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The creation of the “Fortress Europe” and its human rights implications: the technological management of migratory flows between Italy, Libya and the EU

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ABSTRACT

Over the past twenty years, one of the most challenging issues occupying the EU's political agenda has been the management of large migratory flows stemming from Libya, which has historically been considered one of the main gateways from the MENA region to reach the EU.

In response to the most recent refugee crisis, there have been essentially two strategies through which Italy and the EU have addressed increased migrants' arrivals on their shores: externalization practices that outsource the management of migration to countries of departure, such as Libya, and the deployment of new sophisticated technologies for border control, which have led to the creation of the so-called "Fortress Europe".

Nevertheless, despite the increased surveillance of the EU's external borders meets legitimate objectives such as preventing deaths at sea, ensuring the identification of third-country nationals, and protecting national security, the deployment of such technologies may still have some negative implications on migrants' human rights and individual freedoms.

Hence, by focusing on the management of migratory flows between Italy, Libya, and the EU, this thesis aims to assess the legal, practical, and humanitarian implications, for migrants, of new advanced technologies for border control.

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LIST OF ABBREVIATIONS

AFSJ Area of Freedom, Security and Justice

CPIP Common Pre-frontier Intelligence Picture

CPT Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CSDP Common Security and Defense Policy

DCIM Directorate to Combat Illegal Immigration

EBCGA European Border and Coast Guard Agency

EES Entry/Exit System

ECHR European Convention on Human Rights

ECRIS-TCN European Criminal Records Information System for Third-Country Nationals

EMSA European Maritime Safety Agency

ESP European Situational Picture

ETIAS European Travel Information and Authorization System

EU European Union

Eu-LISA European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security, and Justice

EURODAC European Asylum Dactyloscopy Database

EUROJUST European Union Agency for Criminal Justice Cooperation

EUROPOL European Union Agency for Law Enforcement Cooperation

EUROSUR European Union Border Surveillance System

FRONTEX see EBCGA

GDPR General Data Protection Regulation

GNA Government of National Accord

IBM Integrated Border Management

INTERPOL International Criminal Police Organization

IOM International Organization for Migration

IT Information Technology

LCG Libyan Coast Guard

LIBE Committee European Parliament's Committee on Civil Liberties, Justice, and Home Affairs

LNA Libyan National Army

MAS System Multipurpose Aerial Surveillance system

MENA Middle East and North Africa

MoU Memorandum of Understanding

MRCC(s) Maritime Rescue Coordination Centre(s)

MS(s) Member State(s)

NCC(s) National Coordination Centre(s)

NGO(s) Non-Governmental Organization(s)

NSP(s) National Situational Picture(s)

OHCHR Office of the High Commissioner for Human Rights

SAR Search and Rescue

SAR Convention International Convention on Maritime Search and Rescue

SatCen European Union Satellite Centre

SBC Schengen Borders Code

SIS (now SIS II) Schengen Information System

SOLAS Convention International Convention for the Safety of Life at Sea

UAV(s) Unmanned Aerial Vehicle(s)

UN United Nations

UNHCR United Nations High Commissioner for Refugees

UNSMIL United Nations Support Mission in Libya

VIS Visa Information System

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INTRODUCTION

Over the past twenty years, one of the most challenging issues occupying the EU's political agenda has been the management of large migratory flows across the Central Mediterranean route.

This study does not aim to address the migration management issue in its entirety, but rather to examine two of its crucial aspects, often in conflict with each other: on the one hand, the moral duty to safeguard migrants' human rights by ensuring proper access to the EU asylum procedures; while on the other hand, the necessity of EU Member States, and particularly those at its external borders, to prevent uncontrolled migration from third countries, and particularly from the MENA region, because of the perceived social, economic and political repercussions it yields.

In this sense, it seems particularly relevant to consider the migratory flows stemming from Libya, one of the main countries of departure for third-country nationals seeking to enter the EU by undertaking a dangerous journey that, unfortunately, often ends in tragic deaths at sea or forced repatriations to Libya.

Indeed, due to its strategic position, and especially in the years of the recent refugee crisis, Libya has historically been considered one of the main gateways to reach Europe¹.

There have been essentially two strategies through which Italy, supported by the EU, has dealt with the large migratory flows triggered by the most recent refugee crisis: externalization of border control and increased surveillance of the EU's external borders.

The former refers to those practices aiming to outsource migration management and correlated responsibilities, such as border control and asylum procedures, towards countries of departure, such as Libya, where, however, there is no central authority and migrants are particularly vulnerable. Such practices, endorsed by agreements undertaken by Italy, Libya and the EU, involve the provision of financial, logistical, and technical support to the Libyan Coast Guard (LCG) which,

¹ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Istituto Affari Internazionali*, p. 82.

nevertheless, cannot be considered a legitimate national authority, but rather a militia under the control of a government that lacks democratic legitimacy. Cooperation with the Libyan Coast Guard not only requires the provision of significant resources, but it is also indirectly contributing to well-documented violations of migrants' human rights.

By contrast, increased surveillance of the EU's external borders refers to the deployment of border control technologies to prevent maritime fatalities and ensuring the appropriate identification of third-country nationals entering the EU. Such border control technologies can be categorized into two different sets: on the one hand, aerial technologies, also defined as "technologies of visions", such as drones and aircrafts; while on the other, large IT systems such as SIS (now SIS II), VIS, and EURODAC.

However, according to numerous human rights advocates, the introduction of these sophisticated technologies for border control has led to a progressive militarization of the EU's external borders, thus contributing to the creation of the so-called "Fortress Europe".

In fact, although the employment of such technologies is usually justified to satisfy humanitarian purposes such as preventing deaths at sea, ensuring the accurate identification of third-country nationals and the proper assessment of asylum requests, these can often lead to violations of the human rights of migrants, as they are *de facto* impeding access to the gates of the European "cyber-Fortress".

Hence, by focusing on the management of migratory flows between Italy, Libya, and the EU, this study aims to assess the impact of border control technologies on migrants' human rights, among whom there are several asylum seekers who, according to international law, should be entitled to greater individual protection. To this end, the present work seeks to address the following research question: what are the geopolitical (ethical, legal, and humanitarian) implications of border control technologies on third-country nationals seeking to access the "Fortress Europe"?

In order to give a comprehensive answer to this complex question, the first chapter starts by providing an overview of the relationship between Italy and Libya, focusing on the fundamental passages that seem to be crucial to understand the migration management issue.

Indeed, due to their geographical proximity and common economic interests, Italy and Libya have always shared a privileged relationship. However, whereas until the beginning of the 21st century cooperation between the two countries mostly revolved around the exchange of mutual economic interests, since 2008, with the ratification of the so-called "Treaty of Benghazi", Italy and Libya have begun to jointly address the migration management issue.

The chapter continues by providing an overall picture of the current situation in Libya, which has been left in a desperate situation since the outbreak of the civil war in 2011 that led to the collapse of the Gheddafi regime. Nowadays, indeed, Libya can be considered a failed state that has provided fertile ground for the proliferation of organized criminality, and where migrants coming from the MENA region are particularly vulnerable to different kinds of abuses that take place in Libyan detention centers.

Moreover, it has been acknowledged that many of those third-country nationals held in Libyan detention centers are individuals intercepted at sea by the Libyan Coast Guard with the support of Italian authorities, a practice that has been condemned by the European Court of Human Rights in the landmark case of *Hirsi Jamaa and Others vs. Italy*, delivered by 2012.

As a result of this judgment condemning Italian authorities, and in response to the sudden absence of its main interlocutor in the management of migratory flows from Libya, Italy had to find alternative ways to address increased arrivals on EU shores during the years of the recent refugee crisis. To this end, by 2017, the Italian government inaugurated a new phase of cooperation with Libyan authorities through the ratification of the Memorandum of Understanding (MoU), which provides an emblematic example of externalization practices and will be further discussed in the third chapter.

After having laid down the conditions for understanding the management of migratory flows between Italy, Libya, and the EU, the second chapter explores the complex relationship between migration, security, and border control.

Indeed, as a response to the creation of the Schengen area and in parallel with the phenomenon of the “securitization of migration”, in recent years there has been a progressive strengthening of the EU’s external borders. As part of this policy, the EU has been adopting new sophisticated border control technologies to secure its external borders against perceived external threats such as increased arrivals on European shores. This has been contributing not only to the implementation of a more integrated form of border management (IBM) at the EU level but also to what has been described by many as the realization of the so-called “Fortress Europe”.

EU’s border control technologies can be divided into two main categories: on the one hand, large centralized databases that collect third-country nationals’ personal and biometric data, such as SIS (now SIS II), VIS, and EURODAC, which will be complemented by additional information systems for border control, thereby improving the security of the EU’s external borders and facilitating the migration management at the EU level.

Instead, the other set of border control technologies, also defined as “technologies of vision”, involve aerial assets such as drones, aircrafts, and satellites, which allows to provide a comprehensive “situational picture” of the EU’s external borders. This set of technologies, first developed for military purposes and then transferred to the civil domain, are being deployed, in particular, by the EU’s Border and Coast Guard Agency (FRONTEX) and in the framework of the European Border Surveillance System, better known under the acronym of EUROSUR.

The chapter closes by reasoning on the shift from a humanitarian to a “securitarian” approach in migration management at the EU level. This can be deduced, for instance, by looking at some of the most relevant naval operations undertaken by Italy and the EU in the wake of the recent refugee crisis, namely “*Mare Nostrum*”, “Triton” and Operation “EUNAVFOR MED Sophia”. In fact, whereas these missions were initially established to satisfy the humanitarian aim of preventing deaths at sea, this purpose has been gradually abandoned in favor of an approach more focused on reinforcing border control.

The third chapter begins by focusing, instead, on the role of NGOs, which since the beginning of the refugee crisis have been intensifying their Search and Rescue (SAR) activities across the Mediterranean in order to fill the void left by the end of Operation *Mare Nostrum*.

Nevertheless, despite having provided a crucial contribution to preventing deaths at sea, NGOs were soon compelled to suspend or reduce their involvement in SAR operations as a result of a trend that has been defined as the “criminalization of solidarity” and which has led to a gradual yet substantial delegitimization of their SAR activities.

In parallel with this phenomenon, and while the EU Member States (MSs) were progressively reducing their SAR capabilities, the Libyan Coast Guard (LCG) substantially increased its role in intercepting – and returning to Libya – migrants attempting to reach European shores.

Nonetheless, increased interceptions carried out by the LCG would not have been possible without the extensive support provided by Italian and European authorities.

Through the ratification of the Memorandum of Understanding (MoU), in fact, Italy committed to provide financial, technical, political, and logistical support to the Libyan authorities, thus increasing the LCG’s operational capacity. However, the support provided by Italian authorities not only included the allocation of assets, such as patrolling boats, to the LCG, but also direct assistance of the Italian Navy and its Maritime Rescue Coordination Centre (MRCC), which have played a crucial role in coordinating some of the LCG’s pull-back operations. The third chapter, in fact, reports some episodes, which have been documented only thanks to the presence of the few remaining NGOs operating in the Mediterranean, that testify this kind of conduct.

Moreover, coordination of the LCG's pull-back operations has been carried out not only by the Italian Navy, but also by FRONTEX; once again, there is widespread evidence documenting that thanks to the information derived from its aerial assets, FRONTEX has been able to provide operational coordination to numerous LCG's pull-back operations.

However, whereas the first part of the chapter addressed the practical implications of the aerial technologies deployed by FRONTEX and the Italian authorities, the last part revolves, instead, around the human rights implications for third-country nationals triggered by the centralized EU's information systems.

Indeed, while the EU's large-scale information systems for the management of migratory flows facilitate the movement of *bona fide* travelers within the Schengen area, they might also entail some negative repercussions, which risk to be overlooked, for migrants' human rights.

The adoption of the Interoperability Regulations might indeed jeopardize the human rights of third-country nationals and question the respect of some of the EU's fundamental principles, such as the right to privacy and protection of personal data, the principle of non-discrimination, protection of children, and the principle of proportionality².

² Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Human Rights Law Review*, vol. 21 (2), p. 10.

FIRST CHAPTER

MIGRATION MANAGEMENT BETWEEN ITALY, LIBYA AND THE EU

1.1 The fragmentation of Libya and the relationship with Italy

Throughout history and due to their geographical proximity, Italy and Libya have always shared a privileged relationship, marked by both collaboration and conflict.

As a result of political tensions triggered by the Italian colonial past in Libya, the dialogue between the two countries has always been quite complex; however, throughout the years, Italy and Libya kept cooperating on several matters due to reciprocal economic interests.

Following the discovery of abundant oil and gas reserves in the 1960s, Libya experienced rapid economic growth and attracted, once again, the interest of Italy, which became one of its key trading partners, particularly in the energy sector.

Trade relations continued even after the expulsion of the Italians and the confiscation of their assets (1970). This was made possible, in part, thanks to ENI, which maintained a constant presence in the country even during the years of international terrorism and sanctions imposed by the UN Security Council; on the other hand, as a result of Libyan investments in FIAT and in other Italian companies³.

Moreover, given the high demand for labor in the oil, gas, and construction industries, Libyan leader Mu' ammar Gheddafi had encouraged migration from Africa through a policy of "open borders"⁴ that made Libya a final destination for immigration.

³ Ronzitti, N. (2009). The Treaty on Friendship, Partnership, and Cooperation between Italy and Libya: new prospects for cooperation in the Mediterranean? *Istituto Affari Internazionali*, p. 126.

⁴ Toaldo, M. (2015). Libya's Migrant Smuggling Highway: Lessons for Europe. *European Council on Foreign Relations*, p. 6.

At the same time, however, Libya has traditionally been considered a gateway for migrants, asylum seekers, and refugees escaping war and persecution and seeking to reach Europe⁵. This is due to geographical reasons, as Libya's west coast is just 350 km from Europe's southernmost outposts of Malta and Lampedusa⁶. Indeed, records suggest that between 2001 and 2011, about 190,425 migrants arrived in Lampedusa (and roughly 60 percent of these came from Libya)⁷, while another 16,445 arrived in Malta⁸.

Italy, being the closest country to Libya (a so-called country "of first arrival" to Europe) has indeed been at the forefront of dealing with large influx of immigrants⁹, especially during the most recent "refugee crisis", which reached its peak in 2015. Hence, immigration management has always been one of the fundamental pillars on which the relationship between the two countries has rested throughout the years. Although cooperation in the field had begun as early as the 2000s, the relations between the two countries were still very tense due to the abuses suffered by Libya during the Italian colonization, which were left unresolved.

The normalization of relations occurred in 2008, when Italian President of the Council Silvio Berlusconi and Libyan leader Mu'ammarr Gheddafi signed the so-called "Treaty of Benghazi"¹⁰. The Treaty of Friendship, Cooperation, and Partnership finally closed the dispute related to the colonial past and marked the beginning of a new era of cooperation with Libya centered on the management of migration. As part of the agreement, Italy pledged to pay Libya \$5 billion over twenty years as compensation for the damages suffered in the past while, in return, Libya, would take measures against illegal immigration to Italy and encourage investments by Italian companies¹¹. The deal was indeed welcomed by Berlusconi as a guarantee of "more oil and fewer migrants"¹² and inaugurated a policy of pushbacks for migrants' boats coming from Libya.

The Treaty of Benghazi can be considered an initial attempt at "externalization" of border control, a phenomenon that in the wake of the refugee crisis has become the European Union's main strategy to deal with unwanted migratory flows. At the same time, however, this policy has been strongly criticized as a violation of the principle of *non-refoulement* enshrined in Art. 33 of

⁵ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Cit.*, p. 82.

⁶ *Ibidem*.

⁷ Malakooti, A. (2013). Mixed Migration: Libya at the Crossroads. Mapping of Migration Routes from Africa to Europe and Drivers of Migration in Post-revolution Libya. *UN High Commissioner for Refugees (UNHCR)*, p. 121.

⁸ Ivi, p. 115.

⁹ Giordano, A. (2016). The New Political Geography of Migration in Europe Between External Borders and Internal Freedom of Movement. *Bullettin of the Serbian Geographical Society*, vol. 96 (2), p. 61.

¹⁰ Ronzitti, N. (2009). The Treaty on Friendship, Partnership, and Cooperation between Italy and Libya: new prospects for cooperation in the Mediterranean? *Cit*, p. 3.

¹¹ Paoletti, E. (2011). Power Relations and International Migration: The Case of Italy and Libya. *Political Studies*, vol. 59, p. 274.

¹² *Ibidem*.

the 1951 Geneva Convention on the Status of Refugees, by which no one shall be refouled to countries where they would be at risk of serious human rights violations¹³.

However, in the last decade, the numbers and nature of migration through and from Libya have been significantly changing, since whereas the number of those taking the Mediterranean was mostly below 40,000 per year since the early 2000s, this figure skyrocketed in 2014 when 120,000 migrants arrived in Sicily from Libya¹⁴.

Tracing the reasons behind the recent refugee crisis is not an easy task – and it is not particularly relevant to the present work – but one crucial factor that should be taken into account is the beginning of the Arab Spring, a period of uprisings and severe instability that involved many countries in the MENA region (Middle East and North Africa).

In Libya, the aftermath of the Arab Spring resulted in the collapse of the Gheddafi regime, which created a power vacuum and a situation of political instability that persists to this day. The so-called Libyan crisis, in fact, is a contemporary issue, and since 2011 the country has been facing a severe institutional crisis, exacerbated by two civil wars. Moreover, despite the fall of the Gheddafi regime, which had used migration as leverage against Italy while turning a blind eye to human smugglers at home, immigration from Libya had not slowed down¹⁵.

At present, Libya is divided – politically and territorially – between two rival governments¹⁶ competing over legitimacy and control. The north-west (and the capital Tripoli) is controlled by the Government of National Accord (GNA), currently headed by Prime Minister Abdul Hamid Dbeibah¹⁷, and internationally recognized by the UN Security Council and the EU. Meanwhile, the east of Libya is under control of a parallel government created by Libya's House of Representatives in 2022 and led by Fathi Bashagha and General Khalifa Haftar, leader of the Libyan National Army (LNA)¹⁸. Despite appearances, Dbeibah and Bashagha share several similarities, as they are indistinguishable neither by ideology nor by origin and, albeit Haftar has positioned himself as an anti-Islamist, both governments enjoy the support of Islamist factions and lack democratic legitimacy (as the last national elections were held back in 2014)¹⁹.

Both geographical areas under control of these competing governments rely on complex international alliances, as the GNA has the military support of Turkey, while Russia, Egypt, and the

¹³ Andrijasevic, R. (2010). Deported: the right to asylum at EU's external border of Italy and Libya. *International Migration, vol. 48 (1)*, p. 39.

¹⁴ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Cit*, p. 78.

¹⁵ Ivi, p. 85.

¹⁶ Firmian, F. M. (2022). Libia: recenti sviluppi e prospettive. *Istituto per gli Studi di Politica Internazionale*, p. 3.

¹⁷ Ibidem.

¹⁸ Ibidem.

¹⁹ Ibidem.

United Arab Emirates are considered Haftar's main allies; and despite at present another civil war does not seem imminent, the situation is still tense²⁰. Moreover, each entity is backed by a plethora of locally and regionally organized networks of militias and armed groups, operating with varying degrees of independence and with their own command-and-control structures²¹; both the GNA and LNA claim to rule over parts of southern Libya, while local armed groups exercise effective control on the ground.

1.2 The proliferation of organized crime in the failed Libyan state

The political and territorial instability prompted by the collapse of the Ghaddafi regime has also created fertile ground for the proliferation of organized crime. The absence of a strong central authority, armed groups looking for resources to strengthen their political position, no legitimate law enforcement, and widespread corruption have indeed created the perfect environment for the escalation of organized criminality²².

The illicit economy of Libya involves three main criminal activities: smuggling of different goods (such as weapons, drugs, and fuel), recruitment of mercenaries, and human trafficking²³. The latter represents the most profitable illegal activity, as to date it stands as a multi-million-euro business and a key source of livelihood for many Libyans²⁴.

Human trafficking is usually controlled by criminal groups that share many similarities with the Italian mafia, such as control over a precise territory, use of force in the management of affairs, preoccupation to gain legitimacy from the surrounding communities, solid regional ties and relationship with political authorities, and involvement in different criminal activities²⁵.

Hence, instead of being an attractive place for African migrants seeking to sell their labor to a booming oil economy, post-Ghaddafi Libya has become a failed state²⁶, which can be defined, reversing Max Weber's definition, as a state that has lost the monopoly of legitimate violence

²⁰ Ibidem.

²¹ Amnesty International. (2017). "Between Life and Death": Refugees and Migrants Trapped in Libya's Cycle of Abuse. *Amnesty International*, p. 13.

²² Shaw, M., & Mangan, F. (2014). Illicit Trafficking and Libya's Transition: Profits and Losses. *Peaceworks*, no 96, p. 8.

²³ Ivi, p. 9.

²⁴ Human Rights Watch. (2019). No Escape from Hell. EU Policies Contribute to Abuse of Migrants in Libya. *Human Rights Watch*, p. 11.

²⁵ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Cit*, p. 85.

²⁶ Okeke-Uzodike, U., et alia. (2021). The Political Economy of Migration in Africa. *African Heritage Institution*, p. 151.

within its borders. Libya has indeed turned into a space where there are various criminal gangs and armed militias that exploit illegal immigration in different ways²⁷.

While under the Gheddafi regime the illicit economy was largely state-sponsored, and trafficking and smuggling primarily rested in the hands of those favored by the regime, control over these activities has been gradually decentralized²⁸. In that period, indeed, it was not uncommon for the security apparatus to turn a blind eye to illicit trafficking in exchange for political support; conversely, in post-revolutionary Libya, this practice has been somehow liberalized, with a more open market for illegal activities and a closer relationship between criminal networks and political élites²⁹. Moreover, compared to the post-revolutionary period, when numerous groups competed to expand their control over territory and, more importantly, over the management of trafficking, today the situation is slightly different³⁰. Over time, in many cities along the Tripolitanian coast, some criminal networks have managed to prevail over others: to use an economic analogy, this evolution could be explained as the shift from a situation of imperfect competition to one of oligopoly³¹.

Nonetheless, despite state control over the illicit economy has fallen away, there is still significant evidence that smugglers operate in varying degrees of collusion with government officials and allied militias³². Allegations of complicity between Libyan authorities and human traffickers have indeed been raised not only by several international human rights organizations but also by agencies of the United Nations.

Migrants, asylum seekers, and refugees who end up trafficked are those escaping situations of war, persecution, or political instability from countries in sub-Saharan Africa or the Sahel bound. In order to find better life or job opportunities, they face a dangerous journey across the Sahara Desert in overcrowded trucks and with few supplies. *En route* and during their stay in Libya, asylum-seekers, refugees, and migrants, including children, are at risk of being subjected to systematic human rights violations at the hands of smugglers, traffickers, armed groups, militias and criminal gangs acting with impunity³³. This involves physical, psychological and sexual abuse, killings and kidnapping for ransom.

²⁷ Ibidem.

²⁸ Shaw, M., & Mangan, F. (2014). Illicit Trafficking and Libya's Transition: Profits and Losses. *Cit*, p. 9.

²⁹ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Cit*, p. 85.

³⁰ Varvelli, A., & Villa, M. (2018). La Libia tra conflitto e migranti: ripensare il ruolo delle milizie. *Istituto per gli Studi di Politica Internazionale*.

³¹ Ibidem.

³² Human Rights Watch. (2019). No Escape from Hell. EU Policies Contribute to Abuse of Migrants in Libya. *Cit*, p. 13.

³³ UN High Commissioner for Refugees (UNHCR), UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea, p. 8.

Once in Libya, migrants, asylum seekers, and refugees usually have two options: attempting to cross the Mediterranean to reach Italian shores or staying in Libya and running the risk of suffering further abuse and ill-treatment in detention centers. Hence, those who were able to afford the high price demanded by traffickers endure another perilous journey on overcrowded ships where accidents and shipwrecks are unfortunately frequent.

As a result of these tragedies, the central Mediterranean route has been considered one of the deadliest routes worldwide, and the EU and Italy have been forced to take action. At the same time, as it will be clarified in the following sections, it is not uncommon for the Libyan Coast Guard (LCG) to intercept migrants' boats at sea that are trying to reach European shores. Once intercepted, they are usually captured and sent to detention centers where they await mandatory deportation from the country and an indefinite re-entry ban³⁴.

1.3 The reality of Libyan detention centers

Continuing Gheddafi-era processes, migrants and refugees caught in Libya without proper authorization are captured and sent to detention centers³⁵. The same fate applies to those migrants, asylum seekers, and refugees who are intercepted at sea and returned to Libya. Since Libya is not part of the 1951 Convention Relating to the Status of Refugees, of which Italy is part, such actions cannot be sanctioned as a violation of the principle of *non-refoulement*.

Although the right to asylum is provided by Article 10 of the 2011 interim Constitutional Declaration, there is no asylum legislation or any established asylum procedures³⁶. Indeed, there is no formal mechanism for individuals seeking protection in Libya, and authorities do not distinguish between migrants, refugees, and asylum seekers. As a result, all non-nationals, regardless of their status, age, or protection needs, fall under national immigration laws that criminalize all irregular entry, stay, or exit in Libya³⁷. Such violations result in prolonged detention, forced labor, a fine of about 1,000 Libyan dinars (corresponding to \$730), and include, once the sentence is completed, permanent expulsion from the country³⁸. Immigration detention in Libya can be indefinite as the law does not specify a maximum term, and there are no formal procedures allowing detainees to

³⁴ UN High Commissioner for Human Rights (OHCHR). *Nowhere but Back: Assisted return, reintegration and the human rights protection of migrants in Libya*, p. 7.

³⁵ Al-Dayel, N., et alia. (2023). *Captivity, Migration and Power in Libya*. *Journal of Human Trafficking*, vol. 9 (3), p. 283.

³⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, p. 3.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

challenge the legality of their detention and treatment (something that amounts to arbitrary detention and is considered illegal under international law)³⁹.

Therefore, migrants who are caught without proper authorization in Libya or *en route* from Libya can be held captive in official or unofficial detention centers. Official detention centers are those administered by the Directorate to Combat Illegal Immigration (DCIM), a governmental agency established in 2012 by the GNA Interior Ministry, while unofficial detention facilities are managed by traffickers, smugglers, or whichever armed group controls the territory where the center is located. The number of official detention centers is unclear, as it fluctuates over time, given that “[u]nofficial facilities can be taken over and categorized as detention centers overnight, or vice versa... When new managers or guards take over, the detention regime can change, becoming more or less violent and allowing or barring services by the UN or NGOs operating in the country”⁴⁰.

Fig. 1 – Known locations of detainment and captivity in Libya (as of 2023)

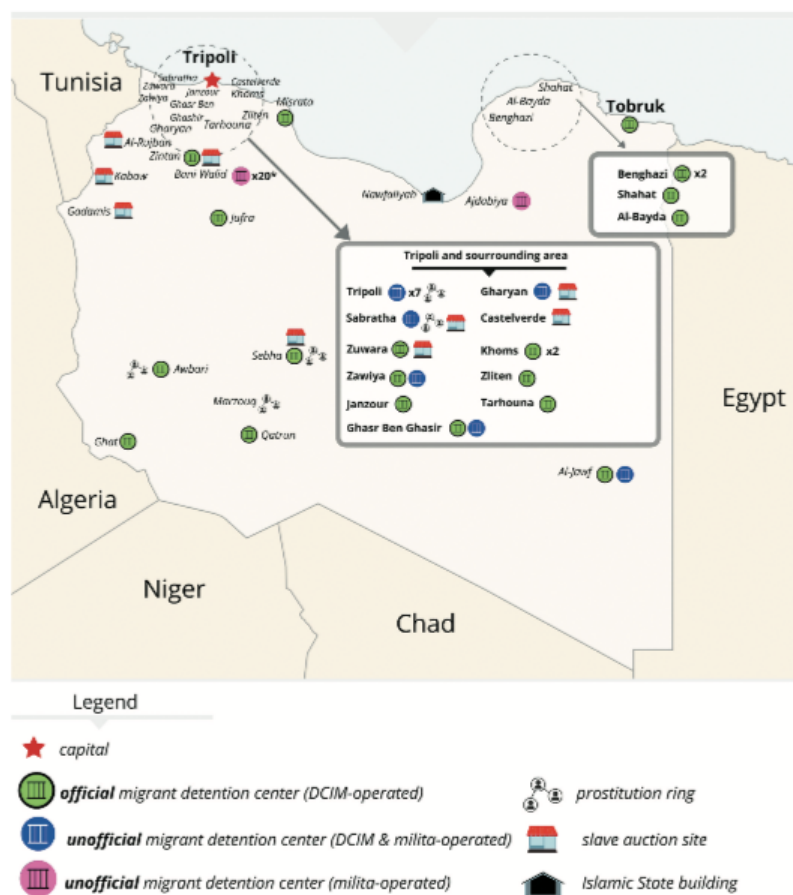


Figure 1. Known locations of detainment and captivity in Libya.

Source: Al-Dayel, N., et alia. (2023). Captivity, Migration and Power in Libya. *Cit.*, p. 287.

³⁹ Human Rights Watch. (2019). No Escape from Hell. EU Policies Contribute to Abuse of Migrants in Libya. *Cit.*, p. 3.

⁴⁰ Ivi, p. 16.

Many NGOs, such as Human Rights Watch or Amnesty International, and UN agencies including the Office of the High Commissioner for Human Rights (OHCHR), the UN Support Mission in Libya (UNSMIL), and the Office of the High Commissioner for Refugees (UNHCR) have indeed issued numerous reports highlighting the systematic abuses and human rights violations faced inside detention centers⁴¹. These are often overcrowded facilities where conditions fail to meet international standards and have been described as horrendous, cruel, and degrading. Unfortunately, as a result of lack of food, water, adequate hygiene conditions, and non-existent medical care, deaths in detention due to violence, suicide, and disease have been very common. Moreover, according to the info provided, both male and female asylum-seekers, refugees, and migrants, including children, are routinely subjected to torture and other forms of ill-treatment, including sexual violence, forced labor, forced recruitment, and extortion.

Therefore, despite being labeled as a “safe country” for disembarkation, what happens in Libyan detention centers shows that the reality is very different. According to international maritime law, disembarkation following rescue at sea shall occur in a place of safety and in conditions that uphold respect for human rights, including adherence to the principle of *non-refoulement*⁴². Nonetheless, in light of the unsteady security situation and the risks faced by foreign nationals, the UNHCR does not consider that Libya meets the criteria for being considered a safe country for the purpose of disembarkation following rescue at sea.

1.4 Hirsi Jamaa and Others v. Italy

The effective collaboration between Italian and Libyan authorities to address illegal immigration and dismantle human trafficking networks began with the adoption of the Treaty of Benghazi, which came into force in 2009. It also marked the beginning of the controversial practice of *refoulement* of migrants, asylum seekers, and refugees intercepted at sea by the Italian Coast Guard and handed over to Libyan authorities; some years later, these pushbacks resulted in a final judgment of the European Court of Human Rights condemning Italy’s conduct.

Hirsi Jamaa and Others v. Italy is indeed a landmark case decided by the Grand Chamber of the European Court of Human Rights that unanimously condemned Italy as it operated the

⁴¹ Ivi, p. 59.

⁴² UN High Commissioner for Refugees (UNHCR), UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea, p. 17.

refoulement of a considerable number of African refugees coming from Libya between May 6 and 7, 2009.

In the author's opinion, dwelling on this case is crucial not only because it brought international attention to the issue of pushback operations at sea but also because it prompted a radical change in how European countries have been dealing with unwanted migratory flows in the last decade⁴³.

The case was brought by eleven Somalian nationals and thirteen individuals from Eritrea who were part of a group of two hundred migrants leaving Libya on three boats heading towards Italy⁴⁴. Intercepted within the Maltese Search-And-Rescue (SAR) region by the Italian Coast Guard and *Guardia di Finanza*, they were transferred onto Italian military ships and returned to Tripoli, where they were handed over to Libyan authorities⁴⁵.

The applicants alleged that during the *refoulement* to Tripoli (which lasted about ten hours), the Italian authorities did not inform them about the destination, took no steps in identifying them, denied them the possibility to apply for political asylum, and, eventually, confiscated all their personal belongings, including their documents⁴⁶. Moreover, according to the information submitted by the applicants' representative to the Court, two of the petitioners died in unknown circumstances after the events at stake⁴⁷.

Therefore, the applicants decided to file a complaint against Italy under Article 34 of the Convention (individual recourse) before the European Court of Human Rights, claiming a violation of Article 3 (torture) and 13 (effective remedy) of the European Convention of Human Rights in conjunction with Article 4 (collective expulsions of aliens) of the additional Protocol to the same Convention.

According to the Court, Article 3 of the Convention, which prohibits any conduct amounting to torture or ill-treatment in absolute terms, was violated by Italy in two different ways. On the one hand, because the applicants were refouled to a country in which they would have been exposed to the concrete risk of suffering torture or inhuman treatment⁴⁸; on the other hand, because such *refoulement* to Libya also exposed them to the risk of being repatriated to their state of origin, where they claimed they were being subjects of persecution⁴⁹.

⁴³ Alarm Phone, Sea-Watch, Mediterranea, Borderline. (2020). Remote Control: the EU-Libya collaboration in mass interceptions of migrants in Central Mediterranean. *Borderline-Europe*, p. 5.

⁴⁴ European Court on Human Rights. (2012). Case of Hirsi Jamaa and Others v. Italy, par. 9-12.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

⁴⁷ Ivi, par. 15.

⁴⁸ Ivi, par. 84.

⁴⁹ Ibidem.

In opposition to this argument, the Italian government replied by claiming that Libya was not a state that posed evident risks of mistreatment of repatriated refugees, having ratified several international human rights conventions⁵⁰ (but not the 1951 Geneva Convention on the Status of Refugees); and, on the other hand, that none of the rescued refugees had expressed a clear desire to seek political asylum in Italy⁵¹. Moreover, it reaffirmed that the presence of UNHCR in Libya constituted an assurance that no one entitled to asylum or any other form of international protection would be arbitrarily expelled⁵².

Relying on pieces of evidence from reliable third parties, the Court rejected both arguments. Indeed, several NGOs and international agencies, such as Human Rights Watch, Amnesty International, the International Federation for Human Rights, the UNHCR, and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (...), had already submitted several reports denouncing the critical situation of immigrants in Libya⁵³. Since there was no national asylum system, they argued that irregular migrants, including asylum seekers, were systematically arrested and subjected to torture and physical violence in Libyan detention centers⁵⁴. Therefore, Libya could not be considered a safe third country for the purpose of disembarkation following rescue at sea, and the Italian government's action amounted to a clear violation of Article 3 of the Convention. Furthermore, as the Italian government claimed that *refoulement* practices were within the scope of the provisions established by the Treaty of Benghazi, the Court clarified that no commitments undertaken by Italy and Libya to combat illegal immigration could exclude or limit the applicability of international human rights standards⁵⁵.

Article 13 of the same Convention regards instead the right to an effective remedy before national authorities, even when the violation has been committed by individuals acting in the performance of their functions. In this regard, the Court recognized that Italy did not give the petitioners the right opportunity to apply for political asylum. On Italian military ships, indeed, there were no translators or legal advisors who could help the applicants with the compilation of a request for political asylum; moreover, the possibility of filing a complaint against Italian authorities once returned to Libya seemed purely theoretical.

Moreover, since the interception took place in international waters, outside the Italian territory, the government attempted to deny the state's jurisdiction and, consequently, that of the European

⁵⁰ Ivi, par. 96-97.

⁵¹ Ibidem.

⁵² Ivi, par. 142.

⁵³ Ivi, par. 101-109.

⁵⁴ Ibidem.

⁵⁵ Ibidem.

Court of Human Rights. The Court discharged this argument as it acknowledged that from the moment of rescue to that of forced repatriation, the applicants were under the continuous and exclusive *de jure* and *de facto* control of Italian authorities⁵⁶. Hence, Italy could be held responsible for any violation of the rights established by the European Convention on Human Rights (ECHR).

Eventually, the last claim concerned the prohibition of collective expulsions of aliens, enshrined in Article 4 of Protocol number 4 to the same Convention. Italy challenged the applicability of the rule in question by pointing out that expulsion and repatriation were not the same concept, as expulsion presupposes the aliens' entry into the territory of the state⁵⁷. However, the Court clarified that the principle of collective expulsions of aliens also applies to violations of the principle of *non-refoulement*.

By 2012, the case ended up with a unanimous condemnation of Italy due to the violation of the above-mentioned articles. In addition to providing monetary compensation, Italy also pledged to verify the status of the applicants, many of whom were in fact granted refugee status.

However, in response to this landmark ruling, EU institutions, as well as Italy – and Member States (MSs) in general – have developed alternative ways to manage migration at sea to avoid any conduct amounting to violations of the principle of *non-refoulement*⁵⁸. The case, in fact, set an important legal precedent on immigration and asylum matters and, more generally, has contributed to shaping immigration policies in Europe.

Hence, this approach has given rise to the phenomenon of externalization of border control, Europe's core strategy to deal with unwanted migratory flows⁵⁹.

1.5 Externalization policies and the 2017 Memorandum of Understanding

Following 2011, due to civil unrest experienced by Libya, the agreements undertaken with Italy to deal with immigration were suddenly interrupted.

For most Western policymakers, the collapse of the Gheddafi regime had meant the absence of a somehow reliable, albeit disagreeable, partner in the implementation of most repressive policies aimed at containing immigration from Libya⁶⁰. Under Gheddafi, according to this line of

⁵⁶ Ivi, par. 81.

⁵⁷ Ivi, par. 160.

⁵⁸ Alarm Phone, Sea-Watch, Mediterranea, Borderline. (2020). Remote Control: the EU-Libya collaboration in mass interceptions of migrants in Central Mediterranean. *Cit*, p. 5.

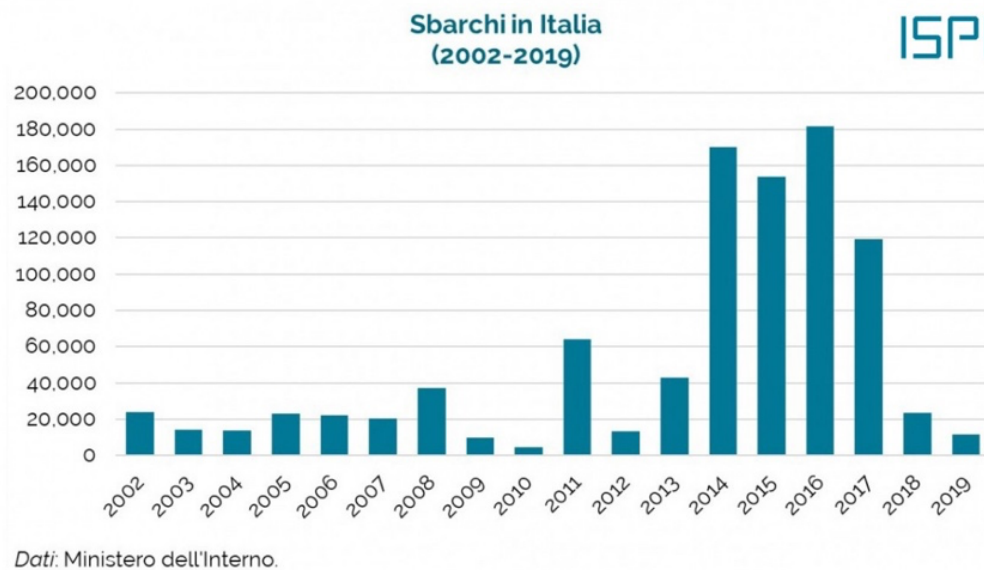
⁵⁹ Giordano, A. (2016). Migration Movements, Territorial Borders and Places of Exclusion: Towards a New Geopolitics of Population in Europe. In Cavasola, S., De Mucci, R. (Eds). *21st Century Migrations: Fluxes, Policies, and Politics*. Luiss University Press, p. 33.

⁶⁰ Toaldo, M. (2015). Migrations Through and From Libya: a Mediterranean Challenge. *Cit*, p. 76.

thinking, there was at least someone who could effectively reject migrants on behalf of Italy (and the EU); conversely, after his overthrow, since no effective institutions took over, this policy was inevitably suspended⁶¹.

Arrivals to Italian shores, which significantly diminished following the conclusion of the 2008 Treaty of Benghazi, resumed to rise as soon as the Treaty was no longer operational (Fig. 2).

Fig. 2 – Arrivals by sea to Italy from 2002 to 2019



Source: Ministero dell'Interno. Villa, M. (2020). *Migrazioni nel Mediterraneo: tutti i numeri*. *Cit.*

Whereas until 2011 the average number of arrivals to Italy was about 15,000 per year (with a peak in 2008 and a steep decline corresponding to the adoption of the Treaty)⁶², this figure skyrocketed during the years of the refugee crisis (2013-2017), reaching an average of 130,000 per year (Fig. 2). Statistics also suggest that over 90 percent of migrants, asylum seekers, and refugees who arrived in Italy during the refugee crisis departed from Libya⁶³.

However, the sharp increase in arrivals from Libya during the years of the refugee crisis is a complex phenomenon that requires careful analysis in order to avoid oversimplifications. Therefore, it is essential to clarify that there is no direct nexus between the collapse of the Gheddafi regime and the beginning of the refugee crisis: whereas Libya's institutional weakness has certainly contributed to the resurgence of arrivals to Italy, it is other factors (such as the Tunisian and Syrian crises) that originally triggered this new wave of migratory flows to Europe.

⁶¹ Ibidem.

⁶² Villa, M. (2020). *Migrazioni nel Mediterraneo: tutti i numeri*. *Istituto per gli Studi di Politica Internazionale*.

⁶³ Ibidem.

Nevertheless, as early as 2012, although the institutional apparatus was still very fragile, the Italian government attempted to resume negotiations with the Libyan Transitional Government which, however, gave partial results⁶⁴.

The urgency to re-establish a form of cooperation in migration management with Libyan authorities corresponded to growing pressure from the Italian – and European – public opinion, who perceived the rise of migratory flows as a security concern. Indeed, many right-wing politicians, such as the former President of the Council Matteo Salvini, fostered an “emergency” narrative, further encouraged by the press, that associated migratory flows to serious social problems such as terrorism, the proliferation of criminality, and social unrest. This trend has been defined as the “securitization of migration” and can be explained as the extreme politicization of migratory flows and their presentation – and treatment – as security threats⁶⁵.

It is in this specific context that in the past few years another tendency has been emerging in Southern European states, that is, namely, the militarization of border controls⁶⁶. Hence, as it will be clarified in the next chapter, other European agencies, such as FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU) have been tasked with border surveillance⁶⁷.

Nonetheless, the state of tension arising from growing public concern about the increased number of arrivals to Italy led, in 2017, to the signing of the Memorandum of Understanding with the Libyan government recognized by the United Nations. The new agreement, currently in force, is being renewed tacitly every three years and aims at “*combating illegal immigration, human trafficking, contraband (...) and reinforcing the border security between Italy and Libya*”⁶⁸. Therefore, to curb the number of deaths at sea and illegal immigration, Italy committed to providing funds, means, and training to Libyan authorities; in exchange, Libya agreed to prevent departures from its shores and to withdraw those migrants who were already in transit to Italy.

Moreover, the Memorandum calls for direct cooperation from the European Union, as in order to carry out the initiatives mentioned, Italy relies to a large extent on EU funds. In fact, as it was

⁶⁴ Ibidem.

⁶⁵ Léonard, S. (2011). FRONTEX and the Securitization of Migrants through Practices. *European University Institute*, p. 2.

⁶⁶ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, *Drones and Unmanned Aerial Systems. Springer International*, p. 104.

⁶⁷ Ivi, p. 105.

⁶⁸ 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 tra lo Stato della Libia e la Repubblica Italiana, 2017. Ministero degli Affari Esteri e della Cooperazione Internazionale, *Archivio dei Trattati Internazionali online (ATRIO)*, p. 1.

stated in the Malta Declaration of February 2017, EU leaders agreed to take measures to reduce migratory flows across the Central Mediterranean route⁶⁹. To do so, the European Union has allocated €266 million from the EU Emergency Trust Fund for Africa for migration-related programs in Libya, and an additional €20 million through bilateral assistance⁷⁰.

The Memorandum of Understanding can be somehow considered a reiteration of the Treaty of Benghazi; however, unlike the latter, it goes one step further, as it takes into account the final judgment delivered by the European Court of Human Rights that condemned Italy for the *refoulement* of migrants, asylum seekers, and refugees coming from Libya. Indeed, compared to the previous Treaty, the new agreement is smarter, since pushback operations are now being transferred entirely to Libyan authorities⁷¹, thus preventing Italy from facing new sanctions resulting from violations of the principle of *non-refoulement*.

The Memorandum resulted in an increased number of migrants, asylum seekers, and refugees being repatriated to Libya, a country with inadequate standards of human rights protection; hence, it has been strongly criticized by numerous NGOs who have called for its annulment (or amendment).

Nonetheless, such agreement is still in force and provides a concrete example of “externalization of migration”, the EU’s main strategy to deal with unwanted migratory flows⁷². Importantly, externalization of migration should not be considered a recent phenomenon, but rather an increasingly common feature of the EU migration governance⁷³.

Externalization practices consist of outsourcing migration management and correlated responsibilities, such as border control and asylum procedures, towards third countries, usually migrant-sending ones⁷⁴. Through bilateral or multilateral agreements, countries of departure or transit such as Libya (or Turkey, notably) receive resources to stem migration flows to the EU.

Many consider that externalization policies represent a strategy to circumvent the international obligations that arise from the Dublin III Regulation and, particularly, an alternative way to relocate the right to asylum outside European borders. However, it has also been argued that these practices do not actually relocate the asylum procedures outside the EU’s external borders, but rather deprive

⁶⁹ European Council, Malta Declaration. (2017).

⁷⁰ Human Rights Watch. (2019). No Escape from Hell. EU Policies Contribute to Abuse of Migrants in Libya. *Cit.*, p. 21.

⁷¹ Nakache, D., & Losier, J. (2017). The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind, p. 3.

⁷² Giordano, A. (2016). Migration Movements, Territorial Borders and Places of Exclusion: Towards a New Geopolitics of Population in Europe. In Cavasola, S., De Mucci, R. (Eds). *Cit.*, p. 33.

⁷³ Palm, A. (2020). Externalized Migration Governance and the Limits of Sovereignty: the Case of Partnership Agreements between EU and Libya. *Theoria*, vol. 86 (1), p. 12.

⁷⁴ Paoletti, E. (2011). Power Relations and International Migration: The Case of Italy and Libya. *Cit.*, p. 273.

asylum seekers of the possibility of accessing asylum determination procedures⁷⁵. The Dublin III Regulation establishes that the responsibility for examining asylum requests lies with the EU member state where the migrant, asylum seeker, or refugee entered for the first time – legally or not. Hence, this system places a great burden on the so-called “countries of first arrival”⁷⁶, who have attempted on several occasions to amend the Regulation in a way that would allow to share this duty among all Member States (for instance, through the implementation of a quota system).

Although the Regulation is still in force, it could be argued that the European Union recognizes, to some extent, the excessive burden imposed on the countries at its external borders. Therefore, it continues to support the Italian externalization policy in Libya through both the allocation of funds (such as those of the EU Emergency Trust Fund for Africa) and border control operations entrusted to FRONTEX (the European Border and Coast Guard Agency).

⁷⁵ Andrijasevic, R. (2010). Deported: the right to asylum at EU’s external border of Italy and Libya. *International Migration*, vol. 48 (1), p. 28.

⁷⁶ Giordano, A. (2016). Migration Movements, Territorial Borders and Places of Exclusion: Towards a New Geopolitics of Population in Europe. In Cavasola, S., De Mucci, R. (Eds). *Cit.*, p. 33.

SECOND CHAPTER

THE DIGITALIZATION – AND MILITARIZATION – OF THE EU’S EXTERNAL BORDERS

2.1 The creation of the “Fortress Europe” and integrated border management within the EU

Over the years, through a series of political, legislative and practical developments, there has been a progressive strengthening of the European Union’s external borders. The European integration process that led to the creation of an internal area of free movement within the EU, has been accompanied, in parallel, by a gradual strengthening of its external borders⁷⁷, a policy that has been described by many as the creation of a “Fortress Europe”⁷⁸.

To some extent, indeed, one could argue that the creation of the Schengen area represented the first step towards the “securitization of migration”, as the Schengen Convention of 1990, subsequently incorporated into the EU *acquis* through the Amsterdam Treaty, clearly formalized, for the first time, an explicit correlation between migration, security, and border control⁷⁹.

As a result of securitization theory, in fact, immigration has been increasingly associated with serious social problems, such as terrorism. Despite numerous scholars have stressed that there is insufficient empirical evidence to support the correlation between migration and security, recent events such as the refugee crisis and a new wave of terrorist attacks in Europe have been further encouraging this view.

⁷⁷ Giordano, A. (2018). La frontiera mediterranea tra mobilità umana e (in)sostenibilità del sistema confinario europeo. In Lucia, M. G., Duglio, S., Lazzarini, P. (a cura), Verso un’economia della sostenibilità. Lo scenario e le sfide. *Franco Angeli*, p. 333.

⁷⁸ Euro-Mediterranean Human Rights Network. (2014). Prioritizing border control over human rights. Violations of the rights of migrants and refugees at sea. *Euro-Mediterranean Human Rights Network*, p. 8.

⁷⁹ Gabrielli, L. (2014). Securitization of Migration and Human Rights: Frictions at the Southern EU Borders and Beyond. *Urban People / Lidé Mesta*, vol. 16 (2), p. 312.

Securitization theory is an approach to the study of security that was originally developed by academics belonging to the School of Copenhagen, according to whom there are no security issues in themselves but only issues that have been “securitized”, that is, constructed as such through securitizing discourses⁸⁰. However, other scholars such as Didier Bigo, leading figure of the School of Paris, have developed an alternative method to the study of securitization processes, one that emphasizes the role of securitizing practices, rather than discourses⁸¹.

Combining the two approaches⁸², it can be argued that in the European Union the securitization of migration is reflected – and produced – by political discourses and daily practices: the former refers, for instance, to the narrative perpetrated by several right-wing politicians that portrays migrants as an existential threat to the life of the nation, a rhetoric that in the last years has become very successful; the latter, instead, results from a series of restrictive immigration policies that the EU has been adopting over the past forty years⁸³.

The EU’s response to the complex relationship between migration, security, and border control, has revolved around two main strategies: on the one hand, externalization of border control, while on the other, increased surveillance of the EU’s external borders and common information systems⁸⁴. Taken together, it can be argued that both of these policies have significantly contributed to the realization of a more integrated form of border management (IBM) at the EU level.

Externalization of border control enables the EU to outsource its border management responsibilities to “buffer zones” outside its territory in order to reduce the number of irregular arrivals to the EU⁸⁵ and ensure a more effective control of its external borders: externalization is realized through several methods such as capacity-building for foreign agents responsible for border control, or through the stipulation of bilateral and multilateral readmission agreements that ensure the return of “irregular” migrants to countries of origin or transit⁸⁶.

In parallel to the implementation of externalization practices, the EU has been promoting, since the 1985 Schengen Convention, a system of integrated border management (IBM) that strongly relies on common information systems and new surveillance technologies.

⁸⁰ Léonard, S. (2011). FRONTEX and the Securitization of Migrants through Practices. *Cit.*, p. 8.

⁸¹ Ivi, p. 9.

⁸² Ivi, p. 10.

⁸³ Benam, C. (2011). Emergence of a “Big Brother” in Europe: Border Control and Securitization of Migration. *Insight Turkey, vol. 13 (3)*, p. 191.

⁸⁴ Ivi, p. 192.

⁸⁵ Giordano, A. (2016). Migration Movements, Territorial Borders and Places of Exclusion: Towards a New Geopolitics of Population in Europe. In Cavasola, S., De Mucci, R. (Eds). *Cit.*, pp.33-35.

⁸⁶ Crépeau, F. (2013). Report of the Special Rapporteur on the human rights of migrants. Regional study: management of the external borders of the European Union and its impact on the human rights of migrants. *United Nations General Assembly*, pp. 15-16.

The securitization of migration has resulted, indeed, in an increased adoption of new control mechanisms by EU Member States, such as external controls before and at the borders that include the creation of common databases, the deployment of law-enforcement agencies, military forces, and new technologies to strengthen border controls⁸⁷.

SIS, VIS and EURODAC, for instance, are large-scale centralized databases, storing personal and biometric data, that were established at the EU level to manage the intricate nexus between borders, migration, and asylum⁸⁸. These information technologies are all managed by Eu-LISA, the European Agency for the operational management of large-scale IT systems in the Area of Freedom, Security and Justice (AFSJ).

The Schengen Information System (SIS), now renamed SIS II, became operational by 1995 as a crucial mechanism for cooperation and information-sharing among Schengen-associated countries. It represents the EU's largest database and information system for law enforcement and migration purposes, and it contains a wide range of information (such as names, photographs, fingerprints and biometric data of individuals sought by national security authorities or suspected of crimes); it also includes data on stolen property or items used in illegal activities⁸⁹. Through the SIS II, national law enforcement authorities of the EU Member States can work together to ensure public safety in the Schengen area.

The Visa Information System (VIS), established in 2004, is another centralized database that allows Member States to exchange data on short-stay visa applications (up to 90 days) of third-country nationals⁹⁰. The crucial purpose of the system is to facilitate border checks, the implementation of the Dublin III Regulation, visa application procedures, strengthen EU's internal security, prevent abuses such as "visa shopping", and assisting in the identification of persons with access denied in the territory of Member States⁹¹. Moreover, since 2018, there has been a new proposal for a regulation that aims to include information on long-stay visas and residence permits, lowers the age for the inclusion of biometrics in the system from 14 to 6 years old, and incorporates the collection of facial images⁹².

⁸⁷ Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Uluslararası İlişkiler*, p. 147.

⁸⁸ Ivi, p. 149.

⁸⁹ Koslowski, R. (2006). Information Technology and Integrated Border Management" in Caparini, M., & Marenin, O., eds. *Border and Security Governance: Managing Borders in a Globalized World*. LIT Verlag, p. 14.

⁹⁰ Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Cit.*, p. 151.

⁹¹ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 3.

⁹² Ibidem.

EURODAC (the European Dactyloscopy Database), on the other hand, is a system that allows Member States to store, compare, and share information about asylum seekers and undocumented migrants staying on their territory. EURODAC, in fact, store fingerprints of asylum seekers (known as “Category 1”), individuals associated with irregular border crossing (“Category 2”), and third-country nationals or stateless persons irregularly staying in the territory of a Member State (“Category 3”)⁹³. Whereas data on asylum seekers can be retained up to 10 years and information on irregular borders crosser for 18 months, fingerprints belonging to the third category of third-country nationals cannot be stored⁹⁴. EURODAC’s main objective is to facilitate the application of the Dublin III Regulation, which determines the EU Member State responsible for assessing an individual’s asylum request⁹⁵. More specifically, it serves to identify those individuals who have already filed asylum claims in other Member States. According to Regulation, the responsibility for proceeding with an asylum application lies with the first MS in which the claim has been registered; if one attempts to register an asylum claim in another country, EURODAC would respond with a denial of request and proceed with the deportation of the individual in question to the country of first arrival, where the claim has been already submitted.

Moreover, first in 2013 and then in 2019, EURODAC underwent a process of reform that opened its doors to enhanced interoperability with different law enforcement authorities⁹⁶. By 2019, in fact, the EU adopted two “Interoperability Regulations” which, on the one hand, have established an interconnecting framework between several EU information systems while, on the other, have granted access to its databases to national law enforcement authorities and supranational Agencies such as EUROPOL and INTERPOL.

Furthermore, such an interoperability framework includes additional border management systems whose implementation is still pending, such as the Entry/Exit System (EES), the European Travel Information and Authorization System (ETIAS) and the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).

The EES, for instance, was adopted in 2017 to complement the VIS system; it should facilitate border crossing of *bona fide* travelers and identifying over-visa stayers, since the VIS does not automatically calculate the duration of time of short-stay visa-holder staying in the Schengen area⁹⁷. The ETIAS system, adopted in 2018, is instead projected to collect information on all

⁹³ Ivi, p. 4.

⁹⁴ Bredström, A., Krifors, K., & Mesic, N. (2022). Border Reconfiguration, Migration Governance, and Fundamental Rights: A Scoping Review of EURODAC as a Research Object. *Social Inclusion*, vol. 10 (3), p. 69.

⁹⁵ Ibidem.

⁹⁶ Ivi, p. 76.

⁹⁷ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 3.

travelers who enter visa-free Europe (that, according to estimates are at least 39 million every year)⁹⁸. Finally, another database for border management will be ECRIS-TCN. ECRIS is a decentralized electronic system designed that facilitates the exchange of criminal records across Member States' national authorities: it grants access to judges, prosecutors and other relevant authorities, which can access a plethora of data on individuals' criminal past, regardless of the country in which they were previously convicted⁹⁹. In the years to come, it shall be complemented with ECRIS-TCN, a centralized database which will process information on previous convictions of third-country nationals and stateless persons¹⁰⁰.

However, in addition to these centralized IT systems that collect, for the most part, biometric data, in recent years the EU has been increasingly resorting to another type of border surveillance technologies, that can be referred to as "technologies of vision". Among these high-tech technologies there are satellites, aircraft and helicopters: yet, it is with the deployment of drones [more formally defined as Unmanned Aerial Vehicles (UAVs)] that the EU has taken a significant step in the implementation of new technologies for border control.

In the past few years, several European and international agencies have joined forces in participating in EU-funded research programs preparing the transfer of drone technology from the military domain to the civil one¹⁰¹. In this context, FRONTEX regularly holds demonstrations concerning drone technology for border surveillance, cooperating with the world's industry giants, like Israel Aerospace Industries, Thales Group, Aerovision, or Lockheed¹⁰².

The introduction of these technologies into the civilian domain has resulted in a progressive militarization of the EU's external borders, which now resemble the gates of a "cyber-Fortress" erected by Europe with its Member States in an attempt to control the unwanted migratory flows approaching European shores¹⁰³.

However, "*integrated border management at the European level is perhaps best embodied in the establishment of FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders of EU Member States*"¹⁰⁴.

⁹⁸ Ivi, p. 4.

⁹⁹ Ivi, p. 5.

¹⁰⁰ Ibidem.

¹⁰¹ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, Drones and Unmanned Aerial Systems. *Springer International*, p. 103.

¹⁰² Ibidem.

¹⁰³ Ibidem.

¹⁰⁴ Koslowski, R. (2006). Information Technology and Integrated Border Management" in Caparini, M., & Marenin, O., eds. *Border and Security Governance: Managing Borders in a Globalized World. Cit.*, p. 2.

2.2 The establishment of FRONTEX as the European Border and Coast Guard Agency

It is within this particular context of securitization of asylum and migration that EU Member States decided to establish, by 2004, the “*European Agency for the Management of Operational Cooperation at the External Borders of EU Member States*”, better known under the acronym of FRONTEX¹⁰⁵. The Agency was indeed created in a context where EU asylum and migration policies had already been shaped by securitization trends¹⁰⁶.

The establishment of FRONTEX came as a response to the perceived need for enhanced cooperation among EU Member States with regard to the management of external borders. A significant contributing factor to the launch of FRONTEX, aside from the securitization of migration, was the EU’s enlargement of 2004, which raised the concern that the newly admitted Members would not be able to effectively control the EU’s external borders¹⁰⁷.

FRONTEX was established by Council Regulation No. 2007/2004 of 26 October 2004 in order to provide operational cooperation among EU Member States in the management of EU external borders¹⁰⁸. The legal basis of FRONTEX can be found in the (old) Lisbon Treaty of the European Community, namely at Art. 62.2 (a) and Art. 66, granting the European Community powers to adopt measures on external borders crossing by establishing common standards and procedures to be followed by the Member States¹⁰⁹.

Based in Warsaw, FRONTEX became operational in 2005, but its tasks and capabilities have been expanded over the years. In response to the refugee crisis, indeed, the European Commission proposed to extend FRONTEX’s mandate and turn it into the fully-fledged European Border and Coast Guard Agency; since the proposal was approved by both the European Council and the European Parliament, FRONTEX was officially launched in October 2016 as the European Border and Coast Guard Agency¹¹⁰.

The FRONTEX Regulation requires the Agency to perform various activities that range from providing training to national border guards and carrying out risk analysis to tracing the

¹⁰⁵ Léonard, S. (2011). *Frontex and the Securitization of Migrants through Practices*, *Cit.*, p. 2.

¹⁰⁶ *Ibidem*.

¹⁰⁷ *Ivi*, p. 7.

¹⁰⁸ *Ivi*, p. 2.

¹⁰⁹ Marin, L. (2011). *Is Europe Turning into a “Technological Fortress?” Innovation and Technology for the Management of EU’s External Borders. Reflections on FRONTEX and EUROSUR*. In E. Kica, & M. Heldeweg (Eds.), *Regulating Technological Innovation: Legal and Economic Regulation of Technological Innovation*. *Palgrave MacMillan*, p. 134.

¹¹⁰ Léonard, S. (2009). *The Creation of FRONTEX and the Politics of Institutionalization in the EU External Borders Policy*. *Journal of Contemporary European Research*, vol. 5 (3), pp. 376-377.

developments of relevant research for the surveillance of external borders¹¹¹. Most importantly, FRONTEX facilitates operational cooperation among Member States in the management of the EU's external borders, assisting in circumstances requiring increased technical and operational assistance and providing the necessary support in the organization of joint return operations¹¹². Apart from being the operational activities on which FRONTEX spends the majority of its budget, coordination of joint operations at the EU's external borders is certainly the task that has drawn the greatest attention – and much controversy – from several NGOs, scholars and media¹¹³.

In addition to cooperating with EU Member States, FRONTEX can also interact with other relevant actors: on the one hand, international organizations or EU agencies such as EUROPOL (European Union Agency for Law Enforcement Cooperation), INTERPOL (International Criminal Police Organization), IOM (International Organization for Migration), and UNHCR (United Nations High Commissioner for Refugees); while on the other, it can cooperate with third countries' relevant authorities through the stipulation of “facilitation agreements” or “working arrangements”¹¹⁴.

Moreover, since the adoption of the new mandate of the Agency in October 2011, FRONTEX's role goes beyond coordinating joint operations, as it is also in charge of administering the maritime border surveillance system of EUROSUR¹¹⁵.

The budget of the Agency has four different strands: a Community subsidy; a contribution from Schengen-associated countries; fees charged for the services provided; and any voluntary contribution from the Member States¹¹⁶. The refugee crisis led to a substantial increase in FRONTEX's funding, as it has been estimated that between 2014 and 2016 the Agency's overall budget grew from € 97.7 million to € 238.7 million¹¹⁷. FRONTEX plays a crucial role in “pooling” technical resources among Member States, as it keeps a central register of their technical means and equipment for external border control and surveillance¹¹⁸.

¹¹¹ Léonard, S. (2011). FRONTEX and the Securitization of Migrants through Practices. *Cit.*, p. 15.

¹¹² *Ibidem*.

¹¹³ *Ivi*, p. 16.

¹¹⁴ Marin, L. (2011). Is Europe Turning into a “Technological Fortress?” Innovation and Technology for the Management of EU's External Borders. Reflections on FRONTEX and EUROSUR. *Cit.*, p. 137.

¹¹⁵ Euro-Mediterranean Human Rights Network. (2014). Prioritizing border control over human rights. Violations of the rights of migrants and refugees at sea. *Euro-Mediterranean Human Rights Network*, p. 10-11.

¹¹⁶ Léonard, S. (2009). The Creation of FRONTEX and the Politics of Institutionalization in the EU External Borders Policy. *Cit.*, p. 383.

¹¹⁷ Perkowski, N. (2012). A normative assessment of the aims and practices of the European border management agency Frontex. *Refugee Studies Centre, Working Paper Series no. 81*, p. 119.

¹¹⁸ Marin, L. (2011). Is Europe Turning into a “Technological Fortress?” Innovation and Technology for the Management of EU's External Borders. Reflections on FRONTEX and EUROSUR. *Cit.*, p. 133.

Among the technologies deployed by FRONTEX, drones hold a special place, since they are becoming crucial tools in border management, as their technology improves the operational capacity and performance of border surveillance systems¹¹⁹.

Drones are currently understood as valuable resources in the creation and management of the so-called “smart borders” (also referred to as “e-borders”)¹²⁰. They can be equipped with some of the latest detection technologies such as high-definition cameras, motion sensors, thermal detectors, GPS data, and even facial or fingerprint recognition systems: drones can patrol remote areas that would be difficult to cover by other means (such as the Mediterranean), and provide real-time data to databases operated by border agents¹²¹. Moreover, aside from significantly reducing surveillance costs, drones can be much more discrete compared to other surveillance tools: because they are unmanned aerial vehicles, indeed, this makes them particularly suitable for border surveillance, as they can keep a constant presence in the Mediterranean without being noticed.

The use of these technologies offers an undoubted advantage in terms of efficiency and, in particular, could represent a valuable asset for Search and Rescue (SAR) operations carried out at sea¹²². Although the main driving factor behind the deployment of drones along the EU external maritime border is to improve existing border control practices, their use is generally justified by FRONTEX and national border authorities with reference to their potential for improving search and rescue capacities¹²³; nonetheless, as will be discussed later, their deployment in such operations has been quite limited.

2.3 The establishment of EUROSUR

Since 2013, to strengthen the exchange of information and the operational cooperation between Member State’s national authorities as well as with FRONTEX¹²⁴, the EU has established, through Regulation No. 1052/2013, the European Border Surveillance System, better known under the acronym of EUROSUR. EUROSUR is a large-scale information system developed by FRONTEX that aims to support the management of the EU’s external borders. Hence, it can be considered

¹¹⁹ Val Garijo, F. (2020). Drones, Border Surveillance and the Protection of Human Rights in the European Union. *Public Security and Public Order Research Journal*, vol. 25, p. 137.

¹²⁰ Ivi, p. 138.

¹²¹ Ibidem.

¹²² Ibidem.

¹²³ Jumbert, M. G. (2016). Creating the EU Drone: Control, Sorting and Search and Rescue at Sea, in the Good Drone. London Routledge, p. 19.

¹²⁴ Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR). *Official Journal of the European Union*, p. 1.

another fundamental tool contributing to integrated border management (IBM) at the EU level (Fig. 3).

The EUROSUR program is based on three main pillars: exchange of information, operational coordination and advanced technological support. The system allows for a more rapid and secure exchange of information and cross-border cooperation among Member States' surveillance authorities as well as with FRONTEX. To do so, it relies on advanced technologies such as radars, satellites and drones; moreover, EUROSUR aims to develop and share innovative technological tools for improving the detection and analysis of border threats.

Therefore, EUROSUR can be described as a network that links all relevant actors involved in the management of the EU's external borders: through National Coordination Centers (NCCs), indeed, national authorities in charge of border surveillance in all Member States (such as border guards, police, coast guard, navy...) can share information and coordinate their activities with other Member States' national coordination centers as well as with FRONTEX. Through a variety of technological means, NCCs gather information on their external borders and share situational reports, the so-called "National Situational Pictures" (NSP)¹²⁵. Combining all National Situational Pictures, FRONTEX can update the "European Situational Picture" (ESP) and a "Common Pre-frontier Intelligence Picture" (CPIP), which provides information on what is happening both inside and outside the EU external borders¹²⁶.

Indeed, through the deployment of drones, satellites, and other aerial technologies, the surveillance area covered by EUROSUR extends far beyond the EU Member States' territorial waters, into what is commonly referred to as the "pre-frontier area". Surveillance of the pre-frontier area is a crucial element for the functioning of EUROSUR, as it enables it to anticipate and promptly respond to those factors that could have an impact on border control.

EUROSUR's data collection and information-sharing regime serves three different purposes: reducing the number of undocumented migrants entering the EU; preventing cross-border crimes such as terrorism, human trafficking, or smuggling; and, finally, reducing the number of deaths at sea by increasing its search and rescue operations (SAR).

Nevertheless, the last point has attracted much criticism and reveals a certain ambiguity because, despite EUROSUR's supporters claim its humanitarian intent of preventing deaths at sea, FRONTEX has no official search and rescue competence¹²⁷. EUROSUR, indeed, is not an

¹²⁵ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, *Drones and Unmanned Aerial Systems. Cit.*, p. 108.

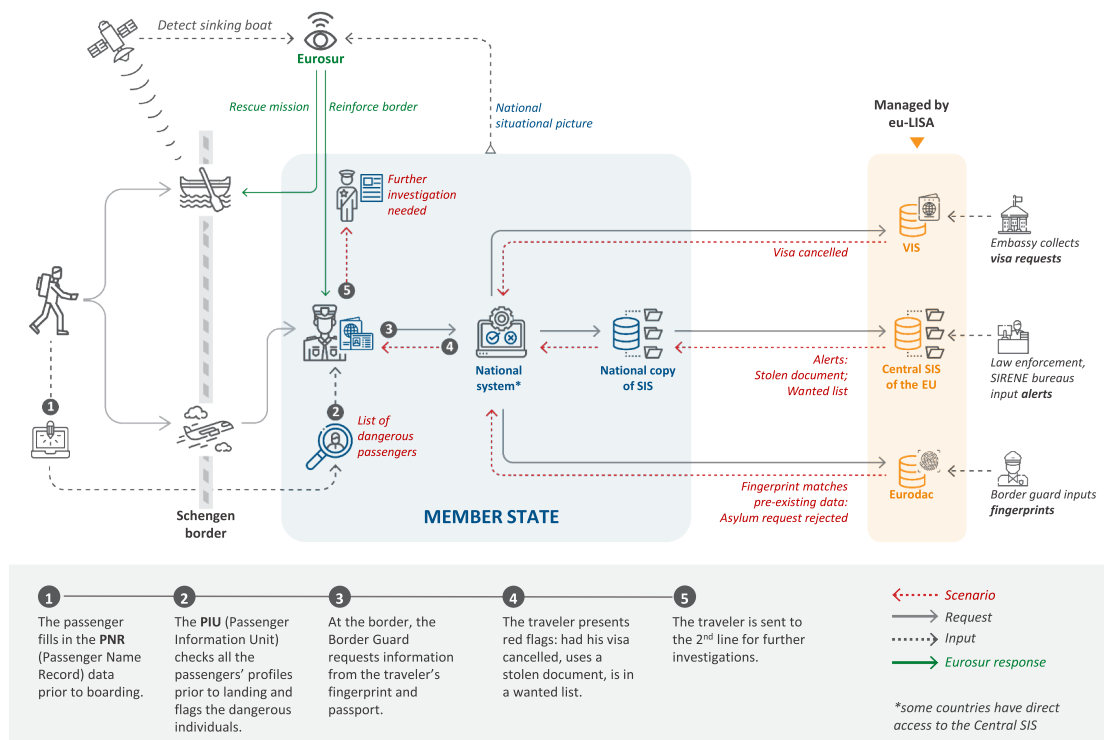
¹²⁶ *Ibidem*.

¹²⁷ *Ibidem*.

independent entity, but is part of FRONTEX, which is tasked with monitoring the EU’s external borders to prevent irregular migration and cross-border crime. Hence, the issue of the ambiguity arises because FRONTEX, unlike EUROSUR, does not have a specific mandate to conduct search and rescue operations. This can create a situation of tension between the objectives of EUROSUR and those of FRONTEX, especially when dealing with emergency situations where migrants’ lives are in danger: in such circumstances, indeed, while immediate action may be needed to rescue people in distress at sea, FRONTEX may be instead more focused on securing EU borders.

Apart from facilitating information-sharing among EU Member States as well as with FRONTEX, data collected by EUROSUR can be shared also with other EU Agencies such as EUROPOL (the EU Agency for Law Enforcement Cooperation), SatCen (the EU Satellite Centre), EMSA (the European Maritime Safety Agency), and others¹²⁸. These may provide EUROSUR with information that is relevant to update the ESP and CPIP: however, they shall use the information received only within the limits of their competence and in compliance with fundamental rights, including data protection requirements¹²⁹.

Fig. 3 – The EU information systems for border security



Source: *Corte dei Conti. Relazione Speciale No. 20/2019 della Corte dei Conti – I sistemi di informazione dell’UE a supporto delle verifiche di frontiera. Publications Office of the EU, p. 10.*

¹²⁸ Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR). *Cit.*, p. 11.

¹²⁹ *Ibidem.*

Nonetheless, concerning the cooperation with third parties, the most sensitive issue concerns the exchange of information with third countries' relevant authorities¹³⁰, a possibility provided by Art. 20 of the EUROSUR Regulation. Accordingly, any exchange of information with such authorities shall be restricted to what is strictly necessary for the purposes of the Regulation, meaning that, even if extremely limited, the exchange of personal data with third countries' authorities is still possible and, inevitably, triggers the question of the fate of those data once in their hands¹³¹. Indeed, the question that arises is: how could it be possible to ensure the respect of data provisions, after having exchanged them with, for instance, Libyan authorities?¹³²

It is believed that such a possibility could jeopardize migrants' human rights, as people could be identified on the basis of such information and potentially face the risk of being subjected to imprisonment, torture or any other violation of fundamental rights.

2.4 Increasing blurred lines between SAR operations and border control

Policies that have led to the creation of a "Fortress Europe" have meant increasing blurred lines between search and rescue operations (SAR) and border control activities¹³³.

The duty to assist people in distress at sea, regardless of their status or nationality, is a long-standing rule of international law codified in several international conventions, such as the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and the 1979 International Convention on Maritime Search and Rescue (SAR Convention). Yet, despite the SOLAS Convention clarifies that search and rescue obligations should prevail over border control, at the EU level, the opposite has been the most frequent scenario¹³⁴.

The shift from a humanitarian to a "securitarian" approach in migration management can be deduced, for instance, by looking at some naval operations undertaken by Italy - and the EU - during the years of the refugee crisis. Indeed, in the opinion of the author, the three operations under analysis – namely, "*Mare Nostrum*", "Triton", and Operation "EUNAVFOR MED Sophia"

¹³⁰ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, Drones and Unmanned Aerial Systems. *Cit.*, p. 118.

¹³¹ Ivi, p. 119.

¹³² Ibidem.

¹³³ Euro-Mediterranean Human Rights Network. (2014). Prioritizing border control over human rights. Violations of the rights of migrants and refugees at sea. *Cit.*, p. 8.

¹³⁴ Ibidem.

– demonstrate how the original aim of preventing deaths at sea has been progressively abandoned in favor of an approach more focused, instead, on border security.

Both perspectives, however, reflect two opposite public opinion’s attitudes towards immigration: on the one hand, indeed, there are those who claim that reception is a humanitarian duty, especially when it comes to people escaping war or persecution; while on the other hand, instead, there are those who would rather keep them outside national borders due to their fear of “invasion”. In line with the trend of the securitization of migration, in fact, the latter group firmly believes that the arrival of a large number of migrants could have detrimental effects, both economically (the rhetoric of “they steal our jobs”) as well as culturally (risk of cultural assimilation).

Operation *Mare Nostrum* was launched by the Italian government of Enrico Letta following the shipwreck of two Libyan vessels, which occurred, respectively, on the 3rd and 11th of October 2013 near the Island of Lampedusa and resulted in the tragic death of at least 636 people¹³⁵. The Italian Navy started *Mare Nostrum* as a “military-humanitarian” operation whose main objective was to rescue migrants in distress at sea¹³⁶, to prevent similar disasters to those of October 2013. The operation covered an extensive area in the Strait of Sicily, ranging from Italian waters up to the beginning of Libyan ones¹³⁷. To carry out its mandate, the operation could rely on several technological means, including an amphibious ship, one to two frigates, helicopters, drones and submarines¹³⁸.

Tab. 1 – Number of SAR interventions of the Italian Navy

YEAR	INTERVENTIONS	RESCUED MIGRANTS
2005	47	2587
2006	45	4025
2007	41	1711
2008	93	6963
2009	11	1322
2010	0	0
2011	20	2686
2012	24	2586
2013	95	11499
2014	439	156362

SOURCE: Italian Ministry of Defence, online data

Source: Panebianco, S. (2016). The *Mare Nostrum* Operation and the SAR approach: the Italian response to address the Mediterranean migration crisis. *Cit.*, p. 12.

¹³⁵ Tazzioli, M. (2016). Border displacements. Challenging the politics of rescue between *Mare Nostrum* and *Triton*. *Migration Studies*, vol. 4 (1), p. 1.

¹³⁶ *Ibidem*.

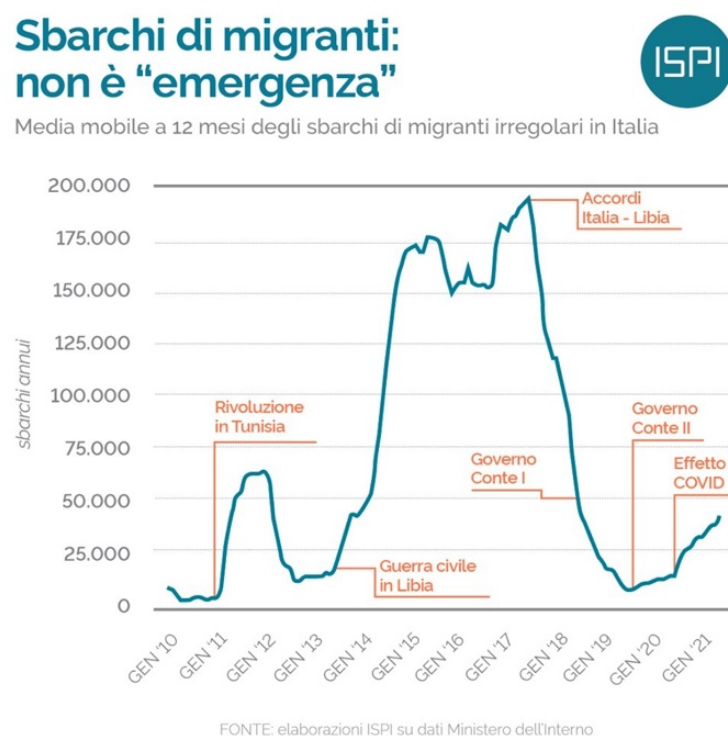
¹³⁷ Ivi, p. 2.

¹³⁸ Jumbert, M. G. (2018). Control or rescue at sea? Aims and limits of border surveillance technologies in the Mediterranean Sea. *Disasters*, vol. 42 (4), p. 680.

During the operational period of *Mare Nostrum*, which lasted approximately a year, the number of rescues carried out by the Italian Navy was about 100 in 2013 and almost 450 in 2014 (Tab. 1)¹³⁹. Overall, it has been estimated that the operation rescued at least 150,000 migrants in distress at sea (Tab. 1).

Nonetheless, it is essential to emphasize how this increase in migration flows has been closely linked to the political situation in Libya. As it was stressed in the previous chapter, indeed, the situation of political instability that followed the collapse of the Gheddafi regime not only created the perfect environment for the proliferation of human trafficking but also made it more challenging for the international community – and especially Italy – to manage migratory flows from Libya. Indeed, whereas under Gheddafi’s regime Italy and Libya had concluded an agreement according to which Libya had to prevent migrants’ departures by holding them in detention centers, this deal was suddenly interrupted with the collapse of the regime and, therefore, arrivals to the EU resume to increase (Fig. 4).

Fig. 4 – Average arrivals by sea to Italy from 2010 to 2021



Source: Ministero dell’Interno. ISPI. (2022). *Sbarchi di migranti: non è “emergenza”*. <https://www.ispionline.it/it/pubblicazione/sbarchi-di-migranti-non-e-emergenza-33408>

¹³⁹ Panebianco, S. (2016). *The Mare Nostrum Operation and the SAR approach: the Italian response to address the Mediterranean migration crisis*. *EUMedEA Online Working Paper Series*, p. 12.

However, after an initial phase in which *Mare Nostrum* was welcomed by the public opinion because of the large number of people rescued, the operation soon became the object of daily domestic tensions¹⁴⁰ due to political and financial issues.

Opposition parties, indeed, pointed out that the massive costs of the operation (about € 9,5 million per month) were an unbearable burden for a country that was already in a difficult economic situation, and since the refugee crisis was a European issue, the government led by Matteo Renzi invoked the “burden-sharing” principle to call for enhanced cooperation from the European Union¹⁴¹.

Moreover, although the number of arrivals to Italy was already increasing before the launch of *Mare Nostrum*¹⁴², there were widespread allegations, that the operation was acting as a sort of “pull-factor” for migrants, encouraging them to embark on a perilous journey across the Mediterranean knowing that they would be eventually saved by the Italian Navy¹⁴³.

However, this argument has been disproven by data: indeed, if improved SAR capacities have affected migration flows in any way, it is more likely that they have done so by making an extremely dangerous route relatively safer to travel rather than by encouraging more people to escape unacceptable living conditions¹⁴⁴.

Therefore, by October 2014, *Mare Nostrum* was interrupted; at the same time, the EU launched “Triton”, a Joint Operation coordinated by FRONTEX that has faced serious backlash for being, essentially, an operation set up to intercept and block migrants’ vessels heading to European shores¹⁴⁵. It has often been claimed that Triton was established to replace *Mare Nostrum*; however, since the two operations are very different, this constitutes an oversimplification¹⁴⁶. Indeed, while *Mare Nostrum* had a specific humanitarian intent, as it was developed to conduct search and rescue activities in order to prevent further tragedies at sea, the Joint Operation Triton has been focusing, instead, on border control and surveillance.

¹⁴⁰ Ivi, p. 13.

¹⁴¹ Ibidem.

¹⁴² Cuttitta, P. (2018). Repoliticization Through Search and Rescue? Humanitarian NGOs and Migration Management in the Central Mediterranean. *Geopolitics*, vol. 23 (3), p. 638.

¹⁴³ Ibidem.

¹⁴⁴ Jumbert, M. G. (2018). Control or rescue at sea? Aims and limits of border surveillance technologies in the Mediterranean Sea. *Disasters*, vol. 42 (4), p. 687.

¹⁴⁵ Tazzioli, M. (2016). Border displacements. Challenging the politics of rescue between *Mare Nostrum* and Triton. *Migration Studies*, vol. 4 (1), p. 2.

¹⁴⁶ Panebianco, S. (2016). The *Mare Nostrum* Operation and the SAR approach: the Italian response to address the Mediterranean migration crisis. *EUMedEA Online Working Paper Series*, p. 14.

However, although Triton has no official SAR mandate, it is still legally obliged, like all seafarers, to rescue people in distress (as well as EUNAVFOR MED Sophia)¹⁴⁷. Such ambiguity in the objectives of FRONTEX is reflected in the words of its Executive Director, Gil Arias Fernandez, who stated that “*while the operation focuses on border control, saving lives still remains an absolute priority for FRONTEX*”¹⁴⁸.

Compared with *Mare Nostrum*, Triton deployed much fewer resources, which included three offshore patrol vessels, two coastal patrol ones, two coastal motorboats, two aircraft and one helicopter¹⁴⁹. Moreover, its operational domain covers a far smaller area than that overseen by its predecessor (up to 30 nautical miles from Sicily), making it less likely for SAR operations to be performed, since vessels in distress are usually located far outside the area covered by Triton.

Following new shipwrecks in April 2015 that killed, overall, about 1000 people, the EU’s response has revolved around two strategies: tripling the initial budget of Triton of € 3 million per month (while extending its area of competence) and launching a new CSDP (Common Security and Defense Policy) military operation conducted by 22 Member States and coordinated by Italy, which has been called “EUNAVFOR MED Sophia”, whose mandate ranges from destroying smuggling routes to provide training to the Libyan Coast Guard¹⁵⁰.

Although the external communication of Triton and EUNAVFORM MED Sophia has placed considerable emphasis on their involvement in SAR activities, this commitment, however, has not been fully reflected in the operational conduct of these missions: both operations have indeed conducted a very limited number of SAR operations, prioritizing border control and anti-smuggling activities (Tab. 2)¹⁵¹.

Triton’s involvement in SAR operations peaked to a maximum of 24 per cent of total rescues in 2015, decreasing to 13 per cent in 2017; on the other hand, by 2016, EUNAVFOR MED Sophia rescued between 16 and 13 per cent of the total number of assisted migrants, a figure that eventually drop to 8 per cent in 2017 (Tab. 2)¹⁵².

¹⁴⁷ Cuttitta, P. (2018). Repoliticization Through Search and Rescue? Humanitarian NGOs and Migration Management in the Central Mediterranean. *Geopolitics*, vol. 23 (3), p. 639.

¹⁴⁸ Jumbert, M. G. (2016). Creating the EU Drone: Control, Sorting and Search and Rescue at Sea, in the Good Drone. *London Routledge*, p. 20.

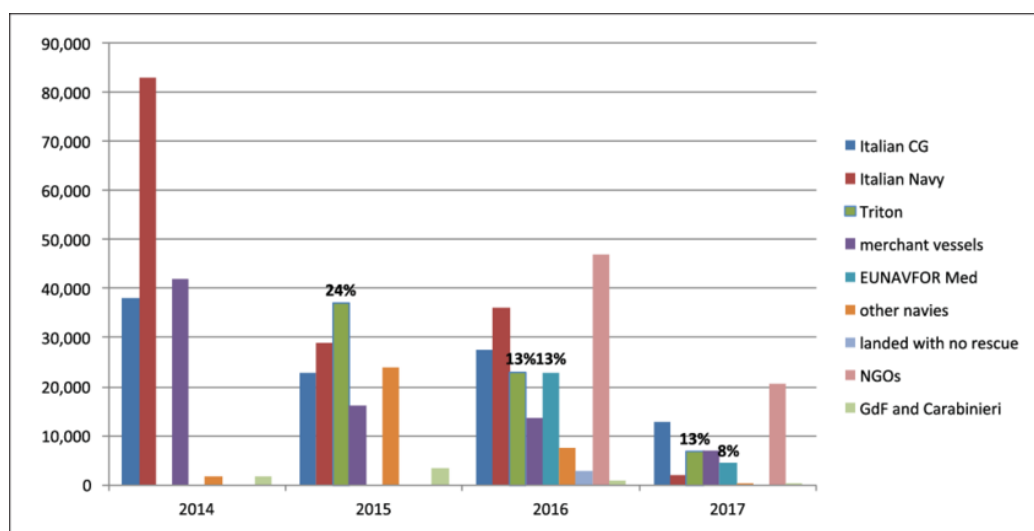
¹⁴⁹ Jumbert, M. G. (2018). Control or rescue at sea? Aims and limits of border surveillance technologies in the Mediterranean Sea. *Disasters*, vol. 42 (4), p. 681.

¹⁵⁰ Hermanin, C. (2017). Immigration Policy in Italy: Problems and Perspectives. *Istituto Affari Internazionali*, p. 7.

¹⁵¹ Cusumano, E. (2019). Migrant Rescue as Organized Hypocrisy: EU Maritime Missions Offshore Libya between Humanitarianism and Border Control. *Cit.*, p. 4.

¹⁵² Ivi, pp. 10-13.

Tab. 2 – Migrants rescued between January 2014 and 2017



Source: Cusumano, E. (2019). Migrant Rescue as Organized Hypocrisy: EU Maritime Missions Offshore Libya between Humanitarianism and Border Control. *Cooperation and Conflict*, vol. 54 (1), p. 11.

Therefore, by looking at the missions undertaken between 2013 and 2015, it can be noted how the original purpose of preventing deaths at sea has been gradually abandoned in favor of a securitarian approach more focused, instead, on “reinforcing control over EU maritime borders, thinly veiled by a humanitarian fig leaf”¹⁵³, and thus contributing to the creation of a “Fortress Europe”. In response to this trend, as early as the end of 2014, civil society actors, including several NGOs and commercial ships, began to carry out search and rescue operations in order to fill the void created by the end of *Mare Nostrum*¹⁵⁴.

The result, however, has been the rise of new tensions between state and non-state actors, since the latter have thwarted, to some extent, those policies undertaken to prevent migrants from entering the EU.

¹⁵³ Ivi, p. 4.

¹⁵⁴ Alarm Phone, Sea-Watch, Mediterranea, Borderline. (2020). Remote Control: the EU-Libya collaboration in mass interceptions of migrants in Central Mediterranean. *Cit.*, p. 6.

THIRD CHAPTER

IMPLICATIONS OF BORDER CONTROL TECHNOLOGIES

3.1 “Criminalization of solidarity” and the provision of assets to the Libyan Coast Guard

In recent years, and particularly after 2017, the EU and its Member States have significantly reduced their involvement in search and rescue (SAR) operations by progressively withdrawing their naval assets in the Central Mediterranean¹⁵⁵. The rationale behind this decision was to decrease the likelihood of encountering boats in distress at sea and thus being obliged, under international law, to carry out rescue operations¹⁵⁶.

This gradual marginalization of search and rescue capabilities can be deduced, for instance, by looking at the shrinking numbers of SAR operations carried out in the framework of both Operation Triton and EUNAVFOR MED Sophia. In fact, despite both missions placed great rhetorical emphasis on the humanitarian intent of preventing deaths at sea, their involvement in SAR operations has been instead quite limited.

In parallel to this trend, as was mentioned in the previous chapter, many humanitarian non-governmental organizations (NGOs) have been intensifying their search and rescue activities in the Mediterranean. As a result, since 2014, over 100,000 migrants have been saved by 10 different non-governmental organizations during SAR operations at sea¹⁵⁷. The intent behind this commitment was that of filling the void left by the conclusion of Operation *Mare Nostrum*, which had saved thousands of lives, and which was not fulfilled by subsequent operations undertaken by the

¹⁵⁵ Amnesty International. (2021). “No one will look for you”: forcibly returned from sea to abusive detention in Libya. *Amnesty International*, p. 23.

¹⁵⁶ *Ibidem*.

¹⁵⁷ Cusumano, E. (2019). Straightjacketing migrant rescuers? The code of conduct on maritime NGOs. *Mediterranean Politics*, vol. 24 (1), p. 106.

EU, as they were more focused on reinforcing border control rather than preventing fatalities at sea.

Paradoxically, in fact, search and rescue operations conducted by NGOs, such as Sea-Watch, *SOS Méditerranée*, *Médecins Sans Frontières*, Save the Children, and others, had managed, overall, to rescue almost as many people as those saved by both Operation Triton and EUNAVFOR MED Sophia. By the end of 2015, for instance, 152,343 people had been rescued at sea; of these, 41,341 were rescued by the Italian Coast Guard; 29,178 by the Italian Navy; 6,290 by Italian *Guardia di Finanza*; 16,158 by merchant ships; **20,063 by different NGOs**; 15,428 by Operation Triton; and 23,885 by Operation EUNAVFOR MED¹⁵⁸.

Nonetheless, despite having provided a crucial contribution to preventing deaths at sea, NGOs operating in the Central Mediterranean were soon compelled to suspend or reduce their involvement in SAR operations. Since the end of 2016, indeed, several European actors such as FRONTEX as well as many right-wing politicians belonging to populist parties, such as the Italian *Lega Nord*, have been increasingly accusing NGOs (and SAR operations in general) of serving as a pull-factor for migration and a catalyst for human smuggling¹⁵⁹.

These claims, not supported by statistical evidence, have triggered a process of delegitimization of non-governmental rescue operations that has resulted in decreasing funding, further restrictions to engage in SAR activities, and increasing risks of criminalization for those humanitarian NGOs operating in the Mediterranean¹⁶⁰.

In Italy, for instance, increased migration flows from Libya, the frustration arising from the lack of EU solidarity in the reception of asylum seekers, and this growing criticism of NGOs activities led, in 2017, to the introduction of a code of conduct that all NGOs involved in SAR operations must comply with¹⁶¹. Despite being presented as a tool to ensure the safety of migrants and respect for human rights, the code imposes severe limitations on non-governmental rescue activities, such as the obligation of not entering Libyan territorial waters or not making communications to facilitate the departure or embarkation of migrants' vessels¹⁶².

However, the Italian code of conduct for NGOs is just an example of a wider set of instruments adopted by the EU Member States aiming at criminalizing or impeding the work of non-

¹⁵⁸ Amnesty International. (2017). A perfect storm: the failure of European policies in the Central Mediterranean. *Amnesty International*, p. 11.

¹⁵⁹ Cusumano, E. (2019). Migrant Rescue as Organized Hypocrisy: EU Maritime Missions Offshore Libya between Humanitarianism and Border Control. *Cit.*, p. 12.

¹⁶⁰ *Ibidem*.

¹⁶¹ Cusumano, E. (2019). Straightjacketing migrant rescuers? The code of conduct on maritime NGOs. *Cit.*, pp. 106-107.

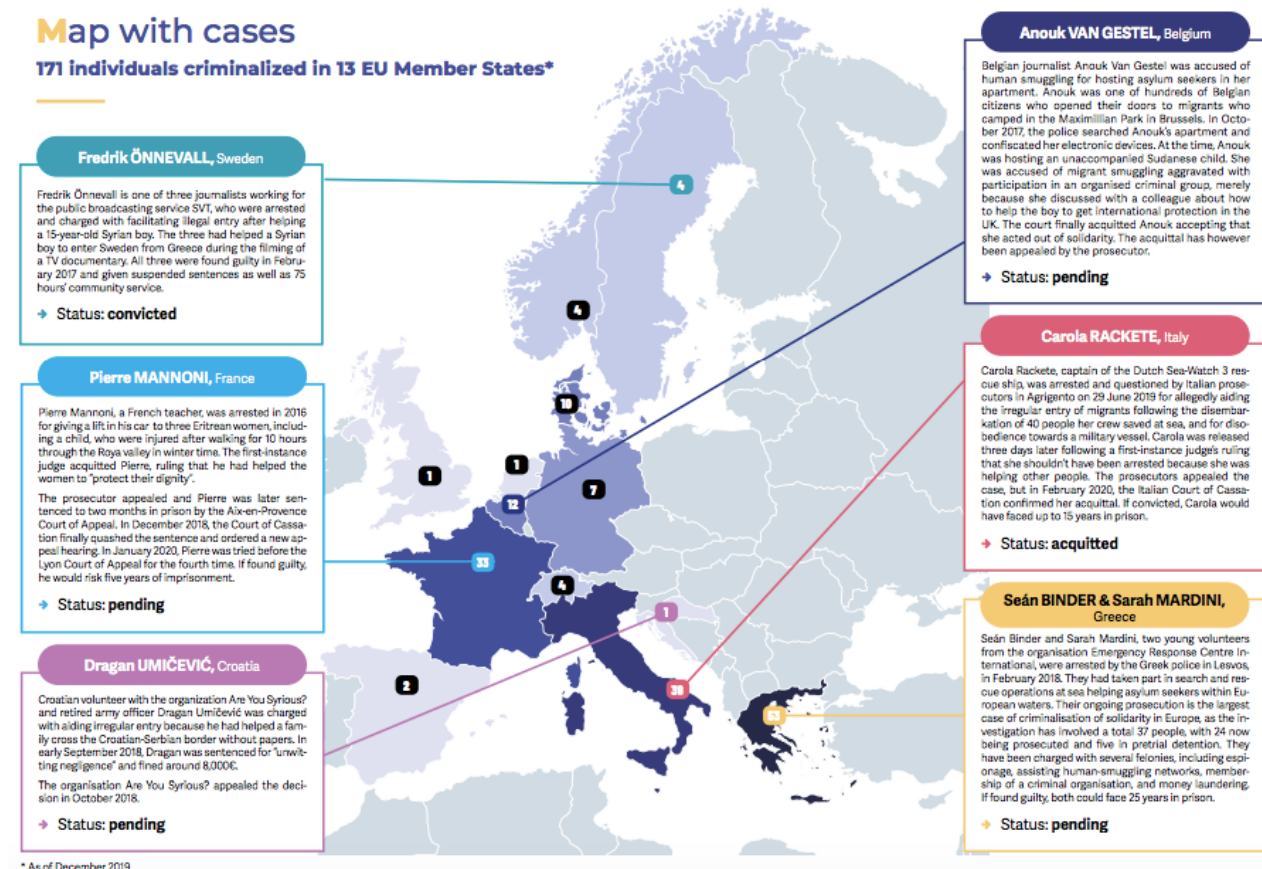
¹⁶² *Ivi*, pp. 108-109.

governmental organizations involved in SAR activities, for which even the UN High Commissioner for Human Rights has expressed his concern¹⁶³.

In recent years, indeed, many EU Member States, including Italy, have been promoting a growing phenomenon of “criminalization of solidarity”. As part of this trend, numerous non-governmental organizations involved in search and rescue activities at sea have been accused by national authorities of facilitating illegal immigration, thus being subjected to criminal proceedings in which, in most cases, were acquitted.

One of the most recent and emblematic cases, for instance, was that involving the German captain of the Sea-Watch 3 rescue ship, Carola Rackete, who was arrested in June 2019 and questioned by Italian authorities for allegedly assisting human smugglers and having challenged the Italian “close ports” policy¹⁶⁴. However, the case of Carola Rackete represents just an example of a number of similar episodes that occurred in recent years at the EU level (Fig. 5).

Fig. 5 – Map with cases: 171 individuals criminalized in 13 EU Member States (as of 2019)



Source: Research Social Platform on Migration and Asylum (ReSoma). (2020). The criminalization of solidarity in Europe. *ReSoma*, p. 4.

¹⁶³ Office of the UN High Commissioner for Human Rights (OHCHR). “Lethal Disregard”: Search and Rescue and the protection of migrants in the Central Mediterranean Sea. *OHCHR*, p. 25.

¹⁶⁴ Duarte, M. (2020). The Ethical Consequences of Criminalizing Solidarity in the EU. *Theoria*, vol. 86 (1), p. 29.

The main outcome of all these measures aiming at discouraging, preventing, or criminalizing NGOs' activities has been their decreased presence in the Central Mediterranean and, therefore, a sharp increase in migrants' maritime fatalities. As of 15 December 2020, indeed, only two of the fifteen humanitarian assets that regularly patrolled the Mediterranean Sea were actively engaged in SAR operations¹⁶⁵.

Moreover, while EU Member States were progressively reducing their SAR capabilities and increasingly criminalizing NGOs' activities, the Libyan Coast Guard (LCG) increased its role in intercepting migrants in the Central Mediterranean and returning them to Libya¹⁶⁶.

Although the rise in interceptions carried out by the LCG has produced a significant decline in the overall number of migrants landing on European shores, the mortality rate of those embarking on this perilous journey has more than doubled¹⁶⁷. Indeed, whereas in 2017, when 119,310 migrants reached Europe via Libya using the Central Mediterranean route, the mortality rate was one in every 51 migrants (1.98%), by 2018, this figure reached 1 in every 35 migrants (2.86%), and by the end of 2019, although the overall number of migrant arrivals to Europe decreased significantly to 14,560, at least one in every 21 migrants (4.78%) would die attempting the crossing¹⁶⁸.

However, the surge in interceptions carried out by the LCG would not have been possible without the extensive support provided to Libyan authorities by European institutions. Indeed, although substantial evidence has demonstrated that the LCG is a *de facto* militia with well-documented involvements in systematic human rights abuses and human trafficking networks, the EU has kept cooperating with Libyan authorities through the provision of technological, financial, and logistical support¹⁶⁹.

On 3rd February 2017, in fact, in an informal meeting held in Malta, members of the European Council issued a declaration (the so-called "Malta declaration"), by which they agreed to take measures to reduce migratory flows in the Central Mediterranean, and particularly those stemming from Libya, considering it represented the departure point for 90% of those seeking to reach the EU¹⁷⁰. Therefore, by adopting the declaration, EU leaders agreed to prioritize, among other measures, the provision of "*training, equipment and support to the Libyan national Coast*

¹⁶⁵ Office of the UN High Commissioner for Human Rights (OHCHR). "Lethal Disregard": Search and Rescue and the protection of migrants in the Central Mediterranean Sea. *Cit.*, p. 26.

¹⁶⁶ Ivi, p. 3.

¹⁶⁷ Ivi, p. 8.

¹⁶⁸ Ibidem.

¹⁶⁹ Alarm Phone, Sea-Watch, Mediterranea, Borderline. (2020). The EU-Libya collaboration in mass interceptions of migrants in Central Mediterranean. *Cit.*, p. 2.

¹⁷⁰ Heller, C. & Pezzani, L. (2018). Forensic Oceanography. Mare Clausum: Italy and the EU's Undeclared Operation to Stem Migration Across the Mediterranean. *Forensic Architecture Agency*, p. 40.

*Guard*¹⁷¹. Hence, the objectives set out in the declaration have led to the initial allocation of at least € 200 million for migration-related programs in Libya, later supplemented by additional resources from the EU Trust Fund for Africa¹⁷². Moreover, by endorsing “*efforts and initiatives from individual Member States directly engaged with Libya*”, the EU has welcomed the implementation of the Italo-Libyan Memorandum of Understanding (MoU)¹⁷³.

Through the Memorandum of Understanding, which was signed on 2nd February 2017 (thus one day before the adoption of the Malta declaration), Italy committed to provide financial, technical, and political support to Libyan authorities, with a clear expectation that by doing so the Libyan Coast Guard would be able to prevent departures from its shores or intercepting those migrants’ vessels already at sea (and thus return them to Libya). The measures contained in the Memorandum of Understanding consist, for the most part, of providing boat patrols and training to the LCG, maintaining the LCG’s assets, supporting Libyan “reception” centers (i.e. detention centers) and the establishment of a Libyan SAR zone and, eventually, coordinating migrants’ vessels’ interceptions at sea by the LCG (framed, for obvious reasons, as rescue operations).

Since 2017, as a result of the actions taken by Italy, and especially thanks to the provision of patrol vessels for conducting maritime interceptions, the LCG’s operational capacity has significantly increased¹⁷⁴. Until 2016, in fact, the LCG had conducted very few interceptions at sea: on the one hand because of its limited resources, on the other because, indeed, there was no real interest in carrying out this kind of operations; by contrast, the monitoring report from EUNAVFOR MED Operation Sophia has shown that the *Bigliani* class patrol boats offered by Italy to the LCG eventually operated the majority of the missions undertaken in the following years¹⁷⁵. The outcome has been increased maritime interceptions: it has been estimated that in 2017 alone, for instance, more than 20,000 people were intercepted at sea and returned to Libya by the LCG¹⁷⁶.

Moreover, the political support offered by Italian authorities to the LCG has culminated, following some difficulties, with the creation of a new SAR Region to be coordinated by Libyan authorities. The rationale behind Italy’s support for the establishment of a Libyan SAR zone and, therefore, of a Maritime Rescue Coordination Center (MRCC), has been that of enabling the LCG to perform interceptions at sea without impunity¹⁷⁷. In fact, by the establishment of a Libyan SAR

¹⁷¹ European Council. (2017). Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route.

¹⁷² *Ibidem*.

¹⁷³ *Ibidem*.

¹⁷⁴ Heller, C. & Pezzani, L. (2018). Forensic Oceanography. Mare Clausum: Italy and the EU’s Undeclared Operation to Stem Migration Across the Mediterranean, *Cit.*, p. 10.

¹⁷⁵ Ivi, p. 44.

¹⁷⁶ Ivi, p. 54.

¹⁷⁷ Ivi, p. 51.

zone and a MRCC, which are two essential requirements for being competent to carry out search and rescue operations, it is indeed possible for the LCG to disguise interceptions at sea (and *refoulements* to Libya) as operations of SAR.

Therefore, it can be argued that the support displayed by the Italian authorities in the establishment of a Libyan SAR zone is part of the numerous strategies adopted by Italy aiming at preventing large migratory flows stemming from Libya.

However, the establishment of a Libyan SAR zone has also raised several concerns, especially among NGOs and human rights advocates, as Libyan authorities not only lack the capacity to carry out SAR operations but also because they have been widely accused of violating migrants' human rights by means of abuses and arbitrary detention. Consequently, the institution of a SAR zone under the jurisdiction of these authorities may result in an increased number of migrants being rejected or detained, with no guarantee of access to asylum procedures.

3.2 The support offered to the Libyan Coast Guard by FRONTEX's aerial technologies

In this framework of cooperation between Italy, Libya, and the EU in the management of migratory flows stemming from Libya, one aspect that deserves specific attention is the support offered to the Libyan Coast Guard by FRONTEX's aerial technologies.

In fact, despite EU Member States have been gradually reducing their involvement in SAR operations, the European Border and Coast Guard Agency (FRONTEX) has nevertheless continued to operate its aerial assets over the Central Mediterranean, and even into the Libyan SAR region¹⁷⁸.

Since 2018, under the Multipurpose Aerial Surveillance (MAS)¹⁷⁹ framework, FRONTEX has been deploying its aerial assets across the Mediterranean to provide a "real-time surveillance service" that contributes to increasing the situational awareness of EU borders and specific pre-frontier areas¹⁸⁰. The MAS system, indeed, combines the use of remote-controlled aerial vehicles – also known as drones – and traditional aircrafts to provide a broad situational picture of the area surrounding the EU's external borders. The aerial assets deployed by FRONTEX are in fact equipped with high-definition cameras and other technological sensors to gather real-time information (such as images and full-motion videos) of the area under surveillance. The information acquired is then

¹⁷⁸ Amnesty International. (2021). "No one will look for you": forcibly returned from sea to abusive detention in Libya. *Cit.*, p. 23.

¹⁷⁹ Office of the UN High Commissioner for Human Rights (OHCHR). "Lethal Disregard": Search and Rescue and the protection of migrants in the Central Mediterranean Sea. *Cit.*, p. 21.

¹⁸⁰ Amnesty International. (2021). "No one will look for you": forcibly returned from sea to abusive detention in Libya. *Cit.*, p. 23.

directly streamed to the FRONTEX headquarters and affected national authorities, who will use it to gain a better understanding of the situation at the borders and to make operational choices. Since 2019, the Multipurpose Aerial Surveillance system has been operating 24/7.

However, the role played by FRONTEX's aerial technologies goes well beyond the "mere" provision of a constantly updated picture of the irregular migration situation across the EU's external borders.

Indeed, there is substantial evidence pointing out that because of the information provided by its aerial assets, FRONTEX has been able to coordinate numerous Libyan Coast Guard's pull-back operations. In fact, when migrants' vessels are spotted in international waters by its drones, FRONTEX can notify their position to the LCG, which will then proceed to return them to Libya without examining their migratory status. For instance, in the report published by Amnesty International "No one will look for you: forcibly returned from sea to abusive detention in Libya", eight different individuals have claimed to have seen an aircraft, most likely a FRONTEX aerial asset, flying over their boats shortly before they had been intercepted by the LCG, who returned them to Libya¹⁸¹. Such testimonies seem to be consistent with findings recently released by the Office of the High Commissioner for Human Rights, which appears to confirm that coordination, cooperation, and intelligence-sharing between the EU and Libyan SAR authorities have resulted in increased interceptions and *refoulements* to Libya¹⁸².

Moreover, such testimonies provided by migrants and refugees have been complemented by direct observations of different non-governmental organizations which have witnessed, firsthand, similar episodes¹⁸³. Thanks to its aerial assets, in fact, the NGO Sea Watch has been able to document several episodes of forced repatriation to Libya during which EU aerial assets had appeared shortly before the arrival of the LCG¹⁸⁴. On 22nd January 2021, for instance, Sea Watch monitored the trajectory of a drone operated by FRONTEX that initially revolved around a migrants' boat in distress, then flew in the direction of Tripoli, and eventually, followed by a vessel of the LCG, head back in the direction of the ship¹⁸⁵.

Additionally, according to an investigation conducted in April 2021 by the German magazine *Der Spiegel*, it has been estimated that since January 2020 there have been at least 20 different episodes in which FRONTEX's aerial assets were spotted around migrants' boats trying to reach

¹⁸¹ Ibidem.

¹⁸² Office of the UN High Commissioner for Human Rights (OHCHR). "Lethal Disregard": Search and Rescue and the protection of migrants in the Central Mediterranean Sea. *Cit.*, p. 21.

¹⁸³ Amnesty International. (2021). "No one will look for you": forcibly returned from sea to abusive detention in Libya. *Cit.*, p. 24.

¹⁸⁴ Ibidem.

¹⁸⁵ Ibidem.

the EU before they had been intercepted by the LCG¹⁸⁶. The same study also revealed that on several occasions FRONTEX's personnel sent to the LCG the GPS coordinates of migrants' boats in distress at sea¹⁸⁷.

In light of numerous testimonies reporting similar incidents, Amnesty International has claimed that the replacement of European SAR vessels with aerial assets deployed by FRONTEX has been clearly designed to bypass the European Union's SAR obligations. Indeed, the use of drones and aircrafts for border patrolling in the Central Mediterranean allows FRONTEX to detect boats in distress at sea without having to engage in rescue activities¹⁸⁸.

However, in response to this criticism, FRONTEX has been justifying its conduct by asserting that notifying Libyan authorities on the position of boats in distress is simply a way to ensure prompt rescue at sea in line with international maritime law obligations¹⁸⁹.

Nevertheless, these episodes of "*refoulement* by proxy" carried out by the LCG on behalf of the EU have actually raised concern that the current EU-Libya collaboration in the field of migration is leading to mass interceptions and pull-backs to Libya¹⁹⁰.

Thus, through the deployment of aerial assets operated by FRONTEX, Europe is indirectly contributing to serious infringements of human rights that amount to violations of the principle of *non-refoulement* and prohibition of collective expulsions.

3.3 Italy's involvement in the interceptions carried out by the Libyan Coast Guard

From the analysis of the above-mentioned practices, it can be argued that 2017 saw a significant acceleration in the collaboration between EU and Libyan authorities¹⁹¹, leading to a rise in the number of interceptions carried out by the Libyan Coast Guard.

Moreover, this trend has been accompanied by a growing tendency towards the so-called "criminalization of solidarity", which has resulted in an increasing delegitimization, at the EU level, of NGOs' SAR activities. The principal outcome of this phenomenon has been an inversion of roles between NGOs and the Libyan Coast Guard: in fact, whereas by 2016 NGOs accounted

¹⁸⁶ Ibidem.

¹⁸⁷ Ibidem.

¹⁸⁸ Alarm Phone, Sea-Watch, Mediterranea, Borderline. (2020). Remote Control: the EU-Libya collaboration in mass interceptions of migrants in Central Mediterranean. *Cit.*, p. 8.

¹⁸⁹ Amnesty International. (2021). "No one will look for you": forcibly returned from sea to abusive detention in Libya. *Cit.*, p. 24.

¹⁹⁰ Office of the UN High Commissioner for Human Rights (OHCHR). "Lethal Disregard": Search and Rescue and the protection of migrants in the Central Mediterranean Sea. *Cit.*, p. 22.

¹⁹¹ Heller, C. & Pezzani, L. (2018). Forensic Oceanography. Mare Clausum: Italy and the EU's Undeclared Operation to Stem Migration Across the Mediterranean. *Cit.*, p. 54.

for the majority of rescues in the Central Mediterranean, by 2017 the Libyan Coast Guard was intercepting way more migrants than those overall rescued during NGOs' SAR operations¹⁹².

Nevertheless, to avoid oversimplifications, when it comes to the reversal of roles between NGOs and the LCG there is an important clarification that must be made, given that these operations have completely different effects and, therefore, cannot be treated in the same way. In fact, whereas migrants intercepted by NGOs during their SAR activities are generally taken to safe third countries for the purpose of prompt disembarkation following rescue at sea, the same cannot be said for those operations carried out by the LCG. Indeed, although the activities of the LCG are conveniently framed as "rescue operations", the truth is very much different. These operations, in fact, consist of forced repatriations to Libya, potentially violating the principle of *non-refoulement*, as Libya cannot be considered a safe country for disembarkation because of ample documented evidence of mistreatment and abuse towards migrants – especially in Libyan detention centers.

However, through the provision of patrolling assets, funds, and training, Italy has also proved to be an essential contributor to the increasing number of pull-back operations carried out by the Libyan Coast Guard.

Indeed, an analysis of 16 documented incidents that took place between 2017 and 2018 clearly shows that the Italian Navy and its Maritime Rescue Coordination Center have played a crucial role in coordinating and directing LCG's maritime interceptions¹⁹³. Moreover, these events have also demonstrated the essential contribution provided by surveillance technologies such as drones, aircrafts, and helicopters, which have proved to be crucial to the coordination – and success – of interception operations at sea as well as to the efficiency of maritime border control activities. It has been reported, in fact, that in most cases of forced repatriation to Libya occurred between 2017 and 2018, the Italian MRCC, after having been informed of the presence of boats in distress in the Central Mediterranean thanks to its surveillance technologies, transferred such information to the LCG, which then claimed coordination over these SAR operations, while NGOs vessels were asked to remain on standby¹⁹⁴. The majority of these cases, which could only be documented thanks to the presence of the few remaining NGOs in the Central Mediterranean, have demonstrated how Italian authorities have *de facto* privileged interceptions carried out by the LCG over rescues performed by European or NGOs' vessels¹⁹⁵.

Thus, this section will present some of the most emblematic cases that attest the establishment of a new operational pattern by which the LCG has been to carry out interception operations

¹⁹² Ivi, p. 57.

¹⁹³ Ivi, p. 58.

¹⁹⁴ Ibidem.

¹⁹⁵ Ivi, p. 83.

under the direct supervision of Italian authorities. The reconstruction of these incidents has been made possible thanks to the work of Heller and Pezzani's Forensic Oceanography research project, which has also been mentioned in a document released by the European Parliament and commissioned by the EP's Committee on Civil Liberties, Justice, and Home Affairs (LIBE Committee), "The EU Approach on Migration in the Mediterranean", thereby acquiring further recognition.

On the 27th of September 2017, for instance, despite the Italian Navy warship *Andrea Doria* being located nearby, two migrants' vessels were signaled to the LCG and returned to Libya; this incident was witnessed and documented by Isobel Yeung, a journalist for *Vice News*, who was on board of the LCG's vessel *Al Kifah*, which carried out the interception¹⁹⁶. According to Yeung, on the morning of the interception, the captain of *Al Kifah* had received two distress notifications from *Andrea Doria*, providing the position of the boats in distress¹⁹⁷. Despite the presence of several merchant ships and two NGO vessels nearby, these were not informed of the position of the distressed boats; instead, the Italian Navy notified their position to the LCG, which then proceeded to return them to Tripoli to be brought to the Tajoura detention center¹⁹⁸. Thus, by looking at this incident, it is possible to infer that the LCG has been able to carry out the interception of 213 migrants, followed by their return to Libya, thanks to the clear operational coordination given by Italian authorities.

An even more significant case occurred on the 11th of October 2017, when a boat carrying approximately 155 migrants that had previously departed from Libya appeared to be drifting due to an engine failure¹⁹⁹. Despite the presence of several NGOs and European ships nearby, *Andrea Doria* requested the LCG to proceed to the position of the boat in distress; at the time of the call, *Al Kifah* was far about 30 nautical miles from the target (and estimated at least 2 hours to reach the indicated position), whereas the Italian ship was only 13 nautical miles away²⁰⁰. What emerges from the reconstruction of this incident is that *Andrea Doria* approached the vessel but remained at distance, only deploying a RHIB (rigid inflatable boat) and offering minimal assistance until the LCG arrived at the scene; then, as the LCG's vessel was approaching, some of the passengers started to jump towards the Italian RHIB, knowing that otherwise they would likely be returned to Libya.²⁰¹ As a result of these actions, 40 people were taken to Italy, whereas the remaining 100

¹⁹⁶ Ivi, p. 68.

¹⁹⁷ Ibidem.

¹⁹⁸ Ivi, p. 69.

¹⁹⁹ Ivi, p. 70.

²⁰⁰ Ivi, p. 71.

²⁰¹ Ivi, p. 72.

passengers were disembarked in Libya and brought to a detention center in Tripoli²⁰². Once again, this incident provides further evidence of the operational coordination exercised by Italian authorities over the LCG, thereby operating a form of “*refoulement* by proxy”.

A similar pattern was documented on the 15th of December 2017, when Fabio Butera, a journalist on board the *Aquarius* vessel of the NGO *SOS Méditerranée* recorded the communication between the Italian Navy and the LCG, which resulted in the interception of two migrants’ boats²⁰³. After having received a distress notification from the Italian MRCC, *Aquarius* was instructed to direct itself toward a first migrants’ boat that was spotted in the Central Mediterranean by a helicopter of the Italian Navy belonging to the *Rizzo* warship²⁰⁴. However, soon after this communication, the MRCC in Rome informed *Aquarius* that also the LCG’s vessel *Ibn Ouf* was directing itself towards the designed target; therefore, it directed the *Aquarius* towards another boat in distress²⁰⁵. While they were trying to contact *Rizzo* in order to know the exact position of the new target, the staff of *Aquarius* overheard a communication between *Rizzo* and *Ibn Ouf* in which the former was urging the latter to direct itself toward another ship in distress²⁰⁶. After having reached the designed target, *Aquarius* carried out the rescue operation under the operational coordination of *Rizzo*; however, according to a Facebook post of the LCG, it was reported that on that day approximately 260 migrants from two different boats – most certainly including the one described in the communication between *Rizzo* and *Ibn Ouf* – were intercepted and brought back to a detention center in Tripoli²⁰⁷. Through the reconstruction of this pull-back operation it is possible to witness, once again, the Italian Navy taking an active role in detecting migrants in distress at sea and passing the information to the LCG²⁰⁸. Although the exact position of *Rizzo* was undisclosed, it was certainly close enough to have been able to rescue the migrants in distress before they were intercepted by the LCG; moreover, whereas *Aquarius* and several merchant ships transitioning in the area could also have been called upon, the Italian Navy, instead, privileged the interception of the LCG²⁰⁹.

In this sense, another emblematic case had previously occurred on the 24th of November 2017, when two boats in distress were intercepted and pulled back from the LCG despite the presence, nearby, of the *Aquarius* vessel²¹⁰. In fact, despite it was *Aquarius* itself which had first spotted the two ships in distress, the NGO’s vessel was asked to remain on standby by the Italian MRCC,

²⁰² Ibidem.

²⁰³ Ivi, p. 76.

²⁰⁴ Ibidem.

²⁰⁵ Ibidem.

²⁰⁶ Ivi, p. 77.

²⁰⁷ Ivi, p. 78.

²⁰⁸ Ibidem.

²⁰⁹ Ibidem.

²¹⁰ Ivi, p. 75.

which instead assigned the coordination of the “rescue” of both ships to the LCG. However, although weather conditions had considerably deteriorated during the four hours of stand-by, further increasing the risk of shipwreck, the crew of *Aquarius* still had to follow the instructions given by the Italian MRCC and, therefore, could not engage in the rescue of such boats; the *Aquarius*’ staff then witnessed the interception of these boats by the LCG, which declined its offer of assistance.

Similarly, on the 27th of January 2018, *Aquarius* witnessed once again a pull-back of the LCG at about 15 nautical miles from the Libyan coast²¹¹. On this occasion, *Aquarius* had previously received a distress notification from the MRCC in Rome that was urging its staff to search for a boat a distress in the international waters west of Tripoli; nonetheless, when the NGO’s vessel was less than 100 meters from the boat and ready to intervene, a LCG’s vessel that was approaching the scene ordered *Aquarius* to leave the area²¹². However, the LCG did not proceed immediately with the “rescue” of the boat in distress, but first escorted the NGO’s vessel away from the scene: this constitutes an important detail, as it clarifies that while conveniently framed as “rescue operations” the intentions behind Libyan interceptions are in fact very different. *Aquarius* was then informed by the Italian MRCC that the LCG had assumed the coordination of rescue and was urged to comply with its instruction²¹³.

Hence, from the reconstruction of the above-mentioned incidents, which have been given ample space in order to emphasize the pervasive nature of such operations, it can be deduced that on multiple occasions, while refraining from its SAR obligations, the Italian Navy and MRCC have been exercising clear operational coordination over interceptions carried out by the LCG, conveniently framed as “rescue operations” even if the reality is far different²¹⁴. Moreover, the analysis of these incidents also suggests the systematic, rather than episodic, nature of such events, thus constituting a consolidated practice of the Italian authorities which have actively sought to prevent European and NGOs vessels to be involved in SAR operations to privilege, instead, through the provision of operational coordination, interceptions of the LCG, thereby operating a form of “*refoulement by proxy*” that has culminated with migrants’ repatriation to Libya²¹⁵.

The expression “*refoulement by proxy*”, indeed, refers to a practice through which a country delegates to another the task of pulling back and detaining those people who attempt to reach, in this case, European shores. In other words, through this strategy, a country seeks to avoid the responsibility arising from the contravention to one of the cardinal principles of international refugee

²¹¹ Ivi, p. 78.

²¹² Ibidem.

²¹³ Ibidem.

²¹⁴ Ivi, p. 83.

²¹⁵ Ivi, p. 64.

law²¹⁶, namely the principle of *non-refoulement*, by delegating this task to other countries not bound by this international commitment (such as Libya, which did not ratify the 1951 Convention on the Status of Refugee nor its 1967 Protocol). This practice can raise serious questions in terms of violations of human rights and international obligations: in fact, due to the lack of appropriate oversight, it can lead to abuses against migrants, asylum seekers, and refugees, especially when forcibly returned to countries that cannot be considered safe.

Moreover, by working with the LCG as if it was a normal state-authority (rather than an effective militia) and by ignoring the fact that migrants intercepted at sea are being returned to a country where there is a concrete risk that they will be subjected to multiple forms of inhuman and degrading treatment²¹⁷, the Italian Navy and MRCC, backed by the EU, have *de facto* made themselves complicit of such abuses perpetrated by Libyan authorities.

Finally, based on these considerations, it could be argued that the effective result of the steps undertaken by the Italian authorities to implement the EU policy direction, as outlined in the 2017 Memorandum of Understanding and in the subsequent Malta Declaration, is not to prevent migrants' deaths at sea, but rather to avoid their arrival to European shores. Hence, the forced repatriations carried out by the LCG under the direct supervision of the Italian authorities have proved to be, in this sense, an extreme measure to remedy to the partial failure of the primary strategy of preventing migrants' departures from Libya.

Therefore, it could be concluded that such operations of forced return to Libya raise serious questions not only about their human rights and ethical implications, but also in terms of the effectiveness, in itself, of the Italian strategy of externalizing the management of migratory flows to Libya.

3.4 Ethical – and practical – implications of the EU's surveillance technologies

Over the past ten years, in order to better manage the increasing migratory pressure triggered by the most recent refugee crisis, the EU has been investing in new technologies for improving the efficiency and efficacy of border control.

The development of new advanced technologies for border control has led to the creation of the so-called “Fortress Europe”, an extensive network of surveillance systems that while intended to protect its external borders is also preventing many third-country nationals from entering the EU.

²¹⁶ Ivi, p. 8.

²¹⁷ Ivi, p. 83.

This broad infrastructure of surveillance systems can be categorized into two main sections: on the one hand, aerial and maritime surveillance technologies such as drones, aircrafts, satellites, and vessels equipped with high-resolution cameras and other high-tech sensors, which allows to monitor important migratory routes such as the Central Mediterranean one; on the other hand, large databases such as SIS II, VIS, and EURODAC, which gather biometric and personal data about migrants and which are crucial for the promotion of cooperation and information-sharing among Member States' national authorities.

The development and implementation of these new technologies, which has led to the creation of the so-called “techno-borders”, is supported by vast amounts of public funding that are expected to further increase in the years to come²¹⁸. It has been projected, in fact, that the total size of the budget that will be allocated to EU border policies between 2021 and 2027 (as the EU budget runs in seven-years cycles) increased by 94 percent compared to the previous budgetary period (2014-2020) – although not the entirety of this budget will be used for such purposes²¹⁹. Nevertheless, considering that between 2014 and 2022 the EU has provided more than €250 million to 49 different projects seeking to develop new border technologies, it can be assumed that billions of euros will be allocated in the upcoming years to expand and strengthen Europe's techno-borders²²⁰.

However, although there is no denying that such technologies are essential to facilitate the movement of *bona fide* travelers across the EU, it is also crucial to acknowledge that they are playing a significant role in the securitization of migration, since they are increasingly preventing many third-country nationals to access the gates of the Fortress Europe²²¹.

As a matter of fact, the deployment of new border control technologies raises a number of serious legal, ethical, and humanitarian questions. Left unchecked, indeed, these could lead to systematic violations of basic human rights or actions that can be considered inconsistent with the core values promoted by the EU²²².

At the EU level, the rules governing the crossing of the Schengen area's external borders can be found in the Schengen Borders Code (SBC). According to Art. 7, border control should pursue a legitimate objective, respect human dignity, non-discrimination, and be proportionate to the

²¹⁸ Jones, C., Lanneu, R., & Maccanico, Y. (2023). Europe's Techno Borders. *EuroMed Rights & Statewatch*, p. 5.

²¹⁹ Ibidem.

²²⁰ Ivi, p. 6.

²²¹ Ivi, p. 5

²²² Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Cit.*, p. 146.

objectives sought²²³. Technologies deployed for border surveillance, understood as part of border control, should therefore respect all of these requirements²²⁴.

However, while their legitimacy is not under question since border control technologies are being deployed for reasonable purposes such as protecting national security, combating cross-border crime, preventing unauthorized migration and, even if in a limited way, enhancing SAR capacities, the question is much more contentious when it comes to the other conditions, especially to the requirement of proportionality.

For instance, when considering drones deployed by FRONTEX during border control activities, the question is whether these constitute the least restrictive measure that could be used to achieve the above-mentioned purposes and whether there is an effective imbalance between the human cost of drone technology and its benefits²²⁵.

Given that Member States have both the right and the legal obligation to monitor their external borders, the deployment of surveillance technologies *at* and *between* legal border crossings can be considered justified and proportionate²²⁶. However, this matter becomes more ambiguous when surveillance is extended beyond the EU's territory. Indeed, although the SBC clarifies that surveillance conducted outside of the EU's external borders must still comply with fundamental human rights obligations, this might result in a shift from reactive to proactive border surveillance²²⁷, thus potentially infringing fundamental human rights such as the freedom of movement, the right to asylum, and the prohibition of collective expulsions.

In this sense, for instance, it might be useful to take into account the support provided by FRONTEX's aerial technologies to the LCG, which enabled it to carry out, since 2017, an increasing number of interceptions at sea that have been followed by forced repatriations to Libya. In this way, in fact, it could be argued that the EU is indirectly contributing to mass expulsions to a country with well-documented patterns of horrific abuses towards migrants without properly assessing their asylum claims or the risks to which they might be exposed to. Apart from constituting a clear breach of the principle of *non-refoulement* as enshrined in the 1951 UN Convention on the Status of Refugees, this conduct may also potentially infringe other fundamental human rights safeguarded by several EU Conventions.

²²³ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, Drones and Unmanned Aerial Systems. *Springer International*, p. 113.

²²⁴ Ibidem.

²²⁵ Ibidem.

²²⁶ Ibidem.

²²⁷ Ibidem.

Indeed, by allowing the LCG to repatriate migrants back to a country that lacks any established asylum procedure and where they are systematically subjected to abuses, arbitrary detention, and inhuman treatment, the EU might also be held accountable for the violation of their right to asylum. FRONTEX's aerial technologies could in fact prevent potential asylum seekers from declaring their vulnerable status before being turned away; moreover, in addition to endangering their right to asylum, this operational pattern may also result in an infringement of their freedom of movement. In fact, if people are aware that a determined area is being monitored by FRONTEX's drones, they might decide to take more dangerous migratory routes²²⁸, thus potentially endangering also their right to life to avoid the concrete risk of being intercepted by the LCG and brought in Libyan detention centers.

Moreover, although increased interceptions carried out by the LCG have significantly reduced the number of arrivals into the EU, it is crucial to acknowledge that this has not eliminated the problems arising from the intense migratory pressure felt by Member States at the EU's southern external borders; but rather, it has caused this pressure to shift from the Central Mediterranean route to new ones. In fact, as throughout the past decade surveillance along the Mediterranean Sea has been considerably rising, migrants have begun to explore alternative paths to enter the EU²²⁹. To this end, the Balkan route – which mainly runs through Turkey, Greece, and the Western Balkan countries – has grown incredibly popular as a substitute²³⁰. Indeed, compared to the past, in the early months of 2021, Greece has registered a considerable surge in migrants' arrivals.

Therefore, despite the deployment of FRONTEX's aerial technologies has been justified on the ground that they will fundamentally contribute to decrease maritime fatalities, there is the concrete risk, in the opinion of the author, that these technologies will instead function as a deterrent to migrants' departures, thus serving more-security oriented purposes such as impeding access to the Fortress Europe.

However, by turning the attention to the other set of surveillance technologies employed to control its external borders – namely SIS II, VIS, and EURODAC – and particularly in view of the EU's recently adopted “Interoperability Regulations”, there are other relevant issues that must be taken into account.

²²⁸ Ivi, p. 118.

²²⁹ Giordano, A. (2016). The New Political Geography of Migration in Europe Between External Borders and Internal Freedom of Movement. *Cit.*, p. 55.

²³⁰ Crépeau, F., & Purkey, A. L. (2016). Facilitating Mobility and Fostering Diversity: Getting EU Migration Governance to Respect the Human Rights of Migrants. *CEPS Paper in Liberty and Security in Europe*, no. 92, p. 8.

The so-called “Interoperability Regulations”, adopted by the EU through Regulation no. 2019/817 and no. 2019/818 as a response to the 2016 Brussels terrorist bombings²³¹, establish an interoperability framework among EU information systems in the field of police and judicial cooperation, asylum migration, borders, and visa²³². As they aim to centralize data from six EU information systems for security, borders, and migration management, they have raised several fundamental rights concerns²³³.

The EU information systems in question can be divided into two main categories: on the one hand, large centralized databases that have already been active for several years but have progressively expanded their scope and purposes, such as SIS II, VIS, and EURODAC; on the other hand, instead, there are those systems whose implementation is still pending, such as EES, ETIAS, and ECRIS-TCN²³⁴. Whereas some of these databases were created for border management purposes, the others were originally established for security-related objectives: however, both types of systems collect similar kinds of biometric data concerning third-country nationals²³⁵.

The main objectives of the Interoperability Regulations are preventing illegal immigration and improving security within the EU: nonetheless, by approaching these goals as a single, unified purpose, such interconnection may underpin violations of fundamental rights, particularly the protection of migrants’ personal data²³⁶. Indeed, although the establishment of such an interoperability framework seeks to improve cooperation between migration agencies, police forces, and judicial bodies, it may also raise the possibility, if proper safeguards are not in place, of exploiting the system for purposes beyond the original intent, thereby rendering it a dangerous tool against the fundamental rights of third-country nationals²³⁷.

Since the Interoperability Regulations enable law enforcement authorities, including EURO-POL and INTERPOL, to access sensitive data of third-country nationals, it might have negative implications for at least four fundamental EU rights and general principles: right to privacy and data protection, principle of non-discrimination, protection of children and principle of proportionality²³⁸.

²³¹ Bredström, A., Krifors, K., & Mesic, N. (2022). Border Reconfiguration, Migration Governance, and Fundamental Rights: A Scoping Review of EURODAC as a Research Object. *Cit.*, p. 69.

²³² Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 2.

²³³ *Ibidem*.

²³⁴ *Ivi*, p. 5.

²³⁵ *Ivi*, p. 3.

²³⁶ *Ivi*, p. 2.

²³⁷ *Ibidem*.

²³⁸ *Ivi*, p. 10.

At the EU level, the right to privacy and protection of personal data, codified by Art. 8 of the EU Charter of Fundamental Rights, applies to any person within the territory of the Union, regardless of their nationality²³⁹. Moreover, since 2018, personal data protection has been also guaranteed by the General Data Protection Regulation (GDPR), which defines the guidelines for the collection, elaboration, and storage of individuals' personal data. Art. 5 of the GDPR dictates that any system regulating the processing of personal data “*must comply with seven core data protection principles: 1) lawfulness, fairness, and transparency; 2) purpose limitation; 3) data minimization; 4) data accuracy; 5) storage limitation; 6) data integrity and confidentiality; 7) accountability*”²⁴⁰.

However, as a result of the adoption of the Interoperability Regulations, some of these principles may be questioned.

For instance, since the new interoperability system will make data from existing databases accessible to a wider range of law enforcement authorities, the principle of lawfulness – which refers to the use of personal data in ways that people would reasonably expect rather than in a manner that could have unjustified negative implications – may be jeopardized²⁴¹.

This same argument also applies to the principle of transparency, whereby data elaboration must be clear and open about *who* and *how* such information is being processed.

Similarly, such an interoperability framework may potentially compromise the purpose limitation principle, which provides that the reasons for data processing are legitimate and clearly specified²⁴². Although data collection operated by the EU's centralized databases meets the legitimate need to enable border authorities to effectively identify third-country nationals (as well as to prevent frauds in the immigration process), it is also crucial that this is done in a way that guarantees that the information collected is adequately secured against unauthorized access and only used for the intended purposes.

In this sense, it could be argued that all existing databases for the management of the EU's external borders (namely SIS II, VIS, and EURODAC) have been violating the principle of purpose limitation given that, despite being originally established for the management of migration, asylum, and borders, they are increasingly being used as intelligence tools for internal security and law enforcement purposes²⁴³. For instance, while the initial scope of SIS was to compensate for the abolition of internal borders and prevent illegal immigration, SIS II assumed a more security-

²³⁹ Ivi, p. 11.

²⁴⁰ Ibidem.

²⁴¹ Ivi, pp. 11-12.

²⁴² Ivi, p. 13.

²⁴³ Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Cit.*, p. 152.

oriented purpose and granted access to additional law enforcement authorities such as EUROPOL or EUROJUST²⁴⁴. Similarly, EURODAC and VIS were originally established as centralized systems for the management of migration and asylum, but due to their recent revision and the provision of greater access from law enforcement authorities, they have *de facto* evolved into investigative and intelligence tools²⁴⁵. Indeed, although EURODAC was primarily conceived as an instrument to prevent “visa shopping” and it was explicitly stated that it should not have been used for other purposes such as criminal investigations against asylum seekers, this did not prevent it from being converted into an effective intelligence tool²⁴⁶.

However, going back to the principles enshrined in Art. 5 of the GDPR, it can be claimed that the interoperability framework is potentially infringing also the storage limitation principle. The Regulations provide, indeed, that migrants’ personal data stored by such databases must be kept “*for no longer than strictly necessary*” and then automatically canceled from the original system²⁴⁷. Yet, the Regulations do not specify the method of deletion; moreover, since each EU information system has its own retention period, if data from third-country national are being stored in different databases, such retention will be inevitably tied to the time limit that allows for the longest period of data retention²⁴⁸.

Aside from possible infringements of third-country nationals’ right to privacy and protection of personal data, such an interoperability framework may also result in a potential violation of the principle of non-discrimination, enshrined in art. 21 of the EU Charter of Fundamental Rights but also in the Interoperability Regulations as well. Art. 5 of such Regulations, indeed, provides that “*the processing of personal data ... shall not result in discrimination against persons on any grounds such as gender, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, ... It shall fully respect human dignity ... fundamental rights, including ... the protection of personal data. Particular attention shall be paid to children ... and persons in need of international protection...*”²⁴⁹. Yet, given that the Interoperability Regulations include extra security checks for third-country nationals,

²⁴⁴ Ibidem.

²⁴⁵ Ibidem.

²⁴⁶ Bredström, A., Krifors, K., & Mesic, N. (2022). Border Reconfiguration, Migration Governance, and Fundamental Rights: A Scoping Review of EURODAC as a Research Object. *Cit.*, p. 69.

²⁴⁷ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 16.

²⁴⁸ Ibidem.

²⁴⁹ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816. *Official Journal of the European Union*, p. 6.

it could be argued that such provisions still do not eliminate the system's inherent discriminatory nature²⁵⁰. After all, differences based on national origin are in essence the purpose for adopting the Interoperability Regulations, which places in the same box, along with criminals, short-stay travelers, migrants, "irregular" migrants, and asylum seekers, having in common only one thing: being third-country nationals²⁵¹. Moreover, despite law enforcement authorities usually present their systems as 'race' neutral, research has already proved that the impact of these new identification technologies is disproportionately felt by minority ethnic communities who tend to be subjected to higher levels of background checks²⁵².

Furthermore, Art. 5 of the Interoperability Regulations also provides for the special protection of children. The processing of minors' data through the same mechanisms as those of adults might infringe, in fact, Article 3 of the UN Convention on the Rights of the Child and Article 24 of the EU Charter of Fundamental Rights, according to which children should have dedicated and specific safeguards²⁵³. Nevertheless, it is not clear how enhanced protection of children, especially those in vulnerable situations, will be safeguarded with the introduction of such regulations²⁵⁴.

Finally, it is essential to assess whether these Regulations comply with the EU's fundamental principle of proportionality, which limits authorities in their functions by requiring them to carefully balance the means employed with the intended purposes²⁵⁵. The Interoperability Regulations may call into question the principle of proportionality because access to the above-mentioned databases would be allowed under the wide purpose of 'ensuring a high level of security', without clearly defining the offences or legal thresholds that could justify the intrusion in people's sensitive data²⁵⁶.

Hence, by prioritizing collective security over individual fundamental rights, it could be argued that the EU is clearly becoming a "Security Union"²⁵⁷. The interoperability framework that links EU information systems might in fact produce negative implications for third-country nationals' fundamental rights, and particularly for the most vulnerable category of asylum seekers. In particular, the rights at stake are those concerning privacy and data protection, the non-discrimination principle, the protection of children, and the principle of proportionality.

²⁵⁰ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 20.

²⁵¹ Ivi, p. 21.

²⁵² Ibidem.

²⁵³ Ivi, p. 23.

²⁵⁴ Ibidem.

²⁵⁵ Ibidem.

²⁵⁶ Ivi, p. 24.

²⁵⁷ Ibidem.

CONCLUSIONS

In recent years, the EU has been increasingly deploying new surveillance technologies for border control that seek to efficiently address the complexity of the migratory phenomenon. These technologies range from “operational” tools for border control, such as drones or aircrafts, to centralized information systems (such as SIS II, VIS, and EURODAC) that collect – and share – a great variety of data from third-country nationals between the EU Member States.

However, while the EU’s implementation of border control technologies meets the legitimate need to ensure security within its territory, it also raises, at the same time, several concerns in terms of human rights and individual freedoms.

Indeed, although the declared goal is that of preventing irregular immigration, the strengthening of the EU’s external borders should not prevent access to protection systems by those entitled to benefit from them, such as asylum seekers²⁵⁸.

The majority of third-country nationals departing from Libya in order to reach European shores during the years of the most recent refugee crisis were, in fact, asylum seekers. According to international law, given that, along with children, they can be considered among the most vulnerable categories of individuals, they should be entitled to greater individual protection.

The right to asylum is in fact enshrined in the 1951 Geneva Convention on the Status of Refugees as well as in the EU Charter of Fundamental Rights, two legal instruments that can be considered legally binding on EU Member States. According to these agreements, asylum seekers should be entitled to greater individual protection if they can demonstrate that they are subjected to persecution in their country of origin because of their race, religion, nationality, or affiliation to a particular social or political group.

²⁵⁸ Marin, L. (2013). Protecting the EU’s Borders from... Fundamental Rights? Squaring the Circle Between Frontex’s Border Surveillance and Human Rights. In: Holzhaecker, R., & Luif, P. (Eds.), *Freedom, Security and Justice after Lisbon: Internal and External Dimensions of Increased Cooperation in the European Union*. Springer, p. 2.

However, despite these provisions, it could be argued that many of the policies adopted by the EU to strengthen its external borders seem to have unintentionally neglected the individual rights of asylum seekers.

The EU's external migration policy of recent years, in fact, has been essentially aimed at keeping third-country nationals outside its external borders. A concrete example of this policy can be found in the ratification of the Memorandum of Understanding, which has led to increased pull-back operations to Libyan detention centers for those migrants intercepted at sea by the Libyan Coast Guard.

The rationale behind this strategy was twofold: reducing migratory flows to European shores and preventing further deaths at sea. However, this policy has been firmly criticized by many NGOs and human rights advocates, as they believe that is violating fundamental international principles and migrants' human rights.

Indeed, one of the main shortcomings of such a policy is that it restricts asylum seekers' access to the EU, allowing them to be rejected – and returned to a country that cannot be considered safe – without having been given the opportunity to apply for asylum or having had their status assessed.

Therefore, it seems that the externalization practices adopted by Italy and the EU through the ratification, for instance, of the Memorandum of Understanding, might have negative repercussions on migrants' human rights, among whom there are several asylum seekers.

As a matter of fact, such policies might lead to an indirect violation of fundamental international principles, such as the prohibition of collective expulsions and the principle of *non-refoulement*.

Indeed, through the support provided to the Libyan Coast Guard, which enables it to carry out an increasing number of pull-back operations, Italian and European institutions have *de facto* operated a form of “*refoulement by proxy*” culminating with imprisonment in Libyan detention centers. *Refoulement by proxy* can in fact be considered a practice of remote control of migration through which Italian and European authorities have delegated to migrants-sending countries, such as Libya, the task of pulling back all those individuals attempting to reach European shores. In other words, through this strategy, these authorities are avoiding the responsibilities arising from the contravention of the principle of *non-refoulement* by transferring this responsibility to other countries²⁵⁹, such as Libya, which are not bound by such international commitments.

Hence, by outsourcing this duty to authorities outside the EU, Italian and European institutions are effectively circumventing the infringement of the principle of *non-refoulement* and the

²⁵⁹ Heller, C. & Pezzani, L. (2018). Forensic Oceanography. Mare Clausum: Italy and the EU's Undeclared Operation to Stem Migration Across the Mediterranean. *Cit.*, p. 8.

prohibition of collective expulsions, a practice for which Italy had already been sanctioned in 2012 by the European Court of Human Rights.

Therefore, although the Memorandum of Understanding has been essentially promoted as a way to improve the management of migratory flows between Italy and Libya, it could be argued that the practical implication of the operational pattern that it has established, namely that of *refoulement* by proxy, is that of blocking illegal immigration into the EU in order to avert two main consequences. On the one hand, it allows them to escape the duty to carry out SAR operations at sea, while on the other, it avoids any obligation to admit third-country nationals to reception centers where their identity and status are being verified and which allows a large number of asylum seekers to access the international protection guaranteed by law.

Fundamentally, Italian and European institutions are indirectly violating the principle of *non-refoulement* because migrants intercepted at sea by the Libyan Coast Guard end up being forcibly imprisoned in detention centers where they are subjected to all kinds of abuses.

The conditions of migrants held in Libyan detention centers are in fact extremely inhuman, degrading, and often characterized by excessive overcrowding, lack of food, water, medical care, and humanitarian assistance. Many NGOs and UN agencies, such as the Office of the High Commissioner for Refugees, have indeed reported extensive evidence attesting the systematic human rights violations faced inside these centers, which include abuse, torture, ill-treatment, sexual violence, demands for ransom, and forced labor²⁶⁰. This situation is particularly threatening for women and children, who can easily become victims of human trafficking, exploitation, and sexual violence. Moreover, migrants held in Libyan detention centers are usually imprisoned for long, undefined periods without any prospect of release or access to international protection procedures.

Another crucial issue of Libyan detention centers that is usually overlooked but is actually quite relevant is the lack of access to any kind of communication services²⁶¹, such as the use of telephones or access to the Internet. This prevents third-country nationals from communicating with the outside world and limits the possibility to collect and disclose evidence about the human rights violations occurring in these centers.

Nonetheless, although the European authorities are fully aware of the atrocities perpetrated in these detention centers thanks to several reports issued by different NGOs and UN agencies, they are still cooperating with the Libyan Coast Guard to prevent migrants' arrival to European shores.

²⁶⁰ Giordano, A. (2018). La frontiera mediterranea tra mobilità umana e (in)sostenibilità del sistema confinario europeo. In Lucia, M. G., Duglio, S., Lazzarini, P. (a cura), Verso un'economia della sostenibilità. Lo scenario e le sfide. *Cit.*, p. 340.

²⁶¹ Hayden, S. (2022). My Fourth Time, We Drowned. Seeking Refuge on the World's Deadliest Migration Route. *Fourth Estate*, p. 8.

However, the lack of a central and unitary government in Libya makes it difficult to consider the Libyan Coast Guard a conventional state authority. Because its actions depend on different local interests rather than on a legitimate central authority, it might be claimed that it actually resembles the structure of a *de facto* militia whose legitimacy is under question.

Hence, by providing their support to the Libyan Coast Guard as if it was a rightful state authority, Italian and European institutions risk to further legitimize their actions, even if these involve serious human rights violations such as the use of violence, arbitrary detention, torture, and slavery. In this sense, since it might be employed to perpetrate this kind of abuses, they should also reconsider their financial, technical, and logistical support.

Indeed, it could be claimed that by supporting the Libyan Coast Guard, the EU is prioritizing the reduction of migratory flows at the expense of migrants' human rights; however, this cannot be considered acceptable for the EU, as it is in explicit contradiction with its commitment to promote and protect fundamental human rights. Moreover, it might also be argued that by cooperating with the Libyan Coast Guard, the Italian and European institutions are subtly betraying the core values they claim to uphold, exposing a certain underlying hypocrisy in their actions.

To maintain its credibility and consistently abide to its fundamental principles, the EU should rethink its cooperation with Libya by promoting alternative solutions to the management of migratory flows that fully guarantee the respect for their human rights and dignity.

To this extent, it seems also necessary to revisit the Memorandum of Understanding, as numerous NGOs and human rights advocates have long called for. The funds supplied to Libya through the MoU are in fact directly supporting not only the Libyan Coast Guard but also Libyan detention centers, conveniently framed in the official text of the agreement as "reception centers".

However, having examined the practical implications of the EU's externalization policies, it is now crucial to analyze the impact of increased surveillance of the EU's external borders, the strategy employed in parallel with externalization efforts to address the complexity of the migratory phenomenon.

Indeed, although the externalization practices analyzed so far represent a crucial aspect of the management of migratory flows between Italy, Libya, and the EU, the present work is especially concerned with the human rights implications of border control technologies. The research question it attempts to answer is in fact the following: what are the geopolitical (ethical, legal, and humanitarian) implications of border control technologies on third-country nationals seeking to access the "Fortress Europe"?

In order to provide a comprehensive answer to this question, the human rights implications of border control technologies must be classified into two separate sections: operational technologies

for border control deployed across the Mediterranean, also defined as “technologies of vision”, and large-scale EU information systems that facilitate the exchange of information concerning third-country nationals.

Albeit in different ways, indeed, the development of new technologies for border control, which has led to the creation of the above-mentioned Fortress Europe, can have a significant impact on migrants’ human rights and individual freedoms. The creation of the so-called European “techno-borders”, which are preventing many third-country nationals from entering the EU, may indeed raise a number of legal, ethical, and humanitarian questions.

As established by Art. 7 of the Schengen Borders Code, technologies deployed for border surveillance, understood as part of border control, should respect the following conditions: pursue a legitimate objective, respect human dignity, the principle of non-discrimination, and be proportionate to the objectives sought²⁶². While their legitimacy is not under question since they are being deployed for legitimate purposes, such as the protection of national security, the employment of technologies for border control can still be highly controversial.

For instance, an important concern with technologies of vision (which include drones, aircrafts, satellites, or vessels equipped with high-resolution cameras and other sophisticated sensors), is the extension of their use outside the EU’s external borders. Besides contributing to a further securitization of migration, the deployment of these technologies beyond Member States’ territorial waters may result in a shift from proactive to preventive surveillance²⁶³, thus potentially infringing fundamental principles promoted by the EU, such as the right to asylum, freedom of movement, as well as the principles of *non-refoulement* and the prohibition of collective expulsions.

To this extent, the third chapter has reported several episodes proving that thanks to the presence of their drones in the Mediterranean, both FRONTEX and the Italian maritime authorities have been able to successfully coordinate a significant number of interceptions carried out by the Libyan Coast Guard, which eventually culminated with migrants’ forced repatriation to Libyan detention centers. Once again, it could be argued that the operational coordination provided to the Libyan Coast Guard, which allowed it to carry out an increasing number of pull-back operations, amounts to an indirect yet evident contravention of the above-mentioned fundamental principles. Indeed, as migrants intercepted by the LCG are being repatriated to a country in which there is a concrete risk that they will be subjected to inhuman or degrading treatment, this conduct of Italian

²⁶² Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Cit.*, p. 146.

²⁶³ Marin, L., & Krajčiková, K. (2016). Deploying Drones in Policing Southern European Borders: Constraint and Challenges for Data Protection and Human Rights. In A. Završnik, Drones and Unmanned Aerial Systems. *Cit.*, p. 113.

and European authorities can clearly be considered a breach of the principle of *non-refoulement*. Moreover, as they are returned to Libya without having had the opportunity to apply for asylum or having their vulnerable status assessed, there is also an explicit violation of their right to asylum, alongside a plain restriction of their freedom of movement.

Violations of these principles not only endanger the lives and safety of third-country nationals seeking to reach the EU, but also contradict the EU's core values and undermine its credibility as a human rights defender at the international level. According to its founding values, indeed, the promotion of human rights should be at the forefront of the EU's political agenda, not only within its borders but also in the external policies dealing with the management of migratory flows. Hence, if the EU intends to maintain its reputation as a human rights promoter, it should guarantee that the decisions it takes (such as the provision of assets and the operational coordination given to the LCG) are consistent with the values it claims to support.

Moreover, although the rise in interceptions carried out by the Libyan Coast Guard has produced a significant decline in the number of migrants reaching European shores, data do not seem to suggest that intensified border controls have prevented migrants from attempting to enter the EU. On the contrary, rather than abandoning their plans to travel to Europe, they have simply chosen alternative paths, such as the Balkan route, or more dangerous – yet unsupervised – migration routes (hence the increase in the mortality rate).

Therefore, it can be claimed that the increased surveillance of the EU's external borders has resulted in a rising number of maritime fatalities, having forced migrants to choose more dangerous migratory routes to reach Europe while, at the same time, EU institutions have been gradually refraining from their SAR activities.

The latter aspect is particularly relevant, as it denotes a gradual shift from a humanitarian to a more “securitarian” perspective in the management of migratory flows, which is evident in light of the missions undertaken by Italian and European authorities during the years of the refugee crisis. Indeed, whereas Operation *Mare Nostrum* was established to satisfy the humanitarian purpose of saving lives at sea, the same cannot be said for Operation Triton and EUNAVFOR MED Sophia, which were instead more focused on the security dimension of border control.

Moreover, the shift from a humanitarian to securitarian approach in the management of migratory flows between Italy, Libya, and the EU, can be also deduced, albeit in a more subtle way, from the implementation of the so-called “Interoperability Regulations”.

Adopted by the EU in 2019 in response to the 2016 Brussels terrorist bombings²⁶⁴, these Regulations have established an interoperability framework among the EU's large-scale information system concerned with security, borders, and migration management. This framework seeks to centralize data from six EU information systems, some of which were created for border management purposes and have already been active for several years (SIS II, VIS, and EURODAC), while others, still under implementation, were established for security concerns (EES, ETIAS, and EC-RIS-TCN). The main objectives of the Interoperability Regulations are twofold: preventing illegal immigration and enhancing security within the EU. However, by approaching these objectives as a single, unified purpose, this system may lead to unintentional human rights violations, especially if proper safeguards are not in place²⁶⁵.

Indeed, as it enables law enforcement authorities to access data of third-country nationals stored in the above-mentioned databases, the Interoperability Regulations may have a negative impact for at least four fundamental EU rights and cornerstone principles: the right to privacy and protection of personal data, the principle of non-discrimination, protection of children and the principle of proportionality²⁶⁶.

At the EU level, the right to privacy and protection of personal data is enshrined in the General Data Protection Regulation (GDPR), which defines the guidelines for the collection, elaboration, and storage of individuals' data, which shall respect some core principles such as lawfulness, transparency, and purpose limitation.

However, as the new interoperability framework will grant access to a wider range of law enforcement authorities, including EUROPOL and INTERPOL, the respect of such principles may be put under question. Indeed, despite being originally established for the management of migration, asylum, and borders, access to the above-mentioned EU's information system is being granted to a wider set of law enforcement authorities which use them as intelligence tools for security purposes²⁶⁷, thus overstepping the purposes for which such systems have been originally created.

For this same reason, the Interoperability Regulations call into question also the principle of proportionality, since access to the six databases would be allowed under the wide purpose of

²⁶⁴ Bredström, A., Krifors, K., & Mesic, N. (2022). Border Reconfiguration, Migration Governance, and Fundamental Rights: A Scoping Review of EURODAC as a Research Object. *Cit.*, p. 69.

²⁶⁵ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 2.

²⁶⁶ Ivi, p. 10.

²⁶⁷ Sadik, G., & Kaya, C. (2020). The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management. *Cit.*, p. 152.

‘ensuring a high level of security’, without clearly defining the offences or legal thresholds that could justify such an intrusion in people’s sensitive data²⁶⁸.

Aside from potential infringements of third-country nationals’ right to the protection of personal data and the principle of proportionality, such an interoperability framework may also clash with the principle of non-discrimination. Indeed, although Art. 5 of the Interoperability Regulations provides that “*the processing of personal data ... shall not result in discrimination against persons on any grounds such as gender, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority*”²⁶⁹, it could be argued that the nature of such an interoperability framework is inherently discriminatory, as it provides for additional security checks for third-country nationals accessing the EU²⁷⁰. Moreover, as the Interoperability Regulations lump together criminals, short-stay travelers, migrants, “irregular migrants”, and asylum seekers²⁷¹, it could also be claimed that such a system contributes to the phenomenon of the securitization of migration, as it reinforces the idea that migrants may pose a substantial threat to national security.

Eventually, aside from the principle of non-discrimination, Art. 5 of the Interoperability Regulations also provides for the special protection of children, who, being the most vulnerable category of people along with asylum seekers, should be entitled to greater individual protection as foreseen by Art. 3 of the UN Convention on the Rights of the Child and Art. 24 of the EU Charter of Fundamental Rights²⁷². Nonetheless, since the Interoperability Regulations have not adequately established how children will be granted with enhanced protection, such an interoperability framework may also jeopardize children’s human rights²⁷³.

Hence, to summarize the findings of this thesis, it can be argued that the policies undertaken in response to the most recent refugee crisis have been creating “techno-borders” (also defined as “smart borders”) that are *de facto* preventing access to many third-country nationals to the gates of the Fortress Europe.

²⁶⁸ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 24.

²⁶⁹ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816. *Cit.*, p. 6.

²⁷⁰ Blasi Casagran, C. (2021). Fundamental Rights Implications of Interconnecting Migration and Policing Databases in EU. *Cit.*, p. 20.

²⁷¹ Ivi, p. 21.

²⁷² Ivi, p. 23.

²⁷³ *Ibidem*.

This is particularly problematic when one considers that, for the most part, those denied access are actually asylum seekers escaping from the inhuman and degrading treatment they face in Libya or in their country of origin.

Looking at the measures implemented to improve the surveillance of its external borders, it is evident that over the past fifteen years, the EU has been prioritizing collective security over individual rights and freedoms, thus becoming a “Security Union”²⁷⁴.

The prioritization of collective security over individual rights largely stems from the above-mentioned phenomenon of the securitization of migration, which has contributed to reinforcing the perception of a part of the public opinion that third-country nationals might pose a serious threat to national security. In fact, although this argument is not supported by any statistical evidence, the presence of migrants on the territory of the EU has been increasingly associated with crucial social problems such as terrorism, the proliferation of organized criminality, the risk of cultural assimilation, or increased unemployment. However, the securitization of migration is not only produced by political opinions and discourses but also stems from concrete policies implemented by the EU, such as the deployment of new surveillance technologies for border control, as they might reinforce the idea that migrants shall be considered a threat to national security.

In this sense, to avoid further encouraging this idea and truly live up to its international commitments and fundamental values, it seems necessary to proceed with a review of the EU’s current migration policies. The EU and its Member States should in fact re-examine the measures implemented to manage migratory flows by ensuring that the adoption of migration policies is based not only on security concerns but also on the respect for the human rights of migrants. Indeed, many of the practices adopted so far cannot be considered acceptable for an organization that claims to support and promote human rights at the international level.

To this extent, in the opinion of the author of this work, Italy should first of all propose a revision of the Memorandum of Understanding, given that, by providing its support to the Libyan Coast Guard, is indirectly contributing to notorious violations of migrants’ human rights. In this regard, the same fate should be applied also to the activities carried out by FRONTEX.

Moreover, as it concerns the deployment of new sophisticated technologies for border control, it should be assessed whether there is a disproportionate imbalance between the legitimate objectives pursued by these technologies (namely, reducing casualties at sea, preventing “irregular” immigration, and enhancing security within the EU) and the practical implications of the means by which the EU seeks to reach these goals (i.e. increased surveillance of its external borders through operational technologies and large-scale IT systems).

²⁷⁴ Ivi, p. 24.

To this end, the EU should take appropriate measures to ensure transparency, accountability, and independent oversight in the use of surveillance technologies for border control.

Additionally, given that data suggests that the intensification of border controls over the past few years has not reduced the number of maritime fatalities, the EU Member States should make an effort to reverse the trend of the “criminalization of solidarity”, which has led to a progressive delegitimization – and thus reduction – of NGOs’ SAR activities. In this sense, since it also seems imperative to adopt migration policies that promote fair access to asylum procedures, this process should be accompanied by a revision of the Dublin III Regulation, as greater solidarity among the EU Member States would certainly guarantee a better protection of migrants’ human rights. These two aspects are, in fact, closely interrelated, since even if NGOs were re-empowered to carry out increased SAR operations at sea, the issue of disembarkation and the excessive migratory pressure felt by countries at the EU’s external borders, such as Italy, would still persist.

In conclusion, the author of this thesis believes that the EU should strike a delicate balance between the legitimate need to control its external borders with the principles of solidarity, humanitarianism, and the respect for migrants’ fundamental rights. Only in this way the EU can maintain its credibility as an international human rights advocate and be true to itself and the values it has always supported.

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SUMMARY

Over the past twenty years, one of the most challenging issues occupying the EU's political agenda has been the management of large migratory flows stemming from Libya, which has historically been considered one of the main gateways from the MENA region to reach the EU.

There have been essentially two strategies through which Italy and the EU have addressed the large migratory flows triggered by the most recent refugee crisis: externalization practices and increased surveillance of the EU's external borders. The former refers to those policies that aim to outsource the management of migration to countries of departure, such as Libya, while the latter concerns the deployment of new sophisticated technologies for border control, which have led to the creation of the so-called "Fortress Europe".

Although the employment of advanced technologies for border control meets legitimate objectives, such as preventing maritime fatalities, ensuring the identification of third-country nationals, the proper assessment of asylum requests, and protecting national security, the employment of such technologies can still raise some legal, ethical, and humanitarian questions. Hence, by focusing on the management of migratory flows between Italy, Libya, and the EU, this thesis aims to assess the implications of new technologies for border control on migrants' human rights.

The starting point of this work is provided by a necessary overview of the relationship between Italy and Libya, focusing on the fundamental passages that seem to be crucial to understand the migration management issue. Indeed, due to their geographical proximity and common economic interests, Italy and Libya have always shared a privileged relationship, marked by both collaboration and conflict. However, whereas until the beginning of the 21st century cooperation among the two countries mostly revolved around the exchange of mutual economic interests, since 2008, with the ratification of the Treaty of

The deployment of new technologies for border control, which has led to the creation of the so-called "Fortress Europe", might entail serious human rights implications

The relationship between Italy and Libya and the outbreak of the 2011 civil war in Libya

Benghazi, Italy and Libya have begun to jointly address the migration management issue. Nevertheless, the outbreak of the 2011 civil war in Libya, which caused the collapse of the Ghaddafi regime, has left the country in a desperate situation that persists to this day. Nowadays, in fact, Libya can be considered a failed state, divided both politically and territorially, between two competing governments that lack democratic legitimacy and are being supported by different local networks of armed groups and militias.

This situation of political instability, which has also provided fertile ground for the proliferation of organized criminality, exposes migrants coming from the MENA region to different kinds of abuses, since all non-nationals who are caught staying “illegally” in Libya end up being detained in Libyan detention centers. According to numerous reports issued by several NGOs and UN agencies, migrants held captive in Libyan detention centers face systematic abuses and human rights violations, such as torture, slavery, sexual violence, and other forms of inhuman or degrading treatment.

Moreover, migrants held captive in Libyan detention centers include not only those who are found to be “illegally” staying in Libya, but also those who are intercepted at sea with the support of Italian and European authorities. The Treaty of Benghazi has in fact triggered the controversial practice of *refoulement* to Libya, which has been extensively examined by the European Court of Human Rights in the landmark case of “Hirsi Jamaa and Others vs. Italy” (2012). As three boats heading to Italian shores were intercepted by the Italian Navy and turned over to Libyan authorities in Tripoli, the applicants filed a complaint against Italy claiming a violation of the principle of *non-refoulement*, prohibition of collective expulsions, and right to an effective remedy. The case ended up with a unanimous condemnation of Italy due to the violation of the above-mentioned principles.

Human rights violations faced in Libyan detention centers

The landmark ruling of Hirsi Jamaa and Others vs. Italy that condemned Italy for the violation of the principles of *non-refoulement*, prohibition of collective expulsions and right to an effective remedy

Hence, in response to this landmark ruling and to avoid further infringements of the principle of *non-refoulement*, Italian authorities had to develop alternative ways to manage the large migratory flows stemming from Libya. This approach has placed new emphasis to the phenomenon of the “externalization of migration”, that is reflected, for instance, in the ratification of the Memorandum of Understanding (MoU) between Italy and Libya.

The urgency to re-establish a form of cooperation with Libyan authorities in the management of migratory flows, previously interrupted with the collapse of the Gheddafi regime, corresponded to a growing pressure from the public opinion that associated the rise of migratory flows to serious security threats, such as terrorism. It is in fact in this context of high “securitization of migration”, not supported by any empirical evidence, that by 2017 Italy signed the Memorandum of Understanding with the Libyan government recognized by the UN, which foresees the provision of financial, technical, political and logistical support to the Libyan Coast Guard (LCG). Nonetheless, many have considered this new agreement nothing more than a smart strategy to circumvent the international obligations arising from the Dublin III Regulation and potential infringements of the principle of *non-refoulement*.

Externalization efforts undertaken by Italy and supported by the EU, have been accompanied by a progressive strengthening of the EU’s external borders, a policy that has resulted in the creation of “techno borders” that are *de facto* restricting access of third-country nationals to the Fortress Europe. In fact, in parallel with externalization practices, the EU’s response to the complex relationship between security, migration, and border control, has led to the deployment of new surveillance technologies that contribute to the realization of a more integrated form of border management (IBM) at the EU level. These new sophisticated border control technologies can be categorized into two main sections: on the one hand, large-scale centralized databases that collect, store, and share a great variety of data from third-country nationals among the EU Member States, while, on the other hand, aerial technologies, such

The ratification of the Memorandum of Understanding between Italy and Libya provides an example of externalization practices, which were adopted in a context characterized by the “securitization of migration”

The strengthening of the EU’s external borders through the deployment of new sophisticated technologies for border control

as drones, that allow to increase the situational awareness of the EU's external borders and specific pre-frontier areas.

The former set of technologies includes databases such as the Schengen Information System (SIS II), the Visa Information System (VIS), and the European Dactyloscopy Database (EURODAC). SIS II provides a crucial mechanism for improving information-sharing among Schengen-associated countries in the management of migration. The crucial purposes of VIS are, instead, facilitating border checks, the implementation of the Dublin III Regulation, visa application procedures, strengthening the EU's internal security, and preventing abuses such as "visa shopping". The objectives of VIS are similar to those of EURODAC, which allows to store, compare, and share biometric data, such as fingerprints, of third-country nationals on the territory of the EU Member States. Its main purposes are facilitating the application of the Dublin III Regulation and identifying individuals who have already filed asylum requests in other EU Member States.

However, with the adoption of the EU's "Interoperability Regulations", these databases will be linked with additional border management systems whose implementation is still pending (the Entry/Exit System, the European Travel Information and Authorization System, and the European Criminal Records Information System for Third-Country Nationals). These Regulations seek, in fact, to create an interoperability framework among the above-mentioned EU's information systems whose access will be allowed to a wider set of national and international law enforcement authorities, including EUROPOL and INTERPOL. Hence, besides improving cooperation among EU Member States' migration and law enforcement authorities, such an interoperability framework might also entail some negative repercussions for some fundamental EU rights and principles.

Moreover, in addition to the above-mentioned databases that collect, for the most part, biometric data, in recent years the EU has been increasingly resorting to another type of border surveillance technologies,

The EU's large-scale information systems (SIS II, VIS, EURODAC, EES, ETIAS, ECRIS-TCN) and the adoption of the Interoperability Regulations

that can be referred to as “technologies of vision”. These operational technologies are especially used by FRONTEX, which since 2016 has been officially labeled as the European Border and Coast Guard Agency. FRONTEX was created in 2004 as a response to the perceived need to strengthen cooperation among EU Member States in the management of external borders. The agency performs different kinds of activities, such as providing training to national border guards, carrying out risk analyses, facilitating operational cooperation among EU Member States, and providing support in the organization of joint return operations. Since 2013, it is also in charge of administering the maritime border surveillance system of EUROSUR, a network that links all Member States’ relevant actors involved in the management of the EU’s external borders and, through the collection of “National Situational Pictures” provided by the single Member States, updates the “European Situational Picture” (ESP) and a “Common Pre-frontier Intelligence Picture” (CPIP), which provide information on what is happening both inside and outside the EU’s external borders.

The deployment of aerial technologies and the establishment of FRONTEX and EUROSUR

Nonetheless, policies that have led to the creation of the above-mentioned Fortress Europe have also meant increased blurred lines between search and rescue (SAR) operations and activities of border control, even though the duty to assist people in distress at sea is a long-standing rule of international law. The shift from a humanitarian to a more “securitarian” perspective in the management of migratory flows can be deduced, for instance, by looking at three naval operations undertaken in the wake of the refugee crisis, namely “*Mare Nostrum*”, “Triton”, and Operation “EUNAVFOR MED Sophia”. Whereas *Mare Nostrum* had the specific humanitarian intent of saving lives at sea, the same cannot be said for the other two missions, which were instead more focused on reinforcing border controls. This demonstrates how the original aim of preventing deaths at sea has been progressively abandoned in favor of an approach more focused, instead, on border security.

The naval operations undertaken in the wake of the refugee crisis reveal a shift from a humanitarian to a more “securitarian” perspective in the management of migratory flows

Moreover, despite NGOs tried to fill the void left by the end of Operation *Mare Nostrum*, they were soon compelled to reduce – or suspend – their SAR activities as they were accused of serving as a pull-factor for migration. These claims, not supported by any statistical evidence, have triggered a process of “criminalization of solidarity” that has resulted in decreasing funding, further restrictions to engage in SAR activities, and increasing risks of criminalization for those humanitarian NGOs operating in the Mediterranean. In Italy, for instance, the delegitimization of NGOs SAR activities led, by 2017, to the introduction of a code of conduct that all NGOs willing to carry out SAR operations in the Mediterranean must comply with.

The “criminalization of solidarity” and increasing delegitimization of NGOs SAR activities

Moreover, in parallel with this trend and while EU Member States were progressively reducing their SAR capabilities by pulling their naval assets from the Mediterranean, the Libyan Coast Guard had significantly increased its role in intercepting migrants at sea and returning them to Libya. Although the rise in interceptions carried out by the LCG has produced a significant decline in the overall number of migrants landing on European shores, the mortality rate of those embarking on this perilous journey has more than doubled. Moreover, the surge in interceptions carried out by the Libyan Coast Guard would not have been possible without the extensive support provided by European and Italian authorities.

Rising interceptions carried out by the Libyan Coast Guard, and culminated with forced repatriation to Libya, with the support of Italian and European authorities

Italy’s support for the Libyan Coast Guard has first of all consisted in the provision of financial and technical means (such as patrolling boats) through the ratification of the 2017 Memorandum of Understanding. Apart from that, Italy has politically supported the creation of a SAR zone for Libyan authorities, thus allowing them to disguise their pull-back operations as legitimate SAR activities. Moreover, through the reconstruction of at least 16 different incidents, it has been reported that Italy has been contributing to these pull-back operations not only through the allocation of assets but also through the provision, by its maritime authorities, of direct operational coordination in the repatriation activities carried out by the Libyan Coast Guard.

Similarly, based on several testimonies documenting such a conduct, also FRONTEX has been accused of having coordinated several pull-back operations carried out by the Libyan Coast Guard. Indeed, there is substantial evidence pointing out that, thanks to its drones, when migrants' vessels were spotted in international waters, FRONTEX was able to notify their position to the Libyan Coast Guard, which then proceeded to return them to Libya where they were imprisoned in the above-mentioned detention centers.

Hence, through the support provided to the Libyan Coast Guard, it can be argued that Italian and European institutions have *de facto* operated a form of “*refoulement* by proxy” to Libyan detention centers, where migrants are subjected to systematic abuses and human rights violations. *Refoulement* by proxy can be considered a practice of remote control of migration through which these authorities have delegated to migrants-sending countries, such as Libya, the task of preventing departures and pulling back all those individuals attempting to reach European shores. By outsourcing this duty to external authorities, Italian and European institutions are effectively circumventing the obligations arising from the Dublin III Regulation as well as potential infringements of the principle of *non-refoulement* and prohibition of collective expulsions.

The definition of “*refoulement* by proxy”

Therefore, it seems that the externalization practices adopted by Italy and the EU might have some negative repercussions on migrants' human rights, among whom there are several asylum seekers. According to international law, given that, along with children, they can be considered among the most vulnerable categories of individuals, they should be entitled to greater individual protection. However, despite these provisions, it seems that many of the policies adopted by the EU to strengthen its external borders have unintentionally neglected the individual rights of asylum seekers. Moreover, although European authorities are fully aware of the atrocities perpetrated in Libyan detention centers thanks to several reports issued by several NGOs and UN

Externalization practices may lead to indirect yet evident violations of the human rights of migrants

agencies, they are still cooperating with the Libyan Coast Guard as if it was a rightful state authority. In so doing, Italian and European institutions risk to further legitimize their actions, even if these involve serious human rights violations. To maintain its credibility and consistently abide to its fundamental principles, the EU should rethink its cooperation with Libyan authorities by promoting alternative solutions to the management of migratory flows that fully guarantee respect for their human rights and dignity.

Moreover, albeit in different ways, also the development of new technologies for border control might entail some negative repercussions on migrants' human rights and individual freedoms. Technologies of vision, for instance, apart from contributing to a further securitization of migration, may also entail a shift from proactive to preventive surveillance, thus potentially infringing fundamental principles promoted by the EU, such as the right to asylum, freedom of movement, as well as the principles of *non-refoulement* and the prohibition of collective expulsions. Violations of these principles not only endanger the lives of third-country nationals seeking to reach the EU, but also undermine the EU's credibility as an international human rights supporter. According to its founding values, in fact, the promotion of human rights should be at the forefront of the EU's political agenda, and not only within its borders but also in the external policies concerned with the management of migratory flows. Hence, if the EU intends to maintain its reputation, it should guarantee that the decisions it takes (such as the provision of assets and the operational coordination given to the Libyan Coast Guard) are consistent with the values it claims to support.

The problems arising from the deployment of aerial technologies for border control

Moreover, as the Interoperability Regulations enable law enforcement authorities to access data of third-country nationals stored in the above-mentioned databases, these may also have a negative impact for at least four fundamental EU rights and cornerstone principles: the right to privacy and protection of personal data, the principle of non-discrimination, protection of children and the principle of proportionality. Since

access to the above-mentioned databases will be allowed under the wide purpose of ‘ensuring a high level of security’, without clearly defining the offences or legal thresholds that could justify such an intrusion in people’s sensitive data, this can be effectively considered an evident contravention to the principle of proportionality and to the right to privacy and protection of personal data. Concerning the principle of non-discrimination, it can be argued that the nature of such an interoperability framework is inherently discriminatory, as it provides for additional security checks for third-country nationals accessing the EU. Moreover, given that the Interoperability Regulations lump together criminals, short-stay travelers, migrants, “irregular migrants”, and asylum seekers, it could also be claimed it contributes to the phenomenon of the securitization of migration, as it reinforces the idea that migrants may pose a substantial threat to national security. Art. 5 of the Interoperability Regulations also provides for the special protection of children, who, along with asylum seekers, should be entitled to greater individual protection. Nonetheless, since the Regulations have not adequately established how children will be granted with enhanced protection, such an interoperability framework may also potentially jeopardize children’s human rights.

The problems arising from the application of the Interoperability Regulations on the EU’s large-scale information systems

Hence, it can be claimed that the policies undertaken in response to the most recent refugee crisis have been creating “techno-borders” that are *de facto* preventing access to many third-country nationals to the gates of the Fortress Europe. Looking at the measures implemented to improve the surveillance of its external borders, it is evident that over the past fifteen years, the EU has been prioritizing collective security over individual rights and freedoms, thus becoming a “Security Union”. In this sense, to avoid further encouraging this idea and truly live up to its international commitments and fundamental values, a review of the EU’s current migration policies seems necessary.

The transformation of the EU into a “Security Union”

The EU and its Member States should re-examine the measures implemented so far to manage migratory flows by ensuring the adoption of

migration policies based not only on security concerns but also on the respect for migrants' human rights. To this extent, aside from a substantial reform of the Dublin III Regulation, there should also be a complete revision of the Memorandum of Understanding, given that is indirectly contributing to notorious human rights violations performed by the Libyan Coast Guard. Moreover, as it concerns the deployment of new sophisticated technologies for border control, it should be assessed whether there is a disproportionate imbalance between the legitimate objectives pursued by these technologies (namely, reducing casualties at sea, preventing "irregular" immigration, and enhancing security within the EU) and the practical implications of the means by which the EU seeks to reach these goals (i.e. increased surveillance of its external borders through operational technologies and large-scale IT systems). To this end, the EU should take appropriate measures to ensure transparency, accountability, and independent oversight in the use of surveillance technologies for border control.

Finally, it might be argued that the EU should strike a delicate balance between the legitimate need to control its external borders with the principles of solidarity, humanitarianism, and the respect for migrants' fundamental rights. Only in this way the EU can maintain its credibility as an international human rights advocate while being true to itself and the values it has always supported.

The EU should revision the measures implemented so far for the management of migratory flows by ensuring the adoption of policies based not only on internal security but also on the respect of the human rights of migrants