Rescue Operations in the Mediterranean

Towards a Reliable EU Policy

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Wilfried **Martens Centre** for European Studies

Credits

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Executive summary[1]

Search and rescue (SAR) in the central Mediterranean has become a highly contentious issue in European politics. Following the decision of the Italian government in mid-2018 to reduce the number of disembarkations of rescued passengers on Italian territory, disputes have erupted between the European governments. These disputes have concerned not only disembarkations, but also the subsequent distribution of migrants across the EU. For years Italy bore the brunt of rescuing and bringing ashore Europe-bound migrants in the central Mediterranean. But it is no longer willing to play this role.

Irrespective of the ongoing European political conflict over SAR, the EU states have been developing a two-segment policy for SAR in the Mediterranean. Although this policy is still not sufficiently robust, it has succeeded in greatly reducing the numbers of irregular maritime arrivals in Europe.

The European policy segment consists of SAR operations by the individual South European member states and ad hoc arrangements following disembarkations. These member states are continuing to conduct active SAR operations in their zones, and they bring passengers to their own territories. With the exception of Greece, all these countries have taken legal action against organisations that operate charity rescue boats. There are differences between the member states in, among other things, the degree of restrictiveness when it comes to disembarkations and the choice of political rhetoric at the national level. Over the last several years, the geographical extent of the European segment has reduced due to the gradual European withdrawal from the Libyan SAR zone.

The EU's Afro-Asian policy segment has been based on the prevention of illegal border crossings and containing Europe-bound irregular migration in general. This segment has been built on the co-inciding interests of the EU and its maritime neighbours. While there are significant differences in the ways the EU deals with each neighbour, it has been united in supporting Turkey, Libya and the other North African countries in running their own SAR operations. Low administrative capacity, 'fear of effi-

ciency' and insufficient internal prioritisations of the issue continue to pose challenges to the Afro-Asian segment of the EU policy.

Each of the two policy segments needs to be made more reliable in the coming months and years. While the EU needs to find a mechanism for accepting and distributing those passengers who have reached EU territorial waters, the European policy should focus on two main objectives. First, efforts must continue to prevent departures from North Africa (and Turkey in the east). Second, the EU needs to assist the SAR efforts of the southern Mediterranean countries, which, like the European Mediterranean countries, have the duty to provide adequate and effective SAR services. Italy's cooperation with Libya and, in the west, Spain's collaboration with Morocco have shown that effective cooperation of this kind is possible. The weakness of the former lies in the human rights abuses in the Libyan detention centres. The EU urgently needs to address these abuses, without compromising on the imperative for the Libyan coastguard to continue bringing rescued migrants back to the country.

Overall, European SAR policy for the Mediterranean needs to be formulated in a manner that elicits democratic support among the European electorate. This means that accepting all survivors is not possible and that the EU needs to build up comprehensive political and economic relationships with the North African states to provide rescued passengers with decent conditions on the territories of the African states.

Introduction

According to the Schengen Borders Code, EU 'external borders may be crossed only at border crossing points and during the fixed opening hours'.[2] The situation in the Mediterranean Sea does not currently conform to this requirement. For years, people—often assisted by people smugglers[3]—have been trying to cross from the African coast to Europe in search of economic opportunity and, sometimes, asylum. In many cases they have boarded unsafe ships or dinghies, and have subsequently been located, rescued and delivered to the European coast by private rescue ships or by national navies, national coastguards, Frontex (European Border and Coast Guard) operations, European anti-smuggling operations (such as Operation Sophia, until March 2019), merchant ships or fishing vessels. According a figure cited by the Centre for European Policy Studies (CEPS), people who have been rescued at sea account for 90% of the illegal entries detected by Frontex across the entire EU external border.[4]

Long-simmering problems with search and rescue (SAR) in the central Mediterranean began coming to the attention of the European public after the sharp U-turn in Italian policy in 2018. Italy now accepts only a select few rescued migrants. In 2018 the number of illegal border crossings in the Mediterranean was the lowest in the period 2014–18 (see Figure 1 below). In addition, according to a calculation by CEPS, the number of people rescued under the coordination of the Italian Maritime Rescue Coordination Centre fell from 114,286 in 2017 to 19,778 in 2018.[5] This was due to a drop in the number of people departing from Libya and fewer active rescue operations by Italian agencies and EU operations, as well as to Italian measures vis-à-vis charity boats, commercial ships and foreign navy ships. Yet, despite the dramatic decrease in arrivals in 2018, this was precisely the year in which sharp intergovernmental conflicts arose over disembarkations, and processing and distributing those who had been rescued.

The SAR situation in the Mediterranean, and especially the central Mediterranean, leaves the EU in a precarious situation. If people are rescued in the Libyan SAR zone, the Libyan coastguard takes most of

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[2] Art. 5(1), cited in R. Parkes, *Healthy Boundaries: Remedies For Europe's Cross-Border Disorder*, European Union Institute for Security Studies, Paper 152 (Paris, 2019).

[3] According to Europol and Interpol data, over 90% of migrants pay smugglers to try to reach Europe. For more information, see *Council of the European Union*, 'Saving Lives at Sea and Targeting Criminal Networks', 1 April 2019.

[4] S. Carrera et al., *The European Border and Coastguard: Addressing Migration and Asylum Challenges in the Mediterranean?*, Centre for European Policy Studies (Brussels, 2017), 22.

[5] S. Carrera and R. Cortinovis, *Search and Rescue, Disembarkation and Relocation Arrangements in the Mediterranean: Sailing Away from Responsibility?*, Centre for European Policy Studies, Report no. 2019-10 (Brussels, 2019), 7.

them back to Libya. As for those rescued in the Maltese or Italian SAR zones, private (NGO) ships and other vessels attempt to disembark them. If disembarkation is refused, the European Commission takes on the moral obligation to persuade the EU's national governments to accept the rescued migrants. The Commission also provides funds to enable the transfer of disembarked people to willing member states.[6]

A lot of time and energy is spent on these negotiations. There are two reasons for this. First, there are no commonly agreed principles on how to deal with distribution disputes, and negotiations always begin anew. Second, even those countries that do accept some of the rescued migrants (including Germany, Sweden, the Netherlands, Portugal and Romania) prefer taking refugees and those with potentially valid asylum claims. Although we do not have precise statistical data, it is commonly accepted that these individuals constitute a small minority of the rescued passengers. While the details of the negotiating process are never made public, politicians from certain European countries tend to make their own— often conflicting—views public. This damages the credibility of the EU internally as well as externally.

These unpleasant political dynamics continue, notwithstanding the low numbers of migrants rescued. According to the European Commission, fewer than 2000 people were disembarked in the EU's coastal member states with its assistance following stand-offs in the central Mediterranean between mid-2018 and mid-2019.[7] By this author's calculation, this figure represents approximately 0.01% of the illegal crossings of the EU border in that period. The vast majority of illegal border crossings across the Mediterranean have not been subject to stand-offs between the European governments.

Still, due to their conflictual nature and their visibility, the intergovernmental conflicts on disembarkation constitute an important reason for finding a policy to address the issue. Another reason is the widespread perception among the European citizens that the EU and member state operations have effectively been transporting to the European territory migrants who do not have credible asylum claims. It is true that, according to a Pew Center survey, the majority of Europeans favour taking in refugees who are fleeing

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[6] European Commission, 'Remarks by Commissioner Dimitris Avramopoulos at the Joint Press Conference with the Maltese Minister for Home Affairs and National Security Michael Farrugia', 7 May 2019.

[7] M. Shotter, contribution at the Hearing on 'Search and Rescue in the Mediterranean', European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Brussels, 3 October 2019.

violence and war.[8] It is equally true that Europeans disapprove of the way the EU has been handling irregular migration. According to a Eurobarometer survey from spring 2018, 85% of Europeans feel that 'additional measures should be taken to fight irregular immigration from countries outside the European Union'.[9] (Specific surveys on public views on SAR have not been conducted at the EU level.)

With regard to illegal border crossings, practices and policies in the east and west of the Mediterranean have differed from those in the centre. The Spanish government has preferred quiet diplomatic solutions in cooperation with Morocco (see below). At the same time, with the exception of the *Aquarius* in 2018 and the *Open Arms* in 2019, Spain has adopted an uncompromising stance towards passengers saved by private rescue ships. In the east, Greece has, equally quietly, continued its practice of sometimes intercepting those dinghies and small boats that have slipped through the Turkish patrols. When the Greek authorities intercept these vessels, they disembark the passengers at Greek ports. When these boats are not intercepted, irregular migrants of course also arrive on Greece's shores. According to one Greek diplomat, no private rescue boats are conducting SAR in the Aegean Sea.[10]

This research paper seeks to address this conundrum. It is based on extensive desk research, and confidential interviews and correspondence with EU officials, diplomats from permanent representations based in Brussels and other experts. The text first describes the legislation governing SAR. It explains the central role of Italy in Europe's SAR efforts, and the variety of EU and private agencies and organisations involved. It briefly describes the different contexts in which the (European) northern Mediterranean countries operate and their differing national policies. It then discusses in detail the (African) southern Mediterranean approaches and their limitations. The 'Discussion' section touches on certain legal constraints on the European SAR operations and asylum policies. Moreover, it provides a justification for pre-emptive containment of maritime irregular migration in collaboration with North Africans. The 'Recommendations' section provides suggestions for strengthening this collaboration with the aim of preventing departures and providing decent conditions for migrants in the North African countries.

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[8] P. Connor, 'A Majority of Europeans Favor Taking in Refugees, But Most Disapprove of EU's Handling of the Issue', *Pew Research Center*, 19 September 2018.

[9] European Commission, *Standard Eurobarometer 89: Europeans' Views on the Priorities of the European Union*, Communication, COM (2018) 42 final (June 2018).

[10] Email communication, 22 July 2019.

> The purpose of *searching* is to locate persons in distress. *Rescuing* is meant to retrieve the located individuals, assist with their basic needs and bring them to a place of safety. A SAR operation is complete only when the rescued persons are disembarked at such a safe location.
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> - See G. Ciliberto, 'Libya's Pull-Backs of Boat Migrants: Can Italy Be Held Accountable for Violations of International Law?', *The Italian Law Journal* 4/2 (2018), 505.

Table 1 Year-by-year illegal border crossings for individual Mediterranean routes, 2009–18

	Western Mediterranean (sea)	Western Mediterranean (land)	Central Mediterranean (sea)	Eastern Mediterranean (sea)	Eastern Mediterranean (land)	Total for the year
2009	5,003	1,639	11,043	28,848	11,127	**57,660**
2010	3,436	1,567	4,450	6,175	49,513	**65,141**
2011	5,103	3,345	64,261	1,467	55,558	**129,734**
2012	3,558	2,839	15,151	4,370	32,854	**58,772**
2013	2,609	4,229	45,298	11,831	12,968	**76,935**
2014	4,755	3,087	170,664	44,057	6,777	**229,340**
2015	4,740	1,264	153,946	873,179	12,207	**1,045,336**
2016	8,641	1,349	181,376	174,605	7,672	**373,643**
2017	21,552	1,511	118,962	34,732	7,587	**184,344**
2018	55,695	1,339	23,485	34,014	22,547	**137,080**
Total for the route	**115,092**	**22,169**	**788,636**	**1,213,278**	**218,810**	

Sources: (1) 2009–14: Frontex, *Annual Risk Analysis 2015*; (2) 2015–18 : Frontex, *Annual Risk Analysis 2019*.

Figure 1 Graphic depiction of the information on sea entries provided in Table 1 (sea entries only)
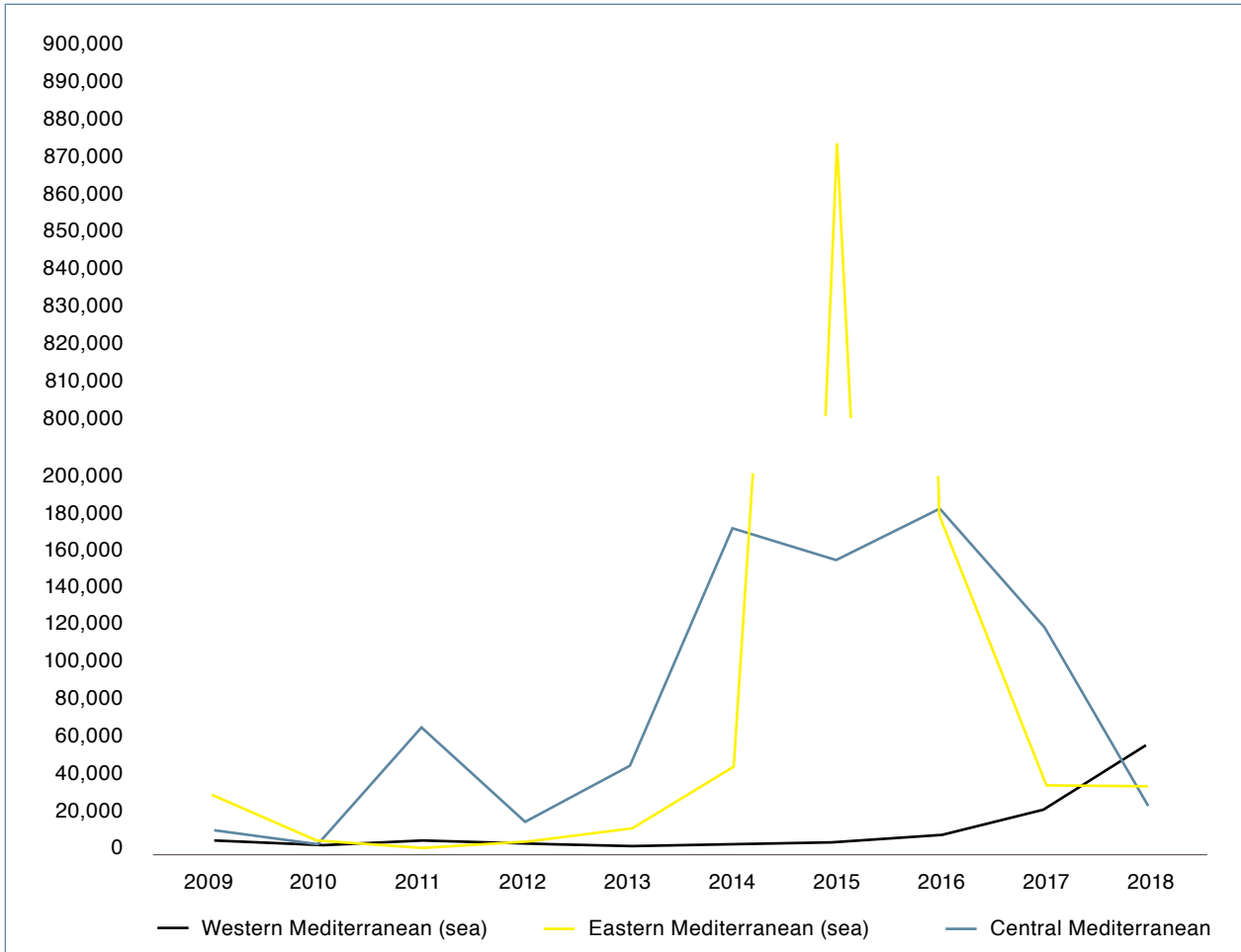
The rules and the politics of SAR

Disembarkation disputes and stand-offs involving European countries have a long history—whether the conflicts have been between these countries or with their counterparts in Africa.[11] For example, in a 2007 incident, Spain accused Malta of not allowing 26 rescued Africans on its territory.[12] In the 2009 Pinar incident, Italy and Malta could not agree who should take 140 immigrants stranded at sea.[13] In recent times, conflicts over the disembarkation (and relocation) of passengers have occurred not only between the EU member states but also between government authorities and the organisations that operate private rescue ships.

The current Mediterranean disembarkation and relocation dilemmas are just another face of the same refugee distribution problem that Europe's national governments have been grappling with very intensively since 2015. Where the lines of conflict are drawn differs according to whether the disputes concern the mandatory quota issue[14] or disembarkation and relocation. The mandatory quota dispute has pitted several Central and Eastern European countries against the rest of the EU. The SAR dispute has pitted Italy and Malta against the rest of the EU; it has sometimes pitted Italy against Malta, and often Italy against France.

The rules of SAR are determined by the international law of the sea. According to the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR Convention), any vessel that detects a ship in distress is obliged to come to its rescue, save the passengers and disembark them in the nearest 'safe place'.[15] Under the existing rules, processing is a duty of the member state on whose

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[11] *Amnesty International*, 'Between the Devil and the Deep Blue Sea: Europe Fails Refugees and Migrants in the Central Mediterranean', August 2018; T. Abderrahim, *Pushing the Boundaries: How to Create More Effective Migration Cooperation Across the Mediterranean*, European Council on Foreign Relations (January 2019).

[12] H. Spongenberg, 'Spain Unhappy With Malta Handling of Migrants', *euobserver*, 1 June 2007.

[13] H. Grech and K. Sansone, 'Shrinking Malta's Search and Rescue Area is "Not an Option"', *Times of Malta*, 26 April 2009.

[14] Regardless of whether this relates to the temporary mandatory quota scheme for 2015–17 or the Commission legislative proposal for a permanent mandatory quota.

[15] For excellent analyses of these treaties, see G. Ciliberto, 'Libya's Pull-Backs of Boat Migrants: Can Italy Be Held Accountable for Violations of International Law?', *The Italian Law Journal* 4/2 (2018); and T. E. Aalberts and T. Gammeltoft-Hansen, 'Sovereignty at Sea: The Law and Politics of Saving Lives in the *Mare Liberum*', *Journal of International Relations and Development* 17 (2014).

territory disembarking or lodging an asylum claim takes place.[16] In contrast to SAR, the processing and distribution (i.e. relocation) of rescued passengers is governed by justice and home affairs legislation.

Under the SAR Convention, the Mediterranean, like other seas, is divided into SAR zones that are assigned to coastal states. In responding to distress signals, ships of the state responsible have to coordinate rescues in the state's SAR zone. The states' rescue coordination centres mobilise public and private resources to render aid to persons in distress and, where possible, to protect property and the environment.[17] The 2004 amendment to the SAR Convention states that 'the Party responsible for the search and rescue region in which such assistance is rendered shall exercise *primary responsibility* for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety.'[18]

The term 'SAR zone' (also 'SAR region' or 'SAR area') usually refers to the maritime area in which ports of the state responsible for the SAR action are the closest.[19] Thus, one could conclude that the member state responsible for the SAR zone in question should disembark the rescued passengers on its territory. However, neither the SAR Convention nor its 2004 amendment say explicitly that the state responsible for the SAR zone is responsible for disembarkation. In other words, the SAR Convention does not provide undisputable clarity on what happens with those who have been rescued.[20]

Importantly, the concept of a 'place of safety' under the law of the sea[21] is different from the 'safe country of origin' or 'safe country of asylum' under asylum law. For example, Tunisia certainly qualifies as a safe place for disembarkation, but there is a continuing discussion on whether it is a safe country of asylum. Certain specifics of SAR are laid out in the 2014 European Parliament and Council Regulation

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[16] Council of Europe, *Lives Saved. Rights Protected. Bridging the Protection Gap for Refugees and Migrants in the Mediterranean* (Strasbourg, June 2019), 34.

[17] Email communication, 19 July 2019.

[18] International Maritime Organization, 'Resolution MSC.155(78), Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979' (20 May 2004), art. 3.1. Italics added.

[19] Email communication with an anonymous contributor, 30 July 2019.

[20] D. Pundy, 'By Refusing Entry to Migrant Rescue Ship, Italy and Malta Reveal Legal Shortcomings', *Deutsche Welle*, 12 June 2018.

[21] Council of Europe, *Lives Saved. Rights Protected*, 27.

on the surveillance of the external sea borders,[22] but even this Regulation does not clearly resolve the issue of responsibility for disembarkation.

In the Mediterranean, SAR zones have been defined as shown in Figures 2 and 3. Italy is responsible for an area equal to approximately one fifth of the Mediterranean Sea. There are several overlaps with the Maltese SAR zone.[23] There are also overlaps between the Turkish zone and those of the neighbouring countries'. Moreover, there are conflicting claims among Turkey and its neighbours about the limits of these zones.

Figure 2 SAR zones in the Mediterranean according to the 2004 amendments

Source: International Maritime Organization Ocean Atlas, cited in T. E. Aalberts and T. Gammeltoft-Hansen, 'Sovereignty at Sea: The Law and Politics of Saving Lives in the Mare Liberum', Journal of International Relations and Development 17 (2014). Reproduced here with permission.

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[22] European Parliament and Council Regulation (EU) no. 656/2014 on establishing rules for the surveillance of the external sea borders, OJ L189 (27 June 2014), arts. 9 and 10.

[23] *Italian Coalition for Civil Rights and Liberties*, 'Know Your Rights: New Guidance on Rescue Operations in the Mediterranean', 25 September 2018.

Figure 3 Details of the SAR zones of Italy and Malta
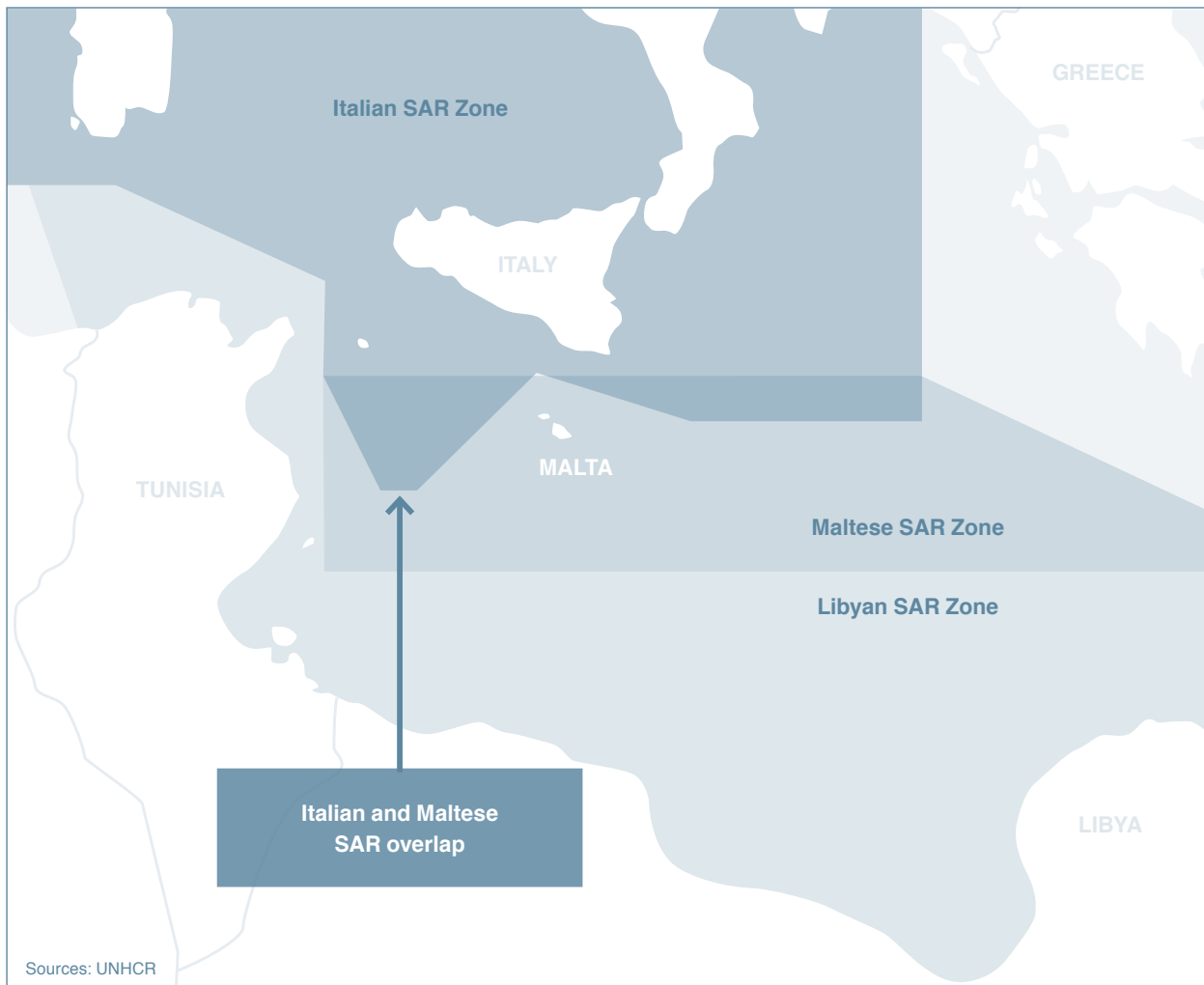
Source: This graph has been adapted from a UN Refugee Agency (UNHCR) source and is used here with the kind permission and assistance of the Italian Coalition for Civil Liberties and Rights.

Finally, we do not have sufficient court rulings to guide policy and the sharing of obligations towards rescued passengers. In principle, the European Court of Human Rights does not have jurisdiction to interpret and apply the law of the sea. The International Court of Justice has yet to make relevant rulings on the relationship between refugee rights and the law of the sea.[24]

Faced with the SAR dilemmas in the Mediterranean, the EU finds itself in a unique situation. It has the equipment and manpower to rescue most people stranded on the sea, and it perceives itself as a normative power that leads by example. However, it has thus far lacked the internal consensus needed to resolve the issues of who bears legal responsibility for the passengers, where their protection claims should be examined and who should provide material support. This situation has continued to exist despite numerous calls to find a policy response, including from the European Parliament in its 2013 'Lampedusa Resolution'.[25] In addition, EU countries are sharply aware that once passengers reach the territorial waters belonging to one of them, that country's human rights jurisdiction is triggered,[26] making immediate returns of even the most ineligible passengers impossible. Interdiction in the waters of the country of departure logically becomes the preferred option (see Figure 4).

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[24] Anonymous interview by the author, 22 February 2019.
[25] European Parliament resolution 2013/2827(RSP) of 23 October 2013 on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa.
[26] Asylum Procedures Directive (European Parliament and Council Directive 2013/32/EU on common procedures for granting and withdrawing international protection (26 June 2013)), art. 3.

Figure 4 Territorial and international waters according to the UN Convention on the Law of the Sea (1982)
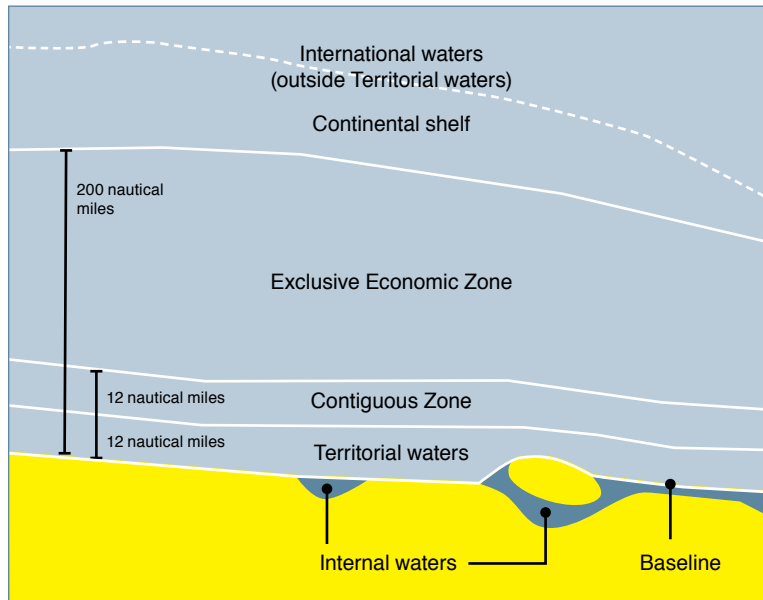
Refugees and migrants use the same irregular routes and seek the assistance of the same people smugglers.[28] However, generally speaking, only a small minority of the irregular migrants who cross the Mediterranean have strong protection claims.[29] (This is with the notable exception of the years 2015–16,

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[27] The *Encyclopaedia Britannica* describes territorial waters as 'an area of the sea immediately adjacent to the shores of a state and subject to the territorial jurisdiction of that state. Territorial waters are thus to be distinguished on the one hand from the high seas, which are common to all countries, and on the other from internal or inland waters, such as lakes wholly surrounded by the national territory or certain bays or estuaries.' There is no universal agreement on the width of the territorial waters 'except that every state is entitled to a minimum of three nautical miles. Claims in excess of 12 nautical miles (22 km) commonly meet widespread opposition from other states' (J. E. Nolen, 'Territorial waters', *Encyclopaedia Britannica* (2019)).

[28] S. Angenendt and A. Koch, 'Global Migration Governance and Mixed Flows: Implications for Development-Centred Policies', *Stiftung Wissenschaft und Politik*, June 2017.

[29] S. Fratzke and B. Salant, *Tracing the Channels Refugees Use to Seek Protection in Europe*, Migration Policy Institute (September 2017), 3.

when hundreds of thousands of Syrian refugees crossed from Turkey to Greece.) Unfortunately, no EU or national source has yet provided direct data on the legal status or mode of entry of asylum applicants.[30]

Under the 1951 Refugee Convention, EU governments have to provide protection to those migrants who qualify as 'refugees',[31] but countries are free to deport those who are not refugees.[32] The existing asylum rules involve finding out who the passengers are and whether they are eligible for such protection. Squaring the EU member states' obligations under the Refugee Convention with their innate interest in safeguarding their borders and legal obligation to do this poses a major legal and political challenge.

So far asylum procedures have been conducted by the member state on whose territory the rescued passengers are disembarked. Experiments with changing the established practices on asylum determination have been rare and not well publicised. For example, there are unconfirmed reports that the UN Refugee Agency (UNHCR) has conducted, from land in Europe, remote asylum interviews with applicants who found themselves on decks of ships during recent stand-offs in the Mediterranean.[33]

In September 2019, interior ministers from four EU countries (Italy, Malta, France and Germany) agreed, as a pilot project, a temporary automatic mechanism to distribute migrants saved from the central Mediterranean. The signatories subsequently invited other governments to join this plan. By the time of writing (October 2019), neither the details of this deal nor the number of participating countries were clear.

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[30] Ibid., with further information provided by the Italian National Institute of Statistics by email on 27 June 2019 and the National Statistical Office of Malta by email on 12 September 2019.

[31] S. Cogolati, N. Verlinden and P. Schmitt, *Migrants in the Mediterranean: Protecting Human Rights*, European Parliament Think Tank (October 2015), 22.

[32] S. Galani, 'The "New" Human Rights at Sea Debate', *The Maritime Executive*, 12 February 2018.

[33] Council source, interviewed on 15 March 2019.

The Italian predicament

What the mandatory quota dispute and the disembarkation and relocation dispute have in common is the central role of Italy as a country that has been on the receiving end of EU-bound irregular migration from Africa. For years, 'the government of Italy has consistently permitted prompt and predictable disembarkation of people rescued by merchant ships as well as by vessels operated by humanitarian NGOs.'[34] According to one account, 'Italy has found itself as being the only actor responsible for coordinating SAR activities not only in the SAR area under its jurisdiction, but also in the Maltese area and in a large stretch of sea beyond Libyan territorial waters which [did] not fall under any state's jurisdiction.'[35]

The above account is disputed by the Maltese authorities, who assert that their Rescue Coordination Centre has always assumed responsibility for coordinating cases in the Maltese SAR region.[36] Wherever the truth may lie, one expert has observed that 'no-one brought more migrants to the EU than the Italian Coast Guard.' Moreover, for years the government of Italy (as well as that of Greece) has been undermining the 'Dublin system' by registering only some of the irregular arrivals.[37] Recognising that the EU's Dublin system for processing asylum applications places an undue burden on the front-line states, the European Commission and the other EU member states have tolerated this situation. The establishment of registration 'hot-spots' in Italy and Greece in 2015, with national and EU personnel, only partially remedied the problem of non-registrations.

As early as 2003 Italy had struck a series of confidential agreements with Libya. These agreements had the result of partly unlinking rescue operations from the EU asylum procedure. They included pushbacks of migrants to Libya, payments for the right of the Italian government to patrol Libyan territorial waters and Italian financing for detention camps inside Libya.[38] In the words of an Italian official, his country, the former colonial power, has remained the 'principal interlocutor and donor' for Libya.[39]

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[34] *gCaptain*, 'ICS: Shipping Industry "Deeply Concerned" About New Italian Policy on Migrants Rescued at Sea', 12 June 2018.

[35] M. Villa, A. Villafranca and E. Corradi, 'Migration: A Compass After the EU Council', *Italian Institute for International Political Studies*, 29 June 2018.

[36] Email communication with a Maltese diplomat, 19 July 2019.

[37] European Commission, 'Central Mediterranean Route: Commission Proposes Action Plan to Support Italy, Reduce Pressure and Increase Solidarity', Press release (4 July 2017).

[38] E. Collett, 'Unauthorized Maritime Migration in Europe and the Mediterranean Region', in K. Newland et al. (eds.), *All at Sea: The Policy Challenges of Rescue, Interception, and Long-Term Response to Maritime Migration* (Washington: Migration Policy Institute, 2016), 54.

[39] Rettman, A., 'EU "Civilian" Mission Training Paramilitaries in Libya', *euobserver*, 18 November 2013.

This was backed by funding from the Italian budget for security-related projects, far outstripping the EU-level funding.[40] A 2012 judgement by the European Court of Human Rights made the practice of pushbacks by the Italians illegal. The judgement concerned a case where ships from the Italian Revenue Police and the Coastguard had intercepted three vessels on route to Italy in the Maltese SAR region. The passengers were transferred on to Italian military ships and then returned to Tripoli.[41]

Italy and Malta raised the alarm following the 'Arab Spring' in North Africa. In February 2011, a centre–right Italian MEP stated, 'It is absolutely essential to convene an extraordinary EU Council . . . in the next few days to deal with an epic emergency comparable in intensity and scale to the fall of the Soviet Bloc in 1989 . . . What is happening in the Maghreb countries has to fully put into question the weakness of the EU Mediterranean Strategy.'[42] Intensive Europe-bound emigration across the Mediterranean followed, mostly from Libya to Italy (see Table 1 and Figure 1).

Following the Lampedusa tragedy in 2013, the Italian government launched Mare Nostrum, a humanitarian and border control operation supported by the military, which operated in the Italian, Maltese and Libyan SAR zones and was under the command of the Italian navy. Apart from saving some 150,000 lives,[43] the launch of Mare Nostrum immediately led to an increase in illegal border crossings in the central Mediterranean from 50,000 in 2013 to 170,000 in 2014. Some have argued that the increase was rather due to an escalation in the Libyan civil war.

In any case, Mare Nostrum ended after one year as the Italian public saw the operation as unfair to the country. Mare Nostrum and subsequent Italian and EU operations (see below) conducted SAR in Libyan and Maltese SAR regions.[44] Responsibility for disembarkations has become blurred. This has not helped to resolve the intergovernmental conflict over SAR.[45]

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[40] Ibid.

[41] ECtHR, Hirsi Jamaa and Others v Italy [GC], Application no. 27765/09, 23 February 2012, *European Database of Asylum Law*.

[42] L. Philips, 'Italy and Malta Want Special Summits on Africa Crisis', *euobserver*, 14 February 2011.

[43] O. Bowcott, 'ICC Submission Calls for Prosecution of EU Over Migrant Deaths', *The Guardian*, 3 June 2019.

[44] Email communication, 30 July 2019.

[45] International maritime law does not prevent a state from deploying rescue assets in the SAR zone of another state. See Council of Europe, *Lives Saved. Rights Protected*, 24.

Frontex-led Operation Triton replaced Mare Nostrum in 2014. Triton covered, with smaller capacity, parts of the Italian SAR zone, the Maltese SAR zone and several other areas.[46] According to information from the European Commission, 'on numerous occasions, Frontex vessels and aircrafts have also been redirected by the Italian Coast Guard to assist migrants in distress in areas far away from the operational area of Triton'.[47] This means that—according to one observer—the vast majority of the rescues were conducted inside the Libyan SAR region. Italian, Maltese and other ships contributed to the operation. Triton operated until February 2018. Its main mandate was not SAR, but border control, surveillance[48] and interception.

Chronologically, Operation Triton overlapped with an informal SAR agreement between Italy and Malta (2014–18). Although claims of such arrangements are denied by the Maltese authorities as 'false and unfounded', a 2018 report by the European Council on Refugees and Exiles stated that 'almost all persons rescued at sea [between 2014 and mid-2018], including persons rescued by the Armed Forces of Malta, and those rescued in Maltese territorial waters or Malta's Search and Rescue Zone, were disembarked in Italy.'[49] Moreover, in 2015 the Italian government launched its own naval operation, Mare Sicuro, to ensure safety, freedom of navigation and the protection of vessels engaged in rescue operations across the central Mediterranean. (For the current EU operations in the Mediterranean, see below.)

In 2017 Italian Interior Minister Minniti from the socialist Democratic Party closed a deal with the Libyan government and tribal leaders in the Libyan south,[50] reviving the spirit of the agreements struck under the Libyan dictator Gaddafi. He also threatened to cancel the registrations of charity organisations if their rescue ships entered Libyan waters.[51] A decree in March 2018 prohibited charity boats and even commercial ships that had rescued people in international waters from accessing Italian ports.[52] Minniti's measures

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[46] Email communication with a Maltese diplomat, 19 July 2019.

[47] European Commission, *EU Operations in the Mediterranean Sea* (4 October 2016).

[48] Carrera et al., *The European Border and Coastguard*, 21.

[49] *Asylum Information Database*, 'Country Report Malta, 2018 Update', 11 March 2019, 16. See also European Political Strategy Centre, 'Irregular Migration via the Central Mediterranean: From Emergency Responses to Systemic Solutions', Strategic Note, Issue 22 (2 February 2017), 10 n. 18. For example, in the well-known 2018 case, 'requested by the Italian government to allow the docking of the [ship] Aquarius, Malta, in whose vast . . . SAR region the Aquarius was transiting, . . . refused . . . arguing that Italy had coordinated the rescues and therefore had the responsibility to identify a safe port for disembarkation' (*Amnesty International,* 'Between the Devil and the Deep Blue Sea', 8).

[50] G. Paravicini, 'Italy's "Minister of Fear": Interior Minister Marco Minniti Credits His "Desert Diplomacy" With Stopping the Flow of Migrants to Italy', *Politico*, 27 December 2017.

[51] P. Taylor, *Molto Agitato: Italy and Mediterranean Security*, Friends of Europe (Brussels, 2019).

[52] Carrera and Cortinovis, *Search and Rescue, Disembarkation and Relocation Arrangements in the Mediterranean*, 5.

resulted in significantly reducing the flows from sub-Saharan Africa into Libya and, by some 70%, from Libya across the Mediterranean,[53] but they did not completely stop the flows. In contrast to his successor Matteo Salvini (from the far-right Lega), Minniti's political style tended to be discreet.

In July 2018 the newly elected government of Giuseppe Conte (composed of the Lega and the populist Five Star Movement) reversed the existing policy. Italy abruptly withdrew from its role as the principal coordinator of rescues in the central Mediterranean.[54] This refusal concerned not only people rescued by private (NGO) ships but also those rescued by ships belonging to foreign navies (including those of the US and Ireland), merchant ships and in some cases—such as that of the *Diciotti*—the Italian navy.

The Italian policy was not consistent. While the Italian government refused disembarkation after some rescues and went on to internationalise the issue, in other cases it accepted rescued people without any protest. When the Italian authorities were in charge of rescues, passengers' chance of being disembarked was higher than was the case for those rescued by other entities. For example, within one week in July 2019, the Italian police and the coastguard rescued and brought to Italy at least one hundred people from two boats that had departed from Libya and Tunisia.[55] The policy on NGO boats was also inconsistent. In July 2019 the Italian-flagged *Alex*, a charity vessel, landed in Lampedusa and disembarked its passengers. Although the *Alex* was immediately impounded, it had not faced the same refusal to dock with which another NGO boat, the German-flagged *Sea-Watch 3*, had been confronted several days earlier.[56]

Stand-offs between Italy and Malta became frequent. According to the report by the European Council on Refugees and Exiles cited above, the first Conte government, in contrast to previous policy, stopped accepting on its territory people rescued within the Maltese territorial waters or by the Maltese navy.[57]

Faced with the continued lack of solidarity from many other member states on both relocations

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[53] *The Economist*, 'How Italy's Interior Minister Tackles Illegal Migration', 1 February 2018.

[54] *Amnesty International,* 'Between the Devil and the Deep Blue Sea'; A. Cuddy, 'Prompted by EU, Libya Quietly Claims Right to Order Rescuers to Return Fleeing Migrants', *euronews*, 7 August 2018.

[55] *The Local.it,* 'Salvini Wants Europe to Take Migrants from Italy Coastguard', 27 July 2019.

[56] *ANSA*, 'Migrant Rescue Ship Alex Impounded', 8 July 2019.

[57] *Asylum Information Database*, 'Country Report Malta, 2018 Update', 57. Again, accounts differ. According to a Maltese official, 'migrants rescued inside Maltese Territorial Sea . . . were never disembarked in Italy' (email communication, 19 July 2019).

and disembarkations, the first Conte government decided to ramp up the issue by means of both its policy and the accompanying inflammatory rhetoric. This led to a simmering intra-EU conflict which, critics argue, was deliberately provoked by the Italian government and especially its interior minister Salvini, who was keen to internationalise the issue and win the approval of the domestic audience.[58] The fall of the first Conte government and the creation of the second Conte government (composed of the Five Star Movement and the Democratic Party) in September 2019 has resulted in the prevailing political rhetoric becoming more moderate and in making Italy more open to finding iintergovernmental solutions to the SAR disputes in the Mediterranean. However, the creation of the second Conte government has not changed the substance of Italy's SAR policy.

The Italian—and Maltese—predicament is the key to understanding the causal relationship between the relocation and disembarkation conflicts. The emergency mandatory quota system for distributing asylum seekers, approved in September 2015 for a two-year period by the Council, aimed to temporarily complement the existing 'Dublin system', which at the time of the 2015–16 migration crisis had proved dysfunctional. The emergency quota system, despite having successfully relocated from Italy and Greece 34,700 people in need of asylum, did not fully live up to expectations, with the member states in Central Europe loudly objecting to the scheme. The European Commission and the European Parliament would like to replace the emergency quota system with a permanent quota system. However, a proposal for the latter is hopelessly stuck in the Council as various groups of countries are opposed to one or other of the measures proposed.

Up to the time of writing (October 2019), all attempts to predictably allocate responsibilities for SAR in the central Mediterranean have failed, despite the Commission's efforts and offers of assistance from EU agencies such as Frontex and EASO. Here, as with many other elements of migration and border policy, a policy stalemate in one area has created a stalemate elsewhere.

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[58] Careful analysis provides a more nuanced picture of Italian public opinion than a non-Italian reader might expect on the basis of the English-speaking press. Salvini's fiery rhetoric has been directed more at those who try to illegally cross to Italy than at refugees in general. In addition, Italian attitudes on refugees are not clear-cut. During the *Aquarius* controversy in June 2018, the daily *Corriere de la Serra* published a poll according to which 59% of the Italian public supported Salvini's 'closed ports' policy. (See N. Pagnoncelli, 'Sondaggio: La politica dei porti chiusi convince il 59% degli italiani (e un elettore del Pd su tre)', *Corriere de la Sera*, 16 June 2018.) However, in an August 2018 poll, only about 37% of respondents agreed with the following statement: 'We must close our borders to refugees entirely—we can't accept any at this time.' Voter groups supporting the Lega movement were much more in favour of this statement than were other groups. (See T. Dixon et al., *Attitudes Towards Migrants, Refugees and National Identity in Italy*, More in Common (July 2018).)

Agencies
and entities

The picture is complicated by the high number of agencies and entities that are involved in SAR operations. For example, Frontex is tasked with managing and surveying the Schengen border. Frontex is 'obliged to provide technical and operational assistance to member states and non-EU countries in support of SAR operations that may arise during border surveillance operations at sea.' [59] Frontex vessels 'continue SAR operations under the coordination of the responsible Maritime Rescue Coordination Centre'.[60]

In recent years the EU's response to SAR relied partly on Operation Sophia, a military operation under the control of the EU member states. The mandate of this anti-smuggling operation, first launched under the name EUNAVFOR MED, has changed several times since its inception in 2015. When it was launched, the member states, reluctant to hand over control of SAR to Frontex, an EU-level border control agency, preferred a military operation under national control.[61] Italy offered itself as the 'framework nation' for the operation, an arrangement which served its own security interest in controlling undocumented migration.[62] The UN Security Council granted a legal mandate.

Operation Sophia led to the rescue of some 49,000 people,[63] the vast majority of which were brought to Italy. However, patrolling by Sophia ships had the effect of moving SAR operations closer to the Libyan coast,[64] thus unwittingly facilitating the business of people smugglers. The Italian government had to accept the majority of the rescued passengers, but Rome saw that progress on dismantling Libya-based people smuggling operations was very modest.[65] In response the Italian command gradually decreased the number of ships patrolling the sea under this operation. On 29 March 2019, the EU member states decided[66] to limit the scope of Operation Sophia and completely replace naval patrolling with air surveillance. Any SAR capacity of the operation was thus removed.[67] Critics argued that this military operation

[59] *Frontex,* 'Search & Rescue'.
[60] *Frontex*, 'News Release: Frontex Launching New Operation in Central Med'.
[61] J. Himmrich, 'Beyond Operation Sophia: What Role for the Military in Migration Policy?', *Dahrendorf Forum*, 4 March 2019.
[62] N. Nováky, 'The Road to Sophia: Explaining the EU's Naval Operation in the Mediterranean', *European View* 17/2 (2018), 205.
[63] Z. Campbell, 'Europe's Deadly Migration Strategy: Officials Knew EU Military Operation Made Mediterranean Crossing More Dangerous', *Politico*, 28 February 2019.
[64] European Political Strategy Centre, 'Irregular Migration via the Central Mediterranean', 7.
[65] See also United Kingdom, House of Lords, *Operation Sophia: A Failed Mission* (2017).
[66] Council of the European Union, 'EUNAVFOR MED Operation Sophia: Mandate Extended until 30 September 2019', Press release (29 March 2019).
[67] M. Peel, 'EU Poised to Order Migrant Rescue Ships Back to Port', *Financial Times*, 27 March 2019.

was ill-suited for the challenges of migration control, which requires skills different from those expected of a national navy. What this operation has delivered could have been more effectively achieved by 'a combination of Frontex, national law enforcement and coast guards'.[68]

The EU continues running two other patrol missions in the Mediterranean. The first is Frontex's Operation Themis, which replaced Operation Triton in 2018. Themis covers flows from Algeria, Tunisia, Libya, Egypt, Turkey and Albania. Apart from SAR, its focus includes cross-border crime, terrorism and drug smuggling.[69] The second patrol mission is Operation Poseidon, which since 2006 has focused on border surveillance on the land and sea border between Greece and Turkey. In total, EU operations have saved some 450,000 people in the Mediterranean since 2015.[70]

NATO is also present in the Mediterranean through its maritime security operation Sea Guardian, which interdicts suspect vessels, fights weapons smuggling and gathers intelligence.[71]

Private (NGO) rescue ships have conducted dedicated SAR operations in the Mediterranean.[72] Starting approximately in 2014 with the winding down of Mare Nostrum,[73] private rescue ships have played an important albeit controversial role in SAR, operating very close to the Libyan coast. According to the Italian Ministry of the Interior, in 2017 and up to May 2018, NGO ships carried out about 40% of the rescues.[74] In most cases NGO ships have placed alert calls to the national Maritime Rescue Coordination Centres. For example, the Spanish NGO Walking Borders has placed as many as 70% of the total alert calls to the national rescue centre, many of them from Moroccan waters.[75] The Mediterranean governments insisted that 'all vessels operating in the Mediterranean must respect the applicable international laws and not obstruct operations of the Libyan Coastguard.'[76] Following intense pressure from these

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[68] Himmrich, 'Beyond Operation Sophia'.

[69] *Frontex*, 'News Release: Frontex Launching New Operation in Central Med'.

[70] Council of the European Union, 'Saving Lives at Sea and Targeting Criminal Networks'.

[71] *NATO*, 'Operation Sea Guardian', 27 June 2018.

[72] Unlike passengers on state vessels, occupants of private ships are not under the jurisdiction of any state.

[73] European Political Strategy Centre, 'Irregular Migration via the Central Mediterranean'; J. Galaski, 'Why NGOs Have Stopped Search and Rescue Operations', *Liberties*, 15 November 2018.

[74] *Amnesty International*, 'Between the Devil and the Deep Blue Sea', 9.

[75] S. Jones, 'Morocco Drops Case Against Spanish Activist Who Helped Save Lives at Sea', *The Guardian*, 11 March 2019.

[76] *Brief*, 'Valletta Declaration after Summit MED7', 14 June 2019.

governments, the number of private rescue ships fluctuated. It fell from 16 in 2015 to about 5 in the spring 2019,[77] then rose again to somewhere between 5 and 10 at the time of writing (October 2019).

Deep disputes rage over the role of NGO rescue operations in the Mediterranean, and more specifically, about what impact their activities are actually having. European national coastguards allege that the very presence of these private ships acts as a magnet for organised smuggling operations, that some charity boats deliberately avoid detection and that they communicate with smugglers to facilitate departures from African shores. In contrast, NGO activists claim that they save lives in situations where no-one else does. Some of these organisations seem driven by purely humanitarian concerns. Others, such as 'WatchTheMed Alarm Phone' have a distinct ideology, advocating 'freedom of movement for all' and challenging 'Europe's exclusionary border regime'.[78]

Finally, commercial and fishing ships are subject to the same obligation to assist a vessel in distress and provide immediate rescue if needed. Commercial ships have been caught up in several incidents involving smuggled passengers, one of the most recent being the *El Hiblu 1* tanker, which in March 2019 was hijacked by a group of migrants who wanted to avoid being returned to Libya.[79] Faced with the withdrawal of EU ships, commercial ships are increasingly being relied upon to conduct rescue operations.[80] The shipping industry is concerned over the national authorities' steps to prevent disembarkations of rescued persons as this leaves the captains in difficult dilemmas.[81] Political conflict over SAR is leading to higher insurance costs for operators as the right of 'innocent passage'[82] through territorial seas is increasingly being questioned.[83]

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[77] Cf. J. Crosbie, 'Frontex "Involved" in Return of Migrants', *Politico*, 21 May 2019; *Welt*, 'Sea-Eye Rescue Ship in Action After a Three-Week Break', 16 February 2019.

[78] M. Stierl, 'Every Refugee Boat a Rebellion? Supporting Border Transgressions at Sea', *OpenDemocracy*, 18 September 2016.

[79] C. Scicluna and Z. Lupi, 'Maltese Soldiers Seize Small Tanker Hijacked by Migrants, Vessel Docks at Valletta', *Reuters*, 28 March 2019.

[80] *International Organization for Migration*, 'Joint Statement: IOM Director General António Vitorino and UN High Commissioner for Refugees Filippo Grandi Welcome Consensus on Need for Action on Libya, Mediterranean', 23 July 2019.

[81] *gCaptain*, 'ICS: Shipping Industry "Deeply Concerned"'.

[82] United Nations Convention on the Law of the Sea, sec. 3.

[83] Anonymous interview, 23 March 2019.

A high degree of interdependency exists between the various actors involved in SAR. According to one observer,

> few if any of the coastal states around the world, including major states such as the US and Australia (the latter has a SAR area up to 10% of the world's surface), have the national resources to be able to directly intervene in all SAR cases within their [region]. It is for this reason that programmes such as AMVER (Automated Mutual-Assistance Vessel Rescue System) have been developed to assist in quickly identifying merchant vessels that can intervene in a given case.[84]

With the elimination of the naval element of Operation Sophia in March 2019 and the state-induced reduction of private rescue ship operations, the diversity of the actors involved in SAR has decreased somewhat.

Irrespective of the ongoing European political conflict over SAR, the EU states have been developing a two-segment policy for SAR in the Mediterranean. Although this policy is still not sufficiently robust, it has succeeded in greatly reducing the numbers of irregular maritime arrivals in Europe. The following two sections outline the main elements of these policy segments. Detailed information on individual countries illustrates commonalities and differences within each policy segment.

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[84] Email communication, 19 July 2019.

The European policy segment: northern Mediterranean countries

The European policy segment consists of SAR operations by the individual South European member states and of ad hoc arrangements following disembarkation and relocation disputes. All the EU Mediterranean countries are continuing to conduct active SAR operations in their zones. The area that this segment covers was largest between 2013 and 2014, due to Mare Nostrum, and then again between 2016 and 2017, because of Operation Sophia. Since 2018, the area covered by this segment has become significantly smaller due to Italy's gradual withdrawal from the Libyan SAR zone.

Although the area covered has shrunk, the recent European intergovernmental political disputes over disembarkation and relocation are making this policy segment unstable. Until August 2019, these disputes were largely limited to the Italian and Maltese SAR zones. (Since that month, Turkey has relaxed its controls over illegal border crossings to Greece, leading to a spike in maritime migration flows to Greece.) With its persistent instability and the terrorist threats emanating from the country, Libya is causing more worries in Italy and Malta than, for example, the stable Morocco causes in Spain.

The Spanish and Greek governments, despite pursuing markedly different strategies, both opted not to politicise the issue in the way that the first Conte government in Italy did. They have refrained from inflammatory rhetoric and both have continued allowing at least some disembarkations.

Malta

Malta has been facing 'great migration challenges compared to the size of the population'.[85] It has shared Italy's frustrations about the lack of solidarity from the rest of the EU concerning the disembarkation, registration and relocation of migrants rescued in the Mediterranean. Unlike Italy, Malta has not ratified the latest (2004) amendments to the SAR Convention and does not consider itself bound by the requirement to provide a safe disembarkation port even if a rescue takes place within its SAR area.[86] Spanning from Tunisia to Greece, its SAR zone covers some 250,000 square kilometres, approximately

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[85] European Commission, 'Remarks by Commissioner Dimitris Avramopoulos'.

[86] *Amnesty International*, 'Between the Devil and the Deep Blue Sea', 11.

'the size of Great Britain.'[87] According to Amnesty International, the Maltese government has insisted that anybody rescued in its SAR zone should be taken to the nearest safe port, often in Italy.[88]

Since the escalation of intra-EU disembarkation conflicts in 2018, Maltese practice has been to allow the disembarkation of passengers brought to one of Malta's ports by private rescue ships. However, this has been under the condition that no passengers remain in Malta and all are immediately distributed to other EU states, a policy that Italy has also practiced.[89]

Still, the Maltese rescue policy has been somewhat more permissive than that of Italy. The Maltese government has repeatedly stated that its own patrol boats would rescue migrants and bring them to Malta when they are seen to be in distress. In a June 2019 case, this was even done following an alert by 'Alarm Phone', an NGO service for refugees in distress at sea.[90] It appears that when the Maltese forces were in control of the whole process from rescue to disembarkation, this policy was implemented without further conditions binding the ships or passengers in question.[91] Moreover, Malta's official rhetoric has been more measured and more legalistic than that of the first Conte government in Italy: it has stopped short of personal attacks on rescuers.

Following the creation of the second Conte government in Italy in September 2019, SAR cooperation between Malta and Italy has markedly improved. In mid-September, the Maltese authorities accepted 90 migrants saved by the Italian coastguard in the Maltese SAR zone.[92]

[87] Grech and Sansone, 'Shrinking Malta's Search and Rescue Area Is "Not an Option"'.

[88] *Amnesty International*, 'Between the Devil and the Deep Blue Sea', 11.

[89] Until recently, people considered for such relocations were 'informed of their rights and of the possibility to apply for international protection in the country of destination.' By July 2019 the procedure had changed, and the migrants in question lodged an international protection application in Malta. Email communication, 19 July 2019.

[90] *Times of Malta*, 'Rescued Migrants Arrive in Malta', 23 June 2019.

[91] For accounts that support this claim, see *The Independent*, 'Armed Forces Rescue 85 Migrants', 11 May 2019; *The Daily Star*, 'Malta Rescues 85 Migrants From Sinking Boat', 11 May 2019; C. Scicluna and M. Heinrich (ed.), 'Several Hundred Migrants Rescued From Mediterranean by Malta', *Reuters*, 5 June 2019.

[92] *Deutsche Welle*, 'Ocean Viking Charity Vessel Rescues 109 Migrants in Mediterranean', 18 September 2019.

Spain

In the western Mediterranean, the Spanish navy has been conducting SAR operations and disembarking passengers on Spanish soil.[93] Restrictions on SAR have so far concerned only private rescue ships.[94] And even there, the Spanish government has made exceptions and invited rescue boats to disembark their passengers. The case of the *Aquarius* in June 2018 and the offer of disembarkation extended to the *Open Arms* in August 2019 serve as examples.[95] However, since the beginning of 2019, the policy has been to decrease the presence of the Spanish Civil Guard (coastguard) in Moroccan and international waters.[96] Soon after taking hundreds of migrants from the *Aquarius*, the socialist Sánchez government made it clear it would not take part in the ad hoc distribution arrangements for passengers accepted by Italy and Malta, arguing that Spain had to deal with all the those arriving via the western Mediterranean route.[97]

The disembarkation of irregular migrants on Spanish territory continues. The non-existence of registration 'hot-spots' on this territory indicates the reluctance of Spanish authorities to register arrivals and assume legal responsibility for them. Spanish authorities have a presence deep inside Africa, which contributes to strong ties with African governments.[98] Cooperation with Morocco, Senegal and Mauritania has been multifaceted. These countries have cooperated in joint patrolling with the Spanish authorities, as far as the Senegalese coast. Joint activities with Morocco are currently taking a completely new shape. (See below.)

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[93] European Council on Refugees and Exiles, *Relying on Relocation: ECRE's Proposal for a Predictable and Fair Relocation Arrangement Following Disembarkation* (25 January 2019).

[94] S. Edwards, 'Spanish NGO Says Rescue Boat Blocked From Operating in Mediterranean', *Reuters*, 14 January 2019.

[95] S. Lüdke et al., 'A Wall Worse Than Trump's: European Policies Create New Dangers on Mediterranean', *Spiegel Online*, 18 June 2019; *Deutsche Welle*, 'Spain Invites Stranded Migrants to Disembark in Majorca or Menorca', 18 August 2019.

[96] Lüdke et al., 'A Wall Worse Than Trump's'.

[97] L. Abellán, 'Italy's Salvini Refuses Entry to "Open Arms" Despite EU Offer of Help', *El País*, 16 August 2019.

[98] Council source, interviewed on 15 March 2019.

France

France is too remote from Africa to be directly confronted with disembarkation problems. Neverthe-less, when faced with a determined effort by an NGO to disembark migrants on the French soil—the case of the *Aquarius* in 2018—Paris showed equal determination not to allow this.[99] In addition, France has further hardened its policy to refuse entry to immigrants at the land border with Italy. It was, at least until March 2019, more lenient vis-à-vis migrants coming from Spain.[100]

Greece

In the eastern Mediterranean, the Greek navy intercepts migrants boats coming from Turkey although estimations of the ratio of intercepted boats vary widely. The Greek forces then disembark rescued mi-grants on Greek shores. Until the early 2010s the country's asylum system was rudimentary. There was a tendency, similar to the situation in Italy, not to register migrants in accordance with the Dublin and Eurodac rules. Registration rates have significantly improved since 2016, not least due to massive EU financial and logistical support. Critics continue to claim that the Greek administration still does not is-sue reliable asylum decisions, thus making returns to Turkey impossible. The Greek coastline extends for 18,000 kilometres, and with Greece's 9,000 islands, it is extremely difficult to police.[101]

Other northern Mediterranean countries, such as Albania and Croatia are too far removed from Africa to be directly faced with disembarkation and relocation dilemmas.

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[99] *The Local.fr,* 'France says "No" to Marseille-Bound Migrant Rescue Ship', 25 September 2018.

[100] A. Nossiter, 'French Mayor Offers Shelter to Migrants, Despite the Government's Objections', *The New York Times*, 12 February 2019.

[101] A. Syrigos, 'Greece as Main Gateway for Immigration Into the EU', in V. Novotný (ed.) *Opening the Door? Immigration and Integration in the European Union* (Brussels: Centre for European Studies, 2012), 224.

The Afro-Asian policy segment: southern and eastern Mediterranean countries

The EU's Afro-Asian policy segment includes preventing illegal maritime border crossings from Africa to Europe and EU support for the management of irregular migration within Africa.[102] This segment came about thanks to coinciding interests between the EU, on the one hand, and the EU's maritime neighbours, on the other.

The maritime part of this segment is based on international law. Articles 19 and 25 of the UNCLOS Convention state the following:

> Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in . . . the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State . . . The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

Moreover, the EU's 2014 Regulation on the surveillance of the external sea borders was adopted to 'prevent unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner.'[103] In Articles 6 to 10, the Regulation describes measures the member state concerned may take to counter migrant smuggling. These include interceptions in territorial and international waters, seizing vessels, ordering vessels to alter their course and even—with regard to international waters (high seas)—disembarkation 'in the third country from which the vessel is assumed to have departed.' These measures have to be conducted 'in accordance with international law and respect for fundamental rights' and in compliance with the principle of *non-refoulement*.

The European Council's Malta Declaration from February 2017 confirmed the need to train the Libyan coastguard.[104] In 2018 the European Council stated that

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[102] For details on measures and financing instruments, see European Commission, *Migration on the Central Mediterranean Route: Managing Flows, Saving Lives*, Communication, JOIN (2017) 4 final (25 January 2017).

[103] European Parliament and Council Regulation (EU) no. 656/2014 on establishing rules for the surveillance of the external sea borders, OJ L189 (27 June 2014), Preamble 1.

[104] European Council, 'Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route' (3 February 2017).

disembarkation in a third country is possible if the search and rescue is carried out in the territorial sea of that country by its coast guard or by other third country vessels. If the search and rescue occurs in international waters and involves an EU State's flag vessel, disembarkation can still take place in a third country, provided that the principle of non-refoulement is respected.[105]

These considerations, as well as the delineation of SAR zones, clearly point to the possibility of returning passengers rescued on the high seas (i.e. the large proportion of the Mediterranean), as well as in the territorial seas of southern Mediterranean states, to their countries of departure. Like all other signatories to the SAR Convention (see Table 2), the southern Mediterranean countries have the duty to provide adequate and effective SAR services.[106]

In fact, EU policy is moving in the direction of pre-emptive containment of migration.[107] The main measures are assisting third countries to fulfil their obligations under the law of the sea and preventing the abuse of the UNCLOS and SAR Convention by smugglers and their clients. Forming partnerships with the countries of departure is essential to this approach. The objectives of this policy are to reduce the number of arrivals and to relieve individual EU countries of the responsibility for rescued migrants by meeting the border and migration management needs of the countries of departure.[108] At the same time, preventing embarkations has led to thousands of lives being saved.[109]

With European encouragement and support, the North African countries have been formally declaring their SAR zones to the International Maritime Organization (IMO). According to the information available on IMO's online information sharing system, the Global Integrated Shipping Information System (GISIS), Morocco uploaded information on its SAR zone in 2011, and Egypt, Libya and Algeria uploaded data on their respective zones in 2018. At the time of writing, only information on

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[105] European Commission, 'Migration: Regional Disembarkation Arrangements', Strategic Notes (24 July 2018).

[106] Ciliberto, 'Libya's Pull-Backs of Boat Migrants', 503.

[107] Although this phrase does not appear, the key elements of pre-emptive containment are included in European Commission, *Migration on the Central Mediterranean Route*.

[108] Cf. Ciliberto, 'Libya's Pull-Backs of Boat Migrants', 492.

[109] Crosbie, ''Frontex "Involved" in Return of Migrants'. In 2013, centre–right deputies in the European Parliament proposed an amendment to the 'Lampedusa Resolution' which would state that the Parliament 'believes that saving lives in the Mediterranean starts at the point of departure'. Ironically, this amendment was defeated by the left-wing majority.

Tunisia was missing from the system.[110]

Each and every North African country has refused EU offers linked to the establishment of 'disem-barkation platforms', or centres for rescued passengers, an idea proposed by the European Council in July 2018.[111] Commitment to such high-profile platforms seems as politically risky to the North African governments as it is for Europeans.

Cooperation with Europe has continued regardless, in a less spectacular manner. This cooperation has taken different forms; comparing these experiences offers valuable lessons for the EU.

Table 2 Ratification of the SOLAS, SAR and UNCLOS conventions by the eastern and southern Mediterranean states as of May 2019

Country	SOLAS	SAR	UNCLOS
Turkey	✓	✓	not signed
Egypt	✓	not ratified	✓
Libya	✓	✓	signed but not ratified
Tunisia	✓	✓	✓
Algeria	✓	✓	✓
Morocco	✓	✓	✓

Sources: International Maritime Organization, 'Status of Conventions', 'Ratifications by State', updated 9 July 2019; and *United Nations Treaty Collection*, 'United Nations Convention on the Law of the Sea', updated 30 July 2019.

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[110] International Maritime Organization, 'GISIS: Global SAR Plan' (n. d.).
[111] European Council, 'European Council Meeting (28 June 2018) – Conclusions', EUCO 9/18 (29 June 2018).

Turkey

Until quite recently, Turkey had a history of not being particularly vigilant when it came to stopping smugglers taking migrants to Greece, by sea or land.[112] This continued throughout the Syrian civil war up until March 2016. Ongoing disputes between Turkey and Greece over, *inter alia*, sea borders were not conducive to cooperation on SAR. The situation changed dramatically with the signing of the EU–Turkey statement in March 2016.[113] The deal does not have an explicit SAR component. The agreement merely states that 'Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU and will cooperate with neighbouring states as well as the EU to this effect.'[114]

This clause was penned after rounds of negotiations between Greece, Turkey, the EU and NATO on the implementation of sea operations on the disputed Aegean Sea border. According to one observer, NATO has symbolic presence' in the Aegean, focusing mostly on information gathering. Other accounts attribute to NATO (and Frontex) a stronger role as a 'watchdog' of the EU–Turkey agreement.[115] Nevertheless, as a result of the agreement, Turkey began to take a more active approach to the interdiction of migrants heading to Greece.[116] The Turkish authorities started suppressing illegal crossings to Greece, breaking up smuggling gangs, patrolling Turkey's shores and intercepting boats. They took similar measures on the land border with Greece. In August 2019 the numbers of migrants arriving on the Greek islands began to rise considerably as a consequence of a relaxation of controls on the Turkish side.

Inside Turkey, Syrians receive protection under the 'temporary protection status'. The remaining asylum seekers have been registered with the UNHCR, and, more recently, with the (Turkish) Directorate

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112 Syrigos, 'Greece as Main Gateway for Immigration Into the EU', 235; and anonymous interview, 30 April 2019.
113 European Council, 'EU–Turkey Statement, 18 March 2016', Press release (18 March 2016).
114 Ibid.
115 Stierl, 'Every Refugee Boat a Rebellion?'
116 Cf. K. Dambach, 'Turkish Coast Guard Saves 69 Migrants', *Infomigrants*, updated 12 February 2019.

General of Migration Management, to be resettled in third countries:[117] in particular, the US, Germany, France and the Netherlands.[118]

Egypt

Egypt does not serve as major transit country en route to Europe. Still, to prevent it from obtaining that status, on 27 August 2017 the German government negotiated an agreement with Cairo. As a result of this agreement, the Egyptian government has been preventing people from leaving Egyptian shores and has also been tackling people smuggling.[119] The deal, the details of which have not been made public, includes additional components, including information campaigns against illegal migration, repatriations and voluntary returns of Egyptians living in Germany, and scholarships for Egyptians studying in Germany and for other countries' refugees who want to stay and study in Egypt. The agreement also contains provisions for training and job creation for Egyptians and for supporting refugees in Egypt.[120]

Following the Germany–Egypt agreement, the EU expected that Egypt could play a major role in coordinating North African border control and SAR operations.[121] However, this expectation has, so far, not been met. Like Algeria (see below), Egypt is preoccupied with its own security, and maritime SAR is not a priority. In February 2019 the African Union, under Egyptian leadership, issued a warning to its members not to follow the Libyan example of entering into disembarkation deals with the EU.[122] Alone among North African countries, Egypt has yet to ratify the SAR Convention (see Table 2), although it does conduct limited SAR operations regardless.

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[117] Anonymous interview, 20 May 2019.
[118] *UNHCR*, 'Resettlement Data Finder'.
[119] P. Carrel and M. Heinrich (ed.), 'Germany and Egypt Agree Deal to Stem Migrant Flow', *Reuters*, 28 August 2017.
[120] *Die Bundesregierung*, 'Deutsch-ägyptische Beziehungen: Bei Migrationspolitik noch enger kooperieren', 28 August 2017.
[121] M. Peel, 'Why the EU is Embracing Middle East Strongmen', *Financial Times*, 24 February 2019.
[122] D. Boffey, 'African Union Seeks to Kill EU Plan to Process Migrants in Africa', *The Guardian*, 24 February 2019.

Libya

In the central Mediterranean, the EU, led by Italy, has been encouraging Libya, until 2017 the main country of departure, to undertake its own SAR operations in accordance with its international obligations. This has gone hand-in-hand with Italy ceding to Libya control of SAR outside Libyan territorial waters.[123] Previously the Italian Maritime Rescue Coordination Centre coordinated rescues in the Libyan SAR zone, including in Libya's territorial waters.[124] This was the case even after the Mare Nostrum operation was terminated.[125] By 2017 the Libyan coastguard had begun intercepting boats and saving lives—it turned back about 20,000 people in that year.[126] Until June 2018 coordination of rescues was entrusted to Italian ships docked in Tripoli.[127]

The process of creating and training the Libyan coastguard has been a discreet one. In the absence of a government authority, Italian intelligence brokered deals with groups of smugglers to intercept boats departing from Libya. Insiders report that neither narcotics smuggling nor arms smuggling has been part of the deals with the newly formed Libyan coastguard. There are even accounts according to which the smuggling of oil out of Libya is a major industry. It has been reported that some prominent oil smugglers were officially registered by the Libyan authorities as members of the coastguard.[128]

The EU supported the Libyan authorities in officially declaring control over the Libyan SAR zone, which until 2018 existed merely as a legal construct.[129] The EU's material, logistical and aerial surveillance support is changing the picture. This support has been provided by the Italian government, Operation

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[123] Carrera and Cortinovis, *Search and Rescue, Disembarkation and Relocation Arrangements in the Mediterranean*, 8.

[124] Italian Coastguard Headquarters, *Search and Rescue Activity and Migratory Flows in Central Mediterranean Sea* (2016).

[125] V. Moreno-Lax, contribution to the panel debate on interception of migrants at sea and the role of international courts, Odysseus Summer School, Brussels, 12 July 2018.

[126] S. Scherer and A. Lewis, 'Exclusive: Italy Plans Big Handover of Sea Rescues to Libya Coastguard', *Reuters*, 15 December 2017.

[127] Y. Maccanico, 'Analysis: Italy's Redefinition of Sea Rescue as a Crime Draws on EU Policy for Inspiration', *Statewatch*, April 2019, 6.

[128] See also P. Tinti, 'Libya: Nearly There, But Never Further Away', *Pulitzer Center*, 5 October 2017.

[129] Council of Europe, *Lives Saved. Rights Protected*, 20, 51 n. 4.

Sophia,[130] Frontex[131] and the European External Action Service.[132] The EU provided a 'ready-made system' of technology, rules of engagement and training. The Libyan Maritime Rescue Coordination Centre was hosted on an Italian navy boat docked off the Libyan coast.[133] Without wider publicity, the EU was also able to draft in support from the International Organization for Migration (IOM) and the UNHCR to 'provide emergency humanitarian assistance to migrants and refugees at 13 "disembarkation points" in Libya'.[134] The Libyan Maritime Rescue Coordination Centre has been allocating Libyan ports as safe ports for disembarkation.[135]

A Council of Europe report describes the situation as follows:

> The declaration by Libya of its own SRR [search and rescue region], covering the main areas where distress situations are most likely to occur, has significantly re-shaped the migration control and SAR landscape in the central Mediterranean. The declaration by Libya of an SRR seems to have further signalled a retreat of member states' deployment of rescue ships . . . in and above international waters off the Libyan coast . . . on the presumption that rescue operations would now be covered by Libya.[136]

These efforts are bearing fruit. According to the UNHCR, from January to June 2018, 46% of the rescues off the Libyan coast were disembarked in Libya, the rest being disembarked in European countries. For the period between July and December, the proportion of those disembarked in Libya rose to 85%. (However, the latter percentage concerns a share of a much smaller total number of rescued passengers than in the first half of the year.)[137] According to the European Commission, 'no boats are allowed to enter Libyan territorial waters without authorisation of the Libyan authorities.'[138]

[130] *EUNAVFOR MED: Operation Sophia*, 'About Us: Mission' (n. d.).

[131] *EU Border Assistance Mission in Libya,* 'Joint Pilot Project EUBAM – FRONTEX – Italy for the Libyan General Administration for Coastal Security (GACS)', 21 February 2019.

[132] European External Action Service, 'EU–Libya Relations', Factsheet (9 November 2018).

[133] V. Moreno-Lax and M. Lemberg-Peterson, 'Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation Through Externalization', *Questions of International Law* 56 (2019), 5–33.

[134] European External Action Service, 'Central Mediterranean Route: Protecting Migrants and Managing Irregular Flows', Factsheet (4 December 2018).

[135] L. Tondo, 'Italy Adopts Decree That Could Fine Migrant Rescuers up to €50,000', *The Guardian*, 15 June 2019.

[136] Council of Europe, *Lives Saved. Rights Protected*, 24.

[137] *UNHCR*, 'Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe's Borders', January 2019.

[138] European External Action Service, Delegation of the European Union to Russia, *Facts Matter: Debunking Myths About Migration* (March 2019).

Major weaknesses remain. The Libyan authorities have not always been able to coordinate rescue operations in their SAR zone. One expert, interviewed for this study, noted that 'on a good day, the Libyan Maritime Rescue Coordination Centre has one person answering the phone', but this person is not always able to dispatch SAR vessels. An internal document of the Council of the EU from February 2019 acknowledged that the Libyan SAR zone was 'beyond the operational capacity of the Libyan Coast Guard'.[139] There have also been reports of poorly disciplined Libyan guards intercepting commercial tankers.

Securing basic welfare remains a challenge, as does preventing arbitrary detention and the endemic human rights abuses and extortion in the Libyan centres to which the rescued migrants are sent. A trilateral taskforce of the African Union, the EU and the UN has been active in freeing migrants from detention and facilitating voluntary returns (there have been 48,000 voluntary returns so far). In 2018 this task force also facilitated the evacuation from Libya of some 2,500 vulnerable refugees and asylum seekers to Niger, Italy and Romania.[140] In addition, in mid-2019 evacuations to Rwanda began. In December 2018 the Libyan authorities agreed to opening a hub that serves those migrants and refugees who want to leave Libya.[141]

Since April 2019, with the advance of General Haftar's forces on the Libyan capital Tripoli, the EU countries' differing interests in Libya have been on full display. This was following months of diplomatic tensions between Italy and France. Related to differing security and energy interests in the oil-rich country, these two countries have been supporting opposing factions in the Libyan struggle, thus heavily damaging the prospects for a unified EU policy.[142] The lack of European coordination on Libya and other North African countries has considerably weakened the EU's foreign policy muscle, including on the external dimension of migration policy. In July 2019 Haftar's forces bombed a detention centre in Tajoura, killing at least 53 people.[143] UNHCR and IOM subsequently called for all disembarkations in Libya to be stopped,[144] implying that all those irregularly departing from Libya should be brought to European shores.

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[139] Council of the European Union, 'Migration: EU Cooperation With Third Countries', Limite, 6599/19 (26 February 2019).

[140] N. Elshin, 'UN Agencies Call for More Resettlement and End to Detention of Asylum Seekers in Libya', *UN News*, 23 November 2018.

[141] *UNHCR*, 'First Group of Refugees Evacuated From New Departure Facility in Libya', 6 December 2018.

[142] T. Lindner, 'Přitažlivost silného muže: Jak se vyznat v současné bitvě o hlavní město Libye', *Respekt*, 28 April 2019.

[143] N. Nielsen, 'EU Dismisses UN Call to Stop Migrant Returns to Libya', *euobserver*, 4 July 2019.

[144] *UNHCR*, 'UNHCR and IOM Joint Statement: International Approach to Refugees and Migrants in Libya Must Change', 11 July 2019.

Tunisia

Although Tunisia has not formally declared its SAR zone, the country's authorities have been involved in limited rescue operations off its coast.[145] The EU and Italy have provided both patrol boats and vehicles to patrol the Tunisian coastline. Tunisia has consistently rejected the Libyan-style 'off the shelf' package of technology, know-how, training and logistical support for SAR. Along with terrorism and Tunisia's national sovereignty concerns, the 2011 influx of one million Libyans into the country has necessitated a much more measured and gradual EU policy towards the country. Unlike Morocco and Libya, Tunisia has refused to enter into SAR deals with the EU. An asylum law has been awaiting approval for years, but the Tunisian parliament has not passed it out of concern that the country would become a centre for the asylum seekers that the EU does not want. Faced with an influx of migrants from Libya, the government recently closed its only three refugee shelters, which were located in Medenine. Despite a functioning Maritime Rescue Coordination Centre, Tunisian authorities have 'a fear of efficiency' in their SAR operations.

Tunisia provides much greater safety than Libya does. It is becoming a more popular country of departure for Europe, although the numbers still lag behind those of its neighbour to the east. Like their counterparts in other North African countries, the Tunisian authorities have mainly been concerned about their country's land border, rather than the Mediterranean Sea border. The anxiety became acute in May 2019 with the outbreak of a renewed conflict in Libya.[146]

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[145] M. Prończuk, 'Migrants Flee Libyan "Prison" to Tunisia', *Politico*, 4 November 2019.
[146] A. Zaman, 'Tunisia on Edge as Libya's Hifter Advances', *Al Monitor*, 14 May 2019.

Algeria

Algeria has thus far shown little interest in active SAR. This may have to do less with capacity than with the lack of political will. As with other southern Mediterranean countries, the land border is the main preoccupation. The authorities have set up effective cooperation with Tuareg tribes in the far south of the country, co-opting them as a border force in exchange for being allowed to smuggle contraband across the border.[147]

Morocco

The EU has relied heavily on Spain in its dealings with the Moroccan authorities. Spain's work with Morocco goes back to the 2000s and is firmly established. Following a 2006 wave of irregular migration into Spain's Canary Islands, the Spanish government adopted a coordinated approach, working together with the Moroccan and other African governments in north-west Africa. This has included saving lives at sea, effecting migrant returns, preventing departures, tackling human smuggling, visa facilitation, conducting joint patrols in the sea and providing development assistance.[148] It has also covered the prevention of illegal crossings into the Spanish enclaves of Ceuta and Melilla. Opening legal migration channels and ensuring good treatment of Moroccan nationals in Spain have been essential elements in the equation.[149] Moreover, Morocco's administrative capacity has proven robust in comparison to that of the country's African neighbours.

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[147] Anonymous interview, 23 March 2019.
[148] K. Senge, 'Co-Responsibility Between Countries of Origin, Transit and Destination: Lessons From Spain's Experience With Migration', *European View* 17/1 (2018).
[149] D. Papademetriou and K. Hooper, *Building Partnerships to Respond to the Next Decade's Migration Challenges*, Migration Policy Institute (Washington, DC, 2017).

While the contact lines run between Madrid and Rabat, the European Commission has provided, through its Directorate-General for Neighbourhood and Enlargement Negotiations, most of the funding for capacity building in Morocco. Contributions by the French government have been considerable. Rigorous monitoring mechanisms have been put in place, including interdiction rates and human rights indicators. According to one observer, 'Morocco is reliable but expensive'.[150]

During the migrant surge that began in 2018, the Moroccan coastguard, in close cooperation with the Spanish authorities, intercepted migrant boats even before they ran into difficulties on the sea, and returned passengers to Moroccan territory. Like Tunisia, Moroccan territory has been used by migrants heading for Europe as it is much safer.[151] Morocco increasingly polices its southern border, thus reducing its role as a transit country.[152]

In February 2019 an unprecedented Spanish–Moroccan deal on SAR was concluded. The effect was immediate. Spanish sea rescue services are now able to return migrants to Moroccan ports when the nearest port is in Morocco. Until recently, all migrants found by Spanish SAR were automatically taken to Spanish ports even if the rescue took place near the Moroccan coastline. Spain had pressured the EU to pay Morocco €140 million to agree to the new arrangement.[153]

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[150] Anonymous interview, 23 March 2019.
[151] H. Saleh, 'Surge in Morocco Migrants Raises Alarm in Spain', *Financial Times*, 24 October 2017.
[152] Abderrahim, *Pushing the Boundaries*.
[153] M. Martín, 'Spain and Morocco Reach Deal to Curb Irregular Migration Flows', *El Pais*, 21 February 2019.

Discussion

Long-term intra-EU disputes concerning disembarkation and relocation indicate that it may be difficult to find a comprehensive solution. Nevertheless, the premise that the EU will accept all rescued passengers clearly no longer applies. There is a growing acknowledgement that a purely humanitarian approach to irregular migration flows in the Mediterranean brings about more deaths since it encourages the people smuggling industry.[154] It is also widely recognised that the EU must preserve passport-free travel inside the Schengen zone and that this is not possible without securing the zone's external borders.

Legal constraints on EU policy in the Mediterranean

For years the US has been able to unlink rescue by its ships from automatic access to the US asylum system. It has done so by conducting asylum admissibility interviews on large coastguard holding vessels. The US policy, practiced in the Gulf of Mexico and around Florida, entails intercepting boats carrying irregular migrants; examining admissibility for asylum on board a large holding vessel; returning rejected asylum seekers to the countries of departure; and, on the completion of the asylum interviews (sometimes conducted at Guantánamo Bay, Cuba), transporting successful applicants to third countries.[155]

At first sight, this US practice appears to be an attractive option for the EU: conducting such admissibility interviews on boats would address the persistent difficulties with returning rejected asylum seekers from European soil. However, closer inspection shows that strong legal and political barriers stand in the way of such an EU policy. In the US, asylum is a 'discretionary form of relief'. According to US law, asylum may be granted to an applicant who meets the definition of a refugee, that is someone 'who has

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[154] European Political Strategy Centre, 'Irregular Migration via the Central Mediterranean'.

[155] S. L. Arenilla, 'Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States', *Anuario Mexicano de Derecho Internacional* 15 (2015), 304.

been persecuted or has a well-founded fear of future persecution' according to the formulations of the Refugee Convention.[156] In contrast, the EU's Charter of Fundamental Rights, whose provisions go beyond those of the Refugee Convention, prohibits, *in absolute terms*—and irrespective of the conduct of the person concerned (Articles 4 and 19)—removal to a country where there is a serious risk of a person being subjected to torture, or inhuman or degrading punishment or treatment.[157]

Moreover, under current European asylum legislation, and in practice, most claims are, in fact, deemed admissible. They do result in formal asylum procedures being conducted. The consequence of conducting admissibility interviews at sea would be that anyone who was intercepted by an EU ship and launched an asylum claim would have to be brought to EU shores. This is because these procedures have a built-in right of appeal, and the idea of a court judging these appeals on board a ship would appear far-fetched to even the most imaginative thinker. Finally, this approach would inevitably mean turning the European holding vessels in question into 'floating disembarkation platforms', an idea that would surely be rejected by the North African governments.[158]

A move to a new EU asylum system that would conceive of asylum as a discretionary measure, as opposed to a legal obligation, would make it possible to disconnect SAR on the sea from automatic access to the EU's asylum process. Such a move would require a legal revolution the likes of which are unlikely to occur in the foreseeable future. Given that even comparably much smaller changes to the existing asylum rules do not find sufficient support in the Council, one can only conclude that such a massive overhaul of the EU legislation is not in sight.

An additional legal challenge to conducting swift returns on the sea stems from the interpretations of the Refugee Convention by the European Court of Human Rights. Outside Europe, all or almost all signatories of the Refugee Convention consider territorial and international waters exempt from the application of the Convention. In contrast, the European Court of Human Rights ruled in 2012 that the Refugee Convention applies extra-territorially and that a vessel is subject to the jurisdiction of the state

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[156] K. Aschenbrenner, 'Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum', *University of Michigan Journal of Law Reform* 45/3 (2012), 595.

[157] Court of Justice of the European Union, 'Judgment of the Court of Justice in Joined Cases C-391/16, M, C-77/17 X, C-78/17 X', Press release no. 62/19 (Luxembourg, 14 May 2019).

[158] I am grateful to an interlocutor from outside the Martens Centre for outlining these limitations.

of the flag it is flying (Italy in the legal case in question). The vessel thus assumes legal responsibility for any persons its crew intercepts and returns to a country where they would be at risk.[159] It is not clear whether the 2019 Spain–Morocco deal (see above) would withstand a similar legal challenge.

It follows that, due to the legal challenges outlined, the EU needs to consistently follow a different path, one of fortifying the Afro-Asian segment of its SAR policy. This includes assisting third-country governments with improving their asylum legislation, conducting interdictions and SAR operations in their SAR zones, and providing safety and security for the rescued migrants. Such a policy is less likely to be struck down by European courts, which tend to interpret the EU's legal obligations in a very broad manner.

Military and private rescue boats

As for the role of the military, difficulties with Operation Sophia have shown that navy operations are not necessarily well suited for the purposes of maritime migration control and that they cannot be expected to take leading roles in SAR.[160] Nevertheless, the case for the deployment of army troops in connection with migration, border management and SAR should not be dismissed entirely. On land and on the sea, European armies and NATO can help create secure environments for civilian authorities to undertake SAR operations and suppress organised crime.[161] In countries of conflict, EU armies can, and should, assist in creating stability and safety for local populations and migrants alike.

The question of private rescuers operating in the Mediterranean is too complex to be addressed here in detail. There is a clash between, on the one hand, the legitimate security interests of the European governments (the need to know who is coming into the EU and for what purpose) and, on the other hand, NGO

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[159] ECtHR, Hirsi Jamaa and Others v Italy.

[160] D. Fiott and R. Parkes, *Protecting Europe: The EU's Response to Hybrid Threats*, European Union Institute for Security Studies, Paper 151 (Paris, 2019), 9. See also Carrera et al., *The European Border and Coastguard*, 37.

[161] Himmrich, 'Beyond Operation Sophia'.

efforts to save lives on the sea. With the right approach and in the long term, the prevention of dangerous journeys across the sea could become the common goal of European governments and NGOs alike.

Pre-emptive containment

The EU's recent successes in persuading third-country governments to cooperate on migration controls show that the policy trajectory of preventing irregular migrant departures from African shores is feasible. This trajectory is also desirable. The EU needs to be able to control its borders and decide who enters its territory, whether the people concerned are economic migrants or refugees. Weaponisation of irregular migration by hostile powers such as ISIS has become a reality, and the Union has a duty to monitor the flows of criminals and weapons and other contraband into the EU.[162]

The model under which people pay Africa-based smugglers and then rely on being rescued and transported to Europe thus cannot be defended morally or politically. The purpose of the maritime conventions is to regulate and coordinate rescue of people in distress, not to provide a living to smuggling gangs. Critics of the EU policy of pre-emptive containment almost invariably forget to count the number of people who do not end up on the bottom of the sea[163] thanks to the EU's support for the North African coastguards, including that of Libya. With regard to the most vulnerable refugees, who do not find international protection within Africa, the EU needs to maintain viable resettlement mechanisms such as legal asylum routes to safety in Europe. Similar imperatives apply in the EU's cooperation with Turkey.

Although not directly related to the discussion on SAR, the EU might want to follow the example of the 2016 US–Australian deal on the mutual exchange of refugees, to further dissuade irregular maritime immigration.[164] The deal (whose wording has never been made public) was concluded between President

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162 Parkes, *Healthy Boundaries*.
163 For example, in May 2019 the Libyan coastguard saved 290 migrants in two operations off the coast near the capital Tripoli. See *Al-Jazeera,* 'Libya's Coastguard Rescues 290 Migrants off Tripoli's Coast', 24 May 2019.
164 *Andrew & Renata Kaldor Centre for International Refugee Law*, 'The Australia–United States Refugee Resettlement Deal', 10 April 2019.

Obama and Prime Minister Turnbull. The US agreed to take in up to 1,250 refugees, predominantly from Iran, Sri Lanka and Afghanistan, who were being held in Australia-run offshore island camps in Papua New Guinea and Nauru. Australia, for its part, agreed to resettle Central American refugees from camps in Costa Rica. Australia benefited by being able to demonstrate the coherence of its policy of not granting asylum to the 'boat' migrants who evade regular channels for asylum applications. The US benefited by being able to demonstrate that it is not the only country to grant asylum to Central Americans. To discourage irregular journeys headed for Europe, the EU could strike similar deals with those non-EU countries that have functioning asylum systems and host at least some refugees.

Finally, achieving compromises between the EU member states' interests inside Africa, and especially in Libya, is an essential condition for a coherent policy, however distant this goal may be at present. The situation where European economic interests in Africa override common 'home affairs diplomacy' efforts is unsustainable if the EU is serious about containing immigration. In addition, a coming together of European interests would make it easier to put pressure on the Libyan authorities to improve the conditions in the country's detention centres.

Coinciding and clashing interests

As for cooperation with the North African countries, it is often asserted that their interests on migration differ from those of the EU countries. It may be true that many African governments see emigration as a solution to their economic, demographic and political problems. But we should not lose sight of those areas where interests coincide. These areas are spelled out in the political declaration and action plan from the EU–Africa Valletta Summit on Migration in November 2015,[165] and are implicit in the European Commission's 2017 *Partnership Framework on Migration*.[166]

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[165] European Council, 'Valletta Summit on Migration, 11–12 November 2015 – Action Plan and Political Declaration', Press release (12 November 2015).

[166] European Commission, 'Partnership Framework on Migration: Commission Reports on Results and Lessons Learnt One Year On', Press release (23 February 2017).

First, North African governments sometimes do not have the capacity to guard their land and sea borders, and they see this as a problem. They would like to create functioning land border management and the capacity to return migrants from North Africa to their countries of origin. For this they need not only technical equipment but also trained personnel. The EU has been helping in this field, for example through the EU Border Assistance Mission in Libya. If the EU does not contribute to strengthening the North African states' migration policies and general administrative efficiency, its efforts to improve co-operation on irregular maritime migration will be less successful.

Second, the EU continues to need workers, especially in low-skilled positions on farms and in construction. Opening legal migration channels for the citizens of North African countries is unlikely to significantly diminish the push factors that drive people to migrate to Europe. However, the existence of legal migration channels, and good treatment of a country's labour migrants in Europe, would lead to the creation of the trust that is necessary for cooperation on border management and SAR. It would markedly increase the democratic legitimacy of Africans' cooperation with Europeans in migration-related matters, not least because remittances significantly contribute to African countries' economies. Therefore, contracts could be concluded between willing African states and the EU. The African states would sign up to quotas for circular labour migrants to work in the EU. The EU member state in question would guarantee these workers' wages and conditions. In return, the African government concerned would bind itself to readmit those of its nationals who were found to be living in the EU illegally. Open-ing up legal migration channels would thus provide the EU with a pressure point vis-à-vis the sending country.

Preventing people smuggling is an area where the EU has been facing unenviable dilemmas. Euro-pean and African interests can coincide when it comes to large-scale people smuggling and trafficking. This is a criminal activity, closely connected to organised transnational groups. Improving security by tackling these groups profits both Europeans and Africans. On the other hand, European and African interests may clash when it comes to small-scale smuggling across land borders. This is a simple commercial activity where the difference between a taxi service and smuggling is minute. This type of smuggling provides livelihoods for considerable numbers of North Africans. EU-inspired legal restric-tions on cross-border traffic destroy the livelihoods of food sellers and operators of other small busi-nesses in transport hubs such as Niger's Agadez.

The fact that genuine refugees often pay smugglers to obtain asylum in the desired destination does not change the imperative to confront the organised smuggling industry. Refugees have no legal right to seek asylum in the country of their choice; they only have the right to seek asylum. The Mediterranean Sea also serves as a major trading route. Guaranteeing safe and secure transport routes free of organised crime is in the interest of both Europeans and Africans. And we should not forget that the North African smuggling groups often have collaborators on the European continent. The multitude of factors and interests involved means that trade-offs in the area of anti-smuggling policies will not be completely eliminated.[167] In the medium to long term, improving economic conditions and creating jobs in North Africa and the Sahel remain imperative if the goal of providing alternative livelihoods is to be reached.

In the context of migration controls, the 'fear of efficiency' is a crucial consideration. As is already well known to the observers of European asylum policies, a country may want to avoid fulfilling its legal obligations on the registration of migrants out of fear that its government would become responsible for processing their asylum claims. In situations where there are high numbers of incomers, such concerns are justified. North African governments have the same fears, which explains their reluctance to adopt asylum legislation in the first place. Easy solutions to this problem are not at hand. In the long run financial incentives—coupled with concessions on economic issues, including trade and investment—and massive European efforts to increase stability in Libya are likely to contribute to durable solutions. The end goal for the EU is to work with North Africans so long and so persistently that their countries become 'safe third countries'. In this way the requirement of *non-refoulement* becomes a non-issue.

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[167] D. Papademetriou and K. Hooper, *Building Partnerships to Respond to the Next Decade's Migration Challenges*, Migration Policy Institute, Report (Washington, DC, 2017).

EU disembarkation mechanisms

As concerns the European segment of the EU's SAR policy, a comprehensive burden-sharing solution for the Mediterranean may still be a matter for the future. Currently we do not even have reliable data on who is coming across the Mediterranean: as mentioned above, statistical data on the mode of entry of asylum seekers does not exist.[168] What is beyond dispute is that once passengers reach the territorial waters of an EU member state, they become the responsibility of that country.[169]

Overall approach

The EU should be moving towards a policy that balances the traditional rights-based SAR system that primarily guarantees the rights of individuals with a functioning rules-based system that encourages adherence to international norms by all the countries around the Mediterranean and further north into EU territory.[170] In contrast to this general insight, a stronger emphasis on the rights of individuals and human dignity—backed by evaluation and monitoring—is necessary in those cases where the EU funds activities inside failed states, such as Libya. The Morocco case shows that monitoring mechanisms can be put in place in cooperation with North African countries.

Finally, the EU needs to be able to provide refuge for individuals fleeing prosecution. A degree of flexibility should be retained in the application of the basic tenet of preventing abuse of the law of the sea. Occasions might arise in the future where groups of refugees choose crossing the sea to Europe as the only way of finding asylum, and the EU might want to keep its doors open at that moment.

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[168] Incomplete information from the European Commission from 2017 shows that along the central Mediterranean route 'just over half of those who arrived to Italy [in an irregular manner] requested asylum' (European Commission, *Migration on the Central Mediterranean Route*, 4).

[169] See the Asylum Procedures Directive, art. 3.

[170] Cf. Netherlands, Ministry of Foreign Affairs, 'A Renewed European Agenda on Migration' (1 May 2019).

Recommendations

On the basis of the points that have been discussed, a number of recommendations can be made. The policy measures recommended would require concerted political and diplomatic backing and adequate financing.

General

• Europe's SAR policies need to be designed in a manner that elicits democratic support from the European electorate. Ship captains' duty of rescue can no longer be misused as a means to enter the EU.

• The EU needs to continue encouraging its African and Asian maritime neighbours to prevent embarkations, conduct their own SAR operations and save lives. At the same time, the EU needs to make European SAR more reliable and predictable for the participating governments.

• Countries on both sides of the Mediterranean need to jointly develop an effective inter-state SAR system that does not have to rely on charity boats and passing merchant ships to engage in rescue operations.

• Countering organised crime groups that smuggle people from Africa to and through Europe remains an important challenge for national police agencies and intelligence agencies on both sides of the Mediterranean.

The European policy segment

• Intensive cooperation *between* EU countries is necessary to achieve common positions on immigration and security vis-à-vis the African partners. Competing country interests in oil exploitation need to be incorporated in a broader EU framework for dealing with Libya and other North African countries.

• For those migrants saved in European territorial waters, the member states, with the assistance of the

European Commission, need to patiently work towards finding mechanisms for disembarking, registering and distributing them in Europe.

• The EU needs to have better information on who is coming to Europe via the Mediterranean. National statistical offices, Eurostat and other agencies should try to collect data on the mode of entry of asylum seekers.

The Afro-Asian policy segment

• To establish trust and ensure that cooperation is mutually profitable, the EU needs to develop comprehensive partnerships with the countries of the southern and eastern Mediterranean. These partnerships should include trade, development, education and culture as well as legal migration and SAR. For these measures to be effective, the domestic population in Africa needs to benefit as well. It is unlikely that a narrow focus on migration alone would be sustainable in the long run.

• The EU needs to seriously address the 'fear of efficiency' in the SAR and asylum issues that exists among the southern Mediterranean governments. The starting point should be assisting these governments with land border management and with returning those not eligible for asylum to their countries of origin. For the EU this assistance could also serve as a means to continue requesting that the partner governments gradually build up their asylum systems.

• The EU should continue building up the coastguards in Libya and other North African countries, thus increasing their capacity to coordinate rescue operations in their SAR zones.

• The EU urgently needs to address the human rights abuses in the Libyan detention centres, without compromising on the imperative that the Libyan coastguard should continue bringing the rescued migrants back to their country.

Bibliography

Aalberts, T. E. and Gammeltoft-Hansen, T., 'Sovereignty at Sea: The Law and Politics of Saving Lives in the *Mare Liberum*', *Journal of International Relations and Development* 17 (October 2014), 439–68.

Abderrahim, T., *Pushing the Boundaries: How to Create More Effective Migration Cooperation Across the Mediterranean*, European Council on Foreign Relations (January 2019), accessed at https://www.ecfr.eu/publications/summary/pushing_the_boundaries_effective_migration_cooperation_across_Mediterranean on 30 July 2019.

Abellán, L., 'Italy's Salvini Refuses Entry to "Open Arms" Despite EU Offer of Help', *El País*, 16 August 2019, accessed at https://elpais.com/elpais/2019/08/15/inenglish/1565852352_828366.html on 26 September 2019.

Al-Jazeera, 'Libya's Coastguard Rescues 290 Migrants off Tripoli's Coast', 24 May 2019, accessed at https://www.aljazeera.com/amp/news/2019/05/libya-coastguard-rescues-290-migrants-tripoli-coast-190524063043952.html on 23 July 2019.

Amnesty International, 'Between the Devil and the Deep Blue Sea: Europe Fails Refugees and Migrants in the Central Mediterranean', August 2018, accessed at https://www.amnesty.org/en/documents/eur30/8906/2018/en/ on 4 July 2019.

Andrew & Renata Kaldor Centre for International Refugee Law, 'The Australia–United States Refugee Resettlement Deal', 10 April 2019, accessed at https://www.kaldorcentre.unsw.edu.au/publication/australia%E2%80%93united-states-resettlement-arrangement on 23 July 2019.

Angenendt, S. and Koch, A, 'Global Migration Governance and Mixed Flows: Implications for Development-Centred Policies', *Stiftung Wissenschaft und Politik*, June 2017, accessed at https://www.swp-berlin.org/en/publication/global-migration-governance-and-mixed-flows/ on 4 July 2019.

ANSA, 'Migrant Rescue Ship Alex Impounded', 8 July 2019, accessed at https://www.ansa.it/english/news/world/2019/07/08/migrant-rescue-ship-alex-impounded_2a58d302-ef5c-4bde-9511-3c375dcfb5be.html on 26 August 2019.

Arenilla, S.L., 'Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States', *Anuario Mexicano de Derecho Internacional* 15 (2015), 283–322.

Aschenbrenner, K., 'Discretionary (In)Justice: The Exercise of Discretion in Claims for Asylum', *University of Michigan Journal of Law Reform* 45/3 (2012), 595–633, accessed at https://repository.law.umich.edu/mjlr/vol45/iss3/3/?utm_source=repository.law.umich.edu%2Fmjlr%2Fvol45%2Fiss3%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages on 3 June 2019.

Asylum Information Database, 'Country Report Malta, 2018 Update', 11 March 2019, accessed at https://www.asylumineurope.org/news/11-03-2019/aida-2018-update-malta on 17 July 2019.

Asylum Procedures Directive (European Parliament and Council Directive 2013/32/EU on common procedures for granting and withdrawing international protection (26 June 2013)).

Boffey, D., 'African Union Seeks to Kill EU Plan to Process Migrants in Africa', *The Guardian*, 24 February 2019, accessed at https://www.theguardian.com/world/2019/feb/24/african-union-seeks-to-kill-eu-plan-to-process-migrants-in-africa on 22 July 2019.

Bowcott, O., 'ICC Submission Calls for Prosecution of EU over Migrant Deaths', *The Guardian*, 3 June 2019, accessed at https://www.theguardian.com/law/2019/jun/03/icc-submission-calls-for-prosecution-of-eu-over-migrant-deaths on 11 July 2019.

Brief, 'Valletta Declaration After Summit MED7', 14 June 2019, accessed at https://www.brief.com.cy/english/valletta-declaration-after-summit-med7 on 22 July 2019.

Bundesregierung, Die 'Deutsch-ägyptische Beziehungen: Bei Migrationspolitik noch enger kooperieren', 28 August 2017, accessed at https://www.bundesregierung.de/breg-de/aktuelles/bei-migrationspolitik-noch-enger-kooperieren-398726 on 30 July 2019.

Campbell, Z, 'Europe's Deadly Migration Strategy: Officials Knew EU Military Operation Made Mediterranean Crossing More Dangerous', *Politico*, 28 February 2019, accessed at https://www.politico.eu/article/europe-deadly-migration-strategy-leaked-documents/ on 17 July 2019.

Carrel, P. and Heinrich, M. (ed.), 'Germany and Egypt Agree Deal to Stem Migrant Flow', *Reuters*, 28 August 2017, accessed at https://www.reuters.com/article/us-europe-migrants-germany-egypt/germany-and-egypt-agree-deal-to-stem-migrant-flow-idUSKCN1B815J on 23 July 2019.

Carrera, S. and Cortinovis, R., *Search and Rescue, Disembarkation and Relocation Arrangements in the Mediterranean: Sailing Away from Responsibility*?, Centre for European Policy Studies, Report no. 2019-10 (Brussels, 2019), accessed at https://www.ceps.eu/wp-content/uploads/2019/06/LSE2019-10_ReSoma_Sailing-Away-from-Responsibility.pdf on 18 July 2019.

Carrera, S. et al., *The European Border and Coastguard: Addressing Migration and Asylum Challenges in the Mediterranean*?, Centre for European Policy Studies (Brussels, 2017), accessed at https://www.ceps.eu/wp-content/uploads/2017/02/TFR%20EU%20Border%20and%20Coast%20Guard%20with%20cover_0.pdf on 18 July 2019.

Ciliberto, G., 'Libya's Pull-Backs of Boat Migrants: Can Italy Be Held Accountable for Violations of International Law?', *The Italian Law Journal* 4/2 (2018), 489—530.

Cogolati, S., Verlinden, N. and Schmitt, P., *Migrants in the Mediterranean: Protecting Human Rights*, European Parliament Think Tank (October 2015), accessed at http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2015)535005 on 30 July 2019.

Connor, P., 'A Majority of Europeans Favor Taking in Refugees, But Most Disapprove of EU's Handling of the Issue', *Pew Research Center*, 19 September 2018, accessed at https://www.pewresearch.org/fact-tank/2018/09/19/a-majority-of-europeans-favor-taking-in-refugees-but-most-disapprove-of-eus-handling-of-the-issue/ on 4 July 2019.

Council of Europe, *Lives Saved. Rights Protected. Bridging the Protection Gap for Refugees and Migrants in the Mediterranean* (Strasbourg, June 2019), accessed at https://www.coe.int/en/web/commissioner/-/council-of-europe-member-states-must-assume-more-responsibility-for-rescuing-migrants-at-sea-and-protecting-their-rights on 2 August 2019.

Council of the European Union, 'EUNAVFOR MED Operation Sophia: Mandate Extended Until 30 September 2019', Press release (29 March 2019), accessed at https://www.consilium.europa.eu/en/press/press-releases/2019/03/29/eunavfor-med-operation-sophia-mandate-extended-until-30-september-2019/ on 23 July 2019.

Council of the European Union, 'Migration: EU Cooperation With Third Countries', Limite, 6599/19 (26

February 2019), accessed at https://www.statewatch.org/news/2019/mar/eu-council-migration-north-africa-coop-6599-18.pdf on 30 July 2019.

Council of the European Union, 'Saving Lives at Sea and Targeting Criminal Networks', 1 April 2019, accessed at https://www.consilium.europa.eu/en/policies/migratory-pressures/sea-criminal-networks/ on 4 July 2019.

European Parliament and Council Regulation (EU) no. 656/2014 on establishing rules for the surveillance of the external sea borders, OJ L189 (27 June 2014).

Court of Justice of the European Union, 'Judgment of the Court of Justice in Joined Cases C-391/16, M, C-77/17 X, C-78/17 X', Press release no. 62/19 (Luxembourg, 14 May 2019), accessed at https://curia.europa.eu/jcms/jcms/Jo2_7052/en/?annee=2019 on 30 July 2019.

Crosbie, J., 'Frontex "Involved" in Return of Migrants', *Politico*, 21 May 2019, accessed at https://www.politico.eu/article/frontex-involved-in-return-of-migrants/ on 22 July 2019.

Cuddy, A., 'Prompted by EU, Libya Quietly Claims Right to Order Rescuers to Return Fleeing Migrants', *euronews*, 7 August 2018, accessed at https://www.euronews.com/2018/07/06/prompted-by-eu-libya-quietly-claims-right-to-order-rescuers-to-return-fleeing-migrants on 22 July 2019.

Daily Star, The 'Malta Rescues 85 Migrants From Sinking Boat', 11 May 2019, accessed at http://www.dailystar.com.lb/News/World/2019/May-11/482933-malta-rescues-85-migrants-from-sinking-boat.ashx on 22 July 2019.

Dambach, K., 'Turkish Coast Guard Saves 69 Migrants', *Infomigrants*, updated 12 February 2019, accessed at https://www.infomigrants.net/en/post/15123/turkish-coast-guard-saves-69-migrants on 23 July 2019.

Deutsche Welle, 'Ocean Viking Charity Vessel Rescues 109 Migrants in Mediterranean', 18 September 2019, accessed at https://www.dw.com/en/ocean-viking-charity-vessel-rescues-109-migrants-in-mediterranean/a-50468236 on 8 October 2019.

Deutsche Welle, 'Spain Invites Stranded Migrants to Disembark in Majorca or Menorca', 18 August 2019, accessed at https://www.dw.com/en/spain-invites-stranded-migrants-to-disembark-in-majorca-or-menorca/a-50069749?utm_source=NEWS&utm_medium=email&utm_content=1st+section+2nd+story+d

w&utm_campaign=HQ_EN_therefugeebrief_external_20190819 on 26 August 2019.

Dixon, T. et al., *Attitudes Towards Migrants, Refugees and National Identity in Italy*, More in Common (July 2018), accessed at https://www.thesocialchangeinitiative.org/migration-italy/ on 27 September 2019.

Economist, The, 'How Italy's Interior Minister Tackles Illegal Migration', 1 February 2018, accessed at https://www.economist.com/europe/2018/02/01/how-italys-interior-minister-tackles-illegal-migration on 16 July 2019.

ECtHR, Hirsi Jamaa and Others v Italy [GC], Application no. 27765/09, 23 February 2012, *European Database of Asylum Law*, accessed at https://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509 on 11 July 2019.

Eder, F., 'Politico Brussels Playbook', *Politico,* 25 February 2019, accessed at https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-presented-by-naftogaz-of-ukraine-bumper-interview-edition-socialist-fest-all-politics-is-local/ on 23 July 2019.

Edwards, S., 'Spanish NGO Says Rescue Boat Blocked from Operating in Mediterranean', *Reuters*, 14 January 2019, accessed at https://www.reuters.com/article/us-europe-migrants-spain/spanish-ngo-says-rescue-boat-blocked-from-operating-in-mediterranean-idUSKCN1P82C2?feedType=RSS&feedName=w&utm_source=NEWS&utm_medium=email&utm_content=1st+section+1st+story+reuters&utm_campaign=HQ_EN_therefugeebrief_external_20190115 on 22 July 2019.

Elshin, N., 'UN Agencies Call for More Resettlement and End to Detention of Asylum Seekers in Libya', *UN News*, 23 November 2018, accessed at https://news.un.org/en/story/2018/11/1026441 on 23 July 2019.

EU Border Assistance Mission in Libya, 'Joint Pilot Project EUBAM – FRONTEX – Italy for the Libyan General Administration for Coastal Security (GACS)', 21 February 2019, accessed at https://eeas.europa.eu/csdp-missions-operations/eubam-libya/58534/joint-pilot-project-eubam-%E2%80%93-frontex-%E2%80%93-italy-libyan-general-administration-coastal-security_en on 23 July 2019.

EUNAVFOR MED: Operation Sophia, 'About Us: Mission' (n. d.), accessed at https://www.operationsophia.eu/about-us/ on 23 July 2019.

European Commission, 'Central Mediterranean Route: Commission Proposes Action Plan to Support Italy, Reduce Pressure and Increase Solidarity', Press release (4 July 2017), accessed at http://europa.eu/rapid/press-release_IP-17-1882_en.htm on 11 July 2019.

European Commission, *EU Operations in the Mediterranean Sea* (4 October 2016), accessed at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/fact-sheets/docs/20161006/eu_operations_in_the_mediterranean_sea_en.pdf on 26 August 2019.

European Commission, *Migration on the Central Mediterranean Route: Managing Flows, Saving Lives,* Communication, JOIN (2017) 4 final (25 January 2017), accessed at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2017%3A4%3AFIN on 26 August 2019.

European Commission, 'Migration: Regional Disembarkation Arrangements', Strategic Notes (24 July 2018).

European Commission, 'Partnership Framework on Migration: Commission Reports on Results and Lessons Learnt One Year On', Press release (23 February 2017), accessed at http://europa.eu/rapid/press-release_IP-17-1595_en.htm on 23 July 2019.

European Commission, 'Remarks by Commissioner Dimitris Avramopoulos at the Joint Press Conference with the Maltese Minister for Home Affairs and National Security Michael Farrugia', 7 May 2019, accessed at https://ec.europa.eu/commission/commissioners/2014-2019/avramopoulos/announcements/remarks-commissioner-dimitris-avramopoulos-joint-press-conference-maltese-minister-home-affairs-and_en on 30 July 2019.

European Commission, *Standard Eurobarometer 89: Europeans' Views on the Priorities of the European Union*, Communication, COM (2018) 42 final (June 2018), accessed at http://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2180 on 18 July 2019.

European Council, 'European Council Meeting (28 June 2018) – Conclusions', EUCO 9/18 (29 June 2018), accessed at https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-9-2018-INIT on 7 October 2019.

European Council, 'EU–Turkey Statement, 18 March 2016', Press release (18 March 2016), accessed at https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ on 23 July 2019.

European Council, 'Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route' (3 February 2017), accessed at https://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/ on 26 August 2019.

European Council, 'Valletta Summit on Migration, 11–12 November 2015 – Action Plan and Political Declaration', Press release (12 November 2015), accessed at https://www.consilium.europa.eu/en/press/press-releases/2015/11/12/valletta-final-docs/ on 23 July 2019.

European Council on Refugees and Exiles, *Relying on Relocation: ECRE's Proposal for a Predictable and Fair Relocation Arrangement Following Disembarkation* (25 January 2019), accessed at https://www.ecre.org/wp-content/uploads/2019/01/Policy-Papers-06.pdf on 23 July 2019.

European External Action Service, 'Central Mediterranean Route: Protecting Migrants and Managing Irregular Flows', Factsheet (4 December 2018).

European External Action Service, Delegation of the European Union to Russia, *Facts Matter: Debunking Myths About Migration* (March 2019), accessed at https://eeas.europa.eu/delegations/russia/60512/facts-matter-debunking-myths-about-migration_en on 23 July 2019.

European Parliament resolution 2013/2827(RSP) of 23 October 2013 on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa, accessed at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0448+0+DOC+XML+V0//EN on 23 July 2019.

European Political Strategy Centre, 'Irregular Migration via the Central Mediterranean: From Emergency Responses to Systemic Solutions', Strategic Note, Issue 22 (2 February 2017).

Fiott, D. and Parkes, R., *Protecting Europe: The EU's Response to Hybrid Threats*, European Union Institute for Security Studies, Paper 151 (Paris, 2019), accessed at https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_151.pdf on 23 July 2019.

Fratzke, S. and Salant, B., *Tracing the Channels Refugees Use to Seek Protection in Europe*, Migration Policy Institute (September 2017), accessed at https://www.migrationpolicy.org/research/tracing-channels-refugees-use-seek-protection-europe on 4 July 2019.

Frontex, *Annual Risk Analysis 2015* (Warsaw, 2015), accessed at https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf on 18 September 2019.

Frontex, *Annual Risk Analysis for 2019* (Warsaw, 2019), accessed at https://frontex.europa.eu/publications/risk-analysis-for-2019-RPPmXE on 18 September 2019.

Frontex, 'News Release: Frontex Launching New Operation in Central Med', accessed at https://frontex.europa.eu/media-centre/news-release/frontex-launching-new-operation-in-central-med-yKqSc7 on 17 July 2019.

Frontex, 'Search & Rescue', accessed at https://frontex.europa.eu/operations/search-rescue/ on 17 July 2019.

Galani, S., 'The "New" Human Rights at Sea Debate', *The Maritime Executive*, 12 February 2018, accessed at https://www.maritime-executive.com/editorials/the-new-human-rights-at-sea-debate on 10 July 2019.

Galaski, J., 'Why NGOs Have Stopped Search and Rescue Operations', *Liberties*, 15 November 2018, accessed at https://www.liberties.eu/en/news/why-ngos-have-stopped-their-search-and-rescue-operations/16294 on 11 July 2019.

gCaptain, 'ICS: Shipping Industry "Deeply Concerned" About New Italian Policy on Migrants Rescued at Sea', 12 June 2018, accessed at https://gcaptain.com/ics-shipping-industry-deeply-concerned-about-new-italian-policy-on-migrants-rescued-at-sea/ on 11 July 2019.

Grech, H. and Sansone, K., 'Shrinking Malta's Search and Rescue Area is "Not an Option"', *Times of Malta*, 26 April 2009, accessed at https://timesofmalta.com/articles/view/shrinking-maltas-search-and-rescue-area-is-not-an-option.254380 on 24 July 2019.

Himmrich, J., 'Beyond Operation Sophia: What Role for the Military in Migration Policy?', *Dahrendorf Forum*, 4 March 2019, accessed at https://www.dahrendorf-forum.eu/wp-content/uploads/2019/03/Beyond-Operation-Sophia.pdf on 17 July 2019.

Independent, *The*, 'Armed Forces Rescue 85 Migrants', 11 May 2019, accessed at https://www.independent.com.mt/articles/2019-05-11/local-news/Armed-Forces-rescue-85-migrants-6736207960 on 22 July 2019.

International Maritime Organization, 'GISIS: Global SAR Plan' (n. d.), accessed at https://gisis.imo.org/Public/COMSAR/Default.aspx on 2 August 2019.

International Maritime Organization, 'Resolution MSC.155(78), Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979' (20 May 2004), accessed at https://www.refworld.org/docid/432acad44.html on 31 July 2019.

International Maritime Organization, 'Status of Conventions', 'Ratifications by State', updated 9 July 2019, accessed at http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx on 30 July 2019.

International Organization for Migration, 'Joint Statement: IOM Director General António Vitorino and UN High Commissioner for Refugees Filippo Grandi Welcome Consensus on Need for Action on Libya, Mediterranean', 23 July 2019, accessed at https://www.iom.int/news/joint-statement-iom-director-general-antonio-vitorino-and-un-high-commissioner-refugees-filippo on 30 July 2019.

Italian Coalition for Civil Rights and Liberties, 'Know Your Rights: New Guidance on Rescue Operations in the Mediterranean', 25 September 2018, accessed at https://cild.eu/en/2018/09/25/kyr-guidance-rescue-operations-mediterranean/ on 4 July 2019.

Italian Coastguard Headquarters, *Search and Rescue Activity and Migratory Flows in Central Mediterranean Sea* (2016), accessed at https://www.guardiacostiera.gov.it/en/Documents/search-and-rescue-activity/search-and-rescue-activity-and-migratory-flows-in-central-mediterranean-sea.pdf on 22 July 2019.

Jones, S., 'Morocco Drops Case Against Spanish Activist Who Helped Save Lives at Sea', *The Guardian*, 11 March 2019, accessed at https://www.theguardian.com/world/2019/mar/11/morocco-drops-case-spanish-activist-helena-maleno on 19 July 2018.

Lindner, T., 'Přitažlivost silného muže: Jak se vyznat v současné bitvě o hlavní město Libye', *Respekt*, 28 April 2019, accessed at https://www.respekt.cz/tydenik/2019/18/pritazlivost-silneho-muze?issueId=100398 on 23 July 2019.

Local.fr, *The*, 'France Says "No" to Marseille-Bound Migrant Rescue Ship', 25 September 2018, accessed at https://www.thelocal.fr/20180925/france-says-no-to-request-by-migrant-rescue-ship-to-dock-in-marseille

on 22 July 2018.

Local.it, *The*, 'Salvini Wants Europe to Take Migrants From Italy Coastguard', 27 July 2019, accessed at https://www.thelocal.it/20190727/salvini-wants-europe-to-take-migrants-from-italy-coastguard on 26 August 2019.

Lüdke, S. et al., 'A Wall Worse Than Trump's: European Policies Create New Dangers on Mediterranean', *Spiegel Online*, 18 June 2019, accessed at https://www.spiegel.de/international/europe/european-policy-leads-to-migrant-drownings-in-the-mediterranean-a-1272521.html on 22 July 2019.

Maccanico, Y., 'Analysis: Italy's Redefinition of Sea Rescue as a Crime Draws on EU Policy for Inspiration', *Statewatch*, April 2019, accessed at https://www.statewatch.org/news/2019/apr/it-boat-directive-analysis.htm on 30 July 2019.

Martín, M., 'Spain and Morocco Reach Deal to Curb Irregular Migration Flows', *El Pais*, 21 February 2019, accessed at https://elpais.com/elpais/2019/02/21/inenglish/1550736538_089908.html on 23 July 2019.

Moreno-Lax, V. and Lemberg-Peterson, M., 'Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation Through Externalization', *Questions of International Law* 56 (2019), 5–33, accessed at http://www.qil-qdi.org/wp-content/uploads/2019/03/02_Externalizing-migration-control_MORENO-LEMBERG_FIN-mod.pdf on 23 July 2019.

NATO, 'Operation Sea Guardian', 27 June 2018, accessed at https://www.nato.int/cps/ua/natohq/topics_136233.htm on 18 July 2019.

Netherlands, Ministry of Foreign Affairs, 'A Renewed European Agenda on Migration' (1 May 2019), accessed at https://www.permanentrepresentations.nl/permanent-representations/pr-eu-brussels/documents/publications/2019/05/01/dutch-policy-paper---a-renewed-european-agenda-on-migration on 23 July 2019.

Nielsen, N., 'EU Dismisses UN Call to Stop Migrant Returns to Libya', *euobserver*, 4 July 2019, accessed at https://euobserver.com/migration/145369 on 23 July 2019.

Nolen, J. E., 'Territorial waters', *Encyclopaedia Britannica* (2019), accessed at https://www.britannica.com/topic/law on 24 September 2019.

Nossiter, A., 'French Mayor Offers Shelter to Migrants, Despite the Government's Objections', *The New York Times*, 12 February 2019, accessed at https://www.nytimes.com/2019/02/12/world/europe/bayonne-migrants-jean-rene-etchegaray.html?utm_source=NEWS&utm_medium=email&utm_content=2nd+section+2nd+story+nytimes&utm_campaign=HQ_EN_therefugeebrief_external_20190213 on 22 July 2019.

Nováky, N., 'The Road to Sophia: Explaining the EU's Naval Operation in the Mediterranean', *European View* 17/2 (2018), 197–209, accessed at https://journals.sagepub.com/doi/full/10.1177/1781685818810359 on 17 July 2019.

Pagnoncelli, N., 'Sondaggio: La politica dei porti chiusi convince il 59% degli italiani (e un elettore del Pd su tre)', *Corriere de la Sera*, 16 June 2018, accessed at https://www.corriere.it/politica/18_giugno_16/politica-porti-chiusi-convince-59percento-italiani-elettore-pd-tre-395f07c4-70d2-11e8-8f08-e72858c58491.shtml on 27 September 2019.

Papademetriou, D. and Hooper, K., *Building Partnerships to Respond to the Next Decade's Migration Challenges*, Migration Policy Institute (Washington, DC, 2017), accessed at https://www.migrationpolicy.org/research/building-partnerships-respond-next-decades-migration-challenges on 23 July 2019.

Paravicini, G., 'Italy's "Minister of Fear": Interior Minister Marco Minniti Credits His "Desert Diplomacy" with Stopping the Flow of Migrants to Italy', *Politico*, 27 December 2017, accessed at https://www.politico.eu/article/marco-minniti-italy-minister-of-fear/ on 16 July 2019.

Parkes, R., *Healthy Boundaries: Remedies For Europe's Cross-Border Disorder,* European Union Institute for Security Studies, Paper 152 (Paris, 2019), accessed at https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_152_Borders.pdf on 23 July 2019.

Peel, M., 'EU Poised to Order Migrant Rescue Ships Back to Port', *Financial Times,* 27 March 2019, accessed at https://www.ft.com/content/2e1fcc90-50b0-11e9-b401-8d9ef1626294 on 30 July 2019.

Peel, M., 'Why the EU is Embracing Middle East Strongmen', *Financial Times*, 24 February 2019, accessed at https://www.ft.com/content/db796d70-3070-11e9-ba00-0251022932c8?shareType=nongift on 30 July 2019.

Philips, L., 'Italy and Malta Want Special Summits on Africa Crisis', *euobserver*, 14 February 2011, accessed at https://euobserver.com/institutional/31803 on 11 July 2019.

Prończuk, M., 'Migrants Flee Libyan "Prison" to Tunisia', *Politico*, 4 November 2019, accessed at https://www.politico.eu/article/migrants-flee-libya-war-for-tunisia/?utm_source=POLITICO.EU&utm_campaign=a2fff72fb6-EMAIL_CAMPAIGN_2019_04_11_04_50&utm_medium=email&utm_term=0_10959edeb5-a2fff72fb6-189767077 on 23 July 2019.

Pundy, D., 'By Refusing Entry to Migrant Rescue Ship, Italy and Malta Reveal Legal Shortcomings', *Deutsche Welle*, 12 June 2018, accessed at https://www.dw.com/en/by-refusing-entry-to-migrant-rescue-ship-italy-and-malta-reveal-legal-shortcomings/a-44186764 on 27 February 2019.

Rettman, A., 'EU "Civilian" Mission Training Paramilitaries in Libya', *euobserver*, 18 November 2013, accessed at https://euobserver.com/investigations/122134 on 11 July 2019.

Saleh, H., 'Surge in Morocco Migrants Raises Alarm in Spain', *Financial Times*, 24 October 2017, accessed at https://www.ft.com/content/c831d386-b7c9-11e7-9bfb-4a9c83ffa852 on 30 July 2019.

Scherer, S. and Lewis, A., 'Exclusive: Italy Plans Big Handover of Sea Rescues to Libya Coastguard', *Reuters*, 15 December 2017, accessed at https://www.reuters.com/article/us-europe-migrants-libya-exclusive/exclusive-italy-plans-big-handover-of-sea-rescues-to-libya-coastguard-idUSKBN1E91SG on 23 July 2019.

Scicluna, C. and Heinrich, M. (ed.), 'Several Hundred Migrants Rescued From Mediterranean by Malta', *Reuters*, 5 June 2019, accessed at https://uk.reuters.com/article/uk-europe-migrants-malta/several-hundred-migrants-rescued-from-mediterranean-by-malta-idUKKCN1T6246?rpc=401&&utm_source=NEWS&utm_medium=email&utm_content=1st+section+1st+story+reuters&utm_campaign=HQ_EN_therefugeebrief_external_20190606 on 22 July 2019.

Scicluna, C. and Lupi, Z., 'Maltese Soldiers Seize Small Tanker Hijacked by Migrants, Vessel Docks at Valletta', *Reuters*, 28 March 2019, accessed at https://uk.reuters.com/article/uk-europe-migrants-hijacking/maltese-soldiers-seize-small-tanker-hijacked-by-migrants-vessel-docks-at-valletta-idUKKCN1R90OC?rpc=401&&utm_source=NEWS&utm_medium=email&utm_content=1st+section+1st+story+reuters&utm_campaign=HQ_EN_therefugeebrief_external_20190328 on 22 July 2019.

Senge, K., 'Co-responsibility Between Countries of Origin, Transit and Destination: Lessons From Spain's Experience With Migration', *European View* 17/1 (2018), 66–73.

Serrano-Conde, L., 'No More Ships to Rescue Migrants in the Mediterranean', *EurActiv*, 5 February 2019, accessed at https://www.euractiv.com/section/global-europe/news/no-more-ships-to-rescue-migrants-in-the-mediterranean/ on 22 July 2019.

Shotter, M., contribution at the Hearing on 'Search and Rescue in the Mediterranean', European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Brussels, 3 October 2019.

Spongenberg, H., 'Spain Unhappy With Malta Handling of Migrants', *euobserver*, 1 June 2007, accessed at https://euobserver.com/justice/24175 on 4 April 2019.

Stierl, M., 'Every Refugee Boat a Rebellion? Supporting Border Transgressions at Sea', *OpenDemocracy*, 18 September 2016, accessed at https://www.opendemocracy.net/en/every-refugee-boat-rebellion-supporting-border-transgressions-at-s/ on 30 July 2019.

Syrigos, A., 'Greece as Main Gateway for Immigration Into the EU', in V. Novotný (ed.), *Opening the Door? Immigration and Integration in the European Union* (Brussels: Centre for European Studies, 2012), 221—251.

Taylor, P., *Molto Agitato: Italy and Mediterranean Security*, Friends of Europe (Brussels, 2019), accessed at https://www.friendsofeurope.org/wp/wp-content/uploads/2019/06/2019_foe_sec_pub_italy_web_0.pdf on 16 July 2019.

Times of Malta, 'Rescued Migrants Arrive in Malta: Some Are "Near Death" and Need Urgent Medical Care – NGO Claims', 23 June 2019, accessed at https://timesofmalta.com/articles/view/rescued-migrants-arrive-in-malta.716184 on 22 July 2019.

Tinti, P., 'Libya: Nearly There, but Never Further Away', *Pulitzer Center*, 5 October 2017, accessed at https://pulitzercenter.org/reporting/libya-nearly-there-never-further-away on 30 July 2019.

Tondo, L., 'Italy Adopts Decree That Could Fine Migrant Rescuers up to €50,000', *The Guardian*, 15 June 2019, accessed at https://www.theguardian.com/world/2019/jun/15/italy-adopts-decree-that-could-fine-migrant-rescue-ngo-aid-up-to-50000 on 23 July 2019.

UNHCR, 'Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe's Borders', January 2019, accessed at https://www.unhcr.org/desperatejourneys/?utm_source=NEWS&utm_

medium=email&utm_content=1st%20section%201st%20story%20unhcr&utm_campaign=HQ_EN_therefugeebrief_external_20190130# on 23 July 2019.

UNHCR, 'First Group of Refugees Evacuated From New Departure Facility in Libya', 6 December 2018, accessed at https://www.unhcr.org/news/press/2018/12/5c09033a4/first-group-refugees-evacuated-new-departure-facility-libya.html on 23 July 2019.

UNHCR, 'Resettlement Data Finder', accessed at https://rsq.unhcr.org/en/#x45U on 23 July 2019.

UNHCR, 'UNHCR and IOM Joint Statement: International Approach to Refugees and Migrants in Libya Must Change', 11 July 2019, accessed at https://www.unhcr.org/news/press/2019/7/5d2765d04/unhcr-iom-joint-statement-international-approach-refugees-migrants-libya.html on 30 July 2019.

United Kingdom, House of Lords, *Operation Sophia: A Failed Mission* (2017), accessed at https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/5/504.htm#_idTextAnchor005 on 23 July 2019.

United Nations Treaty Collection, 'United Nations Convention on the Law of the Sea', updated 30 July 2019, accessed at https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en on 30 July 2019.

Villa, M., Villafranca, A. and Corradi, E., 'Migration: A Compass After the EU Council', *Italian Institute for International Political Studies*, 29 June 2018, accessed at https://www.ispionline.it/en/publication/migration-compass-after-eu-council-20894 on 11 July 2019.

Welt, 'Sea-Eye Rescue Ship in Action After a Three-Week Break', 16 February 2019, accessed at https://www.welt.de/newsticker/news1/article188906287/Einwanderung-Sea-Eye-Rettungsschiff-nach-dreiwoechiger-Pause-wieder-im-Einsatz.html?utm_source=ECRE+Newsletters&utm_campaign=7af88b8ec2-EMAIL_CAMPAIGN_2019_02_18_03_12&utm_medium=email&utm_term=0_3ec94 on 22 July 2019.

Zaman, A., 'Tunisia on Edge as Libya's Hifter Advances', *Al Monitor*, 14 May 2019, accessed at https://www.al-monitor.com/pulse/originals/2019/05/tunisia-on-edge-libya-hifter-tripoli.html on 23 July 2019.

Search and rescue (SAR) in the central Mediterranean has become a highly contentious issue in European politics. Following the decision of the Italian government in mid-2018 to reduce disembarkations of the rescued passengers on Italian territory, disputes have erupted between the European governments. Irrespective of the ongoing European political conflict over SAR, the EU states have been developing a two-segment policy for SAR in the Mediterranean. This two-segment policy has succeeded in greatly reducing the numbers of irregular maritime arrivals in Europe. The European policy segment consists of SAR operations by the individual South European member states, ad-hoc arrangements following disembarkations and a coordinated withdrawal from the Libyan SAR zone. The EU's Afro-Asian policy segment has been based on the prevention of illegal border crossings and support for Turkey, Libya and the other North African countries in running their own border control and SAR operations.

The EU should be moving towards a policy that balances the traditional rights-based SAR system that primarily guarantees the rights of individuals with a functioning rules-based system that encourages adherence to international norms by all the countries around the Mediterranean. The premise that the EU will accept all rescued passengers no longer applies. The EU needs to continue encouraging its African and Asian maritime neighbours to prevent embarkations, conduct their own SAR operations and save lives, while making the European SAR operations more reliable and predictable for the participating governments. To establish trust and ensure that cooperation is mutually profitable, the EU needs to develop comprehensive partnerships with the countries of the southern and eastern Mediterranean. These partnerships should include trade, development, education and culture as well as legal migration and SAR. The EU urgently needs to address the human rights abuses in the Libyan detention centres, without compromising on the imperative that the Libyan coastguard should continue bringing the rescued migrants back to their country.

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