The Borders of Responsibility

Migration Control in the Mediterranean Sea

KIRI OLIVIA SANTER

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Global and Insurgent Legalities

A series edited by Eve Darian-Smith
and Jonathan Goldberg-Hiller

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MIGRATION CONTROL IN
THE MEDITERRANEAN SEA

Kiri Olivia Santer

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This book is dedicated to all those who have taken to the sea in search of a better life, and to those who struggle with them for equal rights and safe routes of flight across and around the Mediterranean.

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Abbreviations

AICS	Agenzia Italiana per la cooperazione allo sviluppo (Italian Agency for Development and Cooperation)
AIS	automatic identification system
ASGI	Associazione per gli studi giuridici sull'immigrazione (Association for Juridical Studies on Immigration) (Italy)
AVR	assisted voluntary return
DCIM	Directorate for Combatting Illegal Migration (Libyan Ministry of the Interior)
DG DEVCO	Directorate General for International Cooperation Development (EU; now DG International Partnerships)
DG Home	Directorate General for Migration and Home Affairs (EU)
DG NEAR	Directorate General for Neighborhood and Enlargement Negotiations (EU)
ECDIS	Electronic Chart Display and Information System
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDF	European Development Fund
EEAS	European External Action Service
EEZ	Exclusive Economic Zone
ENP	European Neighborhood Policy

EP	European Parliament
EUBAM	EU Border Assistance Mission
EUNAVFOR Med	European Union Naval Force Mediterranean
EUTF	European Union Emergency Trust Fund for Africa
FOIA	Freedom of Information Act
GACS	General Administration for Coastal Security (Libya)
GISIS	Global Integrated Shipping Information System
GLAN	Global Legal Action Network
GNA	Government of National Accord (Libya)
IBM	integrated border management
ICMPD	International Centre for Migration Policy Development
IDP	internally displaced person
IMO	International Maritime Organization
INGO	international nongovernmental organization
IO	international organization
IOM	International Organization for Migration
ITMRCC	Italian Maritime Rescue Coordination Center
JRCC	Joint Rescue Coordination Center (Tripoli)
LMRCC	Libyan Maritime Rescue Coordination Center
LYCG	Libyan Coast Guard
MAECI	Ministero degli affari esteri e della cooperazione internazionale (Italian Ministry of Foreign Affairs and International Cooperation)
MRCC	Maritime Rescue Coordination Center
MSF	Médecins sans Frontières
NGO	nongovernmental organization
NIEO	New International Economic Order

OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OpCom	operational committee
PD	Partito Democratico (Italy)
RHIB	rigid-hulled inflatable boat (aka zodiac)
SAR	search and rescue
SDC	Swiss Agency for Development and Cooperation
SEM	State Secretariat for Migration (Switzerland)
SOLAS	International Convention for the Safety of Life at Sea
SRR	Search and Rescue Region
TAR	Tribunale amministrativo regionale (regional administrative court)
UNCLOS	UN Convention on the Law of the Sea
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
VHR	voluntary humanitarian return

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This book plays out against the backdrop of political struggles that continue to take place across and against Europe's violent borders. I want to acknowledge the essential work of Watch the Med Alarm Phone, which has fundamentally shaped the arguments of this book.

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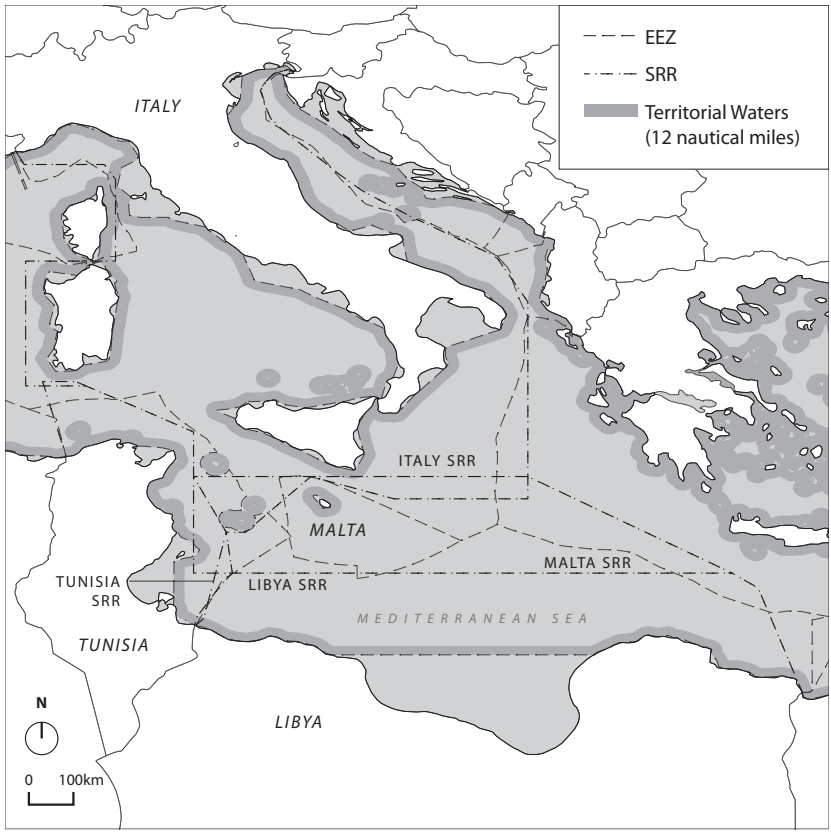
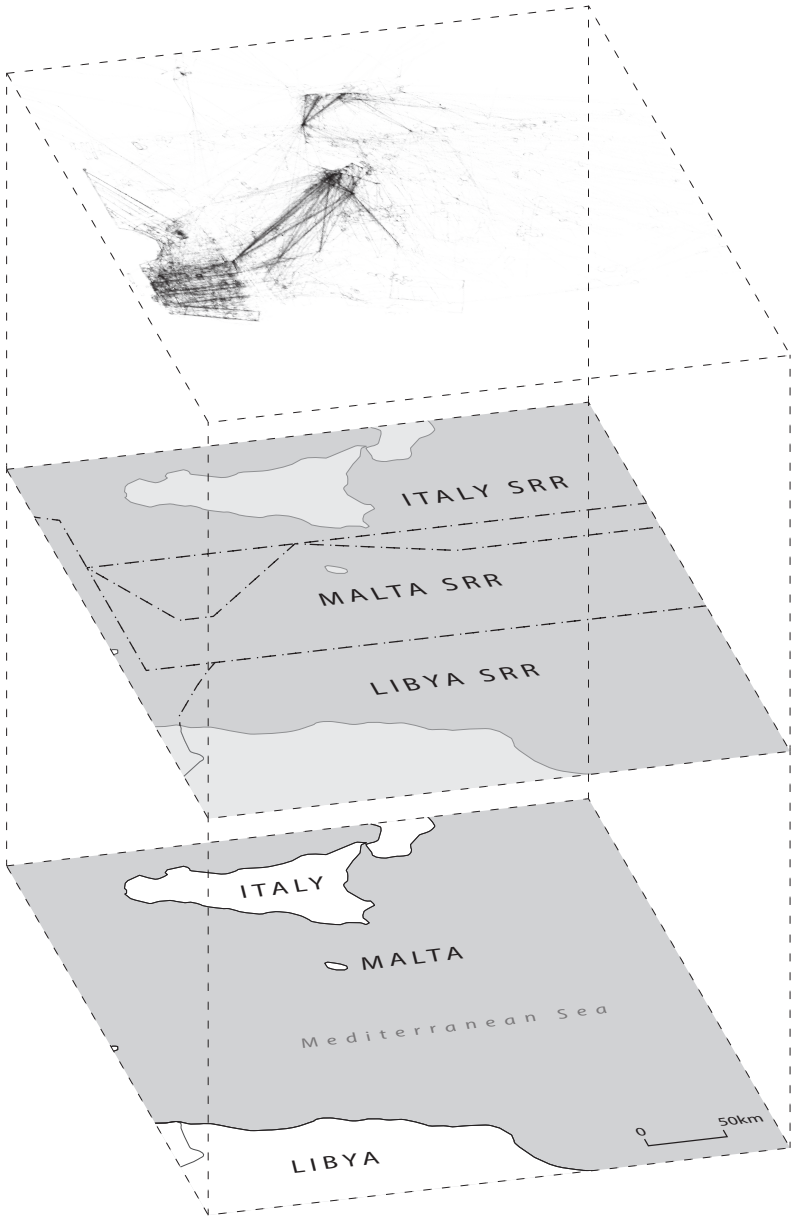
MAP 1. The Central Mediterranean Sea



MAP 2. Legal zones of the sea, including Exclusive Economic Zones (EEZs) and Search and Rescue Regions (SRRs), as provided by UNCLOS, the UN Convention on the Law of the Sea.



MAP 3. The top layer shows the Frontex drone search pattern and tracks between May 2021, when it started operating, and June 2022. Flight tracks have been accessed and analyzed by Border Forensics and published in 2022 in a report with Human Rights Watch. The axonometric view shows the disproportionate presence of official European actors in the skies above the Libyan SRR during the time when they have gradually pulled their naval assets away from these waters.

Introduction

As I squinted to adjust to the darkness, I could see the flames of the Bouri oil field burning in the distance.[1] It was an arresting sight for someone like me who had never been anywhere close to an oil platform, let alone seen one from a ship. It was around midnight, and we had been at sea for several days. The tall gas flare tearing through the darkness reminded me that we were not far from Libyan shores. Our boat had in fact stopped some one hundred kilometers off the coast of Libya. It was October 2018, and I was standing on the bridge of the *Aquarius*, a rescue vessel run by the nongovernmental organizations (NGOs) SOS Méditerranée and Médecins sans Frontières (MSF). It felt lonely there on the black water, which stretched out all around us.

Our boat had been at a halt for some time. I tore my gaze away from the hypnotic flame, unsticking my forehead from the glass of the bridge's front window, and turned around. In front of me, alongside the ship's steering controls, the navigation map was sprinkled with little dots flashing with the signals of boats close by. The map showed several supply vessels making their way to and from Sabratah, the closest Libyan port. Gas would soon be pumped into their large hulls and they would be on their way again. Some would be heading north to Malta, others elsewhere, crossing the path of other oil tankers on their way. It struck me that the loneliness induced by the black blanket of obscurity around us and the velvet tranquility of the waves was illusory: We were certainly not alone. Cargo ships and fishing vessels surrounded us. We were, after all, still in the middle of the Mediterranean, one of the busiest and most surveilled stretches of sea in the world.

A voice crackled through the radio and interrupted my thoughts, bringing me abruptly back to the immediate situation on the bridge. Alongside me was the chief officer of the rescue ship, Vassilis,[2] and the captain, Hans. A maritime patrol aircraft reported that somewhere in our vicinity was a rubber boat with around a hundred people on board who needed rescuing. The

plane informed us that the Maritime Rescue Coordination Center (MRCC) in Rome had tasked a supply vessel—the *Emerald Blue*—with carrying out the rescue of the vessel in distress. However, the aircraft reported that the supply vessel could no longer be located and asked whether the *Aquarius* had had any contact with it. "Negative, sir," replied our captain. Then Vassilis shouted, "Someone call Jim!" Jim was the ship's search and rescue (SAR) coordinator. There was a clear division of labor on the *Aquarius*. The maritime staff looked after the ship and its upkeep and cleanliness and made sure it complied with official regulations and safety requirements.[3] The rescue team employed by SOS Méditerranée consisted of a dozen people (predominantly men) in charge of carrying out the rescues when a boat in distress was spotted or reported by other communication channels. At the head of this team was the SAR coordinator. There was also a medical team from MSF that included a head of mission, two nurses, a doctor, a humanitarian affairs officer, and a communications officer. And I was there, as research and evidence officer. As it was becoming clearer that our ship might be required to support a rescue operation, Jim was needed on the bridge to evaluate the situation, to communicate with maritime authorities (usually Italian, Maltese, Libyan, or Tunisian, but sometimes also other national authorities) or other "assets" in the vicinity,[4] and to give orders on when and how to proceed with advancing toward a boat in distress.

I went to fetch Jim. He came up to the bridge to join me, the captain, and the second mate. Jim stood behind the captain where the nautical charts were laid out. He reached for the phone to call the Italian Maritime Rescue Coordination Center (ITMRCC) for instructions: "Good evening, sir, this is *Aquarius*. We have been informed by maritime patrol aircraft *Albatros 3* that there is a boat in distress close to Sabratah oil fields. We would like to know what your instructions are for us. We have a medical crew ready to assist and a professional team of rescuers." Jim was gruff and in his thirties. He had previously served in military operations and had been working in the SAR world in the Mediterranean for several years. His formal training had given him formidable skills in communicating with authorities, and my time on the ship had taught me that he expected professionalism in return. So it surprised me when, after a few seconds on the phone I heard him stutter "Sir, I . . . , sir . . . , in all due respect sir. . . ." The person on the other end of the line was seemingly not letting him finish his point. His tone got colder: "Sir, we have tried contacting the Joint Rescue Coordination Centre Tripoli multiple times, via VHF,[5] via radio, via phone, via email these past four days to request coordination for SAR operations! This has all been

without success. We are requesting the coordination of ITMRCC as the best-suited authority in this area. We will now alter our course toward the given position." He hung up and angrily announced, "ITMRCC say they cannot coordinate this SAR event."

Over the course of the next few hours, the crew and I monitored the radar, poring over maps and standing by the radio. An hour or so later, the Italian MRCC called to inform us that a rescue had been performed by the Libyan Coast Guard. Jim asked pointedly if the person on the phone could give him a reference number for the rescue and the position of the rescued boat. The Italian authorities were unable to do so. Jim hung up with a look of disgust on his face: "You wonder if they might even be capable of lying about these things nowadays," he spat.

We remained on the edge of our seats, dependent on whatever information trickled into the bridge by whatever channel. The captain could not move the ship any closer to where the aircraft told us the boat was; I looked at the screen of the ECDIS (Electronic Chart Display and Information System) and could distinctly see the dotted line indicating the perimeter that delimited the security zone around the oil rig. A few minutes later, a crackling voice erupted from the radio. It was *Emerald Blue* calling *Verita Cinque*, another supply vessel in the area. We clearly heard the former communicating to the latter: "There are migrants on board."

The Libyan Coast Guard remained unreachable on channel 16,[6] despite the SAR coordinator's repeated attempts to contact it. Jim called the Italians back. He informed them that a merchant ship either was in the process of rescuing or had rescued people close by: "Either the information you provided us earlier was inaccurate, or there is a second rescue under way," he added stonily. "Sir, we have medical teams onboard and a vessel equipped for rescues. The *Aquarius* remains ready to assist at any time if needed." He put the phone down and tried to call the Libyan Coast Guard again, to no avail. Then he called the merchant ship over the radio again: "*Emerald Blue, Emerald Blue*, this is *Aquarius*, can you hear me?"

Two minutes later, a male voice came through the ship's radio. He thanked the *Aquarius* for its offer of collaboration but assured us that his crew had it all under control. He added that they would be in touch if there was any need. It was unclear what would happen to the rescued people on board the *Emerald Blue*, but there was a definite risk that they would get pushed back to Libya. Our forlorn crew started making their way to bed one by one, and I eventually followed suit, wondering if I would be able to sleep or whether we would get called on during the night to assist with another rescue.

The next morning, after a short but at least uninterrupted night of sleep, I sat back at the computer station on the bridge and was joined shortly by Jim and François, the head of MSF operations. We examined the radar data from the previous night and tried to piece together what may have happened to *Emerald Blue*. After some difficulty, we managed to spot its radar signal among all the other luminous dots. The recorded data was patchy; although this is not technically allowed, some ships turn their AIS (automatic identification system) signal on and off to remain discreet.[7] The *Emerald Blue's* AIS signal thus flickered on and off while we fast-forwarded through the data from the night before. On the screen, we watched *Emerald Blue* move into the vicinity of the oil platform. It lingered there for several hours. And suddenly, at around 2 a.m., it headed south, toward the Libyan coast. The icon finally disappeared a few miles off Az-Zawiyyah, a city on Libya's northwestern coast.

Exclusion, Maritime Controversy, and the Crafting of Non/Influence

Over the past two decades, the Mediterranean Sea has become the locus of a huge controversy. People seeking to secure their lives, livelihoods, freedom, or the well-being of their children leave the shores of northern Africa or Turkey in makeshift boats. They launch themselves into these treacherous waters, aware that they may face death but pulled forward by the hope that a better life awaits them on the other side, if they make it. They will either reach their desired destination by their own means, be rescued by a bigger ship that will bring them to Europe, be intercepted and brought back to where they started from, or drown. The controversy that has developed involves the outcome of their voyage. It plays out across landscapes of law where various actors—not all of them present in the seascape themselves—try to influence the triad of rescue, interception, and death. Perhaps nowhere is this controversy so stark as in the Central Mediterranean—regularly referred to as the world's deadliest border. A few years ago, in 2013, when a series of deadly shipwrecks took place off the shores of Lampedusa, there was general uproar. The media flocked to the area. The pope called it a disgrace. Politicians called for international cooperation to stop it from happening again. Since then, the shipwrecks have not stopped. Rather, the border has become harsher, and the technologies of control of migrant lives more sophisticated. Worse yet, a state of affairs has become normalized in which

thousands of Black and brown people perish every year in avoidable tragedies off the coasts of Europe.[8]

Death is thus omnipresent in this border zone. Other declinations of violence, specific to migration control technologies, are too. From the perspective of the rescue boat on which I was a crew member, I witnessed how migrants fleeing Libya and finding themselves in distress were "rescued" by a supply vessel and "pulled back" to Libya.[9] The *Aquarius* was made to stand by while all this took place, even though the ship's crew had expertise in the dangerous enterprise of rescuing overfilled rubber dinghies and the equipment and personnel needed to do so: specially adapted small, inflatable rescue rafts and medical staff on board. After the event, I was never able to clarify whether the people who had needed rescuing close to the Bouri oil platform were handed over to the Libyan Coast Guard or whether the *Emerald Blue* itself brought them back to Libya. What is clear, however, is that they were returned to the place they had been trying to escape from.

The opening episode of this book took place after the summer of 2018, which had been a turbulent one in the Central Mediterranean. Italy's interior minister Matteo Salvini had announced that civil fleets conducting rescues off Libya would no longer be granted authorization to disembark their passengers in Italian ports.[10] Around the same time, the Libyan Search and Rescue Region (SRR) was declared,[11] after European actors, spearheaded by Italy, provided the Libyan Coast Guard with a large amount of technical support and training to enhance its capacities. In effect, this enabled European governments to legitimize interventions from the Libyan Coast Guard and turn these so-called pushbacks of migrant boats to Libya, which is not a signatory of the 1951 Refugee Convention, into pullbacks.[12] The enhanced powers gained by the Libyan Coast Guard, along with the efforts to criminalize rescue vessels, have changed the face of search and rescue operations in the Central Mediterranean, further reducing the chances that people attempting to flee Libya will reach the shores of Europe.

This book is about the crafting of the mass pullback policy that has emerged in the Central Mediterranean. It asks, How are transnational and often contested policies of externalized migration control managed and negotiated by bureaucrats and policy makers? What are the outcomes of these policies? How do they materialize, and what do they produce at the border, where the movements of migrants rub against the sovereign will to

keep them out of a national polity? And, relatedly, what does this tell us about the double bind of international legal structures that both contain the potential for articulating the harm that occurs to migrants as a result of these exclusionary policies, and simultaneously host the very instruments enabling that violence? It shows in detail how legal constraints combined with dominant narratives and policy rationales around migration needing to be securitized have shaped zones of purported noninfluence such as the Libyan SRR. What this zoning of the sea concretely means is that the EU is able to delegate the pushback of people fleeing from Libya and avoid responsibility for rights violations and deaths that occur as a result of their policies. While they provide the enabling conditions of such a practice to exist, they can claim "noninfluence" over it. "Non/influence" might thus better capture the contradictory relations that are simultaneously at play here: influence and noninfluence sit together uneasily in attempts of delegated migration control. This book explores the careful layering of sovereignty and hierarchization of legal frameworks involved in the fragmentation of responsibility for migrants who fall victim to violent border control while on their quest to reach safe havens. I argue that this crafting of non/influence is necessary for violent indirect control to be exercised without hegemonic states of the Global North having to renounce principles and institutions of liberal constitutionalism or norms enshrined in international law.

This specific endeavor of zoning of the sea has significance beyond its regional specificities. Indeed, the equipping and legitimizing of the post-2011 Libyan Coast Guard is symptomatic of trends relating to migration "management" that can be observed around the globe. States of the Global South are increasingly carrying out policing and interceptions of migrants on behalf of the Global North. Migration deals such as the 2016 EU-Turkey arrangement or Italy's 2017 Memorandum of Understanding with Libya or the agreement between the United States and Panama signed in July 2024 have offered money, development aid, and technical support to third states to deport or bar would-be asylum seekers and migrants from accessing protection procedures or places of relative safety.[13] These deals have enabled states from the Global North to avoid having to formally revoke international or regional treaties that codify universal fundamental rights and protections regardless of the nationality of the rights-holder. This outsourcing insulates them from key legal obligations, since other states carry out the contentious work for them. Clearly, the borders of nation-states are not just territorial. They are also dynamic and mobile borders of jurisdiction that limit the applicability

of rights and of law itself. The setting of the opening vignette and the central field site of this book, the Libyan SRR, is a space where various kinds of borders overlap and where zones of influence and noninfluence are crafted. Zoning cuts or modulates the relations between the EU, migrants wishing to reach its territory, and the agents to whom control is delegated. This tension between control and responsibility in a legally plural and interconnected world, where borders define so much of how obligations, accountability, and rights are distributed, lies at the heart of this book.

The policies of migration and border control that are of concern to this book are inscribed within the broader deterrence paradigm of *non-entrée* measures that have proliferated since the 1980s.[14] These measures are designed to prevent the arrival of people on the move into states in the Global North and include visa regimes, carrier sanctions, extraterritorial border patrols, accelerated removal procedures, "safe third country" devices, and deportations (Moreno-Lax 2017a). These measures are also what has led to the "enclosure of the skies" (Walters 2021, 130; see also Shaw 2017); let us also not forget that the "border spectacle" (De Genova 2013, 1181) that has rendered forced migration highly visible in the Central Mediterranean is in part due to the racialized web of control and ways by which air travel has been restricted to prevent people seeking refuge from doing so by taking to the skies. And this, in an era when air travel is ubiquitous. In the Central Mediterranean, a sophisticated variant of the deterrence paradigm has emerged. It is a form of outsourcing of control from the EU that involves "orchestrated forms of consensual and proactive containment" of migratory flows on the part of Libyan authorities (Moreno-Lax and Giuffré 2017, 84). Maritime interdiction or "interdiction at sea" designates specific extraterritorial measures taken by states that aim to "prevent, interrupt or stop" the movement of migrants at sea (Deftou 2021).[15] Interdiction's main effect is the exclusion of non-EU citizens from territory and rights.

Centrally, this is about delegated control. I speak of "delegated interdiction" more specifically to describe this recent intensification of EU border externalization that involves the emergence of a mass pullback policy performed by the Libyan Coast Guard (LYCG) on behalf of European actors.[16] "Delegated" interdiction is interdiction by proxy; it is thus not an equal collaboration between two parties. It is more ominous than that. The delegated nature of control exercised on migrants and refugees fleeing via the Central Mediterranean route is a form of outsourced control whose aim is the barring of entry to European soil of migrants fleeing via the sea. It thus curtails

their very right to leave while erecting a smokescreen around who is responsible for the curtailment.[17]

Delegated Control and the Politics of (Ir)Responsibility

My case study of delegated control focuses on how dynamics of exclusion at Europe's external maritime border were transformed with the emergence of a regime of systematic, delegated pushbacks and how legal constraints shaped zones of purported non/influence.[18] The book centrally explores how law and policy produce and normalize a situation of rightlessness or "organized irresponsibility" (Veitch 2007). The creation of irresponsibility and the unaccountable outcomes of delegated control can be understood on several levels.

First, from the perspective of rights, the establishment of the Libyan SRR brought about a regime of unaccountability where systematic rights violations (nonassistance at sea, threats to physical integrity during interceptions, pullbacks to Libya) were carried out on migrants. This was a zoning strategy aimed at modulating relations between migrant subjects and their rights (Opitz and Tellmann 2012), enabled through a complex set of policies and funding mechanisms. Existing legal frameworks and categories for "legal responsibility, legal liability and the different legal conceptualizations of participating in, enabling or failing to prevent suffering" (Eckert 2018b, 376) jarred against the complex, transnational policy assemblage that was, despite its fragmented nature, instrumental in setting up the very conditions that enabled the violations to occur. Second, deterrence policies and their inscription in transnational dialectics (Mann 2013) have increasingly been designed to eclipse precedents generated by successful litigation challenging them, and their entangled arrangements tend to blur questions of liability and responsibility. The assembling of the Libyan SRR was a reaction to shifting political and legal realities: It was both a reaction to a changed political situation in Libya, which had been an important partner for Italy and the EU for the patrolling of the sea border since the mid-2000s, and to past historical legal judgments, such as the *Hirsi Jamaa and others v. Italy* case, which condemned Italy for collective expulsion when migrants were handed over directly to the Libyan Coast Guard on the high seas.[19] What this book shows is that the architecture of the policy assemblage of delegated interdiction reflected the need to adapt to the *Hirsi* judgment, which in turn, points toward the EU's dilemma of responding to its own constitutional requirements while simultaneously seeking to reduce so-called irregular entries at

its external border.[20] Finally, the actual doctrinal design of international law itself contributes to the limiting of responsibility for the plight of migrants at sea. Itamar Mann (2018) argues that the "maritime legal black holes" that migrants experience when in distress at sea reveal something more about the predicament of rightlessness that anyone excluded from a political community faces, as Arendt (1951) pointed out some time ago. Mann uses this trope to describe how migrant drownings in the Mediterranean take place in a space beyond states' jurisdiction, arguing that their loss of life is therefore not due to a de facto violation of an existing de jure duty. Rather, he argues that rightlessness at sea is the product of the very structure of international law, which limits the distribution of responsibilities between states and individuals on land and fails to encompass the rights of those at sea.

Accountability in political systems that profess their commitment to the rule of law is intimately linked to the idea that law has the capacity of holding powerful actors to account (Berger and Lake 2018). It carries a slightly more technical connotation than the notion of "responsibility," as well as a different relationship to time. Responsibility denotes an ongoing duty or obligation, whereas accountability entails a requirement to justify actions or decisions. The notion of responsibility relating to refugees is heavily influenced by the norms embedded in the post–World War II liberal legal order, including human rights. The 1951 Convention Relating to the Status of Refugees and, in particular, the nonrefoulement principle, which has gained the status of customary law, shape the idea that, in a globalized world, states have responsibilities toward individuals who have fled their state of origin, have been displaced, or who are stateless.[21] This gives rise to the idea that these individuals are, theoretically at least, all rights-holders. Accountability for human rights in migration control entails the proposition that, when states violate these obligations, the rule of law should provide instruments for victims to appeal for redress. There is widespread criticism of the Refugee Convention's inability to respond to the contemporary challenges of the global world, including the distinction it makes between refugees and migrants, thereby erecting a boundary between "legitimate" seekers of protection and "illegitimate" (economic) migrants. But the definitional intricacies are, in any case, currently eclipsed by the fact that many refugees or migrants cannot access the very procedures that would define their status in the first place. The ongoing proliferation of containment policies that impede refugees and migrants from reaching the Global North forces us to think through the issue of responsibility and accountability on a variety of levels, and not just in legal terms.

Approaching the Border Assemblage

Exclusionary migration policies that focus on the external, extraterritorial aspects of migration include diplomatic deal making and memorandums of understanding, but also involve a host of actors, organizations, and legal frameworks to bring them into being and then implement them. Studying their design and operation empirically presents specific challenges. How should one go about studying the process of constructing and maintaining an instrument of exclusion like delegated interdiction across its diverse sites of influence? This methodological question inevitably leads to a second, more analytical one: How are regimes of extraterritorial control and exclusion assembled and stabilized through fragmentary policy processes?

I found these questions to be best answered by an approach that sees the border as an assemblage. In recent migration scholarship, the EU border regime has often been described as an assemblage or an apparatus. These terms capture the myriad actors, rationales, practices, and levels of governance and decision making that shape it. A "migration apparatus," as Feldman (2011b) has conceived it, is a device that is not centrally controlled "but rather instantiated in different parts at the level of 'tactics,' or the specific actions that technical experts make to control the object of regulation" (16). Although assemblages and apparatuses bear many resemblances to each other in the ways they have been used to describe complex governmental interventions and policy formations, there are some small distinctions to be made between the two. The term *apparatus* is more Foucauldian, whereas *assemblage* comes out of Deleuze's writing. An apparatus is a device in which knowledge and power are articulated in strategic ways for control or management (Rabinow 2003, 43). Assemblages denote something similar but include relations of affect and desire that can have disruptive potentials. I have chosen to privilege the term *assemblage* in describing the EU border regime or, rather, to describe the advent of delegated interdiction across it because assemblages are more fluid and emergent and denote a live quality. The term also connotes the active work needed to *assemble* heterogeneous elements so as to stabilize a form of governmental intervention, which is what I describe in this book. Assemblages have an open and rhizomatic quality that the Foucauldian *apparatus* somewhat lacks.[22] Another difference between assemblages and apparatuses that Rabinow (2003, 56) has spelled out concerns time: Assemblages are less stable than apparatuses; they are like prefigurative versions of the latter. With hindsight, the assemblage of delegated interdiction may by now have merged into a more "stabilized" apparatus.

Indeed, the neighboring Tunisian SRR, declared in the summer of 2024, could be seen as a new "controlled variation" (Rabinow 2003, 56) of the initial experiment of the Libyan SRR. Far from wanting to reify what is perhaps a false dichotomy, I simply choose to characterize this particular governmental formation as an assemblage because, at the time I was researching it, it was permeated by uncertainty: Could it be contested through legal challenges? Would the LYCG keep playing the EU's game? Would it become a hegemonic technology of control or not?

As many anthropologists have written before me, studying policy processes with attention to their empirical and ethnographic context of design and implementation requires rethinking the "field" as a geographically bounded space with participant observation as the primary method of choice (Wedel et al. 2005; Gupta and Ferguson 1997; Feldman 2011a). The Libyan SRR provided me with a field site that became my starting point for studying "up down and sideways" (Nader 1997). Then, to trace the controlling processes and the nature of the connection between those working for or within the EU on deterrence policies and those it sought to exclude, I met with informants across many sites and collected and analyzed information from a variety of sources, from court documents to meeting minutes. My engagement was "polymorphous" (Gusterson 1997, 116) and multiscalar (Glick Schiller and Çağlar 2016) as necessary to adequately capture the nature of the social relations connecting, mediating, and holding different parts of the border assemblage together (Feldman 2011a). In this form of "non-local ethnography" (Feldman 2011a), the choice of sites and objects of research developed through the iterative process of my inquiry; my choice of sites then became shaped by my research activities as I tried to establish the links between different parts of the assemblage.

I started by conducting fieldwork on the NGO ship *Aquarius*.[23] While at sea, transnational authority seemed to stretch out, enveloping the ship and molding the conduct of actors involved in search and rescue activities. Political decisions, policies, and manifestations of the border affected many of the ship's activities. A close and aggressive encounter with the Libyan Coast Guard profoundly shook the crew and me (I describe it in more detail in chapter 1.) There was a weeklong standoff off the coast of Malta when survivors of various rescues we had conducted and with whom we had been cohabitating on board the *Aquarius* were forced to wait to be assigned a port where they could disembark. The ship was also stripped of its flag while we were at sea. When I stepped off the aft deck of the *Aquarius* in Marseille at the end of the mission, I remember thinking how, while these experiences

and events had been composed of a complex matrix of decisions and forces from different levels of governance, the EU itself had been gapingly invisible while we were at sea. Nevertheless, it was evident that our experiences had been structured beyond the MRCCs, beyond the encounter with the LYCG militia, beyond the Maltese patrol boat that finally came to pick up the people who had been rescued from their overcrowded dinghy. The extraterritorial maritime space of strategic importance that we had patrolled to carry out rescues *depended* on what went on elsewhere.

To then understand how these experiences at sea had in fact been structured by the geographical and juridical zoning for delegated control, I took seriously the idea that contingent encounters "of different logics of action" are located "in situations structured by historical figurations" (Eckert 2016, 243–44). As Julia Eckert (2016) points out, a situation-based approach is not about tracing an ever expanding chain of relations of interdependency, but rather about identifying where these are "cut."[24] Thus, one of the methodological challenges of this book was to find a way to describe the relations mediating between seemingly disconnected processes that were not always directly observable. The deterritorialized nature of Europe's external border (Andrijasevic 2010) and the delocalization of border management (Walters 2006) meant that my ethnography of delegated interdiction had to reckon with a lack of geographic and institutional fixity (Trouillot 2001, 135). I chose a methodological and conceptual approach that allowed me to focus both on individual agency / pure contingency and on structural determinism; in other words, an approach that would allow me to examine causal relations on different scales at once. I was interested in how these instances of rescue or interception—the material outcomes of policies of exclusion—were situations (in Boltanski's [2009] sense) that could shed light on macrorelations. Combining microscopic attention to encounters at sea with an analytical focus on what the new zoning of the Central Mediterranean's rescue regions enabled on different scales gave me the framework to see processual entanglements—or what Eckert (2016) has called "structured contingency"—of delegated interdiction. Ferguson and Gupta (2002) argue that states produce spatial and scalar hierarchies. "Spectacular examples" of state intervention—which in the Central Mediterranean also include *non*intervention—can illustrate how the EU's external border is spatialized through a specific form of policing and how a hierarchy of lives worth saving takes on social reality through practices of rescue coordination (which includes, again, decisions *not* to coordinate). In my exploration of the changing facets of the maritime border, I attempted to maintain within the

same analytical picture both these dramatic moments *and* the bureaucratic embodiment of these operations, moving between the "migratory frontline" (Andersson 2014, 13) and Europe's migration policy–making machine. This is vital because the security politics relating to the management of the EU's external borders cannot be understood solely through the lens of either crisis *or* routine, but only by considering them both and relating them to specific practices (Jeandesboz and Pallister-Wilkins 2016).

Tracing my way away from the NGO rescue ship into the courts and boardrooms, I followed the trail of texts and threats experienced at sea to the policies and decisions that fed into the making of a situation in which certain laws could be sidelined to the benefit of others. Each of the various sites where I carried out fieldwork shed some light on how delegated interdiction was assembled and what its outcomes were. Different *scales* of action became tangible across the different *sites* I studied. This multiscalar and multisited approach provided insights into how various logics of action on different scales may have their own specific sets of causal relations that seem unrelated to other scales, with their own distinct logics of action, if they are studied separately. My methodology put these different logics of action into discussion with one another to show the transversal logics in terms of coordinated outcomes. I followed George and Bennett (2004, 48), whose notion of "process tracing" attempts to "trace links between possible causes and observed outcomes." Process tracing places great importance on thick descriptions (generated through close observation) of a specific case study and the (historical) context in which it has emerged. My version of process tracing involved the microanalysis of macrorelations, where I tried to capture causal relations "on different scales at the same time" (Boltanski quoted in Eckert 2016, 244).

My first chapter thus offers a thick description, in the Geertzian sense (Geertz 1973),[25] of rescue and interception operations in the newly declared Libyan SRR. The aggressive encounters with the LYCG I experienced while on board the *Aquarius*, and the pullbacks of migrants to Libya that happened around us while we were at sea (and which continue today), were masked by procedural obligations. I therefore chose to examine the relationship between that violence and the web of policies that had enabled the Libyan Coast Guard to regain operational capacities after the country's collapse into civil war in 2014. To do this, I pored over European Commission documents and declarations concerning the solving of "crises" in the Mediterranean. A second site in the assemblage of delegated interdiction soon became clear. The European Union Emergency Trust Fund (EUTF) for Africa

was a multidonor fund that had been established at the EU-Africa summit on migration in Valetta in November 2015. This fund was huge, totaling 5 billion euros[26] spread across three regional "windows"—the Horn of Africa, Sahel–Lake Chad, and the North of Africa—and dedicated to eradicating the root causes of migration. The projects gathered under the North of Africa regional umbrella were mostly dedicated to migration management and focused less on the development concerns of their target "beneficiaries" than on strengthening government structures in countries with direct access to the Mediterranean.[27] Through interviews with European Commission project managers and bureaucrats in Brussels and diplomatic staff from states that had contributed to the EUTF, I delved into projects on border management reform to be implemented in third countries (part of so-called integrated border management [IBM][28]) in order to understand how they had been designed, debated, and approved and, in particular, how they would be funded. I also cross-referenced this data with the minutes of meetings in which projects relating to the North of Africa funding window were approved and relevant documentation produced by the Commission. Traveling to Tunisia, I met with EU officials who had relocated their offices from Libya and who oversaw some of the projects funded by the EU. I sought to understand the connection between the decision makers in the European Commission and the chain of command that led from funding boards to project coordinators and, ultimately, to the people who would be brought back to Libya by the coast guard that had "benefited" from these decisions. I attempted to understand funding regulations and how they were bound to principles of "do no harm" for donors intervening in state-building activities and conflict zones. This "polymorphous engagement" (Gusterson 1997, 116) was fitting, not because I was inherently fascinated with the life-worlds of EU bureaucrats but because, through my process tracing, I wanted to understand how "some people's actions asymmetrically affect other people's lives" (Hertz 2016, 64).[29]

As my work progressed, I realized that some relations of causality were precisely unfindable and perhaps even part of the architecture of the policy I was studying. This realization took me to my third research site. Because the Libyan SRR functioned as a kind of legal "cut" (Strathern 1996), limiting EU member states' responsibility for pushbacks and rights violations of migrants fleeing Libya, I decided to investigate the effects of this "cut" on issues of accountability in migration control in and around the Central Mediterranean. I spent six months in Rome following the Sciabaca and Oruka project of the Associazione per gli Studie Giuridici sull'Immigrazione (ASGI) and

its members.[30] This was a project run mostly by a group of lawyers based at a law firm in Rome who had started developing strategic litigation against the detrimental effects of externalization policies on fundamental rights. I was able to follow them in the daily tasks involved in case building for the litigation they were pursuing. Their quest for information had a different purpose from mine, as they were trying to prove certain causal relations or breaches of do-no-harm commitments in development cooperation funding in order to build profiles of responsibility. But as I spent time in the office with them and followed the various challenges they pursued through legal avenues, parts of the assemblage became clearer through the documents they were granted access to. I came to see how the "contactless" element of the policy, the difficulties of tracing causal relations, was a built-in adaption to past expulsion practices that had been condemned in the *Hirsi* judgment at the European Court of Human Rights (ECtHR).[31] Somehow, the policy assemblage became both a question of empirics (what I could observe) and methods (how I could observe it). And again, my overarching methodological question loomed large: How could I describe a genealogy of domination when the rule itself consisted of fragmented parts?

The methodological decisions I made throughout my research were also shaped by the type of access I was granted to people, places, and documents. As I traced the connections from the sea back to the offices where decisions were made that shaped the maritime interdiction landscape, I encountered various difficulties. The challenge of studying the multilevel and multiactor policies that characterize Europe's (securitized) governance of borders is exacerbated by the secrecy or at least opacity surrounding policy making and enactment. This makes a clear overview of the mechanisms of governance impossible. Unsurprisingly, accessing European and Italian bureaucrats involved in the North African IBM projects funded by the EUTF in Africa proved to be difficult. Emails I sent went unanswered. I was made to wait at front desks for meetings to end and for busy state officials to whisk me up for a quick talk before their next conference call. I was told that a particular office had no time to meet me in person and that I should write back several weeks later, only to do so and be told the same thing again, three times in total.

Moreover, I had experiences similar to those Belcher and Martin (2019, 37) encountered, who observed that the US immigration enforcement and military officials they approached as part of their research were often skillful and seasoned professionals with a sharp appreciation of the politics of recorded statements. My voice recorder was therefore often viewed with

suspicion, and sometimes I simply resorted to taking notes during the interviews, to avoid too stiff an atmosphere. However, I came to understand that these difficulties had their own analytical value. Throughout my fieldwork, offices were regularly reshuffled as people moved easily from Brussels, to Tunis, back to the administrations of the state they represented, or even went from working for the EU to working for an international organization. This made it difficult to track the influence of individuals over specific projects, but these movements were also a sign of how dynamic this field of transnational policy making was and attested to the rhizomatic and fragmented relations between different parts of the assemblage. In any case, my sights were not set on unveiling some kind of organized logic of governance: As Abrams (1988, 82) noted famously, "The state is not the reality which stands behind the mask of political practice. It is itself the mask which prevents our seeing political practice as it is." There wasn't much that was Machiavellian about the European Commission, the operational committee of the EUTF that approved the IBM project in support of the LYCG, or the politicians who voted to renew the financing of the Italian military missions in Libya, including the further support of the coast guard in July 2020 (see Camilli 2020). These were actions and decisions embedded in a specific history in which delegated interdiction had become an acceptable solution to the "threat" of irregular migration by sea. My interest lay in how that acceptability had been constructed and produced through the banalization of law and policy.

To attend to these access challenges, I applied multiple methodological strategies to triangulate data across my field sites: I combined document analysis with interviews and participant observation in an attempt to understand how the different elements of the assemblage fit together. For example, I analyzed the process of accessing information through freedom of information requests made by the lawyers I followed in Rome in order to better understand logics of transparency and secrecy relating to the Italian Ministry of the Interior's involvement in the EUTF IBM projects in Libya.[32] What linked these groups of people and members of a certain ruling class with the legal efforts of the lawyers in Rome who were challenging collective expulsions at sea, and Jim's demands on board the *Aquarius* that the Italian MRCC respect the law of the sea, was a conflict over legality.[33] Each party had a specific idea of which laws should trump others; each side justified its actions on the basis of a certain idea of humanity or community it was seeking to defend. These conflicts were moments of "friction" (Tsing 2005, 5) that take place when global connections rub against one another, producing new arrangements of culture and power in the process. I examined

these moments of friction in order to see into the functioning of the assemblage of delegated interdiction that could help me understand how, despite its fragmentary nature, its dynamic and shape-shifting form enabled a regime of exclusion to prevail. They were privileged moments for observing how, in the legally plural environment of the external maritime border, certain norms trumped others and the rule of interdiction could continue to be implemented. Ethnographic descriptions of these conflicts shed light on the "sticky materiality" (Tsing 2005, 1) of assembled transnational regulations and norms that, at particular moments of friction, would contract to produce an event in which specific sets of power relations intensified or became visible.

Janus-Faced Law in the Workings of International Governance

The opening vignette provides an insight into a crucial aspect of how interdiction is carried out in practice in the contemporary maritime space of the Central Mediterranean. The actions of the *Aquarius*, *Emerald Blue*, and, as I show in the following chapters, the Libyan Coast Guard are the material outcomes of law, regulations, and decisions enacted and made elsewhere. In a situation like the one with which I start this book, interpretations of law collide in a contested space. During my time at sea, I saw Jim appeal to a recognized authority—the Italian MRCC—imploring it for permission to coordinate unfolding distress cases. Meanwhile, the Italian MRCC was communicating with the Libyan Coast Guard in parallel, and the *Aquarius* had no access to these conversations. In every moment when the authority of these maritime agencies was sought out and hierarchies of authority rehearsed, the SAR coordinator and the teams on the *Aquarius* demanded the correct application of the maritime conventions and international laws. They stated that rescue is a duty of any vessel that encounters people in distress at sea and they invoked the rule that rescued people have to be brought to a port of safety—which, by current international consensus, could not be in Libya.[34]

This jarring fact—that Libya was so clearly not a safe country to which people fleeing by the sea could be brought back to—also shaped the assemblage of delegated interdiction in particular ways. If there was one country in the European neighborhood with which such cooperation could highlight the contradictions of Europe's liberal foundations, it was Libya. In 2011 a NATO coalition intervened and toppled the regime of Muammar Gaddafi, under the international principle of the responsibility to protect. The regime

had apparently lost its claim to sovereignty, given that it could no longer control its territory or provide "effective protection to its entire population" (Asad 2015, 408). Indeed, the discretionary executive action, sanctioned by the UN Security Council, was carried out with the goal of protecting civilian populations.[35] Since then, the state of the country's security has been turbulent and the situation for migrants transiting through the country on their way to Europe has been catastrophic. For the EU, a delicate balance has needed to be struck, at least on paper. This has involved, on one hand, propping up Libyan sovereignty to help the country regain control of its borders, the latter having become too porous for the liking of its European neighbor. On the other hand, since delegated interdiction involves the return to Libya of people on the move, work has to be put into improving their condition there. This is true, at least, to the extent that Europe still seems to care somewhat about its self-professed adherence to principles of human rights and humanitarianism.

Delegated interdiction thus marks a regional struggle over "whose lives count." It is "world-making" (Kahn 2018, 255) in the sense that it makes new things acceptable (the subcontracting of migration control to militias, for example), on the back of the widespread idea that aliens have to be prevented from entering Europe at all costs. In the following chapters, the "costs" of the European Union's contemporary version of liberal sovereignty are made clearer by following the dialectical movement between acceptability and exclusion. Contemporary liberal rule—marked by discourses of "good governance" and "rule of law" imperatives—seeks to render certain political and legal connections irrelevant while emphasizing the moral validity of others. Therefore, a close examination of how delegated control is assembled provides key insights into the workings of sovereignty and liberalism in contemporary Europe. Upstream border management reform needs many different actors working at different levels of government—from domestic budgetary decisions for foreign expenditure to the supranational legal order of international institutions—and produces political outcomes of significance for the heart of Europe's liberal constitutional order.[36] The monetary and legal relations that link the EU and its member states to international organizations such as the UNHCR and the International Organization for Migration (IOM) that are present at disembarkation points in Libya, and the dynamics between the EU's various agencies over the approval and management of IBM projects, tell us something more than just how the contemporary external border "works." It gives us insights into key characteristics of contemporary international governance.

The Central Mediterranean is a dynamic laboratory of governance that reveals the contours of the "constitutive dilemma at the heart of liberal democracies" (Benhabib 2004, 2) that the EU currently faces. This dilemma sees the deep roots of the sovereign will to self-determination collide with the pull toward a more universal justice, often framed as a question of the adherence to principles of human rights (Benhabib 2004). Interceptions and denied rescues in the Central Mediterranean encapsulate these basic contradictions of the liberal political order. This tension or contradiction permeates the entire assemblage that enables what might at first seem like wholly momentaneous or localized events to continue to take place through a more or less organized refoulement policy. In the European border assemblage, law connects a variety of locations, acting as a kind of spatial architecture (D'Arcus 2014) or infrastructure that links together the EU community and its institutions and defines their reach. It is thus the focus on law not only in its doctrinal dimensions but also in the actual practices needed to uphold the EU border regime that shed light on the role of law in contemporary governance, especially with regard to the production of unaccountability.

The governance of the maritime space between Libya (and Tunisia) and Europe, especially in terms of the regulation of rescue, the delegitimization of nonstate rescue actors, and the establishment of procedural imperatives for how life itself can be biopolitically managed, is fundamentally connected to *existing* norms that are employed in accordance with the needs of the sovereign. Interdiction lies on a continuum between exception and control (Moreno-Lax 2017b, 2). The Libyan SRR is a work of legal representation in which the norm is struggling to overtake the exception (Johns 2005). It is not "isolated and distanced from the ambit of routine legality," and it is not severed from the "prevailing legal order" (620, 621).[37] Rather, delegated interdiction takes places within a framework of global legal pluralism: It functions and is regulated across domestic, international, and transnational legal orders. We might think of it as a dynamic machine whose purpose is to bar aliens from entering European territory via the maritime route. Following this metaphor, not only do the different "cogs" enable it to function across different jurisdictions, but when migrants are intercepted on the high seas and brought back to Libya, various (and potentially conflicting) legal frameworks might also be triggered at different moments in time and depend on where the travelers are situated geographically when they call for help and are intercepted. Delegated interdiction is assembled across different transnational legal orders that are in conflict with one another (Halliday and Shaffer 2015):[38] On one hand, there is the externalization order, which

includes bilateral agreements between Libya and Italy and various policies, such as integrated border management, that are regulated by EU law but also involve the legislation of partner states such as Libya. On the other hand, there is the international legal order of human rights and refugee law. People, money, and documents interact with and between these orders.

Holding both the assemblage of delegated interdiction and its outcomes on accountability within the same analytical picture provides key insights into the ways law functions within transnational and international situations of governance. Derrida's (1992) conception of law sees it as marked by a double bind:[39] It is both the means through which the state inhibits the possibilities of justice and the channel through which people and society can try to get closer to it. States and international institutions of governance rely on law to carry out their activities of governing, and law provides them with a language for the justification of their operations. In a contemporary twist of Derrida's idea, law across delegated interdiction is a language and toolbox that can be played or orchestrated to produce new exclusions that prevent participation in the liberal promise it simultaneously continues to uphold.

Chapter Outline

The book's central quandary pivots on how fragmented policy assemblages blur and complicate the question of state accountability for extraterritorial rights violations. To address it, six chapters plunge into different nodes of the EU border assemblage, teasing out the perspectives of the characters animating, passing through, and operating the exclusionary machine. Rescuers, coast guards, migrants, humanitarians, policy makers, and lawyers all contribute to the shaping of delegated interdiction and the irresponsibility it produces. In chapter 1, I provide a situational description and analysis of the on-site functioning of the Libyan SRR. By means of my fieldwork at sea with an NGO rescue boat in the (then) newly created Libyan SRR, I show how law is used selectively by EU authorities to produce a regulated space where interpretations of "law at sea" differ and are contested, depending on who is speaking. Procedure is important for EU coast guards, who stress they are complying with principles of sea law and sovereignty by alerting the Libyan Coast Guard. Meanwhile, civil rescue parties reaffirm the legitimacy of their reading of the law, that is, by bringing fleeing people to a place of safety that is not Libya. The analysis of which laws prevail, which are sidelined, and when this happens reveals a spatial element of indirect rule alongside a temporal one.

I then contextualize the historical terrain on which the SRR was assembled. I take into account the history of the regulation of movement of people and exclusion in the Central Mediterranean and Libya (in interplay with the emergence of the EU's external border), highlighting the continuities between Italy's colonial rule of Libya and the two countries' deal making concerning the containment of migratory movements. The contingent nature of Libya's sovereignty—which, as a Third World form of sovereignty (Achiume and Bali 2021, 1397), can be alternatively discarded or propped up according to the terms set by First World nation-states—determines the terrain on which delegated control is assembled.[40]

In chapter 3, I show how the strategic layering of law in the legally plural context of transnational governance enables EU and Italian authorities to avoid responsibility for the plight of migrants at sea. I argue that the rendering rightless of migrants at sea is not inevitable and is not just the result of the structure of international law: It is also the product of a specific hierarchization of legal orders linked to a regulatory "community" (Cotterrell 2018) that supports it. Through the eyes of a retired Italian coast guard official, we glimpse how security interests took precedence over humanitarian concerns for migratory movements at sea.

In chapter 4, I combine the analysis of what goes on at sea with what happens on land before people leave the Libyan shore. I argue that the rendering of migrant bodies into economic and political currency through delegated control agreements has produced a detention economy in Libya. The mass introduction of European funding for the "bettering" of detention centers in Libya has also created a marketplace for international NGOs and organizations involved in providing humanitarian assistance to migrants who have disembarked following interceptions by the LYCG. This chapter shows again how the outsourcing of migration control takes place on several levels. It also discusses how humanitarianism contributes to the diffusion of responsibility by deflecting attention away from the outsourcing of migration control as a key political cause of suffering.

Chapter 5 zooms in on the constitution and architecture of the EU Emergency Trust Fund for Africa, one of the main funding complexes that provided material and instructional support to the Libyan Coast Guard, under the UN-recognized (EU-backed) Libyan Government of National Accord (GNA). It provides a "vertical cross-section" of the EUTF North of Africa funding window, showing how practices of assemblage (Li 2007a) within the window participated in the containment of (reputational) risk that upstream migration management projects present for liberal government.

Moreover, I argue that it is precisely because of the diversity of governance objectives and discourses on development and humanitarianism within the EUTF that critique of such a sensitive project could be contained and presented as a technical issue.

In the final chapter, I show that the outcome of delegated interdiction is a type of incontestable rule that subjects a certain category of people to a particular regime of unaccountability for the violence and death they suffer. In a description of the struggles of lawyers attempting to address Italian and EU responsibility for crimes committed by the Libyan Coast Guard and injustices endured by migrants, I document the difficulties and barriers involved in their referring cases to various courts (national administrative courts, the European Court of Human Rights, the European Court of Auditors) by means of interviews, court document analyses, and participant observation in the preparation of complaints. I end by pointing out that only specific parts of the political-legal assemblage of the Libyan SRR can be addressed in court, while the rule of delegated control remains untouchable.

Finally, in the conclusion, I outline the main contributions that emerge from the discussions in the various chapters. I argue that delegated migration control is a key mediating relation between the First and Third worlds, contributing to the continued subordination of the latter to the former. I outline the types of responsibility diffusion—from legal to political to historical—that emerge from the particular way that delegated interdiction participates in the severing of the links between Europe and migrants from the South who wish to reach its shores. I end with a discussion of the analytical possibilities offered by my study of the Central Mediterranean as a contemporary laboratory of governance for European politics of exclusion.

1

Tense Rescues and Double Standards

In August 2018, the rescue NGO ship *Aquarius* was docked in Marseille, overlooked by the French port's tallest building, the CMA CGM Tower—headquarters of the fourth-largest container shipping company in the world. The NGO ship, jointly operated by SOS Méditerranée and Médecins sans Frontières, had only recently started using Marseille as a port of call. In its three years of operations as a search and rescue vessel in the Mediterranean, it had mostly operated out of Catania in Sicily. However, this pattern had changed when Italy, spearheaded by far-right interior minister Matteo Salvini, in the summer of 2018 declared the country's ports shut to all foreign-flagged vessels that had rescued migrants off the coast of Libya (Cusumano and Villa 2021, 30). Much farther to the south, the port of Valetta in Malta was also off limits to NGO ships, as the Maltese government had similarly started to crack down on ships carrying out rescues of migrants, by opening criminal investigations into crews and captains of vessels docking on its territory (Cusumano and Villa 2021; Moreno-Lax et al. 2019). Now that the

Aquarius was based in Marseille, the sailing time to and from its operational zone north of the Libyan coast was substantially longer.

It was around this time that I first arrived in Marseille to embark on the *Aquarius* as its research and evidence officer. The tense political climate in which search and rescue activities in the Central Mediterranean were taking place was palpable. Not only had the *Aquarius* been forced to move its base of operations from Sicily to Marseille, but, prior to boarding, I also learned that Gibraltar had announced that it would strip the *Aquarius* from its registers. During their previous mission, the crew had rescued 141 people, and Italy had subsequently demanded that the UK take in the survivors, arguing that the ship's links to Gibraltar, a British overseas territory, made the UK legally responsible (Baynes 2018). A ship's flag does not actually confer legal obligations on the flag state to provide a port of safety to rescued people, but nonetheless, it seemed as though any excuse would do.[1]

Divisions among EU states over where rescued people should be disembarked had been growing for months. The dispute had culminated during another of the *Aquarius*'s operations a few weeks earlier. The ship had been refused access to an Italian port in June 2018, with more than six hundred rescued people on board. This left it in limbo for several days at sea, with severe overcrowding on board. The rescued people were subsequently disembarked in Valencia, after Spain finally accepted the ship and allowed it to dock. The *Aquarius*'s difficulties in securing a flag provider were to be understood in this context,[2] as the rate at which responsibilities were pingponged back and forth accelerated. Search and rescue ships run by NGOs were under increasing pressure due to their activities at sea, and states were unenthusiastic about having them in their vessel registries.

The ship needed to find another state willing to provide a flag so it could return to the Central Mediterranean. After initially being told that we would leave the port on the first of September, the departure of the ship was delayed from week to week by the flag debacle. The ship's operator had made a request to the Panamanian authorities for a flag a few days before I arrived.[3] The teams on board were thus in a frenzy to ensure that the ship complied with all the safety and security regulations required by the Panamanian registry. And, as checks and last-minute demands from the authorities dragged out our time on land, the possibility of finally being able to navigate back to the patrol area south of the Strait of Sicily seemed to be shrinking.

While the directors of operations were worried about the need to secure a flag, their jitteriness was made all the more acute by the dark cloud of criminalization that had been hanging over NGOs operating in the Central

Mediterranean for months.[4] The creation in August 2018 of the new onboard position I would be occupying was also linked to the operational units' perceived need to demonstrate the legal basis of their actions with greater transparency and to justify the rescue activity in the face of the growing pressure on SAR NGOs. Research and evidence officer was a new position designed to act as the eyes and ears of the ship, recording rescue operations in detail. My task was to keep a precise timeline of rescue operations and make sure that all logged events could be backed up with "evidences," as they were called—mostly GPS traces on maps and email exchanges—so that the chronology of an operation could be completely reconstructed. This would also serve to show how onboard decisions regarding rescue operations followed a clear legal framework. A further reason for the introduction of the role was the growth of the *Aquarius*'s media profile following the Valencia episode. Both SOS Méditerranée and MSF recognized their need for a more effective means of communicating the specifics of their operations to the public, the media, and other international actors.

Another concerning factor loomed in the background for the directors of rescue operations. The Libyan Search and Rescue Region had recently been established, and there were concerns that it might complicate operations significantly.[5] The new SRR conferred legitimacy, authority, and coordination duties on the maritime authorities of the Libyan state. The concerns of the managers of the *Aquarius*'s operations would be revealed as justified. With the new SRR, the LYCG gained geographical competence as the legitimate coordinating authority for rescues in this huge maritime zone. Not only was its ability to patrol the expanse of international water bolstered by technical support from European actors, but this newfound legitimacy emboldened it to threaten NGOs, sometimes as far as expelling them from "its" SRR.[6] The LYCG emerged as a police force without a policing mandate.

The heart of this chapter concerns the on-site functioning of the then newly declared Libyan SRR from the vantage point of the bridge of a rescue vessel, the *Aquarius*. The declaration of this new zone—technically a "notification"—was to change the governance of the international waters separating Libya from Malta and the southern Italian islands of Lampedusa and Sicily. The result was to render the stretch of sea even more dangerous for people trying to reach safety in Europe, for years to come. It also contributed to making rescues by civil NGOs like the *Aquarius* more challenging. The Libyan SRR was not just a set of coordinates on a map. By attributing authority to the LYCG and legitimating it as primarily responsible for coordinating rescues in this stretch of water, its performative power went far

beyond the updating of maritime charts. The effects of this formalization were felt across the Strait of Sicily and beyond. In this chapter, I argue that the enactment of this new zone enables the establishment of a form of indirect control by the Italian government and the EU over refugees and migrants trying to reach Europe. The declaration of the Libyan SRR acted as a legal "cut" (Strathern 1996) in a network of social and material relations that enabled what Moreno-Lax and Giuffré (2017) have called "contactless control"—a form of unaccountable governance over migratory movements at sea. Indirect control is enabled by the formalization of the authority of the Libyan Coast Guard in the Libyan SRR. Concomitantly, NGOs operating in the newly declared area are subjected to a form of double standard in relation to the regulation of rescue at sea.

It is the close scrutiny of the differential adherence to the law of the sea that shows how indirect control by European authorities can be carried out, and how NGO operations can be hindered while a veneer of respect for maritime protocols can be maintained. The *Aquarius*'s operators and crew acted in accordance with the laws of the sea and the SAR Convention and continuously reaffirmed that interceptions by the LYCG were unlawful. They dutifully documented every communication with maritime authorities, justifying any intervention by referencing international law. Procedure was also important for EU coast guards, who stressed they were complying with principles of sea law and sovereignty while feeding information to the Libyan Coast Guard. Civil rescue parties, on the other hand, reaffirmed the legitimacy of their reading of the law: that of bringing fleeing people to a place of safety, which could not be Libya, according to international law. The cloud of criminalization hanging over NGOs at sea provokes acute attention to compliance, while state actors can make reference to law more selectively to produce a "rulified" space. Disentangling how law, communication infrastructures, and urgency coagulate at sea across tense rescue situations reveals opposing views regarding the hierarchy of lives to be saved.[7]

The *Aquarius* and the LYCG's patrol boat *Al-Kifah* (which emerges as a main character in the rescues/interceptions discussed in the coming pages) operate as they do only because they are connected to an infrastructure of documents, regulations, and protocols that guide their operations and chains of command. They are connected to the authority of other, land-based actors. Documents link to one another in citational chains (the textual and discursive dimension of law), but they also attach "to metal, water, and earth" (Kahn 2018, 176). When it comes to maritime interdiction, textual artifacts and other categories of objects such as "steel, fuel, and bodies" (176) connect

through citational modalities. As Kahn (2018) outlines so well in his book on maritime interdiction between Haiti and the United States, "The borderscape of interdiction emerges out of a double movement of citation—one indexical chain flowing downward from an originating textual order and the other flowing back from the material presence of ships and the abduction it generates" (179). An on-site rendition of *how* the authority of specific actors is asserted helps us to connect the microfunctioning of power to the macrocontext of the policy world. This connection shows what is produced at the points of contact between the elements: where the points of friction lie, where hierarchies are created and rehearsed, and how law is seized and brandished in the middle of all this. In other words, connecting what goes on at sea in moments of rescue to the project of delegated interdiction that is supported by multiple policy processes sheds light on the "manufacture of interdiction's conditions of legitimacy" (177).

Life on Board

The crew of the *Aquarius* consisted of chartered marine personnel, a medical team from Médecins sans Frontières, and an SOS Méditerranée rescue team. All the roughly thirty-five members of the crew shared the living space and kitchen area aboard the seventy-seven-meter-long ship, which was built in the late 1970s. Each team performed a specific task on board; space was limited, so every role had been carefully thought out. The crewing and division of labor on the ship did not escape the global hierarchies that run through the shipping industry today. Since the 1970s, the proliferation of flags of convenience has loosened the staffing rules for ships, removing the requirement to hire staff of the same nationality as the ship's flag (Khalili 2020). This change has led to the creation of a dual wage and contracting system aboard ships (Khalili 2020; see also Markkula 2011) and means that crews have tended to become increasingly international, with some countries even becoming suppliers of specific types of worker. During my time on board the *Aquarius*,[8] the rescuers and medical staff—the NGO workers—were mostly white and European, American, or Australian. The engineers and higher-ranking marine crew (such as the captain and first officer) were mostly Russian or Ukrainian. The able seamen in charge of keeping the decks clean and ensuring the navigational watches were from Ghana. The cooks were from Vietnam.

Most of my time on board was spent on the ship's bridge, in the presence of the captain, the chief officer, or the second mate, depending on who was

on watch. They were new to the NGO world, and the chief officer, with whom I often chatted, pointed out how different this ship felt to them compared to others on which they had worked—including the fact that I, a woman, was spending all this time with them on the bridge. Stavros, the chief mate, told me he sometimes felt as if he was in charge of a school outing because of the number of people on board for whom the hierarchies and security rules of a ship were not second nature. All the nonmaritime staff had received at least basic training in ship security. But it was true that many, like me, had only limited experience at sea and did not know many of the unspoken rules. The fact that the crew, which had a variety of professional backgrounds, nevertheless all had specific functions on board and were therefore not simple passengers made Stavros particularly nervous: "The sea is a dangerous environment," he often repeated to me, fearing that some less experienced crew might underestimate the hazards of working in a maritime setting. The ship was also unconventional, since the captain, the chief mate, and the second mate shared authority with both the coordinator of the MSF team and the SAR coordinator. The latter two, and especially the SAR coordinator, were the ones making decisions when it came to rescue operations. The captain, in charge of navigating, would need to move the boat where the SAR coordinator said it should go. However, the captain remained responsible for the safety of the crew and the ship—and was ultimately liable for any damages.

After all the agitation around securing the new flag, the ship was finally able to set sail a few weeks later. It felt unreal to finally move out of Marseille harbor and slip past the cruise liners and container ships after anticipation of departure had so often ended in disappointment at yet another delay. We left in the early evening hours, and while steering away from land beyond the fortifications of the port, we crossed the path of a few smaller sailing boats that were still out at sea. We waved at some of them from the afterdeck.

Navigating to the Libyan SAR zone from Marseille took several days. This period, whose calm could in no way foreshow the storm to come, was dedicated to training: rehearsing the plans to be activated in case a mass medical emergency was declared, simulating rescues with a range of floatation devices that the rescue teams needed to know how to operate, and performing security drills. As soon as we reached the Strait of Sicily, life on board was, for the rescue teams, suddenly measured by watches from both wings of the ship's bridge. Before 2018, NGO ships such as the *Aquarius* would receive information about cases of boats in distress from maritime rescue coordination centers in Rome or Malta. In fact, between 2014 and 2017 the SAR operations of NGOs were "all coordinated and for the most part initiated

by the Italian MRCC" (Cusumano and Villa 2021, 27). The emergence of the LYCG as well as the newly recognized JRCC Tripoli fundamentally changed that pattern. European and North African coast guards essentially stopped entrusting NGOs to carry out rescues and ceased sending out NAVTEX messages to all ships transiting an area where a distress case might have been declared (Cuttitta 2020).[9] By summer 2018, with all authorities withholding such information from NGO ships, the *Aquarius* was essentially relying on its bridge watch teams, whose members were equipped with binoculars to spot boats in distress.[10]

Before continuing this chronicle of the journey with the *Aquarius* in search of boats in distress, it is important to look more closely and in greater theoretical depth at the legal and political context in which NGO rescue boats operate. Crews are very much caught between conflicting aspects of the law and are subject to multilevel and often contradictory regimes of governance. Understanding the constraints and pressures they face sheds light on why the politics of rescue are so contested in this region of the world.

Humanitarian Witnesses Caught in Law's Double Bind

With the specter of criminalization looming, the stakes of asserting the legitimacy of rescue operations were pressing. The crew of the *Aquarius* and, more broadly, the staff of SOS Méditerranée and MSF were operating on shifting terrain; there was a sense of unease as people nervously contemplated what obscure "evidence" of allegedly illicit actions might be brought against them.[11] The importance of complying with a defined legal framework and of anticipating potential forms of criminalization as much as possible shaped behaviors and modes of operation on board. Indeed, between 2017 and the summer of 2018, criminal investigations were opened into several SAR NGOs, mostly on charges relating to aiding and abetting illegal immigration.

Cusumano and Villa (2021) noted that, as of February 2020, almost none of the investigations into NGOs had found sufficient incriminating evidence to initiate legal proceedings. But within this context of repressive and contentious criminalization, what Aretxaga (2003) has called the "ghostly" and "persecutory" power of law seemed "emptied of content." In such settings, looming sovereign power can give rise "to forms of paranoiac acting" (406) both from the state and from the subjects who encounter it. The spectral authority of the state rippled through a rapidly shifting terrain of rules and state announcements targeting SAR NGOs, highlighting the oscillating

"relation between force and form, between force and signification, performative force, illocutionary or perlocutionary force, of persuasive and rhetorical force" (Derrida 1992, 7).

This atmosphere made the crew especially attentive to questions of legal compliance during those early days and the ensuing operations. There was an awareness that caution might not be enough to avoid the full force of state authority, if it wanted to put an end to the NGO's operations.[12] The NGOs operating the *Aquarius* were caught in the law's double bind: On the one hand, the law could protect them, as it was ultimately the law that justified the mission they were on. On the other hand, however, the law also justified the enforcement of legal violence against them. The lurking shadow of state authority and the paranoia around compliance with the law also shaped my own experience on board. Traces of this concern can be found in the legal references in the footnotes of this chapter. These act as a counterpoint to the narrative description of events. Along with the references supporting my analysis, they should also be understood as reflecting the normative web of law in which the operations of the ship were entangled. Taken together with the events that threatened the ship's very ability to operate at sea, they illustrate how, *despite* the legality of the *Aquarius*'s actions, this oscillating force of law—or rather the unstable nature of transnational authority—could erratically change shape to reassert the force of sovereign law beyond territory.

Given the emphasis that NGOs place on the legality of their humanitarian work, one may understandably be confused as to why these activities aroused such paranoid and repressive reactions from the state. The two NGOs that operated the *Aquarius* certainly emphasized framing rescue activities as nonpolitical.[13] In fact, the importance of documenting what was going on at sea with boats in distress was squarely in line with observations made by anthropologists about how humanitarian organizations justify their interventions. This is often done by combining personal narratives and testimonies with "objective" facts to lay out the urgent moral case for interventions to alleviate suffering (Redfield 2006).

I discussed the testimonial role of the *Aquarius* with a few MSF staff members. One humanitarian affairs officer affirmed that much of the testimony MSF had collected about detention centers in Libya and about the abuses that went on there came from people who had been rescued and taken on board the *Aquarius*. She stressed that MSF's involvement in search and rescue in the Central Mediterranean was both about saving life at sea and about documenting the suffering endured by people on the move in Libya and

elsewhere. A nurse whom I met on board framed the mission's significance in a slightly different way. She had wanted to take part in a rescue voyage for a long time, having previously been part of missions in Central Africa. But given the costs of running a ship and all that it entailed, she acknowledged that the mission was not—in purely biological terms of life preservation—the most efficient: "With that amount of money, you might be able to 'save' a lot more people by offering assistance in an area with food shortages or intervening in a place devastated by a particular health emergency."[14] Her remark could in some sense be associated with the idea that humanitarian medicine is a biopolitical action that intervenes not on "bodies" but on "populations," combining a curative objective with one of intervening on a collective (Fassin 2010, 242). Still, she insisted that for her the Central Mediterranean was the most important MSF mission at that particular time. This was the case, despite its relative lack of focus on health (the medical staff was indeed small in comparison to the rescue team), because it was intervening in an area where death and suffering were otherwise invisibilized. The witnessing function of the mission was, in other words, of utmost importance.[15] In her sense—and we discussed this at length—this was a political mission. It was about demonstrating the equality of lives in the face of a dehumanizing border regime that produced indifference, suffering, and death. Politics, however, was not a topic that often surfaced in the conversations held in the small dining room or in the moments of evening calm in the smoking area on the port side of the ship. Neither was it part of the lexicon used to communicate and frame the *Aquarius*'s mission. Rather, the word *politics* was used mostly to refer to the nefarious games of EU states, the lack of coordination between member states over disembarkation mechanisms, or the spew of nationalist rhetoric emerging from Salvini's entourage. The *Aquarius*'s intervention was an ethical one—not a political one—and one designed to alert a certain public to the degree of suffering in the Mediterranean. For this purpose, a strong emphasis was placed on the nonpolitical nature of the ship and its crew's interventions.

The quasi-scientific method of data collection on board—keeping a record of communications to and from the bridge, noting each action taken and how it complied with various obligations under the law of the sea, maintaining a methodical chronology—was a way of objectifying the enterprise of saving migrant lives at sea. It served to establish "truths" that could legitimize humanitarian intervention and affect a designated public. However, despite these meticulous efforts, the *politics* of saving migrant lives at sea were difficult to ignore. The enterprise was *political* simply because it

took place in a highly charged environment of surveillance and control. Moreover, I would argue that the very enactment of the equality of life in the face of death at sea was political in Rancièrian (2010) terms. Politics, in this sense, is an eruption of equality that has been reduced by what he calls "the police." In the most abstract sense, policing partitions the regime of the visible and sayable and designates subjects' ability to speak and be heard. Regardless of the fact that in its communications, the NGO positioned itself as a nonpolitical actor, one that was merely performing the duties that all ships are bound to—rescuing life at sea when distress is signaled—the very enactment of equality in this way was opposed, in Rancière's terms, to a certain "partition of the sensible." The EU border regime *produces* death at sea in the Mediterranean, or rather, as Heller and Pezzani (2017) put it, "migrants die not only at sea but through a strategic use of the sea" (96). There is nothing natural about the way the sea is erected as a boundary for some while it is domesticated to bring others into contact with one another. In that sense, the way the sea is strategically molded into a deterrence mechanism to prevent migrants from reaching the shores of Europe brings it squarely in line with Rancière's definition of "the police."[16] It is a particular way of dividing the sensible world, space, and access to rights. In Rancière's (2001) view, for politics to emerge, there has to be a form of contrast with the logic of the police, what he calls a manifestation of dissensus. A truly democratic politics is one that ruptures this division, because there is no "natural principle of domination by one person over another" (Rancière 1999, 79). By providing the possibility for the universal right to life to be effective, rescues arguably reveal the ontological equality of human lives, which have been rendered precarious by the police.

That being said, state actors also carry out rescues of migrants at sea, and so the act of rescuing is not in and of itself inherently political and dissenting at all times. Some scholars, viewing humanitarian and border-policing work as entangled, have described SAR activities as necessarily operating across a continuum of care and control (Pallister-Wilkins 2016). However, this does not capture the historic levels of pressure placed on NGO rescue ships at the specific time when I was conducting fieldwork at sea. Continuing SAR operations in a very specific atmosphere of intimidation and criminalization was more than the performance of the "liberal will-to-care" (Reid-Henry 2014), saving life elsewhere while simultaneously constructing that elsewhere and the "distant stranger" as deficient (Pallister-Wilkins 2020). Instead, it was the inherently political nature (in a Rancièrian sense) of the moments of rescue carried out in the newly declared Libyan SRR that

meant so much effort had to be put into the work of producing "facts" on board with such a forceful emphasis on an evidence-based and legally compliant approach to rescue at sea.

Operating in the Libyan Search and Rescue Region: Dynamics of Communication and Control

A few days into navigation, I was awoken at 7:30 a.m. and called to the bridge: A "target," a potential distress case, had been spotted.[17] At the same time, the captain had overheard a conversation over the radio between a couple of distant fishing boats about a "migrant boat." The *Aquarius* contacted the fishermen and informed them that we had the capacity to intervene. Jim, the SAR coordinator, had tried calling JRCC Tripoli to request instructions, but his calls had remained unanswered.[18] Since Tripoli was not picking up the phone, the captain resorted to contacting another RCC.[19] The Italian MRCC was much more responsive, and Jim informed it about the failed attempts to contact Tripoli. The small vessel in distress was a fiberglass boat and was taking on water. The eleven people in it were rescued without difficulty; their boat was not equipped for the long voyage to the north and was completely unsuitable for the bad weather likely to occur on the high seas. Once the rescue was completed, Jim wrote an email to the Italian Coast Guard again, informing it of the number of people now on board the *Aquarius*, making sure Malta and Tripoli also received copies. By the end of the morning, Tripoli had emailed back to inform us that it was taking charge of coordinating the SAR event and giving us coordinates of where they proposed to transfer the rescued people onto a Libyan asset. The *Aquarius* responded that it could not proceed to the transfer, referring to the SAR conventions that prevented us from taking survivors back to an unsafe place; by agreeing to make the transfer, we would potentially be in violation of the nonrefoulement principle.[20] The LYCG then responded that the *Aquarius* should contact another RCC or its flag state for coordination and to allocate a place of safety. Shortly after this event, the Panama maritime authority released a press communiqué stating that it had initiated proceedings to remove the Panamanian flag from the *Aquarius*. The stated reason was that the vessel had "refused to deliver immigrants and refugees to their place of origin" (Autoridad Maritima de Panama 2018).[21] The information that the *Aquarius* had disobeyed orders from the Libyan authorities had been delivered to Panama by the Italians (see MSF 2018). Panama had declared it was going to have to exclude the *Aquarius* from its register

because not doing so would entail severe political difficulties for the many Panamanian ships operating in European ports.

The flag was stripped from the ship without any procedural remedies. From the ship's perspective, it felt as if the removal was a sanction for having disobeyed orders. And indeed, rather than a consequence of any failure to comply with the law, the removal of the flag was nothing more than a result of the formalization of the LYCG's authority. Regardless of the legality of the crew's actions, it was disobeying the orders of the legitimate coordination authority that gave a reason for state authorities to strip the ship of its flag once again.

"They Are Betraying the Spirit of the Law"

Despite this setback, the *Aquarius* continued its patrol in the zone, now with the eleven survivors on board.[22] Over the course of the following day, the ship addressed a request to first the Italian and Maltese authorities and then also the Spanish, Greek, and French authorities asking for them to name a safe place to disembark the rescued people. No positive answers came through. Two days later, in the early-morning hours, the *Aquarius* was alerted to a boat taking on water, said to have left from Zuwara, Libya. The boat was believed to contain around fifty people, including women and children. After informing the ITMRCC of the potential case—JRCC Tripoli was once again unreachable—the captain and SAR coordinator decided to head toward the GPS coordinates we had received. The Italian authorities were obviously in contact with the Libyans via means that were not available to the *Aquarius*, because they knew that there was a Libyan Coast Guard patrol boat close by. On the phone, they gave Jim the name of the patrol vessel and said that he should try to contact it. About an hour later and after several attempts, the bridge managed to establish contact with the patrol boat in question, *al-Kifah*. *Al-Kifah* informed the *Aquarius* that its officers were to be the "on-scene commanders." The SAR conventions provide for the designation of an on-scene *coordinator* to ensure the smooth sequencing of events during a rescue.[23] The designation of "commander" signaled how roles would be distributed on the scene. This was not so much about collaboration as it was about operational hierarchy.

At around 4:40 a.m., the *Aquarius* informed *al-Kifah* that it was altering its course to the south to conduct a search pattern. The Libyan Coast Guard acknowledged this information and gave the green light for *Aquarius* to proceed. Around half an hour later, the teams on board the *Aquarius*

spotted a potential "target" on the radar and informed *al-Kifah*. Another half hour passed before one of the watchmen established a visual of a tiny speck in the distance: the boat we were searching for. The night was eerily clear. The moon shone bright over the huge expanse of sea all around us, flat like a black mirror. The *Aquarius*'s RHIBs,[24] the small, easy-to-maneuver high-speed rescue boats stored on the side of the ship, were then lowered into the water to investigate the sighting. As they were launched into the pitch-black sea, I couldn't help but feel slightly alarmed at the sight of people I had become close to during my time on board disappearing into the shadows of the sea while I looked on from the bridge. Soon afterward, the rescuers on the zodiacs informed those of us on the bridge that they had located a middle-sized wooden boat. This find corresponded with the description of the vessel we had been searching for. Several women and children were on board. The rescuers assessed that everyone would need to be evacuated immediately.

While the search had been underway, our bridge had been communicating with *al-Kifah*. Up until that moment, the discussion had been relatively courteous, but on hearing that the teams on the *Aquarius* had located the boat in distress, *al-Kifah* demanded that the *Aquarius*'s small rescue zodiacs stabilize the situation and then remove themselves to a distance of five miles. Jim explained calmly that he would not be able to do so, since the boat was in distress. From then on, communications with the LYCG tensed up a notch. To make matters worse, the quality of the radio link was poor, and the signal was lost several times. Further adding to the confusion, two different voices were alternating on the radio and giving seemingly contradicting instructions. At one point, one of them yelled, "Five nautical miles, now!" Jim kept asking whether the women and children could start to be transferred from the wooden boat, but no coherent answer came from *al-Kifah*. Both zodiacs were still next to the boat in distress, with the rescue teams wondering why they were not being given the order to transfer—they were not aware of the communications issues between the Libyans and the *Aquarius*. Long minutes passed with no answer being received from the LYCG. With the life jacket distribution complete, Jim then gave the green light to the rescue teams to start transferring the women and children to the small rescue boats.

On the bridge, the silence was intense; everyone was aware that the tone of voice of the Libyan coast guards had been intensifying for a while now. At 6 a.m., the Libyans ordered the *Aquarius* to move fifteen nautical miles away from the scene: "Do you understand what on-scene commander means?

Leave the area now! Do you understand me? We are coming now!" one of the voices exclaimed, now positively aggressive. Three journalists, the captain, the chief officer, the head of the rescue operations, and the coordinator for MSF were all on the bridge at that point, and everyone knew this was a pivotal moment. If the Libyan patrol boat were to move in—and become visible to the people in the wooden boat—the situation could become very dangerous, as people might jump into the water out of panic; the whole boat could even capsize. Over the radio, Jim responded once again that the zodiacs were in the process of stabilizing the wooden boat and that it would be dangerous for both ships to be on the scene at the same time. A group of women and children had now been transferred from the boat that was taking on water to one of the zodiacs. The rescue teams dealing with the boat in distress passed that information back to the bridge, which then requested that the Libyans allow the women and children to be transferred to the *Aquarius*.

By this time, the tension over the communication channel had been mounting for a good half hour. Morning had broken, and I could feel my body pumping with adrenaline. A crackling voice broke the silence on the radio. It was someone on the LYCG's patrol boat addressing the *Aquarius*, seemingly in a bid to intimidate the crew: "Good morning, . . . have you been in Tripoli town before? What do you think if you go to Tripoli? Staying there one or two weeks with us? How would you like to go to Tripoli?" The threat made my stomach do a somersault: It felt as though we had disobeyed orders and that the consequences would be bad. The SAR coordinator's calm voice responded: "Sir, if we could solve this problem now, in a safe manner for everybody. What are your instructions for us? We would like to transfer the women and children that are on our RHIBS to the *Aquarius*." But the LYCG repeated that the *Aquarius* should go fifteen nautical miles away from the distress scene. The situation was deadlocked: Some women and children had already been transferred onto the RHIBS. Families would inevitably be separated if the LYCG were to take the remaining people onto its patrol boat. This meant that the *Aquarius* would take everyone—or *al-Kifah* would.

Another hour of fraught and volatile back-and-forth communication ensued, with confusing instructions from *al-Kifah* and attempts from the *Aquarius* to de-escalate the situation. The confusion continued until 7:00 a.m., when the order to start transferring the people from the small boats to the *Aquarius* was finally given. Before that, the Libyan patrol boat had drawn itself up very close to the wooden boat and our boats and had proceeded to circle the *Aquarius* menacingly. After all the people had been transferred to the *Aquarius*, the last communication we received from the

Libyan Coast Guard was an order for the *Aquarius* to leave the Libyan SRR and not to come back.

"They are betraying the spirit of the law at sea," sighed Paul, one of my colleagues, a trained marine officer, who was working as a rescuer on this particular mission. "The SAR conventions do not provide any indication as to who is more legitimate to carry out rescues! It's about saving lives at sea, not about policing the Mediterranean." The 1979 SAR Convention states that when multiple facilities are about to engage in search and rescue operations, the Rescue Coordination Center should designate "the most capable person" to act as on-scene coordinator.[25] What "most capable" means is not specified in any detail. The *Aquarius*—with its extensive experience of rescues, cumulative knowledge about how to deal with these kinds of flimsy boats, and onboard medical teams—could certainly qualify as "most capable." The United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the SAR Convention all stress the obligation of the shipmaster to proceed as fast as possible to the scene of distress and to offer assistance.[26] The betrayal Paul was referring to was that, in his view, the LYCG took its role as "competent authority" to mean "authority that all assets involved in rescues should obey," effectively becoming a policing force without the mandate to act as one. This clashed with his understanding, and that of others, that by acting consistently with reference to international law and SAR procedures, the *Aquarius* was abiding by the *spirit* of solidarity at sea. What he had learned in his marine training was that preserving life at sea has the highest importance. No person is to be left to die, regardless of political circumstances. In the view of the rescuers on board the *Aquarius*, the LYCG, by acting like "cowboys of the seas" (as they sometimes referred to them), were betraying that spirit and endangering the lives of the people stranded in their small dinghies.

Information Obstruction

As we headed north, away from the patrol zone, we received an INMARSAT-C message to all ships, signaling that there was a boat in distress north of al-Khoms containing a hundred people and said to be sinking.[27] The message indicated that JRCC Tripoli was to be the coordinator of the SAR event and provided several means of contacting them. There was also the possibility of "contact[ing] JRCC Libya via ITMRCC Rome," with Italian numbers and emails provided. The sinking boat was more than a hundred nautical miles away, which meant it would take the *Aquarius* several hours to get

there. However, after a conversation with the Italians—since it was once more impossible to get hold of Tripoli—the *Aquarius* decided to change course and head south again. Half an hour after we had informed the usual MRCCs (Rome, Tripoli, and Malta), an Italian military aircraft announced over the radio that it was dropping SAR kits on the area of distress and ordering a nearby commercial ship to divert to the boat in difficulty. At around 10:00 p.m., while the *Aquarius* was sailing full steam ahead to the sinking boat, another INMARSAT-C distress alert was sent, again emphasizing the need for all boats in the area to divert to the sinking rubber boat. Jim and François, the heads of the rescue and medical teams, respectively, called the crew to the bridge. They warned all of us to get some rest before the morning, when we might be heading toward a site of mass casualty.

By 3:00 a.m., the *Aquarius* was nearing the given position, and Jim called MRCC Rome to ask if it had any updated information about the case. The person who answered on the Italian side was obviously not the same person Jim had spoken to earlier on the phone, and they feigned surprise: "This SAR event is under coordination of JRCC Tripoli; we don't have any more information about it." Jim pointed out that the very message sent out by MRCC Rome indicated that the Italian maritime authorities could act as intermediaries for the Libyans and that the last information he had received was that of an Italian military aircraft dropping SAR kits over the scene. At first, the Italian MRCC would not budge, but when Jim persisted, they let slip that the LYCG had rescued the people on board but that MRCC Rome had no information about the number of survivors or whether any deaths had been reported. When the *Aquarius* arrived at the position that had been given in the emergency message, Jim immediately deployed the RHIBs, but it was soon obvious that there was no dinghy to be found. The ship then proceeded to carry out a search pattern, in an expanding square shape, progressively combing the broader area around the location we had been given for the distressed dinghy several hours earlier. I squinted out at the water from my position on the port side of the ship at the level of the bridge. The gray sky melted into the gray water, which was spotted with the occasional white tops of breaking waves on the choppy sea. We were looking for any sign of bright colors, hoping that the SAR kits that had reportedly been dropped would contrast with the dull water and sky. Eventually, all the RHIBS were able to retrieve were a rubber boat and a yellow SAR emergency raft, the latter with obvious signs that it had been occupied by people. But these were the only traces that people had got into difficulties so far out to sea; there were no other signs of life.

The trip south had lasted all night, and once our ship finally arrived at the designated position, it could only turn around and head back north again. Frustration on board was palpable. "Why didn't the Italian authorities call us when the Libyans informed them that they had conducted the rescue? They knew we were heading to the distress scene, didn't they?" one colleague, an experienced rescuer, asked me. The briefing of the day before had put the teams in a state of alert, and they were exhausted from the marathon rescue and confrontation with the LYCG of the previous night. The anticipation of this rescue operation, which had ultimately turned out not to be one, had drained more than one of us. I could only shrug my shoulders and assume out loud that the authorities were keen to waste our time and fuel.

Rescue, Interception, Death

The *Aquarius* now had two small groups of what the crew called guests on board: one group from the first rescue of the fiberglass boat, and the other from the larger wooden boat that had been rescued at night. Both were in need of a designated place of safety to disembark. Despite multiple emails to European authorities, it took several days for Malta to agree to the survivors coming ashore. Standoffs between NGO boats or merchant vessels and European authorities became a regular occurrence after the declaration of the Libyan SRR.[28] Since the Libyan authorities were now responsible for coordinating the international waters where most distress cases took place, they were also in charge of determining where the rescued people should be disembarked. If the LYCG intercepted people, it would bring them back to Libya. NGO vessels, however, would not recognize Libya as a place of safety, in accordance with international refugee law. I say more in a following section about the de facto situation of clashing legalities this puts NGO ships in and the many ramifications it has for the governance of these waters.

As the *Aquarius* sped north, and as the hours after the rescues turned into days with no news as to when or where the "guests" would be allowed to disembark, the meaning of rescue for them—as opposed to interception—became clearer to me. During these few days after the rescue, the crew and the rescued people mingled on the afterdeck of the ship. It was a moment of respite in the travelers' journeys. Stories were told, experiences shared, we played with the children and sometimes even danced together on the deck, as the sun went down. Although these moments briefly saw eyes sparkle and hopes voiced, for the rescued people, nothing could take away the feeling that they were stuck in a state of limbo. Muhammad itched to move on and

eventually find a place to settle. He had been on the road for years; "I'm so tired," he sighed. Lina worried about finishing school. She wanted to be able to study, perhaps become a doctor someday. Conditions were cramped on board, the ship not being designed to host people for long periods of time. The men had to sleep outside, while the women and children had a small, protected area below deck. During the few short conversations I had with the people who had been rescued, the relief of having escaped Libya was never far from their minds. The distinction between rescue and the relative safety associated with disembarking in Europe, on one hand, and the terror of being intercepted by the Libyan Coast Guard, on the other, is a constant thread in the testimonies of those who have made the perilous crossing. A frequent sentiment is that death would be preferable to being taken back. The following testimony is characteristic of the many stories I heard:

> For migrants in Libya the situation is very difficult. [. . .] Sometimes we are forced to risk and go out in search of work in order to gain [a] little money to buy what we need . . . but unfortunately sometimes when we get work, we work with less payments, or often when we finish work, they don't pay us and instead they sell us to the police who put us in prison for months, then ask us to pay money to free ourselves from prisons, and there's people who are forced to call their family to ask them to pay money to release them from prison, and there's people who hesitate to ask for money from their poor families who they are living in difficult conditions so they prefer to stay in prisons but they never let their families know nothing of all what they facing in Libya. [. . .] I don't know about other refugees and migrants, but for me, I have tried four times to flee Libya. Two times when we see Libyan coast guards, we jumped in the water to not be taken back to Libya, and one time when Libyan sea guards came, we refused to get on their ship, but they stab our boat, and waited till our boat sunk and we jumped in water then they started [to] save us slowly. I really don't know how about others, but for me, I prefer death in the sea instead of live hellish life in this murderer country, because here in Libya we are not respected. [. . .] Fleeing our home and illegal immigration aren't in our wishes or dreams, but this situation is forcing us to flee.[29]

After some back-and-forth by email, it was finally agreed that the rescued people would be transferred to a Maltese Coast Guard patrol vessel in international waters. However, because the weather conditions had deteriorated, making a safe transfer difficult, the *Aquarius* was made to wait

some more. Given the fear that people have of being returned to Libya and the fact that the ship was not adapted for people to stay for longer periods, not to mention the trauma of the voyage and whatever had come before it, it was no wonder that tensions started to rise among our guests. When the day of the transfer finally arrived, there were smiles all around and palpable relief. We said our goodbyes to the people as, one by one, they clambered onto the small Maltese vessel, waving them off until they were just a speck on the horizon.

Clashing Legalities

What happened on board the *Aquarius* was made possible and shaped by the infrastructure of law and documents that surrounded the ship's operations. The addition of JRCC Tripoli to the global SAR plan added a layer of procedural obligations for any ship encountering a distress situation while navigating in the Libyan SRR. By extension, this also applied to any NGO civil rescue ship on a mission there. The establishment of the Libyan SRR meant it needed to contact and collaborate with the newly recognized coordination authority. But the establishment of the new SRR is far more than a formal procedural change, and considering it in terms of the IMO framework alone is to ignore the recent historic politicization of the question of rescue of migrants at sea. The emergence of this zone had far-reaching ramifications, as close attention to circumstances such as those described above begins to reveal. The dynamics of control and governance at play in this space show the trickle-down effect that the establishment of the Libyan SRR had for migrants in distress at sea and for NGO ships engaged in their rescue.

One of the outcomes of the procedural change was to create a clash of legalities, as became tangible in the altercation between the *Aquarius* and the LYCG that culminated in the second rescue I describe above. The opposing actors referred to contrasting authoritative texts and normative practices that were to be adopted in that situation. Laws are material phenomena (Silbey 2005, 327); they do not confine themselves to a hermetic textual world, enacted in courts by designated legal actors, sealed off from societal life. Laws play a role in sustaining and reproducing social structures (Silbey 2005, 329), and social actors refer to the law when they participate in what Silbey and Ewick (1998) call "the construction of legality." In this view, legality is the perceived source of legal authority, and social actors participate in its construction by conforming with, engaging with, and resisting the law.

The clash of legalities recounted from the deck and bridge of the *Aquarius* cannot be reduced to a conflict between clearly defined legal levels within a fixed hierarchy. Rather, applying a multiscalar analysis to rescue situations reveals how the social field in which the LYCG and the *Aquarius* were pitted against each other was shaped by a wider conflict between frames of reference in the contested Central Mediterranean region. For the NGO rescuers, operating in the Libyan SRR meant having to collaborate with the recognized authority associated with the zone. The clash emerged when this authority insisted that rescued individuals, migrants, or refugees be taken back to Libya. In this situation, any vessel—an NGO's or otherwise—that conducts a rescue is stuck between a rock and a hard place: Either it disobeys orders and faces the likely retaliation of European states, which could refuse or delay the disembarkation of survivors on European shores; or it obeys them and, in so doing, violates nonrefoulement principles in international law. In this situation, the frames of legal reference are themselves related to the "institutionalized power embedded in scalar relations" (Çağlar and Glick Schiller 2018, 9): Geopolitical stakes are at play in a moment of tense negotiations over the lives of people who have been turned into political chess pieces. At this level of analysis, the conflict is no longer a simple clash of legal references resulting from actors' use of different citational modalities. Rather, it is a conflict relating to who has (or who has been given) the right to act and to operate in a newly governed zone.

Indirect Spatial and Temporal Control

The physical "space" in which the altercations and rescues I have described took place was legally situated in the international waters of the Mediterranean. However, the authority and policing powers of actors in other locations stretched out beyond their sovereign and territorial limits to surround both the people in distress and the *Aquarius*. These scenes from the NGO ship's time at sea show the complex and layered exercise of control over the newly emerged Libyan SRR. The fact that the MRCC Rome could locate *al-Kifah* and tell the *Aquarius* to contact the patrol vessel points to what is an indirect form of control by the EU and Italy over what goes on in international waters. It is a case of governance beyond government: Control is not territorially delimited and, as I show, the situation is one of legal pluralism. That being said, the control is not absolute; indeed, the scenes I describe earlier also show that, alongside attempts to exert control, there generally also exist concomitant dynamics of contestation and subversion.

Still—and this is the real conundrum—despite the openness and flexibility of the "rules" that regulate how rescue is to be carried out on the high seas, the LYCG had an operational advantage. This advantage was due to the institutionalization and formalization of the LYCG's authority. The argument I am bringing forth here is that precisely this authority was of vital importance for the indirect exertion of control by the EU on this stretch of water and, by extension, on the people who set sail in flight from the shores of North Africa. From the moment the Libyan SRR was created to this day, European actors (whether coast guards, Frontex,[30] or the EU military operation European Union Naval Force Mediterranean [EUNAVFOR Med]) have interpreted the international law of the sea in an extremely restrictive way: If a distress case is declared, they alert only the "competent" RCC according to the geographical position of the SAR event.

According to Article 6.7 of the Guidelines on the Treatment of Persons Rescued at Sea, adopted by the IMO's Maritime Safety Committee in 2004, the RCC that is first contacted is responsible for coordinating the rescue case "until another competent authority assumes responsibility." The International Aeronautical and Maritime Search and Rescue (IAMSAR) manual specifies that this obligation remains even if the distress event takes place outside the RCC's area of responsibility: "An SRR is established solely to ensure that primary responsibility for co-ordinating SAR services for that geographic area is assumed by some State. SRR limits should not be viewed as barriers to assisting persons in distress. Any facility within a SAR organization should respond to all distress situations whenever and wherever it is capable of doing so" (IMO/ICAO 2006, vol. 1: Article 2.3.15, para. (e)). When the Italian MRCC is alerted to a distress case within the Libyan SRR and does not inform other ships in the region (such as NGOs), it is going against the principle recognized in international law that requires it to render assistance to people and ships that are in danger at sea. Immediately shifting responsibility for coordinating rescue activities to JRCC Tripoli corresponds to a reading of international maritime law that prioritizes passing coordination to the RCC responsible for the SRR over the activation of vessels in the area that could render assistance. In the context of the deterrence paradigm at Europe's external border, this means that European authorities can exert indirect spatial control over those seeking to reach the shores of Europe. This spatial control is exercised via the LYCG's policing characteristics; as the interactions between the *Aquarius* and the LYCG show, the latter engages in the policing of the space in which NGOs carry out rescues, aided by the information provided by the Italian MRCC.

A more recent trend in the policing of the maritime border in the Central Mediterranean provides additional density to the picture of indirect spatial control exerted by EU actors on the Libyan SRR. While the above description of the rescue points to the horizontality of control on the surface of the sea (the LYCG's functioning patrol boats keep guard and police NGOs thanks to, among other things, information provided by European actors), it is supplemented by the "vertical politics of intervention" (Andersson 2019) of European aerial surveillance. In May 2019, for instance, *Seagull 19*, an aircraft of the EUNAVFOR Med air fleet flying under the flag of Luxembourg, together with the *Beech B200*, an aircraft of the Armed Forces of Malta, flew over two rubber boats in the Libyan SRR. They fed the positions of the two dinghies exclusively to the LYCG, which arrived on the scene to track and then intercept the migrants (Alarm Phone et al. 2020). The move away from the physical presence of European actors at sea was already perceptible in the replacement of Frontex's Operation Triton by Operation Themis in 2018, when the area of intervention was massively reduced, excluding the Maltese SAR, which had been included under Triton (Carrera and Cortinovis 2019, 7). The EU's military operation in the Central Mediterranean, EUNAVFOR Med, underwent a similar shift away from patrol and intervention capacities at sea to having a bird's-eye view from the sky when Operation Sophia was succeeded by Operation Irini. Frontex is increasingly involved in aerial surveillance, with both aircrafts and military-grade drones now patrolling the airs for the EU agency.[31] In early 2021, Frontex (2021) also announced it would be expanding its cooperation with Operation Irini, including by sharing data from its aerial surveillance in the Central Mediterranean.

A distinct form of temporal rule is also visible in my description of the operational constraints on the *Aquarius* in the Libyan SRR. The emergence of an official partner in the region for rescue coordination enables the ITMRCC to obfuscate key information to civil rescue ships at sea and to feed it only to the Libyan authorities. If NGO vessels such as the *Aquarius* become aware of a distress case, a race against time is set in motion, as it needs to be able to arrive before the LYCG to forestall an interception by the latter.[32] The temporal politics of the encounters between the different actors I have described in this chapter reveal what appears as a competition over the lives of those who find themselves in distress. Not only the frantic rush to arrive "in time" for rescue before the LYCG but also the tense negotiations I describe between the *Aquarius* and *al-Kifah* make explicit both this temporal urgency and a kind of contest among rescuers. There is something absurd about the concurrent temporalities experienced by the

various actors in that moment. The fate of people whose decision-making timeline is complex and fragmented, whose voyage is sometimes planned for weeks or months before departure, before they are suddenly rushed by the threats of a smuggler into a boat after days of waiting, is accelerated and compressed in these few hours. The layered experiential nature of temporal uncertainty they endure is lost in the minute-by-minute depiction I was required to compile of the rescue "event." During the standoff off the Maltese coast, the absurdity of this enforced waiting flashed up on the navigational screens around me on the bridge, which showed the navigational track of the *Aquarius*. I watched as a series of overlapping lines materialized bit by bit every day, showing the zigzagging back and forth of the ship off the Maltese coast, where the heads of operations were hoping to get an authorization to disembark.

Which Connections Are Made to Count?

Border externalization might be seen as the "spatial fix" that contemporary liberal democracies apply to the dilemma they face as a result of unauthorized transnational migration:[33] On one hand, sovereign powers claim the fundamental right to self-determination (and hence control over the right to enter the polity); on the other hand, they also continue to assert adherence to universal human rights principles.[34] Unauthorized migration raises the question of membership in a polity and who should have access to what kinds of political goods. For Moreno-Lax and Giuffré (2017), "contactless controls" are a newer, more aggressive approach to deterrence measures employed by destination countries to impede the arrival and access to asylum procedures of migrants. These forms of control can be characterized as a spatial fix to that dilemma in a double sense: creating distance on both ethical and legal grounds.[35] Countries of destination support countries of transit in exerting the necessary control on their behalf. Coercive management of migrants is thus transferred to third countries, with the aim of eliminating direct contact between refugees and "would-be destination States" (Moreno-Lax and Giuffré 2017, 85). This shift has jurisdictional consequences. Contactless control is able to sever the jurisdictional link between European countries and refugees, enabling the former to elude any responsibility toward the latter. Various means are used to ensure that countries of transit and departure are committed to these kinds of containment measures, including "political and financial promises of fund transfers, visa facilitation, or accession talks" (Moreno-Lax and Giuffré 2017, 84).

In view of this situation, the EU's technical and financial assistance to the LYCG (the policy architecture of which I examine in chapters 2 and 4) clearly aims to contain the movement of refugees and migrants and prevent them from ever entering European territory. Just as significant, this support to a third country also avoids European jurisdiction from being triggered when interceptions are carried out at sea. The events I witnessed at sea show how communication between the Italian authorities and the LYCG produce a space where humanitarian action is hindered and where pullbacks (which we can assume took place in the third situation, when the *Aquarius* arrived after the LYCG had already intercepted the people in distress) can occur without the Italian authorities ever "touching" the migrants, thus avoiding a repetition of the type of action condemned by the *Hirsi* judgment.[36] Indeed, the European Court of Human Rights has determined through its jurisprudence that a member state's jurisdiction is triggered when effective physical power and control are exerted over the person whose rights have been violated (Den Heijer 2013). As mentioned, contactless control is thus also a technique used by Italy and the EU to avoid liability. In chapter 5, I explore liability avoidance further by examining how a group of human rights lawyers challenge the dilution of responsibility caused by the extraterritorialization of control in judicial spheres.

The multiscalar dimension of externalization policies—how they unfold in moments of friction between different scales (Tsing 2005)—helps us understand how multisited connections actually work "and what the sites mean to each other" (Xiang 2013, 284). Through the rescues—and nonrescues—that the *Aquarius* was involved in, we see how communications play out between different actors and how the effects of the policy of supporting and empowering the LYCG unfold at sea. Looking at the different levels of government and governance that are at play in a single situation helps shed light on chains of interdependence and reveals which connections are made to count. As becomes clear in the following chapters, the operations of the LYCG are deeply dependent on the European authorities that indirectly fund its activities. However, this interdependence was "cut" (Strathern 1996) from a legal point of view by the enactment of the Libyan SRR. European jurisdiction is "cut" because the SRR confers responsibility for coordination on the Libyan authorities, even when the latter's coordination capacities are only enabled by the former. This is central to understanding how the spatial fix of externalization enables both ethical and legal distancing (as well as liability avoidance). In other words, only by linking what goes on in and around the boat at sea to the legal architecture that it is caught in and the citational

modalities that activate in moments of friction can positions of domination be made clear, beyond the "flat" textual content of regulations. Here the EU, which has supported the LYCG's operational capacities through the provision of equipment, training, and capacity enhancement, can make it look as though an actor or institution—here the LYCG—is independent, despite the fact that the institution is only and specifically made possible by "a specific position within interdependent relations" (Eckert 2016, 244). Italy's communication with a formalized partner, the LYCG, enabled the ousting of the *Aquarius* from rescue activities at sea: In the third *Aquarius* rescue I depicted, the unsuccessful rush to the scene onto which SAR kits were being dropped, the ship and its crew were simply kept out of the loop and by that means prevented from intervening. The Libyan Coast Guard appears as a "legalized lawless" agent functioning as an exceptional police force, acting beyond public knowledge and review, and operating between national and supranational levels of governance.[37] Italy's sovereignty is extended, through its control of the communication flows, beyond territorial boundaries; the external border does not correspond to a precise demarcation, but rather manifests itself in various ways.

Jurisdictional Boundaries, Regulatory Compliance, and Double Standards

In the scenes described above, both the *Aquarius* and the LYCG were engaged in an interpretive process to assess how to comply with existing norms that regulate their conduct at sea. The teams on board the *Aquarius* integrated their close reading of the legal frameworks surrounding search and rescue and international maritime law more generally with "humanitarian reason" (Fassin 2012) to justify their activities. The altercation between *al-Kifah* and the *Aquarius* reveals how the declaration of the Libyan SRR provided the LYCG with a legal basis for justifying its policing of this stretch of international waters. Nevertheless, the particularly aggressive style of communication it adopts toward NGOs raises the question as to why, in more general terms, the LYCG not only collaborates with the ITMRCC but accepts being deputized in this manner. Beyond the issue of international agreements and geopolitical interests, these are also questions about the nature of compliance. The new Libyan SRR placed new obligations on the LYCG; it did not always respect these obligations (for example, it was often unreachable, and its coordination center was not always manned by an English-speaking person),[38] but in the scene of confrontation I describe above, the LYCG

went beyond what is required from it from a regulatory point of view (to coordinate the rescue, also possibly delegating tasks to other vessels in the vicinity) and insisted on taking the people in distress onto its patrol boat. So, although this is some kind of interpretive process, it also seems that there is a "structured coordination of action as a choreographed sequence" that allows the LYCG and the Italian MRCC to carry out a "process that extends beyond instrumental utilities" (Gray and Silbey 2014, 135).

To bring up the issue of compliance is to question the apparently clear relation between social control (exerted through a chain of command) and regulation. In reality, that relation is not as straightforward as it might seem and is rather blurry when one examines more closely what it is that actually ensures compliance in this case. The term *contactless control* describes how EU authorities outsource the "physical" management of migrants to third parties while still maintaining an (evasive) element of command and control over those processes. So far, I have used that expression to capture *how* control is exerted, but it is also useful to describe the *outcomes* of this way of exerting control: Contactless control leads to diffusion of responsibility. Bringing the issue of compliance to the fore asks *why* the LYCG acts in the way it does, in a somewhat subordinate relation to European authorities, within the paradigm of contactless control. It also inquires as to what social processes are needed for a certain collectivity—here the collectivity of Mediterranean Maritime Coordination Centers—to "act as one to achieve conformity with normative or legal requirements" (Gray and Silbey 2014, 98).

A few weeks after my time at sea, a documentary on the Libyan Coast Guard and its relation to the NGOs operating north of the Libyan coast was broadcast by Al Jazeera in the series *People and Power* (Al Jazeera 2018). The program featured footage of the same rescues I experienced, but this time from the perspective of the LYCG and offered some insight into the nature of the LYCG's collaboration with Italian maritime authorities.[39] Colonel Massoud Abdoul Samad, from the coast guard operations center in Tripoli, spoke of his involvement in Operation Sophia: "During Operation Sophia, 350 people from the Libyan Navy and the coastguards were trained. Because they'd been trained, we were then able to agree with the Europeans that our boats would be given back to us."[40] Indeed, in 2013, four LYCG boats that had been damaged in the 2011 civil war were sent to Italy for repair. These were part of the batch of Bigliani patrol boats that had been donated by Italy to Libya in 2009 for their joint patrols (Senato della Republicca and Camera dei deputati 2019, 44). A document outlining one of the "support to integrated border management" projects cofinanced by the Italian Ministry of

the Interior and the EU Trust Fund for Africa, indicated that the conditionality of material and technical support had been explicitly mentioned in the bilateral meetings of "a mixed-committee composed of high-level representatives from the relevant ministries and entities of the two countries."[41] The document noted that "the Libyan authorities were made aware that depending on the results achieved under the first phase of the project, a second phase might be launched with additional EU funds, with the purpose of further enhancing the operational capacities of Libya in border and migration management, fight against migrant smuggling and search and rescue activities, according to international and European standards and models." This statement tells us something about compliance: The training was linked to material rewards in the form of the return of the vessels. Indirect control is thus also stabilized by forms of exchange in which operational efficacy is guaranteed by one side (the Libyans) in return for equipment. Fidelity is insured by a well-designed structure—a combination of legal architecture and the provision of equipment, knowledge, and manpower.

Clearly, although every ship operator and crew member involved in SAR activities has a head full of legal references, it is not "simply" regulation that ensures compliance. The organizations operating the *Aquarius* anticipated that they would need to prove good faith and compliance with regulations and procedures, and so they hired a research and evidence officer. This underlying concern to show compliance with the law hints at a reversal of the burden of proof; SAR NGOs and migrants were ready to be accountable to European governments for whatever happened. This stood in glaring contrast to the LYCG's attitude toward regulatory compliance: they could interpret the SAR regulation freely, using it to its own operational advantage. Here, the "practical effectiveness of law" (Gray and Silbey 2014, 98) is thus ensured not by its simple existence but by the infrastructure for communication with the Italian authorities (from an operational perspective) and the material rewards (from the perspective of multiple levels of organizational control within the state). For the *Aquarius*, both physical and legal threats were linked to the risk of being accused of not abiding by the rules. For the LYCG, material rewards were linked to enactment of the regulation (which it could do however it pleased, as long as it upheld the legal fiction of the Libyan SRR) and it had a backstage ally, the Italian authorities, with whom the LYCG had a continuing and collaborative relationship to provide the veneer of compliance.

It is true that the LYCG's hostility toward NGOs existed before the declaration of the SRR.[42] However, as I have shown, the emergence of the Libyan

SRR has provided the Libyan Coast Guard with a basis on which to argue for the ousting of NGOs from "its" operational zone. This basis has continued since my time at sea.[43] In July 2021, Sea-Watch reported threats from the LYCG similar to those we experienced on board the *Aquarius*. In a tweet, Sea-Watch wrote:

> The so-called Libyan Coast Guard is threatening to arrest our crew onboard the #SeaWatch3! They falsely claim to have jurisdiction over the Libyan SAR zone, although it is just their area of responsibility to save lives. We are in intl. waters and have every right to be there!
>
> Instead of fulfilling their responsibility to secure people's lives in the Libyan SAR zone, the so-called Libyan Coast Guard threatens to "take every available means" to force us to leave. This is a serious violation of the Convention on the Law of the Sea. (Sea-Watch International 2021)

Conclusion

The addition of the Libyan SRR to the global SAR plan has effectively changed the way this stretch of international waters is governed. The notification of the zone to the IMO has provided the Italian maritime authorities with a legitimate partner, JRCC Tripoli, to whom they can outsource responsibility for rescue coordination. This in turn has meant that the LYCG conducts smooth pullbacks on behalf of Italy and the EU. The consequences of this formalization are far-reaching. It has effectively contributed to the periodical ousting of NGOs from SAR operations in this area of the world and forced them into a position that entails a de facto clash of legality. My descriptions of instances of rescue from the vantage point of an NGO boat—the *Aquarius*—shows the complicity of the Italian authorities in feeding information to the Libyan authorities while obscuring it from the rescue ship. It also shows how lawless conduct, that is, the disregard for maritime conventions designed to protect life at sea, is facilitated by this decision. Reading the notification to the IMO that brought into being the authority of a Libyan JRCC in conjunction with the specificities of the NGO vessel *Aquarius*'s operations within the then–newly recognized zone reveals the contradictions involved in this technocratic move. On the one hand, under the veneer of neutrality and in the spirit of the global SAR plan, the emergence of a new SRR zone with its corresponding coast guard could be read as the first paving of a road toward fewer deaths at sea. On the other hand,

the enactment of this zone cannot be removed from the recent history of this area and the EU's influence in Libya along with its quest to stabilize and regulate its borders and coastline. This enactment has resulted in a coast guard bestowed with enhanced powers and trained essentially to bring back migrants to Libya, where their most basic rights are violated.

The depiction of the tense dynamics in situations of rescue shows that the various legal frameworks regulating conduct at sea have become a legally plural framework of action, which the EU and Italy use to indirectly control this area. This indirect and "contactless" control (Moreno-Lax and Giuffré 2017) is also enabled by the double standards surrounding regulatory compliance with the legal frameworks codifying rescue activities at sea. NGOS are kept on their toes by the risk of abusive criminalization and hence are excessively careful to document their respect for the law. Meanwhile, the LYCG can abuse the law with the complicity of EU authorities to ensure that delegated interdiction is implemented.

2

Colonial Legacies and the Regulation of Mobility Between Libya and Europe

To establish delegated control of migratory movements in the Central Mediterranean, it was essential for European authorities to prop up Libya's sovereignty. Since 2011, and more intensively since 2014, European officials have pledged their support at various levels to help Libya enhance its control of its maritime and terrestrial borders to better manage irregular migration. They have also reaffirmed its right to do so. As postcolonial scholarship in international law has persistently shown, the development of the doctrine of sovereignty—supreme authority over a well-defined territory containing a national population—has been fundamentally linked to colonial conquest (Anghie 2004).[1] Moreover, in conversation with these theories of sovereignty formation, Radhika Mongia (2007, 403) has pointed out that national state sovereignty and migration control have colonial genealogies. She and others (e.g., Cohn 1997) have emphasized the need to consider metropole and colony as a single field of analysis for the constitution of sovereignty. This leads to an analytical shift when examining relations within the colonial field, a shift that prioritizes the study of how these enti-

ties were coproduced rather than seeing their emergence as wholly different and autonomous systems. This chapter places the externalization of migration control from the EU to Libya firmly within the field of colonial and postcolonial history. It points out characteristics of Third World sovereignty that periodically serve neocolonial interests and outlines how it involved the materialization of various forms of control of the movements of specific racialized populations.

There are parallels to be drawn between the Italian authorities' contactless control over the Libyan Coast Guard's interception of migrants on the high seas as described in chapter 1 and the regulation of population movements in Libya under Italian colonial rule. In this chapter, I historicize the emergence of the Libyan SRR within the broader context of the socio-legal construction of Europe's external border in the Mediterranean and Europe's political obsession with controlling and regulating unwanted migration to its shores. I show how "migration" (essentially from sub-Saharan Africa) as a problem in Libya was constructed in conjunction with the emergence of migration policy and the strengthening of the external border as issues for the EU. I also show how the continued importance of colonial imaginaries and power relations in the management of EU external relations brings us closer to characterizing the type of rule instituted by the contemporary EU-Italy-Libya collaboration.

The processes through which the creation of the Libyan SRR could be rendered both effective and acceptable involve strategic manipulations of Libya's sovereignty. It is, of course, simplistic to posit Libyan sovereignty as simply resulting from permissions granted by previous colonial powers or EU declarations. In recent years, countries on the semiperiphery of Europe have been eager to instrumentalize migration in a bid to increase their bargaining power with European authorities, and Libya is no exception to this trend.[2] However, as Achiume and Bali (2021) point out in their useful discussion of how to combine Third World approaches to international law and critical race theory, the dual nature of Third World sovereignty can easily be both perforated and reinforced by legal fictions to serve the interests of the First World: The 2011 NATO intervention showed the contingency of Libyan sovereignty, while, as this chapter shows, the Italian officials I interviewed repeatedly reaffirmed Libya's sovereign interest during the controversial process of helping Libyan authorities to set up a functioning Maritime Rescue Coordination Center.

Italy, the former colonial power in Libya, is at the forefront of the work of legal layering needed to regulate mobility in the region and to outsource

control and responsibility for the management of the EU's external border—at sea and beyond. European externalization policies and the rise of humanitarianism in the Central Mediterranean have emerged in the postcolonial period in the wake of a particular history of population control under colonial rule. On one hand, there are parallels and continuities to be drawn between contemporary dealmaking over migration control and Italy's colonial rule of Libya. This comparison was rendered explicit in 1998, when Italy's official recognition of the suffering its colonial enterprise had caused became linked to the former colony's collaboration on controlling and preventing migration flows (Cuttitta 2015, 35).[3] Until Muammar Gaddafi received monetary compensation for the colonial period in 2009, he used migration control as one of his main bargaining chips with Italy (Paoletti 2010b).

On the other hand, there are many differences between the contactless control that the EU and Italy exert via their support for Libyan authorities and the practices and theories associated with the control of territory and population at the height of colonial rule. Yet it is worth thinking for a moment with Mahmood Mamdani's (1999; 1996a; 1996b) extensive work on colonial rule in Africa, which theorizes the shift between direct and indirect rule. According to Mamdani, indirect rule was a distinct response to issues faced by colonial powers as a result of a lack of European personnel on the ground, difficulties in communicating over long distances, and the search for local allies that would secure more acceptability from the "natives." Direct rule is premised on a single legal order, "a form of state based on the rule of law" (Mamdani 1996b, 147), whereas indirect rule implies legal dualism and a form of power mediated through indigenous local leaders.[4] In the colonial context, indirect rule, featuring a degree of autonomy, is born out of the crisis of direct rule, which is itself based on ideas of assimilation (1999, 862). Mamdani's emphasis on the colonial powers' need to carry out colonial reforms that were acceptable to "local" elites echoes with the requirements of contemporary forms of indirect control in Libya. The desire of Italy and the EU to extend control over migratory movements beyond their own territories requires a balanced mix of effectiveness and acceptability. In this chapter, I trace the contours of how this was achieved via appeals to Libyan sovereignty, involving both reform of Libya's legal system as it relates to migration control and diplomatic discourses that emphasized Libya's right to control its own borders. I also draw parallels between these appeals and the recent history of racialized control of specific populations in Libya, parallels rooted in the violent history of colonial rule.

Regulating Mobility in and Around the Central Mediterranean

Since the end of the 1980s, illegalized migration across the Mediterranean Sea has been increasingly politicized. In the 1990s, journalists and academics alike started using the term *Fortress Europe* as migrant sea crossings and deaths along the maritime border became a cause for concern (Casas-Cortes et al. 2013). A "regime of uneven mobility" (Heller and Pezzani 2019, 645) has since emerged. One aspect of this has been the progressive integration of the EU, of which freedom of movement forms a key pillar, but the other side is the introduction of visa requirements for citizens of a list of countries of the Global South.[5] This curtailment has led to the current state of affairs in which a conflict over mobility—between states' obsession with controlling mobility and access to territory and migrants' capacity to continuously seize their freedom to move—is playing out along clear racial and class lines.

The externalization of border control has taken place through elaborate policies of collaboration with North African states that seek to manage the movement of goods and people across economic and social environments. The "territory" in which this takes place is far more complicated that the linear, bounded European community we find on a map. There is nothing groundbreaking in saying that, within this landscape of mobility management, there is a dialogical relationship between the EU's external dimension and the norms, practices, and concerns of its southern neighbors.[6] Migration in postcolonial Libya has historically evolved as a constructed problem in parallel and in interaction with the erection and consolidation of Europe's external border and its growing need for the policing and control of (un) desirable entries. The evolution of a stratified and regulated regime of entry for foreigners to Libya was strongly marked by the EU's increasing adoption of stringent measures to deter the arrival of unwanted third-country nationals on its shores and its increased reliance on cooperation "partners" to control the external dimensions of migration to Europe. The development of a legal regime for foreigners in Libya took place at a specific moment of globalization: the conjunction of Libya's "opening up" to the world—that is, liberalizing—after the removal of international sanctions against the Gaddafi regime, and Europe's "closing down," that is, the start its efforts to keep migrant Others off its territory.

The Gaddafi Years

Before the emergence of the current dire situation for migrants attempting to cross the Mediterranean, Libya had been a relatively open country. Since the late 1950s, it had welcomed both high- and lower-skilled workers as well as people fleeing internal wars on the African continent. People of many nationalities, from sub-Saharan Africa and from neighboring countries in the Maghreb, flocked to what was one of Africa's fastest-growing economies. In the 1970s and '80s, bolstered by Gaddafi's pan-Arabist diplomacy, labor migration from Palestine and Egypt increased (Klepp 2011, 134; Perrin 2011). Gaddafi's approach to migration fluctuated throughout his time in power, reflected too in a series of legal transformations that regulated access to Libya's growing labor market as the rhythm of his pan-Arab, pan-African, and anti-imperialist political visions changed. The discovery of hydrocarbons in the mid-1950s triggered a deep transformation of Libyan society as the country opened up to the presence of transnational oil corporations (Bini 2018).[7] Around this time, seasonal labor migration from the Sahel to Libya started to emerge (Brachet 2011). From then on, non-Libyan populations and migrant workers were alternately allowed in via an "open door" policy and then periodically irregularized through legislative changes and bouts of deportations.[8] Perrin (2011) splits Gaddafian diplomacy regarding the regulation of foreign labor migration into three main stages: the pan-Arabic phase, with a focus on inward migration from the Arabic-speaking world; then, from 1998, the opening toward the African continent; and finally, from 2003, an era marked by the end of international sanctions.

As early as 1954, Law No. 17 facilitated Libyan naturalization for citizens of Arab countries (Perrin 2011). In the first years of Gaddafi's rule which began with his military coup d'état in 1961, Egyptian and Tunisian migrant laborers enjoyed particularly favorable access to the Libyan economy (Tsourapas 2017, 2372).[9] In the 1980s, a series of decisions gave Arab citizens access to civil servant positions and various professions as well as to private property and to the public education and health services (Perrin 2011). Then, in the 1990s, Gaddafi, isolated by the international embargo against his country after the Lockerbie bombing and faced with the defeat of the pan-Arabist project, began to open Libya up to the African continent. By 1999, he was calling for a "United States of Africa" (BBC News 1999), and his political visions were backed up by the increasingly powerful role Libya was able to play on the African continent, thanks to the financial strength provided by its oil revenues.[10] In 1998, under Gaddafi's incentive, the Community of

Sahel-Saharan States was established in a bid to create a free-trade bloc and to encourage freedom of movement for its member states. Legislation formally adopted in Libya in 2001 gave African laborers access to the private and public sector, in particular the agricultural, building, and cleaning sectors (Perrin 2011). But although Gaddafi pushed a pan-Africanist policy and encouraged migration from the south, xenophobic sentiments and racism against sub-Saharan Africans remained rife in Libyan society (Hamood 2006; Perrin 2009b). In August and September 2000, reports surfaced of brutal attacks on non-Arabs (Johnson 2000; BBC News 2000). The xenophobic attacks were carried out by Libyans against the embassy of Niger and against sub-Saharan nationals (Pliez 2000) and resulted in an estimated 130 deaths and over 30,000 expulsions of sub-Saharan nationals (Perrin 2009b, 294). The attacks were said to have been instrumentalized by rivals of Gaddafi from within the regime to warn against the destabilizing potential of the leader's Africanist policies (Bensaâd 2012, 101). At the time, there were indeed competing factions among the Libyan leadership, between the more security-focused ideologues and the "revolutionary panafricanists," that disagreed on how to open the country up to Europe (Bensaâd 2012, 101). Perrin (2009b) notes that the oil-rich country's financial support of many African countries, as well as its open-door policy to many of these states' citizens, prohibited these same states from denouncing the racist attacks that began to take place in Libya. The attacks and deportations were the sign of the brutal closure of the period of openness toward the Sahel (Bensaâd 2012, 85) and the rise of state xenophobia toward Black populations (101).

It was also around this time that the external dimension of EU immigration and asylum policy was formally embraced by the EU Council, with the Special European Council on Justice and Home Affairs stating that immigration and asylum issues should be integrated into the EU's external relations (Boswell 2003, 620). The integration of the EU had led to the increasing Europeanization of migration control (Boswell 2003, 622; see also Lavenex 2006) with the establishment of the Schengen, Dublin, and EU visa regulations (developed in the 1990s). These three legislative changes regulated access to the EU territory for third-country nationals while ensuring freedom of movement within the Union. Irregular migration to the EU increasingly became treated as a threat, dealt with through securitized means and discourses. By the late 1990s, the need to reinforce external border controls had become central to the European project (Bigo 2008).[11] Throughout the decade, domestic border controls were deemed insufficient, and growing powers were delegated to EU agencies and officials to combat irregular

migration, progressively turning (im)migration policy into a communitarian EU issue (Foblets 2009, 193). In addition to the integration of immigration and asylum into the external dimension of the EU, the late 1990s and early 2000s saw the gradual development of a common European approach to foreign policy (M. E. Smith 2004; Pacheco Pardo 2012).[12]

When in October 2004 the EU decided to lift the economic sanctions (including the arms embargo) on Libya, Italy had already opened bilateral negotiations on possible cooperation arrangements to intercept migrants at sea.[13] In the early 2000s, Italy offered official recognition of the suffering its colonial enterprise had caused in return for Libyan collaboration on controlling and preventing migration flows (Distretti 2021, 11). Crucially, this written bilateral agreement was the first between the two countries to address the issue of migration (Paoletti 2010b, 118). In December 2000, the two countries signed a police cooperation agreement,[14] and, although no further formal agreements were made until 2007, there are several reports that informal talks led to joint measures on migration control throughout this period (Paoletti 2010a, 55–58). Between October 2004 and March 2006, Italy financed the removal of at least 3,000 migrants to Libya (Paoletti 2010a, 59). Moreover, in 2003, the construction began of a camp for undocumented migrants in Gharyan, near Tripoli, funded by Italy (Paoletti 2010b, 141). Three more camps were to be built over the following three years (one in Sabha and two in the Kufra area, close to the border with Egypt, Sudan, and Chad), but these plans were revised (Paoletti 2010b, 142). By 2007 the centers in Kufra had not yet been built, and construction of the Sabha center had stopped, most probably because of strong criticism from international organizations and human rights NGOs (Paoletti 2010b, 142–43). While Libya was developing ties with Italy on migration matters, Gaddafi seemed to be warming to the idea that in the context of Europe's politicization of migration, migrants present on Libyan territory could be turned into diplomatic currency (Perrin 2009b; Greenhill 2010). In 2002, he declared that Libya could not be the benevolent guardian of the EU when it was itself "overrun" by sub-Saharan migrants (quoted in Perrin 2009a). This announcement followed the rendering of thousands of migrants as "illegal" in Libya via a series of domestic laws that transformed the country's approach to migration, which had up till then been characterized by informality. In 2004, the main domestic law regulating the entry, stay, and departure of foreigners was amended to increase penalties for entering or remaining illegally (Human Rights Watch 2006). By then, the Libyan authorities had already started expelling people from Libyan territory. The European Commission reported that Libya

repatriated 43,000 illegal immigrants of different nationalities in 2003 and another 54,000 in 2004 (European Commission 2004, 14). In 2006, access to the labor market was explicitly limited to those who could prove they had entered the country legitimately and, a year later, work contracts become a necessary condition for regular employment (Perrin 2011).

As a sign of the importance that migration-related issues would take as Libya reemerged in the international scene in the years to come, in November 2004, merely a month after having lifted its eleven-year-old sanctions against the Gaddafi regime, the European Commission undertook a "Technical Mission on Illegal Immigration" to Libya. At that time, no formal relations existed between the EU and the formerly ostracized North African country. The trip was to begin what the 2004 report on the mission's work described as "an urgent co-operation with Libya on immigration matters." The report stated that the objectives of the trip were to engage with Libyan authorities on illegal immigration, gain an understanding of illegal migration–related issues in Libya, and explain EU policy on migration to the Libyan authorities (European Commission 2004, 5). The mission visited several regions, including southern desert border posts, and took location-specific day trips along the northern coast, in and around Zuwarah (in the West) and Misrata (in the East). A close reading of the report, produced in the aftermath of this visit, is revealing on many accounts. The European officials visited detention centers—what they called camps—and the report gives off a distinct lack of clarity surrounding the circumstances that led to the detaining of the people they found there. The field trip in the North of the country revealed that "a camp visited in the afternoon of the first day (01.12.04) was located in the center of Tripoli, in El Fatah Street. It was in fact a *brand-new* prison, where the authorities claimed to have registered 1,100 people of all African nationalities" (European Commission 2004, 31 [emphasis added]). On the following day, the report continues, "another visit was made to a detention center located on the coast close to the city of Misrata, where some 250 detainees were found, although the detainees state that more than 700 detainees had been registered the previous days" (European Commission 2004, 31). The delegation documented similar patterns of people having been arrested very recently or detention structures having been built hastily in the area of the field trip in the South: "The illegal immigrants [we] talked to reported being in the camps since very recently (from a few hours to one week). The reasons for which they were arrested by the Libyan authorities and brought to the camps are unclear and appear random" (European Commission 2004, 35). It is unclear if the people in

these centers whom the European Commission were able to interview had been rounded up and imprisoned in a bid to impress the EU authorities on their visit.

The Colonial Genealogy of Detention Centers

The continued existence of detention camps for migrants in Libya today echoes the camps used by the colonial power to detain members of autonomous polities to assert control over territory. Contemporary forms of (re) territorialization of migratory movements and territorial boundaries must clearly be placed, therefore, within the lineage of the territorialization of state space by colonial Italy.[15] The existence of colonial concentration camps in Libya is intimately linked to a history of forced immobility of certain populations during Italian fascist rule. In 1932, Libyan Bedouin and Sanusi populations from the eastern region of Cyrenaica were released from concentration camps where they had been kept in horrendous conditions by the Italian colonial authorities since 1930 (Distretti 2021; Labanca 2004). The indigenous populations of Cyrenaica had sustained years of armed resistance against the Italian colonizers, since the latter had attacked them in 1923, rescinding various power-sharing agreements that they had previously established with the leaders of the influential Muslim religious brotherhood, the Sanusiyya (Atkinson 2000). Indeed, after the Italian invasion in 1911 and prior to Benito Mussolini's seizure of power in 1922,[16] Italian colonial officials had developed a "politics of chiefs" (*politica dei capi*) that pivoted on collaboration with local notables (Ryan 2018, 80). The aim of this policy was to solidify colonial rule, and the Sanusi had been central to that endeavor. These attempts only nominally consolidated Italian domination for the first decade of colonial rule. The occupation of Tripolitania and Cyrenaica was met with fierce resistance from the Sanusi in the West and forces under Mohamed Fekini in the East (Ballinger 2016; on Mohamed Fekini, see Del Boca 2011). In 1930, under the orders of the fascist military officer Rodolfo Graziani, concentration camps were established where the tribal populations of Cyrenaica were systematically rounded up and confined (Atkinson 2000, 112–13). These camps were reported to eventually contain some 100,000 people and 600,000 livestock (Atkinson 2000, 112).

After the incarcerated populations were released in 1932, tight control was kept of the territories to which they returned. Their mobility was severely restricted, and soldiers were posted to "prevent any movement without a permit from an Italian official" (Evans-Pritchard 1946, 14). Graziani was

a true fascist and openly scornful of nomadic modes of life, declaring that "the nomads have no justification and no right to claim to stay in areas of assured development, such as those of the Cyrenaican plateau, rich in promise of tree and cereal culture, but ought to be excluded from it for ever, leaving room for thousands and thousands of Italian arms which are stretched out there, anxious to begin again to till and make fruitful this ancient Roman earth" (cited in Evans-Pritchard 1946, 14). The repression of populations that were difficult to control due to their excellent knowledge of the desert and their mobile resistance tactics was direct and violent. According to official sources 40,000 people perished inside the camps (Di Sante and Nappi 2008, 492); however, some estimates placed the number of deaths between 50,000 and 70,000 (Ahmida 2006, 183). Others reckon that around half a million Cyrenaicans were killed as a result of Italy's military offensive outside the camps (Ahmida 2012, 72). Italian colonial domination (which was short in duration by European standards) was only possible because of this strict control of indigenous space and mobility (Atkinson 1996).

Concentration camps are distinguished from other forms of detention in that they are designed to hold people captive based on who they are or what they represent, rather than what they have done (Mühlhahn 2010, 544). For this reason, historians have tended to point to their origin and widespread use in colonial contexts (Minca 2015, 5; I. R. Smith and Stucki 2011). From the Cuban War of Independence, to the Boer War in South Africa, to the Kenyan Emergency in reaction to the Mau Mau uprising, the "camp" has been a used as a colonial technology of control. The concept of coloniality indicates a continuity between colonial relations of power and modern forms of exploitation and domination (Maldonado-Torres 2013); the concept helps in thinking through the continuities between technologies of control that existed under colonial rule and those used in the postcolonial era. Both the detention camps (see chapter 4) and the indirect forms of control that characterize the management of contemporary irregular migration in Libya point to the continued coloniality of the relations between Italy or the EU and Libya.[17] In a twisted history of colonial reverberations, Italy apologized for the dark history of the concentration camps that existed at the height of its colonial rule of Libya during the fascist period and agreed to compensate for the suffering this had caused, all the while negotiating new guarantees on migration control that continued to apply the detention practices to new populations considered in need of containment: sub-Saharan Africans wishing to reach European shores.[18] Today's conflict over mobility in the Central Mediterranean and the racial logics that underpin Europe's

zealous push to police its borders should be read within this colonial and postcolonial history.

Pointing out existing continuities should not, however, eclipse what has changed since the high point of colonial rule. Although race remains central to the governance of migration today, it is often removed from clear view, rendered taboo in official discourse or policy, and defined as belonging to problematic pasts (M'charek et al. 2014a). The "absent presence" (M'charek et al. 2014a) of race in the global governance of the postcolonial era is linked to the shift from colonial "biological racism" to racism based on cultural difference (Duffield 2006). We should connect this shift to the rise in technical and development assistance;[19] these have been analyzed in terms of new technologies of control of so-called non-insured populations on the planetary scale (Duffield 2008, 2006). The European Commission's report shines a light on some of the dynamics that would come to define the relations between the EU, Italy, and Libya for years to come: a parade of visits and declarations by European officials in search of "technical" partnerships to stem irregular migration from the North African country's shores against a background of seemingly clear and officially sanctioned abuses of migrants on Libyan soil. The rise of a more technocratic and development-oriented language in the EU and Italy's efforts to "accompany" Libya in its management of migrant populations on its territory mark a conspicuous change from colonial rule. However, this alteration should not distract from official discourse which stresses that the post-2011 era of national insecurity in Libya triggered today's Mediterranean maritime "crisis." The creation of migrant illegality in Libya and the technologies of control relating to it can be traced back to distinct moments in colonial and postcolonial history when racialized Others and mobile populations were constructed as problems in need of containment.

Post-2011 Libya and the Rise of Humanitarianism in the Central Mediterranean

The fall of the Gaddafi regime in 2011 following the NATO-led intervention removed the EU's stable partner for discussion of and cooperation concerning migration matters. Since the signing of the Treaty on Friendship, Partnership, and Cooperation between Italy and Libya in August 2008, the number of migrant arrivals on the shores of Italy had drastically declined, with both countries carrying out joint patrols in Libyan territorial waters and Libya agreeing to take back intercepted migrants (Gammeltoft-Hansen

2011).[20] But, from 2011, the loss of centralized control of Libyan borders combined with the instability brought about by the various uprisings of the Arab Spring (among other factors) resulted in more boats being launched from Libyan shores in a bid to reach safety in Europe. In 2013, the disastrous sinking of two boats off the island of Lampedusa, causing the death of 636 people, triggered the launch of Operation Mare Nostrum (Cuttitta 2017; Tazzioli 2016), a "military-humanitarian" operation to rescue migrants in distress at sea led by the Italian navy and financed by the European Commission. Mare Nostrum's operational zone of activity stretched as far as the limit of Libyan territorial waters (Cuttitta 2018a). Italy halted Mare Nostrum only a year after its launch, with domestic and EU politicians blaming the operation for acting as a "pull factor" for people to cross the Mediterranean (Heller and Pezzani 2018, 34). In response, the EU launched the Frontex-coordinated Operation Triton, which had no SAR mandate and a greatly reduced patrol zone off the Italian coasts (Tazzioli 2016). Following the end of Mare Nostrum, several NGOs, confronted with the fact that 2014 had, by all accounts, been the deadliest year on record in terms of deaths of people attempting to cross the Mediterranean, launched rescue missions (MSF 2015). The shift from a state-led mission that explicitly prioritized saving life at sea to a Frontex-led operation, whose stated aim continues to be to "ensure safe and well-functioning external borders providing security"[21] (Frontex, n.d.), also pushed the NGOs to consider filling the rescue gap left by the ending of Mare Nostrum.

The arrival of NGO vessels in the Strait of Sicily in 2015 marked a new chapter for the maritime border. Now the struggles over mobility control were also to become struggles over who could intervene in rescues at sea, as suffering and death on the maritime route continued to rise. As humanitarian actors became involved in rescue activities, the dual dynamic of migrant sea-crossers and states attempting to contain their movements became a triad. For a relatively short period—from the end of 2014, when the first NGOs became active in the Central Mediterranean, to 2016—there was cooperation between MRCCs and SAR NGOs (Cuttitta 2020, 124). But that relationship gradually degraded, as Italy and Malta, in particular, began to criminalize SAR activities and engage in administrative harassment of SAR vessels (Cusumano and Villa 2021; Heller and Pezzani 2018).[22] The various civil society actors expressed degrees of critique of and political dissent toward the border regime from within humanitarian reason (Stierl 2018; Cuttitta 2018c). However, their very ability to document what went on at sea, let alone to attempt to assist people in distress, seemed to disturb the

exclusionary sovereign logics so much that attempts to close the Mediterranean off to these witnesses and nonstate actors have multiplied ever since.[23] The EU Naval Force Mediterranean (EUNAVFOR Med) also launched Operation Sophia in 2015 with a stated aim of disrupting "the business model of human smuggling and trafficking." Although it was a military response to the migration "crisis," it remained constrained by maritime law to conducting rescues if alerted to boats in distress. It thus embodied a form of military humanitarianism that enabled "Europe to cloak its maritime militarizations with a politics of life" (Stierl 2018, 708).

Meanwhile, the security situation in Libya continued to deteriorate. Between 2011 and 2014, the EU's approach seemed to be one of conflict transformation, encouraging institution building and democratic transition (Ivashchenko-Stadnik et al. 2017, 19). However, this changed in 2014 with the ousting of Libya's first democratically elected prime minister, Ali Zeidan, and the country's descent into full-fledged civil war (Raineri 2019; Ivashchenko-Stadnik et al. 2017; Loschi et al. 2018). Since then, both the EU and its member states have focused on containing migratory movements to Libyan shores. A close unpacking of key EU strategic policy documents relating to the situation in Libya reveals that the EU increasingly framed the situation in Libya as a migration crisis (Ivashchenko-Stadnik et al. 2017). This is confirmed by an European External Action Service official interviewed by Ivashchenko-Stadnik et al. (2017): "The only thing we could actually do was to contain the threat, prevent its spill-over in neighbouring countries including the Sahel, and tackle the border problem from the maritime side where we had higher chances to succeed; [and] what we try to do today, is to focus not so much on the crisis itself, which is complex and multidimensional, but on the repercussions that this crisis has in Europe, namely in terms of terrorism and migration" (29). The EU and the UN backed a political solution to the conflict, and the multilateral efforts eventually led to the signing of the Libyan Political Agreement by various opponents (essentially rival parliaments, but crucially, not the forces loyal to General Khalifa Haftar and the Libyan National Army in the East) in December 2015, and to the establishment of the Government of National Accord (GNA) in March 2016 (Raineri 2019, 594–95). In the years that followed, the GNA proved unable to provide real stability. Its power gradually became limited to Tripoli and Misrata in the Northwest, while General Haftar and the Libyan National Army dominated in the East. In 2021, a new Government of National Unity was formed following a UN-led peace process that attempted to end the hostilities between the different conflicting regions (Nzau 2024, 408). The

South remained marked by local power struggles, which commentators say are split along tribal-allegiance lines (Tubiana and Gramizzi 2017, 108–21). In 2017, a peace agreement was signed in Rome between factions representing the Teda and Ouled Slimane peoples, brokered under Italian mediation.

Although the Libyan authorities have changed several times in recent years, European migration policies have demonstrated continuity with the strategy that was in place under Gaddafi (Brachet 2016, 283). To reestablish control after 2014, the EU needed to fill the gap created by the fall of his authoritarian regime. The pressing question for European authorities then became: How can that be done in conditions of such deep instability and in the absence of solid power structures in Libya? Informal security institutions prevailed, and it was extremely difficult to categorize militias or armed groups in relation to their affiliation to or recognition of the GNA or their involvement in criminal activities (El Kamouni-Janssen and de Bruijne 2017), due to alignments that were constantly shifting. Navigating this fragmented security landscape presented a reputational risk for Europe, and particularly Italy, if it was going to seek collaboration with people who held effective power on the ground.[24] In the following section I look at the political and diplomatic labor put into molding associates with whom collaboration on border management and migration control could become feasible.

Shaping Cooperation Partners in Fragmented Security Landscapes: Practices of Government and Usage of Law

Events in Libya since the NATO-led intervention in 2011 point to the dual and contingent nature of Third World sovereignty. Achiume and Bali (2021, 1397) argue that the framing through international law of Libya as a country in need of being "secured" and a transit hub of mostly sub-Saharan Africans sheds light on the characteristics of Third World sovereignty: a sovereignty that can be disregarded or shored up, depending on the needs of the First World. International law provides the legitimating framework for interventions—such as the responsibility-to-protect doctrine, which enabled the 2011 intervention—while also obscuring the sources of destabilization (Achiume and Bali 2021, 1416). As I show in the last third of this chapter, rhetoric and governance practices, including the use of ostensibly liberal legal formulas and norms in documents and treaties, were also used by European and Italian authorities as tools to shape the acceptability of partners in migration control, while discourses on Libya's sovereignty over its borders were couched as reform efforts.

Contemporary governance projects fetishize law, reflecting the general belief that it can generate order. Discourses around the rule of law and the fostering of cultures of legality, as well as projects linked to capacity building of legal professionals, provide legitimacy for governance in international political arenas. However, as Franz von Benda-Beckmann and colleagues (2009) have pointed out, this fetishization often appears "as a spectacle, which deflects from concomitant processes of dissolving legal responsibility for acts of governance, or from the fact that social processes might be shaped by quite different social and normative forces other than law" (8). Their remarks are essential for untangling what was going on in so-called border management reforms during and after the formation of the Libyan SRR. During my fieldwork, the assessment of legal frameworks often proved to be the initial starting point for any further action regarding migration governance in Libya. It was clear to everyone I interviewed, from international organization staff to diplomatic personnel of European states involved in funding projects for improving migration management, that the situation for migrants in the country was dire and that Libyan authorities and militias were involved in gross human rights violations. Still, the development of the rule of law and the enhancement of the respect for international legal frameworks were on everyone's lips. The effects of border externalization and the way the LYCG was contributing to these violations, however, was rarely acknowledged.

Gary, a project manager for the International Centre for Migration Policy Development[25] whom I interviewed, explained to me that a project on migration governance in Libya he had been working on had initially been approved in 2014 and then put on hold because of the political upheavals of the same year; "it was not a conducive environment for reform," he admitted. The project in question then morphed into a kind of inception phase for what was planned to come later: an institutional reform changing the way migration was to be dealt with—"especially the security part, so the border management and the way security is managed." This inception phase had three steps. The first was to map the "institutional capacities" of all departments working on migration in the Libyan state. The second was to work with civil society, Libyan academia, and research institutions to engage them in "setting up a process of migration governance in the country." And the third step was to support the reintegration of Libya into international and regional migration dialogues "like the Khartoum process, the Rabat process, the Valetta action plan, the EUROMED migration project, etc., etc." All three pillars involved assessing the legal frameworks and international

and regional conventions and bilateral agreements that had been signed, as well as examining the national legislation that was actually in place. Gary went on to explain: "We assessed all this. We tried to understand if there were gaps, overlaps, and issues, and we developed, I think, a couple of hundred pages [of] analysis on all this legal framework. Providing a series of recommendation of areas where the legislation should have been amended, improved, enacted; for example, certain conventions that were never transformed into law even though they were ratified, and so on. So we provided basically a road map for reform process at the legislative level."

Since the end of the Cold War, contemporary development doctrines have often encouraged the creation of legal institutions and promoted "justice-sector 'reform' projects" aiming to "bring developing countries' laws and legal institutions in line with 'international standards'" (Krever 2017, 34).[26] When policy-oriented literature speaks of "rule of law," one would be forgiven for thinking that this is a straightforward and neutral concept. However, rule of law discourse and orthodoxy has been criticized by some for contributing to a neoliberal economic agenda by bolstering the ability of legal systems to facilitate market transactions and securing property rights in the name of development cooperation (Franzki 2016; Krever 2011, 2017). In development cooperation and external action, in particular, the proliferation of different forms of legality that are sometimes generated and sanctioned by nonstate actors might not be binding in themselves but are often recognized as valid and legitimate. As already mentioned, they play a fundamental role in organizing and legitimizing positions of authority and governance activities. As anthropologists of development have long shown, since Ferguson's *Anti-Politics Machine* (1994), the technicalization of development and cooperation has tended to depoliticize the handling of law within these types of projects. Gary's vision of "good" reform of migration governance in Libya was an almost textbook example in that sense. During our conversation, I could not help but express some skepticism about the feasibility of carrying out an institutional reform amid what seemed to me an extremely unpredictable and chaotic security situation in Libya. He responded:

> Look, this kind of reform are [*sic*] good for [Fayez al-]Sarraj, for Haftar, for any other that will come after them. We are not talking about a political reform. We are talking about a technical reform utilizing international standards, aligning to international laws and regulations. And enabling capacity of people to work, to fulfill job descriptions

> that are the same all over the world. So whoever is there needs that. If you don't start now and you wait that there is peace and stability in your government [or] that the situation is OK, that moment, you will have already maybe half of the one and half or two and a half million people that are [. . .] already in the country illegally there, with no possibility of regularizing. So, it's gonna be late. You need to do it now. That's the point. See? You need to work on the medium-to-long term and whenever you are ready, then the situation will stabilize and it's perfect timing to have it done, because they [will] have already a sort of a platform to manage all this.

Why was the issue of migrant regularization important, you may rightly be wondering? Migrants without a visa could be detained without judicial review in Libya,[27] and this Libyan power constituted a thorny issue for the EU, since migrants, once intercepted by the LYCG, were almost always brought to detention centers and arbitrarily detained in abusive conditions.[28] Still, Gary emphasized that reforming legal frameworks related to migration was a technical issue. He went to great lengths to explain to me that he was not in the business of "imposing" norms, that he and his team were, rather, "trying actually to enable the government to take full ownership of their migration policy." Once they had done so, he said, the ICMPD would be able to step in whenever external support was needed and identify gaps for the Libyan authorities, thanks to its long-term engagement with the legal frameworks and local institutions. This example of ICMPD's support in reforming Libya's regulatory framework regarding migration and border control shows how the Libyan national collective subject could be promoted alongside the fostering of compliance with international law. The notion of ownership mobilized by Gary here seems to act as a kind of "strategically placed cushion" (Greenhouse and Davis 2020, 3), put in place to smooth the transnational order he was promoting on behalf of the donors of the project. The European Union, as the main funder of the ICMPD on this project, was interested in building a pathway to reform—in which the ICMPD's role was, according to Gary, to support the Libyan authorities in developing their own migration policy.

The importance of "opening up" Libya to the presence of international organizations came up in several interviews with people with field experience there and with international bureaucrats who had been involved in diplomatic discussions with Libyan officials. I soon came to understand the predominant role the 2017 Memorandum of Understanding (MoU)

between Italy and Libya had played in establishing a legal basis for the activities that were to take place in Libya. This too was a strategic layer of international law put in place to facilitate the externalization of migration control. It had been championed by a government led by the social democratic party (Partito Democratico, or PD) in Italy and spearheaded by the then interior minister Marco Minniti. As one Italian parliamentarian and member of the parliamentary Commission on Foreign and Community Affairs (III Commissione Affari Esteri e Comunitari) confirmed to me: "Without the memorandum, we wouldn't be able to work with any institutions in Libya! The idea of the memorandum is to support the Libyan authorities."

The 2017 Memorandum of Understanding Between Italy and Libya

While performing fieldwork in Rome in late 2019, I became increasingly keen on deepening my understanding of the positions of Italian officials who had been involved in the decision making linked to the bolstering of the Libyan Coast Guard's technical and operational capabilities. In January 2020, I secured an interview with a high-ranking official who had served in the Italian Ministry of the Interior under Minister Marco Minniti. As the bus to his office rattled down the cobbled streets of the center of Rome, I kept replaying all the snippets in conversations in which I had heard of this infamous Minniti and his dealings with top Libyan government officials. I recalled the disgust expressed by an Italian immigration lawyer I had interviewed at how, in his opinion, Deputy Prime Minister Salvini had in fact merely reaped the benefits of the PD government's aggressive policy in the Mediterranean and in Libya. Then there was the indignation of an experienced war correspondent who explained to me that before Sarraj came to power, reporting from Libya was much easier: "Imagine! We entered Gharyan Detention Center, which was basically funded by the Berlusconi-Gaddafi agreement! This has always just been a prison basically. And then, on the second of February 2017, the Memorandum was signed, and we could no longer get access to any detention centers, for about two years! And this was under Minniti's left-wing government," she had exclaimed. The MoU came to symbolize the fault line that divided the opinions of Italian activists, journalists, and officials I interviewed: For some, it stood for the unabashed opportunism that characterized the Italian's state's attitude toward inward migration by sea, the very worst of deal-making that used migrant lives as political currency. For others, it was a necessary document to officialize

relations with post-Gaddafi Libya, which Italy needed badly to keep the situation with migratory matters from spiraling out of control.

Most of my attempts to approach Italian officials were premised on questions about the EUTF and Italy's contributions to the fund. However, with Signor Marcuso, the interlocutor I was about to meet, I expected that I would be getting a different kind of insight than I usually received from bureaucrats in office or project officers working for international organizations. I thought Signor Marcuso, as a former senior official, might offer a more strategic overview, including the challenges of high-level foreign policy making. As I arrived at the address his secretary had given me by email, I was surprised that there was no number on the door of the anything-but-ostentatious building. The former senior aid was now working for an Italian humanitarian organization, supporting asylum seekers and refugees in Italy in a variety of ways, from integration to psychosocial support, as well as voluntary returns. Conversely, this same organization had also been involved in providing humanitarian assistance in detention centers in Libya.

The door to the building was open. I entered the unlit, draughty corridor and was immediately struck by a tattered piece of A4 paper with the acronym of the organization printed on it. I realized that I had been expecting a more prestigious building to house the office of this ex–high functionary, now head of an NGO. After I had been made to wait in a nondescript meeting room, the director finally arrived, more than thirty minutes late for our appointment. He was quite an imposing man in his sixties, and he seemed only mildly interested in my research but willing to talk about his past functions. He was used to being interviewed by the media in his new function at the head of an NGO. Very soon, when I asked him to recount the importance of the Memorandum of Understanding, he immediately corrected my formulation, which seemed to have implied that it had constituted a "break" in relations between Italy and Libya: "It followed in the footsteps of the other agreements that Italy had made in the times of Gaddafi," he stressed. "It was, in my opinion, an important passage not only because it served to discipline for some time the flows [of migrants] and to engage the Libyan authorities in the fight against smugglers. But also because it helped open Libya to the presence of international organizations like the UNHCR that were present only in sporadic ways before that."

The text of the Memorandum itself notes both parties' commitments, which range from the "completion of the system of border control in Southern

Libya" to bringing "support to the international organizations that are present and operate in Libya in the migration sector in order to continue the efforts that are also aimed at returning migrants to their countries of origin, including through voluntary return."[29]

Marcuso, with his hybrid career that took him from security institutions to now working in the NGO world, typified a mixed approach to migration control. His evaluation of the Memorandum was that it was "a group of measures that, on the one hand, committed Libyans to curb immigration and guarantee more rights" and, on the other, "helped the Libyan population and the Libyan government itself toward more stability and more European standards, of course." The Memorandum of Understanding between Italy and Libya and, later, the EUTF included liberal formulas and instruments, such as opening the country up for international organizations to tend to migrants in detention centers and efforts to align Libya with international standards. Shortly after the signing of the MoU, the EU Council adopted the Malta Declaration,[30] which included pledges to increase the EU's work in Libya and which welcomed Italy's signing of the Memorandum. The Memorandum and the EU's declaration contributed to the idea that the EU was now dealing with a respectable partner, fully engaged in a process of reforming institutions involved in the management of migration. The legal formulas I outline above acted as a veneer suggesting that Libya was on course toward rational migration management "that not only work[ed] within requisite legislative structures but also fulfil[led] humanitarian objectives" (J. Morris 2017, 401). The introduction of legal frameworks that enabled these international "development" interventions to "support" the Libyan state to develop its own migration policy masked, however, a logic of violent subcontracting. Mainstream literature sees so-called failed states as needing to develop "certain governmental capacities to provide public good" (Fukuyama 2007, 11). However, taking into consideration the colonial continuities and the relational, regional challenges of supporting the development of a state's capacity for legitimate control of violence over a defined territory complexifies openly professed aims of state building. The historical approach I adopt here, which also integrates critical insights from Third World approaches to international law and postcolonial studies, sees postcolonial sovereignty as constituted within a transnational field of relations and sheds light on its dynamic, coconstituted qualities, in contrast to the notion of sovereign equality under international law.

Conclusion

Historicizing relations concerning migration matters between Libya and Italy, and by extension the EU, reveals how the legacies of racialized colonial containment unfold, sometimes in unexpected ways, over time. The concentration camps of yesteryear, designed to contain the nomadic indigenous rebels of the Cyrenaica, resurfaced in Gaddafi's negotiations for reparations for Italian colonial violence and were shortly followed by new camps designed to detain sub-Saharan Africans, preventing them from moving onward to European shores. It is impossible to understand the contemporary project of delegated migration control without considering the legacies of colonial rule and the subsequent postcolonial relations between Italy, Libya, and the EU. Specifically, the notion of Third World sovereignty helps to show how Libya's postcolonial sovereignty was alternately propped up and disregarded on behalf of Europe's project of racialized migration control.

Libyan sovereignty was considered disposable in 2011, when the UN Security Council authorized a military intervention to "protect" the civilian population.[31] However, since then, European authorities, led by Italian efforts, have continuously propped up Libyan sovereignty, affirming that the border management reform projects they fund there are essentially designed to "help" the country to control its borders. The efforts I outline in the last sections of this chapter show how both Italian officials and IO project officers involved in promoting reform efforts on migration-related frameworks in Libya have used legal formulas and the justification of promoting international legal standards to shore up Libyan sovereignty. This strategy also creates confusion over responsibility in a world in which violence under international law is still strongly influenced by the doctrine of sovereignty. It masks the fact that portraying delegated interdiction and the outsourcing of migration to Libyan authorities as both effective and acceptable is above all a scheme designed to keep Third World people out of the territories of the Global North.

3

Coast Guards and the Legal Architecture of Interdiction

On June 27, 2018, the coordinates of the new Libyan SRR were uploaded to the Global Integrated Shipping Information System.[1] This banal act had normative force: Henceforth, the Libyan Coast Guard had coordination priority for search and rescue events over a vast area of international waters. It was to be the legitimate authority for these matters in this zone of the world. The act was performative in an "Austinian" sense (Austin 1962): Its pronouncement brought into being a specific state of affairs.[2] This was a unilateral declaration with a constitutive effect, whose authority was based on the structural dominance of states in their ability to grant powers to specific actors "at the confluence of legal structures" (Eckert and Dann 2020).

Such is the power of law, it would seem. Taken alone and distinct from the socio-legal context in which it came into being, the notification seemed straightforward: It simply defined which state would take responsibility for coordinating rescues in this stretch of international waters. However, it did not emerge in a neutral space. In fact, it was declared in a legal landscape that was already saturated.

The sea, though it has long been portrayed as a "lawless space beyond sovereignty and justice" (Walters 2008, 5), is striated by a complex (and expanding) regulatory system that prescribes the conduct of ships in fields ranging from trade, through environmental protection, to search and rescue. In the Mediterranean, legal partitions, policies, and practices developed by various state and nonstate actors have in fact contributed to turning the sea into a space fraught with shifting and unpredictable peril for certain categories of people. The Libyan SRR thus arose in a legally plural order, further adding to this transnational legal arrangement by shaping it in particular ways. Moreover, before the Libyan SRR was formally notified, this geographic space was already heavily marked by contestations over migrant mobility and the politics of migrant rescue. This chapter asks what features defined the legal landscape in which the Libyan SRR emerged and looks at the socio-legal history that preceded it.

The governance of the EU's external border raises specific dilemmas and conflicts for the actors involved in its management. These are reflected in the laws that straddle humanitarianism and border control.[3] The fact that contradictory legal frameworks exist, that multiple regimes of law and regulation linked to distinct regulatory communities pile up on top of each other over time, raises important questions. Which frameworks take precedence over others? And how do actors of various kinds, who are involved in activities subject to divergent legal interpretations that might be in competition with one another, deal with the effects of this legal assemblage? This chapter addresses these questions by describing some of the processes involved in the actual "layering of governmental forms" (Scheppele quoted in Greenhouse and Davis 2020, 16) designed to implement maritime migrant interdiction. Continuing from the previous chapter, in which I describe how Third World sovereignty was used to serve the EU and Italy's interest in reducing the number of "irregular" migrants arriving via the Central Mediterranean, I now zoom in to a more technical issue. My concern here is how, within a plural legal order, certain norms took precedence over others; and how the dilemma of combining the humanitarian requirements of SAR provisions with the EU's pledges to reduce irregular migration at its external borders was "resolved." In the case of the Central Mediterranean, I argue that a strategic use of legal pluralism there enabled a fragmentation of responsibility on the part of EU authorities for the death and interception of migrants at sea.[4] In this regard, I complement Itamar Mann's (2018, 369) conceptualization of "maritime legal black holes," which characterizes migrant drownings as "*unintended* consequences" (my emphasis) of the division between

sovereignty and human rights within the structure of international law. Mann is right to point out that this division of responsibilities creates conditions in which migrants and refugees in the Mediterranean Sea are de jure rendered rightless. However, the socio-legal approach I pursue here makes it possible to reinject the perspective of strategic, if not *intentional*, uses of this legal pluralism that further fragment responsibility. The rendering rightless of migrants at sea is not inevitable and is not just the result of the structure of international law. It is also the product of a specific hierarchization of legal orders linked to a regulatory "community" (Cotterrell 2018) that supports it. In this chapter, I shift my focus to some of the practices of legal "layering" involved in the assembling of plural jurisdictions in an attempt to understand the empirical mechanisms leading to the "regime complexity" (Mallard 2014a) of nonhierarchically ordered and overlapping legal regimes. I refer to various accounts I gathered while performing my fieldwork, accounts from policy makers and actors such as Paolo, a retired coast guard official from Italy. His narration of the process of setting up the Libyan SRR in the years preceding the official notification to the International Maritime Organization in 2018 helps to illuminate what stakes were being played for at the time. This chapter shows how norm-generating activities such as the enactment of the new Libyan SRR arise from the specific regulatory needs of communities of concern, and how, in a plural legal context like the international waters of the Central Mediterranean Sea, specific security-oriented interests take precedence over others.

Legal Gray Zones

Paolo was a retired official who had worked for the Italian Coast Guard for more than thirty years. Before joining the Italian Naval Academy in the early 1980s, he had trained in law. We first met in Rome, at an event focusing on the evolution of Italy's cooperation with Libya on migration control policies. A few days later, we met again after he agreed to my request for an interview. When I explained that I wanted to gain insight into how the Libyan SRR had developed, Paolo exclaimed enthusiastically, "I followed the entire process, so I am pretty sure I'll be able to answer your questions!" He became an important informant, providing me with documents about the process but also letting me in on his personal views of the dynamics of maritime cooperation that the creation of the SRR had involved, as he had experienced it. His apprehension of the issues surrounding the various laws regulating conduct at sea was particularly incisive. Paolo's experience

of working in several port captaincies gave me key insights into some of the practical issues faced by the Italian Coast Guard at a time when its work had been politicized under the influence of growing concern on the part of state authorities about maritime migration. In his view, the Libyan SRR had emerged at the intersection of three different issues. First, the Italian Maritime Rescue Coordination Center needed a partner to collaborate with when dealing with distress events close to the Libyan shores, which sometimes involved coordinating nearby merchant vessels. Second, gray zones were emerging from the overlap of different international legal frameworks, which were instrumentalized by different actors in ways that suited them best. And third, the securitized way the EU dealt with migration at sea.

Paolo complained a lot about overlapping legal frameworks that came into conflict with one another in international waters. I return to this issue later. Some of my other interlocutors, however, attempted to demonstrate how clear these frameworks were. At the European Commission, a high-ranking official from the European External Action Service who was working for the Libya bureau in Brussels confidently explained to me what should happen to people rescued in the Libyan SRR by the Libyan Coast Guard. Despite his assertiveness, his references continually slipped between international and territorial waters, as he reduced everything to a single formula: The people should be brought back to Libya. In his view, backed up by his credentials (a doctorate in international law), Libya and only Libya bore full responsibility for what happened in the Libyan SAR zone. Paolo was less self-assured and less technocratic. His experience of the law was marked by the sociopolitical process of setting up the Libyan SRR, in which he had actively participated. He explained to me that he and his colleagues at the Guardia Costiera were constantly battling with the Interior Ministry, which was partly responsible for financing the support being provided to the Libyan Coast Guard. At an earlier stage, the coast guard had also struggled to make officials from the Ministry of Transport, the ministry to whom it reported, understand their concerns:

> We were constantly being criticized by the transport ministers for going outside of the Italian SAR zone in order to rescue boats. I kept having to explain to them, "Look, you have competence for your problems, but you also have to understand what we are dealing with. We have responsibilities, we apply the SAR regulation. The SAR rules say that if there is no one, you have to take care until the most competent actor arrives. If there is no one competent there, then I cannot

let them die." Their [those concerned with border control] logic was more "If you don't see, you don't have to intervene."

On one hand, his issue was that colleagues working under ministerial logics different from his kept trying to force their perspectives on him without knowing the laws he was required to abide by. On the other hand, he recognized that there was a problem in the legal architecture itself that specified how to act in relation to people fleeing Libya in unseaworthy boats: "The problem is that the SAR convention itself does not cover humanitarian aspects of the treatment of people rescued. There is the 2004 IMO resolution—which is also included in Frontex's operational framework—which says that humanitarian aspects and the principle of nonrefoulement have to be taken into account, but this same resolution says that these aspects are *not* SAR issues." The problem, Paolo emphasized, was that states could pick and choose among these superimposed legal frameworks what rules they wanted to abide by.[5] Libya had ratified the SAR Convention but not the Geneva Convention. Malta hadn't signed the 2004 amendments of the SAR Convention.[6] Italy was a party to both. Paolo mused about the "schizophrenia of the EU" from the perspective of the Libyan Coast Guard, as he recounted being told by a Libyan official that "the Europeans ask us to rescue migrants and bring them to Libya but if a ship flying a European flag does so, then they will not hand them over." The legal status of ships themselves adds a further level of complexity to the architecture of the law at sea: Because the flag they fly places them partly under the jurisdiction of the state that registered them, they are like floating exclaves. European ships are bound by the European Convention on Human Rights and the 1951 Refugee Convention, to which all European states are party. Criminal liability can also be established for a vessel flying a European flag if the captain steers it to Libya to disembark rescued people who would face ill-treatment there. In October 2021, the captain of an Italian merchant vessel was personally convicted for bringing a group of one hundred migrants in distress back to Tripoli in June 2018 (Scavo 2021). The ship, the *Asso28*, was an Italian-flagged private vessel belonging to the company Augusta Offshore, which operates supply ships to and from the Mellitah Oil and Gas platform off the coast of western Libya. Paolo pointed out that national flags are one reason why the law at sea contains gray areas: Although SAR cooperation makes provisions for an obligatory norm to save human life at sea, other norms limit this obligation, and these—including, for example, the principle of nonrefoulement[7]—may or may not be ratified by the state under whose flag a given ship is sailing.

This uncertainty leads ships to follow different policies at sea, in line with the national obligations of their flag state.

Paolo's criticism of this legal gray zone was based on a deep-seated belief in what he saw as the "principles of the EU": human rights and humanitarian law. He believed that everyone should apply the law "in good faith" and cooperate "because we are living in the same bloc of flats, we are all connected." He quickly also countered an imagined rebuttal that seemed to pass through this mind. Responding to the debate over "push and pull factors" in migration, and the idea that dignified treatment of migrants at sea had the potential of attracting more people to make the crossing, he added: "Without a doubt there is a pull-factor with the NGOs [rescue vessels active in the Central Mediterranean] but actually, as a pull factor there is also the fact that we have laws that they [migrants] can only dream about [*ma di pull c'è anche il fatto che noi abbiamo un diritto che loro se lo sognano*]. What should we then do? Cancel our laws?" For him, all the people denouncing the arrival of barbarian Others faced an unanswerable paradox: If they were to renounce the principles they claimed their civilization was founded on, they would become what they vilified. Paolo's account speaks to the real-life results of the stacking of legal frameworks and the overlapping of jurisdictional spaces.

Global Legal Pluralism and Legal Entanglements

The 1979 SAR Convention divides the high seas (the waters beyond territorial waters) into areas where different state actors have primary responsibility for coordinating rescue, should a distress case be declared there. According to the text of the SAR Convention, an SRR does not entail jurisdiction but assumes duties. However, in practice this is not a clear-cut distinction. In effect, SAR zones extend a form of de facto jurisdiction as states undertake patrol and surveillance activities. The establishment of the Libyan SRR presents a kind of legal "conflict" that emerges due to the fragmentation of international law. The friction between different legal regimes is said to reflect "the differing pursuits and preferences that actors in a pluralistic (global) society have" (International Law Commission 2006). The Libyan SRR formalized the Libyan Coast Guard's authority to coordinate rescues in this region, giving Libyan authorities primary responsibility to ensure rescued people are disembarked in a "place of safety."[8] Although "place of safety" (and the concept of safety more broadly) has not been clearly defined in international legal frameworks, it is widely accepted that it must be interpreted in accordance with refugee law provisions in which the principle of nonrefoulement

is guaranteed (Fischer-Lescano et al. 2009).[9] There is an obligation of result that comes with the duties of the state responsible for the SAR zone to ensure that rescued people are effectively disembarked (Moreno-Lax 2011, 196).[10] Hence, the enactment of this new zone legitimized European authorities' handing over of responsibility to Libyan authorities to coordinate rescues and thus to disembark survivors in Libya.[11] This legitimation provoked a conflict with the international principle of nonrefoulement and the duty to disembark rescued people in a place of safety according to the 1979 SAR Convention. The SAR regime is not the only legal regime that governs states' duties and responsibilities when dealing with migration at sea. In addition to refugee law, international human rights law, and the law of the sea, the UN Security Council adopted Resolution 2240 on October 9, 2015, authorizing member states to "inspect," "seize," and possibly "dispose of" migrant vessels on the high seas off the coast of Libya for the purpose of combatting human smuggling (Ghezelbash et al. 2018, 334). The resolution was introduced following diplomatic lobbying from the EU, which realized that Operation Sophia lacked jurisdiction for an extraterritorial resort to military force (Ghezelbash et al. 2018, 334).

To analyze how legal jurisdictions overlap in specific settings from a socio-legal perspective, two points should be highlighted. First, the growing literature on legal pluralism and transnational legal orders contains a shared sense that specific situations of legal conflict, such as the one at hand, are difficult to understand in reference *solely* to the setting in which the conflict becomes apparent (Zumbansen 2019, 915). The legal roots of the altercation between the civil NGO ship and the LYCG I describe in chapter 1 obviously extend beyond the situation in which the two ships clashed over who should be able to take on board the people on the sinking dinghy. The legal conflict at hand was shaped by decisions, institutional cultures, and ideologies of institutions whose reach extends transnationally. Even local legal conflicts are shaped by legal norms and jurisdictional declarations that have been produced on a global level. We may think of the situation in the Central Mediterranean as characterized by a form of nonlocal legal pluralism.[12] Governmental and nongovernmental entities assert and navigate interacting norms stemming from both sovereigntist territorialism as well as universal principles. This interaction can be related to Sousa Santos's (1987) theorization of "interlegality," which describes the different scales at play and the interaction of laws between them. At the microlevel of analysis, we constantly need to "question the way in which 'the bigger picture' is drawn up" (Zumbansen 2019, 932) in order to track those interactions.

Second, my analysis of the plural legal order of the Central Mediterranean is shaped by the ethnographic approach I have adopted. From this angle, legal frameworks are not bounded regimes but rather provide a variegated architecture that various actors can activate, uphold, or otherwise use to shape their actions. From an empirical perspective, which is different by definition from the juristic doctrinal normative, I see them as "'porous,' graduated, indistinctly delimited spheres of shifting, negotiated authority and jurisdictional reach" (Cotterrell 2018, 126). Adopting this perspective reveals the distributed agency and heterogeneity involved in the layering or sedimentation of these legal frameworks, which challenges notions of legal formalism. In this chapter I emphasize that law was in fact used as a (politicized) technique of governance across this transnational legal order. By deciding which was the "right" procedure to adopt when conducting rescues of migrants in distress, the EU and Italy ensured that the LYCG had operational advantages over SAR NGOs. This is what enables us to characterize the legal landscape of the Central Mediterranean as a transnational legal *assemblage*. Defining it as such provides space for the scalar complexity of governance while also reintroducing the question of agency across these scales. The power to shape the legal conflict from afar is also linked to coercive power (criminalization of "disobedient" NGOs), privileged access to information and communication networks, and the material and financial support offered to the Libyan authorities. But by far the most crucial factor in shaping the legal assemblage was the creation of the Libyan SRR.

The Making of the Libyan SRR

The governance of the sea, however, presents another set of specific challenges altogether. Historically, legal frameworks have emphasized the sea's "unmanageability"[13] (Dickson 2021; Steinberg 2001). The sea was seen as more difficult to control than land—it could not be occupied and hence could not be properly administered and defended. This understanding of "the maritime as a geography distinct to territory, beyond a capacity for regulation," fostered the use of the maritime space as a space of trade (Dickson 2021, 10). Freedom of movement remains a characteristic feature of international waters, which exist outside the limitations of sovereignty, and this legal principle eventually became enshrined in Article 87 of the 1982 UN Convention on the Law of the Sea. Nowadays, however, although maritime regulation and jurisdiction do present challenges that are distinct from practices of control of land, the sea is not a lawless space. On the contrary, the

Mediterranean is under increasingly heavy surveillance and is cut through by various legal frameworks that regulate—among other things—rescue at sea.

Search and rescue regulations apply to everyone who finds themselves in distress at sea, regardless of their nationality. This principle means that if migrants reach out to MRCCs when they are in difficulty, states have a duty to respond. This regulation constituted a problem for the EU's externalization project and the political impetus to lower the number of irregular arrivals on EU coasts.[14] Indeed, if European state vessels intervened and rescued people in distress, the survivors needed to be brought to Europe. Moreover, if NGOs were alerted to distress cases, they could reach out to the Italian or Maltese MRCCs and request coordination. The law of the sea posed a challenge because of its universal applicability to all those in distress at sea. To address this hurdle to externalization, the EU began training the Libyan Coast Guard personnel through the EUNAVFOR Med operation as early as August 2016 (Heller and Pezzani 2018, 9). From 2017 onward, Italy took on a central role in training and supplying the Libyan Coast Guard with equipment. The EU and its member states also increased pressure on NGOs to disrupt their rescue operations off Libya's northern coast. Still, because of the normative constraints of the SAR provisions, a bolstered Libyan Coast Guard would in many situations not be enough to shield European actors from their legal obligations. And so the idea of a functioning Libyan MRCC, responsible for coordinating rescues in its own region, began to form in the minds of Italian officials.

Paolo, the retired Italian Coast Guard officer I introduce at the beginning of the chapter, provided me with a detailed insider's account of how the Libyan SRR—as a regulatory layer instrumental in the avoidance of responsibility—came about. His account indicated how European authorities and their respective professional communities oscillated between more self-interested policies of control and containment of migration and the fundamental values and norms of the European Union, which are aligned with frameworks of humanitarian and refugee law.

Since I have mentioned the significance of professional communities, whose affinities have been shaped in line with certain legal regimes or frameworks, it is worth looking at Paolo's professional trajectory. During a lengthy interview, he outlined when and how his biography had started to intersect with questions of SAR and migrant boats in distress. He explained to me that, after studying law and then attending the Italian Naval Academy at Livorno, he had served in various harbor offices. In a port captaincy in Puglia in the early 2000s, he remembered, he was alerted several times

to boats of Kurdish refugees who had left from Turkey. He explained to me how alerts to these kinds of boats would usually take place:

> At this time, rescue was coordinated at a local level so, when I worked at the captaincy, I was in charge of rescue. They had on board their small boats, which of course did not navigate under any flag state, the numbers either of the police or the coast guard. [. . .] They would often raise the alarm; you would go to a place they had indicated—sometimes they also didn't have a GPS position—and then you wouldn't find them. This was often so that the smugglers had time to escape. All this is to tell you that for what concerns flows coming from Libya, also from Turkey, when they started calling us from international waters, things were coordinated either from Palermo or Rome. In our SAR plan, there is a transfer from the local level to the central level when the event is of importance, for example, if there are many people in danger.

For Paolo, the real issues with the Italian SAR plan started to occur after 2011 in conjunction with the various geopolitical events that led many people to flee their countries, especially in the Middle East and North Africa:

> We found ourselves having to manage so many rescues, not just in one day but on repeat. What also created confusion is that we had many sources giving us sometimes conflicting information on the same event. I remember days where we would have this screen with a tide of dots that we had to verify. This was also sometimes the misunderstanding we had with the NGOS: They had a picture of *their* own situation, but not of the general situation.

He described the sharp increase in the number of boats needing to be rescued as very stressful for the officers working in the coordination center. This work was often made even more complicated by the difficulties coordinating with Malta, whose own SAR region extends far south of the island and overlaps with the Italian SAR.[15] At the time, there was no formal collaboration between the Italians and the Libyan Coast Guard.

> In 2014–2015, we did have contact with the Libyan Coast Guard, but only with singular people. [. . .] We would have problems sometimes because we had to coordinate rescues in the Libyan territorial waters, and of course, in conformity with the conventions, we were supposed to contact a Libyan authority. But these singular people we were in

> touch with would say to us—at the beginning—"We can't do or say anything because we do not have [this or that]." I mean, they were continuing to work as if there was a state functioning behind them. But they were doing it out of inertia, they said: "We have no directives, we have no one to whom we can ask political directives on how we should behave. So we cannot authorize you . . . we also lack the tools." Apart from a couple of walkie-talkies, they didn't have much.

In Paolo's opinion, what the ITMRCC needed was an authority with whom it could have a regular dialogue, as the conventions assumed. In 2017 an agreement was signed between the Italian Coast Guard and the European Commission's Department for Migration and Home Affairs to fund the "Assessment of the Libyan Coast Guard legal framework and capability in terms of SAR Services" project.[16] Paolo insisted that this was a first "logical and natural" step toward helping the Libyan Coast Guard gain the capacity to carry out rescues. He told me that this provided them with instruments to coordinate better with the Italians, who were otherwise "alone in having to deal with complicated cases from a long way away." The project was funded by the EU Internal Security Fund (ISF) and included a feasibility study to define the conditions under which a Libyan Maritime Rescue Coordination Center (LMRCC) and an associated SAR zone could be established. However, in Paolo's opinion, a Libyan coordination center should have been established before the declaration of a zone under its responsibility: "For us, the coast guard, the SAR zone should have followed the establishment of the LMRCC, not preceded it." As a consequence, for some time before the actual declaration of the Libyan SRR, but after the LYCG had greatly increased its activity, the Italians were in fact acting as the coordination authority from a military ship based in Tripoli. This claim is confirmed by numerous sources, including in a court decision on the confiscation of a ship belonging to the NGO Open Arms in March 2018.[17]

The notification of the SRR can be read as having provided a way to legitimize an existing practice: Indeed, the LYCG had already massively increased the number of interceptions in 2017. In 2016, NGOs accounted for the highest number of rescues, but in 2017, the LYCG intercepted more migrants than anyone else (Heller and Pezzani 2018, 13). According to Paolo, before the feasibility study was fully carried out, the Italian Ministry of the Interior decided to bypass the whole process, because it became clear that the plan would take longer than "political needs" would allow. Minniti therefore instead drew up the infamous memorandum with Sarraj, mentioned in

chapter 2, and Italy approached the European Commission in May 2017 with a "major proposal for integrated border and migration management in Libya" (EUTF 2017b) to be funded under the EUTF in addition to the funds already being provided by the ISF.

The focus was clearly on border security, and not SAR. On July 10, 2017, the Libyan Ports and Maritime Transport Authority informed the IMO of the designation of the Libyan Search and Rescue Region. In the letter, the Libyan authorities mentioned the lack of resources and facilities available to the coast guard and air force as a result of the destruction caused by the 2011 military operations. The letter also mentioned a bilateral agreement signed in 2009 with the government of Malta on search and rescue cooperation and coordination,[18] which delegated control and monitoring of the "Tripoli SAR Region" to Malta. The letter states that "such a delegation shall remain effective until the capabilities of the competent establishments have been rebuilt and the political situation has improved."[19] A few months later, the Libyan authorities retracted the request because there were errors in the coordinates of the area, indicating—somewhat cryptically—that "the said delegation has not been issued yet [by the Libyan government]." The notification that was finally then formalized was communicated on December 18, 2017, to the IMO, and was made public in July 2018, with the uploading of the coordinates to the Global Integrated Shipping Information System.

According to Paolo, the initial plan to set up the LMRCC and SAR zone had been devised to avoid a drain on (mostly human) resources. The situation was becoming untenable from the point of view of the coast guard. As Paolo put it, someone needed to be responsible for this area "from an SAR perspective." His account of the genesis of the Libyan SRR shows us that it came about through the interaction of individuals and groups of people in institutions that understood themselves to be bound by different norms. Paolo's belief that the SAR component of international maritime law was a norm whose protection was essential was shaped by his "institutional habitus" (Affolter 2021) that the services of the coast guard should extend to all those needing help when they made the sea crossing, without distinction. For him, it was important not to be sloppy: Why declare a new zone of responsibility at all if you were not yet able to properly coordinate and do the job? In Paolo's view, the process of establishing the Libyan SRR should have come under the coast guard's competency, and, in this process of interministerial dynamics, the Ministry of the Interior had damaged the outcome of the declaration by interfering in its timing. Here, the authority of a specific "community," the Ministry of the Interior, considering its own regulatory needs, pushed for the

SRR to be declared *before* the LMRCC was fully functional. This is a concrete illustration of how transnational law is formed as the product of a process of negotiation and cooperation between different "communities of concern."[20] In this case, a hierarchy of norms emerged within the plural legal space. Although Paolo only briefly mentioned how the Ministry of the Interior had bypassed the feasibility study, it is an indication that security concerns took precedence over search and rescue. With an emergency playing out, with the coast guard overwhelmed by the number of boats it needed to deal with, and at a time when it lacked a partner to talk to on the other side of the Mediterranean, the crisis was "captured" by interests other than those that Paolo felt should guide the conduct of a coast guard.

From Sovereign Surfaces to the Depths of Humankind

Before closing this chapter, I zoom back out again from Paolo and the intricacies of legal "layering" within a plural order. These manipulations took place largely within or in interaction with the framework of international law. This fact merits a concluding comment because specialists have argued that the structure of international law is the very cause of migrants being rendered rightless at sea in the first place. For these authors, the split between sovereignty and human rights or, in other words, "a certain division of labour that international law defines between states and individual actors" (Mann 2018, 369), renders migrants de jure rightless at sea.

For Itamar Mann (2018), who has created a typology of "legal black holes," the deaths that occur in the Mediterranean are not just unfortunate events. Rather, they are a form of "killing by omission" (364), "consequences of an international legal architecture founded upon sovereignty and human rights" (365). The fact that some populations fall "out of the pale of the law" (371) in the context of maritime migration in the Mediterranean is the result of legal black holes that are, paradoxically, constructed by the law of the sea, human rights law, and other sources of international law. He argues that this law is it not put forth "to bypass other law as a matter of a plan" (367) but is a result of "the existence of rights, as they have come to be understood in a Western international legal tradition, stemming from closed polities" (367).

What does the creation of the Libyan SRR, in a space widely considered to be one of freedom and ungovernability, tell us about the ongoing importance of state sovereignty and its relation to international law today? The Libyan SRR granted a degree of control to sovereign powers over what

occurs on the surface of the Mediterranean Sea. The surface was thus separated from the seabed, where the bodies of those who are left to die at sea come to rest. Looking more closely into the history of the formation of an international law of the sea, one gets a sense that postcolonial dynamics of (unequal) control and competition are never far from the fate of individuals who seemingly fall outside the realm of sovereign power by taking flight by sea. The discussions and negotiations between states over the text that would become UNCLOS provide an insight into how unequal relations persist even across legal texts that seek to provide commensurability. In the 1970s, newly independent states negotiated fiercely over the legal status of the seabed and how it should be included in the new law of the sea. It was widely accepted that some states, mostly from the Global North, had greatly benefited from a laissez-faire approach to the high seas. These states, together with proponents of economic liberalism, considered the deep seabed to be res nullius: Its resources could and should be made available to any state capable of exploiting them (Boczek 1984, 20).

The negotiations around UNCLOS were heavily marked by tension between the laissez-faire approach and efforts to ameliorate some of the sedimentary historical inequalities among states, particularly with regard to the newly independent former colonies. These states, many of which viewed the existing international order as based on the Western ideology of economic liberalism, tried to use international law–making arenas to consolidate a more equitable concept of legal equality, one that would also include a notion of economic fairness. This was the very heart of the New International Economic Order (NIEO) project: to see economic justice reflected in international law. Several states, most of them explicitly citing NIEO principles, aimed to introduce some limitations to the notion of freedom of the seas, first developed by the seventeenth-century Dutch jurist Hugo Grotius in support of European maritime colonial interests. They pushed for resources from the seabed, to be considered as *res communis*, and came up with the formulation "common heritage of mankind" to advocate for the idea that riches produced from the exploitation of the seabed should be made available to all mankind and shared irrespective of the abilities of wealthier states to carry out technological exploration and exploitation (Boczek 1984, 20). At the Third UN Conference on the Law of the Sea in Caracas in 1974, two main limitations to the principle of the freedom of the seas were established. A twelve-nautical-mile zone would be established as territorial waters, extending the full sovereign powers of coastal states beyond land. The right to establish Exclusive Economic Zones (EEZs) up to

two hundred nautical miles off the shores of a sovereign state for the exclusive exploitation of natural resources was also declared (Anand 1977, 216). The possibility of establishing EEZs was widely seen as a success from the perspective of newly independent states.

The extent to which the outcome of the negotiations around UNCLOS really challenged the "old" world order, where a handful of European states held power over vast overseas territories, is questionable. Esmeir (2017, 89) points out that UNCLOS split the sea in two: It regulates what happens on the surface of the sea, but leaves everything below the surface to the "commons of humankind." Concretely, this means that the content of the seabed cannot be appropriated by one state, but rather remains "common," open to all, subject only to the regulation of the International Seabed Authority (ISA). But far from providing an effective counterweight to the doctrine of freedom of the seas, this arrangement left huge swaths of underwater landscapes subject only to a weak regulatory institution that could easily be captured by stronger actors. Conversely, at the time of writing, "Humankind" was waiting, with bated breath, for the outcome of year-long negotiations on the regulatory framework for the commercial exploitation of deep-sea mining, which was to have potentially disastrous consequences for marine wildlife and the ability of oceans to sequester carbon.[21] The companies seeking to obtain permits to explore and eventually mine the seabed had been lobbying the ISA and small developing islands such as Nauru and Tonga for the state sponsorship they needed (Lipton 2022). Esmeir (2017, 89) likens the partition of the regulations concerning the surface of the sea and the definition of the seabed as a locus of common humanity to the division between citizens and human beings in international human rights law. The former are protected by the institutions and civil rights regimes of strong sovereign states, while the latter are the subjects of weak human rights law that lacks strong enforcement mechanisms. The commons of humankind seems thus to be badly insured against appropriation under international law as long as there is an advantage in doing so. At the same time, no one is pushing to claim responsibility for the lives of those lost to the dangerous games of sovereign states, passing the buck for rescue or interception always farther south.

Both Esmeir's and Mann's perspectives are important additions to the critique of international law and human rights law. They highlight the splits that run through legal regimes, cracks that enable strong sovereign states to discard the rights of those who fall outside the realm of nation-states. However, they only partially help us to understand the process of norm hierarchization in plural legal spaces that is at hand here. By contrast, a socio-legal

account of the genealogy of the Libyan SRR illuminates something slightly different, which complements this perspective but also reinjects an element of political intentionality into the picture. The notification of the Libyan SRR was the product of a strategic use of legal pluralism; it emerged from institutionalized practices and constraints and was bolstered by the authority of specific institutionalizing agencies.[22]

Conclusion

The emergence of the Libyan SRR was yet another layer on top of the legal sediment governing the conduct of all kinds of state and nonstate actors in the Central Mediterranean. It can be seen to exemplify the kinds of conflicts that international legal scholars have warned about regarding the fragmentation of international law.[23] Its inception crystalized a clash between the imperatives imposed by the EU's commitment to secure its external maritime border and the humanitarian obligations included in international sea rescue conventions and regulations. More specifically, by making the LYCG responsible for coordinating rescues in the waters south of the Maltese and Italian SRR zones, the establishment of the Libyan SRR enabled the outsourcing of responsibility for disembarking people rescued in this zone to Libya. The nature of the conflict becomes clear when we consider that Libya is not considered a place of safety under international law.

The legal interpretation of clashing norms and theoretical considerations on international law and human rights law show how law itself participates in the creation of vulnerabilities for migrants in distress in the maritime landscape. However, Paolo's account reminds us that the global legal plural environment can be shaped by actors to emphasize the needs of a specific regulatory community. The disillusioned former member of the Italian Coast Guard complained about the gray zones of the law at sea. These gray zones reflect the prevailing legal pluralism that enables states to pick and choose which legal provisions to abide by. But his account of the institutional disagreements within the Italian state on how to deal with the increasing number of boats needing assistance also points to the intention behind the encouragement of the declaration of the Libyan SRR before a functioning MRCC had been set up: the Interior Ministry's need to construct a "legitimate" authority to whom responsibility for interceptions could be outsourced. And law provided the veil of acceptability for that endeavor.

4

Offshore Containment Industries at the Margins of Europe

One cannot properly grasp the notions of interception, rescue, and death from the perspective of people fleeing Libya by boat without understanding what happens to them before they set out to sea. The decision to take to the sea, risking all, does not emerge in a void. Nor is it ever taken freely. It is embroiled in all the constraints that come with being born into circumstances that push people to seek better lives elsewhere. Or in the hazards of war that crash into their lives. Or a combination of both. One can begin to understand the drive to *escape*, to flee, and to move forward, and the "choice" to face the perils that crossing the Central Mediterranean entails, only by diving into the stories of those who experience that impossible dilemma directly. This chapter interweaves their stories with a further examination of the assemblage of control and the impediments that have been put in place to stop the flight of unwanted Others. What happens when the will to escape comes up against this assemblage? This chapter seeks to answer that question with the help of Ariam and Gabriel, two brothers who fled their birth country of Eritrea and crossed to Europe by sea.

I got to know Ariam in Geneva through a local group involved in advocacy and awareness raising around migrant death in the Mediterranean. Ariam had been active in struggles against the undignified living conditions of asylum seekers in the city in 2015–16 and had joined a political group of which I was also a member in 2018.[1] I knew that he had crossed from Libya to Italy a few years earlier, but we had never really spoken about it, and I did not know any of the details. However, I did know that his twin brother, Gabriel, remained in Libya. Several times, Ariam had mentioned his worries about Gabriel's situation to me, as well as the suffering that being separated from his twin was causing him. One evening, while I was undertaking fieldwork in Rome, I was traveling back from an event I had attended with human rights and maritime law specialists about Salvini's closed-ports policy when I received a text message from Ariam. "My brother arrived in Lampedusa, there was an accident with their boat," it read. I gasped when I read it. One of the lawyers I was traveling home with asked me what had happened. It turned out that Ariam's brother had been part of a difficult rescue operation by the Italian Coast Guard off the Italian coast in which several people had ended up in the water. My lawyer friend turned to me: She had colleagues in Lampedusa at that very moment who were doing legal counseling in the reception center where the survivors had been taken. So, thanks to a remarkable twist of fate, within no time at all I was able to help Ariam put Gabriel in touch with the lawyers. A few weeks later, Gabriel was in Rome. We met up briefly so that I could give him some money Ariam had sent me for him. When I saw Ariam again, our relationship seemed slightly changed; we now had a more intimate connection due to the small way in which I had become connected to his brother's arrival in Europe. It was then almost natural for us to speak of his brother's voyage across the Mediterranean and, by extension, his own.

A few months later, we sat down for a coffee. Ariam told me that Gabriel had traveled on to France after my brief encounter with him. On Gabriel's arrival in the French capital, Ariam had gone from Geneva to Paris and spent two weeks with him, sharing a hotel room. The brothers had initially left Eritrea together in 2014 but had soon been separated while crossing the border into Sudan. Since then, they hadn't seen each other for over five years. Recounting Gabriel's arrival in Europe still provoked a lot of emotion in Ariam, as he told me what it had been like for him to meet his twin brother after so much time apart: "I took time off work to go and see him. We cried so much! He told me everything about who sold him, the people who betrayed him. All these things that I hadn't understood from

afar." I was immediately struck by how casually he mentioned the practice of human beings being sold. We spoke about it at length as he outlined to me the differences he saw between his brother's voyage and his own. He explained his perception of everything from the moral economy of smugglers to his experience of the hierarchy among the guards in detention centers where they had been imprisoned along the way. Ariam and Gabriel's stories of their crossings, read in parallel, were interesting to me because they took place five years apart. Ariam crossed in 2015, after NGO vessels had started operating in the Strait of Sicily to fill the gap in rescue services left when Italy put an end to Operation Mare Nostrum.[2] He himself was rescued by "a big boat with a German flag," as he described it. Gabriel, however, spent years in Libya and finally made the crossing in 2020, at a time when the LYCG was routinely intercepting migrants. Unlike his brother, Gabriel had been brought back to Libya several times before finally crossing successfully. Their two journeys gave me yet another lens through which to read the changing policies of containment reserved for migrants across the Mediterranean space.

This chapter diversifies the voices of those experiencing the "multi-level policy of containment" (Heller and Pezzani 2018, 37) that has emerged since the establishment of the regime of delegated interdiction in the Central Mediterranean. It connects the stories and descriptions of what goes on at sea during migrant interceptions by the LYCG with the system of exploitation and abuse of migrants on land. "Containment" in this context emerges not just as the containment of migrants to African shores, via the sponsored pullback policy of the EU-Libyan collaboration: It is also linked to the systematic detention of foreigners in Libya. In this chapter, I show how the two realities at sea and on land are connected for the people attempting to flee Libya via the maritime route. I do this by bringing together various voices, each of which, in its own way, sheds light on the circulation of bodies, capital, and services between Libyan detention centers and the sea. Brought together and juxtaposed with a wide array of policy documents and reports on the detention of foreigners in Libya, the voices I foreground enable me to describe the links between interceptions in the Libyan SRR and the violence suffered by non-Libyans brought back to shore and incarcerated.

The first three chapters of this book show how rule—that is the domination and control of the lives and bodies of migrants fleeing Libya by the sea—is constituted through a vast array of governmental practices, one aspect of which is the strategic use and hierarchization of international law.

To fully grasp the nature of delegated interdiction of unwanted migration at the margins of Europe, it is necessary to examine more closely the effects of these policies of containment on those whose movements are targeted: the migrants themselves. Under the regime of delegated interdiction, in which EU authorities have outsourced the control of unwanted migration to third parties, migrant bodies have become a kind of political and economic currency. This chapter has three sections. In the first, I describe how interceptions by the LYCG are linked to an offshore detention industry. The EU's policy of containment enables the outsourced capture of migrant mobility, which contributes to an economy of detention on land in Libya. Here, I explore how value extraction is then carried out on the bodies of migrants. In the second section, I show how this manufactured crisis linked to the detention industry also creates a marketplace for various INGOS and IOS from the so-called rescue industry (Agustín 2007). They profit symbolically and economically from their intervention in and on the detention economy of foreigners in Libya. On both these levels of analysis, I show how migrant mobility is commodified. Within what I describe as an offshore containment industry, the migrant body gains or loses value throughout the "escape" routes that have been made more treacherous by containment policies. At the nodes of these routes where migrants are immobilized by detention, value can be extracted from them. This circular business profits several actors involved in the detention economy: from guards and smugglers, to INGOS that profit from the manufactured crisis that, they argue, needs their intervention to relieve the suffering it produces. In the third section, I look at how the freedom of migrants themselves has become a kind of global currency, the target of state deals where it is traded against money (under various forms) or political legitimacy. Still, this freedom cannot be totally reduced, and the friction between migrants' will to move and these attempts to territorialize them is itself a factor that contributes to the maintenance of the detention economy. The combination of migrants' will to move together with the closure of the maritime escape route leads to the continued circulation of this human currency.

The detention "economy" in Libya is a result not only of civil war and the breakdown of the state but also of the interplay between the EU's remote-controlling of aid and the resulting circularity of "escape" routes and refoulement. Various people enable me to paint this picture. Cheikh, a Senegalese fisherman who has lived and worked in Libya for the past fifteen years, regularly sees migrant boats leaving and being brought back by the LYCG. He sometimes has to intervene himself, when people find themselves

in distress and he cannot contact the coast guard. I interviewed several humanitarian workers, staff of international organizations, and EU and Italian officials who told me about EU funding for projects addressing migration-related detention in Libya after 2015—each from the perspective of the interventions in which they were involved. Finally, the stories of Gabriel's and Ariam's journeys to Europe bring a layer of complexity to "the interplay of subjection and *subjectivation* (or to put it a different way, of coercion and freedom) that constitutes the fabric of migration" (Mezzadra 2015, 122). Their desire for freedom, to keep moving despite the racialized and exploitive detention economy—a product of multiple policies of containment acting on different levels—illustrates why state deals have turned their freedom into a political currency. It cannot be erased, only traded.

Phone Calls and Witnesses

A few months after Gabriel's arrival in Italy, I was sitting in Laura's kitchen in the eastern suburbs of Rome. She was the lawyer I had been with when I received the message from Ariam about his brother's arrival in Lampedusa. I first met Laura in Tunisia through friends at the very beginning of my fieldwork. She was there with a group of Italian lawyer colleagues to collect testimonies of Tunisian men who had been summarily deported from Lampedusa. It was with her help that I was able to follow the strategic litigation work carried out by a group of Roman jurists and their colleagues to contest Italy's and the EU's support for the Libyan Coast Guard, which I outline in the following chapter. On that particular afternoon, Laura and I sat at her kitchen table looking through data relating to air coordination from European aircraft guiding the Libyan Coast Guard to boats in distress in the huge Libyan SAR zone. The work was painstaking and involved cross-checking various sources of data to retrace flight tracks and match them with known distress cases and interceptions documented by NGOs such as Alarm Phone, Sea-Watch, and Mediterranea. We were also being distracted by continual updates from Alarm Phone's Twitter account, which we both followed.[3] Since that morning, the grassroots organization had been busy on social media, documenting the situation of a boat that had called its hotline off the western coast of Libya. It was said to have left from Garabulli, a well-known launch spot for migrant boats located on the coast east of Tripoli. The boat was deflating and contained ninety-one people in acute distress. The latest tweet read: "After hours of calling all numbers of the so-called Libyan coast guard in vain, we were now able to speak to a representative *who told*

us that #Libya did not conduct a rescue operation yet as the detention centers are full & they need a solution. Don't let the people drown!" (my emphasis).[4] The LYCG has a reputation of often being unavailable when distress cases are declared off the Libyan coast. Alarm Phone has repeatedly reported difficulties in reaching it in recent years (Alarm Phone 2019). Thanks to a leaked document containing transcripts of wiretaps on LYCG phones, recorded by Italian prosecutors, reporters have also revealed that the LYCG's Joint Operation Room was severely underequipped and understaffed throughout 2017 and 2018 (Tondo 2021b). The difficulties in reaching the LYCG were matched by the challenge in understanding and systematizing what happened to people after they were intercepted by them. The tweet that day was thus another piece to fit into my growing puzzle made up of fragments of information; it was another indication that people being returned to Libya were detained on disembarkation. In the case at hand, it even seemed as if the Libyan Coast Guard was willing to take the risk of people dying from nonassistance rather than potentially having to disembark them while there was no space in the country's detention centers.

To gain information about what goes in Libya's detention centers, human rights organizations often have to rely on testimony collected from people who have experienced interception or detention only after they have left the country. They are not the only ones who struggle with access to information. Journalists reported to me the difficulties they had in obtaining visas in order to report from the ground in Tripoli. International workers and embassy officials confided to me that even if they got the green light for a field visit to Libya, they often struggled with securing the visas needed to enter the country.[5] One embassy official, for example, explained to me that he had received an official invitation from the Libyan Ministry of Foreign Affairs to visit the country. He had then been told at the Libyan embassy in Tunis, however, that they were "out of stickers" for the visa and so they would not be able to deliver it to him. Only after he had paid some extra fees was the visa finally delivered. Even for the few who are given permission to visit (official) detention centers, access to detainees is effectively impossible. Even when they are given authorization, international visitors are provided access only to a selection of detainees, and their visit to detention centers "curated" (this has been confirmed by media reports; e.g., Montalto Monella and Creta 2019). In view of all these difficulties, which I also faced when undertaking my fieldwork, I tried to use as many sources as I could to piece together a picture of what goes on after interceptions conducted by the LYCG.

Cheikh

Despite the interruptions of social media, Laura and I had powered on with our work. That is, until my phone started to ring. I picked up to hear Cheikh's voice on the other end of the line. Cheikh was another source helping me to understand activities off the Libyan coast. A Senegalese fisherman who had arrived in Libya in 2005 to start a hotel business with a friend, he had seen regime change, the tanking of the economy, uprisings, and militias rolling in to control his neighborhood and the waters where he fished. He had led a fascinating, multifaceted life. Before coming to Libya, he had studied law and worked as a journalist in his home country. He knew how to repair car engines because his father had owned a garage. He spoke fluent Arabic ("They cannot tell I am not local," he would often tell me). Alongside fishing, he worked in a local shop in a coastal city and was respected by the local fishing community from his area for knowing how to swim. He had resorted to calling me up regularly, mostly to report experiences, frustrations, and misadventures with what he called "Fezzan,"[6] the Libyan Coast Guard. He told me that the LYCG would often resell the motors of the migrant boats they intercepted. When I asked him why he documented everything so carefully, why he was so enraged by the corruption he witnessed, he explained simply, "I have lost friends because of traffickers [*traffiquants*]. The sister of my dear childhood friend died at sea, at the end of 2018. I document injustice because she died unjustly."[7]

That day, as I sat with Laura in the relative coolness of her kitchen, he was calling to say that fishermen colleagues of his had spotted several migrant boats while out fishing and that some had been brought back by the Fezzan already. The following day, he called me again. This time, he told me that yet another colleague of his had towed a boat of migrants whose engine had stopped working back to land. Cheikh had been driving back from the port and had spotted a small group of Black women walking along the road with no shoes. He stopped, he explained, to take them back to the city. "They trust me because they see that I am not Libyan," he said. Being a French speaker, he often said to me, also enabled him to communicate more easily with certain West African migrant communities when he encountered them. After his rushed explanations of his encounter with these women, he proudly declared that one of them was still with him. He was eager for me to speak with her: "She will be able to tell you what happened, she was in the boat that was brought back by my colleague," he said. Suddenly I felt way out of my depth. I had not prepared myself to speak right then and there with

someone with direct experience of an attempt to cross the sea. And I did not know what Cheikh had told her about me apart from hearing him say, "Tell her your story. She is a journalist." I had come to realize, through my occasional contact with people in Libya who had experienced detention, that some of them had spoken to journalists while in detention.[8] And, although I had repeatedly tried to explain to Cheikh that I was not a journalist, I had ended up accepting that "journalist" often came to stand for "someone who can tell our stories." The woman explained to me that a fisherman had in fact towed their boat back to land when their engine stopped working. The important thing, she stressed, was that she and the others from the migrant boat had been brought to a place where they could disembark without being spotted by the authorities or armed men, which meant that they had avoided being taken into detention. Again, this was another voice, another fragment of information pointing to the connection between attempted seaborne flight and interception by the LYCG leading to detention.

Offshoring Detention: The Commodification of Migrant Mobility

Beyond these individual voices, the cycle of abuse joining the sea and the Libyan detention system has also been documented by a number of organizations. Some of them have conducted empirical research on the political economy of the detention system itself (Malakooti 2019), while others are involved in humanitarian assistance or human rights advocacy (Amnesty International 2020; MSF 2019; Agresta et al. 2020; Human Rights Watch 2019). They all report that, once intercepted by the LYCG or the General Administration for Coastal Security (GACS), people on the move are mostly brought back to detention centers, where they are arbitrarily deprived of their liberty.[9] Cheikh observed the back-and-forth of the LYCG, which could return hundreds of people to Libya on busy days. He repeatedly complained that he could not stand "all the suffering" that he witnessed at sea: from the drownings he heard of, to the actual boats he encountered, whose occupants would sometimes implore him for water or food. During his phone calls to me, he denounced this "circus," as he called it. In Tripoli, close to his shop, there was a roundabout where some migrants hung about, waiting to be picked up for work. It was an informal spot where it was common knowledge that people made themselves available for manual labor. Sometimes he drove past there, he told me, and spoke to some of the migrants. Based on these encounters, he described stories of people having repeatedly

tried to cross before being brought back, in a circular ballet between land and sea.

For all the attention paid to the situation in the Libyan "camps," as they are routinely referred to in the media (see, for example, Mannocchi 2019; Reuters 2020; *Deutsche Welle* 2017), one would be forgiven for thinking that this was a Libyan anomaly. However, migrant detention—or what Tazzioli and De Genova (2020) have called the "economy of migrant kidnapping"—is simply one of the facets of the contemporary postcolonial border regime. Several authors have pointed out how the detention of noncitizens has become an intrinsic part of states' approach to migration governance (De Genova 2020; J. Morris 2017; Bloch and Schuster 2005; Mountz et al. 2013). De Genova (2020) adapts the Foucauldian notion of an "economy of power" to characterize "the unequal distribution of rationalities, techniques and technologies that makes migrants subject to detention, and thereby administers and governs them through that uneven distribution of their *detainability*" (158; emphasis in original). Following this analytical lens, the economy of detainability refers to the microtechnologies that can enhance the exercise of macropower to produce detainable lives.[10] Detention is one of the "political technologies of bordering" (Tazzioli and De Genova 2020, 880); it is made of practices of detention and "local" forms of control, but detention also has a productive quality, contributing to marking certain bodies as in need of being contained by states. Detention centers, or "carceral circuits," (Gill et al. 2018; Stierl 2021) are undergirded by "economies of violence that are simultaneously necropolitical and biopolitical,"[11] since they are spaces that both capture "unruly mobilities" (Tazzioli and De Genova 2020, 879) of migrants and subject them to racialized threats of violence and death.

The scholarly work that characterizes migrant detention by applying a Foucauldian approach to power and control is important. However, it leaves out some considerations of the nature of these economies of detention. To see Libyan detention centers "just" as a political technology designed to contain the unruly movements of migrants does not disclose the extractive processes at play in a system in which a host of actors, including humanitarians, also participate. There are distinct forms of capital circulating in the Libyan detention economy that need to be examined if we are to understand how such economies are sustained in time. In light of this fact *and* the link I show between Europe's externalization project and the detention of migrants and refugees, in this chapter I expand on a Foucauldian conception of power to draw attention to the detention economy as an offshore extractive project (J. Morris 2019). For extraction to take place, migrant mobility

needs to be captured. It is the process of capturing migrant mobility that the EU outsources to the LYCG and the militias that manage the detention centers where migrants are brought after being intercepted. This "offshoring" of migration control on the part of the EU is a "territorial strategy of zoning," through spatial and nonspatial practices that engender particular types of boundedness and differential access to rights (Opitz and Tellmann 2012).

The migrant body has become commodified as a consequence of the Global North's obsession with governing "unruly human mobility" (Tazzioli and De Genova 2020, 868). From Nauru to Libya, the capturing of people's mobility has produced an extractive industry that renders the bodies of refugees and asylum seekers as commodities for the extraction of political, economic, and moral value.[12] With regard specifically to the emergence of a detention economy in Libya, there are several levels of analysis and types of value extraction at play. At the most basic level, migrants' mobility is captured when they are intercepted and brought to detention. This is then what enables the commodification of mobility: For migrants to be able to move again, they have to pay. While they are captive, however, their bodies can also become monetized in other ways: They can be sold to perform forced labor, and their bodies can be tortured to extract resources from their families. These immediate extractive processes are enabled by the outsourcing of control by the EU to nonaccountable actors. Once more, the notion of the "offshore" is illuminating: Offshoring fundamentally effects the modulation of relations between, for example, money and political space (as in the case of offshore financial centers) and, in the context of delegated interdiction, between subjects and rights. The Libyan SRR very clearly operates such a modulation with respect to the law: It cuts the relationship to European jurisdiction for migrants who are passing through the zone.

But beyond the immediate logics that allow value extraction from the very body of the migrant, there is also a wider industry that not only extracts monetary profits from the capture of human mobility but also makes symbolic and moral profits. A particular framing of the "refugee crisis" as "outside of control" and "outside of someone's responsibility" (Dadusc and Mudu 2020, 8) has been used to justify the necessity of humanitarian intervention around the detention system in Libya. This has also created a marketplace where INGOS and IOS compete for funding from donor states to provide a humanitarian response to the suffering that the detention industry produces. Global migration governance has thus taken on the logic of the marketplace (Betts 2013), with an increasing number of international organizations and private actors vying for the chance to provide services in lieu of states.

The migration industry can be considered to encompass both the service providers that facilitate migration and the providers of migration control (Nyberg Sørensen and Gammelthoft-Hansen 2013). But the definition can also be widened to include other actors that provide humanitarian aid and services to migrants. Laura María Agustín (2007) coined the expression "rescue industry" to signify exactly this phenomenon: the wide spectrum of nonstate actors that might be involved in the industry for reasons other than financial gain and might be "invested in the rescue and rehabilitation of exploited and vulnerable mobile populations" (Hernández-León 2013, 25). For Dadusc and Mudu (2020, 10), the rescue industry includes an economic dimension that "goes beyond disciplinary relations of care and control," namely the commodification of migrants' suffering. The main results of this process, according to Dadusc and Mudu, are the creation of competition between forms of vulnerability (rather than their alleviation) and the depoliticization of possible responses to situations where suffering is linked to border violence.

There are limits to the literature that theorizes the entire endeavor of migration control as an industry. Adopting only the perspective of value extraction erases the fact that many actors are entangled in migration control for reasons other than the chance to profit from it. Quite to the contrary. There are costs associated with the system, too; if a merchant ship has to intervene in a migrant rescue and then becomes embroiled in the politics of where to disembark the rescued people, this intervention will incur economic losses. Defining where the limits of extraction lie is also challenging when extending the lens of "profit" beyond the purely economic sense. To some extent, researchers and academics are also implicated in extractive logics and profit when studying these more spectacular manifestations of borders and sites of suffering.[13] Despite these limitations, I still hold that studying value extraction across the detention industry lens is important when it comes to delegated migration control. Delegated interdiction in particular is a form of offshoring, and it is this very process that enables the other levels of value extraction to exist in the first place.

Offshoring—and the commodification it entails—is visible in the proliferation of "deals," such as the EU-Turkey deal of 2016 or the Italy-Libya Memorandum of Understanding of 2017, in which states "have exchanged human bodies in kind or accepted payments for receiving or detaining people on the move" (Neilson 2018, 377). The figure of the migrant-as-currency can be seen as a "token of exchange that carries 'social validity' across territorial boundaries" (388–89). This figure derives its value across complicated

territorial arrangements that need closer examination. Within the offshore detention economy in Libya, the bodies of migrants have been rendered into currency through contemporary practices of bordering and are inscribed in circuits of value creation. At a more macro level, the transactional nature of Italy's various "deals" with Libya show this quite well; equipment and material are afforded in accordance with how many migrants can be kept from reaching the shores of Europe (Campesi 2018). Marx wrote that money acquires its social validity by its "forced currency," meaning its circulation within "the boundaries of a given community" (quoted in Neilson 2018, 380). Thus, currency is "a form of legal tender rooted in territoriality," as well as "a restless token of exchange" (Mezzadra and Neilson 2019, 30). Since it is deeply connected to territory, it gains and loses value in relation to its circulation through territorial arrangements. Saying that the migrant body has been rendered into a global currency points to these gains and losses of value according to the logics of circulation across territories. It is the very freedom, the "political excess" (De Genova et al. 2018, 250), of migrant mobility that is targeted by these transactional deals. Anything from money to forms of political leverage will be traded in exchange for the services of whoever can contain this freedom. It is in this sense that the currency of migration cannot be separated from its autonomy; it is continually "pushing against the borders and juridical patterns and determinations with which territory is strongly associated" (Neilson 2018, 386–87).

These perspectives on the commodification of human mobility within the process of offshoring and on the rendering of the migrant body into currency through the monetization of migrant freedom help us to understand what sustains these "economies of violence" or "economies of detainability" in time. Logics of extraction and capital accumulation make the system profitable—economically for some and politically for others. Three aspects, which I analyze in the following pages, stand out in this regard. At a first, basic level, monetary value can be extorted from migrant bodies in the detention economy in Libya. Second, IOs and NGOs play an ambiguous role in the "rescue industry" engendered by the crisis produced by offshoring. Humanitarians and international workers have differing views on the legitimacy of their interventions. They articulate varying degrees of discomfort in relation to their work around migrant detention *because* of their awareness of the commodification of human mobility. Finally, Ariam and Gabriel's story, with whom I began this chapter, stand for the broader plight of migrants caught in the circuit between the sea and detention in Libya. They have been rendered into a currency; this "currency" continues to "flow" because of mi-

grants' persistent quest for freedom. They navigate as best they can the violence of this circuit in which their freedom has been turned into a token of exchange, and they have become victims of the racialized economies of violence that tease out profit from the very life forces with which they push against the exclusionary state and exploitation. While their freedom might be marketized, it cannot be extinguished.

Capture for Extraction

My interviews with organizations whose work brought them into contact with the issue of detention in Libya, as well as with people who had direct experiences of detention there, revealed that there were several ways people could be detained. Some were rounded up on the streets and found unable to produce the right documentation when stopped by the police or security forces (see also Amnesty International 2020). Others were detained after being intercepted by the LYCG at sea. Then there were the stories of people paying detention managers to get into a detention center. Ariam explained to me that this was due to rumors that the UNHCR was visiting people in detention. Because the small number of people who had benefited from the UNHCR's relocation program were identified within and taken out of detention centers, some people paid to get into detention in an attempt to get noticed by the organization. Outside detention centers, access to humanitarian organizations was often more difficult.

As the Alarm Phone tweet I quoted earlier suggests, interceptions were conducted whenever there was space for migrants to be brought to detention centers. This was both a systematic practice, as outlined above, and a rule, codified by Libyan state law. Indeed, Article 6 of Law No. 19 (2010), on combatting illegal immigration, stated that "foreign illegal immigrants shall be penalized by detention with hard labor or by a fine not exceeding 1,000 LYD." In 2014, this law was amended by Decree No. 386, "establishing the Anti-Illegal Immigration Agency," whose Article 3, paragraph 4, states that the new agency should "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."[14] The creation of the Libyan Search and Rescue Region hence bolstered the need for detention centers on land: More rescues carried out by the LYCG meant more places were needed for detention of intercepted escapees who had no permission to stay on Libyan territory.

This interdependence was noted by an Italian parliamentarian whom I interviewed. He was a member of the parliamentary External Affairs Committee, which had closely followed the Italian foreign policy response to the insecurity in Libya. In February 2020, he complained to me about the lack of responsiveness from partners such as the UNHCR: "Right now, the UNHCR is scaling down operations while we actually want them to be opening more camps for people to be brought [to], once they have been rescued by the coast guard. The UNHCR is just simply not doing enough."[15] He was not necessarily advocating that migrants be brought to detention centers run by Libyan authorities on their arrival back on land; his idea was that the UNHCR should be setting up reception camps to support the Libyan authorities. The member of parliament's remark confirmed that the enhanced activities of the LYCG presented both the Libyan authorities *and* the donor community with a problem: Once intercepted by the Libyan Coast Guard, there needed to be a place where migrants could be taken, whether it be called a "shelter," "reception," or "detention" center. Still, the law alone could not explain the practice of systematic detention on interception by the LYCG: Detention was also carried out because it was profitable, driving an economy based on the commodification of the migrant body.

Ariam described the process of being intercepted by the LYCG and being brought back to Libyan shores: "When the coast guard intercepts you, they first take you to a prison—like really, really a prison where no one visits. From this place, the authorities transfer the people to different detention centers. And that's where you'll stay." He tried using different analogies to make me understand the arbitrariness of procedure and attitude of the authorities or militias:

> There are many tensions between different factions; it's like . . . in Geneva, how many police stations are there? See, in Libya there is al-Kummus and . . . different places and different kinds of police in different places, you see? Imagine that the police of one of the places, like the police of Carouge [a municipality in Geneva] is very honest, and the one in Veyrier [another municipality] is not [. . .] a lot of policemen work with smugglers and they say, "The UNHCR doesn't know about these people [doesn't know they have been transferred to such and such detention center], so I can sell these people to a smuggler."

Set up in 2012, Libya's Department for Combatting Illegal Migration (DCIM), part of the Libyan Ministry of the Interior, is officially in charge of managing Libya's detention centers (EEAS 2017, 37). Figures relating to

the number of active detention centers run by DCIM have fluctuated over the years.[16] Cuttitta (2021) reports that there were 11 in April and 23 in the summer of 2020, while there had been 24 in June 2016, 29 in July 2017, and 26 in June 2019. In 2017, the initial mapping document produced by the EU Border Assistance Mission in Libya (EEAS 2017, 37) reported that the DCIM controlled only 20 of the 31 detentions centers in Libya, the others being run by local militia. Another EU stakeholder mapping from 2023 reported that of the now 26 detention centers nominally overseen by DCIM, only 10 were active.[17] According to Amnesty International (2017, 27), it was not always clear how much control the Ministry of the Interior had over DCIM-run centers, due to the lack of reporting structures and the fact that DCIM's headquarters are in Tripoli, far from where many detention centers (DCS) actually were.[18]

Some European policies explicitly support the Libyan authorities in charge of detention. The 2017 Italy-Libya Memorandum of Understanding outlined Italy's commitment to supporting (technically, operationally, technologically) both the Libyan institutions in charge of fighting illegal immigration ("*immigrazione clandestine*") and reception centers where these "illegal migrants" were kept.[19] The Memorandum also provided the legal basis for the Fondo Africa, the financial instrument used by the Italian government to put the agreement into practice. The connection between border enforcement at sea and detention in Libya was also confirmed by Italy's Supreme Administrative Court when it rejected a claim made by the Association for Juridical Studies on Immigration (Associazione per gli Studi Giuridici sull'Immigrazione, or ASGI) that accused the Italian government of misusing funds from the Fondo Africa. (I examine the claim in more detail in chapter 6.) In the decision,[20] the Consiglio di Stato found that Italy's intervention in Libya was legitimate because, in addition to providing "technical assistance to the authorities responsible for border control to combat migrant smuggling and human trafficking, it also aimed to improve the protection and humanitarian conditions of the centers in Libya in favor of migrants and refugees" (ASGI 2020a).[21]

Alongside the funding and support given to the LYCG, the EU Trust Fund for Africa also provided funding for the presence of international organizations at disembarkation points (EUTF 2018a).[22] To date, the IOM and the UNHCR are present at several disembarkation points and are meant to provide first assistance and register the people who are brought back to land. Although it is purported to serve a protective function, this presence could also be seen to legitimize detention. Indeed, the ability of these two

organizations to concretely carry out protection activities is severely limited. A UNHCR employee described the usual procedure to me:

> When persons [are] returned from sea operations to Libya, they arrive at disembarkation points; [the] UNHCR and IOM have thirteen points together where we provide services—these are the official ones. So, if the Libyan Coast Guard inform[s] [the] UNHCR about an incoming coast guard boat, the UNHCR immediately inform[s] [the] IOM and other actors about this and then of course, [the] UNHCR is present at all thirteen points for protection monitoring and for health and co-relief item assistance; we are present at six, and [the] IOM is present for health and co-relief items at the other seven. So, when they are brought in, we are there and we quickly—depending on the time and how much advance notice the Libyan Coast Guard gave us—we are able to count the persons that are disembarked. We make again a rapid screening, we check who is male, who is female, who is in urgent need of medical assistance: Is it just basic medical assistance that can be provided by the doctors and nurses we brought with our teams, or do they need immediate referral to hospitals? And then you have to imagine it is a race against time, because the Libyan Coast Guard brings them back and immediately informs DCIM that they have arrived, and then DCIM decide[s] internally to which detention center the persons are brought.

The UNHCR's scramble to register people and screen them so that a few can be referred for medical assistance points, on one hand, to the agency's lack of oversight in terms of what happens to people once they are transferred to detention centers as well as the difficulties the organization has coordinating its activities with local authorities. On the other hand, it also highlights again the circuit of people being disembarked, checked, transferred—like goods. Despite the presence of the IOM and UNHCR at disembarkation points, at the time of my fieldwork, there was no formal and consistent registration of people being held in detention centers. The EU had itself noted in an internal document that Libya "does not appear to have an official catalogue of immigration detention facilities" (EU Council 2019, 9).[23] The limited access to detention centers and the lack of a consistent overview of detainees were flagged over and over to me by members of NGOs and IOs. The UNHCR staff member quoted above described how numbers in the detention centers that the organization visited would fluctuate in incoherent ways: "When we come to a detention center, we might know that the

night before, 300 new people were brought there and [then] the next day, in a week, or something, the 300 persons are gone. We of course check with [the] IOM and say, 'Hey, did you all take them on AVR [assisted voluntary return]' and they say, 'No, nobody,' and we say 'Okay, they are gone.'"

There was a clear lack of oversight of the number of detention facilities, the number of detained migrants, and the ways in which the detention of foreigners in Libya took place. International organizations such as the UNHCR were often in the dark as to whether disembarked people had been registered and where they were being detained. To get out of detention, migrants either paid a ransom or managed to escape. In rare instances, as mentioned above, individuals might be given the opportunity to participate in the IOM's AVR program. Given the extremely dire situations in which individuals found themselves when detained, the extent to which participation in these programs was "voluntary" was of course questionable.[24]

Circuits of Capital in the Detention Economy

Although humanitarian and international workers stressed to me that the only detention centers they ever worked with were run by the DCIM, and not detention by militias, Marisa, a humanitarian affairs officer, admitted that "the control of DCs is completely fluid. It goes from militia to DCIM to militia without us knowing."[25] Another UNHCR employee confirmed that DCIM was "really very aware of the politics of recognition" in the sense that it didn't "take much to become a DCIM center—you need a banner, a logo . . . and then you can quickly be set." She emphasized that it was easy for DC managers to "cash in" on new arrivals from the sea and elsewhere. The extraction of value from detainees was usually done by militias or corrupt officials, through collusion with smugglers to sell them on, by asking for ransom payments under torture, by the confiscation of the small amount of possessions the migrants might still have, and by using migrants' labor power (Micallef 2017; Amnesty International 2021). The UNHCR staff member summarized the issue with Libyan authorities preventing IOs from carrying out systematic registration: "For the Libyan authorities, they do not want us to register them, because then we would be able to trace the people and that would mean for the Libyan actors, they are losing money. We are talking about human trafficking, and they are cashing in at every single stage." Not registering people meant that a detained individual might pay to get out of detention, try to then escape by sea and then be brought back to detention again, several times over, meaning he or she could be squeezed

for money repeatedly without necessarily raising concern from any IO. The drastic reduction of escape possibilities by the sea for detained migrants through empowering the LYCG and the increase in interceptions it carried out thus seemed to contribute to an extractive circuit in which value was partly created through migrants' movement from one stage to the next.

The extortion of detainees to provide cash flow for their captors was also reported to me by Gabriel and Ariam. They described how detainees were sometimes allowed to keep their phones with them to provide a crucial link between them and their families.[26] Captors used phones as instruments for extracting money from detainees under conditions of torture and promises to families that their loved ones would be released in exchange for a kind of ransom payment (for more evidence of this practice, see Michael et al. 2019). While Gabriel was in Libya, he was often forced to work on construction sites for no wage by one of the guards of the detention center where he was being kept. He explained that when he and other laborers protested and asked for their wages, they were threatened with weapons. Forced labor was therefore another source of capitalization for guards and militias who held coercive power over detainees. Amnesty International (2020) and others (e.g., UNHCR 2018) have also reported that militias and other armed groups use migrants and refugees outside detention centers as forced labor in construction and cleaning.

Finally, because the detention of migrants became an important area of concern for humanitarian aid, and because there was little control over how aid was distributed, black markets in items of first necessity were also reported to have developed. A senior state official with an EUTF contributing state confided in me: "For distributed nonfood items, the IOM does not check. If 50 medical kits are distributed, 20 will maybe go to migrants. The rest will go to DCIM. And then who knows. There are shortages of many things right now in Libya, you can easily sell things on."

Dilemmas of Humanitarian Intervention in the Offshore Containment Industry

Despite the presence of IOs at disembarkation points attempting to register the return of people intercepted at sea, there were seemingly no barriers to the transfer of people to detention, where they could then be extorted or sold on again. Moreover, the very presence of international organizations and NGOs partially funded by some of the very same policy instruments that supported the LYCG raised questions as to their function in legitimizing this

fluid circulation between the sea and detention.[27] Consequently, the legitimizing function of NGOs and IOs was a hotly debated topic within the international community working on the issue of migrant detention in Libya. The terminology of migration as currency even trickled into the language of humanitarians themselves, who found themselves caught in difficult dilemmas about how to intervene in the detention economy that had emerged.

The various members of international organizations I interviewed viewed their (co-)implication in the perpetuation of the detention of foreigners in different ways.[28] Some highlighted their organizations' attempts to draw red lines as to what they could and could not do to support migrants in detention in conformity with the do-no-harm principle. Funding providers were also wary about being seen as complicit in paying the operating costs of detention centers; when the UK's Department for International Development came under fire for supporting the Libyan detention system (2018), for example, it was keen to assert that it provided humanitarian provisions only "where it [was] possible to do so whilst upholding humanitarian principles." Following Libya's descent into civil war in 2014, many NGOs and IOs were present in the country to perform humanitarian interventions. In October 2016, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that there were thirty-five organizations working in Libya (not including the Red Crescent or the Red Cross) (OCHA 2016). As of 2021, the EU remained one of the biggest donors of humanitarian aid in the country, and the EEAS (2021) declared it had provided more than 75 million euros in funding for humanitarian action since 2011. The Italian Agency for Cooperation and Development (Agenzia Italiana per la cooperazione allo sviluppo, or AICS) channeled aid into detention centers through several Italian NGOs, which provided aid to detainees in three centers in Tripoli. In 2017, the ministry issued the call "Emergency Initiative in Favor of Populations in the Migrant and Refugee Centers of Tariq al-Sikka, Tarek al Matar and Tajoura in Libya"[29] to distribute a first block of funding of 2 million euros (Ministero degli affari esteri e della cooperazione internazionale 2017). Another 4.2 million was issued in a second call for projects in 2018 (Biella 2018).

Several of the IO or NGO workers I interviewed expressed discomfort at the idea that the donor community was responding to the needs of the EU rather than contributing to more protection for migrants or to the needs of the civilian population in Libya. This was the view expressed by Matthew, a former senior project officer for a humanitarian organization in Libya. Matthew was in his mid-forties and described himself as having a sound

knowledge of issues related to displacement in Libya and Tunisia. For him, it was clear that humanitarian organizations like the one he had been working for in Libya were having to walk a tightrope, responding both to the Government of National Accord's requirements that foreign organizations should meet the civil population's needs and calls from the EU—a major funder of his former organization—to address the plight of migrants in Libya. According to Matthew, the GNA itself needed to build legitimacy with the Libyan population and assert itself as the main political authority under the threat of power grabs from all sides. As a result—and particularly to take the wind out of the sails of nationalist discourse—the GNA had to minimize the perception that it was yielding to EU pressure on migration issues and neglecting the needs of the civilian population by focusing too much on the needs of foreigners. For Matthew, it was clear that the international community in Libya had contributed to legitimizing the system of detaining foreigners in Libya, as migrants were, in his words "being used as a political currency, in a very flexible way." He was particularly critical of the attention the international donor community paid to detention in Libya. For him, this overly narrow focus had contributed to the detention system becoming a profitable business model for detention managers and middlemen involved in the provision of aid on the ground. And this was occurring despite the fact that NGOs had very little independent access to the people in the centers. Indeed, he complained that "when you engage in a DC you engage on the terms of DCIM and those of the DC managers. You go into a DC and of course you see the detention they want you to see. It is a circus. You don't get to see the people who are in solitary confinement, those who are being sexually abused."

To illustrate how migrant detention had, he believed, become a profitable business in Libya, he gave me a concrete example:

> Tariq al-Sikka detention center is run by a militia. In 2017, they were fighting alongside the Tripoli revolutionary brigade. They then fell out with them but were reinstated and given a DC to manage. So yesterday's outlier and spoiler is now DCIM's deputy director. This guy is a gangster! He comes to coordination meetings with his sunglasses and Marlboro cigarettes. Some other [humanitarian] organizations were kicking and screaming about Zawiya being a disgrace.[30] But it's all very good thinking about the six hundred people in the center—the problem is if you bring to light the stuff going on there, all the Chadians and others who live around the DCs will start to be rounded up.

> You are contributing to the narrative that this is where we need to be intervening. But it's a massive business. There are dodgy food contracts, which get subcontracted to family members to provide the food. I mean we all have a stake in the game. These guys are ready for a "Security Sector Reform"; they are no longer pharmacists, or farmers . . .

Matthew was not alone in expressing the view that a disproportionate amount of funding from the EU had been dedicated to addressing the issue of migrants in detention centers. The critique stemmed from the fact that funders' focus on detention was misplaced. Indeed, as of 2020, of the estimated 600,000 to 1 million migrants present in the country,[31] only about 2,400 were reported as detained (Global Detention Project 2020).[32] A UNHCR staff member in charge of donor relations in the region lamented the EU's focus on detention: "The EU is very keen on anything to do with detention centers. However, we also need to say that less than 10 percent of the persons of concern to UNHCR in Libya are in detention centers. I mean refugees and asylum seekers, out of the 46,000 we currently have registered, we estimate about 2,500 which are currently in detention centers. So, it is a very small number and that also needs to be reflected in a certain way [in] the assistance which is provided." This view was mirrored by other organizations, which questioned the distribution of resources as part of the humanitarian response in Libya. A 2018 internal position paper by one of the NGOs implementing humanitarian programs in Libya[33] pointed out that, while the humanitarian community had identified more than 1 million people in need,[34] only "a fraction" of that number had received support. The paper emphasized that migrants and refugees in detention had received the most attention from the international donor community. Some NGOs had said they would not intervene within the detention system (see, for example, Norwegian Refugee Council 2019). Others felt the need to justify to me why *their* organization's activities were legitimate, for instance, because they did not provide services that would ordinarily be provided by the Libyan state. Still, many were caught within the web of capital circulation: They had to respond to the expectations of Western donors who provided them with funding for their operations while often being aware of the Libyan government's inability (and lack of political will) to monitor abuses in DCs.

The disputed character of humanitarian involvement in and around detention in Libya was clearly illustrated in the exchanges that took place during a 2021 online event organized by Paolo Cuttitta, a researcher, and Giacomo

Zandonini, a freelance journalist.[35] Various panelists—including not only journalists, lawyers, and researchers but also representatives of various NGOs involved in the provision of humanitarian aid for migrants in Libya—were invited to share their positions on humanitarian interventions in the country. The event's organizers posed the question of how humanitarian aid was affected (and sometimes conditioned) by European policy aims to contain migratory movements to African shores. One of the speakers was from the immigration rights organization ASGI, which had recently released a report critical of the activities of Italian NGOs that were benefiting from funds from the Italian Agency for Cooperation and Development for their work in Libyan detention centers. The report estimated that, in 2017, around eleven million euros from the fund were allocated to AICS, which then issued calls to the nonprofit sector to present projects aiming to tackle the humanitarian crisis in Libya (Agresta et al. 2020). The report focused largely on how Italian NGOs had carried out activities of a "durable" nature on the structures of detention and raised the question of whether these NGOs were responsible for contributing to upholding the detention regime.[36] The report had later led to a complaint being lodged with the Italian Court of Auditors. In it, ASGI asked the court to "investigate whether the conduct of AICS" was "in line with its statutory purposes and its obligations to ensure the proper use of public money" (ASGI 2021) in light of the criticism that the activities of the NGOs had participated in upholding the arbitrary detention of foreign nationals in Libya.

During the online event, it soon became evident that the positions of the various speakers differed as to their understanding of how their activities were connected to the EU's containment project. One NGO representative started her intervention noting that the organization no longer accepted European funds since the signing of the EU-Turkey deal in 2016, emphasizing that financial independence was important for its activities in Libya and its rigorous approach to humanitarian principles. Another representative of a different NGO pushed back against the accusations in the ASGI report, saying he was proud that Italian taxes were used for humanitarian aid in the Libyan context. His organization had been criticized for supplying the Tarek al Matar center with a recreational area for children detained there. Yet a third representative of another international aid organization scoffed at the correlation that he said was being made between the aid given to the LYCG and the support and legitimation of the detention system from the side of NGOs active there. "They are not even related," was his scornful dismissal.

The discomfort with the question of whether or how humanitarian actors should intervene in Libyan detention centers was obvious. It was a sign of NGOs' awareness that serious human rights violations were taking place in the camps. And perhaps also of some organizations' understanding that the detention system had become a marketplace in which migrants had become a profitable resource. Among humanitarian workers and international organization staff, there was no consensus over the extent to which INGOs and IOs were complicit in this economy. However, some staff members did acknowledge that refugees had become a commodity, and detention a business. On a discursive level, of course, funders and policy makers involved in supporting Libyan institutions often mobilized the "saving the distant stranger" paradigm (Pallister-Wilkins 2020) to justify their work. Donors' focus on detention could be analyzed in terms of what the detained migrant epitomized: helpless victims in a lawless state. The literature on humanitarian governance helps us to understand the conditions under which different Others can be assisted through universal values (Fassin 2010, 239). The humanitarian reason involved in the funding policies and politics of the Fondo Africa posited that the needs of suffering migrants who are detained could be alleviated by charitable acts of giving. This depoliticized approach to humanitarian intervention in fact prompted several donors and humanitarian workers among my interlocutors to assert that "they could not do nothing." This in turn reinforced the idea of the "act of giving" as the only possible solution, abstracted from the structural effects of these interventions, and deflected attention away from political solutions (and the responsibility of donors to contribute to these).

Matthew was one of the more critical humanitarians who deplored the funding logics that turned NGOs into instruments for the realization of EU policy: "We are also driven by growth targets," he confided to me. "You have corporate-style NGOs that just seek to expand their budget and so on. In Libya you can forget your principles—the EUTF is waving a way too attractive flag." He wasn't the only one worried about the effect the flood of funds had had on the ethics of intervention in the humanitarian community. Marisa, the humanitarian worker from MSF, said: "As it stands now, the problem we face is that if we protest something going on in a DC and threaten to leave, the guards laugh at us and say that another organization will just step in. The commanders say, 'You want to leave, ha! Well, there are tens of other organizations waiting on our doorstep.' This is really a clear instrumentalization of aid. It should be a request from all donors: If you fund, you should be held accountable for what you fund!" In recent years,

INGOs active in Libya have repeatedly called for the closure of detention centers in the country because of the widespread human rights violations taking place in them (see, for example, Norwegian Refugee Council 2019). However, as I have highlighted in this section, the aid industry remains deeply connected to the commodification of human mobility at the margins of the European Union. Those performing humanitarian interventions in and around the detention system in Libya also benefited from the suffering of detainees. Their interventions were inscribed within existing power relations and did not upset the ability of the border system to operate smoothly (Dadusc and Mudu 2020). Humanitarian interventions operated on the "visible gaps" (Dadusc and Mudu 2020, 11) of the border system; for example, by counting and rapidly screening migrants on arrival at the disembarkation points. These interventions often ended up complementing the role of the Libyan state or responding to EU donor interests, which was to show that, despite there being a sponsored pullback policy at sea, *something* was being done for migrants once they were detained on their forced return. There were of course nuances among the various activities and services that different organizations provide. The IOM and the UNHCR were present at disembarkation points and were involved in evacuation, resettlement, and return activities. Other NGOs, such as MSF, provided medical assistance within detention centers but pulled out when it was no longer possible for their staff to work and the "serious harm to refugees and migrants" "forced them" to suspend their medical care there (MSF 2021).[37] Most NGOs recognized that there was a thin line between assisting people in detention through humanitarian support and legitimizing arbitrary detention. But, as a result, where to draw the red line—where and when to stop being active in relation to the detention of foreigners—was constantly being renegotiated.

Migration as Currency: Bridging Different Scales of Analysis

Migration can be considered to have now become a global currency, whose exchange value fluctuates in relation to the modulation of migrants' access to territory. In this last section, I connect the scale of diplomacy and dealmaking based on the monetization of migrants' movements to the experiential level of the deprivation of liberty to which these negotiations contribute. Migrants fleeing the detention system in Libya are both subjected to its violent logics of extraction and "deal" with it strategically, when they can. Different actors within this industry, in which migrants have been rendered into a currency, contribute to the extraction of value from migrant mobility.

Maintaining these extractive logics in the same picture as the experiential effects they have on migrants bridges the conceptual gap between the "discrepant and spatially dispersed practices and experiences" of both migration and migration control (Neilson 2018, 379). The detention economy is characterized by European donors' political will to contain, a humanitarian community that refocuses attention on detained migrants as suffering subjects away from the political root causes of the detention economy, and the movement of migrants whose drive for freedom fuels their attempts to escape. These exist together in the historical present. Analyzing the migrant body as a global currency is a way of bringing these social realities together.

I started this chapter with my own surprise at Ariam's and Gabriel's casual allusions to having been "sold" on their journeys to Europe. But as far as Ariam was concerned, his journey was above all about the pursuit of liberty. "Before Libya I was in Sudan. There is a reason I left Sudan. I was seeking freedom, and I did not find it in Sudan, so I continued. [. . .] I took the Sahara," he told me. For both Ariam and Gabriel, this quest for freedom was interspersed by episodes of "being sold" and periodically exploited as forced laborers. Their stories paralleled the tropes of forced, coerced, and victimized migrants subjected to the barbaric practices of smugglers and people traffickers sprinkled throughout official discourses, which often draw comparisons of people on the move to new forms of slavery. This association of contemporary migration with the slave trade—even with the transatlantic slave trade—needs to be examined critically. Indeed, this specific framing of the hardships migrants face on their journeys before and after they cross the Mediterranean has served to justify certain securitized and humanitarian interventions. The increase in maritime interventions both to rescue victimized figures and to fight "those who engage in their 'traffic'" (Stierl 2020, 457) led to military-humanitarian interventions such as EUNAVFOR Med's Operation Sophia. Being critical of the use of the discourse of slavery and of migrants as victims of trafficking does not mean negating the fact that migrants *do* endure violent trials and tribulations en route to Europe. Rather, it points to the importance of taking into account how migrants themselves frame these difficulties, which includes the ambivalent experiences of being rendered an irregular migrant. Gabriel *was* subjected to slave-like working conditions and did consider that he had been moved around like a piece of merchandise. However, he also protested against the situations of detention and forced labor that had been imposed on him, trying to get the attention of the outside world, and built strategic partnerships with detention guards that could aid his efforts to escape. Eventually, he enacted his

freedom through movement by finally crossing the sea. Rather than placing Ariam's and Gabriel's accounts on a spectrum of coercion and liberty, I find it productive to see these experiences as being inscribed in a circuit of capital in which many different actors intervened and that was produced by the closure of escape routes between the sea and detention.

While their migratory journeys were marked by extreme levels of violence and exploitation, Ariam and Gabriel also reflected on the ways they negotiated the commodification and injustices they were subjected to in the process. This negotiation often involved building friendships or tactical partnerships, when possible, buying or bartering for know-how, and lucidly weighing what was to be gained against what could be lost from taking varying kinds of risks along the way. Ariam referred to the fact that he felt strongly about smugglers getting a bad name for what they did. He acknowledged that "many of them become inhuman. They cannot come to Europe because of the work that they have done. They have hurt [people]. They treat us as if [falters] . . . it's very hard. They come, they make you pay three times more, and then they sell you onwards." But then he tempered his statement: "In some ways, there are smugglers [*passeurs*] who are innocent. We were the ones who came! I'd really like to stress that. We came and we asked for help. I think sometimes smugglers are so innocent, sometimes even more innocent than we are." I asked him to explain what he meant by "innocent." Did he mean that because smugglers had helped them when they had been in need? He responded:

> Yes, exactly. What they do is they say, "I know this way. I can help you use it, but you will pay." It wasn't them who forced us to come to Libya or to pass through Libya. We were searching for freedom; they knew the way. Where is the problem? But, yes, it's true, not all smugglers are like that. So why do we complain about some in the end? Because they do not do their work well. What I find unjust is when a smuggler makes you pay, and as soon as he gets your money, he calls another smuggler and says "Hey, you can come here and take them." A Libyan smuggler might arrive and say, "Get into the truck, hurry, hurry." Then they take you to another place and they say: "I don't know anything, what you have already paid—that wasn't for me [so you will need to pay again]."

Ariam had a nuanced understanding of the role smugglers played within a logic of circulating capital combined with what he saw as his irreducible freedom. There were transactions to be made, but under certain conditions of trust.[38]

In another discussion, we touched on what life had been like as a detainee in Libya. Gabriel had been detained for a period of about two years, from 2016 to spring 2018. He recounted how he and some three hundred other people were held for days at a time in the dark. Ariam remembered how the few times when he had managed to talk to Gabriel, using a phone smuggled into the center by a guard whom the detainees paid, he had not been able to see Gabriel's face: "It was always nighttime," he said. After some time, the detainees decided to protest. They broke down some of the doors of the detention center and demanded that the UNHCR review their situation. This was met by violent repression and threats that some of the men, designated the leaders of the protest, could be deported back to Eritrea. The UNHCR was finally able to intervene to stop the deportation. Gabriel was made to sign an official paper of apology to the Libyan authorities, saying that he would never incite a revolt like that again. He was detained once more. Ariam said that at this point his brother had confided to him that he had to get out, that he would flee by the sea. Ariam, who had made the crossing himself some years earlier and who by then had established himself in Geneva, had told him, "Don't even think of it—it is too dangerous." To which Gabriel had responded, "I prefer that than to wait for death with my arms crossed. With the sea, there is still hope. Either I die here, or I cross. At least if I try, I may die, but I may also succeed." Ariam told me that he and his brother had long discussions about this: "We would always do that," he said. "I would say: you want to do that? I am telling you, don't do it, because it is too dangerous for this and this reason. But convince me if you really think this is the right thing to do, and if you want me to agree with you. You see? We always had these exchanges of arguments. We do this since we are small boys to make decisions together."

Eventually, Gabriel was moved to another DC. There, he recounted how a guard had forced him and others to work on a construction site without pay. This was an ambivalent ordeal: The work was undeniably tough. Still, it was a kind of "privilege" afforded to a few detainees who were trusted by the guard who took them to his site. "At least we can get some fresh air, he used to say to me," said Ariam, when I looked puzzled at his use of the expression "they had some rights." "They would be fed there, and they spent the night out of the detention center," he added. It was because of these "trips" outside the DC that Gabriel eventually managed to escape and take to the sea. He didn't succeed the first time, but eventually managed at the end of 2019. Because he could speak Arabic, he had established a closer relationship with one of the guards at one of the sites where he had worked. The guard had even called

him when he arrived in Europe to wish him good luck with the next stage of his life, thanking him for being so loyal. In the brothers' accounts, there was violence, but there were also forms of cooperation in these economies and, above all, an underlying drive for freedom that Ariam emphasized over and over, throughout the description of his journey. Their accounts correspond to the "existential mobility" that Hage (2009, 463) describes as the force propelling people to inch closer to a "viable life." Gabriel and Ariam faced conditions of abjection and subjection in their fight to escape. Their struggles for freedom were struggles for self-determination. Smugglers and guards who helped them along the way, however "good" or "bad" Ariam and Gabriel considered them to be, were ultimately considered in terms of whether they were facilitators of or hindrances to onward movement.

Conclusion

In this chapter I outline some of the effects of delegated control on migrants who have been pushed back to Libya from the sea; they are inscribed in a violent economy of detention in which their mobility has become commodified. As a result of the closure of maritime escape routes and support for Libyan authorities in charge of detention of foreigners, opportunities for migrants to escape by the sea have been severely restricted. The fact that migrants are not only pulled back but also detained on arrival back on land leads to mass rights violations and produces a crisis, which demands intervention. This crisis in turn has led to the emergence of a marketplace for humanitarian intervention in which a range of INGOs and IOs compete for funds to alleviate suffering, while ignoring the role that humanitarianism plays in legitimating the EU's externalization measures in Libya. In the offshore containment industry, the circulating currency is migrants' freedom itself, which gains and loses value in its forced and variable relations to territory. Conceptualizing migration as a global currency points toward the fact that it is the very freedom to move that is targeted by states' deal-making around containment measures. Ariam and Gabriel's stories highlight how they dealt with an industry that had commodified them, as they were both subjected to its violence and determined to escape. Their mobility—fueled by their quest for freedom—is what powers the industry surrounding attempts to contain it, illustrating Andersson's (2014, 8) claim that the "illegality industry" produces not only more of what it is meant to "eliminate, curtail, or transform—more migrant illegality," but also a resource from which moral, financial, and political value can be extracted.

5

Assembling Delegated Control

The violence of the interception regime put in place by European authorities and its legally contested nature presented several challenges from the perspective of governance. The idea and actualization of a renewed and functional Libyan Coast Guard carried a significant amount of political and reputational risk from the European Union's perspective. Bolstering the role of the Libyan Coast Guard amid an ongoing civil war in the country required political maneuvering and legal safeguards in order to make sure that do-no-harm principles could be guaranteed, at least on the surface. Delegated interdiction in the Central Mediterranean emerged within a specific politico-historical genealogy but also involved material and immaterial support from European authorities: material and technical support to enable the LYCG to operate effectively. This chapter asks the obvious analytical questions that follow from these opening sentences: How indeed could support to the Libyan Coast Guard be sustained amid contestation, critique, and crisis? How were connections between European actors and Libyan authorities stabilized in the face of such tension? And how were risk,

contestation, and critique contained and managed in the bureaucratic contexts where policies of containment are designed—and beyond?

To answer these questions, I offer a vertical slice (Nader 1997) of the North of Africa (NoA) funding window of the EU Emergency Trust Fund for Africa,[1] which was instrumental in bolstering the Libyan Coast Guard. This analysis involves examining the controlling processes and dynamics that run through the institutions and discourses that enabled the EU to provide support to the LYCG. As Nader (1997) has pointed out, such processes are often organized vertically. In the following pages I focus in on one of the main enabling mechanisms of support to the LYCG—the EUTF or, more specifically, the NoA funding window—to try to get closer to the practices making up the policy instruments themselves. Zooming in on these funding instruments reveals a particular set of assemblage practices that made up the contested collaborations in externalized migration management. Shedding light on these practices makes clearer what was needed to press on with specific governance objectives that came under fierce critique.

The notion of "practices of assemblage" (Li 2007a) brings together the study of a rationale of government with an examination of the nitty-gritty of the practices that transpire within it. Policy assemblages are in fact made up of sets of *practices* that constitute the "hard work required to draw heterogeneous elements together, forge connections between them, and sustain these connections in the face of tension" (Li 2007a, 264). Recognizing this work helps us to understand both the government of externalized migration control and what makes up that regime from a more sociological or anthropological point of view. As such, it is an analytical proposal that seeks to keep together the survey of governmental interventions and the analysis of what exactly happens when those interventions become entwined with the very process that they seek to intervene in or, in other words, what happens when "the plan, the map and the administrative apparatus" (Li 2007b, 27–28) are analyzed alongside the practices, processes, and struggles that are needed to achieve specific goals of government. Neither the plan nor the practices themselves are the sole focus. Rather, they are taken together in one frame, to see how one constrained the other and vice versa. If the European border regime is a large apparatus, the EUTF can be seen as a particular node of that apparatus. It is an attachment point from which to move closer to the processes, dynamics, and constraints that have conditioned the setting up of a delegated control scheme with Libyan authorities. This approach gives us a snapshot—not an overview—of the inner workings

of the particular governance objective of externalizing control of so-called irregular migration flows to a third party, through noncoercive means, while being seemingly constrained by specific procedural requirements and liberal norms. Hence, an ethnographic examination of the governance of the NoA window of the EUTF illuminates the subtler power dynamics at play within an established governance structure, beyond the hierarchies and processes that are outlined in policy paperwork. The distinction between governmental apparatus and assemblage blurs here; whereas the apparatus is a more stabilized version of an emergent assemblage, as discussed in this book's introduction, this chapter is about showing assemblage practices that are precisely needed to stabilize a wider governmental apparatus. However, sometimes the distinction between what is stabilized and what is not is what is precisely unclear.

In this chapter, I start by outlining some of the characteristics of the context in which the EUTF emerged. Then I describe how the Fund "works" in terms of project selection and implementation. To concentrate on the EUTF is to show how an entity with its own distinct juridical form functions within and interacts with the broader politico-legal apparatus of the EU border regime, itself a wider assemblage of practices. This enables me to illustrate how different parts of the larger assemblage of the EU border and migration regime are composed internally of social relationships. Different elements of the assemblage are interconnected: The border regime is a complex social formation that is not composed of autonomous elements interacting at random, nor is it a synthesis of elements that converge to constitute a totalizing system (Campbell 2021, 15). Instead, the relational account of its different constitutive elements—including the EUTF NoA window—reveals an open-ended dialectical logic. While the border regime may tend toward a totalizing logic of closure (as the expression "Fortress Europe" has it), external elements of critique and contestation force it to constantly adapt and react. Through observation of the ways the EUTF has been engineered and dynamically adapts to some of the constraints of liberal government, I conclude that its assembled form is what actually makes possible the controversial implementation of the maritime interdiction of migrants trying to reach the EU. That is also the argument of this chapter: It is precisely because of the diversity of governance objectives and discourses on development and humanitarianism within the EUTF that critique of such a sensitive project can be contained and presented as a technical issue. In short, the relational complexity of this assemblage helps to reproduce the coercion it facilitates.

Moreover, paying attention to the practices of management of the EUTF and the points of their intersection with the financial regulations framework of the Fund sheds light on the securitization of development in the growing "sector" of migration-related external action.[2]

The EU Emergency Trust Fund for Africa Under Anthropological Scrutiny

In September 2019, a few days before leaving for Brussels, in what was to be another of my attempts to enter the "Brussels bubble" and the unpierceable European Commission, I opened my email and saw I had a message from one of the interlocutors with whom I was hoping to secure an interview. I had contacted several people from the Directorate-General for Neighborhood and Enlargement Negotiations (DG NEAR), in charge of overseeing the management of the North African window of the EUTF—one of the main sources of funding for the training of the Libyan Coast Guard carried out by the Italian Ministry of the Interior. From these people, I hoped to gain insights into the social dynamics of the management of such a complex fund, beyond the documents describing its governance. Although several of my emails went unanswered, one person—a policy officer of the North Africa window of the EUTF—had already gotten back to me, and we had exchanged messages in which I had repeatedly asked permission to meet someone from the team in Brussels overseeing activities under the Fund. A few months earlier, I had gone to lunch with one of the senior experts of the Trust Fund in Brussels and met with employees of the EU delegation to Libya in Tunis, and I thought those meetings would open doors for a second set of interviews. However, email communication was proving difficult. Nervously, I opened the email. It read: "Thank you and thank you again for your interest on the Trust Fund. Please, these days we are not able to meet you as you kindly requested. It would also not be possible for now to set up a meeting at a later stage." This seemed like a final "no" after I had insisted, following the first refusal, on a meeting at a later stage. They had told me that the head of section was busy on the days I was planning to be in Brussels. I felt a sinking feeling in my stomach: This was yet another roadblock on the difficult path of obtaining access to higher levels of decision makers and bureaucrats involved in the impenetrable Fund I was seeking to understand. Trying to access higher-placed bureaucrats in the European Union presents specific challenges for qualitative fieldwork, challenges that need

to be taken into consideration because of how they can shape the research being undertaken. In my case, the negotiations and strategies I had to employ to gain access to certain interlocutors pulled me away from conducting in-depth fieldwork with the central managing force of the NoA window of DG NEAR. Instead, these roadblocks increasingly pushed me to try to understand how this particular level of governance related to the other parts of the Fund.

The one interview with DG NEAR that I did managed to secure, with one of the Directorate General's experts on migration, was fairly typical of the encounters I had in Brussels: It came about after a number of email exchanges in which I presented my research and was frequently moved around my interlocutor's schedule, if they agreed to meet with me at all. Then, I would have to leave my ID at the reception desk of a large building, sometimes go through an airport-style security check, and wait for them to give me between thirty and ninety minutes (if I was lucky) of their time. These access issues pushed me to think creatively about the structures supporting the contested projects in Libya and in the Central Mediterranean relating to the externalization of migration control.[3] Since it was difficult for me to gain the trust of the EU Commission bureaucrats in charge of managing the window of the fund I was interested in, I started branching out and mapping the internal functioning of the funding instrument itself. Step by step, I learned to navigate a complex, multilayered governance instrument. I complemented my interviews at the Commission with interviews with state representatives who sat on the Fund's operational committee and who played a part in examining and approving the initiatives it financed. I read the minutes of their meetings. I spoke to project managers, officers, and field coordinators who were implementing parts of the initiatives pursued under the aegis of the Fund in Libya. I also spoke to people involved in advocacy efforts in Libya that were not funded by the EUTF but who had close contact with NGOS and international organizations whose actions were. Only by approaching these different levels of decision making and project implementation could I begin to understand that my access issues were not just the result of efforts by powerful actors to prevent me from "unmasking" (Abrams 1988) a hidden agenda. Rather, I came to see that my own experiences of the complexity and obscurity of the Fund, its "illegibility" (Eule et al. 2019, 11), were shared by several of my interlocutors who had come into contact with it. I started to wonder whether the complexity had a purpose, given the difficulties I had in understanding the money flows and where decisions about

these were actually made (and under whose authority). I will come back to the role of opacity in complex intergovernmental assemblages in the second half of this chapter.

First, though, a few words are needed to introduce the context in which the EU Emergency Trust Fund for Africa emerged. The EUTF was set up in 2015 after the Valetta Summit on migration. At the time, the atmosphere was one of crisis. April of the same year had seen hundreds of people drown in the Mediterranean after four migrant boats sank off the Libyan, Italian, and Maltese coasts.[4] The expression "European migration crisis" was dominating the media in Europe and across the world (Homberger 2015).[5] And so, in what was described as a "historic" (Knoll 2015) summit, leaders from European and African states came together in November 2015 to discuss—in their words—the root causes of irregular migration, cooperation on legal migration and mobility, the protection of migrants and asylum seekers, and the fight against irregular migration (European Council 2015). Funds for the EUTF were to come from existing financial sources at the EU level: the European Development Fund (EDF), the Neighbourhood Instrument, the Development Cooperation Instrument, and others. The Valetta Summit followed other, regional consultation processes (such as the Rabat Process, the Tripoli Process, the Khartoum Process) but was considered historic precisely because it resulted in an Action Plan and a Trust Fund, as well as a political declaration. A range of EU and non-EU member states (including Switzerland and Norway) contributed some 620 million euros, supplementing the 4.4 billion given by the European Development Fund and various other EU financial instruments.[6] The magnitude of the Fund was such that it almost equaled the sum of all the instruments that had previously targeted external cooperation on migration and asylum between 2014 and 2020 combined (Zardo 2022, 8).[7]

The Fund's stated objectives were to address the root causes of "instability, irregular migration and forced displacement" (EU Commission, n.d.). The projects devised under the Fund were classified under three regional windows—North Africa, Sahel and Lake Chad, and the Horn of Africa—and were intended to contribute to four lines of action: greater economic and employment opportunities; strengthening resilience; improved migration management; and improved governance and conflict prevention.[8] Along with Ethiopia, Niger, and Somalia, Libya was one of the top recipients of funds allocated to projects (Zardo 2022) and was the main recipient within the North Africa window. While the other two windows were under the management of the EU Directorate General for International

Cooperation and Development (DG DEVCO), the NoA window was overseen by DG NEAR.[9]

Directorate General NEAR was housed in the same building as DG DEVCO, a few minutes' walk from the Schuman roundabout, the beating heart of the European quarter in Brussels. "Schuman" was also the metro station I would keenly emerge from, in search of the address of my next interviewee. The busy junction to the east of Brussels's historic center was overlooked by the EU External Action Service building and towered over by the European Commission, incarnated in the huge Berlaymont building. The streets of the EU quarter definitely felt different from the rest of the city: There are more offices, the streets pulse with men and women in suits at very specific moments of the day, and there are plenty of spruce coffee shops for quick lunches.

When I asked a DG NEAR official why this particular directorate was in charge of the NoA window, he answered, "This is just an administrative thing; there is simply more expertise on the region at DG NEAR."[10] However, a short look into the history of DG NEAR and its purpose among the other DGs discloses a little more than just administrative logic. DG NEAR (Neighborhood and Enlargement Negotiations) also oversees the EU's policy on enlargement (i.e., adding member states) and engages in negotiations with the countries to the Union's East and South. In addition, it administers the European Neighborhood Policy (ENP), whose emergence was crucially connected to the EU's security concerns regarding illegal migration and cross-border crime (Kuus 2014). After the EU's 2004 enlargement on the East (the "big bang" enlargement), the EU Council charged the Commission with devising a policy that could influence the EU's immediate neighboring countries "without offering the incentive of eventual membership" (Kuus 2014, 115). According to Tassinari (2005), the ENP is symptomatic of Europe's inability to tackle the conundrum of security and integration. The "neighborhood" is where what is inside and what is outside the community becomes blurred and where the normative limits of the EU become more visible. The ENP devises a vocabulary of inclusion and shared values while creating outsiders "who are treated as such by the EU but who are nonetheless expected to comply with EU internal standards" (Kuus 2014, 116). It is hence no surprise that the NoA window of the EUTF was put under the leadership of DG NEAR. To push for integrated border management in the liminal space of the North African buffer zone was also to push these partner countries to "swallow" (Kuus 2014, 116) as much internal law as possible while keeping them at arm's length.

Genesis of a Multifaceted Instrument for Migration Management

Before going into the details of how the EUTF is managed, it is important to point out that the EU and Italy were already providing support and training to the LYCG via a range of policy channels before the establishment of the EUTF in 2015.[11] An EC and EEAS document from 2016 lists activities in support of the LYCG:[12] the training of trainers, search and rescue, situational awareness, and reaction capability. It enumerates contributions from at least ten European actors, including: Operation Sophia, the MRCC of the Italian Coast Guard, the EUROSUR national coordination center in the Italian Ministry of the Interior, Frontex, the European Maritime Safety Agency, the European Fisheries Control Agency, the Hellenic and Maltese coast guards and RCCs, the EU Border Assistance Mission to Libya, and the Seahorse Med network. EUBAM had already carried out some training activities in early 2014 (EEAS 2017, 42), but efforts were really stepped up from 2016 onward (Heller and Pezzani 2018, 41). Following the signing of the Memorandum of Understanding with Libya in early 2017,[13] but before the approval of the main EUTF project to support the LYCG, training and operational backing were mostly provided by EUBAM, EUNAVFOR Med's Operation Sophia,[14] and Italy. Under this agreement, Italy was to provide the LYCG and the navy with twelve naval unit fast patrol boats.[15]

The LYCG itself is not a unified or coherent actor, nor is it the only agency with competencies along the Libyan coastline. The General Administration for Coastal Security, which is part of the Ministry of the Interior, is involved in coastal patrolling. It has law enforcement powers and is in charge of combatting illegal activities in its area of responsibility (mostly within territorial waters) (EEAS 2017, 38–40).[16] The Libyan Coast Guard and Port Security, to use its official name, is part of the Libyan navy (under the control of the Ministry of Defense) and is responsible for the SRR area and for rescue at sea more generally. However, researchers and journalists with a deep understanding of informal and formal power and security networks in Libya have noted that the Libyan coast is not only "guarded" by official governmental entities; since 2015, the functions of the Libyan Coast Guard have interacted, intersected, and sometimes overlapped with militia activity (Porsia 2017; Micallef 2017). Nevertheless, as will become clear in the following pages, the EUTF played an important role not only in providing concrete material and technical support to the LYCG and GACS but also in presenting a European response to the "problem" of irregular migration and death in the Central

Mediterranean. It was central in framing the provision of support to the LYCG to "solve" the problem as a humane response.

Although several commentators have pointed out that the amount of money European institutions and states promised to set aside was a small sum in view of the defined objectives (Castillejo 2016), many of my interlocutors praised the EUTF as a practical response to the "public outcry" at the time for "something to be done." Reflecting on the significance of the Fund, the Italian parliamentarian close to the Partito Democratico government at the time and a member of the parliamentary Commission on Foreign and Community Affairs (III Commissione affari esteri e comunitari) said to me: "You know that Italy was instrumental in the setting up of the Fund, no? We needed an instrument, this goes back to the Schuman declaration. There has not been, since Cotonou really,[17] a reflection about a Europe-wide approach to Africa. Of course, we all know that Africa is huge, fragmented, made up of many states—so the results were also varied. [. . .] The EUTF was a welcome instrument to start using migration in strategic relations." Another, Tunis-based member of the diplomatic staff of a contributing state, who was quite critical of the Fund's effect on the ground, confided to me that he felt there was pressure attached to the Fund's showcasing of the EU's capacity to produce an effective response to the migration "crisis." Indeed, the EUTF provided money that needed to be spent quickly. In his view, this had led to money being wasted or badly spent. Although opinions differed as to the effectiveness of the EUTF (in terms of available resources, political outcomes, and speed of delivery of the Fund's objectives), it was clearly a highly political instrument, cut through by intergovernmental dynamics.

EUTF Governance

To oversee the use of the Fund, a strategic board was set up and operational committees established for each regional window. As the name suggests, these committees (OpComs) had an operational role: Their task was to decide on activities to be carried out under each regional window. Despite this warrant, they were not the place where extensive discussions took place on the projects. Such deliberation usually happened before the projects reached the OpCom. Indeed, potential implementing partners (that is, member states, their national agencies, international organizations such as the IOM or the UNHCR, or even smaller NGOs) presented their proposals for projects to the relevant national EU delegation and to the EU Commission. The relevant EU delegation's role was to examine these projects not to select which

FIGURE 5.1. Governance of the EUTF for Africa, adapted from information found on the objectives and governance page of trust-fund-for-africa.europa.eu.

should be implemented but to apply "eligibility criteria" that have been criticized for being obscure (Carrera et al. 2018, 28). The projects were then bundled in an "Action Fiche"—a document outlining the details of projects to be undertaken (cost, implementation methods, objectives, etc.)—which was then sent around to the members of the operational committee. Once a project was approved, an implementation partner had to be found via a tendering process, and only then could it start to be implemented.

The Fund was criticized for lacking clear objectives and democratic accountability (European Court of Auditors 2018; Carrera et al. 2018; Castillejo 2016). For example, the "recipient states" where the projects were eventually implemented did not have voting rights on the strategic board or operational committee and were granted only the status of observers. Indeed, only donors that contributed three million euros or more had voting rights on the Trust Fund Board and the operational committee.[18] Moreover, the sourcing of funds was criticized for interjecting "intergovernmental dynamics and democratic accountability deficits into European cooperation" (Carrera et al. 2018, 7).[19] Of course, the European Parliament approved the financial regulation that gave the Commission the authority to set up

Trust Funds in the first place. However, the Parliament was not represented on either the Fund's strategic board or the operational committees, so was de facto able neither to voice concerns nor to influence decisions on how the funding was to be used. Trust Funds are established outside the EU budget because they are meant to be flexible instruments that can respond to "real time"' emergency needs and "crisis" situations. In the case of the EUTF for Africa, a large majority of the funds were sourced from the extrabudgetary EDF, which had not been submitted to parliamentary scrutiny since the revision of the EU's 2021–27 Multiannual Financial Framework.[20] Critical policy observers therefore remarked that this practice went against the spirit of the Lisbon Treaty, which set out the role of the EU Parliament as the authority that provides democratic accountability for the EU's budget and policies (Carrera et al. 2018, 35). The EUTF combined various sources of funding from a number of external funding instruments that are subject to varying degrees of parliamentary oversight. It had multiple financial sources, which were all combined into a single pot. At the same time, however, the flexible nature of the Fund and its relatively informal governance mechanisms enabled contributing states to promote their own domestic political priorities (Raty and Shilhav 2020, 9), as I illustrate in the following section.

Far-Reaching Assemblage Nodes: Intervention Plans and Their Sociopolitical Glue

The NoA window and the EUTF more generally were "nodes" within the sociopolitical assemblage of the European border regime. A word of theoretical caution should be added, however, to lend greater depth to the notion of a "node" in an assemblage, lest it sounding rather reductive. "Nodes" in an assemblage are more than distinct points forming a network. Assemblages are indeed relational: They consist of relationships among various elements that are subject to constant renegotiation, and these relationships can be material, collective, or discursive (Collier and Ong 2005; McFarlane 2009). Still, a node in an assemblage cannot be reduced spatially to a site, and importantly, it will inevitably "exceed the connections between other groups or places" (McFarlane 2009, 562) within the formation. The properties of the individual components taken together do not explain the whole (Müller 2015), leaving the outcome of this unstable arrangement always open. An assemblage does not designate a set of ever expanding relations between objects and people, as Actor-Network Theory would have it. An assemblage

is also structured by what is exterior to its elements (Campbell 2021; Müller 2015). So, while agency is distributed throughout the assemblage, it is also important to point out that there are parts, actors, or, precisely, nodes within them that have the ability to shape the program or plan of a governmental intervention to a greater extent (Li 2007b) and thus also to influence the effects of this plan, even when these are always messy and emergent. The NoA window was one of those more important nodal points—a key explanatory element for understanding *how* the regime of delegated interdiction was enabled and sustained through time.

The NoA node was not spatially defined or limited to the development and execution of programs: The EC managers of the NoA window were in Brussels; state officials who contributed to the Fund were scattered across various European capitals; project implementers from IOs travelled between Tunis and Tripoli; meanwhile others, national staff employees of these implementers, were stationed in Libya. Training of state officials for "intra-community dialogue" had taken place in various locations;[21] voluntary humanitarian return flights shuttled from Libya to Ghana.[22] Project descriptions circulated. Contracts were signed. Meetings were called. True to Feldman's (2011b) observation about the EU's migration policy–making world, this was a decentralized, sociopolitical formation traversed by a diversity of rationales. And following Feldman (2011b, 5) still, one of the defining features of this assemblage was that many of the policy officials—not just bureaucrats in Brussels but also project managers in Tunis—never came into direct contact with the people who were the primary target of the policies they are in charge of managing and implementing: the migrants themselves. Feldman (2011b, 188) describes European migration management as an "apparatus," a "strategic bricolage" (15) of diverse economies of power and knowledge, in part because it is an object of observation that is not easily identifiable in a place or series of places. So, just like European migration governance more generally, the NoA window was made up of interactions between disparate policy domains. The diffuse and dispersed connections among actors and institutions within the recognized structures of governance played an important role even though they were not formally traceable.

I was dealing with a defined policy instrument, but within that structure, there were disparate policy domains that rubbed against one another. The "migration management" component of the Fund was security oriented, if only because of the implementation partners it involved. Indeed, the IBM project in Libya was partially financed by the Italian Ministry of the Interior,

and the main beneficiary was to be the LYCG, which was part of the Libyan Ministry of Defense. Directorate General NEAR in Brussels managed this project alongside the IBM project. It was flanked by development-oriented projects such as "Recovery, Stability, and Socio-Economic Development in Libya."[23] The implementation partners for these included the UNDP and the Italian Cooperation Agency, which worked with Libyan municipalities and whose objectives included improving access to health and education for Libyan nationals and nonnationals alike. Running through several of the Libyan projects was also a protection and humanitarian component, with the UNHCR carrying out registrations and identifications of refugees, for example. For a governance assemblage to cohere, the governmental interventions that set out to improve the world need different "discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions" (Li 2007a, 264). Specific *practices* were needed to sustain government *in the face of tension* because, as I explain, the EU's project of externalized, delegated control of migration to the Libyan authorities was controversial and a legal gray area from a human rights perspective.[24]

The NoA window was characterized by a dual governmental concern about how to extend rule *over* a certain category of people (migrants) in collaboration *with* the authorities of a set of third countries. As mentioned earlier, the NoA window was heavily focused on the objective entitled "improved migration management," and thirteen of the twenty-two projects of the window were to take place in Libya. The stated objective involved projects that trained and "enhanced the capacity" of local, regional, and national authorities, for example, to deal administratively with the registration of different population categories. The NoA window was thus also a way to diffuse a model of population management through "fragile relays, contested locales and fissiparous affiliations" (Rose 1999, 51). As Rose (1999) points out, a designated form of rule never extends itself "unproblematically across a territory" (51). To achieve the goal of containment in Libya, the EUTF had to rely on collaborations—for reasons of legality, legitimacy, and feasibility—with partners on the ground such as the Directorate for Combatting Illegal Migration in the Libyan Ministry of the Interior, which has been the subject of much controversy relating to abuses against migrants it has been accused of having overseen. Much of the diffusion of IBM, which involved integrating several components of border control into an integrated whole (information infrastructure, real-time intervention, technological infrastructure for surveillance, etc.), took place as part of the project "Support to

Integrated Border and Migration Management in Libya,"[25] which consisted of two implementation phases worth 46.3 million and 15 million euros, respectively. This was the project that contributed to the creation of a Libyan SAR zone.[26] As part of Italy's cofinancing of phase 1 of the IBM program, four twenty-seven-meter-long Bigliani-class patrol vessels were reconditioned and returned to Libya (EUTF 2018c).[27] Italy had originally provided six boats to Libya for joint patrol of the Libyan coast, as covered by the 2008 Friendship and Cooperation Treaty between the two countries (Heller and Pezzani 2018, 26). The different rationales for governments cooperating on these various projects meant the NoA window was animated by a deep tension between the liberal discourses of "rights-based migration management" and the obviously illiberal outcomes of supporting the LYCG and IBM more generally.

There were thus several points of contention animating the window. It set out to work with cooperation partners that were potentially refractory to an external authority (the EU) that was defining strategies of migration control on their territories. At the same time, the EUTF was a development instrument and relied on both the rhetoric of that field of intervention and funding allocated from development budgets.[28] The tension between the liberal forms and rationales of government animating the EUTF therefore risked clashing with illiberal outcomes of the instrument. The assemblage of different actors caught under the NoA window was tenuous due to the agency of Libyan actors and their ability to pull out of the partnership. Furthermore, the struggles for mobility of migrants themselves continued to disrupt the carefully planned policies and practices designed to contain them. Their changing strategies forced those who wished to govern them to continuously reassess how best to do so.

Anti-Politics and Rendering Technical

So what holds an assemblage together in the face of contention? According to Li (2007a), it is the concept that "modern rulers should seek to govern and not simply to pillage" (280). The EU did not provide direct funding to the Libyan authorities. This was due to the constraints of international law, the EU's self-professed respect for human rights standards, and its liberal foundations. Moreover, it could not easily employ coercive measures to achieve control. The EU's externalization project was continually garnering criticism because of the human rights consequences that some of the EUTF's components had for migrants and refugees.[29] This criticism created an

imperative to portray EUTF interventions as something other than efforts to meet the domestic concerns of EU member states regarding irregular migration. Framing them rather as efforts to assist international development made it possible to avoid some potential tensions.

When I interviewed high-placed European authorities, it was the technical components of "better migration management" that featured most prominently in their descriptions. The EUTF's projects in Libya included both the supply of patrol boats to the Libyan Coast Guard (with appropriate training) and funding for the UNHCR to carry out protection activities in detention centers. Senior civil servants I interviewed felt the need to respond to the controversies surrounding the Libyan Coast Guard, often noting that "international rules and regulations" had been followed, that the Trust Fund was simply a response to an international consensus that had been reached at the Malta Summit, or that there were "international organizations at disembarkation points."[30] In effect, the Fund's heterogeneity provided officials with a range of reference points when seeking to legitimize the more sensitive enterprise of supporting the Libyan Coast Guard. Signor Marcuso, the former senior civil servant (introduced in chapter 2) who had served in the Italian Ministry of the Interior under Minniti when Gentiloni was prime minister, felt compelled to unpack the controversy around the declaration of the Libyan SAR zone, explaining it as a series of simply technical gestures: "The government of Tripoli was the recognized government from the United Nations, so it could legitimately notify of its SAR zone and communicate it to the IMO," he explained. "The UN recognized the regime and we respect the rules because we are also part of the UN; the government of reference is that one [the GNA], and that government decided to communicate its new SAR zone to the IMO. We can of course discuss the behavior of the coast guard [. . .] but this has more to do with establishing a culture of respect for human rights." The decisions that determined the form and content of EU support for Libya were clearly political, as they established and legitimized social hierarchies and extended them beyond the social space of the decision itself (Balandier 1967). The "project law" (Weilenmann 2009), however, including the regulations set out in international policy frameworks, provided a screen behind which bureaucrats could dissimulate their political aims, rendering the whole exercise apparently as a technical one. In Marcuso's view, the training and support that the Italian Interior Ministry provided to the LYCG, funded via the EUTF, was just a way to bring them up to an acceptable behavioral standard and show that they were being sensitized to human rights principles and were streamlining gender sensitivity

into their rescue activities. By carefully veiling the sociopolitical connections between policies of support for the LYCG and their outcomes, the sovereigntist narrative of "we just supported a state" appeared as a technical gesture, unspoiled by (domestic) political intentions.

Making Obvious the Nonobvious: The Work of Linking Divergent Objectives

One of the practices Li (2007a) carves out in her classification of operations shaping projects of government is the work of "forging alignments." This, she says, involves "the work of linking together the objectives of the various parties to an assemblage, both those who aspire to govern conduct and those whose conduct is to be conducted" (265). Li's emphasis on the work needed to link various objectives within a single assemblage is particularly useful for thinking through the composite forces, legal constraints, and dissenting opinions that animated the goal of shaping the LYCG's conduct within the NoA window in general. Indeed, to render acceptable the larger objective of giving the LYCG greater powers to intercept migrants fleeing the North African state's shores and bring them back to Libya, work was needed to link that objective with a humanitarian rationale of saving life at sea. As mentioned above, several UN organizations were project implementers within the Fund and had to conform to the do-no-harm principle. Then there was the external pressure of critique from human rights organizations at giving the LYCG more power given its spotty human rights record.[31] Lastly, there were the contributing states, each of which had different needs concerning the governance of the Central Mediterranean. Italy wanted to drastically reduce flows of migrants, while some, more northerly states were more concerned with the reputational risks incurred by collaboration with the LYCG. On one hand, the assemblage form enabled heterogenous actors and rationales of governance to "sit" and interact in the same sociopolitical formation. On the other hand, these different rationales (interdiction enforcement *and* humanitarian discourse linked to preserving life at sea[32]) were equally needed if controversy was to be kept to a minimum and the assemblage stabilized.

The European Commission made sustained efforts to ensure the discourse of saving life at sea was continuously linked with the objective of containing migratory flows. This connection is not obvious and had to be reasserted over and over again. Forging the link also involved legitimizing some forms of action while sidelining others because of their disruptive

effect on the extension of a specific form of government. This alternation was particularly striking in the Commission's ambivalent communications concerning the role of SAR NGOs. For example, in a fact sheet the EC released in March 2019 to "debunk" "myths about migration" (European Commission 2019), in particular response to the "myth" that "the EU is preventing NGOs from saving lives at sea," the following "fact" was presented: "NGOs have played a crucial role in saving lives at sea, something the EU commends. But all vessels operating in the Mediterranean must respect applicable laws. No boats are allowed to enter Libyan territorial waters without authorisation of the Libyan authorities. That's why the EU thinks it's preferable to work with the Libyan Coast Guard to enhance its capacity to carry out search and rescue operations in its zone of responsibility, where most search and rescue incidents occur." The LYCG was thus to be considered the most legitimate actor in terms of rescues at sea. But because the subcontracting of migration control to the LYCG was contentious and carried reputational risk, constant reassertion was needed to maintain the linkage between the risk area of the assemblage and its other, less controversial components. In other words, the life-saving aspect of the assemblage was highlighted over its potentially unlawful effects. The practice of assemblage at play here was the work of forging connections between disparate elements. The following examples show how the link between the EU's support for the LYCG and saving life at sea was reworked and reasserted on a discursive level.

In March 2019, the former director of the Directorate General for Migration and Home Affairs (DG Home), Paraskevi Michou, wrote Fabrice Leggeri, the executive director of Frontex, the European Border and Coast Guard Agency, to thank him for the renewal of Joint Operation Themis as well as for notifications of sightings in the Central Mediterranean area.[33] In the letter, she alluded to the recent notification Libya had made to the IMO to declare the Libyan SRR. She noted the Libyan Cost Guard's improved performance in 2017 and 2018, detailing the number of rescues that had taken place in the area and the locations where people had subsequently been disembarked. Seemingly aware of the reputational risks of the actions her DG had been involved in, she stressed that "the Commission does not provide direct funding to the Libyan authorities," while highlighting the increased cooperation between EU and Libyan authorities under the EU Trust Fund's programs. She outlined the legal regulations under which all of this was taking place and concluded by reminding Leggeri that "the commission has repeatedly recalled that the European Union's action on saving lives at sea has been resolute and will continue to be so. Providing assistance to

persons and vessels in distress at sea is an obligation under international law binding upon the EU and its Member States. Early detection of such vessels and timely transmission of the relevant information to the responsible RCC are of paramount importance for saving the life of people on board." At the discursive level, it was vital for the Commission to always decouple the self-congratulatory remarks it made concerning the LYCG's improved performance of interceptions from any hint of violation of the nonrefoulement principle. This was accomplished by asserting the humanitarian nature of the actions.

A few months earlier, in October 2019, the EU Parliament Committee on Civil Liberties, Justice, and Home Affairs had held a hearing on search and rescue in the Mediterranean.[34] In the months prior to the hearing, Minister Salvini's closed-ports policy had been wreaking havoc. Since 2016, the EU Parliament had repeatedly asked the Commission to "provide the Member States with guidelines preventing the criminalization of humanitarian assistance."[35] It brought together speakers from various NGOs active in SAR, most notably Carola Rackete, who had famously entered the port of Lampedusa without authorization a few months earlier, in June 2019, with fifty-three migrants on board her ship who had been rescued in the Libyan SRR.[36] It also included representatives from the EU Commission, Frontex, the Italian Guardia Costiera, and the European Agency for Fundamental Rights. After speeches from the participating institutions and agencies, there was a Q&A session in which parliamentarians could interrogate the Commission and Frontex.

Questions were raised concerning the legality of Frontex's practice of feeding information about distress cases to the LYCG to conduct proxy pullbacks. A Slovakian parliamentarian snapped angrily at Ms. Rackete that she should not lecture him about colonial debt—his country had nothing to do with that! In response to critical questions about the legality of supporting and feeding information to the LYCG, Michael Shotter, the then director for migration, asylum, and visa at DG Home, responded: "On Libya as a place of safety: We have to take into account that Frontex and aerial surveillance are linked to saving lives. If there is a situation of distress in Libyan territorial waters, no EU ships can respond. M. Leggeri said it: Frontex does not coordinate, it informs. About EU institutions: We are not creating a fortress Europe. We are trying to find disembarkation solutions. The disembarkations that took place also did take place because of the cooperation of the Commission." The point that was constantly reasserted in response to criticism of the EUTF's support for the LYCG was that the EU "was first and

foremost working on supporting the saving of lives" and that withholding support from the Libyan authorities "would lead to a situation that is even worse than the current one" (EUTF 2018b).

This mantra-like repetition that the LYCG was a life-saving force and that its presence marked a necessary improvement to the humanitarian situation in the Central Mediterranean presented many characteristics of what Terrence Halliday (2018) calls a plausible folk theory. Such theories, according to Halliday, serve to justify governing in a particular way, grounded on plausible rather than empirical grounds. Plausible folk theories have a series of properties that I use to conceptualize the "LYCG as a life-saving force" discourse. The mantra was a radical simplification: It left out the nefarious human rights consequences that the interventions had for migrants (and SAR NGOs). It was rhetorically compact. It was also ambiguous. For example, the EC communication "Debunking Myths about Migration" left it unclear *which* "applicable laws" everyone engaged in rescues should respect: nonrefoulement? the SAR Convention? And, crucially, the core affirmation of the statement that the LYCG improved the situation in terms of migrant death at sea remained unexamined. Indeed, this statement obscured every other way of considering the issue of migrant death at sea. Reaffirming the life-saving qualities of the LYCG produced an adaptive solution in the sense that it responded to a diversity of interests: curbing irregular migration but also preserving migrants' lives and filling a rescue gap that was consistently raised by migrant rights organizations and SAR NGOs, which were being prevented from going out to sea. Finally, it presented "an immediate basis for action" (Halliday 2018, 953) to a pressing problem.

Risk Management

The states that sat on the operational committee of the NoA window and that had the power to approve the Action Fiches had concerns about the projects implemented in Libya. The discomfort of a few of the representatives—not all of them—shone through in the minutes of the committee meetings as well as in the interviews I conducted with some of them. The first phase of the most controversial project, "Support to Integrated Border and Migration Management in Libya," was adopted on July 27, 2017. The Action Fiche acknowledged the thorniness of the undertaking: "The risk of this action is unusually high. [. . .] There are possibilities of escalated political instability in the region and possible changes in governments. In a context of political fragmentation, Libyan counterparts, notably the Libyan Coast Guards, lack

a solid chain of command, which, for instance, raises concerns over the proper use of the equipment to be provided under the project" (EUTF 2017b, 12). The second Action Fiche of the same project, in describing the second phase of implementation, stated similarly (in the section on risks and assumptions): "If treatment of migrants during SAR interventions will not be improved, then it will further damage the narrative and reputation of the EU."[37] That risk was indicated to be "high."

Scholarship examining the notion of risk has mostly defined it as a concept always associated with strategies and technics designed to render the future calculable (Aradau and Van Munster 2011; Beck 2002). According to Beck (2002), "As soon as we speak in terms of 'risk,' we are talking about calculating the incalculable, colonizing the future" (40). Referring to risk from the perspective of government can indicate a desire to secure the unknown future via techniques, modeling, and strategizing (Aradau and Van Munster 2011, 20). Hence, "risk management" also entails the expansion of particular models of knowledge, which themselves gain validity through styles of reasoning (Aradau and Van Munster 2011). In the context of program planning withing the EUTF, "risk" as mentioned in the IBM Action Fiche did not refer to the securitization of an object of concern such as migration (that is, constituting it as a threat in need of being "secured," rendered controllable, and manageable).[38] What it referred to was the threat of activities being disrupted due to the insecure conditions in which they were carried out. The "risks" of the IBM interventions in Libya were deemed high because of their potentially uncontrollable outcomes that could cause reputational damage. There were thus two kinds of risk: the risk of interventions failing because of the unstable context of intervention *and* reputational risks. Risk management involves presenting possible future deficiencies as rectifiable using specific techniques. The Action Fiches acknowledged risks and presented technical fixes as solutions or mitigation measures. So how exactly was risk "managed," especially in relation to reputational risk (for contributing states and the EU in particular) and the risk of (un)controllable (illiberal) outcomes? It is again the work needed to smooth out anticipated contradictions and failures within the assemblage of the EUTF toward which I now turn.

State contributors were concerned not only about reputational damage. There were also questions about how efficient the EUTF would be from the perspective of its own development objectives. The Swiss contribution, for example, was drawn from the budget of the State Secretariat for Migration (SEM, within the Federal Department of Justice and Police) and not from the Agency for Development and Cooperation (SDC). The latter did not

want to contribute to the EUTF because of the lack of a development focus, as my interlocutor from the SEM explained to me:

> The SDC, quite frankly, did not want to collaborate on this fund. We [SEM] had hoped to contribute together with the SDC, because our total annual budget is thirteen million, so five million is already a lot for us. It's true that the Fund had very much a "regulation of flows" perspective from the very beginning. That is why the SDC did not want it. But for us, it was good: something concrete! For them, it was money diverted from development. But we are not so purist. We don't ask ourselves this question. The important thing for us was to be part of the strategic committee. And it was good—we were high enough on the list of contributors to be on the committee. And once again, it made sense. You need money to turn things around, to make a concrete difference.

Interlocutors' institutional affiliations were decisive when it came to their evaluation of the NoA window and the support the EU gave to the LYCG—as illustrated by the contrasting positions of the Swiss ministries. European Union bureaucrats who worked either for the EEAS or DG NEAR praised the EUTF for "having brought the Central Mediterranean under control," as one of my interviewees put it. Such praise also reflected the fact that the pooling of resources enabled the Fund to be "much more effective than what one single state could do." The Fund was perceived by some actors from contributing states—mostly from the ministries oriented toward justice and security concerns—as an effective tool for addressing the "root" causes of migration, and this seemed to balance out some of the other risks that came with it.

Balancing Acts in Brussels: Between Opaque Project Selection and Controlled Transparency

Reputational risk associated with the illiberal outcomes of Libyan NoA projects was managed through a controlled approach to transparency. This was particularly evident in the project selection process for each funding window of the EUTF, which contrasted with the public-facing transparency practices relating to the Fund. The project selection process went like this: The European Commission would send out the project proposal to the members of the operational committee for them to consult over, two weeks in advance of the scheduled meeting. A representative of one small

contributing state explained to me that he would then communicate the state's comments back to the EC in written form, in time for them to be discussed at the OpCom meetings in Brussels.[39] A program manager from the Delegation of the European Union to Libya assured me that the member states received the Action Fiches two weeks before the operational committee meetings and that if a member of the OpCom did not approve of a project, "of course it would not go ahead." This was, however, an overstatement.

In a 2018 report, the European Court of Auditors (2018) also criticized the Commission for having "no documented criteria for selecting project proposals" (17). Decisions to approve projects were usually made by consensus (Carrera et al. 2018). However, as two officials from smaller contributing states confided, although formally they could voice their objections, they often felt that these concerns were sidelined, because the voices that really counted were those of more powerful states such as Italy, France, and Germany. Carrera and colleagues (2018) assert that, in order to get a better picture of how the EUTF is actually governed, more focus should in fact be put on all that occurs prior to OpCom meetings. This was confirmed by my interviews with participants in these meetings. For them, the informal parts of the selection process—that is, the communication processes during which project proposals arrived and became final proposals—which occurred before the formal decisions were made at the OpCom meetings, were often opaque. Overall, therefore, it was not clear to them how project proposals became final. Because state agencies—themselves potential project implementers—could propose projects to the Fund, there was a blurring of the lines between their function as donors and their function as implementing agencies (Carrera et al. 2018, 30). A Swiss representative confided to me that a lot in fact went on at the level of the EU delegations on the ground, which were also in close touch with various development agencies. He estimated that his capacity to influence project selection (as a non-EU contributor, to make matters worse) was severely limited.

The report of the European Court of Auditors made four more general recommendations to the Commission to improve the management of the Fund. These were (a) to improve the quality of the objectives of the EUTF; (b) to revise the selection procedure for projects; (c) to take measures to speed up implementation; and (d) to improve monitoring of the EUTF for Africa. Interestingly, the Commission accepted all the recommendations except for the second, which it accepted only partially. The Commission justified this decision by claiming it didn't think that a list of clearer criteria for project selection was needed, since the projects were not chosen on the

basis of submissions. Indeed, the Commission confirmed that projects were selected in a consultative process with "concerned services of the Commissions, the EEAS and the EU dels [delegations]" (European Court of Auditors 2018, 4). From this statement we may infer that the Commission was keen to maintain a more informal and dynamic process for selecting projects under the NoA window. The informality involved in the behind-the-scenes negotiations as to what actions were to be carried out under the NoA window was essential for ensuring that certain projects were prioritized over others. It was thus not a question of some politician or policy maker being overtly deceitful or lying. In fact, there was no explicit truth dissimulation from the side of the EC. Still, what emerges around the description of the project selection process is that blind spots were created at specific moments in time that influenced the type of action to be selected under the funding window and that rendered genuine deliberation at OpCom meetings more difficult. The approval of projects at the meetings was thus often a mere formality, since the Operational Committees were not the place where in-depth discussions on the projects usually took place (Carrera et al. 2018, 28). In most cases, informal meetings and talks had already happened before the meetings where the contributors assembled.

The notion of "strategic ignorance" (McGoey 2019, 2012) helps to clarify this relationship between risk management and controlled transparency. Indeed, it can serve to temper the adage that "knowledge is power" by highlighting the fact that sometimes *ignorance* might better serve the interests of the powerful. Selective disclosure of information or data can effectively "manufacture or exploit unknowns in a wider environment to avoid liability" (McGoey 2019, 3). However, beyond individual practices such as "deliberate concealment; institutional suppression of dissent; blinkered trust in risk-detection systems" (McGoey 2012, 555), it is actually quite difficult to observe how strategic ignorance works as a political tactic that utilizes a range of techniques (McGoey 2019, 3). The process of project selection for the EUTF illustrates the production of opacity (Mallard 2014b) within this intergovernmental assemblage. Opacity kept some crucial knowledge in the possession of Fund managers from other Fund contributors, who were to remain in ignorance.

The informality and lack of transparency of project selection for the EUTF NoA window contrasts with the abundance of information publicly available regarding the governance, activities, and development of the Fund. A dedicated website was set up to "monitor, report and share with ease" data relating to the Fund's activities, including the indicators of "results"

relating to projects' goals.[40] This website was in addition to the more classical presentation of information on the official EC website.[41] The relation between secrecy and transparency has been described as symbiotic (Ruppert 2015) and as complementary (Mallard 2014b), even though the two tend to be set on opposite sides of the political and moral scale in contemporary democratic societies. While state transparency is increasingly considered desirable and even afforded a kind of superior moral value, Ruppert (2015) points out that the technicized and depoliticized way that data and states' performance are usually presented can actually lead to more public distrust: flat, quantitative visualizations and presentation of data tend to smooth out contestations and contradictions from qualitative accounts of why transparency is needed in the first place.

Ruppert also considers how transparency agendas and open governance data are always co-constitutive of the publics they are designed to inform. Among the participants in the OpCom meetings, there was a consciousness of a "public," potentially scrutinizing the outcomes and decisions taken by the NoA window. A Belgian representative is, for example, quoted in the minutes of the Fourth Operational Committee for the NoA window of December 4, 2017, when the project supporting reform of Libyan border management, adopted on July 28 the same year, was discussed again.[42] The Belgian representative was quoted as being concerned about increased scrutiny from "parliamentary/media / civil society organizations regarding this initiative" and noted that "communication efforts should be stepped up" (EUTF 2017a). A few months after my first trip to Brussels, I met up with George, a representative of a small Belgian civil society organization involved in international solidarity work. His organization was trying to persuade the Belgian representatives sitting on the operational committee to discuss its criticisms of the Fund. The Belgian minister of development cooperation had organized consultation sessions with civil society before several meetings of the operational committees so they could voice their concerns. While they had made criticisms, George explained, especially regarding the lack of safeguards, independent monitoring, and guarantees around the "do-no-harm principle" for projects carried out in Libya, he could not complain too much about a lack of transparency: "You can find all the projects' Action Fiches there [on the dedicated website], as well as the budget and other information. Now even the request for an independent company to carry out the monitoring has been approved, and I have the feeling you can always ask for information about the state of implementation," he said. The EC and those managing the Fund were well aware that an

easy way to counter certain critiques was to make sure that tools were—at least superficially—made available to civil society (including researchers and journalists) to help them comprehend, in a controlled fashion, the processes and decisions within the EUTF. This controlled output of documentation, and even "raw" data in the form of minutes of OpCom meetings, did of course not disclose the tensions and power dynamics of the Fund, which lurked in the more secretive or inaccessible arenas of decision making, where broader interstate power struggles played out in subtler ways. Personal networks, social relations, and expertise shaped how decisions were made about how funds were to be spent and who was to implement projects.

The EC's efforts at transparency were superficial; details of expenditures, for example, were hard to come by (an aspect I examine further in chapter 6, which deals with the struggles for accountability around the EUTF). Perhaps the most striking aspect of the lack of transparency about expenditure was that the EUTF was wholly exempted from EU public procurement law (Spijkerboer and Steyger 2019). This was achieved through the surreptitious inclusion of an exception clause in the Commission's Decision on the establishment of the EUTF (Spijkerboer and Steyger 2019).[43] In migration law, regulations or standard procedures are increasingly being bypassed or suspended because of "an assumed emergency" (Spijkerboer and Steyger 2019, 521).[44] This is what happened with the EUTF: By classifying all twenty-six African countries where the EUTF operates as "in crisis," the EC was able to distribute grants without prior calls for proposals, thus bypassing the possibility of open competition in project approval and financing.

The reputational risk of the NoA window of the EUTF was thus managed by carefully disclosing transparency and framing deficiencies identified in critiques as rectifiable. In the minutes of the OpCom meetings, when concern was raised over the human rights record of the LYCG and the mistreatment of migrants in Libyan detention centers, the Trust Fund manager often emphasized that efforts were ongoing to ensure third-party monitoring of activities funded under the EUTF and reassured the participants in the meeting that all training activities followed a rights-based approach. The governance of the Fund was a delicate exercise of controlled transparency—with the exemplary website outlining the decisions made, action descriptions, promises of third-party monitoring procedures, and even a critical audit. However, considering the sociopolitical conditions in which actions under the NoA window of the EUTF were agreed on and managed, the more informal channels of Brussels's diplomatic elite were no doubt decisive. In fact, the controlled transparency played a role in masking the informal

relations of power and political intent that enabled certain of the "riskier" projects, such as supporting integrated border management in Libya, to go through. The picture that emerges from a closer analysis of the dynamics of critique is one that is wholly manageable from the perspective of the EC: Risk is contained through the careful framing of mitigating measures (for example, introducing third-party monitoring) and the authorization of controlled transparency.

Operating at a Distance

To conclude this analysis of how the NoA window was governed and how risk was managed, it is important to say a few words about the significance of the spatial dimension of governance. Remote zones of insecurity are increasingly being managed and intervened upon from afar (Andersson 2019). Selective distancing between the "intervenors" and the "intervened upon" in zones of insecurity is a sign of the times, marked by the emergence of danger zones in which "threats" (migrants, terrorists, insurgents) have to be contained (Andersson 2019, 20). Most of the managerial and strategic decisions concerning the NoA projects involving border management reform were made in Brussels and Tunis. And it mattered that they were made there and not in Tripoli. The issue came up repeatedly in the interviews I conducted with organizations or NGOs who implemented projects in Libya: They complained that Brussels saw things differently than those with "boots on the ground." When probed about the way projects were managed and coordinated, my interlocutor at DG NEAR acknowledged that, ideally, project leadership would have been given to the EU delegation, but because of the situation in Libya, one in which international staff were severely limited in their presence and movement,[45] he concluded that "it's actually easier to do most stuff from Brussels." This was confirmed to me by David, a UNHCR donor relations officer whose role included overseeing the UNHCR projects in Libya funded by the EUTF. His job was not restricted to Libya, since the UNHCR benefited from several EUTF grants covering projects in various regions on the African continent. He criticized the EUTF for being incoherent: According to him, the situation in Libya amounted to a humanitarian emergency, but the funding instrument was intended to address the "root causes" of migration. It was, therefore, in David's view, too rigid a tool to address the constantly changing situation on the ground in Libya. Moreover, it was not designed as a long-term funding instrument, which would be needed for more sustainable results to be achieved in the North of Africa region.

David's main complaint, however, concerned the disparity in organizational cultures and levels of expertise between the various EU institutions involved in the oversight and management of the Fund. The cross-regional projects in which both DG NEAR and DG DEVCO were involved were particularly challenging, projects such as the Emergency Transit Mechanism,[46] in which the UNHCR organized so-called evacuation flights to Niger for "vulnerable" people in detention in Libya. DG NEAR was involved in the Libyan projects, and DG DEVCO in those in Niger. David explained to me that the priorities of the two Commission branches differed: "We often have these cases where DG DEVCO says, 'It's too expensive.' And I have to say, 'Speak to DG NEAR, because for them it is essential to get people out.' And, vice versa, if DG NEAR asks for changes, we have to ask DEVCO because we signed the contract together with them." More generally, he complained that "people in Brussels—especially those at DG NEAR—don't have good knowledge of the situation on the ground," and that they were driven by (unrealistic) political imperatives, rather than evaluations of people's needs on-site.

Many project implementers lamented the lack of influence of the EU delegation to Libya on decision making. An International Centre for Migration Policy Development project officer whom I prompted to speak about the coordination of EUTF projects in Libya confided that he "did not see a strong interrelation between the management of the Trust Fund and the country context [including] in the delegation [. . .], even though there are people posted in the delegation to look at the Trust Fund. But I see the decision date taken in Brussels, and that's it." The problem with this weak interrelation, according to him, was that it enhanced the perception of the Libyan authorities he was working with on border management reform that the Fund was not designed to respond to their needs: "The Libyan authorities are highlighting that to me more and more [. . .]," he stressed, "that there are major differences between what is perceived by the EU at Brussels level as a need and what the national authorities request." For David, these differences were amplified by the distance between the decision makers and the actual institutions that were receiving this support.

In what has been described as the "global civil war" (Duffield 2008) or the "Postcolonial New World Order" (Sharma 2020), risk in the form of unwanted or "uninsured" populations (as Duffield [2007, 2008] designates them) situated on the "wrong" side of global borderlands has to be contained, from the perspective of the "developed" world. This has engendered a relationship between the Global North and the Global South that envisages less the exiting of Western powers from these emergent danger zones than

the distanced "delivering" of aid or "security" (in the form of models to reform border management, for example) to them. The interventions on border management in Libya were supervised from afar: They were managed from Brussels or Tunis because of the insecurity that had reigned in the North African state almost uninterruptedly since 2014. Cost and risk calculations were made by the decision makers in Brussels or Tunis while "local" staff in Libya were often paid less (as is standard practice in IOs, where there are clear salary discriminations between national and international staff) and subjected to challenging and dangerous working conditions "on site."[47] The ICMPD project manager, in describing the project he was overseeing, told me: "Everything now happens from Tunis [. . .] because the project also for budget reasons was designed to be implemented from Tunis, which is much cheaper than implementing it from Tripoli. Presence of staff in Tripoli, security requirement, and so on would have required at least a doubled budget than the one that we spent being in Tunis." An official from one of the states that had contributed to the Fund, who was based at an embassy in Tunis and had traveled to Libya to "see for himself the situation in the detention camps" and to meet an international working group on migration, complained to me about the consequences of the securitized way many international organisms operated in the country:

> So much money is wasted! What do the ICMPD and EUBAM actually do?[48] Trainings? Maybe, but they especially hang out in Pearl Coast.[49] They have armored vehicles that cost 800 euros a day to rent out. They are renting out at least ten villas in Pearl Coast, and one villa costs 340 euros a day, so when I traveled there, we must have spent 700 euros for two nights. These villas are very much in demand. [. . .] It used to be a big luxury resort. There isn't actually enough room for everyone. And when I traveled to Libya, I hardly met any Libyans: I had to hire a "fixer" from a private security group.

Governing at a distance was thus also a risk-containment practice. The nature of the distance was threefold: There was the spatial distance between the committee rooms in Brussels and the intervened-upon areas and institutions in Tripoli and along the Libyan coastline. There was a legal distancing induced by the various funding instruments, involving a multiplicity of actors and organizations; and distance between decision makers and implementers. For some of the more critical interlocutors I spoke to—including a project manager from the Danish Refugee Council, an NGO that had also received funds from the EUTF to work on the protection of refugees, mi-

grants, and internally displaced persons—distance creation was an ethical issue. "From an EU perspective," he said, "the problem is kind of being dealt with like this: out of sight, out of mind. The center stage of all of this is actually Brussels. The delegation for example, has very little possibilities to take effective decisions." This institutional set-up, in which actors with a better understanding of the "local" implementation terrain had less influence, was a third form of distancing, alongside the spatial and legal distance. Both in ethical and legal terms, distance creation served the purpose of keeping unwanted migrants and unpleasant Libyan coast guards out of sight, and therefore removing them from the concern of the decision makers in Brussels.

Europe à la Carte: Liberal Assemblages for Coercive Control

The EUTF is a complex instrument, cloaked in EU technicalities of governance from Brussels but with far-reaching effects. It is an EU initiative with a strong intergovernmental character, shaped by the unilateral interests of some specific states, implementation partners ranging from IOS to NGOs, UN agencies to state ministries, and with some supranational governance sprinkled on top; it is "multilateral," "transparent," and "in line with fundamental rights." Simultaneously, it is obscure, technical, and unaccountable. It is Europe à la carte. In this chapter, I go beyond the "plan" that the NoA funding window of the EUTF lays out in the various documents and policy frameworks. I focus on some of the practices of this governmental intervention to understand how the NoA window, which contributed to the emergence of the Libyan SRR and endeavored to export a specific model of population management, in the form of IBM, functioned beyond the planned intervention. These practices are needed in heterogenous assemblages of governmental interventions to make different parts of the assemblage more or less coalesce. Supporting the LYCG was presented as a wholly technical endeavor, "cleansed" of political considerations. The linking of divergent objectives (saving lives and curbing irregular migration) was also carefully reiterated by means of discursive maneuvers that resemble plausible folk theories (Halliday 2018). As regards the containment of controversy and management of reputational risk, my vertical exploration of the governance of the Fund shows that the production of opacity through controlled disclosure (at calculated times) facilitated the selection of projects, such as the IBM project in support of the LYCG, which suited the interests of particular actors in the assemblage. Finally, I show how the spatial politics

of the management of the Fund also created the conditions necessary for producing legal and ethical distance from the unpleasant outcomes of some of its components.

Setting up delegated interdiction was not an uncontroversial task, and practices were thus needed to quell the internal contestations to these processes. Indeed, the EC and the states that contributed to the Fund had to take account of both external criticisms and tensions from within, by means of continually shifting and dynamic efforts to govern. Control of the external border by coercive means is difficult for the contemporary political formation that is the EU. Seeing the EUTF as a governance assemblage shines light on the amalgamated yet fragmented practices facilitating the acceptability of delegated interdiction, which takes on a liberal form but has illiberal effects. Ultimately, my approach shows how the relational complexity of the EUTF as an assemblage of divergent policy objectives, actors, and rationales of government was instrumental in obfuscating the harmful effects of the NoA window.

6

Border Violence and the Fragmentation of Responsibility

It was August 2020. Coronavirus had rendered Fiumicino airport in Rome—like most airports globally—a sad sight.[1] It was a far cry from the usual hustle and bustle—coffee cups clinking on the marble bar tops as people nervously check their watches before striding toward their gates, trolleys full of luggage, families waiting impatiently at the sliding doors of the arrivals. On this particular day in August,[2] although the unusual quiet and the face masks rendered the atmosphere strange, a small group of people were all smiles at the arrival gate, albeit slightly on edge. They were awaiting the historical arrival of five Eritrean citizens who had been part of a group of eighty-nine people pushed back at sea by the Italian navy to Libya in 2009 when they had been trying to reach Europe. The much-anticipated travelers were arriving from Israel, where they had fought a legal battle to redress the wrong to which they had been subjected for over ten years. The group of people anxiously awaiting their arrival consisted of lawyers and human rights advocates, mostly from the two organizations that had supported the case, Amnesty International and the Associazione per gli studi giuridici

sull'immigrazione. They, too, had fought hard against the illegal pushback, alongside the Eritrean travelers. The five Eritrean nationals had finally been granted entry visas (*visto di ingresso*) to step onto Italian soil following a landmark judgment of the civil court in Rome in 2019,[3] which ruled that the claimants (fourteen in total) had the right to be compensated for the violations they had been subjected to. These included being summarily and collectively expelled by the Italian authorities, being deprived of the right to a procedure for the attainment of international protection, and being pushed back to Libya, where their rights to physical integrity and liberty had been routinely violated. The compensation took the form of a monetary indemnity but also (and more significantly) the granting of access to Italian territory to present a request for international protection. One of the lawyers summarized for me the significance of the judgment and the arrival of these people on Italian soil: "The judgment is important for us because it affirms an international principle that is very crucially related to the notion of outsourcing, according to which people who are in Israel now have the right to get a visa and enter Italy. This is the first case ever in which the Italian state goes beyond the ECHR, not only to grant compensation for damages, as was done in the *Hirsi* case,[4] but to affirm a principle that, according to Italian law, it is necessary to remedy the damage because everyone has the right to enter and apply for asylum."

The result was also historic because of the innovative use of civil law. Reparations for the damages caused by the Italian state to the five people arriving at Fiumicino in August 2020 took the form not only of monetary compensation but also of a specific kind of remedy (to receive the right to access Italian territory) that derived from noneconomic damage (*danno non patrimoniale*) caused by the "infringement of the right to apply for recognition of international protection, etiologically linked to the conduct of refoulement, and the harm suffered by the present applicants as a result of their forced arrival in Libya."[5] The legal claim had argued that the right of entry that had been violated was constitutional: Article 10, paragraph 3, of the Italian Constitution states that "a foreigner who is prevented in his own country from exercising the democratic freedoms guaranteed by the Italian Constitution has the right to asylum in the territory of the Republic in accordance with the conditions laid down by law."[6]

I had followed the work of some of those lawyers impatiently waiting in the arrival hall throughout the ten months preceding that hot August day. Indeed, they were closely involved in a whole series of strategic litigation

efforts against the externalization of migration control, a significant amount of which related to the role of Italy and the EU in Libya and the Central Mediterranean. But I share more on that and the Rome court case later. First, to introduce this final chapter adequately, I need to say a few more words on the unique role law has played in the creation of the landscape of delegated interdiction in the Central Mediterranean. The support for the LYCG provided by the EU and Italy is firmly written into the broader trend of "cooperation-based mechanisms of non-entrée" (Gammeltoft-Hansen and Hathaway 2015), which has pushed migration control measures onto the authorities of transit or departure countries outside the EU. Many of these interventions have been crafted to avoid judicial review.[7]

The lawyers' excitement over the positive result they had managed to secure in the civil court in Rome had to be measured against the daily difficulties they faced in their work defending migrants and refugees. Establishing liability for rights violations in migration control has been rendered increasingly difficult by the extraterritorial nature of control measures and the proliferation of actors involved. Border externalization policies in the Mediterranean have significantly contributed to this trend. Judgments often take years to work their way through the courts, as was evidenced by the case at hand; the five people handed over to the Libyan Coast Guard by an Italian navy vessel in 2009 waited ten years to receive a verdict in their favor. In the following pages, I take this specific case relating to the cooperation on pushbacks between Italy and Libya in 2009 as a starting point. I then trace how the work involved in establishing legal responsibility for human rights violations linked to the externalization of migration control has changed over time. To provide a picture of the governance of the Mediterranean space as shaped by judicial decisions on land, which in turn mold the practice of executive forces at sea and beyond, I zoom in on practices of litigation that sought to destabilize the regime of delegated interdiction that emerged after 2017, following the signing of the Libya-Italy Memorandum of Understanding. I claim that by studying the legal reasoning of lawyers whose clients are in search of accountability for border violence–related violations, we gain yet another layer of understanding into how the ever more restrictive migration control and deterrence measures in the Central Mediterranean "operate."[8] I ask what "accountability" looks like on such shifting terrain, where the space afforded to refugees to legally access asylum procedures is shrinking and migration control measures, including extraterritorial ones, continue to expand relentlessly.[9] To respond

to this question empirically, I followed the Sciabaca & Oruka project, which was set up to address and document the encroachment of the externalization regime in and around the Central Mediterranean on migrants' rights.[10] I focused on the various practices that the lawyers engaged in to gather information with which to build profiles of responsibility and reconstruct situations of violence.[11] These practices played a role in unveiling the structures they sought to destabilize; they provided a dynamic picture of the legal architecture of the interdiction regime and how it was innovative in the production of irresponsibility for border-related violence and death at sea.

This chapter is split into two parts. In the first, I outline the difficulties and challenges the lawyers from the Sciabaca & Oruka project faced when litigating for human rights violations relating to border violence. I outline the variety of actions that the lawyers came up with to address Europe's and Italy's role in directly and indirectly causing harm and violence in externalization processes. Some of the project's strategic actions attempted to push judicial review beyond the executive web that wields force on a particular situation of harm and toward the parts that play an enabling role for that force to be exerted (Mann 2013). To analyze this shift in legal reasoning, I draw on literature that examines the expanding trend of struggles to assign responsibility to actions and institutions that enable harm creation, in an attempt to align moral responsibility with legal responsibility (Clarke 2010; Eckert and Knöpfel 2020; Eckert 2018b). In the second half of the chapter, I reflect on the losses and gains of the lawyers "multi-pronged approach" (Tan and Gammeltoft-Hansen 2020) to accountability. A multipronged approach considers multiple courts and jurisdictions for defending migrant rights and challenging state practice in migration control (Tan and Gammeltoft-Hansen 2020, 354) precisely because of the legally fragmented nature of migration control. The strategic actions attempting to address European and Italian responsibility for their support for the LYCG articulated a duty of government to abide by the do-no-harm principle and work toward the (re-)constitution of a public toward which the state should be responsible: both citizens requiring responsible government and noncitizens who fall victim to their policies. However, they remained unable to fully challenge the rule of exclusion that the EU has engineered through complex and multilayered bordering techniques, and ultimately failed to halt the practice of delegated pushbacks.

The Challenges of Contesting Border Externalization Through Strategic Litigation

Francesca was a lawyer in her thirties who was always eager to provide me with the documents and information I needed to understand the cases she was involved in. She had worked both on the Rome civil court case and on the strategic litigation of the Sciabaca & Oruka cases since the project's launch in 2018. The project's nerve center was in Rome, in a high-ceilinged but unostentatious law office shared by a few lawyers who specialized in Italian and European immigration law. Francesca was one of them. At the *studio*—as the office was known—clients often dropped in to speak to her or one of her colleagues. The partners were kept financially afloat by defending migrants and supporting them in navigating the uncertain terrain of the Italian immigration bureaucracy, while the strategic work on externalization was funded externally by grants from various foundations. The lawyers didn't all work in the same way on the externalization projects, since each person had their special field of expertise. Some dealt with cases that needed a command of international maritime law. Others were more eager to work on legal advocacy at the EU level. Yet others had a geographical interest in the effects of externalization farther afield than the southern coasts of the Mediterranean, such as in Nigeria.[12] I was interested in several different aspects of the project but was particularly keen to understand the main difficulties they faced in their litigation work that opposed the EU's and Italy's externalization efforts in and around the Mediterranean. These challenges, it turned out, were multiple.

One day, during a lengthy interview with Francesca in the *studio*, she sighed in frustration after recounting some of these challenges to me. We had been talking about the Rome civil court case, mentioned in the opening lines of this chapter, which she had described as an important success. However, she also admitted it had been the fruit of a long and arduous battle. As she explained, "In this case, which was very similar to the *Hirsi* case, we were able to 'win' only because the authorities made a mistake and took photos of everyone on board. Without this identification, we would not have been able to do anything." As I detail in the following paragraphs, Francesca's frustration lay in the fact that even when litigating against a state practice that had clearly been condemned in the case law of the European Court of Human Rights, the lawyers and their clients had faced tremendous hurdles in assembling the facts of the case and getting them recognized by a court.

The judgment of the civil court in Italy had condemned the pushback of the migrants to Libya largely in reference to the *Hirsi Jamaa and others v. Italy* decision of 2012, in which the ECtHR had criticized Italy's instrumental role in the forced return to Libya of eleven Somali nationals and thirteen Eritrean nationals. Italy had claimed that the legal basis of the collaboration between Italian and Libyan officials was the 2007 Additional Operating and Technical Protocol on cooperation in the fight against irregular immigration, the 2008 Treaty on Friendship Partnership and Cooperation and an additional "technico-operational" executive protocol adjoined to the 2007 Protocol in 2009 (Giuffré 2012, 700–701). The historical elements of the *Hirsi* decision had been the following: First, the court had confirmed the extraterritorial jurisdiction of states parties to the ECHR when they "exercised authority and control over a person outside [their] territory" (Pijnenburg 2018, 400). The judgment had affirmed that when the applicants were on board an official Italian ship, they had been under the "continuous and exclusive *de jure* and *de facto* control of the Italian authorities."[13] In other words, the court had recognized Italian extraterritorial jurisdiction in this scenario. Another important aspect of the decision was the pronouncement that Italy could not use international obligations arising from other international regimes it was bound to (such as the law of the sea or the bilateral agreement with Libya) in order to circumvent its responsibilities under the ECHR (Pijnenburg 2018).

The events described in the case that the claimants had submitted to the civil court in Rome were almost a carbon copy of those that had been condemned in *Hirsi*. And they took place during the exact same period, in which Italian officials were routinely handing over rescued migrants to the LYCG on the high seas. The civil court's judgment clearly referenced the *Hirsi* decision by stating the necessity to refer to the interpretations adopted at the international level and to the hermeneutics adopted by the supranational courts, pointing out that these had been transposed by the ECtHR.[14] It also directly alluded to the order the ECtHR had made to the Italian state to pay 15,000 euros in damages to the victims. The trickling down of the arguments adopted by the ECtHR in the *Hirsi* decision into the civil court's decision could be considered a clear example of supranational constitutionalism (Garlicki 2008; Cichowski 2004).[15]

Stefano, another lawyer who had worked on the civil case, went into more detail about how the legal team had struggled with the issue of victim identification. He recounted how, three years before, he and his colleagues had tried to activate emergency measures that would allow the victims to

appear directly before the court in Rome. At the time, the people who had been pushed back were in Israel: After their return to Libya, they had managed to escape to Egypt and then to cross the Sinai Desert to Israel, in a bid to reach Europe by land. In Israel, they were first arrested and then released, but they were not given any protected status. However, a local branch of Amnesty International was able to help coordinate the case relating to their pushback at sea with the human rights advocates in Italy. Stefano recounted how the Roman court had asked for further guarantees that the people he and his colleagues were defending were the same ones who had been taken on board the Libyan Coast Guard's boat in 2009. Fortunately, the people had been identified and filmed on board the Italian ship, and the lawyers were able to show the judge this photographic evidence. The pictures formed the crux of the case. And what was even more fortuitous was that they had ended up in the hands of the lawyers defending the claimants. Francesca explained that there had initially been another case involving that specific pushback from 2009, which was going on in a parallel section of the court.[16] That case had focused on the mistreatment the claimants stated they had suffered on board the Italian navy ship and for which they were also asking for compensation. The photos had been mobilized by the state *in its defense*, to show that people had not been mistreated—apparently, they showed things like children playing, proof of the peaceful atmosphere onboard. It was a *puro caso*, in Francesca's terms—sheer luck, in other words—that the lawyers from the case asking for damages and the right of entry onto Italian territory as compensation for the harm endured by the migrants were able to get hold of the photos. But this was just the first hurdle in the identification obstacle course.

Stefano continued his explanation: "Here we said to the judge, 'Look, at the moment what we can do as a matter of urgency is to show you videos, show you photographs that were taken on the ship.' However, the court answered, 'But I'm not sure if these people are the same that were returned to the Libyan prison you describe.'" In another stroke of luck, it emerged that the people had been identified by the UNHCR in the Libyan prison where they had been held on disembarkation. The organization had collected their identities and issued them protection cards. Stefano proceeded to point out another difficulty impeding the work that he and his colleagues were trying to carry out: It originated with international organizations such as the IOM and the UNHCR, which he considered to carry out "mystification actions that covered up those of the government." He continued, illustrating his point: "We asked the UNHCR for help, and the UNHCR told us that all that

data had been lost during the civil war. [. . .] *Bene*. So the people remained blocked in Israel for the next three years until we discovered later during the trial that these documents had in fact not been destroyed." The lawyers then asked the Italian judge to order the UNHCR to produce these documents for the purpose of the trial. However, the UNHCR refused to cooperate, raising the principle of the immunity of international organizations and asserting that it was not under the authority of the Italian courts (*la clausola di non sottoponibilità a una autorità giudiziale italiana*).[17] The lawyers were finally able to gather testimony from friends and family members who were now scattered around the world, which confirmed the identity of the people whose photos had been taken on the boat. However, before they managed to do so, Stefano lamented, the judge had made the following comments: "Yes, all this is really legitimate, but I'm not sure that the people you met in Israel are those same people who were on this ship. [. . .] This [the UNHCR's collaboration] would have been an element of great importance, but they chose to raise their immunity." Stefano confirmed to me that the UNHCR had *chosen* to raise immunity; but it remained unclear why. We speculated that this could have been related to its wish to avoid conflict with government policies, so as to ensure the continued presence of the UNHCR in Libya.

In the lawyers' work of strategic litigation, maintaining stable contact with people who had been pushed back and reconstructing precisely what had happened to them was not the only difficulty. The security of potential claimants was also a significant concern. Francesca said that she refused to collect powers of attorney when people were still in Libya or farther afield:

> We don't start cases until the people are in security in Europe, because we want to avoid [. . .] that people feel or are instrumentalized. Many times, I get reports from different people or organizations saying that "this person was pushed-back by a commercial vessel with an Italian flag—can we get the power of attorney from them?" I say: "Where is the person who was pushed-back? Are they in Libya? Are they in Sudan?" I will not touch these people, because the [outcome of the] case is not sure. It is not sure, and there is no guarantee that if the case is won, the person [whose rights were violated] will consequently be in a safer situation.

She emphasized that getting people involved in legal actions to fight against expulsions was tricky because lawyers had to be careful not to instill hope in people who might be in desperate situations, facing abuse, or suffering trauma or who simply might have difficulty understanding that a case might

not help them gain protection or access to the territory they were seeking to reach. To reconstruct a case involving a pushback at sea, it was as if the stars needed to align: Alongside the difficulty of getting in touch with people who had been pushed back, and staying in contact with them over long periods, the various "events" that had played out (or not played out—when it came to the absence of procedures and remedies) had to be documented, and this was often something the actors involved had no incentive to do. In addition, all this evidence needed to be accessible to the lawyers and to come in a form that would be "receivable" in court.

The Dialectics of Transnationalism

Francesca reflected on how authorities were paying ever less attention, she believed, to legal formalities in migration control, especially at the external border: "There is a clear incentive for governments to do less, to act less accurately, to do things in a less precise way. The worse governments do their job, the fewer instruments we have to react against them," she said. She located the shift to delegated forms of control squarely within this trend: "Now all Italy has to do is call up the Libyans who will come and pick the people up. So how is a person whose rights have been violated meant to act when it never came into direct contact with the authority that notified the Libyan Coast Guard to pick them up? How can I act if I was never identified by that authority?" From her perspective, there was a relationship between the way governmental action was carried out and the "threat" of litigation. Scholars have also pointed to the dialectical relations between judicial intervention and the shaping of practices and policies of migration control. Transnational public law litigation has actually been criticized for participating in a cat-and-mouse game whereby legal actions prompt shifts in policies that tend to "refine deterrence policies in order to avoid or reduce legal liability" (Gammeltoft-Hansen 2014, 588; see also Mann 2013). In particular, the policy and operational developments linked to the emergence of delegated pushbacks through the "contactless control" (Moreno-Lax 2020; Moreno-Lax and Giuffré 2017) of the Libyan Coast Guard seemed to be a result of government practice adapting to the *Hirsi* judgment to avoid legal liability.

In her analysis of the "unintended consequences" of *Hirsi*, Greenberg (2021, 519) describes the phenomenon of state actors learning from international human rights courts how to effectively "shore up the exercise of state power" as a case of "counterpedagogy." Mann's (2013) earlier theory of the

"dialectic of transnationalism" also sheds light on what happens when the judicial review of transnational policies becomes transnational. In such cases, he argues, the opposing forces of executive and judicial power bifurcate, and the transnational legal environment ends up instructing "executive agencies on *how* to further bifurcate executive and judicial functions, avoiding the costs imposed by human rights law" (Mann 2013, 318). This was the case for *Hirsi*, Mann contends. Applied to the analysis of unauthorized migration, his theory makes three important points. First, he notes that the bifurcation of executive and judicial competencies take place in situations of transnationalism. Second, that transnational judiciaries tend to accelerate disaggregation processes when they defend human rights. The accountability of executives in future cases becomes diluted because, among other factors, judicial review provides guidelines on how to design policies that might enable *other* enforcement agencies to avoid judicial review (Mann 2013, 369). And third, transnational legal processes often participate in the reformulation of human rights as a political compromise. In addition, Mann's theory claims that "as the logic of the judicial web is to follow only the places where the executive web wields force, some parts of the executive web will remain systematically uncovered by the judiciary web" (Mann 2013, 317).

My informant Francesca commented on the dialectic between litigation challenging state practice in migration control and the judicial outcomes of such processes: "If you challenge the act with which they [Italy] give the patrol boats [to Libya], maybe they will not give them any more by this means, because they'll manage to get them [delivered] through another government in the sense that . . . [these things] always go forward." Litigation, in her view, often did not put an end to a harmful state practice or policy. At best, it blocked one channel, and the state in question would need to seek another way to carry out its policy. In other words, political will took primacy over fundamental legal norms. Litigation was thus only one instrument in a whole toolbox of actions needed to defend the rights of people who fell victim to border violence. She added:

> Litigation is a bit of the reaction that I as a lawyer have, but here you have to put together many types of different reactions. Obviously, from a certain point of view, I think that they [the government] arm themselves to limit more and more the responsibilities, they do things worse and worse because . . . to prove a legal responsibility you always need evidence. So, the less you have, the less you can produce, the more at peace they will be. On the other hand, I think that if someone

knows how to do something, it's good that he or she does her part. But obviously that [litigation] is not the only thing to do.

The civil case in Rome is illustrative in that it shows the challenges specific to achieving justice in cases that violate the nonrefoulement principle, when these cases involve situations of externalized and extraterritorial control. The case was successful because of the alignment of a series of (unlikely) circumstances. The victims could be identified by the judge because, by chance, photos of the victims on the boat had been produced in the context of another civil court case; the lawyers managed to stay in contact with the claimants over years; and the accusations were against a governmental practice that had already been condemned at the supranational level in a landmark judgment. But, as I show, even in a case where "the stars had aligned," there were significant hurdles to achieve accountability when the nonrefoulement principle had been violated. In reference to Francesca's comment above, without the fortuitous disclosure by the Italian state of the claimants' identity, the case would likely have come to nothing. Under the regime of delegated interdiction, such mistakes would in any case not happen, because of the contactless nature of control: No direct contact between European authorities or official representatives on a ship in the Mediterranean and migrants themselves means there would be no possibility of identifying people in a repeat of the 2019 Rome civil court case.

The European Court of Human Rights and the Erosion of Faith

Victory in Rome lent hope to the group of Roman lawyers. Interestingly, they often mentioned the case *in contrast to* the ECtHR's recent rulings. The civil case in Rome was an example of a successful case brought before a domestic court and stood for their belief that the domestic level could potentially offer a more effective arena for seeking progressive judgments concerning expulsions. Of course, the ECtHR's *Hirsi* decision had been central to the domestic judgment in the Rome civil court case. As mentioned above, the dynamic relationship between constitutional texts and a supranational court was conspicuous. However, the lawyers I interviewed were no longer sure how much they could count on the ECtHR to act as a trailblazer, securing rights at the supranational level that would trickle down into the reasoning of domestic court judges. Their uncertainty reflected, on one hand, the risks they saw emerging out of the transnational dialectics (Mann 2013):

the danger that they could further instruct executive power on how to evade responsibilities under human rights law, as seems to have been the case with the *Hirsi* decision with regard to maritime multiactor interventions. On the other hand, they also perceived that the court was increasingly unwilling to adjudicate in favor of expelled migrants, given that expulsions at the EU's external borders were a burning political topic for most member states.

Their concerns were reflected in the commentary on the relevant ECtHR case law relating to the rights of migrants. It is generally acknowledged that the court has become somewhat of a political battleground on the issue of fundamental rights of non-EU citizens in recent years (Baumgärtel 2020). Nonrefoulement and extraterritoriality are at the center of these current debates (Wilde 2017, 489; Tan and Gammeltoft-Hansen 2020; Çalı et al. 2020). Initially, the European Convention system could be seen as having given rise to a form of cosmopolitan constitutionalism (Somek 2020) involving the expansion of rights of non-EU citizens,[18] in line with Habermas's (2012) idea of a European community founded on a constitution beyond the state. However, commentators have pointed out that in practice, the ECtHR has done little to diminish the state prerogative of border controls and that, consequently, from the founding of the court to this day, migrants have greatly struggled to see the violations of their rights recognized or denounced (Dembour 2015). In fact, Dembour (2015) shows in her close analysis of migrant case law and the genealogy of the ECHR how the default position of the ECtHR is to "consider the migrant first as an alien" and not as an equal human being (61).

I saw the confidence of the lawyers from Sciabaca & Oruka in the ECtHR erode during the time I was in Rome.[19] Indeed, at that time (in February 2020) the Strasbourg court's Grand Chamber made its final judgment in the *N.D. and N.T. v. Spain* case,[20] a ruling of great significance for collective expulsions at the Spanish border with Morocco. The case was heavily criticized by legal commentators and human rights lawyers for poking "a hole into the prohibition of collective expulsions, the dimensions of which are difficult to fathom" (Markard 2020; see also Papageorgopoulos 2020; and Raimondo 2020). The judgment did not find that Spain had violated Article 4 of Protocol 4 of the Convention, prohibiting the expulsion of aliens, and the court estimated that the violations were entailed by the "culpable conduct" of the applicants, who, it was considered, could have avoided being pushed back if they had gone through the regular border procedure. This reasoning, of course, did not take account of the fact that despite the existence of such procedures, they were effectively not available to sub-Saharan nation-

als, who were systematically discriminated against at the Beni Enzar border crossing into Melilla, and at Spain's diplomatic and consular representations, due to their skin color (Forensic Architecture and ECCHR 2020). In effect, the judgment appeared to legalize the practice of land border pushbacks by a European state.

My interlocutors repeatedly raised the *N.D. and N.T.* case to illustrate how the ECtHR seemed increasingly unwilling to protect the rights of non-EU citizens.[21] But it wasn't the only example in which they had been left dumbfounded by the court's willingness to follow the justificatory logic of states to protect their borders. The decision was one in a string of other disappointments, mostly regarding Rule 39 cases relating to urgent situations at sea,[22] which some of the Sciabaca lawyers had helped submit. Others included the Carola Rackete case in June 2019,[23] wherein Rackete and some forty individuals of different nationalities aboard *Sea Watch 3* asked for the court to order interim measures that would compel Italy to allow them to disembark after nine tense days on the overcrowded rescue vessel. The request was denied based on an argument based on jurisdiction as the ship was blocked from entering Italian territorial waters and because the court noted that the people in most need of medical attention had been evacuated by the Italian authorities.

Laura, another lawyer from the Sciabaca & Oruka project, noted that the lawyers' loss of faith in the court was not total and there was no question of their ceasing to use it. As she confided to me:

> I think it's important to use this tool because it can have really good impacts if it ends well. At the same time, if it doesn't end well, at least it shows how social dynamics are now working, and then it's also important to say: "OK, I don't have a judge for this but this is something that society must at least be aware of," or "These institutions are establishing double standards," for example. [. . .] It's important to be clear what the current political, historical situation is, and what tool you can or cannot use or expect to have good results with. [. . .] It is also important to use this [the court], because it is an instrument that has been created to be used by everyone, so if we are living in a society, we need to know which are the guarantees and so on.

When I asked her what she meant by "lacking a judge" for a certain question, she elaborated: "This is the feeling I have when it comes to situations where you only have the ECtHR and then you are afraid somehow to trigger that instrument because you're afraid of the bad impact. The longest discussions

we had within ASGI, with the NGOs, and with the other lawyers in Europe was about the possible negative impact of these kinds of cases, but it's kind of crazy because you don't have any other tool in a lot of situations."

In fact, many hopes and fears concerning the possibility of countering the violent developments of the externalization regime in the Central Mediterranean hinged precisely on a pending case at the ECtHR: *S.S. and others v. Italy*.[24] This claim was based on a dramatic rescue situation that occurred on November 6, 2017, in which the LYCG's patrol vessel *Ras al Jadar* was involved in the interception of a capsizing boat with 150 people on board off the coast of Libya. The rescue vessel *Sea Watch 3* was also involved in the rescue, and the communication made to the court was largely based on the reconstruction of events based on material collected by Sea Watch during the altercation.[25] Two of the applicants lost children to drowning during the rescue operation, two were pushed back to Libya by an LYCG vessel, and several others were subjected to mistreatment and beatings. With the practice of delegated pushbacks, the crux of the case lay in the recognition of Italian jurisdiction. One of the lawyers explained this to me when I asked what the stakes were if the case were unsuccessful. "Brutal!" she exclaimed, and continued:

> The main reason why the appeal could be rejected is if the court does not consider Italian jurisdiction. To say "Italy was not responsible" would create a precedent, which in the current phase would be very dangerous, of course, because this would mean that whether Italy answers the phone from the MRCC or does not answer, as it is doing now, the jurisdiction, that is, the responsibility for the people at sea, is never that of Italy. In other words, the current practice of what we call "deferred pushbacks" (*respingimenti differiti*) would actually be legitimized by the court, so it would be a very serious precedent.

On June 12, 2025, this fear was partially confirmed; the ECtHR declared the claim inadmissible.[26] This occurred despite the fact that Violeta Moreno-Lax, acting as lead counsel on the *S.S. and others v. Italy* case, had developed a new theory of jurisdiction attributing Italian responsibility for these deaths, not based on a notion of territorial jurisdiction but on "functional" jurisdiction. According to her legal argument, Italy had exercised a "sufficient degree of 'effective control' over the applicants' fate" to reach the jurisdictional threshold of the Convention (Moreno-Lax 2020, 387). Her theory of functional jurisdiction addressed the issue of bifurcation between the ju-

dicial and executive powers in the context of delegated pushbacks; building on a close reading of ECtHR jurisprudence on extraterritorial jurisdiction, she argued that as soon as the exercise of public powers can be established, jurisdiction is activated and human rights obligations are thus triggered (Moreno-Lax 2020, 398). In *Hirsi*, the crux of the application of extraterritorial jurisdiction had pivoted on the Italian authorities having exercised "full and exclusive control" of the applicants.[27] But Moreno-Lax pointed out that for the ECtHR, "direct physical contact is not always necessary as long as the control thereby exerted is indeed effective" (Moreno-Lax 2020, 401). According to her formulation, jurisdiction on a given case should depend on the "governmental 'functions' through which the power of the state finds concrete expression" (Moreno-Lax 2020, 402). This means that "policy measures and operational procedures" (Moreno-Lax 2020, 403) through which states exert personal or spatial control should be understood as public powers that amount to jurisdiction. In the November 2017 case, the MRCC Rome performed its coordinating role from its headquarters, which are on Italian territory, but the effects of its actions were felt outside Italian territory. Moreno-Lax pointed out that the Italian authorities had knowledge of the risk to which they were exposing the people in distress when they activated the LYCG over the *Sea Watch 3* to undertake the "rescue." Finally, she showed that Italy's policies of supporting the technical and operational capacities of the LYCG have a "decisive influence" on the Libyan Coast Guard. The various declarations as to the "success" of these policies in significantly decreasing arrival numbers on Italian shores show the "planned and expected" outcomes of the policy (Moreno-Lax 2020, 410), whose explicit goal was to stem irregular migration across the Central Mediterranean.

The theory of functional jurisdiction was an attempt from within doctrinal normativism (Costello and Mann 2020, 327) to address the executive blind spots that emerge in transnational migration control. But confirming the trend of the court refusing to account for violence at Europe's borders, the ECtHR did not step beyond existing jurisprudence to establish Italian jurisdiction in this case,[28] where no state official was physically present on the scene where the violations took place.[29] Still, even a positive precedent would perhaps not have invalidated the pullbacks by proxy, which now mostly take place from within the Libyan SRR. Indeed, the giving of instructions by the Italian MRCC was considered a decisive element in this case (Pijnenburg 2018, 422), and the events described took place before the official existence of the Libyan SRR. In this sense, the existence of the Libyan SRR has undoubtedly added another layer of legal distancing from Italy's authority over

delegated pushbacks in the Central Mediterranean. It is a form of jurisdictional irresponsibility that makes accountability for border violence in this part of the world elusive.

Shifting from Direct Causation to Enabling Models of Responsibility

In this section, I show how the lawyers at Sciabaca & Oruka operated another kind of "shift" in legal reasoning to address the problem of bifurcation between executive and judicial power. Violeta Moreno-Lax's theory of functional jurisdiction takes state actions, such as policies or operational procedures, that project abroad as a *type of connection* that should trigger jurisdiction. The alternative (but ultimately complementary) approach that the Sciabaca & Oruka lawyers came up with to address European responsibility in externalization processes that produce human rights violations also elaborated on the nature of the *connection* between "controlling" states, executing (third-state) actors, citizens, and noncitizens. But rather than focus on the harm caused to the figure of the migrant by externalization policies in the Central Mediterranean, the lawyers included themselves as European citizens as injured subjects. In this way, they raised central questions as to how European citizens are implicated in the harmful policies and practices of externalization formulated by their own government, and how these boundaries can be drawn through legal means.

The Need to Know: Accessing Information and the Battle for Transparency

As the lawyers and project collaborators at Sciabaca & Oruka sought to lodge claims at several judicial levels, from domestic to regional, they diversified their claims against various types of harm creation. This has been called a multipronged approach (Tan and Gammeltoft-Hansen 2020) to accountability. However, before they could take any legal action against particular policy instruments, it was necessary for them to understand what was actually going on, beyond the cacophony of policy descriptions on the various websites dedicated to such policies.[30] Within this work of drawing up responsibility profiles, pressuring public authorities to disclose information came to play a crucial role. In Italy, the lawyers were often able to apply such pressure thanks to a tool commonly referred to as FOIA, following the

English acronym for Freedom of Information Act. It was not unusual for me to observe, in meetings in which ongoing legal procedures were being discussed, one of the participants to comment impatiently on the fact that "the deadline for the ministry to answer us is almost up" in reference to a request for information that had been made under the transparency law. The way Stefano, Laura, Francesca, and the others from Sciabaca & Oruka started using FOIAs in Italy represented an innovation. Not only was the law relatively new, since the "Decreto trasparenza n.97" had only been published in the *Gazzetta Ufficiale* on May 25, 2016, but this was the first time Italy had recognized a right to transparency.[31] The lawyers were also the first to start using FOIA not only for journalistic purposes but also as a kind of legal instrument against externalization measures. For Stefano, submitting freedom of information requests formed part of "a wider judicial strategy." He said he and his colleagues had realized that FOIA requests were useful because, in certain cases, they enabled a form of evidence production that could be of value in convincing both national and international judges (either ECtHR or UN treaty bodies). But they were also useful in trying to block externalization policies "at the root." These requests were part of their attempts to piece together the functioning of externalization policies and to track their related funding decisions and expenditure. Understanding how money was spent to carry out activities relating to the "securing" of borders was a way of widening the perspective from the direct situations of rights violations to the making of the structural conditions that had enabled them.

The lawyers told me that when they had started to experiment with FOIA requests, they had noticed discrepancies between their requests for information from government services and public bodies and the documents that were eventually disclosed. "The Italian government is still not used to FOIA," Francesca noted, "so they tend to just reject our requests. Of course, we then appeal the decision in court, and we tend to usually get something out of the judicial procedure because they [the government] do not substantiate their rejections properly." However, she said, things were different on the European level: "The [European] Commission uses FOIA in a much sharper way. They always grant you the FOIA request, but then, when they have examined it, they tend to say they cannot provide you with the information you requested. And then we lack means of recourse, which is a problem." At the domestic level, a successful example they regularly brought up involved a FOIA request addressed to the Ministry of Foreign Affairs and

International Cooperation (Ministero degli affari esteri e della cooperazione internazionale, or MAECI), asking it to disclose details of a project funded by the Fondo Africa, the financial fund that complemented the Memorandum of Understanding established between Italy and Libya in 2017,[32] and that was implemented by the International Organization for Migration. The project, called the "Comprehensive and multisectoral action plan in response to the migration crisis in Libya," included 10 million euros to finance the subproject "Humanitarian return and reintegration of vulnerable and stranded migrants out of Libya." In the request, the lawyers had asked for various documents, including the implementation plans and details of the procedures to be followed in assisting returns, including, specifically: how the IOM assessed the voluntary nature of the return, the presence of interpreters and mediators, how consent for the return was given, the agreements concluded by the IOM with third countries of return, and the annual and financial report of the IOM as set out in the agreement with the MAECI, the donor. The MAECI had responded to the request on the points on which it disposed of information and had supplied the number of people the project had served to "voluntarily" return and their nationalities. However, the ministry noted that the financial reporting document the lawyers had requested was not a document issued by the ministry itself. The rejection letter stated that the ministry had tried to interpellate the IOM but that the latter had responded that it could not provide the requested information given the extremely delicate context of the intervention the IOM was dealing with in Libya. The MAECI then proceeded to justify its inability to provide the financial report by stating that the disclosure of such a document could compromise both the relationship of trust between the ministry and said organization, and the operations of the IOM in Libya. The lawyers contested this explanation in court, but the regional administrative court (tribunale amministrativo regionale, or TAR) of Lazio ruled in favor of the MAECI,[33] taking the view that it was legitimate for the ministry to invoke the need to safeguard international relations as a reason for refusing access to the documents. The lawyers appealed the decision once more and were finally proven right by the Consiglio di Stato (Council of State), which overturned the TAR's decision.[34] The highest administrative authority pointed out that the document requested—the financial report—was never rendered secret (in the sense of a state secret, *segreto di stato*) by the MAECI, which would have had the authority to do so if it had considered it necessary. Moreover, the court ruled that the Italian state had entrusted a third party "manager" with carrying out assisted returns, and that if the names of the persons

involved in the project were withheld, the way the funds were managed did not constitute secret data or information. The court therefore ordered that the lawyers from ASGI be granted the annual and financial report redacted by the OIM.

"This judgment was a success, and we hope it may bear results beyond the single case of the IOM," said Stefano when I asked him about it. He saw this action, in particular, as a way to force organizations such as the IOM to be careful about how they spend donors' money. But also, more generally, the result was a way to indicate to organizations such as the IOM—which he called "*soggetti cuscinetti*" (literally, "cushion subjects") because of the kind of "screen" they interjected between the government and civil society—that they were being closely observed by civil society with regard to their role in Libya. In Stefano's view, these organizations served a limited humanitarian purpose, but tended more generally to legitimize the effects of externalization and act as a kind of buffer. "These 'buffer' subjects are placed in the middle [between the state and the migrant] basically to avoid the system being shown in all its clarity, [to ensure] that the outsourcing cannot be fully revealed," he added. For him, the precedent the court set for international organizations whose projects were paid for by public money was important in that it served to question not just the action carried out by the organization but also to highlight this "buffer" role.

To exemplify the discrepancy between accessing information on the domestic level and accessing it on the European level, Francesca outlined the techniques they had started to develop when the public administration refused to release a document on the grounds that this would pose a threat to international relations:

> We ask the judge to ask the administration for the document and for it to be deposited at the office of the clerk of the court [*cancelleria*]. That way I can see a copy, make my notes for the case—of course, I cannot extract a copy of it—and the judge can also see it. That way, we are all on the same level and can make an evaluation of the grounds for their rejection. If a document is not covered by state secrecy, the rule is its accessibility, and the rejection of the FOIA should be the exception, so they have to give us very specific grounds!

No such mechanism existed at the EU level, she lamented.

Still, even on a domestic level, obtaining information was often Kafkaesque, as illustrated by the description of the back-and-forth needed to gain access to the IOM's accounting data. Similar challenges emerged when

trying to uncover how Italian public money was spent in the controversial EUTF project "Support to Integrated Border and Migration Management in Libya—First Phase,"[35] which was partly implemented by the Italian Ministry of the Interior and cofinanced by Italy. In October 2020, Sara Creta, a freelance journalist who had been reporting on the situation of migrants in Libya for several years, submitted an FOIA request to the Ministry of the Interior for details on expenditures on the IBM project. While researching in official online sources, she had uncovered that out of the 46 million euros that were budgeted for the first phase of the project, only 6 million had been spent (Agresta and Maria De Nicola 2021). It was impossible to find out how the other, "missing" 40 million had been used. The Ministry of the Interior rejected her first access-to-information request on the grounds that all activities and implementation measures had been performed in accordance with public procurement and transparency legislation. The ministry did not give her any further information about where to find the breakdown of the costs. ASGI supported the journalist in appealing this rejection to the administrative court in Lazio, but the TAR Lazio rejected the appeal, finding that the disclosure of the requested information could prejudice Italy's international relations with a third state, which could constitute a risk for public order and security.

These examples show the arduous efforts (and resources) it took to access information about the operations linked to border externalization in Libya. In one case, the lawyers had to go as far as the Consiglio di Stato to access the financial statements of the IOM, even though the project was financed with public money. Domestically, there were more remedies than at EU level, which was important because it was often at higher judicial levels that access to information was granted. One of the first banal observations these descriptions prompt is that the mere existence of a FOIA is not enough to secure access to governmental information. Expertise in navigating the judicial system of appeals is often also necessary in order to extract the desired information from the state. In addition, in relation specifically to Italy's externalization measures in Libya, the account I made of the challenges linked to accessing information is yet another sign of how migration control has become nontransparent. The secrecy of these measures was sometimes justified by a logic of state security. However, most of the projects with border management components were funded partially or fully from development budgets (as is the case with the Fondo Africa and the EUTF). The FOIA requests from the Sciabaca & Oruka project show that national security itself

was repeatedly invoked to justify information obstruction. The security justifications thus contradicted the discourse of development and human rights that the EU and Italy used to legitimize their actions. They highlight yet another form of responsibility avoidance.

Access to information about how money is spent is fundamentally linked not only to state accountability but also, as I discuss in the following section, to citizen implication in government. Indeed, a key element of Sciabaca & Oruka's strategy, which went beyond a purely legalistic question of highlighting the harmful effects of externalization on the rights of migrants (at sea and beyond), was to highlight how citizens are materially implicated in the actions of their government (through their taxes) (Rothberg 2019). To expose how citizens are implicated in Italy's (and the EU's) negative effect on migrants' rights via their support for the LYCG, they needed to claim the right to transparent government to be able to show how public money was being used in rights violations abroad. This in turn could be seen as an attempt to juridify Iris Marion Young's (2011) social connection model of responsibility: expanding the scope of circumstances in relation to which persons and institutions could be considered responsible for harm creation across borders. Young's model criticizes liability models of responsibility for individualizing issues of social justice and necessitating clear causal connections between agents and harm, which she says is an inappropriate model with which to demonstrate responsibilities in relation to structural injustices (Young 2011, 98–99). However, what lies at the heart of Young's model, in my understanding, is the politicization of the links between agents, actions, and their immediate and diachronic effects in the production of injustice. Moreover, she emphasizes that within the social connection model, "agents share responsibility with others who are differently situated" (Young 2006, 130) and that the political process required to highlight this involves the constitution of a public "in which members raise problems and issues and demand of one another actions to address them" (Young 2011, 122). I would thus argue that the legal actions taken to highlight the production of the enabling conditions of harm fit this model, even though they are also involved in an articulation of causality through law: They highlight the implications of public money being used in a way that contributed to the violation of migrants' rights at sea and beyond, and reassert the right of citizens to oppose harmful usages of public money. This was achieved through a logic of refusing, as citizens of the violating state, to be coimplicated in these harmful actions.

Repoliticizing the Link Between Citizens and Noncitizens to Affect Extraterritorial Governance

When Laura spoke of the ECtHR being a court that was "conceived to be used by everyone" because "we are all living in this society, so we need to know which guarantees we can count on," her words stuck with me; I felt they touched on the fundamental tension that animated the work of Sciabaca & Oruka on building responsibility profiles linked to the regime of interdiction in the Central Mediterranean. This reference to "our society" came up in conversations about the significance of making governments face their responsibilities, not only toward marginalized subjects, based on the universalism of human rights, but also toward their own citizens. It was also highlighted in the Consiglio di Stato's decision on the right to access the IOM's financial report, which noted that the appellants had pointed out "the interest of the community in verifying the correct use of the funds allocated in favor of the other party to the proceedings."[36]

The collective right to responsible government was articulated in legal claims at both the Italian domestic and EU levels. As part of the Sciabaca & Oruka project, a complaint was submitted to the EU court of auditors by three advocacy associations: the Global Legal Action Network, ASGI, and the Italian Recreational and Cultural Association. Again, the complaint centered on the controversial EUTF IBM project mentioned above. One of the main stated objectives was "to improve the Libyan capacity to control their borders and provide for lifesaving rescue at sea," which, as discussed in the previous chapters, effectively meant supporting the Libyan authorities in declaring the new Libyan SAR zone to the International Maritime Organization. The complaint to the court of auditors argued that the EU was contributing to human rights violations by funding the IBM project, since the project envisaged the shift of responsibility for SAR activities in the newly declared Libyan SRR to Libyan authorities that were themselves directly involved in human rights abuses. A legal opinion on the legality of EU funding for the Libyan Coast Guard stated that the funding for the project, which stemmed partially from the European Development Fund was inconsistent with the development objectives to which the EDF was legally bound and that this constituted a violation of EU Parliament budgetary authority (Dann et al. 2020).

Another central case addressing the misuse of public money was filed at the Italian domestic level. On October 30, 2017, ASGI lodged a lawsuit

against the Ministry of Foreign Affairs (MAECI) disputing a decree (Decreto 41100/47), the so-called Fondo Africa, which provided for 2.5 million euros for technical support to the Italian Interior Ministry, which was to use these funds to support competent Libyan authorities in improving border and migration management, fighting against the smuggling of migrants, and strengthening search and rescue activities. ASGI argued that the way this funding was used violated the law that had established the Fondo Africa. The stated objectives of the fund were to foster cooperation, instigate a dialogue with specific countries along the migration route, fight the root causes of migration, and reinforce protection measures for migrants along the route. Instead of working toward these aims, ASGI argued, the measures financed by the fund appeared to pursue the sole objective of reducing migration flows to Italy and Europe and, in doing so, obviously vitiated the fundamental rights of migrants. In January 2019, the administrative court of the region of Lazio rejected ASGI's claims. ASGI then launched an appeal to the Consiglio di Stato, the highest administrative judiciary body in Italy. In June 2020, the Consiglio rejected the appeal, ruling that because 18 million euros of the fund had been used by the IOM for assisted voluntary returns and for its work assisting migrants and local communities in Libya, and another 10 million had been given to the UNHCR for its protection work, the Italian state, and its involvement in Libya via the Fondo Africa, was evidently not limited to technical assistance in border control. It also noted that it could not evaluate the usefulness or suitability of the means used to carry out the stated aims of the Fund, since the public administration benefited from a margin of maneuver based on the "merit" of its competencies, which the court said it could not review. The court also used the reasoning that the Italian administration had no effective control over the practices of harm carried out in Libyan detention centers. Therefore, according to the court, Italy's intervention in the migratory route across the central Mediterranean *had* to engage and cooperate with "the only possible interlocutor" with direct and exclusive control over the Libyan coastline: the sovereign state of Libya.[37] Finally, the court noted that no international court had ever condemned a cooperation intervention of the kind that the ASGI was contesting on the grounds of contributing to indirect refoulements or delegated pushbacks of migrants and asylum seekers.

Before the judgment on the Fondo Africa case was rendered public, Francesca had told me that even if they were to lose in front of the Consiglio di Stato, she and the team would have no regrets; to have raised the issue of

Italian complicity in such a way on a legal level was already an achievement. The action was notable because "we attack the instrument enabling harm itself." The action's main message was to signify that "as the Italian state you cannot give funding to a subject like Libya." She continued:

> I think it is also important that it is an association raising the problem,[38] and therefore there are no problems of active legitimacy or need to find the victims and make sure they are safe, proving that they were on board a specific ship, etc. Here, we are giving back a responsibility to the Italian government in the sense that we are confronting it and asking it to explain why it gave that money to Libya. Above all, because this [the *Fondo Africa*] is the instrument on which everything else is based, in the sense that without patrol boats, or without those weapons, or without that money, Libya cannot do what it is doing.

In legal anthropology, Julia Eckert (2018b) has pointed out that in our increasingly entangled world, there is a juridification of "claims to mutual care and concern arising from moral notions of obligation" (375). In particular, anthropological research has looked at how social movements and human rights defenders have attempted to redraw the "net" of causal responsibility in various ways through legal institutions that govern attributions of responsibility in procedural, tort, and corporate law (Eckert and Knöpfel 2020; Affolter 2020; Lindt 2020; Loher 2020a). The corporate accountability "gap" for example, has been read as a sign of a disconnect between moral expectations and legal regulations within contemporary global capitalism[39] (Eckert and Knöpfel 2020). The actions I describe above complemented those in which the fundamental rights of migrants were claimed directly; they mostly mobilized administrative law and expanded perspectives on accountability. They went beyond looking at direct, causal relations of violence to consider the relational situatedness of violence and to contest the enabling conditions of situations of damage or harm creation (Eckert 2018b). This effort entailed broadening the definition of who could be considered as having been "harmed" by externalization processes. The actions described above—from the FOIA request concerning the IOM's activities to the Fondo Africa case—became about a right to transparent government, as well as a right to a government not complicit in rights violations abroad; they thus came to focus on the right of European citizens to accountable government. They occurred as a result of legal innovations (using the transparency decree, for example) and by means of the development of new types of legal reasoning that stretched the notion of state responsibility in the field

of migration in order to relate the state responsibility not to harm the migrant Other to a citizen's right not to be complicit in this harm. This was an attempt to use legal argumentation to show that there were entities in civil society (in this case, the ASGI) that stood for something other than the abstract category of "people" used by the forces pushing for ever more restrictive migration control (Eckert 2018a; Butler 2015). Indeed, several of the European bureaucrats I spoke to shared a sense that "the people" or "the electorate" strongly supported the curtailing of the right to asylum and the reduction in the number of arrivals of migrants in Europe. For instance, a Justice and Home Affairs counselor to the EU from a member state confirmed this when he confided to me that perhaps the EU's collaboration with contested third-state actors such as the Libyan Coast Guard was viewed critically by a portion of European civil society, but within the Commission and among member state representatives, it was not. To him, the Commission was simply following a majority preference for protected borders. The actions of the Sciabaca & Oruka group, which focused on the governmental duty to do no harm, were thus also attempting to shift the narrative relating to this "we the people" to show how there was "a public" that contested the state's ability to simply suspend its own rules and reinforce its exclusionary founding principles of territorial sovereignty.

A more radical reading of these actions—which would, incidentally, be consistent with the comments that Francesca, Laura, and Stefano made to me concerning strategic litigation as rooted in conflict[40]—could be made by considering them as the enactment of relational human rights. Costas Douzinas (2000, 287), in his critique of liberal, individualizing human rights, points out that "human rights . . . can be exercised only in common with others. . . . Rights do not find their limit in others and community, as liberal theory claims. On the contrary, if the function of rights is to give rise to reciprocal recognitions, they presuppose the existence of others and of community. [. . .] A right is a particular way of being in common." These legal actions show a particular conception of a deterritorialized community, united and connected by the *effects* of state actions, albeit differentially. Echoing Jaspers's (2000) notion of political guilt, in which every citizen bears responsibility for the misdeeds of the state under whose rule they live, the actions of the members of Sciabaca & Oruka project reached out to demand responsible government from a state that represents them and acts on their behalf, with their taxpayer money. They undertook this project also out of a sense of being connected to noncitizens through an ethics of responsibility. The multiplication of legal avenues came in reaction to the

complexity of the policies linked to migration control themselves, and to the accountability gaps this complexity led to. Comaroff and Comaroff (2006, 26) have deplored the fact that "politics is migrating to the courts," following a lineage of critique claiming that the juridification of social conflict depoliticizes the issues at stake (Anders 2012, 97–99; Kirchheimer 1928). But I would argue that in this situation, the legal strategies of contestation did not entail a depoliticization of the situation of violence they sought to denounce, first, because these claims had the ability to articulate legal responsibility in a more collective way than by focusing on individual rights and, second, because they directed attention to the "procedures that ensure democratic participation and fair decision-making" (Leander and Wouter 2016, 86), which concern societies as a whole.

A transformation takes place when a subject of effective rights activates their political right to assemble by placing themselves voluntarily in a shared space with migrants and refugees. Since the *effective* right to have rights had been rendered quasi-unattainable in human rights tribunals, the lawyers I followed activated a different kind of reasoning, a kind of relational responsibility—that is, the duty of the historically advantaged states of the so-called First World to govern in a transparent way and not to cause harm through their support of problematic authorities in third countries. By this means, the rights of subjects who lacked the means to effectively enforce them were claimed by contesting governmental measures that indirectly affected them.

The Parts and Their Totality

These legal actions targeting the enabling role of states in the extraterritorial violation of migrant rights emerged in a context foregrounded by the accountability gap that migrants face on their journeys to Europe through the Mediterranean as a result of migration control. It was *because* the blatant violation of the nonrefoulement principle and the life-threatening conditions migrants face at sea and in Libya could not easily be addressed (or claims even be received) by dedicated human rights tribunals that attention had to be focused on the technicalities of Italy's funding politics. This is a depressing reminder that the "right to have rights" (Arendt 1951) continues to be reserved primarily for citizens of states that are willing or able to enforce them. The Sciabaca & Oruka actions were a creative and necessary response to the lack of accountability in migration control; as I discuss in this chapter, they multiplied avenues of accountability by switching between

and reconstituting different publics to which the state needs to answer in relation to the issue of harmful, extraterritorial migration control. However, recentering the conversation on effective rights-bearing (European) subjects and *their* right to parliamentary and democratic oversight of the ways in which public money is spent also risks sidelining, once more, the rights of migrants themselves. The focus on the technicalities of transparent government and budgetary politics risks obscuring from view the more radical discussion that needs to be had in terms of how the legacies of colonialism shape the question of responsibility between so-called First and Third World people and the latter's right to move.[41] From the perspective of historical subjugation and exploitation, migrants themselves are perhaps the primary public to which First World states are accountable, considering the legacies of colonialism (see Achiume 2019).

My final point here is not a technical legal argument: The human rights of migrants are at the heart of why transparent government and budgetary clarity are needed. Moreover, when ASGI made claims under administrative law, it did so as an association representing "the rights and interests of foreigners and stateless persons" (ASGI, n.d.).[42] A discursive shift is at play, however, when public expenditure in migration control becomes central to the issue of state accountability; it has an effect on the discourse of who can claim rights and risks obscuring from view migrants themselves. The Sciabaca & Oruka actions were pragmatic actions that grappled with an immediate horizon of countering a set of harmful policies. Still, there is a risk that they, paradoxically, might infringe on the long-term goals of those defending the rights of migrants. More transparent government and spending that does not violate parliamentary authority do not lead to a society in which migrants can safely access the First World and be included and recognized in it as fully human subjects. In fact, it might contribute to states simply being more careful about labeling certain migration-related expenditure as state secrets or becoming even better at emitting roundabout technical explanations of where certain public funds are being spent. Most important, the fact that this complementary strategy of defense was even considered as opportune and necessary in this moment of Mediterranean history indicates something about the character of impunity of this assemblage of interdiction policies. The legal architecture of delegated control in the Central Mediterranean dilutes direct, causal responsibility of First World states for the violence of the exclusionary pushbacks at the EU's external border and affects a broader horizon of justice by putting more distance between migrants and direct accountability measures. It further obscures from view

European responsibility for human rights violations at sea. Via this cloaking of responsibility, an ethical and legal distance is also maintained from the idea that, in the wake of Europe's colonial history, states of the First World have to respond to the claims of migrants for inclusion (Achiume 2019).

The Production of Irresponsibility Through Law

When rescues of migrant boats in the Central Mediterranean are carried out by nongovernmental actors—be they NGO ships or commercial vessels—and the question of disembarkation in Europe is posed, the back-and-forth between states over responsibility begins.[43] Migrant boats are also sometimes denied assistance and left to drift or sink, as shown, for example, in the seminal investigation of Forensic Oceanography, *The Left-to-Die Boat* (2012). These are examples of the *disregarding* of responsibility for migrant lives at sea. This chapter shows that there is something deeper at play in the assembled regime of interdiction in the Mediterranean, something that relates to the actual production of irresponsibility via the legal architecture that upholds the regime itself. The rise of complex arrangements in upstream migration control blurs questions of political responsibility and liability for human rights violations "either by virtue of cooperation between states and other actors, questions of extraterritoriality, or a combination of both these factors" (Tan and Gammeltoft-Hansen 2020, 337). By attempting to contest the regime of delegated interdiction in the Central Mediterranean using novel tactics, the litigation efforts of the Sciabaca & Oruka project expose the assembled quality of the rule. Indeed, they unveil how the rule of interdiction is marked by the use of jurisdiction and secrecy by Italy and the EU to avoid responsibility. The Libyan SRR added legal distance between the enablers of delegated interdiction and the executive forces carrying it out. It made it possible to move European jurisdiction further away from the people intercepted at sea. State secrecy justified by security imperatives made it difficult for lawyers to contest these policies of outsourced control, as is revealed in the legal decisions that emerged out of the actions of the Sciabaca & Oruka lawyers.

My final comments in the previous section on the limitations of addressing the enabling role of Italy and the EU do not seek to disqualify the usefulness of such actions. Indeed, given the current likelihood that the EU border regime will only get harsher, there is an urgent need for immediate resistance to violent exclusions, and doing so through the strategic use of law is one of the many necessary articulations of such resistance. Still, these actions seem

unable to redress injustice *and* destabilize the rule of interdiction, or at least not at the same time. I end this chapter with questions as to the limitations of the strategic use of law, following Heller and Pezzani's (2019) appeal that immediate forms of resistance be accompanied by "renewed strategic thinking" geared toward a "horizon of transformation." It is in that spirit that I conclude with Achiume's (2019) urge that we rethink First and Third World people *not* as political strangers but as bound together in a relationship of cosovereignty. Human rights may have become out of reach for migrants, as my material on the legal contestations against border externalization seems to indicate. However, migrants remain the primary agents capable of transforming the audience to which European states consider themselves accountable, by means of their continued struggles for inclusion in the First World. This is of course a question of distributive justice as opposed to just a processual issue: it is important not to lose sight of this fact in the struggle for accountability in contemporary migration control.

Conclusion

After another blistering summer in 2023, Frontex announced that the Central Mediterranean was back at the top of its chart as the most used migratory route in the Mediterranean. It is still the deadliest migration route in the world. The year 2023, furthermore, saw increases in departures from Tunisia. Yet again, one may say, since numbers have been rising year in, year out. In this context it is, then, unsurprising, given the political hysteria against migrants and the trend toward securitization and externalization of migration control in the region, that another Memorandum of Understanding was brokered between Tunisia and the EU in July of the same year. Just as in the case of Libya, this Memorandum of Understanding promised patrolling equipment for search and rescue, drones, jeeps, radars, and funding for organizations on the ground, such as the IOM and the UNHCR. The timing was at the very least unfortunate: Tunisia's prime minister had spent the early months of the year promoting racist discourses about the need to take urgent measures against the presence of sub-Saharans in the country, with undertones of the "Great Replacement" theory. Neither the MoU nor the official communication around it signaled condemnation of such rhetoric. A year later, in 2024, the Tunisian SRR was officially added to the IMO's Global Integrated Shipping Information System.

In the waters off Libya, agreements and practices of exclusion have thus seemingly been tested and proved to be so successful that they have now been exported elsewhere. The Mediterranean should be seen as a laboratory where policies of and partnerships for exclusion are experimented with; their normalization and diffusion are a barometer for scoping authoritarian and xenophobic currents in and beyond Europe, which continue to rise.

The practice of bringing people back to where they were fleeing from or transiting through as they make their way to Europe is legally complex and is operated across many sites. It increasingly involves the outsourcing of migration control by destination states to states of origin or of transit and

the implementation of non-entrée policies under the latter's jurisdiction or authority. This has far-reaching consequences for the rights of migrants as well as for sponsoring states, which can isolate themselves from their duties and legal responsibilities toward migrants. It is this book's claim that to really grasp the mechanisms that enable the externalization of control, and therefore also to understand the progressive normalization of exclusionary policies in Europe and beyond, one needs to connect the micro- to the macrolevel: to scrutinize in detail how law and authority are played out at sea when pullbacks by the Libyan Coast Guard are carried out, and to combine this work of close observation with consideration of how the rescue, interception, and death of racialized non-Europeans at sea are connected to people, decisions, and legislative processes at the heart of Europe. The crafting of delegated interdiction also carries significance for global governance beyond the Central Mediterranean. In this conclusion, I consider what we can learn from delegated interdiction and its central focus on the figure of the migrant, in relation both to today's and tomorrow's Europe and to contemporary global governance more broadly.

Zones of Non/Influence

Delegated interdiction is the collaborative (albeit unequally so) effort to bar people on the move from territory and rights, resulting in the curtailment of their very right to leave. This book has shown how the training and equipping of the Libyan Coast Guard and the creation of the Libyan SRR were the result of a collusive collaboration between European authorities and a third state, Libya, to contain migratory movements to the shores of North Africa. It was a zoning strategy by European authorities that involved the severing of jurisdictional links to avoid responsibility to the people targeted by the containment policy. The enactment of the Libyan SRR enabled a specific type of offshore processing that performed a legal "cut" (Strathern 1996) in a chain of existing material and communicational relations between European and Libyan authorities. The Libyan SRR lies on the geographical and political margins of Europe; spatially, it is one of those places where the interior and the exterior of the EU community merge and blur. But, though situated at the margin, it provides an entry point to understanding how delegated control has been constructed and sustained in the face of tension around the liberal constitutionalism of contemporary Europe. I have used it as a window through which to peer into key relations between the ordering and the violence of contemporary sovereignty and state forms.

The *physical absence* of European actors when migrant travelers find themselves in distress at sea means that the former's responsibility for the latter can be suspended, even though the structural enablers of the interdiction measures are European. However, the cutting of responsibility ties through delegated interdiction also involved other, more complex and evasive modes of accountability diffusion: from funding politics to shifting boundaries of jurisdiction. Tracing how the Libyan SRR was brought into being and how the associated regime of delegated interdiction is sustained in time reveals how legal borders and hierarchies are constantly being redrawn and selected in maritime interceptions, legal judgments, and diplomatic negotiations. The *Aquarius*'s struggles to conduct rescues in the Libyan SRR revealed how manifestations of sovereign power shine through in moments of "monopolies of jurisdiction and discretion" (Moore 2000, 30). The violence linked to these situations where rescue vessels are denied authorization to come to the aid of sinking dinghies is linked to specific state authorities' ability to establish legal borders, that is, to define the scale of applicability of transnational law. The material consequences of a new legal enactment, the Libyan SRR, become apparent in the theater of operations at sea. The Libyan SRR enables "contactless control" (Moreno-Lax and Giuffré 2017), meaning that migrants can be brought back to Libya without ever coming into contact with European jurisdiction. This zoning has permitted the modulation of the relation between the subjects passing through the area and their rights (Opitz and Tellmann 2012). It has led to a form of jurisdictional irresponsibility.

Fundamentally, delegated interdiction shows Europe's attention to the crafting of zones of purported non/influence. Approaching delegated interdiction as an assemblage of practices, laws, and discursive formations enables us to see the disjuncture between claims of nonresponsibility and bordered sovereignty. This disjuncture becomes evident once the material, practical, and "enabling" connections have been uncovered. The crafting of zones of exclusions has already been long discussed in relation to the "inside" of liberal nation-states' territory; we might think of the waiting zones in airports (for the French example, see Basaran 2020), hotspots, or detention centers. These zones often involve divorcing territory from law. In other terms, if one is an illegalized migrant, physical presence does not necessarily mean legal presence. What I am referring to here, on the other hand, as "purported non/influence" takes place outside the territorial boundaries of states wishing to deter migrants from reaching their shores.

It involves hegemonic states of the Global North strategically emphasizing and even empowering postcolonial states' sovereignty or authority over their borders to serve their own political interests. "Sovereignty" in a formalistic sense is needed for deals to be made; Libya and Tunisia but also Albania and recently Rwanda have all been parties to migration control or asylum-processing deal-making. However, this sovereignty can also be then "punctured": by the states parties implementing asylum procedures on the territory of the state receiving the money and support for detaining the unwanted migrants, as it was, for example, planned to be the case in Albania.[1] In the international waters of the Mediterranean, technologies of control have been used to craft these external zones of claimed noninfluence—the Libyan SRR—whereas, in fact, a careful layering of European and Italian sovereignty is at play when one looks closer at the practices of governance they involve. The legal formalism of Libya's sovereignty has allowed it to declare its own SRR and to enter into international agreements with Italy. But this is a "contingent" form of sovereignty, a feature that characterizes the sovereignty of most Third World states, as Achiume and Bali (2021) point out. It was this very contingency that led to the NATO-led military invasion of 2011, which was carried out on the basis that Libya had lost its claim to sovereignty, as it could no longer control its territory or provide "effective protection to its entire population" (Asad 2015, 408). Shortly afterward and despite the country's descent into civil war, Italy and the EU realized they needed to shore up Libyan sovereignty to gain a legitimate partner with which to enter into relations over migration management concerns. This contingent sovereignty has now come to serve European interdiction efforts and is indeed constructed by them. The Libyan SRR is in fact the expression of *Italy and the EU's* sovereign will to extend control and order beyond territory, while trying to escape the constraining legalities of the EU's liberal foundational order. In this setup, responsibility for migrants fleeing Libya to Europe can be deferred to the sovereign state that formally controls the boundaries of the territory where the populations it should "protect" are located.

This crafting of zones of non/influence is designed so that states wanting to externalize control and implement deterrence can claim noninfluence so as to uphold a hollowed-out liberal constitutionalism; cooperation "partners" are formally outside the jurisdiction and territorial control of controlling states, while their control practices and zones of patrol remain designed, circumscribed, and financed by the North.

Violence Across Border Assemblages and the Liberal Paradox

How are zones of purported non/influence achieved? First of all, we may consider delegated interdiction as a key tool for claiming non/influence. Delegated interdiction is activated across an "assemblage." This assemblage is transnational, a plural sociopolitical, heterogeneous formation that includes the Libyan, Italian, and Maltese coast guards and detention centers in Libya where people on the move are brought when they are intercepted. It includes the EUTF, managed by European bureaucrats and implemented by international organizations such as the IOM but also state agencies such as the Italian Ministry of the Interior. It includes Libyan diplomatic staff with whom European authorities negotiate integrated border management measures. Within the regime of delegated interdiction, a multitude of divergent elements coalesce and interact, in a ballet of circulating documents, enactments, and enforcements of legal frameworks, speech acts, and collaborations between officials populating offices from Tunis to Brussels, via Tripoli. One should not be fooled by the networked appearance or be lured into thinking about delegated interdiction in terms of an unending set of sociopolitical relations; the zoning at its heart is skewed in favor of Europe's violent exclusionary project.

Law, in turn, plays a fundamental stabilizing and legitimizing role for delegated interdiction. It is also through law that the "dialectics of liberal paradox" (Kahn 2018, 17)—the tension between sovereign power and the constraining legalities that attempt to fetter it—are most clearly expressed. Indeed, delegated interdiction is a dynamic sociopolitical formation constrained to some extent by but also constructed through the tools of liberal constitutionalism. It is constantly adapting to critique and court decisions. It is maintained through the application and enforcement of law as a social practice; law embedded in various contexts of development, jurisdictional enforcement, and interpretative enactments that enable the reinstatement of state authority. In fine, delegated interdiction de facto suspends the right to asylum, without Italy or the EU having to renounce its duties under international law.

Global Governance and the Hollowing Out of Liberal Constitutionalism

Delegated interdiction gives us an indication of the characteristics that law takes on in transnational governance. Law is used to govern, and increasingly, these legal operations are also what create obstacles for uses of law as

a means of redress. In many ways, this obstruction is connected to the hollowing out of liberal law (understood as the individual protections that liberal constitutional orders are meant to provide) that I have already pointed out. This active diminishment of the already limited possibilities of law to redress situations of harm or in favor of social justice can be observed in other political contexts; from India's authoritarian legalism that constructs Muslims as Others within the nation state or when multinational corporations turn to out-of-court settlements when they are sued by people who are negatively affected by their activities (Eckert and Santer 2025). These are all highly different contexts that it might make little sense to compare. However, one thing does seem to run through them all; these are all contexts where remedies for "the Have Nots" (Galanter 1974) are diminished through law's very operations.

It is the assembled nature of delegated interdiction, and its legal architecture, combined with the sovereign state's ability to strategically hierarchize legal frameworks, that reduces possibilities for accountability. The lawyers from Sciabaca & Oruka whom I followed tried to pin down the violations of the EU and the Italian state for their breaching of the nonrefoulement principle, but the dialectics of transnationalism (Mann 2013) seemed to keep moving the goal posts. The evolving jurisdiction of the ECtHR also contributes to a differentiated access to rights and liberties for migrants, as opposed to their European counterparts. The lawyers' attempts to address the enabling condition of harm creation by Italy and the EU through administrative law revealed the labyrinthian quality of how delegated interdiction is governed. Their efforts to establish clear profiles of responsibility across the opaqueness of multileveled governance also revealed the extent to which the coexistence of different forms of law contributed to the opacity of the EU's external approach to migration.

Similar dynamics of unaccountability production through governmental assemblages are visible in other regions where migration is transnationally governed. In the Aegean Sea, the EU-Turkey deal preceded the Italy-Libya Memorandum of Understanding by about a year.[2] The collaborative character of that governmental assemblage was clearly transactional in nature: In broad terms, under the aegis of President Recep Tayyip Erdoğan, Turkey took money from the EU to contain migratory flows. Looked at more closely, this particular agreement shares many traits with the Central Mediterranean case. The Aegean crossing includes its own unique characteristics and economies of violence, as well as a specific set of actors and geographical features. However, there are similarities to be found in the strategic

and assembled uses of law that enable circumventions of accountability. When three asylum seekers arrived on the Greek islands by boat in 2016, shortly after the EU-Turkey agreement, they risked being returned to Turkey if Greece rejected their asylum applications. They challenged the legality of the EU-Turkey deal in the General Court of the European Union. Ultimately, the Court of Justice of the European Union held that it lacked the jurisdiction on the matter because the "EU-Turkey Statement," as it was designated, was not an international and formal agreement concluded by an institution of the EU.[3] Instead, it found, it was an agreement "concluded by the Heads of State or Government of the Member States of the EU and the Turkish Prime Minister" (General Court of the European Union 2017).[4]

The scalar analysis of law in migration control would thus point toward the narrowing of its capacity to be used as a mechanism for redress, as it increasingly becomes exclusively a tool of governance. The way law is assembled to govern while reducing means of redress raises problems of accountability depending on how laws are hierarchized and suspended over time. It also leads to normative fragmentation; delegated interdiction repudiates the nonrefoulement principle. Jurisdiction is fragmented through money, actors, and the strategic enactment of legal frameworks distributed across different scales. It is this assembled form that participates in the very dissolution of accountability for the violence and violations suffered by Third World migrants wishing to reach European shores.

Depoliticizing by Labyrinthian Obscuring

The way exclusion has been crafted in the Central Mediterranean also works to depoliticize transnational governance. Echoing Ferguson's (1994) depiction of international development as an "Anti-Politics Machine," delegated interdiction as a form of outsourced migration control is again and again characterized as a technical endeavor. The central role played by the EUTF, an instrument conceived as having "development" at its core, testifies to this characterization. Development "aid" gets channeled across different implementing actors, which span different levels of government, to finally be deployed in a bid to keep migrants out. Again, the way in which scales become blurred in this endeavor is particularly striking.

The assembling of zones of claimed non/influence involves depoliticization through labyrinthine processes of obscure governance that blur what is actually at play. Zooming in on one particular policy instrument that has contributed to delegated interdiction in the Central Mediterranean—

the EUTF—shows how controlled transparency and risk management enable diffusion of political responsibility for the harm that the instrument helps to create. The EUTF operational committee's opaque project selection procedures together with powerful intergovernmental dynamics rendered both consensus and critique in the project selection for the North of Africa window difficult from the perspective of "weaker" states and fund contributors. With its high level of relational complexity, this European instrument, which was mostly designed to exert control, nevertheless combined divergent policy objectives such as humanitarian support and development, involving various actors and rationales of government. This obfuscated the harmful effects of delegated interdiction. Analyzing the technical details of enabling policy mechanisms and the funding channels of delegated interdiction has thus to be accompanied by a critical apprehension of the rationales that are also mobilized across this dizzying border assemblage. The imperative of "saving life at sea," for instance, was used to justify the support given to the LYCG. This contributed to the framing of drownings in the Mediterranean as a "humanitarian crisis." The clear interconnectedness of "saving life at sea" and the systematic detention of intercepted people once they were brought back to Libya was hence blurred. Delegated interdiction emphasizes humanitarian motives of intervention while fueling the humanitarian "crisis."

If we do not question the framing of migration management as a purely technical endeavor, if we do not question the framing of the Mediterranean migration "crisis" as a humanitarian crisis in which the Libyan Coast Guard can play a lifesaving role, we fail to see the political roots of the violence at play. In this sense, the rights abuses that emerge from the outsourcing of migration control cannot easily be addressed by more monitoring or putting additional measures in place that "protect" migrants during their transfer to detention centers, or more "conflict-sensitive approaches" to be integrated into the training of abusive coast guards. Instead, the violence that results from outsourced migration control is the result of a kind of "planned misery" (Marks 2011, 75), misery that belongs to the relational logic of "particular socioeconomic arrangements" resulting from histories of colonial conquest, European racist nationalism, and the First World's exploitation of Third World resources and economies. Going even further, delegated interdiction is an exclusion device that is, in fact, designed to uphold misery in the sense that it turns a blind eye to it and continues to unequally regiment "human powers and freedoms in relation to the planet" (De Genova 2016, 45). The exclusion and the violence it produces are not the unfortunate side effects of technical project management.

The Inescapable Interconnection Between the First and the Third World

Across the proliferation of political technologies of control on a planetary scale, the figure of the migrant remains a central target. Constructions of an Other to be policed, detained, and controlled retain immense political traction. Delegated interdiction articulates and mediates the relationship between the populations of the so-called First and Third worlds in ways that can further shed light on why the figure of the migrant is so upsetting to sovereign powers of the global core. The EU's obsession to stop migrants from ever reaching its territory is linked to what the presence of migrants on European soil can enable. Physical presence on a given territory has the potential of upsetting boundaries of membership and bordered communities and provoke new ways of relating to one another. Not in the sense of an elementary cosmopolitanism that would see the simple fact of the coexistence of difference in a territory as leading to more conviviality and acceptance toward Others. Rather, it is through politics in the Arendtian sense of *vita activa* (Arendt 1958), a politics that requires direct relations in the form of speech and action, so that new relations of relating to one another can emerge, ultimately leading to new modalities of participating within and sharing common goods across a polity. Take the growing trends of urban citizenship, for instance. Cities are increasingly seeking to institutionalize the presence of urban dwellers and enable their participation in the urban polity, regardless of their status. Remittances, workplace solidarities, and even radical politics of helping all have the potential of shaking up political alliances, distribution networks, and citizens' and noncitizens' relations to the state.[5]

As I have argued elsewhere (Santer 2025), the presence of Third World citizens in the territories of the Global North can enable redistribution. Indeed, migration opens the potential for redistribution when a "common space of appearance" (Arendt 1958) is actualized by the reduction of mediated connection between citizens of the First and Third worlds or, as otherwise stated, between core and periphery. By moving to Europe, migrants from the Third World embody a form of claim to national admission and inclusion, radically challenging the sovereign's "right" to exclude. This can be read as an assertion of their fair share of historically accumulated riches and development in the North, where First World citizens enjoy what has been called the "imperial mode of living" (Brand and Wissen 2017)—a particular way of life based on the integration into everyday life of liberal markets and

the appropriation of resources that are needed to uphold that model of "the good life" (153). Delegated interdiction as a form of legal and spatial distancing of Third World migrants from the states and territories where imperial living is possible is an attempt to deny these demands for justice and a fairer share for historically accumulated riches. It enables a lessening of the geographical distance that otherwise separates "us" and "them." South-North migration's redistributive potential, as well as the potential offered by a politics of presence in terms of how it reduces distance between citizens of the world otherwise spatially divided, explains in part Europe's continued obsession with keeping migrants out.

History helps to theorize political communities of the present; beyond the formal, bounded nation-state community, neocolonial imperialism, which Achiume (2019, 1541) defines as the condition that results from the continuing logic of formal European colonialism, also binds together a kind of historically constituted political community. Because of their neocolonial connection, Third and First World people remain bound in a relation of cosovereignty, in part because of the past and continued condition of subordination of the former by the latter (Achiume 2019) and because of their indisputably bounded future. Ambalavaner Sivanandan's famous words "We are here because you were there" (cited in Younge 2018) help to reveal the appeal of distancing more clearly; if the "we" is no longer "here" then historical amnesia becomes a little easier. Delegated interdiction participates in the fragmentation of historical responsibility of which postcolonial migration is the reminder (Rigo 2005) because of its attempts to sever any legal connection to the migrants it excludes, and because of its role in physically keeping them from reaching the European continent.

In the end, the stratification of global mobility and the policies of exclusion that aim to keep migrants out of the First World attempt to negate an inescapable interconnectedness; First World people are materially connected to the lives of those whose labor, resources, and land are needed to uphold their ways of livings. Delegated interdiction severs that interconnection in the present moment and participates in obscuring the relations of interdependency between the First and the Third World that prevail today. The continuous redrawing of European jurisdiction in relation to the responsibilities linked to the violence produced by the policing of its external border is a process intimately linked to the very notion of justice in a postcolonial and increasingly overheating world. It lies at the heart of redefinitions of participation, access to rights, and responsibility for global inequality.

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Notes

INTRODUCTION

1. The Bouri oil terminal is an offshore oil and natural gas extraction site in the Mediterranean Sea, off the northern coast of Libya.

2. Names and personal information have been changed to ensure anonymity.

3. The maritime staff were not directly employed by either of the NGOs operating the ship, but were hired by the owner of the *Aquarius*.

4. The term comes from military jargon to describe a piece of noncivilian infrastructure, which can be anything from weaponry to transport devices. At sea, the word *asset* was often used to describe state or military vessels or aircrafts.

5. Very high frequency radio, used for ship-to-ship communication.

6. In radio communications at sea, channel 16 is the distress and safety frequency.

7. A satellite emission and detection system that gives unique identification information on ships at sea (such as name, position, course, speed), AIS emits signals that are fed into publicly available online maps such as vesselfinder.com and marinetraffic.com that enable users to visualize maritime traffic more or less in real time.

8. As Sabine Broeck and P. Khalil Saucier (2016) have highlighted, the current situation of crisis in the Mediterranean is one of *longue durée*. This is also behind the term *Black Mediterranean* that other writings have referred to. The racialized character of migrant deaths in the Mediterranean needs to be put in context with the entire project of European modernity, which included empire, colonial conquest, and transatlantic slavery (Di Maio 2012; Danewid 2017).

9. Throughout this book I use the terms *refugee*, *migrant*, *people on the move*, and sometimes *traveler* interchangeably. I do so with the awareness that the use of some of these categories in contemporary scholarship has been critiqued for reifying forms of violence and Othering that critical scholarship precisely seeks to deconstruct (Cabot 2019, 268). Indeed, "irregular migrant," "undocumented migrant," and "asylum seeker" are constructed categories that racially hierarchize people on the move who are the targets of technologies of control. There is also a long-standing debate in international refugee law about the distinction between migrants and refugees (see Crépeau and Atak 2021). A vast literature in anthropology problematizes bounded categories that fail to reflect the complexity of the lived experience of displacement and highlight the problem of the migrant-nonmigrant binary (Malkki 1995; Ramsay 2020; Salazar and Schiller 2013). People move for complex reasons and are faced with

varying constraints, and therefore the dichotomy made between "forced" and "voluntary" migration does not hold empirically (Turton 2003). Nevertheless, I have chosen to use the above terms interchangeably as a sign that these are not fixed categories corresponding to experience but rather that they correspond to a particular way of constructing mobility as a "problem" in need of attention. My work seeks to show how vulnerabilities linked to these categories are produced through law and policy.

10. Salvini's right-wing Lega Nord party and the Five Star Movement formed a coalition government following the Italian elections of March 2018. The coalition government (Conte I cabinet) was led by Giuseppe Conte, an independent. It eventually collapsed in August 2019 (Horowitz 2019).

11. I sometimes also refer to the Libyan SRR as the Libyan SAR zone.

12. *Pushback* is the term used to describe the forced return of a refugee or migrant over a border. When migrants or refugees are pushed back, they are not given the possibility to apply for international protection, nor are their individual circumstances taken into consideration by the authority conducting the forceful return. Pushbacks violate a number of legal provisions, including the 1951 Convention and Protocol Relating to the Status of Refugees (Art. 33, Prohibition of Expulsion or Return ["Refoulement"]), the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1984 (Art. 3), and the European Convention on Human Rights (Protocol No. 4, Art. 4, Prohibition of Collective Expulsion of Aliens). The term *pullbacks* is used to designate measures from third countries (in the service of the European Union, for example) that prevent refugees and migrants from entering other States' borders (for a legal commentary on maritime pullbacks, see Markard 2016). Pushbacks and pullbacks have been described as two sides of the same coin (Deftou 2021). I employ both terms quasi-synonymously since they have similar effects on migrants and refugees who, through such actions, are violently returned to where they were fleeing from.

13. The EU's New Pact on Migration and Asylum, presented by the European Commission in September 2020, also announced a series of policies to affect the external dimension of migration, including partnerships with third countries of origin and transit.

14. The expression "politics of non-entrée" appeared for the first time in Hathaway's 1992 article "The Emerging Politics of Non-Entrée."

15. Moreno-Lax (2021) distinguishes between three types of interdiction that take place at sea: direct interdiction, which involves "contact-based measures of detention, seizure, boarding, and apprehension of the persons concerned for their repatriation or forcible transfer to areas within government control" (493); indirect interdiction, which involves measures taken from a distance, the deflection of international responsibilities to third countries, and pullbacks by proxy; and, finally, the interdiction-by-omission paradigm, which involves "the negation of rescue through outright abandonment at sea" (497). The following chapters mostly discuss the construction and consequences of the indirect modality.

16. Regarding the pullback policy, for an overview of arrival numbers from Libya to the EU since 2014, see the IOM's *Missing Migrants: Tracking Deaths Along Migratory Routes—Central Mediterranean Route*, accessed October 25, 2021,

https://missingmigrants.iom.int/region/mediterranean?migrant_route%5B%5D=1376. The practice and appropriation of counting border deaths by an intergovernmental organization such as the IOM has long been critiqued by civil society and activist organizations (see also Heller and Pécoud, 2017). Throughout this book I refer to the Libyan Coast Guard and not to the "so-called Libyan Coast Guard," as some SAR NGOs and human rights observers have started to do. The latter designation serves to highlight the LYCG's failure on multiple occasions to abide by its duties under the SAR Convention and its lack of professionalism and responsiveness.

17. For an extensive legal commentary on the right to leave by sea from the perspective of international human rights and refugee law, see Markard 2016.

18. Collecting data on attempted, failed, and successful maritime crossings in the Central Mediterranean is challenging because the Libyan authorities do not publicly disseminate details of the interceptions they carry out and because it is difficult to estimate the number of departures from North African shores. Following a slight decrease in 2018 from the 15,358 interceptions carried out in 2017 (International Rescue Committee 2021), migrant interceptions by the LYCG have increased ever since. Amnesty International (2021) reported at least 9,225 returns in 2019, at least 11,891 returns in 2020, and nearly 15,000 for the first six months of 2021. IOM Libya (2022) reported a total of 24,684 migrants intercepted and returned to Libya in 2022. The *Libya Observer* reported on January 9, 2025, the IOM numbers of 17,190 interceptions in 2023 and 21,762 interceptions in 2024. Beyond the numbers, though, I speak of a regime of "systematic" delegated pushbacks because this is what the creation of the Libyan SRR enabled: the establishment of a legitimate agency that European authorities could activate when cases of migrant distress were declared in that region that would systematically organize for migrants to be brought back to Libya.

19. Hirsi Jamaa and others v. Italy, ECtHR judgment of February 23, 2012 [Grand Chamber], no 39473/98.

20. It is always important to remember that under the 1951 Geneva Convention, there is no such thing as an undocumented or illegal asylum seeker.

21. International refugee law includes other sources of law such as international humanitarian law, the law of the sea, international migration law, and international human rights law.

22. David-Ménard (2008) makes the essential distinction that an "apparatus" describes a delimited mechanism whereas assemblages have an affinity with the infinite because of their rhizomatic ability to connect on to other assemblages.

23. In total, I spent six weeks aboard the *Aquarius*, two of which were spent at sea. The rest of the time, the ship was docked in the port of Marseille.

24. On how property rights perform this function of cutting through networks of social relations, see Strathern 1996.

25. This includes the description, not only of material practices but of "the nuances, affects, multiple codes of meaning, silences, jokes, and so on, that accompany them" (Gibson-Graham 2014, 148).

26. "State of Play and Financial Resources," EUTF, accessed February 28, 2025, https://trust-fund-for-africa.europa.eu/our-mission_en.

27. Libya has in fact been the biggest beneficiary of the EUTF, with a total of 465 million euros having so far been spent on programs there. See "EU Support on Migration in Libya," EU Emergency Trust Fund for Africa North of Africa Window, March 2022, https://enlargement.ec.europa.eu/system/files/2022–03/EUTF_libya_en.pdf.

28. The European Commission first introduced IBM in 2002. It is a key policy objective inscribed in the Lisbon Treaty. Its central components include the Schengen Borders Code and operational cooperation between member states (and Frontex) (Moreno-Lax 2011). IBM, which emphasized information exchange, risk analysis, mobile border controls, and principles of "good governance," rapidly became a model to be exported outside the EU (Le Chêne 2017). IBM is an integral aspect of the EU's strategy of externalizing border control. Elements of IBM include the detachment of liaison officers from EU member states to third states of migration origin and transit, information exchange, readmission agreements, and, crucially, the transfer of knowledge and border management techniques through the training of officials from third states (Le Chêne 2017, 121). As part of the multiannual financial framework running from 2021 to 2027, the EU has set up a new Integrated Border Management Fund. In December 2020, the EU Parliament and Council agreed that the size of the fund should be 6.241 billion euros (European Parliament 2020). The agreement was later endorsed by the Council in June 2021 and approved by the Parliament in July of the same year.

29. I spent a total of three weeks in Brussels, split into two trips in February and September 2019. I spent six months in Tunisia, from January to August 2018, where I had initially started studying the international politics of Security Sector Reform efforts in the postrevolutionary context. I eventually shifted my research to focus more specifically on the governance of the maritime border in the Central Mediterranean. The interviews I conducted with European bureaucrats and staff members of international organizations involved in supporting the Tunisian government's effort to reform their national security sector gave me important contextual knowledge about the concerns of the international and European donor community around border management reform in North Africa. During these six months, I participated in a workshop on Frontex (the European Border and Coast Guard) and Operation Seahorse that took place at the Ministry of Foreign Affairs in Tunis with EU and Tunisian officials. I also carried out participant observation at a "Community border management" training session for Ben Guerdane community leaders (Tunisia-Libya border), organized by the Danish Refugee Council and the Danish Demining Group in Zarzis, Tunisia. I came back to Tunis in March 2019, where I was able to conduct several interviews with European embassy officials and EU Border Assistance Mission (EUBAM) and International Centre for Migration Policy Development (ICMPD) staff, thanks to the contacts I had established in the capital the previous year. I conducted thirty-eight semistructured interviews of international staff members, EU officials, and national representatives who were involved in integrated border management efforts in Libya as project managers, policy advisers, or representatives of donor states.

30. This fieldwork was interrupted in March 2020 by the COVID-19 pandemic. I was nonetheless able to continue to follow their work and attend meetings online. I conducted ten semi-structured interviews with the lawyers and project managers of Sciabaca & Oruka, supplemented by many informal discussions over the course of the participant observation.

31. Hirsi Jamaa and others v. Italy, ECtHR judgment of February 23, 2012 [Grand Chamber], no 39473/98, accessed October 25, 2021, http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509. For an extensive commentary on the case, see Den Heijer 2013. The judgment was historically progressive because of its extraterritorial scope. I detail this further in chapter 6.

32. As Larsen and Walby (2012, 1) have noted concerning the use of freedom of information requests in the social sciences (a research method that they have mostly used and studied in Canada), access regimes emerge as sites of contestations between "the public pursuit of transparency" and the "culture of secrecy in government."

33. I follow Engle Merry and others (Engle Merry 2006; Levitt and Engle Merry 2009), who study the socially mediated character of legality rather than conduct a close study of institutions producing legal judgments.

34. Libya is currently not considered a safe third country for the disembarkation of migrants (see UNHCR 2020a). The UN High Commissioner for Refugees issued a position paper on returns to Libya in September 2018 (UNHCR 2018), which replaced earlier positions, from 2014 and 2015. Each of these position papers stated that Libya was not a safe third country and was therefore unfit for disembarkation following rescues at sea.

35. As per the principle-cum–international norm of responsibility to protect, which has been applied to date in an infamously selective manner (see Orford 2011).

36. When I use the term *liberal constitutionalism*, I am referring broadly to political systems that hinge on "a written constitution that includes an enumeration of individual rights, the existence of rights-based judicial review, a heightened threshold for constitutional amendment, a commitment to periodic democratic elections, and a commitment to the rule of law" (Ginsburg et al. 2018, 239).

37. Several scholars have made similar critiques of characterizing the United States' infamous extraterritorial detention site Guantanamo Bay as being "outside the law," showing instead the multiple legal geographies and representations in which the site is embedded (Johns 2005; Reid-Henry 2007; Gregory 2006).

38. According to Halliday and Shaffer (2015), a transnational legal order has the following characteristics: It produces order in a domain of social activity that relevant actors have constituted as a "problem"; it is legal "insofar as it has a legal form, is produced by or in connection with a transnational body or network, and is directed toward or indirectly engages national legal bodies; and it is transnational because it orders social relationships that transcend the nation-state" (20).

39. I borrow this formulation from Rosalind C. Morris (2007).

40. Here and throughout this book, I follow postcolonial legal scholars who use *Third World* as a counter-hegemonic discursive practice to designate the "territories and peoples that Europeans colonized primarily between the mid-eighteenth and

twentieth centuries" (Achiume 2019, 1513). Rajagopal (1998, 3) reasserts the expression's continued relevance in the post–Cold War era because "it clearly reveals the hierarchical ordering of the international community at both the statal and non-statal level." Achiume (2019) acknowledges that some may find the term anachronistic and tainted with a negative connotation but reaffirms Rajagopal's counterhegemonic use of the term as useful for legal theory.

1. TENSE RESCUES AND DOUBLE STANDARDS

Parts of the material used in this chapter were first published in Kiri Olivia Santer, "Governing the Central Mediterranean Through Indirect Rule: Tracing the Effects of the Recognition of Joint Rescue Coordination Centre Tripoli," *European Journal of Migration and Law* 21, no. 2 (2019): 141–65, https://doi.org/10.1163/15718166–12340045.

1. In the EU the Dublin Regulation defines the first country of entry of an asylum seeker as responsible for treating that claim. Hence, first-arrival countries like Italy, seeking to reduce the number of arrivals on their shores, have an extra incentive not to disembark people on their territory so as not to have to officially register them.

2. In 2017, the Italian Interior Ministry, led by Marco Minniti, tried to impose a code of conduct on rescue NGOs, which was widely criticized for being legally unclear and for imposing obligations on NGOs while leaving out the responsibilities of the Italian state (Papanicolopulu 2017). The code emphasized, among other things, the obligation of a shipmaster to immediately notify the competent authorities of the flag state once a rescue is conducted in a zone where there is no official SRR. The code of conduct was issued before the declaration of the Libyan SRR. It illustrated the Italian government's push to involve other states in the contentious issue of disembarkation of rescued people by trying to the establish a link of responsibility through the flag state. For an overview of the repressive legal frameworks that successive Italian governments since 2017 have used to target civil society organizations' search and rescue activities, see Alagna and Cusumano 2023.

3. Panama delivers "flags of convenience," giving foreign-owned vessels the right to fly its flag for comparatively low registration and annual fees and taxes (Bernaerts 2006, 104–5). Flags of convenience are popular amongst shipping companies precisely because they enable them to avoid taxation and to benefit from far less stringent inspections and regulations than are required under, for example, European flags (Khalili 2020).

4. The *Iuventa*, a ship belonging to the association Jugend Rettet, was seized in 2017, and individual members of the crew were put under investigation by the Italian authorities. Criminalization and administrative pressures have increased ever since. During the summer of 2020, the ships *Aita Mari*, *Alan Kurdi*, *Ocean Viking*, *Open Arms*, and *Sea Watch 3* and *Sea Watch 4* were all repeatedly required to carry out a procedure to verify their compliance with safety rules and regulations (called "Port State Control"), which has resulted in a steady increase in the administrative detention of rescue ships.

5. The integration of the Libyan SRR in the global search and rescue plan was officialized when the coordinates of the zone and communication details of the Joint

Rescue Coordination Center (JRCC) Tripoli were published on the IMO's Global Integrated Shipping Information System (GISIS) on June 27, 2018; see chapter 3 for more details on the process that led up to this action.

6. This stance is contrary to one of the most basic principles of international maritime law, which stipulates navigational freedom in international waters for all ships flying the flag of a sovereign state.

7. Violeta Moreno-Lax (2017b) outlines the "rescue-through-interdiction" paradigm, which, she argues, reconceptualizes the meaning of "saving" and "life" in a selective approach that curtails (migrants') human rights. "Life" that is rescued through interdiction, she says, is recast as a "life-without-full-rights"; "a (human) life that is severable from the (human) rights that should come with it" (14). This is not exactly equivalent to Agamben's (1998) conception of bare life, because it is not a life that can be purely sacrificed in a total exclusion from a regime of rights. Rather, it is the manifestation of a "selective (non-)access to rights" (Moreno-Lax 2017b, 14).

8. SOS Méditerranée and MSF decided to stop operating the *Aquarius* in December 2018 after having struggled to find a flag state to register the ship. The flag of the ship was stripped twice in 2018, and the press release announcing the end of the ship's operations cites political, legal, and administrative harassment from several European states as the reasons that motivated the organizations' decision (SOS Méditerranée 2018).

9. NAVTEX is a radio system that delivers information about navigational security and meteorological warnings to ships.

10. In addition, in recent years, the Alarm Phone, a volunteer-operated hotline for migrants in distress in the Mediterranean, has taken on an increasingly prominent role in alerting the public and relevant authorities about ships in distress.

11. In April 2021, it emerged that Sicilian prosecutors had wiretapped journalists, lawyers, and individuals from rescue organizations over the summer of 2017 for alleged complicity in people smuggling (*The Guardian* 2021). The crew of the rescue ship *Mare Jonio* of the NGO Mediterranea was reportedly also wiretapped and then accused of abetting illegal immigration (Tondo 2021a). These secret recordings of phone conversations took place in a number of different Italian criminal investigations into NGOs conducting rescues in the Central Mediterranean, as part of the wider campaign to discredit their activities. The existence of these recordings confirms that the Italian state was carrying out surveillance on rescue organizations and shows a posteriori the extent to which the state's approach to civilian SAR activities was shrouded in suspicion and secrecy.

12. In fact, administrative and judicial harassment of the NGOs operating the *Aquarius* eventually led to their suspending the ship's operations. Italian prosecutors accused MSF of illegally dumping "toxic waste" during its operations between January 2017 and May 2018. They ordered that the *Aquarius* (which was still docked in Marseille) be impounded and that money in the NGO's account be frozen (Barbuscia 2018). The difficulty of finding a state willing to issue a flag for the vessel was also part of what both NGOs described as a "smear campaign" by European governments (Reuters 2018). As of October 2021, both organizations were back at sea, SOS Méditerranée operating the ship *Ocean Viking*, and MSF the vessel *Geo Barents*.

13. It is important to note here that NGOs involved in search and rescue in the Mediterranean adopt a variety of positions on the political spectrum. Paolo Cuttitta (2018b) has closely examined the positions of the ships operated by MOAS, MSF, SOS Méditerranée, and Sea-Watch. He offers a nuanced analysis of discussions of the "humanitarian border regime" (Andersson 2017; Walters 2009; Pallister-Wilkins 2015). The literature he reviews mostly attempts to show how policing, humanitarian action, and intelligence gathering all become entangled in a series of networks—including states, international organizations, and NGOs—within a system designed to both intercept and rescue migrants in distress at sea and highlights the ambivalences of the protection and control nexus. With his stricter focus on the politics of NGOs at sea, Cuttitta (2018b) suggests that they waver between depoliticizing and repoliticizing the situation in the Central Mediterranean, but does not unambiguously conclude that they enhance the SAR efforts (and control measures) of governmental actors. He also argues that in the current configuration, their actions contribute to raising awareness around what goes on in these waters and the condemnation of the systematic (and avoidable) loss of life at sea.

14. Field notes, September 2018.

15. See also Fassin 2008 on the politics of testifying in the context of Israel-Palestine.

16. Here I draw inspiration from De León (2015), who writes at length about how the US Department of Homeland Security makes strategic use of the hostile "nature" of the Sonoran desert to render the crossing of the US-Mexican border more perilous for migrants.

17. This was the word used to describe a potential distress case. The military-sounding terminology reflected use of radar equipment on board, which provided additional information if a case had been spotted by someone on watch using the binoculars. A "target" simply referred to the position of an object in the distance, on the screen.

18. According to the SAR Convention of 1979, section 2.3.3, any operational Rescue Coordination Center (RCC) should be available on a twenty-four-hour basis and be manned by trained staff with a working knowledge of English.

19. As outlined in IMO Resolution MSC.167 (78): "In a case where the RCC responsible for the area where the survivors are recovered cannot be contacted, [one should] attempt to contact another RCC."

20. Although "place of safety" has no stable definition in the various SAR conventions, the IMO Guidelines on the treatment of persons rescued at sea specifies some details: A place of safety is where "rescue operations are considered to terminate . . . where the survivors' safety of life is no longer threatened" (IMO Guidelines 2004, Resolution MSC.167(78), para. 6.12, also in 1979 SAR Convention, Annex 1.3.2). Another ship cannot be considered a place of safety, only a temporary accommodation before alternative arrangements are made (para. 6.13). The Guidelines stress that each rescue case is unique (para. 6.15), and that provisions should be made to "avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is [*sic*] a consideration in the case of asylum-seekers and refugees recovered at sea" (para. 6.17). The responsibility

to ensure that survivors are delivered to a place of safety lies with the coastal state that coordinates the SAR region in question. However, Moreno-Lax (2011, 196) notes, "the duty on the coastal state is limited to ensuring collaboration and does not include a commandment to allow for disembarkation onto its own territory; the amendments establish nonetheless an obligation of result," referencing the Annex of the 1979 SAR Convention, para. 3.1.9, and the International Convention for the Safety of Life at Sea (SOLAS), Ch. V, Regulation 33.

21. Original in Spanish; author's translation.

22. The stripping of the flag had ramifications for the operations of the *Aquarius* only after the ship was back on land. Faced with the impossibility of securing a new flag, the *Aquarius* was never able to set sail again as a search and rescue vessel. See note 12.

23. SAR Convention 4.7.2: "When multiple facilities are about to engage in search and rescue operations, and the rescue co-ordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene co-ordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene co-ordinator, taking into account the apparent capabilities of the on-scene co-ordinator and operational requirements."

24. Rigid-hulled inflatable boats (RHIBS) consist of a sturdy hull surrounded by inflatable tubes. Because they are fast and easy to maneuver, it is common for larger rescue ships to have some on deck and to lower them into the water during rescue operations. Once the people who were in danger at sea have been safely pulled on board the RHIBS, they are usually then transferred to the bigger ship, where they can be checked by medical personnel and cared for. These types of boats are also sometimes called "zodiacs" after a prominent manufacturer.

25. See note 23.

26. See UN Convention on the Law of the Sea (UNCLOS), Art. 98; SOLAS Reg. 33-1; SAR Convention Annex 2.1.10; and IMO Guidelines on the Treatment of Persons Rescued at Sea, Resolution MSC.167(78).

27. An INMARSAT-C is a system used on ships to communicate with other ships and land stations to signal distress cases and other issues of maritime safety. Al-Khoms is a Libyan coastal city to the east of Tripoli.

28. After two particularly long standoffs involving merchant vessels—the Maersk *Etienne* and the *Talia*—which had rescued migrants in the Libyan and Maltese SRRS, respectively, the European Shipowners Association, the International Chamber of Shipping, and the European Transport Workers Federation wrote an open letter to the European Commission demanding that measures be put in place that would enable prompt and predictable disembarkation. See "Open Letter from Shipping Industry Calls for Protection for Merchant Vessels," SRI, October 21, 2020, https://seafarersrights.org/open-letter-from-shipping-industry-calls-for-protection-for-merchant-vessels/.

29. Testimony gathered by Alarm Phone (2020a, 26).

30. Frontex, the European Border and Coast Guard agency, is present in the Central Mediterranean. It carries out border control, surveillance, and patrolling activities as

part of Operation Themis, which began in 2018, replacing Operation Triton (launched in 2014). See chapter 2 for more details.

31. As attested by the contract award notice that it published in October 2020, which specifies that Airbus GmbH and Elbit Systems Ltd have been contracted to provide military-grade drones for surveillance activities in the Mediterranean (Ahmed 2020). Contract award notice available here: https://ted.europa.eu/udl?uri=TED:NOTICE:473315–2020:TEXT:EN:HTML (accessed October 25, 2021). In early August 2021, the EU published another two contract award notices for aerial surveillance services for Frontex, amounting to 84.5 million euros. See https://ted.europa.eu/udl?uri=TED:NOTICE:395424–2021:TEXT:EN:HTML and https://ted.europa.eu/udl?uri=TED:NOTICE:395423–2021:TEXT:EN:HTML (both accessed October 25, 2021).

32. Civil rescue organizations have recognized the need for speedy intervention in order to outpace the LYCG. Perhaps the most outspoken avowal to date is that of Pia Klemp, the captain of one of the newer additions to the civil rescue fleet in the Mediterranean, the *Louise Michel*. In August 2020, referring to the *Louise Michel*'s top speed of 27 knots, she observed: "Hopefully [it will enable us] to outrun the so-called Libyan coastguard before they get to boats with refugees and migrants and pull them back to the detention camps in Libya." (quoted in Tondo and Stierl 2020).

33. This is obviously a nod to David Harvey's (2001, 24) "spatial fix," which describes "capitalism's insatiable drive to resolve its inner crisis" by "geographical expansion and geographical restructuring."

34. See Seyla Benhabib's (2004) seminal book *The Rights of Others*.

35. For the creation of distance through externalization, see Moreno-Lax and Lemberg-Pedersen 2019.

36. Hirsi Jamaa and others v. Italy, ECtHR judgment of February 23, 2012 [Grand Chamber], no 39473/98. With the help of several human rights organizations, 17 survivors nevertheless tried to take the Italian state to the European Court of Human Rights (ECtHR) for coordinating a fatal incident in November 2017 when the Libyan Coast Guard interfered with the rescue efforts of the NGO Sea-Watch and subsequently brought back to Libya some 110 survivors of a sinking boat. During the incident, 20 people died. The case, which hinged on the question of the extraterritorial application of the ECHR, was declared inadmissible in June 2025. In the *Hirsi* decision, the court held that the applicants had been "under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities" (para. 81). In S.S. and Others v. Italy, the plaintiffs argued that the equipping and training of the Libyan Coast Guard by the Italian state constituted such effective control, thereby enabling Italy to effectively "contactlessly" violate the right to life (Art. 3) and the prohibition of collective expulsions (Art. 4, Protocol 4) (see Baumgärtel 2018). I discuss this case in more detail in chapter 6.

37. For a full discussion of the various ways that the exception—that is the sovereign decision to suspend the law—can be legalized in and through the Western legal tradition, see Humphreys 2006.

38. See note 18.

39. Unfortunately, my own requests to interview the LYCG went unanswered.

40. Some were eventually returned in 2017 (Heller and Pezzani 2018).

41. EUTF, "Action Document for project 'Support to integrated Border and migration management in Libya—Second phase' (T05-EUTF-NOA-LY-07)," accessed March 7, 2025, https://trust-fund-for-africa.europa.eu/document/download/6f72cd67-ff9f-482a-a346–171427a8a966_en?filename=t05-eutf-noa-ly-07.pdf.

42. For a notable example of the LYCG engaging in aggressive behavior against NGOs, see the case reconstruction of the altercation between Sea-Watch and the Libyan Coast Guard from November 6, 2017 in Heller and Pezzani 2018.

43. For more recent examples, see Delteil 2021 and Cuttitta 2018a.

2. COLONIAL LEGACIES AND THE REGULATION OF MOBILITY BETWEEN LIBYA AND EUROPE

1. As Bhandar and Toscano (2025) also note, the relation between sovereign power as (supreme) executive power and *dominium* or (absolute) ownership has "shaped the political imaginaries of European political philosophers from Hobbes to Locke." It has laid the basis for the modern colonial order. Succintly put: "Sovereignty as *imperium* became the basis for the colonial acquisition of Indigenous territory and the making of land into property (*dominium*)."

2. On the EU's diplomatic relations with third countries on the issue of migration control, see Guild 2022. In chapter 4, I detail the specificities of the Libyan "dealification" of migration by outlining the processes whereby, through the brokering of such diplomatic agreements, the bodies of migrants themselves have been turned into a form of political and monetary currency.

3. On the 1998 "joint communication" between Italian minister for foreign affairs Lamberto Dini and the Libyan secretary for foreign liaison and international cooperation, Omar Mustafa Muntasser, see La Repubblica 1998.

4. Mamdani (1996b) speaks of legal dualism to describe the way that "modern law" governed relations between "non-natives" and "natives," whereas relations among "natives" were regulated by customary law (146–47; see also Mamdani 1996a).

5. In the 1980s, with the establishment of the Schengen Agreement (1985), a supranational layer of control was introduced between Schengen member states, which had previously issued and checked passports independently. They began developing intergovernmental agreements on visas, creating common databases and manuals, and strengthening external border controls. Since the Amsterdam Treaty, the EU Council determines which nationals need a visa to enter the EU and which countries are on a "blacklist," meaning that their citizens must obtain a visa abroad before even reaching an EU border. The introduction of visas and stricter border controls for certain non-EU nationals ultimately made access to the EU more difficult. For a comprehensive overview of the development of Schengen visa policy, see Bigo and Guild 2005. For a discussion on the racial dimensions of the "blacklist", see M'charek et al. 2014b.

6. For a historical overview of the European Commission's external dimension before the approval of the Single European Act, see Garavini 2010.

7. The 1955 Petroleum Law meant that by the end of 1959, different companies of various sizes had drilled 122 wells (Vandewalle 2012, 58). The Italian energy company ENI began its first operations in the country in 1959 (Distretti 2021). The company

entered into a joint venture agreement with the Libyan state-owned National Oil Corporation in 1972 (Brambilla 2014, 236).

8. In the early years of Libyan independence, the country suffered from a lack of trained labor and an overwhelming majority of the population (81%) was illiterate (Tsourapas 2017, 2372). For a table showing the sectoral distribution of foreign labor in Libya between 1970 and 1990, see Tsourapas 2017, 2375. Regarding deportations, Bensaâd (2012) lists mass expulsions that took place in 1979 and 1981 (sub-Saharan Africans), 1985 (expulsion of 80,000 labor migrants, mostly Egyptians and Tunisians), 1995 (expulsion of 300,000 mostly Egyptian, Sudanese and Palestinian migrants), 2000 (around 30,000 Sub-Saharan Africans).

9. For a detailed rendition of both Egyptian white-collar and unskilled migration to Libya under Nasser between 1952 and 1970, see Tsourapas 2015 and 2016. Egyptian migrant laborers, especially teachers, were often expelled due to concerns around their role in disseminating Nasserist ideas.

10. The Libyan Arab Foreign Investment Company (Lafico) became Gaddafi's principal foreign financing instrument, especially in making African investments (Vallée 2012, 159).

11. The Amsterdam Treaty came into force in 1999 and gives the EU legal competency on migration matters. At this point, European (im)migration policy shifted from being a national issue to a communitarian EU issue (Foblets 2009, 193).

12. The European Security and Defence Policy was adopted in 1999 (the Treaty of Lisbon later introduced the name it still goes by today, the Common Security and Defence Policy).

13. Lifting the arms embargo would enable Libya, in turn, to import "(semi-)military equipment officially destined for improving border controls" (Haas 2008, 1310). In October 2003, a ship headed for Libya and carrying centrifuge enrichment–related equipment was seized by European authorities thanks to American intelligence in a port of the northern Mediterranean (Arms Control Association 2018; Nuclear Threat Initiative 2015; International Atomic Energy Agency 2004). This event is said to have accelerated Libya's decision to renounce weapons of mass destruction (WMD) and adhere to nonproliferation norms (Arms Control Association 2018). Gaddafi made the announcement to the world in December 2003 and subsequently opened the country to international nuclear inspectors (International Atomic Energy Agency 2004). The abandonment of WMD certainly played an important role in normalizing relations between Europe and Libya and helped with the lifting of sanctions (Lutterbeck 2009).

14. The Bilateral Agreement on Counterterrorism, Organized Crime, and Illegal Immigration, ratified by the Italian Parliament on December 22, 2002 (Paoletti 2010a, 58).

15. Territorialization that took place through a relational, not unidirectional, causal process made up of different moments of (sometimes violent) encounters between local elites and anticolonial resistance (Wyrtzen 2017).

16. Ryan (2018, 2) actually defines four periods in the relationship between the Italian colonial administration and Sanusi elites. One from 1904 to 1912, when the Italians believed that Sanusiyya elites, who were against Ottoman rule, would offer little

resistance to Italian conquest. A second phase, from 1912 to 1916, in which the Italian imperialists were met with fierce resistance by the Sanusi and gave up on expanding further inward into Cyrenaica. A third phase, from 1916 to 1923, which was when the *politica dei capi* was developed. And then, the period from 1923 to 1931 saw the end of the era of accords and featured a violent military campaign against resistance forces.

17. The *politica dei capi* bears certain resemblances to contemporary deals made by Italy with local leaders in the South of Libya for controlling the southern borders (see Fubini 2017; and Longo and Stabile 2017).

18. Transcript of the meeting between Italian minister for foreign affairs Lamberto Dini and Libyan secretary for external relations and international cooperation, Mustafa El-Muntasser: Associazione degli italiani di Libia, 2014, "Processo verbale (Roma, 4 Iuglio 1998)," accessed December 1, 2022, https://www.airl.it/2014/06/25/processo-verbale-roma-4-luglio-1998/.

19. On how colonial governance was reconfigured after World War II into a new politics of development centered on technical assistance, see Mitchell 2009.

20. For details and legal commentary concerning Operation Nautilus, see Moreno-Lax 2011, 184–85.

21. The surveillance of the EU's external sea borders is specifically regulated in EU Regulation No. 656/2014 (Sea Border Regulation). For a detailed discussion of the launch of Operation Triton, its involvement in SAR activities, and the regulation of Frontex joint operations more generally, see Bevilacqua 2017, 168–69.

22. For Cuttitta (2018a; 2018b), the harassment of NGOs by Italy from 2016 onward culminated in the confiscation of the NGO ship *Open Arms* in March 2018. This was the first time that the Italian MRCC had formally transferred SAR coordination to Libyan authorities, and investigations were opened against the ship for acting against the code of conduct imposed on SAR NGOs in the summer of 2017. It was also the first time that investigations were opened against an NGO for not disembarking people in Malta, as requested by the Italian MRCC. Cuttitta considers that these escalations spell the "end of the humanitarian turn." He argues that Italy has turned toward managing the Central Mediterranean via exclusion, treating NGOs as adversaries to be kept out and using the LYCG to carry out pullbacks of migrants to Libya on Italy's behalf. Although I agree with his analysis that Italy, backed by other EU member states and the EU itself, has made a strong effort to close the sea to NGO vessels, I consider that the period of humanitarianism is still ongoing because these criminalization and pressuring measures have not managed to expel the presence of humanitarian actors.

23. In terms of the use of law to control NGO activities, the 2017 code of conduct, imposed on SAR NGOs by the Italian government, is an interesting example. It was criticized for being unclear in legal terms, for unilaterally imposing obligations only on one side of the parties, and for potentially having a negative impact on SAR NGOs' ability to carry out rescue operations in compliance with international maritime law (Papanicolopulu 2017). See also "Code of Conduct for NGOs Undertaking Activities in Migrants' Rescue Operations at Sea," *Avvenire* (2017), accessed October 25, 2021, https://www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf.

24. The minutes of the EU Emergency Trust Fund for Africa's operational committee meeting show that the main contributors of the fund voted to approve the second phase of the project "To5-EUTF-NOA: Support to Integrated Border and Migration Management in Libya," but several country representatives raised concerns about the project's impact on human rights. The UK specifically mentioned news reports about the mistreatment of migrants and refugees in Libyan detention centers. In chapter 5, I examine the EU's management of risk in relation to the support made to Libyan authorities for the purpose of migration control.

25. The ICMPD is an intergovernmental organization with its headquarters in Vienna, Austria. It is a leading consultancy institution and service provider for European states on the issue of migration policy and governance.

26. Many critical studies of mainstream developmental economics (promoted by institutions such as the World Bank) see this promotion of "rule-of-law" ideology as functioning under a broader economic logic. A (legally) stable environment in which private property and a secure market for contractual relations can emerge is seen to encourage private investment.

27. See National Team for Border Management and Security and ICMPD 2020.

28. I explore the relationship between interceptions by the LYCG at sea and detention in more detail in chapter 4.

29. For an English translation of the Memorandum of Understanding see "Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic," Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe (October 2017), http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf. The original version is on the Italian government's website: "Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana," Governo Italiano (2017), accessed October 25, 2021, http://www.governo.it/sites/governo.it/files/Libia.pdf.

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

31. For a critical view of the UN's Responsibility to Protect doctrine, see Asad 2015.

3. COAST GUARDS AND THE LEGAL ARCHITECTURE OF INTERDICTION

1. In this chapter I use the terms *Libyan SAR zone* and *Libyan SRR* interchangeably.

2. According to Austin (1962), performative utterances (or practices) bring into being that of which they speak. Butler (2010, 151) adds that "this is the operative assumption in law or when authority has been delegated or assumed in such a way that a given pronouncement of a state of affairs brings that state of affairs into being."

3. Various legal scholars have argued that states focus on the law enforcement aspects of the law of the sea and on cooperation agreements that promote border securitization while ignoring their obligations under human rights and refugee protection regimes. See, in particular, Ghezelbash et al. 2018; Moreno-Lax 2011; and Klein 2014.

4. This strategy has a history in EU law. In his book *Fallout: Nuclear Diplomacy in an Age of Global Fracture* (2014b), Grégoire Mallard shows how the Euro-federalists under Jean Monnet's leadership wrote and interpreted nuclear nonproliferation rules in an opaque fashion, strategically overlapping legal orders enabling them to evade the more stringent applications of international law linked to nonproliferation.

5. In legal pluralism, this is referred to as "forum shopping" (K. von Benda-Beckmann 1981).

6. Essentially because of a dispute over where people rescued at sea should be disembarked. Malta favors the "closest safe haven" rule for disembarkation, rather than the state responsible for the SRR where the people were rescued (Moreno-Lax 2011, 197).

7. The UNHCR, the IOM and several other leading international organizations have issued position papers stating that Libya is not safe (UNHCR 2020a; IOM 2019b). The two organizations are, however, present at disembarkation points in different ports in Libya. I explore the significance of this in chapter 4.

8. SAR Convention, Annex 1.3.2.

9. The IMO Guidelines on the Treatment of Persons Rescued at Sea specify that survivors should not be disembarked at a place "where their safety would be further jeopardized" (Resolution MSC.167(78), May 20, 2004, para. 5.6).

10. Of course, in full conformity with international law, the disembarkation should be at a place of safety, a concept that, as noted, *should* be interpreted in accordance with refugee law provisions. However, I am not outlining here the proper normative interpretation of these provisions. Rather, I point out that *despite* the existence of this framework, which prohibits the disembarkation of people in a place where their lives and safety are threatened, empirical observation revealed that the enactment of the Libyan SRR enabled a fragmentary reading of these provisions and attributed authority to specific officials in enacting this reading.

11. According to the IMO Guidelines, the responsibility for arranging a place of safety for survivors to disembark falls "primarily on the Government responsible for that region [the SRR]" (Resolution MSC.167(78), May 20, 2004, para. 6.7).

12. Global legal pluralism is not a universal theory: It doesn't offer one definition of law that operates on a global scale (Schiff Berman 2020). In the case of the Central Mediterranean, the overlapping legal frameworks may be regional (as in the bilateral treaties between Italy and Libya) or international (as with UNCLOS). In terms of region formation, political geographers have spoken about an emergent geography of "non-accession integration" with regard to the EU neighborhood and border externalization processes (Casas-Cortes et al. 2013). Ben-Yehoyada (2014, 2017) has, from a more anthropological perspective, looked closely at the role of kinship and segmentation across the Mediterranean to study the transnational politics of region formation.

13. There is growing research showing that this "ungovernable" characteristic of the sea has been instrumentalized to argue that the death (of migrants) at sea is "quasi-natural" (Stierl 2016, 565).

14. The EU Council, Commission, and Border and Coast Guard Agency (Frontex) have repeatedly stated their commitment to ensuring better control of the EU external borders in order to stem irregular flows. This commitment has resulted in a steady drop in irregular border crossings since the "crisis" years of 2015–16. Member states reported 141,846 irregular arrivals in 2019, compared to 149,117 in 2018, which contrast starkly with the 1.8 million arrivals in 2015 (Frontex 2020).

15. In addition, Malta did not ratify the 2004 amendments of the SAR Convention and therefore is not bound by them. Malta therefore still favors the principle of the closest safe harbor for disembarking rescued people and not the principle according to which they should be disembarked in the state that was responsible for the SAR region where they were rescued. For legal commentary, see Moreno-Lax 2011, 197.

16. For the full text of the agreement, see European Commission and Guardia Costiera, "Grant Agreement," 2017, https://www.guardiacostiera.gov.it/stampa/Documents/progetti-finanziati/Grant%20Agreement%200051%20signed.pdf.

17. "The personnel on board the Italian military vessel ([part of] operation NAURAS), stationed in Tripoli, informed Rome that a patrol boat belonging to the Libyan coast guard would shortly be leaving its moorings to head for the target and specified that the aforementioned coast guard would take responsibility for the rescue operation." Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, "Decreto di convalida e di sequestro preventivo" (Validation and preventive seizure decree), March 17, 2018, p. 3 https://www.statewatch.org/media/documents/news/2018/apr/it-open-arms-sequestration-judicial-order-tribunale-catania.pdf (author's translation from the Italian).

18. Copy of the agreement on file with the author.

19. Letter on file with the author.

20. Of course, "concern" must be here seen in a very limited sense since other "communities" that could be considered to have an interest in how this regulation developed, such as the civil rescue community, had no voice in the process. This was strictly a state-led affair.

21. As of early 2025, negotiations were still ongoing. More than eight hundred scientists, some companies, and a number of states have also called for a moratorium on deep-sea mining, mostly advancing arguments such as a lack of knowledge about environmental impacts to substantiate their claim (Feichtner and Ginzky, 2024).

22. Michael Zürn (2018) develops the notion of "reflexive authority" to revisit the concept of authority under conditions of global governance. Reflexive authorities "depend on the epistemic constructions that identify the limits of subordinates and the realm of superiority of an authority" (46). Because command and deference are not at the heart of this theory of authority, the social processes in which "superior knowledge" or "an impartial perspective" (47) is established become of utmost importance. Zürn then speaks of the objectivization and institutionalization of authority under global governance, which are necessary for operational hierarchy to be imposed.

23. Tomer Broude (2013, 280) has since concluded that the issue of fragmentation in international law is no longer a subject of great theoretical debate. Fragmentation, he claims, has been normalized since it is seen as "politically inevitable" and "legally manageable."

4. OFFSHORE CONTAINMENT INDUSTRIES AT THE MARGINS OF EUROPE

1. For detailed insight into the struggles of migrants against being kept in "bunkers" in Geneva between 2015 and 2016, see Rey and Del Biaggio 2017.

2. After several disastrous shipwrecks off the coast of Lampedusa in October 2013, Italy launched Mare Nostrum, "by far the largest 'humanitarian and security' operation in the Mediterranean" (Heller and Pezzani 2016). This mission, which had search and rescue at its heart, was soon replaced by Frontex's Operation Triton, whose priority was border enforcement (with a patrol zone significantly reduced in comparison to Mare Nostrum's) and EUNAVFOR Med's Operation Sophia, whose stated aim was to fight human smugglers in the name of protecting migrants (Garelli and Tazzioli 2018).

3. Alarm Phone is a hotline for migrants in distress in the Mediterranean. It is operated by volunteer activists and alerts relevant authorities to cases of distress, reminding them of their duty to rescue to avoid cases of non-assistance. For a detailed analysis of the Alarm Phone project, see Stierl 2015.

4. A couple of months later, Alarm Phone published a press release indicating that this particular boat had probably been shipwrecked. Washed-up human remains retrieved on the shores of Dafniya some days after the boat went missing matched information provided by relatives who had never heard from their loved ones again. The press release also confirmed that, on that particular date, three migrant boats had gone to sea from Libya, but only two had been rescued (one by the Libyans, the other by the Armed Forces of Malta). All of this evidence pointed to an (invisible) shipwreck having occurred (Alarm Phone 2020b).

5. The difficulty for Europeans and international staff to obtain visas in Libya has been confirmed again in communications of the EEAS reporting on EU Border Assistance Mission's activities in Libya in 2024 ("Interim Strategic Assessment (ISA) EUBAM Libya 2024," document on file with author).

6. "Fezzan" is also the name of one of the LYCG's patrol boats, whose official name is *Fezzan* P658. It is one of the Corrubia-class vessels that was donated to Libya by Italy.

7. The alleged corruption of the LYCG has been widely reported by various media outlets. See, for example, Nielsen 2021.

8. Sally Hayden (2019), a freelance investigative journalist from Ireland, for example, has documented the plight of detainees using social media and messaging services while in detention. Most notably, she gathered testimonies from the detention centers of Zintan and Tajoura.

9. Sometimes intercepted migrants may manage to escape, either while disembarking or during transfer to a detention facility. It has also been reported that upon disembarkation, migrants are separated by nationality and then "triaged" according to how much money can be extracted from them (this is also reportedly linked to the

connections the LYCG has with different smugglers, who often work with a specific national community of migrants) (Nielsen 2021).

10. Here "microtechnologies" is a reference to Foucault's (1980, 39) attention to "capillary" forms of power that reach into, control, and discipline the body. The production of detainable bodies relates closely, however, to the "macro" geopolitical and bureaucratic power of states to engineer the projects and policies that themselves partly enable these microtechnologies to exist in the first place.

11. Necropolitics as theorized by Achille Mbembe (2003) is the sovereign's capacity to define who is disposable and who is not: in other words, who can be left to die. There is an important racial component attached to the notion of necropolitics. The Foucauldian notion of biopolitics, on the other hand, designates a sovereign mode of power that exercises control not just over territory but over life itself, through deterritorialized and productive techniques. Biopolitics is often used in critical migration and border studies to show how the various technologies of control and containment are used to manage migrants' lives and movements.

12. See, in particular, Julia Morris's (2023) influential work on the extractive logics of the offshore asylum arrangement and the phosphate industry on the island of Nauru.

13. Heath Cabot (2019) has called the proliferation of studies on the European refugee regime a "business."

14. The Geneva Centre for Security Sector Governance (DCAF) has assembled a repository of Libyan laws relating to security that it has also translated from the Arabic, which is available here: "DCAF in Libya: Legal Database for the Security Sector in Libya," DCAF, accessed August 16, 2025, https://security-legislation.ly/. According to the Global Detention Project (2015, 5), when immigration detention does not take place as part of a criminal process, as in Libya, it occurs in a "legal vacuum" because there seem to be no unambiguous legal provisions providing for administrative immigration detention. Hence, immigration detention generally takes place without judicial order and can thus be considered "arbitrary" (Global Detention Project, 2015, 5).

15. The interview I conducted with the parliamentarian came a few days after the UNHCR had issued a press release stating that it was halting its operations at the Gathering and Departure Facility in Tripoli amid security concerns (UNHCR 2020b).

16. And so, not unexpectedly, have estimates of people detained in them. Cuttitta (2021) reports that "people held in migrant detention centres went down from 8,672 in July 2018 to 5,695 in June 2019. In January 2020 it was 'more than 3,000,' and 'roughly 1,500' or 'more than 1,400' in April 2020. In September of the same year, it increased to 2,467, and was estimated at 'some 2,000' or '2,000–3,000' at the end of the year." His figures are based on reports from Amnesty International (2020), IOM (2019a, 2019b), and the UNHCR (2016). In June 2021, Amnesty International (2021) reported that the number of individuals detained in DCIM centers had increased again over 2020, to 6,176. Cuttitta (2021) again cautions that the reported decrease in the number of detention centers and people detained between June 2016 and January 2020 may be explained by various factors, including the possibility that people were simply shifted to unofficial detention centers run by militias, which were less expensive to run.

17. Council of the European Union, General Secretariat, "EU Stakeholder Mapping on Migration in Libya," October 27, 2023, https://migration-control.info/documents/149/WK-14008-2023.pdf.

18. For an overview of detention centers in Libya and their status (in operation or not), see the map in Creta 2019, dated October 7, 2019. See also: "Libya: Detention Centres," Global Detention Project, accessed March 14, 2025, https://www.globaldetentionproject.org/countries/africa/libya#detention-centres; and Appendix A to Annex 24, "Violations of International Human Rights Law Committed Against Migrations in Detention Centres," in UN Security Council Panel of Experts on Libya, 2021.

19. See chapter 2 for more details on the context in which the MoU was signed and its significance regarding the empowerment of the LYCG by Italy.

20. Sentence reference number: Consiglio di Stato sentenza n. 4569/2020.

21. Author's translation from the Italian.

22. See chapter 5.

23. The document was obtained by the watchdog organization Statewatch.

24. For a critique of IOM's AVR program and the so-called "voluntary" returns of rejected asylum seekers from Switzerland to Tunisia, see Loher 2020b.

25. This fluidity was also reported in a number of news outlets and human rights reports. See, for example, Agresta et al. 2020; Creta 2019; Michael et al. 2019.

26. Sometimes the opposite was also true though, and all elements of value (including jewelry, money, phones) were confiscated from migrants on arrival at a DC.

27. The presence of IOs at disembarkation points for needs assessments, the provision of basic humanitarian support, and registration is funded by the EUTF project "Integrated Approach to Protection and Emergency Assistance to Vulnerable and Stranded Migrants in Libya" (Action Fiche), accessed October 25, 2021, https://ec.europa.eu/trustfundforafrica/sites/default/files/to5-eutf-noa-ly-06modified.pdf. See chapter 5 for more details.

28. A wide variety of types of organizations were involved in one way or another in the registration or assistance of migrants detained in Libya; international organizations (such as UN agencies like the IOM and the UNHCR), intergovernmental organizations (such as the ICMPD), and international NGOs (such as MSF and Italian NGOs like CEFA). The INGOs in Libya formed a forum in 2016 to "efficiently address key issues of common interest and improve the coherence and effectiveness of humanitarian relief." See "Libya INGO Forum," Reliefweb, accessed October 25, 2021, https://reliefweb.int/organization/libya-ingo-forum.

29. Author's translation from the Italian.

30. Zawiya is a coastal city in the West of Libya in which a detention center for migrants operates.

31. More specific figures and fluctuations over time can be found on Libya's profile page of the IOM's Displacement Tracking Matrix, accessed October 25, 2021, https://displacement.iom.int/libya. The IOM started compiling demographic data in 2016, when it estimated that there were between 700,000 and 1 million migrants present in Libya. By December 2020, the number had fallen to 574,146 migrants. The Global Detention Project on the other hand, lists 818,216 international migrants for 2019. Finally,

the UNHCR's 2020 Humanitarian Needs Overview estimated that 900,000 people needed humanitarian assistance.

32. Of course, taking into account the above description of how difficult access to detention centers is as well as the lack of a registration system, this number must not be taken at face value. Moreover, detainee numbers usually only account for those held in DCIM-controlled centers and not for those controlled by militias. It can be assumed that these numbers are therefore higher or, at least, can fluctuate greatly.

33. On file with the author.

34. In 2018, the UN Office for the Coordination of Humanitarian Affairs estimated the number of people in need of life-saving humanitarian assistance and protection across Libya (OCHA 2018).

35. The event, entitled "Libia, confine d'Europa: Tra controllo delle migrazioni e aiuti umanitari e allo sviluppo," was broadcast live on Facebook on April 22, 2021.

36. The AICS defines "non-essential" as activities that do not target the meeting of needs of detainees (e.g., provision of food, clothing, medicine) and "durable" activities as those that aim at "bettering" detention facilities or the skills of those who operate them (e.g., construction of toilets, rehabilitation of the water system, creation of recreational spaces, staff training) (Agresta et al. 2020, 31–32).

37. This is reminiscent of Fassin's (2010) analysis of an infamous episode of MSF operations in March 2002 at the beginning of the US attack on Iraq. After three members of MSF's team were kidnapped, the organization abruptly decided to stop its operations in the country. Fassin uses the episode to discuss the "inequality of lives" and "hierarchies of humanity" that humanitarianism is founded on. In the Libyan context, halting medical visits in detention centers is both a principled protest flagging the inability for MSF staff members to adequately assist sick and injured detainees (either because of access issues or because the injuries were carried out by the guards themselves) *and* a mark of the asymmetrical relation between the lives of humanitarians and the lives of those they intervene in. The former can choose to stop intervening when it becomes too dangerous for their staff, while the latter obviously remain encamped.

38. On smuggling as a service industry, see Bilger et al. 2006.

5. ASSEMBLING DELEGATED CONTROL

1. Throughout this chapter I refer to the European Union Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa (which is its full title) as the "EUTF" or "Fund." It should be noted that other EU Trust Funds have been established in past years, including the Bêkou Trust Fund (for the Central African Republic) and the Madad Trust Fund (established to respond to the Syrian crisis). However here, EUTF always refers to the Trust Fund for Africa, established in 2015.

2. Marijnen (2017) employs a similar methodology and analytical angle to approach the EC's "green militarization" of development aid and produces a critique of the support for armed conservation in the Democratic Republic of Congo's Virunga National Park.

3. Several authors who research contemporary state practices where access issues are commonplace have pointed out that the way access is granted can itself have analytical value. See, for example, Lindberg and Borrelli 2019; Belcher and Martin 2019.

4. Resulting in some 1,480 deaths. See "Migration Within the Mediterranean," Missing Migrants Project, accessed October 25, 2021, https://missingmigrants.iom.int/region/mediterranean?migrant_route.

5. For examples of such media coverage, see Kingsley et al. 2015; and Rice-Oxley and Walker 2015.

6. For more details on the Fund's financial resources (including the breakdown of contributions from member states) see: "State of Play and Financial resources," Emergency Trust Fund for Africa, updated May 5, 2022, https://ec.europa.eu/trustfundforafrica/content/trust-fund-financials_en.

7. Namely the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund for external borders and visas, and the Global Public Goods and Challenges program.

8. For details, see Emergency Trust Fund for Africa, "Strategy," accessed March 14, 2025, https://ec.europa.eu/trustfundforafrica/content/strategy_en.

9. As of the January 16, 2021, DG DEVCO has been renamed DG International Partnerships (European Commission 2021). Since early 2025, DG NEAR has been split into DG MENA (Middle East, North Africa and the Gulf) and DG ENEST (Enlargement and the Eastern Neighbourhood).

10. Former colonial relations often play a role in the selection of ambassadors and high officials chosen to represent the EU in external action. See Kuus 2014; and Formuszewicz and Kumoch 2010. I observed that many of the EU officials working on issues pertaining to Libya, whether from the EEAS or DG NEAR, were Italian nationals.

11. For a detailed overview of the various policies and political decisions involved in the enhancement of the LYCG's capacities by the EU and Italy since 2014, see Heller and Pezzani's definitive report *Mare Clausum: Italy and the EU's undeclared operation to stem migration across the Mediterranean* (2018). Although the EUTF was established in 2015, support for the LYCG began only in 2017.

12. On file with author.

13. See chapter 2.

14. See EEAS "Strategic Review on EUBAM Libya, EUNAVFOR MED Op Sophia and EU Liaison and Planning Cell," 2017, accessed October 25, 2021, https://www.statewatch.org/media/documents/news/2017/jun/eu-eeas-strategic-review-libya-9202–17.pdf.

15. Ten classe 500 and two 27-metre classe Corrubia patrol vessels (Senato della Republicca and Camera dei deputati 2019, 44).

16. In 2019, when I interviewed a high-ranking official at EUBAM's offices in Tunis, he explained to me that the EUBAM teams had taken on tasks relating to training of GACS, while provision of support to the LYCG was coordinated via the EUTF. In October 2019, a Libyan motorboat approached the NGO ship *Alan Kurdi*, which was carrying out a rescue in international waters, at high speed and fired shots in the air. It later emerged that the speedboat was a GACS boat; the GACS's mandate sometimes overlaps with that of the LYCG, which can create clashes between the two entities (Monroy 2019).

17. The Cotonou Agreement was signed in June 2000 and defined the main principles of aid, trade, and development relations between the EU and African, Caribbean, and Pacific states. It came to an end in 2021 after the end of the agreed-on twenty-year period and will be replaced by a new EU Organization of African, Caribbean, and Pacific States (OACPS) agreement. For a critical analysis of the Cotonou Agreement, see Hurt 2003.

18. 2015 Constitutive Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa and Its Internal Rules.

19. As noted previously, the bulk of the EUTF's money comes from the European Development Fund (EDF) (to which member states contribute), but other important sources include the Development Cooperation Instrument (DCI), European Neighborhood Instrument (ENI), Asylum, Migration, and Integration Fund (AMIF), DG ECHO, and direct contributions from member states themselves. See the breakdown in "Our Mission: State of Play and Financial Resources," Emergency Trust Fund for Africa, accessed December 18, 2023, https://trust-fund-for-africa.europa.eu/our-mission/state-play-and-financial-resources_en.

20. The EDF is the oldest intergovernmental fund created by EU states in the area of development policy. Contributions to it mostly come from EU countries' Official Development Assistance, but the Fund is managed by the EU Commission. There have been long-standing debates about the Fund and calls to include it in the EU budget. In fact, the Commission agreed to integrate the EDF into the EU budget in the Multiannual Financial Framework for 2021–2027 (Parry and Sapala 2018), which means it is now subject to the same financial regulations as other EU funding programs.

21. "DEC—Managing Mixed Migration Flows in Libya Through Expanding Protection Space and Supporting Local Socio-Economic Development," Akvorsr, accessed October 25, 2021, https://eutf.akvoapp.org/en/project/6263/#report.

22. "First Voluntary Return Charter in Five Months Assists Over 100 Ghanaian Migrants," IOM, August 21, 2020, https://www.iom.int/news/first-iom-libya-voluntary-return-charter-five-months-assists-over-100-ghanaian-migrants.

23. The Action Fiche can be found on the EUTF website: "Recovery, Stability and Socio-Economic Development in Libya," EUTF, accessed December 18, 2023, https://trust-fund-for-africa.europa.eu/our-programmes/recovery-stability-and-socio-economic-development-libya_en.

24. Li (2007a) distinguishes six types of practice: 1) forging alignments, (2) rendering technical, (3) authorizing knowledge, (4) managing failures and contradictions, (5) anti-politics, (6) reassembling.

25. The first phase of the project was adopted on July 27, 2017. The Action Fiche can be found on the EUTF website. "Support to Integrated Border and Migration Management in Libya—First Phase" Emergency Trust Fund for Africa, accessed December 18, 2023, https://trust-fund-for-africa.europa.eu/our-programmes/support-integrated-border-and-migration-management-libya-first-phase_en. The second phase was adopted on December 13, 2018. The Action Fiche can be found on the EUTF website: "Support to Integrated Border and Migration Management in Libya—Second Phase,"

Emergency Trust Fund for Africa, accessed December 18, 2023, https://trust-fund-for-africa.europa.eu/our-programmes/support-integrated-border-and-migration-management-libya-second-phase_en.

26. As quoted from the Action Fiche of the planned activities of the project: "Activity 3: Assistance to the Libyan concerned Authorities with a view to enabling them to declare a Libyan SAR Region (as per assessment results). Detailed design for the setup of a full-fledged MRCC in Tripoli (or nearby), associated with proper communication facilities."

27. Bigliani is one the categories of the Guardia di Finanza in Italy. They also have Corrubia- and Buratti-class vessels.

28. This duality was an issue in terms of reporting what counted within the fund as spending on development. In 2017, Oxfam reported that only 63 percent of the EUTF had been spent on development cooperation (Kervyn and Shilhav 2017). It was unclear whether the projects in the NoA window even met the OECD criteria on development spending (Kipp 2018, 24). In 2018, the OECD's Development Assistance Committee approved a new reporting code for "facilitation of orderly, safe, regular and responsible migration and mobility," but as late as 2020, Oxfam (2020, 29) communicated that the EU had not yet started to report using the OECD code.

29. For example, the migration-development nexus of the EUTF and the extent to which it was linked to other policy objectives (such as curbing irregular migration) was repeatedly raised in parliaments across contributing states (Lauwers et al. 2021). The European Parliament (2021) also adopted a resolution in May 2021, calling on the EC to conduct a "comprehensive evaluation" of the human rights implications of the EU's external migration policy. The text specifically mentioned the lack of transparency of the EUTF and lack of parliamentary oversight.

30. Fieldnotes, September 2019.

31. See, for example, Amnesty International 2020; Human Rights Watch 2019.

32. Philippe Frowd (2018) has similarly shown how disparate practices and rationales of care and control are brought together in the IOM's "developmental borderwork."

33. For the letter, see Michou to Executive Director (Fabrice Leggeri), March 8, 2019, Statewatch, accessed August 17, 2025, https://www.statewatch.org/media/documents/news/2019/jun/eu-letter-from-frontex-director-ares-2019)1362751%20Rev.pdf. The word *Joint* is in the name because Operation Themis supported the Italian authorities with border control, surveillance, and SAR in the Central Mediterranean. It was launched in February 2018 after Operation Triton was brought to a close. As already mentioned in chapter 2, one of the main features of Themis was that it reduced its operational area to the Italian SAR zone, while Triton had covered both the Italian and Maltese SARS (Carrera and Cortinovis 2019, 7).

34. European Parliament, October 3, 2019, Hearing: Search and Rescue in the Mediterranean.

35. Question for Oral Answer O-000025/2019 to the Commission," European Parliament, 2019. Brussels. https://www.europarl.europa.eu/cmsdata/187320/sar-oral-question-original.pdf.

36. She was subsequently arrested. See Tondo 2019.

37. Emergency Trust Fund for Africa, "Support to Integrated Border and Migration Management in Libya—Second Phase."

38. That the phenomenon of irregular migration to Europe needs "securing" is a basic premise of the EU's external approach to migration. Bigo (2002, 65) defines the securitization of migration as "a transversal political technology, used as a mode of governmentality by diverse institutions to play with the unease, or to encourage it if it does yet exist, so as to affirm their [security professionals and politicians] role as providers of protection and security and to mask some of their failures."

39. OpCom meetings of the NoA window were chaired by DG NEAR, as distinguished from the other two regional windows, which were managed by DG DEVCO.

40. European Commission, accessed August 17, 2025, https://eutf.akvoapp.org/.

41. Emergency Trust Fund for Africa, accessed October 25, 2021, https://ec.europa.eu/trustfundforafrica/index_en.

42. The second phase of the project was approved on December 13, 2018.

43. Commission Decision C (2015) 7293 of 20 October 2015 on the establishment of a European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa.

44. On the temporary reinstatement of controls at the internal borders of Schengen, see, for example, Wriedt and Santer 2017.

45. Because of their local implementation work, EU delegations were perceived as having a better understanding of national political contexts and dynamics. In 2014, however, following the outbreak of hostilities between rival political factions, the EU's delegation to Libya was relocated to Tunis, along with most international staff (including UN staff). Some returned in early 2019, but the situation deteriorated again in April of that year. At the time of writing, therefore, most international staff members were operating remotely from Tunis. This also applies to the offices of the EU delegation to Libya, which are situated an the upscale neighborhood in Tunis, a few blocks down from the offices of the EU delegation to Tunisia.

46. For details, see "Factsheet: Emergency Transit Mechanism," UNHCR, April 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/75207.pdf.

47. For example, David, the UNHCR employee mentioned above, said that due to the UN's safety and security regulations, the UNHCR had to go through a third-party contractor to recruit and employ national staff.

48. EUBAM Libya was launched in 2013 with the core mandate of training and supporting Libyan border agencies. Andersson (2019, 160–67) details (also through the eyes of an interlocutor of his, a Finnish customs chief who was head of the mission at the time) how EUBAM officials gradually moved from hotels in downtown Tripoli to luxury compounds on the city's outskirts, then ultimately exiting the country and operating from Tunis by mid-2014.

49. He was referring to a luxury compound on the outskirts of Tripoli.

6. BORDER VIOLENCE AND THE FRAGMENTATION OF RESPONSIBILITY

1. Some of the empirical material discussed in this chapter also figured in a 2024 publication in the journal *Social and Legal Studies* (Santer 2024).

2. I base the introductory description on the various news reports that covered the arrival of the five Eritrean nationals to Rome (see ASGI 2020b), as well as on informal conversations with some of their supporters who met them at the airport.

3. Tribunale di Roma, Prima sezione civile Sentenza n. 22917/2019, RG n. 5615/2016.

4. Hirsi Jamaa and others v. Italy.

5. Tribunale di Roma, Prima sezione civile Sentenza n. 22917/2019, RG n. 5615/2016, p.12. Original in Italian, translation by the author.

6. "Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge." Costituzione della Repubblica Italiana, article 10, paragraph 3 (author's translation from Italian).

7. On the impact of migration control policies on refugee law and the fundamental rights of migrants, see Den Heijer 2012; Frelick et al. 2016.

8. As to legal reasoning, I am inspired by Del Mar (2017), who analyzes "how legal reasoning within one norm-generating unit relates with that of other norm-generating units" (44).

9. Costello and Mann (2020, 313–14) outline four features of migration control that "render accountability elusive": the asymmetry in international law between the right to leave and the right to enter a given country; the narrow legal category of "refugee," which does not correspond to the contemporary range of threats people may be fleeing from; the increasingly extraterritorial nature of migration control and the contested applications of state jurisdiction in relation to it; and the fragmentation of actors involved in migration control.

10. The project was an initiative of the Italian research, litigation, and advocacy organization ASGI (Associazione per gli studi giuridici sull'immigrazione). It focused on the monitoring and defense of migrants' and refugees' fundamental rights. From June 2019, the Sciabaca project, which originally had a geographical focus on north African countries (Morocco, Libya, Tunisia, and Egypt), started working in tandem with the Oruka project, which was centered on five sub-Saharan countries (Nigeria, Niger, Chad, Sudan, and Ethiopia) (ASGI et al. 2019). In practice, therefore, the two projects often overlapped.

11. Here I follow Adler and Pouliot (2011), who consider "practices" in international arenas as "not merely descriptive 'arrows' that connect structure to agency and back" but rather "dynamic material and ideational processes that enable structures to be stable or to be evolved, and agents to reproduce or transform structures" (5).

12. For example, in February 2020, a conference and networking event was organized in Lagos, Nigeria, bringing together lawyers and practitioners from across Africa and Europe under the framework of Sciabaca & Oruka. The aim was to examine the use of strategic litigation in non-European contexts to counter the effects of border policies on migrants' rights and the freedom of movement of African citizens.

13. *Hirsi* decision, paragraph 79.

14. Tribunale di Roma, p. 8 (author's translation from the Italian).

15. Supranational constitutionalism has been shown to exist in the struggles for women's rights, for example. Cichowski (2004) shows how the European Court of Justice (ECJ) and women activists have played a significant role in expanding women's pregnancy and maternity rights through the process of legal integration of EU social provisions into member states' domestic policy. She shows how the interaction between treaty provisions, supranational courts, national governments, and litigants is dynamic and that the ECJ's authoritative interpretation of EU treaty law and secondary legislation effectively makes it a judicial policy maker (491). She concludes that "supranational constitutionalism in the EU does not only hinge on a series of executive and legislative choices, but has also evolved as the accumulation of strategic activism by courts and social activists operating above and below the nation-state" (509). In the cases she studied, the expansion of women's rights happened through the ECJ's ability to directly amend domestic legislation to make it compatible with EU law, thereby having a direct effect on individuals' rights.

16. Sections don't communicate between each other. In Italy, these sections were created in the different civil *tribunali* at the end of the 1990s to deal with a huge backlog of pending cases that had developed since the late 1980s (Varano 2002).

17. On the immunity of the UN and other international organizations before national courts as well as their accountability more generally, see Verdirame 2011.

18. According to Somek (2020, 467), the exercise of state authority is also legitimate from the perspective of noncitizens since domestic constitutions "must embrace fundamental rights and the representation of insiders in order to facilitate the representation of all, including outsiders," as codified in European treaties. He sees opportunities for a cosmopolitan constitutionalism if fundamental rights (of insiders and outsiders) are protected and equally implemented by the constitution.

19. The lawyers I interviewed often pointed out that the ECtHR's judges did not work in a sociopolitical vacuum. In fact, they speculated that the court's authority was particularly on the line on expulsion cases. Indeed, with the state practice of pushbacks having become so widespread throughout the Union, they wondered what would happen in case of a strong condemnation from Strasbourg. Might it be that the court simply could not make such decisions in the current political climate because of the risk that it would be ignored? These were of course only speculations. However, they are in line with commentators such as Çalı (2017, 240), who analyzes the various backlashes against the court from various state parties (among them what she calls "well-established democracies") since the early 2000s. The most important pushback against the court comes from states arguing that expansive interpretations of human rights encroach upon domestic authorities' margin of appreciation. This has sometimes provoked begrudging attitudes to compliance with the court's authority from "domestic executives, parliaments and judiciaries" (241).

20. N.D. and N.T. v. Spain, ECtHR judgment of 13 February 2020 [Grand Chamber], no 8675/15 and 8697/15.

21. The argumentation in *N.D. and N.T. v. Spain* that carved out an exception from the prohibition of collective expulsions based on the "culpable conduct" of the

applicants was confirmed in a more recent judgment at the ECtHR. In *A.A. and others v. North Macedonia*, the court rejected the claim that refugees were pushed back at the Greek-Macedonian border in 2016. See Wriedt 2022.

22. Rule 39 is an emergency mechanism (also known as an "interim measure") that gives the ECtHR the power to immediately intervene in a situation where an applicant is in a predicament of extreme gravity, in order to avoid irreversible harm. Requests are examined on an individual basis and given high priority to be processed rapidly. For a noteworthy overdue and critical assessment of the rise and fall of Rule 39 applications to the ECtHR since 2006, see Dembour 2015, chapter 12.

23. Rackete and others v. Italy, no 32969/19 [Chamber].

24. S.S. and others v. Italy, App. No. 21660/18, communicated on June 26, 2019.

25. The event was reconstructed in great detail in the report by the Forensic Oceanography research collective Mare Clausum (Heller and Pezzani 2018).

26. S.S. and others v. Italy, App. no. 21669/18, First section decision on June 12, 2025.

27. *Hirsi* decision, paragraph 79.

28. Pijnenburg (2018) outlines three scenarios the court could possibly follow to argue that Italy exercised jurisdiction: the presence of Italian assets at the scene, Italy's support of the LYCG (through the donation of patrol boats and the operational role of the Italian naval mission Nauras), and Italian authorities giving instructions that led the migrants being "rescued" by the LYCG and not an NGO ship that was also nearby.

29. An Italian helicopter was present during the incident, but it did not come into direct contact with the migrants.

30. For example, the EUTF website.

31. For all physical and juridical persons, without the need to justify the request.

32. On the context and significance of the signing of the MoU between the two countries, see chapter 2.

33. Sentenza TAR Lazio, Sez. III-TER, n.12349/2019.

34. Sentenza Consiglio di Stato, n.03012/2020 Reg. Prov. Coll., N. 00997/2020 Reg. Ric.

35. This project included two phases, costing circa 46,300,000 and 15,000,000 euros, respectively. See chapter 5 for more details on the context in which the EUTF emerged and the constitution of this controversial two-phase IBM project.

36. Sentenza Consiglio di Stato, n.03012/2020 Reg. Prov. Coll., n. 00997/2020 Reg. Ric., p. 7 (author's translation from Italian).

37. Sentenza Consiglio di Stato, n. 04569/2020 Reg. Prov. Coll., n. 04809/2019.

38. One of the important aspects of the Fondo Africa claim, regardless of the result, was that the Consiglio di Stato recognized the association's right to challenge a governmental measure that had an *indirect* effect on the people whom ASGI's statutes avowed to defend (that is, the interests of foreigners outside Italian territory).

39. For example, throughout global supply chains or for harm caused by corporations operating transnationally through the control of subsidiaries.

40. The very concept of strategic litigation proposes that the law is not a means of resolution; in fact, Stefano affirmed to me that "the law is the first form of abuse,"

somewhat echoing Benjamin's (1978) critique of law and violence. Francesca emphasized that the Fondo Africa procedure played an important role in "annoying the state." For Stefano, the purpose of that action was to "destabilize" and "create conflict."

41. Following Achiume (2019) and others (e.g., Rajagopal 1998), I use *Third World* to designate the places and people who were subjugated to the European colonial project.

42. Translated from ASGI's statutes. The original in Italian reads: "Tutelare i diritti soggettivi e gli interessi legittimi degli stranieri e degli apolidi, inclusi richiedenti e titolari di protezione internazionale." "Statuto dell'ASGI," ASGI, updated April 20, 2024, https://www.asgi.it/chi-siamo/statuto/.

43. See, for example, the case of the Maersk *Etienne* (Attard and Kilpatrick, 2020) and the case of the *Aquarius* from June 2018, which I discuss in chapter 1 (see also Denti 2018). And consider the unsatisfactory 2019 Malta Declaration on predictable disembarkation measures ("Joint Declaration of Intent on a controlled emergency procedure—Voluntary commitments by member states for a predictable temporary solidarity mechanism," Statewatch, accessed October 17, 2021, https://www.statewatch.org/media/documents/news/2019/sep/eu-temporary-voluntary-relocation-mechanism-declaration.pdf). For critical commentary, see Berckel Smit 2020.

CONCLUSION

1. The migration deal signed between Italy and Albania (the Italy-Albania protocol) was designed to offshore the processing of asylum seekers. It suffered an important blow when the European Court of Justice issued a ruling on August 1, 2025, establishing that its implementation was incompatible with EU law.

2. See the EU Council's press release of March 18, 2016, "EU-Turkey Statement," https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.

3. Court of Justice of the European Union (2017), Cases T-192/16, T0193/16, and T-257/16, NF, NG and NM v, European Council. February 28, 2017.

4. The EU-Turkey "Statement," according to the court, was an agreement between states and *not* between the EU and Turkey (Danisi 2017). Despite this reading by the EU Court of Justice, a different legal reality was to be found in Greek domestic courts. As Gkliati (2017) observed in her examination of the case law of the Greek Asylum Appeals Committees in the period following the deal, the committees relied heavily on the EU-Turkey agreement to justify decisions to return asylum seekers from Greece to Turkey. Here the EU-Turkey agreement entered into circulation, taking on the force of a treaty and was quoted and referred to as such in Greek *domestic* decisions to return people. On another scale, its treaty qualities were repudiated as it was considered out of the jurisdictional ambit of a supranational court.

5. See Eckert 2024.

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