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THE CONTROVERSIAL ITALIAN POLICY TOWARDS MIGRATION FLOWS FROM LIBYA: FROM PULLBACKS AGREEMENTS TO THE SUPPORT OF HUMANITARIAN CORRIDORS

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Acronyms

AMIF: Asylum, Migration and Integration Fund

CEAS: Common European Asylum System

CJEU: Court of Justice of the European Union

CPT: Committee for the Prevention of Torture

CSDP: Common Security and Defence Policy

DCIM: Directorate for Combatting Illegal Migration

ECHR: European Charter of Human Rights

ECtHR: European Court of Human Rights

ETC: Emergency Transit Mechanism

ETM: Emergency Transit and Evacuation Mechanism

EU: European Union

EUBAM: EU Integrated Border Management Assistance Mission

EUFTA: EU Emergency Fund for Africa

GAMM: EU Global Approach to Migration and Mobility

GDPN: General Directorate of Passport and Nationality

GNA: Government of National Accord

GNC: General National Congress

HoR: House of Representatives

IBM: Integrated Border and Migration management

ICC: International Criminal Court

IMO: International Maritime Organization

IOM: International Organization for Migration

LCG: Libyan Coast Guard

LNA: Libyan National Army

LPA: Libyan Political Agreement

LYD: Libyan Dinar

LTV: Limited Territorial Validity

MoU: Memorandum of Understanding

NGO: Non-Governmental Organization

NTC: National Transitional Council

NATO: North Atlantic Treaty Organizations

OAU: Organization of African Unity

SAR: Search and Rescue

UAE: United Arab Emirates

UN: United Nations

UNHCR: Office of the United Nations High Commissioner for Refugees

UNSMIL: UN Support Mission in Libya

VHR: Voluntary Humanitarian Returns

Introduction

The number of people in need of protection as a consequence of internal conflicts, wars, climate change, poverty and unstable political situation, brought to a sharply increase in migration flows over the last few years. As a consequence, a large number of people tried and still try to reach Europe, attracted by the idea of a safe and welcoming place, where they can find protection. Depending on the country of origin, migrants usually undertake different migratory routes, one of this is the one from Libya, the Central Mediterranean one. Libya has been in fact the main departure point of this route, although in the past also a destination country for migrants. The case of Libya will be the central focus of this paper, especially for what regards its relationship with European Member States, Italy in particular, and the consequences this had on migrants' conditions and related human rights' violations. To counterbalance the effects that these policies produced and keep producing, a proposal for the implementation of safe and legal transfers of migrants from the region, the so-called 'humanitarian corridors', has been presented to the Italian government. The main point of the text is exactly this last part, as it tries to assess how the creation of humanitarian corridors could provoke a major change to the Italian migration policy towards Libya and especially to what extent this can contribute to an increasing respect of human rights in the country.

In order to answer to this, it is necessary to deeply analyse the Libyan context and the migration related mechanisms, the policies that European institutions and the Italian government implemented in this regard and how the project of humanitarian corridors can be considered as a valid complementary legal pathway in respect to the current ones in place. Therefore, the text will begin retracing the history of the country, from Gaddafi's regime to the current unstable political situation, derived by the end of the regime in 2011, which led the country to chaos. In this regard, will be analysed the several attempts that the UN and the international community made in order to establish an effective government in the country, which seemed to be achieved in 2015 with the Libyan Political Agreement, and that however did not provoke the changed that they hoped. Indeed, the conflict in the country kept going, further divisions worsened and despite further attempts, as the Berlin Conference in 2019, no agreement has been found yet. After explaining the current political situation, we will focus on the role that Libya had and has as a destination and transit country for migrants. In particular, we will focus on the different approaches this had towards migration. As we will see, this brought to an increasing business for smuggling and trafficking activities towards Europe, reason why we will take into account the existing smuggling routes towards and through Libya and the way these practices are organized. Moreover, the text will focus on the business of the

sea-crossing and how this has been facilitated by the high rate of corruption within Libyan authorities and the impossibility for migrants to reach Europe legally. In general, migration has always been a key element for Libya, given the small population, and if before it was attracting them to the country after, also due to the pressure exercised by the EU and Italy, it instead started a process of criminalization. In this regard, it will be analysed how migrants' criminalization permitted the realization of detention centres, principle theatre of abuses, tortures and exploitations at the hands of militias, armed groups as well as Libyan authorities. Therefore, a part will be about the business and its human rights' implications on migrants.

The increasing departures and consequent arrivals in Europe, provoked a reaction in the European counterparts, especially Italy. Therefore, the second part will analyse how European institutions approached the situation, delineating since the beginning a strong determination in blocking departures. Indeed, the text will begin explaining how in general the EU behaves in relation to migration flows, that showed an increasing resort to externalization policies, which means relying on neighbouring and third countries, to which provide funds and assistance, to prevent and impede arrivals on its territories. In particular, we will retrace how these policies were implemented through the creation of the Emergency Trust Fund for Africa, the UN-AU-EU Task force, the EU Agenda on migration and further declarations. Given the topicality of the issue, the text will also take into account the 2020 New Pact on Migration and Asylum, providing an assessment of how this can change the European approach towards migration.

After this, given the central role that Italy plays in regard to the Libyan context, a focus will try to retrace the policies that Italy implemented during the Gaddafi regime, with the 2008 Treaty of Friendship, and how this changed with the end of the regime. Of particular relevance in this regard is the 2012 ECtHR's Hirsi Jamaa rule and the consequences this had on the Italian policy, that increasingly started relying on the Libyan Coast Guard to carry out pullbacks operations, impeding migrants to reach the Italian coasts. A major change in this is represented by the 2017 Memorandum of Understanding that Italy stipulated with Libya, which seriously defined the policy change, for which Italy, with the support of the EU, starting providing assistance and trainings to the Libyan coast guard, obtaining the recognition of the Libyan Search and Rescue zone. The fact of providing assistance and aid for the interceptions and return of migrants to the Libyan coast, which cannot considered a safe place and therefore in violation of the non-refoulement principle, brough several NGOs to present cases before different human rights institutions, called to assess the responsibilities Italy and the EU have in relation to the above mentioned violations. Despite all this, the Memorandum has been recently renewed, in February 2020, showing no serious changes in the policy,

notwithstanding the recommendations of NGOs and human rights' bodies, thus continuing in the direction of impeding people to leave Libya.

The only options available for migrants to leave the country are then the few legal pathways that European Member States can voluntarily decide to offer. In particular, there will be a focus on the available safe transfers that migrants have the opportunity to join, as resettlements, evacuations or voluntary return to their country of origin, respectively offered by the UNHCR and IOM together with the EU. Given the limited numbers that these offer though, we will then analyse further instruments that EU states could use to increase the number of beneficiaries, as humanitarian admissions, humanitarian visas and the recent Private Sponsorships' Programmes, with a focus on the Italian initiative of Humanitarian Corridors. In particular, we will take into account the project of European Humanitarian Corridors, that specifically aims to allow 50.000 people to leave Libya. The first project within this larger one, has been recently presented to the Italian government, which has the opportunity, through their implementation, to seriously improve the life of 5,000 migrants and asylum seekers and to eventually provoke a change in the migration policies in place and the human rights' violations within the Libyan context.

To provide an interesting assessment of all this, the research takes into account different available tools as public statements by governments and international institutions, reports, data and index collected by the UN, NGOs, European Union, Council of Europe and last literature development on the matter. This will permit in fact to have more than one point of view regarding migration management, both in Europe and in Libya, allowing to transmit a neutral narrative of the facts. Moreover, as primary sources, conventions, treaties and further bilateral agreements will be taken into account. In addition to this, given the recent proposal of humanitarian corridors' projects, an interview has been conducted to Giulia Gori, an operator of the Italian Federation of Evangelical Churches, representing of the NGOs that proposed the initiative.

Chapter 1

The Libyan political situation and the development of a dramatic migration management

As unfortunately well-known, Libya is now theatre of a proper war, where the power is divided between two competitive governments that relatively administer the eastern and western part of the country. In general, the conflict became more and more international over years, as the presence of oil and gasses pushed for the intervention of external actors, who act in line with their interests. The prolonged unstable political situation in the country, facilitated the development of a complex mechanism of trafficking and smuggling of people, mostly migrants, at the hands of militias and armed groups, who realized a proper business based on strong relationships with the territory, both socially and economically. The possibility to put in place this system is linked to the large presence of migrants in the country, estimated to represent the 10% of the population, as they were before attracted by the high demand of labour force, given the discovery of oil wells, and after by the perspective of reaching Europe. Indeed, policy changes brought to the increasing criminalization of migrants and to the following creation of detention centres, where migrants are stuck for an indefinite time, victims of abuses and violence, where the only chance is to pay their torturers and try to leave, relying on the sea and on the hope for a future.

In order to understand what is happening in Libya, it is important to retrace the history of the country and the current political situation, as it will be analysed in the first part: what changed with Gaddafi and his death, the civil war and UN interventions to restore the situation, as well as the political failures and the actual state of affairs. Going on, the chapter will be focused on migration flows, why they changed over time, in relation to which political goals, and the adaptation of part of the people, who were able to boost the business of human smuggling and trafficking. The last part will instead address the legal criminalization of migrants in the country, functional to their exploitation, as it allows for their arbitrarily detention in centres officially managed by authorities but, in practice, mostly left in the hands of armed groups and militias, where corruption, torture and human rights' abuses have place and go unpunished. Overall, it will be explained the context in which smugglers are operating and how they are organized, showing the deep connection of the system and the government, pointing at the main criticalities that render it difficult to change.

1. Libya's history and the current political situation

To understand how the actual context has been created, it is necessary to look at the country's history and political situation. Since Libya's independence from the Italian colonial domination in 1943 and the then Allied administrations, at the hands of UK and France, in 1951, two systems ruled the

country: the monarchy of King Idris, from 1951 till 1969, and the regime of Gaddafi, the leader of the revolution that deposed the King, lasted until 2011 (Winer, 2019). The revolution, guided by Gaddafi, brought to the abolishment of the monarchy, leaving space to his political program, which aimed at eliminating the powers of the religious' and tribes' elites, giving back to the people.

Indeed, to administrate the country, he promoted the idea of local popular committees, which, however, strongly relied on the former system of local tribes and were still subjected to the central power, whose support could guarantee privileged access to oil rents (Guazzone, 2016). Overall, mostly thanks to the deployment of an economic system based on oil export and import of foreign goods, Gaddafi put in place a rentier and socialist country, where the basic needs of the people were met by the state, assuring stability and support to the regime. Unfortunately, in the long run, the regime increasingly came to be seen as a corrupt kleptocracy, where only those close to Gaddafi could benefit from it (Winer, 2019). As the Arab Spring broke out in Tunisia and Egypt at the end of 2010, also Libya became one of the protagonists a few times after, in February 2011, when clashes between government's militias and the rebels started (Morana 2020, 4).

Even if initially limited in Benghazi and Tripoli, the conflict escalated into a civil war that, in May 2011, brought to the establishment of the National Transitional Council (NTC), the umbrella authority that led the revolt against the regime, recognized by the international community as the legitimate representative of the Libyan people (Dessi, Greco 2018, 48).

The anti-regime and pro-democratic attitude of the NTC provided western countries, namely NATO, good reasons to militarily intervene in the conflict, whose support eventually brought to the capture and killing of Gaddafi in October 2011 (Bhardwaj 2011, 83). The operation was in line with the United Nations Security Council's resolutions 1970 and 1973, which allowed the use of force in the country within the responsibility to protect civilians, and the deployment of the UN Support Mission in Libya (UNSMIL), whose goal was to enhance public security, promote a dialogue between the political and military factions and help the country for the transition to a democratic state (Morana 2020, 4).

Unfortunately, the lack of real political institutions resulted as the worst legacy of the regime to the country, given that just after Gaddafi's fall, the common enemy which unified Libyan factions disappeared and had place a process of decentralization of power at the hands of tribes, city-states, and militias, eventually bringing the country to internal clashes (Morana 2020, 5). These forces, especially Islamic ones, became a key obstacle to peace and state-building, making it difficult for the NTC to create a new democratic state (Dessi, Greco 2018,50). Besides the fights, in July 2012 the

NTC decided to hold the first elections of the General National Congress (GNC), the legislative assembly in charge of the creation of a new government and a constituent assembly (Guazzone 2016, 196).

In this regard, a key move for the downfall of Libya's political stability has been the approval of the controversial 'political isolation law' in May 2013, which aimed at eliminating from state institutions technocrats and employees previously working under Gaddafi, that allowed those in charge of enacting the law to consolidate their power (Winer 2019,9). As a consequence, the spread opposition to the law brought the people to organize nationwide demonstrations in early 2014, asking for the dissolution of the GNC (whose mandate was expired), eventually paving the way for the outbreak of the civil war which splitted the country and protracted economic, political and security problems (Dessi, Greco 2018, 53).

An important contribution for the fall of the GNC was given by Khalifa Haftar, ex Gaddafi's General of the armed forces, who conducted the so-called *operation dignity* to dismantle the government, fighting its loyal extremist Islamic militias in the east that eventually lost control of several cities, letting Haftar expanding its dominion and influence in the country (Winer 2019,12).

As a consequence, new elections were held in June 2014, when the ballot box revealed a devastating loss for the previous members of the GNC, who, in reaction, asked their aligned Islamic militias to occupy the capital and prevent the establishment of the newly elected executive, the House of Representatives (HoR), that, as a consequence, decided to convene in the east (Morana 2020, 4).

Since this moment, the country has in fact being divided into two parts, rupturing any sense of unity, which was already precarious given the rising competition of armed groups and militias in maintaining control of the territories and organizing illegal trafficking of people and resources (Dessi, Greco 2018, 53). Moreover, the divisions were fuelled by the presence of external forces in the country, such as Egypt, Saudi Arabia and the UAE on one side and Qatar and Turkey on the other, which supported and fostered the split into two governments (Winer 2019,11).

1.2 The 2015 Libyan Political Agreement

The internal separation of the Libyan state, resulted in two ineffective and minimally legitimate governments, brought the country to a critical situation, where oil production dropped, and national savings disappeared (Winer 2019, 12). Moreover, the support of international actors as Egypt, the United Arab Emirates, and Saudi Arabia for the HoR and Turkey, Sudan, and Qatar for the GNC, brought the conflict to be more and more complicated, as we can still see nowadays. That is why, even if the UNSMIL proposed a series of talks and negotiations which eventually brought to the sign

of the Libyan Political Agreement on December 2015, to curtail the civil war and find the country a balance between the competing forces, the alignment of external actors was fundamental to resolve the conflict (Dessi, Greco 2018, 54).

The Libyan Political Agreement (LPA) consisted in the establishment of a council President, five deputies and three state ministers, representing different political and geographical area (ICG, 2016). Indeed, the agreement aimed at constructing national security structures and forces, leading to an effective command and control of the territory (Morana 2020,5).The political process though, required the Presidential Council, a nine-member executive, to create an elected Government of National Accord (GNA) within two years, replacing the existing one, while the HoR. supposed to act as the single national parliament, together with the High State Council, an advisory institution, had to vote so to secure the democratic legitimacy of the proposed government (Atilgan et al., 2017). Unfortunately, the implementation of the agreement quickly stalled, not only because the Presidential Council was not able to convene given the refusal of two of the members but also because the HoR rejected the agreement and did not give the vote of confidence necessary for the formation of a new government (ICG, 2016). In addition to this, nor the General Haftar nor the GNC offered support for the GNA, which, however, led by the Prime minister Al-Serraj, established in Tripoli in 2016 (Atilgan et al., 2017).

Overall, at this time, Libya had three different competing authorities: The State Council and the internationally recognized Government of National Accord, backed by the UN, the EU and US, the New General National Council and its National Salvation Government, heir to a part of the GNC, supported by Turkey, Sudan and Qatar and the House of Representatives with its interim government, sustained by Egypt, the UAE, France, Saudi Arabia (Dessi, Greco 2018, 59).

As the terms of the Agreement were expiring at the end of 2017 and clashes within a divided country were still going on, the newly appointed Special Representative of the Secretary-General, Ghassan Salamè, proposed a new plan, which foresaw the reduction of the Presidential Council from 9 to 3 members, followed by the call of a Democratic National Assembly that would have enabled the creation of a permanent government, together with the hold of new elections for the president and the parliament, which eventually was never put in practice (Winer 2019,19).

1.1.2 Attacks on Tripoli and the Berlin Conference

Notwithstanding the failed attempts to improve the country's political situation, at the macro level, Libya seemed to maintain certain stability during GNA's mandate, even if with criticisms about Al-Sarraj's dependence on militias in Tripoli to maintain the power (Winer 2019,20). According to

General Haftar indeed, this was the reason for his April 2019 assault on the capital, which aimed at attacking the GNA and its leader, as well as at taking control of the Libyan Central Bank so to have access to oil revenues and national savings (De Luca, 2020). The attacks on Tripoli by Haftar and the Libyan National Army were backed by the same international actors but with a considerable new entry, Russia, that contributed to a greater extent with its mercenaries to the first phase of the conflict, until Turkey's intervention in January 2020 reversed the situation (Mezran, 2020).

Before this moment though, given the threat that Libya represents for international peace and security, especially for the presence of traffickers, armed groups, and terrorist organizations, the EU tried to interpose within the parties involved in the conflict and to regain a role in its management (Zaptia, 2020). For these reasons, the German Chancellor Merkel convened a Conference in Berlin at the end of November 2019, which saw the participation of a great number of states such as France, Italy, Great Britain, US, Algeria, Egypt, Republic of Congo, Turkey, the UAE, China, Russia as well as representatives of the EU, of the Arab and of the African Leagues and eventually the UN (Saini Fasanotti, 2020). In this occasion, both Al-Sarraj and Haftar were invited, representing for the latter the proof of his legitimization from the international community (De Luca, 2020).

The Berlin Conference concluded with the approval of 55 points, that still considered the implementation of the Libyan Political Agreement and the Salamè plan as the only political solutions able to provide a sustainable future for the country (Zaptia, 2020). Moreover, given the relevance of external interferences in the conflict, the parties to the agreement were required to enforce an arms embargo, so to permit a permanent ceasefire and a pacific solution to the conflict (De Luca, 2020). This last point indeed, actually shows how the interests and the support of external forces are relevant for the evolution of the conflict and the achievement of a long-term solution, apparently even more than local actors (Dacrema, 2020).

Despite the good purposes and the announced commitment of the parties involved for the achievement of a political solution, the conflict on the ground did not stop. Indeed, in March, after the Conference, Turkey launched the operation *Peace Storm*, permitting the GNA to relieve its position and to push Haftar outside the capital, driving the conflict towards the area of Sirte, 370 km southeast of Tripoli, at the entrance of important oil wells (Pusztai, 2020).

The Turkish forces and the Islamist militias supporting the GNA want to eliminate the LNA once and for all, pointing at the richness of the present oil wealth in the area, thus not looking for a ceasefire (Pusztai, 2020). Despite the critical situation, Haftar can still rely on the support of Russia, which, despite having gas and oil interests in the country widely served still needs LNA's presence in order

to maintain them, and Egypt, whose President Al-Sisi announced that the country will intervene militarily in the conflict, as requested by the HoR, in case Turkey and the GNA will overpass this territory, considered as the red line, eventually leading the war to a further escalation (Dacrema, Varvelli, 2020).

In the last months, despite the declaration of a ceasefire in August 2020, sporadic fighting are continuing, leading to a further chaos in the country, worsening the economic conditions of a country in which are carried out, in a climate of total impunity, crimes under international law and other serious human rights violations (Amnesty 2020b,13).

Overall, notwithstanding several attempts to improve the situation, it is possible to consider Libya a failed state, as it lacks a unified and legitimate government, where the monopoly over the use of force does not belong to the state (Dessi, Greco 2018, 47). For these reasons, in this lawless context, armed groups, criminal gangs, and militias compete for power and resources, restoring to illegal economic activities, such as trafficking and smuggling of fuel and people, so to keep pursuing their interests (Atilgan, et al. 2017, 66).

If the presence of oil wells and migrants in the country is now at the core of illegal activities, it is important to analyse how they are related and how they have been fundamental for the development of the country as well as for delineating its profile.

1.2 The key role of Libya as a destination and transit country for migration: the development of smuggling activities

The discovery of oil wells in 1959, paved the way for a massive growth in Libya's economy and well-being, which rendered the country attractive for thousands of people. In this regard, the wealth created by oil's discovery led to the investment in huge development schemes that increased labour demand, especially manpower, unavailable among the small numbers of the Libyan population and thus requiring foreign workers (Hamood 2006, 17). Overall, due to the high per capita GDP and economic development, Libya became a destination country, where people were planning to go and stay (Baldwin-Edwards 2006, 313).

With the boom of the oil's industry in the 1970s, Gaddafi, who just rose to power, started allowing nationals from neighbouring Arab states into Libya, influenced by the pan-Arabism ideal that had been developed by then-president of Egypt, Gamal Abdel Nasser, of whom Gaddafi was a strong supporter (Amnesty 2017, 12). To implement the pan-Arab policy, between the 1970s and the 1980s, Libya concluded a series of decisions and bilateral conventions with countries such as Tunisia,

Morocco, Algeria, and Jordan, granting their nationals residence and employment rights as they were Libyan nationals (Zampagni et al., 2017).

If for several years the majority of people reaching Libya were coming from the Middle East and North Africa, a change in the political scenario during the 1990s, redirected Gaddafi's choices towards a Pan-African dream, leading to an influx of Sub-Saharian Africans (Hamood 2006, 24).

This all started in March 1992, when the Security Council Resolution 748 decided for the imposition of sanctions on Libya due to the lack of cooperation in investigating its role in the bombing of a flight over Lockerbie (Scotland) in 1988 and of a French airliner over Niger, as it was demanded in a previous Resolution, provoking UN Security Council's decision to impose air and arms embargo on the country (Zampagni et al., 2017). The embargo was suspended in 1999 but lifted only in 2003, when Libya recognized the responsibility of his officials for the attacks and agreed on the payment of compensation, condemning terrorism and committing to cooperate for further questions about the facts (UNSC, 2003).

Over those years no help to mitigate the embargo has been offered by Arab states, bringing Gaddafi to realize the failure of his pan-Arab dream and to reorient his policy towards his southern neighbours (Amnesty 2017,12). Indeed, the country facilitated the entry of Sub-Saharian African migrants by removing barriers such as visas and residence permits, demanding a medical certificate only (Hamood 2006, 18). This was the first step towards the realization of Gaddafi's new pan-African dream, leading to the conclusion of several bilateral and multilateral agreements with African states and eventually to the foundation of the Community of Sahel-Saharan States in 1998, a regional bloc of states whose goals included the free trade and movement across the signatory countries (Zampagni et al., 2017).

Thanks to these agreements, a large-scale of Sub-Saharians arrived in the country, not just to work there but also in perspective of reaching Europe (IOM 2019, 1). Since the 1990s in fact, an increasing number of migrants started seeing Libya as a transit country, especially for what regards Sub-Saharians coming from Burkina Faso, Ethiopia, Eritrea, Ghana, Mali, Niger, Nigeria, Somalia, and Sudan (UNSMIL, OHCHR 2016, 5). Indeed, given the central location of the country and the stricter policies at the maritime borders established by Morocco and Tunisia in cooperation with the EU, Libya came to be seen as a more convenient point of departure (Malakooti 2019, 9).

Unfortunately, due to the enforcement of international sanctions and the oil recession that affected the country in the following years, a strong negative impact on the economy and therefore on the job market, no longer requiring so high numbers of unskilled labour, led to policies of detention, large-scale expulsions and deportations for irregular migrants (Hamood 2006, 18).

Moreover, the legislation introduced, prioritized the employment of foreign workers from countries that had stipulated bilateral agreements with Libya, putting an end to the hitherto existing regional approach (Zampagni et al., 2017).

Further proof of this is the cooperation on border management and security that Libya started during the 2000s with Europe, which led to the implementation of stronger policies against irregular migration and a hostile environment for migrants (IOM 2019, 1). In particular, Law No.6 (1987) on the Entry, Residence, and Exit of Foreign Nationals, was amended by Law No.2 (2004), expanding the definition of illegal entry or exit in case this happens outside the designated checkpoints, with no authorization from the competent authorities or without the issued of a regular visa (Hamood 2006, 20).

This policy became more and more relevant in 2007, when, due to the high numbers of migrants in the country, estimated to be 1,5 million in 2006, Gaddafi decided to reintroduce visa requirement for all nationalities, except for those coming from the Maghreb region, the ultimate display of the split from the Community of Sahel-Saharan States (Malakooti 2019, 9). Moreover, further policies to contrast illegal migration seemed necessary, for which in 2010 was implemented Law No. 19, that imposed harsher punishment for smugglers, criminalizing persons who facilitate or are directly involved in the transport of irregular migrants (Amnesty 2017, 20).

These laws were efficient but only together with Gaddafi's administration, able to have full control of the human smuggling industry. In this regard, the commitment of the Libyan Intelligence Service in sanctioning certain smuggling activities was instrumental to the maintenance of the power, as showed by the fact that some of these were tolerated but only in case the tribe or the family in charge was supporting the regime (Micallef 2017, 4). Overall, in this period, it was possible for the state to have direct management of migrants' flows over borders and of smuggling routes through Libya if not, eventually, to Europe (Porsia 2015, 1).

1.2.2 Libya as a transit country and the development of smuggling activities

In the years following the revolution in 2011, the collapse of the Libyan state and the respective security structure brought to a growing competition over power's distribution and state resources, leading, on the one side, larger revolutionary groups and militias to seize important governmental institutions and infrastructures and, on the other side, to the possibility for smaller forces and armed groups to take control of the remaining territories (Micallef 2017, 9).

About this, if Gaddafi's attempt to maintain tribal authorities and armed groups under control was successful during his regime, after his downfall, they regained power and autonomy, transforming the country in a combination of state-cities where each is controlled by a different administration and organization (Kuschminder, Triandafyllidou 2019, 214). Indeed, the political instability resulted from the revolution enabled armed groups and militias to compete for the control of the territories and the related illicit economy (Shaw, Mangan 2015, 103). This was further encouraged by the complete impunity that the lack of rule of law could guarantee (Abderrahim 2018, 2), so that many of these groups started investing in the smuggling of goods, drugs, and especially people, now become a liberalized market and no more a business in the hands of few (Micallef 2017,5).

In general, the hybrid political order established in Libya rendered the state authority unable to provide security and welfare, permitting, in contexts of economic crisis, the legitimization of smuggling activities within the population (Micallef 2017, 30). In particular, militias or armed groups engaged in smuggling activities, were able to involve their communities offering jobs in the industry and protection against other criminal groups, who, in turn, facilitated the routes for smugglers and militias throughout the territory (Kuschminder, Triandafyllidou 2019, 209). Even if this kind of relation soon became a characteristic feature in the Libyan socio-political landscape, of course, the level of complicity was different depending on the region they worked in: while in the coastal area the economic situation was much better and smugglers usually entered the business with the sole aim of accumulating wealth in the shortest time possible, thus not requiring close contact with the people, this was widely different in the south, where smugglers appeared as the sole source of income and were able to generate acceptance by the people reinvesting their profits locally (Al-Arabi 2018, 2).

If smaller groups succeeded in guaranteeing control over the territory, at the same time, larger ones reached higher positions within the society. Indeed, as they refused to surrender to the new established Interim government, they were asked to join it, entering in the state security structures, that permitted them to obtain not only legitimacy but also the control of strategic locations, both on land and on the coast (Amnesty 2017, 34).

The presence of militias with no training nor policy endorsement, tasked with patrolling activities, often led to their involvement in the smuggling business, from simply taking bribes for letting migrants entering the country to a more active and direct involvement (Porsia, 2015). Indeed, corruption at all state levels is vital for the functioning of smuggling (Reitano, Ruiz-Benitez 2018, 20). As a consequence, while this shows the crucial role played by the state in smuggling operations, at the same time, it reveals how sensitive the business is to state practices and attitudes (Lutterbeck 2013, 161), as the policy change in late 2017 demonstrates.

1.2.3 Smuggling routes towards and through Libya

In general, the internal divisions within revolutionary forces and the difficulties of the Interim Government to generate a new political order in the country, brought to a renewed civil conflict in 2014, worsening the fragmentation of Libya and its institutions. If this was bad for the majority of people, on the contrary, it favoured the business of smugglers, armed groups, and militias who, thanks to security checks' deterioration and the inefficiency of the policies previously implemented, could take advantage of increasing flows of migrants and refugees in the country (IOM Libya 2019, 64) and of people's need to flee, given living conditions' deterioration (Zampagni et al., 2017).

Concerning the first aspect, which is to say the influx of people within Libya, it is necessary to mention that irregular routes, especially for Sub-Saharians, were already present before the fall of the regime but that the end of it permitted to better organize smugglers' networks and to create stronger lines from Africa but also Middle East (Micallef 2017, 7), also thanks to the release of veteran human smugglers by Gaddafi at the end of his rule, as a revenge to the European support of his opponents, making it possible for them to restore and improve the business (Atilgan et al. 2017, 72).

Differently from Gaddafi's regime, most of the people who got to Libya, despite the conflict, did it with the intent to continue to Europe, going to add to the ones already present. Indeed, the conflict and its consequences were able to affect both Libyan nationals, who resulted in 400,000 internally displaced people in 2014 (UN General Assembly 2018, 5) and foreigners, representing quite 10% of the total population, who tried to leave in different ways: from self-organized travels to the opportunity of evacuations to home or third countries offered by international organizations and NGOs, or eventually counting on smuggler transports to reach Europe (Zampagni et al., 2017).

In general, in 2013, between 1 and 2.5 million migrants settled in or travelled through Libya (Darme, Tahar 2017, 52) creating in the country the conditions for it to be considered as one of the most significant hubs for human smuggling (Porsia 2015, 1). This was also possible thanks to the increased difficulties encountered by migrants on the Western Mediterranean Route, which is to say via Morocco to Spain, that, in 2010 had been affected by stricter law enforcement by the respective authorities (Achilli 2016, 99). As a result, just in 2011, approximately 70.000 people, of whom 90% left from Libya, disembarked on the Italian and Maltese shores (Di Maio, Sciabolazza, Molini 2020, 7).

A major competition started instead in 2015, when the Eastern Mediterranean Route, via Turkey and Greece, was taken into account, deemed less risky and expensive (Darme, Tahar 2017, 14). However, in this case, the route became more difficult to undertake after the agreement between the EU and

Turkey in 2016, which drastically blocked the influx of people towards Europe. Afterall, migratory flows to and through Libya remained intense and smuggling networks continued to operate in many different ways.

1.2.4 How smugglers are organized

Before talking about the specific organization of human smuggling in Libya, it is necessary to understand what it is. In this regards, the *UN Protocol against the smuggling of migrants by land, sea, and air* defines it as the "procurement, to obtain, directly or indirectly, a financial or other material benefits, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

Therefore, smuggling is a voluntary socio-economic agreement that implies a transnational crossing, usually related to the presence of barriers impossible for migrants to surmount on their own, which can be both physical, as a sea, desert or a fence, or political, as in the case of an armed border, restrictive immigration policies, or the need for a visa (Reitano, Ruiz-Benitez 2018, 4).

Although smuggling and trafficking can overlap sometimes, what distinguishes the latter is the condition of exploitation that transforms the client into a victim. Differently from this in fact, the relationship between migrants and smugglers is based not only on payment but also on trust, fundamental for the resilience of smuggling networks (Kuschminder, Triandafyllidou 2019, 207). Although smugglers consider migrants as customers, they are not always treated as such, given the recognition of migrants as an extremely vulnerable subject, mostly due to the irregular status, which makes it likely to be exploited or abused (Lutterbeck 2013, 155).

If these are general considerations about human smuggling, it is now necessary to go back to the situation in Libya and analyse how smuggling networks work there. In this context then, smuggling networks can be of many kinds, varying according to the origin, the client, and the route (Achilli, 2016), while they can also change depending on the journey migrants decided for, if organized or step by step.

The first, usually refers to travels that begin in the country of origin and end to the Libyan coast, or even to Europe, for which a highly structured network is needed and able, in some cases, to protect the people smuggled during the journey. Different is the case of step by step trips, for which migrants need to stop multiple times to work or to organize the next leg of the journey, relying on different smugglers, who can be part of a highly structured network, but also provide single works (Achilli, 2016). The smuggling service can in fact offer a broad choice of jobs, such as transporters,

coordinators, intermediaries, shelter providers, spotters, and security services, all needed for it to function.

In general, smuggling operations can be controlled by simple smugglers, who work for personal gain, or by independent armed groups and militias, usually joining the business to obtain financial means for buying weapons and keep control of the territory (Porsia 2015, 2). Given the high competition and use of violence in the market, especially for the firsts, there is the need to seek protection against other groups (Shaw, Mangan 2015, 103). In this case, there is the option of hiring armed out-riders or to pay militias not directly involved in the business, which prefer to just take advantage of their power whenever smugglers necessitate to operate in their territory or to receive protection (Micallef 2017, 32).

As said before, the size of the network and the organization of it can change according to the route undertaken, varying from those in charge of sea crossings to the ones helping people moving in and within the country. Indeed, the former must provide a higher capital to cover the costs of the journey, arranging accommodation at the coast and the equipment for the boat trip, thus probably resulting in a more organized network (Darme, Tahar 2017, 79). Geographically speaking, the development of the political situation in the country and the consequent lack of control, brought smugglers to operate mostly along the southern border and the coastal region (Atilgan et al. 2017, 72). Indeed, is in the southern region that migrants conclude their first part of the journey and then look for other means to reach the north.

Depending on the country, there are several routes to get to Libya: people coming from East Africa, usually get in the south-eastern desert of Kufra, arriving from Sudan, for those coming from West and Central Africa, it is common to arrive in Tomu-Gatrun, passing through Niger or, to a lesser extent, to Ghat if arriving from Algeria (Darme, Tahar 2017, 14). To leave these cities, people keep relying on smuggling services to reach the central region, usually gathering in the important smuggling hubs of Sabha, Bani Walid, and Gharyan (Al-Arabi 2018, 8). From this area, further services are offered to migrants to get to the coast, mostly in the west, where, starting from the eastern part, the most important spots are: Misrata, Zliten, Khoms, and Garabulli, followed by Zawiya, Sorman, Sabratha, and Zuwara in the west, among which Tripoli is included (Al-Arabi 2018,12). In general, from the city of Misrata, 250 km East of Tripoli, to the town of Abu Qammash, 25 km East of the Tunisian border are located embarkation points (Porsia 2015, 4).

These areas are now under the control of the GNA and patrolled by the Libyan coast guard but the strength of militias and armed groups, together with high levels of corruption, still allow smuggling operation to have place, even if to a lesser extent than in the previous years.

1.2.5 The Sea-Crossing Business

If in the first period after Gaddafi's fall, the human smuggling business was still moderate, it instead worsened at the end of 2013, when the political process engaged by revolutionary forces failed and the country plunged into chaos (Porsia 2015, p.3).

During the first years, in fact, journeys were usually organized by veteran smugglers, who relied on people with navigation skills, equipped with seaworthy vessels that could carry between 300 to 1000 people and for which a high price was requested (Reitano, Tinti 2015, 10). These conditions changed completely in late 2013, when the first hints of a civil war pushed an increasing number of people to leave and new entries to join the business, as young armed criminals with no navigation experience and militias, who started promoting low-cost journeys aiming to fund their weapons, bringing to a big drop in the standards of the service (Porsia 2015, 3).

The low-standard conditions led to one of the most tragic shipwrecks on the Italian coast, where 368 people died, provoking the reaction of the Italian government, which decided to implement search and rescue activities in the Mediterranean, the so-called Mare Nostrum operation (Micallef 2017, 43). Overall, if on the one side, the policy permitted the rescue of 166,00 people out of the total number of 170,000 arrived in Italy in 2014, on the other side, it also provoked unintended consequences, as the possibility of the Italian intervention permitted the reduction of operational costs, thus removing entry barriers in the business and leading to a proliferation of people joining the smuggling market (Reitano, Tinti 2015, 12). Indeed, especially between 2013 and 2014, smugglers tried to compensate the high competition, the increasing demand, and the subsequent shortage of means of transport, using overcrowded and low-quality boats and offering increasingly lower prices at the expenses of not providing experienced drivers, usually chosen among migrants, and life jackets (Micallef 2017, 43). Also, it was common not to fill the boat with enough fuel to get to Europe, and migrants were instead instructed to make distress calls once they reached international waters (UNSMIL, OHCHR 2016,19).

The presence of rescue missions though, also given the very low conditions of the journeys, did not reduce the risks of shipwrecks to zero, as shown by the fact that from 2014 to 2017, 14,500 people died in the Mediterranean (IOM, 2017). The high number of deaths then, if principally caused by the way smugglers operated, is also ascribable to the policy change developed by the EU that, just after one year, pushed for an end of Mare Nostrum and instead deployed the EU Naval operation Triton,

which, differently from the previous one, reduced the patrol area for search and rescue activities (Reitano, Tinti 2015,12).

In general, thanks to the high profits obtained with smuggling operations during 2013-14, armed groups and militias became even more entrenched in the local political economy and increased their power, bringing to a ruthless and more violent smuggling industry (Reitano, Tinti 2015,12). In this regard, the chaos in which Libya precipitated since 2014, with absolute lack of control by the state and rule of law, allowed smugglers to see migrants as means to enter one of the most profitable markets (Pastore et al. 2015, 50).

Therefore, the possibility of migrants to be victim of violence, extortion and exploitation increased. This could happen both in the desert and, even more probable, near the coast, where they were usually stored by smugglers in private farms, warehouses, or abandoned factories, and had to wait from several days to two or even three months to reach an adequate number of passengers to cover the costs of the journey (Porsia 2015, 6). In general, in these contexts, migrants are vulnerable subjects at the hands of their smugglers, and it can happen to be beaten, abused and tortured, if not robbed or sold to other groups (Micallef 2019, 23). In specific, migrants reported being victims of ill-treatment such as being subjected to electric shock, being deprived of access to washing or sanitary facilities, being provided inadequate quantities of food and water (Amnesty 2015,12). In some cases, if not economically self-sufficient to buy the next step of the journey, migrants are induced to work for a certain period, usually in construction sites or farms, until they reach the demanded sum.

This condition worsened in 2016 when the implementation of stricter policies led not only to changes in the smuggling market, restoring higher costs, limited numbers of travellers and departures, but also to further extortions, ransoms and forced labour (Micallef 2019,11). Indeed, if on the one hand stricter policies towards smuggling activities can decrease the demand, as prices and concerns increase, on the other hand, they exacerbate dangers and risks (Campana 2020,514).

The change was promoted by the GNA, whose establishment led to an increasing level of controls and the deployment of a security-law enforcement model, pushing the co-opted militias to change their attitude toward smuggling, switching from protection to obstruction (Campana 2020,512).

Even though the turn away from protection was mostly based on internal factors, the GNA appears reluctant and unable to properly eradicate it from the country, as the government's interests within the business and the limited authority and control of the territory show (Abderrahim 2018,19). Thus, further pressure on this change was exerted by western countries, that imposed sanctions on Libyans involved in smuggling activities, which, together with the government's policy change, led to the

decline of sea crossings from Libya especially in 2017-18 (Micallef 2019,13). In this regard, the Memorandum of Understanding stipulated between the GNA and Italian authorities in 2017, contributed to a large extent to the decrease in the number of arrivals in Europe and in the enhancement of security levels, especially the role that the Libyan Coast Guard plays in intercepting and returning people to the coast.

Overall, if on the one side counter-smuggling operations brought to a decrease in departures and the corresponding revenues, on the other side, this led militias and armed groups to retain and even increase their interest and participation in a complementary business: migrant detention centres (Malakooti 2019,19). Indeed, these became more and more important for the smuggling business, as both militias, that succeeded in the control of a large part of the centres, and official institutions, the legitimate responsible, keep seeing them as an extra source of funding (Baldwin, Lutterbeck 2019, 2248).

1.3 The establishment of detention centres and its legislative basis

The practice of detention towards irregular migrants goes back to Gaddafi's regime when the introduction of stricter policies to prevent and limit irregular flows in the country brought to the necessity of their implementation. As previously mentioned, the first law introduced in this regard is Law No. 6 (1987) that regulates the Entry, Residence, and Exit of Foreign Nationals. In particular, under Article 17, 18 of the law, prohibiting the entry in the country without a valid visa or through unofficial border points, as well as the staying without a regular permit (Amnesty, 2017). The foreseen consequences are further explained in Article 19, which establishes that whoever found to be in the country illegally, "shall be sentenced to imprisonment or fined an amount of money that does not exceed LYD 200 or either of these two punishments" (Law No. 6, 1987). Furthermore, the person must be expelled from Libyan territory once the conviction is over (Malakooti 2019,10). The introduction of this law represents the starting point for detention and monetization as a common practice in Libya.

Further proof of this is the amendment and tightening of it in 2004, when Law No.2, lifted the fine to at least 200 LYD and the imprisonment sentence up to 20 years, even longer in case of reliance on organized criminal networks (Grange, Flynn 2015,4). In addition to this, in 2010 was introduced Law No. 19 on Combat Irregular Migration, which, if still criminalized irregular migration determining deportation after detention, differs itself from the previous one, as it does not express about the maximum term of detention, now indefinite (Amnesty 2013,16).

Overall, the decision of arresting and deporting migrants should follow a judicial order or, in case, can be under the authority of the General Directorate of Passport and Nationality (GDPN), which, according to art. 20 of Law N.6 (1987) "shall have the capacity of judicial officers in matters concerning the implementation of the provisions of the law" (Malakooti 2019,18).

In contrast to this though, the Directorate for Combating Illegal Migration (DCIM), established in 2012 to oversee the centres, was given the authority, through a Cabinet Decree (386) in 2014, to "apprehend illegal migrants in Libya and place them in shelters to monitor them and complete the procedures necessary for deporting them to their countries of origin in coordination with the relevant authorities". Thus, in addition to the overlapping mandates of the GDPN and the DCIM, there is another conflict: in fact, the laws do not provide the option to resort to the measure of administrative detention, as a judicial or official order is required, which is instead allowed by the decree and, only in this case, foreseen by international law (Malakooti 2019,18).

If the practice of detention in case of deportation is allowed at the international level, at the same time, it is also widely discouraged. Indeed, under International Human Rights Law, to resort to detention solely for reasons related to immigration status should never be mandatory or automatic and instead be used as a last resort, when strictly necessary to achieve a legitimate purpose and however based on an individual assessment (HRW 2019,62).

Indeed, the only fact of entering or staying in the country irregularly is not a reason for detention, as it does not constitute any criminal offense, reason why must be granted to the person the right to security and liberty (UNSMIL, OHCHR 2016, 9). About this, not only freedom and security should be granted to all migrants inside the country but, in particular, this should be assured to those people who can be classified as asylum-seekers and victims of trafficking, now criminalized and indiscriminately involved in the system of arbitrary and indefinite detention (Amnesty 2017, 7).

The principal cause of this is the refusal of Libyan authorities to sign and ratify the 1951 Refugee Convention and the successive Protocol in 1967, thus not granting the possibility for the recognition of the Refugee Status of people entering the country (Zampagni et al., 2017). If the ratification of the Convention is usually strongly recommended by the international community, in the case of Libya this is mandatory, being it part of the Organization of African Unity (now African Union) and thus bound by the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, that not only covers a wide definition of refugees and obliges the state parties to protect their rights, especially for what regards the principle of non-refoulment (Hamood 2016, 19), but it also encourages

the ratification of the 1951 Refugee Convention and Protocol and to formalize UNHCR's presence (Amnesty 2017, 20).

Although Libya still lacks an asylum system, it has offered, over the years, the possibility for a small number of nationalities (Eritreans, Ethiopians, Iraqis, Palestinians, Somalis, Sudanese of Darfuri origin, and Syrians) to have access to a primary process of recognition, which doesn't remove the possibility to be caught and brought to detention centres, but instead offers the chance for the UNHCR to analyse the asylum claims and ask for release (Amnesty 2017, 29). Although there is not an official Memorandum of Understanding between UNHCR and Libya, in violation of the 1969 OAU Convention, its presence has been tolerated since 1991, when an informal mandate has been stipulated and has allowed it to conduct Refugee Status Determinations (Grange, Flynn 2015, 8).

An important step forward towards the recognition of refugees and asylum-seekers has been made in 2011, when the Interim Government established after the revolution engaged in the drafting of the Constitutional Declaration, within which under Article 10, stipulates that "the state shall guarantee the right to asylum by virtue of the law" and that "the extradition of political refugees shall be prohibited" (Amnesty 2013, 9). Despite the commitment though, probably due to the political turmoil and instability in the country, Libya has not yet introduced this right in national legislation nor set up any effective administrative structure to provide it, thus leaving asylum seekers and refugees with no regular documents at risk of detention at any time, as established by the law (UNSMIL, OHCHR 2016,11).

If referring to the problem in practice, in 2019, of an estimate of 655,144 migrants residing in Libya, according to UNHCR, 8,794 of these were refugees while 47,414 could be considered asylum-seekers (Mixed Migration Centre 2019,7). Hence, as numbers show, there is a large part of the migrants' population in a recognized vulnerable situation but no protected from the law.

Notwithstanding the recommendations, however, Libyan law decides for the administrative detention, which, if legal, the conditions in which it is deployed are not, rendering the detention arbitrary. Indeed, not only DCIM staff arrested people on no grounds, as still in possession of work permits, or without informing about the reasons of the arrest (UNSMIL, OHCHR 2016,14), but also did not provide access to legal representation nor the opportunity to challenge the decision of detention (HRW 2019, 14). In general, once in the centres, apart from few people who can be resort to alternative options to leave, the only perspective of the future is one of indefinite detention.

This is the reality of the 4,596 migrants identified inside government-operated detention centres, in December 2019 (IOM Libya 2019, 6) who, unfortunately, represent just a small part of the total

migrants' detainees, as a relevant number of the facilities, since the revolution, are controlled by armed groups and militias.

1.3.1 The management and control of the centres

During Gaddafi's regime, detention centres were mostly managed by the government, which resorted to them to a larger extent, pressured by European countries, than in the previous years of the rule, thus becoming more and more institutionalized. In this period, the GDPN was in charge of migration's control, holding individuals suspected to be irregular and managing detention centres (UNSMIL, OHCHR 2016,12). With the revolutionary government, in 2012, this has been largely replaced by the DCIM, still subjected to the control of the Ministry of Interior and in charge of the centres, now the main body to contrast irregular migration (Amnesty 2017, 27).

Despite its mandate, the ongoing and past political instability rendered the capacity of the Directorate more and more fragile, with both structural and budgetary issues, which definitely contributed to the increasingly fierce competition for detention centres' control (Darme, Tahar 2017, 127). This resulted in reducing DCIM's control on the functioning of the centres, bringing a large part of detention centres formally under the Directorate's authority, to practically being run by armed groups (Baldwin Lutterbeck 2019, 2247).

This mixed management was common already before the civil war, when of the 19 detention facilities under the control of the DCIM, only 10 appeared to recognize a various level of authority to it (Amnesty 2015, 20). Indeed, these groups gained so much power and influence in the country that it is practically impossible for the DCIM to manage the centres without their support or agreement, which can change according to the degree of connection with the government. Indeed, while some armed groups are fully integrated and paid by the Ministry of Interior, as they were offered the possibility to join the government, and in particular the DCIM and others are aligned with the authorities but not cooperative, with the government exerting little power on them and still financing the centre, there are then other groups, working for themselves and running their non-official detention facilities (Malakooti 2019, 27). About the latter, especially after 2014, a growing number of non-official centres were erected, leading migrants to be exposed to even greater levels of arbitrary arrest and detention, which together with the already existing controls of the DCIM and its affiliated, created a very dangerous situation for migrants.

In general, most of the centres are in the north of the country, mainly in the area of Tripoli and along the coast, as these areas are the most popular areas for migrants, who were mostly arrested in raids in private homes, along the streets and in smuggler camps (HRW 2019, 16). In addition to this, mostly

in the last years, the increase in interceptions at sea at the hands of the Libyan Coast Guard functioned as an extra force for the detection of migrants. In this regard, the conclusion of the Memorandum of Understanding between the GNA and the Italian authorities in 2017 in fact, contributed to a large extent to the enhancement of security levels and, thanks to the transfer of high-level equipment and the training of the Libyan Coast Guard, also to increasing numbers of interception operations. Consequently, between January and August 2018, 12,945 migrants were intercepted at sea, rising the number of detainees from 5,200 to 8,000-10,000 at the end of the year, rendering people intercepted at sea the majority inside detention centres (Micaliff 2019, 25).

The role of the Coast Guard became in fact instrumental for the functioning of detention centres, as this, together with the guards, local police, militias, and centres' service providers, all contributed to the creation of a full-fledged system to exploit migrants and obtain some profits (Malakooti 2019,42). Overall, business models can change and involve a large range of activities that, as widely reported, are not in line with human rights.

1.3.2 The Business and the Human Rights' Implications

Although the number of migrants detained represent only a small portion of the total presence in the country, such as 1 or 2 % (Abderrahim 2018, 3), the serious level of violence, abuses and exploitation having place inside the centres, both official and not, has drawn the attention of several organizations, and above all, the UN Support Mission in Libya that describes the situation as a "human rights crisis" (Darme, Tahar 2017, 25).

Before analysing the violations occurring within detention facilities, it is important to remind that the possibility to create and maintain such a complex and unlawful system is mainly due to collapse of state institutions, the economy and the rule of law of the country, a combination of factors that contributed to the boom of the business (Micallef 2017,38). About this, the power vacuum left by the lack of a functioning central government has contributed to the flourishment of the human smuggling and trafficking into a multi-million euro industry, providing Libyans with employment opportunities and rendering the business the major source of income, not only for armed groups but also for the DCIM, pushed to join the business given the low funds provided by the state (Mixed Migration Centre 2019, 6). Moreover, the lack of a national security system together with the guarantee of impunity, allowed smugglers, as well as state officials, often working in close cooperation to obtain a mutual financial advantage, to repeatedly commit human rights violations against migrants, refugees and asylum seekers (Morana, 2020).

In general, particularly since the revolution, migrants living in Libya became vulnerable subjects, both physically and psychologically, commonly at risk of violence, exploitation and abuses at the hand of smugglers, traffickers and state authorities (IOM 2019, 32). Of course, this increases within the centres where, considering the lack of funding by the government, migrants are commonly kept in facilities with overcrowded cells and no ventilation, that lack of sanitation facilities and access to medical care, eventually not providing adequate nutrition, that is a context which can amount to cruel, inhuman and degrading treatments under international law (Amnesty 2017, 22). In the same way, most of the actions undertaken by guards and militias within their business in detention centres are to be considered serious violations of international norms, as migrants are systematically subjected to torture, ill-treatment, exploitation, prostitution, extortion, enforced labour and further abuses (UNSMIL, OHCHR 2016, 1).

These practices can have place already along the routes but increase once migrants enter the centres, as from now on they are under the control of guards and/or smugglers. Indeed, given the few chances to be released lawfully, which means by deportation, negotiation through UNHCR but only in case of certain nationalities, and the application for Voluntary Humanitarian Returns (VHR) operations organized by the International Organization for Migration (Amnesty 2017, 29), migrants usually need to rely on alternative forms to leave the centre.

This can happen through the payment of a ransom, the release upon the request of a sponsor in need of labour and, eventually, escaping (Malakooti 2019, 7). About the first, it is quite common for migrants to be asked to pay a ransom to get free, the amount of which can vary according to the nationality and the geography of Libya. Indeed, for example, Somalis can be asked to pay between 5.000 and 9.000 € while west Africans between 300 to 1.000 €, generally increasing for people fleeing from war zones or who declared the intention to get to Europe (Malakooti 2019, 40). Systematically, to practice extortion, smugglers as well as guards, rely on torture and abuses, which can be shared with relatives in case the migrant does not possess the requested amount of money. Indeed "guards would provide a mobile phone and force detainees to call their relatives and ask them to transfer a sum of money, usually to secure their release (..) several migrants were shot dead or died as a result of torture when they or their families could not pay the amount requested" (UNSMIL, OHCHR 2016, 17).

If the payment of a ransom is a necessary condition to be released, however, at times, migrants are unable to obtain the needed amount of money, in alternative to which the guards give them two options: they can contact a former employer and ask him to pay in exchange of his work, or to rely on some other, probably close to the guards, who require laborers (Amnesty 2017, 31). People

testified of being forced to work often under threats to be killed or while being beaten with sticks or metal bars, eventually not receiving any payment (UNSMIL, OHCHR 2016, 18). Overall, the buying and selling of migrants is a common practice and can happen in the case of Libyans in need of laborers but also between the centres and/or smugglers depending on the possible financial gain (Malakooti 2019, 7).

Further violations are deployed against children, kept in the centres in the same conditions, the majority of whom is unaccompanied (Amnesty 2014, 25) and against the women inside the centres, who commonly report sexual harassment and violence, drawing attention to the total absence of female guards in any of the facilities, which is contrary to UN Standard Minimum Rules for the Treatment of Prisoners, that Libya had signed, exposing women to gender-based violence (Amnesty 2015, 21).

In addition to this, the overall management of detention centres is based on practices which are in contrast with international law, articulated in several treaties by which Libya is bound, as the UN Convention Against Torture, the Convention on the Rights of the Child, the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the one on the Elimination of all Forms of Discrimination against Women and of Racial Discrimination as well as the Migrant Workers Convention (HRW 2019, 63). Moreover, Libya is also part of the Palermo Protocols, to Prevent, Suppress, and Punish Trafficking in Persons (Amnesty 2017, 21).

For these reasons, the management of detention centres under DCIM has been under the scrutiny of the international organization supporting them, consequently requesting the government to put in place a range of mitigating measures to improve the situation, such as the monitoring and reporting of human rights standards and the exclusion of DCIM members when found to be involved in human rights violations (Malakooti 2019, 28). Moreover, a large part of the people are closed up in detention centres in the hands of armed groups, facilities that the government discouraged to visit, affirming that such an action would legitimize them, thus leaving them operating in a complete lack of scrutiny and permitting to their business to grow (Amnesty 2017, 27).

Given the complicated situation of the country and existence of official and unofficial detention centres, it is not immediate to detect the total number of facilities nor the number of detainees. Indeed, while the current numbers of illegal sites holding migrants at the hands of smugglers and traffickers remain unknown (Zampagni et al., 2017), it is possible to detect more accurately the current numbers of state-detention centres which, according to the Global Detention Project, nowadays amount to 22

(GDP, 2020). About the number of people detained instead, the UN Secretary-General estimated the presence of 2,347 detainees on the 14th of August 2020 (UNSMIL 2020, 9). Although the number seems relatively low respect to the 5,000 in January 2019 or the 4,956 estimated by IOM in December 2019, it is possible to see how in the last period the trend opposed to the previous one, as in May 2020 the people detained were 1,400 (UNSMIL, 2020). The increase, as mentioned before, is mostly linked to the increasing number of interceptions, which only in 2020 brought back to Libyan coasts around 6,500 refugees and migrants, a large part of whom were returned to the centres while the rest disappeared.

Despite the efforts to contrast human rights violations, detention centres continue to be managed in conflict with international and human rights law, as these methods consent to obtain a financial gain from the still high number of people detained. It seems that the pressure exerted by the EU, together with international actors, for the respect of human rights, though widely in contrast to the policies deployed that actually feed this business, is not working, probably not only for the government's unwillingness but also for the complex dynamics between the people involved in the business.

In response to these grave human rights violations, the UN High Commissioner for Human Rights retains that the closure of the centres is the only solution to remedy these conditions, considering Libya's detention system impossible to be repaired (OHCHR, n.d.). Thus, following this statement, it seems reasonable to ask for gradual closure of the detention centres and to provide the possibility to leave the country legally and safely.

In conclusion, the Libyan context can be defined as highly complex and chaotic, given the high numbers of actors involved and the strong interests connected to it. In this regard, the current political situation is one of the main contributor, as the presence of international actors and their related interests for oil and gasses in the country, fighting against each other, do not allow the conflict to end and to reach a unified government with an effective control on the country. About this, it is necessary to remind that since 2011, despite the attempts, Libyan politicians, UN and further actors failed to create one, showing the necessity to think about a further formula to which current opponents could agree. In addition to the political status, the richness that the country owned, and its geographical location, represented a destination for thousands of people every year, who are now stuck in a terrible system. Indeed, as saw in the text, the high presence of migrants permitted to create a proper business in smuggling activities towards Europe, involving militias and armed groups but also part of the authorities. The strong link between these actors, together with the acute economic crisis, represent in fact the major obstacles to contrast the resort to corruption and ransoms as the only means to survive. However, what permits and fuels the existence of this system is without doubts the

criminalization of migrants and the consequent presence of detention centres, which function as the principle arena for the business. Indeed, the possibility to detain people arbitrarily and for an indefinite time, with no legal remedies to oppose it, permits to the ones in charge to exploit them and with no consequences, given the lack of rule of law. For these reasons, human rights violations and abuses can be carried out and utilised as a method to extract profit.

What is further scandalous is that the system not only represents an income for Libyan militias, armed groups, tribes or governments, but it is functional to the interest of the European Union too. Indeed, the existence of detention centre is sustained and financed by the EU and its Member States, Italy in particular, as it is part of a larger and cumbersome policy which aims at preventing arrivals to Europe, blocking departures or through interceptions, resulting the main beneficiaries.

Chapter 2

The European and Italian approach to the Libyan migration context

The huge increase in migration flows to Europe in the last years has been a hard test for the functioning of the European Union, leading to an increasing externalization of the borders and of their control. As over years the main interest has always been based on protecting its territory, due to the high number of arrivals, the safeguard of *fortress* Europe became a priority in the political agenda. It is for this reason that European States started working in cooperation with countries of origin and transit, trying to address the root causes of migration and to prevent arrivals. In addition to this, extraterritorial agreements with third countries have been used in perspective of a process of externalization of borders' control. Indeed, this is included within a range of externalization policies, implemented with the aim of interrupting, halting or deterring migrants' movements. Of course, this happened also in the case of Libya, which increasingly became a key actor for the management of migration flows in the Mediterranean, assisted and financed by the EU and Italy.

In this regard, this chapter aims to retrace the different policies implemented towards Libya and the consequences these had on the enjoyment of human rights of migrants. In particular, the first part will analyse the use of externalization policies over years as an instrument for the EU to control and prevent migration flows, focusing on the one with Libya and on the several programs and funds aimed to improve Libyan capabilities and especially border management ones. In the second part, it will be observed the development of the key partnership between Libya and Italy, functional to European Member States' interests on migration, which began during Gaddafi but is still in place. In particular, the text will focus on the agreed 2017 Memorandum of Understanding, which permitted Italy to provide continue assistance, both financial and technical, to Libyan authorities, resulted in the

achievement of some sort of autonomy in the carrying out of pullbacks operations, preventing arrivals to Europe. Indeed, as we will see, Italy and the EU succeeded in gradually delegating the task of blocking departures from Libya exercising remote control only, so to detach from the human rights violations deriving from it. This is why the last part takes into account the pending cases and applications presented before human rights institutions, which represent an attempt to assess Italian and European co-responsibility for the violations carried out by Libyan authorities and to put an end to the practices.

2.1 The European Union's externalization policy

The creation of the European Union and the subsequent enforcement of the Schengen Agreement in 1995 brought to the free movement of goods, persons, services and capitals within Member States, leading to the disruption of the internal borders and the creation of a great European one. After this, the existence of a common external border and the incrementation of migration flows, have been a hard test for the functioning of the European Union and, in particular, in doing so respecting human rights, although at the core of its foundation.

The implementation of the Amsterdam Treaty in 1997 and of the Tampere Programme in 1999 represent the beginning of a shared migration management between the countries of the Union, as they posed the basis for the realization of the Common European Asylum System (CEAS), a process of harmonization for what regards minimum reception's conditions as well as for asylum procedures, eventually determining the responsible State for the relative examination (Chetail et al, 2017).

In addition, the Programme aimed to secure the outer border of the EU and to prevent migration flows through the realization of partnerships with countries of transit and origin (Baldwin et al. 2019, 2142). Instead of facilitating the access to the CEAS, the external policy focused on keeping refugees outside the EU, enhancing the capacity of third-party countries for the management of asylum seekers and refugees (Baldwin, Lutterbeck 2019, 2242). This approach was further revealed in 2003 with the implementation of the European Neighborhood Policy, which foresaw an increasing cooperation with southern Mediterranean partners, not only to improve prosperity and stability but also to strengthen migration management and border control, and then re-confirmed by the Hague Programme in 2004, that continues the Tampere, where partnerships with third countries are still central (Hamood 2006, 71).

Going back to Libya, as it was not part of the Euro-Mediterranean Partnership, a regional relationship established in 2008 between the EU and Mediterranean countries with regard to political, economic and social cooperation (ILO, n.d.), it did not have any formal relation with the EU. Therefore, it was

possible to collaborate with Libya in the area which deemed necessary, that is migration, through bilateral cooperation with Member States. Indeed, after the lifting of the embargo in 2003, European heads of states and officials of the European Commission started conducting official visits to the country, eventually reporting a specific cooperation plan for the future management of irregular migration (Hamood 2006, 72). The European Union thus started to provide training and monitoring equipment to strengthen Libya's maritime borders, as well as to improve the living conditions of migrants in detention facilities (Grange, Flynn 2015, 11).

About the latters, it must be said that in the early 2000s, under European pressure, Libya began to adopt more restrictive migration policies and to establish migration detention centres, that the EU funded both for the opening and the provision of aid (Grange, Flynn 2015, 10). This happened since the idea to handle asylum claims outside the EU through the creation of "transit processing centres", previously rejected, was instead revived in 2004 by Italy and Germany, who saw North Africa as a possible location for it (Hamood 2006, 72). This is in fact confirmed in a report of the UN Special Rapporteur on the Human Rights of migrants, who criticizes Member States for encouraging, financing and promoting detention of migrants in non-EU countries as part of the externalization of border control (HR Council, 2013).

Overall, in the period 2004-2013, the Commission committed more than €1 billion to migration-related projects with Southern Mediterranean and sub-Saharan African countries, leading to the creation of the so-called "Fortress Europe" (Reitano 2015,11). In addition to the previously mentioned initiatives, this approach was included in the architecture of EU's Global Approach to Migration and Mobility (GAMM), approved in 2005, that foresaw the externalization of migration controls through partnerships with countries of origin and the establishment of preventative measures to discourage mobility in exchange of development aid and further financial assistance (Baldwin-Edwards, et al. 2019, 2143).

If the strategy appeared to be working in the period 2000-2011, this changed in the following years, when increasing numbers of migrants reached European Union's borders, especially Italian and Greek ones (Campana 2017, 2). Indeed, if in the first case Gaddafi's death and the subsequent collapse of the government rendered bilateral agreements with Italy void, making Libya the main departure point for Europe (Baldwin-Edwards et al. 2019, 2143) at the same time, the situation in Syria brought the eastern countries, especially Greece, to an unsustainable situation. In general, the break out of the Arab Spring in 2011 led to a rising pressure on the European Union, which reached unprecedent levels of arrivals in 2015, and thus to the need of a stronger co-operation in the Mediterranean Area (Morana 2020, 7).

2.1.2 The approach towards Libya

With the adoption of a new version of the GAMM in 2012, the EU widely showed the will to base the external migration policy on cooperation and political dialogue with third countries (Atanassov et al., 2018, 23). Indeed, already in 2013, the EU decided to deploy a new mission in Libya, the EU Integrated Border Management Assistance Mission (EUBAM), with the aim of enhancing "the security of Libya's land, sea and air borders" as stated at art. 2 of the Council Decision 2013/233/CFSP, transferring customs and border security expertise, as a pure civilian technical assistance (Zampagni et al., 2017). Overall, in the long term, the mission aimed at creating a broad integrated border management in Libya, sharing intelligence and carrying out joint operations (Herbert 2019, 5).

However, due to the break out of the civil war in 2014 and the following security deterioration, the mission was forced to move in Tunis, from where could only deploy a 'mapping' exercise on Libyan border control authorities (Baldwin, Lutterbeck 2019, 2249). With the establishment of the GNA in 2015 then, EUBAM's mandate was amended and started including the task of enhancing capacity building and the support for a Security Sector Reform, with the goal of disrupting organized criminal networks involved in the smuggling of migrants and in human trafficking (Loschi et al. 2018, 9). Given the insecurity in the country though, the mission remained essentially a planning cell until 2018, when it was possible to move to Libya again (Phillips 2020, 92), where the mission is still running with a mandate that has been extended until 30 June 2021 (Council of the EU, 2020).

However, this is only one of the many policies deployed within the GAMM, which was in fact extended in 2015 with the announcement of the *European Agenda on Migration* (Atanassov et al., 2018). The rising numbers of arrivals at EU borders from 2011, with a peak of 1 million people entering EU in 2015 (IOM, 2015), showed the need for an immediate European action plan, required to provide practical responses to the challenges. In this regard, in May 2015, the European Commission presented a comprehensive programme addressing the criticalities of the system, proposing the implementation of long-term measures focused on areas such as irregular migration, borders and asylum, together with the promotion of legal pathways (EC, 2015).

Specifically, the Agenda strongly commits Member States to achieve a coherent CEAS implementation and to allow for new legal forms of access such as resettlement and relocation, with a focus on development cooperation so to intervene in the root causes of migration, as established by the Migration Partnership Framework in 2016 (Crawley, Blitz 2019, 2259). In addition to this, it was stressed the necessity to target criminal smuggling and traffickers through operations coordinated by

the Common Security and Defence Policy (CSDP) and to develop a more effective border management, which foresaw the threefold increase in Frontex's (European Border and Coast Guard Agency) budget both to encourage activities of search and rescue but especially of maritime borders' security (EC, 2015).

At that time, Frontex was in fact engaged in two operations in the Mediterranean: Poseidon and Triton. While the first dedicated to the Greek area since 2006, Triton was deployed in the Central Mediterranean in 2014, replacing the previous Italian rescue operation Mare Nostrum, even though with a limited territorial capacity of 30km from the European shores (Micallef, 2017).
The budget increase was thus going to further commit the Agency, which along with the previous tasks of border security and search and rescue activities, after the approval of Frontex's new regulation in 2016, its mandate also included the support for Member States in migration management and returning operations as well as the fight of cross-border crimes (Atanassov et al. 2018, 15). However, in February 2018, Triton was replaced by the new Joint Operation Themis which boosted its law enforcement's role, being equipped with a significant security component that aims at detecting terrorist threats at the external borders.

While the European Border and Coast Guard Agency was essentially involved in frontier management tasks, in June 2015 the European Council approved the deployment of the military operation EUNAVFOR-MED (lately renamed *Operation Sophia*) under the CSDP, with the aim of contrasting smuggling and trafficking in the Mediterranean. In this regard, the operation's mandate focused on the identification, capture and dispose of vessels suspected of being used for smuggling operations (UNSMIL, OHCHR, 2016), which, however, was enabled to work in the Libyan SAR zone but not in the country's territorial waters (EPSC, 2017). In 2016, the mission was prolonged for another year, with the additional tasks to implement UN arms embargo and to collaborate in the training of the Libyan Coast Guard (Micallef, 2017).

The focus on capacity building is in fact central for EU's containment policy and allowed to increase rescues and interception of 40 % in one year, to which contributed not only coastguards' acquired capabilities but also the interests of certain smuggling networks, attracted by the money EU could offer in exchange of border controls (Micallef 2017, 49).

Despite improvements and the deployment of sophisticated assets for surveillance, the operation did not reach the expectations, as just few small smugglers and traffickers were intercepted, 109 until mid-2017, and arrivals on EU borders kept rising, reaching 180,000 only in 2016 (UNHCR, 2020). Sea border operations are in fact often inefficient, not only due to the vast patrolling area difficult to

control and the connected increasing financial costs, but also because of the push to develop different routes of unauthorized migration flows, rendering it impossible to effectively block them (Achilli 2016, 103).

The only positive aspect thus regarded the rescue of more than 34,000 people between 2015 and 2017, 11,8 % of the total, although search and rescue activities were not included in Operation Sophia's mandate (Loschi et al. 2018, 4), in fact suspended in mid- 2019, when it was decided that no more naval ships would have been deployed in the Mediterranean, thus solely relying on air surveillance and on the Libyan coast guard (ECRE, 2019).

SAR activities had instead a limited role for what regards operation Triton, which achieved 8 % of the rescues between 2014 and 2016, not only because primarily a mission to combat crime and secure EU's borders but also due to its deployment away from the areas where major emergencies take place, thus contributing to the increase in deaths' number from 2,877 in 2015 to 5,000 in 2016 (Baldwin, Lutterbeck 2019).

If on the one side the rising number of deaths can be connected to the high numbers of departures and the use of unseaworthy dinghies, on the other side, this is related to the wrong assumption that reducing the scope of rescue activities respect to the previous humanitarian operation Mare Nostrum, would stop migration flows, functioning as a deterrent (Loschi et al. 2018, 20). Unfortunately, this policy did not work as desired and despite the presence of European Union's missions and the intervention of some NGOs since 2015, which decided to carry out search and rescue activities going as far as Libyan territorial waters (EPSC 2017, 4), they did not prevent the loss of 13,457 people between 2014 and 2017 (UNHCR, 2020), becoming the deadliest route in the world.

Afterall, Operation Sophia was replaced in February 2020 by Operation Irini, at the heart of which resides the implementation of UN arms embargo and the gather of info on illicit oil exports, while still involved in training activities and operations to contrast smugglers and traffickers (EEAS, 2020).

2.1.3 The Emergency Trust Fund for Africa, the Malta Declaration and the UN-AU-EU Task Force

Within the agreed Agenda on migration and in the perspective of externalising EU migration controls, together with security borders operations, the EU launched an Emergency Trust Fund for Africa (EUTFA), agreed in 2015 at the Valletta summit, which is supposed to provide an extra tool to intervene with rapid and effective responses in the so-called 'migration crisis' (Loschi et al. (2018) p.13). Labelling migration as such can in fact permit to resort to exceptional measures which only

require to be immediate and flexible, although at the risk of being not in line with the rule of law or in respect of fundamental rights (Baldwin-Edwards et al. 2019, 2149).

At the beginning, 2,5 billion euros were allocated to the Fund with a view to promote economic and employment opportunities, together with the fight of smugglers and traffickers (EC, 2017), with the general goal to improve stability and address the root causes of migration and displacement in Africa. Specifically, the Fund expresses the will of EU to further externalize its policy, going to intervene beyond the North African countries, reaching the Horn of Africa and the Sahel region (Majcher, Flynn, Grange 2020, 214).

Within the North Africa Window though, which includes Algeria, Egypt, Morocco and Tunisia, Libya received 40 % of the total budget (Loschi et al. 2018, 14), rendering the Fund the main tool for actions in the country, which were mainly focused on three areas: protection and assistance of those in need, stabilisation of municipalities and integrated border management (EU, 2020). Since its creation, the majority of the budget has been dedicated to the protection and assistance of migrants and displaced people (EU, 2020), while at the same time offering trainings, improving the living conditions and resilience of Libyans, providing voluntary returns or relocations for migrants, as well as fostering labour migration and mobility and fighting human smuggling, as the projects approved in 2019 can still confirm (EC, 2019).

For the implementation of the programmes, the EU is supposed to work in accordance with agencies at the UN level, such as IOM and UNHCR, as well as with the national and local level, including civil society groups and community-based organisations (Phillips 2020, 92). In practice though, there are some critics, as it is perceived that in order to speed up decision-making for immediate and effective solutions, these are created through a top-down approach, hindering participation and local ownership (Loschi et al. 2018, 15). This has an impact on the efficiency of the projects which, notwithstanding difficult to evaluate, don't seem to contribute to poverty alleviation and development (Majcher, Flynn, Grange 2020, 214) nor to contrast the widespread and systematic violence across the country (HRW 2019, 21).

In addition to this, part of the budget was used to increase borders surveillance and security through the implementation of the *Integrated Border and Migration Management* (IBM) project, headed by Italy. The programme has the stated objective "to improve Libyan capacity to control their borders and provide for lifesaving rescue at sea, in a manner fully compliant with international human rights obligations and standards". However, as sustained by several NGOs in the *Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's*

'Support to Integrated Border and Migration Management in Libya' Programme, not only interventions in security and support lack adequate measures to mitigate human rights' violations, thus resulting in complicity with Libyan authorities, but also, they do not comply with the primary objectives of the Fund, which means reduction and eradication of poverty (GLAN, ASGI, ARCI 2020, 6).

Indeed, as it is predominantly financed by the European Development Fund (HRW 2018, 10), projects run within the Trust Fund should show a direct connection with the aforementioned objectives, which, however, in case of IBM, have been judged "incompatible if not contradictory" by the Court of Auditors, as it aims at reducing the number of migrants going to Europe instead of addressing the root causes of irregular migration (GLAN, ASGI, ARCI 2020, 7). Despite alleged compliance with human rights violations, the lack of mitigating measures and the inconsistence of its objectives, thus in contrast with EU law, the second phase of IBM programme has been renewed in December 2018 and will be valid until December 2021 (GLAN, ASGI, ARCI 2020, 13).

Furthermore, some of the funds are used to implement additional measures to address migration related issues in the Mediterranean, in particular about the root causes in the countries of origin and transit, confirmed as priority tools also within the Malta Declaration (Abderrahim 2018, 4), endorsed in February 2017 by 28 EU member states (Reyhani, et al. 2019, 9). In this occasion, EU heads of state held an informal meeting to deal with the external dimension of migration, with a focus on the Central Mediterranean route, from Libya to Italy.

During the Summit, Member States focused on the necessity of an increasing cooperation with Libyan authorities, as well as of further support for local community development, for the fight against human smugglers and the security of Libyan borders (Zampagni et al., 2017). In this perspective, the EU supported Italy's new deal with the GNA, a Memorandum of Understanding that foresaw cooperation on border management and support for the enhancement of Libyan Coast Guard capacities so to prevent arrivals (Abderrahim 2018, 4).

In addition to this, later in 2017, a joint African Union-European Union-United Nations Task Force was put in place, representing a shift towards a more balanced and true partnership with African countries. The Task Force decided to take care of three main issues: to save and protect migrants and refugees along the routes, in particular in Libya, to accelerate assisted voluntary returns and resettlement of those in need and keep tackling smuggling and trafficking networks (Atanassov et al. 2018, 25).

In regards to the first goal, the Task Force seeks to find alternatives to the practice of systematic detention, while at the same time trying to implement registration systems at disembarkation points and in the centres as well as ensuring access of NGOs and international organizations inside the facilities (Abderrahim 2018, 6). About the remaining objectives, the UN-EU-AU Task Force planned to rely on the GNA to improve police's capabilities so to secure judicial consequences and asset freezing of those involved in smuggling and trafficking activities, while, through cooperation with IOM and UNHCR, to implement voluntary return and repatriation, which actually led to a decrease in official detention centres' population from 20,000 in October 2017 to 4000 in March 2018 (Abderrahim 2018, 7).

At the same time though, EU bilateral policy with Libya seems to play against these positive achievements, as in mid-2018 the number of detainees nearly doubled, from 5,000 to over 9,000, rendering European policy makers complicit in the maintenance of the detention system (Mixed Migration Centre 2019, 8). European Union thus promotes the massive resort to unsafe detention centres, contributing to a policy-made humanitarian crisis while at the same time showing and upholding a humanitarian narrative (Phillips 2020, 94).

2.1.4 EU Policies assessment and the New Pact on Migration and Asylum

In general, the approach of the EU can be considered highly controversial, as while on the one side it provides support to the Italian Memorandum with Libya, increasing interceptions and blocking departures, on the other side, it engages in a trilateral cooperation created with the opposite intent, which is alleviating pressure in detention centres (Abderrahim 2018, 20). Therefore, this results in a lack of coherence and efficiency of its objectives which, at the same time, jeopardize EU's core values of respect and promotion of human rights.

As they often simply involve cooperation between states, policies aiming at externalising migration cannot be considered unlawful per se but they can instead pose significant human rights at risk. Although on the one hand, border controls for rescue activities and contrasting smugglers can be considered legitimate, on the other hand, if these are put in practice with a view of reducing the number of arrivals, they are not, especially if they consist in punitive or preventive measures and the assistance of a country with problematic human rights records (Amnesty 2017b, 6).

In this regard, EU's ambitions to control irregular migration in rights-violating contexts such as Libya can in fact lead to further political destabilization and to increase, rather than decrease, migration flows from the region (Baldwin-Edwards, et al. 2019, 2153). Moreover, Europe's focus on migration as primary concern in the country and the related need of building an efficient border security machine

outside a larger security sector reform process, not only jeopardizes its realization in the long-term but also the establishment of accountable institutions (Herbert 2019, 7).

Despite the well-known critical political situation, the EU has kept externalizing and outsourcing border management, policies which preclude the legal responsibilities that would arise once migrants and asylum seekers reach EU jurisdiction (HRW 2019, 20), obstructing asylum claims and maintaining migrants in a situation of fundamental rightlessness in Libya (Reyhani et al. 2019, 13). Indeed, as confirmed by Amnesty International research, demands on third countries to prevent irregular departure to Europe expose refugees, asylum-seekers and migrants to the risk of human rights' violations such as liberty and remedy as well as of being involved in practices of refoulement or torture and ill-treatments (Amnesty, 2017b). As mentioned before, if borders' control and externalization can be lawful, these should be implemented in line with international maritime law, human rights and refugee law, thus primarily focused on preserving human life and dignity (CoE 2019, 9).

Notwithstanding NGO's complaints and reports in regard to the consequences of an externalized migration policy and its alleged contributions to human rights' violations, the European Union does not seem prone to a change, as showed by the proposals within the recently announced *New Pact on Migration and Asylum* that, replacing the European Agenda on Migration, is going to guide EU's future policies on the topic.

The New Pact proposes improvements both on the external side, strengthening cooperation with countries of origin to intervene on the root causes and to tackle smugglers as well as in the perspective of creating an effective partnership for readmission agreements and the faster return of those with no right to stay, and on the internal one, working on asylum's procedures, on measures to improve refugees' integration and on the creation of new legal pathways to reach Europe (EC, 2020b). Overall, the Pact wishes to realize a robust and fair management of the external borders, an efficient asylum system and coordinated system of returning procedures through a comprehensive approach to asylum and migration policies realized at the EU level (EC, 2020c).

Despite similarities with the previous Agenda, the Pact is presented as a "fresh start on migration", as the Commission now tries to send the message that migration is good and should be dealt in a calm way instead of as a crisis, although consolidating the strategy of preventing arrivals and promoting only some improvements (ECRE, 2020). In this regard, a proposal has been made about the internal management of migration flows, which foresees a new framework able to ensure fair-sharing responsibility and solidarity between Member States (EC 2020, 3).

These will be in fact bound to act in solidarity in times of stress, which is in case of disembarkation, of pressure on the State's migration management system or in situation of crisis, opting for refugees' relocation from the territory of a State to another or the payment of a contribution for the return of individuals with no legal requirements to remain (EC 2020b, 2).

Overall, the high expectations for a more welcoming Europe have been disappointed, as it has been realized through a compulsory solidarity and only in some exceptional circumstances, to which is going to add a stricter migration management with the introduction of new compulsory pre-entry screenings and of faster asylum border procedures so to speed up decision-making and effectively implement relocations or returns.

The fact is, that an accelerated procedure can easily undermine a fair and effective examination of international protection claims, although the Commission secures that "every person would have an individual assessment and essential guarantees remain in full, with full respect for the principle of non-refoulement and fundamental rights"(EC, 2020c).

This fast procedure is supposed to deliver a decision on the application within 12 weeks, not furnishing provisions for how it will work for legal assistance, reception and remedies to challenge the decision, which, in case of rejection foresees the return of the person, thus revealing a policy based on border containment and increasing returns at the expenses of a fair and efficient asylum system (ECRE, 2020b). This is in fact confirmed by the scheduled appointment of an EU Returns Coordinator and of return representatives for Member States, together with the empowerment of Frontex, as a new standing corps is planned to reach 10,000 staff in 2027, going to contribute to a better management of external borders and of returning procedures (EC 2020, 8).

Moreover, despite the commitment to create a monitoring mechanism at the borders to control and prevent pushbacks practices, no changes have been announced in regards to the externalization approach to migration, still based on borders, detention centres and on cooperation with not safe third countries (Amnesty, 2020), regardless human rights' violations against those in need. For these reasons, Amnesty International's EU Advocacy Director, Eve Geddie, commented that "*Pitched as a fresh start, this pact is, in reality, designed to heighten walls and strengthen fences. Rather than offering any new approach to facilitate bringing people to safety, this appears to be an attempt to rebrand a system which has been failing for years, with dire consequences*" (Amnesty, 2020).

Overall, while it is clearly recognized that no one country can manage migration alone, it would be necessary to for the EU to agree on a long-term policy which is coherent in its internal and external aspects, "*rooted in genuine partnerships, grounded in human rights and aligned with existing*

international frameworks and agreements" (IOM, 2020). Indeed, migration policies can be sustainable only if in compliance with human rights, thus prohibiting arbitrary detention and collective expulsions, guaranteeing due process and with respect of the principle of non-refoulement (OHCHR, 2020). For these reasons, it can be said that although some improvements, EU's policy on migration is still promoting an approach which goes against the protection of those in need, reasons why further changes are needed, requiring a coherent approach in respect to Member States' policies, as in the case of Italy.

2.2 The Italian Approach to Migration Flows and the Partnership with Libya

A wide number of policies to address migration flows from Libya are carried out at the EU-level but these are supported by further ones, deployed through bilateral agreements between Italy and Libya, which resulted fundamental to obtain practical improvements. In general, given the colonial past, that saw the Italian regime ruling the country until 1943, and the geographical proximity, it has been possible to create bilateral agreements mostly in relation to illegal migration with the aim, from the Italian and European side to prevent arrivals and, on the Libyan side, to take advantage of this to obtain financial benefits as well as political support and recognition.

Of course, this all started with Libya's regained access to the international political arena, which was after the lifting of sanctions in 2003, when EU authorities started making visits to the country. Among them, Italian politicians conducted high level-meetings with Libyan officials in regard to the fight against illegal immigration and organized crime, resulting in a permanent collaboration in 2004. Since then, the Italian government started offering Libya training and equipment for border surveillance and management together with the provision of funds for the construction of detention camps, in line with EU (Hamood 2006,65), as previously explained.

Despite the agreement, the number of people arriving in Italy increased over years, rising from 19,000 in 2007 to 36.000 in 2008 (HRW 2019,25). It is in this year in fact, that Italy proposed to Gaddafi to further develop their cooperation to fight illegal migration, stipulating a proper pact, the so-called "*Treaty of Friendship, Partnership and Cooperation*". In particular, they agreed on the payment of $5 billion for infrastructure projects, as a compensation for the abuses committed by Italy during colonial time, as well as the provision of funds to strengthen border controls and to enhance technical capacities of Libyan authorities, including: "professional training, assistance for the repatriation of illegal migrants to third countries, supply of goods and services, the setting up of reception centres for illegal migrants as well as operational and investigative cooperation" (Grange, Flynn 2015, 9). Eventually, given the past relationship, it seemed necessary to reaffirm the principles of sovereign

equality, non-interference in internal affairs, prohibition to resort to the use of force and respect of human rights and freedoms (Vari 2020, 111).

The Treaty officially entered into force in February 2009 and saw the furnishment of three Italian patrol boats (HRW 2009,7), and the implementation of the first joint patrol operation both in Libyan territorial waters and international ones (FRA 2013, 44). The mission officially began in mid-May, its primary task was detecting and intercepting boats and to return them to Libya, mission that will be defined as a "pushback agreement" (Amnesty 2017,14), which resulted in the drop of arrivals to 4400 in 2010, and to almost 90% in two years (Porsia 2015,1).

In general, the Treaty consisted in the deployment of every means available so to block the exit of migrants and refugees from Libya, not only at the expenses of the EU and Italy but especially at the ones of persons in need of protection, for whom no safeguards have been taken (Baldwin et al. 2019,2143) preventing them the possibility to reach Italy, where they could seek asylum (Reitano 2015,11). In this regard in fact, when carrying out push backs operations not only non-refoulment can be violated, but also prohibition of torture and of collective expulsions (FRA 2013, 47).

Italian authorities justified pushbacks relying on international and national tools such as the UN Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air and various norms of the Law of the Sea, that, however, at art. 19 of the Protocol contains a specific reference to the non-interference with rights under International law, including International Humanitarian and Human Rights law, and mentions specifically the principle of non-refoulement (CoE, 2010).

In particular, the principle is a customary norm of international law, contained both in Refugee law, Human Rights law and European and Italian law, whose definition can be found in the 1951 Refugee Convention (to which Italy is part) at art. 33, where it is stated that:

"*No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion*"(GC,1951).

The principle of non-refoulement does not refer only to the return of people to their country of origin, but it comprehends the so-defined *indirect refoulement*, which can occur in case people are returned to a place where there is a risk of onward movement to a country where their life can be threatened (FRA 2013,49), as well as in case of the return to countries, including third countries, where there are substantial grounds to believe that people would be at real risk of being subjected to torture or cruel, inhuman or degrading treatment (HRW 2009,29).

In this regard, Italy's violation of the principle was widely recognized in a report issued by the Committee for the Prevention of Torture (CPT) after its visit to the country in 2009, where it was confirmed that not only migrants were returned to Libya, where there is a real risk of being subjected to ill-treatments, thus in violation of the non-derogable right that prohibits torture, but also that no individual assessment nor the possibility to ask for asylum had been provided by Italian authorities once under their jurisdiction, thus further violating the prohibition of collective expulsions, as contained in Article 4 of Protocol 4 of the ECHR as well as in Article 19 of the EU Charter of Fundamental Rights (CoE, 2010).

These practices were eventually suspended in 2012, when the outbreak of the civil war brought to the interruption of the relationship between the countries and the violations carried out by Italy were eventually recognized and condemned by the European Court of Human Rights (ECtHR) in the judgement Hirsi et al. v. Italy (Vari 2020,112)

Overall, according to the ruling of ECtHR in the case of Hirsi Jamaa and Others v. Italy, it can be sustained that Italian practice of disembarking refugees and migrants in Libya is unlawful and violates articles contained in the European Convention of Human Rights (ECHR) (Amnesty 2017,17). Specifically, the case, of which the applicants are 11 Somalian and 13 Eritrean, concerns 200 people who left Libya in 2009 on board of three boats, intercepted in the Maltese SAR region by Italian authorities, transferred on Italian military ships and returned to Tripoli.

In this regard, the Court noted that Italy violated the principle of non-refoulement, which results from the lack of individual assessment and of the possibility to apply for asylum, in breach of art. 4 Protocol 4 ECHR, which prohibits collective expulsions, as well as from the return to Libya despite Italian authorities knew the risk of being exposed to ill-treatments, thus violating the prohibition of torture, contained in art. 3 ECHR and of being arbitrarily returned to their countries of origin, given the lack of any asylum procedure and the impossibility of recognition of the refugee status as Libya did not ratify the 1951 Geneva Convention nor the related 1967 Additional Protocol (FRA 2013,41). Moreover, the ECtHR condemned Italy's violation of art. 13 ECHR, which foresees the right to an effective remedy, that was in no way provided to the migrants in relation to their expulsion (ECtHR 2012,4).

Overall, one of the major difficulties of the case was the evaluation of the extraterritorial applicability of the ECHR and thus if Italy could be condemned for the related violations committed in high sea. In this case, for the first time, the Court found that: "*Whenever the State, through its agents operating outside its territory, exercised control and authority over an individual, and thus its jurisdiction, the*

State was under an obligation to secure the rights under the Convention to that individual" (ECtHR 2012,3).

Thus, notwithstanding the existence of bilateral agreements with Libya, Italy cannot refrain from its responsibilities, given that the performance of acts, or the effects of these, actually constitute an exercise of jurisdiction by the state (Grange, Flynn 2015,10). Indeed, according to the ruling, Italian authorities were exercising full control over the persons on board of the Italian ships and that consequently they were obliged to safeguard individual's rights and freedom included in the ECHR (FRA 2013,40).

Eventually, as a result of the ruling, it is possible to affirm that the policy of push backs carried out by Italy is unlawful and that Italian and European Union vessels shall not bring migrants back to Libya (UNSMIL, OHCHR 2016,5). The judgement, together with the break out of uprisings in 2011, led to the suspension of the agreement and of these practices, provoking an increase in the number of arrivals already in 2012, which went back to pre-2009 levels (Lutterbeck 2013,139).

Besides the changes, in April 2012, Italy signed an additional agreement with Libya which still focused on training programs, voluntary returns of migrants and their detention, again lacking any measure to uphold Human Rights and Refugee law (Grange, Flynn 2015,10).

2.2.2 From Mare Nostrum to the EU Frontex operation and the intervention of NGOs

Although renewed agreements with the Libyan government to strengthen Coast Guards' capabilities and border controls, the number of crossings continued to rise as well as the number of deaths, given the hundreds of shipwrecks and of incidents at sea (Amnesty 2017,17). In particular, two major shipwrecks took place on the 3rd and 11th October 2013 near the coast of Lampedusa, causing the death of more than 560 people, leading to the decision of the Italian government to launch an extensive criminal investigation against smuggling as well as to establish a large-scale rescue mission which started already on the 18th of October, "*Operation Mare Nostrum*" (Campana 2018,482), that foresaw the deployment of sea and air capabilities in the Italian, Maltese and Libyan search and rescue (SAR) areas (EPSC 2017,3).

Even if the permanent patrols in SAR zones permitted the rescue of over 166,00 people till the moment of their suspension, on 31 October 2014 (Amnesty 2015b,15), the mission has been accused, by the former foreign office Minister of the UK, to represent an unintended *pull factor* for increasing numbers of refugees and migrants attempting to cross the Mediterranean (Travis, 2014). It was therefore considered responsible for provoking more tragic and unnecessary deaths, as showed by the increasing use of unseaworthy boats, factors which eventually led to its end (Deiana et al. 2019, 8).

In late 2014, Mare Nostrum was in fact replaced by the Frontex operation Triton, which differently from the previous one, was mainly focused on border control and operated only within 30 miles from Italian coast (Cusumano 2017, 2). The reduction of the patrol area had been thought to induce a deterrent effect in the number of departures which, on the contrary, increased given the outbreak of a full-fledged civil war in Libya. This instead showed the insufficiencies of the operation addressing the humanitarian crisis which resulted from the rise in the death rate that reached 1 out of 23 in first three and a half months of 2015, compared to 1 in 50 during Mare Nostrum (Amnesty 2015b,5).

An additional factor that contributed to the rise in deaths is said to be attributable to smugglers' practices, who did not upgrade their standards in sea-crossings expecting that the boats would have been picked up by European forces or NGOs shortly after departure (Darme, Tahar 2017,104). In this regard, there's the need to say that it is with the launch of SAR operations in the Mediterranean that smugglers were induced to shift from safer wooden boats to inflatable crafts, thus benefiting from the deployment of such operations at the expenses of the potential safety benefits these could offer to migrants (Deiana et al. 2019,23).

Overall, given the humanitarian crisis that was provoked by the end of Mare Nostrum and its replacement with Triton, from August 2014 till 2016, eight different Non-Governmental Organizations intervened in the Mediterranean deploying their own maritime SAR assets, funded by civil society, so to compensate the fallacies of EU policy and carry out private rescue operations (Cusumano 2017, 91). Although their activities showed a crucial contribution in mitigating the loss of life at sea, as they exclusively dedicate to SAR operations, these were much smaller in scope and intensity respect to official ones (Deiana et al. 2019, 24).

Despite the presence of NGOs, the use of unsafe boats and the limited rescue capabilities that Triton foresaw, led to other major shipwrecks in April 2015, which resulted, as with Mare Nostrum before, to the expansion of the operation's funding and power, pushing SAR area up to 138 miles south of Sicily. At the same time, a EU military mission was deployed, called Operation Sophia, with the goal to contrast smuggling and trafficking activities and to enhance Libyan Coast Guard capacities, through training packages, in perspective of outsourcing border controls (Amnesty 2017,18), which already during 2016 in fact, brought to rescue 18,904 migrants heading to Europe from Libyan water, despite 4,576 people lost their lives notwithstanding the presence of NGOs and EU ships (El-Zaidy 2017, 1).

Given the high number of arrivals in 2016, EU and Italy pointed at the closure of the migratory route, policy which foresaw the enhancement of Libyan Coast Guard's capabilities in carrying out an

increasing number of interceptions, the provision of technical support and assistance to the DCIM for the management of detention centres and eventually the stipulation of agreements with Libyan local authorities and leaders of tribes and armed groups, while at the same time hampering NGOs' operations and avoid disembarks in Italian ports (Amnesty 2017, 8). In line with these first moves, the abovementioned policies will be officially implemented in 2017, as they will result at the core of the Italian and Libyan Memorandum of Understanding.

2.2.3 The Italian-Libyan Memorandum of Understanding

As just mentioned, the intent of the EU and Italy to reduce arrivals on their shores led to the stipulation of a Memorandum of Understanding (MoU) on cooperation and migration on February 2nd 2017, with a validity of three years, signed by the then Italian Prime Minister Paolo Gentiloni and the Presidential Council of Libya, represented by Fayez Al-Sarraj, Prime Minister of the Government of National Accord. Given the previous agreements between the countries, the MoU refers in its articles to the Treaty of Cooperation and Friendship signed in 2008 and to the bilateral agreement of 2012, with no direct intervention by the EU, which limited itself to integrate the new one within the Malta Declaration, adopted the following day (El-Zaidy 2017,3). In general, the agreement seems functional for both parties: for Italy it is an instrument to encourage practical measures so to prevent arrivals on its shores, by the GNA it is instead considered as a way to increase its political support and international recognition, acquiring more power in political negotiations (El-Zaidy 2019,10).

In general, the Memorandum has two main goals at its basis: the control of migration flows and the development of the region (GRETA 2019, 55). The MoU foresees investments for the economic development and stability of Libya as well as for the technical enhancement of its staff, with the aim of blocking migrants at the southern border or intercepting them at sea (Vari 2020, 112). About the measures, serious concerns were expressed on their compliance with human rights, also due to the grave human rights violations Libyan authorities are responsible for (Amnesty 2017,6), issue which is not prioritised within the MoU, as confirmed by the UN Committee Against Torture which stressed that it "does not contain any particular provision that may render cooperation and support conditional on the respect of human rights" (CAT, 2017).

Besides this, the agreement was officially accepted and endorsed by Italy and the EU, differently from Libya, where its validity was contested. The Tripoli Court of Appeal in fact, ruled against the MoU in March 2017, leading to its temporarily suspension (Libya Herald, 2017). The ruling sustained that Mr. Sarraj did not secure support for the MoU from the HoR, thus having no mandate for its execution, and also that its implementation would have overburden Libya, given the fragile situation

(El Zaidy 2017,3), and jeopardized the life of migrants, as a consequence of the "controversial plans outlined in the memorandum, which included for the return of migrants to camps in Libya" (Libya Herald, 2017). The suspension though did not last long, as it was reversed by the higher Libyan Supreme Court (Vari 2020, 120).

Already in March 2017 in fact, the Libyan Prime Minister presented a list to Italy with the funding and supplies necessary for the implementation of the MoU, amounting to 800,000 million euros, money that Italy allocates from the government-issued African Fund, supposed to promote development and cooperation and that was instead going to be used to improve border management, providing helicopters, rafts, satellite phones, patrol boats, vessels and so on (Vari 2020, 121). Indeed, as stipulated, Italy delivered four patrol boats in 2017 and an additional 12 in 2018, as well as training programs for the Libyan Coast Guard, co-funded by the EU (El-Zaidy 2019,10).

Once on the ground, Italian authorities expanded their policy engaging in dialogues with further key actors, from institutional players to local tribes, mayors, entrepreneurs and even opponents of the GNA (Palm, 2017) as the General Khalifa Haftar, given his potential control of the southern border (Vari 2020, 120). Furthermore, it has been reported the direct involvement, by Italian authorities, of militias implicated in smuggling activities (Phillips 2020,94).

Indeed, the role that these and other armed groups can play seems functional to prevent departures and to achieve fast and effective strategies to contrast migration flows (Herbert 2019,6). For example, a deal between the GNA, Italy and some militias controlling Sabratha, one of the major ports in Libya, was revealed, in which the militias committed to stop departures in exchange of equipment, boats and money, provided by Italy but channelled through the Libyan government, permitting to non-state actors to take the role of state authorities (Amnesty 2017,50). Therefore, if smugglers were before paid by migrants to cross the sea, some of them are now paid by Italy to do the opposite (Vari 2020,119).

Overall, as this was widely shown by data, crossings dropped already in 2017, even though there are different interpretations of the factors behind this drop, as some believe this happened as a consequence of events on land (Micallef 2019,9), while others sustain that this was due to the increasing capacities of the Libyan Coast Guard, together with Italian assistance, in detecting and intercepting boats (Vari 2020,119). Officially in fact, the Libyan coast guard is part of the Libyan navy and committed to counter trafficking and smuggling, allowed to operate not only in Libyan territorial waters but also in international ones, under the coordination of the Coast Guard Maritime Centre in Tripoli (Amnesty 2017,35).

Despite the decrease, however, there are criticalities linked to the strategy that the MoU is carrying out, especially in regards to the limits and the conflicting effects it produces, as not only the GNA is unable to fully control the territory but also that the forces on which it relies to disrupt smugglers are instead often directly involved in the smuggling business (Al-Arabi 2018,3). This is confirmed by the UNSMIL, that received creditable information about the participation in smuggling and trafficking activities of state institutions and local officials (UNSMIL, OHCHR 2016,1).

2.2.4 MoU's Human Rights implications

As explained in the previous chapter in fact, also members of the Libyan Coast Guard are involved in the business, as according to migrants' interviews carried out by Amnesty and to a report published by the UN Panel of experts on Libya in 2017, collusion with smugglers seems recurrent and it is often described in the form of allowing boats to depart in change of the payment of a fee (Amnesty 2017,38). Indeed, it is because of inadequate resources and working conditions as well as of the lack of trained and disciplined staff that these practices were developed (UNSMIL, OHCHR 2016,13).

Nowadays in fact, Libyan Coast Guard and smugglers, together with DCIM authorities in charge of detention centres, have been able to create a proper cycle of exploitation. In particular, the system firstly relies on the departure of boats at the hands of smugglers, who then alert the Coast Guard that will proceed with the interception and bring migrants back to Libya, where they end up again in the hands of smugglers, disappearing, or in detention centres under control of DCIM authorities and/or militias, who eventually will refer migrants to further smugglers, continuing the cycle (Mixed Migration Centre 2019,9).

If not to the causes, the MoU contributed at least to its development, given that strategy to prevent arrivals on European shores is based, on the one side, on the increasing capacities of the Libyan Coast Guard in intercepting boats and, on the other side, on detention centres, despite being both deployed in violation of International and Human Rights law.

In line with the MoU intent in fact, interceptions at the hands of the Libyan Coast Guard contributed to a clear reduction in arrivals of almost 80% between 2017 and 2018 (El-Zaidy 2019,119), notwithstanding the misconduct and human rights violations perpetrated while carrying out these operations (Amnesty 2018,19). In particular, a discrete level of violence had been testified not only by migrants, who recounted dangerous and life-threatening interceptions by armed men believed to belong to the state body (CAT, 2017), but also by NGOs, which reported harassment, intimidations and threatens at the hands of the Libyan Coast Guard (Amnesty 2017,37).

The recurrent violation of human rights is confirmed by the European Council's request to vessels operating in the area to refrain from intervening in Libyan Coast Guard's operations, aimed at gradually remove potential inconvenient witnesses (Amnesty 2018,16). At the same time, this had the further goal of hindering rescue operations, leaving space to the Libyan Coast Guard, as it has been confirmed by Italian policies against NGOs that diminished their presence in the Mediterranean (Amnesty 2017,44). This happened in fact through a process of criminalization and delegitimization of NGOs, accused to represent a pull factor and to be colluded with smugglers, increased after the implementation of a code of conduct for the organizations in August 2017, the violation of which foresaw legal and financial consequences (Deiana et al. 2019, 25). Moreover, the new Italian policy of *closing ports*, which denies the possibility to disembark on Italian shores (Reyhani et al. 2019,12) contributed to the decrease of rescue activities at the hands of NGOs, which if between 2017 and 2018 were able to carry out 35% of all rescues, in 2019 it decreased to 10% (IDOS 2019,2).

Thus, in agreement with EU governments and institutions, the gradual restriction of rescue activities by NGOs was actually a mean to effectively ensure to the Libyan Coast Guard to be the primary actor in intercepting migrants (Amnesty 2017,47), going to feed the other pillar of the strategy, detention centres, which in fact saw a dramatic rise in the number of people arbitrarily detained, who, only from March to July 2018 grew from around 4,400 to more than 10,000 (Amnesty 2018, 6). The centrality of detention facilities is proved by the fact that the MoU includes proposals for their improvement and not for their closure. In particular, it foresaw the support of international organizations providing services in them, the enhancement of capacity building addressed to DCIM staff and the rehabilitation of the centres, providing medical services and ensuring the safety of the people, everything in perspective of complying with human rights (El Zaidy 2017,4).

Despite the attempts, in September 2019, the Finnish Presidency of Council of the EU, distributed to the delegates an annex which, among others, affirmed that "Libyan authorities have persistently failed to improve the situation in the centres" and that "the government's reluctance to address the problems raises the question of its own involvement" (EU Council, 2019). Therefore, this confirmed the corrupted system Europe and Italy are supporting and that the context where migrants are brought back in Libya is still one of abuse and violence. As mentioned before, the problem is that the MoU lacks of mechanisms for an effective monitoring and accountability (Amnesty 2018,19), as to provide support with no requests of guarantees for what regards respect of human rights seems efficient for the success of the policy (GLAN et al. 2020,18), given that neither Italy nor the EU did anything to ensure Libya's compliance with them (Vari 2020, 126).

Because of this, the Committee Against Torture, which recently considered Italy's reports, addressed the MoU and reminded Italy that its international human rights obligation should prevail over the ones stipulated within the agreement with Libya (OHCHR,2017). In fact, the MoU foresees the return of migrants back to Libya, pushing them in contexts where their safety can be put at risk and where they can be victim of enforced disappearance, torture, extortion, forced labour, sexual violence and other degrading treatments, contrary to the principle of non-refoulement (CoE 2019,28). In response to the Committee though, Italy affirmed that the operations are conducted by Libya within its national waters and that this means they are out of Italy's control, adding that the agreement is not binding and that it can be ended at any time (Vari 2020, 126).

In contrast with this, rescue operations at the hands of the Libyan Coast Guard have actually been coordinated by Italian authorities through the creation of a Joint Rescue Coordination Centre, which followed the recognition of a Libyan SAR region, pushed by Europe and Italy (Amnesty 2020b, 16). The fact is that Italy is actually providing funds to Libya as well as technical assistance with the aim of enabling operations to be carried out, regarding this, also the Council of Europe affirmed that "assistance aimed at enhancing rescue capacity may not be distinguishable from assistance enabling the Libyan Coast Guard to prevent people from fleeing Libya" and is thus "in clear violation of the obligation only to disembark rescued persons in a place of safety" (CoE, 2019).

Overall, it is difficult to evaluate to what extent Italy is responsible for the violations: if before the Hirsi Jamaa case Italian authorities were directly involved in pushbacks activities, now this has been delegated to Libya itself, thanks to the recognition of the Libyan SAR region, although financially and technically assisted by Italy.

2.3 The policy of externalization and the creation of the Libyan SAR

Destination countries, such as Italy and other EU Member States, tend to implement policies of externalization so to outsource migration control and management, usually providing support to law enforcement and immigration authorities in the transit country, Libya in this case, encouraging the active target, detention and deportation of irregular migrants (Nethery, Hirsch 2020, 8). In particular, given the absence of functioning institutions in the country, after the fall of Gaddafi, Italy outsourcing policy required to re-create the Libyan Coast Guard, achieved through the deployment of assistance and trainings, in perspective of enabling Libya to autonomously conduct search and rescue activities and to take control of its own SAR (CSDM 2020,12). This permitted in fact to obstruct and deter the arrival of refugees, asylum seekers and migrants through pull-backs operations and detention camps, justified in the bigger context of border control and of the rescue of lives at sea (Lax, Giuffré 2017,8).

When deploying measures for border management with third countries, European member states should assure the protection and the fulfillment of human rights obligations in every context related to the policy, refraining from asking third countries to intercept migrants in case this is at risk of harm or foresees disembarkation of people in non-safe places (FRA 2016a). Unfortunately, despite these recommendations, Italian outsourcing policy with Libya do not to satisfy human rights obligations, and is instead used by Italy in an attempt to avoid accountability (CSDM 2020,97), as confirmed by the shift from push-backs operations, before directly conducted by Italy's own navy, to pull-backs operations deployed by Libyans, which permits Italy to refrain from any physical contact with migrants (Alarm phone et al. 2020,5). This could only be achieved through the creation of the Libyan SAR zone and the relieve of Italy from its responsibility, as it was before bound to intervene being the only state providing a functioning and fully-recognised SAR service (Reyhani et al. 2019,10).

If before 2017 it was actually impossible to transfer coordination responsibilities to Libya, given the lack of a declared SAR region and the inefficiency of the Libyan Coast Guard, between 2016 and 2017 EU and Italy's assistance and training permitted to create such capacity (Amnesty, HRW 2019). To obtain this, apart from EUNAVOR MED trainings of the personnel, in March 2017, it was requested to the Italian Coast Guard to assist Libyan authorities in setting up a Libyan Maritime Rescue Coordination Centre (Amnesty 2017,45). Therefore, in addition to funds, equipment and trainings, Italian authorities deployed a navy in the harbour of Tripoli with the aim of coordinate Libyan Coast Guard's SAR activities (CSDM 2020, 13). In this context, Italy gave Libyan naval authorities technical information on how to ensure communication and coordination between the Libyan Coast Guard, the Italian Maritime Rescue Coordination Centre (IMMRC) and any ship operating in the Mediterranean (Amnesty, HRW 2019).

Since this moment, the IMMRC has gradually facilitated and transferred responsibility for rescue operations to the Libyan Coast Guard, giving priority to it even in cases where other vessels, as NGOs, were closer and better positioned to the scene (Reyhani et al. 2019,10). In the following months, Italy's determination in reinforcing Libyan operational capacities brought to the creation of an interagency National Coordination Centre and the Maritime Rescue Coordination Centre, realizing the so-called Joint Rescue Coordination Centre (JRCC) in Libya (CoE 2019,21). These were funded by the Eu Trust Fund and worked thanks to the provision of Italian technological infrastructures and operational coordination, as well as training, mentoring and monitoring operations (Alarm phone et al. 2020, 7).

In June 2018, IMO confirmed the realization of a Libyan SAR region, thus assuming the primary responsibility for the coordination of search and rescue operations, still captained by the JRCC

(UNHCR 2020c,10). Together with the recognition of the Libyan SAR zone, NGOs carrying out rescue activities were criminalized, and Italian ports closed, leaving space to Libyan Coast Guard's interceptions and returns (CSDM 2020, 42). This is just one of the various consequences of Libyan SAR's acknowledge.

2.3.2 The Libyan SAR zone and its implications

Since the establishment of the Libyan SAR, it often happened that the MRCC in Rome received distress calls from vessels within the Search and Rescue Region (SRR) declared by Libya (CoE 2019a, 8) and that Italy in particular, increasingly instructed ships conducting rescues in the area to contact Libyan authorities, transferring the responsibility for its coordination to the JRCC (HRW 2019,24). The transfer of rescue operations to another RCC, even if in line with law, should be made only in case the latter is able to assure that rescues are carried out in safety and that obligations under international maritime law and human rights law are fulfilled, which does not happen in case of delegating operations to Libya (CoE 2019a, 8).

The Council of Europe expressed in fact its concern about this phenomenon, affirming that "neither the declaration by Libya of an SRR nor the establishment of the JRCC can justify member states' RCCs taking action that would ultimately endanger the lives of persons in distress at sea or lead to their disembarkation in a port that cannot be considered a place of safety" (CoE 2019,21). Indeed, to permit and even fuel disembarkations in Libya is in contrast with IMO Guidelines, as when referring to a safe place this should "be regarded as a location where survivors' safety of life is no longer threatened, where their basic human needs can be met"(IMO, 2004). Moreover, a high number of fatalities have been registered and imputable to the incapacity of the Libyan authorities to efficiently coordinate SAR events (Alarm phone et al. 2020, 3). Notwithstanding the arguable capabilities of Libyan authorities in fact, after the recognition of the Libyan SAR, Italy withdrew from its leading role in coordinating rescues in the Central Mediterranean, jeopardizing the system, which became "unreliable, unpredictable and punitive" (Amnesty 2018, 5). These are just part of the reasons that recently brought hundreds of NGOs and individuals to demand the revocation of the Libyan SAR zone to the IMO, where they firmly criticise the close relation between Coast Guard and smugglers, the possibility to jeopardise the right to life and the duty to assist people as well as the role it had in the increasing criminalisation of NGOs, preventing rescue activities and disembarkations in Europe (Statewatch,2020).

The recognition of Libyan SAR zone in fact, permitted Europe to develop a different policy in the area, as Italian shift in reducing search and rescue activities shows. This is in fact in line with EU's

tendency over years, as since the end of Mare Nostrum Operation, EU and Member States progressively reduced the performance of SAR activities by their institutional actors, increasingly relying on Libyan interventions (Alarm phone et al. 2020, 2). The decreased presence of Italian and EU naval assets from the Central Mediterranean is in fact functional to reduce the likelihood to encounter boats in distress and then to be bound to rescue and disembark them in Europe (Amnesty 2020b, 17). In line with this, European actors focused on expanding communicational infrastructure and surveillance means, resorting to the use of drones and planes for patrolling the Central Mediterranean, allowing Frontex to detect the presence of boats in distress without engaging in rescue activities (Alarm phone et al. 2020,8). This way of operating was confirmed by the renewal in 2019 of Operation Sophia, and the subsequent deployment in 2020 of Operation Irini, which foresaw the implementation of aerial assets only, without maritime ones (Starita 2020,160). The aim of this is to ensure the Libyan Coast Guard to intercept people at sea and return them to Libya (Amnesty 2020b, 20), as aerial assets spot migrant boats and then guide the Libyan Coast Guard to the location (Alarm phone et al. 2020, 4). This procedure is achieved even though European officials affirmed the impossibility to consider Libyan coastguard authorities as a reliable partner for maritime rescue, as leaked reports on Operation Sophia revealed (GLAN et al. 2020,13).

According to European authorities and staff, to communicate the position of boats in distress to the maritime coordination centre in charge is a duty under international law (Amnesty 2020b, 20). Although this is true, it is considered an "illegitimate and formal interpretation of international law of the sea" as "if the distress event happens to take place in the disputed Libyan SAR region, only the Libyans will be asked to intervene, even when NGO ships or other ships could help in a faster and more appropriate way" (Alarm phone et al. 2020,8). The reliance on the sole Libyan Coast Guard in fact, systematically brings people to be disembarked in Libya, where it is luckily that they will be victims of arbitrary detention and ill-treatments, which is absolutely not in line with EU's binding obligations (Amnesty 2020b, 20). EU authorities and Member States seem in fact facilitating and contributing to systematic 'refoulement by proxy' operations, delegating responsibility to Libyan authorities and becoming complicit in this system (Alarm phone at al. 2020,3).

The attempt to eliminate any physical contact with refugees appears in fact functional to elude any concomitant responsibility of EU countries, avoiding any jurisdictional link (Lax, Giuffré 2017,4), even though under international law destination states can still be held accountable for the measures taken within externalization policies, permitting to be scrutinized over human rights violations (Nethery, Hirsch 2020, 14). As stated by UNHCR in fact: "where a State's coordination or involvement in a SAR operation, in view of all the relevant facts, is likely to determine the course of

events (..) the concerned State's negative and positive obligations under applicable international refugee and human rights law, including non-refoulement, are likely to be engaged"(UNHCR 2020c).

In this regard in fact, despite is it usually taken for granted that contactless control are in line with human rights, given the indirect performance of containment measures (Lax, Giuffré 2017,11), assistance to this can instead held EU and Member States accountable for the forced return of migrants to Libya, where human rights violations have systematically place (Alarm phone et al. 2020,27).

2.3.3 Externalization policies and the Responsibilities of Member States

First of all, it is important to remind that policies aiming at outsourcing border control are allowed by international law but only in case these are implemented in cooperation with safe third countries (Pascale 2019, 44), requirement that with respect to Libya is not fulfilled, as the lack of a functioning asylum system and the widespread abuses towards migrant populations as well as the absence of durable solutions do not permit to consider it a safe country (UNHCR 2020c,16). Moreover, although providing assistance to third countries to improve search and rescue activities is in line with the law, also in this case, assistance cannot be distinguishable from the one that permits Libyan Coast Guard to prevent people from fleeing the country, in contrast with human rights law (CoE 2019,43). About this, the aid and the assistance provided can in fact entail the complicity of the EU and Member states (Pascale 2019, 45), risking to breach their obligation under International and European law (Nethery, Hirsch 2020, 6). In this regard in fact, "the principle of non-refoulement entails extra-territorial obligations that could be violated by the provision of international assistance to a third country, such as the support to the Libyan coastguard" (Loschi et al. 2018,21).

On the contrary, Italy refuses to take any responsibility for the violations committed by Libyan authorities on migrants, as these do not have place under Italian jurisdiction and are not a result of its policy to push migrants back to Libya, given that interceptions and returns to detention centres are carried out by Libyan state organs only, while Italy instead, contributed for its part to the engagement of Libyans to strengthen the protection of human rights of migrants in the country, since stipulated in the MoU (Pascale 2019, 42). If this may sound reasonable, as Italy succeeded to fully delegate pull-backs operations to Libyans, however, Italian authorities can still be held accountable under several international and human rights law instruments such the European Convention of Human Rights, the Refugee Convention as well as the Convention Against Torture and further ones, although it is difficult to prove its direct responsibility within these contexts. On the contrary, the International Law Committee's Draft Articles on Responsibility of States for Internationally Wrongful Acts, instead provide the legal framework able prove Italy's complicity (Vari 2020, 107).

In this case in fact, Italy can be held responsible for the human rights violations although migrants are under Libyan jurisdiction (Pascale 2019, 37), as at art. 16 of the document is established that a state may be considerate complicit in case it *aids* or *assists* another state to carry out wrongful acts, violating international obligations (FRA 2016a, 2). In particular, these acts must show a connection between the conduct of the first state and the wrongful acts of the third one, it should be known that through its acts the first is supporting violations of international norms, and lastly, they both should be bound by the same norm (Pascale 2019, 49).

About the first condition, it can be affirmed that through the provision of equipment and trainings, of assistance for the declaration of the SAR region and the deployment of military and civilian personnel in Libya, Italian government has covered a leading role, in the creation of Libyan Coast Guard and the system right now in place (Amnesty 2020b, 16). The notion of 'aid and assistance' in fact includes financial activities or the material logistical and technical support, as the one provided by Italy to Libya (AIRE et al. 2019,9), which had in fact the aim of implementing a policy to outsource border control, despite aware of the human rights violations, confirming the second condition that renders it responsible (Pascale 2019, 54). Lastly, as already mentioned, the deployment of such policy is in contrast with the principle of non-refoulment, norm of customary law, binding both countries (Lax, Giuffré 2017,25). Therefore, even if just in part, Italy can be considered responsible due to the aid and the assistance provided for Libya's unlawful conduct (Vari 2020, 134).

In addition to art. 16, also articles 40 and 41 of the text about Responsibility of States for Internationally Wrongful Acts can be taken into account to assess Italy's complicity. In this regard in fact, under art. 41 it is said that no State shall recognize as lawful a situation created by a serious breach within the meaning of article 40 (which is in case of violation of a customary norm) nor render aid or assistance in maintaining that situation, without mentioning knowledge or intention of the act (CSDM 2020,85). Applying the same circumstances mentioned above then, it is possible to condemn Italy's conduct as unlawful, as it contributed to continue the violations (Pascale 2019, 58). Overall, even if this can be sustained in theory, it is different to prove it in practice as the lack of an effective authority in Libya and the high number of actors involved make it difficult to understand who could be held accountable and especially which should be the court in charge, as it is supposed to have jurisdiction over both states (Palm, 2017).

For this reason in fact, in 2019 the jurists Omer Shatz and Juan Branco decided to present a communication to the Prosecutor of the International Criminal Court (ICC), who would have the possibility to carry out a preliminary assessment of European leaders' responsibilities, as stated under art. 15 of the Rome statute that "the Prosecutor may initiate investigations proprio motu on the basis

of information on crimes within the jurisdiction of the Court"(Rome Statute, 1998). In particular, the allegations focus on the consequences of European policies, in particular the reduction of search and rescue operations at sea between 2013 and 2015 and the creation of a system for intercepting and transferring migrants back to Libya since 2015, which relatively provoked a high number of deaths and the suffering of serious crimes such as deportation, murder, imprisonment, and other inhuman acts (Shatz, Branco 2019). As a consequence, the jurists sustain that European leaders could be held accountable for crimes against humanity towards migrant populations in the Mediterranean and in Libya, since they carried out a systematic and widespread attack against them from 2013 on, given the high numbers of victims and the complex but well-working mechanism created by national and supra-national governments and politicians (Pasquero 2020, 51). Even though it is not sure that an inquiry will be open on this, jurists' attempt represents a way to oppose the practices currently sustained by European leaders and to hold them responsible for the consequence they have on the human rights of migrants.

Overall, externalization policies undermine human rights principles and violate international law, which are in fact not beyond challenge (Nethery, Hirsch 2020, 14), as further cases presented before human rights institutions, such as the Human Rights Committee, the Committee Against Torture and the European Court of Human rights show, although still under scrutiny.

2.3.4 The European Court of Human Rights and the pending case against Italy

When taking the European Convention of Human Rights into account and thus presenting an application before the Court, it is first necessary to assess its applicability which means if, according to article 1 of the ECHR, the state exercises jurisdiction. In this regard in fact, "the exercise of jurisdiction is a necessary condition for a Contracting State to be held responsible for acts or omissions imputable to it, which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention" (Papastavridis 2020, 421). Although within the ECHR human rights violations committed by third-country officials are normally not considered under the responsibility of an EU Member State (FRA 2013,46), this should be evaluated in the single circumstances of the operation, thus in exceptional cases, depending on the exercise of *de jure* or *de facto* control over a person or the degree of influence exerted on the conduct of a third country (FRA 2016a, 2). Therefore, it is the amount of control exercised by a state in a certain circumstance that establishes jurisdiction, also outside its own territory, condition which is much more complex to assess in contemporary practices of remote control (Papastavridis 2020,422).

To assess the jurisdiction of a state in contactless control operations is a new challenge for the Court which has been called to evaluate, given the case *S.S. and Others v. Italy* recently presented before it,

being jurisdiction one of the threshold conditions for the case to be accepted (Papastavridis 2020, 419). Although it is possible to affirm that the jurisprudence of the ECtHR is applicable in maritime contexts as confirmed by Hirsi Jamaa case, in that circumstance, however, Italy was directly involved in the operations, differently from the current pending cases, where relying on the Libyan Coast Guard it tried to circumvent its obligation (Amnesty, HRW 2019).

The application has been filled in May 2018 by lawyers from ASGI and GLAN on behalf of 22 claimants, pertaining the incident in which Italian Coast Guard's coordination with Libyan authorities brought to the interception and return of migrants to Libya (GLAN et al. 2020,33). In particular, the claimants accused Italy of violations of Article 2 (right to life), Article 3 (prohibition of torture and inhumane or degrading treatment), and Article 4 of Protocol 4 (prohibition of collective expulsions) of the Convention (Papastavridis 2020,417). The case refers to an episode which had place on the 6th of November 2017 in which the Libyan Coast Guard, on board of a vessel donated by Italy, under the coordination of the IMRCC and facilitated by the presence of an Italian navy ship that was nearby, interfered with the rescue of 130 migrants that was carried out by the NGO Sea-Watch 3 (GLAN, 2020). In this occasion, 20 people died, 59 people were rescued by Sea-Watch 3 and 49 were brough back to Libya (Fazzini, 2020).

According to the applicants, the influence of Italian authorities exercised over the Libyan Coast Guard is sufficient to establish its jurisdiction on the latter and that they are responsible for the abuses committed both during interceptions and the ones resulting from the return to Libya (GLAN et al. 2020,33). Indeed, the interveners sustain that, under article 1 ECHR, "states establish jurisdiction on the high seas when their agents exercise authority in a manner that has *proximate* and *foreseeable effects on Convention rights*" and that "a *jurisdictional link* is established whenever a State's authority issues instructions to a third actors with extraterritorial effect"(AIRE et al. 2019,4). This interpretation would be efficient in case it is ascertained that Italy exercised am *effective control* over persons in rescue activities, resulting from the actions of the IMRCC and the Italian navy ship nearby (Fazzini, 2020). In case this amount of control is not possible to assess, a further approach was proposed, deriving by ECtHR's sentence in *Iliascu and Others v. Moldova and Russia*, where the court established that jurisdiction is exerted by a Member State also in case this exercises a *decisive influence* on another state, proving the existence of a relation of dependency of some degree (military, economic, financial and pollical), entailing its responsibility and the following obligations under the Convention (Amnesty, HRW 2019). In relation to this, further interveners affirm that Italy exerted influence since at least 2017, following the sign of the MoU, to such an extent that it can be assessed as exercising jurisdiction, at least concurrently with Libya (Amnesty, HRW 2019).

In addition, whether no jurisdictional link is possible to find, it is proposed to take the into account art. 53 of the ECHR which states "Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party". In this regard in fact, Italy's conduct could be evaluated in relation to the International Convention on Maritime Search and Rescue, the UN Convention on the Law of the Sea (UNCLOS), International Convention for the Safety of Life at Sea (SOLAS), the International Maritime Organisation (IMO) Guidelines on the Treatment of Persons Rescued at Sea as well as other Human Rights Conventions. In line with these conventions, Italy is bound to ensure that the "Search and Rescue Mission Coordinator does not transfer coordination to the authority of another State unless they are satisfied that the other State will ensure rescue, treatment and disembarkation in full respect of the obligation not to expose a person to a risk of serious violation of human rights" (AIRE et al. 2019,5). In addition to this, in case Italy's jurisdiction is recognized, human right law imposes positive obligations on States to take adequate measures to assure the right to life, also protected under art. 2 ECHR, applicable in case of SAR operation, as confirmed by the interveners who sustain that "where member states coordinate their activities with the Joint Rescue Coordination Centre, this should only be done under the clear understanding that they fully retain own responsibility for the preservation of the life on the sea and the respect of the non-refoulement obligation" (AIRE et al. 2019,8).

Overall, the ECtHR is required to express on the applicability of the ECHR in this new context of 'contactless control' exerted by a Member State to the Convention, thus firstly call to determine whether Italy exercises jurisdiction and the consequent violations of human rights norm attributable to it. As seen, the interveners offered a wide set of options and interpretations which could help an evaluation of the episode and the following responsibilities of Italy, despite the case is still under scrutiny and the admissibility to the jurisprudence of the Court is still not confirmed.

2.3.5 The request of inquiry to the Committee Against Torture

In line with the pending case presented to the European Court of Human Rights, in July 2020 the Committee against Torture has been invited to open an inquiry to evaluate Italy's practice of pullbacks by proxy operations. The demand has been submitted by the Centre Suisse pour la Défense des Droits des Migrants (from now on CSDM), which provided a document containing Italy's alleged violation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. Italy's policies can in fact be assessed by the Committee since it ratified the Convention and, in accordance with art. 28(1), declared to recognize its competence. In this regard, there is the possibility to request the Committee to open an official evaluation of the alleged violations, as the

CSDM did. In particular, under art. 20(1) of the CAT is foreseen that "If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned". In our case, the Committee is now called to assess if the Italy's practice of delegating pull-backs operations to Libya is in contrast with the Convention. As with the ECHR before, the claimants argue that the word *territory* must be interpreted also in case of an extraterritorial conduct in which is exercised a certain level of control over persons (CSDM 2020, 15). The submitters sustain that, in our case, Italy exercised de facto control in the context of migrants' interceptions in the Mediterranean, given the strong connection with the Libyan Coast Guard, its re-creation, the provision of resources for its functioning and of assistance during rescue operations, deployed though real-time surveillance and information sharing (CSDM 2020, 10). According to Article 2(1) of the Convention though, state parties have positive obligations to eradicate practices of tortures in its jurisdiction through effective legislative, administrative, judicial or other measures. It is for this reason, that the request focuses on Italy's failure to take steps to prevent the risk of torture on migrants, both during interceptions and once back to Libya, considering the "continuous and uninterrupted link of responsibility" it has with the Libyan Coast Guard and thus the jurisdiction exercised on it (CSDM 2020, 82).

2.3.6 Further applications to the Human Rights Committee

In addition to the previous assessments of Italian practices, further applications were submitted to the Human Rights Committee, in charge of monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR). In particular, two complaints were presented: the first, addresses the recent practice of European Member States to use private merchant vessels as an instrument of refoulement, the SDG case, while the second instead focuses on the role of Italy, Malta and Libya in violating rights of the Convention, focusing on the right to leave. Like the CAT, the ICCPR is applicable where a state exercises jurisdiction, also on foreign territories (Amnesty 2017,54). In this regard, the HR Committee specified that a state can be held responsible in case there is a *causal chain* which can provoke violations, that should be foreseeable, necessary and known by the state, within the territory of a third-county (AIRE et al. 2019,3).

Going deeper into the complaints, the first has been submitted by an individual, with the support of the Global Legal Action Network, who, in November 2018 "was intercepted on the high seas off the coast of Libya by a Panamanian merchant vessel, the Nivin, which, following joint instructions of the Italian and Libyan Coast Guards, disembarked him in Libya" (GLAN et al. 2020,33). In particular,

the subject was forced to disembark after 10 days, using tear gas and live bullets, he was shot in the leg and then arbitrary detained, being subjected to tortures (GLAN,2019). The submitters accuse Italy of breaching its responsibility to offer a port of safety, given its control over the violations of the claimant's rights during the rescue, and that this led him back to detention centres, in contrast to the principle of non-refoulement, the right to leave and to access an effective remedy (GLAN et al. 2020,33).

Overall, as mentioned above, the communication has the role to address attention to a new phenomenon, which is the reliance by EU Member State on private vessels to carry out push-backs to Libya, practice that, as confirmed in the report of the Forensic Oceanographic, has risen sharply since June 2018 (Heller, 2019). The use of private merchants appears to be functional to European states to circumvent their obligations towards refugees, while instead involving the vessels in activities of border control and violence. This represents in fact a new way of externalisation of border control and to delegate pushbacks operations, threatening to annul fundamental rules of international law such the norm of non-refoulement (GLAN, 2019).

Differently, the case presented by the Association for Juridical Studies on Migration (ASGI) and the Cairo Institute of Human Rights on behalf of two individuals, refers to an episode that had place in 2019, concerning the rescue of a boat in distress within the Maltese Search and Rescue zone, close to Lampedusa, of which both Italian and Maltese authorities were informed but refrained from intervening, delegating to the Libyan Coast Guard that brought them back (ASGI, CIHRs 2020). As a result, Italian, Maltese and Libyan authorities are accused for the infringement of Article 6 (Right to Life), Article 7 (The Prohibition of Torture, Inhuman and Degrading Treatment), Article 9 (Right to liberty), and Article 12.2 (Right to leave any country) of the International Covenant on Civil and Political Rights (ASGI, CIHRs 2020). In this particular case though, violations are addressed from a new perspective. Indeed, as affirmed by the scientific project manager of the legal representatives, Cristina Laura Cecchini, "for the first time a complaint submitted to an international body calls into question the violation of the right to leave any country as the right leading to the depletion of other fundamental rights (..) to be read in the broader border externalization's framework"(ASGI, CIHRs 2020).

In the first place, it's worth stressing the strong link between the right to leave and the one to seek asylum, as the latter can be satisfied only upon the existence of the first, showing "that departure in order to avoid irreversible harm and seek protection shall be considered a legitimate ground for one to escape any country" (Lax, Giuffré 2017,19). The policies implemented by the EU for outsourcing border controls could in fact be considered as exerting a direct interference with the right to leave,

which should instead be available to everyone, unless in case of permissible restrictions (FRA 2013,46). Specifically, the impossibility to leave the country, applied as a general measure and aimed at preventing people to reach Europe, cannot be considered necessary and instead appears irreconcilable with the ICCPR (Lax, Giuffré 2017,18).

Overall, as widely sustained in these complaints and cases, Italy and the EU seem to be consciously collaborating with Libya in the support of a system of violations and abuses, while at the same time trying to avoid any responsibility given the new system of remote control of pullbacks operations. It is for this reason that the above-mentioned cases were presented, to hold them accountable and to provoke a change, ending the support to Libyan authorities and assure respect for the human rights of migrants. So far, no communication on the issue has been provided by the competent bodies, while Italy instead renewed the Memorandum of Understanding with Libya.

2.3.7 The renewed Memorandum of Understanding

Despite the recognized criticalities and the human rights violations deriving from the MoU, in February 2020, Italy and Libya renewed the agreement, extending it for three years. In line with the previous years, it still promotes a collaboration with borders' authorities and in particular with the Libyan Coast Guard, providing technical and financial support for rescue activities (Redattore Sociale, 2020), and thus pullbacks to Libya. It is for this reason, as a response to the wide range of critics expressed by international bodies, NGOs and civil society, that the Italian government proposed amendments to the plan, which will improve human rights protection of refugees and migrants (Amnesty 2020b,19).

In particular, the Italian Foreign Minister sent a letter to Tripoli, calling Libya to accept international humanitarian and human rights law, with specific references to the 1951 Geneva Convention, and to implement an appropriate judicial procedure based on the rule of law, when conditions will allow it (PIR,2020). Moreover, it stressed the need to improve conditions in detention centres and to facilitate the release of vulnerable subjects such as women and children (Redattore Sociale, 2020). Although the strong demand for ending the agreement, Italian authorities instead sustain that to collaborate with Libyan authorities is the only possibility to guarantee better protection to migrants and asylum seekers, as Italy aims at progressively replace detention centres with new formulas in line with human rights (PIR,2020).

In line with, Italy committed to enhance access and involvement of IOM and UNHCR to evacuate of the centres, which with no doubts would be beneficial but at the same time in contrast with Italian policy of interceptions and pullbacks (HRW, 2020), therefore sounding as a pure humanitarian

rhetoric. In the same way, Italian amendments supposed to enhance migrants' human rights do not condition the co-operation upon Libya's acceptance of them (Amnesty 2020b,19). Moreover, the MoU still does not foresee the implementation of a monitoring system to assess the impact of related-MoU activities on human rights nor the possibility to redress for those who consider the enjoyment of their rights affected by these, as instead advised by the Council of Europe (CoE 2020,1). The amendments then appear to be insufficient, as migrants will keep living in a system of abuses and interceptions by the Libyan Coast guard, still through the use of assets provided by Italy and the assistance of Italian military and civilian personnel, leading, between January and September 2020, 8,435 people back to Libya (Amnesty 2020b,19).

Overall, given the foreseeable and well-known consequences of the agreement, Italy is called to suspend its support in activities detrimental to human rights, such as the one to the Libyan Coast Guard and to render the agreement conditional to the commitment of Libyan authorities in improving the situation on the ground, particularly in detention centres, in line with international and refugee law (CoE 2020,1). In the meanwhile, Italy should focus on the protection of migrants detained (Amnesty, 2020c), planning and facilitating alternatives through evacuations and the creation of safe humanitarian corridors (CoE,2020b). What is necessary is in fact to reassess the conception of the crisis as an emergency and to consider it as a new normality, halting the current approach based on specific circumstance of a certain member state and aiming instead to longer-term responses, based on humanitarian practices (Panebianco 2019, 397).

In general, the establishment of the European Union and the subsequent creation of a common external border led to the necessity of dealing with migration through the implementation of a shared policy. Since the beginning, European Member States started addressing migration going to work on the root causes of it, engaging in partnerships with third countries, both of origin and transit. In line with this and in perspective of reducing migration flows, the European Union stressed the need to strengthen borders' controls and thus provided assistance for an integrated border management. This process occurred also in the case of Libya, being it the main country of departures for what regards the Mediterranean route towards Europe, where military missions to contrast smuggling and trafficking were put in place.

Together with the policies implemented at the EU level, Italy exploited its ex-colonial relationship with Libya to intervene on the issue of migration flows from the country, before with Gaddafi and after with the GNA. As observed in the chapter, the approach was subjected to a shift from the first to the second period, switching from a push backs to a pull backs' policy. A key role in this regard has been played by the Hirsi Jamaa ruling, which condemned Italian authorities for directly

intervening in interceptions and returns operation to Libya, in contrast with the principle of non-refoulement. Apart from Mare Nostrum operations, that saw the implementation of SAR operations, lasted from 2014 till 2015, Italian policies have been focused on keeping migrants away from its shores, as the stipulation of the 2017 Memorandum of Understanding shows. Through the provision of funds, assets, and trainings to the Libyan Coast Guard, together with the assistance of Italian personnel on Libyan soil, Italy succeeded in enhancing their capabilities and increasingly render them autonomous. After a year in fact, it was recognized the Libyan Search and Rescue area, that allowed Libyan authorities to directly being engaged in pullbacks operations, still with the support of the European Union and Italy. In line with this in fact, European and Italian assets were gradually removed from the Mediterranean, replaced by aerial surveillance, which assist Libyan authorities in search and rescue activities.

The possibility to rely on the Libyan Coast Guard permitted European member states to delegate rescue operations and to only provide a remote control, with no practical interferences, trying to avoid the duty to assist boats in distress and especially the responsibilities of the human rights violations deriving from the pullback policy. It is in fact well-known that the assistance provided to Libyan authorities actually feeds a cycle of abuses, as the people intercepted are brought back to Libya and end up in detention centre, if not in unofficial centres at the hand of militias and armed groups, where they will be subjected to further tortures and abuses. As analysed in the chapter though, this new way of operating did not stop non-governmental organizations from accusing Italy and the EU of being complicit in the violations, given the aid and assistance provided, despite the cases presented before human rights institutions are still pending and no sentences have been release on their responsibilities.

The recognized violations of international and human rights law, strongly connected to the highly criticised agreement between the Italian government and the GNA, as well as the well-known presence of smugglers and traffickers within Libyan authorities, led important human rights bodies such the Council of Europe and further civil societies organizations to demand the ending of such agreement and the closure of detention centres. In the meanwhile, Italy is called in fact provide increasing alternatives for migrants to leave the centres and the country, both relying on the existing project of IOM and UNHCR, but also through the creation of further safe humanitarian corridors.

Chapter 3

Legal pathways towards Europe: current initiatives and future projects for Libya

When talking about migrants risking their lives to get to Europe, as it is the case of those arriving from the Mediterranean route, it often happens to hear people saying: "why don't they take a flight? It is cheaper and safer". The answer to this question is exactly the point of the chapter, during which will be analysed the few legal and safe pathways foreseen for migrants, mostly directed to asylum seekers and refugees. Firstly, the chapter will address the situation of migrants stuck in Libya, direct effect of European and Italian policies, taking into consideration the few current mechanisms that permit migrants to leave the country, which represent the only alternative to the Mediterranean's crossing. In particular, the first part will explain UNHCR's initiatives of resettlements and evacuations in place, which permit the safe transfer of people towards European countries. Afterwards, it will be instead analysed IOM's alternative, which offers the opportunity to migrants to go back to their country of origin through its program of Voluntary Humanitarian Returns.

In general, although European policies towards migration is one of borders' control and prevention of arrivals, there are some legal pathways that states can provide to migrants in order to counterbalance this policy, as it will be showed in the following part. Indeed, we will consider the system of Protected Entry Procedures that EU Member States have the faculty to put in place, despite their reluctance and the small quotas offered. Therefore, the chapter will explain resettlements and humanitarian admissions, as well as the possibility to resort to humanitarian visas and the increasing initiatives of private community sponsorships' programmes. About the latter, a special focus will address one of the new complementary pathways that Italian NGOs put in place, the so-called 'humanitarian corridors' program. The expansion of the project to further European Member States brought in fact Italian NGOs to launch the idea of European Humanitarian Corridors, specifically with the aim to address the Libyan situation, providing the transfer of 50,000 asylum-seekers to Europe.

Although the program has been just presented to the European Commission, Italian organizations decided to proposed themselves as the leaders of the project, therefore making deals with the Italian government, that welcomed the program but recently slowed down the process for its implementation. In general, the realization of Humanitarian Corridors provides a further alternative which could permit migrants to flee, in a safe and legal way, Libya and the related human rights violations. They could represent the beginning of a policy change, but these should however be accompanied by further actions towards human rights' compliance in the country.

3.1 The way out of Libya: current mechanisms to leave the country

The regulation of European Union's entry requirements, both for economic migrants, asylum seekers and refugees is unclear and incomplete, as no specific criteria for admission are established in regards to visa or asylum instruments, instead assimilated to the category of irregular migrants and victim of the same policies put in place by the EU to contrast their transit and arrival (EPRS 2018,39).

As showed by data provided by UNCHR, this is the case of those locked up in Libya too, which, as of 30 September 2020, had registered the presence of 45,661 asylum seekers and refugees in the country (UNHCR, 2020d), without considering the ones not officially registered (UNHCR 2020c, 3). The barriers implemented by EU and the few legal options offered, force these people to resort to illegal channels to reach Europe, providing the perfect conditions for criminal smuggling networks to flourish (Reitano 2015, 15). In addition to this, the recent Italian and European withdraw of rescue operations actually increases the risk for people to perish at sea as well as their return to Libyan detention centres, both official and not, where migrants are exposed to violence and tortures (ASGI 2018, 2). Although detainees decreased over 2019 and 2020, between January and April 2020, hundreds of migrants returned to Libya and consequently the number of people detained rose to 2,500, including 1,212 asylum seekers (UNHCR 2020c,6).

Thanks to the MoU and the following possibility of an Italian mediation in the country, UN agencies such as IOM and UNCHR have been allowed to monitor migrants' conditions and to offer humanitarian assistance both in detention centres and at disembarkation points (HRW 2019,28). These agencies in fact represent the channel that permits the EU to indirectly support DCIM's management, providing mattresses, blankets, clothing, food and hygiene kits for detainees, medical care and measures to improve sanitary conditions (Grange, Flynn 2015,12). Moreover, IOM and UNHCR have the faculty to register migrants in 12 official ports along the western coast which, however, does not prevent the possibility to lose their track, as sometimes disembarkations take place in remote locations or at late night, and the DCIM staff in the centres do not systematically make a record of the people transferred there (HRW 2019,28).

In general, UN agencies have been instrumental to advance EU's externalisation objectives, as relying on their personnel, expertise and legitimacy, permitted to consider them crucial partners to implement the external dimension of its policies (Nethery, Hirsch 2020, 12). In line with this in fact, since 2017, a conspicuous amount of economic resources has been allocated from the EU to these organisations so to increase the number of voluntary repatriations, evacuations to third countries and direct resettlement out of Libya, fundamental counterweights to the deadlock European policies along the

Mediterranean route and necessary to the respect fundamental rights of refugees (ASGI, 2018). In contrast with this, both UNHCR and IOM do not seem to have sufficient capacities to contrast the needs of detained migrants and asylum seekers (HRW 2019,34), reason why further changes in the European and Italian policies are required.

The criticalities and capabilities of the organizations and the related measures in place within the Libyan context will be analysed in this first part of the chapter, beginning from the ones implemented by UNHCR and eventually assessing the opportunity for Voluntary Humanitarian Returns, provided by IOM.

3.1.2 UNHCR: resettlement and evacuation mechanisms in place

The possibility to resort to resettlement, defined by UNHCR as "the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status"(UNHCR, n.d.), is not a right of the refugee and is not automatic, as states are not obliged to accept it, being the final decision at the hands of the country itself (ASGI 2018,12).

Resettlements can be conducted directly from Libya to a third country or following humanitarian evacuations via Niger and Rwanda. The decision to supplement resettlements with an Emergency Transit and Evacuation Mechanism (ETM) is a direct consequence of the unstable conditions and the human rights violations in Libya, offering the possibility for potential refugees recognized by the UNHCR, to be evacuated from Libya as soon as possible (ASGI 2018,6). The ETM represents in fact one of the first and concrete measures undertaken by the EU to permit the release of migrants blocked in Libya, agreed within the European Agenda on Migration and implemented since 2017 (Frasca 2019,222). Moreover, in the AU-EU-UN Summit of November 2017 in Cote d'Ivoire, it was decided to set up a joint task force to accelerate resettlements and it is in this context that the bilateral agreement between UNHCR and Niger was stipulated (ASGI 2018,6). In particular, the ETM in Niger has been established in collaboration with an Italian organization, COOPI, in charge of running 17 transit centres in Niamey and 6 in Agadez where asylum seekers will be host before being resettled (El Zaidy 2019,12).

Prior to the arrival in Niger, the UNHCR, as mentioned before, has the chance to identify the most vulnerable subjects in Libya and to profile them, either in official detention centres or at disembarkation points, taking into consideration potential refugees (Malakooti 2019,24). Libyan authorities though, being the state not part of the 1951 Refugee Convention, allow UNCHR staff to register asylum seekers and refugees from only nine countries: Eritrea, Sudan, South Sudan, Somalia,

Ethiopia (only members of the Oromo ethnic group), Iraq, the Syrian Arab Republic, Yemen and Palestine, who therefore represent the only beneficiaries of evacuations (HRW 2019,31). Although exclusive for some nationalities, the mechanisms permits to evacuate vulnerable asylum seekers from Libya and transferred them to a safe environment, Niger, which expands the asylum space (Malakooti 2019,24) and offer them a safe location where to undergo full refugee status determination and the subsequent chance to take part to resettlement operations to third countries (HRW 2019,30).

In the agreement though, the Nigerian government specified that the number of people who may be simultaneously on its territory, included the ones waiting for resettlement, can be maximum 600, impairing the effectiveness of the mechanism and the possibility to involve a growing number of migrants in case of slowdown with transfers (ASGI, 2018). Indeed, the process of finding resettlement places for refugees is often characterized by a waiting period and lengthy procedure, both to assess the asylum application and to obtain approval from the host country (Abderrahim 2018,11). Indeed, since September 2017 to the end of November 2018, out of 2,069 asylum seekers evacuated to Niger, only 860 were resettled (HRW 2019,31). In general, these programs suffer from limited capacity and a gap between the number of people in need and the resettlement places offered by host countries (HRW 2019,6), as it is widely demonstrated by the call for 40,000 resettlement places launched by UNHCR in September 2017, which received only 10,500 pledges from the states, showing an insufficient level of commitment (Abderrahim 2018,12). For what regards states within the EU, this can be attributed to the absence of a legal framework for resettlement, neither at the European level nor at the national one, therefore states are independent and exclusively bound by the protocols sporadically concluded with the UNHCR (ASGI 2018,5).

Refugees and asylum seekers have the chance not only to benefit from evacuations to Niger and Rwanda (since 2019) but also to the Emergency Transit Centre (ETC) in Romania and to Italy (UNHCR, 2020e). Within EU Member States in fact, Italy is the only European country that since December 2017 allowed for two humanitarian evacuations from Libya directly to its territory, in accordance with the Minister of the Interior, UNHCR and Italian Caritas (Frasca 2019,222). In total, since late 2017, 4,252 refugees and asylum seekers left Libya thanks to humanitarian evacuations, including 2,913 to Niger, 808 to Italy, 531 to Romania and 189 to Rwanda (UNHCR resettlement update #86). In addition, UNHCR also facilitated the return of asylum seekers to the countries where they first registered for asylum, as three countries, Sudan, Ethiopia and Chad, agreed to receive people back (HRW 2019,31).

Eventually, since December 2018, in collaboration with the Libyan Ministry of Interior, and funded also by the EU Trust Fund for Africa, UNHCR opened a new Gathering and Departure Facility (GDF)

in Tripoli, intended to host hundreds of refugees and asylum seekers in a safe environment, as an alternative to detention centres, while waiting for resettlement or evacuations to third countries (Malakooti 2019,22). Indeed, this was created as there are no safe locations in Libya where these people can find protection and this is probably the reason why already in 2019 the GDF was saturated and could not accommodate more vulnerable subjects (MSF,2019). Unfortunately, due to security reasons connected to the increasing hostilities in the capital, in January 2020, UNHCR announced the closure of the GDF (HRW, 2020b). Moreover, due to Covid-19 pandemic, since March, all evacuation/resettlement flights have been postponed and resumed only in August 2020 (UNHCR, 2020f).

Overall, it is possible to affirm that UNCHR's ability to exercise its mandate is restricted, not only due to the unsafe environment in which it operates, where the government is unable to uphold the rule of law and to stop violations of human rights but also for the fact that only designated nationalities are able to register with UNHCR and to enjoy the available solutions to leave Libya, which also suffer from long waiting times (UNHCR 2020c, 16). As a consequence, in order to ameliorate the problem and provide quicker options, IOM provides repatriation operations, offering the possibility to leave the country also to economic migrants, not included within UNCHR's beneficiaries (Abderrahim 2018,11).

3.1.3 The role of IOM and critics to the existing alternatives to detention

The Voluntary Humanitarian Return (VHR) programme is managed by IOM and aims at providing a safe option for migrants locked in Libya and willing to return to their country of origin (Malakooti 2019,22). The IOM started operating in the country already in 2006, mainly financed by EU countries such as Italy, Germany and the UK but receiving further support also from Switzerland and the US, not only with the aim of assisting returns but also to carry out other migration management efforts (Grange, Flynn 2015,12). In 2014 though, given the deteriorating situation in the country, IOM suspended its activities, which restarted only in 2016 and despite this, at the end of November 2017 had assisted 13,000 individuals to return home (Amnesty 2017,29).

Since this moment, given the critical situation in the country, IOM Libya started distributing non-food items to IDP families and migrants and providing immediate humanitarian assistance in detention centres and at disembarkation points, even though humanitarian repatriations remain the central point. Since early 2017 in fact, IOM tried to find practical measures to facilitate return operations, result that was achieved only after the AU-EU Summit in November of the same year, when the AU stepped up dialogue with African states and pushed them to collaborate (Abderrahim

2018,9). In line with this, a UN-UE-AU Task force was created with the aim of coordinating the trilateral cooperation between IOM, the GNA and African countries of origin and transit as well as to improve conditions for migrants in Libya and committing to facilitate voluntary humanitarian returns for 15,000 migrants before March 2018, quota that was far exceeded at the end of 2018, when more than 35,000 migrants were returned (IOM, 2018). This also permitted to reduce the number of detainees in official centres, which decreased from 20,000 in October 2017 to nearly 4000 in March 2018 (Abderrahim 2018,8). In total, IOM affirms to have helped over 50,000 people to return to 44 countries since 2015 (IOM, 2020), offering the beneficiaries a small amount of cash and assistance for reintegration in the community as well as for training, schooling and in some cases also for starting an income-generating activity (HRW 2019,32).

While the program can be valuable, the extent to which these returns are 'voluntary' it is not without critics, as it appears more as a proper necessity if considered in alterative to the stay in detention centres, where they are victims of abuses (Loschi et al. 2018,16), or to a dangerous and expensive journey across the Mediterranean (HRW 2019,6). Indeed, the shift by humanitarian organizations in Libya towards the use of the notion "evacuation" to describe mechanisms to leave the country, strongly affirms this concept (Abderrahim 2018,8). Moreover, further NGOs such as Amnesty International, sustain that IOM carried out voluntary returns in the absence of a registration system or a framework that allows to apply for asylum and that, considered as the only alternative to an indefinite detention, actually poses the risk that "people potentially in need of international protection may, for lack of better options, accept to return to a country where they may be exposed to persecution, torture or other human rights violations" (Amnesty 2017,29). In response to these critics, IOM Libya assures that the program is absolutely voluntary and that the staff proceeds with returns only once migrants have taken informed decisions about it, with no risks of persecution (HRW 2019,33).

Although VHR are carried out in good faith, the increasing numbers of operations deployed by IOM seems functional to EU's interests of pushing migrants away from its borders, as this is confirmed by the lower numbers of migrants reaching Europe and also of those intercepted by the Libyan Coast Guard (El Zaidy 2019,11). Indeed, EU institutions and countries invested, and keep doing it, significant resources in projects of returns, resettlements and evacuations, managed by IOM and UNHCR, that aim at alleviating the suffering of migrants in Libya and at the same time perpetuate their policy of containment, preventing arrivals (Amnesty 2020b, 20). If on the one hand these programs helped large numbers of people to escape, on the other hand they did not succeed in addressing the problems of immigration detention in Libya, therefore appearing as a "fig leaf to cover

the injustice of the EU policy" (HRW 2019,30). In line with this, both organizations in several statements stressed their limits to intervene in the situation, demanding the stop of disembarkations in Libya, increasing evacuations of detainees and to strengthen sea rescue operations, requests usually ignored by Italy and the EU (Statewatch, 2020b).

Indeed, as strongly advocated by several NGOs as well as by IOM and UNHCR, important changes are needed to improve the conditions of migrants in Libya. To begin, the EU must stop financing pullbacks at the hands of the Libyan Coast Guard and the return of migrants in detention facilities, which should instead be closed and replaced by safe and open spaces, and those perpetrating abuses must be held accountable (MSF,2020). In the meanwhile, further actions are required by the international community to seriously improve the respect of human rights within the centres and to find safe alternatives to it, being them shelters in the country or direct evacuations to Europe (Malakooti 2019,91), also resorting to humanitarian visas and community-based sponsorships (CoE, 2019). As returns and evacuations cannot be considered real long-term solutions and cannot succeed in emptying detention centres, given the practices of pullbacks, what is further necessary is to decriminalize irregular stay and entry of migrants in Libya and to create a pathway that allows them to regularize their status (HRW 2019,32).

While some of these proposals have been included in the renewed MoU between Libya and Italy in February 2020, as the one to improve conditions in the centres with a view of gradually transforming them and or the need to promote increasing alternatives to evacuate migrants, such as humanitarian corridors and further European projects, however, it did not mention the practices of pullbacks and instead focused on strengthen surveillance of Libyan southern land borders (Statewatch, 2020b).

Overall, what is possible to observe from this, is that the main concern of European countries still remains the prevention of arrivals to its shores, being those economic migrants, refugees and asylum seekers. As a consequence EU state, are carrying out a policy which is in contrast with human rights and refugee rights, that they try to compensate with few alternatives and small numbers, as confirmed by the fact that 90% of those who were granted international protection reached the EU in an irregular way (EPRS 2019,7). In order to better understand the few options asylum seekers have to legally enter the EU and to evaluate to what extent these actually counterbalance the policy of containment, the next part will explain the existing safe and legal pathways towards Europe.

3.2 The Safe, Legal and Complementary Pathways towards Europe

According to the data recently published by Frontex, over 2019, 139,000 migrants entered Europe illegally, a decrease of 92% respect to the entries registered in 2015, when instead 1,800,000 people irregularly reached the European territory (Frontex, 2020). Although this could suggest a decrease also in the number of people in need, this is actually not the case, as migratory flows and therefore the number of migrants seeking international protection instead increased (Marinai 2020,57).

The answer to this change is in fact ascribable to the process of extra territorialization of migrations, which through new forms of cooperation between the EU and third countries, incentivised measures able to contrast irregular migration, hampering smuggling and trafficking (Panizzon, Van Riemsdijk 2019, 1227). If on the one hand this can help to stop or at least decrease migration flows, on the other hand, the low numbers of available legal pathways actually push migrants, being those economic ones, refugees or asylum seekers, to rely on the dangerous means of smugglers and traffickers (Amnesty 2015b,7), in strong contrast with EU's priority of a controlled migration management. As sustained in 2018 by the Special Representative on Migration and Refugees, Tomáš Boček, after his finding missions in European border zones, the resort to legal pathways "is a central plank to resolving the so-called migration crisis" (Gatta 2018,168).

It would sound logical in fact, to incentivise and to expand the range of legal entry channels to permit refugees and asylum seekers to get to Europe safely. This could contribute to decrease migrants' death rate and to fight smugglers and traffickers, enabling states to reinvest the money currently used to contrast irregular migration in better welcoming and reception practices (Marinai 2020,58). In addition to the benefits that the measures directly bring to the destination country, as it permits a high level of screening and control over entries, they also ease pressure on host countries and provide refugees the possibility to achieve a durable solution (UNHCR 2019,7).

In general, the necessity to develop and broaden legal pathways for the admission of refugees has been confirmed also at the UN level in the *New York Declaration for Refugees and Migrants* in 2016 as well as in the related *Global Compact for Safe, Orderly and Regular Migration*, which promotes the idea of a 'whole-of-society' approach, therefore including all levels of society, and aims to open confrontation on alternative legal solutions not for governmental authorities but for the civil society as well (Ricci 2020,266). This goal was then reiterated in the *Global Compact on Refugees*, adopted in 2018, when Member State committed to develop a Three Year (2019-21) Strategy on Resettlement and Complementary Pathways (SHARE 2019,6). Indeed, this aimed to expand the range of safe solutions for refugees, to mobilise an increasing number of actors, including non-state actors, and to create welcoming societies (EC 2020d, 2).

The need to enlarge legal pathways for refugees and asylum seekers is further confirmed within the European context, where notwithstanding the existence of legal routes, the numbers of people in need admitted through these programmes remain low, around 10% (EPRS 2019,7). Moreover, the limited scope is mostly ascribable to the non-binding character of the measures, as their implementation is not foreseen neither by international law nor by European law, therefore states are free to decide if and in which case to facilitate access to their territories (Marinai 2020, 74). Indeed, for some Member States, the opening of legal pathways is perceived as an additional channel for refugees, which in no way can alleviate the current migratory pressure (Gatta 2018,201). Therefore, besides several attempts, there is not a harmonisation at the Union level in this regard (EP 2018).

Despite this, what is important is that discretionary Protected-Entry Procedures (PEPs) have emerged within the EU and involved an increasing number of states over years, as showed by the growing interest of the European Commission which in 2015 conducted a first study on the feasibility of alternative pathways (Gatta 2018,172). Indeed, the Commission defines PEPs as "an overarching concept for arrangements allowing a non-national to approach the potential host State outside its territory with a claim for asylum or other form of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final"(EC, 2002). This definition in fact includes a wide range of programmes with different formulae and which grant a different status depending on the Member State in charge (EPRS 2018,49.

Therefore, single European Member States opened up the possibility for people in need of international protection to resort to resettlement as well as further complementary pathway such as humanitarian admissions, humanitarian visas, community or private sponsorship schemes, that will be analysed during the chapter. It is necessary to stress that, although labour migration, educational mobility and family reunifications are not channels strictly related to refugee status, these could be further adapted to specific situation of the refugees, going to add to the already existing opportunities (ECRE 2017,33).

3.2.2 Resettlement programmes: the leading legal pathway

To begin, as already mentioned for the Libyan context, resettlement programmes involve the selection and transfer of already recognised refugees from a country in which they have sought protection to a third state, that accepted to admit them (EPRS 2019,8). In particular, resettlement addresses vulnerable categories of refugees who are living in a situation which is precarious, undignified or unsafe due to health conditions (EPRS 2018,52). Therefore, the state provides protection offering the refugee and his/her family a permanent residence status and therefore access to rights which are

similar to those enjoyed by nationals (UNHCR 2011,3). Indeed, as showed in this case, resettlement can offer the possibility to include also family members if this can be functional to maintain family unity (Marinai 2020,61). In general, it represents a tangible expression of international solidarity which permits to integrate the individual in the socio-cultural environment of the receiving state, offering a durable solution (Gatta 2018,174).

At the European Union level, the increasing importance of this program has been evoked during the peak of the so-called 'migration crisis' in 2015, within the context of the Agenda on Migration, when the Council adopted the European Resettlement Scheme, which foresaw the possibility for 22.000 people to resort to resettlement over a two-year period (Gais, Falchi 2017,66). In order to provide support to Member States and attract significant pledges, the EU committed to financially assist resettlement through the current Asylum, Migration and Integration Fund (AMIF) 2014-2020, increasing provisions (EPRS 2018,53).

Despite this, in March 2016 already emerged a number of problematic issues and difficulties in regard to resettlements, starting from the voluntary character of Member States' participation and the lack of balance in the efforts to provide resettlement opportunities as well as the broad diversity in the national procedures and practices (Gatta 2018,177). Therefore, in July 2016, as part of the overall reform of the Common European Asylum System, the Commission made a proposal for the creation of a Union Resettlement Framework Regulation (EC 2018,6). Specifically, the Regulation aims at establishing common harmonised rules for the admission of third-country nationals through resettlement, the eligibility criteria for beneficiaries, their legal status once arrived in the EU, rights and obligations of Member States as well as the related financial support (Gatta 2018,181). Despite the good purposes, the Regulation is not fully adopted yet, as discussions between the Council and the European Parliament about the total number of persons to be admitted, the quotas for Member States and the third countries from which to operate, impeded to reach an agreement.

This, however, did not jeopardize further resettlement operations under the first EU resettlement scheme in 2015, when Member States allowed to resettle 22.504 people from Middle East, the Horn of Africa and North Africa (EC 2020d, 2). It included the so-called EU-Turkey Statement of 2016, which permitted the arrival of 18.000 Syrian refugees (Marinai 2020,63). In 2017 the Commission announced a new scheme for resettlement, which committed states to allow the entrance of 50.000 persons in need of protection by October 2019, providing support with 500 million euros from EU budget (ASGI 2018,3). In particular, the majority of people was resettled from specific vulnerable countries such as Turkey, Lebanon, Jordan and African ones as Libya, Egypt, Niger, Chad, Sudan and Ethiopia (Caritas 2019, 21).

Overall, between 2015 and 2020, Member States contributed to strengthen the Union's partnership and solidarity with third countries, helping over 43.827 people for resettlement, which represents the 88% of the total pledge (EC 2020d, 2). This shows in fact the increasing EU's share of global resettlement, which raised from 9% before 2016 to 41% in 2018, as well of the financial assistance 1 billion Euro dedicated for the period 2015-2020 (EC 2020d, 2). In line with this in fact, the European Commission committed for over 30.000 resettlements in 2020, which in contrast with the current trend of other states in reducing the number pledges, "the EU is now the lead actor in resettlement" (UNHCR 2020d, 5).

If in general this was beneficial to a large number of people, however, it has been noticed that states actually prefer to engage in resettlements with those countries that cooperate at contrasting irregular migration towards the EU, thus presenting legal and safe pathways as a strategic migration management tool (SHARE 2019,8). Indeed, resettlements take the form of a reward for states that help containing migration flows, obtaining in return a reduction of the number of migrants on their territories (Marinai 2020,75).

What raises further concerns though, is the voluntary nature of the program within a worldwide situation of increasing numbers of persons in need of protection, as showed by the UNCHR which estimates 1.4 million refugees in 2019, out of a total of 25.4 million, who could enjoy resettlement programmes, a 17% increase from 2018 (SHARE 2019,7). Although the number of Member States engaged has grown significantly in the last years, if observed at the world level, the overall number of states involved is relatively small (Gatta 2018,174). Indeed, in 2018 for example, only 29 countries accepted resettlements, providing assistance to less than 5% of those in need (Marinai 2020,61).

Therefore, at least within the EU, states should be able to find an agreement and to accept the Union Resettlement Framework Regulation, engaging Member States in a balanced manner while increasing numbers of beneficiaries, the only way to seriously provoke a change. This is even more important if we look at the situation in the Mediterranean, where in the 15 countries of first asylum and transit along the migratory route, UNHCR estimated to be 277.000 refugees in need of resettlement (Caritas 2019, 21). The fact is that with current states' commitment, it is possible to provide only 100.000 places per-year, sharply unveiling the limits of the program and the fact that this is not an option for the majority of refugees (IOM 2019, 5).

Therefore, states are called to engage in complementary pathways so to permit persons in need of international protection to lawful arrive and stay in the country (FCEI, Sant'Egidio 2019). Indeed, these are additional to resettlement and provide extra opportunities for refugees to access protection

when durable solutions are not available, especially in large scale and protracted emergency situations (UNHCR 2019,5). This it is the case for example of humanitarian admissions offered to Syrian nationals since the outbreak of hostilities in the country, which not only took the form of resettlements but also of ad hoc and exceptional measures, which means that the selection does not rely solely upon the recognition of the refugee status, widening the range of beneficiaries (EPRS 2018,50).

3.2.3 The resort to Humanitarian Admission Programmes

In an attempt to delineate the framework of Humanitarian Admissions, the European Resettlement Network defined it as the "process by which countries admit groups from refugee populations in third countries so as to provide temporary protection on humanitarian grounds" (ERN+ 2018,9). In general, they indicate and include a broad range of access procedures related to humanitarian grounds, which can result from several reasons such as family reunification, health reasons or further exceptional circumstances (Caritas 2019,22). The valued of Humanitarian admissions has been recognized also within EU institutions, as they were added, alongside resettlement, within the scope of the Union Resettlement Framework Regulation (EC 2020d, 3).

Differently from resettlement though, the protection-sensitive nature of the program widens the potential beneficiaries, going beyond the recognition of the refugee status and including persons with urgent needs of protection (Gatta 2018,197). Admissions in fact usually work on "ad hoc" basis and in relation to vulnerability and protection concerns, deployed in response to a specific humanitarian need or a displacement situation and with regard to a particular group of people (EPRS 2019,9). This can in fact address migrants in vulnerable situations, persons in need of medical assistance and extended family members (IOM 2019, 7), as showed by the 31,000 visa issued between 2013 and 2015 to Syrian family members, hosted in the MENA region, who were allowed to reach Europe and join their relatives, in response to the Syrian crisis (ERN+ 2018,18).

Usually, once arrived in Europe, beneficiaries are usually granted with a specific and temporary protected status, with access to more limited rights respect to the permanent visa granted to refugees through resettlement (EI, 2019). However, according to the national legislation of the country they are hosted by, they can be provided with time-limited or permanent residence permit (FRA 2015,8). Indeed, the status can vary from a two-years temporary residency, in case of Germany and Ireland, to a five-years residency permit in UK or to subsidiary protection in France (ECRE 2017,25). In some cases, temporary permits can be renewed upon review of the situation in the country of origin but in case of non-renewal this should be based on an individual assessment of the circumstances (ERN+ 2018,21).

At the EU level, no funds for Member States are foreseen by the AMIF in relation to programmes of humanitarian admissions, which could instead bring to an increasing commitment of states (ECRE 2017,25). Despite this, within the European context, states developed such programs and not only to relocate people from war countries, such Iraq and Syria, but also to carry out humanitarian evacuations, as showed by the transfer of migrants from Libya to Italy (Caritas 2019,27).

If humanitarian admissions and resettlement can present some similarities, this is not the case in relation to humanitarian visas which, although still within the framework of complementary pathways, sharply differentiate from it (Gatta 2018,196).

3.2.4 The possible issue of Humanitarian Visas and the related criticalities

As just mentioned, humanitarian visas are included within the complementary pathways that, in addition to resettlement, foresee the possibility to admit individuals in need of protection to a third country. In general, visa's issue relies upon the direct relationship between an individual, or a small groups of people, and a state's entity situated outside its territory, being it an embassy or consulate, which provides the opportunity to apply for it (ECRE 2017, 28). Indeed, this does not represent a refugee specific instrument but is instead linked to the EU Community Code of Visa (FRA 2015,9).

The resort to visas as a complementary pathway is allowed by the EU Visa Code at art.25, which provides the possibility for Member States to exceptionally issue short-term visas, with limited territorial validity (LTV), on the basis of international obligations, reasons of national interest and on humanitarian grounds (Marinai 2020,66). In relation to the latter condition, a visa can be emitted for the purpose of lodging an application for international protection in that country and is therefore aimed at providing protected entry to not yet recognised refugees (EPRS 2019,8). However, this could be granted not only to people who meet all the criteria to be recognized as such, but it also addresses those who meet at least one them for being considered "vulnerable" (Gois, Falchi 2017,67).

To obtain this, non-nationals are allowed to approach a potential host country outside its territory, claiming for asylum or other forms of international protection and to be granted an entry permit in case of positive response, being it preliminary or definitive (EP, 2014). Differently from other complementary pathways in fact, humanitarian visas allow the transfer of people following an initial assessment and do not require the legal status to be determined prior to the arrival to the third country, as it is instead the case of humanitarian admissions and resettlements (UNHCR 2019,9).

Therefore, in this context, no comprehensive asylum procedure is actually conducted but instead a preliminary assessment, required to ascertain the presence of the elements established by the Visa Code and the Schengen Borders Code in view of admission or refusal (ECRE 2017, 29). However,

in both cases, derogations to these conditions are permitted: the first foresees that in case of applications on humanitarian ground and international obligations, as laid down in art. 19 (4), states are allowed to derogate from the established entry requirements and consider the application admissible, thus paving the way for the issue of a visa on the same ground, as conceived under art. 25 (1) (EP, 2014).Therefore, art. 19 (4) governs derogations from admissibility conditions and art. 25 (1) allows derogations from the fulfilment of Schengen visa requirements, not foreseeing any separate procedure for the lodge and the process of an application for a humanitarian LTV (EP, 2014).

Overall, if art. 25 (1) suggests that states *shall* grant an LTV visa for specific reasons, however, it also indicates that these should be issued *exceptionally* and when the Member State involved considers it *necessary* (Marinai 2020,67). The mandatory nature of the issuing of humanitarian visas has been in fact matter of discussion in relation to the strict Belgian government's interpretation of the provision, which highlighted the discretionary element of the art. 25 refusing to grant a humanitarian visa (Moreno-Lax, 2017).

In particular, the case involved a Syrian family escaping Aleppo which reached the Belgian embassy in Lebanon and submitted for LTV visas on humanitarian grounds, as established at art. 25, to reach Belgium with the intention of applying for asylum (Ricci, 2020). They sustained in fact that Member States have positive obligations to avoid violations of art. 4 (prohibition of torture) and 18 (right to asylum) of the EU Charter of Fundamental Rights as well as at art. 3 (prohibition of torture) of the ECHR and art. 33 (non-refoulement) of the Geneva Convention (Gatta 2018,191).

Belgian Immigration Office rejected their application as according to it there was no obligation to admit the family and that "authorising the issue of an entry visa to the applicants in order for them to be able to lodge an asylum application in Belgium would be tantamount to allowing such an application to be submitted to a diplomatic post" (De Vylder, 2017). The applicants then appealed to the Council of Alien Law Litigation, which on its side, request the Court of Justice of the European Union (CJEU) a preliminary ruling to clarify if art. 25 of Visa Code should be interpreted in light of above mentioned articles of EU law and whether the refusal to grant a visa could amount to a violation of such articles (Frasca 2019,216).

However, the Grand Chamber of the CJEU expressed its judgement in March 2017, affirming that the Visa Code only concerns visas for transit on the territory of Member States which should not exceed 90 days and given that asylum seekers' purpose is for a longer stay, this situation falls outside the scope of the Code (EPRS 2018, 47). According to the Court's interpretation in fact, the Visa Code has not the function of harmonising states' legislative norms on international protection and can

therefore be legitimate to not allow third-country nationals to request protection at Member States' Representations outside their territory (Marinai 2020,67). Moreover, the Court also argued that "since no measure has been adopted, to date, by the EU legislature on the basis of Article 79(2)(a) TFEU (long-term visas and residence permits on humanitarian grounds), the present case fell solely within the scope of national law" (EDAL, 2017). As a consequence, the EU law is inapplicable in regards to temporary visas for humanitarian reasons and in particular to rely on art.4 and 18 of the EU Charter on Fundamental Rights, rendering the state not obliged to avoid the risk of non-refoulement, which widely contradicts the Visa Code (Ricci 2020,275). Therefore, Member States are not governed by EU law and the provisions of the Charter, do not apply, although states are not impeded to grant humanitarian visas if this is permitted by their national law (EP 2018).

The fact is that if the applicant's circumstances, which includes his/her future plans, can jeopardise the application's acceptance, this should be a reason for refusal and not to constitute a basis for the a priori non-application of the relevant rules, as a condition to not apply the code (EPRS 2018, 47). In this regard, according to the Advocate General Mengozzi's non-binding opinion, when deciding on the delivery or refusal of a short-term visa, states should consider that humanitarian reasons allow them to exclude the grounds for refusal established in art. 32 of visa code, including the intention to overstay the 90-day limit (EDAL, 2017).

The CJEU then, chose to leave discretionary power to the States on whether to admit or not asylum seeker on their territory, allowing state sovereignty to prevail over human rights' protection (Gatta 2018,192). The fact is that this decision seems to have been guided more by political reasons than by legal arguments, as 14 Member States as well as the European Commission intervened on the case before the final decision was released by the CJEU. They supported the idea that a different decision would have led to a massive increase of applications and put embassies and diplomatic entities at the limit of their capacity as well as provoke an unacceptable impact on the functioning of the Dublin system (Gatta 2018,193).

States prefer to resort to humanitarian visa only in specific cases and in accordance to national procedures and this is further confirmed by the European Commission's rejection of a legislative proposal to manage humanitarian visas as a separate instrument from the Visa Code. In particular, the European Commission replied to European Parliament's suggestion to create a Union Humanitarian Visa Framework, sustaining that "once the Union Resettlement Framework will be adopted, it will have the potential to achieve the objective pursued by the Parliament's initiative" (EC 2019). The Parliament though, in its proposal, stressed the fact that humanitarian visas can be granted through a faster process respect to resettlement and represent a further suitable instrument for

responding to humanitarian emergencies, enlarging the possibility to seek protection for beneficiaries who cannot migrate into the EU (Backhaus et al. 2019, 4). In general, it aimed at reducing deaths and risks connected to migration routes through the issue of higher numbers of humanitarian visas, still assuring the voluntary pledges of states which would have been financially supported by the AMIF (EP, 2020). The conditions established by the Parliament then, could be considered as a feasible and straightforward proposal for the EU to enhance the possibility for third-country nationals to enjoy protection, going to contribute to a larger degree to the existing complementary pathways (Backhaus et al. 2019, 5).

Although the Parliament's attempt, a new regulation (EU) 2019/1155, on the revision of the Common Visa Code was approved by the Parliament itself and the Council in June 2019, which however did not contain any specific provision on the duty for states to grant humanitarian visas (Ricci 2020, 276). The aim of the proposal was instead to improve visa procedures so to better respond to the changes regarding migration and security, to achieve through the broader of EU external policy and the connection between visa policy and readmission cooperation with third countries (EP, 2019b).

In particular, the new mechanism establishes the use of visa policy as a leverage to readmission, which means implementing stricter conditions for visa processing, such a restrictive and temporary application of art. 25, and increasing visa fees in case a third country does not cooperate on readmissions (Ricci 2020, 276). On the contrary, if a country is found to be cooperating, the Commission may propose a reduction in fees as well as in the time for the issue of the visa (EP, 2019b). Therefore, this mechanism represents an EU unilateral system of incentives and sanctions, created with a view to enhance third countries' cooperation on readmission (Ricci 2020, 276).

Overall, the issue of humanitarian visa is specific and related to states' own initiatives, which can be deployed according to different reasons, such as protection-related, medical reasons or for family reunification purposes (EP, 2014). In this regard, in 2014 it was registered that only 16 Member States accepted the issue humanitarian visas and for a smaller number of people respect to resettlements (CEPS 2019,11). In recent times though, a conspicuous number of programmes have been developed resorting to humanitarian visas, which mostly rely upon the creation of states' ad hoc initiatives, increasingly deployed through the creation of Private Sponsorship Programmes (Caritas 2019,23).

3.2.5 Private-Community Sponsorship Programmes: an emerging instrument

Overall, Sponsorship Programmes are characterized by the participation of non-state actors which organize themselves to perform roles that were traditionally in the hands of state governments or international organizations (Frasca, 2019b). If on the one side, these programmes can be deployed as

a tool that enables a person, a group or an organisation to take care of refugees once arrived in the country through other pathways, "providing financial, social and emotional support for a predetermined period of time" (EPRS 2019,8), on the other side, they can also involve the process of refugees' admission which includes the identification of the person they will assistance (ECRE 2017,27). About the latter, it is important to stress that these programmes should be additional to the existing pathways promoted by governments and should not substitute them (Caritas 2019,27). Indeed, although sponsorships programmes can overlap with resettlement, humanitarian visas and family reunification, their main goal is to broaden the scope and allow safe access to those who cannot benefit from other pathways (ECRE 2017,26).

The practice of Sponsorship Programmes was originated in Canada and has been ongoing since 1978 (SHARE 2019,8). The well-functioning of the programmes provided the inspiration for the establishment, in 2016, of the UNHCR-led Global Refugee Sponsorship Initiative, which had the aim of supporting other countries for the creation of similar schemes (EPRS 2018, 57). In line with this, in September 2017, the European Commission recommended Member States to establish sponsorship schemes, and the year after it commissioned a study '*on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the Eu'*, to explore how to developed these programmes within the EU (SHARE 2019,10). According to this, it is proved that such schemes permit to contribute to the safe and legal channels of admission and that, thanks to the involvement of local communities, it increases the level of public engagement within international protection's area and integration (EC 2018,6).

A key element of Private Sponsorship in fact, is the commitment of a person, groups or organizations to take partial responsibility in providing support and facilitating the integration process within the community, taking in charge part of the costs of the refugees for a certain period of time, usually one year or more (Caritas 2019,27). In addition to this, it can happen that the sponsors take care of the process for beneficiaries' identification too, whose main criteria for eligibility are usually based on vulnerability grounds, so to provide protection to those people who do not qualify for asylum but according to the circumstance in which they find themselves are still in need of protection (Triandafyllidou et al. 2019,33). Therefore, as vulnerability grounds can vary, in the same way also protection status can change (EPRS 2018, 54).

In general though, sponsorships programmes are criticized over the geographical bound and limited time which characterize them, as well on the risk of selectivity issues and the reliance, of numerous initiatives, on UNHCR to identify potential beneficiaries, which instead of granting a primary way of unrecognised subjects, provides them a second mean of access to already recognised refugees (EPRS

2018,49). On the positive side, these schemes are going to offer additional and complementary regular alternatives, promoting solidarity with beneficiaries and country of first asylum, while providing a high level of control and a better integration into the community (EPRS 2018,49).

This is probably why the European Commission recently showed appreciation towards the programmes, inviting states to implement them and institutions to coordinate a pilot-project at EU level towards the realization of the schemes (Caritas 2019,34). The need of complementary pathways beyond resettlement, based on Sponsorship Programmes, has been further stressed in the proposal for the New Pact on Migration released in September 2020, specifically inviting Member States to "contribute to an EU approach to community sponsorship, drawing upon the wide range of models of humanitarian admission to design admission programmes in line with their respective national priorities and take into account EU external relation priorities and interests" (EC 2020d, 9).

Until now, in the EU, Private Sponsorship Programmes have been developed by Germany, UK, Italy, France and Belgium, Ireland, Slovakia and Poland (EPRS 2018, 54). In this regard, they have been according to three different kinds: family reunification schemes, pilot-models promoted by single-states, such as resettlement-based scheme, and the project of humanitarian corridors (Caritas 2019,30). In particular, the first was promoted since 2013, and foresaw the involvement of, mostly Syrian, families for financial and social responsibilities, to allow their relatives to reach Europe. While in Germany and Ireland this has been achieved through humanitarian admissions, in France it was regulated by humanitarian visas (SHARE 2019,12). The project is thought to be inspired by the 'groups of five' Canadian model which, in the same way, enables private citizens to support individual arrivals by family members (EPRS 2018, 56). Germany and Ireland though, together with UK, were also involved in resettlement-based sponsorship schemes, which permit to groups of citizens to permit the arrivals of refugees referred by the UNHCR and admitted through resettlement schemes' quotas (SHARE 2019,18). While UK and Ireland offered protection places which fall within the numbers of foreseen resettlement commitments, the German program is instead additional to government's pledges (SHARE 2019,18).

Eventually, Italy France and Belgium, developed a recent innovation programme, which foresees the cooperation between national authorities and faith-based, NGOs and third-sector organizations for the admission of vulnerable people through the system of humanitarian visas, privately funding the scheme and the integration process (Triandafyllidou et al. 2019,31). Under this program, sponsors are involved in all stages of admission process, from identification to the transfer to the state concerned (EC 2020d, 5). Specifically, this model was firstly introduced in Italy, in 2015, and then followed by France and Belgium in 2017, as well as San Marino and the Principality of Andorra.

Within the first three years they succeeded to bring 2.500 people to safety, numbers which were additional to existing resettlement programs (SHARE 2019,12), whose beneficiaries were at first identified in Lebanon, Turkey (Caritas 2019,33) and over time included also Ethiopia, Niger and Jordan. They are able in fact to consider the conditions and the constrains which define different regional contexts, showing a great operational adaptability, although small in scale and in need of support to render it a more stable legal complementary pathway (Triandafyllidou et al. 2019,32).

Therefore, the model of humanitarian corridors seems to be a new interesting tool which deserves to be analysed more deeply. Indeed, the next part will explain how they were created and improved over years. In addition to this, it will analyse the projects that NGOs and faith-based organization proposed to the Italian government and to European institutions, specifically addressing the Libyan context.

3.3 The idea and realization of Humanitarian Corridors

As previously explained, the project of Humanitarian Corridors (from now on HC) is part of the Protected Entry Procedures, which are created to provide an alternative legal pathway for persons in need of protection who do not fall within the 'refugee' criteria, as set out by the 1951 Geneva Convention (Ricci 2020, 271). This model though, resorted to the concept of Private Sponsorship, that allows the Civil Society, as citizens, associations, non-profit organization and even parishes, to play a primary role and to contribute to the migration management (APG23 et al.,2019, 88). Specifically, it creates a safe route of escape from difficult and dangerous contexts, securing both a safe journey as well as housing and means to achieve integration once on the host country's soil (Panebianco 2019, 392).

HC have been promoted as an answer to the 2015 European Agenda on Migration, which called on Member States to use to the full the legal avenues available to enable persons in need of protection to reach a safe place, including private, non-governmental sponsorship and humanitarian permits, as Italy actually put in place in December 2015 (Mallardo, 2017). The project resulted in fact in "a particularly significant and original case of sponsorship, addressing people potentially entitled to international protection and in vulnerable conditions" (APG23 et al.,2019, 7).

Going back to the roots, HC were born in reaction to the shipwrecks of 2013 and 2015 near the Italian coasts and while EU institutions were planning further military operations, few NGOs focused instead on finding alternatives to the dangerous cross of the Mediterranean Sea (Panchetti, Schneyder 2020, 4). The belief that migrants and asylum seekers should be able to demand protection before reaching the borders of the hosting state, pushed in fact for the realization of the project (Sossai 2017, 85). In particular, it was created by Italian faith-based organizations as the Community of Sant'Egidio, the

Italian Federation of the Evangelical Churches, the Waldensian and Methodist Churches, which promoted a unique fully bottom-up project financed with the 8x1000 funds (Gois, Falchi 2017,73).

Of course this had to rely on the Italian Ministers of the Interior and of Foreign Affairs too, as the NGOs saw in art. 25 of the Visa Code only officially permissible way to obtain a safe and legal journey to Italy (Panchetti, Schneyder 2020, 5). In this case, art. 25 foresees the issue of a LTV Visa on humanitarian grounds by consular entities, upon security checks by Italian authorities, granting the persons, once in Italy, to apply for international protection before the Territorial's Commission (Sossai 2017, 87).

Overall, the project permitted 3,100 refugees to legally reach Italy over a period of three and a half years (Ricci 2020,268). These depended on the conditions established in the Memoranda of Understanding signed by the government and the NGOs during this time lapse, which decided the organisations' full management of a fixed quota of beneficiaries, the possibility to select them, to organize their visa application, exit permit and travel to Italy as well as the asylum application and integration (Frasca, 2019b). Specifically, three hybrid Memorandum have been arranged, one in 2015, another in 2017 and the latter in 2019.

The first, which marked the beginning of the programme, was concluded on December 15, 2015 by the Italian Ministry of Foreign and Internal Affairs and the Community of Sant'Egidio, the Federation of Protestant Churches and the Waldensian board (Ricci 2020,268). They agreed to admit a quota of 1000 vulnerable persons from the Lebanese refugee camp, principally Syrian refugees, to be achieved over two-years (Gatta 2018,198). At the end of November 2017 in fact, 1.011 Syrians were able to reach Italy (APG23 et al, 2019, 66).

The fact is that, if already between February and October 2016, 400 people reached Italy through Humanitarian Corridors, in the same period, 4.000 people died in the Mediterranean Sea, registering the one of the highest death rate ever (Sossai 2017, 76). This is probably why, on January 12, 2017 a new protocol was signed between Italian Ministries and the Italian Bishops' Conference, through Caritas and Migrantes, and the same Community of Sant'Egidio for five hundred people from refugee camps in Ethiopia (Sant'Egidio 2019, 2). This wanted to address in particular Sub-Saharan Africans, mostly Eritreans, Somalis and South Sudanese who flew their countries due to armed conflicts (Sossai 2017, 90). After the two-years period, both Memoranda were renewed: the first in November 2017 with an additional quota of 1000 persons from Lebanon, while the second in May 2019 through a further protocol, which granted six hundred new visas from Ethiopia as well as Niger and Jordan, considered transit countries (SHARE 2019,15).

Overall, despite some differences, within the Memoranda religious communities proposed not only to ensure the legal and safe arrival of potential beneficiaries of international protection or vulnerable subjects at their expenses, but they also committed to ensure legal assistance as well as reception and socio-cultural integration, with the goal of stabilizing them in the country (Ricci 2020,270). Regarding the beneficiaries though, there's to say that the selection critera somehow changed from the first Memorandum to the second and third. The first in fact targeted victims of armed conflict, violence and systemic violation, as well as vulnerable people such as single women with children, women victims of trafficking, unaccompanied minors, disable or traumatized people (Ricci 2020,272). This means targeting people in evident need of protection, who are not a priority within the Geneva Convention, but who will be however entitled to an entry visa in case they meet one or more of these criteria (Mallardo, 2017). Within the second and the third instead, these specific criteria are not present, and they just focus on the individual condition, referring in general to the personal situation, age or health status, without any indication on the circumstances causing the vulnerability (Ricci 2020,272). This permits in fact to include within the beneficiaries also those people who do not possess the criteria to be considered refugees according to the Geneva Convention, thus enlarging the possibility to be part of the program to subjects not usually included in UNHCR's programmes. Moreover, the 2019 protocol has opened to family reunification programmes, which allowed the relatives of refugees already in Italy to take part to the project (Panchetti, Schneyder 2020, 14).

In general, the process for the selection of beneficiaries is carried out by the sponsors' personnel in the field, often in consultation with UNHCR and local partners (Morozzo 2017,19). If it usually happens that the people "selected" are mainly prima facie refugees according to UNHCR's standards, as mentioned before, this is not the only criteria, as vulnerability is also taken into account (Marinai 2020,73). This is why a team of specialists, including doctors, interpreters and aid workers, help in the appointing of the beneficiaries after a series of in-depth interviews (Panchetti, Schneyder 2020, 7). This phase is crucial also to provide the identified people the fundamental information about the entire migration project, the rules and the modalities it encompasses, rendering them conscious and strongly motivated to undertake the path of integration and adaptation (APG23 et al., 2019, 23). Taking into account the own will of refugees and migrants can in fact secure a steady and permanent integration in the hosting country (Ricci 2020,273).

In general in fact, NGOs have the faculty to select the people as they will be the ones in charge of the welcoming process in Italy and will thus base their choice on those who better fit for the programme, according to the individual situation, the physical, psychological and socio-political vulnerabilities as well as the available possibilities for reception (Caritas 2019,49). Moreover, in line with European

policy, the project aims at excluding or limiting any secondary and voluntary movements towards other countries, for which potential beneficiaries will be asked, during the selection phase, to express a clear and univocal intention to remain in the country (Ricci 2020,271).

Once the assessment is terminated, NGOs will autonomously prepare an individual dossier for each applicant, collecting them in a list of potential beneficiaries (Gatta 2018,198). This will be screened by Italian authorities of the Ministry of the Interior for security reasons and then, if it's the case, potential beneficiaries are requested to reach the Italian embassy for pre-identification procedures (Caritas 2019,50). If everything is in order, the Ministry of Foreign affairs will issue an LTV visa on humanitarian grounds for entry (EPRS 2018, 59). In the meanwhile, NGOs are in charge of organising visa applications with the consulate and the exit permits with third country's authorities (Frasca, 2019b). In addition to this, prior to departure, they will also provide basic linguistic and cultural training, as well as an introduction to the legal and cultural context of the hosting country (APG23 et al., 2019, 30).

Once on the Italian soil, people are granted the possibility to lodge an application for protection immediately upon arrival and thanks to pre-screening activities and security checks, the demand for international protection will receive a faster verdict respect to normal times (Marinai 2020,73). In addition to the costs for the journey, visa application and further bureaucratic procedures, once in the territory, NGOs will support the costs for reception and integration, as well as legal assistance, for at least one year (Ricci 2020,270). Beneficiaries will in fact be hosted in small communities, in line with their characteristics, in order to achieve the best possible integration process.

Differently from government's led resettlement and welcoming procedures, the people arrived through humanitarian corridors register a higher activation rate, especially thanks to the support offered by volunteers who engage them in training courses, provide job search support and employment opportunities, as well as the inclusion of refugee children in the school system (APG23 et al., 2019, 59). The presence of civil society organisations and volunteers for reception and integration services are in fact the cornerstone of the project, which permit to achieve better results respect to usual government's procedures for integration (Gatta 2018,198). Indeed, this is also possible thanks to the fact that this alternative pathway is for single and well-identified individuals and not for groups or multitudes as in the case of resettlement (Ricci 2020,273). Looking more in general at the project though, a positive and fundamental aspect is its additionality respect to existing legal pathways, which permits to offer increasing protection places to those who are not necessarily eligible within the previous programmes (SHARE 2019,17).

Although there are criticalities within the project itself, as the high selective process, with no clear and transparent criteria, as well as the small numbers of beneficiaries, given the limited duration and the shorts of resources provided by the NGOs (Gois, Falchi 2017,73), Humanitarian Corridors can still be considered as a valuable initiative. They represent in fact the welcoming face of Italian civil society which has been able to realize the program through the solidarity of many people, and even to inspire further practices in Europe, as the ones implemented in France, Belgium, Andorra, San Marino and the Principality of Monaco (Sant'Egidio 2019, 2).

3.3.2 The spread of the Corridors and the project of European ones from Libya

Overall, Humanitarian Corridors not only took into account people in vulnerable situations, promoted a hosting system and an integration process but were also able to create a replicable model for other European countries (Gois, Falchi 2017,73). The replicability of HC has been rendered possible the fact that they do not entail significant economic or political costs for the hosting state, and is instead based on the availability of the civil society to directly fund reception and related activities (APG23 et al.,2019, 15). This is mainly why further Humanitarian Corridors were implemented in 2017 in France and in Belgium, representing a point of reference for piloting private sponsorships' programmes across Europe (Frasca, 2019b). In particular, they paved the way for additional corridors in Andorra, the Holy Seat and the Republic of San Marino, while attracting the interest of the Polish Bishops' Conference (Ricci 2020,274). In total though, between 2015 and 2019, 650 people were welcomed in France and Belgium, 81 in San Marino, 33 in the Holy See and 7 in Andorra (APG23 et al., 2019,76), which showed a further reduction within the already small-scale of the programmes.

Despite the limited numbers, the interest showed by other Member States for Humanitarian Corridors can be taken as a positive factor in perspective of the improvement of the system. It is because of this that Italian NGOs, specifically the Community of Sant'Egidio and the Italian Federation of the Evangelical Churches, relying on the support of a wide network of organizations across Europe, proposed to expand the mechanism of HC, exceeding the initial model, to a wider group of European countries and to create a flexible system applicable to different legal frameworks. This would be based in fact on art. 25 of the Visa Code and promoted by Community Sponsorships Programs, still within a multi-stakeholder approach and involving the government (FCEI, Sant'Egidio 2019). The initiative has been firstly proposed during a meeting called by the Italian Federation of Protestant Churches in Italy on the 8th and 9th October to the Italian government, where representatives of ecumenical organisations and international churches from 15 countries met to discuss the project (NEV, 2019).

Although proposed by these subjects, the model of Humanitarian Corridors would be opened not only to churches communities but to the civil society in general, in view of enlarging the program and render it a European instrument (Gori, 2020). The proposal for the creation of a common European Humanitarian Corridor reflects the total lack of harmonisation between safe mobility options for migrants, at the EU level, as well as the urgent need of European institution to intervene on this (Gatta 2018,170). Therefore, the project has been proposed to the European Parliament in December 2019 and refers to a specific case: the transfer, over two-years, of 50.000 vulnerable migrants and refugees out of Libya and the neighbouring countries (FCEI, Sant'Egidio 2019).

This represents in fact an attempt to realize the legal alternatives so highly requested by EU institutions, promoting durable solution in regard to a part of the current migration flows into Europe (Gois, Falchi 2017,73). As confirmed in the proposal in fact, the project "should not only address the urgent need to remove vulnerable migrants and refugees safely from immediate danger but also offer a long-term prospect of successful integration into another society" (FCEI, Sant'Egidio 2019).

The current European policies of reinforcing borders and criminalizing migration are instead working in the opposite direction, rendering the journey unsafe and offering smugglers a wide range of clients, rendering it is necessary to improve migration management through the creation of humanitarian corridors for refugees and vulnerable people (Reitano, Ruiz-Benitez 2018, 30). The establishment of the corridors would in fact contribute to reduce the demand of smuggling networks while taking positive decisive steps towards a durable solution (Achilli 2016, 103).

Overall, the expansion of Humanitarian Corridors has the role to respond to a serious emergency situation in Libya (Gori, 2020). The implementation of the project would in fact provide, to the beneficiaries, protection against the risk of refoulement, would remove potential victims from a context of violence and abuses, offering a long-term solution in another society where migrants can become autonomous and integrated (FCEI, Sant'Egidio 2019,5). In particular, the decision to intervene in the Libyan context responds to the need of UNHCR to receive support, as by its own admission, it can offer only limited solutions to migrants, given Member States' small commitment in offering places (Gori, 2020). In this regard in fact, the program aims to promote a shared responsibility among a coalition of willing partners, based on the idea that "the larger the coalition, the smaller the burden" (FCEI, Sant'Egidio 2019,3). The establishment of an agreement among states is in fact the first phase of the program, which foresees the mapping of the states which commit to host migrants and the precise extent of their capacity, to be determined according to the relevant national legal regimes, the available number of entry permitted and the resources offered by governments which will be supported, in part, by civil society (FCEI, Sant'Egidio 2019,3). In this

regard, a necessary condition to increase protection places is that the quotas provided by the European Humanitarian corridors must be additional to existing commitments of the states in the area, thus seriously contributing to the improvement of the regional situation (FCEI, Sant'Egidio 2019).

Indeed, the program aims to work not only with Libya but with 15 countries along the Central Mediterranean Route, so to have a larger impact on smuggling networks but also to avoid the project to become a pull factor and to attract a larger number of people to Libya (FCEI, Sant'Egidio 2019). The enlargement of the geographical area has in fact the goal to contrast an existing phenomenon which has place in Libya and has been discussed by Vincent Cochetel, UNHCR's responsible in the area, with the NGOs in charge of the program "whereby many migrants started paying to enter detention centres, where they would obviously be tortured and kept in inhumane conditions, because in their understanding this is the only way to access the resettlement programs that Europe makes available" (Gori, 2020). In order to avoid this, in addition to widen the scope of the corridors and despite the temporary and fixed-term of the program, it has been proposed to define stricter criteria for the access, as for example rendering it available only to those registered with UNHCR on a specific date (FCEI, Sant'Egidio 2019,3). In this regard, the identification of the beneficiaries will be in fact carried out primarily by UNCHR, supported by a small number of referrals from other organizations on the ground, which will select migrants according to protection and vulnerability criteria, given the intolerable conditions of the regional context, and will not require a strict analysis based on the Geneva Convention's criteria (FCEI, Sant'Egidio 2019,6).

As described in the proposal presented to the European Parliament, once people have been selected, thanks to the larger number of countries available, the candidates will be matched with potential hosting states, giving priority to the existing familiar links and the skills owned by the subject, together with the needs and constraints that may affect integration in the country (FCEI, Sant'Egidio 2019,6). As in the previous projects of humanitarian corridors, also in this it is foreseen a certain level of pre-departure orientation in terms of language tuition, cultural orientation and psychotherapeutic assistance, considered a key element of the program, which could be provided via digital technology, civil society elements and other professionals (FCEI, Sant'Egidio 2019,7). Once travel documentation, exit permit and entry visa have been obtained, NGOs will support the transfer of the migrants and the reception of the persons in the host country, helping beneficiaries to become self-sufficient (FCEI, Sant'Egidio 2019,7). Overall, these are the guidelines which delineate the starting point for the project's implementation, as they can be adapted to the different contexts of the European Member States.

The realization of European Humanitarian Corridors from Libya though is not automatic and, as affirmed by Mrs. Del Negro and Impagliazzo, Presidents of the proponents' associations: "Italy should be the leader of the programme, by opening another corridor from Libya for at least 2,500 people a year. Our institutions have already started relations with some NGOs working in Libya to effectively implement this project, which starts in Italy but is addressed to the European countries and institutions" (MH, 2019). In this regard in fact, a draft for the realization of humanitarian corridors from Libya to Italy has been presented to the government, although a compromise between the proposed European project and the government's conditions.

3.3.3 Italian commitment and its relationship with the current migration policy

The launch of new Humanitarian Corridors from Libya has been proposed through a letter to the Italian Prime Minister Giuseppe Conte, who affirmed that he is willing to realize the project, going into the direction of a policy change towards the country, which is desired since long time by international organizations and NGOs (Frasca 2019,222). The initiative would in fact offer the safe and legal transfer of 5.000 migrants and asylum seekers in the country over a two-years period, showing a huge increase in numbers respect to the previous agreements.

The program has been presented by the Italian Federation of the Evangelical Churches, the Community of Sant'Egidio and Doctors Without Borders but differently from the European proposal, due to some changes introduced by the Italian government, it now will be realize as an hybrid system between evacuations and humanitarian corridors, whose beneficiaries will be selected by UNHCR and only from Libya, the costs of which will be divided between NGOs and the government (Gori, 2020). Despite the general good purpose of the program, there are criticalities related to each condition imposed.

First of all, limiting the scope of the program to Libya actually increases the possibility to attract migrants to the country, creating the opposite effect that both UNHCR and NGOs want to realize. As mentioned before in fact, it is necessary to enlarge the territorial application of the program to seriously produce a change, while this could instead attract more people to the terrible situation in Libya, as testified by UNHCR (Gori, 2020).

About the latter subject in fact, it will be the one in charge of selecting the beneficiaries, although in the previous proposal also Doctors Without Borders, which is working in some of the detention centres, had been included for the selection, which would have given priority to serious medical cases. The truth is, that the difficult situation in Libya does not allow to find further reliable partners on the ground who are able to assist NGOs for the selection of the beneficiaries, therefore UNHCR remains

the only option (Gori, 2020). Moreover, UNHCR's selection has been required by the Italian government itself, as the pre-recognition of potential refugees can secure higher chances to be granted international protection by the territorial commissions once in Italy (Gori, 2020). Differently from the original project though, this poses the risk of taking into account only refugees and offer them a second chance, if previously not accepted for resettlements or evacuations, instead of providing an alternative to those who do not strictly possess these criteria, vulnerable people.

In addition to this, the proposal of a hybrid system between humanitarian corridors and evacuations based on UNHCR's lists, renders void the best practice of the pre-departure orientation usually carried out by the NGOs. Indeed, the beneficiaries will not be selected according to the vulnerabilities of the subject or the characteristics that better fit for the reception process and they will not be supported by psychologists or therapists, jeopardizing their integration and activation once in the country (Gori, 2020). The risks that the lack of this process can provoke have been experienced by Caritas, a branch of the Italian Bishops' Conference, which between 2017 and 2018 was involved by the Italian government and the UNHCR in the reception of the 312 beneficiaries evacuated from Libya, which can testify the high levels of abandonment of the project (Caritas 2019,43). Humanitarian evacuations are in fact characterized by limited time and don't allow to undertake a sufficient assessment of the individual situation or expectations, especially if carried out in such a dangerous context as Libya (Caritas 2019,43). That is why the program previously presented by the NGOs aimed to create a proper humanitarian corridor, in line with the European project, which foresaw the deployment of personnel in Niger, where they could have had the possibility to conduct deeper interviews with potential beneficiaries as well as to provide support and safe transfers (FCEI, Sant'Egidio 2019,7).

Despite the announced commitment of the government, however, the process for the realization of the project slowed down in the last period and it is still not clear if it will be realized, also considering the migration policies Italy is carrying out with Libyan authorities, which actually aim at impeding people to reach Italian coasts, instead blocking people in Libya (Gori, 2020). According to the NGOs in fact, the obligation to rely on a government (principally for the issue of the visas) which on the one side finance and assist a system of abuses and pullbacks, and on the other side commits to create safe legal pathways to Italy, renders the ground a bit slippery and stresses even more the necessity to render humanitarian corridors systematic and autonomous at the European level (Gori, 2020).

Although the conditions imposed by the Italian government could actually jeopardize the success of the project in terms of proper humanitarian corridors, if realized, the initiative would allow 5.000 migrants and asylum-seekers to reach Italy, preventing further abuses as well as the risks related to the crossing. The initiative proposed by the third sector has in fact the goal of wider the framework

of intermediary options which stay between an unconditional opening and the closure of the channels for a regular entry, representing a good solution in this regard (Ricci 2020,281).

Moreover, as previously mentioned, the project should remain additional to existing Italian commitments in the field and thus be distinguished from the current resettlement and humanitarian evacuation operations as well as national humanitarian corridors (FCEI, Sant'Egidio). In this regard, for example for 2020, Italy had committed to resettle 700 refugees from Niger, Libya, Lebanon and Jordan while at the same agreeing on the implementation of humanitarian corridors from Niger, Ethiopia and Jordan for 600 beneficiaries (Del Re, 2019). In line with this, Italy should keep deploying large-scale schemes of evacuation of migrants from Libya, as it is currently doing (Triandafyllidou et al. 2019,34). About this in fact, in the New Pact on Migration, the European Commission called on Member States to further support emergency transit mechanisms in Niger and Rwanda, therefore addressing the Italian commitment as well (EC 2020d, 3).

Overall, Italy started collaborating with IOM and UNHCR for the provision of alternative complementary pathways from Libya since 2017, the same year of the Memorandum of Understanding with Libyan authorities, which instead began condemning thousands of migrants and asylum seekers to be stuck in the country. Given the circumstances, the creation of humanitarian corridors would in fact provide an additional chance for those in need of international protection to receive assistance and offer a safer alternative than resorting to smugglers, representing an active step towards a counterbalancing policy which could prevent Italy to be considered responsible for Libya's wrongful acts (Vari 2020, 133). Moreover, although a hybrid system between humanitarian corridors and evacuations, the project could ensure 5.000 people to reach Italy in safety and, if considered as the leading initiative of a greater European project, seriously produce a change in the Libyan context. Indeed, if 5.000 people are just a small part respect to the 45.000 asylum seekers and the 650.000 migrants in the country, with the creation of a European project numbers will be different, and the life of 50.000 people will be saved. In line with this, the Council of Europe recently suggested Italian authorities to increase its support to operations for the transfer of migrants and asylum seekers from Libya, for example through the creation of humanitarian corridors (CoE,2020b).

These should however be put in place together with search and rescue operations in the Mediterranean and the suspension of any co-operation activity with Libyan authorities that provokes, directly or indirectly, the return of persons to Libya, until guarantees of human rights' compliance in the county will be reached (CoE,2020b). Italian authorities have in fact the possibility to provoke a serious change in the migrants' situation in the country, which could be achieved conditioning the MoU, and the related funds, on Libya's compliance with human rights. This means to improve the situation in

detention centres, assigning funds only once ensured that they will be used for it rather than for their expansion and also to eventually push Libyan authorities to ratify the 1951 Refugee Convention and the related Protocol, creating an asylum system in the country and definitely putting an end to the detention system (Vari 2020, 133). In general, the MoU could serve as a tool to improve the situation, bringing to the closure of the centres and the end of detention, although this should be carried out together with the implementation of SAR operations and EU humanitarian evacuations (Statewatch, 2020b).

General Conclusions

As widely analysed in the previous chapters, European and Italian policy towards migration flows, not only from Libya but in general, is a policy that aims at contrasting and preventing the arrivals of migrants and asylums seekers, with quite no distinction. The consequences of this though, are a larger market for smugglers and more dangerous routes for migrants, enriching the firsts and jeopardizing the life of the latters. In addition to this, as seen in the Libyan case, migrants are usually living in terrible situations, victims of abuses and tortures, where they remain stuck as a consequence of European policies.

To counterbalance these strict and deadly measures, European Member States are called to provide complementary safe and legal pathways, to which they can participate voluntarily. As analysed in the first part in fact, these instruments have been implemented in the Libyan context as well, where since 2017, resettlements and humanitarian evacuations have been carried out by UNHCR in collaboration with Member States. The limited pledges and commitments offered by states though, only partially balanced their policies, provoking a minimal change. A further option, Voluntary Humanitarian Returns, appeared instead as the most effective program, although it is still arguable its serious voluntary nature, if the alternative to it is an indefinite detention.

In general, these are only some of the instruments that Member States can put in place, although the lack of an EU harmonisation on legal pathways, renders the efficiency of these programs much smaller than their potential capacities As seen in the chapter in fact, the most common instrument for states is the one of resettlement as it supported by EU funds, but also others as humanitarian admissions or humanitarian visas are available, even if implemented on states' own initiatives and therefore offered to a lesser extent. Despite this, over the last years, new initiatives have been promoted, as the ones of Private Community Sponsorships' Programmes. Indeed, these permit to the civil society to contribute to migration management and offer additional legal avenues for migrants. Some of these took the form of medical evacuations and family reunifications, while others, as humanitarian corridors for example, relied on humanitarian visas. Despite the ruling of the Court of Justice of the European Union did not consider the issue of visas on humanitarian grounds an obligation for Member States, they are still free to resort to them as an additional channel for persons in need of protection. As not only the Italian government but also further Member States agreed to participate to the program, this showed the need to implement a European mechanism that civil society's organizations and the related state can put in place in view of a larger program.

In this regard in fact, as seen in the chapter, Italian NGOs proposed to the European Parliament the realization of a European Humanitarian Corridor from Libya, which could allow 50.000 refugees and asylum seekers to leave Libya. In order to realize the project and to provide a good example in that direction, Italian NGOs sent their proposal to the government, which however imposed some conditions. As seen before, the latters could in fact jeopardize the success of the project, as not properly humanitarian corridors will be put in place and no selection will be carried out by the organization themselves, which instead need to rely on UNHCR, therefore giving priority to prima facie refugees instead of other vulnerable subjects as well. Moreover, there is no place for the good practices of pre-departure orientation, usually carried out by NGOs to improve the chances of integration and activation of migrants once in the hosting country.

Although the many critics, the implementation of the Italian project could get 5.000 people in safety and represent the starting point of a larger European Humanitarian Corridor, allowing to 50.000 asylum seekers and refugees to leave the country. As the overall number of migrants in the country is much higher than this, the Italian government is called to intervene on further areas related to migration and migrants in Libya. Indeed, while providing additional means to leave the country, Italian authorities should call on Libya to address not only detention centres' management, the conditions in there, the abuses and the tortures, but also to put an end to the practice of indefinite detention itself, decriminalizing migrants' status and realizing an asylum system in the country, through the ratification of the 1951 Geneva Convention and related Protocol. To obtain all this, Italy should render the Memorandum of Understanding with Libya conditional to the respect of human rights, pushing for a grater change in the migration management in the country while at the same time implementing SAR activities in the Mediterranean and suspending any co-operation activity with Libyan authorities that contribute to the practice of pullbacks.

The project of Humanitarian Corridors from Libya could represent in fact a great opportunity for Italy which, if realized, could push for further changes and approaches towards migration management, increasing safeguards and protection not only for those who will take part to the project but also to the ones who will remain in the country.

Blibliography

Abderrahim T. (2018) *Advancing the impossible? Progress of the joint African, European and International response to the migration crisis in Libya,* Discussion Paper No. 229, ECDPM, https://ecdpm.org/publications/advancing-impossible-progress-joint-african-european-and-international-response-migration-crisis-libya/

Achilli L., (2016) *Irregular Migration to the EU and Human Smuggling in the Mediterranean. The Nexus between Organized Crime and Irregular Migration*, pp. 98- 103, Dossier: Mobility and Refugee Crisis in the Mediterranean, https://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/med.2016/IEMed_MedYearBook2016_Irregular%20Migration%20Mediterranean_Luigi_Achilli.pdf

AIRE, DCR, ECRE, ICJ (AIRE et al. 2019) *Written submissions on behalf of the AIRE centre (Advice on Individual Rights in Europe), The Dutch Refugee Council (DCR), The European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists (ICJ)*, https://www.icj.org/wp-content/uploads/2019/11/ECtHR-SS_v_Italy_final-JointTPI-ICJECREAIREDCR-English-2019.pdf

Al-Arabi (2018) *Local specificities of migration in Libya: challenges and solutions. Local specificities of migration in Libya : challenges and solutions*, Policy Briefs, 2018/04, Middle East Directions (MED), European University Institut, Robert Schuman centres for Advanced Studies, https://cadmus.eui.eu/handle/1814/52585

Amnesty (2013) *Scapegoats of fear, Rights of refugees, asylum-seekers and migrants abused in Libya*, Amnesty international Ltd, MDE 19/007/2013, https://www.amnesty.org/en/documents/MDE19/007/2013/en/

Amnesty (2015) '*Libya is full of cruelty' stories of abduction, sexual violence and abuse from migrants and refugees,* Amnesty International Ltd, MDE 19/1578/2015, https://www.amnesty.org/en/documents/mde19/1578/2015/en/

Amnesty (2015b) *Europe's sinking shame: The failure to save refugees and migrants at sea*, EUR 03/1434/2015, https://www.amnesty.org/en/documents/eur03/1434/2015/en/

Amnesty (2017) *Libya's dark web of collusion. Abuses against Europe-bond refugees and migrants*, Amnesty International Ltd, MDE 19/7561/2017 https://www.amnesty.org/en/documents/mde19/7561/2017/en/

Amnesty (2018) *Between the devil and the deep blue sea: Europe fails refugees and migrants in the central Mediterranean*, Amnesty International Ltd, EUR 30/8906/2018

Amnesty (2017b), *The Human Rights' risks of external migration policies*, Amnesty International Ltd., POL 30/6200/2017, https://www.amnesty.org/en/documents/pol30/6200/2017/en/

Amnesty (2020), *EU: Migration Pact is not a fresh start but a false start*, Press Release, https://www.amnesty.eu/news/eu-migration-pact-is-not-a-fresh-start-but-a-false-start/

Amnesty International (Amnesty,2020c), *Libya: Renewal of migration deal confirms Italy's complicity in torture of migrants and refugees*, https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/

Amnesty International, Human Rights Watch (Amnesty, HRW 2019) Written Submissions to the European Court of Human Rights on behalf of the interveners,

https://www.hrw.org/sites/default/files/supporting_resources/hrw_amnesty_international_submissions_echr.pdf

Apap J., Radjenovic A., Dobreva A. (2019) *The migration issue*, European Parliamentary Research Service, https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635542/EPRS_BRI%282019%29635542_EN.pdf

APG23 et al. (2019) *Humanitarian Corridors: implementation procedures for their extension on a European scale*, Working group of the Humanitarian Corridors Project, https://www.humanitariancorridor.org/wp-content/uploads/2019/12/REPORT_ENG_WEB.pdf

ASGI (2018) *The "Emergency Transit Mechanism" program and the resettlement from the Niger. Legal analysis, current and future concerns*, https://www.asgi.it/wp-content/uploads/2019/07/ASGI-Resettlement-ETM-ENGLISH.pdf

Association for Juridical Studies on Migration, Cairo Institute of Human Rights (ASGI, CIHRs 2020) *Complaint to the UN Human Rights Committee over the role of Italy, Malta, and Libya in violating the right to leave Libya, resulting in denial of the rights of asylum seekers*, https://www.statewatch.org/media/1267/un-asgi-cihrs-complaint-libya-pull-backs-pr-24-7-20.pdf

Atanassov N., Dumbrava C., Mentzelopoulou M., Radjenovic A. (2018), *EU* asylum*, borders and external cooperation on migration: Recent developments*, European Parliamentary Research Service, https://op.europa.eu/en/publication-detail/-/publication/152ef8b2-5ca1-11e8-ab41-01aa75ed71a1/language-en

Atilgan, C., Ertl, V., & Engelkes, S. (2017). *Failing state Libya as a Supraregional Security Threat*, pp. 66-81, Konrad Adenauer Stiftung, http://www.jstor.org/stable/resrep17545

Baldwin-Edwards M. (2006) *'Between a rock & a hard place': North Africa as a region of emigration, immigration & transit migration*, Review of African Political Economy, 33:108, 311-324, DOI: 10.1080/03056240600843089

Baldwin M.B. & Lutterbeck D. (2019) *Coping with the Libyan migration crisis*, Journal of Ethnic and Migration Studies, 45:12, 2241-2257, DOI: 10.1080/1369183X.2018.1468391

Belbeisi O. (2018) *Returned to Libyan shores and held in detention centres: What are the practical alternatives?*, Thomson Reuters Foundation, https://news.trust.org/item/20180816142408-bats4/

Bhardwaj M., (2011) *Development of Conflict in Arab Spring Libya and Syria: From Revolution to Civil War*, Global System for Sustainable Development

Campana P., (2020) *Human Smuggling: Structure and Mechanisms*, The University of Chicago, pp. 471-519, DOI: 0192-3234/2020/0049-0010

Caritas Italiana (2019) *Oltre il mare. Primo rapporto sui Corridoi umanitari in Italia e altre vie legali e sicure d'ingresso*, https://inmigration.caritas.it/sites/default/files/2019-05/corridoi%20definitivo%2015052019.pdf

Chetail V., De Braycker P., Maiani F. (2017) *Reforming the Common European Asylum System: The New European Refugee Law*, International Journal of Refugee Law, Volume 29, Issue 2, 382–385

Committee against Torture (CAT, 2017) *Concluding observations on the combined fifth and sixth periodic reports of Italy,* CAT/C/ITA/CO/5-6, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrcLgPII26jRu6

si7MAAE4jraLHqWr9%2b2%2fAP28xTQtOlsTwwjAIACRxD2YL%2fsgIQQ%2fLGUGMR3SRktWz9x3aLCRkmOABdrugHAzm2AaSNF3G%2b

Council of Europe (CoE, 2010) *Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, CPT/Inf (2010) 14, https://rm.coe.int/1680697276

Council of Europe (CoE, 2019) *Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean*, Council of Europe Commissioner for Human Rights, https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb874

Council of Europe (CoE, 2019a) *Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights, Application No. 21660/18 S.S. and others v. Italy*, https://rm.coe.int/third-party-intervention-before-the-european-court-of-human-rights-app/168098dd4d

Council of Europe (CoE,2020b) *Commissioner calls on the Italian government to suspend the co-operation activities in place with the Libyan Coast Guard that impact on the return of persons intercepted at sea to Libya*, Statement, https://www.coe.int/en/web/commissioner/-/ommissioner-calls-on-the-italian-government-to-suspend-the-co-operation-activities-in-place-with-the-libyan-coast-guard-that-impact-on-the-return-of-p

Council of the EU (2013), *COUNCIL DECISION 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya),* L 138/15, Official Journal of the European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0233&from=EN

Council of the European Union (EU Council, 2019) *Libya and the surrounding area: current situation and need for immediate action*, 11538/19, https://www.statewatch.org/media/documents/news/2019/sep/eu-council-libya-11538-19.pdf

Council of the European Union (EU Council, 2020), *Council extends the mandates of EU CSDP civilian missions for one more year,* Press release, https://www.consilium.europa.eu/en/press/press-releases/2020/06/30/council-extends-the-mandates-of-eu-csdp-civilian-missions-for-one-more-year/

Crawley H., Blitz B. (2019) *Common agenda or Europe's agenda? International protection, human rights and migration from the Horn of Africa*, Journal of Ethnic and Migration Studies, 45:12, 2258-2274, DOI: 10.1080/1369183X.2018.1468393

CSDM (2020) Information Submitted under Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concerning Italy's responsibility for the torture of migrants pulled back to Libya, https://centre-csdm.org/wp-content/uploads/2020/07/CAT-Art.-20-Inquiry-CSDM-01.07.2020.pdf

Cusumano E. (2017) *Emptying the sea with a spoon? Non-governmental providers of migrants search and rescue in the Mediterranean*, Marine policy 75, 91-98, Elsevier, https://doi.org/10.1016/j.marpol.2016.10.008

Dacrema E. (2020)., *La Libia, l'Italia e il necessario cambio di visione,* ISPI, https://www.ispionline.it/it/pubblicazione/la-libia-litalia-e-il-necessario-cambio-di-visione-25407

Dacrema E., Varvelli A. (2020)., *La relazione tra Italia e Libia: Interessi e rischi*, ISPI, https://www.ispionline.it/it/pubblicazione/le-relazioni-tra-italia-e-libia-interessi-e-rischi-26883

Darme, M., & Tahar, B. (2017) *Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges*, Report, pp. 1-162, Unhcr, Impact, Altai Consulting, https://www.unhcr.org/publications/operations/595a02b44/mixed-migration-trends-libya-changing-dynamics-protection-challenges.html

De Luca A. (January 2020), *Libia: Tregua armata*, ISPI, https://www.ispionline.it/it/pubblicazione/libia-tregua-armata-24879

De Vylder H. (2017*) X and X v. Belgium: a missed opportunity for the CJEU to rule on the state's obligations to issue humanitarian visa for those in need of protection*, Strasbourg Observer, https://strasbourgobservers.com/2017/04/14/x-and-x-v-belgium-a-missed-opportunity-for-the-cjeu-to-rule-on-the-states-obligations-to-issue-humanitarian-visa-for-those-in-need-of-protection/

Deiana C., Maheshri V., Mastrobuoni G. (2019), *Irregular Migration and the Unintended Consequences of Search and Rescue Operations in the Central Mediterranean Sea*, https://dagliano.unimi.it/wp-content/uploads/2020/02/Mastrobuoni_migrants_at_sea.pdf

Dessi A., Greco E. (2018)., *Search for stability in Libya_ OCSE's role between internal obstacles and external challenges*, IAI Research studies, New-Med research network, DOI: 978-88-3365-060-9

Di Maio M., Sciabolazza L., Molini V. (2020) *Migration in Libya, A Spatial Network Analysis,* World Bank Group, Policy Research Working Paper 9110, https://www.researchgate.net/publication/338622376_Migration_in_Libya_A_Spatial_Network_Analysis

ECRE (2017) *Protection in Europe: safe and legal access channels, ECRE's vision of Europe's role in the global Refugee protection regime: policy paper 1*, European Council on Refugees and Exiles, https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-01.pdf

ECRE (2019) *Operation 'Sophia' is Given Six More Months Without Ships*, ECRE Weekly Bulletin, https://www.ecre.org/operation-sophia-is-given-six-more-months-without-ships/

ECRE (2020) *The new Pact on Asylum and Migration: An opportunity seized or squandered?* , Statement, https://www.ecre.org/wp-content/uploads/2020/02/PACT-Statement-February-2020.pdf

EDAL (2017) CJEU-Judgment C-638/16 PPU X and X, 7 March 2017, European Database of Asylum Law, https://www.asylumlawdatabase.eu/en/content/cjeu-judgment-c-63816-ppu-x-and-x-7-march-2017

EEAS (2020), *Operation EUNAVFOR MED Irini*, https://www.operationirini.eu/about-us/

El Zaidy Z. (2017) *EU Migration Policy towards Libya: A Libyan Perspective on the Memorandum of Understanding between Italy and Libya*, Policy Paper, Friedrich Ebert Stiftung, http://library.fes.de/pdf-files/bueros/tunesien/15544.pdf

El Zaidy Z. (2019) *EU Migration Policy towards Libya: A policy of conflicting interests,* Friedrich Ebert Stiftung, https://library.fes.de/pdf-files/bueros/tunesien/15544.pdf

European Commission (2002) *Study on the Feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure*, European Union, https://www.refworld.org/docid/58ac44504.html

European Commission (EC, 2015) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda on Migration*, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0240&from=EN

European Commission (EC, 2017) *Strategy*, https://ec.europa.eu/trustfundforafrica/content/strategy_en

European Commission (EC, 2018) *Communication from the Commission to the European Parliament and the Council, Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy*, COM (2018) 635

European Commission (EC, 2019) *Follow up to the European Parliament non-legislative resolution with recommendations to the Commission on Humanitarian Visas*, https://oeil.secure.europarl.europa.eu/oeil/spdoc.do?i=31896&j=0&l=en

European Insights (EI, 2019) *How effective are existing complementary pathways for meeting protection needs?* In Legal Pathways for refugees to Europe: developments and challenges, n. 4, https://www.vuesdeurope.eu/en/brief/how-effective-are-existing-complementary-pathways-to-the-eu-for-meeting-protection-needs/

European Commission (EC, 2019) *EU Trust Fund for Africa: new migration-related actions to protect vulnerable people and foster resilience of host communities in North of Africa*, Press Release, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3461

European Commission (EC, 2020) *Migration: New Pact on Migration and Asylum*, European Union, https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package.pdf

European Commission (EC, 2020b) *A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity*, Press Release, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1706

European Commission (EC, 2020c) *Communication from the Commission on a New Pact on Migration and Asylum*, COM (2020) 609, https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN

European Parliament (EP 2014), *Humanitarian Visas Option of Obligation?* , PE 509.986, European Union, https://www.refworld.org/docid/541fcbd24.html

European Parliament (EP 2019) *Proposal for a Regulation on establishing a European Humanitarian Visa*, Legislative Train Schedule towards a new Policy on Migration, https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa

European Parliament (EP 2019b) *Revision of the Common Visa Code*, Legislative Train Schedule towards a new Policy on Migration, https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-revision-of-the-common-visa-code

European Parliamentary Research Service (EPRS, 2018) Humanitarian visa: European Added Value Assessment accompanying the European Parliament's legislative own-initiative report, https://www.europarl.europa.eu/cmsdata/150782/eprs-study-humanitarian-visas.pdf

European Parliamentary Research Service (EPRS, 2019) *Legal migration to the EU*, Briefing, https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635559/EPRS_BRI(2019)635559_EN.

pdf

European Political Strategy Centre (EPSC,2017) *Irregular Migration via the Central Mediterranean: From Emergency Responses to Systemic Solutions*, European Commission, Strategic Notes, https://ec.europa.eu/commission/sites/beta-political/files/irregular-migration-mediterranian-strategic_note_issue_22_0_en.pdf

European Resettlement Network+ (ERN+ 2018) *Humanitarian Admission programmes in Europe: Expanding complementary pathways of admission for persons in need of international protection*, coordinated by IOM, ICMC Europe, UNHCR, http://resettlement.eu/sites/icmc/files/ERN%2B%20Humanitarian%20Admission%20Programmes%20in%20Europe%20-%20Expanding%20complementary%20pathways%20of%20admission%20for%20persons%20in%20need%20of%20international%20protection.pdf

European Union Agency for Fundamental Rights (FRA 2015) *Legal entry channels to the EU for persons in need of international protection: a toolbox*, https://fra.europa.eu/sites/default/files/fra-focus_02-2015_legal-entry-to-the-eu.pdf

European Union Agency for Fundamental Rights (FRA, 2013), *Fundamental rights at Europe's southern sea borders*, Publication offices of the European Union, ISBN 978-92-9239-085-3 doi:10.2811/26971

European Union (EU, 2020) *EU Support on Migration in Libya: EU Emergency Trust Fund for Africa – North of Africa window, https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/eutf-factsheet_sept_2020-libya_0.pdf*

European Union Agency for Fundamental Rights (FRA, 2016a), Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries, Publications Office of the European Union, https://fra.europa.eu/en/publication/2016/guidance-how-reduce-risk-refoulement-external-border-management-when-working-or

Fazzini A. (2020) *Il caso S.S. and Others v. Italy nel quadro dell'esternalizzazione delle frontiere in Libia: osservazioni sui possibili scenari al vaglio della Corte di Strasburgo*, n.2/2020 in Diritto, Immigrazione e Cittadinanza, https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-2-2020/594-il-caso-s-s-and-others-v-italy-nel-quadro-dell-esternalizzazione-delle-frontiere-in-libia-osservazioni-sui-possibili-scenari-al-vaglio-della-corte-di-strasburgo/file

FCEI, Sant'Egidio (2019) *European Humanitarian Corridors Concept Paper*, https://www.nev.it/nev/wp-content/uploads/2019/12/191205-Concept-Note.pdf

Frasca E. (2019) *L'ordinanza del Tribunale di Roma del 21 febbraio 2019 che obbliga il Ministero degli Esteri all'immediato rilascio di un visto per motivi umanitari restituisce un senso all'articolo 25 del Codice dei Visti Europeo: politiche del diritto ed esigenza di tutela a confronto*, Diritto, Immigrazione e Cittadinanza, Fascicolo n.3, https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/note-e-commenti/fascicolo-2019-3/482-l-ordinanza-del-tribunale-di-roma-del-21-febbraio-2019-che-obbliga-il-ministero-degli-esteri-all-immediato-rilascio-di-un-visto-per-motivi-umanitari-restituisce-un-senso-all-articolo-25-del-codice-dei-visti-europeo-politiche-del-diritto-ed-esigenze-di-tu/file

Frasca E. (2019b) *Private Sponsorship Programmes in Europe and the Rule of Law: Towards a Greater Involvement of Private Actors in International Protection*,

https://www.researchgate.net/publication/337243800_Private_Sponsorship_Programmes_in_Europe_and_the_Rule_of_Law_Towards_a_Greater_Involvement_of_Private_Actors_in_International_Protection

Frontex (2020) Flash report-Irregular migration into EU at lowest level since 2013, News Release, https://frontex.europa.eu/media-centre/news-release/flash-report-irregular-migration-into-eu-at-lowest-level-since-2013-n5pHiA

Gatta, F. (2018) *Legal avenues to access international protection in the European Union: past actions and future perspectives*, European Journal of Human Rights, n.3, https://alfresco.uclouvain.be/alfresco/service/guest/streamDownload/workspace/SpacesStore/c62277be-572b-4ec4-a54c-f5309395077b/legal%20avenues_gatta_2018_JEDH.pdf?guest=true

GDP (2020), I*mmigration Detention in Libya, Detention centres*, Global Detention Project, https://www.globaldetentionproject.org/countries/africa/libya#detention-centres

Geneva Convention (GC, 1951) *Convention and Protocol Relating to the Status of Refugees*, https://www.unhcr.org/3b66c2aa10

GLAN, ASGI, ARCI (2020), *Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's 'Support to Integrated Border and Migration Management in Libya (IBM) Programme,* https://www.asgi.it/wp-content/uploads/2020/04/GLAN-ASGI-ARCI-ECA-Libya-complaint-expert-opinion.pdf

Global Legal Action Network (GLAN, 2019) *Privatised Migrant Abuse by Italy and Libya*, https://www.glanlaw.org/nivincase

Global Legal Action Network (GLAN, 2020) *Italy's coordination of Libyan Coast Guard*, https://www.glanlaw.org/ss-case

Gois P., Falchi G. (2017) *The third way. Humanitarian Corridors in Peacetime as a (local) Civil Society response to a EU's common failure*, REMHU, Rev. Interdiscip. Mobil. Hum., Brasília, v. 25, n. 51, p. 59-75, https://www.scielo.br/scielo.php?script=sci_arttext&pid=S1980-85852017000300059

Gori G. (2020) *Interview on the project of Humanitarian Corridors from Libya*, operator of the Italian Federation of Evangelical Churches

Grange M., Flynn M. (2015) *Immigration Detention in Libya*, Global Detention Project, https://www.refworld.org/pdfid/5567387e4.pdf

GRETA (2019) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Second evaluation round*, GRETA 28, Council of Europe, Group of Experts on Action Against Trafficking in Human Beings

Guazzone, L. (2016). *Storia contemporanea del Mondo arabo: I paesi arabi dall'impero ottomano ad oggi*. Milano, Italy: Mondadori università.

Hamood S. (2006) *African transit migration through Libya to Europe: the human cost,* The American University in Cairo, Forced Migration and Refugee Studies, http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/African_Transit_Migration_through_Libya_-_Jan_2006_000.pdf

Heller C. (2019) *Privatised Push-Back of the Nivin*, Forensic Oceanography Team, https://forensic-architecture.org/investigation/nivin

Herbert M. (2019), *Less than the sum of its parts-Europe's fixation with Libyan border security*, Institute for Security Studies, Policy Brief 126, https://www.africaportal.org/publications/less-sum-its-parts-europes-fixation-libyan-border-security/

Human Rights Council (2013) *Report of the Special Rapporteur on the human rights of migrants, François Crépeau. Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*, General Assembly, A/HRC/23/46, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf

Human Rights Watch (HRW, 2009) *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, 1-56432-537-7, https://www.hrw.org/report/2009/09/21/pushed-back-pushed-around/italys-forced-return-boat-migrants-and-asylum-seekers

Human Rights Watch (HRW, 2019) *No escape from hell: EU Policies contribute to abuse of migrants in Libya*, Human Rights Watch, Report, https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya

Human Rights Watch (HRW, 2020) *Italy: Halt Abusive Migration Cooperation with Libya, As Abuse Is Known, Material Assistance Makes Rome Complicit*, https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya

Human Rights Watch (HRW 2020b) *Italy: Halt Abusive Migration Cooperation with Libya*, News, https://www.hrw.org/news/2020/02/12/italy-halt-abusive-migration-cooperation-libya

International Crisis Group (ICG, 2016) *The Libyan Political Agreement: Time for a Reset*, Middle East and North Africa Report n. 170, https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libyan-political-agreement-time-reset

IDOS (2019) *Dossier Statistico Immigrazione 2019*, https://immigrazione.it/docs/2019/scheda-dossier-idos-2019.pdf

ILO (n.d.), *Euro-Mediterranean Partnership (EUROMED)*, https://www.ilo.org/brussels/ilo-and-eu/euro-mediterranean-partnership/lang--en/index.htm

International Maritime Organization (IMO, 2004), *Resolution MSC.167(78), Guidelines on the Treatment of Persons Rescued At Sea*, https://www.refworld.org/docid/432acb464.html

IOM (2015), *Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015,* Press release, https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom

IOM (2017), *The Central Mediterranean route: migrant fatalities*, IOM's Global Migration Data Analysis Centre, https://missingmigrants.iom.int/sites/default/files/c-med-fatalities-briefing-july-2017.pdf

IOM (2018) Return and Reintegration Key Highlights, IOM, https://www.iom.int/sites/default/files/our_work/DMM/AVRR/2018_return_and_reintegration_key_highlights.pdf

IOM Libya (2019) *Annual Report*, IOM UN Migration, https://libya.iom.int/news/iom-libya-annual-report-2019

IOM (2019) *Living and working in the midst of conflict: The Status of Long-term Migrants in Libya*, IOM, UN migration, ISBN 978-92-9068-827-3

IOM (2020) *More than 50.000 Migrants Benefited from Voluntary Humanitarian Return Assistance from Libya since 2015*, Press release, https://www.iom.int/news/more-50000-migrants-benefited-voluntary-humanitarian-return-assistance-libya-2015

Kuschminder, K. & Triandafyllidou A. (2019) *Smuggling, Trafficking and Extortion: New Conceptual and Policy Challenges on the Libyan Route to Europe*, Antipode, DOI:: 10.1111/anti.12579

Lax V., Giuffré M. (2017) *The Raise of Consensual Containment: From 'Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows*, Research Handbook on International Refugee Law (Edward Elgar, forthcoming), S. Juss (ed), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

Libya' (IBM) Programme, https://www.asgi.it/wp-content/uploads/2020/04/GLAN-ASGI-ARCI-ECA-Libya-complaint-expert-opinion.pdf

Libyan Law: Cabinet Decree 386 (2014) https://security-legislation.ly/sites/default/files/lois/1321-Decree%20No.%20%28386%29%20of%202014_EN.pdf

Libyan Law: Law No. 6 (1987) *on organizing the entry, residence and exit of foreigners in Libya,* https://security-legislation.ly/sites/default/files/lois/1214-Law%20No.%20(6)%20of%201987_EN.pdf

Loschi C., Raineri L., Strazzari F. (2018), *The implementation of EU Crisis Response in Libya: Bridging theory and practice*, Eunpack project, European Union, https://www.researchgate.net/publication/324897864_The_implementation_of_EU_Crisis_Response_in_Libya_Bridging_theory_and_practice

Lutterbeck D., (2013) *Across the Desert, Across the Sea: Migrant Smuggling into and from Libya*, pp. 137-166 in P. Seeberg et al. (eds.), Migration, Security, and Citizenship in the Middle East, DOI: 10.1057/9781137345417_7

Majcher I., Flynn M., Grange M. (2020), Immigration Detention in the European Union: In the shadow o the "Crisis", European Studies of Population 22, ISBN 978-3-030-33868-8, https://doi.org/10.1007/978-3-030-33869-5

Malakooti, A. (2019) *The Political Economy of Migrant Detention in Libya: Understanding the players and the business models*, The Global Initiative, Clingendael, https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/migrant_detention_libya_-_final_report.pdf

Mallardo, A. (2017) *Humanitarian Corridors: A Tool to Respond to the Refugees' Crisis*. Available at: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/05/humanitarian

Mandalari C. (2018) *La questione delle vie di accesso legali e sicure dei rifugiati nell'Unione Europea: problemi e prospettive del programma "corridoi umanitari"*, Diritti Comparati: comparare i diritti fondamentali in Europa, https://www.dirittocomparati.it/la-questione-delle-vie-di-accesso-legali-e-sicure-dei-rifugiati-nellunione-europea-problemi-e-prospettive-del-programma-corridoi-umanitari/

Marinai S. (2020), *L'Unione europea e i canali di accesso legale per i soggetti bisognosi di protezione internazionale*, in "Diritto pubblico, Rivista fondata da Andrea Orsi Battaglini" 1/2020, pp. 57-77, doi: 10.1438/96675

Martin Baldwin-Edwards, Brad K. Blitz & Heaven Crawley (2019) *The politics of evidence-based policy in Europe's 'migration crisis'*, Journal of Ethnic and Migration Studies, 45:12, 2139-2155, DOI: 10.1080/1369183X.2018.146830

Mediterranean Hope (MH, 2019) *Refugees: A European Humanitarian Corridor To Be Opened in Libya*, Mediterranean Hope, Italian Federation of Evangelical Churches, https://www.mediterraneanhope.com/2019/05/28/refugees-a-european-humanitarian-corridor-to-be-opened-in-libya/

Mezran, K. (2020)., *La Libia a un anno dall'offensiva di Haftar*, ISPI, https://www.ispionline.it/it/pubblicazione/la-libia-un-anno-dalloffensiva-di-haftar-25493

Micallef M. (2017) *The Human Conveyor Belt : trends in human trafficking and smuggling in post-revolution Libya*, The Global Initiative against transnational organized crime, https://globalinitiative.net/wp-content/uploads/2017/03/GI-Human-Conveyor-Belt-Human-Smuggling-Libya-2017-.pdf

Missaglia N. (2017), *Chaos in Libya: A background*, https://www.ispionline.it/it/pubblicazione/chaos-libya-background-17108

Mixed Migration Centre (2019) *What makes refugees and migrants vulnerable to detention in Libya? – A microlevel study of the determinants of detention*, Research Report, http://www.mixedmigration.org/resource/what-makes-refugees-and-migrants-vulnerable-to-detention-in-libya/

Morana W. (2020), *The OCSE and the Libyan Crisis,* Security and Human Rights, 1-16, Brill nijhoff, https://doi.org/10.1163/18750230-03001005

Moreno-Lax V. (2017) *Asylum Visas as an Obligation under EU Law: Case PPU C-638/16 X,X v Belgium*, in Asylum, European Court of Justice, Visas, https://eumigrationlawblog.eu/asylum-visas-as-an-obligation-under-eu-law-case-ppu-c-63816-x-x-v-etat-belge/

Morozzo della Rocca P. (2017) *I due protocolli d'intesa sui "corridoi umanitari" tra alcuni enti di ispirazione religiosa ed il governo ed il loro possibile impatto sulle politiche di asilo e immigrazione*, Diritto, Immigrazione e Cittadinanza, Fascicolo n.1/2017, https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-2017-n-1/60-i-due-protocolli-d-intesa-sui-corridoi-umanitari-tra-alcuni-enti-di-ispirazione-religiosa-ed-il-governo-ed-il-loro-possibile-impatto-sulle-politiche-di-asilo-e-immigrazione

MSF (2019) *Closure of detention centre exposes migrants and refugees to even worse conditions*, Press Release, https://www.msf.org/worsening-conditions-libya-follow-closure-detention-centre

MSF (2020) *Arbitrary detention in Libya must end as asylum seeker dies in detention centre fire*, Press Release, https://www.msf.org/arbitrary-detention-libya-must-end-asylum-seeker-dies-detention-centre-fire

Nethery A., Hirsch A. (2020) *Externalisation of Migration Control Policies: An introduction*, Comparative Network on Refugee Externalisation Policies (CONREP), Policy Paper,

https://arts.unimelb.edu.au/__data/assets/pdf_file/0007/3432571/Policy-Paper_Externalisation-of-Migration-Control-Policies.pdf

NEV (2019) *Italy to lead on organising European Humanitarian Corridors*, Evangelical News, Press agency of the Italian Federation of Evangelical Churches, https://www.nev.it/nev/2019/10/09/italy-to-lead-on-organising-european-humanitarian-corridors/

Office of the High Commissioner for Human Rights (OHCHR,2017) *Committee against Torture considers report of Italy*, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22399&LangID=E

OHCHR (n.d.) , *UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity*, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E7

Palm A. (2017), *The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?*, EU Immigration and Asylum Law and Policy, http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/

Panchetti B., Schnyder von Wartensee I. (2020) *The Humanitarian Corridors Experience*, Report, Human lines, https://www.humanlines.org/en/the-humanitarian-corridors-experience-5.html

Panebianco S. (2019) The Mediterranean migration crisis: humanitarian practices and migration governance in Italy, Contemporary Italian Politics, 11:4, 386-400, DOI: 10.1080/23248823.2019.1679961

Panizzon M., Van Riemsdijk M. (2019*) Introduction to Special issue: 'migration governance in an era of large movements: a multi-level approach'*, Journal of Ethnic and Migration Studies, 45:8, 1225-1241, DOI: 10.1080/1369183X.2018.1441600

Papastavridis E. (2020) *The European Convention of Human Rights and Migration at Sea: Reading the "Jurisdictional Threshold" of the Convention Under the Law of the Sea Paradigm*, German Law Journal 21, 417–435, doi:10.1017/glj.2020.23

Pascale G. (2019) *Is Italy Internationally Responsible for the Gross Human Rights Violations against Migrants in Libya?*, Questions of International Law, Zoom-in 56, 35-58, http://www.qil-qdi.org/wp-content/uploads/2019/03/03_Externalizing-migration-control_PASCALE_FIN_mod.pdf

Pasquero A. (2020) La Comunicazione alla Corte Penale Internazionale sulle responsabilità dei Leader Europei per i crimini contro l'umanità commessi nel Mediterraneo e in Libia. Una lettura critica, Diritto, Immigrazione e Cittadinanza, Fascicolo n.1, ISSN 1972-4799

Pastore et al., (2015) The Changing Dynamics of Cross-border Human Smuggling and Trafficking in the Mediterranean, New-Med research network, IAI, https://www.iai.it/en/pubblicazioni/changing-dynamics-cross-border-human-smuggling-and-trafficking-mediterranean

Permanent Italian Representative to the Council of Europe (PIR,2020) *Reply of Italian authorities to the Commissioner*, https://rm.coe.int/reply-of-the-italian-authorities-to-the-letter-of-dunja-mijatovic-coun/16809c902d

Phillips M. (2020), *Managing a Multiplicity of Interests: The Case of Irregular Migration from Libya*, Migration and Society: Advances in Research 3, 89–97, doi:10.3167/arms.2020.111407

Porsia N. (2015) *Smuggling networks in Libya*, Freelance journalist, https://blamingtherescuers.org/assets/annexes/Porsia_Human_Smuggling_in_the_Central_Mediterranean.pdf

Pusztai W. (2020)., *Turkey and Russia's Libyan adventure is a European Problem,* ISPI, https://www.ispionline.it/it/pubblicazione/turkey-and-russias-libyan-adventure-european-problem-26807

Reitano T. (2015), *A Perilous but Profitable Crossing: The Changing Nature of Migrant Smuggling through sub-Saharan Africa to Europe and EU Migration Policy (2012-2015)*, The European Review of Organised Crime 2(1), 1-23, ISSN: 2312-1653

Reitano T., Ruiz-Benitez L. (2018) *Understanding contemporary human smuggling as a vector in migration: A field guide for migration management and humanitarian practitioners*, The Global Initiative against transnational organized crime, https://globalinitiative.net/understanding_human_smuggling/

Reitano T., Tinti P., (2015) S*urvive and advance: The economics of smuggling refugees and migrants into Europe*, ISS, The Global Initiative, ISS Paper 289, https://globalinitiative.net/survive-and-advance-the-economics-of-smuggling-refugees-and-migrants-into-europe/

Reyhani, A., Gomez C., Mayer, M., (2019) *Challenging the Externalised Obstruction of Asylum – The Application of the Right to Asylum to EU Cooperation with Libyan Coast Guards*, http://dx.doi.org/10.2139/ssrn.3361889

Ricci C. (2020). *The Necessity for Alternative Legal Pathways: The Best Practice of Humanitarian Corridors Opened by Private Sponsors in Italy*. German Law Journal 21, 265–283. https://doi.org/10.1017/glj.2020.7

Rome Statute of the International Criminal Court, 1998, https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf

Saini Fasanotti F. (2020) *L'Europa e la Libia: Cosa (non) ci ha insegnato Berlino*, https://www.ispionline.it/it/pubblicazione/leuropa-e-la-libia-cosa-non-ci-ha-insegnato-berlino-25573

Sant'Egidio (2019) *Humanitarian Corridors in Europe*, Dossier: Humanitarian Corridors in Italy, France, Belgium and Andorra, The Principality of Monaco, https://www.santegidio.org/downloads/Dossier-Humanitarian-Corridors-DEF.pdf

Share Network (2019) *Fostering community sponsorships across Europe*, Caritas Europa, International Catholic Migration Commission, https://www.icmc.net/wp-content/uploads/2019/11/191030-icmc-europe-caritas-fostering-community-sponsorships-europe-en.pdf

Shatz O., Branco J. (2019) *Communication to the Office of the Prosecutor of the International Criminal Court Pursuant to the Article 15 of the Rome Statute*, https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf

Shaw M., Mangan F., (2015) *Enforcing 'Our Law' When the State Breaks Down: The Case of Protection Economies in Libya and Their Political Consequences*, Hague J Rule Law (2015) 7:99–110, DOI 10.1007/s40803-015-0008-4

Sossai, M. (2017) *Canali di ingresso legale e sicuro dei migranti in Europa: il modello dei "corridoi umanitari*". In U. Curi (a cura di), Vergogna ed esclusione. L'Europa di fronte alla sfida dell'emigrazione (pp. 75-89). Roma: Castelvecchi

Statewatch (2020) *Open letter asking the International Maritime Organization (IMO) to deregister the Libyan SAR zone*, https://www.statewatch.org/media/1203/imo-letter-29-6-20.pdf

Statewatch (2020b) *Italy renews Memorandum with Libya, as evidence of a secret Malta-Libya deal surfaces*, https://www.statewatch.org/analyses/2020/italy-renews-memorandum-with-libya-as-evidence-of-a-secret-malta-libya-deal-surfaces/

Starita M. (2020) *Il principio del non-refoulement tra controllo dell'accesso al territorio dell'Unione europea e protezione dei diritti umani*, Diritto Pubblico, Fascicolo 1, 141-163, Il Mulino, ISSN 1721-8985, doi: 10.1438/96679

Travis A. (2014) *UK axes support for Mediterranean migrant rescue operation*, The Guardian, https://www.theguardian.com/politics/2014/oct/27/uk-mediterranean-migrant-rescue-plan

Triandafyllidou, A., Bartolini, L. and C.F. Guidi (2019) *Exploring the Links Between Enhancing Regular Pathways and Discouraging Irregular Migration*, IOM: Geneva.

UNHCR (2011) *UNHCR Resettlement Handbook*, Division for International Protection, Geneva, https://www.unhcr.org/46f7c0ee2.pdf

UNHCR (2019) *Complementary Pathways for Admission of Refugees to Third Countries*, UNHCR Division of International Protection (DIP), https://www.refworld.org/docid/5cebf3fc4.html

UNHCR (2020), Data Portal Refugee Situation, https://data2.unhcr.org/en/situations/mediterranean/location/5205

UNHCR (2020b) UNHCR Recommendations for the European Commission's proposed Pact on Migration and Asylum, https://www.unhcr.org/publications/euroseries/5e60d1847/unhcr-recommendations-european-commissions-proposed-pact-migration-asylum.html

UNHCR (2020c) *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*, UN High Commissioner for Refugees, https://www.refworld.org/docid/5f1edee24.html

UNHCR (2020d) *Operational Portal Refugee Situations in Libya*, https://data2.unhcr.org/en/country/lby

UNHCR (2020e) *2019 Year-End report on the Operation in Libya*, Global Focus: UNHCR Operations Worldwide, https://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2019-Libya-eng.pdf

UNHCR (2020f), *Factsheet Libya*, https://reporting.unhcr.org/sites/default/files/UNHCR%20Libya%20Fact%20Sheet%20-%20September%202020.pdf

UNHCR (n.d.) *Information on UNHCR Resettlement*, https://www.unhcr.org/information-on-unhcr-resettlement.html#:~:text=What%20is%20refugee%20resettlement%3F,refugees%20%E2%80%90%20with%20permanent%20residence%20status

UNSC (2003), *Resolution 1506*, https://www.sipri.org/sites/default/files/2016-03/N0349881.pdf

UN General Assembly (2018), *Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to Libya*, https://www.refworld.org/docid/5b4c60664.html

UNSMIL (2020), *Report of the Secretary-General*, S/2020/360 https://unsmil.unmissions.org/sites/default/files/s_2020_360_e.pdf

UNSMIL, OHCHR (2016) *'Detained and dehumanised' Report on Human Rights abuses against migrants in Libya*, https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf

Vari E. (2020) *Italy-Libya Memorandum of Understanding: Italy's International s International Obligations*, 43 HASTINGS INT'L & COMP. L. Rev. 105, Available at: https://repository.uchastings.edu/hastings_international_comparative_law_review/vol43/iss1/5

Winer J. (2019) *Origins of the Libyan conflict and options for its resolution,* Middle East Institute, https://www.mei.edu/publications/origins-libyan-conflict-and-options-its-resolution

Zaptia S. (2020)., *The Berlin Conference on Libya: Conference Conclusions* https://www.libyaherald.com/2020/01/20/the-berlin-conference-on-libya-conference-conclusions/

Zampagni et al., (2017) *Migrants in Countries in Crisis: Libya Case Study: An Unending Crisis – Responses of Migrants, States and Organisations to the 2011 Libya Crisis*. International Centre for Migration Policy Development, Vienna. https://reliefweb.int/sites/reliefweb.int/files/resources/Libya_CaseStudy_FINAL.pdf.