiude oltre mille pagine social in cui venivano pubblicizzati viaggi clandestini* [Countering migrant smuggling along the Libyan route. The State Police shuts down over one thousand social media pages used to advertise clandestine journeys], 14 September 2024, available at: Contrasto al traffico di migranti dalla Rotta libica. La Polizia di Stato chiude oltre mille pagine social in cui venivano pubblicizzati viaggi clandestini | Polizia di Stato: in 2024, the average cost reportedly amounted to approximately EUR 4,600 per person; Frontex, *Monthly irregular migration statistics* - February 2025, 13 March 2025, available at: Monthly irregular migration statistics - February 2025, reported amounts ranging between EUR 5,000 and EUR 8,000; Current Affairs Editorial Team, *Palermo. Migrant smuggling, two Bangladeshi brothers* arrested, in *Avvenire*, 8 February 2025, available at: Traffico migranti, arrestati due fratelli bengalesi, which reports a journey cost of EUR 11,000. According to A. Gaspardo, *Op. cit.*, before the COVID-19 pandemic the average cost was estimated at approximately EUR 6,000.
71. A. Gaspardo, *Op. cit.*, which reports several "price items" listed in a notebook: "the service for crossing the Sahara; the provision of false documents; provisions for the crossing of the Mediterranean Sea (just two small bottles of water and a tin of sardines); a place on board the vessel selected for the crossing, bearing in mind that a spot on the deck is preferable because the chances of survival in the event of a shipwreck are greater; a possible life jacket; and even the catheter that women during their menstrual period must use to 'expel their fluids overboard'." Children are also subject to a separate pricing scheme of around EUR 1,500, compared with EUR 700–800 for adults, because they represent a greater risk for smugglers in the event of being caught.
72. M. Elsobky, *A bloody route through Libya: Europe-bound migrants caught between Cham Wings Airlines and Haftar's army,* in *arij.net,* 10 October 2023, available at: *https://arij.net/investigations/syrian-immigrants-en:* In 2023, the average cost per person smuggled into Italy from western Libya reportedly ranged between USD 2,500 and USD 3,000, while from eastern Libya it ranged between USD 4,000 and USD 4,500.

and the period under consideration, the differences in the fees charged nevertheless provide clear evidence of a genuine business built on the exploitation of migration. These differences reflect two distinct operational models. On the one hand, there are smuggling networks offering "all-inclusive packages", which tend to attract certain nationalities, most notably Bangladeshi migrants, who pay for the journey in its entirety. On the other hand, some networks operate along individual segments of the route, whose fees therefore vary according to the specific circumstances of each journey and its overall duration. For example, for a Pakistani national, a full transit service could cost up to USD 16,000, reducible to approximately USD 6,300 for those with access to more efficient contact networks.[73] For Bangladeshi nationals, in 2023, the cost of the journey from Bangladesh to Libya reportedly ranged between EUR 2,000 and EUR 3,000, to which a further EUR 3,000–5,000 had to be added for the sea crossing, generally with an initial advance payment made in the country of origin and the balance for the sea segment paid in Libya.[74] Frontex estimates the overall cost for Bangladeshi nationals in 2025 at between EUR 9,500 and EUR 13,000.[75] Syrian nationals, by contrast, reportedly incurred significantly lower costs: between USD 1,100 and USD 1,700 for documents and flights from Damascus to Benina at the beginning of 2023.[76] The payment mechanism, which generally consists of an initial deposit paid in the country of origin followed by the settlement of the remaining amount through international money transfers made by family members[77], enables smugglers to maintain continuous control over migrants throughout the journey and until they arrive at their destination.[78]

## 2. The main risks faced by migrants along the Libyan route

People on the move along the Central Mediterranean route face multiple dangers, which, between 2023 and 2024, confirmed itself not only as the most active route, but also as the deadliest.[79] Although varied in nature, these risks share a common origin in a system of systematic exploitation of migrants: in Libya, a criminal economy based on the commodification of people on the move has reportedly flourished for a long time, to the extent that it is now described as an alarming manifestation of "modern slavery".[80] Italian and European policies for managing migration flows have contributed first to consolidating, and subsequently to sustaining, this business model in which detention becomes the principal instrument of migration control.

73. R. Horsley, *Op. cit.,* p. 11.
74. *Ibid.*
75. Frontex, *EU external borders: Illegal crossings down by a quarter in the first four months of 2025, Op. cit.*
76. R. Horsley, *Op. cit.,* p. 11.
77. STATE POLICE, *Op. cit.*
78. R. Horsley, *Op. cit.*, p. 11, according to which the use of escrow accounts, released to smugglers only upon arrival at the destination, is also often envisaged,
79. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.,* p. 1.
80. F. Jusu Lahai, *The new slave trade in Libya: evaluating the modern humanitarian crisis (2015–2024),* in *Front. Polit. Sci. 7,* 24 June 2025, p. 1.

## 2.1 From the country of origin to Libyan territory

At every stage of the migration route, within the so-called "transit spaces", a relationship of dependency between migrants and smugglers, referred to as "gatekeepers", may either emerge or be reinforced.[81] Generally, departure from the country of origin, particularly in the case of migrants from the African continent, unlike those who opt for "hybrid packages", such as many migrants from Bangladesh[82], involves cooperation between Libyan members of organised smuggling networks and intermediaries of the same nationality as the migrants, to gain their trust. Smugglers frequently advertise their activities on Facebook pages as though they were services offered by travel agencies, with migrants able to pay higher fees in exchange for greater levels of "comfort".[83] Among the dangers to life, liberty and personal dignity[84] already present at this stage, first and foremost is the extremely high number of people who die merely attempting to reach Libya[85]: from 2014 to the present, the Missing Migrants Project has documented more than 2,000 deaths, as well as 6,927 missing persons, among individuals transiting through the Sahara Desert, figures that are moreover heavily underestimated due to the impossibility of determining (and recording) the real number involved.[86] Moreover, migrants travelling from West Africa face numerous danger zones along the route, where they may be subjected to imprisonment, torture and ill-treatment by different law enforcement authorities depending on the territory crossed, as well as, in many cases, various forms of exploitation as a condition for continuing their journey.[87] Among other practices, in the cities of southern Libya (Sebha, Qatrun and Kufra),

81. A. Fill and F. Moresco, *Op. cit.*
82. For the "hybrid" modes of arrival used by migrants, particularly those originating from Bangladesh, see Section 1.3 of this study.
83. M. Toaldo, *Op. cit.*, p. 8.
84. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.,* p. 4; MEDU, *ESODI. Rotte migratorie dai paesi sub-sahariani verso l'Europa* [EXODUSES. Migration routes from sub-Saharan countries to Europe], 13 September 2016, available at: ESODI. Rotte migratorie dai paesi sub-sahariani verso l'Europa – Medici per i Diritti Umani; MEDU, *UNA MALATTIA CHIAMATA TORTURA. ROTTE MIGRATORIE DALL'AFRICA SUB-SAHARIANA ALL'EUROPA* [A DISEASE CALLED TORTURE. MIGRATION ROUTES FROM SUB-SAHARAN AFRICA TO EUROPE], 16 April 2017, available at: UNA MALATTIA CHIAMATA TORTURA. ROTTE MIGRATORIE DALL'AFRICA SUB-SAHARIANA ALL'EUROPA – Medici per i Diritti Umani; M. Monyani, *Shifting sands: Migration policy and governance in Libya, Tunisia and Egypt,* in *ISS*, November 2024, available at: Shifting sands: migration policy and governance in Libya, Tunisia and Egypt, p. 7.
85. IOM, *IOM Deeply Alarmed by Mass Graves Found in Libya, Urges Action,* 10 February 2025, available at: IOM Deeply Alarmed by Mass Graves Found in Libya, Urges Action | International Organization for Migration (freely translated): "According to the IOM's Missing Migrants Project, of the 965 deaths and disappearances recorded in Libya in 2024, more than 22% occurred along land routes. This highlights the often overlooked risks migrants face along land routes, where deaths are frequently underestimated"; B. Frouws, C. Sollitt, Forgotten Fatalities: The number of migrant deaths before reaching the Mediterranean, in the Mixed Migration Centre, 27 June 2016, available at: Forgotten Fatalities: The number of migrant deaths before reaching the Mediterranean | Mixed Migration Centre
86. Mixed Migration Centre, *"In questo viaggio, a nessuno importa se vivi o muori",* ["On this journey, no one cares whether you live or die"], October 2020, available at: 127_UNHCR_MMC_rapporto_in_questo_viaggio_a_nessuno_importa_se_vivi_o_muori.pdf., pp. 14 ff.
87. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 17.

the profitable "transfer" of groups of migrants from one smuggling group to another reportedly occurs frequently, and subsequently also in the cities of Tripolitania.[88]

Upon reaching Libyan territory, migrants face a high risk of being sold and/or otherwise exploited by their original smugglers[89], abducted by criminal groups that have proliferated amid the country's political instability, or apprehended by State or para-State actors on account of their irregular status, and subsequently placed in detention centres. In any event, within the exploitation-based business model that characterises the country, such captures are generally intended to facilitate ransom demands. Even where a ransom is paid, however, migrants often find themselves recaptured, transferred to other detention centres and/or subjected to further financial demands in exchange for their release.[90] Within this system, victims are reportedly selected also based on the presumed financial means associated with their nationality[91]: in addition to Eritreans and Ethiopians, Bangladeshis are now said to be particularly affected, reporting kidnappings upon arrival, malnutrition and violence in the warehouses where they are detained.[92] Such extortion-related kidnappings have reportedly increased drastically over the last three years[93], at times culminating in mass killings, as demonstrated by the discovery in February 2025 of mass graves in the south-east of the country containing the bodies of migrants believed to have been killed by extortion gangs.[94] One area at particularly high risk for such kidnappings is Fezzan, deep in the desert, where in 2023 groups affiliated with the LAAF reportedly intensified abuses and predatory practices, formally justified as part of the fight against irregular migration.[95]

Whereas these crimes were once committed primarily with the collaboration of warehouse owners or officials working in detention centres, since 2020, extortion systems have reportedly taken on increasingly sophisticated forms.[96] Security agents linked both to the LAAF and to the Government

88. A. Fill and F. Moresco, *Op. cit.*
89. M. Herbert et al., *Illicit Economies and Peace and Security in Libya*, in *Global Initiative Against Transnational Organized Crime,* July 2023, available at: Illicit Economies and Peace and Security in Libya | Global Initiative, p. 19; N. Mellersh, *"David Yambio: Life in Libya – 'Living a Nightmare' (Part 2)",* in *InfoMigrants*, 15 January 2025, available at: David Yambio: Life in Libya – 'Living a Nightmare' (Part 2) – InfoMigrants.
90. N. Adin Fares, *'Never-ending humiliation': Recalling the horrors in Libya's migration centres,* in *Al Jazeera*, 24 March 2024, available at: 'Never-ending humiliation': Recalling horrors in Libya's migration centres | Migration | Al Jazeera; for a more detailed description of this cycle of violations, consolidated since the early 2010s, and of its current scale in light of more recent and sophisticated smuggling models, see section 2.3.1 of this paper.
91. M. Herbert, *Op. cit.*, p. 5.
92. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 17.
93. M. Herbert, *Op. cit.,* p. 5.
94. *Ibid.*
95. M. Herbert et al., *Op. cit.,* p. 19.
96. Ibid.: during the 2010s, migrants were detained and moved between various warehouses and factories by smugglers, where they were subjected to violence for extortion purposes; more recently, this practice has been reported less frequently because it no longer appears to form part of the current sophisticated smuggling model and, perhaps, also due to the relocation of such facilities to remote areas in the south and south-west. See also EUROMEDS RIGHTS, Complex persecution: *Complementary system of oppression and exploitation of migrants and asylum seekers in Libya,* 13 December 2021, available at: Complex persecution: Complemented system of oppression and exploitation of migrants and asylum seekers in Libya. Warehouses therefore constitute the first unofficial

of National Unity (GNU)[97] are reportedly now deeply involved at various points in the human smuggling chain, in some cases even carrying out a second job as smugglers themselves.[98]
As will be discussed in greater detail in relation to detention centres, the involvement of various actors within Libya's political and military landscape in migrant smuggling is said to be a direct consequence of European and Italian funding policies. These actors quickly came to understand that maintaining a system of systematic abductions and extortion, coupled with the establishment and operation of detention centres, not only generated immediate profits but also attracted the attention of European governments, which, under increasing pressure, channelled substantial financial resources to such actors, mistakenly treating them as legitimate partners in efforts to combat migrant smuggling.[99]

## 2.2 The maritime segment: deaths at sea and interceptions

Despite the temporary decrease in arrivals on European shores following the strengthening of the operational capacities of the Libyan Coast Guard (LCG)[100], the Central Mediterranean route continues to be the deadliest.[101] This apparent "success" therefore conceals deeply troubling humanitarian consequences. Indeed, the European externalisation policy pursued in this manner has been described as a striking example of the trade-off between respect for human rights,

detention centres within the migrant smuggling system, together with the so-called "connection houses", places where migrants awaiting transfer by smugglers are subjected to abuse and which are particularly known as centres of forced prostitution and sexual exploitation. See ECCHR ET AL., *Article 15 Communication to the Office of the Prosecutor of the International Criminal Court, Re: Situation in Libya – Crimes against Migrants and Refugees in Libya,* 19 November 2021, pp. 90-91.

97. UK HOME OFFICE, *Libya Country Information*, April 2025, available at: LBY CPIN Security situation, pp. pp. 16 ff.; G. AFTANDILIAN, *Libya's Deep Divisions Show No Sign of Abating, Arab Center Washington DC*, 27 March 2025, available at: Libya's Deep Divisions Show No Sign of Abating. Following the fall of the Gaddafi government in 2011, the outbreak of civil conflict in 2014 and its resurgence in 2019, Libya has remained divided into at least two distinct spheres of control: the United Nations-recognised Government of National Unity (GNU), based in Tripoli and led by Prime Minister Abdul Hamid Dbeibah, which controls approximately one third of the northern part of the country; and the Government of National Stability (GNS), based in Benghazi and led by Prime Minister Osama Hammad, supported by the Tobruk-based House of Representatives and General Khalifa Haftar's Libyan National Army (LNA, also known as the LAAF), which controls the remaining two thirds of the country.
98. UNSC, *Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2024/914,* 13 December 2024, https://main.un.org/securitycouncil/en/sanctions/1970/panel-experts/reports
99. W. LACHER, J. TUBIANA, *Op. cit.*
100. On this point, see section 3 of this work.
101. According to UNSC, *Implementation of Security Council resolution 2698 (2023), S/2024/642, Op. cit.,* p. 1, approximately 1,361 people died at sea specifically along the Central Mediterranean route between September 2023 and August 2024; p. 2 reports that the actual number of deceased migrants is likely much higher due to "invisible shipwrecks", namely shipwrecks for which the exact location of the affected vessels cannot be identified; SOS MÉDITERRANÉE, *Mediterraneo, l'OIM: "28mila vittime in 10 anni". SOS MEDITERRANEE: "Ascoltare il grido che viene dal Mare"* [Mediterranean, the IOM: "28,000 victims in 10 years". SOS MEDITERRANEE: "Listening to the cry coming from the Sea"], 29 April 2025, available at: Mediterraneo, l'OIM: "28mila vittime in 10 anni". SOS MEDITERRANEE: "Ascoltare il grido che viene dal Mare" - SOS Mediterranee, according to which there have been more than 20,000 deaths in the Central Mediterranean since 2014, including 2,500 in 2023 alone.

which remains, at least on paper, a fundamental value of the European Union, and its determination to reduce migration flows towards the continent.[102] Thus, between the beginning of 2025 and 4 October, ANSA reported at least 461 deaths and 424 missing persons.[103] Above all, mortality at sea reportedly increased drastically when viewed in proportion to departures: whereas in 2017 one person died for every 42 crossing the Mediterranean, in 2018 this ratio rose to one death for every 18 people, and in 2019 to one for every 6.[104]

This would also be due to the increasingly frequent and increasingly violent interceptions of vessels heading towards Europe.[105] By way of example, as of October 2025, approximately 20,000 people had reportedly been intercepted and returned to Libya.[106] As previously noted, the escalation of violence at sea recorded in recent years is particularly alarming[107]: in 2023 and

102. E. Reidy, *The legal battle to hold the EU to account for Libya migrant abuses*, in *The New Humanitarian*, 10 August 2020, available at: The legal battle to hold the EU to account for Libya migrant abuses (freely translated).
103. ANSA, *Oim, 461 morti nel Mediterraneo centrale da inizio anno* [IOM, 461 deaths in the Central Mediterranean since the beginning of the year], 7 October 2025, available atOim, 461 morti nel Mediterraneo centrale da inizio anno - Africa - Ansa.it; LibyaReview, *14,000 migrants intercepted and returned to Libya in 2025*, 22 August 2025, available at: 14,000 migrants intercepted and returned to Libya in 2025 - LibyaReview: in 2024, 655 deaths and 1,034 missing persons had been recorded; in 2023, 962 deaths and 1,536 missing persons.
104. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe financed the Libyan Coast Guards: 10 years of human rights violations], *Op. cit.*; Amnesty International, *La strage silenziosa dei rifugiati nel Mar Mediterraneo: le nostre colpe* [The silent massacre of refugees in the Mediterranean Sea: our responsibilities], 5 November 2019, available at: La strage silenziosa dei rifugiati nel Mar Mediterraneo: le nostre colpe.
105. A. De Leo, *Op. cit.*, p. 107. As noted by V. Punzo and A. Scaglione, *Beyond borders: exploring the impact of Italian migration control policies on Mediterranean smuggling dynamics and migrant journeys, in Trends in Organized Crime*, 3 May 2024, available at: Beyond borders: exploring the impact of Italian migration control policies on Mediterranean smuggling dynamics and migrant journeys | Trends in Organized Crime, p. 14, the number of deaths at sea increased sharply particularly following the adoption in 2023 by the Italian government of restrictive measures and the criminalization of sea-rescue activities carried out by NGOs, a topic which, however, has not been addressed in this work.
106. ANSA, *Op. cit.*; LibyaReview, 14,000 migrants intercepted and returned to Libya in 2025, *Op. cit.*: reports 21,762 intercepted persons in 2024; UNHCR, EUROPE SITUATIONS: DATA AND TRENDS - ARRIVALS AND DISPLACED POPULATIONS, JUNE 2025, 12 August 2025, available at: Document - EUROPE SITUATIONS: DATA AND TRENDS – ARRIVALS AND DISPLACED POPULATIONS – JUNE 2025 and UNHCR, *EUROPEAN SITUATIONS: DATA AND TRENDS - ARRIVALS AND DISPLACED POPULATIONS*, JULY 2025, *Op. cit.*, which reports, respectively, 2,500 interceptions in June 2025 and 1,500 in July 2025; UNSC, *Implementation of Security Council resolution 2698 (2023)*, S/2024/642, *Op. cit.*, pp. 2–3, states that, between August 2023 and August 2024, out of 50,294 people intercepted in the Mediterranean during 1,112 operations, 152 were reportedly conducted by Libyan authorities, mainly the Coast Guard (91%) and the General Administration for Coastal Security (GACS) (4%), including beyond territorial waters. In the east, forces belonging to the armed group Tariq Ben Zeyad (TBZ) and the Libyan "navy" also reportedly operate, both affiliated with the Libyan National Army.
107. S. Fratini, *La motovedetta Ras el Jadir 648 sparò su un gommone. Rgowans manipolò il video* [The patrol boat Ras el Jadir 648 fired on an inflatable boat. Rgowans manipulated the video], 20 July 2024, available at: La motovedetta Ras el Jadir 648 sparò su un gommone. Rgowans manipolò il video; Al Jazeera, *Caught on camera: Libyan coastguard fires on migrant boat,* 1 July 2021, available at: Caught on camera: Libyan coastguard fires on migrant boat | Migration News | Al Jazeera; for the video showing the attempts by the Libyan Coast Guard (LCG) to sink the migrants' boat, see N. Scavo, *Migranti. Così i guardacoste libici hanno tentato di speronare e sparare su un barcone* [Migrants. Thus the Libyan coast guards attempted to ram and fire upon a migrant boat], in *Avvenire*, 1 July 2021,

2024, four NGOs reportedly experienced incidents involving the use of firearms[108], while in 2024 as many as seven attacks against humanitarian vessels were recorded.[109] In August 2025, the Libyan Coast Guard (LCG) reportedly fired hundreds of rounds at a vessel belonging to the NGO SOS Méditerranée during a twenty-minute uninterrupted assault[110], and a further armed attack reportedly occurred only one month later against a vessel operated by the NGO Sea-Watch.[111] Furthermore, another *SOS Méditerranée* vessel was approached by a Libyan military inflatable boat whose occupants reportedly threw ten migrants into the sea using kicks and punches.[112] The situation is reportedly made even more complex by collusion between the Libyan Coast Guard (LCG) and armed groups involved in smuggling networks, creating a dangerous overlap between official authorities and organized crime.[113]

Indeed, Italian and European funding reportedly also has a significant impact on these systematic interceptions. This is true both because such funds are expressly intended to strengthen the operational capacity of the Libyan Coast Guard, indeed to enable it to operate in the first place, and because they create a strong incentive for various Libyan actors to maximise the number of interceptions, demonstrate their operational effectiveness, and maintain migration flows at a constant level to secure the continuation of their role and the associated funding.[114] Within this dynamic, the attraction would therefore stem not only from direct financial support, but

Così i guardacoste libici hanno tentato di speronare e sparare su un barcone. For a factsheet documenting episodes of violence perpetrated by the so-called LCG and other Libyan militias in the Central Mediterranean from 2016 to September 2025: Sea-Watch, *Incidents of violence by the so-called Libyan coastguard and other Libyan militias at sea,* 28 September 2025, available at: Sea-Watch-Violence-at-sea-2016-September-2025.pdf

108. E. Vasques, "Exclusive: Libyans Fired at Rescuers While Performing a Rescue at Sea", in Euractiv, 9 July 2023, available at: Exclusive: Libyans fired at rescuers while performing a rescue at sea - Euractiv
109. MSF, *Deadly Manoeuvres: Obstruction and Violence in the Central Mediterranean*, *Op. cit.*, pp. 8, 9; S. Fratini, *Una motovedetta appena regalata dal governo Meloni spara sulla Ocean Viking* [A patrol boat recently donated by the Meloni government fires on the Ocean Viking], 23 July 2023, available at: Una motovedetta appena regalata dal governo Meloni spara sulla Ocean Viking - SaritaLibre.
110. RaiNews.it, *Attacco alla Ocean Viking: "I libici ci hanno sparato per venti minuti"* [Attack on the Ocean Viking: "The Libyans fired at us for twenty minutes"], 25 August 2025, available at: Attacco alla Ocean Viking: "I libici ci hanno sparato per venti minuti".
111. Sea-Watch, *Una motovedetta donata dall'Italia alle milizie libiche ha aperto il fuoco sulla nave di soccorso Sea-Watch 5 impegnata in un'operazione di soccorso* [A patrol boat donated by Italy to the Libyan militias opened fire on the rescue vessel Sea-Watch 5 during a rescue operation], 26 September 2025, available at: Una motovedetta donata dall'Italia alle milizie libiche ha aperto il fuoco sulla nave di soccorso Sea-Watch 5 impegnata in un'operazione di soccorso • Sea-Watch e.V.
112. Mediterranea Saving Humans, *Gettati in mare dai miliziani libici. Soccorse 10 persone in acque internazionali al largo di Tripoli* [Thrown into the sea by Libyan militiamen. Ten people were rescued in international waters off the coast of Tripoli], 21 August 2025; available at: Mediterrana Saving Humans | Gettati in mare dai miliziani libici. Soccorse 10 persone in acque internazionali al largo di Tripoli.
113. MSF, *Deadly Manoeuvres: Obstruction and Violence in the Central Mediterranean*, *Op. cit.*, pp. 10, 11.
114. F. Pacella, *Cooperazione Italia-Libia: profili di responsabilità per crimini di diritto internazionale* [Italy-Libya cooperation: profiles of responsibility for crimes under international law], in *Diritto Penale Contemporaneo, Issue 4/2018*, available at: DPC | Cooperazione Italia-Libia: profili di responsabilità per crimini di ..., p. 10; M. Michaels et al., *Making misery pay: Libyan militias take EU funds for migrants,* in *AP News,* 31 December 2019, available at: Making misery pay: Libya militias take EU funds for migrants | AP News

also from the opportunity to be recognized as legitimate institutional interlocutors by European governments.[115] Foreign funding has thus paradoxically reportedly fostered the emergence of a counterproductive "anti-smuggling business", in which militia leaders actively seek collaboration as partners with the law enforcement authorities of European countries by intensifying the exploitation and abuse of migrants, while also obtaining a form of legitimacy that allows them to "launder" their own reputation.[116]

Once intercepted, migrants reportedly receive only minimal assistance from UNHCR, the IOM or the Red Cross at the few officially authorized disembarkation points[117]; there, unless they are visibly and seriously ill, they are subsequently handed over to the Department for Combating Illegal Migration (DCIM) and transferred, often through private bus companies linked to smuggling networks, to official detention centres or, in some cases, unofficial facilities[118]. The destination is generally determined by factors such as proximity to the place of disembarkation, the availability of space, or the profit opportunities associated with the transfer.[119] Moreover, during this transfer, many migrants reportedly appear to "disappear" from official records (those of UNHCR and the IOM precisely because they are sold or moved to informal facilities.[120]

## 2.3 Detention centres

Whether because they have been dependent on a smuggler from the outset, kidnapped for extortion purposes by armed gangs, detained by "state" authorities due to their irregular status, or intercepted at sea while attempting to reach Italy[121], migrants in Libya are generally held arbitrarily in detention facilities under inhuman and degrading conditions[122], where they remain for months or

115. W. Lacher, J. Tubiana, *Op. cit.*
116. M. Micallef and T. Reitano, *The anti-human smuggling business and Libya's political end game – North Africa report – ISS*, December 2017, available at: The anti-human smuggling business and Libya's political end game | ISS Africa
117. A. Fill and F. Moresco, *Op. cit.;* USDOS, *2024 Trafficking in Persons Report:* Libya, 2024, available at: Libya - United States Department of State, which emphasizes the impossibility, in such a context, of carrying out any genuine assessment of migrants' vulnerabilities, including their ability to access international protection.
118. UNSC, Implementation of Security Council Resolution 2698 (2023), S/2024/642, *Op. cit.*., pp. 3–4.
119. A. Fill and F. Moresco, *Op. cit.*, according to whom it occurs that centres already operating at full capacity nevertheless pay to receive additional migrants in the hope of profiting from them.
120. IOM, *Migrants Missing in Libya a Matter of Gravest Concern*, 17 April 2020, available at: Migrants Missing in Libya a Matter of Gravest Concern | International Organization for Migration; InfoMigrants, *20,000 migrants taken back to Libya reported missing in 2021: Oxfam,* 1 February 2022, available at: 20,000 migrants taken back to Libya reported missing in 2021: Oxfam – InfoMigrants; A. Fill and F. Moresco, *Op. cit.*, reports, by way of example, that migrants from the al-Nasr centre are reportedly sent to Ubari or Sebha for EUR 20–200, depending on nationality, gender and work capacity.
121. A. Malakooti, *Op. cit.*, p. 34, according to which many people currently held in detention centres were reportedly intercepted at sea.
122. MSF, *Un nouveau rapport de MSF dénonce la violence des politiques européennes d'obstruction aux interventions de sauvetage en Méditerranée centrale* [A new MSF report denounces the violence of European policies obstructing rescue operations in the Central Mediterranean], 24 June 2025, available at: Un nouveau rapport de MSF dénonce

even years.[123] In the absence of temporal limits or criteria governing detention and release[124], Libya has thus been transformed from a country of migrant transit into a place of prolonged detention.[125] Despite the difficulties faced by international organizations and NGOs in gaining access, it is possible first and foremost to identify an "official" network of centres managed by the DCIM[126], divided between a structure linked to the Government of National Unity (GNU), operating in Tripolitania, and another linked to the Government of National Stability (GNS)/LAAF, operating in Cyrenaica and Fezzan. Following 2017 and the reconstitution of the DCIM, the official purpose of these centres reportedly became participation in the "containment cycle": interception at sea, detention in these facilities, and the relocation or repatriation of migrants.[127] Moreover, it has been observed that detention centres in the eastern part of the country primarily serve to create the appearance of action against migrant smuggling, whereas those in the west, often effectively controlled by local militias, constitute the central hubs of the criminal enterprise.[128] Further south, centres such as Sebha and Kufra reportedly function more as places of informal deportation.[129] The DCIM reportedly also divided its facilities according to the reason for detention and the profile of detainees: for example, Tariq al-Sikkah[130] would mainly accommodate irregular migrants awaiting voluntary repatriation or subject to investigations and expulsion procedures; Ayn Zarah and Tariq al-Matar would house men and unaccompanied minors; Abu Salim would be the only facility designated for women, unaccompanied girls and mothers with children under the age of four. [131] In January 2024, between 4,000 and 10,000 migrants were esti-

la violence des politiques européennes d'obstruction aux interventions de sauvetage en Méditerranée centrale | Médecins sans frontières.

123. A. Puglia, *Op. cit.*
124. A. Malakooti, *Op. cit.*, p. 22.
125. *Ibid.*
126. M. Wirtz, *"They don't think we are humans": The cycle of human trafficking for ransom in Libya*, Doctor of Philosophy, Tilburg University, Bamenda, 2025, available at: content, pp. 315–316: being "official", detention centres formally under the control of the DCIM should, inter alia, be accessible to NGOs, UN agencies, government representatives and journalists. However, on the one hand, the Libyan administration reportedly makes such physical access difficult, while on the other hand neither official lists issued by the DCIM nor official data transmitted to the relevant organizations appear to exist. For example, the IOM's "*Libya — Detention Centre Profile Generator*" (footnote 131) reports information collected through direct contact with staff and/or managers of centres to which access was possible, rather than from official lists. The sources we have cited (footnote 133) likewise provide only indications and estimates regarding the overall number of facilities and, at times, detainees.
127. A. M. Morone, *The cycle of migrants' containment between Libya and Africa: navigating their lives amidst dreams, resilience and setbacks',* in *Journal of Eastern African Studies, 18(1), 2024,* pp. 18–35.
128. A. Malakooti, *Op. cit.*, p. 31, which identifies, among the western centres, Tajoura, Tarik al Sikka, Al Nasr, Gharyan and Sabratha.
129. *Ibid.*
130. On Tarik al Sikka, N. Mellersh, *"David Yambio: Life in Libya – 'Living a nightmare' (part 2)"*, *Op. cit.*: states that "*(...) [it is] infamous for its brutal conditions and controlled by Mohammed Al-Khoja's militia. Al-Khoja, a UN-sanctioned figure implicated in serious abuses against migrants, wields immense power as the head of Libya's Department for Combating Irregular Migration (DCIM). Under his leadership, (...) the detention centres became synonymous with inhumane conditions, arbitrary detention, extortion, torture, sexual violence and forced labour".*
131. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.*, p. 6. The last report currently available online on the IOM website appears to be IOM, *Libya — Detention Centre Profile Generator (September 2023)*,

mated to be detained overall in 11 DCIM[132] centres, as well as in "unofficial" facilities run by armed groups affiliated with the GNU, in addition to thousands of others illegally detained in secret sites controlled by armed groups.[133]

Indeed, alongside the "official" system, numerous informal centres exist that are managed by local militias, often located in remote areas and beyond any institutional control[134], as well as any form of external access or monitoring.[135] Generally, migrants are detained there until they can pay for their release (and any subsequent continuation of the journey) or manage[136] to escape.

In any event, the distinction between "official" and unofficial centres should not be understood in rigid terms. For example, groups that are officially aligned with the government, yet do not cooperate with it, often manage detention centres; these are therefore referred to as "official" even though the Ministry of the Interior exercises no real control over them.[137] Moreover, although government authorities portray "informal" centres as the sole sites of illicit smuggling and trafficking activities[138], extortion practices reportedly also occur within official facilities, generally when individual guards (often originating from militias involved in smuggling) abuse their position.[139] Moreover, given that detention sites declared closed are then regularly reactivated by militias, in practice this distinction between official and unofficial centres becomes even more blurred: for example, the unofficial centre managed by the al-Nasr Brigade in Zawiya remained operational despite the closure order issued by the DCIM, while the Tajoura centre in Tripoli, although formally closed, was reportedly still active in 2024.[140]

30 September 2023, available at: Libya — Detention Centre Profile Generator (September 2023) | Displacement Tracking Matrix

132. Amnesty International, *LIBYA 2024*, 2024, available at: Human rights in Libya | Amnesty International, estimates that, as of December 2024, more than 5,470 people were detained in official centres.
133. USDOS, *Op. cit.;* As of March 2024, there were reportedly at least 30 centres, 11 of which also housed minors. M. Herbert, *Op. cit.*, p. 7: as of 2025, the GNU's DCIM reportedly managed 4 centres in the Tripoli area (holding approximately 1,500–2,500 detainees per month), while other forces under the Ministry of the Interior detained more than 1,000 people in non-DCIM facilities; the GNS's DCIM, by contrast, reportedly managed 7 centres in the east (with 1,200–2,000 detainees monthly), in addition to exercising partial control over another 8 in Fezzan (holding 2,000–3,000 detainees per month).
134. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642*, *Op. cit.,* which refers to centres in Mabani and Tajoura in Tripoli, as well as in Al Nasr, Nalut and Zawiyah in the north-west.
135. A. Fill and F. Moresco, *Op. cit.*
136. T. Barthes, *"No Money, No Freedom": Torture and Extortion of Migrants in Libya,* in *SOS Mediterranee,* 26 June 2025, available at: - *SOS MEDITERRANEE: "After being detained, most are forced to give a family member's phone number. The detainee is filmed whilst being tortured—burned, beaten or electrocuted—to pressure their relatives into sending ransom money. (...) The ransom demands made by kidnappers in formal and informal detention centres range from hundreds to thousands of dollars, far beyond what most families can afford. (...) Even when the ransom is paid and the person is released, many are abducted again."*
137. A. Malakooti, *Op cit.*, p. 26.
138. *Ibid.*, p. 27.
139. *Ibid.*; M. Herbert, *Op. cit.*, p. 7.
140. As of today, the last documented use of the latter reportedly dates back to 2021, according to Tajoura (Tajoura) Detention Centre, in Global Detention Project, available at: : Tajoura Detention Centre – Global Detention Project | Mapping immigration detention around the world

Detention conditions, both in official facilities[141] and in informal ones, have been the subject of extensive reports documenting not only inadequate access to essential services and goods, but also serious violations such as torture, inhuman and degrading treatment, sexual violence, extrajudicial executions and enforced disappearances[142], as reported — inter alia — by the United Nations Independent Fact-Finding Mission, which specifically refers to crimes against humanity committed systematically within such contexts of deprivation of liberty.[143]

### 2.3.1 Business models operating within detention centres

It is now well known that, within the dense network characteristic of systems of human smuggling[144] and trafficking, Libyan detention facilities constitute key sites for the implementation of a genuine criminal business model[145]: arbitrary detention reportedly serves as the antechamber to exploitation, facilitated by strong collusion between state or para-state actors and criminal groups.[146] Moreover, this system reportedly constitutes not only a pillar of the profit-driven management of migration flows by smugglers, but also a tool for the punishment and neutralization of the "irregular migrant" by the Libyan government, whose immigration legislation expressly provides for detention, and in some cases even forced labour, for those present irregularly within the country.[147] Moreover, the two systems are reportedly interconnected, to the extent that, in

141. USDOS, *Op. cit.* (freely translated): "Detention facilities managed by the DCIM suffer from massive overcrowding, a lack of basic infrastructure, serious hygiene and sanitation problems, and food shortages (...) Detainees (...) had limited access to medical assistance, legal assistance and other forms of protection services."
142. Global Centre for the Responsibility to Protect, *Atrocity Alert No. 440: Israel and the Occupied Palestinian Territory, Protection of Civilians and Libya,* 21 May 2025, available at Atrocity Alert No. 440: Israel and the Occupied Palestinian Territory, Protection of Civilians and Libya – Global Centre for the Responsibility to Protect; UNSMIL, *Libya: Sites of gross human rights violations must be cordoned off and investigated impartially – Türk*, 4 June 2025, available at: Libya: Sites of gross human rights violations must be sealed off and investigated impartially - Türk | UNSMIL; UN News, *Detention centres in Libya remain places of violations and abuse: experts,* 28 March 2022, available at: https://news.un.org/en/story/2022/03/1114842. M. Herbert et al., *Op. cit.,* p. 19.
143. UNHRC, *Report of the Independent Fact-Finding Mission on Libya,* 27 February – 31 March 2023, A/HRC/52/83, 27 March 2023, available at: https://www.ohchr.org/en/hr-bodies/hrc/libya/index.
144. Mixed Migration Centre, *Trafficking and exploitation in mixed migration,* 24 April 2025, available at: Trafficking and exploitation in mixed migration |; Mixed Migration Centre, *Beyond Definitions: Global migration and the smuggling–trafficking nexus,* 6 November 2015, available at: Beyond Definitions: | Mixed Migration Centre: although a formal distinction exists between trafficking, which is aimed at exploitation, and smuggling, which is intended to facilitate the unlawful entry of migrants who initially turned to smugglers voluntarily, the two phenomena are closely intertwined along the Central Mediterranean Route. Many migrants fall victim to traffickers from the outset, others become trapped in forms of so-called "debt bondage" in order to repay the cost of the journey, while still others are abducted during the journey by criminal groups operating within trafficking networks. Given these interconnections, the various actors involved in these business models have here been considered as part of a single criminal system that profits from the arbitrary detention and exploitation of migrants.
145. USDOS, *Op. cit.*
146. M. Herbert, *Op. cit.*, p. 7.
147. A. Malakooti, *Op. cit.*, p. 20 (freely translated): "The legal basis for the detention of migrants is Law No. 19 of 2010, which grants the judge the authority to do whatever he deems appropriate in the case of irregular migrants. "This means that, if a judge considers it necessary, he may order the detention of a migrant. However, this should be

several official centres, the government has entrusted security to armed militias linked to human trafficking networks.[148]

The core of the criminal entrepreneurial model that generates profits through the exploitation of detained migrants is constituted by extortion, a practice that is structurally widespread in both official and unofficial centres.[149] Detainees are subjected to torture, while the violence inflicted upon them is recorded and sent to their families, who are contacted using telephones provided by the detention centre staff themselves, to obtain ransom payments[150]. Indeed, the payment of a ransom appears to be the most common means of securing release.[151] In other cases, a "sponsor" from West or East Africa may appear at the detention centre, pay for the detainee's release, and subsequently compel the individual to work to repay the new debt thereby incurred.[152] After paying their ransom, former detainees are usually taken towards the coast. In some cases, however, they are first transferred to, in other words, purchased by, armed groups[153]; in others, and very frequently, they are recaptured and returned to the Libyan detention system. As a result, they become trapped in a cycle of extortion that gradually strips both them and their families of the financial resources needed to secure any future release. The result of this brutal criminal business model, beyond ensuring a constant supply of "clients", is a level of psychological pressure so devastating that some detainees who were recaptured after having previously secured their release have taken their own lives. One such case involved a young Sudanese refugee who, after being released, was detained again just two weeks later.[154] Moreover, although the amounts demanded vary strategically according to nationality[155], extortion is reportedly beco-

established through a court judgment in which the migrant appears before a judge, something that today almost never occurs in Libya. The law also permits the detention of migrants through a reasoned decision issued by the Passport Authority. Cabinet Decree No. 386 of 2014, which establishes the mandate of the DCIM, further grants the Directorate the authority to detain migrants without a court judgment, but only in the case of individuals awaiting expulsion (...). (...) the DCIM is expected to 'arrest illegal migrants in Libya and place them in reception centres in order to monitor them and complete the procedures necessary for their repatriation to their countries of origin (...)'."

148. USDOS, *Op. cit.*
149. A. Malakooti, *Op. cit.*, p. 39.
150. *Ibid.* (freely translated): "In most entry hubs into Libya, such as Sebha (...) and Kufra (...), migrants report having been detained upon arrival and asked to pay a ransom in order to be released."
151. *Ibid.*, p. 36, according to which, in cases where the ransom is paid by family members, the money is transferred from a third country into accounts indicated by the extortionists. In other cases, a contact in Tripoli makes the payment on their behalf.
152. *Ibid.*, according to which, in cases where the ransom is paid by family members, the money is transferred from a third country into accounts indicated by the extortionists. In other cases, a contact in Tripoli makes the payment on their behalf.
153. *Ibid.*
154. F. Marsi, *Despairing teen refugee found hanged in Libya detention centre* in *Al Jazeera*, 23 June 2022, available at: Despairing teen refugee found hanged in Libya detention centre | Migration News | Al Jazeera
155. A. Malakooti, *Op. cit.*, p. 40 reports higher amounts for migrants from East Africa (especially Eritreans and Somalis). Specifically for 2019, the amounts ranged from EUR 5,000 to EUR 9,000 for Somalis and from EUR 4,000 to EUR 6,000 for Eritreans; migrants from West Africa reportedly paid between EUR 300 and EUR 1,000, while migrants from Asia reportedly paid up to EUR 9,000. In L. Ciabarri, A. Simonsen, *Fragments of solidarity: the social worlds of African migrants moving northwards,* in *Journal of Eastern African Studies, 18(1), 2024,* pp. 2–17: this disparity is said to stem from the existence of extensive transnational Somali and, to a lesser extent, Eritrean networks, as well as

ming less profitable precisely because many migrants, having already paid several ransoms, are no longer able to meet further financial demands.[156]
Evidence of the operation of this model, consolidated for at least the past fifteen years, has also emerged in relation to the 2017–2024 period.[157] Although, as will be seen concerning the Al-Maya centre[158], militias involved in smuggling in more recent times reportedly operated with the primary aim of attracting the attention of both the local government and European governments[159], following the failure of such a strategy, they allegedly returned to a detention model based on extortion through ransoms demanded from migrants.[160]

In addition to extortion, illicit financial gains reportedly also derive from involvement in the management of food intended for detainees[161]: supplies provided by the government, NGOs

forms of intra-community solidarity, which make it possible to raise substantial sums of money. By contrast, the same is generally not true of families from West Africa, particularly those living in rural areas.

156. A. Malakooti, *Op. cit.*, p. 40.
157. T. Barthes, *Op. cit.;* N. Adin Fares, *Op. cit.;* M. Wirtz, *Op. cit.* For findings to this effect based on interviews conducted during the 2019–2021 period, see also M. Wirtz, D. de Vries & M. van Reisen, *The Past is not Past: The History and Context of Human Trafficking for Ransom in Libya,* in M. Van Reisen et al. (eds.), *Enslaved. Trapped and Trafficked in Digital Black Holes: Human Trafficking Trajectories to Libya,* 2023, pp. 154–194, available at : pure.uvt.nl/ws/portalfiles/portal/68884648/Enslaved.TrappedandTraffickedinDigitalBlackHoles_HumanTraffickingTrajectoriestoLibya_2023_VanReisenMawereSmitsWirtz_Fin_1_1_.pdf; M. Wirtz, M. Van Reisen, *Living Skeletons: The Spread of Human Trafficking for Ransom to Libya,* in M. Van Reisen et al. (eds.), *Enslaved. Trapped and Trafficked in Digital Black Holes: Human Trafficking Trajectories to Libya,* 2023, pp. 521–569, available at: content
158. Section 2.3.2. of this work.
159. W. Lacher, *A Political Economy of Zawiya: Armed Groups and Society in a Western Libyan City,* in *the Small Arms Survey/SANA project,* March 2024, available at: SAS-SANA-Report-2024-Zawiya-EN.pdf, p. 48: in this context, it was therefore particularly difficult for detained migrants to secure their release, even by offering to pay a sum of money, since ransom was not the primary objective of the militias that had captured them.
160. *Ibid*. Similarly, T. Eaton, L. Yousef, *How migrant smuggling has fuelled conflict in Libya: A systems analysis of key transit hubs*, *Chatham House*, 13 February 2025, available at: https://www.chathamhouse.org/sites/default/files/2025-02/2025-02-13-transnational-smuggling-libya-eaton-and-yousef.pdf, p. 53, where we read (freely translated): "They take advantage of EU policies on the externalization of border security, benefiting from EU funds allocated to initiatives aimed at combating irregular migration. Under the pretext of combating irregular migration, intercepted migrants are arrested at sea and returned to Libya. However, local sources reveal that, following interception, migrants are transferred or forced to pay a ransom in order to be released. Testimonies from the end of 2022 indicate that migrants detained in the al-Maya detention centre, managed by the SSA, were extorted in exchange for their release." ENACT, *Organised Crime Index – Africa, Libya,* 2025, available at: Criminality in Libya - The Organised Crime Index | ENACT (freely translated): "Armed groups, militias and criminal organizations operate across various territories, often engaging in kidnapping for extortion and torture, particularly targeting migrants and refugees. The practice is widespread throughout Libya, from Kufra in the far south-east to the north-western coast. Bani Walid has become a central hub for the ransom of kidnapped migrants, where armed gangs, often composed of young men, torture victims and send videos to their families to extort money. Militias have long been involved in the detention and abuse of refugees, but these gangs are increasingly becoming key actors in the market. At the beginning of 2024, the authorities dismantled a criminal organization in Sabha that targeted African migrants with false job offers, only to then demand ransom payments from their families."
161. A. Malakooti, *Op. cit.*, pp. pp. 41 ff.

or catering companies contracted by the DCIM are often allegedly stolen by staff and resold[162]; at times, the catering companies themselves reportedly use only part of the allocated budget while retaining the remainder.[163]

Within the criminal economy characteristic of Libyan detention centres, sexual and labour exploitation reaches the threshold of "human trafficking" as internationally defined[164] and constitutes an almost constant reality, particularly in centres where smugglers and staff form part of the same criminal network.[165] Particularly widespread in unofficial centres, forced labour practices involve detained migrants being used either as unpaid labour during the day in external activities[166], returning in the evening, or directly within the centres themselves as staff in exchange for slightly better detention conditions.[167] Likewise, concerning sexual exploitation, these are not isolated incidents but rather a structural practice that turns gender-based violence into a source of income[168]: many migrant women in Libya are affected by it, and it is not uncommon for them to be forced into prostitution directly by detention-centre staff, particularly in unofficial centres.[169] Also, within the trafficking system, cases involving the sale of migrants as actual slaves are frequent, especially in relation to persons originating from sub-Saharan Africa.[170] In some cases, detainees are transferred from one detention centre to another for profit[171]. This may occur at the direct request of those managing the facilities, who contact the DCIM when they need to reduce the number of detainees, or detainees may be sold directly by "State" authorities to smugglers as a form of commodity exchange.[172]

162. J. Tubiana, *Diary. Safe and Unsafe Ports,* in *London Review of Books, Vol. 47 No. 9*, 22 May 2025, available at: Jérôme Tubiana · Diary: Safe and Unsafe Ports
163. AlJazeera, *Libya militias rake in millions in European migration funds: AP,* 31 December 2019, available at 'Libya militias rake in millions in European migration funds': AP | Migration News | Al Jazeera
164. M. Herbert, *Op. cit.*, p. 8 (freely translated): "According to reports, detainees are 'rented out' by detention-centre staff to private individuals, families or even business owners, or forced to work without pay, both within detention facilities and in the agricultural and construction sectors"; USDOS, *Op. cit.,* (freely translated): "(...) guards and administrative staff at DCIM detention centres forced detained migrants, including unaccompanied minors, to work both within detention centres and at third-party locations, such as farms and construction sites."
165. A. Fill and F. Moresco, *Op. cit.*, which cites Al Nasr Zawiya.
166. A. Malakooti, *Op. cit.*, p. 41.
167. *Ibid.*
168. USDOS, *Op. cit.,* (freely translated): "Guards and DCIM personnel systematically subjected migrants detained in DCIM detention centres to sexual trafficking and other forms of sexual exploitation; guards and staff forced women, girls, men and boys to perform sexual acts in exchange for essential goods such as food, clean water and, at times, their freedom."
169. A. Malakooti, *Op. cit.*, p. 42.
170. *Libya Immigration Detention Data Profile*, in *Global Detention Project,* 2020, available at: Libya Immigration Detention Data Profile - Global Detention Project - index.php; USDOS, *Op. cit.;* N. Mellersh, *The cruel reality of migrant detention and deportation in Libya,* in *InfoMigrants*, 9 January 2025, available at The cruel reality of migrant detention and deportation in Libya - InfoMigrants: *"the slave trade is alive and thriving in Libya".*
171. A. Fill and F. Moresco, *Op. cit.*; A. Malakooti, *Op. cit.*, p. 43.
172. A. Malakooti, *Op. cit.*, p. 44.

### 2.3.2 The characteristic interconnections of migrant smuggling and the complicity of European governments

As has already emerged, the control of migration flows as a source of substantial illicit profits is made possible through close interconnections between various actors operating, in different capacities, within Libyan territory: (corrupt) state actors, para-state actors and armed groups involved in smuggling networks. To these must also be added the European governments which, despite being aware[173] that they constitute a fundamental link in the lucrative vicious cycle of detention[174], do not cease their material support, thereby remaining a constant incentive for the functioning of that cycle.

It is undoubtedly within the context of a weak rule-of-law State, such as Libya[175] has been and continues to be, that the Libyan Coast Guard, government ministries, security forces and armed groups that have infiltrated public institutions began cooperating with criminal smuggling and trafficking networks[176]. For example, the DCIM itself is alleged to engage in illicit profit-making activities in collaboration with armed groups,[177] which in turn have reportedly placed their own members within official detention facilities so that they may be paid directly by the Department.[178] Thus, although exploitation was already an integral part of the country's migration governance in the post-Gaddafi period, European policies have significantly influenced the business models that have since become consolidated within Libyan territory, specifically by incentivizing extortionists and smugglers to operate within state security institutions and encouraging the repro-

173. OHCHR, *Report of the independent fact-finding mission on Libya (Report No. A/HRC/52/83),* 20 March 2023, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/043/04/PDF/G2304304.pdf?OpenElement, according to which the financial, technical and material support provided by the EU and Member States is reportedly used "in the context of the interception and detention of migrants". Furthermore, in Openpolis, *Human rights are violated in Libya with cooperation funds*, *Op. cit.*, we read that: "In October 2017, the Milan Court of Assize condemned the living conditions and the practices of torture and violence perpetrated in institutional detention centres in Libya. The Trust Fund, through the support it provides to Libyan internal security forces, risks indirectly contributing to such practices."

174. M. Okba, *Three kidnappings, prison and a shipwreck: Ghaith's journey sheds light on the ruthless nature of Europe's migration crisis,* 3 February 2025, in *The Guardian,* available at: Three kidnappings, prison and a shipwreck: Ghaith's journey reveals the ruthless business behind Europe's migration crisis | Migration and development | The Guardian; A. De Leo, *Op. cit.*, p. 107.

175. USDOS, *Op. cit.*, reports that the GNU, established through a UN-facilitated process in March 2021, failed to govern effectively large portions of Libyan territory and that efforts toward national stability were reportedly complicated by violations of the October 2020 ceasefire, isolated violence throughout the country and political conflicts between the GNU in the west and rival institutions in the east, including the self-proclaimed Libyan National Army (LNA) and the GNS. This security vacuum was reportedly filled by armed groups responsible for "various human rights violations, including unlawful killings, abuses against migrants and refugees, forced recruitment, forced labour and human trafficking for sexual exploitation." Furthermore, there have been numerous reports of "criminal networks, militias, government officials and private employers systematically exploiting migrants, refugees and asylum seekers in cycles of human trafficking for sexual and labour exploitation."

176. USDOS, *Op. cit.*

177. A. Malakooti, *op. cit.*, p. 39.

178. *Ibid.,* p. 29.

duction and expansion of those models.[179] Starting from 2017, Europe reportedly progressively institutionalized militia leaders as official interlocutors, granting them legitimacy and effectively transforming them into state actors. This process emerges clearly from certain paradigmatic cases: Mohammed al-Khoja (known as al-Bija), a militia leader responsible for managing the Tariq al-Sikka detention centre, was appointed director of the DCIM in 2021, a position he held until his death in August 2024; similarly, Emad Trabelsi, whose group exercised control over the Al-Mabani facility, assumed the office of Minister of the Interior the following year.[180] The United Nations Security Council has likewise recognized this overlap between institutions and criminal actors[181], adding to the numerous reports documenting the collusion and financing networks existing from the moment of interception at sea[182] through to detention and subsequent extortion.[183] However, despite some initial arrests in connection with these well-known illicit activities, in practice those responsible have often remained unpunished.[184]

Thus, precisely because of Italian and European funding, certain Libyan actors, particularly those already holding institutional positions, are reportedly engaged simultaneously in combating irregular migration and in the smuggling of migrants[185]: indeed, the most effective smugglers are said to be members of the Libyan Coast Guard itself, as they face no risk of being intercepted.[186] Since it remains essential for the Coast Guard itself, within the "smuggling market"[187], to ensure that at least a portion of migrants attempt the crossing, it has reportedly increasingly allowed vessels to depart, in some cases even escorting certain boats towards Lampedusa before returning to Libya.[188]

On the other hand, militias operating within the country are said to adopt increasingly sophisticated strategies to secure the attention, and consequently the funding, of European governments. These include intensifying violence and abductions targeting migrants, directly bribing members of the Libyan Coast Guard and the DCIM in order to ensure a steady flow of detainees into detention centres,[189] and, in some cases, establishing new facilities designed not primarily

179. W. Lacher, J. Tubiana, *Op. cit.*
180. W. Lacher, J. Tubiana, *Op. cit.*
181. UNSMIL, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya,* 20 December 2018, available at: LibyaMigrationReport.pdf, p. 27.
182. UNSMIL, *"Detained and Dehumanised": Report on Human Rights abuses against migrants in Libya*, 12 December 2016, available at:: Microsoft Word - OHCHR_UNSMIL_Report on migrants_final_clean.docx; N. Mellersh, *"David Yambio: Life in Libya – 'Living a nightmare' (part 2)"*, *Op. cit.*
183. USDOS, *Op. cit.*
184. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.,* p. 4.
185. M. Herbert et al., *Op. cit.*, p. 17.
186. W. Lacher, J. Tubiana, *Op. cit.*
187. On the concept of the "smuggling market", in which demand consists of migrants' requests to move and supply consists of the transport services offered by smugglers, see Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.*, p. 30.
188. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.,* p. 17.
189. USDOS, *Op. cit.*; Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.,* pp. 6, 32.

for extortion but rather to attract funding directly from the European Union.[190] Emblematic of the perversity of the system is the case of the Al-Maya detention centre, built in 2021 by the militia known as the Stability Support Apparatus (SSA)[191] with the declared intention of attracting the attention of the EU and the United Nations. This is confirmed by the very words of an SSA commander who, when asked by certain detained migrants to secure their release in exchange for ransom payments, reportedly replied: *"This place isn't like other prisons. We don't need your miserable money. We're after the European Union. You can't give us the sort of ransom the EU can. When we get what we're looking for, we'll release you."*[192] The centre was therefore conceived as a bargaining tool through which to obtain official recognition, equipment and funding from European governments, a concrete illustration of how migration control has become a business model for Libyan militias. These groups are attracted by an activity capable of providing official status, as well as salaries and access to State budgets, including funds allocated through the DCIM.[193]
Faced with European and Italian funding formally intended to protect human lives, but which in practice appears to sustain a system that converts those very lives into an economic resource[194], increasing calls are being directed at the European Union and the Member States to suspend support both for Libyan authorities and for Libyan militias.[195] In this context, in February 2025, thirty international organizations jointly called for the suspension of funding, emphasizing that such funding neither guarantees the protection of human rights nor contributes to improving the conditions of those seeking protection, a circumstance moreover confirmed by a 2024 report of the European Court of Auditors.[196] Moreover, following an armed attack on the vessel *Ocean Viking* in August 2025[197] by a craft supplied to the Libyan Coast Guard under the SIBMMIL programme, which, as will be discussed below, is funded by Italy through European Union[198] resources, 42 civil society organisations[199] addressed an open letter to the European Commission[200]. In that letter, they argued that European funding had "legitimised abuses" and contributed to

190. W. Lacher, J. Tubiana, *Op. cit.*
191. Il Post, *Cosa sappiamo della visita di un capo di una milizia libica in Italia* [What we know about the visit of a Libyan militia leader to Italy], 22 March 2025, available at: Cosa sappiamo della visita di un capo di una milizia libica in Italia - Il Post.
192. W. Lacher, J. Tubiana, *Op. cit.*
193. *Ibid.*
194. M. Moro, *Il trafficante lo paghi tu* [You Pay for the Trafficker], in *L'Espresso*, 5 August 2025, available at: Il trafficante lo paghi tu | L'Espresso.
195. Amnesty International, *La cooperazione tra Ue e Libia è un fallimento morale* [Cooperation between the EU and Libya is a moral failure], 7 July 2025, available at: La cooperazione tra Ue e Libia è un fallimento morale - Amnesty International Italia.
196. A. Assad, *30 international organisations call for a freeze on EU funds provided to Libya',* in *The Libya Observer*, 19 February 2025, available at: 30 international organisations call for a freeze on EU funds provided to Libya | The Libya Observer
197. Note 110.
198. As referred to in section 3.1.
199. MeltingPot, *Fondi europei alla Guardia costiera libica* [European funds for the Libyan Coast Guard], 24 September 2025, available at the link Fondi europei alla Guardia costiera libica – Progetto Melting Pot Europa.
200. SOS HUMANITY, *Open letter to Magnus Brunner and Dubravka Šuica,* 23 September 2025, available at: https://sos-humanity.org/en/press/open-letter-ov/

entrenching "a culture of impunity for violence" perpetrated by the Libyan authorities during interceptions at sea. The document, therefore, calls on the European Union to end all forms of cooperation with Libya in the field of search and rescue and on Italy to terminate the 2017 *Memorandum*.

The persistence of the European Union in maintaining such support raises fundamental issues which, beyond the dimension of protecting the human rights of the migrants directly concerned[201], call into question the consistency of the Union with the democratic principles it proclaims as its own normative foundations.[202] The establishment of partnerships with regimes characterised by democratic deficits and authoritarian tendencies, such as Libya, but also Egypt and Tunisia, would indeed appear to be at odds with the democratic values that Europe continues to claim as its own.[203]

## 2.4 The risks associated with remaining in Libyan territory

Even outside detention facilities and smuggling networks, remaining in Libyan territory exposes migrants to multiple risks, both pre-existing and emerging. First and foremost, within a context marked by prolonged political instability that already compromises the ability to guarantee the essential needs of vulnerable populations in the country[204], the Libyan authorities further restricted the operational space of humanitarian organizations by ordering, in April 2025, the closure of ten foreign NGOs on allegations of purported "hostile activities".[205] Secondly, the policy of effectively criminalising anyone present in the country in an irregular situation[206], coupled with the absence of any form of protection for migrants, is now being compounded by an increasingly racist climate within the country. Already in 2024, arrests based solely on migration status

201. EU Commissioner for Human Rights: *European countries must urgently change their migration policies which endanger refugees and migrants crossing the Mediterranean,* 9 March 2021, available at: European countries must urgently change their migration policies which endanger refugees and migrants crossing the Mediterranean - Commissioner for Human Rights; OHCHR, *Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea,* May 2021, available at: OHCHR-thematic-report-SAR-protection-at-sea.pdf; LibyaMohammed, *OMCT expresses its fear of cooperation between Europe and Libya in the field of migration,* in *The Libya Observer,* 30 June 2024, available at: OMCT expresses its fear of cooperation between Europe and Libya in the field of migration | The Libya Observer
202. Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.,* p. 33.
203. Amnesty International, *Conferenza sulle migrazioni: lettera congiunta alla presidente Meloni* [Conference on Migration: joint letter to President Meloni], 21 July 2023, available at: Conferenza sulle migrazioni: lettera congiunta alla presidente Meloni - Amnesty International Italia.
204. Mixed Migration Centre, *Crossing borders, building livelihoods. The precarious economic lives of migrants in Libya, Op. cit.*, p. 24. Pp. pp. 41 ff.: despite relatively rapid access to the informal labour market, migrants in Libya face barriers to their economic inclusion, including highly unstable sources of income (the majority are believed to earn a living through casual or sporadic work in manual and low-skilled sectors), a lack of access to social benefits, and income that is insufficient to cover basic needs and/or build up savings, or is entirely absent.
205. SOS Mediterranee, *Libya Shuts Down 10 NGOs, Claiming "Hostile Actions",* 24 April 2025, available at the link Libya Shuts Down 10 NGOs, Claiming "Hostile Actions" - SOS MEDITERRANEE
206. Note 147.

had reportedly increased dramatically, especially in the south, with raids and round-ups carried out at disembarkation points or in informal camps, often accompanied by violence and family separations.[207] For example, in June 2024, hundreds of men, women and children from various sub-Saharan African countries, who had taken refuge in an improvised camp in Tripoli, were arrested during a raid allegedly carried out by seven Libyan security agencies, which reportedly destroyed the tents of the informal camp and fired at people attempting to flee.[208] Furthermore, in July 2025, more than 1,500 irregular migrants from the eastern area of Tripoli were arrested and detained.[209] According to the International Commission of Jurists (ICJ), disinformation campaigns on social media during the first half of 2025 further fuelled hostility towards migrants, particularly those of African origin. This climate culminated in attacks, racist rhetoric and xenophobic demonstrations, including a protest held in Tripoli in March 2025 under the slogan "*Friday for the Expulsion of Africans from Libya*". Saïd Benarbia, Director of the ICJ Middle East and North Africa Programme, described these attacks as "blatant assaults" on the human rights of migrants.[210] UNSMIL has likewise confirmed that disinformation and hate speech are fuelling social tensions and increasing the risks faced by migrant communities within the territory.[211]

In this scenario, far from combating such violence, the Libyan authorities reportedly chose the path of expulsion: in January 2025, they allegedly expelled hundreds of Nigerian migrants, including women and children, and announced new plans for mass deportations.[212]

Moreover, asylum seekers and refugees in Libya receive no additional protection, as would instead be required under international law, since the country is neither party to the 1951 Geneva Convention nor equipped with its own procedure for the recognition of the right to asylum.[213] As a result, all migrants present in the country are treated as irregular migrants, without any distinction being made between them, and are therefore subject to the same sanctions[214], ranging

207. Amnesty International, *LIBYA 2024*, *Op. cit.*
208. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.*, p. 7.
209. S. Sanderson, *Libya: 1,500 migrants detained following weekend raids,* in *InfoMigrants,* 29 July 2025, at the link Libya: 1,500 migrants detained following weekend raids - InfoMigrants
210. ICJ, *Libya: Immediately halt collective expulsions, arrests, violence and hate speech against migrants, refugees and asylum seekers,* 2 April 2025, at the link Libya: Immediately halt collective expulsions, arrests, violence and hate speech against migrants, refugees and asylum seekers | ICJ. On this point, see also BBC News, Natasha Booty, "*Libya expels aid groups accused of 'African' population plot",* 4 April 2025, available at: Libya kicks out aid groups accused of 'African' population plot; EUROMEDS RIGHTS, *"Alarming increase in racist violence against migrants in Tunisia and Libya",* 10 April 2025, available at: Alarming increase in racist violence against migrants in Tunisia and Libya - EuroMed Rights
211. UNSMIL, *Statement by the United Nations in Libya warns against misinformation and hate speech,* 13 March 2025, available at: Statement by the United Nations in Libya warns against misinformation and hate speech | UNSMIL
212. ICJ, *Op. cit.*, according to which, on 17 March 2025, the Libyan Minister of the Interior announced plans to deport 100,000 migrants, refugees and asylum seekers every four months. See also S. Magdi, *'Libya deports 700 Sudanese migrants in crackdown on trafficking'*, in *AP News*, 19 July 2025, available at: Libya deports 700 Sudanese migrants in crackdown on trafficking | AP News
213. UNHCR, *Annual Results Report 2023 Libya,* 30 May 2024, available at: Annual Results Report – 2023 Libya, p. 6.
214. World Organisation Against Torture (OMCT), *How can we bring about positive change for migrants, refugees and asylum seekers in Libya? Recommendations for the Libyan authorities,* March 2023, available at: https://www.omct.org/site-resources/legacy/Policy-brief-on-migration-in-Libya.pdf, p. 8.

from indefinite detention, often accompanied by forced labour, to expulsion.[215]
This complete lack of protection is in no way offset by the activities of international organizations operating within the territory, such as UNHCR and the IOM. On the contrary, hundreds of direct testimonies have denounced the structural failure of these organizations, highlighting not only their inability to protect refugees, but also an actual collaboration with European containment policies, for example in suppressing the protests of thousands of people.[216] The allegations concern difficulties in registering and renewing documents, the absence of medical assistance, but also corruption and complicity with Libyan militias: according to David Yambio of *Refugees in Libya*, "The humanitarian aid system walks hand in hand with the containment system." They feed you, but the door remains closed. They treat your wounds, but they leave you in a cage. It is a system built not to save, but to contain.[217]

## 3. The management of irregular migration from Libya following the 2017 Memorandum: the *focus* on strengthening the Libyan Coast Guard

Given Libya's strategic position along the migration routes of the Central Mediterranean, it has been transformed by the European Union and the Member States into the principal actor in the control of the Old Continent's maritime borders.[218] Indeed, for several years now Europe has responded to the challenges posed by human mobility primarily by delegating border control to the authorities of third countries, implementing the so-called "externalization" of borders.[219] Thus did Italy in 2017 with the well-known *Memorandum of Understanding* with Libya[220], which com-

215. ASGI, *Critical aspects of Italian NGOs' activities in detention centres in Libya funded by A.I.C.S.,* July 2020, (final) Report on the analysis of NGO projects in Libya, p. 22.
216. D. Fassini, *I rifugiati di Libia, Niger e Tunisia accusano l'Unhcr: «Non ci protegge»* [Refugees in Libya, Niger and Tunisia accuse UNHCR: "It does not protect us"], in *Avvenire*, 12 September 2025, available at: I rifugiati di Libia, Niger e Tunisia accusano l'Unhcr: «Non ci protegge» | Avvenire.
217. Furthermore: "UNHCR was present in the detention centres, but their care was never freedom. They brought blankets, knowing that we were enslaved. "They saw women being raped, but said that it was not in their hands to free us", in MeltingPot, *"Book of Shame" irrompe a Ginevra* ["Book of Shame" bursts into Geneva], 23 September 2025, available at: "Book of Shame" irrompe a Ginevra – Progetto Melting Pot Europa. The document referred to is available at: Book of Shame | Refugees in Libya.
218. R. Palladino, *Nuovo quadro di partenariato dell'Unione europea per la migrazione e profili di responsabilità dell'Italia (e dell'Unione europea) in riferimento al caso libico* [The new European Union partnership framework on migration and profiles of responsibility of Italy (and the European Union) in relation to the Libyan case], in *Freedom, Security & Justice: European Legal Studies, No.* February 2018, p. 117.
219. ASGI, *Il diritto alla trasparenza nei finanziamenti volti alla gestione integrata delle frontiere: il caso della Libia* [The right to transparency in funding aimed at integrated border management: the case of Libya], 18 February 2021, available at: Il diritto alla trasparenza nei finanziamenti volti alla gestione integrata delle frontiere: il caso della Libia - Asgi.
220. *"Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere"* ["Memorandum of Understanding on Cooperation in the Fields of Development, Combating Illegal Immigration, Human Trafficking and Smuggling, and Strengthening Border Security"], hereinafter also referred to simply as the "Memorandum",

mitted our country to providing technical and technological support to the Libyan institutions tasked with combating "illegal" immigration, to render them autonomous in the management of migration flows, especially in the maritime segment of the journey. From the signing of that agreement onwards, the interception and control tasks entrusted to the Libyan Coast Guard reportedly became increasingly explicit, to prevent any disembarkation of migrants on EU territory.[221] Italian and European migration policies over the last decade have therefore reportedly materialized in the creation of a "Great Wall" which, by progressively shifting European borders further south, aims to render migration increasingly invisible to public opinion.[222]

## 3.1 European Union funding policies

Since 2015, the European Union has intervened in the migration phenomenon from Libya primarily through the Emergency Trust Fund for Africa (EUTF)[223], officially aimed at addressing the root causes of irregular migration. However, given the flexible nature of the objectives of this Fund, the more than EUR 5.26 billion spent[224] reportedly ended up being diverted, that is, used not for any genuine improvement of conditions in migrants' countries of origin, but rather to deter them from European territory.[225] By way of example, it should be noted that 24.3% of the funds in

signed on 2 February 2017 by Italian Prime Minister Paolo Gentiloni and the President of the Presidential Council of the Government of National Accord of the State of Libya, Fayez al-Sarraj, available at: Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri.

221. A. Beck, *Italian and EU Funding of the Libyan Coast Guard: How Italian External Border Immigration Policies Have Led to Crimes Against Humanity, Public Ignorance and Legal Accountability,* in *Immigration and Human Rights Law Review, Vol. 5: Issue 1, Article 2,* February 2024, available at: Italian and EU Funding of the Libyan Coast Guard: How Italian External Border Immigration Policies Have Led to Crimes Against Humanity, Public Ignorance and Legal Accountability Issues, p. 13.
222. L. Bagnoli, F. Papetti, *Come l'Italia ha costruito le forze marittime della Libia* [How Italy built Libya's maritime forces], in *IrpiMedia*, 27 October 2022, available at: Come l'Italia ha costruito le forze marittime della Libia - IrpiMedia.
223. A. De Leo, *Fostering Accountability for Human Rights Violations in the Externalisation of EU Borders Through the European Ombudsman: The Case of Contesting Financial Support to the Libyan Coast Guard* in *Journal of Immigrant & Refugee Studies,* 23(1), 104–120, 3 January 2025, available at Full article: Fostering Accountability for Human Rights Violations in EU Border Externalization Through the European Ombudsman: The Case of Contesting Financial Support to the Libyan Coast Guard. According to ASGI, *Critical profiles of the activities of Italian NGOs in detention centres in Libya funded by AICS*, *Op. cit.*, p. 10, the Fund was refinanced in 2018 with EUR 30 million and, for 2019, with EUR 50 million. The 2019 Budget Law partially amended the purposes of the Fund by providing, under Article 101, that the Fund's interventions may also be directed towards non-African countries, with an allocation of EUR 30 million for 2020, EUR 30 million for 2021 and EUR 40 million for 2022.
224. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe financed the Libyan Coast Guards: 10 years of human rights violations], November 2019, available at: IT-COME-LITALIA-E-LEUROPA-HANNO-FINANZIATO-LE-GUARDIE-COSTIERE-LIBICHE.pdf, according to which the Italian contribution amounted to EUR 123,000.
225. ASGI, *Rimpatri volontari o espulsioni mascherate? Contestata la legittimità dei programmi di rimpatrio volontario dalla Libia* [Voluntary returns or disguised expulsions? The legitimacy of voluntary return programmes from Libya challenged], 18 December 2024, available at: Rimpatri volontari o espulsioni mascherate? Contestata la legittimità dei programmi di rimpatrio volontario dalla Libia - Asgi.

question reportedly flowed into the thematic area of "migration flow management"[226], and all 13 projects in Libya reportedly focused on migration-related issues.[227] The EU thus reportedly pursued its strategy of formally offering development aid as an "incentive" to stop migrants, while concealing behind humanitarian objectives the true purpose of migration control.[228] Within this framework, Libya was the principal beneficiary of the "North Africa" section of the Fund, with EUR 465 million allocated between 2015 and 2024.[229] Despite official declarations of support for the Libyan authorities in creating a "rights-based"[230] migration management system and formally multisectoral interventions, the allocated resources reportedly primarily strengthened the Libyan Coast Guard in its capacity to block departures and/or intercept vessels in the Mediterranean.[231] The clearest example of this approach is undoubtedly the "Support to Integrated Border and Migration Management in Libya" (SIBMMIL, or IBM) programme, launched in 2017[232] and implemented by the Italian Ministry of the Interior. Its stated objectives were to strengthen the Libyan Coast Guard (GCL) and the General Administration for Coastal Security (GACS), both in relation to search and rescue operations at sea and the control of maritime borders[233]; to provide and maintain naval assets[234]; to establish a National Inter-Agency Coordination Centre and a Maritime Rescue Coordination Centre in Tripoli (LMRCC); and to support the management of a Libyan SAR zone.[235] Although the programme also provided funding to support Libyan capacities for the con-

226. Openpolis, *A cosa è servito il fondo fiduciario per l'Africa?* [What was the Emergency Trust Fund for Africa used for?], 15 April 2022, available at: A cosa è servito il fondo fiduciario per l'Africa? - Openpolis.
227. Openpolis, *A cosa è servito il fondo fiduciario per l'Africa?* [What was the Emergency Trust Fund for Africa used for?], *Op. cit.*
228. B. Benvenuti et al. (MSF), *Death, Despair and Destitution: The Human Costs of the EU's Migration Policies,* 21 February 2024, available at: Death, despair and destitution: The human costs of the EU's migration policies | MSF, p. 10; Mixed Migration Centre, *Beyond restrictions: migration & smuggling across the Mediterranean, the Atlantic & the English Channel*, *Op. cit.,* p. 33; Openpolis, *In Libia si violano i diritti umani con i fondi della cooperazione* [Human rights violations in Libya funded by cooperation grants], 7 November 2018, available at: In Libia si violano i diritti umani con i fondi della cooperazione - Openpolis, where we read that EUTF projects were reportedly designed specifically around migration routes and that funds were allocated on the basis of the presence of migrants rather than actual needs.
229. EU DATA, *Libya, Southern Neighbourhood,* November 2024, available at: f437e90f-b47d-4fb6-9c66-a8751e6d46bf_en
230. EU DATA, *Op. cit.* (freely translated).
231. F. Jusu Lahai, *The new slave trade in Libya: evaluating the modern humanitarian crisis (2015–2024),* in *Front. Polit. Sci. 7,* 24 June 2025, p. 1.
232. European Union, *Support for Integrated Border and Migration Management in Libya – First Phase,* available at: Support for Integrated Border and Migration Management in Libya – First Phase – European Union: the first phase reportedly cost EUR 42 million, running until the end of 2023; European Union, *Support to Integrated Border and Migration Management in Libya – Second phase*, available at: Support to Integrated Border and Migration Management in Libya – Second phase – European Union: the second phase reportedly cost approximately EUR 16.8 million, running until November 2024.
233. Openpolis, *In Libia si violano i diritti umani con i fondi della cooperazione* [Human rights are violated in Libya with cooperation funds], *Op. cit.*
234. E. Vasques, *EU delivers new patrol boats to Libya despite militia links,* in *Euractiv*, 23 June 2023, available at: EU delivers new patrol boats to Libya despite militia links - Euractiv
235. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How

trol of land borders[236], the focus on the maritime phase of the migration route would nonetheless appear evident, as confirmed by a separate project which, in the same year, allocated an additional EUR 1.8 million in support of the establishment of a Libyan MRCC and a Libyan SAR Zone.[237]
Even among recent multisectoral projects[238], greater attention would reportedly be devoted to the management (that is, the control) of the migration phenomenon rather than to its root causes. By way of example, of the approximately EUR 130 million allocated by the EU between 2021 and 2023 through bilateral and regional programmes under the NDICI[239], more than half was reportedly devoted to protection, "humanitarian" returns[240], strengthening border-management capacities, SAR operations and the fight against migrant smuggling and human trafficking.[241] The New European Pact on Migration and Asylum, ratified by the European Parliament in April 2024, likewise emphasized coordination with North African countries to prevent irregular departures and combat smuggling and trafficking[242], thereby adhering to the same underlying logic described above.[243] Furthermore, in June 2025, the President of the European Commission announced a new European mission to Libya aimed at exploring new cooperation agreements to stop irregular migration flows from the country's coasts, emphasizing the need for joint action precisely to "strengthen border management, combat migrant smuggling (...) and ensure the voluntary return of migrants from Libya to their countries of origin."[244] Moreover, in mid-2025 the *EUBAM Libya* Mission received an extension until 2027, with a budget of EUR 52 million, to continue supporting the Libyan authorities in improving border management and combating human trafficking and migrant smuggling.[245] It is therefore clear that the European Union's approach to migration along the Central Mediterranean Route is one of border externalisation, pursued through the establishment of ever closer cooperation with third countries, despite their being

Italy and Europe financed the Libyan Coast Guards: 10 years of human rights violations], *Op. cit.*

236. L. Bagnoli, F. Papetti, *Come l'Italia ha costruito le forze marittime della Libia* [How Italy Built Libya's Naval Forces], *Op. cit.*
237. This concerned the programme "*Assessment of the Libyan Coast Guard legal framework and capability in terms of SAR Services*", between the Italian Coast Guard and the European Commission's DG HOME, as stated in EU Commission – Directorate General Migration and Home Affairs, Grant Agreement for an action with one beneficiary, *AGREEMENT NUMBER – HOME/2017/ISFB/AG/EMAS/0051*, 9 October 2017, available at: about:blank
238. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe financed the Libyan Coast Guards: 10 years of human rights violations], *Op. cit.*
239. EU DATA, *Op. cit.:* this refers to *Neighbourhood, Development and International Cooperation Instrument – Global Europe*, the principal instrument for EU cooperation with external partners.
240. This is discussed in more detail in section 3.4.
241. EU DATA, *Op. cit.*
242. UNSC, *Implementation of Security Council Resolution 2698 (2023), S/2024/642, Op. cit.,* p. 10.
243. MSF, *Deadly Manoeuvres: Obstruction and Violence in the Central Mediterranean*, March 2025, available at: msf-sar-deadly-manoeuvres-en.pdf, p. 3.
244. A. Assad, *European Commission launches mission to curb immigration flow from Libya,* in *The Libya Observer,* 24 June 2025, available at: European Commission launches mission to curb immigration flow from Libya | The Libya Observer (freely translated).
245. EUBAM Libya, *European Union Integrated Border Management Assistance Mission in Libya Received New Mandate until June 2027*, 2 July 2025 European Union Integrated Border Management Assistance Mission in Libya Received New Mandate until June 2027 | EEAS

the site of widely documented human rights violations, to delegate the management of migration to them.

## 3.2 Italian initiatives

From 2017 onwards, Italy likewise made available approximately €200 million through the Africa Fund for "extraordinary interventions" in African countries considered strategically important along migration[246] routes, thereby embracing an approach that makes it deliberately difficult to distinguish between security-driven and humanitarian policies.

First and foremost, confirmation of Italy's strategic intention to concentrate its resources on strengthening Libya's interception and border-control capacities can be found in the tacit renewals of the 2017 Memorandum in 2020 and again in 2023. Italy has thus continued to provide Libya with naval assets, fund and support the refurbishment of several patrol vessels, and maintain an Italian naval unit in Tripoli to deliver technical assistance and training. As a result, some observers contend that the Libyan Coast Guard is now entirely funded, equipped and trained by Italy.[247]

Moreover, several specific missions[248] likewise concretized and confirmed Italy's exclusive focus on blocking departures and carrying out interceptions at sea. Among these was the International Support Mission to the Libyan Coast Guard[249], initially focused on the repair of patrol boats already transferred to Libya[250] and on personnel training, which in 2021 subsequently evolved to include the construction of a shipyard and a nautical school directly on Libyan territory.[251] Some of the tasks carried out under that mission were subsequently incorporated[252], until 2020, into the parallel Bilateral Assistance and Support Mission in Libya (MIASIT)[253]. Although the mission had

246. Openpolis, *Il budget oscuro tra cooperazione e migrazione* [The opaque budget between cooperation and migration], 10 January 2018, available at: La partita impropria tra aiuto e controllo delle frontiere.
247. A. Beck, *Op. cit.*, p. 2.
248. For a detailed overview of the military missions in Libya in which Italy participated between 2017 and 2020, see ARCI, *Soldi e militari per la guerra all'immigrazione* ["Money and Military Resources for the War on Immigration"], 14 July 2020, available at: Soldi e militari per la guerra all'immigrazione – Arci.
249. Chamber of Deputies, *Le missioni internazionali autorizzate e prorogate nel 2017 (XVII legislatura)* [International missions authorized and extended in 2017 (17th Legislature)], 18 February 2019, available at: XVII Legislatura - XVII Legislatura - Documenti - Temi dell'Attività parlamentare. The mission was approved in 2017 with a budget of EUR 22 million until 2020.
250. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe have funded the Libyan Coast Guard: 10 years of human rights violations], *Op. cit.*
251. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe have funded the Libyan Coast Guard: 10 years of human rights violations], *Op. cit.*, reporting total funding amounting to EUR 32.5 million by 2021.
252. Camera of Deputies, *La partecipazione italiana alle missioni in Libia, Dossier n° 67 - Schede di lettura* [Italy's Participation in Missions in Libya, Dossier No. 67 – Briefing Notes], 30 May 2019, available at: DI0149, p. 3.
253. ARCI, *Soldi e militari per la guerra all'immigrazione* [Money and Military Resources for the War on Immigration], *Op cit.*; Camera of Deputies, *La partecipazione italiana alle missioni in Libia, Dossier n° 67 - Schede di lettura* [Italy's Participation in Missions in Libya, Dossier No. 67 – Briefing Notes], *Op. cit.*, p. 1, according to which a total of EUR 189 million was spent on this mission between 2017 and 2020, with a further EUR 47 million allocated under a decree issued in July 2021. Camera of Deputies, Senate of the Republic, *Autorizzazione e proroga missioni inter-*

the broader objective of supporting Libya's Government of National Accord, it placed particular emphasis on training Libyan security forces and government institutions to enhance their overall capabilities, including in the control of and response to irregular migration.[254] Furthermore, in August 2017 the Bilateral Assistance Mission of the personnel of the Guardia di Finanza Corps to the Libyan Coast Guard was activated, without a predetermined expiry date[255], with the specific aim of rendering the Libyan authorities "responsible for the control of maritime borders (...) progressively autonomous in the technical management of naval units", to ensure their "effective operational use" against illicit trafficking by sea, clearly including migrant smuggling.[256] Within the framework of this mission, Decree-Law No. 84/2018 further provided for the free transfer of 12 naval units to increase the operational capacity of the LCG, covering the costs of the restoration, transfer and maintenance of the naval units, as well as the training activities for Libyan personnel.[257] It is evident that these are not humanitarian interventions, but rather components of a system aimed first at rendering Libya operational, and subsequently at maintaining it so, in preventing migrants from reaching European shores. Operation "Mare Sicuro" likewise saw, from 2017 onwards, the addition of specific tasks in support of the Libyan Coast Guard.[258]

Moreover, in addition to these missions, numerous more specific interventions were also approved (and are therefore even more difficult to reconstruct), all likewise aimed at strengthening the

*nazionali* [Authorisation and Extension of International Missions], 16 May 2023, available at: NormalSegreteria, p. 52, reports that the financial requirement for 2022 was approximately EUR 40 million; according to Camera of Deputies, Senate of the Republic, *Proroga missioni internazionali e interventi di cooperazione per l'anno 2024* [Extension of International Missions and Cooperation Measures for 2024], 12 March 2024, available at: Camera dei deputati Dossier DI0090.htm, the corresponding figure was approximately EUR 25 million in both 2023 and 2024.

254. Senate – 19th Legislature Dossier, *Proroga delle missioni internazionali in corso e autorizzazione per ulteriori missioni per l'anno 2025* [Extension of ongoing international missions and authorization for additional missions for the year 2025], 10 April 2025, available at: Normal Segreteria, p. 41.

255. Chamber of Deputies, *La partecipazione italiana alle missioni in Libia, Dossier n° 67 - Schede di lettura* [Italian participation in missions in Libya, Dossier No. 67 – Reading Sheets], *Op. cit.*, pp. 3 ff.; ARCI, *Soldi e militari per la guerra all'immigrazione* [Money and military forces for the war on immigration], *Op. cit.*; Chamber of Deputies, Senate of the Republic, *Autorizzazione e proroga missioni internazionali e interventi di cooperazione e sviluppo per l'anno 2022 - DOC. XXV, n. 5 e DOC. XXVI n. 5* [Authorization and extension of international missions and cooperation and development interventions for the year 2022 – DOC. Vol. 25, No. 5 and DOC. Vol. 26, No. 5], 11 July 2022, available at: DI0501, p. 11; Chamber of Deputies, *Autorizzazione e proroga missioni internazionali* [Authorization and extension of international missions], *Op. cit.*, p. 88. Chamber of Deputies, *Proroga missioni internazionali e interventi di cooperazione per l'anno 2024* [Extension of international missions and cooperation interventions for the year 2024], *Op. cit.*, where we read the resources requested for that mission: EUR 1.6 million for 2018, almost EUR 7 million for 2019, approximately EUR 10 million for 2020 and 2021, almost EUR 12 million for 2022, around EUR 10 million for 2023 and EUR 12 million for 2024, while for 2025 the financial requirement was estimated at approximately EUR 11 million.

256. Senate – 19th Legislature Dossier, *Proroga delle missioni internazionali in corso e autorizzazione per ulteriori missioni per l'anno 2025* [Extension of ongoing international missions and authorization for additional missions for the year 2025], *Op. cit.*, p. 83.

257. Chamber of Deputies, *Proroga missioni internazionali e interventi di cooperazione per l'anno 2024* [Extension of international missions and cooperation interventions for the year 2024], *Op. cit.*

258. ARCI, *Soldi e militari per la guerra all'immigrazione* [Money and military forces for the war on immigration], *Op. cit.* The operation received total funding of approximately EUR 429 million from 2017 until its renewal in 2021.

Libyan coastal authorities. For example, as early as August 2017, the Ministry of Foreign Affairs and International Cooperation (MAECI) reportedly approved a "technical support" intervention aimed at "improving border and migration management", funded with EUR 2.5 million.[259] Furthermore, funding has been reconstructed for certain individually identified patrol boats (for approximately EUR 400,000), more generic contracts for the maintenance of the engines of naval units "transferred and/or to be transferred to the Libyan Coast Guard" (EUR 2 million in 2020), and framework agreements for the supply of spare parts (EUR 900,000 for the period 2021–2022).[260] Multisectoral interventions were also implemented which, at least in their programmatic intentions, aimed to address the migration issue from broader and more diversified perspectives, through the coordination of various international organizations. However, they reportedly combined humanitarian components with objectives related to the management and containment of migration flows, frequently incorporating funding intended for so-called "voluntary" return programmes, the problematic nature of which will be examined later.

The first major investment in this direction dates to September 2017, with the allocation of approximately EUR 18 million (followed by a further EUR 2 million between 2019 and 2021) for the project *"Comprehensive and Multi-sectoral Action Plan in Response to the Migration Crisis in Libya",* created with the aim of strengthening IOM activities in the North African country.[261] Among other things, the programme focused both on supporting "voluntary" returns and the reintegration of vulnerable persons outside Libya, and on providing information and assistance to vulnerable migrants along the route.[262] Subsequently, a new agreement between MAECI and the IOM for the project "*Multi-sectoral Support for Vulnerable Mobile Populations and Communities in Libya*" provided for the allocation of EUR 16 million distributed over three phases between 2021 and 2025[263]:initially focused on assistance in maritime search and rescue (SAR) operations, it subsequently addressed the conditions of detention centres and currently deals primarily with assisted voluntary returns.[264] A subsequent project, entitled "Multi-Sectoral Support for Vulnerable Migrants in Libya", allocated a further €7 million for the period 2024–2026 to finance, among other initiatives, IOM interventions supporting programmes for the "assisted voluntary return from Libya to countries of origin of 820 migrants", as well as measures aimed at strengthening search and rescue activities in desert

259. MAECI, Decree No. 4110/47 of 28 August 2017, available at: 105.1 - Decreto 4110 47.pdf: "Technical support by the Italian Ministry of the Interior to the competent Libyan authorities in order to improve border and migration management, including the fight against migrant smuggling and search and rescue activities."
260. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe have funded the Libyan Coast Guard: 10 years of human rights violations], *Op. cit.*
261. For Intesa MAECI - IOM, 27 May 2019 25.2 - Intesa_OIM_Libia_27maggio2019.pdf; for MAECI, Decree 4100/32 of 31 May 2019 25.1 - Decreto.pdf
262. ASGI, *Report sul mancato controllo del MAECI sui fondi per le migrazioni in Libia* [Report on the lack of MAECI oversight over migration funds in Libya], 12 July 2022, Report sul mancato controllo del MAECI sui fondi per le migrazioni in Libia - Asgi, through the Migrant Resource and Response Mechanism.
263. Phase I Progetto Dettaglio - The big wall, Phase II Progetto Dettaglio - The big wall, Phase III Progetto Dettaglio - The big wall.
264. AIDA, *Italy, Country Report: Access to the territory and push-backs,* 24 July 2025, available at: Access to the territory and push backs - Asylum Information Database | European Council on Refugees and Exiles, p. 44.

areas.[265] Other multi-sectoral projects were reportedly financed through the European EUTF and implemented by Italian organizations such as the Italian Agency for Development Cooperation (AICS)[266] and the Cesvi Foundation.[267] Furthermore, in 2023, the Italian government launched the "Rome Process on Development and Migration", presented as a "strategic platform"[268] for cooperation with African and Mediterranean countries, including Libya, on development and the management of migration flows. It would therefore once again constitute a formally multisectoral initiative, but one aimed at strengthening the containment of irregular migration flows, through both agreements to combat migrant smuggling and operational partnerships between police and judicial authorities intended to improve Libyan border-management capacities.

### 3.2.1 Calls for proposals to NGOs for interventions in detention centres[269]

Among the multisectoral projects implemented by Italy, particularly controversial are three separate calls for proposals through which, in 2017, AICS allocated EUR 6 million to Italian NGOs with the declared aim of improving conditions in Libyan detention centres. The interventions that followed not only proved ineffective in the long term, but also appear to have served the interests of migration-control externalization policies more than the actual protection of human rights, contributing in various ways to keeping the Libyan detention system operational.

First and foremost, Italy reportedly disbursed these funds without requiring the government of the North African country to undertake any concrete commitment to address the structural causes of the inhumane conditions in the centres, which in fact derive from specific political choices made by the authorities in Tripoli: this consequently resulted in the problematic de facto sub-

265. IOM, *IOM Libya Project Proposal: Multi-sectoral support for vulnerable migrants in Libya,* June 2024 434.3. Intesa Tecnica.pdf

266. European Union, Recovery, Stability and Socio-Economic Development in Libya, available at: Recovery, Stability and Socio-Economic Development in Libya - European Union, (2018–2023), with the declared aim of improving access to basic and social services for vulnerable persons and supporting local governance, particularly in the Libyan municipalities most affected by migration flows; European Union, *Recovery, Stability and Socio-Economic Development in Libya – Phase 2 (RSSD 2)*, available at: Recovery, Stability and Socio-Economic Development in Libya – Phase 2 (RSSD 2) - European Union (2020–2024).

267. European Union, *TOP-UP - Managing mixed migration flows: Enhancing protection and assistance for those in need in Libya,* available at: TOP-UP - Managing mixed migration flows: Enhancing protection and assistance for those in need in Libya - European Union, (2019–2023), with the objective of strengthening the protection and resilience of vulnerable and at-risk migrants, refugees and host communities in Libya, while at the same time supporting efforts to improve migration management along the country's migration routes. This project was established in order to strengthen a previously existing one, European Union, Managing mixed migration flows in Libya through expanding protection space and supporting local socio-economic development, available at: Managing mixed migration flows in Libya through expanding protection space and supporting local socio-economic development - European Union

268. International Conference on Development and Migration, *Conclusioni* [Conclusions], 23 July 2023, available at the link Conclusioni_20230723_IT.pdf

269. For this entire section, reference was made to ASGI, *Profili critici delle attività delle ONG italiane nei centri di detenzione in Libia con fondi A.I.C.S.* [Critical profiles of the activities of Italian NGOs in detention centres in Libya funded by AICS], *Op. cit.*

stitution of Italian NGOs for the Libyan government in the day-to-day management of the facilities. More serious still, many activities reportedly focused not so much on improving the living conditions of detainees, but rather on the maintenance and infrastructural strengthening of the centres themselves, thereby contributing to preserving their capacity to accommodate new prisoners in the future as well.

Moreover, the second and third calls for proposals explicitly aimed at the identification of migrants and their subsequent referral to bodies responsible for "voluntary" returns or resettlement, further demonstrating that the primary interest of these interventions was not at all the well-being of detainees, but rather their removal from the centres through established channels that fit perfectly within the now dominant logic of migration-flow control.

## 3.3 Violation of the principles of transparency and accountability

Although the allocation and use of public funds, whether national or supranational, ought to be governed by strict principles of transparency and oversight, European and Italian funding for the management of migration flows in the Central Mediterranean has instead been characterised by systemic opacity and the absence of adequate monitoring mechanisms. As a result, such funds have become, and continue to be, particularly vulnerable to misappropriation by corrupt officials, militias and criminal organisations.[270]

At the supranational level, the Emergency Trust Fund for Africa would reportedly be incompatible with EU requirements governing the management of funds intended for external actions, insofar as it combines vaguely defined objectives with a complete lack of transparency in the use of resources.[271] For this reason, ARCI, ASGI and GLAN reported to the European Court of Auditors an alleged "misdirection" of these funds, which, originally intended for development cooperation, were in fact diverted towards migration-control purposes.[272] The European Court of Auditors itself thus highlighted the contradiction between the declared objectives of addressing the "root causes" of migration and the actual use of resources to restrict migrants' freedom of movement.[273] In 2021, a resolution of the European Parliament formalized these concerns, emphasizing a lack of democratic oversight over the Union's external migration policies, which would compromise verification of both the proper use of public resources and of compliance with fundamental rights in the implementation of the policies financed in this way.[274]

270. S. van Brunnersum, "M*igrants for sale": An investigation into the clandestine migrant smuggling economy on the Mediterranean route – Part 1*, in *InfoMigrants*, 30 September 2024, available at: "Migrants for sale": An investigation into the illegal migrant smuggling economy on the Mediterranean route – Part 1 - InfoMigrants
271. ASGI, *Il diritto alla trasparenza nei finanziamenti volti alla gestione integrata delle frontiere: il caso della Libia* [The right to transparency in funding aimed at integrated border management: the case of Libya], *Op. cit.*
272. ARCI, *Esposto sulla complicità finanziaria dell'UE nei respingimenti verso la Libia* [Complaint concerning the EU's financial complicity in push-backs to Libya], 27 April 2020, available at: Esposto sulla complicità finanziaria dell'UE nei respingimenti verso la Libia – Arci.
273. ASGI, *Il diritto alla trasparenza nei finanziamenti volti alla gestione integrata delle frontiere: il caso della Libia [*The right to transparency in funding aimed at integrated border management: the case of Libya], *Op. cit.*
274. B. Benvenuti et al. (MSF), *Op. cit.*, p. 10.

There are also specific critical issues relating to individual projects. For example, concerning the SIBMMIL programme,[275] an audit highlighted the absence of mechanisms for monitoring compliance with human rights[276]; ASGI and other associations denounced, in addition to this lack of instruments for verifying the impact on the rights of foreign nationals, also the absence of transparency and accountability[277], since numerous refusals were reportedly issued in response to requests for access to documents submitted over the years and the reporting available on the Ministry of the Interior's website reportedly covers only a minimal percentage of the total amount allocated.[278] ASGI also denounced, concerning the programme "*Comprehensive and Multi-sectoral Action Plan in Response to the Migration Crisis in Libya*",[279] the absence of controls over the use of public funds granted to the IOM: MAECI reportedly limited itself to accepting vague and incomplete financial reports, thereby failing to comply with the supervisory obligations provided for in the management of state resources.[280]

The AICS calls for proposals concerning the intervention of Italian NGOs in certain Libyan detention centres were likewise criticized for their lack of transparency and oversight mechanisms. First and foremost, the condition explicitly imposed by these calls not to have Italian personnel on the ground made it practically impossible to verify the actual use of the goods and services provided, and the approximate reporting submitted by certain NGOs likewise confirmed this lack of oversight.[281] It is therefore easy to imagine that part of the funds ended up in the hands of those very militias, detention-centre managers or corrupt officials who are now notoriously responsible for serious violence against detainees, as well as being the principal actors in their systematic exploitation. When directly questioned by ASGI in November 2021 regarding the monitoring mechanisms implemented, AICS initially declared that it had activated a "*Third Party Monitoring*" system, namely, external oversight carried out by independent actors. However, subsequent freedom of information requests revealed that this independent monitoring mechanism had never in fact been implemented. This suggests that, despite the widely documented inhuman conditions prevailing in Libyan detention centres, the Italian government chose to invest millions of euros without establishing any conditions, safeguards or oversight mechanisms governing the use of those public funds, pursuing instead the singular objective of advancing policies aimed at the interception, containment and removal of migrants.[282]

275. referred to in section 3.1.
276. European Court of Auditors, *Special Report 17/2024: The EU Trust Fund for Africa – Despite new approaches, support remained unfocused,* 25 September 2024, available at: Special Report 17/2024: The EU Trust Fund for Africa | European Court of Auditors
277. ASGI, *Il diritto alla trasparenza nei finanziamenti volti alla gestione integrata delle frontiere: il caso della Libia* [The right to transparency in funding aimed at integrated border management: the case of Libya], *Op. cit.*
278. ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe have funded the Libyan Coast Guard: 10 years of human rights violations], *Op. cit.*
279. See section 3.2.
280. ASGI, *Report sul mancato controllo del MAECI sui fondi per le migrazioni in Libia* [Report on the lack of MAECI oversight over migration funds in Libya], *Op. cit.*
281. ASGI, *Profili critici delle attività delle ONG italiane nei centri di detenzione in Libia con fondi A.I.C.S.* [Critical profiles of the activities of Italian NGOs in detention centres in Libya funded by AICS], *Op. cit.*
282. ASGI, *È stato attivato un sistema di monitoraggio per i progetti AICS nei centri di detenzione in Libia?* [Has a monito-

## 3.4 Voluntary repatriation

Among the apparently multi-sectoral approaches, since 2017, "voluntary return" programmes have progressively become one of the pillars of the migration strategy towards Libya[283], with increasing investments at both national and supranational levels. The MAECI funds allocated to IOM programmes including or exclusively dedicated to such returns between 2017 and 2025[284] confirm this centrality: reference is made to EUR 11 million devoted to "Voluntary Humanitarian Return and Reintegration" (VHR-R)[285] projects during the period 2017–2020, approximately EUR 5 million[286] for the third phase of the aforementioned "*Multi-sectoral Support for Vulnerable Mobile Populations and Communities in Libya*",[287] funds specifically targeted at the "voluntary humanitarian return" of "820 vulnerable migrants"[288], and EUR 4.5 million within the framework of the "Multi-sectoral Support for Crisis-affected Population in Libya" (2020–2022). To these must be added EUR 20 million approved by Italy in April 2025 to facilitate the "voluntary" return of approximately 3,300 migrants from Libya, Tunisia and Algeria.[289] The supranational dimension of this strategy also clearly emerges from further funding allocated by the EU to similar initiatives during the same period[290], the Union having in fact already approved, in 2021, an "EU Strategy on Voluntary Return and Reintegration".[291]

ring system been activated for AICS projects in detention centres in Libya?], 11 October 2022, available at: È stato attivato un sistema di monitoraggio per i progetti AICS nei centri di detenzione in Libia? - Asgi.

283. ASGI, *'Voluntary returns from Libya in the EU's externalisation strategy: a critical analysis in the light of ASGI's strategic litigation'*, 2 February 2021, available at: https://bit.ly/3Yujyhy.
284. ASGI, *Rimpatri volontari dalla Libia: i finanziamenti italiani* [Voluntary returns from Libya: Italian funding], 6 December 2024, available at: Rimpatri volontari dalla Libia: i finanziamenti italiani - Asgi.
285. MAECI–IOM Agreement, 27 May 2019, *Op. cit.* This concerns the sub-programme "*Humanitarian return and reintegration of vulnerable and stranded migrants out of Libya*" (2017–2021), forming part of the broader "*Comprehensive and Multi-sectoral Action Plan in Response to the Migration Crisis in Libya*" already mentioned in section 3.2.
286. MeltingPot, *Voluntary Humanitarian Refusal: a choice you cannot refuse,* 26 March 2025, available at "Voluntary Humanitarian Refusal. An offer you can't refuse"– Melting Pot Europe Project.
287. Section 3.2.
288. A. Nardone, *Op. cit.*; these are funds allocated within the already mentioned "*Multi-Sectoral Support for Vulnerable Migrants in Libya*", section 3.2. According to MeltingPot, *Voluntary Humanitarian Refusal: a choice you cannot refuse*, *Op. cit.*, out of a total of EUR 2,450,000, EUR 970,000 would reportedly be dedicated to VHR (2024–2026).
289. Agenzia Nova, *Migrants, Farnesina: programme approved for 3,300 voluntary repatriations to Algeria, Tunisia and Libya*, in *Agenzia Nova,* 2 April 2025, available at: Migrants, Farnesina: programme approved for 3,300 voluntary repatriations to Algeria, Tunisia and Libya - Agenzia Nova
290. European Union, *Supporting protection and humanitarian repatriation and reintegration of vulnerable migrants in Libya* (2016–2019), available at: Supporting protection and humanitarian repatriation and reintegration of vulnerable migrants in Libya - European Union, which funded IRC, IOM and the International Water and Sanitation Centre with almost EUR 20 million; IOM, EU-IOM Joint Initiative for Migrant Protection and Reintegration (2017–2023), available at: About the EU-IOM Joint Initiative | EU-IOM Joint Initiative; *European Union, EU-IOM Joint Initiative in North Africa – Top up to Voluntary Humanitarian Return and Reintegration Assistance* (2019–2022), available at: EU-IOM Joint Initiative in North Africa - Top up to Voluntary Humanitarian Return and Reintegration Assistance - European Union, which funded IOM with EUR 24 million.
291. European Commission, *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: The EU strategy on voluntary return and reintegration, COM/2021/120 final*, 27 April 2021, available at: EUR-Lex - 52021DC0120 - EN - EUR-Lex

All these interventions, presented as humanitarian solutions[292], would constitute "disguised expulsions that violate the principle of non-refoulement and the obligations of protection owed to minors and to persons who have survived trafficking, torture and gender-based violence."[293] Indeed, they reportedly aim to offer migrants stranded in Libya a safe alternative for returning to their countries of origin, while at the same time functioning as a deterrent to irregular migration. However, the genuinely "voluntary" nature of these programmes has repeatedly been called into question, including by the United Nations itself[294]. A return can be considered truly voluntary only if it is based on a free and informed choice, made in the presence of viable alternatives and in the complete absence of coercion, conditions that are impossible to guarantee in the Libyan context. Indeed, many returns take place directly from detention centres, where migrants held arbitrarily are subjected to serious abuse and torture.[295]

Despite this, Italy[296] and the EU continue to provide substantial funding for such programmes, even in the face of international denunciations[297] and mobilizations by civil society. Among the latter, a campaign launched in March 2025 formally challenged the coercive nature of the operations in question, calling for the termination of funding for return projects as well as, more generally, for agreements with third countries aimed at preventing migrants from reaching Europe.[298] Furthermore, at the international level, in a joint communication of April 2025[299], the United Nations raised serious concerns regarding Italian financial support for voluntary humanitarian return (VHR) programmes, particularly highlighting, in addition to the questionable volun-

292. According to ASGI, *I rimpatri volontari dalla Libia nella strategia di esternalizzazione dell'UE* [Voluntary returns from Libya in the EU externalization strategy], 20 December 2020, available at: I rimpatri volontari dalla Libia nella strategia di esternalizzazione dell'UE - Asgi. "The rhetoric of voluntary return is even stronger in the delicate Libyan context, where the IOM's AVR procedures are defined by the organization itself as 'Voluntary Humanitarian Return' (VHR) and are carried out within the framework of the organization's activities in the country."

293. ASGI, *Rimpatri volontari o espulsioni mascherate? Contestata la legittimità dei programmi di rimpatrio volontario dalla Libia* [Voluntary returns or disguised expulsions? The legitimacy of voluntary return programmes from Libya challenged], *Op. cit.*

294. OHCHR, *Libya:* UN human rights report details violations of migrants' rights amid 'assisted return' programmes, 11 October 2022, available at: Libya: A UN human rights report details violations of migrants' rights in the context of 'assisted return' programmes | OHCHR

295. AIDA, *Italy, Country Report: Access to the territory and push-backs, Op. cit.*, pp. pp. 43 ff. A. Nardone, *Deportazioni mascherate da programmi umanitari: contestata la legittimità dei programmi VHR in Libia* [Deportations disguised as humanitarian programmes: the legitimacy of VHR programmes in Libya challenged], 21 January 2025, available at: Deportazioni mascherate da programmi umanitari: contestata la legittimità dei programmi VHR in Libia - The big wall, in fact reports that "43% of VHR beneficiaries in 2023 were in detention at the time of identification and assistance, while approximately 7% were victims of trafficking."

296. MeltingPot, *Voluntary Humanitarian Refusal: a choice you cannot refuse,* reports that between September 2017 and December 2024, 11,415 persons were returned from Libya with funding allocated by MAECI.

297. UNHRC, *Report of the Special Rapporteur on the Human Rights of Migrants: notes by the Secretariat,* A/HRC/38/41, 4 May 2018, available at: Report of the Special Rapporteur on the Human Rights of Migrants :

298. *Manifesto, Voluntary Humanitarian Refusal: a choice you cannot refuse,* March 2025, available at: Manifesto

299. OHCHR, Mandates of the Special Rapporteur on Trafficking in Persons, Especially Women and Children; the Working Group on Arbitrary Detention; and the Special Rapporteur on the Human Rights of Migrants, AL ITA 4/2025, 30 April 2025, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29915

tary nature of the returns, the inadequacy of the procedure and the insufficient reintegration support.[300] Moreover, in this regard, civil society organizations have denounced the inadequacy of reintegration programmes (where provided), which reportedly consist of support often limited to a small financial subsidy, evidently inadequate to address the complex risks of violence and marginalization existing in the country of origin.[301] In response to the previously mentioned UN communication, Italy stated[302] that the VHR programmes fit perfectly within the IOM's Assisted Voluntary Return and Reintegration (AVRR) model and, therefore, within its "rights-based" approach, founded primarily on the principle of the informed consent of the persons involved and on their possibility of withdrawing from the programme at any time. However, in reality, as previously highlighted, the existence of conditions of necessity such as to exclude any genuinely voluntary character in migrants' participation in return programmes while present on Libyan territory appears undeniable, given that they find themselves in a context which, according to the wording used by the United Nations itself, constitutes a "coercive environment that is often inconsistent with free choice." By way of example, of the little more than 9,000 migrants supported by IOM Libya in 2023 in returning to their countries of origin, approximately 43% were in detention and nearly 7% were victims of trafficking.[303] Indeed, the people most affected by return programmes would reportedly be women who are victims of trafficking and who, despite originating from national contexts characterized by systematic gender-based violence, frequently "choose" to adhere to such programmes as the only alternative to the endemic sexual violence and torture to which they are subjected in Libyan detention centres.[304]

Among the various routes used by migrants to reach Libya, two main corridors have become established over time. Their persistence, despite repeated attempts at dismantlement, demonstrates the ability of criminal networks specializing in the exploitation of migrants to adapt to geopolitical changes, thereby ensuring the continuity of their illicit activities.[305] In this context, the involvement of UNHCR and the IOM would moreover be instrumentalised to legitimise this political practice and to reject criticisms concerning human rights violations: the operational presence of the two UN agencies in the countries and projects connected to European migration-containment policies is in fact presented as proof of the adequacy and non-harmful nature of such policies.[306] However, such legitimisation would take shape within a vicious circle: these

300. Centre for Human Rights – University of Padua, *L'Italia risponde alle preoccupazioni delle Nazioni Unite sul rimpatrio volontario umanitario dalla Libia* [Italy responds to United Nations concerns regarding voluntary humanitarian return from Libya], 12 September 2025, available at: L'Italia risponde alle preoccupazioni delle Nazioni Unite sul rimpatrio volontario umanitario dalla Libia.
301. *Manifesto, Voluntary Humanitarian Refusal: a choice you cannot refuse, Op. cit.*
302. MAECI, *Italy's response to UN Joint Communication AL ITA 4/2025*, 21 July 2025, available at: DownLoadFile
303. A. Gennaro, *Rimpatri "volontari" dalla Libia? Non con i soldi italiani* ["Voluntary" repatriations from Libya? Not with Italian money], in *Altreconomia*, 18 December 2024, available at: Rimpatri "volontari" dalla Libia? Non con i soldi italiani. Il ricorso contro Oim e Farnesina.
304. *Ibid.*
305. MeltingPot, *"Book of Shame" irrompe a Ginevra* ["Book of Shame" bursts into Geneva], *Op. cit.*
306. M. Garavoglia et al., *Come l'Ue strumentalizza le agenzie che si occupano di rifugiati e migrazione* [How the EU instrumentalises agencies dealing with refugees and migration], in *IrpiMedia*, 21 February 2025, available at: Come l'Ue strumentalizza le agenzie che si occupano di rifugiati e migrazione - IrpiMedia.

organisations would be heavily influenced by their donor countries, whose political developments would in turn give rise to attempts to instrumentalise the UN agencies in pursuit of externalisation strategies.[307] In practice, this has therefore resulted in an increase in the use of funds precisely in areas of intervention linked to externalisation policies: the budgets of UNHCR and the IOM for voluntary returns and return assistance have reportedly grown significantly in recent years.[308] Thus, associations such as *Refugees in Libya* openly maintain that UNHCR "was and is the agency for the EU's externalisation of borders".[309]

## 3.5 Combating smuggling and human trafficking: a counterproductive effort?[310]

As structural components of migration flow from Libya, migrant smuggling and human trafficking have, from 2017 onwards, attracted significant investments within the framework of strategies for the management of irregular migration. Among these initiatives, Italy allocated EUR 2.5 million to a UNODC project providing training and legal assistance to countries of origin and transit in the field of organised crime[311], and a further EUR 614,000 to enable the Ministry of Defence to train the Libyan authorities in combating smuggling as well as in border management, thereby clearly combining objectives related to crime prevention with the externalisation of European border control.[312] At the supranational level, the European Union launched ambitious initiatives, such as a three-year EUR 15 million operation aimed at dismantling North African criminal networks through the strengthening of local investigative capacities and the revision of the Libyan legal framework.[313] Operation IRINI (2020–2021) likewise included among its secondary tasks the combating of migrant smuggling and human trafficking networks operating within the areas assigned to it.[314] Furthermore, in November 2023 the "*Global Alliance to Combat Migrant*

307. *Ibid.*
308. *Ibid.*
309. *Ibid.*
310. For the current scope of the phenomenon in relation to Libya, as well as for the distinction between the two, reference is made to section 2.3.1.
311. Project *"Strengthening the transnational response to migrant smuggling and maritime crime in West, North and East Africa"* (2017–2020), in ActionAid, *Op. cit.*
312. Project *"Finanziamento di programmi di formazione per le Autorità libiche responsabili della gestione delle frontiere e dell'immigrazione e per la lotta al traffico di migranti e alla tratta di esseri umani"*, ["Funding training programmes for the Libyan authorities responsible for border and migration management and for combating migrant smuggling and human trafficking"], *in ActionAid, Op. cit.*
313. European Union, *Dismantling the criminal networks operating in North Africa and involved in migrant smuggling and human trafficking,* (2019–2022) available at: Dismantling the criminal networks operating in North Africa and involved in migrant smuggling and human trafficking – European Union; UNODC ROMANIA, *Dismantling Human Trafficking and Migrant Smuggling Criminal Networks in North Africa,* available at: Overview; this initiative was launched under the North Africa window of the EUTF.
314. EUNAVFOR MED, Operation IRINI, available at: Operation EUNAVFOR MED IRINI; UNSC, Implementation of Security Council Resolution 2698 (2023), S/2024/642, *Op. cit.*, p. 9, according to which efforts to combat smuggling and trafficking between September 2023 and August 2024 were carried out primarily through aerial surveillance and in the westernmost area of the mission's operational zone. ARCI, *Come l'Italia e l'Europa hanno finanziato*

*Smuggling*" was launched to intensify international involvement in the fight against smuggling through prevention, direct enforcement and the creation of alternatives to irregular migration[315] and, in September 2025, the European Parliament and the Council of the European Union reached a provisional political agreement to amend the Europol Regulation and strengthen the agency's role in combating migrant smuggling and human trafficking through the creation of a "European Centre Against Migrant Smuggling", with mandatory information-sharing and additional resources (50 new staff members and EUR 50 million).[316]

However, these investments would in practice be counterproductive: rather than dismantling the system, they would end up reinforcing it from within. This is because the criminal groups operating in Libya, which have shown a remarkable capacity to adapt, have infiltrated the very institutions that are funded to combat them, thereby paradoxically gaining increasing legitimacy and access to resources.[317] Thus, in the Libyan context of instability, institutional fragility and corruption, European and Italian anti-smuggling policies would in fact contribute to sustaining the trade, since the funds provided would ultimately end up in the hands of those who manage migration flows by exploiting the people involved in them. The case of the Tariq Ben Zeyad Brigade (TBZ) is particularly illustrative. Officially responsible for push-back operations at sea[318] and presented as a tool in the fight against smuggling, the unit is at the same time widely known to be involved in smuggling networks and has also been accused of war crimes.[319]

Moreover, for the same reasons, anti-smuggling initiatives implemented by the Libyan authorities would face similar structural limitations and operational contradictions. These include campaigns launched by the governments of Tripoli and Tobruk since 2023 to demolish smuggling facilities, the conviction of 38 smugglers by the Attorney General of the Tripoli government[320], drone operations in the Zawiya region aimed at dismantling migrant camps controlled by smugglers, and international forums on migration.[321] In addition, in January 2025 the Libyan border security insti-

*le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe Funded the Libyan Coast Guards: 10 years of human rights violations], *Op. cit.*, reports that Italy's financial contribution to the operation increased from EUR 24.9 million in 2020 to EUR 39.7 million for the period 2021-2022.

315. European Commission, *Commission launches a Global Alliance to Counter Migrant Smuggling and proposes a strengthened EU legal framework,* 28 November 2023, available at: A Global Alliance to Counter Migrant Smuggling

316. European Council, Council of the European Union, *Traffico di migranti: Consiglio e Parlamento europeo vogliono un ruolo più incisivo per Europol* [Migrant smuggling: Council and European Parliament seek a stronger role for Europol], 25 September 2025, available at: Traffico di migranti: Consiglio e Parlamento europeo vogliono un ruolo più incisivo per Europol - Consilium.

317. W. Lacher, J. Tubiana, *Op. cit..;* M. Monyani, *Op. Ibid.*, p. 9; USDOS, *2024 Trafficking in Persons Report: Libya,* 2024, *Op. cit.*

318. P. Boussel, *The War Against Human Traffickers in Libya, in Carnegie Endowment for International Peace*, 10 August 2023, available at: The War Against Human Traffickers in Libya | Carnegie Endowment for International Peace

319. Lighthouse Reports, *Smuggler, Warlord, EU ally*, 20 July 2023, available at: Smuggler, Warlord, EU ally - Lighthouse Reports; S. van Brunnersum, *"Migrants for Sale": An investigation into the clandestine migrant smuggling economy on the Mediterranean route – Part 1, Op. cit.*; Amnesty International, *La cooperazione tra Ue e Libia è un fallimento morale* [EU-Libya Cooperation Is a Moral Failure], *Op. cit.*

320. P. Boussel, *Op. cit.*

321. In July 2024, the GNU hosted the Trans-Mediterranean Migration Forum, attended by the prime ministers of Italy, Malta and Tunisia, according to UNSMIL, *UNSMIL welcomes the hosting of the Trans-Mediterranean Migration*

tutions reportedly agreed to establish a joint communications and intelligence centre to combat terrorism and irregular migration[322] and, in July 2025, the Libyan National Army (LNA) reportedly expanded its military operations in the southern border region, intending to dismantle cross-border criminal networks.[323] However, the Libyan reality presents significant obstacles that undermine these efforts from the outset: political instability, institutional fragmentation and internal conflict are intertwined with the paradox of authorities being called upon to combat criminal activities by which they are themselves systematically infiltrated.[324] Similarly, although arrest warrants against smugglers may be issued, they are reportedly not enforced because of the inadequacy of the local law enforcement authorities[325]. Nor do the Libyan Ministries of the Interior and Justice appear to have any real capacity to raise public awareness of trafficking offences and other human rights violations.[326] As a result, it is unsurprising that Libya continues to record one of the highest levels of human trafficking in the world according to the 2024 Global Organized Crime Index. It also ranked 192nd out of 193 countries in the 2023 Resilience Score, placing last among African nations in terms of institutional capacity to effectively combat these crimes.[327]

Considering the uncertain, and at times even counterproductive, results of anti-trafficking and anti-smuggling policies, whether Libyan or international, it becomes clear that the European approach is aimed not at effectively combating human trafficking, but rather at protecting its borders at all costs. Nor does it appear to matter that this cost includes the indirect strengthening of the very criminal networks that these policies claim to combat, provided that migration flows are contained before they reach European shores. Thus, Italy and the European Union would not only have knowingly transformed smugglers into guardians of Europe's borders,[328] but would also continue to provide funding that is in no way subject to rigorous monitoring mechanisms, particularly concerning compliance with human rights.[329] The result is a vicious circle in which the very dynamics of violence and exploitation that these policies claim to combat are instead sustained, through a "strategy" that calls into question not only the effectiveness of the policies themselves, but also the fundamental democratic values that the European Union claims to uphold.

*Forum in Tripoli, calls for a rights-based approach*, 27 July 2024, available at: UNSMIL welcomes the hosting of the Trans-Mediterranean Migration Forum in Tripoli, calls for a rights-based approach | UNSMIL.

322. UNSMIL and *Libyan border security institutions agree to establish a joint centre for communication and information to counter terrorism and irregular migration,* 24 January 2025, available at: Libyan border security institutions agree to establish a joint centre for communication and information to counter terrorism and irregular migration | UNSMIL
323. LibyaReview, *Libya's National Army Expands Anti-Smuggling Campaign in Southern Region,* 10 July 2025, available at: Libya's National Army Expands Anti-Smuggling Campaign in Southern Region - LibyaReview
324. US Department of State, *2024 Trafficking in Persons Report: Libya, Op. cit.*
325. S. Watkins, *The Libyan Political Crisis: Implications for Human Trafficking,* in *Foreign Policy Research Institute,* 25 April 2024, available at: The Libyan Political Crisis: Implication for Human Trafficking - Foreign Policy Research Institute
326. *Ibid.*
327. *Ibid.*
328. W. Lacher, J. Tubiana, *Op. cit.*
329. EuroNews, *EU funds Libyan Coast Guard but has limited monitoring capacity, leaked report suggests,* 3 November 2019, available at: EU funds Libyan Coast Guard but has limited monitoring capacity, leaked report suggests | Euronews.

Alessio Genovese, Libya 2013, “Dopo l’approdo” project

Giovanni Diffidenti, Libya 2012, “Dopo l’approdo” project

Giovanni Diffidenti, Milan 2025/26, “Traces of Mobility” project

Giovanni Diffidenti, Milan 2025/26, “Traces of Mobility” project

Giovanni Diffidenti, Milan 2025/26, “Traces of Mobility” project

Giovanni Diffidenti, Milan 2025/26, “Traces of Mobility” project

# CHAPTER TWO
# THE LEGAL FRAMEWORK: INTERNATIONAL RESPONSIBILITY AND JUDICIAL AND NON-JUDICIAL REMEDIES

This second part seeks to outline the various avenues that have been pursued, or could be pursued, to establish possible Italian responsibility in relation to crimes committed against migrants travelling along the Central Mediterranean route. After examining the development of the International Criminal Court's interest in pursuing investigations into the "crimes against humanity" committed against migrants in Libya, the second section focuses on possible Italian complicity. This is analysed from both the perspective of State responsibility under the international rules governing responsibility for internationally wrongful acts and that of the individual criminal liability of Italian officials under the Rome Statute. The third section then examines a range of multi-level initiatives undertaken to challenge Italian conduct through other avenues, both before national courts and other domestic bodies and at the European and international levels. Finally, the chapter addresses the issue of the Libyan search and rescue (SAR) zone. The demonstrated inability of the Libyan Coast Guard to carry out such activities gives rise to a corresponding residual duty to intervene on the part of Italy, a responsibility that it appears either to disregard or, in some cases, to openly resist.

## 1. The International Criminal Court and Crimes Committed Against Migrants in Libya

The treatment of migrants and refugees in Libya has long attracted the attention of the International Criminal Court (ICC) in The Hague. This originated with the referral of the broader situation in Libya to the Court by the United Nations Security Council through Resolution 1970 of 26 February 2011, which authorised the Prosecutor to investigate crimes committed on Libyan territory from 15 February 2011 onwards.[330] That referral, therefore, enabled the Court to open investigations into war crimes committed on Libyan territory. Subsequently, several initiatives called for the Court's investigations to be extended to include alleged international crimes committed specifically against the migrant population in the country.[331]

330. This referral was necessary because Libya is not a State Party to the Statute of the International Criminal Court (also known as the Rome Statute). As a result, the Prosecutor could not independently open an investigation, and a resolution of the United Nations Security Council was required to authorise the Court's exercise of jurisdiction through what is known as a referral.

331. On the question of whether that resolution can provide a legal basis for the opening of a second investigation concerning crimes committed against migrants, see F. Pacella, *Cooperazione Italia-Libia: profili di responsabilità per crimini di diritto internazionale* [Italy-Libya Cooperation: Profiles of Responsibility for Crimes Under International Law], in *Diritto Penale Contemporaneo*, Issue 4/2018, available at: DPC | Cooperazione Italia-Libia: profili di responsabilità per crimini di ..., pp. 11 ff.

In May 2017, the Prosecutor of the Court had already expressed, in his 13th report, an intention to consider opening a specific investigation into this issue[332], a possibility that was also confirmed in the report issued the following semester.[333] In both the 18th[334] and 19th reports[335], the then Prosecutor Bensouda accused leaders of Libyan militias affiliated with the government of committing "systematic atrocities" against migrants[336]. She noted specifically that the authorities in Tripoli were responsible for organised violations against migrants, including "arbitrary detention, unlawful killings, enforced disappearances, torture, sexual and gender-based violence, kidnapping for ransom, extortion and forced labour". Bensouda also stressed that these abuses were not confined to unofficial facilities controlled by armed groups and smugglers, but also took place in official government detention centres, thereby highlighting the institutional dimension of the human rights violations suffered by migrants detained there.

Subsequently, in November 2021, several international NGOs, alongside the publication of a joint report on the issue[337], submitted a communication to the ICC[338] arguing that the abuses suffered by migrants in Libya amounted to international crimes falling within the Court's jurisdiction, specifically "crimes against humanity" under Article 7 of the Rome Statute.[339] In particular, the communication called on the Court to investigate and prosecute 19 individuals alleged to be

332. ICC, *Thirteenth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 8 May 2017, available at: THIRTEENTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO UNSCR

333. ICC, *Thirteenth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 8 November 2017, available at: https://www.icc-cpi.int/sites/default/files/iccdocs/otp/otp-unsc-lib-11-2017-ENG.pdf

334. ICC, *Eighteenth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 6 November 2019, available at: 191024-report-icc-otp-UNSC-libya-eng.pdf

335. ICC, *Nineteenth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011)*, 5 May 2020, available at: 19th-report-icc-otp-UNSC-libya-ENG.pdf

336. N. Scavo, *Migranti. La Corte penale internazionale verso nuovi mandati d'arresto in Libia* [Migrants: The International Criminal Court Moves Towards New Arrest Warrants in Libya], in *Avvenire*, 5 May 2020, available at: La Corte penale internazionale verso nuovi mandati d'arresto in Libia.

337. ECCHR, *No way out: Migrants and refugees trapped in Libya face crimes against humanity,* 2021, available at: ECCHR: No way out: Migrants and refugees trapped in Libya face crimes against humanity

338. Technically, this was a communication submitted under Article 15 of the ICC Statute, a provision that allows information concerning potential international crimes to be brought to the attention of the Court's Prosecutor. The communication is now available at: Redacted_Art_15__Communication_to_the_ICC_on_crimes_against_refugees_and_migrants_in_Libya.pdf

339. M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International Criminal Justice and Crimes Committed Against Migrants and Refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], in *Sistema Penale*, 23 December 2021, available at: Presentata una denuncia alla CPI per crimini contro l'umanità commessi nei confronti di migranti e rifugiati in Libia (di M. Crippa) | Sistema Penale | SP.

responsible for those crimes, including senior military and political figures from armed groups, militias and State actors involved in various ways in the Libyan crisis.[340]

According to that communication, the Court's jurisdiction would be based on a direct connection between the Libyan armed conflict and the crimes against migrants alleged therein. Indeed, since Resolution 1970 (2011), on its face, limits the Court's jurisdiction to crimes committed in Libya from 15 February 2011 onwards, and since the case law has confined that jurisdiction to crimes connected with the armed conflict in the country, it is precisely the link with the alleged war crimes identified in the communication that would make it possible to bring the abuses committed against migrants in Libya within the Court's jurisdiction. In particular, the Libyan conflict would constitute the basis for the methods, motives, capacities and underlying causes of the human rights violations committed against migrants.[341] First, the instability and collapse of national security would have intensified discrimination and hostility towards migrants, leading to a serious deterioration in their living conditions.[342] Second, migrants would reportedly be compelled to serve with armed groups, carrying out activities ranging from the transportation of weapons to direct participation in military operations. Furthermore, there would be links and, in some cases, direct overlaps between the main actors in the armed conflict and those responsible for these crimes against migrants. Finally, the conflict would be economically linked to the systematic exploitation of migrants and refugees, which has become a significant source of funding for the military activities of the competing groups.[343]

In the previously mentioned communication of November 2021, civil society organisations characterised the violations of migrants' rights in Libya as "crimes against humanity", a significant classification when compared with the focus on "war crimes" that has characterised other complaints and investigations conducted by the Court in relation to Libya. Indeed, criminal conduct amounts to "crimes against humanity" only where specific requirements are met. The acts must fall within those listed in Article 7 of the Statute and must be committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".[344]

340. M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International criminal justice and crimes committed against migrants and refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], *Op. cit.*
341. M. Kersten, *Crimes against migrants and asylum seekers in Libya: Here's how the ICC has jurisdiction,* in *Justice in Conflict*, 6 May 2022, available at: Crimes against migrants and asylum seekers in Libya: Here's how the ICC Has Jurisdiction | Justice in Conflict
342. M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International criminal justice and crimes committed against migrants and refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], *Op. cit.*
343. C. Meloni, X. Zhang, *Complementarity is no excuse: Why the ICC Investigation in Libya must include crimes against migrants and refugees,* in *OpinioJuris,* 1 December 2021, available at: Complementarity Is No Excuse: Why the ICC investigation in Libya must include crimes against migrants and refugees - Opinio Juris
344. Rome Statute of the International Criminal Court, Article 7.

This definition, therefore, requires that the conduct in question not consist of isolated incidents. Rather, the individual act must either form part of a series of crimes of the same nature or be one of a succession of acts through which such crimes are carried out (a "widespread" attack). It must also reflect a governmental policy or a pattern of atrocities pursued, tolerated or accepted by governments, de facto authorities or organisations (a "systematic" attack).[345] Finally, the mental element of "knowledge of the attack" requires both the intention to commit the underlying offence and awareness that the individual criminal act forms part of a broader attack.[346]

Against this background, the crimes committed in Libya against migrants and refugees could, first, fall within several of the acts listed by the Statute as constituting "crimes against humanity", including murder, extermination, enslavement, imprisonment, torture and sexual violence.[347] As regards the other requirements laid down by the Statute for conduct to qualify as "crimes against humanity", the NGO communication argues that the acts under investigation are "widespread" both because of the high number of victims involved and because those victims belong to a wide range of ethnic, national, religious and gender groups. The "systematic" nature of the conduct would be reflected in the implementation of a genuine policy of economic exploitation directed at individuals unlawfully held in Libyan detention centres.[348] Furthermore, the institutional endorsement of these criminal acts would be reflected in the domestic legal framework, which denies the right to asylum and provides for the indefinite detention and forced labour of migrants (Law No. 19 of 2010), thereby indicating the existence of a State policy of systematic violence against them.[349] As for the mental element ("knowledge of the attack"), it would be difficult to argue that the Libyan Coast Guard, members of the DCIM, smugglers and other non-State actors are unaware of these systematic violations, particularly given that crimes against migrants in Libya have been widely documented and are now a matter of public record.[350]

However, also in November 2021, in his 22nd report[351], the ICC Prosecutor ruled out opening

345. P. Scevi, *Crimini perpetrati contro migranti e rifugiati in Libia e giustizia penale internazionale. Una riflessione sui meccanismi di risposta* [Crimes committed against migrants and refugees in Libya and international criminal justice. A reflection on response mechanisms], in *Archivio Penale*, Issue No. 2, May-August 2020, available at: Crimini perpetrati contro migranti e rifugiati in Libia e giustizia penale internazionale. Una riflessione sui meccanismi di risposta, pp. 9 ff. for a comprehensive discussion of the requirements in question.

346. G. Raimondo, *Invisible Crimes: Accountability for Crimes Against Migrants in Libya,* 30 August 2023, available at: Invisible crimes: Accountability for crimes against migrants in Libya by Giulia Raimondo: SSRN, p. 8.

347. P. Scevi, *Op. cit.*, pp. 11 ff.

348. M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International criminal justice and crimes committed against migrants and refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], *Op. cit.*

349. C. Meloni, X. Zhang, *Op. cit.*, who further note that these crimes, having largely occurred in the context of an ongoing armed conflict, would constitute not only crimes against humanity but also war crimes. G. Raimondo, *Op. cit.*, p. 7.

350. G. Raimondo, *Op. cit.,* p. 9.

351. ICC, *Twenty-second report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 23 November 2021, available at: 20211123-prosecutor-report-unsc-1970-eng.pdf

specific investigations into crimes committed against migrants and refugees in Libya, characterising the reported abuses as human trafficking and thereby overlooking both the systematic nature of the exploitation and the gravity of the violence suffered by the victims.[352] This was a questionable decision, given the breadth of the evidence available concerning the widespread and systematic nature of the abuses suffered by migrants. Among other sources, this was confirmed by the October 2021 report of the United Nations *Independent Fact-Finding Mission* on Libya, which had already found that migrants and refugees in the country were "systematically subjected to a range of abuses" that could amount to international crimes under the Rome Statute. In addition, several international organisations had already extensively documented the widespread and systematic attacks directed against this vulnerable segment of the population present in Libya.[353]

Subsequently, in January 2022, other civil society organisations submitted a further communication under Article 15 of the Rome Statute, requesting that the Court investigate the international crimes committed by Libyan armed groups against thousands of migrants trapped in detention centres in Libya, where they were systematically subjected to torture and violations of their human dignity.[354] It should be noted that this communication characterised the abuses committed against migrants in DCIM detention centres between 2017 and 2021 as both "war crimes"[355] and "crimes against humanity".[356]

Thus, in his subsequent biannual report, published in April 2022[357], the Prosecutor referred for the first time specifically to crimes committed against migrants in Libya, acknowledging that they could constitute both "war crimes" and "crimes against humanity" falling within the Court's jurisdiction. This development finally opened the way for a new line of investigation that had long been advocated[358]. Following this approach, the Court issued several arrest warrants in

352. M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International criminal justice and crimes committed against migrants and refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], *Op. cit.*; C. Meloni, X. Zhang, *Op. cit.*

353. C. Meloni, X. Zhang, *Op. cit.*

354. UpRights et al., *Article 15 Communication on war crimes and crimes against humanity committed against migrants and asylum seekers in Libya*, 17 November 2022, available at: Article-15-Communication-on-War-Crimes-and-Crimes-Against-Humanity-Committed-Against-Migrants-and-Asylum-Seekers-in-Libya.pdf; M. Kersten, *Crimes against migrants and asylum seekers in Libya: here's how the ICC has jurisdiction, Op. cit.*, according to which the ICC's jurisdiction would be established by the flexible nature of the nexus required between an armed conflict and the acts of violence in question, thereby making it possible to bring within that framework the violence suffered by migrants in detention centres.

355. UpRights et al., *Op. cit.*, p. 13, section 15, which identifies six DCIM detention centres in which such crimes were allegedly committed, under the effective control of armed groups.

356. UpRights et al., *Op. cit.*, p. 13, section 17.

357. ICC, *Twenty-third report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 8 April 2022, available at: 23rd Report of the Prosecutor of the ICC to the UN Security Council pursuant to Resolution 1970 (2011)

358. UpRights, UpRights, The ICC Prosecutor confirms that crimes committed against migrants in Libya may amount

December 2022 against individuals suspected of responsibility for such crimes.[359]
Furthermore, in September 2022, the Office of the Prosecutor announced that it would join several national authorities in a Joint Team established to support investigations into crimes committed against migrants and refugees in Libya. It also reiterated that it had received a wide range of credible information concerning the abuses and ill-treatment suffered by them.[360] This was an approach based on "complementarity" with national jurisdictions, which, as will be discussed below, has nevertheless proved ineffective. To date, European authorities reportedly continue to treat crimes committed against migrants and refugees in Libya as cases of migrant smuggling and human trafficking, rather than recognising them as components of a broader system of violence amounting to "crimes against humanity" or other international crimes under the Rome Statute.[361]
Despite the March 2023 final report of the *Independent Fact-Finding Mission on Libya*, which confirmed the commission of "crimes against humanity" against migrants, refugees and asylum seekers in the context of the deprivation of their liberty[362], and which also assigned a key role to EU support for Libyan forces[363], it remains unclear what the future holds for the line of investigation that had been so strongly advocated and was only opened by the Prosecutor a year earlier. Indeed, in November 2023, Prosecutor Karim Khan initially announced that all lines of investigation in Libya would be concluded by the end of 2025, with no further arrest warrants to be issued. Organisations such as Human Rights Watch immediately criticised this timetable, stressing the need for the investigations to continue, considering both Libya's limited cooperation with the ICC up to that point and the absence of credible domestic proceedings concerning the matter.[364]
In May 2025, the Prosecutor's 29th report[365] confirmed the intention to conclude the investiga-

to international crimes and fall within the ICC's jurisdiction, 5 May 2022, available at: Breaking: The ICC confirms that crimes against migrants in Libya may amount to international crimes

359. E. P. Reale, *Aggiornamenti dalla Corte Penale Internazionale. Una linea di indagine anche sui crimini contro l'umanità connessi alla tratta dei migranti nel Mediterraneo* [Updates from the International Criminal Court. A line of investigation also into crimes against humanity linked to the trafficking of migrants in the Mediterranean], in *Giustizia Insieme*, 9 December 2022, available at: Aggiornamenti dalla Corte Penale Internazionale. Una linea di indagine anche sui crimini contro l'umanità connessi alla tratta dei migranti nel Mediterraneo - www.giustiziainsieme.it.
360. ICC, *Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya*, 7 September 2022, available at: Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in a Joint Team on crimes against migrants in Libya | International Criminal Court
361. ECCHR, Refugees in Libya, Situation in Libya at the International Criminal Court: position paper, June 2025, available at: 250613_ECCHR_PP_ICC_EN.pdf, p. 4.
362. ICJ, *Libya: Immediately halt collective expulsions, arrests, violence and hate speech against migrants, refugees and asylum seekers,* 2 April 2025, available at: Libya: Immediately halt collective expulsions, arrests, violence and hate speech against migrants, refugees and asylum seekers | ICJ
363. R. Brito, Lawyers ask ICC to investigate 122 European officials for crimes against humanity in the Mediterranean, in AP News, 16 October 2025, available at: Lawyers ask ICC to investigate 122 European officials for crimes against humanity in the Mediterranean
364. Human Rights Watch, *Libya: Barriers to Justice,* 2 June 2025, available at: Libya: Barriers to Justice | Human Rights Watch
365. ICC, *Twenty-ninth report of the Prosecutor of the International Criminal Court to the United Nations Security Council*

tions by early 2026. However, only a few days earlier, the Tripoli government had lodged with the Registry of the Court a declaration formally accepting the Court's ad hoc jurisdiction over all alleged international crimes committed on Libyan territory from 2011 until the end of 2027.[366] Thus, after describing this development as an "unprecedented advance"[367] in the investigations, the Prosecutor stated in his 30th report that Libya's renewed cooperation would provide "new opportunities for action against alleged perpetrators". While reaffirming his commitment to concluding the investigative phase as swiftly as possible, he also envisaged its continuation beyond May 2026.

Moreover, the November 2025 report expressly identifies four lines of investigation: (a) the 2011 violence; (b) crimes committed in detention facilities; (c) crimes relating to operations conducted between 2014 and 2020; and (d) crimes against migrants. Of these, only the first is reported to have completed the investigative phase.[368] A notable development, however, would be the issuance of new arrest warrants in relation to both the line of investigation concerning detention facilities (b) and that concerning abuses against migrants (d).[369] Regarding the latter, the Prosecutor highlighted the importance of testimony provided by migrant victims. Their accounts, describing systematic "patterns of violence and alleged acts of rape, beatings, torture and cruel treatment suffered during their journeys", were said to have strengthened "the overall robustness of the investigation".[370] However, regarding this line of investigation, a preference for cooperation with the States participating in the Joint Team[371] has been reaffirmed, although doubts have been raised as to the effectiveness of this approach.[372]

These concerns regarding the complementary approach based on cooperation with other

*pursuant to UN Security Council Resolution 1970 (2011),* 15 May 2025, available at 250515-icc-otp-report-unsc-libya-eng.pdf

366. ECCHR, Refugees in Libya, *Op. cit.,* p. 1.
367. ICC, *Thirtieth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 25 November 2025, available at: 2025-11-25-otp-report-libya-eng.pdf, p. 6.
368. ICC, *Thirtieth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UN Security Council Resolution 1970 (2011),* 25 November 2025, available at: 2025-11-25-otp-report-libya-eng.pdf, p. 13, section 21.
369. V. R. Spagnolo, *Il caso Almasri non è chiuso, la Corte internazionale reclama la consegna* [The Almasri case is not closed: the International Criminal Court demands his surrender], in *Avvenire*, 26 November 2025, https://www.avvenire.it/politica/il-caso-almasri-non-e-chiuso-la-corte-internazionale-reclama-la-consegna_101396, where it is reported that: "The names of those subject to the warrants are not disclosed by the Court for security reasons and will only be made public when operational conditions and witness protection allow".
370. ICC, *Thirtieth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UNSCR 1970 (2011),* 25 November 2025, available at: 2025-11-25-otp-report-libya-eng.pdf, p. 19, section 51.
371. On this point, see ICC, *Thirtieth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UNSCR 1970 (2011), Op. cit.*, p. 19, which states [freely translated]: "47. "The Office has maintained its commitment to and cooperation with the Joint Team through frequent operational exchanges with representatives of the partner jurisdictions (...) 49. The Joint Team held expert-level meetings in October 2025 to advance the Office's investigations in this area, as well as the investigations of the other partners."
372. ECCHR, Refugees in Libya, *Op. cit.*, p. 4.

national authorities were confirmed, if not intensified, following the issuance of an international arrest[373] warrant against Najeem Osema Almasri Habish, commonly known as Almasri. He is the head of the Libyan Judicial Police and commander of Mitiga Prison, as well as director of the Tripoli branch of the Reform and Rehabilitation Institution, a network of detention centres operated by the Special Deterrence Forces and supported by the Libyan government.[374] The warrant in question is said to lie "at the intersection of the lines of investigation relating respectively to crimes committed in detention facilities and crimes committed against migrants. Regarding the latter, the Office of the Prosecutor had until then favoured an approach based on so-called positive complementarity, entrusting the investigation and prosecution of such crimes primarily to the national jurisdictions involved".[375]

The case is both significant and emblematic because, when the warrant was issued in January 2025, the Libyan general was present on Italian territory. He was initially arrested by the General Investigations and Special Operations Division (Digos), only to be released three days later by order of the Court of Appeal and subsequently returned to Libya on an Italian state flight.[376] From a procedural perspective, legal scholars[377] had already identified this conduct as a breach by Italy of its duty to cooperate with the ICC, an obligation assumed through its ratification of the Rome Statute (pursuant to Article 86). Subsequently, in October 2025, the Court itself formally found that Italy had failed to comply with its obligations concerning judicial cooperation and had not exercised the required due diligence.[378] Given that, at the time of writing, no domestic

373. ICC, *Decision issuing a corrected version of the "Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem" dated 18 January 2025 (ICC-01/11-149-US-Exp) and appending the dissenting opinion of Judge Flores Liera,* 24 January 2025, Decision issuing a corrected version of the "Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem" dated 18 January 2025 (ICC-01/11-149-US-Exp) and appending the dissenting opinion of Judge Flores Liera | International Criminal Court

374. Amnesty International, *Libia/Italia: l'arresto di Osama Njeem serva per porre fine all'impunità* [Libya/Italy: the arrest of Osama Njeem must serve to end impunity], 21 January 2025, available at: Libia/Italia: l'arresto di Osama Njeem serva per porre fine all'impunità - Amnesty International Italia.

375. M. Crippa, L. Parsi, *I profili di responsabilità del generale libico Elmasry nel mandato di arresto della Corte penale internazionale* [The grounds of liability of Libyan General Elmasry in the arrest warrant issued by the International Criminal Court], 8 February 2025, available at: M. Crippa, L. Parsi | I profili di responsabilità del generale libico Elmasry nel mandato di arresto della CPI | Sistema Penale | SP. The reference is to the previously mentioned Joint Team.

376. M. Caianiello, C. Meloni, *Almasri: una discutibile interpretazione della legge di cooperazione dell'Italia con la CPI ha portato alla scarcerazione del primo ricercato arrestato sul suolo europeo nell'ambito delle indagini in Libia* [The Almasri case: a controversial interpretation of Italy's law on cooperation with the ICC led to the release of the first suspect arrested on European soil in connection with the Libya investigations], in *Sistema Penale*, 24 January 2025, available at: M. Caianiello, C. Meloni | Caso Almasri | Sistema Penale | SP; see also M. Crippa, *Per la Corte Penale Internazionale l'Italia ha violato gli obblighi di cooperazione per via della mancata consegna del libico Almasri all'Aia* [The International Criminal Court finds that Italy breached its cooperation obligations by failing to surrender Libyan national Almasri to The Hague], *Op. cit.*, where it is stated (section 1) that: "On 21 January, the Rome Court of Appeal, acting on the request of the Prosecutor General, declared that there was no basis to proceed in relation to Almasri's arrest, as it had been carried out 'irregularly', in the absence of prior consultations with the Minister of Justice."

377. M. Caianiello, C. Meloni, *Op. cit.*

378. M. G. Schiavone, *Caso Almasri: la Corte Penale Internazionale accerta l'inadempimento dell'Italia* [The Almasri

proceedings have been initiated to assess any individual responsibility in relation to the Almasri case[379], the matter is significant not only because of the procedural violations that have been identified, but also because it appears to reflect a lack of political willingness on the part of Italy to cooperate in establishing criminal responsibility, including for crimes committed against migrants in Libya. Consequently, it also raises questions about the effectiveness of the cooperative approach promoted by the Office of the Prosecutor. Moreover, the case undoubtedly contributes to reinforcing the troubling message that violence against migrants is not a priority. Such abuses are treated as "mere" migrant smuggling or human trafficking, rather than being recognised and addressed as serious international crimes.

It should also be noted that this lack of cooperation in relation to the Almasri case was relied upon as one of the grounds in the application subsequently brought against Italy before the European Court of Human Rights by one of the general's many victims.[380] Through this application, which has recently passed the initial admissibility stage[381], the Strasbourg Court will, for the first time, examine a State's refusal to surrender a suspect sought by the ICC. More importantly, the applicant alleged that he had been the victim of violations of his fundamental rights both because of Almasri's conduct while he was detained in Libya and because of Italy's failure to comply with its legal obligations.[382] Specifically, the alleged breach of the obligation to cooperate in Almasri's surrender and, more fundamentally, to conduct effective investigations into the Libyan general, would be relevant before the European Court of Human Rights under Articles

case: the International Criminal Court finds Italy in breach of its obligations], in *Unione Forense per la Tutela dei Diritti Umani*, 4 November 2025, available at: Caso Almasri: la Corte Penale Internazionale accerta l'inadempimento dell'Italia - Unione dei Diritti Umani; M. Crippa, *Per la Corte Penale Internazionale l'Italia ha violato gli obblighi di cooperazione per via della mancata consegna del libico Almasri all'Aia,* in *Sistema Penale* [The International Criminal Court finds that Italy breached its cooperation obligations by failing to surrender Libyan national Almasri to The Hague], in *Sistema Penale*, *Op. cit.*, section 10, reports that the decision on whether to refer Italy to the Assembly of States Parties (ASP) or to the United Nations Security Council (UNSC) was nevertheless postponed. Italy was invited to submit, by 31 October 2025, information concerning the existence and impact of any domestic proceedings. Furthermore, in section 12, reference is made to a partially dissenting opinion according to which there were no valid grounds for delaying the referral: "The seriousness of Italy's conduct should be inferred from its consequences for the proceedings before the ICC and, more broadly, for the Court's mandate to put an end to impunity for the most serious crimes of concern to the international community. The seriousness of the violations attributed to the Italian State was also evident from its failure to accept responsibility and its lack of willingness to cooperate with the ICC".

379. M. Crippa, *Per la Corte Penale Internazionale l'Italia ha violato gli obblighi di cooperazione per via della mancata consegna del libico Almasri all'Aia,* in *Sistema Penale* [The International Criminal Court finds that Italy breached its cooperation obligations by failing to surrender Libyan national Almasri to The Hague], in *Sistema Penale*, *Op. cit.*, section 13.
380. ECCHR, *Italy to answer to European Court of Human Rights after failure to surrender suspected Libyan torturer to the ICC,* 14 October 2025, available at: ECCHR: Italy to answer to European Court of Human Rights after failure to surrender suspected Libyan torturer to the ICC
381. M. Crippa, *Per la Corte Penale Internazionale l'Italia ha violato gli obblighi di cooperazione per via della mancata consegna del libico Almasri all'Aia* [The International Criminal Court finds that Italy breached its cooperation obligations by failing to surrender Libyan national Almasri to The Hague], *Op. cit.*, section 13.
382. ECCHR, *Italy to answer to European Court of Human Rights after failure to surrender suspected Libyan torturer to the ICC, Op. cit.*

2 and 3 of the Convention, which protect the right to life and prohibit torture and inhuman or degrading treatment.[383]

In any event, the ICC would remain the forum best suited to prosecuting crimes committed against migrants in Libya. Unlike national courts, including those in Italy, which are generally confined to individual prosecutions without addressing the broader system of structural abuse, the international Court can pursue high-level perpetrators, overcome the immunities enjoyed by State actors, and investigate the complex criminal networks involving both public institutions and armed groups.[384]

## 2. Italian involvement in crimes against migrants: possible grounds of shared responsibility

Considering the documented human rights violations committed along the Central Mediterranean route by both State authorities and Libyan smugglers and militias, it is necessary to examine Italy's role in relation to these abuses. Indeed, as discussed above, the various Italian initiatives supporting the North African country are largely aimed at providing material, financial, technical and logistical assistance to both the Libyan Coast Guard, which carries out dangerous interceptions at sea and subsequent push-backs, and the authorities responsible for managing detention centres on Libyan territory, where abuse and exploitation take place. Indirectly, such initiatives would also encourage additional actors to engage in violations of migrants' rights in order to attract the attention and funding of Western governments.[385]

It is argued here that Italy's support for the abuses perpetrated against migrants may be examined as a form of shared responsibility from two distinct perspectives: State responsibility and individual responsibility.

### 2.1 State responsibility: the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)

Destination States affected by migration flows, such as Italy, appear to assume that they are not bound by fundamental human rights obligations, foremost among them the principle of non-refoulement[386], when they intervene only indirectly in the management of such flows, namely by

383. ECCHR, *Italy to answer to European Court of Human Rights after failure to surrender suspected Libyan torturer to the ICC, Op. cit.*, where it is further stated [freely translated] that: "By releasing Almasri, Italy obstructed justice and denied victims any prospect of accountability".

384. C. Meloni, X. Zhang, *Op. cit.;* M. Crippa, *Giustizia penale internazionale e crimini commessi nei confronti di migranti e rifugiati in Libia: una comunicazione ex art. 15 Statuto di Roma sollecita il Procuratore all'apertura di indagini per crimini contro l'umanità e crimini di guerra di fronte alla Corte penale internazionale* [International criminal justice and crimes committed against migrants and refugees in Libya: an Article 15 Rome Statute communication urging the Prosecutor to open investigations into crimes against humanity and war crimes before the International Criminal Court], *Op. cit.*

385. For this profitable cycle of violence, reference is made to section 2.3.2 of Chapter One of this study.

386. Known as the principle of non-refoulement, it prohibits a State from removing a third-country national to a State where there is a real risk that the individual will be subjected to inhuman or degrading treatment. The principle enjoys particularly strong protection in relation to refugees (Article 33 of the 1951 Geneva Convention).

"delegating" third countries to prevent migrants from reaching their territory. This interpretation is grounded on the fact that the principal international human rights treaties make their application contingent upon the effective exercise of State jurisdiction over the individuals concerned. Accordingly, Italy has argued, and continues to argue, that it cannot be held responsible for the violations suffered by migrants intercepted and returned by the Libyan Coast Guard, given that those individuals are outside its "control" and therefore not subject to Italian jurisdiction. Indeed, notwithstanding the landmark judgment in *Hirsi Jamaa and Others v. Italy* before the European Court of Human Rights[387], the issue of jurisdiction has always represented, and continues to represent[388], a significant obstacle to establishing Italian responsibility for violations of the human rights of migrants who are intercepted, returned and subsequently detained in Libya.[389] To overcome this impasse, it has therefore been proposed that Italy's cooperative initiatives with the Libyan government be examined through the lens of so-called derived responsibility.[390] This possibility would be provided by the rules of customary international law governing the attribution of internationally wrongful acts, which were codified in 2001 by the United Nations International Law Commission (ILC) in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).

### 2.1.a Article 16 of the ARSIWA

First, a form of derived responsibility based on "aid or assistance" under Article 16 of the ARSIWA

387. European Court of Human Rights, Application No. 27765/09, 23 February 2012 (*Hirsi Jamaa and Others v. Italy*), which was significant in extending the concept of jurisdiction beyond territorial limits. In particular, the Court found the existence of "continuous and exclusive control, both de jure and de facto, by the Italian authorities" in a case involving the interception of migrants on the high seas by vessels of the Italian armed forces.
388. Most recently, see the findings in *S.S. and Others v. Italy*, Application No. 21660/2018 (also discussed in section 3.2 of this chapter), in which the European Court of Human Rights, contrary to the position advocated by a considerable body of legal scholarship, held that Italy had not exercised extraterritorial jurisdiction in relation to a pull-back operation carried out by the Libyan Coast Guard.
389. For an in-depth analysis of these difficulties and the various responses advanced in legal scholarship, see E. Terzoli, *Oltre i confini, oltre le responsabilità? Un'analisi critica delle politiche di esternalizzazione delle frontiere di Italia ed Unione Europea* [Beyond borders, beyond responsibility? A critical analysis of the border externalisation policies of Italy and the European Union], 2024, available at: Un'analisi critica delle politiche di esternalizzazione delle frontiere di Italia ed UE – Progetto Melting Pot Europa.
390. F. De Vittor, *Responsabilità degli Stati e dell'Unione europea nella conclusione e nell'esecuzione di "accordi" per il controllo extraterritoriale della migrazione* [State and European Union responsibility in the conclusion and implementation of "agreements" for the extraterritorial control of migration], in *Diritti umani e diritto internazionale*, Quarterly Review, 1/2018, available at: (PDF) Responsabilità degli Stati e dell'Unione europea nella conclusione e nell'esecuzione di 'accordi' per il controllo extraterritoriale della migrazione, p. 22, where it is stated that: "Even in the absence of an exercise of power and control over the victim sufficient to establish jurisdiction for the purposes of the application of the European Convention on Human Rights or the International Covenant on Civil and Political Rights, it nevertheless appears possible to establish the shared responsibility or complicity of the European State with the third State". On this form of responsibility, see M. Riccio, *The Human Rights Implications of the Externalization of Migration Management: The EU and Italy's De Facto Impunity in Libya*, 2022, available at: Academy, pp. 10 ff.

has been proposed[391]. This provision establishes that a State may incur responsibility where it aids or assists another State in the commission of an internationally wrongful act.[392] Specifically, in the Italian-Libyan context, Italy's complicity could arise in its capacity as the "assisting State" with respect both to violations of the principle of non-refoulement committed at sea by the Libyan Coast Guard and to violations of the right to leave one's country.[393]

The provision in question requires several specific conditions to be satisfied before it can be applied.[394] First, paragraph (a) requires "knowledge of the circumstances" of the internationally wrongful act, a requirement whose scope has been the subject of considerable debate.[395] Faced with a restrictive interpretation of this requirement, according to which Italy's support measures would need to be accompanied by a genuine intention to assist Libya in its unlawful conduct[396], legal scholars have instead preferred to shift the focus from the State's intention to its awareness, understood in terms of risk acceptance. Under this approach, a State that assists while being aware of the circumstances surrounding the principal violation accepts the risk that internationally wrongful acts may be committed through that assistance and may therefore be regarded as complicit.[397] Against this background, it is difficult for Italy to claim that it was unaware that its assistance was being used in a manner that violated the fundamental rights of migrants and therefore contributed to internationally wrongful acts. This is so both because a substantial body of information to that effect has long been publicly available and because Italy's funding for Libya has been expressly directed towards activities and resources used to intercept migrants along the Mediterranean route.[398]

391. Also known as the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA). The official text is now contained in the Annex to General Assembly Resolution 56/83 of 12 December 2001.
392. G. Pascale, *Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya?,* in *Questions of International Law,* 28 February 2019, available at: Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya? - QIL QDI, p. 45.
393. E. Terzoli, *Op. cit.*, pp. 58 - 59.
394. A. Pijnenburg, *Op. cit.*, p. 328, according to whom both case law and scholarly debate on the proper interpretation of these requirements remain lacking.
395. E. Terzoli, *Op. cit.*, pp. 62–67 review the various scholarly approaches to the issue.
396. J. C. J. Hathaway, T. Gammeltoft-Hansen, The externalisation of European migration control and the reach of international refugee law, in E. Guild, P. Minderhoud (eds.), *The First Decade of EU Migration and Asylum Law*, *Leiden, Martinus Nijhoff Publishers*, 2012, p. 279, according to whom the actual achievement of the objective of facilitating the wrongful act would also be required (the "consummation requirement"). However, such a high threshold would exclude all those situations in which a State commits an internationally wrongful act not out of a deliberate desire to violate human rights, but because it has implicitly accepted the risk that such a violation may occur while pursuing different objectives. See, inter alia, M. Giuffré, *State Responsibility Beyond Borders: What is the legal basis for Italy's push-backs to Libya?,* in *International Journal of Refugee Law,* vol. 24, No. April 2013 (pp. (692–734), p. 728.
397. M. Giuffré, *Op. cit.*, p. 728; F. De Vittor, *Op. cit.*, p. 24; G. Pascale, *"Esternalizzazione" delle frontiere in chiave anti-migratoria e responsabilità internazionale dell'Italia e dell'UE per complicità nelle gross violations dei diritti umani commesse in Libia* ["Externalisation" of borders as an anti-migration strategy and the international responsibility of Italy and the EU for complicity in gross human rights violations committed in Libya], in *Studi sull'integrazione europea, Vol. Vol. XIII, No. 2/2018,* p. 433; J.C. Hathaway, T. Gammeltoft-Hansen, *Op. cit.*, p. 280.
398. M. Giuffré, *Op. cit.,* p. 729; G. Pascale, *Is Italy Internationally Responsible for the Gross Human Rights Violations*

Article 16 of the ARSIWA also requires a causal link between the assistance provided and the violation committed by the other State. The (Italian) support must constitute a "significant" contribution to the (Libyan) wrongful act, going beyond mere encouragement. At the same time, however, it remains sufficient that the conduct be capable of facilitating the commission of the principal wrongful act.[399] In this regard, it has been argued that such assistance may take the form of a wide range of actions, including conduct that is lawful.[400] The International Court of Justice[401] has also had to characterise the provision of weapons, military equipment and financial resources as "aid or assistance" within the meaning of Article 16 of the ARSIWA. Accordingly, the funding, training and equipment provided by Italy to the Libyan authorities would constitute assistance sufficient to facilitate the violations committed first during interception operations and subsequently within Libyan detention centres.[402] Moreover, according to some commentators, since Libya initially lacked both the means and the willingness to carry out such pull-backs, the assistance provided by Italy could even be regarded as "indispensable".[403]

Finally, paragraph (b) of the provision requires that the violation in question be one that would constitute an internationally wrongful act if committed by either of the States involved. In the present case, this requirement is considered satisfied because both Libya and Italy are bound by international human rights obligations arising from both treaty law and customary international law[404], including, naturally, the prohibition of refoulement and the obligation to respect the right to leave one's country.

Ultimately, Article 16 of the ARSIWA would make it possible to characterise Italy's support for Libya, particularly in relation to the push-back operations carried out by the Libyan Coast Guard, as aid or assistance in the commission of internationally wrongful acts by the Libyan government, thereby giving rise to a possible basis for Italy's responsibility on grounds of complicity.[405]

*against Migrants in Libya?, Cit.,* p. 54; A. Pijnenburg, *Op. cit.* p. 330.

399. E. Terzoli, *Op. cit.*, pp. 60–61 provide a more detailed discussion of the individual scholarly views on this issue.
400. G. Pascale, *"Esternalizzazione" delle frontiere in chiave antimigratoria e responsabilità internazionale dell'Italia e dell'UE per complicità nelle gross violations dei diritti umani commesse in Libia* ["Externalisation" of borders as an anti-migration strategy and the international responsibility of Italy and the EU for complicity in gross human rights violations committed in Libya], *Op. cit.,* p. 436. M. Giuffré, *Op. cit.,* pp. 725, 727; J. Crawford, *Second Report on State Responsibility, in Yearbook of the International Law Commission, Volume II (Part One)*, 1999, paragraph 349, according to whom relevant forms of "support" include, inter alia, the conclusion of agreements, political declarations of support, the exchange of confidential information, the provision of infrastructure, technical assistance, economic support, training, as well as treaties, less formal agreements and memoranda.
401. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Erzegovina v.* Serbia and Montenegro), Judgment of 26 February 2007, ICJ Reports (2007), p. 217, paragraph 420, footnote 122.
402. A. Pijnenburg, *Op. cit.* p. 329; G. Pascale *Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya?, Op. cit.*, p. 53,
403. A. Fazzini, *Il caso S.S. and Others v. Italy nel quadro dell'esternalizzazione delle frontiere in Libia: osservazioni sui possibili scenari al vaglio della Corte di Strasburgo* [The case of S.S. and Others v. Italy in the context of the externalisation of borders in Libya: observations on the possible scenarios under consideration by the European Court of Human Rights], in *Diritto, Immigrazione e Cittadinanza, Rivista quadrimestrale*, No. 2/2020, p. 97.
404. A. Pijnenburg, *Op. cit.,* p. 330. E. Terzoli, *Op. cit.*, p. 60 for further scholarly support of this view.
405. For scholarship reaching this conclusion, as well as for a contrary view, see E. Terzoli, *Op. cit.*, p. 57, footnote 412; M. Riccio, *Op. cit.*, p. 13.

### 2.1.b Article 41(2) of the ARSIWA406

Italy's operational and financial support for Libya's unlawful conduct has also been characterised as a breach of the obligation of non-assistance set out in Article 41(2) of the ARSIWA. Indeed, the provision stipulates that, where a State (Libya) commits a serious breach of an international obligation, other States (Italy) are under an obligation neither to recognise that situation as lawful, whether formally or in practice, nor to render aid or assistance in maintaining it. Indeed, the provision stipulates that, where a State (Libya) commits a serious breach of an international obligation, other States (Italy) are under an obligation neither to recognise that situation as lawful, whether formally or in practice, nor to render aid or assistance in maintaining it. Accordingly, Italy could be found responsible on a residual basis under this provision.[407]

## 2.2 An additional basis for State responsibility: the Draft Articles on the Prevention and Punishment of Crimes Against Humanity408

There is a further basis on which Italy's contribution to human rights violations along the Libyan route may be assessed, namely the Draft Articles on the Prevention and Punishment of Crimes Against Humanity recently adopted by the ILC.[409] This approach links State responsibility with individual criminal responsibility and is premised on the qualification, discussed above, of the Libyan conduct as "crimes against humanity" within the meaning of Article 7 of the Rome Statute.[410] The Draft Articles establish six fundamental obligations for States in this area, including the obligation not to expel, return, surrender or extradite individuals to a country where there are substantial grounds for believing that they would be at risk of being subjected to crimes against humanity.[411] Accordingly, assuming that the requirements set out in the Rome Statute are met, it has been suggested that these provisions may apply to Italy's non-entry policies concerning migrants who are returned or pushed back to Libya.[412]

406. Its applicability to Italy's support activities has been examined by G. Pascale, *Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya?*, *Op. cit.,* pp. 54 ff.
407. G. Pascale, *Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya?, Op. cit.,* p.56.
408. This is an approach advanced by G. Raimondo, *Op. cit.,* pp. 5 ff.
409. ILC, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity,* in *Yearbook of the International Law Commission, 2019, Vol. II, Part Two*, available at: Draft articles on the Prevention and Punishment of Crimes Against Humanity, 2019
410. For a detailed discussion of this issue, see section 1 of this chapter.
411. The other obligations include: refraining from committing crimes against humanity; preventing others from committing such crimes to the extent possible; adopting effective legislative measures and other appropriate preventive measures in territories under their control; cooperating with other States and international organisations in the prevention of crimes against humanity; and ensuring the effective punishment of crimes against humanity.
412. G. Raimondo, *Op. cit.*, p. 5, who explains in the following pages how the requirements of a "widespread or systematic attack directed against a civilian population" would also be satisfied, specifically, by the structured policies of migration-control externalisation adopted by European States, as would the mental element consisting of those States' awareness of the situation in Libya.

The concept of "derived responsibility" would therefore appear to provide a basis for some form of accountability on the part of the Italian State for the support it has provided to Libyan authorities in connection with violations of the human rights of migrants. However, it is necessary to acknowledge certain practical limitations to this possibility, foremost among them the fact that the most appropriate forum in which to pursue such claims is the International Court of Justice, which is not accessible to individuals.[413] Moreover, international case law provides little guidance as to how accessory responsibility should be applied in the context of border externalisation. Indeed, it was precisely this lack of guidance that led the Regional Administrative Court of Rome (TAR Lazio) and, subsequently, the Council of State to dismiss a case in which ASGI argued that financial assistance provided to the Libyan authorities amounted to a "proxy refoulement", that is, a de facto push-back resulting from the conduct of the Italian authorities.[414]

Most importantly, the application of the prohibition of complicity would be constrained by the so-called Monetary Gold principle[415], according to which a court may not exercise jurisdiction over an internationally wrongful act, where doing so would first require it to rule on the lawfulness of the conduct of a third State that has not consented to such a prior determination.[416] Thus, even in the case under consideration, a form of circularity would arise. Under Article 16 of the ARSIWA, responsibility exists only if the assisted State has committed an internationally wrongful act resulting from the assistance provided. Consequently, a prior examination of that State's conduct is required to determine whether it was unlawful. However, if that State, as in the present case, Libya, is not a party to the dispute or does not consent to the examination of its conduct, it will not be possible to assess the responsibility of the assisting State, namely Italy. More specifically, since Libya is not a party to the European Convention on Human Rights, for as long as the European Court of Human Rights remains the principal judicial body seized by victims of violations materially committed by the North African State, the need to establish whether the aiding or assisting State exercised jurisdiction will remain a prerequisite that is unlikely to be satisfied.[417]

## 2.3 Individual responsibility: the Rome Statute

The classification of abuses committed against migrants by Libyan nationals as international crimes under the Rome Statute[418] would not only provide a basis for an innovative form of State

413. A. De Leo, *Fostering Accountability for Human Rights Violations in the Externalisation of EU Borders Through the European Ombudsman: The Case of Contesting Financial Support to the Libyan Coast Guard,* in *Journal of Immigrant & Refugee Studies,* 23(1), pp. 104–120, 3 January 2025, available at: Full article: Fostering Accountability for Human Rights Violations in EU Border Externalization Through the European Ombudsman: The Case of Contesting Financial Support to the Libyan Coast Guard, p. 110.
414. A. De Leo, *Op. cit.*, p. 110.
415. G. Ciliberto, *Libya's Pull-Backs of Boat Migrants: Can Italy Be Held Accountable for Violations of International Law?,* in *The Italian Law Journal, Vol. 4, No. 2/2018,* pp. 489–530, available at: 489-ciliberto.pdf, pp. 525, 526.
416. F. Endemann, *Judging a Ghost S.S. and Others v. Italy and the Indispensable Third Party,* in *Völkerrechtsblog*, 20 November 2025, available at: Judging a Ghost - Völkerrechtsblog
417. G. Ciliberto, *Op. cit.*, p. 526.
418. As discussed in section 1 of this chapter.

responsibility, but would also make it possible to identify potential individual criminal responsibility on the part of those who cooperate, or have cooperated, with the Libyan authorities, by characterising such conduct as aiding and abetting the commission of those crimes.[419]

First, the fact that all Member States of the European Union are parties to the Rome Statute provides a basis for the ICC to exercise jurisdiction over potential crimes committed by heads of government and other high-ranking officials of those States.[420] Second, it is necessary to assess whether such jurisdiction may be exercised, considering the principle of complementarity set out in Article 17(1)(a) of the Rome Statute, according to which the Court may intervene only where States are unwilling or unable genuinely to investigate and prosecute international crimes themselves. From this perspective, although Italy has undertaken certain actions against those responsible for migrant smuggling and human trafficking in Libya, it has nevertheless confined its efforts to the prosecution of lower-level officials, without addressing the full scale and complexity of the crimes committed against migrants. Moreover, Italy has not incorporated into its domestic legal system most of the "crimes against humanity" set out in Article 7 of the Rome Statute.[421] Moreover, according to some commentators, the refusal to authorise proceedings against certain Italian ministers amounts to a form of functional immunity, thereby triggering the possibility for the ICC to intervene.[422] Moreover, more generally speaking, a lack of willingness to cooperate in establishing criminal liability in relation to crimes against migrants could also be inferred indirectly from the Chamber of Deputies' decision to refuse authorisation to bring proceedings against the Minister of Justice, the Minister of the Interior and the Under-Secretary of State to the Prime Minister's Office in connection with the aforementioned Almasri case.[423]

Against this background, two distinct modes of liability may be identified in relation to Italian officials involved in the crimes against humanity committed by Libyan actors against migrants.

419. M. Kersten, *Calling abuses against migrants in Libya what they are: war crimes and crimes against humanity,* in *Justice in Conflict*, 17 May 2022, available at: Calling abuses against migrants in Libya what they are: war crimes and crimes against humanity | Justice in Conflict

420. G. Raimondo, *Op. cit.*, p. 21; A. Preziosi, *Can top Italian officials be prosecuted and tried by the ICC for complicity in the crimes committed against migrants in Libya?,* in *GroJIL-blog,* 4 February 2019, available at: Can top Italian officials be prosecuted and tried by the ICC for complicity in the crimes committed against migrants in Libya? | Groningen Journal of International Law, which identifies (albeit as unlikely) two additional bases on which ICC jurisdiction might be established: the Prosecutor's initiation of an investigation *proprio motu* into crimes allegedly committed by Italian officials, or a new and specific referral by the United Nations Security Council.

421. G. Raimondo, *Op. cit.*, p. 22.

422. G. Raimondo, *Op. cit.*, p. 22; A. Preziosi, *Op. cit.;* L. Masera, *Reversing the Perspective: Criminal Responsibility of Italian Authorities for Human Rights Violations in Libya?,* in *Controlling Immigration Through Criminal Law. European and Comparative Perspectives on Crimmigration* (edited by) G. L. Gatta et al., (2021, pp. 274 ff.) criticise the ease with which the principle of complementarity has been considered satisfied, arguing (at p. 276) that it would be more appropriate to submit the matter to the national criminal authorities before turning to the ICC.

423. M. Crippa, *Per la Corte Penale Internazionale l'Italia ha violato gli obblighi di cooperazione per via della mancata consegna del libico Almasri all'Aia* [The International Criminal Court finds that Italy breached its cooperation obligations by failing to surrender Libyan national Almasri to The Hague], *Op. cit.*, section 1.

### 2.3.a Article 25(3)(c) of the Rome Statute

A first possibility would be individual liability for aiding and abetting under Article 25(3)(c) of the Rome Statute. Under this provision, a person may incur criminal responsibility if, for the purpose of facilitating the commission of a crime within the Court's jurisdiction, they aid, abet or otherwise assist in its commission.[424]

According to some commentators, the provision may be interpreted as imposing a relatively low causation threshold. Since it concerns aiding and abetting the "commission or (...) attempted commission" of a crime by the principal perpetrator, it would be sufficient to establish a causal link consisting in the facilitation of a mere attempt to commit the crime, even where that attempt ultimately proves unsuccessful.[425] According to others, a "substantial contribution" to the principal crimes is required, although the contribution need not be "essential".[426] In any event, in light of the foregoing, it is submitted that the financial and technical support provided by Italy to Libya for the purpose of preventing migrants from leaving the country and facilitating their return could well constitute a substantial contribution to the crimes committed by the recognised Libyan government and by the armed groups operating within the country.[427]

More problematic is the mental element required by the provision, according to which the assistance must be provided "for the purpose of facilitating the commission of the crime". This requirement, which demands not only that the accused have knowledge of the crime but also that they possess the specific intent to facilitate its commission[428], has been criticised because it effectively requires the accomplice to share the principal perpetrator's criminal intent and, ultimately, imposes a higher degree of *mens rea* on the accomplice than on the principal offender.[429] Consequently, some commentators consider it sufficient that the accused was aware that the crime would occur in the ordinary course of events.[430] In the present case, the fact that Italian officials accepted the risk that "crimes against humanity" would be committed against migrants

424. Article 25(3) of the Rome Statute: "*In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (...) (c) for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission*";

425. C. Plomp, *Aiding and Abetting: The Responsibility of Business Leaders under the Rome Statute of the International Criminal Court,* in *the Utrecht Journal of International and European Law, Volume: 30, Issue: 79,* 19 August 2014, available at: Aiding and Abetting: The Responsibility of Business Leaders under the Rome Statute of the International Criminal Court | Utrecht Journal of International and European Law

426. G. Raimondo, *Op. cit.*, p. 20.

427. A. Preziosi, *Op. cit.*

428. G. Raimondo, *Op. cit.*, p. 20; A. Preziosi, *Op. cit.*

429. L. Masera, *Reversing the Perspective: Criminal Responsibility of Italian Authorities for Human Rights Violations in Libya?*, *Op. cit.*, p. 272, emphasises the difficulty of establishing the *mens rea* requirement, since the official statements of the Italian authorities do not indicate any intention to permit the use of Italian resources for the commission of crimes. On the contrary, measures aimed at improving the conditions of migrants in Libya would suggest an intention to prevent criminal conduct.

430. M. Kersten, *Calling abuses against migrants in Libya what they are: war crimes and crimes against humanity,* in *Justice in Conflict*, *Op. cit.*

in Libya in the ordinary course of events as a result of, and facilitated by, their assistance[431] could give rise to the form of accessory liability for aiding and abetting discussed here.[432]

### 2.3.b Article 25(3)(d) of the Rome Statute

Still within the framework of individual criminal responsibility, some commentators argue that the contribution of the Italian authorities may give rise to liability under Article 25(3)(d) of the Rome Statute, which serves as a residual mode of liability and applies to those who contribute "in any other way to the commission or attempted commission of such a crime by a group of persons acting with a common purpose". It is submitted that, as already noted, the acts of funding and operational or logistical coordination carried out by senior Italian officials would constitute a contribution that is not merely "significant", but indeed "substantial", to the commission of the crimes in question, given that the very functioning of the Libyan Coast Guard would depend upon such support.[433] It is further argued that the Italian authorities acted while "knowing the intention of the group to commit the crime", thereby satisfying the mental element required under Article 25(3)(d)(ii).[434]

The forms of shared responsibility proposed here would therefore give rise to potential individual criminal liability, which could, and should, lead the Italian actors involved to reconsider their cooperation with Libya in the field of migration.[435] However, while the possibility of relying on the previously mentioned provisions of the Rome Statute may be established at a theoretical level, it should be noted that, although their application has indeed been advocated, there remain significant practical obstacles that would considerably limit their prospects for effective use.

First, as already noted, the International Criminal Court has in fact received three separate communications under Article 15 of the Rome Statute requesting the opening of investigations not only into the conduct of Libyan actors, but also into the collaborative activities of authorities of EU Member States (and of the European Union itself), including, of course, Italy. More specifically, in June 2019, two lawyers and a group of students from *Sciences Po*[436] submitted extensive evidence of the involvement of various individuals working for the European Union and its Member States in crimes committed against migrants in Libya. They argued that the conduct of those individuals had enhanced the operational capacity of the Libyan authorities to prevent departures towards Europe, resulting in a significant increase in the detention of migrants in Libyan

431. A. Preziosi, *Op. cit.*
432. G. Raimondo, *Op. cit.*, p. 20.
433. M. Kersten, *Calling abuses against migrants in Libya what they are: war crimes and crimes against humanity,* in *Justice in Conflict, Op. cit.;* G. Raimondo, *Op. cit.*, p. 21; A. Preziosi, *Op. cit.*
434. A. Preziosi, *Op. cit.*
435. M. Kersten, *Calling abuses against migrants in Libya what they are: war crimes and crimes against humanity,* in *Justice in Conflict*, *Op. cit.*; A. De Leo, *Op. cit.*, p. 111.
436. Statewatch, *Communication to the Office of the Prosecutor of the International Criminal Court,* 2019, available at: Communication to the Office of the Prosecutor of the International Criminal Court pursuant to Article 15 of the Rome Statute.

detention centres. According to this communication[437], all heads of State and government who, at the level of the European Council, had contributed to the formulation of the European Union's migration policies should be regarded as responsible for "crimes against humanity". In addition, the Italian Prime Minister and Minister of the Interior were alleged to bear individual responsibility on the basis that they had concluded separate agreements with the Libyan authorities.[438] In fact, the 2019 communication did not identify by name the individuals in respect of whom a finding of responsibility was being sought. In September 2025, however, the same lawyers submitted an equally substantial legal brief to the ICC[439]. This time, they identified 122 individuals, ranging from senior State officials to lower-level bureaucrats, as "co-perpetrators", together with the Libyan suspects, of the deaths of 25,000 asylum seekers and of the abuses suffered by approximately 150,000 survivors who were "abducted and forcibly transferred to Libya, where they were detained, tortured, raped and enslaved".

However, not only was there no immediate response to the communication submitted to the Court[440], but there currently appears to be no indication that the Court intends to open investigations into officials of European States, or of the European Union, for complicity in international crimes.

Moreover, there would be significant practical difficulties in seeking to establish before the ICC the responsibility arising from Italy's acts of assistance. First, even assuming that the mental element is satisfied in the manner outlined above, the requisite intent would still have to be established in relation to individual government officials.[441] Moreover, the initiation of such an investigation would require significant political support at the outset, something that is unlikely to be forthcoming in a historical and political context in which the focus is, instead, on pursuing the containment of migration flows and the externalisation of migration control.[442] Finally, the decision whether to proceed ultimately rests with the Prosecutor.

At present, therefore, it would appear unlikely that this avenue will lead even to the initiation of a process aimed at holding the Italian and/or European authorities accountable.[443]

437. As noted above, this communication was followed by two further submissions from civil society organisations which, by characterising the abuses suffered by migrants in Libya as crimes against humanity, relied on the previously mentioned provisions of the Rome Statute to establish the responsibility of Italian officials for the assistance provided to the Libyan Coast Guard. UpRights et al., *Op. cit.,* pp. 160 -283.
438. L. Masera, *Reversing the Perspective: Criminal Responsibility of Italian Authorities for Human Rights Violations in Libya?, Op. cit.,* p. 273.
439. O. Shatz, J. Branco, *EU Crimes Against Humanity, The Legal Brief,* 1 September 2025, available at: https://crimesagainsthumanity.eu/en/the-legal-brief
440. R. Brito, *Op. cit.*
441. A. De Leo, *Op. cit.*, p. 111.
442. M. Riccio, *Op. cit.*, p. 27.
443. A. De Leo, *Op. cit.*, p. 111; Among the alternative solutions proposed, L. Masera, *Reversing the Perspective: Criminal Responsibility of Italian Authorities for Human Rights Violations in Libya?, Op. cit.,* pp. 77 ff., suggests turning to the national criminal justice system and characterising the conduct in question as a form of external participation in a criminal association. M. Riccio, *Op. cit.,* pp. 28 ff., instead proposes the termination or suspension of the 2017 Memorandum.

# 3. Multilevel initiatives aimed at establishing Italian responsibility for migration control from Libya

Given the difficulties outlined above in establishing actual shared responsibility on the part of Italy or Italian officials through the provisions of the Rome Statute, a range of actions have nevertheless been pursued at the national, European and international levels to challenge different and more specific forms of Italian responsibility arising from migration policies implemented in cooperation with Libya. These efforts have given rise to what have been described as "integrated legal strategies"[444], through an approach that combines judicial litigation with other accountability mechanisms.

## 3.1 National level

Before the national courts, Italy's responsibility for violations of migrants' rights arising from the outsourcing of migration control to the Libyan authorities has been challenged from a variety of procedural angles. These have included claims for damages and/or applications seeking entry visas for victims of push-backs[445], administrative challenges concerning the use of public funds to finance Libya, and a constitutional challenge relating to the 2017 Memorandum.

### 3.1.1 Claims for damages and entry visas: the constitutional right to asylum

First, victims of maritime push-back operations carried out by the Libyan Coast Guard with Italian

444. A. Pijnenburg, K. van der Pas, *Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route,* in *European Journal of Migration and Law, Volume 24, Issue 3,* 12 September 2022, pp. 401–429, available at: Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route in: European Journal of Migration and Law Volume 24 Issue 3 (2022), p. 420.

445. It may also be possible to envisage claims for damages and/or applications for the issuance of entry visas based on Italy's provision of the equipment subsequently used by the Libyan Coast Guard to carry out push-backs. To date, however, this approach does not appear to have been pursued and would likely be hindered by the difficulty of establishing both the nature of the equipment supplied and, more specifically, which patrol vessels were involved in individual push-back operations (Sea-Watch, *Episodes of Violence by the So-Called Libyan Coastguard and Other Libyan Militias at Sea*, 28 September 2025, Sea-Watch-Violence-at-sea-2016-September-2025.pdf, pp. 1-2). Between 2018 and 2021, Italy is reported to have "provided maintenance services and training for the crews of six or seven vessels owned by Libya and, in addition to the four patrol boats transferred under the 2009 agreements, to have donated a further 12 vessels formerly belonging to the Italian Financial Police and Coast Guard, as well as 20 newly built boats", according to ARCI, *Come l'Italia e l'Europa hanno finanziato le Guardie Costiere libiche: 10 anni di violazioni dei diritti umani* [How Italy and Europe Have Financed the Libyan Coast Guards: 10 years of human rights violations], November 2019, available at: https://www.arci.it/app/uploads/2019/11/IT-COME-LITALIA-E-LEUROPA-HANNO-FINANZIATO-LE-GUARDIE-COSTIERE-LIBICHE.pdf. As of 2022, according to the report monitoring the capabilities of the Libyan Coast Guard and Navy within the framework of Operation IRINI, those forces reportedly possessed a total of 26 vessels, 17 of which had been supplied or repaired by Italy. See L. Bagnoli, F. Papetti, *Come l'Italia ha costruito le forze marittime della Libia* [How Italy Built Libya's Maritime Forces], in *IrpiMedia*, 27 October 2022, available at: Come l'Italia ha costruito le forze marittime della Libia - IrpiMedia.

involvement have brought a series of legal actions against Italy pursuing a twofold objective. On the one hand, they sought compensation from Italy for violations of both the principle of non-refoulement and the right to seek asylum, which are protected under both international law and the Constitution. On the other hand, they sought the issuance of an entry visa enabling them to enter Italian territory lawfully and thereby effectively exercise their right to seek protection.

In a pioneering case brought before the Rome Tribunal in 2016, five Eritrean nationals who had been intercepted and rescued by the Italian Navy in 2009, only to be handed over to the Libyan Coast Guard and returned to Libya, obtained in 2019 not only a declaration that the push-back carried out by the Italian authorities had been unlawful, but also, as a consequence, an award of damages against the Italian government.[446] In an innovative ruling, the judgment recognised that so-called "pull-backs" violate not only the principle of non-refoulement, but also the constitutional right to asylum protected by Article 10(3) of the Italian Constitution.[447] Since this constitutional provision is directly effective, the right to asylum it recognises exists independently of both the individual's physical entry into Italian territory and any formal recognition of that right. Consequently, in order not to deprive this constitutional provision of its practical effect, the courts must recognise, and in this case did recognise, the applicants' right to "enter Italian territory for the purpose of submitting an application for international protection or special protection"[448]. Only such access, in fact, ensures the substantive and effective protection of the right to asylum, rather than a merely formal one.

This line of case law has been consolidated through several subsequent judgments[449], including several cases arising from the push-back carried out in 2018 by the Italian merchant vessel Asso 29.[450] By way of example, in June 2024, the Rome Tribunal held Italy liable for the unlawful col-

446. Rome Tribunal, Judgment No. 22917/2019, Case No. 5615/2016, available at: Sentenza n. 22917/2019 pubbl. il 28/11/2019 RG n. 5615/2016, known as the Orion Case; this judgment was upheld by the Rome Court of Appeal, Judgment of 11 January 2021, Case No. 2525/2020.

447. L. Leo, *Le politiche di esternalizzazione europee e la negazione del diritto di asilo: focus sulla sentenza n. 22917/2019 del Tribunale Civile di Roma* [European Externalisation Policies and the Denial of the Right to Asylum: Focus on Judgment No. 22917/2019 of the Civil Court of Rome], 26 February 2020, available at: Intervento-Lagos-finale-LEO_ITA.pdf.

448. ASGI, *Storica vittoria del diritto di asilo: un visto d'ingresso in Italia per richiedere protezione* [Historic Victory for the Right to Asylum: An Entry Visa to Italy for the Purpose of Seeking Protection], 30 August 2020, available at: Storica vittoria del diritto di asilo: un visto d'ingresso in Italia per richiedere protezione - Asgi.

449. Rome Tribunal, Judgment No. 1364/2024 of 3 September 2024, Case No. 25889/2023 (Asso 29 Case); Rome Tribunal, Order of 19 November 2024, Case No. 26758/2024 (Vos Triton Case), discussed in ASGI, *Caso Vos Triton: Italia ritenuta responsabile per il respingimento delegato verso la Libia. A. arriva in sicurezza a Roma* [Vos Triton Case: Italy Held Responsible for a Delegated Push-Back to Libya. A. Arrives Safely in Rome], 24 March 2025, available at: Caso Vos Triton: Italia ritenuta responsabile per il respingimento delegato verso la Libia. A. arriva in sicurezza a Roma - Asgi; Rome Court of Appeal, Judgment No. 4611/2025 of 21 July 2025, Case No. 3740/2021 (Orion Case), upholding Rome Tribunal, Judgment No. 6900/2021 of 21 April 2021, discussed in Melting Pot, *Respinti in Libia da nave militare italiana: riconosciuto risarcimento di 15.000 euro* [Migrants Returned to Libya by an Italian Military Vessel: Compensation of €15,000 Awarded], 20 August 2025, available at: Respinti in Libia da nave militare italiana: riconosciuto risarcimento di 15.000 euro – Progetto Melting Pot Europa.

450. A. Talese, *Caso Asso 29: il tribunale di Roma condanna il governo italiano per violazione del divieto di respingimento* [Asso 29 Case: Rome Tribunal Condemns the Italian Government for Violating the Prohibition of Refoulement], 30

lective push-back to which the applicant had been subjected and accordingly recognised his entitlement to damages.[451] Similarly, a further judgment delivered in August 2024, concerning another foreign national who had been on board the same merchant vessel, found his return to Libya to be unlawful and, having confirmed the active role played by the Italian authorities in the violation of international legal obligations, ordered the issuance of an entry visa in his favour.[452]

This line of case law, therefore, points to a form of Italian responsibility linked both to so-called "proxy push-backs" (carried out by the Libyan authorities under Italian coordination, as in the 2016 case) and to so-called "privatised push-backs" (carried out by private vessels acting on the instructions of the Italian authorities, as in the Asso 29 case). In both situations, the courts have recognised Italy's obligation to compensate for the harm caused and to issue entry visas to migrants returned to Libyan territory.

These judgments ordering the issuance of entry visas to migrants returned at sea gave rise to the practical question of determining the appropriate form of admission to be granted to them, and specifically whether it was possible to rely on the so-called humanitarian entry visa. Indeed, having recognised the applicants' right to enter Italy, the national courts have consistently left it to the administrative authorities to determine the specific arrangements through which that right is to be exercised.

In this regard, Article 25 of the Schengen Visa Code provides that an EU Member State may, by way of derogation from the ordinary rules, issue visas with limited territorial validity on "*humanitarian grounds, for reasons of national interest or because of international obligations*". Although, as clarified by the Court of Justice of the European Union in 2017, the issuance of such a visa is a discretionary power rather than a legal obligation[453], the visa cannot nevertheless be refused arbitrarily. Any decision in this regard must comply with constitutional and statutory principles.[454] This means that any refusal must be supported by adequate reasoning and may not be based on arbitrary criteria that would undermine the right to asylum. Most importantly, in the Italian context, it is significant that this discretionary power had already been exercised in practice through the authorisation of the so-called humanitarian corridors, beginning in 2015. Accordingly, having already granted collective visas on humanitarian grounds through those humanitarian corridors, Italy could not legitimately deny a comparable right to individual applicants.

The first concrete application of Article 25 of the Visa Code in Italian case law occurred in

July 2024, available at: Caso Asso 29: il tribunale di Roma condanna il governo italiano per violazione del divieto di respingimento - Master in Tutela internazionale dei diritti umani "Maria Rita Saulle".

451. Rome Tribunal, Judgment of 26 June 2024, Case No. 4782/2021, in which the court held that the claimant was subject to Italian jurisdiction because, while in international waters, he had been taken on board an Italian vessel.

452. Rome Tribunal, Judgment of 22 August 2024, Case No. 25889/2023. S. Fratini, *L'Italia condannata a dare subito il visto di ingresso a Harry, illegalmente respinto dal mare alla Libia* [Italy Ordered to Immediately Issue an Entry Visa to Harry, Unlawfully Returned from the Sea to Libya], 12 September 2024, available at: Governo Meloni condannato a riammettere migrante respinto in Libia; Melting Pot, *Asso 29, ha diritto al visto per chiedere asilo una persona respinta illegalmente in Libia* [Asso 29: A Person Unlawfully Returned to Libya Has the Right to a Visa to Apply for Asylum, 13 September 2024], available at: Asso 29, ha diritto al visto per chiedere asilo una persona respinta illegalmente in Libia – Progetto Melting Pot Europa.

453. CJEU, Case C-638/16 PPU (2017).

454. Rome Court of Appeal, Judgment of 11 January 2021, Case No. 2525/2020.

2021, when two Afghan nationals applied to the Ministry of Foreign Affairs and International Cooperation (MAECI) for a humanitarian visa to escape the imminent risks to their safety arising from the Taliban's return to power in Afghanistan and from their work as journalists and activists. However, the Ministry failed to issue a decision on that application. Faced with this silence, the applicants subsequently brought an urgent application before the Rome Tribunal.[455] In granting the application, the court found that the applicants were genuinely exposed to a risk and held that the issuance of a humanitarian visa was the only legal mechanism capable of averting that risk. The granting of such a visa was therefore characterised as an obligation whenever concrete exposure to threats to the applicants' safety had been established.[456]

More recently, a series of judgments delivered by the Rome Tribunal in August 2025 ordered the Italian government to issue humanitarian visas to residents of the Gaza Strip. The court reaffirmed that, in the face of Italy's "duty of active protection" towards a population exposed to risk, the discretion ordinarily enjoyed by Italian consular authorities in granting such visas is transformed into a legal duty to act, as overriding international obligations and constitutional principles come into play.[457]

It is readily apparent that the reasoning set out in the above-mentioned order is equally applicable to migrants challenging the Italian State in relation to so-called pull-backs in the Central Mediterranean. Given that such individuals are returned to Libyan detention centres, where they are exposed to serious and well-documented human rights violations, the humanitarian visa emerges as an indispensable instrument for enabling those returned to and detained in Libya to enter Italy safely, thereby escaping the numerous risks to their personal safety and physical integrity.

### 3.1.2 Other initiatives: public funding and constitutional legitimacy

As noted above, issues relating to Italy's responsibility for the violations suffered by migrants along the Central Mediterranean route have also emerged through administrative proceedings, particularly those aimed at challenging, and consequently ending, the use of Italian public funds

455. Rome Tribunal, Order of 21 December 2021, Case No. 62652/2021.

456. M. Flamini, N. Zorzella, *Asilo e protezione internazionale* [Asylum and International Protection], *in Diritto, Immigrazione e Cittadinanza*, Issue 1, March 2022, available at: Asilo e protezione internazionale, where the Tribunal stated: "The fact remains that a well-founded claim has been brought before a national court concerning a specific, imminent and present risk faced by two foreign nationals, together with a request for a measure capable of preventing that risk from materialising and averting potentially irreparable harm. It must be concluded that these circumstances fully satisfy the humanitarian grounds envisaged by the Visa Code, thereby triggering what, while constituting a mere discretion for the State authorities, becomes a mandatory course of action for a court charged with the protection of fundamental rights (...)".

457. ASGI, *Gaza: diritto all'ingresso in Italia per motivi umanitari e familiari* [Gaza: The Right to Enter Italy on Humanitarian and Family Grounds], 26 August 2025, available at: Gaza: diritto all'ingresso in Italia per motivi umanitari e familiari - Asgi, where it is noted that Italy is subject to an "enhanced obligation of means", meaning that "it is not sufficient merely to issue a visa formally; the Ministry must take all possible concrete steps to ensure safe entry, including engaging with foreign authorities, international organisations and humanitarian organisations in order to overcome logistical obstacles. Passive waiting or inaction constitutes a breach of that duty".

for migration-related activities involving Libya that entail violations of the rights of the persons concerned.

In October 2017, ASGI brought proceedings before the Rome Regional Administrative Court (TAR Lazio) challenging Decree No. 4110/47, through which the Italian government had authorised several funding measures in favour of the Libyan authorities under the framework of the Africa Fund. More specifically, the Association argued that the funds had in practice been used to refurbish four patrol vessels, supply spare parts and train the crews of the Libyan Coast Guard. This, it contended, amounted to a misuse of funds, since under the legislation establishing the Fund, the resources allocated were intended instead to promote cooperation with African countries affected by migration-related phenomena.[458] ASGI, by contrast, argued that the Italian government had unlawfully strengthened the Libyan Coast Guard's capacity to carry out interception and/or push-back operations at sea, which were already known for being conducted in a violent manner and in disregard of the human rights of the migrants concerned. However, after the claim had been dismissed at first instance, the Council of State[459] likewise rejected ASGI's appeal, holding that the Italian measures were consistent with the cooperation objectives pursued through the Africa Fund, while effectively disregarding their concrete effects in facilitating arbitrary detention and undermining the right to asylum.[460]

Also, concerning the use of public resources, in January 2021, ASGI submitted a complaint to the Public Prosecutor's Office at the Rome Court of Auditors, requesting an investigation into the management of public funds allocated to Italian NGOs operating in Libyan detention centres. According to ASGI, those funds had not been used for the benefit of the individuals detained there but had instead served to facilitate their "continued detention in inhuman conditions and under the control of the authorities managing the centres themselves".[461]

More recently, in November 2024, ASGI and several other organisations brought a further action before the Rome Regional Administrative Court (TAR Lazio), this time challenging a ministerial decree allocating additional funds for the implementation of the project entitled "*Multisectoral Support for Vulnerable Migrants in Libya*"[462], which included, among other components, a programme managed by the International Organization for Migration (IOM) to assist the Voluntary Humanitarian Return of migrants present in Libyan territory. More specifically, the applicants argued that the Italian government had committed several irregularities in granting that funding.

458. ASGI, *Depositato il ricorso di ASGI contro lo sviamento di 2,5 milioni di euro dal c.d. Fondo Africa* [Appeal Lodged Against the Diversion of €2.5 Million from the So-Called Africa Fund], 14 November 2017, available at: Depositato il ricorso contro lo sviamento dei fondi della cooperazione.

459. ASGI, *Fondo Africa sotto esame al Consiglio di Stato* [The Africa Fund Under Review by the Council of State], 19 July 2019, available at: Fondo Africa sotto esame al Consiglio di Stato - Asgi.

460. Council of State, Judgment No. 4569/2020 of 25 July 2020; ASGI, *Il Consiglio di Stato rigetta l'appello sull'impiego del "Fondo Africa"* [Council of State Rejects the Appeal Concerning the Use of the "Africa Fund"], 7 August 2020, available at: Il Consiglio di Stato rigetta l'appello sull'impiego del "Fondo Africa" - Asgi.

461. ASGI, *Esposto alla Procura Regionale presso la Corte dei Conti - Sezione Lazio* [Complaint Submitted to the Regional Prosecutor's Office at the Court of Auditors – Lazio Section], January 2021, available at: Alla Procura Regionale presso la Corte dei Conti; for a discussion of these funding measures, see sections 3.2.1 and 3.3 of Chapter 1 of this study.

462. See section 3.2, Chapter One; ALTRECONOMIA, *Op. cit.*

First, it was alleged that the government had failed to carry out an adequate prior assessment of the situation on the ground, despite being fully aware of the real risk that such returns could take place in violation of the principle of non-refoulement. Furthermore, it was argued that the government had failed to verify the existence of adequate safeguards to ensure that participation in the programme was genuinely voluntary for the migrants concerned, nor had it assessed the potential consequences of those measures in terms of compliance with its international obligations. In essence, this action likewise challenged the financial support provided by Italy for initiatives involving migrants in Libya on the grounds that insufficient consideration had been given to the impact of those measures on their fundamental rights.[463] However, the Regional Administrative Court declared the application inadmissible on the ground that it had not been notified to the IOM as an interested party and therefore did not address the substance of the alleged irregularities in any way.[464]

Issues relating to Italy's responsibility for the violations suffered by migrants along the Central Mediterranean route have also been raised at the constitutional level, specifically through requests for the Constitutional Court to assess the constitutionality of the agreements concluded between Italy and Libya. More specifically, in February 2018, acting on behalf of four Italian parliamentarians, ASGI brought proceedings before the Constitutional Court arguing that the 2017 Italy–Libya Memorandum of Understanding did not comply with Article 80 of the Constitution, since the government had failed to submit the agreement to Parliament for authorisation of its ratification through the required legislation.[465] However, the Constitutional Court declared the appeal inadmissible.[466]

Finally, a different attempt to establish Italian responsibility took place in July 2021, when a complaint was lodged with the Rome Public Prosecutor's Office concerning a shipwreck that had occurred in April 2021, in which 130 people in transit lost their lives off the Libyan coast. The complaint called for an investigation into the potentially criminal conduct of all actors involved, whether private or public, at both the national and European levels.[467]

463. ASGI, *Rimpatri volontari o espulsioni mascherate? Contestata la legittimità dei programmi di rimpatrio volontario dalla Libia* [Voluntary returns or disguised expulsions? The legitimacy of voluntary return programmes from Libya challenged], 18 December 2024, available at: Rimpatri volontari o espulsioni mascherate? Contestata la legittimità dei programmi di rimpatrio volontario dalla Libia - Asgi.
464. Lazio Regional Administrative Court (TAR Lazio), Judgment No. 12935/2024 of 21 February 2025, available at: mdp.giustizia-amministrativa.it/visualizza/?nodeRef=&schema=tar_rm&nrg=202412935&nomeFile=202503892_20.html&subDir=Provvedimenti
465. ASGI, *Mancata ratifica parlamentare del memorandum Italia-Libia: al via il ricorso alla Corte Costituzionale* [Failure to Obtain Parliamentary Ratification of the Italy–Libya Memorandum: Constitutional Court Challenge Filed], 28 February 2018, available at: Memorandum Italia-Libia : ricorso alla Corte Costituzionale.
466. Constitutional Court, Order No. 163/2018 of 25 July 2018, available at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2018&numero=163
467. ASGI, *Naufragio del 22 aprile 2021: presentato l'esposto per accertarne le responsabilità* [22 April 2021 Shipwreck: Complaint Filed to Establish Responsibility], 29 July 2021, available at: Naufragio del 22 aprile 2021: presentato l'esposto per accertarne le responsabilità - Asgi.

## 3.2 European level

Establishing Italy's direct responsibility before human rights bodies such as the European Court of Human Rights for push-backs physically carried out by the Libyan authorities is particularly difficult, since Article 1 of the European Convention on Human Rights requires that the State alleged to have violated the Convention must have exercised jurisdiction over the victim.[468] Although the *Hirsi Jamaa* judgment significantly strengthened the principle that jurisdiction is not confined to national territory, until recently the case law of the European Court of Human Rights had not yet addressed situations involving push-backs physically carried out by the authorities of a third State (namely Libya) using equipment supplied by a State party to the Convention (namely Italy).[469] For this reason, considerable expectations were placed on the case of "S.S. and Others v. Italy"[470], which arose from the push-back of 130 migrants by the Libyan Coast Guard in November 2017. In addition, by obstructing the rescue operations of the NGO vessel Sea-Watch, the Libyan authorities had contributed to the deaths of several individuals. The application alleged that Italy had violated the Convention by providing the vessel used by the Libyan Coast Guard during the push-back operation in question and had thereby contributed to the infringement of the migrants' rights to non-refoulement, to seek protection, and to life.[471] Moreover, since the Italian Maritime Rescue Coordination Centre (MRCC) had initially delegated responsibility for the interception to the Libyan authorities while simultaneously preventing other NGO vessels from intervening, some commentators argued that those instructions constituted an act of Italy capable of producing extraterritorial effects and, consequently, of establishing Italian jurisdiction and the European Court of Human Rights' competence to hear the case.[472] However, in its June 2025 judgment, the Court declared the application inadmissible on the ground that Italy had not exercised extraterritorial jurisdiction over the applicants, thereby rejecting the argument that the Convention could apply to extraterritorial situations involving the delegation of search and rescue (SAR) operations within the framework of cooperation agreements. In finding that the financial and technical support provided by Italy to the Government of National Unity (GNU) did not amount to "effective control" over the Libyan authorities, the Court missed an opportunity to establish an important precedent clarifying that the protection of human rights cannot be circumvented through policies of externalisation. Moreover, somewhat paradoxically, the Court acknowledged that Libya is "unsafe" and took note of the numerous international calls to end cooperation with the North African country yet subsequently declared itself without jurisdiction to rule on the alleged violations of fundamental human rights arising precisely from that lack of safety.[473]

468. Article 1, Obligation to Respect Human Rights: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."
469. E. Terzoli, *Op. cit.*, pp. pp. 31 ff.
470. European Court of Human Rights, Case No. 21660/18 (S.S. and Others v. Italy), available at: S.S. and Others v. Italy.
471. Forensic Oceanography, *Mare Clausum: Italy and the EU's covert operation to curb migration across the Mediterranean,* 2018, available at: FORENSIC OCEANOGRAPHY MARE CLAUSUM.
472. A. Pijnenburg, *From Italian Push-backs to Libyan Pullbacks: Is Hirsi 2.0 in the Making in Strasbourg,* in *the European Journal of Migration and Law 20, No. 4/2018,* p. 423.
473. ASGI, *Sentenza della Corte europea dei diritti dell'uomo sulla politica di "pullback" tra Italia e Libia — S.S. e altri c.*

Given the difficulties outlined above, efforts have also been made at the European level to bring to light other forms of responsibility, so that the adverse consequences of Italy's support for Libya in the management of migration flows do not go unnoticed.

In relation to the use and alleged misuse of funds, in April 2020 ASGI, ARCI and GLAN submitted a complaint to the European Court of Auditors (ECA) concerning the mismanagement of EU[474] funds channelled through the "*Support to Integrated Border and Migration Management in Libya*" (SIBMMIL) programme, discussed above.[475] However, in May 2020, the ECA informed the complainants that it would not pursue any further investigation, partly due to its limited resources.[476]

In September 2021, the European Parliament's Committee on Petitions (PETI) examined a petition submitted in 2020 by the same organisations[477] concerning the diversion and mismanagement of development funds used to equip and train the Libyan Coast Guard. More specifically, the PETI Committee agreed to keep the petition open until the European Parliament had received assurances that the funding programme was being implemented in compliance with EU law, specifically relating to the rights of migrants.[478] However, following the Commission's response of November 2022[479], which firmly rejected the allegation that the funds had been misused or mismanaged, the petition was subsequently included in the draft agenda for December 2024 among the "petitions proposed for closure in the light of the Commission's written reply or other documents received".[480]

## 3.3 International level

Among the "integrated legal strategies", one notable example of international litigation was the communication brought before the United Nations Human Rights Committee (HRC) in 2017 concerning a shipwreck that had occurred in October 2013. On that occasion, when a vessel in distress departing from Libya requested assistance, the Italian authorities directed those on board to contact the Maltese authorities instead and simultaneously instructed a nearby Italian naval vessel not

*Italia* [Judgment of the European Court of Human Rights on the Italy–Libya "Pull-Back" Policy — S.S. and Others v. Italy], 12 June 2025, available at: Sentenza della Corte europea dei diritti dell'uomo sulla politica di "pullback" tra Italia e Libia — S.S. e altri c. Italia - Asgi.

474. GLAN, ASGI, ARCI, *Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's "Support to Integrated Border and Migration Management in Libya"* (IBM) Programme, 27 April 2020, available at: GLAN-ASGI-ARCI-ECA-Libya-complaint-expert-opinion.pdf
475. See section 3.1, Chapter One.
476. GLAN, *Petition to the European Parliament Challenging the EU's Material Support for Abuses Against Migrants in Libya,* 2020, available at: https://www.asgi.it/en/sciabaca-oruka/petition-to-european-parliament-challenging-eus-material-support-to-libyan-abuses-against-migrants/
477. European Parliament, Petition No. 0655/2020, available at: Home | PETI | Committees | European Parliament
478. ASGI, *Petizione sulla mala gestione dei fondi in Libia: Il Parlamento UE accoglie le richieste di ARCI, ASGI e GLAN* [Petition on the Mismanagement of Funds in Libya: European Parliament Accepts the Requests of ARCI, ASGI and GLAN], 2 September 2021, available at: Petizione sulla mala gestione dei fondi in Libia: Il Parlamento UE accoglie le richieste di ARCI, ASGI e GLAN - Asgi. The PETI Committee also requested that the European Commission update and submit the periodic monitoring report on the SIBMMIL Programme, as well as forward the information contained in the petition to the European Court of Auditors for inclusion in its evaluation report on the EUTF.
479. European Parliament, *Communication to Members*, 15 November 2022, available at: CM_PETI.
480. European Parliament, *Draft Agenda*, 1 December 2024, available at: OJ link, p.

to intervene, thereby contributing to a serious delay in the rescue operation and to the deaths of more than 200 people.[481] Some of the victims' relatives, therefore, lodged a communication alleging, first and foremost, that the Italian authorities had failed to take appropriate measures to assist the migrants in distress at sea, thereby violating their rights under Article 6 (right to life) and Article 7 (prohibition of torture and cruel, inhuman or degrading treatment) of the International Covenant on Civil and Political Rights. The applicants further argued that the Italian State had failed to conduct an effective investigation into the circumstances surrounding the shipwreck.[482] Significantly, the Committee held that, in the circumstances of the case, Italy had exercised jurisdiction even though the vessel was in international waters and the migrants had never been on board an Italian ship or under the direct control of Italian officials. This conclusion was based on the initial contact between the survivors and the Italian authorities, the presence of a nearby Italian naval vessel, and Italy's involvement in the rescue operation. Consequently, by failing to respond directly to the distress call, Italy was found to have violated the victims' right to life.[483]

Similarly, in July 2020, ASGI and the Cairo Institute for Human Rights Studies (CIHRS) submitted a communication to the HRC on behalf of two individuals who had been returned at sea, seeking to establish the related responsibility of Italy, Malta and Libya. Although the Italian and Maltese authorities had been informed immediately of a search and rescue (SAR) incident, they waited for the arrival of the Libyan Coast Guard. Only many hours later did the Libyan patrol vessel Fezzan, itself supplied by Italy, return the survivors, including the applicants, to Libya. The communication therefore alleged multiple violations of international human rights obligations under the International Covenant on Civil and Political Rights, arising from the repeated interceptions and proxy push-backs delegated by Italy to the Libyan authorities in the Central Mediterranean, as well as from the resulting practices of arbitrary and indefinite detention in Libyan territory.[484] However, the communication was declared inadmissible on the ground that the available domestic remedies had not been exhausted, both in Italy and in Libya, as required before a complaint may be brought before the HRC.

Also before the United Nations Human Rights Committee, GLAN brought the case of "*SDG v. Italy*"[485]

481. Human Rights Committee, *A.S., D.I., O.I. and G.D. v. Italy, CCPR/C/130/D/3042/2017,* 4 November 2020, available at: Document Viewer
482. Human Rights Committee, *A.S., D.I., O.I. and G.D. v. Italy, CCPR/C/130/D/3042/2017,* 4 November 2020, available at: Document Viewer p. 2, section 1.2.
483. M. Mattirolo, A. Pasquero, *Naufragio 11 ottobre 2013: il Comitato ONU stabilisce la responsabilità dell'Italia* [11 October 2013 Shipwreck: UN Committee Finds Italy Responsible, 5 February 2021], available at: Naufragio 11 ottobre 2013: il Comitato ONU stabilisce la responsabilità dell'Italia - Asgi. The HRC also found a violation of the right to an effective remedy, noting that although Italy had initiated criminal proceedings in relation to the incident, after seven years no responsibility had yet been established and no satisfactory explanation had been provided for the delay.
484. ASGI, *ASGI e CIHRS: presentato ricorso al Comitato diritti umani ONU contro Italia, Malta e Libia* [ASGI and CIHRS Submit Communication to the UN Human Rights Committee Against Italy, Malta and Libya], 24 July 2020, available at: ASGI e CIHRS: presentato ricorso al Comitato diritti umani ONU contro Italia, Malta e Libia - Asgi. More specifically, the communication alleged violations of Article 6 (right to life), Article 7 (prohibition of torture and cruel, inhuman or degrading treatment), Article 9(1) (right to liberty), and Article 12(2) (right to leave any country).
485. *GLAN, SDG v. Italy, Communication to the HRC*, 18 December 2019, available at: https://www.academia.edu/41462159/Communication_to_the_United_Nations_Human_Rights_Committee_In_the_case_of_SDG_v_Italy

in 2019 on behalf of an individual who had departed from Libya and was intercepted at sea by the Panamanian merchant vessel Nivin as part of the practice of so-called "privatised push-backs". The Italian MRCC had, in fact, enlisted the passing merchant vessel to intercept the migrants in distress and, rather than instructing it to disembark the survivors in a place of safety, directed it to contact the Libyan Coast Guard and return them to Libya. According to GLAN, this conduct, and more broadly the intention and effect of preventing departures by sea arising from the 2017 Memorandum, contribute decisively to Italy's violation of the individual's right to leave a country, as protected by Article 12(2) of the Covenant.[486] This communication too was declared inadmissible, however, on the ground that not all available domestic remedies had been exhausted.[487]

In parallel, also at the international level, in June 2020, the *Centre Suisse pour la Défense des Droits des Migrants* (CSDM) requested that the United Nations Committee against Torture (CAT) open an inquiry into Italy's responsibility for push-backs and the resulting systematic torture suffered by migrants disembarked and detained in Libyan detention centres.[488] The World Organisation Against Torture (OMCT) subsequently joined that request, providing additional information on the dire conditions in Libyan detention facilities. The two organisations later submitted a joint follow-up communication on relevant developments along the Mediterranean migration route, drawing particular attention to the repeated refusals by Italy (and Malta) to allow rescued persons to disembark at places of safety. According to the organisations, this demonstrated a systematic practice of cruel, inhuman and degrading treatment of migrants by Italy, or at the very least Italy's contribution to such treatment.[489]

## 4. The illegitimacy of the Libyan SAR authority and Italy's residual obligations

The control of search and rescue operations in the Central Mediterranean underwent a decisive transformation in 2017 with the establishment of the Libyan Search and Rescue (SAR) zone.[490] In December of that year, the Libyan Port Authority notified the International Maritime Organization (IMO) of its SAR region[491], which became officially operational in June 2018, thanks in part to

486. E. McDonnell, *Challenging Externalisation Through the Lens of the Human Right to Leave,* in *Netherlands International Law Review (2024) 71:119–154,* 25 March 2024, available at: Challenging Externalisation Through the Lens of the Human Right to Leave | Netherlands International Law Review, p. 137.

487. E. McDonnell, *Op. cit.,* p. 138.

488. CSDM, *Request for a United Nations Inquiry into Italy's Role in the Systematic Torture of Migrants Returned to Libya, Press Release,* 26 June 2020, available at: Press-Release-CSDM-25-June-2020.pdf

489. CSDM, OMCT, *Further Information Submitted under Article 20 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,* 16 November 2020, available at: https://www.omct.org/files/2020/11/26175/uncat_inquiry___closed_ports_16.11.2020_1.pdf

490. A Search and Rescue (SAR) zone is an internationally designated maritime area within which a State assumes responsibility for coordinating search and rescue operations for persons in distress at sea. Governed by the 1979 Hamburg SAR Convention and the SOLAS (Safety of Life at Sea) Convention, it extends beyond territorial waters (12 nautical miles) into international waters, where the State concerned is required to provide round-the-clock search and rescue coordination services through a Maritime Rescue Coordination Centre (MRCC).

491. European Parliament, *Answer given by Mr Avramopoulos on behalf of the European Commission,* 4 September 2018,

European support.[492] Before this development, rescue operations involving migrant vessels in the Mediterranean had been carried out by the Italian State and humanitarian organisations. The new SAR zone, however, gave the Libyan Coast Guard the authority to instruct vessels, whether commercial or humanitarian, to return rescued individuals to the country from which they had departed[493], as well as the primary responsibility and corresponding duty to conduct rescue operations involving vessels in distress within its newly designated area of competence. However, this designation raises serious concerns. As highlighted by the request submitted by several organisations to the IMO seeking the withdrawal of recognition of the Libyan SAR zone[494], Libya is, first and foremost, not a safe country and does not provide safe ports for the disembarkation of migrants, owing both to the ongoing armed conflict and, more specifically, to the well-documented violence in detention centres and against the migrant population more generally. Moreover, the Libyan Coast Guard is said to be wholly inadequate to carry out search and rescue operations, to such an extent that the North African country can scarcely be regarded as a legitimate authority for the performance of such activities. Among the indicators of this inadequacy are reports that the Libyan MRCC often fails to respond to distress calls, that its personnel includes individuals identified as human traffickers, and that there have been numerous reports of obstruction and ill-treatment by the Libyan Coast Guard during what are described as rescue operations or, more accurately, the interception of vessels carrying migrants departing from Libya itself.[495]

Italian case law has repeatedly confirmed this dual reality: the inadequacy of the Libyan Coast Guard as a SAR operator and of Libya itself as a "safe" port to which intercepted migrants may be returned. As regards the first aspect, in June 2024 the Court of Crotone[496], in setting aside the detention of the vessel *Humanity 1*—which had been accused of obstructing the Libyan authorities during the rescue of 77 people off the coast of Libya—held that the activities of the Libyan Coast Guard could not be classified as rescue operations, given the presence of armed personnel on board the patrol vessel and its failure to identify a place of safety.[497] The appellate court[498] confirmed that

available at: Parliamentary question | Answer to Question No. P-003665/18 | P-003665/2018(ASW) | European Parliament

492. Euronews, *La Libia crea la sua zona SAR e notifica l'IMO (con il sostegno UE)* [Libya creates its own SAR zone and notifies the IMO (with EU support)], 9 July 2018, available at: La Libia crea la sua zona SAR e notifica l'IMO (con il sostegno UE) | Euronews.

493. I. Urbina and J. Galvin, *L'organizzazione marittima dell'ONU sta facilitando i crimini nel Mediterraneo?* [Is the UN maritime organization facilitating crimes in the Mediterranean?], 27 April 2022, available at: L'organizzazione marittima dell'ONU sta facilitando i crimini nel Mediterraneo? - IrpiMedia.

494. ASGI, *Necessario revocare la zona SAR libica* [Revocation of the Libyan SAR zone is necessary], 6 July 2020, available at: Necessario revocare la zona SAR libica - Asgi.

495. As discussed in Chapter One, Section 2.2.

496. Court of Crotone, judgment of 26 June 2024, Case No. 348/2024.

497. ASGI, *Le autorità libiche non possono mai legittimamente coordinare i soccorsi in mare* [The Libyan authorities can never lawfully coordinate search and rescue operations at sea], 1 July 2025, available at: Le autorità libiche non possono mai legittimamente coordinare i soccorsi in mare - Asgi, which notes that the Court held that "in the absence of specific circumstances indicating otherwise, the intervention carried out by the Libyan Coast Guard could not be regarded as a lawful maritime rescue operation due to the complete lack of guarantees that the shipwrecked persons would be taken to a place of safety".

498. Catanzaro Court of Appeal, Judgment No. 603/2025 of 17 June 2025, Case No. 1253/2024, available at:

the Libyan authorities can never be regarded as legitimate actors in SAR operations, both because they operate in a manner contrary to humanitarian principles and because they are structurally incapable of ensuring the designation of a place of safety as the outcome of rescue operations.
This principle was also reaffirmed in an amicus curiae submission filed in December 2024 in constitutional proceedings challenging the legitimacy of the provision requiring rescue vessels operating in international waters to comply with orders issued by the Libyan authorities. In that submission, Human Rights Watch argued that "the overwhelming evidence of the abusive treatment of migrants by the Libyan Coast Guard demonstrates that it is impossible to regard it as a reliable actor in SAR operations and to vest it with the authority to issue binding instructions to rescue vessels. This conclusion is borne out by evidence of collusion between units of the Libyan Coast Guard and other official security authorities, on the one hand, and trafficking groups, on the other," and, consequently, "their operations do not qualify as rescue operations under the applicable rules of international maritime law."[499]
The impossibility of classifying Libya as a safe port of disembarkation had already been established in the case known as Vos Thalassa, concerning the rescue in July 2018 of 67 migrants aboard a vessel on the verge of sinking in the Libyan SAR zone by the Italian tugboat of the same name. The Italian authorities had informed the GCL of this situation, and the GCL had ordered the ship to head for the Libyan coast to disembark the shipwrecked migrants: upon realising the change of course, two migrants reacted in an attempt to prevent this push-back and, once in Italy, were investigated for the offences of violence or threats against a public official, aggravated resistance to a public official and aggravated aiding and abetting of irregular immigration.[500] The Preliminary Investigations Judge (GIP) of Trapani subsequently acquitted them on the grounds of self-defence[501], finding it indisputable that there had been a violation—not only in respect of the two identified individuals, but also of all the others involved—of "their right to be taken to a place of safety", and that the order issued by the Libyan authorities to the Vos Thalassa[502] was contrary to the Hamburg Convention[503]. Accordingly, the defence was recognised on the basis that the two defendants had acted to protect their right to non-refoulement. [504] Following the overtur-

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499. Human Rights Watch, *Amicus Curiae Submission of Human Rights Watch to the Constitutional Court*, 3 December 2024, available at: Amicus Curiae Submission of Human Rights Watch to the Constitutional Court | Human Rights Watch
500. L. Masera, *La Cassazione riconosce la legittima difesa ai migranti che si erano opposti al respingimento verso la Libia* [The Court of Cassation recognises self-defence for migrants who opposed being returned to Libya], in *Sistema Penale*, 28 July 2022, available at: L. Masera | La Cassazione riconosce la legittima difesa ai migranti che si erano opposti al respingimento verso la Libia | Sistema Penale | SP.
501. Court of Trapani, judgment of 23 May 2019, available at: 4095-sentenza-gip-trapani-con-omissis.pdf
502. ASGI, *Vos Thalassa, il Tribunale assolve i migranti: difesero il loro diritto alla vita* [Vos Thalassa: Court acquits migrants who defended their right to life], 13 June 2019, available at: Vos Thalassa, il Tribunale assolve i migranti: difesero il loro diritto alla vita - Asgi.
503. "International Convention on Maritime Search and Rescue" (SAR Convention)
504. L. Masera, *La Cassazione riconosce la legittima difesa ai migranti che si erano opposti al respingimento verso la Libia* [The Court of Cassation recognises self-defence for migrants who opposed being returned to Libya], *Op. cit.*

ning of the judgment by the Court of Appeal[505], the Court of Cassation[506] ultimately quashed the second-instance conviction, "holding that the offence of resisting a public official is justified where a migrant rescued on the high seas, invoking the right not to be returned to an unsafe place, opposes being handed back to the Libyan State".[507] Accordingly, for present purposes, in finding the migrants' conduct justified, the Court recognised that their return to Libya would have exposed them to danger, namely the risk that they would be subjected there to torture or to inhuman or degrading treatment. It follows that Libya cannot be regarded as a safe country for the disembarkation of migrants rescued at sea, a conclusion that the Court also stated expressly.[508]

Even more recent criminal case law, in a judgment delivered in January 2024[509] concerning the case known as "Asso 28", held that handing migrants over to the Tripoli coastguard constitutes a criminal offence[510] precisely because Libya cannot be regarded as a place of safety.

It is therefore clear that Libya cannot, under any circumstances, be regarded as a legitimate operator within a SAR zone. That being said, it is essential to recall that international maritime[511] law first and foremost establishes a legal duty to rescue any person in distress at sea, including outside a State's own area of responsibility[512]; moreover, it provides that where a State is unable or unwilling to carry out rescue operations, neighbouring States have a legal duty to intervene in its stead. For

505. Court of Appeal of Palermo, Judgment No. 1525/2020 of 3 June 2020, Case No. 3310/2019, available at: cor app palermo no leg difesa anonima.pdf - Google Drive, which held that the migrants had voluntarily exposed themselves to the danger and that issues relating to human rights should be resolved through intergovernmental political channels.
506. Court of Cassation, Judgment No. 15869/2021 of 16 December 2021, Case No. 19708/2021, available at: 1658926119_masera-cass-vosthalassa-legittima-difesa.pdf.
507. G. Faillaci, *Caso «Vos Thalassa»: configurabile la legittima difesa a favore dei migranti che si oppongono alla riconsegna alla Libia* [Vos Thalassa case: self-defence may be invoked by migrants who oppose being returned to Libya], in NJus.it, 26 April 2022, available at: Caso «Vos Thalassa»: configurabile la legittima difesa a favore dei migranti che si oppongono alla riconsegna alla Libia | NJus.it.
508. Court of Cassation, Judgment No. 15869/2021 of 16 December 2021, Case No. 19708/2021, pp. 22, 23. A. A. Hayo, *PRINCIPIO DI NON REFOULEMENT E LEGITTIMA DIFESA* [PRINCIPLE OF NON-REFOULEMENT AND SELF-DEFENSE], in *Rivista Penale Diritto e Procedura*, available at: penaledp.it/principio-di-non-refoulement-e-legittima-difesa/?print-posts=pdf, pp. 10–11, which emphasises that "the judicial approach, which has declared Libyan territory unsafe, stands in contrast to the political approach, consisting in recognising the competence of the Libyan authorities to implement and direct rescue procedures within the maritime area entrusted to them, thereby resulting in the implicit recognition of the safety of 'Libyan sovereignty' contained in the SAR Convention."
509. Court of Cassation, Fifth Criminal Division, Judgment No. 4557/2024 of 1 January 2024 (appeal against the judgment of the Court of Appeal of Naples of 10 November 2022).
510. A. R. COVELLA, *Corte di Cassazione: la Libia non è un porto sicuro* [Court of Cassation: Libya Is Not a Safe Port], 28 February 2024, available at: Court of Cassation: Libya Is Not a Safe Port – Progetto Melting Pot Europa, which notes that such conduct constitutes a breach of the Italian Code of Navigation provisions concerning the "abandonment of minors or incapacitated persons in a situation of danger" and the "arbitrary disembarkation and abandonment of persons".
511. United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention on Maritime Search and Rescue (also known as the "SAR Convention").
512. ASGI, *ASGI: è un dovere giuridico soccorrere chiunque sia in pericolo in mare, anche se fuori dalla nostra area di intervento* [ASGI: it is a legal duty to rescue anyone in danger at sea, even outside our area of responsibility], 13 March 2023, available at: ASGI : è un dovere giuridico soccorrere chiunque sia in pericolo in mare, anche se fuori dalla nostra area di intervento - Asgi.

present purposes, this means that Italy retains responsibility for ensuring the rescue of, and subsequent disembarkation in a place of safety for, persons in distress within the Libyan SAR zone, including, where necessary, by assuming coordination of non-Italian vessels operating in the area to fulfil that obligation.[513] This is, for example, what should have occurred following a shipwreck reported in March 2023, when the Libyan Coast Guard had already stated that it was unable to assist a vessel in distress within the Libyan SAR zone: Italy could not, as it in fact did, disclaim responsibility because the rescue operation fell outside its area of competence. In practice, although SAR zones are not intended to be exclusive, the establishment of a Libyan area of responsibility has been used by the Italian authorities as a pretext to omit or delay assistance to vessels in distress outside Italian territorial waters, conduct that is undeniably in breach of international obligations.[514]

Nor is this the only concern. Formally, beginning with the so-called "Code of Conduct" for NGOs engaged in maritime rescue operations[515], introduced in 2017 by the then Minister of the Interior Minniti, the Italian government has, in open contravention of its international obligations, established a practice of criminalising rescue at sea which has now evolved into a form of "systematic obstruction of NGO search and rescue (SAR) operations by the Italian State"[516], as is readily apparent from the continued arbitrary detention of NGO vessels under the so-called Piantedosi Decree adopted in January 2023.[517]

This criminalisation is evident in two significant judicial cases, both arising from rescue operations at sea carried out by foreign NGOs, which also gave rise to important judicial findings concerning the unsafe nature of Libya.

The first is known as the "Iuventa case"[518], named after the vessel operated by a German NGO that was seized in August 2017 because it was necessary to prevent further criminal conduct by members of the crew, who were formally charged by the Public Prosecutor's Office of Trapani in January 2021 with facilitating irregular entry in connection with rescue operations carried out between September 2016 and October 2017.[519] After proceedings lasting approximately seven

513. Court of Rome, judgment of 19 November 2024, Case No. 26758/2024 (Vos Triton case).

514. ASGI, *Necessario revocare la zona SAR libica* [Revocation of the Libyan SAR zone is necessary], *Op. cit.*

515. *CODICE DI CONDOTTA PER LE ONG IMPEGNATE NELLE OPERAZIONI DI SALVATAGGIO DEI MIGRANTI IN MARE* [CODE OF CONDUCT FOR NGOs INVOLVED IN RESCUE OPERATIONS FOR MIGRANTS AT SEA], available at: codice_condotta_ong.pdf

516. ASGI, *Dichiarazione congiunta: ostacolare le imbarcazioni di ricerca e soccorso significa causare centinaia di morti in mare* [Joint statement: obstructing search and rescue vessels means causing hundreds of deaths at sea], 17 July 2025, available at: Dichiarazione congiunta: ostacolare le imbarcazioni di ricerca e soccorso significa causare centinaia di morti in mare - Asgi.

517. Decree-Law No. 1 of 2023, discussed in L. Masera, *Il d.l. Piantedosi sulle operazioni di soccorso in mare: l'ennesimo tentativo di impedire ciò che il diritto internazionale impone e il problema della depenalizzazione come fuga dalla giurisdizione* [The Piantedosi Decree-Law on maritime rescue operations: yet another attempt to prevent what international law requires and the problem of decriminalisation as an escape from judicial scrutiny], in *Sistema Penale*, 13 February 2023, available at: |L. Masera | Il d.l. Piantedosi sulle operazioni di soccorso in mare | Sistema Penale | SP.

518. On this issue, see in particular Amnesty International, , *ITALIA - UNA CHINA PERICOLOSA PER I DIRITTI UMANI: IL CASO IUVENTA* [ITALY– A DANGEROUS SLIDE FOR HUMAN RIGHTS: THE IUVENTA CASE, 2021], available at: Report

519. Amnesty International, *ITALIA - UNA CHINA PERICOLOSA PER I DIRITTI UMANI: IL CASO IUVENTA* [ITALY – A

years, in April 2024, the Court of Trapani granted the Public Prosecutor's request for dismissal and declared that there were no grounds to proceed because "the alleged offence did not occur".[520] The lengthy criminal proceedings thus demonstrated, first and foremost, the criminalisation of those engaged in SAR activities, a practice inconsistent with the fundamental principles of the law of the sea and, consequently, indicative of the Italian government's willingness to disregard the obligations incumbent upon States and shipmasters to protect human life at sea and subsequently ensure access to international protection.[521]

Moreover, as noted above, the judgment is also relevant to the assessment of Libya as an unsafe country for migrants. The judgment states that "Flight from torture, arbitrary detention, sexual violence, abuse, sexual and labour exploitation, and deprivation of basic human necessities (food and medical care) clearly demonstrates the necessity of escaping an immediate danger of serious harm to the person arising from continued confinement in Libyan detention centres for transit migrants. In this context, any conduct materially capable of facilitating the entry into Italy of migrants lacking lawful authorisation to enter would in fact be necessary, insofar as it serves to protect the fundamental interests of the human person and to remove transit migrants in Libya from the inhuman conditions prevailing in detention centres. All the more so since the risks associated with remaining in Libya are correspondingly recognised (...) in the right not to be returned ('non-refoulement') to an 'unsafe place', such as Libya at the time of the events, having regard to the reasonable risk of being subjected to torture or inhuman or degrading treatment, as well as threats to life, liberty and physical and psychological integrity".[522]

The complex case known as "Open Arms"[523], involving a vessel seized following rescue operations in March 2018 in the context of an investigation alleging offences of criminal association and facilitation of irregular immigration by the captain and certain other crew members, also forms

DANGEROUS SLIDE FOR HUMAN RIGHTS: THE IUVENTA CASE], *Op. cit.*, p. 6, notes that formal charges were brought against 16 individuals who had served as crew members, captains, or team leaders on three NGO rescue vessels during that period: four of the defendants had worked aboard the Iuventa, which at the time was operated by the German NGO Jugend Rettet; six aboard the Vos Prudence, operated by Médecins Sans Frontières; and eleven aboard the Vos Hestia, operated by Save the Children.

520. Court of Trapani, Preliminary Hearing Judge (GUP), Judgment No. 126/2024 of 19 July 2024, available at: GUP-Trapani-nlp-iuventa-ong.pdf. Moreover, the vessel in question was returned to the organisation in 2024 in a completely destroyed condition, as reported in Melting Pot, *Caso Iuventa: la nave di soccorso distrutta in custodia. Chi si assume la responsabilità?* [Iuventa case: the rescue vessel destroyed while in custody. Who will take responsibility?], 13 December 2024, available at: Caso Iuventa: la nave di soccorso distrutta in custodia. Chi si assume la responsabilità? – Progetto Melting Pot Europa.

521. Amnesty International, *ITALIA - UNA CHINA PERICOLOSA PER I DIRITTI UMANI: IL CASO IUVENTA* [ITALY – A DANGEROUS SLIDE FOR HUMAN RIGHTS*: THE IUVENTA CASE]*, *Op. cit.*, p. 10.

522. Court of Trapani, Preliminary Hearing Judge (GUP), Judgment No. 126/2024 of 19 July 2024, p. 487; Melting Pot, *Perché il processo di Trapani contro Iuventa e le altre Ong è sempre stato un teorema* [Why the Trapani trial against Iuventa and the other NGOs has always been a fabricated case], 24 May 2024, available at: Perché il processo di Trapani contro Iuventa e le altre Ong è sempre stato un teorema – Progetto Melting Pot Europa.

523. On this issue, see in particular F. De Vittor, *Soccorso in mare e favoreggiamento dell'immigrazione irregolare: sequestro e dissequestro della nave Open Arms* [Sea rescue and facilitation of irregular immigration: seizure and release of the Open Arms vessel], in *Diritti umani e diritto internazionale*, Vol. 12, 2018, pp. 443–452, available at: De Vittor - Osservatorio per SIDI (def.)

part of the debate surrounding the existence of a "crime of solidarity". Specifically, following the disembarkation of the 218 rescued migrants, the Public Prosecutor of Catania requested the preventive seizure of the vessel in question, a measure that was subsequently confirmed by the validating order of the Court.[524] However, following the Preliminary Investigations Judge (GIP) of Catania's declaration of lack of jurisdiction, the Preliminary Investigations Judge of Ragusa intervened and ordered the release of the vessel[525], recognising that Open Arms had acted lawfully in refusing to withdraw from the rescue operations in favour of the Libyan Coast Guard and to cooperate with it, since such cooperation would have exposed the migrants to an immediate risk of serious harm.[526] In concluding that the defence of necessity was applicable, the Preliminary Investigations Judge first recognised that rescue operations "do not end with the mere recovery of migrants at sea, but must be completed and concluded with disembarkation in a place of safety (POS, place of safety)", which, when interpreted in conjunction with the Geneva Convention relating to the Status of Refugees, was defined as a place where there is no serious risk that a person may be subjected to death, torture, or inhuman or degrading treatment.[527] Having established this, he went on to assess whether Libya could in fact be regarded as a place of safety, concluding that "there is no evidence on the record that (...) Libya, or any part of its territory, has achieved an acceptable system for the protection of migrants rescued at sea and returned there through the establishment of suitable places of safety (POS)."[528]

Subsequently, in dismissing the appeal lodged by the Public Prosecutor's Office against the release of the vessel, the Review Court of Ragusa[529] likewise confirmed that "the existence of a place of safety in Libya, as defined by international law (...), is at present contradicted by well-known facts, referred to even in official documents of the Senate of the Republic", owing to the continuing political instability and conflict prevailing in Libyan territory.[530] For this reason, the judge held

524. District Public Prosecutor's Office at the Court of Catania, *Richiesta di convalida e di emissione di decreto di sequestro preventivo* [Request for validation and issuance of a preventive seizure order], 18 March 2018, available at: richiesta_convalida_emissione_decreto_sequestro_preventivo-pdf.pdf. In F. De Vittor, *Soccorso in mare e favoreggiamento dell'immigrazione irregolare: sequestro e dissequestro della nave Open Arms* [Sea rescue and facilitation of irregular immigration: seizure and release of the Open Arms vessel], *Op. cit.*, p. 2, we read that "the jurisdiction of the Public Prosecutor's Office of Catania, rather than that of Ragusa, which would ordinarily have jurisdiction over the Pozzallo area, was said to be justified by the existence of the offence of criminal association; however, that offence was excluded by the Preliminary Investigations Judge of Catania, who, while confirming the seizure, declared a lack of jurisdiction in favour of the Preliminary Investigations Judge of Ragusa."

525. Court of Ragusa, Office of the Preliminary Investigations Judge, Order rejecting the request for a preventive seizure order, 16 April 2018, available at: decreto_rigetto_sequestro_preventivo_tribunale_ragusa_gip.pdf.

526. F. De Vittor, *Soccorso in mare e favoreggiamento dell'immigrazione irregolare: sequestro e dissequestro della nave Open Arms* [Sea rescue and facilitation of irregular immigration: seizure and release of the Open Arms vessel], *Op. cit.*, p. 5.

527. Court of Ragusa, Office of the Preliminary Investigations Judge, Order rejecting the request for a preventive seizure order, 16 April 2018, p. 13.

528. Court of Ragusa, Office of the Preliminary Investigations Judge, Order rejecting the request for a preventive seizure order, 16 April 2018, p. 14.

529. Review Court of Ragusa, Order confirming the decision of the Preliminary Investigations Judge, 11 May 2018, available at: file.

530. Review Court of Ragusa, Order confirming the decision of the Preliminary Investigations Judge, 11 May 2018, p. 4

that the defence of necessity was established not only because the rescued persons were at risk of drowning, but also considering the dangers to which they would have been exposed had they been returned to Libyan territory.[531]

Moreover, the continuing existence of States' rescue obligations until a place of safety has been identified and the rescued persons have actually been disembarked was confirmed in the judgment in which the Court of Cassation ruled on the so-called "Rakete case", named after the captain of the rescue vessel *Sea-Watch 3* who, in June 2019, contrary to an express prohibition on entering Italian territorial waters, brought a vessel carrying migrants she had rescued into the port of Lampedusa and was subsequently arrested on charges of resisting a public official.[532] The Preliminary Investigations Judge of Agrigento, in declining to validate the arrest, had already stated that the duty to render assistance "does not end with the mere taking aboard of shipwrecked persons, but extends to their transport to the nearest place of safety."[533] In January 2020, the Court of Cassation[534] dismissed the appeal lodged by the Public Prosecutor of Agrigento against the refusal to validate the arrest[535], holding that the captain's arrest had been unlawful because she had acted in fulfilment of her duty to render assistance at sea. At the same time, it confirmed that this obligation does not end with the recovery of shipwrecked persons, but includes the duty to disembark them in a place of safety[536], thereby clearly indicating that Libya could not be regarded as satisfying that requirement.

531. ASGI, *Atti del seminario Profili problematici della normativa e delle prassi in tema di contrasto al soccorso in mare di navi private (prima parte)* [Proceedings of the seminar Problematic aspects of legislation and practices concerning the obstruction of maritime rescue operations by private vessels (Part One], 6 June 2025, available at: Atti del seminario Profili problematici della normativa e delle prassi in tema di contrasto al soccorso in mare di navi private (prima parte).
532. As well as with resistance and violence against a warship, as noted in S. Zirulia, *La Cassazione sul caso Sea Watch: le motivazioni sull'illegittimità dell'arresto di Carola Rackete* [The Court of Cassation in the Sea-Watch case: the reasoning behind the unlawfulness of Carola Rackete's arrest], in *Sistema Penale*, 24 February 2020, available at: Cassazione Sea Watch: illegittimo l'arresto di Carola Rackete | Sistema Penale | SP. This second charge arose from her repeated failure to comply with orders to halt her course towards the port and from having ultimately struck a vessel of the Financial Police (Guardia di Finanza) during the docking manoeuvre.
533. Court of Agrigento, Office of the Preliminary Investigations Judge (GIP), Order of 2 July 2019, RGNR No. 3169/2019, RG GIP No. 2591/2019, available at: Rachete-Carola-Ordinanza-sulla-richiesta-di-convalida-di-arresto.pdf
534. Court of Cassation, Judgment No. 6626/2020 of 16 January 2020, available at: cassazione-su-rackete.pdf.
535. S. Zirulia, *Op. cit.*
536. Court of Cassation, Judgment No. Court of Cassation, Judgment No. 6626/2020 of 16 January 2020, p. 11, paragraph 9 of the judgment: "nor could it be maintained (...) that the rescue operation had been completed merely by taking the shipwrecked persons on board the vessel. The duty to render assistance laid down by the International Convention on Maritime Search and Rescue (SAR Convention) of Hamburg does not end with the act of removing shipwrecked persons from the danger of being lost at sea, but also entails the ancillary and consequential obligation to disembark them in a place of safety (so-called 'place of safety')." Moreover, the Court referred to the definition of a place of safety contained in the 2004 Guidelines to the SAR Convention, according to which "a place of safety is a location where rescue operations are considered to terminate; where the survivors' safety or life is no longer under threat; where their basic human needs (such as food, shelter and medical care) can be met; and from which transportation can be arranged for the survivors to their next or final destination."

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