

FORENSIC OCEANOGRAPHY

MARE CLAUSUM

Italy and the EU's undeclared operation to stem migration across the Mediterranean

A report by Forensic Oceanography (Charles Heller and Lorenzo Pezzani), affiliated to the Forensic Architecture agency, Goldsmiths, University of London, May 2018

EXECUTIVE SUMMARY

In an attempt to stem migrant crossings of the Mediterranean into Europe, Italy and the EU have enacted an undeclared operation, which we term *Mare Clausum*. This operation has deployed two complementary actions: first, rescue NGOs have been criminalised with the intention of limiting their activities so that they do not disembark migrants on European shores; second, Italy and the EU have tasked and enabled the Libyan coast guard to intercept and pull back migrants to Libya through political agreements, the provision of material and technical support, and coordination mechanisms. This report shows that Italy and the EU have come to exercise both strategic and operational control over the Libyan Coast Guard, which has been made to operate *refoulement by proxy* on behalf of Italy and the EU. This policy has been implemented with full knowledge of the Libyan Coast Guard's violent behaviour and the detention and inhumane treatment that awaited migrants upon being returned to Libya.



Still from a video reconstruction of the Sea Watch vs Libyan Coast Guard case by Forensic Oceanography and Forensic Architecture, May 2017.

On 6 November 2017, the rescue NGO Sea Watch (SW) and a patrol vessel of the Libyan Coast Guard (LYCG) simultaneously directed themselves towards a migrants' boat in distress in international waters. The boat, which had departed from Tripoli a few hours earlier, carried between 130 and 150 passengers. A confrontational rescue operation ensued, and while SW was eventually able to rescue and bring to safety in Italy 59 passengers, at least 20 people died before or during these events, while 47 passengers were ultimately pulled back to Libya, where several faced grave human rights violations – including being detained, beaten, and sold to another captor who tortured them to extract ransom from their families.

To reconstruct the circumstances that gave rise to this particular incident however, this report argues it is also necessary to understand the policies that shaped the behaviour of the actors involved, and the patterns of practices of which this event was only one

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particular instantiation. Before arriving on the scene, the LYCG liaised with the Maritime Rescue Coordination Centre of the Italian Coast Guard, which informed them of the presence of the boat in distress. The *Ras Jadir* - the patrol vessel of the LYCG that engaged in reckless behaviour and thus contributed to the death of several passengers -was one of the four patrol boats that had been donated by Italy to the LYCG on 15 May 2017,

in presence of the Italian Minister of Interior. On board that vessel on the day of the lethal events, eight of the 13 crew members had received training from the EU's anti-smuggling operation, EUNAVFOR MED.



Italian Interior Minister Marco Minniti in front of the *Ras Jadir* (648), 15 May 2017. Reuters, Ismail Zitouny.¹

Based on these elements, this report argues that the incident is paradigmatic of the new, drastic measures that have been implemented by Italy and the EU to stem migration across the central Mediterranean. This multilevel policy of containment operates according to a two-pronged strategy which aims, firstly, to delegitimise, criminalise and ultimately oust rescue NGOs from the central Mediterranean; and at the same time, to provide material, technical and political support to the LYCG so as to enable them to intercept and pull back migrants to Libya more effectively. This undeclared operation to seal off the central Mediterranean is what we refer to as *Mare Clausum*.

While in our report “Blaming the Rescuers”, released in June 2017,² we have analysed in detail the targeting of rescue NGOs, here we focus instead on the second aspect of this strategy. We show that through policy agreements and multifarm support to the LYCG, Italy and the EU have come to exercise both strategic and operational control over the LYCG. In this way, the LYCG has been made to operate *refoulement by proxy* - the sending back of migrants to a territory in which their lives are at risk undertaken by Libyan agencies acting under the control and direction of Italian and EU authorities, in contravention to one of the cornerstones of international refugee law, the principle of *non-refoulement*.³

1 Aidan Lewis and Steve Scherer, ‘Italy tries to bolster Libyan coast guard, despite humanitarian concern’, Reuters, 15 May 2017, <https://uk.reuters.com/article/uk-europe-migrants-libya/italy-tries-to-bolster-libyan-coast-guard-despite-humanitarian-concern-idUKKCN18B2EN>

2 Charles Heller and Lorenzo Pezzani, ‘Blaming the Rescuers’, June 2017, <https://blamingtherescuers.org/>

3 According to Article 33(1) of the 1951 Refugee Convention (CSR51): “No contracting State shall

The report relies on new findings generated through extensive interviews with state officials, rescue NGOs, and migrants, as well as newly accessed official reports, statistical analysis and cartographic and spatial reconstruction methods. It has been produced by *Forensic Oceanography* – a research project directed by Charles Heller and Lorenzo Pezzani and affiliated with the Forensic Architecture agency at Goldsmiths (University of London) that specialises in the use of forensic techniques and cartography to reconstruct the conditions that lead to deaths at sea.

The report is divided in three main sections. It first analyses the **policies** through which Italy and the EU have sought to entrust the Tripoli-based Government of National Accord (GNA) in Libya with the patrolling of their maritime frontier; it then reconstructs the particular **patterns** of practices that emerged throughout 2017 as a result of these policies, before returning in detail to the **case** of Sea Watch vs Libyan Coast Guard.

POLICIES

In the Policies section, we analyse the policies, imposed by Italy and the EU on the Tripoli-based government in Libya, that have led to the practice of *refoulement by proxy*. Faced with persistently high numbers of migrant arrivals on Italian shores, as of 2016 onwards Italy and the EU have attempted to re-establish the practices of externalised border control that had seen Gaddafi’s Libya function as a border guard for Italy and the EU. However, after the practice of directly returning to Libya migrants intercepted on the high seas was found to be illegal by the European Court of Human Rights in 2012, Italy and the EU have instead entrusted the Libyan Coast Guard with the task of intercepting and pulling migrants back to Libya.

While since **Autumn 2016** the EU, through its EUNAVFOR MED operation, had begun **training of LYCG personnel** – 188 of which participated in this program to date,⁴ in 2017, Italy took the lead in implementing substantial new steps in this policy refoulement by proxy with full EU support and financial contributions.

On 2 **February 2017**, Italy signed a “**Memorandum of Understanding**” with the Government of National Accord (GNA) of Libya “on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security”.⁵ This Memorandum, with at its core, the aim of “stemming illegal

expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

- 4 As of 21 August 2017, EUNAVFOR MED has further been assigned the task of monitoring the activities of the LYCG and Navy – a task which we should note implies a hierarchical power relation. Monitoring is considered as “an essential component of the Libyan maritime capacity building programme”, by helping to “define future training requirements, and helps the LCG&N to define its equipment (including assets) shortfalls and requirements” (EUNAVFOR MED Op Sophia - Monitoring of Libyan Coast Guard and Navy Report October 2017 - January 2018, 9 March 2018, p.3). The monitoring task was assigned to EUNAVFOR MED by the Council Decision of July 2017 and agreed with the Libyan authorities within an additional Annex to the 2016 Memorandum of Understanding. See EUNAVFOR MED Op SOPHIA - Six Monthly Report 1 June - 30 November 2017, 22 December 2017.
- 5 Memorandum of understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf An English translation of the “Memorandum” is available here: <https://>

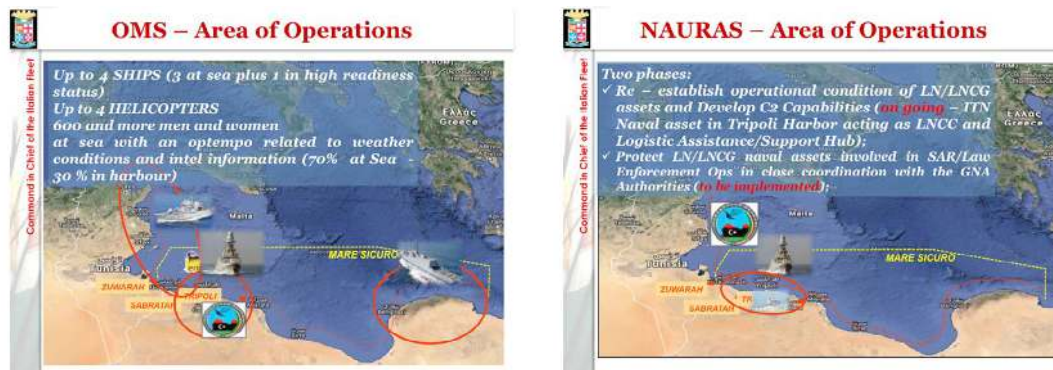
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migrants' flows", received full EU Council support the very next day in the Malta Declaration adopted on 3 February 2017.⁶



Official Twitter account of the Italian embassy in Libya, showing the patrol vessels arriving in Tripoli, 5 May 2017.⁷

In **May 2017** Italy provided the Libyan navy and LYCG with **four fast patrol boats**, with a further six boats to be delivered in the following months.⁸ These assets substantially increased the operational capacity of the LYCG.



Power point slides by the Italian Navy on Operation Mare Sicuro, Shade Med briefing, Rome, 23 November 2017.

On **2 August 2017**, a decisive step was achieved in the Mare Clausum operation when the Italian Parliament approved the extension of the **Mare Sicuro operation**, to provide "support to the Libyan security forces in their activities against irregular migration and human smuggling by deploying aerial and naval means and supporting Intelligence, Surveillance and Reconnaissance capabilities."⁹ We show that the Mare Sicuro ships

www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf

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

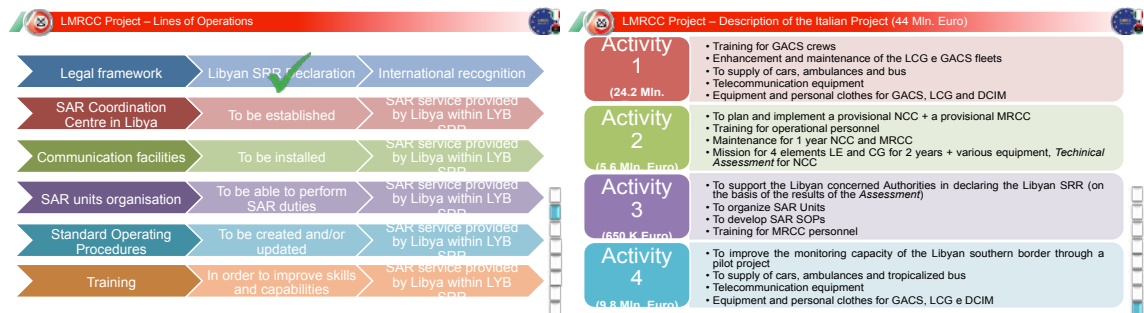
7 <https://twitter.com/ItalyinLibya/status/860452910517415937>

8 Italian Ministry of Interior, *Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica*, 21 April 2017, www.interno.gov.it/it/notizie/contro-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica; *Minniti in Libia: fronte comune contro il traffico di migranti*, 16 May 2017, www.interno.gov.it/it/notizie/minniti-libia-fronte-comune-contro-traffico-migranti.

Three more patrol boats were handed over in February 2018, see http://www.ilsole24ore.com/art/mondo/2018-02-24/libia-e-niger-bilancio-dell-italia-e-l-eredita-il-prossimo-governo--212523.shtml?uuid=AEwxvQ6D&refresh_ce=1

9 *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera Libica (DOC CCL, n.2)*, 28 July 2017, www.camera.it/_dati/

and aircrafts operating off the coast of Libya have played a decisive role in facilitating LYCG interception, while the communication equipment onboard the Italian naval ships docked in the port of Tripoli has been used by the LYCG to coordinate their operations at sea. An Italian judge has gone as far as to affirm that the coordination of rescue operations by Libya, is **“essentially entrusted to the Italian Navy, with its own naval assets and with those provided to the Libyans”**.¹⁰



Power point slides of the Italian Coast guard presentation “Libyan Maritime Rescue Coordination Centre Project”, Shade Med briefing, Rome, 23 November 2017.

On **10 August 2017**, the Libyan authorities in Tripoli announced that they had (unilaterally) **declared the Libyan Search and Rescue (SAR) zone** and threatened any rescue NGOs that dared to enter it. This declaration was one of the planned outcomes of an EU-funded project implemented by the Italian Coast Guard. While the Italian Coast Guard project foresees the LYCG MRCC as being fully operational only in 2020, all Italian and European state actors have acted *as if* it already was, so as to frame LYCG interception operations as rescues.

As a result of these policy agreements and multiform support and coordination, Italy and the EU re-established the LYCG, which, until then, had neither been able or willing to intercept migrants leaving Libyan shores. Through these combined measures, Italy and the EU have exercised *strategic control* over the LYCG, which has operated as their proxy, to intercept migrants - more than 20,000 in 2017 alone¹¹ - and bring them back to a country in which they would be subjected again to extreme forms of violence and exploitation.

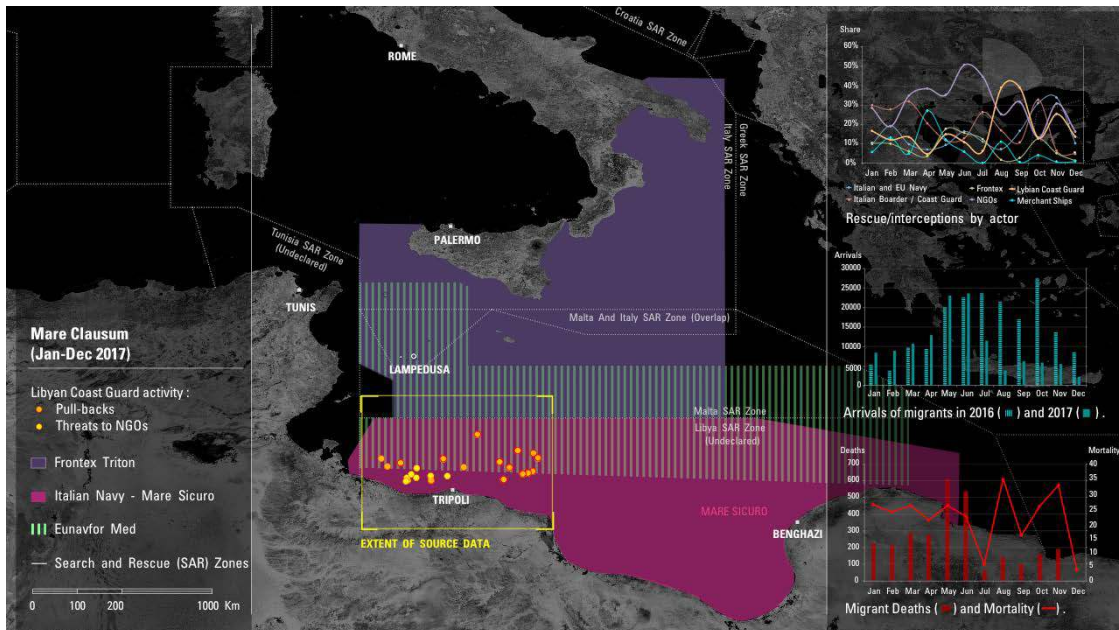
While the horrific conditions migrants face in Libya have been well documented over several years by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets,¹² and Italy’s Deputy Minister for

leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

- 10 The same judge has further affirmed in relation to the Open Arms case that the intervention by the Libyan patrol vessels happened “under the aegis of the Italian navy ships present in Tripoli”. In: Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, Decreto di convalida e di sequestro preventivo, 16 April 2018. See also: Marina Petrillo and Lorenzo Bagnoli, ‘The Open Arms case continued: new documents and Malta’, 12 April 2018, Open Migration, <https://openmigration.org/en/analyses/the-open-arms-case-continued-new-documents-and-malta/>
- 11 The IOM has been collecting data on “rescues” operated by the LYCG since 2016, <http://www.globaldtm.info/libya/>
- 12 See Amnesty International, ‘Libya’s Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants’, 11 December 2017, Index: MDE 19/7561/2017, <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>, p.56, for full list, to which we should add the recent report by the Office of the United Nations High Commissioner for Human Rights in

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Foreign Affairs, Mario Giro, admitted on 6 August 2017 that “taking them [migrants] back to Libya, at this moment, means taking them back to hell”,¹³ **Italy and the EU have continued to implement their policy of *refoulement by proxy* with full knowledge of its human implications.**



Synthetic figure of operations and migratory trends in the central Mediterranean, 2017. Figure by Forensic Oceanography. Statistical analysis by Gian-Andrea Monsch, GIS analysis by Vanessa Guglielmi, design by Samaneh Moafi.

PATTERNS

In the Patterns section, we demonstrate that these policies led to substantial operational shifts at the maritime frontier. The Italian and EU campaign of delegitimation and criminalisation of rescue NGOs found its counterpart in the practices of the LYCG at sea, with LYCG patrol boats increasingly threatening with violence the NGO vessels operating off the Libyan coast. As a result, the number of NGO vessels decreased starkly, and those that remained active were forced to operate further from the coast.



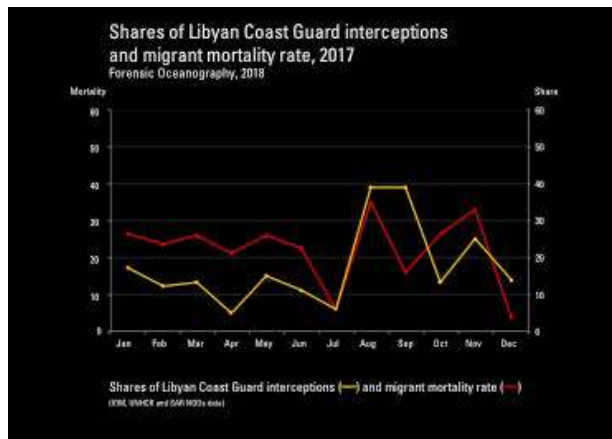
On 15 August 2017 a vessel of the LYCG threatened Open Arms' vessel Golfo Azzurro while the latter was located 27 NM off the Libyan coast. REUTERS/ Yannis Behrakis.¹⁴

cooperation with the United Nations Support Mission in Libya, 'Abuse Behind Bars: Arbitrary and unlawful detention in Libya', April 2018, http://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf

13 Marco Menduni, 'Giro: "Fare rientrare quelle persone vuol dire condannarle all'inferno"', La Stampa, 6 August 2017, <http://www.lastampa.it/2017/08/06/italia/cronache/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-allinferno-SXnGzVlzftFI7fNGFCMADN/pagina.html>

14 Yannis Behrakis, 'Spanish migrant rescue ship threatened by Libyan coastguard: witness',

At the same time, the LYCG interceptions were dramatically stepped up – with the LYCG intercepting and pulling back 20,335 people over 2017.¹⁵ As a result of these combined trends, 2017 saw a dramatic *inversion* in the roles of NGOs and the LYCG: while in 2016 the former became the number one Search and Rescue actor, by August 2017 *the LYCG intercepted more migrants than anyone else rescued*,¹⁶ and the rate of interceptions by the LYCG has grown even higher in the first months of 2018. We further show that there is a statistical correlation between the higher rate of interception by the LYCG and the higher migrant mortality rate – a measure of the danger of crossing – observed in the second half of 2017 and early 2018.



Migrant mortality and share of interception by the LYCG, January 2017-March 2018. Forensic Oceanography figure, statistical analysis by Gian-Andrea Monsch, based on Italian Coast Guard, IOM and UNHCR data.

While very little is known of the conditions in which more than 20,000 people were pulled back to Libya over 2017, we analyse 16 pull-back incidents, most of which could be documented only thanks to the presence of the few remaining NGOs. In most cases, the IMRCC, after having been informed of the presence of a boat in distress, transferred this information to the LYCG, which claimed the coordination of SAR operations, and NGO vessels were asked to stand-by. In this way, the IMRCC contributed to migrants being intercepted and brought back to Libya. In three documented instances, on 27 September, 11 October and 15 December 2017, we recorded *operational instructions* given by the Italian Navy to the LYCG to intercept migrants, all the while refraining from rescuing the migrants itself.

The distinct and recurrent operational patterns we document demonstrate the widespread and systematic - rather than episodic - nature of these events, which indicate they are the outcome of a well-defined strategy. These incidents demonstrate that the LYCG has effectively implemented the practices demanded of it by the different policy agreements the Tripoli-based government signed with Italy and the EU, and that Italian actors have coordinated and directed the LYCG’s interceptions, thereby operating *refoulement by proxy*.

15 August 2017, Reuters, <https://www.reuters.com/article/us-europe-migrants-libya-ngo/spanish-migrant-rescue-ship-threatened-by-libyan-coastguard-witness-idUSKCN1AV20Q>

15 IOM DTM Libya data for 2017, <http://www.globaldtm.info/libya/>

16 Qualculation by Gian-Andrea Monsch, Researcher at Fors, University of Lausanne, for Forensic Oceanography based on Italian Coast Guard and IOM data.

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Migrants being intercepted by a Libyan coast guard vessel on 27 September 2017, with the Italian warship Andrea Doria in the background; the migrants were handed the life jackets by the Italian Navy before they were intercepted. Filmed by Vice News.¹⁷

As a result of the *Mare Clausum* operation at sea, which was also combined with Italy's direct negotiations with tribal leaders and militias on firm land,¹⁸ crossings dropped in summer 2017: July saw a reduction in arrivals of 51% in relation to the previous year, August 82%.¹⁹ As more migrants were contained in Libya, they experienced even *worse* conditions than before, in particular in increasingly overcrowded detention centres.²⁰ This was acknowledged on **14 November 2017** by the **UN High Commissioner for Human Rights**, who, after a visit of detention centres in Tripoli, stated: ***“The increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants. Our monitoring, in fact, shows a fast deterioration in their situation in Libya.”***²¹

CASE

Finally, in the Case section, we reconstruct in detail the Sea Watch vs Libyan Coast Guard incident, in which the policies and operational patterns described above converge. Using the material recorded by audio and visual devices onboard the Sea Watch vessel, and through spatial modelling methodologies developed by Forensic Architecture, we reconstruct the events in far greater detail than any other interception by the LYCG. By documenting the violence exercised by the LYCG, this incident brings the dramatic effects of Italy and the EU's policy of *refoulement by proxy* into sharp relief.

This report demonstrates the alarming extent to which Europe has been outsourcing its human rights violations. While this policy has temporarily succeeded in stemming crossings, this has been at a far too high human cost, and by acting in violation of the principle of non-refoulement.

17 VICE News, 'Italy is paying Libya to intercept migrants on the Mediterranean', 25 October 2017, https://news.vice.com/en_us/article/med4dg/italy-is-paying-libya-to-intercept-migrants-on-the-mediterranean

18 For a summary, see Amnesty International, 'Libya's Dark web of Collusion: Abuses Against Europe-Bound Refugees and Migrants', 11 December 2017, Index: MDE 19/7561/2017, <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>, 50.

19 Our calculation based on data collected by the UNHCR, <http://data.unhcr.org/mediterranean/regional.html>

20 IOM DTM Libya data for 2017, <http://www.globaldtm.info/libya/>

21 OHCHR, 'UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity', 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

We call upon Italy and the EU to immediately end their policy of refoulement by proxy, and suspend collaboration with LYCG for as long as the latter is responsible for grave violations. Rescue activities must be used to save lives, not as a cover-up for border control. Inasmuch as the LYCG do perform rescue operations in the future, they must not be allowed to disembark migrants on Libyan territory, where migrants' lives are endangered. Italy should further end the criminalisation of rescue NGOs, whose humanitarian activities are partly filling the lethal rescue gap left by states. Instead of seeking to contain migrants at all cost, Italy and the EU must embark on a fundamental re-orientation of the EU's migration policies to grant legal and safe passage to migrants. Only in this way, will the smuggling business, the daily reality of thousands of migrants in distress, and the need to rescue them, finally come to an end.

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