

LIQUID TRACES

Spatial practices, aesthetics and
humanitarian dilemmas at the maritime
borders of the EU

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I hereby declare that the work presented in this thesis meets the full requirements of a doctoral dissertation in the Centre for Research Architecture (CRA) and is largely my own but also contains materials co-produced with Charles Heller, PhD Candidate (CRA).

Signed: _____

Lorenzo Pezzani, March 16, 2015

ABSTRACT

This practice-based PhD critically investigates the aesthetic and spatial conditions that have turned the Mediterranean into a military-humanitarian border zone, dissecting the political anatomy of violence inflicted *at* and *through* the sea. It understands the maritime borders of the EU as a paradigmatic conflict zone in which new assemblages of power, legal arrangements and uneven patterns of mobility have emerged in relation to a vast, and yet patchy, surveillance apparatus. Contrary to the popular representation of the maritime territory as a homogeneous and empty expanse, the sea appears here as a technologically mediated space thick with events and complex relations between people, environments, and data. Recasting the notion of structural violence in aesthetic terms (i.e., as violence hidden in plain sight), this thesis further investigates documentary, humanitarian and cartographic practices that operate across this contested frontier and their role both in governmental practices of control and in migrants' infrastructures of mobility. Part 1 (Genealogies) locates the current migration regime at sea within a longer genealogy of bordering technologies and aesthetic practices operating at sea. Part 2 (Liquid Traces) builds upon "Forensic Oceanography", a project that I co-initiated in 2011 and which has mobilised geographic and media technologies (remote sensing, drift modelling, GIS, vessel tracking and others) to document the violence perpetrated against migrants in the Mediterranean. Here I read the maps, videos, visualisations and human right reports that I have co-produced during this project and that have been used as evidence in actual legal proceedings as attempts to challenge the regime of (in-)visibility imposed on this contested area. This thesis offers a new "cognitive mapping" of migration at sea by following my own situated encounters with the practices, policies, discourses and geographies that constitute the sea as a frontier.

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PROLOGUE

14th August 2009. Barca, Libya



The former train station of Barca (Cyrenaica, Libya) built during the Italian colonisation of Libya. In 2009, at the time in which I took this picture, it was the seat of a “Sudanese social and cultural network”, as indicated by the signs and flags hanging on the façade.

In the summer of 2009, I travelled to Libya with the intention of analysing the role played by the demolition, reuse and subversion of examples of spatial infrastructure that had been built during the period of Italian colonisation. This fieldwork, undertaken as part of my MA degree, was conducted at a time when the (post-)colonial relation between Italy and Libya was changing rapidly. About a year earlier, on 30 August 2008, Italy had signed a “Treaty of friendship, partnership and cooperation” with Libya that paved the way for a \$5 billion investment in Libyan public infrastructure as a way of finally “settling past disputes and legal arguments”.¹ Appearing in front of the media, Italian Prime Minister Silvio Berlusconi presented the treaty as long-awaited reparation for the misdeeds committed in the past and as a way of offering redress to the Libyan people for the sufferings they had had to endure.²

The vision that underpinned this agreement was one of rediscovered harmony, of a perfect “symmetry” of interests between former colonisers and former colonised. However, as I realised during my visits to the former colonial buildings, there was an inconvenient

presence troubling this idyllic narrative. I found that it had become impossible not to notice the high numbers of so-called “transit migrants” from Sub-Saharan Africa, Bangladesh and elsewhere who were in Libya at the time.³ Statistics suggested that there were at least two million in a country that had a total native population of around five million. Often living in precarious conditions on the edges of urban areas, many of them were, according to the “myth of invasion”, ready to take a boat and enter Europe.⁴

In response to this situation, and in exchange for the infrastructure projects promised by Italy, Libya implemented a series of measures aiming at controlling “illegal migration” through its territory. These provisions were presented by the Italian government as the “solution” to the increasing number of people coming ashore on the Italian coasts. Libya’s coast, approximately 2000 km in length, the treaty established, was to be patrolled by Italian and Libyan crews on patrol boats provided by Italy, while satellite detection systems jointly financed by Italy and the EU were to be provided to monitor unauthorised entries at the land borders in the south of Libya. After the opening on Libyan territory, a few years earlier, of detention camps co-financed by Italy and the EU, in which migrants had been detained for months in appalling conditions, the signing of this treaty marked the start of the infamous pushback policy through which, in violation to the principle of *non-refoulement*, migrants intercepted at sea were collectively send back to Libya without being given the opportunity of asking for asylum. Libya had become the new border of Europe.

10 August 2011. Piana degli Albanesi (Palermo), Italy



Interview with a group of Bangladeshis who had crossed the Mediterranean during summer 2011 fieldtrip in Southern Italy

Only two years later everything had changed. This time I was on the other side of the Mediterranean but it was not only my position that was different. While for some time the pushbacks, as well as the transnational cooperation between Tunisia, Libya, Italy, Malta and the EU, had managed to curb temporarily the number of people reaching the southern coasts of Italy without authorisation, the “spatial upheavals” brought about by the so-called Arab Spring ushered in a new political and military situation that completely upset the plans of the Italian and Libyan governments.⁵ In Libya, an entrenched civil war and the ensuing NATO-led military intervention had induced many to leave the country. This situation was exacerbated by the active role of Gaddafi’s regime in using “transit migrants” as a “weapon of war”, threatening to turn Europe “black” by forcing many of them onto boats.⁶ As a result, in 2011 almost 26,000 people left Libya by boat (in fact, this was a tiny fraction of those who left the country, the great majority of whom fled by land to neighbouring countries) and reached the southern shores of Italy. In Tunisia, over 28,000 people took the chance offered by the fall of the Ben Ali regime to cross the sea to Italy during that same year.

According to the Office of the United Nations High Commissioner for Refugees (UNHCR) over 1,822 recorded deaths occurred in the central Mediterranean in this period, making 2011 the “deadliest year” in the Mediterranean until last year’s new peak.⁷ While between 1988 and March 2012 there were 13,417 documented deaths along the maritime borders of the EU,⁸ the deaths of 2011 occurred at a time when the militarisation of the EU’s maritime frontier in the context of the daily low-intensity “war on migration” had taken on an entirely new dimension, with a large number of Western warships and patrol aircraft deployed off the Libyan coast as part of the international military intervention. This particularly dramatic situation, however, also offered an opportunity to non-governmental organisations (NGOs) and activist groups to contest anew, and with new instruments and arguments, the deadly militarisation of the sea. In June, the migrants’ rights organisation *Groupe d’information et de soutien des immigrés* (GISTI) announced that it would file a legal case against the EU, Frontex and NATO for non-assistance to migrants at sea, arguing that given the heightened surveillance of the central Mediterranean during the military campaign, it was impossible for military and border control personnel to have failed to witness the distress of migrants at sea.⁹ However, while smuggled videos from Libya showed the departure of migrants¹⁰ and while those of them who managed to reach Lampedusa were met by the spotlights of camera crews providing images of the “ongoing invasion” (this time in the opposite direction of the Italian colonialists), what was happening at sea, in-between these two spaces, had remained until that moment largely opaque. Those

who never made it were of no concern to the border regime, which only cared about “arrivals”, never about departures.¹¹ Nor activists seemed equipped to do anything more than keeping track of the shipwrecks that came to be known through the news.

It was in this context that my interests gradually but steadily shifted towards the ocean. Together with Charles Heller, a friend and fellow doctoral candidate at the Centre for Research Architecture, we started thinking about how we could contribute to the campaign launched by GISTI. The ideas for our contribution were framed by two elements: on the one hand, our previous engagement as critical scholars and visual/spatial practitioners in the politics of migration; and, on the other, a new sensibility towards the use of aesthetic objects (video images, satellite imagery, architectural plans and models, maps, audio recordings, etc.) as evidence of human rights violations that we, together with several other colleagues at the Centre for Research Architecture, were starting to explore within the framework of the Forensic Architecture project.¹² With these two elements in the back of our minds, in the first half of August 2011 we set off to southern Italy (Apulia, mainland Sicily and Lampedusa) to interview migrants who had recently fled Libya and Tunisia, as well as key actors in the central Mediterranean (Coast Guard and Border Police officials, the personnel of humanitarian organisations – Médecins Sans Frontières (MSF), International Organisation for Migration (IOM), UN Refugee Agency (UNHCR), Protezione Civile and International Red Cross (IRC) – and a migration lawyer) in order to find out if and how the alleged violations of legal norms imposing the duty to rescue people in distress at sea could be documented. To those who were in charge of monitoring the sea (especially the Coast Guard and Border Police) we asked how surveillance was operating at sea – its means, spatial layout and purposes – as well as the general patterns of the crossing. The questions to migrants focused instead on minute and, at times, seemingly irrelevant details of the trip: “How many hours did you spend travelling? On what kind of boat? Did any of the passengers die during the crossing? How many ships or aircrafts did you spot? Did any of those fail to assist them? Do you remember any identifying trait of those? The colour of the hull, the presence of flags, the language spoken by the crew? Was it day or night when that happened?” People who had travelled on the same boat gathered together and gave us something like a collective narrative of the crossing.

Our interviews proved fundamental in establishing a general understanding of the structural violence that made possible the death of so many people. And yet, the possibility of going beyond previously established practices, such as counting the deaths, hinged on the capacity to document with precision episodes of direct responsibility by specific actors and tactically mobilise them to challenge the overall government of mobility. For this

reason, a few weeks later we started to work on the case that would become the fulcrum of our research: the “left-to-die boat” case. This was the story of how 63 migrants had lost their lives while drifting for 15 days in the central Mediterranean, despite having informed rescue agencies of their position and their distress, and despite having been spotted by at least a surveillance aircraft, two military helicopters and several ships. Because of the complex legal structure of the Mediterranean and the high number of actors operating there during the time of the event, creating a coherent spatial picture was critical for determining the degree of involvement of each of these parties. In collaboration with a wide network of contributors, we used imaging, mapping and modelling technologies to provide a spatio-temporal reconstruction of what happened to this boat, retracing for the first time its deadly drift across different areas of maritime jurisdictions and within the detection range of the powerful surveillance means deployed in the area.¹³ Challenging the common assumption that spatial analysis does not apply to the liquid territory of the sea, we interrogated the ocean as a digital archive, a sensorium mediated by a vast remote sensing apparatus composed of optical and thermal cameras, radars, tracking and satellite imaging technologies.¹⁴ Based on this information, we produced maps, videos, visualisations, human right reports, articles, exhibitions and websites that became the basis for legal action in several countries and other political initiatives.

In doing so, we opened up new ways of critically investigating the militarised border regime in the Mediterranean and challenging the regime of visibility imposed by surveillance means on this contested area. This was the start of the Forensic Oceanography project that continues to this day.

INTRODUCTION

THE SEA AS FRONTIER: DOCUMENTING *INFRA-STRUCTURAL VIOLENCE*

“It is not strange that attention has been focused more on personal than on structural violence. Personal violence shows. [...] Personal violence represents change and dynamism – not only ripples on waves, but waves on otherwise tranquil waters. Structural violence is silent, it does not show – it is essentially static, it is the tranquil waters.”¹⁶

- Johan Galtung

“Day after day we keep receiving updates on that uncanny war which is ongoing in the Mediterranean.”¹⁶ While for many years mainstream news outlets have dedicated scant attention to the ongoing death of migrants¹⁷ at sea, information on how many migrants have died, how many have been rescued and how many are feared missing has increasingly had, at least since late 2013, a daily presence across the media. Short reports indicate the approximate location of shipwrecks, the nationality of the migrants and the identity of the rescuing ship in the dry but merciful language of a war bulletin.

In the last months, and particularly after the tragedy that took place on 3 October 2013, in which more than 365 people died less than one kilometre away from the coast of Lampedusa,¹⁸ there has been an extraordinary increase in public attention towards the death of migrants in the Mediterranean. Several journalistic initiatives,¹⁹ reports by major human rights NGOs (including those which did not have, until recently, a specific focus on migrants’ deaths, such as Amnesty International),²⁰ and countless political and cultural initiatives by activists and various other groups have managed to make migration at sea and its so-called “human cost” an item of public debate. Even major international organisations that are part of the very apparatus that attempts to govern human mobility, such as IOM, have released worried reports about migrants’ “fatal journeys” around the world, pointing to the global scale of the phenomenon.²¹

To be sure, this clamour is not an absolute novelty. In past years public attention to tragedies involving migrants in the Mediterranean has been a recurring occurrence across the European media landscape. Yet the enduring persistence that has characterised

the recent debate on deaths at sea is, in several respects, unprecedented, as are the transformations that took place across the Mediterranean between 2011 and 2014, the years on which this thesis focuses. What is particularly significant is that during this time the deaths of migrants have entered the public debate not only as a news story, but mainly as a “problem” in need of an urgent solution. Whether the response to this “problem” is formulated in the overtly racist language of “keeping them in their place” or in the seemingly more benign, humanitarian tone of calls for increased surveillance and the dismantling of trafficking networks, proposed solutions to the ongoing tragedies in the Mediterranean have abounded. Never as in past years has the Mediterranean been so consistently portrayed as an “unsafe space”²² of humanitarian concern and never has death at sea occupied such a significant position in political debates.

This situation can at least partly be understood in relation to the increasing scale of migrant deaths in the Mediterranean in the last few years.²³ While the more than 1,500 deaths highlighted by the UNHCR in 2011 seemed at the time to have hit a staggering new height,²⁴ these numbers now pale in comparison to those that have been recorded since October 2013. With over 207,000 migrants attempting to cross the Mediterranean and at least 3,419 of them perishing along the way, in 2014 the central Mediterranean was proclaimed the deadliest crossing in the world,²⁵ the epicentre of those “landscapes of deaths” that characterise global borders.²⁶ But it also, more specifically, speaks to the way in which the border itself is now being reinvented as a space of humanitarian government²⁷ and, more generally, a certain humanitarian discourse has come to occupy centre stage in the management of economies of violence.²⁸

The ubiquitous “focus on saving lives”²⁹ that has characterised the present debate, however, has not really led to the questioning of the very migration regime that, arguably, has caused these deaths in the first place. While many activists and scholars, including me, have highlighted for several years the close tie that exists between the tightening EU border regime and the increasing numbers of migrant deaths,³⁰ the policies, practices and actors that have shaped the current government of mobility have never really come under scrutiny. On the contrary, every “tragedy” is usually followed by urgent calls for more surveillance, more controls and more militarisation, precisely some of the mechanisms that, according to the analyses mentioned above, have caused death in the first place. The official responses to the outcry that followed the tragedy of 3 October 2013 in Lampedusa (mentioned above) were in this sense emblematic. The EU President, José Manuel Barroso, used his visit to the Italian island to announce the final implementation of the EU-wide Eurosur surveillance system and the reinforcement of Frontex, the EU border control

agency.³¹ As for the Italian government, it deployed five military ships off the coasts of Libya, as well as helicopters, aircrafts and drones over a period of one year, launching the most spectacular rescue and border control mission to date, the military-humanitarian operation “*Mare Nostrum*”. While revealing and highlighting the death of migrants at sea has been for years one of the principal ways in which criticism of the border regime has been articulated,³² “a crucial element in the system of checks and balances that keep power at bay”, it has now become increasingly “internal to the exercise of power” and is being used to underpin and justify that very regime.³³

Similarly to way in which, according to Nicholas De Genova,³⁴ the spectacle of border enforcement ends up reifying and naturalising the border and the condition of illegality it creates, the spectacular “visibilisation” of deaths has managed to make the very practices and policies of border control vanish from critical analysis. The larger social, legal, political and economic context in which border deaths happen has thus remained outside the analytical frame of many observers. “Through a myriad of policies and bureaucratic structures, governments [have] been able to distance themselves from deaths at the border,” thus untying the link that exists between border deaths and border controls.³⁵ Blame for the deaths is shifted onto the migrants themselves – “who are depicted [...] as subjects who are at fault by putting themselves in danger”³⁶ – or the “ruthless” smuggling networks that organise the crossings, and whose increasing presence is, in fact, as has been widely argued, just a consequence of the increasing militarisation of borders.³⁷ Instead, the deaths of migrants are often presented as a sort of tragic but inevitable – almost “natural” – catastrophe, for which no clear responsibility can be attributed. As Stephanie Grant has argued, quoting official statements by border officials, “migrant frontier deaths and violations of migrants’ rights at frontiers have tended to be seen as a ‘tragic by-product’ and as ‘unintended side effects’ of state action to control national borders”.³⁸

As a consequence, while massive death at the maritime frontier of the EU is increasingly registered and exposed, impunity is ever-present. Even in those cases in which migrant deaths and violations of migrant rights have been documented in detail, and even when dead bodies have been found and harrowing stories told by survivors, attributing responsibility for them has remained extremely challenging, if not impossible. Among the many examples that could be mentioned, the “left-to-die case” that I have contributed to documenting is particularly telling. In the two years that have passed since the release of our report, no elements of our detailed reconstruction has been disproved, nor even challenged. Not one of the actors involved has proved us wrong on any of the spatial or temporal elements of the chain of events that we contributed to assembling. And yet, the

public prosecutors of all the European countries to which the case has been brought have, in the best scenario, not initiated a legal proceeding, or, in the worse, dismissed the case, taking national armies' "denials [and] referrals back to NATO and/or the member states" as proof of non-involvement and hence, implicitly, passing the buck of responsibility to the other actors that were present at sea at the time of the events. What is perhaps most painfully ironic is that the very precision of our reconstruction has been used by a French judge as the reason for dismissing the case, on the grounds that since our investigation had been "exhaustive", it could not prove the involvement of French assets – denied also by the French military (i.e., the accused) – and that this was reason enough to close the case. While appeals have been successfully lodged by the legal team that represents the survivors, this behaviour is paradigmatic of the unwillingness to attribute responsibility for this case, or, as in the case of the regret expressed by NATO for the "missed opportunity" to intervene, to reduce this and other similar events to malfunctions in an otherwise respectable system. As Charles Heller and I have written, "while fully visible to the public, the collective crime of which the passengers have been the victims has remained invisible to the law. [...] The indifference which led to their being abandoned to the winds and currents continues to plague the demand for justice of the survivors, perpetuating their drift even on firm land."³⁹

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In order to make sense of this peculiar relation between violence, visibility and accountability in the context of borders and migration, some authors have mobilised the notion of "structural violence".⁴⁰ This concept, which in recent years has enjoyed a certain revival,⁴¹ describes episodes of indirect violence, violence that is not committed by any identifiable author(s) but that is rather the "the outgrowth of the seemingly acceptable, institutionalized practices of organizations deemed as legitimate."⁴² It does not refer to acts of violence but rather to how certain practices and policies create the *conditions* in which violence can thrive unchallenged.

While this notion has a long and complex genealogy,⁴³ the Norwegian peace scholar Johan Galtung is largely credited with having provided its first thorough formulation at the end of the 1960s, in the context of growing theorising on dependency, world systems and imperialism.⁴⁴ More recently, several anthropologists⁴⁵ have used it to describe the "suffering [caused by] historically given (and often economically driven) processes and forces that conspire – whether through routine, ritual, or, as is more commonly the case, the hard surfaces of life – to constrain agency".⁴⁶ In all these instances, "structural

violence” has proved to be a powerful instrument to expand the understating of violence and to account for those powerful forces that, embedded as they are in complex patterns of causation, are difficult to detect.

Its mobilisation in relation to border deaths is much more recent but seems equally fruitful. Joseph Nevins first used it in relation to the deaths happening at the Mexico-US border in order to contrast what he perceived as “an outgrowth of a narrow conceptualization of violence, one that impoverishes an understanding of the social actors and complex processes that contribute to the harming of people” by focusing only on direct, personal violence and leaving “the creation and reproduction of social conditions that inevitably result in deaths” unaddressed.⁴⁷ As a consequence of this narrow conceptualisation, “the violence embodied by the growing number of deaths of unauthorized migrants, as well as other manifestations of violence against migrants, has resulted in so little public scrutiny”.⁴⁸ This does not mean, Nevins explains, that there is no debate around these deaths but that “the basic assumptions underlying immigration and boundary enforcement remain largely unchallenged.”⁴⁹ The practices of border enforcement as well as the legal and administrative policies that sustain them are naturalised. A more expansive understanding of violence, instead, has the merit of turning this state upside down and of critiquing “the limits of conventional approaches to accountability”.⁵⁰

Beyond a general utility of this concept in the analysis of border violence, however, what I find of particular interest is its operational potential in rethinking practices of documentation. At the core of structural violence lies, in fact, an aesthetic problem – if by aesthetics we mean, with Rancière, the politics of “framing and re-framing the visible and the invisible”.⁵¹ For many of the authors that have employed this notion, what is at stake is a distinctive relationship that is instituted between violence and visibility, one by which violence is concealed in plain view. As Nevins notices, “structural violence is not hidden simply because it occurred ‘behind the scenes’ [...] but because powerful actors reproduce its hidden nature and/or construct it as something legitimate or other than violence through various representations.” Therefore, he continues, while direct violence tends to receive attention “because it is visible as action”, structural violence becomes “part of the social fabric, of the status quo” and tends to seem “normal” and thus “not only goes unnoticed, but also [...] not challenged”.⁵² Structural violence addresses a form of invisibility that does not (only) operate by removing knowledge, by keeping violence in the dark so as to allow its repetition and reproduction. While visible, migrants’ deaths are not understood as violence. In other words, what structural violence does is to expose the gap that exists between what is “visible” and what is “articulable”, between the “visibility”

of certain events – in this case the death of migrants – and their “sayability” in terms of violence – the possibility of producing statements that would be able to link these deaths with violence and seek accountability for it.⁵³

This situation clearly poses important challenges to a project like mine that emerged precisely as an attempt to document the violence perpetrated against migrants at sea, as well as to all other image and mapping practices operating in this field. Since “it is not invisibility that allows violence to be repeated and reproduced but [rather] repetition and reproduction [that] make violence invisible,”⁵⁴ documentation cannot be understood as a “simple” act of unveiling. “To read this violence is not to draw open a theatrical curtain or a veil behind which violence is lurking.”⁵⁵ The question then arises of what kind of aesthetic and political response would be required by “structural violence.”⁵⁶ If “historically,” as Maria Lind and Hito Steyerl write, “the documentary is a form that emerges in a state of crisis,” what kind of documentary form does the current situation in the Mediterranean require?⁵⁷ Under what conditions can visual and spatial documents expand our political imagination so as to confront the complex structures of causation that this concept allows us to grasp? What aesthetic means do we have to deploy in order to challenge a form of violence that operates by “omission” rather than by “commission”?⁵⁸

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This thesis can be read as an attempt to give an answer to these questions and to rethink how documentary practices, understood in a very broad sense, might look like in the face of the structural violence produced at the maritime borders of the EU.

In retrospect, I can say that my personal attempt to deal with those questions has articulated itself along at least three interconnected lines.

THRESHOLDS

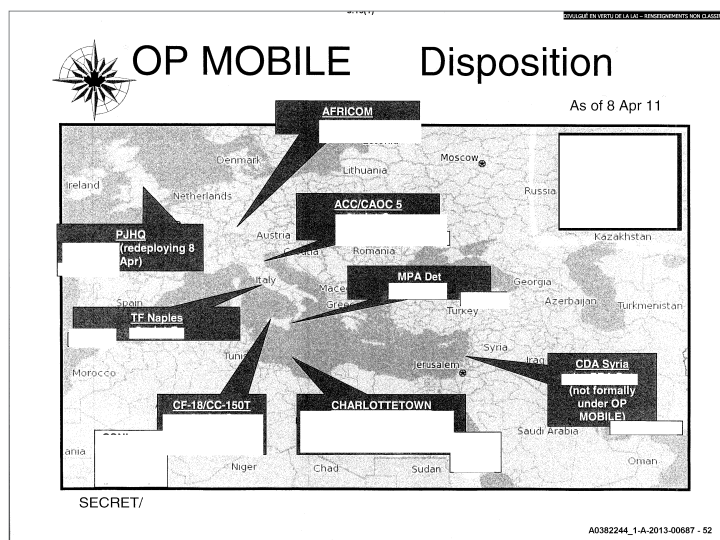
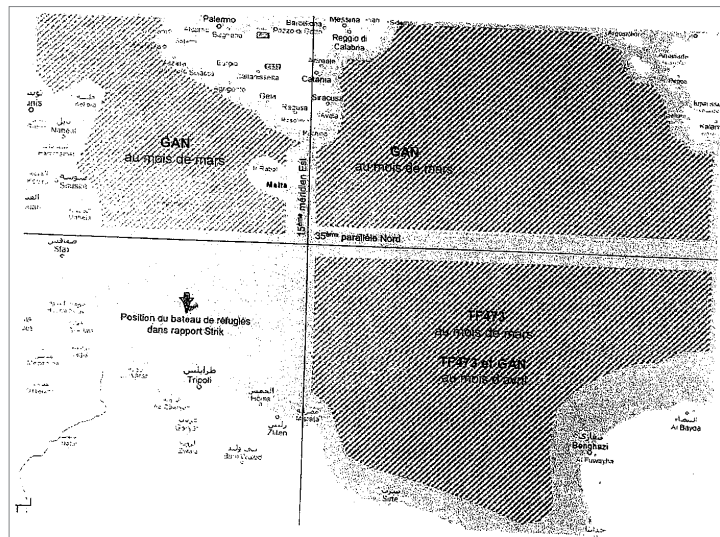
On the one hand, as already mentioned, it constituted itself as a practice of image production and mapping that has aimed at challenging the current regime of (in-)visibility of the maritime border. If, as it has been written, “the border as social relationship mediated by images is a key site [...] in which contestation and struggle among a diverse range of actors produce particular forms of representational drift,” intervening at the level of images becomes a crucial endeavour.⁵⁹

Usually the conditions of (in-)visibility of the Mediterranean border are presented in rather simplistic terms, as a dichotomy between “clandestine” – etymologically, “hidden” – migrants and border controllers who instead want to shed light on practices

of border crossing. In reality, this is much a more complex and muddled field. The selective “spectacularisation” of border enforcement, for instance, is intimately tied with the deliberate concealment of the violence against migrants. Conversely, migrants’ “clandestine” tactics are always weighted against the risk of dying unnoticed at sea. Visibility and invisibility do not designate here two discrete and autonomous realms, but rather a topological continuum.

This consideration has important consequences. While an important part of Forensic Oceanography’s work has certainly been concerned with finding new ways to shed light on episodes of violence against migrants that have not been brought to the attention of a larger public or have been deliberately kept hidden from it, this has not happened as a process of “absolute” unveiling. Rather, acknowledging that in the context of structural violence visibility and invisibility constitute two already intertwined realms, documenting the violence perpetrated against migrants at sea has often meant intervening within and against the already established “field of perceptible reality” that determines “whether and how we respond to the suffering of others [and] how we articulate political analyses”.⁶⁰

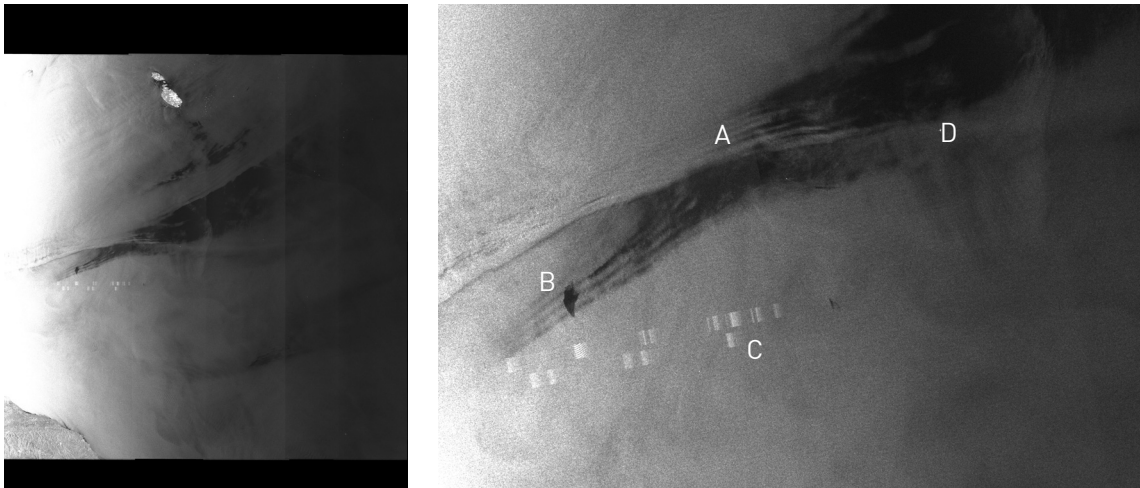
In his book on Foucault, Deleuze explains how “visible” and “articulable” are interdependent but not isomorphic terms. They exist in constant tension with each other. Their dialectical relationship, at any given historical moment, establishes epistemological *thresholds* that define the limits of what we can know. These thresholds of perceptibility are not only the thresholds of discourse, as a “vulgar” poststructuralist interpretation might believe. Rather, the very “discursive limits of intelligibility”⁶¹ are themselves encoded in medial forms and bound up with the techno-political and material assemblages that constitute the Mediterranean scopic regime.⁶² They are the very “thresholds of detectability”⁶³ which, for instance, regulate the resolution of images and which, in their turn, determine a specific “partition of the sensible”.⁶⁴ These thresholds are, of course, not ontologically determined but embedded in a range of techno-scientific calculations and political disputes. Often they are “maintained by epistemic and military violence, by the fog of war, by political twilight, by class privilege, nationalism, media monopolies, and persistent indifference. [Their] resolution is managed by legal, political, and technological paradigms.”⁶⁵ A striking example of this has been the extremely elusive responses provided by states in response to the various legal proceedings initiated on behalf of the survivors of the “left-to-die boat” case.



Top: Map provided by the French Ministry of Defence on the 23 October 2012 with the aim of demonstrating that French naval assets were not present at the time and in the area where the events occurred. Nevertheless, the map does not consider the presence of French surveillance aircraft (like the one that took a picture of the “left-to-die” boat), nor the detection capabilities of the French naval assets, which might have detected the presence of the drifting boat even if they were not physically present in the area.

Bottom: Response by the Canadian government to the Freedom of Information procedure filed in relation to the case. All relevant information has been blanked out.

In our investigation into the “left-to-die boat”, we could not rely on the certitude of a revelatory image to corroborate the witnesses’ testimonies, but had to work with the “weak signals” that underpin truth production practices in the field that Thomas Keenan, after Allan Sekula, has called “counter-forensics”.⁶⁶ These were mainly the data provided by the vast and yet patchy apparatus of sensing devices that has transformed the contemporary ocean into a technologically mediated space: vessel-tracking technologies, satellites, radars, drifters, meteorological and oceanographic stations, etc.



Synthetic Aperture Radar image depicting a portion of the central Mediterranean at three different zoom levels. The image was taken by the Envisat satellite on 28 March 2011, at the time of the international military intervention against Libya. When examined carefully, different textures and features start to emerge. The darker area that crosses the whole image diagonally (A) represents an area of calmer sea, while the sharply defined dark feature in the mid-left side of the image (B) is probably an oil spill or some other phenomenon decreasing the amount of microwaves scattered back from the sea surface to the satellite. Just below that, a striping pattern (C) appears, an artefact in all likelihood introduced by the sensor's response. What does not appear in this image, however, is the “left-to-die boat” itself nor any other migrant boat that might be present in the image's frame, as their small size would remain below the threshold of detectability. By combining this image with a drift model that maps the trajectory of the “left-to-die boat” after it ran out of fuel, thus providing its approximate location, we were able to establish that the bright pixels that are to be seen mainly in the upper-right quarter of the image (such as point D) represent large ships that were located in the vicinity of the migrants' boat and could have easily rescued them but chose not to intervene. For a more detailed explanation of how this image was used in our investigation, see figures 21 to 25 in the report annexed to this thesis.

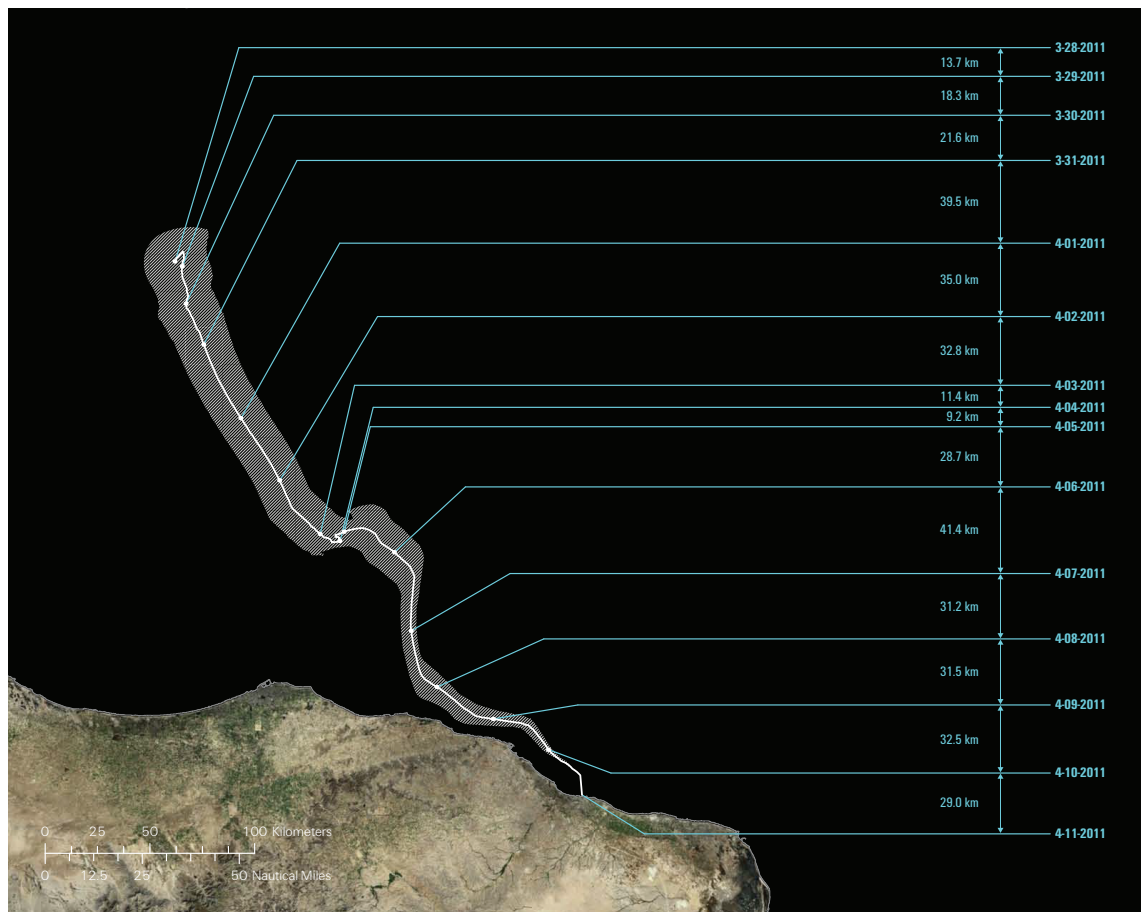
This sensorium, emerging at the intersection of electromagnetic and physical waves, proved to be a valuable witness, revealing a space thick with events and complex relations between people, environments and data. The information it provided, however, was often incomplete or fuzzy, both because it was deliberately kept secret but also because the promise of full-spectrum visibility symbolised by the technological apparatus of border surveillance constantly runs up against the limits of swath and resolution. Yet, through a process of “trawling through, looking at, and looking again, interpreting, verifying, decoding and amplifying messages and broadcasting them further”,⁶⁷ we managed to assemble a coherent narrative that provided important elements of evidence for the crime of non-assistance. Moreover, in a context in which this remote sensing apparatus is central

to border control, we needed to position ourselves strategically in relation to their usual application by border agencies. We sought, as I shall explain in more detail in chapter 3, not to replicate the technological eye of policing, but to exercise a “disobedient gaze”, redirecting the gaze of the surveillance apparatus towards the act itself of policing the sea. While reading the same images and data that are normally used to enforce the maritime border, we contested the practices of “inscription” and “visualisation” that transform those images into evidence of illegal trespassing,⁶⁸ paying particular attention to the way in which this spatial and visual information becomes the object of intense scrutiny and conflicting interpretation as they circulate across different forums.⁶⁹ In chapter 2, I further analyse a plurality of image practices that in the context of humanitarian interventions at sea have been contesting the (sovereign) monopoly of seeing. I shall argue that it is in their circulation across different *forums* – rather than simply in what they represent – that these images still hold an emancipatory potential.

INFRA-STRUCTURAL VIOLENCE

The second axis along which this thesis moves is the spatial dimension of the maritime border. Here, the attempt is to challenge the “terracentric bias” that has characterised most thinking about space and politics until very recently.⁷⁰ Against a prevalent (mis-)conception of the maritime territory as a homogeneous and empty expanse, sitting outside history and beyond the reach of society, this thesis takes the sea as a central space of politics. Renewed attention to maritime zones is not, it should be said at the outset, a lonely enterprise anymore. Since the late 1990s, the ocean has gained a prominent position in several areas of research that share an interest in spatial politics; a growing body of work has decentred the focus of scholarly analysis away from continental landmasses.⁷¹ For historians, who have hailed oceans as “the supreme arena of the events that constitute global history”,⁷² focusing on ocean regions has offered the possibility of overcoming the limits imposed by national historiographies and area studies.⁷³ Geographers have used oceans as a privileged site to analyse “hybrid formations that emerge through interaction and movement”.⁷⁴ For anthropology, cultural studies and critical theory, finally, the ocean has often become a “theory machine”,⁷⁵ “an ideal medium for rethinking modernist notions of identity and subjectivity and the ways in which these are reproduced through land-centred divisions and representations of space”.⁷⁶

For many of these scholars, oceans have thus represented the ideal scale on which to understand new global phenomena. It is not a coincidence that this raft of scholarship on the ocean emerged precisely in the late 1990s, at the time when the concept of



Drift model that simulates the path of the “left-to-die boat” after it started floating without use of its motor. Richard Limeburner of the Woods Hole Oceanographic Institution reconstructed the drift trajectory by analysing data on winds and currents collected by buoys in the Sicily Channel. Over time, the margin of error in the drifting vessel’s track linearly decreases as it is constrained by the known position of landing. For a more detailed explanation of how this map was produced, see figures 16 to 18 in the report annexed to this thesis.

globalisation came to the fore. Oceans came to be regarded as the quintessential metaphors for globalisation, which, according to anthropologist Stephan Helmreich, should indeed be called “oceanisation”.⁷⁷ “If area studies offered a vision of the world that reflected the political, military, and economic concerns of the cold war era, as many critics have charged, studies that revolve around maritime regions and emphasize processes of exchange no doubt mirror an era of globalization.”⁷⁸ This literature, however, has also often suffered from the very same flaws that have marked mainstream analyses of globalisation. The “fluvial nature of the ocean” has been “used to signal a world of mobilities, betweenness, instabilities, and becomings”.⁷⁹ Watery metaphors of flow, circulation and fluidity have been increasingly mobilised in an effort to describe the perceived increase in movements of capital, people and communications that exceed the boundaries of modern sovereignty. However, “the

idea of the ocean as a backdrop for movement informs a narrative of globalisation as a story of increased interconnectedness”,⁸⁰ which has left largely unquestioned the conflicting and often violent processes of “segmentation, hierarchisation, and logistical coordination” that are at stake in the production of the sea as frontier.⁸¹

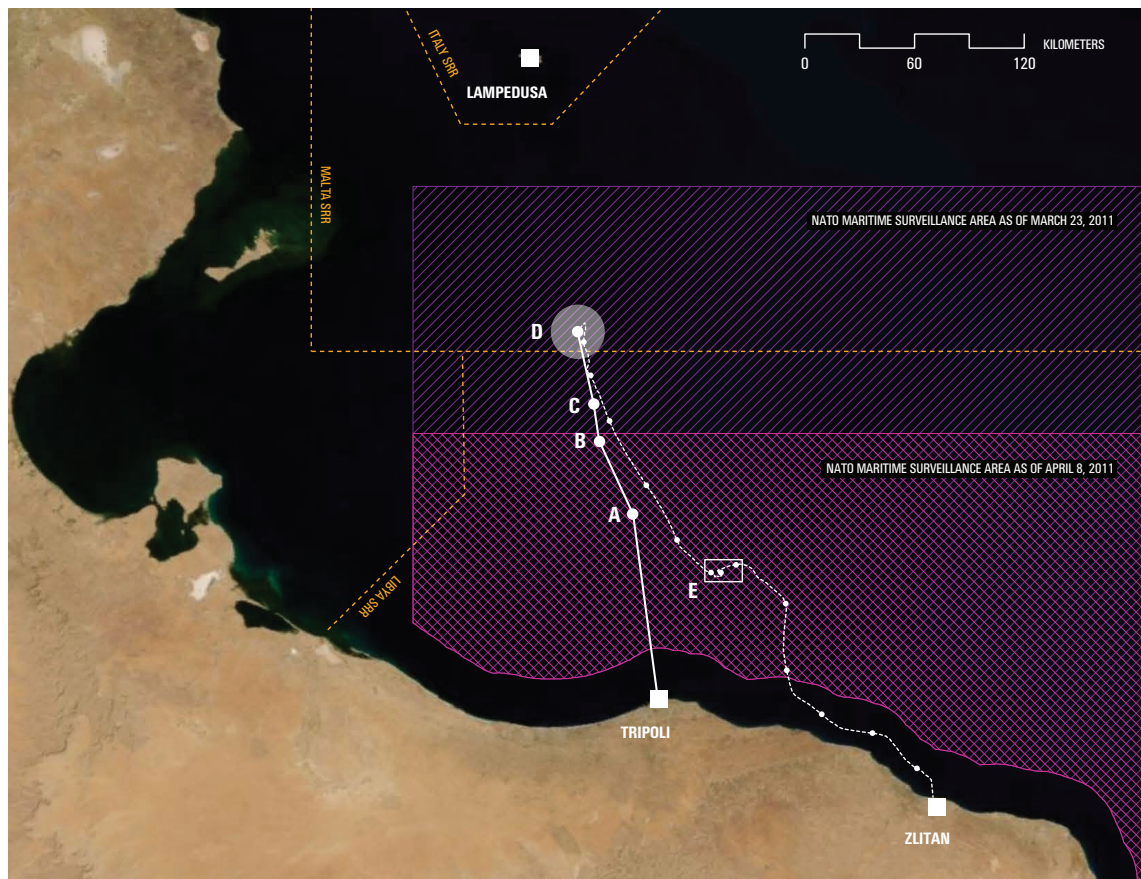
Refusing the politically dubious image of the ocean as a space of unhindered flow and cohabitation, this thesis takes a radically different approach and seeks to reconceptualise the sea as a material field of struggle. It looks at the Mediterranean from the perspective of mobility and control, analysing the processes that have turned it into the southern border of the EU. It places at the centre of this process the violent reality of bordering, which acquires here a distinctly spatial dimension. At sea, the moment of border crossing is expanded into a process that can last several days and extends across an uneven and heterogeneous territory that sits outside the exclusive reach of any single polity. The spatial imaginary of the border as a line without thickness dividing isomorphic territorial states is here stretched into a deep zone, “in which the gaps and discrepancies between legal borders become uncertain and contested”.⁸² As soon as a migrants’ boat starts navigating, it passes through the various jurisdictional regimes that crisscross the Mediterranean (from the various areas defined in the UN Convention on the Laws of the Sea to Search and Rescue regions, from ecological and archaeological protection zones to areas of maritime surveillance). At the same time, it is caught between a multiplicity of legal regimes that depend on the juridical status applied to those onboard (refugees, migrants, etc.), on the rationale of the operations that involve them (rescue, interception, etc.) and on many other factors. These overlaps, conflicts of delimitation, and differing interpretations, as I shall argue, are not a malfunctions but rather a structural characteristic of the maritime border that has been often mobilised to produce violence and escape responsibility for it. It has allowed, for instance, different actors at sea to carry out unlawful pushbacks or to refrain from engaging in rescue operations. Here, it is not the absence of law, but rather the proliferation and spatial entanglement of different legal regimes that produces violence on a large scale.

This condition evokes the way in which, throughout modernity, the depiction of the ocean as a lawless space of violence lying “beyond the line” of civilisation has been functional to the proliferation and expansion of violence of European colonial states. Being “beyond the line”, in fact, didn’t mean to be in a legal void. Rather it implied being in a “zone of conflicting laws” where colonialists “were free to engage in forms of violence that were unacceptable (whether in Britain proper or in Europe’s law- bound state system)” and yet essential to European colonial expansion.⁸³ This examples shows how maritime zones

should not be understood as an exceptional space that sit outside of state-like territoriality, but rather as paradigmatic of some of its legal and political spatial formations. While the sea has been largely side-lined in mainstream accounts of modern and contemporary territoriality, it is one of the claims of this thesis that in order to understand the political spaces in which we live, and, in particular, the contemporary borderscapes that crisscross global space, one should start from the sea.

It is in the early modern period, when control of the world's oceans became “a fundamental part of European empire building”⁸⁴ and the bases for the contemporary juridical-political architecture of the sea started to be laid, that the sea became “a privileged arena within the global order”⁸⁵. Historians of empire have effectively shown how “transoceanic trade and colonization created significant new international conflicts and constellations of power outside existing arrangements”⁸⁶. This situation fostered the proliferation of differential zones of variegated sovereignties that were not, however, temporary aberrations from an ideal standard of territoriality, soon to be eliminated under the overarching jurisdiction of accepted international norms (as, for instance, conventional narratives of the maritime origins of international law claim). Rather, these zones were “integral to empire”⁸⁷ and part of their standard formation, which relied – not only in the maritime context, but primarily in that- on a deep grammar of “gradated variations and degree of sovereignty and disenfranchisement”⁸⁸. This is what made of the sea not a deviation from the sovereign norm, but rather one of its crucial models. As Lauren Benton has put it, “international norms take shape not at Westphalia but at the edges of the Indian Ocean.”⁸⁹

The vision of the sea as a laboratory of modern political spaces continues to have enduring relevance for understanding and assessing the production of political space in today's world. This particular vision of imperial territoriality as inhomogeneous and highly differentiated has in fact been increasingly mobilized to describe the political spatiality of the present. It is by now a widespread assumption that global space is not a smooth, increasingly undifferentiated surface as it was imagined by enthusiast of neoliberal globalisation at the beginning of the 1990s but is rather characterized by the proliferation of “indeterminate and ambiguous spaces” that “appear as anomalous from the point of view of the modern state and its legal and political standard”⁹⁰. Although world maps perpetuate the vision of an isomorphic global space completely filled by contiguous states, several scholars have looked at the “multiplication of a broad range of partial, often highly specialised, global assemblages of bits of territory, authority, and rights that begin to escape the grip of national institutional frames”⁹¹. As I will try to show, the deeply uneven legal

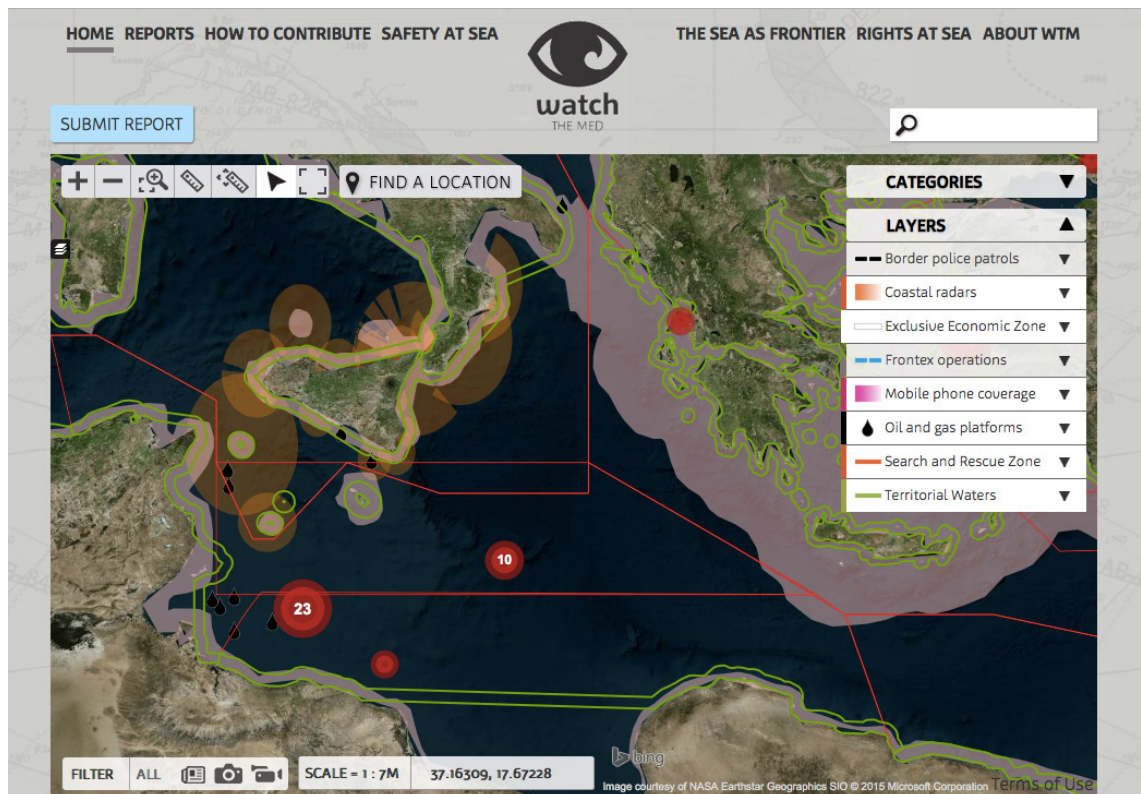


Chain of events in the “left-to-die boat” case as reconstructed for the Forensic Oceanography report. The map shows how the boat entered the Maltese Search and Rescue zone and remained for several days within the area closely monitored by NATO as part of the international military operation against Libya. For more information on this map, see figures 2, 27 and 28 in the report annexed to this thesis.

and political geography of the sea continues to offer a valid model for the study of new formations of territory, authority and rights.

This spatial and legal arrangement of the maritime border, what we might call with Keller Easterling its “disposition”, constitutes an “unfolding potential”, an “inherent agency” that “makes certain things possible and other things impossible”.⁹² In the context of the contemporary border regime, it creates a field of possibilities in which violence can happen. This “undeclared, even hidden, potentially violent dispositions immanent” in what Easterling calls “infrastructure space”⁹³ should perhaps lead us to rename the violence of the maritime border “*infra-structural*” violence. From this perspective, the sea stops being simply a neutral background on which human action takes place and becomes a force field that is shaped by – but also shapes – conflict.⁹⁴

It is because of this distinctly spatial dimension of violence at sea that mapping has represented such an important aspect of Forensic Oceanography’s work: if violence is



WatchTheMed, an online mapping platform seeking to document violations of migrant rights at the maritime boundaries of the EU.

made through space, mapping can help locate the indices where this “infrastructure that evades representation” – the structural violence of the maritime border – “nevertheless leaves its imprint and creates its own specific forms”.⁹⁵ On the one hand, mapping has been useful to re-inscribe responsibility across the complex legal geography of the sea. In the case of the “left-to-die boat”, for instance, plotting the trajectory covered by the boat onto the various jurisdictional areas of the Mediterranean was crucial in pointing to the multiplicity of agencies that, at different times, had specific responsibility for the rescue operations but did not intervene. On the other, by linking events across distant geographical locations and different scales, mapping can also reveal patterns of violence beyond individual cases. We have pursued this objective by creating, in collaboration with a vast network of NGOs and activist groups, an online mapping platform called WatchTheMed. This website seeks to enable civil society to exercise its critical right to look at the maritime borders of the EU by making available some of the mapping tools and geographical knowledge accumulated during the “left-to-die boat” investigation. In this way, it allows a vast network of activists and NGOs to map with precision violations of migrants’ rights at sea so as to determine which authorities and actors at sea had responsibility for them. Through WatchTheMed, several other cases of violence have been documented and plotted over the complex geography of the Mediterranean.⁹⁶

COGNITIVE MAPPING

The mapping and documentation that has been produced in the framework of Forensic Oceanography has been mobilised tactically in various legal proceedings. From the beginning of the project, however, the limits of the model of criminal justice and the “figuration” it produces – the extraction of individual victims and perpetrators from the “messy physical or political ground in which they were embedded”⁹⁷ – have been very clear to us.⁹⁸ As Martina Tazzioli writes, “an exclusive focus on the ‘excessive’ violence [of borders], consisting in human rights violations, overshadows the violence that is constitutive of the very act of tracing borders and instantiating differential rights to mobility.”⁹⁹ In order to bring out the structural violence of borders, it has not been enough to rely on mapping practices. We have also needed what might be called, paraphrasing Alberto Toscano’s take on Jameson, a different *cognitive mapping* of migration and borders, one that might help us in locating the “levers”, “nerve-centres” or weak links in the political anatomy of the contemporary border regime.¹⁰⁰

A number of authors have already attempted to reconnect the death of migrants in the Mediterranean with the border policies that have created the very conditions in which deaths become inevitable. All these accounts have highlighted how at the root of the issue of border deaths there has been a series of policies and practices that have rendered legal access to the European territory increasingly difficult for certain categories of people, forcing them to resort to dangerous means to reach European territory. These researchers, with whom I certainly share vast political and theoretical ground, have been extremely useful in de-naturalising the existence of the border and showing how border deaths are in fact the result of specific policies, thereby also pointing to the possibility of their demise. Many of them, however, focus on a rather narrowly framed historical and geographical account, one that starts with the creation of a supposedly free space of circulation inside the EU with the Schengen agreement and then follows the subsequent hardening of its external borders.

In this thesis I attempt to do something different. Following Paul Farmer’s dictum that the analysis of structural violence cannot just rely on the most proximal and obvious explanations but must be “geographically broad” and “historically deep”,¹⁰¹ I consider a wider historical, socio-economic and political matrix.¹⁰² While focusing on migration in the central Mediterranean between 2011 and 2014, I seek to re-position contemporary migration across the Mediterranean within a broader genealogy.¹⁰³ In chapter 1, I excavate the colonial roots of the current mobility regime by looking in particular at the Italian

colonisation of Libya and the specific vision of the Mediterranean that it fostered. The chapter also sets the politics of human mobility in relation to larger flows of resources, information, images and capital.¹⁰⁴ Chapter 3 starts from the history of maritime governance and then analyses the geopolitical, juridical and technological conditions that have turned the Mediterranean into a liquid trap. In chapter 2, finally, I find unexpected but significant antecedents to the present humanitarian regime in the Vietnamese “boat-people crisis” of the late 1970s. In doing so, I seek, on the one hand, to inscribe the control and management of migration within a wider set of bordering technologies that have been employed in different times and places to modulate the differential mobility of people along socio-economic and racial lines, and, on the other, to contest the “rhetoric of newness and forgetting” that tends to present modern border control as the overcoming of a previous period of unchecked controls, thus fostering a teleological narrative that leads towards the progressive stabilisation of territorial sovereignty.¹⁰⁵

While the notion of structural violence provides valuable resources for this endeavour, I also depart significantly from its tendency to depict a totalising and undifferentiated framework. While I expand the analytical framework of the Mediterranean border regime to other histories and geographies of migration, I am not attempting to lead this multiplicity of historical periods and geographical contexts back to a unified narrative; nor am I claiming to be evenly covering a highly differentiated and rapidly changing field. Rather, each one of the following chapters is a probe into the diverse issues with which I have been confronted in the course of FO. Each of them cuts across a paradigmatic¹⁰⁶ entanglement of spatial, aesthetic and political issues, constituting a sort of boring that fathoms the stratified complexity of politics. Each follows a situated encounter with the practices, policies, discourses and geographies that constitute the sea as a frontier and my attempt to make sense of them, in an itinerary that has taken me in the past three and a half years across and beyond the Mediterranean.

These have been encounters with violence at various scales and speeds, whose multiplicity cannot be grasped by the essentially “static” connotation of structural violence.¹⁰⁷ Crucially, while attempting to connect all these experiences across time and space, I am not seeking to recompose a structural unity but to tackle the current border regime from, so to speak, the middle, i.e. starting from the very practices of mobility that challenge it on a daily basis. The enduring capacity of migrants to organise and cross borders is certainly a good antidote to the risk of creating a deterministic and disempowering cage that lurks behind the notion of structural violence. From this perspective, the Mediterranean border regime appears as a political forcefield that is

constantly made and re-made not only by violence but also by the enduring practices of mobility that, as a “creative force”, traverse it.¹⁰⁸ This inextinguishable desire to move, which often comes at the cost of people’s lives, shapes new subjectivities and new geographies. At best, each of this thesis’ chapters can become a “tactical pointer”¹⁰⁹ that wedges its way into the gaps opened into the border regime by these multifarious practices of mobility.

This “move to the outside”,¹¹⁰ as Foucault would have it, allows me to challenge the apparent inevitability of the current border regime and destabilise its internal coherency, all the while underlining the productive outcome of the various and often conflicting rationalities that are part of it. This standpoint not only opens new perspectives on the role of migration in processes of globalisation and capital accumulation, to which this thesis only alludes,¹¹¹ it also sheds a different light on the violence of borders, on the possibility and pitfalls in denouncing it and in making the power that provokes it intolerable.¹¹²

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Thesis outline

This thesis is divided in two main parts. **Part one** (Genealogies) locates the current migration regime at sea within a longer genealogy of bordering technologies and aesthetic practices operating at sea. It is formed of two chapters. **Chapter one** puts the emergence of the Mediterranean border regime in relation to a wider spectrum of systems of mobility and technologies of control that have been redrawing the geography of a vast contested area.¹¹³ While focusing on the Central Mediterranean and loosely following a chronological order (that starts with the 1911 colonial occupation of Libya and ends with the 2011 international military operations against this country), it does not offer a totalizing nor linear history. It rather highlights the “vacillating” quality of this border, following its continuous displacements across multiple geographical scales. In doing so, it also shows how its geopolitical history is overdetermined by an entanglement of colonial, racial and socio-economic rationales. While chapter one focuses on the spatial dimension of the sea as frontier, **chapter two** deals instead primarily with its aesthetic dimension.¹¹⁴ It does that by retracing the history of two humanitarian ships carrying the same name, the *Cap Anamur*. Each of these two vessels figured prominently in two episodes – the first one taking place during the Vietnamese boat people crisis of the late 1970s, the second in the Mediterranean in 2004 – that have profoundly marked the history of humanitarianism at sea and of its media aesthetics. Discussing these two episodes in relation to more recent developments on the Mediterranean border allows me to explore how the latter have transformed under conditions of increased border surveillance and

militarisation, to suggest new possibilities that have emerged in an era of proliferating image production, and to ask under what conditions these possibilities might be taken up. Each of the two chapters composing part one is introduced by what I call an image-prologue, i.e. a particular image that I have encountered during the course of my research and that has been crucial in bringing into focus the questions explored therein. More similar to dialectical images, “picture puzzles that shock by way of their enigmatic form and thereby set thinking in motion”, than to illustrations of an already formed argument, each image-prologue exposes a specific dilemma that forced me to reorganise my thinking in order to make sense of what it was that I was seeing.¹¹⁵

Part two (Liquid Traces) builds upon Forensic Oceanography, a project that Charles Heller and I co-initiated in 2011 and which has mobilized geographic and media technologies (remote sensing, drift modelling, GIS, vessel tracking and others) to document the violence perpetrated against migrants in the Mediterranean Sea. In keeping with the practice-based spirit that has animated this research, this section mixes various visual and textual material that has been produced in the course of the project. **Chapter three** analyses the processes and practices that have turned the Mediterranean Sea into a liquid trap, causing the death of several thousands of migrants.¹¹⁶ It dissects the current regime of maritime governance and analyses its modes of operation across the fragmented legal architecture of the ocean, paying particular attention to the multiple sensing technologies that are used for the purpose of surveillance. After having charted the broader political, juridical, and technological conditions through which the sea was made to kill, it then explores how, in the frame of the Forensic Oceanography, those very conditions have been mobilized against the grain in the task of breaching the impunity of the actors involved. **Chapter four** is centred on the “left-to-die boat” report that I have co-authored in 2012 and that has since been used as evidence in a series of legal proceedings.¹¹⁷ After an introduction that analyses the methodology developed in the course of the investigation on the “left-to-die boat” case and presents its main findings, the report itself is followed by a text that I have co-written in June 2014 to summarize the events that have followed the release of the report and the inconclusive demands for justice it has sought to support. Part 2 is closed by two further elements. First, a **postscript** that interrogates the meaning and role of practice-based research in the frame of the struggles against the border regime. Secondly, a **portfolio of practice** provides an overview of the various projects carried out in the framework of Forensic Oceanography.

NOTES

- 1** The text of the treaty can be found in the Italian law authorising its ratification (Law no. 7 of February 6 2009).
- 2** Ironically, at the centre of the treaty was the completion of a highway stretching all along the Mediterranean coast; this had been originally inaugurated by Mussolini himself as one of the biggest achievements of Italian colonialism.
- 3** Michael Collyer, Franck Düvell, and Hein de Haas, “Critical Approaches to Transit Migration,” *Population, Space and Place* 18, no. 4 (July 2012): 407–14, doi:10.1002/psp.630.
- 4** Hein de Haas, “The Myth of Invasion: The Inconvenient Realities of African Migration to Europe,” *Third World Quarterly* 29, no. 7 (2008): 1305, doi:10.1080/01436590802386435.
- 5** Martina Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean” (Goldsmiths, University of London, 2013), <http://research.gold.ac.uk/9607/>.
- 6** Nick Squires, “Libya to Unleash Wave of Migrants on Europe,” *The Telegraph*, April 7, 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8435884/Libya-to-unleash-wave-of-migrants-on-Europe.html>.
- 7** UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011,” Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html>.
- 8** See: <http://fortresseurope.blogspot.com>.
- 9** See: <http://www.gisti.org/spip.php?article2304>.
- 10** Fortress Europe, “Un Video Mostra Il Ruolo Di Gheddafi Dietro Gli Sbarchi,” *Fortress Europe*, September 20, 2011, <http://fortresseurope.blogspot.it/2011/09/un-video-mostra-il-ruolo-di-gheddafi.html>.
- 11** Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean,” 216–217.
- 12** See: <http://www.forensic-architecture.org/>
- 13** For an in-depth description of this case and our investigation, see chapter 5.
- 14** See: Lindsay Bremner, “Fluid Ontologies in the Search for MH370,” *Journal of the Indian Ocean Region* (2014): 1–22, doi:10.1080/19480881.2014.985899.
- 15** Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* 6, no. 3 (January 1, 1969): 173.

16 This opening line is quoted almost verbatim from an appeal by researchers involved in the production of knowledge on migration (I was one of the first signatories). See: https://www.change.org/p/to-all-those-who-want-to-sign-a-collective-refusal-an-appeal-by-researchers-involved-in-the-production-of-knowledge-on-migration?just_created=true

17 In recent years, there has been a growing debate on the appropriate terminology to use when referring to “undocumented migrants” (see for instance: <http://picum.org/en/our-work/terminology/>). In this thesis three terms will be mainly used for migrants: “illegalised”, to emphasise the production of illegality as one of the key outcomes of the border regime; “unauthorized”, to underline the creative act of border transgression; and “clandestine”, which, despite the derogatory connotation that this term often has, is used here in reference to its etymological meaning of “hidden” in order to highlight the aesthetic dimension of the border.

18 <http://watchthemed.net/index.php/reports/view/31>

19 See for instance: <https://www.detective.io/detective/the-migrants-files/> and <http://www.theguardian.com/world/2014/oct/20/-sp-migrants-ales-asylum-sea-mediterranean>

20 Amnesty International, *Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean* (Amnesty International, September 30, 2014), <http://www.amnesty.org/en/library/info/EUR05/006/2014/en>.

21 Tara Brian and Frank Laczko, *Fatal Journeys. Tracking Lives Lost during Migration* (Geneva, Switzerland: International Organization for Migration (IOM), 2014), <http://www.iom.int/files/live/sites/iom/files/pbn/docs/Fatal-Journeys-Tracking-Lives-Lost-during-Migration-2014.pdf>.

22 Martina Tazzioli, “Mare Nostrum beyond the Sea” (presented at the Migration and Law, Birbeck College, London, 2013).

23 The very availability of data about migrant mortality and their huge circulation across the media is a clear index of the increasing relevance that counting deaths has acquired not only for activists denouncing the border regime but also for the whole management of migration and borders. This politics of counting, which clearly requires a deeper scrutiny, is the subject of a project involving a tactical use of statistics first outlined by Charles Heller and me in a roundtable discussion at the Centre for Research Architecture in December 2012, and now described in a much more detailed way in Charles Heller’s PhD thesis.

24 “More than 1,500 Drown or Go Missing Trying to Cross the Mediterranean in 2011,”

UNHCR, accessed January 18, 2015, <http://www.unhcr.org/4f2803949.html>.

25 “Focus on Saving Lives, Says UNHCR, as Numbers of People Taking to the Seas in Search of Asylum or Migration Passes 348,000 Globally,” UNHCR, accessed January 18, 2015, <http://www.unhcr.org/5481bf796.html>.

26 Joseph. Nevins, *Operation Gatekeeper: The Rise of the “Illegal Alien” and the Making of the U.S.-Mexico Boundary* (New York [u.a.]: Routledge, 2002), 144.

27 William Walters, “Foucault and Frontiers: Notes on the Birth of the Humanitarian Border,” in *Governmentality: Current Issues and Future Challenges*, ed. Ulrich Bröckling, Susanne Krasmann, and Thomas Lemke (New York: Routledge, 2011), 138–64. This dimension of the border will be the specific focus of chapter 4.

28 Eyal Weizman, *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza* (London; New York: Verso, 2011); Didier. Fassin and Mariella. Pandolfi, *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (New York, N.Y.: Zone books, 2010).

29 “Focus on Saving Lives, Says UNHCR, as Numbers of People Taking to the Seas in Search of Asylum or Migration Passes 348,000 Globally.”

30 Liz Fekete, *Death at the Border – Who Is to Blame?* (London: Institute of Race Relations, July 2003); Charles Heller and Lorenzo Pezzani, “Time to End the EU’s Left-to-Die Policy,” openDemocracy, September 14, 2014, <https://opendemocracy.net/can-europe-make-it/charles-heller-lorenzo-pezzani/time-to-end-eu%E2%80%99s-lefttodie-policy>; Nevins, *Operation Gatekeeper*; Thomas Spijkerboer, “The Human Costs of Border Control,” *European Journal of Migration and Law* 9, no. 1 (March 1, 2007): 127–39, doi:10.1163/138836407X179337; Leanne Weber and Sharon Pickering, *Globalization and Borders: Death at the Global Frontier*, 2014.

31 See: http://europa.eu/rapid/press-release_SPEECH-13-792_en.htm

32 The number of migrant fatalities over the past twenty years has been recorded by two independent organisations (the journalistic blog “Fortress Europe” and the NGO “United Against Racism”), whose data have been mobilised in countless political initiatives against the border regime.

33 Sandro Mezzadra and Brett Neilson, *Border as Method, Or, the Multiplication of Labor* (Duke University Press, 2013), 176.

34 Nicholas De Genova, “Spectacles of Migrant ‘illegality’: The Scene of Exclusion, the Obscene of Inclusion,” *Ethnic and Racial Studies* 36, no. 7 (July 2013): 1180–98, doi:10.1080/01419870.2013.783710.

35 Alicia de la Cour Venning, “Death at Europe’s Frontiers: Foreseeable Result of State

Policy?,” Institute of Race Relations Blog, accessed January 19, 2015, <http://www.irr.org.uk/news/death-at-europes-frontiers-foreseeable-result-of-state-policy/>.

36 Tazzioli, “Mare Nostrum beyond the Sea”.

37 Fekete, *Death at the Border – Who Is to Blame?*; See for instance: Hein de Haas, “Smuggling Is a Reaction to Border Controls, Not the Cause of Migration,” accessed January 24, 2015, <http://heindehaas.blogspot.co.uk/2013/10/smuggling-is-reaction-to-border.html>; Weber and Pickering, *Globalization and Borders*.

38 Stefanie Grant, “Recording and Identifying European Frontier Deaths,” *European Journal of Migration and Law* 13, no. 2 (January 1, 2011): 135, doi:10.1163/157181611X571259.

39 Heller and Pezzani, “Time to End the EU’s Left-to-Die Policy.” <https://opendemocracy.net/can-europe-make-it/charles-heller-lorenzo-pezzani/time-to-end-eu's-lefttodie-policy>

40 Joseph Nevins, “A Beating Worse than Death: Imagining and Contesting Violence in the U.S.-Mexico Borderlands,” *AmeriQuests* 2, no. 1 (2005): 1–25; I am referring in particular to: Weber and Pickering, *Globalization and Borders*. Another author that has explicitly mobilised this concept in the context of migration is Andrew M. Gardner, “Engulfed: Indian Guest Workers, Bahraini Citizens and the Structural Violence of the Kafala System,” in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Mae Peutz (Durham, NC: Duke University Press, 2010).

41 For instance, two journals recently dedicated entire issues to the topic of structural violence: *New Political Science* 34, no. 2 (June 2012) and *E-Flux*, no. 38 (October 2012). The attempt to revive this notion resonates with parallel contemporary endeavours to expand our understanding of violence, such as: Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, Mass.: Harvard University Press, 2011).

42 Nevins, “A Beating Worse than Death: Imagining and Contesting Violence in the U.S.-Mexico Borderlands,” 15.

43 Yves Winter, for instance, traces back the emergence of this notion to Engels’ “Condition of the working class in England”, while, according to Balibar, “the theme of force (*Gewalt*, in its double German meaning of force and violence) [...] is so persistent in Capital [...], that this whole work could be read as a treatise on the structural violence that capitalism inflicts.” See: Yves Winter, “Violence and Visibility,” *New Political Science* 34, no. 2 (June 2012): 195–202, doi:10.1080/07393148.2012.676397; Étienne Balibar, “Reflections on Gewalt,” *Historical Materialism* 17, no. 1 (March 1, 2009): 99–125,

doi:10.1163/156920609X399227.

44 Galtung, “Violence, Peace, and Peace Research.”

45 Nancy. Scheper-Hughes, *Death without Weeping the Violence of Everyday Life in Brazil* (Berkeley; Los Angeles; London: University of California Press, 1993); Paul Farmer, *Pathologies of Power* (Berkeley and Los Angeles, California: University of California Press, 2003); Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham, NC: Duke University Press, 2012).

46 Farmer, *Pathologies of Power*, 40.

47 Nevins, “A Beating Worse than Death: Imagining and Contesting Violence in the U.S.-Mexico Borderlands,” 15–16.

48 *Ibid.*, 22–23.

49 *Ibid.*, 4.

50 *Ibid.*, 16–17.

51 Jacques Rancière, *The Politics of Aesthetics* (Continuum, 2006).

52 Nevins, “A Beating Worse than Death: Imagining and Contesting Violence in the U.S.-Mexico Borderlands,” 16.

53 Gilles Deleuze, *Foucault*, trans. Seán Hand (Minneapolis (Minn.): University of Minnesota Press, 1988).

54 Winter, “Violence and Visibility,” 202.

55 *Ibid.*, 199.

56 This is the question that other authors have asked in relation to “new” forms of violence. See for instance: Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, Mass.: Harvard University Press, 2011).

57 Maria Lind and Hito Steyerl, “Introduction,” in *The Green Room: Reconsidering the Documentary and Contemporary Art* (Berlin; Annandale-on-Hudson, NY: Sternberg Press ; Center for Curatorial Studies and Hessel Museum of Art, Bard College, 2008), 12.

58 Winter, “Violence and Visibility,” 198.

59 Maribel Casas-Cortés et al., “New Keywords: Migration and Borders,” *Cultural Studies* 29, no. 1 (January 2, 2015): 13, doi:10.1080/09502386.2014.891630.

60 Judith Butler, *Frames of War: When Is Life Grievable?* (London; New York: Verso, 2010), 64.

61 Winter, “Violence and Visibility,” 198.

62 A parallel could be drawn with the complex entanglement between vision and visuality described by Hal Foster in a seminal publication. “Although vision suggests sight as a physical operation, and visuality sight as a social fact, the two are not opposed

as nature to culture: vision is social and historical too, and visibility involves the body and the psyche. Yet neither are they identical: here, the difference between the terms signals a difference within the visual-between the mechanism of sight and its historical techniques, between the datum of vision and its discursive determinations- a difference, many differences, among how we see, how we are able, allowed, or made to see, and how we see this seeing or the unseen therein.” See: Hal Foster, *Vision and Visuality* (New York: New Press, 1999), p. ix. More recently, and in more direct connection with the politics of migration, Martina Tazzioli has effectively distinguished between the narrower “politics of visibility” and a broader “politics of perceptibility”. While the first term refers “simply” to our field of vision, the second involves “all the ways through which ‘noisy’ or silent practices – in our case, migrants’ movements and migrant struggles – become part of our political horizon, without necessarily being visible, that is appearing on the public scene.” See: Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean,” 242–243.

63 Eyal Weizman, “Introduction, Part II: Matter against Memory,” in *Forensis: The Architecture of Public Truth*, ed. Forensic Architecture (Berlin: Sternberg Press, 2014), 365.

64 Rancière, *The Politics of Aesthetics*.

65 Hito Steyerl, *The Wretched of the Screen* (Berlin: Sternberg Press, 2012), 157.

66 Eyal Weizman, “Forensis: Introduction,” in *Forensis: The Architecture of Public Truth*, ed. Forensic Architecture (Berlin: Sternberg Press, 2014), 29.

67 *Ibid.*, 12.

68 Bruno Latour, “Visualisation and Cognition: Drawing Things Together,” in *Knowledge and Society: Studies in the Sociology of Culture Past and Present*, ed. Henrika Kuklick and Elisabeth Long, vol. 6 (Greenwich, CT: JAI Press, 1986), 1–40.

69 I expand on this aspect in: Maribel Casas Cortes et al., “Clashing Cartographies, Migrating Maps,” in *Grenzregime II* (Berlin: Assoziation A Verlag, 2014).

70 Marcus Rediker, “Toward a People’s History of the Sea,” in *Maritime Empires: British Imperial Maritime Trade in the Nineteenth Century*, ed. David Killingray, Margarete Lincoln, and Nigel Rigby (Boydell Press, 2004), 198.

71 Philip E. Steinberg, *Oceans*, February 26, 2013, <http://www.oxfordbibliographies.com/display/id/obo-9780199874002-0052>

72 Felipe Fernández-Armesto quoted in: P. Horden, “Review: Maritime History as World History,” *The English Historical Review* 120, no. 487 (June 1, 2005): 810, doi:10.1093/ehr/cei270.

- 73** K. Wigen, "AHR Forum: Oceans of History - Introduction," *The American Historical Review* 111, no. 3 (June 1, 2006): 717–21, doi:10.1086/ahr.111.3.717; P. Horden and N. Purcell, "The Mediterranean and 'the New Thalassology,'" *The American Historical Review* 111, no. 3 (June 1, 2006): 722–40, doi:10.1086/ahr.111.3.722; Jerry H. Bentley, "SEA AND OCEAN BASINS AS FRAMEWORKS OF HISTORICAL ANALYSIS," *Geographical Review* 89, no. 2 (April 21, 1999): 215–24, doi:10.1111/j.1931-0846.1999.tb00214.x.
- 74** Philip E. Steinberg, "Oceans," in *International Encyclopedia of Human Geography*, ed. Nigel Thrift (Oxford: Elsevier Science, 2009), 21–26.
- 75** Stefan Helmreich, "Nature/Culture/Seawater," *American Anthropologist* 113, no. 1 (March 2011): 132–44, doi:10.1111/j.1548-1433.2010.01311.x
- 76** Philip E. Steinberg, "Of Other Seas: Metaphors and Materialities in Maritime Regions," *Atlantic Studies* 10, no. 2 (June 2013): 158, doi:10.1080/14788810.2013.785192
- 77** Helmreich, "Nature/Culture/Seawater," 133.
- 78** Bentley, "SEA AND OCEAN BASINS AS FRAMEWORKS OF HISTORICAL ANALYSIS," 222. It is interesting to note that it was the Ford Foundation, i.e. the same organisation that was at the forefront in promoting the establishment of "area studies", which then pushed towards their demise and the reframing of scholarly research around ocean basins by funding the "Oceans Connect" project at Duke University in 1997. However paradoxical this shift might at first appear, it has to be understood in the context of a wider shift of the "knowledge geography". While area studies were functional to the US Cold War developmental agenda, they proved ill-suited to describe the "changing configuration of global and regional space under late capitalism". Ocean studies were deemed more apt to this endeavour, as long as they were not engaging in "political arguments about labour, migration, and border struggles", which is precisely what this thesis attempts to do. See: Mezzadra, Sandro, and Brett Neilson, *Border as Method, Or, the Multiplication of Labor*. Duke University Press, 2013, 44–51.
- 79** Steinberg, "Of Other Seas," 156.
- 80** Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge; New York: Cambridge University Press, 2010), 104.
- 81** Mezzadra and Neilson, *Border as Method, Or, the Multiplication of Labor*, 209.
- 82** Brett Neilson, "Between Governance and Sovereignty: Remaking the Bordscape to Australia's North," *Local-Global Journal* 8 (2010): 126, <http://mams.rmit.edu.au/56k3qh2kfcx1.pdf>
- 83** Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the

British Atlantic, circa 1772,” *William and Mary Quarterly* 60, no. 3 (July 1, 2003): 474, doi:10.2307/3491549.

84 Elizabeth Mancke, “EARLY MODERN EXPANSION AND THE POLITICIZATION OF OCEANIC SPACE*,” *Geographical Review* 89, no. 2 (April 21, 1999): 225, doi:10.1111/j.1931-0846.1999.tb00215.x.

85 Benton, *A Search for Sovereignty*, 120.

86 Mancke, “EARLY MODERN EXPANSION AND THE POLITICIZATION OF OCEANIC SPACE*,” 232.

87 Benton, *A Search for Sovereignty*, 132.

88 A. L. Stoler, “On Degrees of Imperial Sovereignty,” *Public Culture* 18, no. 1 (January 1, 2006): 139, doi: 10.1215/08992363-18-1-125.

89 Benton, “Legal Spaces of Empire,” 702.

90 Mezzadra and Neilson, *Border as Method, Or, the Multiplication of Labor*, 208.

91 Saskia Sassen, “Neither Global nor National: Novel Assemblages of Territory, Authority and Rights,” *Ethics & Global Politics* 1, no. 0 (January 1, 2008): 61, doi:10.3402/egp.v1i1.1814.

92 Keller Easterling, *Extrastatecraft: The Power of Infrastructure Space* (London; New York: Verso Books, 2014), 14.

93 *Ibid.*, 149.

94 For a rethinking of the notion of field in the context of forensic practices see: Eyal Weizman, “Forensis: Introduction,” in *Forensis: The Architecture of Public Truth*, ed. Forensic Architecture (Berlin: Sternberg Press, 2014), 9–32.

95 Julieta Aranda, Brian Kuan Wood, and Anton Vidokle, “Editorial—‘Structural Violence,’” *E-Flux*, no. 38 (October 2012), <http://www.e-flux.com/journal/editorial-29/>

96 See: www.watchthemed.net

97 Weizman, “Forensis: Introduction,” 25.

98 I reflect more specifically on the limits of an exclusively legal approach in chapter 7, as well as in: Lorenzo Pezzani and Charles Heller, “A Disobedient Gaze: Strategic Interventions in the Knowledge(s) of Maritime Borders,” *Postcolonial Studies* 16, no. 3 (September 2013): 289–98, doi:10.1080/13688790.2013.850047.

99 Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean,” 187–188.

100 Alberto Toscano, *Cartographies of the Absolute* (London: Zero Books, 2015), 8.

101 Farmer, *Pathologies of Power*, 42.

102 This tendency is also one of the main sources of criticism of theories of structural

violence, i.e. that it is – often rightly – accused of conflating forms of violence that need to be differentiated into a totalising framework. See for instance the critique levied by Loic Wacquant in: Paul Farmer, “An Anthropology of Structural Violence,” *Current Anthropology* 45, no. 3 (June 2004): 305–25, doi: 10.1086/382250.

103 For a genealogical approach to borders see: William Walters, “Mapping Schengenland: Denaturalizing the Border,” *Environment and Planning D: Society and Space* 20, no. 5 (2002): 561–80, doi:10.1068/d274t. Against the distrust for the history of “brief, rapid, nervous fluctuations” and their “still burning passions” that theories of structural violence share with the Annales School, this thesis analyses specific events as prisms to unpack larger webs of connections. See: Fernand. Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*. Vol. 1, trans. Siân. Reynolds (London: Collins, 1972), 21.

104 An important precedent for this has been: Ursula Biemann and Brian Holmes, eds., *The Maghreb Connection : Movements of Life across North Africa* (Barcelona: Actar, 2007).

105 Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2008).

106 I am referring here to Agamben’s notion of the paradigm, which, according to the Italian philosopher, “is a singular case that is isolated from its context only insofar as, by exhibiting its own singularity, it makes intelligible a new ensemble, whose homogeneity it itself constitutes.” See: Giorgio Agamben, *The Signature of All Things: On Method* (New York: Zone, 2009), 18.

107 See the criticism levied by: Nixon, *Slow Violence and the Environmentalism of the Poor*, 11.

108 Sandro Mezzadra, “The Gaze of Autonomy. Capitalism, Migration and Social Struggles,” in *The Contested Politics of Mobility*, ed. Vicki Squire (London: Routledge, 2010).

100 Foucault, *Security, Territory, Population*, 3.

110 Michel Foucault, *Security, Territory, Population : Lectures at the Collège de France, 1977-78* (New York: Palgrave Macmillan, 2007), 116–118. I am grateful to Charles Heller for pointing out this passage to me.

111 I am thinking here, just to name a few of the names that have been more influential for me, at the work of Sandro Mezzadra and Brett Neilson, Vassilis Tsianos and Dimitris Papadopoulos, Bridget Anderson and Nicholas De Genova.

112 Alberto Toscano, “The Intolerable-Inquiry: The Documents of the Groupe

D'information Sur Les Prisons,” *Viewpoint Magazine*, September 25, 2013, <http://viewpointmag.com/2013/09/25/the-intolerable-inquiry-the-documents-of-the-groupe-dinformation-sur-les-prisons/>.

113 Chapter one is based on a previously published text, which has been here, however, substantially revised. See: Lorenzo Pezzani, “Between Mobility and Control. The Mediterranean at the Borders of Europe,” *New Geographies* 5 (2013): 303–12.

114 This chapter is a substantially expanded version of an essay first appeared in: Forensic Architecture, ed., *Forensis: The Architecture of Public Truth* (Berlin: Sternberg Press, 2014).

115 Theodor Adorno, quoted in: Michael Taussig, “History as Sorcery,” *Representations*, no. 7 (Summer 1984): 89.

116 This chapter was co-authored with Charles Heller and published in a slightly different version in: Forensic Architecture, *Forensis*.

117 The report on the “left-to-die boat” case was co-authored with Charles Heller and SITU Research. Both the introduction to the report and the text appearing in the “aftermath” were written with Charles Heller. The first was published in the edited volume *Forensis*, the second online. See: Charles Heller and Lorenzo Pezzani, “Time to End the EU’s Left-to-Die Policy,” *openDemocracy*, June 25, 2014, <https://opendemocracy.net/can-europe-make-it/charles-heller-lorenzo-pezzani/time-to-end-eu%E2%80%99s-lefttodie-policy>.

PART ONE: **GENEALOGIES**

CHAPTER ONE

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Rome, 11 June 2009: Muammar Gaddafi, the Libyan head of state and Chair of the African Union, lands in Rome for his historic first official visit to Italy. The meeting followed the signing, a year earlier, of the infamous “Treaty of Friendship” by which Libya pledged to stem migrant departures from the North African coast in exchange for a €25bn infrastructural programme. The deal was presented as reparations for the misdeeds of Italian colonialism, thus creating a seemingly incongruous link between colonialism and migration control.

Silvio Berlusconi, the Italian prime minister, welcomes Gaddafi on the tarmac, where they together review the troops assembled there before heading to the Italian parliament building for official talks. Pinned on the black fabric of Gaddafi’s uniform is a black-and-white photograph carefully placed there in order to be easily visible and photographed by the press. It depicts the moment when the leader and hero of the Libyan anti-colonial resistance, Omar Al-Mukhtar, was captured by the Italian army after he had waged a strenuous guerrilla campaign against them for years. The photograph shows a man in chains, wearing non-Western clothing, encircled by his captors, who look proudly at the camera. It is an image constructed according to the classic iconography of the (man-)hunt, in which the trophy – be it a lion or a human being – is exposed as evidence of success.

The old black-and-white picture, however, acquires a completely different meaning when brought into this new context on Gaddafi’s body, and from there to the front pages of the major Italian newspapers. As in the photo-ops made famous by South American civil rights movements for the disappeared, the act of showing is staged as a fundamentally made-for-the-camera event. It mobilises a whole visual economy according to which Gaddafi features as the one who remembers the absence of Mukhtar and addresses the Italian audience, demanding justice for the crimes that their nation perpetrated. It is this image-within-the-image that dialectically conflates two spatially and temporally distant scenes and opens up an alternative, albeit precarious, field of visibility. By means of its circulation in the media, the colonial memory re-enters the Italian public sphere, from which it has been forcibly excluded until that moment, relegated to a haunting presence. As a sort of inverted *mise en abîme*, the historical, political and ideological distance that separates the two pictures – instead of being amplified by their succession – is compressed and reveals its contemporary relevance, disrupting an otherwise familiar scene of an official state visit.

BETWEEN MOBILITY AND CONTROL: THE MEDITERRANEAN AT THE BORDERS OF EUROPE

Moments of rupture have the ability to offer, in a condensed timeframe, a penetrating snapshot of complex situations. The “spatial upheaval” provoked in 2011 by the arrival of several thousand migrants on the coasts of Italy in the aftermath of the so-called Arab Spring was certainly one of these moments.¹ In a few days, the border regime that European institutions had put in place – with the complicity and active collaboration of Ben Ali’s and Qaddafi’s regimes over twenty years of negotiations, partnerships and agreements – seemed to have suddenly vanished, only to reappear shortly afterwards scattered over a multitude of other locations across the purportedly borderless Schengen Area.² In the attempt to “stem the tide” of migrants spreading across the continent, border controls between Italy and France, as well as between Denmark, Sweden and Germany were swiftly restored, targeting those whose racial profile better conformed to the image of the African migrant. Meanwhile, the prime ministers of Italy and France sent a joint letter to the EU leadership asking for a review of substantial parts of the Schengen agreement, thus overtly challenging the principle of free movement within the Schengen Area, perhaps for the first time since its integration into European law in 1997. On the other side of the Mediterranean, most of those fleeing the civil war that had erupted in Libya sought refuge in neighbouring African countries, where refugee camps were created with the purpose of “control[ling] the migration flows”.³

The Mediterranean, which over recent years had become, according to border controllers and activists alike, the edge of an impenetrable fortress, a “closed sea”, was suddenly reopened by these migratory movements, whose ripple effects were to be noticed across the whole European and North African space.⁴ Observed from the perspective of the government of mobility, this situation clearly represented an aberration from the norm, an anomaly that was swiftly amended with the restoration of re-admission agreements between Italy and Tunisia and the deployment of new border patrols.⁵

The hypothesis that I want to put forward here, however, is that if we are able to move beyond this institutional perspective that makes us “see like a state”, something different can be grasped.⁶ What I want to suggest is that these events provided, at least for a fleeting moment, a revealing insight into the deeper nature of the Mediterranean border regime. The unruly practices of mobility that upset the apparent stability of this border threw into question the very possibility of identifying an inside and outside to Europe, exposing instead what Balibar has called the “vacillating” quality of the border.

With this expression the French philosopher refers to the fact that borders “are no longer *at the border*, an institutional site that can be materialized on the ground and inscribed on the map”.⁷ The way in which, in reaction to the turmoil provoked by the Arab Spring, the Mediterranean border was dislocated and removed to myriad of other locations in a desperate attempt by border guards, humanitarian personnel and others to track down certain bodies as they moved across the space of Europe and Northern Africa clearly illustrates this point. It also shows how the border is no longer the place where “the set of functions of sovereignty, administration, cultural control, taxation, and so on” are superimposed onto a clear institutional entity but have rather fragmented and do not work “*in the same way*, ‘equally’ for all people, and notably not for those who come from different parts of the world”.⁸ Here, another of the crucial characteristic of borders described by Balibar, overdetermination – their being simultaneously geopolitical, racial and socio-economic divisions – appears in all clarity.⁹

All these elements evoke an image of the border that is very different from the “classical” one¹⁰ that we have inherited from modernity, where the border represents “a continuous structure enclosing a political territory”.¹¹ They invite us to see the border “not as a thing (a wall, a fence, or a bridge), but as a social relation mediated by things”.¹² In order for this different vision of the Mediterranean border to emerge, another genealogy needs to be traced, which is precisely what this chapter sets out to do. Its purpose is to set the emergence of the Mediterranean border regime in relation to a wider spectrum of systems of mobility and technologies of control that have been redrawing the geography of the Mediterranean, relating the movement of people to colonial conquest and occupation, war, trade patterns, political affiliations and labour regimes. Like any genealogy, this is not, it should be said at the outset, “an exhaustive or totalizing history but a very partial one.”¹³ While focusing on the central Mediterranean and the relationship between Italy and Libya, it follows the transformation of the Mediterranean into a border across multiple geographical scales, jumping in a non-linear fashion from the Sahara to Schengen, from Italy to Northern Africa. The narrative I propose does loosely follow a chronological order, but it does not attempt to define evolutionary stages – it rather seeks to locate “ruptures [...] where only evolutionary change had been posited”, as well as “continuities with [...] where only novelty had been assumed”.¹⁴ Charting a wider geography of (im-)mobility does not mean equating every form of movement and control, but rather to defamiliarise the current cross-Mediterranean migration by re-inscribing it in a longer history of mobility in this area. It sets the scene for the narration of the stories in the following chapters.

MARE NOSTRUM

The Mediterranean has since long been described – and often celebrated – as a space of movement, exchange and interconnection, to the point of having become a generalised term for areas linked by intense networks of trade and communication.¹⁵ “The whole Mediterranean consists of movement in space,” declared Braudel more than sixty years ago.¹⁶ “Anything entering it – wars, shadows of war, fashions, techniques, epidemics, merchandise light or heavy, precious or commonplace – may be caught up in the flow of its life blood, ferried over great distances, washed ashore to be taken up again and passed on endlessly, maybe even carried beyond its shores.”¹⁷ The vast literature on the Mediterranean that has recently been produced, however, has often ended up generating an image of it as a comforting symbol of benevolent hybridity.¹⁸ In this text, instead, I want to rethink this space from the point of view of the movements that have connected, and at the same time disconnected, different parts of the Mediterranean basin in a constant process of spatial reorganisation. Channels for the transit of goods, raw materials, financial investments and certain categories of people have been opened, while zones of exclusion and confinement have been created, often simultaneously.

At the beginning of the nineteenth century, Mediterranean patterns of human mobility took on a decidedly north–south orientation, which was intensified by the rise of colonialism.¹⁹ I choose this as the starting point of my narrative because colonialism marked, crucially, the introduction of a new paradigm of territorial separation, which is still present today. “The European colonial empires”, writes Balibar, “were most certainly the condition of emergence, reinforcement and subsistence, within the framework of different world economies, of the nation states of [...] Europe. As a result, these states’ borders with each other were both, indissociably, national borders and imperial borders, with other frontiers replicating them into the ‘earth of darkness’, somewhere in Africa and Asia”, where “they served to separate different categories of ‘nationals.’”²⁰ What sets the colonial frontier apart is that colonialism not only traced new lines over old lines – as for instance the prevalent narrative about the 1884 Berlin Conference and the Scramble for Africa suggests – but it also instituted a qualitative distinction between European space, in which the myth of exclusive territoriality and linear borders emerged, and extra-European spaces, which it defined as open to conquest.²¹ At the same time, however, in practice it also constantly attempted to reproduce and amplify difference by fostering the “proliferation of juridically and hierarchically differentiated zones, territories, populations and subjects” and by trying to regulate the flows between these internally homogeneous, but externally

differentiated areas.²² As historian Frederick Cooper notes in connection with Africa as a whole, “colonization itself, far from just imposing a high degree of connectivity on an isolated continent, at the same time connected and disconnected, created new networks and severed ancient bonds.” To study colonisation, he writes, “is to study the reorganization of space, the forging and unforaging of linkages”.²³

Italy and its former African colonies, especially Libya, have been at the forefront of the redefinition of this composite economy of movement, both in recent times and during the colonial period. The 2011 revolt and the NATO intervention, in which Italy was an active participant, were just one of the most recent chapters in a long history which began with the Italian occupation of the Ottoman provinces now known as Libya exactly a century before. After a military campaign that lasted over a year, the area now is known as Libya was officially ceded to Italy by the Ottoman Empire in 1912. Although military outposts were also established in the internal, desert regions, the colonial occupation of Libya focused almost exclusively on the control of the cities and villages on the coast and in its immediate hinterland, reflecting similar patterns of colonial penetration into the countries situated between the Sahara and the sea.²⁴ The establishment of real military control was long and difficult, especially in the Eastern region known as Cyrenaica. At the time of the first Italian invasion, this region was in fact controlled by the Sanussia, an Islamic brotherhood which had had strong roots there since the beginning of the nineteenth century. Sanussia and its charismatic leader, Omar Al-Mukhtar, waged a strenuous guerrilla war against the Italian invaders that was crushed by General Graziani only in the early 1930s.

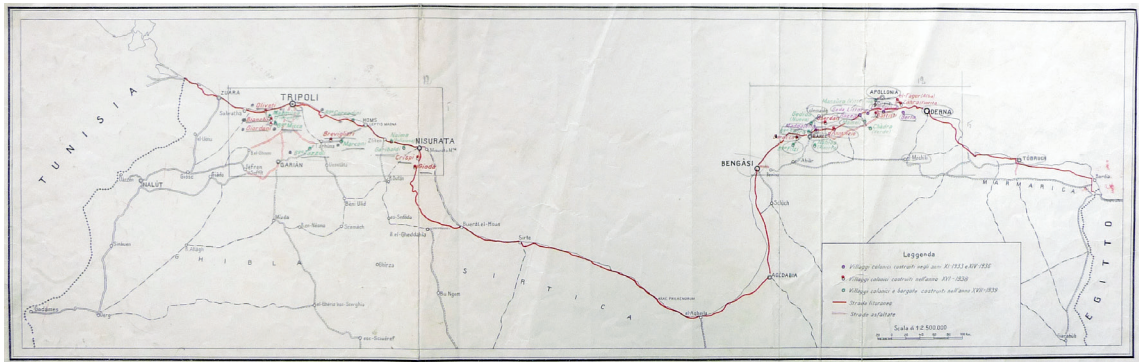
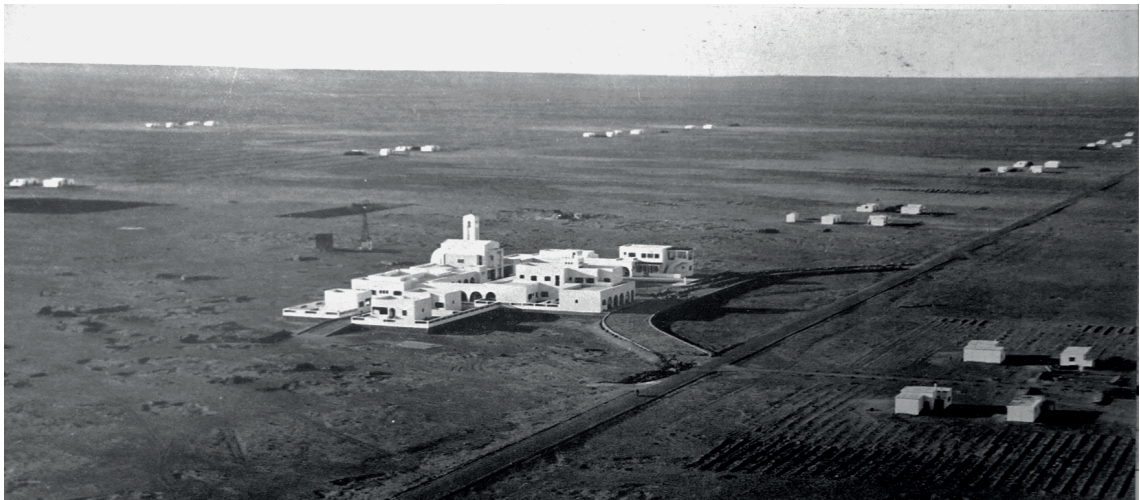
The occupation campaign relied on a combined spatial strategy. On the one hand, it constructed new borders and enclosures. Almost half the population of Cyrenaica, especially those living on the Jebel Akhdar, a large, heavily forested plateau where guerrilla fighters were most pervasive, was forcibly displaced into a vast system of concentration camps in deserted areas.²⁵ Hundreds of Libyan anti-colonial leaders were also deported and confined for years on many of the prison islands of southern Italy, while those who were not displaced physically were marginalised in a subtler way: “when Italy annexed Libya, [...] in a simultaneous counter-movement Libyans became the equivalent of migrants to another country, rather than inhabitants of their own.”²⁶ On the other hand, to enhance political and military control over the areas that had been occupied and to address the problems of internal over-population, emigration and poverty, the Italian government organised the arrival in Libya of thousands of settlers. State-sponsored “demographic colonisation” reached its apex in 1938 with the arrival of twenty thousand farmers – a



*Images taken from the book *I Ventimila* (“the twenty thousand”), the photo story of the first wave of Italian settlers in Libya in 1938. Right: the arrival of the settlers in the port of Tripoli. The original caption reads: “Marching in thick rows, the twenty thousand set out to Piazza Castello in Tripoli” / Left: the parade of trucks bringing the settlers to their villages in the centre of Tripoli. The banner reads: “Mussolini redeems the land and founds cities.”*

number only slightly lower than the number of migrants who reached Italy from Libya in 2011 – in the so-called *villaggi agricoli*, a string of agrarian settlements built from 1934 along the coastal areas of Tripolitania and Cyrenaica with the intention of “making the desert bloom” anew.²⁷

The Mediterranean Sea played an important role in the Italian image of colonisation. The invasion of Libya was presented as a way of regaining control over the Mediterranean, the sea that the Romans had dubbed *mare nostrum*.²⁸ Italian leaders presented the conquest of Libya as a return to a place that “naturally” belonged to Italy because of the ancient Roman presence. Roman traces, fervently sought for by Italian archaeologists, were but a confirmation of the indissoluble tie that linked the young nation to its glorious past. Italian sailors climbing ashore in Northern Africa were depicted in propaganda as taking up their ancestors’ claim to possessions that had since been occupied by uncivilised people. Italian colonialism, well before Fascist times, made this imperial trope one of the cornerstones of its project of territorial expansion, presenting the move into Northern Africa as the reconquest of the “fourth shore”, the missing seaboard of Italian territory. Even if the reality on the ground was very different, and Italy was able to exercise effective



Above: aerial photograph of the Gioda settlement built in 1938 in Tripolitania / Below: map of the Italian agrarian settlements in Libya. In violet, those built in 1934; in red, in 1938; in green, in 1939.

control over the sea only in limited areas and for short periods of time, the Mediterranean was constantly presented as an internal sea connecting once again the shores that had been separated after the fall of the Romans.

THE SEA OF SAND

With decolonisation, patterns of movement in the region took a different orientation. The 1960s saw the arrival in North-West Europe of large numbers of Tunisians, Algerians and Moroccans, who thus inverted the previously prevalent south-bound direction of European settlers.²⁹ While this transborder mobility happened initially in a clandestine way, it was swiftly regularised by the so-called “guest worker” programmes, which thus attempted to channel and govern these movements through regularisation.³⁰

In Libya, however, the situation was different. The abrupt end of the Italian colonial occupation did not lead to a “privileged” relationship between former colonisers and former colonised, while the discovery of large quantities of oil in the late 1950s led



*Right: cover of an Italian 1942 school report card with the lettering “Mare Nostrum” / Left: cover of “The Sphere”, 1911. Italian soldier coming ashore on the coasts of Libya to resume the Roman mission of conquest. From: Mia Fuller, *Moderns Abroad: Architecture, Cities and Italian Imperialism* (London; New York: Routledge, 2007).*

the Libyan leadership to focus its attentions on the interior of the country rather than on cross-Mediterranean relationships. The penetration into the interior of the country gained impetus especially after the 1969 revolution, which ousted the British-backed king and brought Gaddafi to power. The Libyan colonel started to build the infrastructures that enabled the discovery and exploitation of the oilfields as well as later of huge underground aquifer systems located in the internal regions. The “rediscovery” of the Sahara reflected larger developments that took place after decolonisation, when the “sea of sand” started to re-emerge from a period of latency to which it had been relegated by the opening of trans-oceanic routes and by the colonial powers.³¹

Within this context, the 1973 oil crisis and related political and economic shifts marked “the most important post-war migration turning points”.³² While economic recession led to the end of most guest worker programmes in Europe, the wealth generated in Libya by the rise of oil prices and Gaddafi’s decision to nationalise several foreign oil companies attracted many foreign workers, who mainly during this phase arrived from other Arab countries.³³ Later on, the fall of oil prices in the middle of the 1980s as well as the 1992 UN sanctions that marginalised Libya caused an economic crisis to which

Gaddafi responded with the progressive privatisation of the Libyan economy.³⁴ This reform required the influx of an even larger and cheaper workforce from the beginning of the 1990s. Demand was met by a large number of Sub-Saharan and South Asians migrants, “who were seen as a more reliable and docile workforce compared to Arab workers, who were also seen as a political liability” at the time of the first Gulf War.³⁵ Their presence was encouraged too by the markedly pan-African orientation that Gaddafi’s foreign policy assumed from 1997, and they made up 25 per cent of the working population in 2011.³⁶

In the 1990s, the rest of the Maghreb region underwent deep socio-economic changes that modified its relationship with both Europe and Sub-Saharan Africa. While the end of guest worker programmes and the introduction of visa requirements closed off most ways of entering Europe legally, cross-Mediterranean migration from North Africa never really stopped and, in fact, gained new impetus in the 1990s. In the context of “the first attempts to flexibilize the labour market along with the persistence of a large informal economic sector”, Italy and Spain emerged as the main destinations for North African migrants.³⁷ At the same time, however, the Maghreb transformed in this period from an area in which migration flows only emerged into a relay of southward movements that plunged deeper into Sub-Saharan Africa. The new lines of connection with Europe were in fact mirrored by the reactivation of trans-Saharan circulations and by the progressive rapprochement of the two “shores” of the desert. The Sahara thus progressively became the core of an important migratory system that started to connect Libya, as well as other northern African countries, with Sub-Saharan Africa, becoming in a way the mirror to the other sea, the Mediterranean.³⁸ The desert, “the spatial archetype of the periphery”, was thus transformed into a functional crossroads connecting and disconnecting spaces on an intercontinental scale.³⁹ As geographer Ali Bensaâd has written, “it spins out and weaves together the threads of a system of mobility that it simultaneously channels and injects with its own specificities, thus becoming a space which is both a conduit and a creator of globalization.”⁴⁰ It is in this context that the construction of a European border in the Mediterranean basin has started. As new lines of connection have been drawn, new spaces of confinement have arisen.

A “VIRTUAL MARITIME BORDER”

The last chapter in this trajectory moves back to Europe and starts with the signing of the Schengen Treaty in 1985. As is well known, this agreement paved the way for the removal of internal border checks and the simultaneous consolidation of the EU’s external borders. When understood in the frame of the complex socio-economic field of forces sketched

above, however, the “glorious” narrative of the creation of an even space of internal freedom of movement, in opposition to a clearly defined exterior, immediately reveals its limitations.

In terms of the internal EU space, the process that started with Schengen cannot really be understood as one of progressive homogenisation.⁴¹ While new institutions and surveillance mechanisms operating on a European-wide scale, such as Frontex and Eurosur, have been created, the “internal” borders of the EU have not simply disappeared but, in the framework of the post-9/11 recoding of migration as a security threat, have rather been substituted with what have been termed “networks of control”.⁴² Operating along specific routes that extend across European territory, mobile surveillance teams have been carrying out cross-border operations with the aim of apprehending illegal migrants and gathering information about their strategies of mobility.⁴³ This work has been facilitated – and, in its turn, has facilitated – the creation of databases and systems of information exchange (such as the EURODAC fingerprints database) which have enhanced the profiling of “risky” subjects so as to identify them within the “normal” flow of travellers. Moreover, a hierarchical regime of mobility within the EU has not only not disappeared, but has even intensified for specific categories of people, including not only asylum seekers subject to the so-called Dublin II regulation but also citizens of “new” member states whose mobility is restricted for a number of years after the accession of their countries, as well as, more recently, “core” EU citizens moving to north European countries.⁴⁴

At the same time, the external EU border has not simply hardened along a line but has rather extended and multiplied into a vast zone “whose contours are continuously negotiated by the movement of people and things, new forms of surveillance technology, and new processes of sovereign and supranational government”.⁴⁵ The EU and individual European states have been progressively externalising onto the countries of the Maghreb the control and surveillance of migrants, transforming the northern rim of the African continent in a sort of “buffer zone” protecting Europe.⁴⁶ In exchange for financial, military or political support, North African leaders have cracked down on “illegal” immigration and imposed tighter control on both the boats leaving from their coasts and the Saharan land borders, while often using these agreements to quell internal dissent and gain a more prominent position in regional politics.⁴⁷ The externalisation of border controls has thus been tightly connected with processes of economic penetration and the liberalisation of the economies across North Africa. This transformation of North African countries “from a source of emigration, to a transit route, to, finally, a destination for would-be immigrants”

highlights the productivity of the European border regime, which has become, beyond its stated objectives, “both a precondition and a motor for a specific form of peripheral globalisation of the economies at the edge of Europe”.⁴⁸

The case of Libya provides once again a paradigmatic example.⁴⁹ While, as we have seen, the presence of migrants in Libya has been extensive since decolonisation, it was only in the context of the creation of the external border of the EU that Libya introduced restrictions on the presence of immigrants, opened detention camps for migrants, signed re-admission agreements with other African countries further south, and tightened controls along their Saharan border. During a long series of multilateral (EU–Maghreb) and bilateral (Libya–Italy) political negotiations, Libya has been obtaining political and economic concessions by raising the spectre of “invasion” by the “transit” Sub-Saharan migrants present in Libya.⁵⁰ The “Treaty on Friendship, Partnership, and Cooperation” of August 2008 (mentioned above) is a clear example of this: in exchange for infrastructural projects, “Libya has agreed to take back intercepted migrants, allow joint migration control patrols inside Libyan territorial waters and for Libyan authorities themselves to help prevent irregular migrants from both entering Libya and moving on towards Europe.”⁵¹

In this new “borderscape”, the Mediterranean Sea has acquired a new centrality. Rather than by the claims of exclusive control that characterised the colonial vision of the Mediterranean as an internal (French or Italian) lake, however, the vision of the Mediterranean as an external border of the EU is better encapsulated by the concept of a “virtual maritime border”. The European Council adopted this definition in 2003 “in order to reinforce the legal borders of Member States by means of joint operations and specific measures in the places where illegal migratory flows originate or transit”. With this definition, the council sought to extend the EU borders to “every vessel suspected of transporting ‘illegal’ migrants”, therefore creating a virtual border “irrespective of the geographic distance between the patrolled waters and the coastlines of member states”. The notion of *virtuality*, when understood in the Deleuzian meaning of potency, expresses well the instability of the maritime border, which is not constrained by a fixed location but can rather materialise anywhere that an unauthorised movement is detected. As I describe in more detail in chapter 3, this has given rise to a form of “unbundled” sovereignty that selectively expands or retracts its prerogatives and obligations, creating a fragmented and heterogeneous jurisdictional landscape which has become a liquid grave for thousands of people. Instead of representing an anomaly, the deeply uneven legal and political geography of the sea constitutes, in this sense, a paradigmatic example not only of the new formations of “territory, authority and rights” that characterise the contemporary borders

of Europe, but also of their violence.⁵²

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This genealogical sketch offers a different standpoint from which to rethink the events described at the beginning of this chapter. In the *longue durée* of Mediterranean history, the deterritorialisation of borders put in motion by the unauthorised movements that traversed the Mediterranean in the aftermath of the Arab Spring do not represent an exceptional event. Beyond the specific borders that each historical context has produced, what this genealogy brings out is precisely the persistence and overlap of different bordering technologies as well as the constitutive role played by different kinds of mobilities. Any analysis of the border regime needs to retrace the refractions and echoes that link experiences of mobility and techniques of control across different geographical and historical scales. What appears in this light is the continuity of enduring colonial asymmetries and socio-legal inequalities that structure mobilities along hierarchical lines, determining who can travel freely and who cannot.

When seen in connection with this vaster and more heterogeneous assemblage of bordering technologies and infrastructures of movement, it seems impossible to trace a linear trajectory leading from the multiplicity of pre-modern mechanisms of control to the constitution of the Mediterranean as the southern border of the EU, and then to the current deterritorialisation of borders.⁵³ If “the geometric abstraction of exclusive territoriality and linear borders, while it has exerted an extremely important influence on the way in which politics has been conceived and executed in the modern era, was only ever a convention”,⁵⁴ even the contemporary ubiquity of borders that has received in-depth scrutiny by a growing literature should be understood as a more structural characteristic.⁵⁵ It stops being the exception and becomes the rule, showing that the border’s function “is not simply to keep out those who are perceived as ‘trespassers’ but, first and foremost, to govern populations both inside and outside the territory.”⁵⁶ Observed from this perspective, the Mediterranean appears as a jellylike, tri-dimensional mass that “can oscillate between states of fluidity, enabling the passage of people, forms and ideas and states of solidity, blocking passage under given political and historical circumstances”.⁵⁷ It appears, moreover, not as the exceptional space of risk and death that migration policies have tried to produce, but rather as a central space of politics constantly reshaped by various tangles of movement.

NOTES

- 1 Matina Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean” (Goldsmiths, University of London, 2013), <http://research.gold.ac.uk/9607/>.
- 2 For a more in-depth account of the migration situation across the Mediterranean in those first months of 2011, see section 1.3 of the report on the “left-to-die boat” case annexed to this thesis.
- 3 Michel Agier, “The Undesirables of the World and How Universality Changed A Camp,” [www.opendemocracy.net](http://www.opendemocracy.net/michel-agier/undesirables-of-world-and-how-universality-changed-camp), May 16, 2011, <http://www.opendemocracy.net/michel-agier/undesirables-of-world-and-how-universality-changed-camp>. According to the International Organization for Migration, of the 721,772 people who fled Libya, only 25,932 reached Italy, while the others reached neighbouring countries by land. See <http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/IOM-sitrep-MENA.pdf>.
- 4 *Closed Sea* is the title of a well-known documentary about the push-back policy that allowed Italian border patrols to take migrants intercepted in the Mediterranean back to Libya. See: <http://www.zalab.org/project-en/14#.VOxKEXa3wmQ>
- 5 The agreement signed by the Italian Interior Minister and his Tunisian counterpart on 5 April 2011 involved a simplified and expedited procedure for the re-admission of “illegalised” Tunisian migrants, the transfer of new technical means (ten patrol boats and off-road vehicles) to restore border controls on the coasts of Tunisia, and the allocation of 15€bn for economic measures against youth unemployment.
- 6 James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).
- 7 Étienne Balibar, “The Borders of Europe,” in *Politics and the Other Scene* (London: Verso, 2002), 89. [Italics in original]
- 8 Ibid., 91. [Italics in original]
- 9 Étienne Balibar, “What Is a Border?,” in *Politics and the Other Scene* (London: Verso, 2002), 75–86.
- 10 Enrica Rigo, *Europa Di Confine: Trasformazioni Della Cittadinanza nell’Unione Allargata* (Meltemi Editore srl, 2007).
- 11 William Walters, “Mapping Schengenland: Denaturalizing the Border,” *Environment and Planning D: Society and Space* 20, no. 5 (2002): 565, doi:10.1068/d274t.

- 12** Sandro Mezzadra, “The Proliferation of Borders and the Right to Escape,” in *The Irregularization of Migration in Contemporary Europe: Detention, Deportation, Drowning*, ed. Joost de Bloois, Robin Celikates, and Yolande Jansen (London ; New York: Rowman & Littlefield International, 2014), 125.
- 13** Walters, “Mapping Schengenland: Denaturalizing the Border,” 526.
- 14** Ibid., 562.
- 15** David Abulafia, “Mediterraneans,” in *Rethinking the Mediterranean*, ed. W. V. Harris (Oxford, UK; Malden, MA: Oxford University Press, 2005), 64–93; Philip E. Steinberg, “Mediterranean Metaphors: Travel, Translation, and Oceanic Imaginaries in the ‘new Mediterraneans’ of the Arctic Ocean, the Gulf of Mexico and the Caribbean,” in *Water Worlds: Human Geographies of the Ocean*, ed. Jon Anderson and Kimberley Peters (Farnham, Surrey, England; Burlington, VT: Ashgate, 2014).
- 16** Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*. Vol. 1, trans. Siân. Reynolds (London: Collins, 1972), 277.
- 17** Ibid.
- 18** Roberto Dainotto, “Asimmetrie Mediterranee. Etica E Mare Nostrum,” *NAE* 3 (Winter 2003): 3–18.
- 19** Julia Clancy-Smith, *Mediterraneans: North Africa and Europe in an Age of Migration*, c. 1800-1900 (Berkeley: University of California Press, 2010).
- 20** In this passage the French philosopher also brilliantly turns upside down the usual narrative that sees modern sovereignty as originating in Europe and then gradually expanding across the world. In his account, modern borders are simultaneously imperial and national and constantly interact across colonial and metropolitan spaces. Étienne Balibar, “What Is a Border?,” in *Politics and the Other Scene* (London: Verso, 2002), 79.
- 21** Sandro Mezzadra and Brett Neilson, *Border as Method, Or, the Multiplication of Labor* (Duke University Press, 2013), 15.
- 22** Miguel Mellino, “De-provincializing Italy: Notes on Race, Racialization, and Italy’s Coloniality” (forthcoming); Alessandro Petti, *Arcipelaghi e enclave: architettura dell’ordinamento spaziale contemporaneo* (Milan: B. Mondadori, 2007).
- 23** Frederick Cooper, “What Is the Concept of Globalization Good For? An African Historian’s Perspective,” *African Affairs* 100, no. 399 (April 2001): 189–213 (25).
- 24** Nicola Labanca, *Oltremare: Storia Dell’espansione Coloniale Italiana* (Bologna: il Mulino, 2002). Achille Mbembe has explained how the importance of the coast in

African states “goes back to the period of the trading-post economy, when Europeans set up agencies on the coasts and began to trade with the natives. The establishment of this economy explains, in part, some of the physical characteristics of African states, and first of all the distinction between the littoral areas and the hinterland that so deeply marks the geographical structure of various countries.” In: J Mbembe, “At the Edge of the World: Boundaries, Territoriality, and Sovereignty in Africa,” *Public Culture* 12, no. 1 (January 1, 2000): 284.

25 For an overview of the location and extent of Italian concentration camps in Libya during Fascism, see: <http://www.campifascisti.it/mappa.php?nazione=Libia>. The role that the camp, as a *dispositif* of control spilled over from the colonies into metropolitan territories, has played in the management of, especially illegalised, migrants, could of course be hardly overstated. See: Federico Rahola, “La Forma Campo: Per Una Genealogia Dei Luoghi Di Transito E Di Internamento Del Presente,” *Conflitti Globali* 4 (2007): 11–27.

26 Mia Fuller, *Moderns Abroad: Architecture, Cities and Italian Imperialism* (London; New York: Routledge, 2007), 173.

27 *ibid.*,

28 This ideological construction mirrors how the process by which the Mediterranean was progressively integrated within an area of French influence and portrayed as a “French lake”. See: Hélène Blais and Florence Deprest, “The Mediterranean, a Territory between France and Colonial Algeria: Imperial Constructions,” *European Review of History: Revue Européenne D’histoire* 19, no. 1 (February 2012): 33–57, doi:10.1080/13507486.2012.643608.

29 Hein de Haas, “Mediterranean Migration Futures: Patterns, Drivers and Scenarios,” *Global Environmental Change* 21 (December 2011): S59–69, doi:10.1016/j.gloenvcha.2011.09.003.

30 Serhat Karakayali and Enrica Rigo, “Mapping the European Space of Circulation,” in *The Deportation Regime. Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Duke University Press, 2010), 128–129.

31 Ursula Biemann and Brian Holmes, eds., *The Maghreb Connection : Movements of Life across North Africa* (Barcelona: Actar, 2007).

32 de Haas, “Mediterranean Migration Futures,” 61.

33 The trajectory of Libya mirrors similar trends characterising migration in the Gulf

region. See: de Haas, “Mediterranean Migration Futures.”

34 Olivier Pliez, *La nouvelle Libye: sociétés, espaces et géopolitique au lendemain de l'embargo* (Paris: Karthala Editions, 2004).

35 de Haas, “Mediterranean Migration Futures,” 61.

36 Delphine Perrin, “Aspects juridiques de la migration circulaire dans l'espace euro-méditerranéen. Le cas de la Libye,” series “CARIM AS,” 2008–23, Robert Schuman Center for Advanced Studies, San Domenico di Fiesole (FI): Institut universitaire européen, 2008.

37 Sandro Mezzadra, “The Gaze of Autonomy: Capitalism, Migration and Social Struggles,” in *The Contested Politics of Mobility*, ed. Vicki Squire (London: Routledge, 2010).

38 Bensaâd, “Les migrations transsahariennes: une mondialisation par le marge”; Ali Bensaâd, “The Militarization of Migration Frontiers in the Mediterranean,” in Ursula Biemann and Brian Holmes, eds., *The Maghreb Connection: Movements of Life across North Africa* (Barcelona: Actar, 2007); Bensaâd, *Le Maghreb à l'épreuve des migrations subsahariennes*; Sylvie Bredeloup and Olivier Pliez, eds., *Autrepart*, 36, 2005: *Migrations entre les deux rives du Sahara* (Armand Colin, 2006); Delphine Perrin, “Immigration et création juridique au Maghreb: la fragmentation des mondes et des droits,” in *Le Maghreb à l'épreuve des migrations subsahariennes: immigration sur émigration*, 245–265.

39 Bensaâd, “Les migrations transsahariennes. une mondialisation par le marge,” 14.

40 Ibid.

41 Karakayali and Rigo, “Mapping the European Space of Circulation.”

42 William Walters, “The Frontiers of the European Union: A Geostrategic Perspective,” *Geopolitics* 9, no. 3 (2004): 680, doi:10.1080/14650040490478738; Didier Bigo, “When Two Become One: Internal and External Securitisations in Europe,” in *International Relations Theory and the Politics of European Integration*, ed. Morten Kelstrup and Michael Williams (London: Routledge, 2000).

43 Among the many examples that could be mentioned, the recent Joint Police Operation Mos Maiorum provides a good example of such actions.

44 See: <http://www.concessioniprecarie.org/2014/03/20/movements-of-europe-problems-and-opportunities-of-the-new-government-of-labor/>

45 Ticktin, “The Offshore Camps of the European Union,” 3.

46 Externalisation can be defined as a practice “which involves the displacement of border control and its technologies beyond the territorial edges of formally unified

political spaces”. See: Brett Neilson, “Between Governance and Sovereignty: Remaking the Borderscape to Australia’s North,” *Local-Global Journal* 8 (2010): 126. For a general overview of the practices of externalisation in the European context, see Thomas Gammeltoft-Hansen, “The Externalisation of European Migration Control and the Reach of International Refugee Law,” in Elspeth Guild and Paul Minderhoud, eds., *The First Decade of EU Migration and Asylum Law* (Leiden: Martinus Nijhoff Publishers, 2010): 273–298.

47 Katharina Natter, “The Formation of Morocco’s Policy Towards Irregular Migration (2000–2007): Political Rationale and Policy Processes,” *International Migration* 52, no. 5 (October 2014): 15–28, doi:10.1111/imig.12114; Emanuela Paoletti, “Power Relations and International Migration: The Case of Italy and Libya,” *Political Studies*, June 2010, no – no, doi:10.1111/j.1467-9248.2010.00849.x; Jean-Pierre Cassarino, ed., “Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area” (Middle East Institute, 2010), <http://www.mei.edu/LinkClick.aspx?fileticket=y0UGbA6b01A%3d&tabid=541>.

48 Dimitris Papadopoulos, Niamh Stephenson, and Vassilis Tsianos, *Escape Routes: Control and Subversion in the 21st Century* (Pluto Press, 2008), 165.

49 Pliez, “La nouvelle Libye”; Claire Rodier, “Externalisation des frontières au sud de l’Europe: L’alliance Union européenne-Libye,” in Bensaâd, ed., *Le Maghreb à l’épreuve des migrations subsahariennes*; Sylvie Bredeloup and Olivier Pliez, “The Libyan Migration Corridor” (Robert Schuman Center for Advanced Studies, EUI (2011); Rutvica Andrijasevic, “Lampedusa in Focus: Migrants Caught between the Libyan Desert and the Deep Sea,” *Feminist Review* 82, no. 1 (February 2006): 120–25, doi:10.1057/palgrave.fr.9400274. For specific information on detention facilities financed by European states in north Africa, see Miriam Ticktin, “The Offshore Camps of the European Union: At the Border of Humanity” (International Affairs at The New School, 2009). On the practice of push-backs at sea, condemned by the European Court of Human Rights (*Case of Hirsi Jamaa and others v. Italy*), see Human Rights Watch, *Pushed Back, Pushed Around* (New York, 2009).

50 This same anxiety was mobilised to justify the 2011 military operations against Libya and avoid the threat of what the Italian Minister of Interior called “a migratory tsunami”.

51 Gammeltoft-Hansen, “The Externalisation of European Migration Control and the Reach of International Refugee Law,” 273.

52 Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages*, Updated edition (Princeton, N.J.: Princeton University Press, 2008).

53 Recent historiographical scholarship seems to confirm this hypothesis. The image of mobility across the Mediterranean these works delineate is in fact not simply one of a multiplicity (multiplicity of rationales of mobility control – fiscal, demographic, political, police – or multiplicity of actors operating controls – religious communities, professional guilds, medical authorities), which has been already largely described. What these authors stress is also the superposition and articulations of these different bordering technologies in ways that defy any attempt to identify a linear trajectory leading to the formation of stable linear borders. See: Claudia Moatti, *La mobilità des personnes en Méditerranée de l'Antiquité à l'époque moderne: procédures de contrôle et documents d'identification* (Rome: École Française de Rome, 2004); Claudia Moatti and Wolfgang Kaiser, "Mobilità umana e circolazione culturale nel Mediterraneo dall'età classica all'età moderna," in *Storia d'Italia. Annali 24. Migrazioni*, ed. Paola Corti and Matteo Sanfilippo (Torino: Einaudi, 2009), 5–20; Claudia Moatti and Wolfgang Kaiser, *Gens de passage en Méditerranée de l'Antiquité à l'époque moderne: Procédure de contrôle et d'identification* (Paris: Maisonneuve & Larose, 2007).

54 Mezzadra and Neilson, *Border as Method, Or, the Multiplication of Labor*, 14.

55 See, for instance, among a very wide literature: Markus Euskirchen, Henrik Lebuhn, and Gene Ray, "From Borderline to Borderland: The Changing European Border Regime," *Monthly Review* 59, no. 6 (November 2007): 42-53; TRANSIT MIGRATION Forschungsgruppe, *Turbulente Ränder: neue Perspektiven auf Migration an den Grenzen Europas* (Bielefeld: Transcript, 2007); Enrica Rigo, *Europa Di Confine: Trasformazioni Della Cittadinanza nell'Unione Allargata* (Meltemi Editore srl, 2007); Elspeth Guild and Didier Bigo, "The Transformation of European Border Controls," in *Extraterritorial Immigration Control: Legal Challenges*, ed. Bernard Ryan and Valsamis Mitsilegas (Leiden, Boston: BRILL, 2010).

56 Enrica Rigo, "Citizenship at Europe's Borders: Some Reflections on the Post-colonial Condition of Europe in the Context of EU Enlargement," *Citizenship Studies* 9, no. 1 (February 1, 2005), 11.

57 Vyjayanthi Rao, "Speculative Seas," in Güven Incirlioglu and Hakan Topal, eds., *The Sea-Image: Visual Manifestations of Port Cities and Global Waters*, (New York: Newgray, 2011), 124.

CHAPTER TWO

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Screenshot of a video broadcast on the evening news in early November 1978 by the SOIR 3 channel (© INA.fr). It depicts the Hai Hong, one of the “rust buckets” fleeing Vietnam with thousands of asylum seekers onboard. Bernard Kouchner, who would later become one of the leading figures in the humanitarian response to that refugee crisis, describes the events as follow in the opening lines of his memoir: “It was raining on the Jardin du Luxembourg and on the China Sea. In the evening of 8 November 1978, Paris was calm: some cars and just a few cold passers-by. Off the coasts of Malaysia, some refugees were drowning. We had chosen ignorance. It was far away, and South-East Asia and Vietnam remained a sacred country despite the invasion of Laos, despite the invasion of Cambodia. All of a sudden, the 8pm news broadcast a cargo ship shaken by the waves: ‘We are threatened by famine and epidemics. United Nations, save us!’ Written in English, the banner, held out in the midst of the monsoon storm on the poop deck of the Hai Hong, cried out through the world’s televisions.”¹

THE TWO LIVES OF THE *CAP ANAMUR*: MEDIA AESTHETICS AND HUMANITARIANISM FROM THE SOUTH CHINA SEA TO THE MEDITERRANEAN

Since the end of the 1970s the sea has become a fundamental terrain of intervention for an emerging form of humanitarianism without borders. It was in the second half of that decade, in the South China Sea, that a new category of people defined by the vehicle on which they travelled – the so-called “boat people” – came to the fore. During what came to be known as the Indochinese refugee crisis, the exodus of thousands of Vietnamese by sea reflected not only the increasingly global geography of mass displacements and humanitarian catastrophes created by the expanding scope of the Cold War,² but marked also the rise of a novel relationship between the documentation of episodes of distant suffering and the kinds of political reactions these underpin. This new media aesthetics of humanitarianism and its lasting consequences is what I want to focus on in this chapter. By “media aesthetics”, I should say at the outset, I do not mean here simply the narrowly defined field designating traditional news broadcasting, photojournalism and the use of visual imagery in public campaigns. Rather, I am referring to a much wider domain that includes all the visual and aural protocols involved in the becoming-public of events of distant suffering and that is shaped by a complex *assemblage* of sensing, recording and broadcasting devices instituting a certain regime of (in-)visibility in relation to what happens at sea.

Within this new aesthetic field, ships have played a crucial role, becoming not only spaces of humanitarian intervention in their own right, but also broadcasting studios of sorts. They have thus modified both the way in which humanitarian operations have been carried out and the way in which migration by sea has become a matter of public concern. It is no coincidence, then, that two ships bearing the same name, *Cap Anamur*, stand out as symbols of this new phase. Each of these two vessels, as well as the organisation that was named after them, figured prominently in two episodes that have profoundly marked the history of humanitarianism and its involvement with the practice of bearing witness to under-reported catastrophes around the world. The first ship to be named *Cap Anamur* began its operations in the midst of the Vietnamese exodus of 1979 when, so the organisation claimed, it helped to rescue “9,057 people from death” and, together with other similar humanitarian vessels, became a fundamental forum for the collection and transmission of images of the boat people’s plight.³ In 2004, this time in the Mediterranean, a second ship belonging to the same organisation, named *Cap Anamur* in homage to its

predecessor, rescued 37 sub-Saharan migrants on their way to the southern shores of Europe and found itself at the centre of another affair in which not only the possibility of conducting rescue operations at sea but also that of raising awareness of the thousands of migrants who have been dying in recent years in the Mediterranean came under threat.

Retracing the historical trajectory of these two *Cap Anamurs* and setting them in relation to more recent developments on the Mediterranean border, as I will do in the following pages, offers the chance not only to assess what has changed since the first humanitarian intervention in the South China Sea, but also to discuss the opportunities and risks present in the aesthetics of contemporary maritime borders. It allows me, more specifically, to explore how the latter have transformed under conditions of increased border surveillance and militarisation, to suggest new possibilities that have emerged in an era of proliferating image production, and to ask under what conditions these possibilities might be taken up.

1979, THE SOUTH CHINA SEA

The episode concerning the first *Cap Anamur* took place in the aftermath of the Vietnam War. After North Vietnamese troops entered Saigon in 1975, thereby unifying the country under Communist rule, there began an exodus of refugees which, within a few years, reached disastrous proportions.⁴ In late 1978, when larger ships started being used to transport people fleeing Vietnam, the number of recorded arrivals in neighbouring countries increased rapidly⁵ and “the trickle of refugees became a flood.”⁶ Aboard unseaworthy vessels, many of those leaving Vietnam drowned or were attacked by pirates who, attracted by the rumours of people carrying large amounts of gold, abducted, robbed and killed hundreds of them. Other ships navigating in the area largely ignored the refugees, and those who finally reached the coasts of neighbouring states, dehydrated and sick, were often refused disembarkation and pushed back into the sea, where their tragedy continued.⁷

The story of the *Hai Hong* is in this sense paradigmatic and will certainly provoke some sense of *déjà vu* among those who are familiar with what has been happening in the Mediterranean in the past few years.⁸ This was the first of a series of ships carrying large numbers of Vietnamese to find itself in the midst of a long diplomatic standoff. Heading first towards Hong Kong, the rusty tramp steamer had to change course due to bad weather and reached Indonesian Anambas Islands, but was forced to leave shortly afterwards. After the Singapore Navy denied access to its territory, the ship finally reached Port Klang in Malaysia in November 1978, where it was caught in a diplomatic standoff. Interrogated by

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Stills from an interview with Bernard Kouchner, aboard the ship Akuna in the China Sea, pointing, as the original caption of the video states, to “a boat of fishermen-pirates”. 7 December 1981. © INA.fr

the local authorities, the ship’s captain claimed that he had found the refugees in distress on the open seas but his version was quickly challenged by growing rumours that the trip had been organised with the connivance, if not active collaboration, of the Vietnamese authorities against the payment of large sums of money. Fearing that a new wave of organised trips would jeopardise its national interests, the Malaysian authorities were determined to turn the ship back to the sea, while Western embassies and the UNHCR were pressuring to have the passengers disembarked.⁹ Finally, the disembarkation process started after a two-week delay and continued for months while people were slowly airlifted to Western countries, which had eventually accepted to resettle them. This was the moment in which “the world realized it had a crisis on its hands” and images of cramped, derelict boats and desperate people washing ashore started to make their way into Western news outlets.¹⁰ As many accounts of these events show,¹¹ it was the link established through television between the open sea and the rest of the world that spurred the international response.

Shocked by the images of the refugees’ plight in the South China Sea, several private citizens around the world decided to act. At the forefront of this movement was one of the most prominent and controversial figures in the new wave of humanitarian figures that emerged in the late 1960s, Bernard Kouchner, who was years later to become French Minister of Foreign Affairs and one of the champions of “state-led” military-humanitarian intervention. Influenced by the anti-totalitarian credo that had radically changed the French left in those years,¹² he founded a committee called “Un Bateau pour le Vietnam” (A boat for Vietnam) which chartered the ship the *Île de Lumière* to bring assistance to the Vietnamese boat people. Significantly, a committee of the same name had been founded 12 years earlier by the French Communist Party. But while that was meant to be a militant initiative in support of the Communist anti-imperialist struggle, this time around it designated a humanitarian intervention in favour of the victims of those same Communist forces.¹³

In Germany, the journalist Rupert Neudeck decided to follow the initiative of the French group and, with the support of leading West German intellectuals such as Heinrich

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On board of the Hai Hong. 21 November 1978. © Alain Dejean/Sygma/Corbis

Böll, chartered the *Cap Anamur*, which started operations in the summer of 1979. Vessels of different kinds had been used earlier in the Indochinese refugee crisis to bring aid and relief supplies. This time, however, ships were transformed into veritable sea-going ambulances, floating refugee camps, which searched the same waters where pirates were operating for boat people in distress. Most importantly, these ships often carried teams of reporters and journalists who, by connecting the public with what was happening on the sea, transformed their decks into “forums” of a new kind.¹⁴ While the cargos crammed with refugees became symbols of the brutality of the Indochinese crisis, the busy upper decks of these humanitarian ships populated by solicitous crews and distressed boat people came to epitomise the independent role claimed by the new humanitarians. Through these “mixtures of bodies and vehicles”, the public image of the crisis was broadcast to a growing public and the boat people emerged as a subject of history and an object of government.¹⁵

It is not surprising that it was on the ocean, the international space *par excellence*, that the new humanitarianism without borders which emerged in those years after the creation of Médecins Sans Frontières (“the humanitarian international, as Alex De Waal once called it”)¹⁶ found one of its favourite areas of operation. The high seas, being outside the full jurisdiction of any sovereign state, provided these new humanitarian actors with an effective form of extraterritoriality in which independent intervention was possible.

Images protected by copyright

Right: Poster by the first “Un Bateau pour le Vietnam” launched by the French Communist Party. January 1968. © Musée de l’Histoire vivante / Left: André Glucksmann accompanies Jean-Paul Sartre and Raymond Aron to the press conference for the presentation of “Un Bateau pour le Vietnam”. The reunion under the banner of human rights of the left wing intellectual par excellence with the symbol of liberal anti-communism was seen as the inaugural moment of a post-ideological era whose anti-totalitarian credo was meant to transcend the division between left and right. 20 June 1979. © Richard Melloul/Corbis

Nevertheless, in the same way as international waters are not located outside any form of control,¹⁷ these new forms of maritime humanitarianism also did not exist in a power vacuum and thus immediately entered into difficult and ambiguous relations with state power. While (and because) these ships sailed under European flags as a guarantee that those rescued at sea would be allowed to disembark and be resettled in the West, their intention of operating as mobile rescue platforms met with strong resistance from Western national authorities. It was only after several weeks of functioning as a stationary hospital off the Indonesian Anambas Islands that the *Cap Anamur* was allowed to conduct operations at sea, and not before being reminded by the German Foreign Office “not to rescue too many [boat people]”.¹⁸ The dilemmas and contradictions that made it possible for humanitarian operations and human rights principles to be largely recaptured by the arsenal of state and military governmental techniques in the so-called “humanitarian present”¹⁹ already existed in embryonic form in the South China Sea of the 1970s.

MICHEL FOUCAULT THE HUMANITARIAN

This was the context in which, in 1981, Michel Foucault, who had already been a supporter of “Un Bateau pour le Vietnam” a couple of years before, was invited to Geneva to speak at a press conference organised by the newly founded International Committee against Piracy (ICP). The event was intended to raise awareness of the pirate attacks on the Vietnamese

boat people, and took place near the UNHCR headquarters, whose corridors at the time “were decked with giant photographs of the boat people staggering ashore from their crippled vessels”.²⁰ In a short but powerful statement titled “Confronting Governments: Human Rights”, written in the passionate tone of a manifesto, Foucault outlines the traits of an emerging “international citizenship”, of which the Committee against Piracy would constitute an example, and for which initiatives such as the *Cap Anamur*, which he explicitly mentions in the speech, constitute conspicuous antecedents.²¹ This new citizenry, he argues, has not been appointed by anyone and is composed of “private individuals [...], with no other ground for speaking, or for speaking together, than a certain shared difficulty in enduring what is taking place”.²² What binds together this unauthorised gathering of individuals is not their belonging to traditional ideologies or political constituencies, but rather the fact that they are “all members of the community of the governed”.²³ Their duties and rights are outlined in forceful terms that are worth quoting at some length:

Because they claim to be concerned with the welfare of societies, governments arrogate to themselves the right to pass off as profit or loss the human unhappiness that their decisions provoke or their negligence permits. It is a duty of this international citizenship to always *bring the testimony of people’s suffering to the eyes and ears of governments* [...]. The suffering of men must never be a silent residue of politics. It grounds an absolute right to stand up and speak to those who hold power.²⁴

This little-known text sits rather awkwardly within the French philosopher’s intellectual and political trajectory. For somebody who just a few years earlier had summarised his entire philosophical project as “an attempt to reverse the mode of analysis of the discourse of right in order to show that right is itself an instrument of domination”, claiming a new right might certainly sound odd.²⁵ Moreover, for reasons that I shall discuss in more detail later, this piece places him at the beginning of a process which, given the subsequent use of that new right by his collaborators of the time – Kouchner first of all – has led to places that he would have probably resisted more vehemently had he not died shortly afterwards. In any case, what is particularly significant here is that Foucault binds the introduction of this new, non-sovereign right to an aesthetic preoccupation, that of “bringing to the eyes and ears” of government the misfortunes of people. At the core of this “politics of the governed”, he claims, is an act of witnessing where what is at stake is the limit between the visibility and the invisibility of a claim, the point where it becomes audible and intelligible.²⁶ According to this understanding, humanitarian action (and non-governmental politics in

general) would consist not only of bringing aid and relief to suffering populations, but also of raising international awareness about their plight in way that could turn it into a matter of concern for a larger public.

The idea that humanitarianism is founded on a fundamental act of “reporting” is anything but new. Recent scholarship has described in great detail the way in which “aesthetic concerns” have long been at the core of human rights activism.²⁷ From the pamphlets and engravings depicting the disastrous effects of the 1755 earthquake in Lisbon²⁸ to the reports written by British diplomat Roger Casement in the early 1900s from Congo and Colombia to denounce the horrors of the European colonialism,²⁹ via Dunand’s gruesome description of Solferino battlefield in 1859,³⁰ images of distant suffering have defined and continue to define not only what we understand as humanitarianism but also the “mediascape of modern democracies” *tout court*.³¹ Nevertheless, the aesthetic regime that emerged with the Vietnamese exodus is marked a specific reformulation of humanitarianism’s aesthetic paradigm, one that is characterised by a fundamental act of bearing witness.³² In this sense, Vietnam’s refugee crisis “stands out as a key event in the history of this new media-savvy interventionist humanitarianism”.³³

While this paradigm of “bearing testimony” has become the watchword and predominant practice of the international human rights movement, a series of problems have started to emerge since the very beginning. Foucault himself was certainly wary of some of these risks and, in his speech, he explicitly cautions against an understanding of activism that would rely on “the theatrical role of pure and simple indignation that is proposed to us”.³⁴ However, in the mainstream discourse on humanitarianism, the idea of “bearing testimony” has been largely taken for granted and left unquestioned, thus engendering a whole web of presuppositions and (largely false) expectations about the role that the visibility given to a certain event or group of people might play and the interventions it might trigger. The risks implicit in this paradigm were highlighted, a few years later, by a second episode which involved the *Cap Anamur*’s successor and namesake.

2004, THE MEDITERRANEAN SEA

Fast forward to 2004. The Cap Anamur organisation that began in the 1970s is now a large and respected NGO which operates across the world bringing emergency medical care and humanitarian aid. Although they have continued to charter ships to deliver relief items all over the world, from 1986 their operations moved inland. In 2003, however, a new director, the former journalist Elias Bierdel, replaced Rupert Neudeck as the president of



Stills from footage collected on board the Cap Anamur during the diplomatic standoff off the coast of Italy in the summer of 2004. Courtesy of Aquino Film GmbH.

the organisation and proposed buying a ship to carry out its humanitarian operations.³⁵ Faithful to the principle of independence that has been one of the grounding ideals of contemporary humanitarianism, he decided to take advantage of the celebrations for the association's 25th anniversary and the large influx of donations that the memories of the Vietnam action prompted to buy a new ship, which was immediately christened the *Cap Anamur*. His long-term project, besides using the ship to bring aid supplies to the areas where his NGO was operating, was to raise awareness of the dramatic effects of climate change on the small Pacific Island of Tuvalu, which is threatened with being swamped by rising sea levels. Bierdel's idea was to navigate to Tuvalu side by side with another iconic non-governmental ship, Greenpeace's *Rainbow Warrior*, in a demonstrative action that was meant to raise awareness on the growing issue of climate refugees. But during its inaugural journey, the story took an unexpected turn.

After sailing from Germany to the coast of West Africa, where it unloaded several containers of aid material, the ship entered the Mediterranean through the Straits of Gibraltar on its route to the Suez Canal. While it was resolving some engine problems in the central Mediterranean between Malta, Libya, and the small Italian island of Lampedusa, the *Cap Anamur* rescued 37 African migrants in distress during their crossing to Europe. After deciding to disembark them in Sicily, the ship headed towards the port of Pozzallo

but was denied permission to enter Italian territorial waters. The ship was held off the coast of Sicily during a legal and diplomatic standoff in which the fate of the migrants, who in the meanwhile had applied for asylum, bounced between competing claims and denials by the governments of Italy, Germany, Malta, as well as the EU and the UNHCR. Over the course of two weeks, numerous lawyers, journalists, photographers, politicians, priests, activists, and doctors reached the ship. Itinerant disaster area and floating court at the same time, the ship became yet another temporary and precarious zone of contested political agency. The way in which events unfolded throughout its architecture – the way in which the migrants and the crew held assemblies in the hold; the way in which an improvised press area was organised on deck; the striking contrast between the huge hold of the ship and the fragility of the rescued dinghy – provided a veritable spatial diagram of the unfolding events and the changing power relationships on board, highlighting how, as deftly noted by William Walters in relation to the vehicles of migration, “the way in which publics are assembled [...] and experience the politicization of what is often called irregular border crossing, these very distorted and unsatisfactory forms of bearing witness, would be unthinkable without the mediating work undertaken by this field of material artefacts.”³⁶

Through press conferences, articles, and TV news, the situation on board was broadcast to a growing public. The rescued migrants were interviewed and could tell their stories, thereby challenging the widespread tendency to distance their plight “from the human rights abuse, from the conflict and dysfunctional inequalities in the global economic system that cause people to move, and [...] suppress their rationality, dehumanize them and suggest an analogue with natural disasters.”³⁷ Yet the exposure of the migrants’ plight did not ultimately lead to salvation. When the ship finally entered a Sicilian port, the migrants were immediately expelled after being identified as “bogus” asylum seekers, and representatives of the *Cap Anamur*, including Bierdel himself, were indicted (and not acquitted until a few years later) for supporting illegal immigration and turning the humanitarian emergency into a “PR stunt” for their own profit.³⁸ Under the authority of a sovereign power, the undocumented suddenly became overexposed, and aid-giving and news-making became equally culpable.

The conditions in which the *Cap Anamur* found itself in 2004 were radically different to those in the Indochina of the late 1970s. First of all, the attitude of Western governments towards boat people and migrants in general had changed following the end of the Cold War. While the Vietnamese boatpeople provided Western liberal democracies with “evidence” of Communist regimes’ inhumanity – a situation that made of them

cherished “political trophies in a bipolar world”, at least by all appearances – after the fall of the Berlin Wall and the progressive recoding of migration as a security issue, they started to be increasingly treated as “undesirables”.³⁹ The decision of the UNHCR to consider all people fleeing Vietnam as *prima facie* refugees, regardless of the circumstances of their trip, clearly exposes the gap existing with the current situation in the Mediterranean and elsewhere.⁴⁰ As Nicholas De Genova remarked, the current system of asylum “is premised upon a comprehensive suspicion of people seeking asylum, and is designed to disqualify as many applicants as possible, as allegedly ‘bogus’ asylum seekers. In terms of its real effects and what it actually produces, therefore, the European asylum system is a regime for the production of migrant ‘illegality’.”⁴¹ While the figure of the “asylum seeker” was for a short time replaced by that of the “guest worker”, after the tumultuous transformations of capitalism that began to unfold in the early 1970s the figure of the “illegal” has come in recent years to fundamentally dominate governmental codes and taxonomies of migration.⁴²

As a premise and consequence of this situation, the maritime border itself has also been considerably transformed. The Mediterranean has been turned into a militarised border constantly scanned by remote sensing devices geared towards its enforcement, forcing more and more people to resort to clandestine trips in order to enter the EU. The dominant image of migrants that is produced through this vast surveillance apparatus and made public by border controlling agencies and mainstream media is either that of “illegal” trespassers who “invade” Europe, or that of the victims of trafficking at the mercy of unscrupulous smugglers. In both cases, by rendering “migrant ‘illegality’ [...] spectacularly visible” and thus naturalised, such representations have become a function of the border itself, their primary role being only to confirm the necessity of the latter.⁴³

So if, in 1978, despite the contradictions that were already present, the question for humanitarian actors might have been posed in terms of how to make the claims of refugees heard and their plight visible, today the issue seems far more complex. The fact is that, insofar as “only detected, that is to say failed acts of illegal immigration become visible”,⁴⁴ images of migration have often already unwittingly become an integral part of the border regime itself. Under such conditions, the risk implicit in “bearing testimony” is to ignore the ways that openness and transparency can support governmental practices and regimes of power, in particular within the field of the politics of migration. Since for migrants the only possibility for moving is often to do so undetected, “showing what is hidden may sometimes lead to new forms of oppression.”⁴⁵ This is what the case of the *Cap Anamur* painfully reminds us.⁴⁶ Despite the courageous effort to make visible

the violence routinely perpetrated against migrants at the maritime borders of Europe, this act of exposure was infamously turned against the migrants and the crew of the ship themselves. For the migrants, it implicitly became proof of their illegal status, which led to their hasty deportation; for the crew of the ship, while it was insufficient to prevent them from being brought to court, accused of “illegal trafficking” of migrants, it was enough to morally “disqualify” their intervention as an alleged attempt to attract funding through a “high-visibility” crisis.

This situation has been even exacerbated under the current military-humanitarian border where, as already recalled in the introduction to this thesis, the ability of the border regime to diffuse or even turn against itself the emancipatory potential of attempts to expose the violence it produces is growing. This reflects a larger process by which humanitarian discourse in general has increasingly been mobilised, not against states and the coercive dimension of borders, but rather in their support. While Foucault’s right to stand up and bear testimony “was envisaged as a non-sovereign right, available to private individuals whose only authority stemmed from their inability to bear the suffering of others”,⁴⁷ in the course of the development of the doctrine of humanitarian intervention that proposition has been increasingly translated into a right for states to carry out military intervention.⁴⁸ “As the idea of international solidarity was detached from any broader emancipatory perspective and became focused not on collective struggle but on the rescue of victims, the right to intervene began its trajectory from a prerogative of private individuals to one of states.”⁴⁹ This became clearly visible in the context of the Vietnamese boat people a few years after Foucault’s speech, when, in a striking anticipation of what would happen thirty years later in the Mediterranean with the operation *Mare Nostrum*, the US Navy “seized on the human rights rhetoric under President Carter” and started replacing independent humanitarian organisations as the main actors responsible for rescue operations at sea.⁵⁰

FROM REPRESENTATION TO PARTICIPATION

As the situation sketched above seems to suggest, the paradigm of “bearing testimony” that has for long time guided humanitarian aesthetics has lost the emancipatory potential advocated by Foucault. A new aesthetic practice needs to be invented, one able to take stock of the changed situation at the maritime borders. On the one hand, it should be clear that the eyes and ears of today’s humanitarianism are no longer simply the official photojournalists and TV crews that were onboard the two *Cap Anamurs*. They include, as I shall explain in more detail in part two of this thesis, a much wider and more complex infrastructure that has turned the Mediterranean into a technologically mediated sensorium constantly

recording, transmitting, storing and broadcasting information. Traces of past events are scattered across this multiplicity of sensing devices, and imprinted in multiple formats, making it increasingly difficult for anyone to ground claims on the unstable status of these aural and visual data. This condition, however, has also opened up unexpected possibilities. Many of these sources, including those usually utilised for the purpose of surveillance, are no longer exclusively in the hands of states and even images produced by them can be obtained and repurposed as active sites of struggle by a much larger number of people. Much of the data normally used to monitor clandestine trips – satellite images, plane- and ship- spotters’ websites, vessel- tracking data, online ships’ logs, and oceanographic and meteorological data – can be accessed and used for purposes other than those for which they were originally commissioned. Moreover, the proliferation of small audio- and video- recording devices means that many more people at sea, including migrants themselves, can now mass produce images and sounds outside of the control of border agencies, be they state, international, or non-governmental organisations. A renewed visual culture of humanitarianism should certainly be attuned to these new sensors and their modes of operation.

On the other hand, the new media aesthetics of humanitarianism at sea that I am starting to delineate here should also necessarily need to leave behind the problematic relationship between representation and political action on which the notion of “bearing testimony” is based. Indeed, many of the assumptions on which this practice has been based have been brought into question. While, in its mainstream understanding, the paradigm of “bearing testimony” institutes a straightforward relationship between two supposedly discrete and well-defined entities such as, on the one hand, the public, and represented objects/events, on the other, none of these seem to be in a fixed position anymore, if they ever were. On the side of the public, so to speak, both the existence of recurrent media effects, as well as the presence of a public waiting to be addressed, have already been the object of insightful and sustained critiques. Thomas Keenan, for instance, writing about the post-Cold War humanitarian scenario (the events of Bosnia, Somalia and Rwanda in particular) has questioned the existence of a media-induced causal link between the exposure to suffering and an ethico-political response,⁵¹ defining the public precisely as that “what is hailed or addressed by messages that might not reach their destination”.⁵² On the side of the “represented”, instead, the practice of “bearing testimony” presupposes that there exists a faithful representation waiting to be transmitted. It takes for granted that there is out there a univocal representation of suffering subjects that just needs to enter the frame of a compassionate camera to be made publicly visible. Paraphrasing Ariella



Mobile phone recording of the crossing of the Mediterranean made by one of the migrants who arrived in southern Italy in the summer of 2011. Image courtesy of Charles Heller.

Azoulay, we might say instead that any visual “representation” does not exist as *a priori* but is rather the result of a process: it emerges from the unique encounter between a photographer, a photographed subject, a technical device and, successively, a spectator. It is this event that creates the condition for the appearance of a certain subject.⁵³

The failure of the old paradigm makes the invention of a new one all the more urgent. Different critical tools are needed to rethink the contours and the modes of operation of this new media aesthetics. Help, in this sense, might come from all those authors who have attempted to think beyond what artist Hito Steyerl calls “the struggle over representation”.⁵⁴ In an important text, she delineates the contours of this possible practice in terms of *participation*, rather than *representation*. She writes:

To participate in an image – rather than merely identify with it – [...] would mean participating in the material of the image as well as in the desires and forces it accumulates. How about acknowledging that this image is not some ideological misconception, but a thing simultaneously couched in affect and availability, a fetish made of crystals and electricity, animated by our wishes and fears – a perfect embodiment of its own conditions of existence? As such, the image is – to use yet another phrase of Walter Benjamin’s – without expression. It doesn’t represent reality. It is a fragment of the real world. It is a thing just like any other – a thing like you and me.⁵⁵



Demonstration of the families of the disappeared in Tunis in March 2013. The banners show TV stills that appear to show their relatives. Photo by Lorenzo Pezzani.

Under these new conditions, images and sounds cease to be simply “representations” of human rights violations and of the misfortune of people and rather become fields of possibility, actions and weapons in and of themselves.⁵⁶ This shift from the indexicality to the materiality of the image, to its being a thing among things, has far-reaching consequences and opens up new possibilities of documentation. Images here become sensors which might contain information not only beyond the intentionality of their author, but also beyond what they represent. Ariella Azoulay makes this point forcefully when she writes that a photograph

“exceed any presumption of ownership or monopoly and any attempt at being exhaustive. Even when it seems possible to name correctly in the form of a statement what [they] show - “This is X” - it will always turn out that something else can be read in [them], some other event can be reconstructed from [them], some other player’s presence can be discerned through [them], constructing the social relations that allowed [their] production.”⁵⁷

How the possibilities offered by this expanded understanding of visual and aural imaging might be able to ground a renewed practice of “bringing testimony” in the media aesthetics of humanitarianism at sea remains to be seen. Another aesthetic grammar waits to be defined, one that can move along the lines of new forms of circulation and interruption,

diversion and subversion, or, to say it in more cinematic terms, of *montage*.⁵⁸ However, glimpses of how this renewed media aesthetics might look like can be already found among some of the practices that populate the maritime border and that operate at the intersection of moving bodies and moving images. For instance, the way in which migrants take part in the production of images of the crossing, offering an image of their journey at sea that radically challenges the victimising image prevalent in the public discourse, can be considered an example of this expanded field of participation.

Moreover, the way in which the families of the Tunisians “*disparus*”⁵⁹ have used TV news images of migrants who have arrived in Lampedusa (which are usually shown to bolster the idea of “invasion”) to challenge the silence of Tunisian and Italian authorities over the fate of their missing relatives and demand that a proper investigation is carried out to ascertain their fate shows instead the power that interfering with the circulation of those images might hold.⁶⁰ Here circulation is not “something that simply transmits meaning”, but rather “a constitutive act in itself”.⁶¹

Finally, the Forensic Oceanography and WatchTheMed projects that I have co-initiated have also attempted to take stock of some of these new possibilities in different ways. They have, for instance, repurposed visual and spatial data that is normally used for other purposes, including surveillance itself, for mapping cases of violence against migrants at sea. The maps produced in this way have circulated widely in the press, in official legal and political documents as well as in activist flyers, allowing for the discussion around these cases to happen across different arenas.

In all these examples, the emancipatory potential of images and maps lies not only in what they portray but also in what they enable, as they cease to be simple depiction of certain subjects or situations and rather become “a shared ground for action and passion, a zone of traffic between things and intensities”.⁶² This opens up a new field of struggle, one which, of course, is not devoid of pitfalls. Forms of re-appropriation and subversion are not hermetically sealed from the practices they seek to contest, since they often rely on some of the same epistemologies and technical tools. “The very maps [and images] they produce may “migrate” between different, and sometimes opposed, fields. In the process, the use their [...] authors had initially intended is frequently reverted, pointing to the politics that emerges in the circulation and use of knowledge and representations, rather than what is contained in them.”⁶³ The way in which the Italian police has used mobile phone videos of the crossing shot by migrants at sea as evidence to identify and condemn the alleged “smugglers” is a clear instance of this.⁶⁴ Here, as in many other cases, “the meaning and effects of the very same images may be radically altered by the technological



Mobile phone video shot by one of the migrants rescued by the operation Mare Nostrum on 26 April 2014. The video was confiscated during the transfer to Sicily and later used by the Italian police to identify the alleged “smugglers”. It was subsequently publicly released with the addition of the police logo and edited together with the images of the “smugglers” arrest that took place at the moment of disembarkation.

and institutional assemblage in which they are inscribed.”⁶⁵ The police logo superimposed over the very images that I have myself often celebrated as examples of the power of subversion that image practices can yield is a painful reminder of this.

“One”, as Charles Heller has written, “might lament the risk of reappropriation of such imagery. But we may also recognize that the multifarious, contested, and unstable life of images and image practices is the very condition for them to shape the world.”⁶⁶

What this long winding trajectory from the South China Sea to the Mediterranean shows is that under certain conditions, however unstable these might be, images can indeed become tools for movement. In order for this to happen, however, a crucial rethinking of the role of aesthetic practices at the maritime border has to take place. The histories of the two *Cap Anamurs* point to the need to rethink a visual culture that would be able to operate within and against the ambivalences of the border regime and not betray the empowering potential of the new form of right advocated by Foucault. In marking the passage from the faith in a grandiose act of unveiling to the uncertainties of a process of editing images and sounds that are immanent to the very field of power they seek to oppose, they open up a whole new range of practices and emancipatory possibilities. These, however, can only be achieved if we acknowledge that the political relevance of migration does not reside in the

exposure and recognition of a new subject – the migrant – either as a victim or as a kind of (almost revolutionary) avant-garde figure, but rather that it is already for the very fact of moving and being “there where you are not supposed to be” that migration destabilises established geographies of power.⁶⁷ The subjectivities that are produced in this process do not (always) need a public image to be political. What they need, if anything, are common tools in the struggle to move.

NOTES

1 My translation from: Bernard Kouchner, *L'île de lumière* (Paris: Ramsay, 1980), 13.

2 Beside the changing role of independent humanitarian organisations – analysed in more detail below – international bodies like the UNHCR greatly changed their scope and range of operations, as testified by the more than sixfold increase in its annual expenditure between 1975 and 1980.

3 Rupert Neudeck, *Exodus aus Vietnam* (Bergisch Gladbach: Lübbecke, 1986), 230.

4 The reconstruction of the boat people crisis in Vietnam is based on the following texts: Bruce Grant, *The Boat People: An Age Investigation* (Harmondsworth: Penguin Books, 1979); Barry Wain, *The Refused: The Agony of the Indochina Refugees* (New York: Simon & Schuster, 1981); Bernard Kouchner, *L'île de lumière* (Paris: Ramsay, 1980); Rupert Neudeck, *Die letzte Fahrt der Cap Anamur I: Rettungsaktionen 1979 bis 1982* (Freiburg im Breisgau: Herder, 1983) and *Exodus aus Vietnam* (Bergisch Gladbach: Lübbecke, 1986); Court Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response* (London: Zed Books, 1998); Office of the United Nations High Commissioner for Refugees, *The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action* (New York: Oxford University Press, 2000).

5 The number of arrivals rose from fewer than 27,263 for the three years between 1975 and 1977 to 166,604 in the first six months of 1979 alone. Grant, *The Boat People*, 31.

6 *Ibid.*, 4, 32.

7 Indeed, the principle of non-refoulement that has in recent years been increasingly undermined on the European and Australian sea borders was first challenged in the context of the Indochinese refugee crisis in the 1970s. See: Seline Trevisanut, “The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection,” *Max Planck Yearbook of United Nations Law* 12 (2008): 205–46.

8 While there are, of course, important differences between the two contexts and attempts to draw a direct comparison with any specific event in the Mediterranean would not hold true, there are also some recurring patterns, for instance, the problems of disembarkation and the accusation of smuggling.

9 Other famous “rust buckets” that fled Vietnam with large numbers of people onboard were the *Southern Cross*, which actually left before the Hai Hong but did not make it into the headlines as it did not find itself in the midst of a diplomatic standoff, and the *Huey Hong*.

10 Bruce Grant, *The Boat People: An Age Investigation* (Harmondsworth, Eng.: New

York: Penguin Books, 1979), 54.

11 See, for instance, Neudeck, *Die letzte Fahrt der Cap Anamur I*; and Kouchner, *L'île de lumière*.

12 I am referring to the reactions provoked, for instance, by the publication of Aleksandr Solzhenitsyn's "The Gulag Archipelago" and the accounts of the brutalities perpetrated by the Khmer Rouge in Cambodia, which were perceived as radical acts of unveiling that managed to expose the nefarious effects of totalitarian regimes. See Michael Scott Christofferson, *French Intellectuals Against the Left: The Antitotalitarian Moment of the 1970s* (Berghahn Books, 2004); and Eyal Weizman, *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza*. (London; New York: Verso, 2011).

13 See Rony Brauman, *Penser dans l'urgence : Parcours critique d'un humanitaire* (Paris: Seuil, 2006).

14 During its first mission, there were 11 journalists on board the *Cap Anamur* (Neudeck, *Die letzte Fahrt*, 51). On the Île de Lumière, there was a team from Antenne 2, a French public television channel, as well as a filmmaker and a photojournalist. Kouchner, *L'île de lumière*, 76–77. According to Jessica Whyte, "the Boat for Vietnam stands out as a key event in the history of this new media-savvy interventionist humanitarianism." Jessica Whyte, "Human Rights: Confronting Governments?," in *New Critical Legal Thinking: Law and the Political*, ed. Matthew Stone, Costas Douzinas, and Rua Wall Illan (Milton Park, Abingdon, Oxon: Routledge, 2012), 19.

15 William Walters, "Where Are the Missing Vehicles? Critical Reflections on Viapolitics" (Border Crossing Selves, Hanyang University, Seoul, 2011), http://www.academia.edu/1823268/Where_are_the_missing_vehicles_Critical_reflections_on_viapolitics

16 David Rieff, "Humanitarianism in the Aftermath of Sans-frontierisme," Médecins Sans Frontières, http://www.medicisenzafrontiere.it/Immagini/file/azione_umanitaria/rieff-web.pdf, accessed October 2013.

17 I expand on this in chapter 3.

18 Neudeck, *Die letzte Fahrt*, 59–60.

19 Eyal Weizman. *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza* (London & New York: Verso, 2011).

20 David Macey, *The Lives of Michel Foucault* (New York: Vintage Books, 1993), 437.

21 Michel Foucault, "Confronting Governments: Human rights," in *Essential works of*

Foucault 1954-1984. Volume 3, ed. James Faubion (London: Penguin, 2002), 474–75, at 474.

22 Ibid., 474.

23 Ibid.

24 Ibid., 474–75. [emphasis added]

25 Jessica Whyte, “Human Rights: Confronting Governments?,” in *New Critical Legal Thinking: Law and the Political*, ed. Matthew Stone, Costas Douzinas, and Rua Wall Illan (Milton Park, Abingdon, Oxon: Routledge, 2012), 12. See also: Tom Keenan, “The ‘Paradox’ of Knowledge and Power: Reading Foucault on a Bias,” *Political Theory* 15, no. 1 (1987): 5–37.

26 Michel Feher, “The Governed in Politics,” in *Nongovernmental Politics*, ed. Michel Feher (New York: Zone Books, 2007), 12–27.

27 See for instance: McKee, Yates, “Eyes and Ears: Aesthetics, Visual Culture, and the Claims of Non- Governmental Politics,” in *Nongovernmental Politics* (New York: Zone Books, 2007), 326–55; Sharon Sliwinski, *Human Rights in Camera* (University of Chicago Press, 2011); Luc Boltanski, *Distant Suffering. Morality, Media, and Politics* (Cambridge, U.K.; New York: Cambridge University Press, 1999), <http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=55626>

28 Sliwinski, *Human Rights in Camera*.

29 Anselm Franke, “Across the Rationalist Veil,” *E-Flux Journal* 8 (September 2009), <http://www.e-flux.com/journal/across-the-rationalist-veil/>. Franke describes how Casement’s reports created the first mass human-rights movement in the early years of the twentieth century. “It was”, he writes, “what today can be considered global in scale, and it involved not merely reports, but photographic evidence of crimes reproduced in widely circulating newspapers in both the industrialized world and in the colonies; thus was initiated a form of activism in which both the evidence and the effects of empathy produced by pictures of atrocities for the first time occupied a central place, thus mobilizing public opinion in novel ways.”

30 The response to Dunand’s memoir led not only to the creation of the International Committee of the Red Cross but also to the writing of the First Geneva Convention.

31 Franke, “Across the Rationalist Veil.”

32 Michal Givoni, “Witnessing/Testimony,” *Maftē’akh*, no. 2e (Winter 2011): 147–69. The figure of the witness, as it well known, emerged on the one hand in reaction to the “neutrality rule” that had been used until then by the International Red Cross as a way to guarantee for itself access to the wounded on a battlefield, but which had also been

accused of being at the root of the Red Cross's failure to speak out against the horror of the gas chambers in 1942; on the other, it was a result of the already recalled anti-totalitarian credo that, filtered through the work of Arendt, at the time was having radical effects on the political debate in France. On this see: Eyal Weizman, *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza* (London; New York: Verso, 2011).

33 Whyte, "Human Rights: Confronting Governments?", 19.

34 Foucault explicitly distinguishes between "the holy indignation of the governed", which is accepted by governments as long as "it remains lyrical", and a deeper right "of private individuals to effectively intervene in the sphere of international policy and strategy", which would have been created by initiatives like the ICP (475). As Yates McKee writes, "making a political issue out of 'what is happening' would involve more than simple exposure and denunciation [...]. It would involve rendering visible and audible the grievances of those affected and doing so by means of specific techniques and policies." Yates McKee, "Eyes and Ears: Aesthetics, Visual Culture, and the Claims of Non-governmental Politics," in *Nongovernmental Politics*, ed. Michel Feher with Gaëlle Kirikorian and Yates McKee (New York: Zone Books, 2007), 328.

35 The reconstruction of the events concerning the second episode of the *Cap Anamur* is based on interviews that I conducted with several leading figures in the story, including Elias Bierdel, Martin Hilbert (one of the journalists present onboard during the standoff), and Dominik Berg (a member of the crew of the *Cap Anamur*). I have also consulted the personal archive of Bierdel, which includes numerous online and press articles, TV newsreels concerning the case, and his memoir titled *Ende Einer Rettungsfahrt : Das Flüchtlingsdrama Der Cap Anamur* (Weilerswist: Ralf Liebe, 2006).

36 Walters, "Where Are the Missing Vehicles? Critical Reflections on Viapolitics."

37 M. Pugh, "Drowning Not Waving: Boat People and Humanitarianism at Sea," *Journal of Refugee Studies* 17, no. 1 (March 1, 2004): 50–69, doi:10.1093/jrs/17.1.50.

38 William Walters, "Foucault and Frontiers: Notes on the Birth of the Humanitarian Border," in Ulrich Bröckling, Susanne Krasmann, and Thomas Lemke, eds., *Governmentality: Current Issues and Future Challenges* (New York: Routledge, 2011), 138–64, at 155.

39 Michel Agier, "The Undesirables of the World and How Universality Changed Camp," Open Democracy, May 16, 2011, <http://www.opendemocracy.net/michel-agier/undesirables-of-world-and-how-universality-changed-camp>

40 This changed attitude had already affected the latter waves of Vietnamese boat

people themselves. “During the 1980s, Western governments became concerned about the large number of Indochinese people arriving in their countries. [...] Under pressure from these governments, new measures were eventually adopted by states in the region to control departures and to facilitate repatriation”. Office of the United Nations High Commissioner for Refugees, *The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action* (Oxford University Press, 2000), 7.

41 Nicholas De Genova, “Expert Testimony at Tribunal 12” (Tribunal 12, Stockholm, 12 May 2012), www.nicholasdegenova.net/12.html

42 See: Sandro Mezzadra, “The Proliferation of Borders and the Right to Escape,” in *The Irregularization of Migration in Contemporary Europe: Detention, Deportation, Drowning*, ed. Joost de Bloois, Robin Celikates, and Yolande Jansen (London ; New York: Rowman & Littlefield International, 2014), 121–36.

Nicholas P. De Genova, “Migrant ‘Illegality’ and Deportability in Everyday Life,” *Annual Review of Anthropology* 31, no. 1 (October 2002): 419–47, doi:10.1146/annurev.anthro.31.040402.085432.

43 Nicholas De Genova, “Spectacles of Migrant ‘Illegality’: The Scene of Exclusion, the Obscene of Inclusion,” *Ethnic and Racial Studies*, vol. 36, no. 7 (July 2013): 1180–98, at 1181.

44 Christine Bischoff, Francesca Falk, and Sylvia Kafehsy, eds., *Images of Illegalized Immigration: Towards a Critical Iconology of Politics* (Bielefeld: transcript Verlag, 2010), 9.

45 *Ibid.*, 8.

46 This is an issue that Charles Heller and I sought to address in our report on the “left-to-die boat” by using a selective, “disobedient” gaze geared at showing only the presence of military vessels and not that of migrants’ boats. See chapter 3.

47 Whyte, “Human Rights: Confronting Governments?”, 23. Foucault himself was well aware of these risks. Interestingly, as Whyte recounts, “the one occasion on which he broke with Kouchner during the period in which they worked together closely was in 1983 when the latter drafted a petition with Gluksmann calling on the French Government to take action against Gaddafi. Foucault refused to sign on the basis that he did not wish to appear to be calling for war” (30). Almost thirty years later, the presence of Bernard-Henri Lévi, Gluksmann’s fellow “nouveau philosophe”, next to Nicholas Sarkozy and David Cameron during the celebrations for the “liberation” of Tripoli in September 2011 tragically signals the supremacy of the military-humanitarian paradigm over Foucault’s non-sovereign right.

- 48** Didier Fassin and Mariella Pandolfi, *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (New York, N.Y.: Zone books, 2010).
- 49** Whyte, “Human Rights: Confronting Governments?,” 23.
- 50** Ibid., 23.
- 51** Thomas Keenan, “Mobilizing Shame,” *South Atlantic Quarterly* 103, no. 2/3 (June 8, 2004): 435–49.
- 52** Thomas Keenan, “Publicity and Indifference: Media, Surveillance, ‘Humanitarian Intervention,’” accessed July 31, 2013, <http://roundtable.kein.org/sites/newtable.kein.org/files/keenan.publicity.pdf>
- 53** Ariella Azoulay, *The Civil Contract of Photography* (New York: Zone Books, 2008).
- 54** Hito Steyerl, *The Wretched of the Screen* (Berlin: Sternberg Press, 2012), p. 54.
- 55** Steyerl, *The Wretched of the Screen*, 51-52.
- 56** Thomas Keenan, “Publicity and Indifference: Media, Surveillance, ‘Humanitarian Intervention,’” accessed 31 July 2013, <http://roundtable.kein.org/sites/newtable.kein.org/files/keenan.publicity.pdf>
- 57** Ariella Azoulay, *The Civil Contract of Photography* (New York: Zone Books, 2008), 11-12.
- 58** This point was suggested to me by Michel Feher, who kindly commented on a previous version of this text.
- 59** This term, which means “disappeared” in French, refers to those who, in the aftermath of the Tunisian revolution, took to the sea in the attempt to reach southern Italy but went missing during the crossing.
- 60** See: “We demand your knowledge. A petition by the mothers and families of missing Tunisian migrants”, February 2013. URL: <http://www.storiemigranti.org/spip.php?article1047> . Accessed: 6-10-2013
- 61** Meg Mclagan and Yates Mckee, *Sensible Politics: The Visual Culture of Nongovernmental Activism*, 1st edition (New York : Cambridge, Massachusetts: MIT Press, 2012), 16.
- 62** Steyerl, *The Wretched of the Screen*, 172.
- 63** Maribel Casas Cortes et al., “Clashing Cartographies, Migrating Maps,” in *Grenzregime II* (Berlin: Assoziation A Verlag, 2014).
- 64** This has become common practice in the summer of 2014. For the specific case depicted in the figure, see: www.corrierediragusa.it/articoli/cronache/pozzallo/26138-video-girato-dai-migranti-col-telefonino-incastri-gli-scafisti.html
- 65** Charles Heller, “Fractured Chains of Custody,” in *Forensis* (Berlin: Sternberg Press,

2014), 698.

66 Ibid.

67 For an in-depth critique of the politics of recognition in the field of migration, see: Martina Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean” (Goldsmiths, University of London, 2013), [http:// research.gold.ac.uk/9607/](http://research.gold.ac.uk/9607/)

PART TWO: **LIQUID TRACES**

CHAPTER THREE

FORENSIC OCEANOGRAPHY: INVESTIGATING THE DEATHS OF MIGRANTS AT THE EU'S MARITIME FRONTIER

If geography expresses in its very etymology the possibility to write and therefore read the surface of the earth, the liquid territory of the sea seems to stand as the absolute challenge to spatial analysis. The waters that cover over 70% of the surface area of our planet are constantly stirred by currents and waves that seem to erase any trace of the past, maintaining the sea in a kind of permanent present. In Roland Barthes' words, the sea is a "non-signifying field" that "bears no message."¹ Furthermore, its vast expanse and the lack of stable habitation on its surface lead events at sea to occur mostly outside of the public gaze and thus remain unaccounted for. The deaths of migrants at sea and the violation of their rights are no exception. While between 1988 and November 2012 the press and NGOs reported more than 14,000 deaths at the maritime frontier of the EU—including more than 7,000 in the Sicily Channel alone—the conditions in which these occur have rarely been established with precision and the responsibility for them has seldom been determined. Many more lives have been lost without being recorded other than in the haunting absence experienced by their families.²

It is in relation to the challenges posed across this liquid frontier that we started the *Forensic Oceanography* project in summer 2011 in an attempt to document the deaths of migrants at sea and violations of their rights.³ This endeavour was spurred by the new demands for accountability that emerged in the aftermath of the Arab Spring, which represented a moment of paroxysm and rupture in a number of respects. The revolution in Tunisia and the civil war in Libya led to the sudden reopening of the central Mediterranean's clandestine migration routes. While this context saw an intense movement of people, the precarious conditions in which the crossings occurred led to a record number of deaths. However, as we will see, these deaths occurred while this very maritime space was being monitored with unprecedented scrutiny due to the NATO-led military intervention in Libya. The crossings and deaths were occurring in a space populated by a large number of Western states' military ships and patrol aircraft, and there were strong indications that military forces were failing in their obligation to rescue migrants in distress, despite possessing the requisite means of surveillance to witness their plight.

This was particularly apparent in the incident now known as the "left-to-die boat" case, in which sixty-three migrants lost their lives while drifting for fourteen days in the NATO maritime surveillance area, despite several distress signals relaying their location as well as repeated interactions, including at least one military helicopter visit

and an encounter with a military ship.⁴ By precisely reconstructing these events and the involvement of different actors within them, we demonstrated that traces are indeed left in water, and that by reading them carefully the sea itself can be turned into a witness for interrogation. The contemporary ocean is in fact not only traversed by the energy that forms its waves and currents, but by the different electromagnetic waves sent and received by multiple sensing devices that create a new sea altogether. Buoys measuring currents, optical and radar satellite imagery, transponders emitting signals used for vessel tracking and migrants' mobile phones are among the many devices that record and read the sea's depth and surface as well as the objects and living organisms that navigate it. By repurposing this technological apparatus of sensing, we have tried to bring the sea to bear witness to how it has been made to kill.

Migrants do not only die at sea but through a strategic use of the sea. As this particular incident exemplifies, even when they drown following a ship-wreck or starve while drifting in its currents, there is nothing "natural" about their deaths. Following Elisabeth Grosz, the sea, like any geographic environment, can be considered to be endowed with a "geopower" that "refers to forces that precede, enable, facilitate, provoke and restrict 'life,'" but conversely political practices shape the way this geopower operates, and affect the ways some are empowered and others restricted by that power.⁵ Our project thus could not limit itself to reading the sea in order to document specific incidents, but demanded that we attempt to understand the conditions that have led the sea to become so deadly. As we will demonstrate, the Mediterranean has been made to kill through contemporary forms of militarized governmentality of mobility which inflict deaths by first creating dangerous conditions of crossing, and then abstaining from assisting those in peril. This governmentality is shaped by the complex legal structure and mode of governance of the sea that enables state actors to selectively expand or retract their rights and obligations. What emerges from these conditions is a form of violence that is diffused and dispersed among many actors and which often, as in the case we have investigated, operates less through the direct action of a singular actor than through the inaction of many. As a consequence of this form of systemic violence, the specific responsibility for deaths and violations at sea is difficult to detect and prove. Before describing the strategies and methodologies we applied to collect the testimony of the sea so as to reconstruct the "left-to-die boat" case and others, it is first necessary to chart the broader political, juridical, and technological conditions through which the sea was made to kill — conditions that we have mobilized against the grain in the task of breaching the impunity of the actors involved.



The waters of the Central Mediterranean, as seen from the coast of the Italian Island of Lampedusa, July 2013 Photo: Charles Hellar

MARITIME GOVERNANCE: BEYOND THE “FREEDOM V. ENCLOSURE” DIVIDE

In “The Nomos of the Earth” the German jurist and political theorist Carl Schmitt epitomized a vision of the sea as an anarchic space in which the impossibility of drawing long-standing and identifiable boundaries made it equally difficult for European states to establish a durable legal order or found claims of sovereignty.⁶ “The sea,” he wrote, “has no character, in the original sense of the word, which comes from the Greek *charassein*, meaning to engrave, to scratch, to imprint.”⁷ On this note, Schmitt based the fundamental distinction on which geopolitics has been predicated for many years: the binary division between a solid land, where territories can be clearly demarcated and where order may be imposed, and a sea where borders can be neither traced nor held and where freedom reigns absolute. This opposition found its expression in the evolution of maps of the world which, from the early seventeenth century onwards, tended to represent (European) land in great detail in terms of geographic morphology, human built environment and political boundaries, but signified the territory of the surrounding sea as an abstract and frictionless geometric space open to navigation.⁸

While idealizations of the sea as empty and lawless still persist today,⁹ recent scholarship on maritime governance tells us a different story, in which the oceans have long been crisscrossed by multiple regimes of appropriation and juridical differentiation.¹⁰



Nova Orbis Tabula in Lucem Edita, Map of the world by Frederik de Wit, 1662, Bibliothèque royale de Belgique. Source: Wikimedia Commons

Geographer Philip Steinberg has effectively shown how maritime governance imposed by (Western) states and capital has oscillated throughout modernity between two poles: on the one hand, the desire to divide up the waters of the earth in a way that would mirror the carving up of territorial boundaries on land; on the other, the vision of the oceans as commons, open to free navigation—the “free seas.” However, rather than an either / or application of these seemingly opposed tendencies, what we observe throughout this period is rather their productive entanglement.¹¹

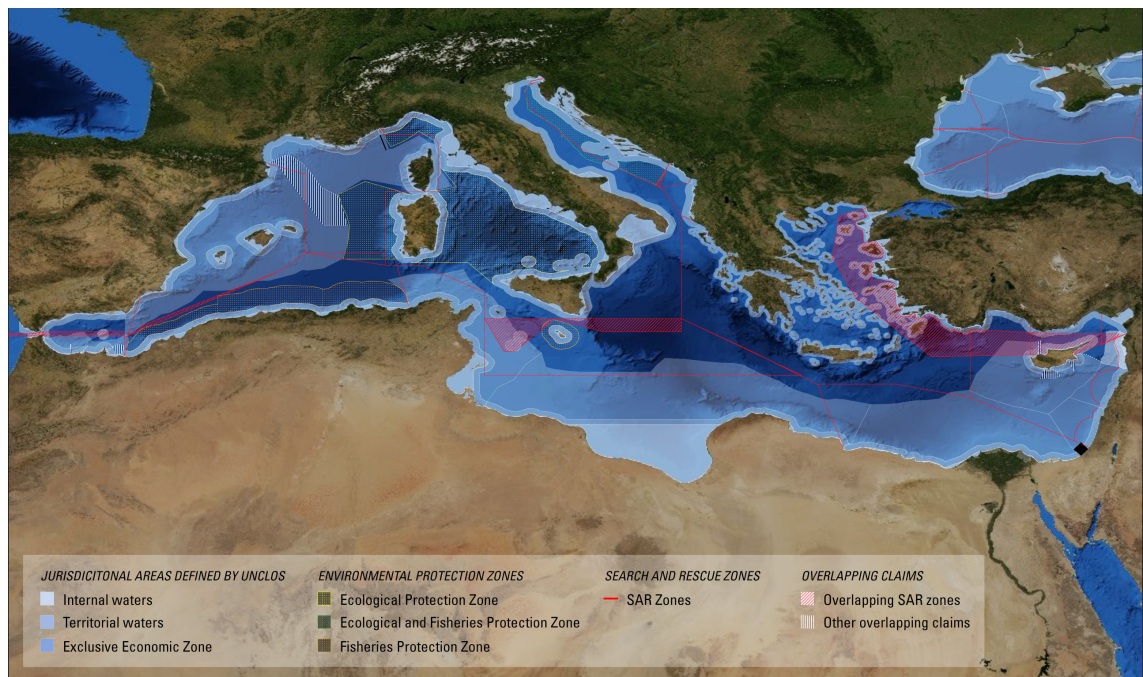
This productive tension is at work in one of the founding moments of maritime law, commonly referred to as the “Battle of the Books” (1580—1650), which centred around the opposition between the vision of a free sea expressed by the Dutch jurist Hugo Grotius in his 1609 text *Mare liberum* (“the free sea”) and the defense of maritime division and control formulated by the English scholar John Selden in *Mare clausum* (“the closed sea”) in 1635.¹² But this apparent contrast conceals a deeper convergence. While Selden, by noting that “mare clausum can go only so far as one can assert effective control,”

endorsed negatively the idea of freedom for the high seas,¹³ the concept of the “freedom of the seas” coined by Grotius routinely led to the use of coercion to ensure the smoothness and security of trade routes or block those of competitors.¹⁴ As Philip Steinberg writes, “freedom requires policing and mobility requires fixity, and both of these activities require continual efforts to striate the ideally smooth ocean.”¹⁵

For both poles in the governance of the seas, the ability to map, measure, and exercise surveillance over the maritime space was fundamental. This knowledge did not precede its application in the service of power, but was inextricably bound to war, trade, and imperialism in its very production. It was the coupling of scientific epistemologies and Western commercial and military networks spanning the globe that enabled systematic measurements to be sampled across vast distances, and generated increasingly detailed knowledge of the winds, currents, tides, depths, landmasses, and living organisms that constitute the ocean’s global system.¹⁶ This understanding of the seas was essential to secure and fast navigation, as well as to charting maritime territory and life in a way that would eventually enable its division, exploitation and regulation.

While Carl Schmitt was indeed right to state that the sea itself cannot be carved up and possessed as land, the same is not true of the resources located within the water and in the soil under it, or the traffic that floats on its surface. By going beyond his land—sea binary and by being attuned to the vertical dimension of maritime spaces, we are able to decipher a much more complex form of governance than the simple opposition between territorial control and deterritorialized flow.

The tension between and coexistence of the tendencies of enclosure and freedom in the governance of maritime space have resulted in, on the one hand, a form of unbundled and spatially variegated sovereignty, and on the other a governance in motion that seeks to compensate for the impossibility of controlling the entire liquid expanse by focusing on the control of maritime routes and the mobile people and objects that ply them. Whereas in 1702 the extension of the territorial waters could be defined by Cornelius Bynkershoek as the area covered by coastal states’ cannon-shot range, with the governance of routes largely dependent on the presence of ships along key corridors, today a far more complex jurisdictional regime and mode of governance has been enabled by the contemporary technological apparatus discussed below, which transforms the maritime space into a dense and extensive “sensorium.”¹⁷ In this situation, as we will see with reference to the Mediterranean, multiple lines of enclosure that run parallel to the coastline and dissect the surface and volume of the ocean into partial sovereignty regimes intersect with diagonal and ever shifting lines of control that attempt to follow routes of maritime traffic. These sets of lines do not simply

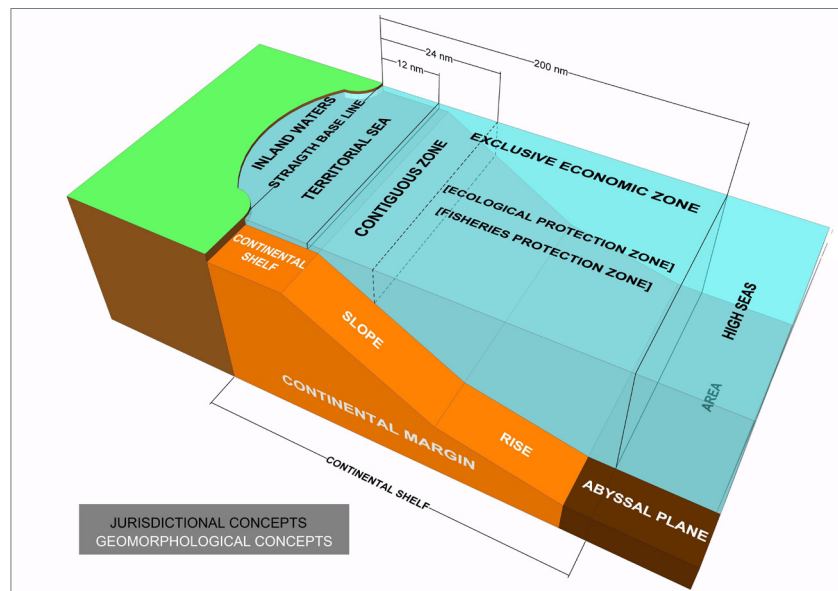


Map of maritime jurisdictions in the Mediterranean. Based on data compiled by www.marineplan.es and the International Maritime Organization. Design: Lorenzo Pezzani.

coexist for, as we will see, the carving up of partial sovereignty regimes is the very legal basis for governance in motion to expand and retract selectively in policing the “free seas.”

LINES OF ENCLOSURE: UNBUNDLED SOVEREIGNTY AT SEA

The successive stripes of jurisdiction, which, by dissecting both surface and volume of the sea determine the current legal architecture of maritime territories, are mainly codified by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹⁸ After establishing the criteria for determining the position of the so-called “baseline”—the ideal line that usually corresponds to the low-water line along the coast—the convention further defines several jurisdictional zones, over which states exercise decreasing degrees of control and exclusive privilege. These include, among others, “territorial waters” that extend up to twelve nautical miles from the baseline within which states have full sovereignty; the “contiguous zone,” covering up to twenty-four nautical miles and within which states may further exercise certain border police functions; the “exclusive economic zone” (EEZ), which may delimit a zone up to two hundred nautical miles from the baseline, within which coastal states have exclusivity over natural resources both in the water (such as fish) and under the soil (such as gas or oil). Beyond this zone lie the “high seas,” where no state can exercise its full sovereignty nor subject any part of them to its jurisdiction. While the high seas are “free for all states and reserved for peaceful purposes,” they do not become



Maritime jurisdictional concepts. Source: Juan Luis Suárez de Vivero, “Jurisdictional Waters in The Mediterranean and Black Seas” (European Parliament, 2010), p. 27.

as a result a legal vacuum, since the rights and obligations of each actor and state are framed by international law. The jurisdiction of states applies to boats flying their respective flags, and each boat thus becomes a small piece of floating state jurisdiction, transforming the high seas into an international space in the strongest sense, since all states are potentially in contact with each other.¹⁹ Finally, vessels and coastal states also have particular obligations: among these, of central relevance for our investigation into the “left-to-die boat” case, are the duty of vessels to provide assistance to people in distress, and the obligation of coastal states to coordinate rescue operations. For this purpose, Search and Rescue (SAR) zones have been established across the high seas, delimiting the geographic areas within which particular states have a legal responsibility to coordinate rescue operations.²⁰

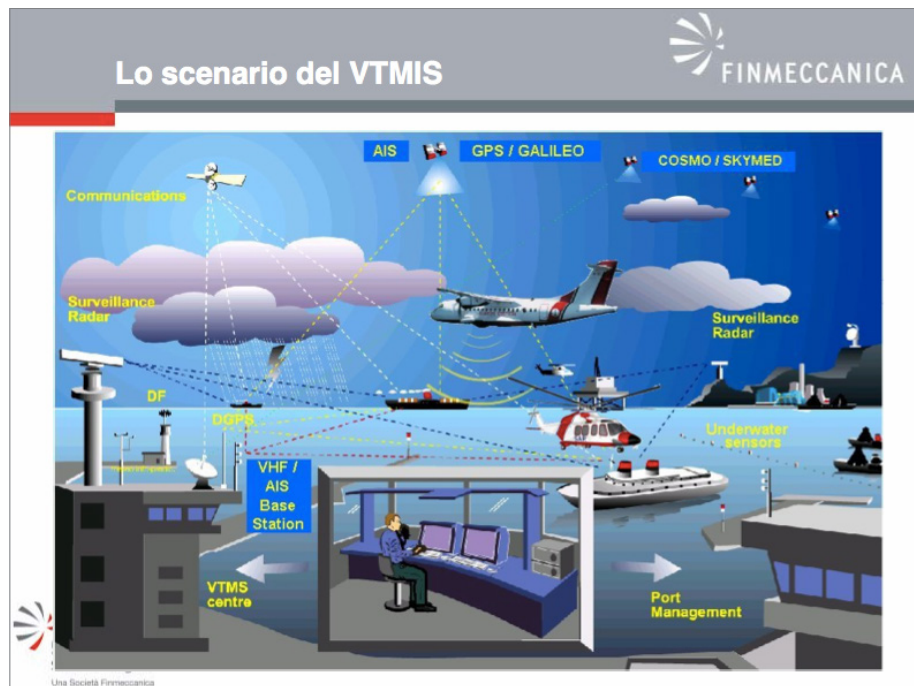
What emerges from this process of enclosure of the high seas by various and sometimes competing jurisdictional regimes, is the image of a space of unbundled sovereignty, in which the rights and obligations that compose modern state sovereignty on the land are decoupled from each other and applied to varying degrees depending on the spatial extent and the specific issue in question.²¹ As a result, a patchy legal space constituted by overlapping and often conflicting fragments has emerged. The Mediterranean is a paradigmatic example of this phenomenon, which is therein reproduced at a smaller scale but with increased rapidity and intensity. Until recently, most Mediterranean states had refrained from extending exclusive claims beyond their territorial waters, for fear of getting entangled in thorny legal conflicts and of reducing the navigational advantages guaranteed

by the high seas. Since the beginning of the 1990s however, under changed geopolitical conditions, the Mediterranean has entered a phase of accelerated juridicalization, and zones of exclusive maritime use have proliferated, extending national jurisdiction into what used to be high seas.²² These are zones of environmental protection and resource conservation which are often not even provided for by the UNCLOS, but which further subdivide the high seas according to specific functions such as fishing, ecological and archaeological protection. The complexity of these maritime jurisdictions has in turn created numerous disputes which involve states as well as fishing, oil, and shipping companies and which are often fought through scientific campaigns to map and measure the size of fisheries, the morphology of the seabed, and the presence of minerals located under it.²³

These overlaps, conflicts of delimitation, and differing interpretations that have been the by-product of the recent carving up of the sea are less malfunctions than an exacerbated expression of the structural condition of global law, which, as Gunther Teubner and Andreas Fischer-Lescano have argued, results from deep contradictions between colliding sectors of a global society.²⁴ Furthermore, as we will see in relation to the policing of illegalized migrants at sea, this condition has become an integral part of the capacity of states and other actors to apply rights and abide by obligations at sea selectively according to their interests, expanding and retracting their jurisdictional claims at will—for example to intercept migrants or to evade the obligation to rescue people in distress. This unbundled and elastic sovereignty is key to the operations of the mobile governance exercised to police the so called “freedom of the seas.”

LINES OF CONTROL: GOVERNANCE IN MOTION THROUGH SCOPIC SYSTEMS

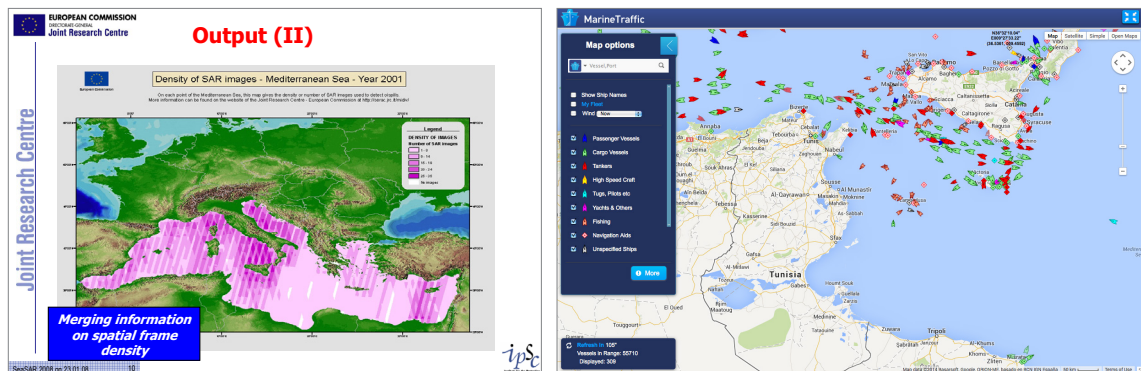
In addition to the lines of enclosure running parallel to the coastline discussed above, the Mediterranean is crisscrossed by diagonal and ever shifting lines of control that emerge as maritime governance attempts to follow routes of maritime traffic and police the “freedom” of the high seas. As Michel Foucault had already noted in the late 1970s, this inextricable articulation between freedom and control is characteristic of forms of mobility governance in (neo)liberal societies, which operate by “maximizing the positive elements, for which one provides the best possible circulation, and [by] minimizing what is risky and inconvenient, like theft and disease, while knowing that they will never be completely suppressed.”²⁵ While the Mediterranean’s waters are central to global trade—with an estimated total of 200,000 commercial ships crossing it annually²⁶—this dense traffic and the maritime space itself are perceived through the lens of security as being



This map, produced by the European Commission Joint Research Centre, shows the density of Synthetic Aperture Radar images available in 2001 across the Mediterranean Basin. Source: D. Tarchi, oil spills statistics in The Mediterranean, PowerPoint presentation at the specialized training course on oil pollution monitoring, November 2006.

constantly under threat: from international terrorism, criminality, illegal fishing, pollution, and, of course, illegal migration. To detect threats amidst the productive flow of vessels and goods, states deploy means of surveillance, military and border patrols, and rescue agencies. In addition to national initiatives, NATO's Operation Active Endeavour was launched in the wake of 9/11 to act as a deterrent and protect civilian traffic in the Mediterranean. Policing has thus become an increasingly structural part of the supposed freedom of the high seas. The exercising of the "right of visit" is an indication of this. While according to the UNCLOS this right allows officials to board a vessel in the high seas in "exceptional circumstances," it has come to be used to justify an increasing number and array of interventions, including the routine interception of migrants.²⁷ Nevertheless, the deployment of aerial and naval forces remains insufficient to police the vast waters of the Mediterranean. The sorting out of "bad" traffic from large quantities of "good" mobilities within an extremely vast space necessitates the assemblage of a sophisticated and increasingly automated technological apparatus of surveillance.

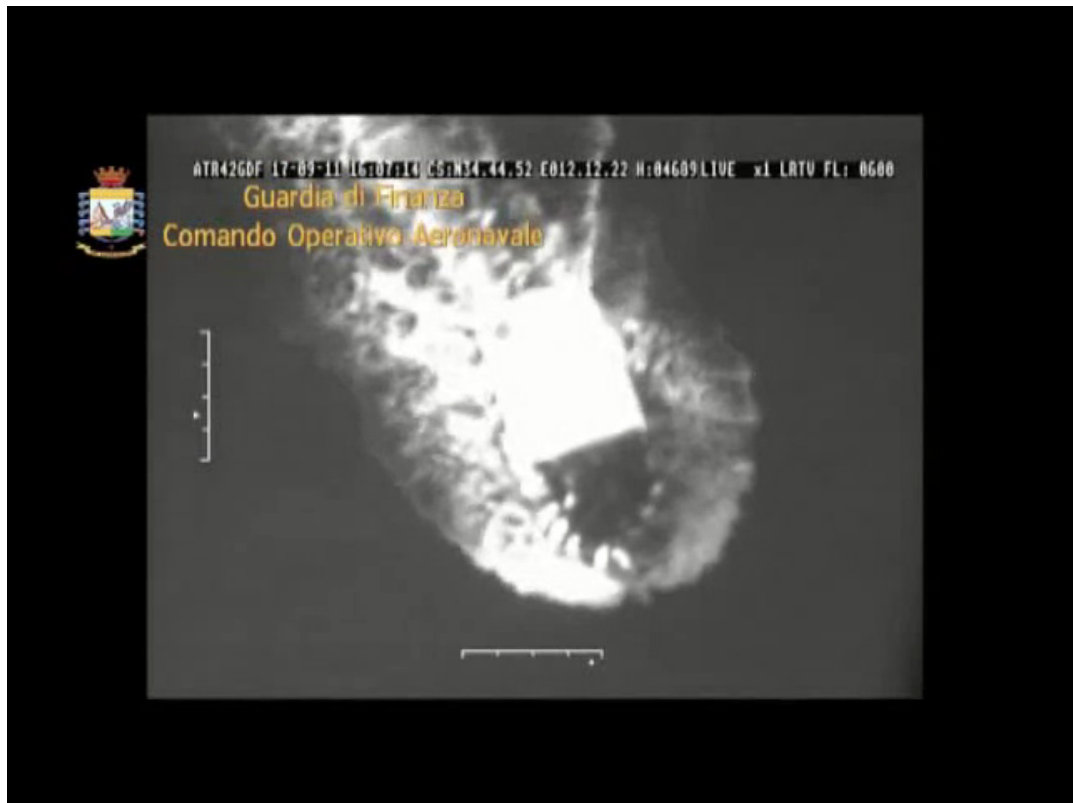
For the purposes of surveillance, the coasts of the Mediterranean, as well as state-operated vessels, are equipped with radars that scan the horizon around them by sending out high-frequency radio waves that are bounced back to the source wherever they encounter an object, indicating these "re-turns" as an illuminated point on a monitor.



(Right) Finmeccanica PowerPoint slide from “Dal VTS al VT- MIS,” 2007. The graphic presents the “Vessel Traffic Management and Information System” (VTMIS). (Left) Screenshot of one of the live online vessel tracking portals, which gathers and presents live AIS data. Source: www.marinetraffic.com.

Automated vessel-tracking data for large commercial ships (AIS) or for fishing boats (VMS) is sent out by a transponder on board via the VHF radio frequency and captured either by coastal or satellite receivers, providing a live view of all registered vessels.²⁸ Optical satellites generate imagery by capturing reflected energy of different frequencies such as visible and infrared light, while satellites equipped with synthetic—aperture radar (SAR) emit a radio signal and create an image based on the variations in the returns. Both “snap” the surface of the sea according to the trajectory of orbiting satellites and are used to detect unidentified vessels or track pollution. The constant emission and capture of different electromagnetic waves these technologies utilize confers a new material meaning on Fernand Braudel’s metaphor of the Mediterranean as an “electro-magnetic field” in terms of its relation to the wider world.²⁹ These technologies do not simply create a new representation of the sea, but rather constitute a new sea altogether, one which is simultaneously composed by matter and media. The current aim of different agencies striving to govern the sea is to assemble these different technologies so as to achieve the most complete possible “integrated maritime picture.” This is both a technological and institutional challenge, since it requires the interoperability of agencies from different countries (both within and outside the EU) across different fields of activity. Through this assemblage emerges what Karin Knorr Cetina has called, with reference to financial markets, a “scopic system”: “When combined with a prefix, a scope (derived from the Greek *scopein*, “to see”) is an instrument for seeing or observing, as in periscope. [...] A scopic system is an arrangement of hardware, software, and human feeds that together function like a scope: like a mechanism of observation and projection [...]”³⁰

While the assemblage of technologies and institutions that constitute the



Aerial video of a migrants' boat recorded and published online by the Italian border police.

Source: "Lampedusa: Immagini inerenti l'attività della Guardia di Finanza a contrasto dell'immigrazione clandestina," September 17, 2011, <http://youtu.be/E1eB--bK6w4>.

Mediterranean's scopic system enable a "vision" of the sea that far exceeds that of its ancestor the telescope, it is still far from producing the totalizing panoptic view that state agencies and surveillance companies regularly call for. For a start, agencies come up against their limits when faced with the huge quantity of data generated by the dense maritime traffic and the increasing deployment of remote-sensing technologies. To deal with the ensuing information overload, surveillance agencies are increasingly resorting to the use of algorithms that allow the automatic detection of "anomalies" so as to distinguish "threats" from the "normal" maritime traffic.³¹ An even bigger challenge is posed by the task of detecting the kinds of small boats used for clandestine migration—such as ten-meter rubber boats or fifteen-meter wooden boats— within such a vast area. In this respect, all solutions to date have run up against the conflict between resolution and swath: while the detection of small boats necessitates high-resolution means of sensing (such as SAR satellite imagery), this can only be achieved for small geographic areas, thus leaving much of the maritime area unattended.³² As such, the Mediterranean's scopic system operates a form of incomplete and patchy surveillance that runs up against the frontiers of information quantity and resolution.

Recognizing the impossibility of monitoring the entire space of the sea and the totality of traffic that populates it, state agencies focus the attention of their mobile governmentality on the main vectors and lines of sea crossing. At work then is a form of “viapolitics,” a concept coined by William Walters to describe a politics that takes as its object routes and vehicles.³³ For Walters, “vehicles and their infrastructures are nodes, relays, surfaces, volumes in a dispersed and uneven governance of population and territory.”³⁴ The modality of governance of the maritime frontier is thus deeply shaped by and to a certain extent consubstantial of the surveillance apparatus that enables it. For if the border exists only in its violation, the latter must first be detected either by human perception or its various technological extensions. Conversely, the strategies of invisibility enacted by clandestine migrants so as to slip through the cracks and gaps in this surveillance apparatus are essential to subverting the violent border regime that operates at sea.

THE CONTESTED FRONTIER: MOBILE KNOWLEDGES, ELASTIC BORDERINGS, AND THE POLITICS OF IRRESPONSIBILITY

Like the ocean, the mobility of people has proven particularly difficult to govern throughout history. In the past twenty years, severe restrictions have been imposed on the movement of people across the Mediterranean with the introduction of Schengen visas and the progressive externalization of border controls into the maritime frontier and onto North African states. This brought to an end to the phase following World War II in which “guest-worker” programs and post-colonial relations promoted the influx of migrant labourers into European countries—who frequently crossed the sea by ferry.³⁵ The recent restrictions to the movement of non-European migrants have however proven unsuccessful in curbing “unwanted” migration flows.³⁶ Migration from the southern shores of the Mediterranean has continued, but in a clandestine and precaritized form, employing, amongst other methods, the crossing by sea on unseaworthy vessels.

Those wanting to cross the Mediterranean despite being denied access to formal and legal modes of doing so had to create a new transport infrastructure, constituted as much by actual vessels as by interpersonal relations and knowledge of borders. Faced with governmental agencies’ interlinking of their means of surveillance to form an “integrated maritime picture” so as to control mobility, illegalized migrants developed their own social network through which information and services are exchanged.³⁷ As the work of the sociologist Mehdi Alioua has shown, contrary to common perception, resorting to smugglers is usually limited to particularly difficult stages in the crossing of borders, whereas the majority of migrants’ trajectories are organized autonomously and

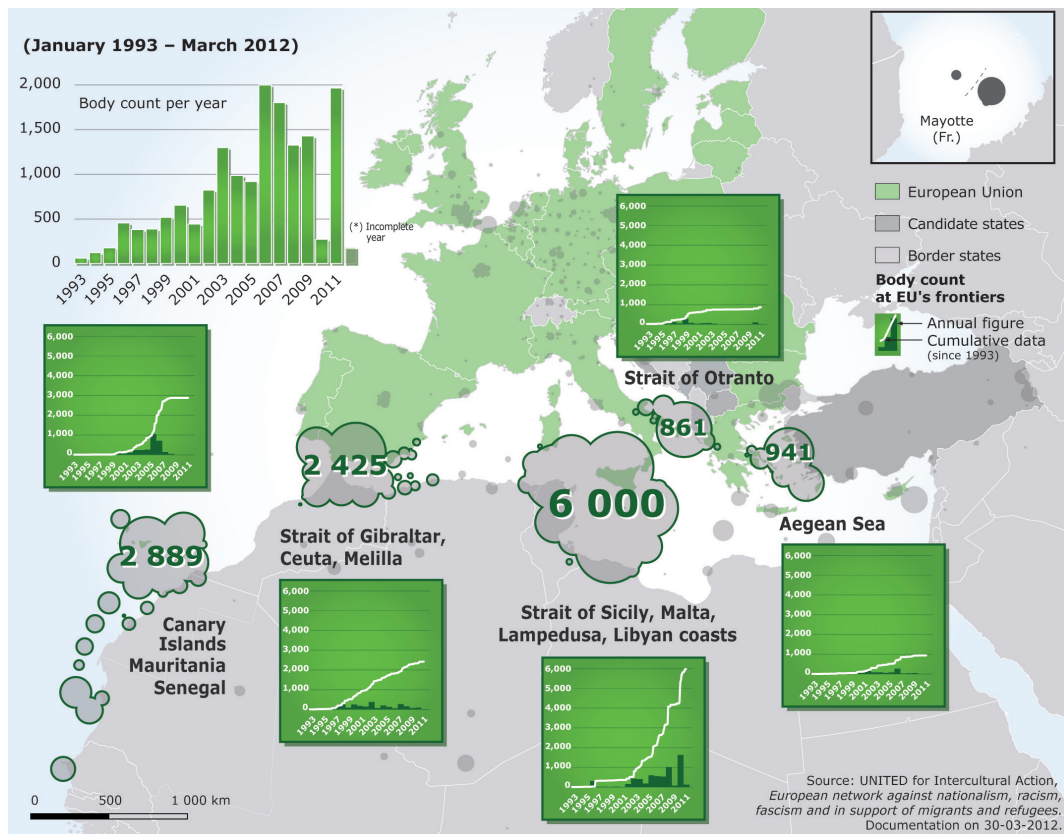
collectively. Through their mobility, migrants progressively generate a shared knowledge, which allows them to orient themselves in new environments and know where and how to cross borders undetected.³⁸ This collective knowledge and practice of border crossing has a deep and ambivalent aesthetic dimension, in that it hinges on the conditions of appearance of migrants.³⁹

The very term “clandestine,” from the Latin *clandestinus* meaning “secret” or “hidden,” points to their aim to circulate undetected—literally, under the radar; this is also why most crossings begin at night. However this desire to go undetected is always weighed against the risk of dying unnoticed at sea, as in the “left-to-die boat” case when, in distress, the migrants did everything they possibly could to be noticed and rescued.⁴⁰

In response to the continued capacity of illegalized migrants to reach the southern shores of Europe, through a series of policies and practices the Mediterranean was progressively militarized and transformed into a frontier area that allows border operations to both expand and retract far beyond the legal perimeter of the EU, thus adding further friction to the mobility of migrants.

In an important report submitted in 2003 to the EU Commission by CIVIPOL—a semi-public consulting company to the French Ministry of the Interior—the authors explain that in order to “hold a maritime border which exists by accident of geography,” it is necessary to go well beyond an understanding of the maritime border as delimited by EU states’ territorial waters.⁴¹ To exploit the geopower of the sea and use its physical characteristics to reinforce the border, surveillance has to cover “not just an entry point, as in an airport, nor a line, such as a land border, but a variable-depth surface.”⁴² The unbundled sovereignty at work in the high seas enabled European and non-European coastal states—assisted since 2001 by NATO as part of its “Operation Active Endeavour” and since 2006 by Frontex (the European border management agency)—to deploy maritime border patrols using boats, helicopters, airplanes, and the aforementioned surveillance technologies to intercept incoming migrants.

Through these means of governance in motion, the line of the border has become elastic, expanding and retracting with the movement of patrols. However, the increasing militarization of the maritime frontier of the EU has not succeeded in terms of the stated aim of stopping the inflow of illegalized migrants, but rather has resulted in the splintering of migration routes towards longer and more perilous areas of crossing.⁴³ It is thus the strategic use of the maritime environment as a frontier zone that has turned the sea into an unwilling killer. The fact that such policies remain active despite policy makers’ knowledge of their “failure” is a reminder of the productive dimension of illegalized



Deaths at the Borders of Europe. Source: Migreurop, Atlas of Migration in Europe: A Critical Geography of Migration Policies (London: New Internationalist Publications, 2013).

migration. It makes it possible for governments to engage in a never ending “war on migration” whose benefits include attracting the populist vote, keeping the surveillance and military industries buoyant, and, last but not least, providing the labor market with a ready supply of de-qualified and precaritized laborers. This is the obscene supplement of the spectacular scene of border enforcement to which Nicholas De Genova rightly draws our attention.⁴⁴

As a result of these policies and militarized practices, once travelling at sea, migrants frequently find themselves in difficult situations of distress, due to a variety of factors such as failing motors, vessel overload, or loss of direction. However, as soon as they enter the Mediterranean Sea, they enter a space of international responsibility. We have already noted the obligation of vessels at sea to provide assistance to those in distress, and for coastal states to coordinate rescues within their respective Search and Rescue (SAR) zones. The strategic mobilization of the notion of “rescue” has at times allowed coastal states to justify police operations in the high seas or even within foreign territorial waters for which they would otherwise have little legal ground, thus blurring the line between policing and humanitarian activities.⁴⁵ But along with rescue

comes the burden of disembarkment, which in turn entails responsibility for processing possible asylum requests or deporting migrants in accordance with the so-called Dublin Regulation.⁴⁶ To avoid engaging in rescue missions, states have strategically exploited the partial and overlapping sovereignty at sea and the elastic nature of international law.⁴⁷ The delimitation of SAR zones has been the first battlefield. In the central Mediterranean, Tunisia and Libya have refrained from defining the boundaries of their SAR zones, while Italy and Malta have overlapping SAR zones and are signatories to different versions of the SAR convention, a situation which has led to repeated standoffs.⁴⁸ The latter have been exacerbated by the lack of clear definitions of concepts such as “distress” and “assistance” within international maritime law, enabling divergent interpretations.⁴⁹ Moreover, coastal states’ unwillingness to accept the disembarkment of migrants has led to an increased reluctance on the part of seafarers to allow those in distress on board their vessels, “in some cases fearing criminal liability for being accused of facilitating illegal immigration.” In such ways, the international legal norms established to determine responsibility for assisting those in distress at sea have been used precisely for the purpose of evading and deferring this responsibility. As a result, many migrants have been left unassisted, leading to human tragedies. It was precisely this politics of irresponsibility that was at work in the unfolding of the “left-to-die boat” case.

While Italy and Malta had been informed of the location and distress of the passengers, with the vessel still outside of their SAR zones (but soon to enter their zone of overlapping and conflicting responsibility), they limited themselves to sending out distress signals to vessels transiting the area and informing NATO command, which was monitoring the “Maritime Surveillance Area” within which the passengers were located.⁵⁰ However during the time of the international military intervention in Libya, NATO operated a practice of minimal assistance, the aim of which was to ensure that the migrants could continue their journey until they entered the Italian or Maltese Search and Rescue (SAR) zone so that they would become a concern for those states. While this did occur in several instances, in the case of the “left-to-die boat” the evaluation of the distress of the migrants and the minimal assistance provided to them (a helicopter visited them twice and dropped a few bottles of water and biscuits) were clearly insufficient as they soon started to drift back to the Libyan coast, left to merciless winds and currents that inflicted on the passengers a slow death.

If migrants thus die at sea from a range of direct causes such as dehydration, lack of food, the ingestion of salty water and drowning, all of which are related to the geopolitics of the sea, it should be clear from the above that it is through the enforcing of migration

policies imposed by the EU and their articulation within a particular maritime legal and governance regime that the sea has been turned into a deadly liquid, the site and means of a rising number of deaths and structural violations of migrants' rights. What has emerged is a form of violence that is exercised less by effecting a destructive force onto a given actor, than by creating *the conditions* in which the sea becomes a liquid trap and refraining to help those who are caught in it. In this, the governmentality of migration at sea constitutes an example of a form of biopolitical power described by Foucault, which is exercised not only by actively sustaining and protecting the life of certain populations, but also by causing death of others by simply abstaining from any form of action. To paraphrase his famous summary of this form of power, one could say that the maritime border regime "makes flow and lets drown."⁵¹ The migration regime thus produces a form of systemic violence that kills without touching and is exercised by several actors simultaneously. As a consequence, the responsibility for the deaths and violations that are its structural product is shared, diffuse, and thus difficult to address. While migrants' rights organizations have been documenting the deaths of migrants for a number of years and have denounced the deadly policy of the maritime border regime, it was not until 2011, with the radical geopolitical shifts brought about by the "Arab Spring" and the military intervention in Libya, that new possibilities for addressing this form of violence arose.

2011: RUPTURES IN THE MIGRATION REGIME AND RENEWED OPPORTUNITIES FOR ACCOUNTABILITY

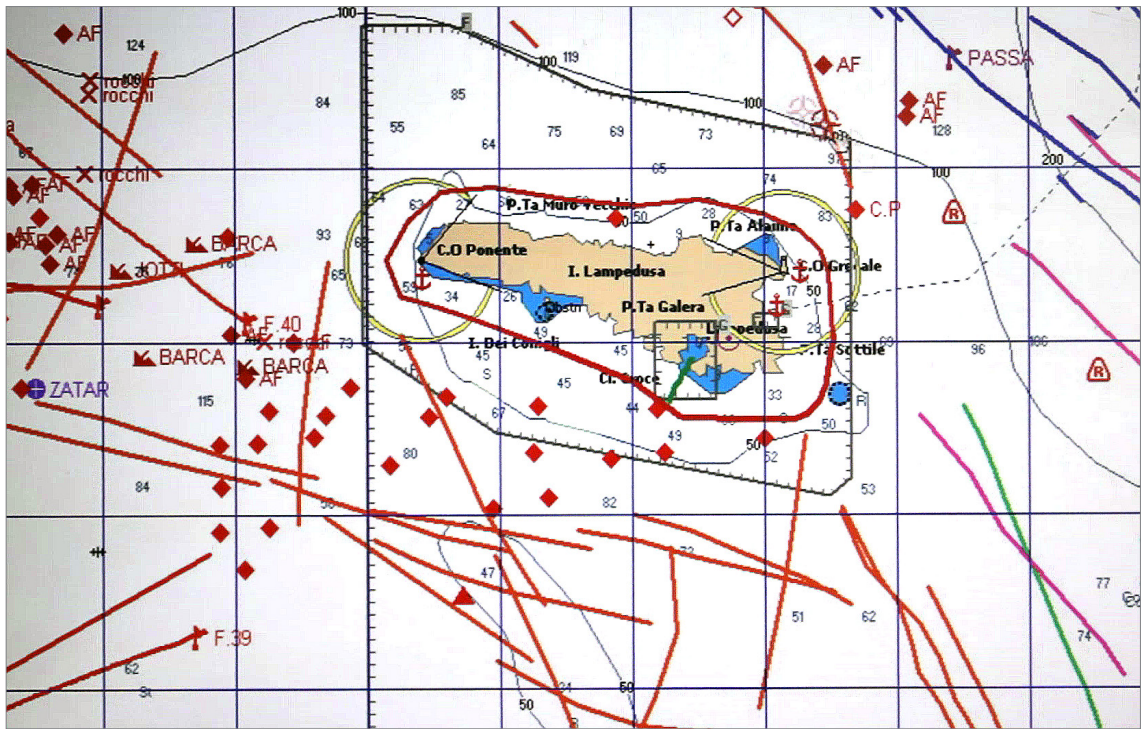
In relation to the context outlined above, 2011 represented a moment of paroxysm and rupture in a number of respects. The so-called Arab Spring led to a temporary power vacuum in Tunisia that enabled over 28,000 people to cross the sea to Italy during that year. This intense mobility in the immediate aftermath of a revolution is a clear indication that the aspiration to freedom and justice of the Tunisian people was directed not only towards the way their country was governed, but also extended towards the imposition by the EU—with the active participation of the Ben Ali regime—of a violent and discriminatory migration regime within and beyond Tunisia's borders.⁵² The uprising in Libya led less to the seizing of a new freedom than to forced displacement. The entrenched civil war and the ensuing NATO-led military intervention forced almost 26,000 people to cross the sea to reach the southern shores of Italy, with Gaddafi's regime playing an active role in forcing migrants onto boats with the aim of using them as weapons of war.⁵³ With boats loaded to the point of collapse and without regard for even the minimal safety measures usually provided by smugglers, over 1,822 recorded deaths occurred in the Central Mediterranean

during 2011, one of the all—time highs.⁵⁴ However, these deaths occurred at a time when the militarization of the EU’s maritime frontier had taken on entirely new dimension, with the usual agents of the low intensity “war on migration” joined by a large number of additional military ships and patrol aircraft deployed by Western states off the Libyan coast in support of the international military intervention. Their mission included the surveillance of a wide maritime space off the coast of Libya in order to enforce an arms embargo.⁵⁵

In this context, a coalition of NGOs was formed with the aim of identifying direct responsibility for these deaths. Their claim was that, given the means deployed, it would have been impossible for military and border control personnel to have failed to witness the distress of migrants at sea.⁵⁶ The “left-to-die boat” incident provided a case in point and the coalition decided to focus on this paradigmatic incident to launch a legal case claiming liability for non-assistance of people in distress at sea. In support of this endeavor, together with the architectural practice SITU Research, we produced a seventy-three-page report which, by mobilizing a wide range of digital mapping and modeling technologies and by relying on an unorthodox assemblage of human and non-human testimony, reconstructed and mapped as accurately as possible what happened to this vessel.⁵⁷ Having outlined above the conditions that have turned the sea into a deadly liquid, we are now in a position to explain how we brought the sea to bear witness to the conditions that have led it to kill.

As should now be clear from our discussion of the scopic system assembled to monitor maritime traffic, it is no longer true that the sea entirely resists being written. The maritime space is constantly registered in optical and thermal cameras, sea-, air-, and land-borne radars, vessel tracking technologies, and satellites that turn certain physical conditions into digital data according to specific sets of protocols, determining the conditions of visibility of certain events, objects, or people. While many of these remote sensing means remain in the exclusive hands of states and their agencies, certain types of automated vessel tracking data (“automatic identification system,” or AIS), meteorological data, as well as satellite imagery are available to the public. Moreover, parallel civilian networks also supplement these sensors: migrants frequently film their crossings with mobile phones, while networks of ship- and plane-spotters post photographs of naval activities, thereby contributing to documenting, transmitting and archiving events at sea.⁵⁸

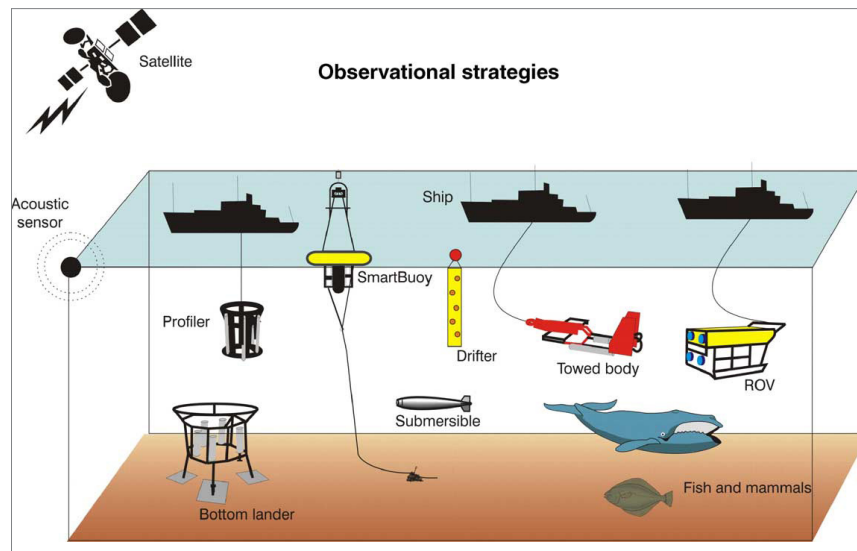
Through this vast process of imaging and dataization of the maritime space, the sea has become a vast and extended sensorium, a sort of digital archive that can be interrogated and cross-examined as a witness. This is precisely what we did in order to produce our report: in the absence of external witnesses, we corroborated survivors’ testimonies by



Still from a video depicting the digital navigation system onboard one of the trawlers of the Mazara del Vallo fleet (Southern Sicily). The map shows the various trawling paths and the presence of obstacles (rocks and shipwrecks) around the island of Lampedusa, Mazara del Vallo, July 2012. Video: Charles Heller and Lorenzo Pezzani.

interrogating the very environment where these events took place, the sea itself.

But in a context in which remote sensing is so central to the process of policing illegalized migration and the success of clandestine border crossings hinges on not being detected, how to avoid becoming complicit with the governmental attempt to manage migration by shedding light on the transgression of borders? The use of these technologies and other sources of information demanded that we position ourselves strategically in relation to their usual application by border agencies. While the latter perform an ambiguous act of unveiling practices of clandestine migration while concealing the violent political and legal exclusion that produce this clandestine status in the first place, as well as the numerous legal violations the migration regime generates in turn, our approach needed to invert this strategy.⁵⁹ We aimed not to replicate the technological eye of policing, but to exercise a “disobedient gaze,” one which refuses to disclose clandestine migration but seeks to unveil instead the violence of the border regime. Applying this strategy to the “left-to-die boat” investigation entailed redirecting the light shed by the surveillance apparatus away from clandestine migrants and towards the act of policing the sea, and spatializing the practices of different actors so as to reinscribe



*Schematic overview of marine observational strategies (drawing by Irene Gooch). Source: Silke Kröger and Robin J. Law, "Biosensors for Marine Applications," *Biosensors and Bioelectronics*, vol. 20, no. 10 (April 2005): 1905.*

responsibility within the space of the unbundled sovereignty at sea.⁶⁰

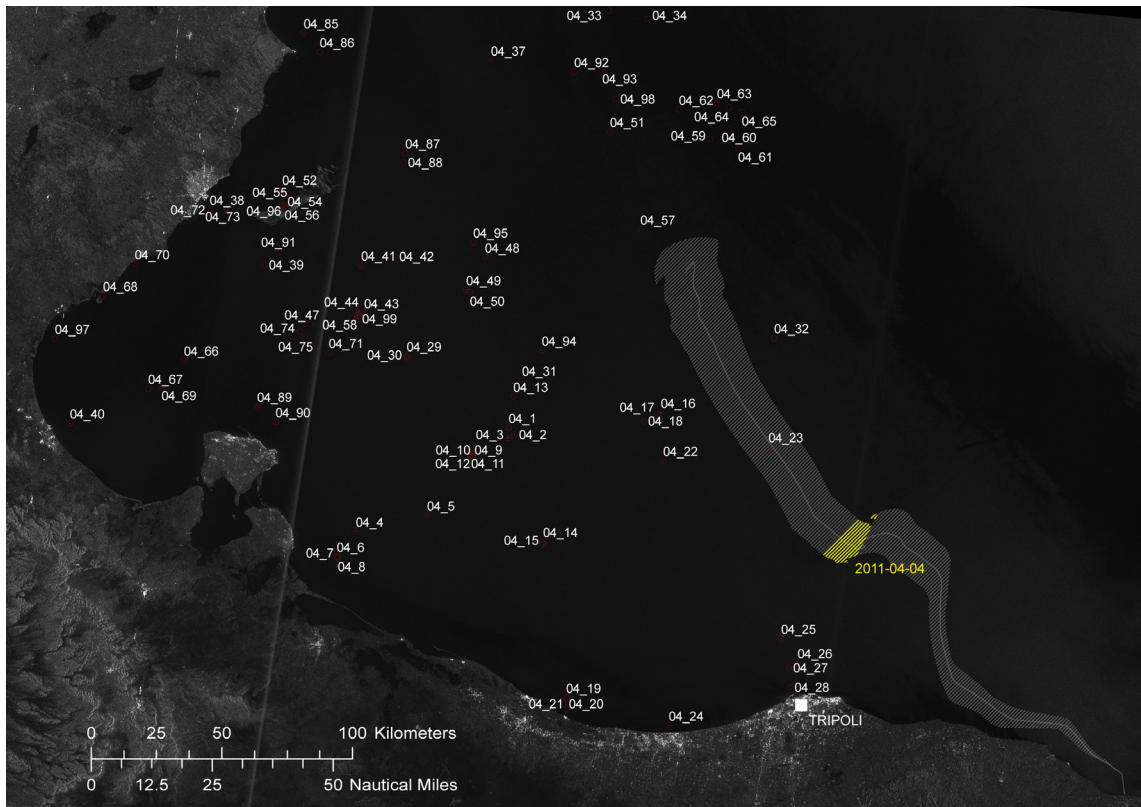
As described in more detail earlier in this volume, we mobilized different remote sensing technologies to reconstruct the events and determine the degree of involvement of different parties in several ways.⁶¹ In this endeavor, it has been crucial to couple a robust understanding of the technical characteristics of these technologies with a thorough analysis of the web of economic, scientific and political relations in which they are embedded and which shape both their potential usage and the epistemological frame they impose on the world.⁶² Only then was it possible to insert ourselves within the complex chain of production that their use involves, in order to locate specific nodes from where information could be extracted and repurposed towards the spatio-temporal reconstruction of the events and actors involved in the incident.

First, we reconstructed the trajectory of the migrants' boat up to its point of drift, by georeferencing the position of the migrants' distress calls using a satellite phone and by reconstructing the boat's speed and route based on detailed interviews with the survivors. But to determine the entire trajectory of the boat during its fourteen days of deadly drift, we also had to bring the winds and the currents to bear witness. An oceanographer reconstructed a model of the drifting vessel by analyzing data on winds and currents collected by buoys in the Sicily Channel.⁶³ In this way, we determined that the migrants' vessel remained for the majority of its trajectory within the NATO maritime surveillance area.

With the migrants' boat's trajectory determined and the knowledge of its distress by other vessels operating in the area at the time established by tracing the different distress signals that were sent out, the key question became "which ships were in its vicinity and failed to respond?" To answer this, we relied on synthetic aperture radar (SAR) satellite imagery, which, analyzed by a remote sensing specialist, allowed us to establish the presence of a number of ships in the immediate vicinity of the migrants' boat. However, the relatively low resolution of the images (1 pixel represents 50 m² or 75 m²) did not allow us to locate migrants' boats (usually small wooden and plastic vessels), but only the bigger military and commercial vessels. The *resolution* of the image thus became a highly political issue, in that it determined the frontier between the visible and invisible, and separated the practice of a disobedient gaze from an uncritical act of revealing that risks complicity. In the process, not only were we using against the grain a technology usually used for surveillance, but repurposing the very images surveillance produces: the availability of those SAR images was probably due in the first place to the military operations in Libya, since there was a sharp increase in the number of available images coinciding with the days of the conflict.

In a third strategic use of surveillance technology, this time in line with the claim made by the coalition of NGOs, we turned the knowledge generated through surveillance means into evidence of responsibility. While the military had deployed exceptional means of surveillance to impose the embargo and detect any threat at sea, the knowledge they generated also made them aware of the distress of migrants—and therefore responsible for assisting them. After collecting several official statements by military officials celebrating the technical capability of the means of surveillance deployed in the Mediterranean, we carried out a detailed analysis of the range and precision of their sensing technologies in order to prove that the naval assets in operation at the time of the "left-to-die boat" case had the means to detect the drifting migrants' boat. While, as Bruno Latour reminds us, with the capacity to sense events should come "sensitivity"—the capacity to respond to them—the lack of response despite the knowledge generated by surveillance became in this case evidence of guilt.⁶⁴ In this way, we attempted to close the gap which the politics of irresponsibility tries to leave open, between the possibility of sensing a certain event (of distress) and the obligation to intervene.

While many questions remain open in terms of the identities of the different actors involved—crucially the two helicopters and the military ship that entered into direct contact with the migrants have not yet been identified—we were able to provide a precise reconstruction and to point to the implication and failures of several actors, including



Analysis of April 4, 2011 Radarsat-1 Synthetic Aperture Radar (SAR) by Rossana Padeletti, GIS and Remote Sensing specialist. Addendum to the Report by Forensic Oceanography on the “left-to-die boat,” June 2013. By overlaying the drift model of the “left-to-die boat” and underlining in yellow the position of the vessel on the day the image was taken, Padeletti’s analysis demonstrated that there were 78 probable vessels of over 50 m surrounding the drifting migrants’ vessel at the time in which, according to the survivors’ testimony, they encountered a military vessel. There may have been further vessels present in the Eastern side of the image, which however presented too much scattering and background noise to detect possible targets.

NATO and the coalition of national militaries, the Italian and Maltese Coast Guards, the fishing and commercial vessels present in the area and Gaddafi’s troops. Because of this multiplicity of actors and the partial and overlapping juridical regimes with which the migrants’ boat intersected, the question of who should be held responsible for the systemic violence perpetrated onto the passengers emerged. While the fragmentation of juridical regimes at sea so often allows for the evasion of responsibility, in this case it was mobilized strategically towards the *multiplication* of potentially liable actors and of forums where they could be judged and debated. Not only were several legal complaints lodged in the courts of France, Italy, Spain, and Belgium against unknown parties for nonassistance to people in danger at sea—each time generating press attention—but several other initiatives took place in parallel: two documentary investigations were screened on television as well as at festivals;⁶⁵ a report was published by the Council of Europe, leading to several hearings with

representatives from different states; and finally, the case was presented in many venues to activist and academic audiences across Europe and North Africa. Each of the forums, with their respective languages, rules and technologies, became a space of judgment. But even managing to address the responsibility of the numerous actors involved would have been insufficient if the multifarious policies of exclusion, militarization, and evasion of responsibility that shaped the incident in the first place were not themselves put on trial. While demanding accountability for *all* the deaths of migrants at the maritime frontier of the EU has not been possible so far within the forum of the law and its particular language, the different actors investigating this case had to go beyond the realm of the law and venture into that of politics. In this way, they denounced the violence of the denial of freedom of movement and the deaths it generates, which no amount of compliance with legal obligations will be able to undo.

CONCLUSION: LIQUID LANDS

Following the meandering route of the history of the governance of the seas and its intersection with the policing of the mobility of people was necessary to understand the conditions under which the sea was made to kill, and which have led to the structural violations of the rights of migrants. Only through a “hand-to-hand” struggle with this network of geographic, aesthetic, technological, legal, social, and political conditions were we able to reinscribe history and responsibility into a sea of impunity.

Understood in these terms, incidents such as the “left-to-die boat” shed a new and crude light on contemporary forms of maritime governance and migration management. The image of the Mediterranean that emerges is that of an environment crisscrossed by “a thick fabric of complex relations, associations, and chains of actions between people, environments, and artifices.”⁶⁶ It is the totality of this field of forces that constitutes the particular form of governance that operates at sea. With regard to the policing of illegalized migrants, we have seen that the selective expansion and retraction of sovereignty that this space enables has led to a form of governmentality that, although highly militarized, diverts and modulates movement rather than blocking it, blurs the line between humanitarian and policing functions, and inflicts deaths on a large scale by creating conditions of precarious crossing and by refraining from acting to save those caught in this liquid trap.

The fantasy of a soft governance that would make the movement of people and things simultaneously orderly and productive is a mere chimera, since there will always be subjects that refuse this order, and attempts to tame them can only lead to deaths and legal violations on a structural basis. The deaths at the maritime frontiers of the EU are, in



I-Map, 2012. Dialogue on Mediterranean Transit Migration (MTM) map of Irregular and Mixed Migration Flows. Source: International Centre for Migration Policy Development (IC- MPD). The I-Map project developed by the ICMPD in collaboration with states and international organizations is an interactive cartography that traces out migration routes, initially on the borders of Europe, but increasingly expanding to the wider region of Africa, The Middle East, and Eurasia. I-Map was designed to develop a new sensibility among border and migration management agencies to the complexities of migrant routes across a wide geographic area.⁶⁷

this sense, the necropolitical ghost that haunts this vision of neoliberal governmentality.⁶⁸ They will continue unabated as long as the current migration regime and governance of the seas prevails. While European publics seem to have come to accept these deaths as a necessary lesser evil, documenting violations, filing multiple contentious legal cases, and supporting the mobilization of the relatives of the migrants lost at sea in their struggles to shed light on what has happened to their family members, may be seen as inserting “grains of sand” into the migration regime’s mechanisms, blocking them temporarily, forcing them to change slightly.⁶⁹ In this process, an important shift has occurred: states, the military, and other actors at sea no longer have the monopoly over watching. Civil society demands that the increased capacity to monitor the sea be accompanied by an increased level of responsibility, and uses the same sensing technologies against the grain to follow the (in)actions of the different actors who operate in the frontier space of the sea, reinscribing responsibility where they attempt to evade it. But if the change that maybe

affected through such a practice is only in its infancy, we already observe the tendency of maritime-like forms of governance being exported onto land, in a striking inversion of Carl Schmitt's land—sea binary. While, as we saw, the challenge for Schmitt was to impose onto the ocean a form of power characteristic of the land, the sea has become a laboratory in which new forms of contemporary governance have been devised and experimented with and are now being brought to bear on the land. As at sea, border functions on the land have been decoupled from the limits of the territorial border and are becoming increasingly dispersed and mobile, able to follow ever-shifting routes. From the notion of "Routes Management," which revolves around the charting of clandestine migrants' routes, to that of "Integrated Border Management," which seeks to control migration "before, at and after the border," practices of border control seem to have increasingly done away with fixed territorial thinking.⁷⁰ In a move that echoes the practice of maritime governance over several centuries, their focus seems instead to be on following the routes of migrants as they move across different geographical and political spaces. Rather than the "solidification of the sea"—a term that was suggested by the collective Multiplicity to describe the progressive invasion of the terrestrial logics of bordering into the sea—what we observe here is rather a "liquefaction of the land."⁷¹

There would be another, more desirable way to draw inspiration from the sea, one that is still out of sight of the hegemonic public view and policy circles. Viewing the world "from the sea," from the perspective of the constant movement of the liquid element that defies the appropriation of the ocean, one might be able to perceive the unruly freedom of human mobility which, far from being an anomaly, has been a constant throughout history, and that persists in excess of the multifarious practices that try to tame it.

NOTES

1 Roland Barthes, *Mythologies*, ed. and trans. Annette Lavers (New York: Hill and Wang, 1972), 112.

2 For more information, see <http://fortresseurope.blogspot.com/p/la-fortezza.html> and <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>, last accessed December 2013.

3 The terminology used to describe “migrants”—understood as people who cross political boundaries to live in another country for a more or less durable time and who, at some point in their trajectory or stay, evade the control and authorisation of the state—is highly politicised and contested. Within European media and policy uses, the terms “illegal migration” and “clandestine migration” are frequently used to point to the evasion or violation of the law, and both terms have negative connotations. In our research we alternate between using the terms “illegalized migrants” (to point to the policies that make migration illegal in the first place) and “clandestine migrants.” This latter term may seem problematic in that it is marked to such an extent by the language of power; yet in its etymological connotations of hiddenness and secrecy, “clandestine” accurately describes the strategies of migrants who, having been denied access to legal means of entry into a state, must cross borders undetected. We will thus use the term “illegalized” when wishing to underline the effect of migration policies and “clandestine” when pointing to the strategies of migrants and when wishing to emphasize the “aesthetic” dimension of borders, as will be discussed further on. For the politics of the language of migration, see Franck 15 Düvell, “Clandestine migration in Europe,” *Social Science Information*, vol. 47, no. 4 (2008): 479–97, and Harald Bauder, “Why We Should Use the Term Illegalized Immigrant,” *RCIS Research Brief*, no. 2013/1 (August 2013): 1–7, http://www.ryerson.ca/content/dam/rcis/documents/RCIS_RB_Bauder_No_2013_1.pdf.

4 See “Case: ‘Left-to-Die Boat’” in this volume.

5 Duncan Depledge, “Geopolitical material: Assemblages of geopower and the constitution of the geopolitical stage,” *Political Geography* (June 2013): 1–2; see also Kathryn Yusoff, Elizabeth Grosz, Nigel Clark, Arun Saldanha, and Catherine Nash, “Geopower: a panel on Elizabeth Grosz’s *Chaos, Territory, Art: Deleuze and the Framing of the Earth*,” *Environment and Planning D: Society and Space*, vol. 30 (2012): 971–88, at 973–75.

6 Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum*

Europaeum (New York: Telos Press, 2003). For a broader commentary on this text see Philip E. Steinberg, “Free sea,” in *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos*, ed. Stephen Legg (London: Routledge, 2011), 268–75.

7 Schmitt, *The Nomos of the Earth*, 42–43.

8 For an important historical review of the shifting practices of cartography of oceans in relation to changing forms of governance and ideologies, see Philip E. Steinberg, “Sovereignty, Territory, and the Mapping of Mobility: A View from the Outside,” *Annals of the Association of American Geographers*, 99(3) (2009): 467–95; see also Philip E. Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001), 99–109.

9 See Stefan Helmreich, “Nature/Culture/Seawater,” *American Anthropologist.*, vol. 113, no. 1 (2011): 132–44; and Allan Sekula and Noël Burch, dirs., *The Forgotten Space* (Amsterdam: Doc.Eye, 2010), 112 min.

10 Lauren Benton traces back this process to the early modern period in *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 105.

11 Philip Steinberg traces this period back to the 1493 Papal bull. The bull was formalized and amended the following year by the Treaty of Tordesillas. Philip E. Steinberg, “Lines of Division, Lines of Connection: Stewardship in the World Ocean,” *Geographical Review*, vol. 89, no. 2, Oceans Connect (April 1999): 254–64.

12 English translations of these Latin texts have been published as Hugo Grotius, *The Freedom of the Seas, or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, trans. Ralph Van Deman Magoffin (New York: Oxford University Press, 1916) and John Selden, *Of the Dominion, or Ownership of the Sea: Two Books* (New York: Arno, 1972).

13 Steinberg, *The Social Construction of the Ocean*, 97 and 105. It should also be remembered that both thinkers were writing from the perspective and in the service of mercantilist states which were challenging Iberian maritime supremacy. See China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (London: Haymarket Books, 2006), 211.

14 Benton, *A Search for Sovereignty*, 106.

15 Steinberg, “Free sea,” 271.

16 Before the emergence of relatively independent scientific institutions, oceanographic knowledge was produced by sailors involved in military and commercial activities. Even at the turn of the nineteenth century, scientists frequently operated within naval

institutions and relied on their infrastructure; the fact that the ships associated with the pioneers of oceanography were exclusively military is a striking expression of this. For a general overview of the emergence of oceanography, see Tom Garrison, *Essentials of Oceanography*, 5th ed. (Belmont, CA: Brooks/ Cole Cengage Learning, 2009), 22–44. For more specific and theorized examples, see Michael S. Reidy, “The Royal Navy and the Rise of Modern Geophysics,” *Trafalgar Chronicle* no. 18 (2008), 222–37; and Graham Burnett, “Hydrographic Discipline Among the Navigators,” in *The Imperial Map: Cartography and the Mastery of Empire*, ed. James Ackerman (Chicago: University of Chicago Press, 2009), 185–255.

17 For the use of the concept of the sensorium in relation to assemblages of technologies extending the human senses, see Mark Cote, “Technics and the Human Sensorium: Rethinking Media Theory through the Body,” *Theory & Event*, vol. 13, no. 4 (2010); and Bruno Latour, “Air,” in *Sensorium*, ed. Caroline A. Jones (Cambridge, MA: MIT Press, 2006), 104–07.

18 For a useful summary, see Juan Luis Suárez de Vivero, *Jurisdictional Waters in The Mediterranean and Black Seas* (Brussels: European Parliament, 2010).

19 Paolo Cuttitta, “Le monde-frontière. Le contrôle de l’immigration dans l’espace globalisé,” *Cultures & Conflits*, 68 (2007): 61–84.

20 1979 International Convention on Maritime Search and Rescue (SAR).

21 Steinberg, “Free sea,” 270. For the unbundling of sovereignty considered within a historical perspective and in other fields, see Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006).

22 Gemma Andreone, “Observations Sur La ‘Jurisdictionnalisation’ de La Méditerranée,” *Annuaire Du Droit de La Mer*, vol. 9 (2004): 7–25.

23 For an overview of these disputes, see Suárez de Vivero, *Jurisdictional Waters in the Mediterranean*.

24 Andreas Fischer-Lescano and Gunther Teubner, “Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law,” *Michigan Journal of International Law*, vol. 25:999 (2004): 999–1046, at 1004. We are grateful to Sandro Mezzadra for this reference. This is in fact a long-standing characteristic of governance at sea. Lauren Benton shows how since early modern times imperial visions of the ocean were “organized around the discovery and militarization of maritime passages” (see: Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge; New York: Cambridge University Press, 2010), 106. This tendency will be stressed also in US Navy admiral and geostrategist Alfred Thayer

Mahan's work on sea lanes and maritime logistics in the late nineteenth century.

25 Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France*, 1977–78 (New York: Palgrave Macmillan, 2007), 34.

26 Ameer Abdulla and Olof Linden, eds., *Maritime traffic effects on biodiversity in the Mediterranean Sea*, IUCN Centre for Mediterranean Cooperation (Malaga, Spain: 2008): 1–184, at 8. This report further notes that approximately 30% of international sea-borne volume originates from or is directed towards the 300 ports in the Mediterranean Sea.

27 Efthymios Papastavridis, “The Right of Visit on the High Seas in a Theoretical Perspective: *Mare Liberum versus Mare Clausum Revisited*,” *Leiden Journal of International Law*, vol. 24, issue 1 (March 2011): 45–69. For the UN's specification of those practices that should be covered by the term “interception,” see U.N. Office of the High Commissioner for Refugees (Exec. Comm.), *Conclusion on Protection Safeguards in Interception Measures*, no. 97, 10 October, 2003, <http://www.unhcr.org/3f93b2894.html>. For the use of the “right to visit” as the basis for interception, see Eur. Parl. Ass., *The interception and rescue at sea of asylum seekers, refugees and irregular migrants*, 22nd Sitting., Doc. No. 12628 (2011), <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18008&lang=en>, last accessed September 2013.

28 AIS (Automatic Identification System) is a ship-borne transponder system designed for maritime safety and in particular collision avoidance. It provides information as to identification, position, speed, course. This live data is made publicly accessible on different websites such as marinetraffic.com. While mandatory for large commercial ships, the carriage of AIS is not required for certain categories of ships such as warships. VMS (Vessel Monitoring System) data is mandatory for fishing vessels longer than 15 m and is used to monitor fishing activities. While VMS operates in very much the same way as AIS data, it remains tightly controlled by state agencies. See “Integrated Maritime Policy for the EU, Working Document III, On Maritime Surveillance Systems,” *European Commission / Joint Research Centre*, Ispra, Italy, June 14, 2008, http://ec.europa.eu/maritimeaffairs/policy/integrated_maritime_surveillance/documents/maritime-surveillance_en.pdf.

29 Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 2nd ed., 2 vols., trans. Sian Reynolds (New York: Harper and Row, 1976), 168.

30 Karin Knorr Cetina, “The Synthetic Situation: Interactionism for a Global World,” in *Symbolic Interaction*, vol. 32, no. 1 (2009): 61–87, at 64.

31 Such techniques are already being implemented by NATO, for example: see Commander Brian Finman, “Keeping the Med safe—how it's done,” *NATO Review*, May

19, 2010, http://www.nato.int/docu/review/2010/Maritime_Security/EN/index.htm. EU agencies are still developing this practice, with the “Blue Hub” project of the EU’s Joint Research Council (JRC) leading the way. See <http://ipsc.jrc.ec.europa.eu/index.php/Projects/318/0/> and <https://bluehub.jrc.ec.europa.eu/>, last accessed September 2013.

32 Eur. Comm’n Joint Research Council, *JRC-Frontex Space-borne SAR Small Boat Detection Campaign–Italy & Spain* (2011) (by Victor M.G. Silva and Harm Greidanus), <http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/24183/1/lbna25065enn.pdf>, last accessed September 2013.

33 William Walters, “Where Are the Missing Vehicles? Critical Reflections on Viapolitics” (paper presented at the Summer School on “Border Crossing Selves”) Hanyang University, Seoul, June 25–29, 2011).

34 Ibid.

35 For an overview of the historical emergence of the European Union’s migration regime and the apparatus that is used to implement it, see Migreurop, *Atlas of Migration in Europe: a Critical Geography of Migration Policies* (London: New Internationalist Publications, 2013).

36 There are several more specific reasons for this, including the need for un- or de-qualified migrant labor in EU economies, the constraints imposed on liberal democracies

by the human rights regime, and because once established, migratory networks tend to become self-sustaining and relatively autonomous from policies. See Paul De Guchteneire and Antoine Pécoud, “International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility,” *Journal of Borderlands Studies*, vol. 21, no. 1 (2006): 69–86.

37 On this, see also Lorenzo Pezzani, “The Two Lives of the Cap Anamur: Humanitarianism at Sea” in this volume.

38 Mehdi Alioua and Charles Heller, “Transnational Migration, Clandestinity and Globalization–Sub Saharan Trans-migrants in Morocco,” in *New Mobilities Regimes in Art and Social Sciences*, eds. S. Kesselring and G. Vogl (London: Ashgate Publishing, 2013): 175–84.

39 Our understanding of aesthetics is influenced by the work of Jaques Rancière, for whom politics hinges first and foremost on “the partition of the sensible,” which he defines as the distribution and redistribution of times and spaces, places and identities, that way of framing and reframing the visible and the invisible, of telling speech from noise. See Jacques Rancière, *The Politics of Aesthetics*, trans. Gabriel Rockhill (London:

Continuum, 2006).

40 Here too social networks proved central: like many hundreds of people before and after them, the passengers in distress used a satellite phone to contact Father Mussie Zerai, an Eritrean priest living in Rome who has defended migrants crossing through Libya for several years, and whose phone number has circulated by word of mouth.

41 CIVIPOL, *Feasibility study on the control of the European Union's maritime borders*, at 8 and 71, transmitted July 4, 2003 to the European Commission (JHA), document 11490/1/03 (2003), http://www.ifmer.org/assets/documents/files/documents_ifm/st11490-re01en03.pdf.

42 *Ibid.*, 8.

43 This effect is explicitly recognized in the report, which notes that while the majority of clandestine migration by sea uses “focal routes” of which “geography dictates the locations—straits or narrow passages where Schengen countries lie close to countries of transit or migration,” they observe that “when a standard destination is shut off by surveillance and interception measures, attempts to enter tend to shift to another, generally more difficult, destination on a broader and therefore riskier stretch of water” (*Ibid.*,9). The effect has also been widely observed in academic literature—see for example Hein De Haas, “The myth of invasion: The inconvenient realities of migration from Africa to the European Union,” *Third World Quarterly*, vol. 29, no. 17 (2008): 1305–22.

44 Nicholas De Genova, “Spectacles of migrant ‘illegality’: The scene of exclusion, the obscene of inclusion,” in *Ethnic and Racial Studies*, vol. 36, no. 7 (2013): 1180–98. See also Claire Rodier, *Xénophobie business : À quoi servent les contrôles migratoires ?*, (Paris: La découverte, 2012).

45 This was the case, for instance, of Spain. Ruben Andersson, “A Game of Risk: Boat migration and the business of bordering Europe,” *Anthropology Today*, vol. 28, no. 6 (December 2012): 7–11, at 8. This was also the argument mobilized by the Italian government in the trial against Hirsi et al. at the ECHR, as discussed in Matteo Tondini Tondini, “Fishers of Men? The Interception of Migrants in the Mediterranean Sea And Their Return to Libya,” paper published as part of the INEX Research Project, October 2010, <http://www.inexproject.eu/>.

46 The Guidelines on the Treatment of Persons Rescued at Sea (adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments) contain the following provisions: “The government responsible for the SAR region in which survivors were recovered is responsible for providing

a place of safety or ensuring that such a place of safety is provided.” MSC Res. 167(78), ¶ 2.5, Doc. MSC 78/26 /Add.2 (May 20, 2004).

47 See Thomas Gammeltoft-Hansen and Tanja E.Aalberts, “Sovereignty at Sea: The law and politics of saving lives in the Mare Liberum,” *DIIS Working Paper* (2010): 1–31, at 18; and Juan Luis Suárez de Vivero, *Jurisdictional Waters in The Mediterranean and Black Seas*.

48 This dispute is well summarized by Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at Sea,” 21: “Italy has signed the 2004 amendments to the SAR and SOLAS conventions that stipulate that the migrants should be disembarked on the territory of the state within which’s [sic] SAR zone its vessel is identified or intercepted. Malta however, due to the size of its SAR zone, has refused to ratify these amendments for fears that it would impose unrealistic obligations to disembark migrants rescued by other states and private vessels. Malta consequently maintains the interpretation that the coordinating country’s obligation is to disembark rescued persons at the nearest safe port of call. This has led to tensions between Malta and Italy following a series of incidents where migrants were rescued in Malta’s SAR zone yet closer to the Italian islands Lampedusa and Pantelleria. The result has been lengthy stand-off during which migrants have died, and a number of confrontations between Italian and Maltese naval vessels literally trying to block each other from entering its territorial waters and disembark rescued migrants.”

49 Efthymios Papastavridis, “Rescuing ‘Boat People’ in the Mediterranean Sea: The Responsibility of States under the Law of the Sea,” blog of the *European Journal of International Law*, May 31, 2011, <http://www.ejiltalk.org/rescuing-boat-people-in-the-mediterranean-sea-the-responsibility-of-states-under-the-law-of-the-sea/>.

50 See image of analysis of April 4, 2011 Radarsat-1 Synthetic Aperture Radar (SAR) by Rossana Padeletti, GIS and Remote Sensing specialist. Addendum to the Report by Forensic Oceanography on the “left-to-die boat,” June 2013 in this chapter.

51 In his March 17, 1976 lecture, Foucault addressed the form of power over life–biopower–which emerged in the nineteenth century. Foucault argues that in the classical theory of sovereignty, the right of life and death was one of sovereignty’s basic attributes, but was mainly exercised negatively, in the taking of subjects’ lives. The new power over life that emerges in the nineteenth century is much more productive in that it revolves around the care for life and death, and is inflicted less through direct action than through the lack of care. In the process, the right over life and death was radically

transformed: “sovereignty’s old right—to take live or let live—wasn’t replaced, but it came to be complemented by a new right which does not erase the old right but which does penetrate it. [...] It is the power to ‘make’ live and ‘let’ die.” Michel Foucault, *“Society Must Be Defended”: Lectures at the Collège de France, 1975-1976*, trans. David Macey (New York: Picador, 2003), 240–41.

52 The recent work of Jean-Pierre Cassarino is an important reminder that these policies were not only imposed by the EU on Tunisia within highly unequal relations, but that the Ben Ali regime instrumentalized externalization policies to forward its own goals of political and social control. Jean-Pierre Cassarino, “Tunisia’s New Drivers in Migration Governance” (presented at the International Studies Association Conference, San Francisco, CA, April 3–6, 2013).

53 It should be noted that, contrary to the alarmist discourse of EU politicians, those fleeing Libya mostly remained within North Africa, with over 700,000 people fleeing to neighboring countries and only 25,935 people arriving in Italy and 1,530 in Malta. See Office of the UN High Comm’r for Refugees, *Update no 13: Humanitarian Situation in Libya and the Neighbouring Countries*, March 24, 2011, <http://www.unhcr.org/>.

54 Office of the UN High Comm’r for Refugees, *Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011*, briefing notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html>.

55 Vice Admiral Rinaldo Veri, Commander of the NATO Maritime Command in Naples responsible for the embargo enforcement, stated on April 4, 2011 that “anyone who believes they can sail through NATO’s layers of surveillance and interdiction needs to think again.”

NATO, “VADM Veri holds Press Conference aboard ITS Etna,” April 4, 2011, <http://www.jfncaples.nato.int/page167503642.aspx>.

56 For the initial press release by the French NGO GISTI (Groupe d’information et de soutien des immigrés), which made the explicit connection between surveillance and responsibility, see GISTI, “Le Gisti va déposer plainte contre l’OTAN, l’Union européenne et les pays de la coalition en opération en Libye,” June 9, 2011, <http://www.gisti.org/spip.php?article2304>.

57 The report can be found at <http://www.forensic-architecture.org/publications/report-on-the-left-to-die-boat/>. See also the “Case: ‘Left-to-Die Boat’” investigation text in this volume.

58 See Lorenzo Pezzani, “The Two Lives of the *Cap Anamur*: Humanitarianism at Sea,” in the present volume.

- 59** See Nicholas De Genova, “Spectacles of migrant ‘illegality.’”
- 60** We further elaborate this strategy of the “disobedient gaze” in Charles Heller and Lorenzo Pezzani, “A disobedient gaze: strategic interventions in the knowledge(s) of maritime borders,” *Postcolonial Studies*, vol. 16, issue 3, special issue on “Migrations and Militant Research,” eds. Martina Tazzioli and Glenda Garelli (2013): 289–98.
- 61** See the “Case: ‘Left-to-Die Boat’” investigation summary in the present volume.
- 62** For an exploration of this web of relations, see Laura Kurgan, *Close Up at a Distance: Mapping, Technology and Politics* (Zone Books, New York, 2013).
- 63** For further details, see the “Case: ‘Left-to-Die Boat’” investigation summary in the present volume.
- 64** Bruno Latour, “Anthropocene and the Globe Theatre,” lecture 4 of the 2013 Gifford Lectures, University of Edinburgh, February 18–28, 2013.
- 65** Emiliano Bos and Paul Nicol, dirs., *Mare Deserto* (Switzerland, RSI, January 24, 2012.), 52 min., <http://la1.rsi.ch/falo/welcome.cfm?idg=0&ids=0&idc=42593>; and Stefano Liberti and Andrea Segre, dirs., *Mare Chiuso* (Italy, Zalab, 2012), 60 min.
- 66** Eyal Weizman, *Forensic Architecture: Notes from Fields and Forums* (Ostfildern: Hatje Cantz, 2012), 6.
- 67** Maribel Casas-Cortes, Sebastian Cobarrubias and John Pickles, “Re-bordering the neighbourhood: Europe’s emerging geographies of non-accession integration,” *European Urban and Regional Studies*, vol. 20, no. 1 (2013): 37–58.
- 68** Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Durham: Duke University Press, 2013), 174.
- 69** Following the “left-to-die boat” case, we have continued to collaborate with the migrants’ rights movement through different investigations and by developing a new online and participatory mapping platform, “WatchTheMed,” www.watchthemed.net.
- 70** Casas-Cortes, Cobarrubias, and Pickles, “Re-bordering the neighbourhood.”
- 71** Multiplicity/Stefano Boeri and John Palmesino, “Materials for a research programme on contemporary flows through the Mediterranean,” *Archis* (September 2002).

CHAPTER FOUR
REPORT ON THE “LEFT-TO-DIE BOAT”

INTRODUCTION

While from 1988 to March 2012 there were 13,417 documented deaths at the maritime borders of the EU, according to the Office of the United Nations High Commissioner for Refugees (UNHCR), 2011 was the “deadliest year” in the Mediterranean since the organization began recording migration statistics for the region in 2006.¹ The UNHCR estimated that over 1,500 migrants died while fleeing Libya during the initial stages of the conflict that began in February 2011 while a wave of uprisings, known collectively as the Arab Spring, enveloped the Middle East.

Most notable is the fact that the loss of lives at sea in 2011 occurred in the context of the heightened concentration of Coalition/NATO assets in the area enforcing a maritime embargo of Libya during the conflict. This places these deaths squarely in the most highly surveyed area of sea in the entire world.

Among the many vessels that attempted the journey, one particular boat was covered extensively in the international press. Coming to be known as the “left-to-die boat,” the case involved the journey of 72 sub-Saharan migrants fleeing Tripoli by boat on the morning of March 27, 2011. After traveling about halfway to the Italian island of Lampedusa during their first day at sea, the vessel ran out of fuel and subsequently drifted for the following 14 days without food or water until landing back on the Libyan coast. Only 9 of the passengers ultimately survived. In interviews following the event the survivors recounted a series of interactions they had with others while at sea. This included a military aircraft that flew over them, a distress call they placed via satellite telephone, two encounters with a military helicopter and fishing vessels, and an encounter with a military ship. Moreover, the Italian and Maltese Maritime Rescue Coordination Centers, as well as NATO forces present in the area, were informed of the distress of the boat and of its location, and had the technical and logistical ability to assist it. Despite the legal obligation to render assistance to people in distress at sea enshrined in several international conventions,² none of these actors intervened in a way that could have averted the tragic fate of the people on the boat. An NGO coalition was formed to demand accountability for these deaths that were allowed to occur despite heightened surveillance and for those of the “left-to-die boat” case in particular.³

METHODOLOGY

In an effort to understand the events that led to this tragedy, we undertook a report, with the aim of providing a spatio-temporal reconstruction of the 15-day period between March 27, 2011, when the vessel left the Port of Tripoli, and April 10, 2011, when it washed ashore at Ziltan.⁴ In this effort, we attempted to account both for the events as they were experienced by the passengers and for the conduct of the actors who were either in direct contact with the passengers, in the vicinity of their vessel, or informed of their distress. Because of the complex legal structure of the Mediterranean and the high number of actors operating there during the time of the event in question, creating a coherent spatial picture was critical for determining the degree of involvement of each of these parties.

A comprehensive textual analysis was undertaken in concert with the production of a series of visualizations, diagrams, and figures. This work was an exercise in the culling of disparate data (geospatial, meteorological, testimonial, military, and other) that was ultimately recombined in an effort to assemble a coherent spatial narrative of the chain of events. The diversity of sources and types of data required the report to draw upon the methodologies and expertise of a variety of disciplines, among them remote sensing, cinematography, architecture, and oceanography. The result is a synthetic spatial product that leverages increasing technological interoperability and cross-disciplinary collaboration to help address what was a humanitarian and legal failure.

GATHERING THE INITIAL DATA

Before focusing specifically on the “left-to-die boat” case, extensive fieldwork was conducted in Southern Italy to build an overall understanding of the conditions in which maritime crossings were taking place during this period. 68 migrants who had recently crossed the Mediterranean were interviewed, as well as representatives from the Coast Guard, immigration lawyers, and fishermen operating in the Sicily Channel.

Following the decision of the NGO coalition to focus its demand for accountability on the “left-to-die boat” case, specific information on the case was initially acquired through interviews—conducted by ourselves, human rights workers, and journalists—with the survivors and other actors involved. In the interview we conducted with Dan Haile Gebre, one of the survivors, we tried to depart from formats of witnessing normally associated with humanitarian organizations. Rather than placing the emphasis on the subjective dimension of his experience, the interview methods we employed aimed at assisting him in the recollection of any precise element that could support the reconstruction of

the spatio-temporal coordinates of the event and the identification of the various vessels and aircrafts that the migrants encountered while at sea. To this end, we gave Dan Haile Gebre a notepad and a felt-tip pen, asking him to draw or write any element that he made reference to. We also asked for temporal points of reference throughout the narrative of the events, inquiring for instance whether events had taken place at dawn, in the daytime, at sunset, or at night, and trying to reconstruct the passage of time by making informed guesses about fuel consumption, average speed of the boat, and so forth. Finally, we inquired about information such as the color and shape of the encountered vessels and aircraft, the presence of flags or writings on their hull, and the language spoken by the crew. To support this process, we presented him with pictures of maritime assets that were present in the area at the time of the events.

Elements of information were also extracted from news reports, as well as publicly available official documents concerning the incident. In this respect, an important source of information was the parallel and complementary inquiry led by Dutch Senator Tineke Strik on behalf of the Parliamentary Assembly of the Council of Europe which resulted in a report entitled “Lives lost in the Mediterranean Sea: who is responsible?”⁵

DETERMINING THE TRAJECTORY OF THE MIGRANTS’ VESSEL

Based on these initial elements, we began writing the report with the aim of determining the location of the migrants’ vessel throughout its 15 day drift at sea. To this effect, all available information was geolocated. This information was collected in a variety of formats and translated into latitude/longitude and mapped in relation to a timeline of events. This initial set of points, which documented key information such as encounters with other vessels and point of drift, provided the foundation for all subsequent analyses. With this main timeline in place, strategies were explored to model the trajectory of the boat from the time it ran out of fuel until when it finally landed back on shore, south of Tripoli. A conversation was begun with oceanographer Richard Limeburner of Woods Hole Oceanographic Institute, who had experience modeling the trajectory of objects in the open ocean based on subsurface currents and wind. Working with Limeburner, a drift model was created that takes known components of the case (i.e. the point of drift, and the dimensions and type of vessel used by migrants) and projects its trajectory over the ensuing 14 days of drift based on available meteorological data. (See figures 16 -18 of the “Left-To-Die Boat” Report). The drift model allowed us to offer a complete map of the vessel’s trajectory (with a certain stated margin of error) during the period in question.



Images taken from the video of the interview with survivor Daniel Haile Gebre conducted by Lorenzo Pezzani and Charles Heller, Milan, December 22, 2011.

(Top). In this still, Haile Gebre writes the text that he saw on the side of the helicopter. It reads “RESCUE ARMY,” although he is not sure about the presence of the first word (“RESCUE”).

(Middle). Image of the United Kingdom Army Air Corps West- land Lynx, which Haile Gebre recognizes as having a similar color to the helicopter that hovered over the migrants’ boat.

(Bottom). When shown the image of the Italian ship Borsini, he recognizes it as having the same shape as that of the ship the migrants encountered.

ASSESSING MILITARY PRESENCE

The analysis then turned to assessing where and when military assets might have encountered or been in the vicinity of the vessel. The first task in this respect was to determine the overall maritime laydown as well as its spatial distribution. In order to do that, we analyzed several documents, among which were various maps released by the US Department of Defense at news briefings showing the maritime laydown of 38 naval assets, press releases and declarations from NATO officials, and the online journals of some of the ships involved in the military operations. (See ANNEX B.3 of “Left-To-Die Boat” Report). Whilst these sources provided an overall image of a congested stretch of sea, they did not help in determining the location of specific assets at certain times and locations. To achieve a more precise picture, we resorted to satellite imagery. (See figures 21- 26 of the “Left-To-Die Boat” Report). Optical satellite imagery, however, was not useful for this application due to its very limited coverage of the open ocean. Alternative remote sensing technologies were explored and, ultimately, a satellite-mounted sensor known as Synthetic Aperture Radar (SAR) was utilized. Not only is SAR uniquely suited for vessel detection, it also generally offers a greater degree of coverage over the open ocean—particularly the Mediterranean—than optical satellite imagery, since it is used by states for monitoring diverse activities, including those of terrorists and irregular migration towards Southern Europe. For the purposes of this case, we inverted this more common application of the technology in order to try to monitor the activities of naval assets in the region. A survey was conducted to assess public availability of SAR data for the period and locations in question and a series of relevant SAR images were acquired for analysis. Each tile provides documentation of vessel locations in the form of radar returns. When viewed in relation to the drift model, the SAR tiles provide a snapshot of maritime activity in the vicinity of the drifting vessel at specific moments in its trajectory.

While it is not possible to identify the specific identity of a ship based on SAR return alone, it is possible to use this data to draw some conclusions regarding the size of the ship. Since the resolution of available SAR data can only trace ships of 50 meters and above, what ultimately emerges from this analysis—circumstantial though it may be—is an image of a number of very large vessels in and around the area where the migrants’ boat was adrift. In the context of the maritime embargo that was in full effect at the time, and given that normal commercial shipping activity was limited, the question ultimately becomes: are the radar returns showing the position of military assets? And if so, to whom do they belong?

In response to these questions, informed guesses regarding the specific identity of the ships and helicopters encountered by the migrants were made on the basis of the description provided by the survivors and information gathered from official military documents and statements, news reports, and plane-and ship-spotters websites. (see Figures 11-15 and 19-20 of the “Left-To-Die Boat” Report).

ASSESSING AVAILABLE INFORMATION ON THE MIGRANTS’ DISTRESS

Finally, the analysis turned to assessing, firstly, which actors were initially informed of the migrants’ distress and, secondly, whether military actors operating in the NATO maritime surveillance area might have had the technical capability to detect the migrants’ boat while it was drifting. This evaluation was important because international law obliges seafarers to rescue anyone in distress at sea if informed of their distress.⁶

In order to answer the first question, we reconstructed the way in which information about the distress of this boat circulated among the various actors involved. Firstly, we conducted an interview with Father Mussie Zerai, the Eritrean priest who had initially received the migrants’ distress call and had subsequently called several state agencies. We also consulted official statements (made at press conferences and in correspondence between Senator Tineke Strik and government officials) referring to the communication between parties concerning the migrants in distress. Finally, we inquired into the technical characteristics of the maritime distress signals that were sent out by the Italian Maritime Rescue Coordination Center and mapped the extension of their reach. (see Figures 8-10 of the “Left-To-Die Boat” Report). Based on these elements, we determined that all vessels in the area—including naval assets under NATO command and those operating under their respective national commands—should have been informed of the position of the migrants’ vessel and the distress of its passengers.

With regard to the second question, we analyzed a vast quantity of military statements and documents relating to the remote sensing capacity in the area. In addition to this, we attempted to determine the spatial extent of the remote sensing technologies onboard specific assets and found that aerial and naval assets deployed at the time had previously been capable of detecting small rubber boats similar to that used by the migrants. (see Figures 29-32 of the “Left-To-Die Boat” Report). This allowed us to conclude that the states participating in the military intervention had the means to detect the drifting boat, and that detecting such an unidentified vessel with anomalous behavior was precisely the task assigned to numerous assets monitoring the embargo area.

SUMMARY OF RESULTS

Our report sought to combine qualitative and quantitative information into a single analysis so as to provide as comprehensive a picture of the chain of events as possible and to assess the degree of involvement of all parties implicated. To this end, testimony and geospatial data were combined and cross-referenced, official documents and news reports analyzed, and the technical characteristics of maritime distress signals and satellite phone calls examined. The result is a synthetic approach to the model of the human rights report that draws upon varied and disparate forms of evidence.

While we were unable to determine the identity of the helicopter and vessel that entered into direct contact with the migrants in distress, we were able to confirm that the account of the survivors was highly accurate. We established with certainty that the Italian and Maltese Maritime Rescue Coordination Centers, as well as NATO command, were informed of the location and distress of the migrants, and that there were several naval assets in the vicinity of the boat that had the ability to detect and assist it. None of these actors intervened in a way that could have averted the 63 deaths.

LEGAL CHALLENGES

The ultimate destination of this report has been a series of legal cases regarding non-assistance to people in distress at sea led by a coalition of NGOs. While it has been deemed impossible to bring NATO to court for this case due to its status of immunity, the legal strategy has been to file different cases in the national courts of each of the states participating in the military operations against Libya. A complaint “against persons unknown” was initially lodged before the section of the Paris High Court (Tribunal de grande instance) specializing in military cases in April 2012, after a similar procedure in Italy. After the decision of the Paris Prosecutor’s Office to take no action on this initial complaint, the survivors and NGOs initiated proceedings in France and Spain as civil parties. Both these actions have been dismissed and appeals have been filed against these decisions. A complaint was further launched in Belgium. Finally, Freedom of Information requests have been submitted in Canada, the US, and the UK. Should these states fail to investigate the incident comprehensively, the case may be brought to the European Court of Human Rights.

OUTCOMES

In line with the practice of strategic litigation, beyond the goal of holding accountable those individuals, states, and organizations that failed to assist the people onboard the

“left-to-die boat,” the broader aim of the investigation has been to draw greater attention to the systemic and long-standing issue of migrant deaths at sea in the Mediterranean and the impunity that surrounds the perpetrators of human rights violations committed against migrants at sea.

Whereas the report has been primarily directed towards the legal sphere, its contents have circulated in a much wider arena. In particular, Human Rights Watch has sent several information requests to the actors involved in this case based on the evidence we generated, and some of our visualizations were included in the above-mentioned report by the Dutch Senator Tineke Strik. The analysis, maps, and images generated by our report have also been widely circulated within the international press.

Finally, an additional outcome of the report has been the attempt by ourselves and others to replicate the use of such innovative methodologies in relation to other incidents involving the deaths of migrants and the violation of their rights at sea. In particular, Forensic Oceanography has collaborated with a network of NGOs to create “WatchTheMed,” an online and participatory mapping platform, so as to enable the migrants’ rights movement to exercise a civilian right to look at the sea.⁷

NOTES

INTRODUCTION

1 UNHCR, “Mediterranean takes record as most deadly 4 stretch of water for refugees and migrants in 2011,” Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html>.

2 The main text framing this obligation is the United Nations Convention on the Law of the Sea, December 10, 1982, 1833 U.N.T.S. 397 (UNCLOS), which states in Article 98 (1): “Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.”

3 The list of organizations belonging to this coalition includes: The Aire Centre, Agenzia Habeshia, Associazione Ricreativa e Culturale Italiana (ARCI), Associazione per gli Studi Giuridici sull’Immigrazione (ASGI), Boats4People, Canadian Centre for International Justice, Coordination et initiatives pour réfugiés et immigrés (Cisé), Fédération internationale des ligues des droits de l’Homme (FIDH), Groupe d’information et de soutien des immigrés (GISTI), Ligue belge des droits de l’Homme (LDH), Ligue française des droits de l’Homme (LDH), Migreurop, Progress Lawyers Network, Réseau euro-méditerranéen des droits de l’Homme (REMDH), and Unione Forense per la Tutela dei Diritti Umani (UFTDU).

4 For the full report, see <http://www.forensic-architecture.org/publications/report-on-the-left-to-die-boat/>.

5 Parliamentary Assembly, Council of Europe, “Lives lost in the Mediterranean Sea: who is responsible?” March 29, 2012, [http://www.assembly.coe.int / CommitteeDocs/2012/20120329_mig_RPT.EN.pdf](http://www.assembly.coe.int/CommitteeDocs/2012/20120329_mig_RPT.EN.pdf).

6 See Article 98 (1) of the UNCLOS quoted in note 2 above.

7 <http://www.watchthemed.net>.

REPORT

Forensic Oceanography

Report on the “*Left-To-Die Boat*”

Charles Heller, Lorenzo Pezzani and Situ Studio

Part of the European Research Council project “Forensic Architecture”
Centre for Research Architecture, Goldsmiths, University of London.
www.forensic-architecture.org

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i. Annexes

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- B.1 Distress call launched by Rome MRCC on 27 March 2011 at 18:54 GMT on the Inmarsat-C Gateway Enhanced Group Call (EGC).
- B.2 Hydrolant Navigational Warning sent out through the World Wide Navigational Warning Service (WWNWS) on 28 March 2011 at 04:06 GMT.
- B.3 Slide presented by Vice Admiral Gortney at a US Department of Defence news briefing on 24 March 2011. The image shows the "US & Coalition Maritime Forces Laydown".
- B.4 NATO Maritime Surveillance Area (MSA) between 23 March and 8 April 2011 in the frame of the arms embargo (Operation Unified Protector).
- B.5 Slide presented by Vice Admiral Gortney at a US Department of Defence news briefing on 20 March 2011. The image shows cruise missiles strikes launched from ships and submarines in the Mediterranean on 19 and 20 March 2011.
- B.6 Letter sent on 28 November 2011 by Gil Arias, Deputy Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), in reply to a request of information sent by a colation of NGOs.
- B.7 Email sent by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO Headquarters) on 3 October 2011, in response to an email by journalist Emiliano Bos. This document was quoted in Emiliano Bos and Paul Nicol's documentary "Mare deserto" produced for the RSI and broadcasted on 24 January 2012.
- B.8 Letter from NATO to the Council of Europe dated 8 February 2012.

ANNEX C: Interviews with the survivors (note that the interviews with the migrants are listed here only as references but will not be made public):

- C.1 Interview with Dan Haile Gebre, conducted by Lorenzo Pezzani and filmed by Charles Heller in Milan on 22 December 2011.
- C.2 Interview with Abu Kurke Kebato conducted on the phone by Emiliano Bos in April 2011, while the former was still in Libya.
- C.3 Second interview with Abu Kurke Kebato conducted by Emiliano Bos on 2 and 3 August 2011 in San Giorgio Lucano (MT), Italy.
- C.4 Interview with Elias Mohammed Kadi conducted by Michel Toubiana, member of REMDH executive committee and honorary president of the League for Human Rights (France), on 6 September 2011 at the UNHRC camp in Choucha, Tunisia.

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C.5 Interview with Elias Mohammed Kadi conducted by Emiliano Bos between 17 and 19 August at the UNHRC camp in Choucha, Tunisia.

C.6 Interview with Filmon Weldemichail Teklegergis conducted by Emiliano Bos on 8 and 9 October 2011 in Larvik, Norway.

C.7 Interview with Bilal Yacoub Idris conducted by Emiliano Bos on 6 September 2011 in Rome.

C.8 Interview with Mohammd Ahmed Ibrhaim conducted by Emiliano Bos between 17 and 19 August at the UNHRC camp in Choucha, Tunisia.

ii. Acronyms and Abbreviations

ARCI	Associazione Ricreativa e Culturale Italiana
CIRÉ	Coordination et Initiatives pour Réfugiés et Etrangers
ECG	Enhanced Group Call
FIDH	International Federation for Human Rights / Fédération internationale des ligues des droits de l'Homme
GMDSS	Global Maritime Distress Safety System
GISTI	Groupe d'information et de soutien des immigrés
HRW	Human Rights Watch
IOM	International Organization for Migration
LDH	Ligue des droits de l'homme / Human Rights League
MRCC	Maritime Rescue Coordination Centre
MSA	Maritime Surveillance Area
MSF	Médecins Sans Frontières / Doctors Without Borders
NATO	North Atlantic Treaty Organization
PACE	Parliamentary Assembly of the Council of Europe
REMDH	Réseau Euro-Méditerranéen des Droits de l'Homme / Euro-Mediterranean Human Rights Network
RMP	Recognised Maritime Picture
RSI	Radiotelevisione svizzera
SAR	Synthetic Aperture Radar
SAR zone	Search and Rescue zone
SOLAS	International Convention for the Safety of Life at Sea
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

iii. About the Authors

This report was prepared in the framework of “Forensic Oceanography”, a project by Charles Heller and Lorenzo Pezzani, both PhD students at the Centre for Research Architecture, Goldsmiths, University of London, as well as by SITU Studio, a creative practice in Brooklyn, New York committed to spatial investigations in a wide range of scales and media. Additional technical expertise was provided by Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at Woods Hole Oceanographic Institution and Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing, who was recruited for us by GIScorps. Ayesha Ahmed, a Postdoctoral Fellow of the Centre for Research Architecture, Goldsmiths, University of London also contributed to the research informing this report.

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Forensic Architecture

Goldsmiths
UNIVERSITY OF LONDON



SITU STUDIO

iv. Acknowledgements

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1. INTRODUCTION

1.1 EXECUTIVE SUMMARY

The UNHCR defined 2011 as the “deadliest year” in the Mediterranean since the organisation began recording these statistics in 2006, estimating that over 1,500 migrants died while fleeing Libya during the initial stages of the violent conflict.¹ This number is extremely high in comparison to the 13,417 deaths documented from 1988 to March 2012 at the maritime borders of the EU, and the 6,226 deaths occurred solely in the Sicily Channel during the same period.² Furthermore, the loss of lives at sea in 2011 occurred despite the significant naval and aerial presence in the area due to the military intervention in Libya launched by an international coalition of states and NATO (hereafter referred to as “participating states/NATO”) under the United Nations Security Council Resolution 1973.³

One particular event, reported by the international press, provoked widespread public outrage⁴. In the case of what is now referred to as the “left-to-die boat”⁵, 72 migrants fleeing Tripoli by boat on the early morning of March 27 2011 ran out of fuel and were left to drift for 14 days until they landed back on the Libyan coast. With no water or food on-board, only nine of the migrants survived. In several interviews, these survivors recounted the various points of contacts they had with the external world during this ordeal. This included describing the aircraft that flew over them, the distress call they sent out via satellite telephone and their visual sightings of a military helicopter which provided a few packets of biscuits and bottles of water and a military ship which failed to provide any assistance whatsoever. The events, as recounted by these survivors, appeared to constitute a severe violation of the legal obligation to provide assistance to any person in distress at sea, an obligation sanctioned by several international conventions.

In response to this incident, several initiatives were undertaken to shed light on these deaths and demand accountability for them. On 10 May 2011, Human Rights Watch demanded that NATO and its member countries conduct a full investigation of the case.⁶ On 9 June 2011, the French NGO GISTI sent out a public call which led to the formation of a coalition of NGOs (constituted primarily by CIRÉ, FIDH, GISTI, LDH, and Migreurop) that sought accountability for the non-assistance of migrants at sea during and in the aftermath of Arab Spring in general and in the case of the “left-to-die boat” in particular.⁷ The Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE) appointed the Dutch Senator Tineke Strik to prepare an in-depth report on the deaths that have occurred in the Mediterranean in 2011. Her report titled “Lives lost in the Mediterranean Sea: who is responsible?” was presented in Brussels on 29 March 2012.

The enclosed report focuses on the spatial analysis of data surrounding the case of the “left-to-die boat” and includes a series of visualizations that supplement the written reports produced by the organisations and institutions mentioned above. In order to generate our analysis and report we employed a wide range of digital

1 UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”, Briefing Notes, 31 January 2012. URL: <http://www.unhcr.org/4f27e01f9.html> (All websites accessed in March 2012).

2 See the data gathered by Fortress Europe, one of the leading sources concerning the documentation of migrants’ deaths within and at the border of the EU: <http://fortresseurope.blogspot.com/p/bortezza-europa.html>.

3 We discuss our use of the terminology “participating states/NATO” in section 3.2.1.

4 Several newspapers reported the news of the deaths and various journalists conducted specific investigations on this case. Among these we would like to mention: Stefano Liberti, “La NATO dov’era?”, Il Manifesto, 14 April 2011. URL: <http://www.ilmanifesto.it/approfondimenti/immigrazione/naufragio-63-morti-risposta-nato/immigrazione/naufragio-63-morti/>; Emiliano Bos, “Quell’elicottero che non è tornato a salvarci”, RSI, 15 April 2011. URL: http://info.rsi.ch/home/channels/informazione/info_on_line/2011/04/15--Lelicottero-che-non-tornato-a-; Jack Shenker, “Aircraft carrier left us to die, say migrants”, 8 May 2011. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>. Moreover, Emiliano Bos and Paul Nicol conducted the in-depth documentary investigation titled “Mare Deserto” on behalf of the Swiss national television which was broadcasted on 24 January 2012. URL: <http://la1.rsi.ch/falo/welcome.cfm?idg=0&ids=0&idc=42593>.

5 To our knowledge this particular designation was first introduced by the Dutch Senator Tineke Strik in several communications relating to her inquiry. See for example: Parliamentary Assembly of the Council of Europe, “The left-to-die boat”: there should be no gaps in the division of responsibility for search and rescue”, 16 December 2011. URL: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=7279&L=2

6 Human Rights Watch, “NATO: Investigate Fatal Boat Episode”, 10 May 2011. URL: www.hrw.org/news/2011/05/10/nato-investigate-fatal-boat-episode

7 GISTI, “Le Gisti va déposer plainte contre l’OTAN, l’Union européenne et les pays de la coalition en opération en Libye”, 9 June 2011. URL: <http://www.gisti.org/spip.php?article2304>.

mapping and modelling technologies, which included the use of Synthetic Aperture Radar (SAR) imagery, geospatial mapping, and drift modelling. In combining these technologies to elucidate the chain of events of this particular case we also suggest new ways in which these emergent technologies could be applied to the field of international law and human rights advocacy.

In collecting, analysing, and synthesising data, reports, and human testimonies related to the case, this report reconstructs as accurately as possible what happened to this vessel. It ultimately aims to answer the following question: what happened to the “left-to-die boat” and who was involved in the events leading to the deaths of 63 migrants? While some differences between oral testimonies occur on specific points and while there are some instances in which more data would have been desirable, overall a coherent picture emerges from the synthesis of these disparate bodies of information, a picture that demonstrates how the migrants were lead to a slow death despite repeated contacts with several parties. An abbreviated summary of key events is outlined as follows (fig. 2):

- In the early morning of 27 March 2011, between 00:00 and 02:00 GMT,⁸ a Zodiac-style rubber boat, approximately 10 metres in length with 72 people on-board left the port next to the Medina (Old City) of Tripoli, Libya and headed in the direction of the island of Lampedusa in Southern Italy.
- At 14:55 GMT an aircraft flew over the migrants’ vessel notifying the Italian Maritime Rescue and Coordination Centre (MRCC) of its sighting. This fly-over generated a photograph and provided the exact location of the vessel (fig. 2A).
- At the end of the afternoon of the same day, with little fuel and almost no food and water left and no sight of land, the migrants called Father Zerai, an Eritrean priest based in Rome, by satellite phone to ask for help. After receiving the call, Father Zerai informed of the situation Rome MRCC, which after obtaining the GPS location of the boat at 16:52 GMT from the satellite provider (fig. 2B), informed their Maltese counterparts, NATO’s Naples Maritime HQ and sent out a distress signal to all ships in the area.
- Two to three hours after having placed the call and while the migrants’ vessel continued sailing in the direction of Lampedusa, it was flown over by a military helicopter, which bore the writing “ARMY” or “RESCUE ARMY” on its side. Despite the migrants’ clearly identifiable gestures for help - waving, holding the babies on board at arms length, showing the empty tanks of petrol -, the helicopter hovered over the boat but left without providing any immediate assistance. The migrants now believed they would soon be saved, and the “captain” therefore threw overboard the satellite phone, which had failing batteries and could have been used as evidence of his involvement in a smuggling network. The last GPS position registered by the satellite provider at 19:08 GMT (fig. 2C) thus corresponds in all likelihood to the location of the first helicopter encounter.
- After 4-5 hours of waiting, floating in approximately the same position and with no sign of rescue, the migrants decided to ask for help from some fishermen, whose boats they noticed around them. They attempted to reach those boats but the fishermen too left without providing any assistance. Shortly afterwards, and still in approximately the same position, the same helicopter came back. This time, military personnel on-board threw down 8 bottles of water and a few packets of biscuits before leaving again.

⁸ Throughout this report times will be indicated in Greenwich Mean Time (GMT), the convention predominantly used by Rome MRCC in its official communications. However when quoting migrant testimonies local times are used, which at the time of events for both Italy and Libya was GMT plus two hours. For the purposes of this report GMT is considered as equivalent to Coordinated Universal Time or UTC.

- Following this second helicopter visit, the migrants were shown the direction of Lampedusa by yet another fishing vessel. Between 00:00 and 01:00 GMT on 28 March 2011, they resumed movement in this direction for 5-8 hours until they ran out of fuel in the early morning (fig. 2D). From this moment, until they landed back on the Libyan coast, their boat drifted on the open sea without any use of its motor.
- After several days of drifting, between the 3rd and 4th of April, the migrants encountered a military ship with one or two helicopters on its deck (fig. 2E). The migrants got as close as 10 metres to this ship in their plea for help. The crew on the deck of the military ship did not provide assistance and only took photos before departing.
- The migrants' vessel continued to drift until it eventually landed back on the coast of Libya, near Zlitan, on April 10th. In total, the boat drifted for 14 days. Of the 72 people who departed from Tripoli only 11 survived. One woman died shortly after arriving ashore, while the others were caught and imprisoned by Libyan soldiers. During the imprisonment another person died. In total nine people survived the journey and 63 perished.

While the involvement of all actors in these dramatic events will be discussed in greater detail in chapter three, the reconstruction of the events will clearly demonstrate that the actions or inactions of different actors contributed to the death of 63 migrants. At least one patrol aircraft, one helicopter, two fishing boats, and a military ship, whose identities still remain unknown, allegedly had direct contact with the boat. Moreover, the Italian and Maltese MRCC as well as participating states/NATO forces present in the area were informed of the distress of the boat and of its location, and had the technical and logistical ability to assist it. Despite all this, none of these actors intervened in a way that could have averted the tragic fate of the people on the boat.

In her report "Lives lost in the Mediterranean Sea: who is responsible?" Senator Tineke Strik has spoken of a "catalogue of failures" that led to the loss of "many opportunities for saving the lives of the persons on board the boat."⁹ Furthermore, these deaths occurred in an area that was under strict surveillance by NATO to enforce an arms embargo as provided for by UNSCR 1973 and where at least 38 naval assets were present at some time during the event. While this report focuses on the "left-to-die boat" case specifically, it should be recalled once again that this is only one amongst the many incidents that have caused the death of more than 13,417 deaths at the maritime borders of the EU over the last 20 years.¹⁰

1.2 METHODOLOGY

This report is the first outcome of an investigation that began in the summer of 2011. Between 4 to 14 August 2011, we conducted a fact-finding mission in Southern Italy to inquire into the reasons that had caused several hundred deaths in the Mediterranean. During this mission we conducted nineteen interviews in the provinces of Bari, Brindisi and Palermo with 68 migrants who had recently crossed the Mediterranean. In Lampedusa we had meetings with officials of the Italian Coast Guard and Border Police (Guardia di Finanza), MSF personnel, IOM and UNHCR representatives. In Palermo we interviewed Fulvio Vassallo Paleologo, a lawyer who specialises in migration law. These interviews were fundamental to building an overall understanding of the more general conditions in which the crossings were taking place.

Among the several cases of deaths and claims of non-assistance around which we gathered video testimonials or of which we heard, we decided to concentrate on the "left-to-die boat" case. During our investigation into

⁹ Senator Tineke Strik, European Parliamentary Assembly, Committee on Migration, Refugees and Displaced Persons, "Lives lost in the Mediterranean Sea: who is responsible?", 29 March 2011, p.1. URL: http://assembly.coe.int/CommitteeDocs/2012/20120329_mig_RPT.EN.pdf

¹⁰ See the data gathered by Fortress Europe, one of the leading sources concerning the documentation of migrants' deaths within and at the border of the EU: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>

this case, which took place between October 2011 and March 2012, we were able to gather several pieces of evidence as well as analyse a significant amount of material available in the public domain. These elements form the basis of the in-depth visual and spatial analysis that constitutes the core of this report and which has allowed us to create a synthetic picture built upon corroborating and cross-referencing disparate sources and pieces of information. Because of the complex legal structure of the Mediterranean and the numerous actors operating there during the time of the event in question, creating a coherent spatial picture based upon the data gathered is critical to determining the degree of involvement of each of these parties.

In establishing our findings, we relied primarily and whenever possible on information gathered first-hand or whose sources could be directly verified. When, in certain cases, this has not been possible, it has been clearly indicated.

For the purposes of this report, we rely primarily on the following types of sources and information-gathering methods:

1. Interviews with witnesses and other persons having relevant information, conducted either by us or by Swiss journalist Emiliano Bos, with whom we have had direct contact.

Throughout this document, we will refer to specific points within witnesses' interviews by quoting the initials of the interviewee followed by a number that refers to line of the interview where the quote is taken from. If more than one interview is available, the second interview is differentiated from the first one by inserting the number "2" after the initials.

It should be noted at the outset that while the testimonies of the survivors are occasionally divergent in terms of the timing of events they are remarkably consistent in terms of the sequence of events. The temporal or factual inconsistencies – as minimal as they are – must be understood in relation to the volatile context of the war that they were fleeing, the lack of spatio-temporal references in the open sea and the cumulative effects of having endured over two weeks with little to no food or fresh water and of drinking sea water.¹¹

Throughout the reconstruction, we will use survivor Dan Haile Gebre's narrative as a main point of reference while corroborating or adding to his testimony by comparing it to interviews conducted with other survivors - Abu Kurke Kebato, Elias Mohammed Kadi, Filmon Weldemichail Teklegergis, Bilal Yacoub Idris, and Mohamed Ahmed Ibrahim.

Dan Haile Gebre's testimony is foregrounded as the interview we conducted with him is, to our knowledge, one of the most detailed that has been carried out with any of the survivors.¹² Secondly, unlike several of the other survivors interviewed, he can speak English proficiently. This allowed him to communicate with us very precisely and clearly. Thirdly, his version of the events is the most consistent with the other sources of data described below.

Abu Kurke Kebato recalls the same chain of events with a sometimes striking degree of precision.¹³ Some of the events that Dan Haile Gebre remembers, such as the encounter with several fishermen's boats and the second visit of the helicopter, are not mentioned by Abu Kurke Kebato, who nevertheless

¹¹ Senator Tineke Strik refers to the following effects of drinking seawater: excessive thirst, increased heart rate, headaches, dizziness, and nausea, vomiting, brain damage, impairment of judgement, and dehydration. See MarineInsight, "10 Effects of Drinking Salt Water of the Sea", 20 September 2011. URL: <http://www.marineinsight.com/misc/marine-safety/10-effects-of-drinking-salt-water-of-the-sea/>

¹² DHG: interview conducted by Lorenzo Pezzani and filmed by Charles Heller in Milan on 22 December 2011. Father Zerai was present and provided additional translation from Tigrine.

¹³ AKK: interview conducted on the phone by Emiliano Bos in April 2011. Audio recording available at: <http://la1.rsi.ch/falo/welcome.cfm?idg=0&ids=0&idc=42583>

did not contradict them.

Elias Mohammed Kadi mentions the same events recalled by Dan Haile Gebre (the encounter with several fishermen's boats, with a helicopter and a military ship), but the sequence of events is not always consistent between their two narratives.¹⁴

Finally, the testimonies of Filmon Weldemichail Teklegerkis, Bilal Yacoub Idris and Mohamed Ahmed Ibrahim, which we could analyse only in the form of written and translated transcripts, have been used as references to corroborate or disprove some specific points, but have not been the object of as detailed an analysis as the other testimonies.¹⁵

Another important interview we conducted was with Father Zerai, who received the migrants' first distress call via satellite phone.¹⁶ He also provided us with the exact text and dispatch time of an SMS that he had sent to the satellite phone of the migrants on the 27 March 2011.¹⁷

2. Geo-referenced locations logged by Rome MRCC.
3. A drift model (figs. 16, 17, 18) which simulates the path of the migrant's vessel over the 14 day period in which it was floating without any use of its motor. Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at Woods Hole Oceanographic Institution, created a model that tracks the path of the vessel on the basis of ocean current data and wind data. A detailed account of how this has been produced is provided in Limeburner's full report (annex A).
4. Commercially available Synthetic Aperture Radar (SAR) data for our time and area of interest was analysed by Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing (figs. 21 to 26). A detailed account of this analysis is provided in figs. 25 and 26.
5. Official communications among different actors involved in this case (NATO, Frontex and the Ministries of Defence of Italy, France, and Spain) and several investigating bodies or individuals (among which, in particular, are Senator Tineke Strik and journalist Emiliano Bos).
6. The review of publicly available information from military sources, statements by the participating states/ NATO concerning the 2011 military operations in Libya and official statements by other actors involved such as the Italian Coast Guard and media reports.
7. The evidence collected by Senator Tineke Strik towards the report "Lives lost in the Mediterranean Sea: who is responsible?" on behalf of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE).

The synthesis of these various forms of information has allowed us to build a compelling picture of the events surrounding this case. In order to reconstruct certain specific moments for which definitive evidence was lacking, we have formulated informed hypotheses by cross-referencing different sources of data. These hypotheses are clearly indicated as such. As soon as further inquiry takes place and the key actors involved in the case release

¹⁴ EMK: interview conducted by Michel Toubiana, member of REMDH executive committee and honorary president of the League for Human Rights (France) on 6 September 2011 at the UNHRC camp in Choucha, Tunisia; EMK2: translation in Italian of the transcript of an interview conducted by Emiliano Bos towards his documentary "Mare deserto", *ibid*.

¹⁵ FWT, BY1 and MA1: translations in Italian of the transcripts of interviews conducted by Emiliano Bos towards his documentary "Mare deserto", *ibid*.

¹⁶ Interview conducted and filmed by Charles Heller in Geneva on 12 November 2011.

¹⁷ As reported in an article that appeared in the newspaper "La Repubblica", Father Zerai initially indicated the morning of the 26 March 2011 as the time when he received the distress call from the "left-to-die boat" (Carlo Bonini, "Sessanta profughi alla deriva lasciati morire da navi NATO. L' Alleanza replica: tutto falso", *La Repubblica*, 10 May 2011. URL: <http://rassegna.governo.it/testo.asp?d=60677635>). However, Father Zerai later amended his initial version of the facts following a review of his phone bill, which confirmed that he was first called by the migrants of the vessel in question on the afternoon of the 27th. It should be noted that during the time of events Father Zerai received several calls, frequently within a single day, either by migrants who were in distress at sea or by relatives of people who went missing in the Mediterranean.

the relevant data, the pertinent sections of this report will be updated. This is particularly the case in sub-chapter 3.2, in which disclosure of information by participating states/NATO forces is required to prove or disprove the reconstruction of facts that we have compiled.

1.3 2011: “THE DEADLIEST YEAR IN THE MEDITERRANEAN”

The phenomenon of migrants dying at sea in their attempt to reach the shores of the EU is not new. Since the beginning of the 1990s, we have simultaneously witnessed the consolidation of freedom of movement within the EU for its citizens and increasing restrictions on the entry of non-European migrants.¹⁸ As a result, migrants have resorted to clandestine means to enter EU territory. One frequent strategy involves embarking on unseaworthy vessels to cross the Mediterranean. EU policies that aim to contain and control these movements have thus far failed to stop clandestine migration across the Mediterranean. Rather they have resulted in the splintering of migrants’ routes throughout the Mediterranean basin and led to increasingly dangerous points of passage.¹⁹ The independent blog Fortress Europe, which has become one of the most authoritative sources covering the death of migrants within and at the borders of the EU, documented that from 1988 to March 2012, 13,417 deaths at sea have occurred, and 6,226 in the Sicily Channel only.²⁰ Their estimate is based primarily on news reports and thus there are certainly many more deaths that have gone unreported.

The dramatic geopolitical changes that swept across North Africa in 2011 nonetheless marked an important break in migration patterns both within North Africa and between North Africa and the EU and have led to an unprecedented number of migrants’ deaths in the Mediterranean. The collapse of the Tunisian and Libyan regimes, which had until that moment contained the migration of their nationals and non-nationals on behalf of the EU, provoked a temporary crisis in migration patterns in North Africa, an increase in the number of migrants attempting to cross the Mediterranean to Europe and an increase in the number of migrants losing their lives in this attempt.

1.3.1 Tunisia

In Tunisia the revolutionary process sparked by the immolation of Mohamed Bouazizi on 17 December 2010 led to the collapse of the Ben Ali regime on 14 January 2011. A temporary power vacuum ensued. With the regime no longer controlling the emigration of its citizens, a significant number of people seized the opportunity to cross the Mediterranean to the small Italian island of Lampedusa. Between 9 and 13 February 2011 five thousand migrants arrived in Lampedusa.²¹ By the beginning of April, 22,200 had arrived.²² The number of arrivals led to a diplomatic crisis at the EU level since different states disagreed as to who should be responsible for managing these new arrivals.²³ However, these diminished rapidly following the agreement signed on 5 April 2011 between the Italian and Tunisian authorities allowing for the repatriation of new arrivals and by the end of June the total number of Tunisian arrivals in Italy had reached approximately 25,000.²⁴ By the end of 2011, 28,000 Tunisians had reached Italy²⁵ and Fortress Europe had counted 334 deaths amongst the migrants departing from Tunisia.²⁶

18 Concerning these broader developments, see the synthesis provided by Migreurop, “Atlas des migrants en Europe – Géographie critique des politiques migratoires”, Armand Colin: Paris, 2009.

19 Hein de Haas, “Mediterranean migration futures: Patterns, drivers and scenarios,” in Global Environmental Change, forthcoming. URL: www.bis.gov.uk/foresight/our-work/projects/published-projects/global-migration/reports-publications

20 See: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>

21 Abderazak Bel Haj Zekri, “La dimension sociopolitique actuelle de la migration en Tunisie”, CARIM Analytic and Synthetic Notes; 2011/48, 1 July 2011. URL: <http://cadmus.eu.eu/handle/1814/18474>

22 Migreurop, “note de synthèse janvier-juin 2011”, 27 June 2011, p.3. URL: <http://www.migreurop.org/article1949.html>

23 *Ibid.*, p.1.

24 *Ibid.*

25 UNHCR, “HCR: nombre record de migrants ayant traversé la Méditerranée en 2011”, 31 January 2012. URL : <http://www.un.org/apps/newsFr/story.asp?NewsID=27476&Cr=HCR&Cr1=>

26 Alberta Torres, “Nel Canale di Sicilia almeno 6.166 morti dal 1994”, 03 December 2011. URL : <http://fortresseurope.blogspot.com/2006/02/nel-canale-di-sicilia.html>
The recently formed movement of relatives of Tunisians who have gone missing after trying to reach Italy by boat claims that the number of missing persons oscillates between 500 and 800. This number includes people who might have died during the crossing, as well as persons who went missing after their arrival in Italy. See: <http://www.senato.it/Web/16Lavori.nsf/All/A5854376F94C2C82C12579AC0058CDDD?OpenDocument>

1.3.2 Libya

In Libya the popular revolt that began on 15 February 2011 aimed at toppling the Gaddafi regime was met with strong repression leading to a civil war which was officially ended on 23 October 2011 but the effects of which are still felt as we write. As of 19 March 2011, a military intervention was launched by an international coalition and NATO under the United Nations Security Council Resolution 1973 (see section 3.2 for further details on this operation). The conflict led to numerically important and rapid movements of civilians. While some expatriates were evacuated very quickly by charter flights, many more migrant workers fled to neighbouring countries. However, the mounting violence and the targeting of Sub-Saharan Africans by both Gaddafi forces and the rebels forced them into hiding, often without food and in very precarious conditions.²⁷ Furthermore for many migrants residing in Libya, no return to a country of origin was possible. Some arrived too late in the main cities to be able to board the charter flights organised for the repatriation of third country nationals. Others had in fact fled countries such as Sudan, Somalia or Eritrea or Iraq and would risk their lives if they returned. For many migrants, the only solution for fleeing the conflict was to attempt the crossing of the Mediterranean. These crossings were first reported at the end of March.²⁸

By 23 March 2011, UNHCR estimated that a total of 351,673 persons had fled Libya, escaping to Tunisia (178,262), Egypt (147,293), Niger (11,949) and Algeria (9,168).²⁹ By 7 October 2011, the IOM counted a total of 721,772 persons who had crossed the Libyan border, mainly escaping to Tunisia (313,414), Egypt (229,514), Niger (82,935), Algeria (13,962), and Chad (51,682). A comparatively smaller number of migrants succeeded in crossing the Mediterranean from Libya: by 7 October, 25,935 people had arrived in Italy and 1,530 in Malta.³⁰

Migrants making these crossings had at times to rely on paying smugglers and Gaddafi forces. There were also widespread reports of Sub-Saharan migrants being forced into boats by Gaddafi forces.³¹ Gaddafi himself had warned the EU on two occasions that he would cease all cooperation with European states in attempts to control migration should these states continue their support of the rebellion against his regime.³² The bodies of migrants had thus become a form of ammunition within the international conflict. The extremely precarious conditions of such crossings lead to a new high in the number of deaths. The UNHCR defined 2011 as the “deadliest year” in the Mediterranean “since UNHCR started to record these statistics in 2006” and estimates that the number of deaths among the people fleeing Libya by water was more than 1,500.³³

Reviewing the number of arrivals both from Libya and Tunisia, we see that slightly more than 50,000 people arrived in Italy and Malta. This number is far lower than the “up to 1.5 million” potential arrivals European politicians and the European Border agency (Frontex) warned of at the beginning of the Arab Spring.³⁴ The majority of the movement of civilian populations occurred within the region itself, with close to 700,000 people fleeing to neighbouring countries.

From a humanitarian point of view, much more alarming than the amount of people arriving on the European

27 UNHCR, “UNHCR fears for the safety of refugees caught in Libya’s violence,” 22 February 2011. URL: <http://www.unhcr.org/4d6393e06.html>

28 UNHCR, “Some 2,000 people flee from Tripoli by boat to Italy and Malta”, 29 March 2011. URL: <http://www.unhcr.org/4d9114f49.html>.

29 UNHCR, “Update no 13: Humanitarian Situation in Libya and the Neighbouring Countries”, 24 March 2011. URL: <http://www.unhcr.org/4d8b6a1f9.html>.

30 IOM “Response to the Libyan Crisis”, External Situation Report, 10 October 2011. URL:

<http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/IOM-sitrep-MENA.pdf>

31 Martin Chulov and Simon Tisdall, “Libyan regime accused of exploiting boat people”, The Guardian, 11 May 2011. URL:

<http://www.guardian.co.uk/world/2011/may/11/libya-accused-of-exploiting-humanitarian-crisis>. See also John Irish, “Libya may be using migrants as weapon against EU-UN”,

Reuters, 11 May 2011. URL: <http://af.reuters.com/article/libyaNews/idAFLE74A0YB20110511?sp=true>

32 Ghaddafi first announced this intention to European representatives in Tripoli on 17 of February 2011. Later he reasserted that Europe would be

invaded by thousands of people if he were to lose power. See “Libya threatens to stop help on illegal EU immigration”, 21 February 2011, URL:

<http://www.eubusiness.com/news-eu/libya-unrest-8p5/> and “Kadhafi: ‘J’en appelle à la France’”, Le Journal de Dimanche, 6 March 2011. URL:

<http://www.lejdd.fr/International/Afrique/Actualite/Exclusif-L-interview-integrale-accordee-par-Mouammar-Kadhafi-au-JDD-278745/>.

33 UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”. It should be noted that this is an estimate based just on satellite phone calls from boats in distress, and on reports from survivors, from migrants arrived on other boats or from relatives of the missing living in the EU. The death toll is therefore likely higher than 1,500.

34 Euronews, “Italy’s EU immigration rescue call”, 23 February 2011. URL: <http://www.euronews.net/2011/02/23/italys-eu-immigration-rescue-call/>

coasts was the amount of people who lost their life during the crossing. Here, comparing the number of deaths between Tunisian and Libyan crossings is instructive. From the total of 1,822 deaths documented by Fortress Europe in 2011, 334 were from Tunisia and 1,488 from Libya.³⁵ In relative terms this means that while one in 85 migrants departing from Tunisia lost their lives, this ratio rose to one in 19 for those departing Libya.³⁶ While the area and time of crossings were similar, the great difference both in absolute and relative terms in the number of deaths amongst migrants fleeing Tunisia and Libya has to be primarily related to the organisation of the crossings by Gaddafi forces.

1.3.3 Patterns of Crossings

We will not review in detail the 19 interviews we conducted in the summer of 2011 with 68 migrants who had recently crossed the Mediterranean from Libya to Italy in the Italian cities of Bari, Palermo and Lampedusa. In the following section, however, we will provide a broad overview of the patterns of crossings that emerged from them.

Most of the migrants we interviewed testified to the active role that Gaddafi's troops played not only in organizing and managing the crossing but also in often forcing Sub-Saharan migrants to leave. The great majority among them did not have to pay for the trip, or paid just a small amount, and were searched by soldiers before embarking. This prevented them from carrying any water or food, cellular phones, or money. The majority left from Tripoli (Medina or Janzur port). Most of the boats were wooden fishing boats less than 15 metres long but bigger fishing vessels that could transport several hundred people were also used at times. Migrants were usually distributed on three levels of the boats: on the top of the small pilothouse; on the main deck; and in the lower level where the engines are housed. Safety measures were almost completely non-existent. In some instances a few life-jackets were available but were not enough to supply all passengers, many of whom did not know how to swim. Migrants' boats usually moved at a speed of 6 or 7 knots which means that, in good weather conditions and when able to hold the shortest course, it normally took them between 19 and 24 hours to cover the 156 nautical miles that separates Tripoli from Lampedusa. However crossings lasting two or three days were very common. Almost all migrants we interviewed reported having crossed several vessels at sea, ranging from the boats of other migrants, fishermen, NATO ships, cruise ships, and the coast guard patrols of Malta and Italy.

While many of the migrants we interviewed did not have any casualties on board, we were also regularly told of deaths. The most common causes were the suffocation of the migrants in engine section of the boat, falling over-board of migrants following a collision with another boat or heavy weather, and finally lack of food and water if the boat got lost at sea for several days.

The general context provided above as well as the overall patterns of crossings that emerged from our interviews allowed us to have a more thorough understanding of the events in the "left-to-die boat" case, to which we now turn.

³⁵ Alberta Torres, "Nel Canale di Sicilia almeno 6.166 morti dal 1994", 03 December 2011. URL : <http://fortresseurope.blogspot.com/2006/02/nel-canale-di-sicilia.html>

³⁶ *Ibid.*

2. CHAIN OF EVENTS

2.1 DECIDING TO FLEE LIBYA

The migrants' individual life stories that lead them to embark upon the perilous journey cannot be reconstituted exhaustively since the majority of the migrants perished and the interviews of the remaining survivors we have accessed do not necessarily mention their lives prior to departure. The case of Dan Haile Gebre however provides a more detailed example. While he worked and earned a decent living as a mechanic in a garage located in Tripoli, with the onset of the conflict the situation became increasingly perilous for the population as a whole and for Sub-Saharan migrants in particular. "The people are divided in two, pro Gaddafi and pro Benghazi groups. So anybody will ask you asked: who do you support? If you say 'rebels' the person you are speaking to might be pro Gaddafi, and if you say with 'Gaddafi' he might be with the rebels. It is very complicated, especially for the Black people. They started killing black people. They come to our homes and steal everything you have. They stole everything from my workshop because of the green flag, mandatory if you want to find work under the Gaddafi regime. We were afraid. There was a lot of things: if you want to take a taxi, the driver will ask you the same question. In a bakery: buying bread was not allowed for Africans. There was no more police, so it's a matter of chance if something good or bad happens to you." (DHG, 22-29)

For Dan Haile Gebre as for many others, fleeing to Italy seemed to be the last option available amidst a very volatile context. He could not ask for the protection of the Eritrean Embassy since he had fled his country, but neither did he have the means to go to Tunisia. "At this time only if you have a passport you can go to Tunisia, and also you will pay a lot of money to the police, but we had nothing. [...] The only thing we could do is cross to Italy." (DHG, 31-33)

A friend of Dan Haile Gebre informed him that a boat was about to leave and he was directed towards a group in a camp in the Gargash area of Tripoli. He told us: "I found a lot of Ethiopians, many of them women and mostly young people." (DHG, 35-36). He further describes staying with the group for one night. On the second they had an aborted departure, which Dan Haile Gebre describes as follows: "The second night we started to travel. While we were there, we were shot at by pro-Gaddafi soldiers, because they thought we were from the Benghazi group. But then they said "if you are immigrant, you want to go to Italy, come back tomorrow and we will send you to Italy with respect". (DHG, 38-39) Their actual departure would occur the following night.

2.2 DEPARTURE FROM TRIPOLI

The vessel's departure location is consistently identified throughout all interviews as the commercial port of Tripoli, near the Medina area. The interviews conducted by Forensic Oceanography during the summer of 2011 in Southern Italy with several other migrants as well as posts on the Fortress Europe blog confirm that this, together with the Sidi Bilel port in Janzur were the main departure points in the Tripoli area for migrants' vessels (fig. 3).³⁷

The survivors' testimonies differ on the date of departure. While being quite consistent on the time of the night when they left port (midnight for DHG, 215; three am for EMK, 8 and AKK, 9), they differ on the date itself (25 March 2011 according to DHG, 215, AKK, 11 and MAI, 16; 26 March 2011 according to EMK, 6). It is difficult to understand whether the migrants, when talking for instance of three am on 25 March 2011, are really referring to the 25th or would rather be mistakenly referring to the early morning of the 26th as it might very well be instead.

³⁷ Fortress Europe, "Sidi Bilel: this is where they use to leave for Lampedusa", 20 September 2011. URL: <http://fortresseurope.blogspot.com/2011/09/sidi-bilel-this-is-where-they-use-to.html>, and "A video shows Gaddafi's role in the landings in Lampedusa", 20 September 2011. URL: <http://fortresseurope.blogspot.com/2011/09/video-shows-gaddafis-role-in-landings.html>

The first aborted departure of the previous day may be an additional reason for confusion.

The timing after the departure is however very consistent between the interviews. Survivors state to have contacted Father Zerai via satellite phone 15-18 hours after the departure (DHG, 215; AKK, 18). Furthermore, the moment and location of this call is documented by several pieces of evidence to have occurred between 16:00 and 16:52 GMT on 27 March 2011. Working backwards starting from the moment when the distress call was placed, we can then establish the time and date of departure as between 2-3am Libyan time, or 00:00-01:00 GMT, on 27 March 2011.

The boat on which the migrants travelled was provided by the Libyan military and is described by Dan Haile Gebre as a Zodiac-type plastic vessel (this is confirmed by EMK2, 201) equipped with a Yamaha motor of 37 horsepower (figs. 5, 6). Twelve tanks with a capacity of 20 litres of petrol each were provided and loaded into the boat. The migrants were told that this amount of fuel should allow them to reach Lampedusa and that the trip should have lasted around 18 hours (DHG, 61).

On the vessel there were 72 people including three children, 60 who had been gathered in the nearby camp and waiting for over 24 hours. Additionally a group of 12 people were brought to the point of departure in the last moments before leaving port (DHG, 49). According to Abu Kurke Kebato, there were seven people from Nigeria, six from Ghana, five from Sudan and seven from Eritrea, all of the 47 others were from Ethiopia (AKK, 13). The Libyan military that were organising the departure provided a "captain", from Sub-Saharan Africa. His nationality is not defined consistently across the testimonies: Dan Haile Gebre believes he was a francophone from West Africa (DH, 186), while Abu Kurke Kebato (AK, 90) and Elias Mohammed Kadi (EMK, 16) believe he was from Ghana. According to Dan Haile Gebre the "captain" told the migrants on board that he had already successfully brought migrants to Italy in the past, so they more or less trusted him at first. He continues: "But we had no choice. We only trusted in God" (DHG, 76). The migrants were given a GPS, a compass and a Thuraya satellite phone (DHG, 69-70).³⁸ No food or water was provided (DHG, 144).

According to Dan Haile, the boat was much too small to carry 72 people and at the moment of departure they contested being forced to travel in such a vessel (DHG, 58), but finally, with little choice, they embarked. The boat was overloaded to such an extent that at first it only travelled at minimum speed, "very, very slowly" as Dan Haile testifies (DHG, 65), while the sea was calm (DHG, 92). From Dan Haile Gebre's testimony and the fact that the vessel carried 72 people we have estimated that the boat was slightly above 10m in length.³⁹

2.3 AIRCRAFT SIGHTING

At 14:55 GMT Rome MRCC received a notice from a French aircraft describing a small rubber boat with about 50 people on-board. It located the position of the migrants' vessel as follows: LAT 33°40' N, LONG 13°05' E. According to the testimonies collected by Senator Tineke Strik, the migrants "noticed an aircraft flying high above them".⁴⁰ Ghirma Halefom said "the aircraft was white, and not a helicopter but rather a small patrolling aircraft."⁴¹ Rome MRCC provided Senator Tineke Strik with evidence corroborating this sighting, in particular with a photograph of the rubber boat taken from the aircraft itself (fig. 7).⁴²

³⁸ "Thuraya Telecommunications Company is a world-leading mobile satellite service provider of voice, data, maritime, rural telephony, fleet management and other telecommunication solutions in remote areas. Providing mobile satellite communications to over 140 countries around the world, Thuraya offers a congestion-free network that now covers most of the planet, encompassing Asia, Africa, Australia, the Middle East and Europe." URL: <http://www.thuraya.com/about>

³⁹ The ASIS WB 12, a commercially available rubber boat of 11.9 metres in length, is described as having a floorboard usable area of 22.2 square metres. Its advertised capacity, in accordance with the ISO 6185 standard, is 25 people. However if we consider that it is possible to overcrowd the boat with 4 people per square metre, this boat would have a capacity of 88 people. URL: <http://www.asiscommercialboats.com/asis-commercial-work-boat-wb-12.html>

⁴⁰ Senator Tineke STRIK, "Lives lost in the Mediterranean Sea: who is responsible?" p. 7.

⁴¹ *Ibid.*

⁴² *Ibid.*, p. 15.

Based on the information gathered by Senator Tineke Strik, we can reasonably conclude that this event did occur as described. The event is mentioned by the testimony of at least one survivor; moreover Senator Tineke Strik presented one of the survivors with the photograph taken by the aircraft and the boat it documents was identified as the one pertinent to the case; and finally the time and location of the identification are consistent with the established trajectory of the boat.⁴³

2.4 DISTRESS CALL

Dan Haile Gebre and Abu Kurke Kebato say that after approximately 15-18 hours at sea they called Father Zerai because they were about to run out of fuel (DHG, 215; AKK, 18). Dan Haile Gebre recounts the following: "I looked at the GPS and it seemed we were travelling in the right direction but not very fast. At the time we called Father Mussie [Zerai] we had not even covered half the distance." (DHG, 77-78). The boat seems thus to have moved at a speed of slightly less than 5 knots (covering 66.6 nautical miles in around 15 hours). Considering that according to Dan Haile Gebre the boat was moving at slow speed (DHG, 65), this is consistent with the average speed of 6-7 knots of vessels loaded with migrants that the Italian CG provided us.⁴⁴

According to the survivors (EMK2, 132-137; AKK2, 17-62) and to Father Zerai, there were several calls exchanged, first between the migrants and Father Zerai, then between the migrants and Rome MRCC. Several calls were necessary because the driver was not able to read the boat's GPS instrument and could not provide the exact GPS coordinates of the boat. (AKK, 91). The connection was made more difficult by failing batteries (DHG, 72 and 82; AKK, 18; EMK, 11).

Rome MRCC confirmed to Senator Tineke Strik that they logged and recorded Father Zerai's call on the 27 March 2011 at 16:28 GMT.⁴⁵ Father Zerai has provided us with the SMS he sent the migrants the same day at 16:33 GMT in order to explain them how to read the GPS: "Go to display menu gps maenager actual solution selected put my phon number send". This attempt at explanation proved unsuccessful. Thuraya, the satellite phone company, was contacted by Rome MRCC at 16:40 GMT. It provided the location of the satellite device at 16:52 GMT at LAT 33°58'.2" N, LONG 012° 55'.8" E.⁴⁶ This location effectively corresponds approximately to "half the distance" between Tripoli and Lampedusa, as was observed by Dan Haile Gebre (DHG, 78).

Rome MRCC sent out several distress signals (which we will discuss in detail in sub-chapter 3.2.2; see also figs. 8, 9,10), the first being an Enhanced Group Call (EGC) broadcast to all ships transiting in the Sicily Channel at 18:54 GMT via the Inmarsat C system. The message with the priority code "DISTRESS" warned of the presence of a "boat with about 68 passengers, probably in difficulty. All ships transiting in the area are requested to keep a sharp lookout and reporting any sighting urgently at MRCC Rome" (fig. 8). It also directly informed specific parties such as Malta and NATO headquarters allied command in Naples.

2.5 FIRST HELICOPTER ENCOUNTER

Following Father Zerai's advice to continue on their way because Rome MRCC had been warned and believing that rescue would soon come (DHG, 81), they continued for "a few hours" (DHG, 89), until a helicopter arrived. This account is confirmed, with small differences, by Abu Kurke Kebato who says that after the distress call they waited for a short time and then they proceeded for two more hours before encountering the helicopter (AKK2, 66-76). All testimonies converge in describing the helicopter as "military" and, some of the survivors

⁴³ *Ibid.*, p. 7.

⁴⁴ Interview conducted by Charles Heller and Lorenzo Pezzani with Sottotenente di Vascello Salvatore Porcaro, Lampedusa, Capitaneria di porto, 12 August 2011.

⁴⁵ Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p.11.

⁴⁶ The GPS signal is accurate to 100 meters and there should be no doppler effect. See http://www.universattalia.it/pdf/SERVIZI%20SATELLITARI%20-%20Allegati%20SatNetwork%20Brochure/Brochure%20Thuraya_en.pdf

add, equipped with a machine gun (DHG, 103; EMK, 18; AKK, 38; AKK2, 74 and 83; MAI, 27; FWT, 16-17). Furthermore, witnesses state that it bore the English writing "ARMY" (AKK, 24; BYI, 16-19) or "RESCUE ARMY" (DHG, 107; FWT, 16). The helicopter cabin door was open and at least 2 people wearing military uniforms could be seen (DHG, 103; EMK2, 71; AKK, 24; FWT, 133; MAI, 27).

Dan Haile Gebre describes the helicopter's approach as follows: "It circled around us 4-5 times and came closer. It was making a lot of wind, and we almost lost our balance" (DHG, 93). Abu Kurke Kebato adds: "The helicopter came very close to us down, we showed him our babies, we showed them we finished oil, we tell them 'Please help us'" (AKK, 30). He continues: "I think I saw them take our picture. I think I saw a photo camera or something like that" (AKK, 41). This description is consistent with protocols for vessel identification missions in the frame of NATO's monitoring of the embargo over Libya during Operation Unified Protector.⁴⁷

Despite the fact that the helicopter clearly came very close, approximately 10 meters according to Abu Kurke Kebato, (AKK, 40), and that the migrants clearly communicated signals of distress, the helicopter left without providing any assistance. Following that encounter, the migrants believed they would be soon rescued (AKK2, 85-87). Dan Haile explains: "The captain told us: 'This is the rescue! We are safe'. We were very happy. He told us we were far from Italy and we needed to leave a bit of time for the rescue to arrive." The captain then threw GPS, satellite phone and compass into the water. He disposed of these items because he was afraid that if a Search and Rescue team found this on-board he would be identified as a smuggler and deported (DHG, 93-96).

Thuraya identified the last signal from the migrants' satellite phone at 19:08 GMT, with the position 34 07.11 N - 12 53.24 E, i.e. 9 nautical miles further in the direction of Lampedusa in relation to the earlier position provided by Rome MRCC. We can reasonably assess that this time/location was established just before the satellite phone was thrown overboard and is therefore very close to that of this first helicopter encounter.

Waiting for rescue, the migrants remained in place 4-5 hours (DHG, 119, EMK, 15) or "over 5 hours" (AK2, 98). By then, it was the middle of the night, i.e. around 23:00-00:00 GMT. The women on the boat told the captain "We can not wait any more, lets go (DHG, 119)." The migrants decided to start moving again despite the little fuel they had left and with no communication means and with a small plastic compass attached to a belt (DHG, 121). This compass and the stars in the sky were their only means of orientation at this point (AKK2, 130).

2.6 FISHERMAN ENCOUNTER

Once they resumed movement, the migrants tried to approach some fishermen whose boats they noticed around them to ask for help (Dan mentions 5-6 vessels). Dan Haile Gebre believes that they were from Tunisia and Malta (DHG, 124). When the fishermen saw the migrants' boat arriving though, they drew in their nets and sailed away swiftly, almost making the small migrants' vessel capsize (DHG, 125). During this time, the migrants navigated for very short stretches in random directions, i.e. without following the direction of Lampedusa but rather moving from one boat to the other. We can therefore estimate that during this time they did not move considerably from the previously established GPS position.

2.7 SECOND HELICOPTER ENCOUNTER

According to Dan Haile Gebre, this encounter with the fishermen was immediately followed by the re-appearance of what appeared to be the same helicopter that had visited the vessel previously. This time, the military on-board lowered down eight bottles of water and small packets biscuits, both of which had Italian writing on them, and

⁴⁷ This practice is illustrated in a video depicting the HMCS Charlottetown's Sea King helicopter on a reconnaissance mission during which the military take photographs of the ships they encounter for identification. [Natochannel.tv](http://natochannel.tv), "Maritime Helicopter Patrols", 6 April 2011. URL: www.natochannel.tv or <http://www.youtube.com/watch?v=sjV1o9GOhVg>

left again (DHG, 127, AKK, 28, EMK, 19; FWT, 175-176).

After the helicopter departed for a second time, the migrants encountered one more Tunisian fishing boat (EMK2, 181), which gave them the direction of Lampedusa in Arabic. Pointing to the Island's direction the fisherman said "four hours" (DHG, 136). We can estimate that the entire interaction with the fishermen and the second helicopter visit lasted one hour, leaving us at between 00:00 GMT and 01:00 GMT on 28 March 2011 but in approximately the same location as that of the first helicopter encounter.

Following the Tunisian fisherman's indications, the migrants' vessel thus started to navigate again with the outboard engine. The estimate of the duration of this second phase of navigation varies between: four hours, as indicated by Dan Haile Gebre a first time (DHG, 137) and Abu Kurke Kebato (AKK2, 132); or eight to nine hours, as indicated by Dan Haile Gebre some time later in the same interview (DHG, 218) and by Filmon Weldemichail Teklegergis (FWT, 83). Two witnesses specify that when they started navigating again, they were moving at "greatest possible speed" (DHG, 122; FWT, 89) and they consumed all the remaining 20 litres of fuel (DHG, 218), a detail that is confirmed by Abu Kurke Kebato (AKK, 47) while Filmon Weldemichail Teklegergis mentions 40 litres instead (FWT, 83). All accounts agree that the vessel kept sailing until the following morning (DHG, 122), i.e. until there was daylight again. In that area the sun rose at around 07:00 GMT on 28 March, with daylight probably already visible at around 06:00 GMT. Based on this information, we have concluded that the motor run out of fuel and the vessel began to drift between 6:00 and 8:00 GMT on 28 March 2011. Two time/position possibilities for the start of the drift were calculated by Richard Limeburner of Woods Hole Oceanographic Institution based on the information above:

- The vessel started to drift at 06:00 GMT (after 5 hours navigation) 22.2 nm north northwest of last GPS position.
- The vessel started to drift at 08:00 GMT (after 7 hours navigation) 31.1 nm north northwest of last GPS position.

2.8 DRIFTING IN THE STORM

From the morning of the 28 March 2011, the migrants found themselves drifting in high waves for which their small, overcrowded rubber boat was unfit (AKK2, 152). Dan Haile Gebre recalls that "the sea was very dark with too much waves and wind. We lost our direction. From then on and for several days we don't know anything" (DHG, 139-140).

As part of this report a drift model has been created to simulate the trajectory of the vessel as it travelled from the morning of the 28th until eventually landing ashore in Ziltan on 10 April 2011 (figs. 16,17,18).

Left without food or water, the migrants began drinking sea-water as well as their own urine mixed with toothpaste (DHG, 144). According to Dan Haile, after 2-3 days of this weather people started to die (DHG, 142-143). According to Abu Kurke, the number of people dying increased daily. First two, then four, then five or six people died everyday (AKK, 55-62).

While drifting the migrants sighted the lights of boats in the distance during the night. "During the night we would see the lights of other big boats in the distance, we could not see them but the reflection of their lights looked like a city in the distance" (DHG, 145). In the attempt to come closer to these vessels four people in the boat started paddling with their hands but the effort was unsuccessful (DHG, 146).

2.9 MILITARY VESSEL ENCOUNTER

After 5-6 days of drifting in bad weather (DHG, 219) the migrants' vessel encountered a military ship. Dan Haile Gebre describes its approach in the following way: "At first the ship was very far. Maybe 700 metres. They then circled around us, three times, until they came very close, 10 meters. We are watching them, they are watching us. We are showing them the dead bodies. We drank water from the sea to show them we were thirsty. The people on the boat took pictures, nothing else." (DHG, 154-155; see also EMK, 26). Despite coming within viewing distance and despite the migrants' evident signs of distress, the military vessel left without providing them with any assistance.

The survivor's testimonies provide indications concerning the military vessel in question. While we will discuss these elements of identification further in sub-chapter 3.4.2, suffice to mention here that according to three witnesses the military-ship bore two helicopters (DHG, 176; EMK, 25; FWT, 347), while Mohamed Ahmed Ibrahim recalls just one helicopter (MAI, 217). During our interview with Dan Haile Gebre, we showed him images of different naval assets. When presented with a photograph of the Borsini ship of the Italian Fleet (fig. 20B) he recognized the typology of the ship being very similar to the one they encountered and stated: "Yes exactly like this, like two steps" (DHG, 177). He also recalled elements leading him to believe the vessel was French (DHG, 187).

Dan Haile believes this encounter occurred "5-6 days" after the beginning of the drift in the storm (DHG, 219), which would lead us to 2 April 2011. However he told us that approximately six days after the encounter they landed back in Libya (DHG, 221). While we know that the migrants landed in Zlitan on 10 April 2011, counting backwards leads us to 4 April 2011. This date is corroborated by Elias who believes the encounter occurred nine days after embarking on their journey (EMK, 25). Considering the above, we believe it is most likely that the encounter with the military ship occurred between the 3rd and the 4th.

2.10 DRIFTING BACK TO THE LIBYAN COAST

After the military ship left the migrants without assisting them, morale dropped precipitously. "We knew that we would die little-by-little", says Dan Haile Gebre (DHG, 248). According to him, they continued to drift for approximately six days before landing in Zlitan (DHG, 221).

He states that for the last four days of drifting they could see the Libyan coast. "We could see buildings at night. The driver thought this is Malta, but some Nigerians on the boat said "no, these are the Hotels built by Gaddafi in Tripoli" (DHG, 206-207). The proximity of the vessel to the coast during this period is confirmed by the drift model (fig. 18).

During the last days of drifting almost all migrants seem to have lost consciousness or were in a very bad physical state. Ultimately only 11 of them landed back on Libyan soil alive (AKK, 64). Their arrival and subsequent imprisonment is thus remembered in fragments. Abu Kurke Kebato described these events as follows to journalist Emiliano Bos one day after being released from prison: "The wind and the sea made us drift on Libyan land, to a small village area near Misrata. When we reached that place we didn't know it was Libya, we thought it was Italy! When we reached the land one girl died within the hour. The military took the ten of us to a pharmacy, not a hospital. They only gave us a bit of water and took us to prison in Zlitan. We spent three days there. Without food. One more of our brothers died there because lack of food. When he died they took us to Homs hospital, all of us. But they still wouldn't give us anything and brought us back to Zlitan prison. The next day they took us to a Tripoli prison, called Toyesha. We stayed there two days and told them we were very sick, that people were going to die, "Please help us, take us to hospital". But the policemen answered "die die die!".

After that my brother knew an Ethiopian boy in Tripoli, he knew his number. Using the phone of a Bangladeshi man we called him and Father Mussie. The man came to prison with drinks and food. He took us from Toyesha prison yesterday. He said "I can take these people to my house", they said: "Take them". He rented a room and took us there in two taxi cars." (AKK, 64-74).

The day after being released from prison the nine survivors met with representatives of the Catholic Church. During this meeting organised by Father Zerai (AKK, 76; DHG, 233), the survivors were interviewed and provided with medical assistance.

A group of survivors fled shortly after to Tunisia where they have been residing in Choucha refugee camp since. The rest attempted the crossing to Italy once again, this time with success. They now reside in different countries throughout Europe (Italy, Norway and the Netherlands).⁴⁸

⁴⁸ For details concerning the individual trajectories of the survivors and their legal statuses at the time of writing, see Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 22.

3. PARTIES INVOLVED

This section attempts to answer the following question: who was involved and to what degree in the events leading to the deaths that occurred in the “left-to-die boat” case? With this objective in mind, we will review evidence that points to the involvement of different parties. While the tragic effects of Gaddafi’s forces facilitating and, in some cases, directly organising the exodus of hundreds of migrants in unseaworthy vessels was already addressed in sub-chapter 1.3, we will now focus exclusively on the involvement of those actors who, although informed of the distress of the people on the “left-to-die boat”, might have failed to assist them. Whereas the previous section looked at the chain of events from the point of view of the migrants by corroborating their testimony with verifiable data, this section analyses the same events from the point of view of the former parties.

While we will limit ourselves to collecting and assessing the facts that will allow for a determination regarding the degree of involvement of different actors, the legal framework that sets out the obligations of ships and states to assist any person found in distress at sea provides a useful point of reference for our inquiry. This obligation is mainly framed by two essential texts, the 1982 United Nations Convention on the Law of the Sea (UNCLOS convention) and the 1974 International Convention for the Safety of Life at Sea (SOLAS convention).⁴⁹ These provide that every state shall require the master of a ship (civilian or military) flying its flag to provide assistance to seafarers if informed of their distress and if the ship does incur danger in doing so. Furthermore, coastal states have the obligation to coordinate search and rescue operations within a given area (SAR zone) as defined by the UNCLOS, SOLAS and SAR conventions.⁵⁰ In the particular context of war in which the “left-to-die boat” case occurred, International humanitarian law may also provide an important point of reference, in that, it obliges parties to armed conflict “to take all possible measures to search for, collect and evacuate the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment and to ensure their adequate care. There are also obligations on parties to take feasible measures to account for persons reported missing, with respect to the right of families to know the fate of their missing relatives, and with respect to the management of the dead and related issues”.⁵¹

This chapter will mainly enquire into the implication of participating states/NATO forces involved in the 2011 military operations in Libya. Our choice of emphasis is motivated by the fact that the involvement of non-military parties has already been established with a sufficient degree of clarity by Senator Tineke Strik’s report “Lives lost

- 49 International Maritime Organization (IMO) and the Office of the United Nations High Commissioner for Refugees (UNHCR), “Rescue at sea, a guide to principles and practice as applied to migrants and refugees”, September 2006. URL: www.unhcr.org/450037d34.html
The 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention) provides that: “Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
(a) to render assistance to any person found at sea in danger of being lost;
(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.” (Art. 98 (1))
The 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) obliges the: “master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so...” (Chapter V, Regulation 33(1)).
- 50 *Ibid.* The 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention) imposes an obligation on every coastal State Party to: “...promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose”. (Art. 98 (2))
The 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) requires State Parties: “... to ensure that necessary arrangements are made for distress communication and coordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary...” (Chapter V, Regulation 7)
The 1979 International Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to: “... ensure that assistance be provided to any person in distress at sea ... regardless of the nationality or status of such a person or the circumstances in which that person is found” (Chapter 2.1.10) and to “[...] provide for their initial medical or other needs, and deliver them to a place of safety.” (Chapter 1.3.2)
The May 2004 amendments (which came into force in July 2006) to the SOLAS and SAR conventions as well as Guidelines on the Treatment of Persons Rescued at Sea further specify their application. The Guidelines contain the following provisions: The government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided. (para. 2.5) A place of safety is a location where rescue operations are considered to terminate, and where the survivors’ safety or life is no longer threatened; basic human needs (such as food, shelter and medical needs) can be met; and transportation arrangements can be made for the survivors’ next or final destination. (para. 6.12) While an assisting ship may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made. (para. 6.13)
- 51 UNHCR, “Refugees and Asylum-Seekers in Distress at Sea - how best to respond?”, 5 December 2011. URL: <http://www.unhcr.org/refworld/docid/4ede0d392.html>. The document refers to “Articles 18, 19, 20, 21 of the 1949 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, entered into force 21 October 1950; Article 26 of the 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War, entered into force 21 October 1950; Articles 10, 17, 32, 33, 34 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), entered into force 7 December 1978; Articles 4, 8 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), entered into force 7 December 1978.”

in the Mediterranean Sea: who is responsible?”. The specific focus of our report is further based on two initial elements of evidence:

1. The drift modelling (figs. 16,17,18) produced towards our report, which indicates that the migrants’ vessel remained within NATO’s Maritime Surveillance Area (MSA) or within the highly surveilled Libyan territorial waters for the entirety of its trajectory (fig. 28). This area was closely patrolled to impose an arms embargo on Libya and densely populated with a high number of maritime and aerial military assets.
2. The testimonies of the survivors, who state that they encountered naval and aerial assets that failed to assist them.

Despite our choice of emphasis, we will first review the involvement in the incident on the part of non-military parties, relying almost exclusively on secondary sources as well as on the evidence gathered by Senator Tineke Strik.

3.1 NON-MILITARY PARTIES INVOLVEMENT

3.1.1 Fishermen

As we have indicated in the previous section, the passengers on board the “left-to-die-boat” claim to have encountered a number of fishing vessels in the hours that followed the distress call and the first helicopter encounter during the night of 27 and into the morning of 28 March. Dan Haile Gebre mentions 5-6 boats, some of which were from Tunisia and Malta (DHG, 124). The migrants’ vessel went from one boat to the other asking for help, but none of them provided any assistance. On the contrary, they left swiftly, almost making the small migrants’ vessel capsize. One Tunisian fishermen indicated the direction towards Lampedusa but provided no other assistance. All these fishermen failed to render assistance to the migrants in any way that could have averted their tragic fate, thus disregarding their obligation to rescue vessels in distress at sea. Furthermore, according to the evidence analysed by Senator Tineke Strik, the fishermen also failed to inform any maritime authorities.⁵² While we are not able to identify the fishing vessels in question, it might be possible to do so by analysing VMS data in possession of national authorities.

However, this episode of non-assistance should be also understood in connection to the process by which assistance to migrants in the Sicily Channel on the part of fishing and/or commercial vessels has been heavily discouraged in recent years, if not criminalized. Both in the “Cap Anamur” case in 2004 as well as in the case involving two Tunisian fishermen in August 2007, shipmasters have been arrested and criminally charged with facilitating illegal immigration after having taken on-board migrants in distress at sea and disembarking them in Italy.⁵³ Even though in both these cases the defendants have been acquitted, they have nevertheless suffered severe economic damages, having been on trial for several years and having had their vessels confiscated for several months. Moreover, a strong disincentive for ships to comply with their obligation to assist has been the growing reluctance on the part of Southern European coastal states to accept responsibility for disembarking migrants, which has caused difficult situations of standstill for shipmasters. Since the enforcement of the Dublin Regulation which sets out that the first state of entry of an asylum seeker in the EU is responsible for following his or her claim, coastal states have been increasingly hesitant to receive migrants rescued at sea and have in several occasions engaged in diplomatic rows with neighbouring states to establish where those migrants

⁵² Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 16.

⁵³ See for example: Statewatch, “Italy - Criminalising solidarity - Cap Anamur trial underway”, 2007. URL: <http://www.statewatch.org/news/2007/apr/03italy-cape-anamur.htm>; and Fortress Europe, “Lampedusa: fishermen arrested having saved 44 shipwrecked migrants”, 29 August 2007. URL: <http://fortresseurope.blogspot.com/2006/01/lampedusa-fishermen-arrested-having.html>

should have been disembarked. In the already mentioned case of the “Cap Anamur” as well as in the case involving the Turkish cargo ship Pinar in 2009 the ships were denied the possibility to disembark the rescued migrants for several days.⁵⁴ Although these events have acted as a strong disincentive for shipmasters of fishing and/or commercial vessels to comply with their obligation to assist and rescue at sea, this situation does not diminish the fact of non-assistance by the fishermen to the passengers of the “left-to-die boat”.

3.1.2 Coastal States

The responsibility of coastal states “to ensure arrangements for distress communication and coordination in their area of responsibility and for the rescue of persons in distress at sea around their coasts” is defined in several maritime conventions.⁵⁵ In the Sicily Channel, SAR responsibilities are divided between Italy, Malta and Libya, while Tunisia still hasn’t established its SAR zone boundary (fig. 27). The delimitation of SAR zones is aimed at avoiding situations wherein a ship might find itself in danger and no state is designated as responsible for coordinating its rescue. However coastal states’ divergent interpretations of SAR norms have been used to evade this responsibility. Italy and Malta, for example, have an on-going and notorious dispute because they are signatories to different versions of the SAR convention. This dispute is well summarized by Thomas Gammeltoft-Hansen and Tanja E. Aalberts: “Italy has signed the 2004 amendments to the SAR and SOLAS conventions that stipulate that the migrants should be disembarked on the territory of the state within which’s SAR zone its vessel is identified or intercepted. Malta however, due to the size of its SAR zone, has refused to ratify these amendments for fears that it would impose unrealistic obligations to disembark migrants rescued by other states and private vessels. Malta consequently maintains the interpretation that the coordinating country’s obligation is to disembark rescued persons at the nearest safe port of call. This has led to tensions between Malta and Italy following a series of incidents where migrants were rescued in Malta’s SAR zone yet closer to the Italian islands Lampedusa and Pantelleria. The result has been lengthy stand-off during which migrants have died, and a number of confrontations between Italian and Maltese naval vessels literally trying to block each other from entering its territorial waters and disembark rescued migrants”.⁵⁶

In the case of the “left-to-die boat” both Italian and Maltese MRCCs were informed of the distress of the migrants. As discussed above, Father Zerai called Rome MRCC. They established communication with the migrants and later sent out a distress signal to all ships transiting in the Sicily Channel at 18:54 GMT. According to evidence provided to Senator Tineke Strik, considering that the ship would have soon entered the Maltese SAR zone, Rome MRCC then informed Malta MRCC by phone. The call was followed by a fax alert sent at 18:40 GMT. At 19:40 GMT, Rome MRCC sent a fax to NATO headquarters allied command in Naples. On 28 March at 04:06 GMT Rome MRCC sent out to all vessels another form of alert message, a Hydrolant navigational warning. The evidence provided to Senator Tineke Strik does not indicate that Libyan authorities were informed.⁵⁷ While we will discuss the precise content and geographic scope of these signals in short order, suffice it to say here that both Italian and Maltese authorities were informed of the boats distress, but given the localisation of the vessel at the moment of its distress signal within the Libyan SAR zone they did not consider they had the responsibility to coordinate rescue operations.⁵⁸ However, according to the drift model produced for our enquiry by Richard Limeburner (Woods Hole Oceanographic Institution), it appears probable that the vessel entered the Maltese SAR zone for at least part of one day (fig. 27), drifting in an area located 82 nautical miles from Lampedusa and 149 nautical miles from the Island of Malta, and thus within the zone of conflicting responsibility between Italy

⁵⁴ BBC, “Italy takes in stranded migrants”, 20 April 2009. URL: <http://news.bbc.co.uk/1/hi/world/europe/8007379.stm>

⁵⁵ UNHCR, “Rescue at Sea. A Guide to Principles and Practice as Applied to Migrants and Refugees”, September 2006. URL: <http://www.unhcr.org/refworld/docid/45b8d1e54.html>

⁵⁶ Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at Sea: The law and politics of saving lives in the Mare Liberum”, DIIS Working Paper 2010:18, p. 21-22.

⁵⁷ Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 12.

⁵⁸ Ibid., p. 13.

and Malta described above.

According to the analysis provided by Senator Tineke Strik, even if the vessel had remained within the Libyan SAR zone, this would not completely exempt Italy and Malta from all responsibility, for Libyan SAR capacity was compromised by NATO's intervention. Libyan Coast Guard vessels were involved in combat and targeted by participating states/NATO forces as an enemy naval asset.⁵⁹ While Senator Strik notes that the situation of a failing SAR zone is not foreseen in the existing legal framework, she also reminds all actors that "not being responsible on the basis of SAR zones, doesn't relieve another state which is informed about an incident at sea of its responsibility to ensure the rescue operation".⁶⁰ While Rome MRCC told Senator Strik that between 26 and 28 March 2011 the Italian authorities were engaged in incidents involving approximate 4,300 persons with over 2,200 of these people assisted at sea and around 2,000 rescued from distress situations, we may also note that the Italian Coast Guard had the technical and logistic capability to conduct a SAR operation well into Libyan SAR zone.⁶¹ On 4 August 2011, around 140 migrants were rescued by the Italian Coast Guard 90nm South of Lampedusa, hence several nautical miles south of both Italian and Maltese SAR zone.⁶²

3.1.3 Frontex

As of 20 February 2011, following the demand from the Italian Ministry of Interior, Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, deployed the 'Joint Operation EPN Hermes Extension 2011 [...] to assist the Italian authorities in managing the influx of migrants from North Africa, most of whom have been arriving on the island of Lampedusa'.⁶³ The operation was described by Frontex as follows: "All maritime assets and crews will be provided by the Italian authorities and will patrol a predefined area with a view to detecting and preventing illegitimate border crossings to the Pelagic Islands, Sicily and the Italian mainland. Aerial assets made available by other Member States [Italy, France, Germany, the Netherlands, Malta, Spain] for enhanced border surveillance and search and rescue capability will support these sea patrols. Meanwhile, second-line border control will be supported through the deployment of debriefing and screening experts to identify migrants' nationalities and to gather intelligence on people-smuggling networks. Further support may also be made available in the area of return operations."⁶⁴

According to evidence provided to Senator Tineke Strik, Frontex was directly informed by Rome MRCC of the vessel in distress. However on 28 November 2011, Frontex wrote a letter in response to a request of information advanced by a group of NGOs in which it clarified the scope and location of its mission.⁶⁵ In the letter, Frontex provided the coordinates of the "operational area" of the naval assets, which were involved in the "joint operations that were taking place in Central Mediterranean between 22nd of March and 10th of April".⁶⁶ From the information provided, it emerges that the trajectory of the "left-to-die boat" never entered any of Frontex's operational areas.

59 During the evening of 28 March 2011, only one day after the migrants' distress call, a U.S. Navy P-3C Maritime Patrol aircraft, a U.S. Air Force A-10 Thunderbolt attack aircraft and the guided-missile destroyer USS Barry (DDG-52) engaged the Libyan Coast Guard vessel Vittoria and two smaller crafts, which were firing indiscriminately at merchant vessels in the port of Misrata. See Joint Task Force Odyssey Dawn Public Affairs, "US Navy P-3C, USAF A-10 and USS Barry Engage Libyan Vessels", 29 March 2011. URL: <http://www.africom.mil/getArticle.asp?art=6347&lang=0>

60 Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 14.

61 Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 13.

62 Francesco Viviano, "Cento corpi in mare", nuova strage di migranti", La Repubblica, 5 August 2011. URL: <http://www.dirittiglobali.it/home/categorie/23-immigrati-a-rifugiati/18594-qcento-corpi-in-mare-nuova-strage-di-migranti.html>

63 EC Press release, "The European Commission's response to the migratory flows from North Africa", MEMO/11/226, 8 April 2011. URL: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/226>

64 Frontex press release, "Hermes 2011 running", 22 February 2011. URL: http://www.frontex.europa.eu/newsroom/news_releases/art96.html

65 Letter by Gil Arias, Frontex Deputy Executive Director, to Souhayr Belhassen, President of FIDH; Olivier Clochard, President of Migreurope; Stéphane Maugendre, President of GISTI; Fred Mawet, Director of CIRE; Pierre Tartakowsky, President of LDH. Written in Warsaw on the 28th November 2011.

66 *Ibid.*

3.1.4 Summary Of Non-Military Parties Involvement

From what precedes, it appears that fishermen failed to assist the migrants in the open sea and that Italy and Malta, although informed of the distress of the migrants (the migrants' vessel was on the threshold of, if not inside, the Maltese SAR zone), did not intervene to rescue them or assure that their rescue was being coordinated. The "left-to-die boat" thus remained adrift for 14 days within a non-operational Libyan SAR zone. This same area was however populated by an intensified amount of aerial and maritime assets deployed in support of the multi-state military operations in Libya. NATO monitored all maritime traffic as part of the maritime embargo over Libya. Furthermore the migrants' testimonies state that they encountered military aerial and naval assets that failed to assist them. All these elements point in the direction of a strong involvement on the part of participating states/NATO forces, which we will now investigate in detail.

3.2 PARTICIPATING STATES/NATO INVOLVEMENT

In the remainder of this chapter we will enquire into participating states/NATO involvement with regard to the "left-to-die boat" case. To this effect we will try to answer, to the best of our knowledge, the following questions:

1. To what extent were participating states/NATO naval and aerial assets present during the events in question? We estimate that at least 38 naval assets had been in operation off the coast of Libya at least for some time during the time of events. Several aerial assets were also deployed in the same time and area.
2. Were participating states/NATO naval assets informed of the migrants' distress? NATO has admitted that its maritime command did receive a "general notice in the evening of 27 March from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people."⁶⁷ We will further demonstrate that participating states/NATO naval assets themselves were informed of the migrants' distress through two maritime distress signals that provided them with the distressed vessels' location.
3. How did participating states/NATO forces respond to the information of distress? In one of its statements on the events dated 3 October 2011, NATO claims that the message its maritime command received did not request assistance.⁶⁸ In a letter sent to Senator Tineke Strik, NATO has further specified that "there is no record of any aircraft or ship under NATO command having seen or made contact with the small boat in question".⁶⁹ However, based upon the migrants testimonies describing two encounters with military helicopters and based upon prior practices of assistance by NATO, we will argue that a NATO or a participating states' naval asset probably did send out a helicopter to assess the condition of the migrants' vessel and limited itself to providing them with food and water.
4. Could participating states/NATO have detected the vessel as it drifted back towards the Libyan coast during 14 days (11 within NATO's MSA and the remaining three within the highly surveilled Libyan territorial waters)? We will argue that participating states/NATO's sensing capabilities did enable them to detect the migrants' vessel.
5. Did the migrants' vessel encounter a military ship that failed to assist them? Considering the survivors' overall agreement on this point and the number of naval assets of the type recognised by the survivors present at the time in the area, we will argue that this is not only plausible, but also probable.

By reviewing the above questions and assessments in detail we will demonstrate a high degree of involvement

⁶⁷ Email in response to journalist Emiliano Bos sent on the 3 October 2011 by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO HQ) the content of which "can be attributed to Ms Oana Lungescu, NATO spokesperson". This email was quoted in Emiliano Bos and Paul Nicol's documentary "Mare deserto", produced for the Swiss Radio and Television and broadcasted on the 24th of January (annex B.13) Note the reference to "68 people" is quoted from the Italian Coast Guard signal sent out on the March 27th 2011. The number is inaccurate but reflects their knowledge at the time.

⁶⁸ *Ibid.*

⁶⁹ Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 26.

on the part of participating states/NATO command and assets that contributed to the death of 63 passengers on board the “left-to-die boat” and to grave psychological and physiological consequences for all 72 passengers.

3.2.1 Participating States/NATO Naval And Aerial Assets Presence

NATO and states participating in the military intervention have so far not provided precise lists or locations of their active naval assets during the time of the events in question. In what follows, we nevertheless offer a general picture of the scope and density of participating states/NATO’s maritime and aerial presence in the area and time of interest, based on publicly available information released by NATO command as well as by various national navies. The accuracy of this general picture will be tested against Synthetic Aperture Radar imagery (figs. 21 to 26), which will allow for an assessment of the presence of ships, both military and civil, in the area.

The international response to the Libyan crisis was framed by two United Nations Security Council Resolutions. While Resolution 1970 adopted on 26 February 2011 instated the arms embargo,⁷⁰ Resolution 1973 adopted on 17 March 2011⁷¹ lead to international military deployment by authorizing “member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” To the effect of protecting civilians, the Resolution further decided to “establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians” and called upon “all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011).”

This resolution led to an international military intervention in Libya involving the deployment of naval and aerial assets from 18 states.⁷² The official names for the interventions by the states contributing most importantly to the military effort are Operation Harmattan by France; Operation Ellamy by the United Kingdom; Operation Mobile for the Canadian participation and Operation Odyssey Dawn for the United States. NATO’s role progressively grew as it took under its command the arms embargo on 23 March⁷³, the no fly zone on 25 March⁷⁴ and actions the protection of civilians from attack or the threat of attack on 31 March.⁷⁵

The structure of command thus evolved rapidly at the beginning of the military operations and official statements remain contradictory, making it extremely difficult to determine which assets were under which command at what time.

The French Ministry of Defence explained in its presentation of Operation Harmattan that “while the multinational mechanism [dispositive] is being installed and grows more important, the command of each military asset falls under the command of its national joint-staff. In France the command of assets falls under the Centre for Planning and Conduct of Operations (CPCO), under the authority of the CEMA.”⁷⁶ Despite having been updated in September 2011, this statement seems to refer to the period prior to NATO’s increasingly important role.

70 United Nations Security Council Resolution. 1970, adopted on 26 February 2011, point 9. URL: http://www.un.org/Docs/sc/unscl_resolutions11.htm

71 United Nations Security Council Resolution. 1973, adopted on 17 March 2011. URL: http://www.un.org/Docs/sc/unscl_resolutions11.htm

72 The International Institute for Strategic Studies mentions 18 states contributing military assets to the operations undertaken to enforce UN Security Council Resolution 1973 as of 10 June 2011. See: <http://www.iiss.org/whats-new/iiss-voices/operation-odyssey-dawn-ellamy-harmattan-mobile/>

73 NATO Fact sheet, “Operation Unified Protector - NATO Arms Embargo against Libya”, March 2011. URL:

http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf

74 NATO Fact sheet, “Operation Unified Protector - NATO No-Fly Zone over Libya”, March 2011. URL:

http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-no-fly-zone.pdf

75 NATO Fact sheet, “Operation Unified Protector - Protection of civilians and civilian populated areas”, April 2011. URL:

http://www.nato.int/nato_static/assets/pdf/pdf_2011_04/20110407_unified-protector-protection-civilians.pdf

76 French Ministry of Defence, “L’opération Harmattan”, last updated 27 September 2011. URL: <http://www.defense.gouv.fr/actualites/operations/l-operation-harmattan>

During a press briefing on 31 March 2011, NATO Military Committee Chairman Admiral Giampaolo Di Paola stated that “over the past week we have seen NATO gradually taking over responsibility of operations in Libya. Today we can announce that NATO has full responsibility of Operation Unified Protector – which includes the arms embargo, the no-fly zone and actions to protect civilians.” He further declared that the 28 members of the Alliance had “decided that a unified chain of command under NATO was the best solution for dealing with this crisis from a military point of view”⁷⁷

However NATO’s response to Senator Tineke Strik dated 8 February 2012 states clearly that: “not all military ships in that part of the Mediterranean were operating under NATO command”.⁷⁸ Furthermore, during a telephone conversation we were granted on 12 March 2012, Stanislas Gentien, Adjunct director of communications for the French Navy, explained that the majority of French naval assets involved in the military effort operated under national command while one naval asset – which could shift through time - was provided to NATO towards operations under its command. According to an article published in the newspaper “L’Express” based on an interview with French Admiral Philippe Coindreau, the French aircraft carrier Charles-de-Gaulle remained under national command but upon takeoff its aircrafts came under NATO command.⁷⁹

Considering the complexity and the evolving nature of the command over military assets by states taking part in the military intervention and NATO, we will refer throughout this section to “participating states/NATO” assets to encompass all assets present at the time of events and their relative commands.

3.2.1.1 Participating States/NATO Naval Presence Towards Enforcement Of The No-Fly Zone And For Protection Of Civilians

The military operations launched to enforce UNSCR 1973 started early on the afternoon of 19 March 2011, when around 20 French aircrafts were deployed over Libya.⁸⁰ The presence of naval assets in the first 24 hours was probably limited but expanded rapidly in the following 24 to 72 hours, with the first ships being joined by several others which were already on hold in the Mediterranean or were deployed for the possible evacuation of foreigners trapped in Libya.⁸¹ The national navies most heavily involved in this very early phase were the French, the American, the British, and the Italian, although other significant contributions from other countries cannot be excluded on the basis of the information at our disposal. The main naval means deployed by those countries within the first 24 hours of combat were:

- Two French military ships (the anti-air frigates Jean Bart and Forbin), which started to take part in military operations on the afternoon of 19 March. The Jean Bart was one of the first naval assets to reach the coast of Libya. It received the order to head towards Libyan waters on 7 March 2011 and arrived off the coast off Tripoli on the 8th. Its initial mission was to gather intelligence on the situation in Libya.⁸² The Forbin left Toulon on 17 March and arrived on the coast of Benghazi on the 19th to join Operation Harmattan.⁸³

⁷⁷ NATO Press briefing, 31 March 2011. URL: http://www.nato.int/cps/en/natolive/opinions_71897.htm

⁷⁸ Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 29

⁷⁹ Romain Rosso, “Le Charles-de-Gaulle accusé d’avoir laissé mourir 61 migrants”, L’Express, 9 Mai 2011. URL: http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html

⁸⁰ French Ministry of Defence, “Libye: point de situation opération Harmattan n°1”, 25 March 2011. URL: <http://www.defense.gouv.fr/actualites/operations/libye-point-de-situation-operation-harmattan-n-1>

⁸¹ As it was the case, for instance, of the British HMS Cumberland (see <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/HmsCumberlandDeploysToLibyanCoast.htm>) and of the Canadian HMCS Charlottetown (see <http://www.rcf-arc.forces.gc.ca/v2/nr-sp/index-eng.asp?id=11534>)

⁸² See the posts on the Jean Bart’s “Journal de bord”: <http://jdb.marine.defense.gouv.fr/index.php/post/2011/04/02/Le-%C2%A0Jean-Bart%C2%A0-au-c%C3%A9ur-de-la-crise-libyenne> and <http://www.defense.gouv.fr/english/content/view/full/111961>

⁸³ See the posts on the Forbin’s “Journal de bord”: <http://jdb.marine.defense.gouv.fr/index.php/post/2011/04/02/Le-%C2%A0Forbin-%C2%AC-fer-de-lance-de-l'operation-des-Nations-Unies>. As of the arrival of the aircraft carrier the Charles-de-Gaulle in the zone on the 22 March 2011, the Forbin joined the carrier strike group (CSG), which was composed as well by tanker Meuse, destroyer Duplex, and frigate Aconit.

- Two US destroyers, the USS Stout and USS Barry, as well as three American submarines (USS Providence, USS Scranton and USS Florida) and another British one (HMS Triumph), which were reported to have fired several Tomahawk cruise missiles on 19 and 20 March 2011.⁸⁴ Other US ships present in the area include the USS Kearsarge, USS Ponce and USS Mount Whitney.⁸⁵
- Two British frigates, the HMS Westminster and HMS Cumberland.⁸⁶
- The Italian aircraft carrier Giuseppe Garibaldi, which left the port of Taranto on 19 March, the destroyer Andrea Doria and the frigate Euro. Other Italian naval assets present in the Sicily Channel were the auxiliary vessel Etna and patrol boat Borsini.⁸⁷
- Whereas the initial operations to protect civilians occurred in the area south-west of Benghazi, the enforcement of the no-fly-zone required the firing of missiles all along the Western and Central sections of the Libyan coast, from the border with Tunisia to Benghazi (annex B.5). Another mission assigned to those ships in the first days of conflict was to block Libyan gunboats in port, preventing them from performing coastal patrols and the bombardment of rebel-held positions ashore, as well as the use of participating states/NATO surveillance suites “to monitor activities along the Libyan coast, providing vital intelligence for the overall mission”.⁸⁸ We can therefore assume that naval assets involved in these operations were located along this stretch of Libyan coast from the border with Tunisia to Benghazi.
- The naval presence of participating states/NATO forces grew rapidly. At a news briefing on 24 March, three days before the migrant’s boat left Tripoli, Vice Admiral Gortney of the US Department of Defence presented a slide (annex B.3) describing the “maritime laydown, with most ships operating just to the north of Libya” mentioning 38 naval assets taking part in operation at the time.⁸⁹ According to both media reports and press releases by national navies, that the naval presence in the Central Mediterranean continued to grow in the following days. In the period between 27 March and 10 April it was further reinforced by ships belonging to the Belgian, Greek, Dutch and Spanish Navies, all of which contributed at least one military ship each⁹⁰, and the Turkish Navy which contributed at least four ships.
- Amongst the 38 ships mentioned in this document, those involved in the protection of civilian and the no-fly zone enforcement and those involved in the arms embargo enforcement are not differentiated. But if the number of ships involved in the latter numbered between 12 and 21 (as is explained in the following subchapter) we can assume that those involved in the former two elements of the operations were likely of a similar number, that is between 16 and 26.⁹¹

3.2.1.2 NATO Naval Presence Towards The Enforcement Of The Arms Embargo

According to our understanding, the naval assets patrolling the approaches to Libyan territorial waters so as to monitor the enforcement of the embargo operated under NATO command as of 23 March 2011 in the frame of Operation Unified Protector. “Their mission”, it can be read in a fact-sheet provided by NATO, “is to reduce the flow of arms, related material and mercenaries to Libya, as called for in UN Security Council Resolution 1973.

⁸⁴ U.S. Department of Defence, “DOD News Briefing by Vice Adm. Gortney on Operation Odyssey Dawn”, 19 March and 20 March 2011. URL: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4786> and <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4787>

⁸⁵ *Ibid.*

⁸⁶ See: <http://www.navynews.co.uk/news/1123-royal-navy-blockade-forces-gaddafis-gunboats-off-the-ocean.aspx>

⁸⁷ See: http://www.marina.difesa.it/Conosciamoci/Notizie/Pagine/20110321_libriacrisi.aspx

⁸⁸ See: <http://www.navynews.co.uk/news/1123-royal-navy-blockade-forces-gaddafis-gunboats-off-the-ocean.aspx>

⁸⁹ U.S. Department of Defence, “DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn”, 24 March 2011. URL: <http://www.defense.gov/news/g20110324pptslides.pdf>

⁹⁰ Respectively, the BNS Narcis, the frigate Limnos, the HNLMS Haarlem and the ESPS Méndez Núñez.

⁹¹ Although the upper limit of ships’ involvement in the arms embargo has been made publicly available (see: http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf), the lower limit hasn’t. The number of 12 ships refers in fact to September 2011. More precise information on the number of ships involved in the first phases of the arms embargo could not be found.

(...) NATO ships will use surveillance to verify the activity of shipping in the region, separating out legitimate commercial and private traffic from suspicious vessels that warrant closer inspection. Suspicious traffic will be hailed by radio, and if they cannot give satisfactory information about their cargoes, the NATO ships are authorized to intercept them. As a last resort, the Task Force is empowered to use force.⁹² In order to impose the embargo, a wide zone of the Central Mediterranean (fig. 28) was turned into a "maritime surveillance area" (MSA) monitored by various naval assets and sophisticated surveillance systems centralised by NATO's Headquarters in Naples.⁹³ Ships aiming to transit through the embargo area were required to notify NATO of their cargo and destination as detailed in a Navigation Warning message.

The number of naval assets specifically involved in monitoring the MSA fluctuated but at the peak of the arms embargo mission, 21 naval assets were assigned to NATO in support of the operation.⁹⁴ On 4 April 2011, Vice Admiral Rinaldo Veri, Commander Maritime Command Naples, stated: "I have been entrusted with commanding the part of the operation which enforces the arms embargo in the maritime approaches to Libya. (...) Under my command I currently have 16 ships, submarines and surveillance aircraft. Nine nations are contributing. This force is destined to grow."⁹⁵ As of 5 April 2011, eight Allies (Belgium, Canada, Greece, Italy, Netherlands, Spain, Turkey, and United Kingdom) provided 18 ships and submarines to monitor and enforce the arms embargo, supported by surveillance planes and fighter jets as required.⁹⁶ This important naval presence was necessary to monitor one of the most congested waterways in Europe. By 3 May 2011, 750 ships had been hailed, 26 boarded and five ships turned away.⁹⁷ By 30 September 2011, a total of 2862 vessels had been hailed, 293 boarded and 11 denied transit to or from Libyan ports. In order to most effectively monitor the MSA, each of the naval assets under NATO command patrolled a specific area of responsibility, or "patrol box", which evolved through time.⁹⁸ While NATO has not provided information as to the delimitation of these areas according to naval assets, the coverage was extensive. Luca Selva, Operations Officer on board the Italian ship Bettica operating under NATO command, describes the 24/7 activity of maritime surveillance in a video posted on 20 April 2011 as follows: "When you have about 18 ships at sea to control such a vast sea portion, obviously you have to make sure that every portion of sea is controlled, and that there is nothing passing through and you are not noticing it."⁹⁹

3.2.1.3 Participating States/NATO Aerial Assets

At the 24 March 2011 US Department of Defense News briefing on Libya Operation Odyssey Dawn, Vice Admiral Gortney from the Pentagon stated: "You can also get a sense here of the international contributions to the no-fly zone mission. More than 350 aircraft are involved in some capacity, either enforcing the no-fly zone or protecting the civilian populace. Only slightly more than half belong to the United States."¹⁰⁰ Between 19 and 27 March

92 NATO Fact sheet, "Operation Unified Protector NATO Arms Embargo against Libya", March 2011. URL: http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf

93 From the 23rd of March to the 8th of April the area was defined as follows: Northern limit: 35 00 N, Western limit: 34 00 N 012 00 E, Southern limit: Libya TTW limit -not included-, Eastern limits: 34 00 N 022 00 E and 33 00 N 025 00E. As of the 8th of April the Northern limit was reduced to 34 00 N. For the most recent definition of the area see: NATO, "Update to NATO Embargo operations in the vicinity of Libya", 8 April 2011. URL: [http://www.shipping.nato.int/SiteCollectionDocuments/110408_Engagement_Embargo_update\[1\].pdf](http://www.shipping.nato.int/SiteCollectionDocuments/110408_Engagement_Embargo_update[1].pdf). For the definition of the area prior to 8 April 2011 see "NATO Embargo operations in the vicinity of Libya", 22 March 2011, available at http://www.aegirshipbrokers.com/images/110324_Engagement_Embargo_LBY.pdf

94 NATO Fact Sheet, "Operation Unified Protector NATO-led Arms Embargo against Libya", October 2011. URL: http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf

95 NATO, "VADM Veri holds Press Conference aboard ITS Etna", 4 April 2011. URL: <http://www.jfcnaples.nato.int/page167503642.aspx>

96 NATO Fact Sheet, "Operation Unified Protector NATO-led Arms Embargo against Libya", March 2011. URL: http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf

97 NATO press conference, "Maritime Embargo has contributed significantly", Naples, 3 May 2011. URL: http://www.jfcnaples.nato.int/Unified_Protector/page190902014.aspx

98 See "International Operations: HMCS Vancouver completes successful Mediterranean mission", January 12, 2012. URL: http://www.navy.forces.gc.ca/cms/4/4-a_eng.asp?id=892 and the video : http://www.isafnato.com/natocommunity/nato-and-libya-italian-patrol-ship-bettica-enforcing-the-arms-embargo-video_45f8fd52e.html

99 Natochanneltv, "NATO Libya ARMS EMBARGO 24-7", 20 March 2011. URL: <http://www.youtube.com/watch?v=Wa9C-a2A-k4>. The division of the sea into patrol sectors is confirmed in yet another video posted on the 14 April 2011 on natochanneltv, in which we are taken onboard the Bettica as its manoeuvres towards its patrol area, "near the border between Tunisia and Libya." Mike Mühleberger, the NATO correspondent aboard explains while describing a monitor on which maritime traffic appears: "The area North of Libya as been divided into patrol sectors assigned to each NATO ship." Available at <http://www.youtube.com/watch?v=fwVPv0sgsk8>

100 U.S. Department of Defence, "DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn", 24 March 2011. URL : <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4798>

2011, a total of 1,602 sorties had taken place under the auspices of Operation Odyssey Dawn.¹⁰¹

A number of participating states/NATO aerial assets were deployed over the Mediterranean Sea. Most of the naval assets patrolling the MSA were equipped with helicopters, which were scrambled to verify unidentifiable radar returns. The above-mentioned HMCS Charlottetown, for example, had a Sea King helicopter on board.¹⁰² The French aircraft carrier Charles-de-Gaulle was equipped with two E-2C Hawkeye planes that operated from its deck.¹⁰³ France also deployed an Altantique 2 maritime patrol aircraft, which operated surveillance missions towards the maritime embargo in April.¹⁰⁴ The Canadian Forces deployed two CP-140 Aurora maritime patrol aircrafts as part of Operation Mobile as of the 25 of March 2011.¹⁰⁵ In the framework of the intervention in Libya, the Aurora “began conducting maritime surveillance to identify vessels in the embargo zone and relay that information to the NATO task group patrolling the waters off Libya.”¹⁰⁶ Participating states/NATO also deployed AWACS (Airborne Warning and Control System) aircrafts. On 9 March 2011 NATO reinforced AWACS presence over the Mediterranean to 24/7.¹⁰⁷ While these first AWACS were NATO assets, several other participating states (USA, UK, and France) subsequently provided their own planes in order to monitor the Libyan land, air, and sea.¹⁰⁸

3.2.1.4 Conclusion On Participating States/NATO Naval And Aerial Assets Presence

From what precedes, we can estimate that at least 38 naval assets had been in operation in the waters off the coast of Libya for at least some time between 27 March and 10 April. Although this data alone does not allow us to determine with precision the exact laydown of naval assets as it evolved day by day, it does establish the degree of naval presence during the time of events. The extent of participating states/NATO’s naval asset presence was conveyed by an Italian official to Senator Tineke Strik as follows: “I expect that sailing from Libya towards Italy should be a bit like doing a slalom between military ships”.¹⁰⁹ Furthermore, the maritime space was also closely monitored by several aircrafts.

The image of a congested stretch of sea – populated by both military and commercial vessels - is confirmed by our analysis of Synthetic Aperture Radar (SAR) data (figs. 21 to 26). Combining the analysis of SAR data with that of the drift model, we are able to demonstrate that both on 28 and 29 March 2011 a large number of ships were located in the area, some of which were at distance of between 20 and 38 nautical miles to the migrants boat. Although we are not currently able to identify whether they were military or commercial ships or their nationality, the question that presents itself is compelling: who’s ships were these? Only further investigation and disclosure by participating states/NATO forces will provide the answer to this question.

3.2.2 Participating States/NATO Information Of The Migrant’s Distress

At first, after the “left-to-die boat” case was reported in the international press NATO denied being involved in any way in the incident.¹¹⁰ Carmen Romero, NATO Deputy Spokesperson, stated on 10 May 2011 that:

101 U.S. Department of Defence, “DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn”, 28 March 2011. URL: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4803>

102 Natochannel.tv, “Maritime Helicopter Patrols”, 6 April 2011. URL: www.natochannel.tv or <http://www.youtube.com/watch?v=siV1o9GOHvQ>

103 French Ministry of Defence, “Libye: appareillage du porte-avions Charles de Gaulle”, 21 March 2011. URL : <http://www.defense.gouv.fr/content/view/full/111961>

104 French Ministry of Defence, “Libye: arrivée des Atlantique 2 à la Sude”, 4 August 2011. URL :

<http://www.defense.gouv.fr/operations/autres-operations/operation-harmattan-libye/actualites/libye-arrivee-des-atlantique-2-a-la-sude>, see also Mer et marine, “La marine française déjoue une opération de minage devant le port de Misrata”, 2 Mai 2011. URL: <http://www.meretmarine.com/article.cfm?id=116002>

105 Canada National Defence and Armed Forces, “Canadian Forces Deploy Maritime Patrol Aircraft In Response To Situation In Libya”, News Release 11.034 , 25 March 2011. URL: <http://www.cfcmaf.com.ca/pa-ap/nr-sp/doc-eng.asp?id=3758>

106 Canada National Defence and Armed Forces, “Auroras fly first mission over Libya”, 4 October 2011. URL : <http://www.comfec-cfcmaf.com.ca/pa-ap/fs-ev/2011/10/04-eng.asp>

107 NATO, “NATO increases airborne surveillance in the Mediterranean”, 9 March 2011 URL:

http://www.nato.int/cps/en/SID-60A834D6-21121871/natolive/news_71316.htm?selectedLocale=en

108 NATO, “AWACS: NATO’s ‘Eye In The Sky’”, URL: http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics_48904.htm?selectedLocale=en

109 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 5.

110 Although it was not the first to report the incident, Jack Shenker’s article “Aircraft carrier left us to die, say migrants” published in “The Guardian” newspaper on 8 May 2011 was the one that sparked international criticism. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>.

“NATO has reviewed all relevant information available, so we have already looked into that, and we can find no evidence whatsoever of any NATO ships being involved in this tragic incident reported by The Guardian. (...) In addition to that, NATO units at sea neither saw nor heard any trace of distress calls from that area. This is all we have to say about this. We looked into this and there is no evidence. Basically, NATO was not involved because it had no signs.”¹¹¹

A number of elements now allow us to say with conviction that participating states/NATO forces were informed of the migrants’ distress.

3.2.2.1 French Military Aircraft Identification

As mentioned previously in the “Chain of Events” section of the report, both the testimonies of the survivors and the evidence provided to Senator Tineke Strik by Rome MRCC lead to the conclusion that on the afternoon of 27 March 2011 the migrants’ vessel was flown over by a French aircraft.¹¹² Because the aircraft provided GPS coordinates as well as a photograph of the migrants’ vessel, a practice consistent with maritime identification practices under NATO, this leads us to believe that it was a military aircraft involved in participating states/NATO operations. As discussed above, France had a number of aircrafts operating specifically over the Mediterranean Sea, some of which might appear to be “white”, as stated by Girma Halfmon to Senator Tineke Strik. This is the case for example of the Altantique 2 maritime patrol aircraft, which is light grey and was operating off the Libyan coast in April. Based on the information reviewed we cannot confirm that it was already in operation on 27 March 2011. The military aircraft that first sighted the migrants’ vessel described the small rubber boat and mentioned it was carrying about 50 people, a smaller number than the 72 migrants actually on the “left-to-die boat” but already an observation that indicates dangerous overcrowding.

3.2.2.2 Fax And Phone Call

From its initial statement of denial, NATO reviewed its position several months later, as detailed in Emiliano Bos and Paul Nicol’s documentary “Mare deserto” produced for the RSI and broadcasted on 24 January 2012. In this documentary, the authors quote a response to their inquiry provided on 3 October 2011 by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO Headquarters) that, as we read, can be attributed to Ms Oana Lungescu, NATO spokesperson. In this communication, Ms Oana Lungescu finally admitted receiving a “general notice” sent out by the Italian Authorities, but that this did not imply a request for assistance:

“NATO maritime command did not receive a call for assistance in relation to this migrant ship. Instead, NATO received a general notice in the evening of the 27th of March from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people.¹¹³ The message was not an instruction to begin search and rescue, nor did it request assistance [...]. At the time the message was received, the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel.” (annex B.13)

The “general notice” Ms Oana Lungescu is referring to is the fax sent by MRCC Rome to NATO headquarters allied command in Naples on 27 March 2011 at 19:40 GMT and quoted in Senator Tineke Strik’s report:

“FROM: MRCC ROMA
TO: NATO HEADQUARTER ALLIED COMMAND – NAPLES
SUBJECT: BOAT WITH APPROX 68 P.O.B. PROBABLY IN DIFFICULT IN POS. LAT 33°58.2’N – LONG 012°55.8’E (16.52 UTC)

¹¹¹ NATO News conference, “NATO Allied Joint Force Command”, Naples, 10 May 2011. URL: http://www.jfcnaples.nato.int/Unified_Protector/page19090937.aspx

¹¹² Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, pp. 7, 15.

¹¹³ Note that the reference to “68 people” comes from the Italian Coast Guard signal sent out on 27 March 2011. The number is inaccurate but reflects their knowledge at the time.

TEXT: DEAR SIRs/MADAMS

FOR ANY APPROPRIATE ACTION, PLEASE BE INFORMED THAT TODAY THIS MRCC RECEIVED THE INFORMATION ABOUT A SMALL BOAT WITH ABOUT 68 P.OB. IN DIFFICULT IN THE SOUTH MEDITERRANEAN SEA. ON BOARD THERE IS THE THURAYA SAT PHONE WITH THE NUMBER 008821621256157.

WE CARRIED OUT SOME INVESTIGATION ABOUT THIS CASE WITH THE PURPOSE TO LOCATE THE CALLER. "THURAYA" COMPANY INFORMED US THAT THE POSITION OF THE SATELLITE DEVICE AT 16.52 UTC WAS LAT 33°58.2'N – LONG 012°55.8'E.

PLEASE KEEP US UPDATED IN CASE OF SIGHTING OF THE ABOVE MENTIONED BOAT BY ANY NATO NAVAL ASSETS."¹¹⁴

According to NATO's latest statement dated 27 March 2012 "despite the imprecise nature of the request for information contained in the MRCC fax, which was not a formal request for assistance or «distress call», it was forwarded to NATO Task Force units under its operational control." (annex B.14)

The following day, 28 March 2011, NATO was also alerted by telephone by Father Zerai. In several newspaper articles, Father Zerai stated to have informed NATO command in Naples. In our interview, Father Zerai declared: "On Monday 28th I have called the Coast Guard, and when they told me they still didn't have any news I called NATO at Naples at around 10-10.30 to ask them to mobilize their means to look for this boat as well. [...] At NATO, the person who answered first was speaking English. I asked for somebody speaking Italian. They put my call through to somebody who could speak Italian. I explained him that there were these two boats missing and asked for NATO participation in the search. He told me that he would warn the appropriate authorities".

¹¹⁵ However, in a response to Senator Tineke Strik's inquiry, Richard Froh, Deputy Assistant Secretary General Operations, states that NATO operational headquarters in Naples does not have "any record of a phone call from Father Zerai on 28 March".¹¹⁶

3.2.2.3 Distress Signals

In addition to the fax and phone call received directly by NATO allied command in Naples, all participating states/ NATO naval assets present in the area received the distress signals sent out by Rome MRCC.

The first signal was an ECG message sent at 18:54 GMT¹¹⁷ through the SafetyNET international safety service.¹¹⁸ According to Admiral Lo Sardo, interviewed by journalist Emiliano Bos, this distress signal was sent "to all ships in transit and to anyone in the area".¹¹⁹ The message provided the coordinates of the migrants' boat and stated that it was "probably in difficulty" (fig. 8). It demanded that "all ships transiting in the Sicily Channel" "keep a sharp look out and reporting any sighting at MRCC Rome". The distress signal, whose status will be discussed in more detail in the following section, was emitted again every four hours for ten days.

On 28 March 2011 at 04:06 GMT the initial warning was also circulated by the World Wide Navigational Warning Service (WWNWS) as a Hydrolant Navigational Warning (fig. 9).¹²⁰ It further specified: "Vessels in vicinity

¹¹⁴ Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 12.

¹¹⁵ Interview conducted and filmed by Charles Heller in Geneva on 12 November 2011 (our translation from Italian to English).

¹¹⁶ Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 26.

¹¹⁷ *Ibid.*, p. 11.

¹¹⁸ SafetyNET uses the Inmarsat EGC (Enhanced Group Call) service to allow authorised maritime safety information providers, such as Maritime Rescue Coordination Centres, to broadcast messages to all ships in certain geographical areas in accordance with Global Maritime Distress and Safety System (GMDSS) procedures. See: http://www.inmarsat.com/Support/Inmarsat_C/FAQs/default.aspx?language=EN&textonly=False

¹¹⁹ Interview conducted and filmed by Emiliano Bos at Rome MRCC (Comando Generale del Corpo delle Capitanerie di Porto) on 8 September 2011 (our translation from Italian to English).

¹²⁰ "In support of the Global Maritime Distress and Safety System (GMDSS), Broadcast Warnings are promulgated by the Worldwide Navigational Warnings Service [...] to provide rapid dissemination of information critical to navigation and the safety of life at sea. Navigational Warnings are issued regularly and contain information about persons in distress, or objects and events that pose an immediate hazard to navigation. The four types of Navigational Warnings - NAVAREA IV, HYDROLANT, NAVAREA XII, and HYDROPAC - are categorized by their location". URL: http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal_page_63

requested to keep a sharp lookout, assist if possible. Report to MRCC Rome.” This second message was sent in a perimeter including the Sicily Channel and beyond (the Hydrolant broadcast zones 52,53 and 56 indicated in fig. 10).

While a spokesman of the Spanish ministry of defence has denied that the Spanish asset operating in the area received this message,¹²¹ according to Senator Tineke Strik “all maritime vessels, be they private, commercial or military, are supposed to be equipped to receive these messages”.¹²² All participating states/NATO naval assets present in the area should thus have received the successive distress signals.

The above suggests that both NATO maritime command in Naples and participating states/NATO naval assets present in the area were directly informed of the presence of a vessel in distress, respectively by fax and telephone and via maritime distress signals.

3.2.3 Participating States/NATO Response To The Distress Signal

We must now discuss the participating states/NATO response to the information of the migrants’ distressed boat, which was received through multiple channels and NATO’s understanding of “distress” more generally.

The first element that needs to be discussed is NATO’s understanding of what kind of situation constitutes “distress”. In the above mentioned response to Emiliano Bos, NATO spokesperson Ms Oana Lungescu acknowledges that NATO maritime command was alerted “to the presence of a vessel in difficulty” but states that “the message was not an instruction to begin search and rescue, nor did it request assistance”. If the above-mentioned fax sent by MRCC Rome to NATO headquarters allied command in Naples on 27 March indicating the presence of a boat “in difficulty” did not require immediate and explicit intervention, participating states/NATO naval assets should have received the ECG signal sent out by the Italian Coast Guard. This message had a priority code marked as “distress”, the highest possible in a scale that includes, in decreasing order of urgency, “distress, urgency, safety, and routine”. The 1979 SAR Convention defines distress as “a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.”¹²³ According to this definition then, the EGC sent out by the Italian Coast Guard would have required “immediate assistance”. Moreover, all participating states/NATO assets in the Central Mediterranean should have received the Hydrolant message demanding that they “assist if possible”. Finally, it should be reminded that on 8 April 2011 - only a few days after the message was received and while the migrants’ vessel was still drifting at sea, the UNHCR’s Assistant High Commissioner for Protection Erika Feller stated that “any overcrowded boat leaving Libya these days should be considered to be in distress.”¹²⁴

From the above it follows that if participating states/NATO forces did not deem the distress signals urgent enough to prompt their intervention, they failed to correctly assess the degree of distress of the passengers. However, the question “how did NATO and participating states assets act upon the information of the vessels distress?” remains entirely open. In a letter sent on 8 February 2012 in response to Senator Tineke Strik’s enquiry, NATO specified that “there is no record of any aircraft or ship under NATO command having seen

¹²¹ Jack Shenker and Giles Tremlett, “Migrant boat disaster: Spain challenges NATO over distress call claim”, 29 March 2012. URL: <http://www.guardian.co.uk/world/2012/mar/29/migrant-boat-disaster-spain-nato>

¹²² Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 12

¹²³ Annex to the International Convention on Maritime Search and Rescue (SAR Convention), adopted on 27 April 1979, entered into force on 22 June 1985, para. 1.3.13. It should also be noted that the very definition of “distress” has been a contested term in the frame of assistance to migrants at sea in the Mediterranean, and in the Sicily Channel in particular. For instance, Maltese Armed Forces, the agency responsible for SAR operations in Malta, have at times applied a more narrow definition. According to a senior officer of the Armed Forces of Malta, distress is defined as “the imminent danger of loss of lives, so if they are sinking it is distress. If they are not sinking it is not distress”. Quoted in: Sijja Klepp, “Illegal migration and migrant fatalities in Malta”, in *The human cost of border control in the context of EU maritime migration systems*, Vrije Universiteit: Amsterdam, 2009, p.7. On this issue see also: Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at sea: the law and politics of saving lives in the Mare Liberum”, DIIS Working Paper, 2010:18, p. 21; and Michael Pugh, “Drowning not waving: boat people and humanitarianism at sea”, 2004, *Journal of Refugee Studies*, 17 (1), pp. 50-68.

¹²⁴ UNHCR, “UNHCR calls on States to uphold principles of rescue-at-sea and burden sharing”, Press Releases, 8 April 2011. URL: <http://www.unhcr.org/mt/index.php/news-and-views/news/312-unhcr-calls-on-states-to-uphold-principles-of-rescue-at-sea-and-burden-sharing>

or made contact with the small boat in question”.¹²⁵ However in several different statements, NATO has progressively admitted that several assets were in the area. In the email of 3 October 2011, NATO stated: “the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel”. Senator Tineke Strik’s report has revealed that the Spanish Méndez Nuñez “was located around 11 miles away from the boat in distress”.¹²⁶ In NATO’s latest response dated 27 March 2012 it further conceded that, according to information from the Italian authorities, the Italian Borsini was “37 miles away” and the Etna “155 nautical miles from the position reported by the MRCC fax” (see annex B.14). No further information has been disclosed as to the position of other participating states/NATO naval assets present at the time.

We will now provide a hypothesis of what the participating states/NATO’s response may have been based on prior practices of assistance by NATO and by discussing the migrants’ testimonies describing their two encounters with military helicopters.

3.2.3.1 NATO Prior Assistance Practice

As stated in the “background” section of NATO’s 3 October 2011 statement concerning the “left-to-die boat” quoted above, “issues of migration do not fall within the mandate of the mission aimed at preventing the flow of arms, related material, and mercenaries to Libya. However all ships under NATO command are fully aware of their responsibilities with regards to the International Maritime Law regarding Safety of Life at Sea (SOLAS). As such NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions” (annex B.13). In NATO’s Fact Sheet “Operation Unified Protector NATO-led Arms Embargo against Libya” dated October 2011, NATO states that during the operation, “NATO ships have directly assisted in the rescue of more than 600 people in distress at sea and through coordination with national authorities and coast guards, NATO has facilitated the rescue of many hundreds more”.¹²⁷ We may note here that the number of people rescued by NATO is relatively small if compared to the 25,935 people¹²⁸ who arrived in Italy after fleeing Libya in unseaworthy boats and that at least 1,500 people lost their lives at sea during the same period.¹²⁹ This might be considered an indication of NATO’s minimal assistance practice. One particular case of rescue that occurred the day before the “left-to-die boat” left the port of Tripoli provides further insight into the way NATO conducted its assistance to migrants.

Between 25 and 26 March 2011, one day prior to the departure of the “left-to-die boat”, a migrant vessel was initially assisted by the Canadian frigate HMCS Charlottetown. The episode is described on the Canadian Navy journal “Crow’snest” as follows: “Shortly before noon on March 25, an order from the commander of Combined Task Group 4555.01 [Nato Maritime Command] directed HMCS Charlottetown to investigate a vessel off the coast of North Africa that had been reported as “adrift” to authorities ashore. The frigate scrambled her Sea King helicopter, which became the first NATO aircraft to reach the vessel. ‘We located the vessel, tracked it by radar, and confirmed visually it was making good headway,’ said pilot Captain Gerritt Siebring. ‘As soon as Charlottetown came into visual distance, however, the vessel stopped dead in the water.’ When contacted by radio, the crew of the migrant vessel claimed that they were adrift because their engine was seized and they were out of fuel. A boarding party set off from the frigate to investigate. Once aboard the migrant vessel, the boarding party members saw that the actual situation was rather different. ‘I was surprised to see the engine was running,’ said engineer Petty Officer 2nd Class Serge Grondin. ‘I checked the sump and the oil was pure black;

¹²⁵ Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik’s “Lives lost in the Mediterranean Sea: who is responsible?”, p. 26.

¹²⁶ *Ibid.*, p.17

¹²⁷ NATO Fact sheet, “Operation UNIFIED PROTECTOR NATO Arms Embargo against Libya”, October 2011 http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf.

¹²⁸ IOM “Response to the Libyan Crisis”, External Situation Report, 10 October 2011. URL:

<http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/IOM-sitrep-MENA.pdf>

¹²⁹ UNHCR, “More than 1,500 drown or go missing trying to cross the Mediterranean in 2011”, 31 January 2012, <http://www.unhcr.org/4f2803949.html>

there was no water contamination as they said. When I checked their fuel, there was easily 400 litres in their tanks.' The boat also had an efficient bilge pump, powered by the main engine. After a minor adjustment to the rudimentary steering system, the migrant vessel was deemed seaworthy. Meanwhile, Charlottetown provided food, water and blankets for the passengers, and a member of the warship's medical team checked their general health. The final determination was that, although crowded, everyone aboard was in good health and in no immediate danger. 'Once we provided aid and met our obligations by assuring their health, ability to navigate and safely operate their vessel, our options became limited,' said Commander Craig Skjerpen, commanding officer of Charlottetown. 'We opened our distance and resumed our patrol, but stayed close enough to monitor the situation and respond if required.' The warship monitored the migrant vessel all night as the NATO Combined Task Group began managing the situation in coordination with Italian national authorities. The Italian Coast Guard took charge of the vessel and its occupants the following day."¹³⁰

During a press briefing held on 10 May 2011, NATO reported that the following day, on 26 March 2011, the Italian military ship Etna also provided assistance to what seems to have been the same vessel. The statement reads as follows: "On the 26th March, the Italian ship ETNA, under NATO command in support of the arms embargo, assisted a vessel with around 150 people on board, including women and children. The vessel had earlier been given food and water by another NATO ship, but after the vessel came into distress, with no power, the ETNA sent teams including medical professionals to assess the passengers. The Etna then provided sickbay care for a newborn baby and mother before flying them to Lampedusa for transfer to hospital. The Etna remained alongside the vessel as all passengers were evacuated from the vessel by the Coast Guard. The helicopter returned to Etna before taking a second woman, undergoing contractions, to the Lampedusa for transfer to the same hospital".¹³¹

Nowhere in NATO's official sources could we find a confirmation of the fact that these two cases of rescue refer to the same migrants' boat. However, and although some inconsistencies remain (in particular, different articles in the press refer to 300-350 migrants, whereas NATO talks of 150 migrants in the case involving the Etna),¹³² several elements of evidence point to this. In particular, the images provided in relation to the rescue carried out by the Charlottetown and by the Etna depict a boat that, although shot from two different sides (figs. 33, 34, 35), portray the same migrants' boat, leaving little space for doubt about the identity of the rescued boat. Moreover, the reconstruction of the facts provided by Italian journalist Francesco Viviano, who had been directly in touch via satellite phone with the migrants involved in these two cases of rescue, is consistent with this version.¹³³

In the above-mentioned case, when informed of the presence of a vessel that was reported as "adrift", NATO did send out an order to a vessel, the Canadian Charlottetown under its command, to investigate the case. The commander of the ship, after assessing the condition of the boat through the ship's helicopter and later via radio, sent a boarding team to provide assistance in the form of water, food, and blankets, and also checked the general health of the people on-board (although the superficiality of this health check is reflected by the fact that only a few hours later two women gave birth). It further assessed the condition of the vessel. NATO seems to have then monitored the migrants' vessel until it was taken charge of by the Italian Coast Guard.¹³⁴

130 Lieutenant (Navy) Michael McWhinnie, "HMCS Charlottetown assists drifting migrant vessel", in *Crowsnest* Vol. 5, No. 2 Summer 2011, p. 4. URL: www.navy.forces.gc.ca/_/crowsnest_v5-2.pdf

131 NATO Press briefing on Libya by the NATO Deputy Spokesperson, Carmen Romero; Brigadier General Claudio Gabellini, Chief Operations Officer, Operation Unified Protector; Commander Peter Clarke. 10 May 2011. URL: http://www.nato.int/cps/en/natolive/opinions_73660.htm

132 See: AFP, "First migrant boat from Libya nears Italian shores", 26 March 2011. URL: <http://www.google.com/hostednews/afp/article/ALeqM5ifS4xArk5jPzv4SE8qeV4wjJLA?docId=CNG.37378ace3822a8bc9b9d812757bbadc.11>; La Stampa, "Odissea sul barcone alla deriva: recenti disperati e un parto", 27 March 2011. URL: <http://www3.lastampa.it/cronache/sezioni/articolo/1395151/>; Il Fatto Quotidiano, "Storie di disperazione a Lampedusa: nella notte 700 arrivi. Ed è emergenza sanitaria", 27 March 2011. URL: <http://www.ilfattoquotidiano.it/2011/03/27/storie-di-disperazione-a-lampedusa-nella-notte-700-arrivi-ed-e-emergenza-sanitaria/100414/>

133 Francesco Viviano, "Sul barcone alla deriva nasce Yeabsera. In salvo il bambino della speranza", *La Repubblica*, 27 March 2011. Accessible at: <http://giovannitaurasi.wordpress.com/2011/03/27/sul-barcone-alla-deriva-nasce-yeabsera-in-salvo-il-bambino-della-speranza-di-francesco-viviano/>

134 Lieutenant (Navy) Michael McWhinnie, "HMCS Charlottetown assists drifting migrant vessel".

NATO's understanding of assistance thus seems to have been limited to a few elements of relief that would provide the minimal conditions for the boat to carry on its journey. This limited practice of assistance may be related to NATO's operational priorities (as stated above "issues of migration do not fall within the mandate of the mission") as well as to the potentials of becoming involved in the legal-political conflicts between coastal states described in sub-chapter 3.1.2. This was the case when on 11 July 2011 the Spanish *Almirante Juan de Borbón* operating under NATO command assisted a migrants' vessel in distress but was unable to disembark the rescued migrants for several days.¹³⁵

3.2.3.2 Identification Elements Of The Two Helicopters Encountered By The Migrants

We will now provide all the elements in our possession that might contribute to the identification of the helicopter that the migrants' claim visited them twice during the afternoon and evening of 27 March 2011.¹³⁶

Dan Haile Gebre describes the first encounter with the helicopter as follows: "It circled around us 4-5 times and came closer. It was making a lot of wind, and we almost lost our balance" (DHG, 93). Abu Kurke Kebato adds: "The helicopter came very close to us down, we showed him our babies, we showed them we finished oil, we tell them 'Please help us.'" (AKK, 31)

All testimonies confirm that the helicopter was "military" (AKK, 38; AKK2, 74; MAI, 27; FWT, 16-17) and equipped with a machine gun (DHG, 102). The helicopter cabin door was open and at least two people, who according to some of the survivors were wearing military uniforms and carrying arms, could be seen (DHG, 103; EMK2, 71; AKK, 24; AKK2, 83; FWT, 133; MAI, 27). Filmon Weldemichail Teklegergis remembers the colour of their uniform as being green (FWT, 224), while Abu Kurke says they were green and a sand-like colour (AKK2, 107-108). The colour of the helicopter is described as light green (BYI, 13) or green and grey (FWT, 112). All these elements exclude the possibility of the helicopter belonging to the Italian Coast Guard, which uses civilian white and red helicopters.

Abu Kurke continues: "I think I saw them take our picture. I think I saw a photo camera or something like that" (AKK, 41). Mohamed Ahmed Ibrahim confirms this particular point (MAI, 28), which is in fact consistent with protocols for vessel identification missions in the frame of NATO's monitoring of the embargo over Libya during Operation Odyssey Dawn.¹³⁷

Furthermore, an important element revealed by witnesses is that the helicopter bore the English writing "ARMY" (AKK, 24; BYI, 16-19;) or "RESCU ARMY" (DHG, 107; FWT, 16) on its side (fig. 11). Most military ships contributing to the participating states/NATO operations off Libya were equipped with a helicopter but normally such a helicopter would belong to the Navy and would therefore bear the writing "NAVY" on its sides. It is known that Army helicopters were on-board ships taking part in the military intervention, but those mentioned in official sources were combat helicopters (like the British Army Apache Attack Helicopters¹³⁸) which could not have performed SAR operations, and would be considerably different from those described by the migrants. Moreover,

¹³⁵ See a series of detailed posts on the blog migrantsatsea.wordpress.com as well as the Statement by the Spanish Ministry of Defence "La Armada entrega a Túnez a los inmigrantes rescatados el pasado día 11", 16 July 2011. URL: http://www.defensa.gob.es/gabinete/notasPrensa/2011/07/DGCG_110716_Entrega_Inmigrantes_Tunez.html. In summary, 114 migrants were rescued on 11 July 2011 by the Spanish *Almirante Juan de Borbón*, operating under NATO command. Shortly after the initial rescue of the migrant boat, 3 migrants were evacuated and turned over to Tunisian authorities. On orders from NATO command, the *Juan de Borbón* sailed to Malta and took a position 40 miles off the coast of that country, hoping to be able to disembark the migrants on the island since their vessel was rescued within Malta's SAR. However, once again due to the legal-political conflict between coastal states in the Sicily Channel, Maltese authorities criticised the attempt to bring the rescued migrants to Malta given that the migrants should have been taken to Tunisia or Italy because both locations were closer to the original point of rescue. Only five of the migrants were airlifted to Malta for medical reasons on the 13th. On the 16th, instructed by the command of NATO, the Spanish frigate headed for the coast of Tunisia to start the transfer of the 106 immigrants who were still on board to the Tunisian Navy patrol boat *Carthage*.

¹³⁶ Filmon Teklegergis (FWT, 268) agrees with Dan Haile Gebre (DHG, 126) that it was the same helicopter that visited them twice, while Elias Mohamed (EM2, 104) and Mohamed Ahmed Ibrahim (MAI, 91) says there were two different helicopters. Mohamed Ahmed Ibrahim also adds that he cannot remember differences because there were very little. Abu Kurke Kebato does not mention neither a second visit nor a second helicopter.

¹³⁷ This practice is illustrated in a video showing the HMCS *Charlottetown's* Sea King helicopter on a reconnaissance mission during which the military take photographs of the ships they encounter for identification. [Natochannel.tv](http://natochannel.tv), "Maritime Helicopter Patrols", 6 April 2011. URL: www.natochannel.tv or <http://www.youtube.com/watch?v=sj1to9GQhVg>

¹³⁸ British Ministry of Defence, "Apaches get ready to help protect Libyan civilians", 27 May 2011. URL: <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/ApachesGetReadyToHelpProtectLibyanCivilians.htm>

according to the sourced reviewed, these types of helicopters were not deployed in military operations in Libya until 4 June 2011 onwards.¹³⁹

Nevertheless, the Westland Lynx¹⁴⁰, a battlefield utility helicopter of the British Army which does bear the writing "ARMY" on its side and can be used for SAR operations, was spotted in June 2011 in Malta on-board the HMS Ocean, a landing platform dock ship that took part to the military operation in Libya (fig. 13). During our interview with Dan Haile Gebre, we presented him with several photographs of different helicopters in operation at the time of events and when we showed the image of the Westland Lynx helicopter of the British Army, he immediately said it was "exactly like this" (DHG, 100) (fig. 12). The aspect of this particular helicopter seems in fact very similar to that described by the migrants, not only because of the "ARMY" writing, but also in terms of its colour and typology. However, according to the sources we have consulted, the HMS Ocean only joined the operations in the Mediterranean in June.¹⁴¹ This specific ship and its helicopters cannot therefore have been involved in the "left-to-die boat" case but we cannot exclude the possibility that similar ships, British or belonging to other national navies, could have carried army helicopters.¹⁴²

If the particularities of the observed writing of the word "ARMY" are correct, this would narrow down the nationality of the helicopter as belonging to an English speaking country either taking part in the military operations (the US, the UK and Canada) or geographically located within an helicopter's operative range (Malta). Both the US and the UK had at the time a broad military presence deployed in the Mediterranean, among which helicopters of the typology described are therefore more likely to be found.¹⁴³ On the contrary, the only Canadian ship present at the time of the events in the Central Mediterranean was the HMSC Charlottetown, which carried one Sea King helicopter. This aircraft only bears numbers written on its side and belongs to the Navy (fig. 15). Moreover, it has a profile dissimilar to Dan Haile Gebre's description. All of these factors make it very unlikely that this was the helicopter described by the migrants. Finally, Malta's Armed Forces involvement also has to be ruled out, because the helicopters at their disposal, although being used in SAR operations, are not able to travel such long distances according to Malta MRCC.¹⁴⁴

Consequently, while we are unable to identify the helicopter in question, the convergent testimonies are very precise in their description of particulars that point to the involvement of a military helicopter. Although the word "ARMY" written on the helicopter as identified by the testimonies points to an US or UK asset, the involvement of other national armies in this episode cannot be excluded.

3.2.3.3 Hypothesis Concerning Participating States/NATO Response

Based on the previously mentioned case of assistance by NATO as well as on the survivors' testimonies, the possibility that participating states/NATO did not respond to the distress signal has to be considered unlikely. According to the elements in our possession, we provide the following hypothesis as to the action participating states/NATO took in response to the reception of the distress signal:

- Following the reception of the information concerning the distress of the migrants sent out by Rome MRCC, NATO maritime command instructed its closest naval asset to identify the vessel and assess its condition. It should be noted that the distance indicated by the NATO spokesperson, 24 nautical miles

¹³⁹ NATO, "NATO attack helicopters increase pressure on Qadhafi regime", 4 June 2011. URL: http://www.nato.int/cps/en/natolive/news_75021.htm

¹⁴⁰ For a technical description of the helicopter, see: <http://www.army.mod.uk/equipment/aircraft/1532.aspx>

¹⁴¹ British Ministry of Defence, "UK and French ships rendezvous off Libyan coast", 19 September 2011. URL: <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/UKAndFrenchShipsRendezvousOffLibyanCoast.htm>

¹⁴² To our knowledge, these helicopters would more likely be found on Landing Platform Docks, which usually carry amphibious assets.

¹⁴³ Dan Haile Gebre even mentions at a certain point that the writing on the side of the helicopter might have been "US RESCUE ARMY", but he's not sure about this particular detail (DHG, 107-108).

¹⁴⁴ Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p.13

can be covered by most NATO ships present in the area in around one hour¹⁴⁵ and in around 15 minutes by a military helicopter of the type found on-board those same ships.¹⁴⁶ The distance of 11 nautical miles indicated in Senator Tineke Strik's report in relation to the Spanish frigate Mendez Núñez can be covered by this ship in less than half an hour at its top speed.

- Alternatively it is possible that participating states' naval assets were even closer and could send a helicopter.
- The NATO's or participating states' helicopter conducted a first assessment and deemed the condition of the migrants and of the vessel good enough not to demand its assistance.
- As was the NATO practice in the precedent analysed above, the helicopter left but the participating states/NATO's closest naval asset did however continue to track the migrants' ship.
- Within less than five hours, the same helicopter was sent back to provide a few packets of biscuits and bottles of water.
- The migrant boat continued for 5-7 hours before running out of fuel and starting to drift.

The above hypothesis however cannot be proven with the elements in our possession and demands further disclosure on the part of participating states/NATO forces to prove or disprove, as well as to identify the helicopter in question.

3.2.4 Participating states/NATO Detection Of The Migrants' Vessel During Its 14 Days Of Drift

We have established that NATO and participating states' naval assets were informed of the migrants' distress. However, and whether or not participating states/NATO's closest naval asset did send a helicopter to assess the migrants' condition and provide food and water (which we consider highly probable as discussed above), the passengers were not provided with a form of assistance that could avert their tragic fate. Nevertheless, given the on-going military intervention and in particular the operation aiming at monitoring the MSA involving 16 naval assets on 4 April 2011 and mobilising extremely sophisticated sensing equipment, could participating states/NATO not have detected a Zodiac boat approximately 10 metres in length drifting very slowly during 14 days, 11 of which within NATO's MSA and the remaining three within the highly surveilled Libyan territorial waters?

While NATO and participating states have so far not disclosed precise information about the surveillance equipment mobilised by Naples Maritime command and participating states/NATO naval assets to monitor the area, we may nonetheless offer general indications of the high degree of surveillance present at the time of events in this area. These were well summarized by Vice Admiral Rinaldo Veri, Commander Maritime Command Naples' words of warning on 4 April 2011: "Anyone who believes they can sail through NATO's layers of surveillance and interdiction needs to think again."¹⁴⁷

3.2.4.1 Surveillance Means Deployed Prior To The 2011 Intervention: Operation Active Endeavour

In order to assess NATO's maritime surveillance capacity in the frame of its intervention in Libya, it is important to understand that it relied on an already existing system deployed within the Operation Active Endeavour

¹⁴⁵ The top speed of the ships present in the area as of the 24 March 2011 (discussed in section 3.2.1.1) ranges between 18 and 30 knots (35 and 50 km/h). 24 nautical miles (nm) corresponds to around 44 kilometres (km).

¹⁴⁶ The speed of the CH-124 Sea King helicopter on board of the HMSC Charlottetown is 211 km/h. See http://www.navy.forces.gc.ca/cms/1/1-a6_eng.asp

¹⁴⁷ NATO, "VADM Veri holds Press Conference aboard ITS Etna", 4 April 2011. URL: <http://www.jfnaples.nato.int/page167503642.aspx>

(OAE).¹⁴⁸ OAE was first launched after the 9/11 attacks to provide a deterrent presence and protect civilian traffic in the Western Mediterranean from the threat of terrorism. It progressively evolved to encompass the entire Mediterranean and provide detailed surveillance and analysis of all traffic. In order to detect threats it produces a multisensor, semi-automated Recognised Maritime Picture (RMP).

In his contribution to the May 2010 NATO Review online magazine, Commander Brian Finman, the Expeditionary Warfare Branch Head in the Operations Division of NATO maritime command in Naples, provides a good overview of how the RMP was produced:

"Watchstanders in the Maritime Operations Centre can process vast amounts of raw data received from shore-based, sea-based, and airborne sensors. Some of this data comes in the form of Automated Identification System (AIS) signals, which all commercial vessels greater than 300 tons are legally obliged to transmit. With an expanding array of networked sensors based in over 15 countries around the Mediterranean and Black Sea, this information system provides real-time data on a daily average of 8,000 contacts. Today's network represents a quantum leap in surveillance capacity over just a few years ago. With so much raw information available, the trend in MSA is to develop technological tools that can compare in real-time the transmitted data to database information in order to validate the contacts' names, registry numbers, cargo, owners, recent and upcoming ports of call, etc. These tools enable watchstanders to focus on anomalous contacts and concentrate intelligence and maritime analyst resources on irregular behaviour, such as unexplained loitering or course deviations".¹⁴⁹

In summary, OAE had developed an extremely sophisticated system that relied on: land based sensors (such as coastal radar stations); sensing capacity on board naval assets deployed on a permanent basis (such as the two Standing NATO Maritime Groups (SNMGs)) as well as that provided by naval assets temporarily in the area; airborne sensors provided by Maritime Patrol Aircraft from a variety of NATO contributing nations as well as AWACS.¹⁵⁰ NATO maritime command has also increasingly turned to the use of Synthetic Aperture Radar imagery to monitor maritime traffic.¹⁵¹ These multiple sources of data were brought together in NATO's Naples' Headquarters Maritime Command (HQ MC). These were first analysed in an automated manner to detect anomalous behaviour, which the watchstanders in the Maritime Operations Center could further inquire into. It is worth noting that the key anomalies mentioned by Commander Brian Finman - "unexplained loitering or course deviations" - could describe the migrants' vessel trajectory during its 14 days of aimless drifting.

The surveillance system developed in the frame of OAE was mobilised towards monitoring the embargo on Libya in 2011. It is from the very same maritime operational centre used for OAE that NATO monitored all shipping activity in the MSA 24/7 and directed its naval activities to impose the arms embargo on Libya.¹⁵² In this context, the existing sensors and the data management system already in place were further supplemented by all the sensors on board participating states/NATO naval and air assets, of which the following examples illustrate the capacity.

3.2.4.2 Participating States/NATO Detection Capabilities In 2011

As an example, we will briefly review the detection capabilities of the French aircraft carrier Charles de Gaulle, which was in operation during the time of events of the Libyan coast in the Gulf of Syrte. Despite its position

148 NATO Allied Maritime Command Naples, News Release, "Ten years of Operation Active Endeavour", 26 October 2011. URL: http://www.manp.nato.int/news_releases/mcnaples/pressreleases11/NR_52_11.html

149 Commander Brian Finman, "Keeping the Med safe - how it's done", in NATO review, 19 May 2010, http://www.nato.int/docu/review/2010/Maritime_Security/EN/index.htm. See also the video "The God's eye view: Operation Active Endeavour" in the same edition of NATO review, 19 May 2010.

150 Ibid. See also the summary of OAE provided by the French Ministry of Defence: <http://www.defense.gouv.fr/english/content/view/full/68253>

151 R. Grasso, J. Horstmann, P. Ranelli, K. Bryan, C. Carthel, S. Coraluppi, A. Baldacci, "Performance assessment of sensors for maritime surveillance using sea trial data", presentation at ESA SeaSAR10 Frascati 25-29 January 2010. URL: <http://earth.eo.esa.int/cgi-bin/confsea10.pl?abstract=542>

152 Natochanneltv, "NATO and Libya - Operation Unified Protector: The Command", 1 April 2011. URL: http://www.youtube.com/watch?v=jxujD9BQA-Q&feature=player_embedded#

“above 200 km” from the Libyan coast,¹⁵³ Rear Admiral Philippe Coindreau, Commander of the French task force, declared in an article dated 30 March 2011 that: “We know exactly where the Libyan ships are and what they are doing.”¹⁵⁴ This was enabled by the vessel’s electromagnetic detection systems. According to the description provided on the website of the French Ministry of defence, the CDG operated, amongst others sensing equipment, the DRBJ 11 B long-range 3D radar developed by Thales,¹⁵⁵ that enables detection up to 300km and allows to measure with precision the spatial coordinates of any mobile detected.¹⁵⁶ Participating states/NATO naval assets sensing capacities varied in terms of specific technologies, but they all mobilised very sophisticated means of surveillance.

The surveillance capacity of the MSA was further extended by mobilising participating states/NATO air assets (described in sub-chapter 3.2.1.3). In particular, the intelligence produced by AWACS (Airborne Warning and Control System) aircrafts provided both by NATO as well as by several other participating states (USA, UK and France) offers an example of the sensing capacity of their air assets.¹⁵⁷ According to Lieutenant-colonel Arnaud B, Chief of Mission on-board the French E-3F AWACS (fig. 29) which had been in operation above Libya since the 19th of March¹⁵⁸ “the rotodome on the aircraft’s roof contains two radars that allow us to ‘see’ everything flying and sailing in a radius of 400 km².”¹⁵⁹ The AWACS detection capacity is able to identify rubber boats similar to that used by the migrants. On 14 June, NATO reported that “NATO assets including Intelligence, Surveillance and Reconnaissance (ISR) aircraft and Airborne Warning and Control System (AWACS) aircraft identified and tracked rigid-hulled inflatable boat (RHIB) activity off the Libyan coast west of Misrata near Zlitan”.¹⁶⁰ This intelligence allowed Attack helicopters to be deployed and destroy two RHIBs operated by pro-Gaddafi forces that posed a threat to maritime traffic in the area.

All detection capacities on-board participating states/NATO’s naval and air assets were assembled in Naples Maritime command and made available to all other assets in operation. Commander Craig Skjerpen, Captain of HMCS Charlottetown, detailed this process as follows in a video posted on natochannel.tv on 1 April 2011: “What we do is link up all our radar images together, all the ships, and from that we create sort of a map of all contacts in the area. We are also working with aircrafts that are tracking vessels. And from that we have a full picture of all vessels in the area”.¹⁶¹

In another video posted on natochannel.tv on 14 April 2011, we are taken on-board the Bettica as it manoeuvres towards its patrol sector, “near the border between Tunisia and Libya.” Mike Mühleberger, The NATO correspondent on-board describes a monitor presenting maritime traffic and squares delimiting large areas: “The area North of Libya has been divided into patrol sectors assigned to each NATO ship. By sharing information they can be more effective, and ensure that vessels are continuously tracked as they pass from one sector to another”¹⁶² (fig. 32). These combined sensing capabilities provided an extremely precise overall picture. Commander Fabrizio Falzi, on-board the Italian Bettica, explains: “To be an asset amongst others assets part of NATO, means that you can have a complete overall situation of everything that is flying or sailing all around you, and not only in the immediate vicinity of your ship. Knowing what’s going on, also far away from you, helps you

153 Romain Rosso, “Le Charles-de-Gaulle accusé d’avoir laissé mourir 61 migrants”, L’Express, 9 Mai 2011. URL: http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html

154 Romain Rosso, “Libye: la marine pro-Kadhafi sous surveillance”, L’Express, 30 March 2011. URL: http://www.lexpress.fr/actualite/monde/libye-la-marine-pro-kadhafi-sous-surveillance_977811.html

155 For a technical description of the Charles de Gaulle, see: <http://www.defense.gouv.fr/dga/equipement/naval/le-porte-avions-charles-de-gaulle>

156 Deputy François Cornut-Gentille, “Défense - Equipement des forces - Dissuasion”, “Avis” presented to the French National Assembly on 25 October 2011, p. 215. URL: <http://www.assemblee-nationale.fr/13/budget/plf2012/a3809-tvii.asp>

157 NATO, “AWACS: NATO’s ‘Eye In The Sky’”, URL: http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics_48904.htm?selectedLocale=en

158 French Ministry of Defence, “A bord d’un E-3F au dessus de la Libye”, 24 June 2011. URL: <http://www.defense.gouv.fr/air/mediatheque/carnet-de-vo/a-bord-d-un-e-3f-au-dessus-de-la-libye>

159 French Ministry of Defence, “Unified Protector: Mission en Awacs dans le ciel libyen”, 21 June 2011. URL: <http://www.defense.gouv.fr/actualites/articles2/unified-protector-mission-en-awacs-dans-le-ciel-libyen>

160 NATO, “NATO attack helicopters destroy pro-Qadhafi military equipment”, 14 June 2011. URL: http://www.nato.int/cps/en/natolive/news_75418.htm

161 Natochanneltv, “NATO and Libya - Operation Unified Protector: The Arms Embargo”, 1 April 2011. URL: http://www.youtube.com/watch?v=dRqzFvvg2Y&feature=player_embedded#

162 Natochanneltv, “NATO and Libya - Italian patrol ship Bettica enforcing the arms embargo”, 14 April 2011. URL: <http://www.youtube.com/watch?v=fwVPv0sgsk8>

take the right decision in the right moment".¹⁶³

From these kinds of statements, it would appear that participating states/NATO naval and air assets were equipped with technologies that offered an extremely high sensing capacity geared both towards combat operations and to monitoring the MSA. It is highly probable that some of the sensing capabilities mentioned above were sufficient to identify a Zodiac-style rubber boat approximately 10 metres long carrying 72 people. In addition to their own surveillance systems, participating states/NATO assets benefited from sensors already in place in the framework of Operation Active Endeavour as well as from NATO Maritime command's capacity for data fusion and analysis. The later was specifically designed to detect objects that appeared anomalous, such as a vessel drifting aimlessly for 14 days. It thus appears highly improbable that the migrants' vessel went undetected for so long within one of the most highly patrolled areas in the world. Moreover the survivors claim that on 3 or 4 April 2011 they encountered a military ship with one or two helicopters on-board that, despite clearly witnessing their distress, failed to assist them. We now turn to discussing the identification of this vessel.

3.2.4.3 Identification Elements Of The Military Ship Encountered By The Migrants

As we have described in the "Chain of Events" section, the migrants claim to have encountered a military vessel after several days of drift. We assessed this time to be between 3 and 4 April, towards the end of the afternoon. Dan Haile Gebre describes its approach in the following way: "At first the ship was very far. Maybe 700 m. they then circled around us, three times, until they came very close, 10m. We are watching them, they are watching us. We are showing them the dead bodies. We drank water from the sea to show them we were thirsty. The people on the boat took pictures, nothing else." (DHG, 152-153, EMK is consistent, see 26). According to survivors then, a military vessel approached intentionally the migrants' vessel until it came close enough to witness, and photograph, the evident distress of the migrants on board and yet failed to assist them.

The first attempt at identifying the military vessel the migrants claim to have encountered was led by the journalist Jack Shenker in his article for the Guardian. He mainly based his assessment on Abu Kurke Kebato's testimony, in which he claimed to have encountered an aircraft carrier with jets taking off.¹⁶⁴ After failing to receive any information from NATO, and following "extensive inquiries to ascertain the identity of the aircraft carrier", The Guardian "concluded that it is likely to have been the French ship Charles de Gaulle, which was operating in the Mediterranean on those dates".¹⁶⁵ This version was immediately contested by the French military, who claimed that at the time of events the Charles de Gaulle was operating in the Gulf of Sirte, faraway from the migrants' vessel trajectory, and none of its other naval assets was involved in the case.¹⁶⁶ It later appeared that at the time news media had mostly been relying on Abu Kurke Kebato's testimony, probably because his eloquence and excellent English gave him a role of "representation" in relation to the other survivors.¹⁶⁷ His testimony though, while altogether very reliable, was to our knowledge the only one to recall an aircraft carrier with jets taking off (AKK, 49-52). Several other testimonies, such as those of Dan Haile Gebre and Elias Mohamed Kadi, mentioned a smaller military ship carrying two helicopters (DHG, 176; EMK, 25). This version seems more plausible since there were many vessels corresponding to this description operating at the time of events.

During our interview with Dan Haile Gebre, we presented him with several photographs of different naval assets in operation at the time of events. When shown photographs of large aircraft carriers, he dismissed them as "too big". But he recognised the Italian vessel "Borsini", one of the "Commandante Class" ships in the Italian fleet, as

¹⁶³ *Ibid.*

¹⁶⁴ Jack Shenker, "Aircraft carrier left us to die, say migrants", 8 May 2011. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>

¹⁶⁵ *Ibid.*

¹⁶⁶ Romain Rosso, "Le Charles-de-Gaulle accusé d'avoir laissé mourir 61 migrants", L'Express, 9 Mai 2011. URL:

http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html

¹⁶⁷ This was also the case for Emiliano Bos's initial report on the case. "Quell'elicottero che non è tornato a salvarci", RSI, 15 April 2011. URL: http://info.rsi.ch/home/channels/informazione/info_on_line/2011/04/15--Lelicottero-che-non-tornato-a-

similar to the boat they sighted. He said: “The front section was very small, with only room for one helicopter, and one helicopter in the back. (...). Yes, exactly like this, like two steps.” (DHG, 177) While Dan Gebre Haile did not identify this specific ship, his testimony leads us to believe that the military vessel the migrants encountered was within a similar class of vessels.

There were many participating states/NATO naval assets operating at in the MSA at the time of events in this category that could correspond to the “two step” structure recognised by Dan Haile Gebre. Amongst them are in particular frigates that incorporate in their design stealth features (as, for instance, those in the Italian and French “Horizon” class, the “Andrea Doria” and “Forbin”; those in the French “La Fayette” class, as the “Aconit”; or those in the Italian “Comandante” class, as the already mentioned “Borsini” and the “Bettica”) or those with a rather squared-off design (as, for instance, those in the Italian “Maestrale” class, as the “Libeccio”; those in the Spanish “Álvaro de Bazán” class, as the “Méndez Nuñez).

Dan Haile Gebre provides further elements that bring us closer to identification. He claims that the vessel bore writing on the front side, which he recalled in fragments while writing it on paper: “MF’...there is a ‘9’ then I think ‘29’ and then I am not sure of the following numbers. ‘MF’ is sure, ‘9’ is sure, maybe ‘MF 929...’” (DHG, 170-171). Filmon Weldemichail Teklegerkis remembers to have read a similar identification code on the side of the ship: “There was written MF 900 29 or something similar. I’m sure about the ‘MF’ acronym. There was ‘MF’ written on it” (FWT, 414-415). We have not found any ship bearing such writing on its side, although the structure of the writing Dan Haile Gebre describes does correspond to that of an identification code for a military vessel.

Dan Haile Gebre claims to have recognized a French flag floating on the top of the vessel’s centre tower (DHG, 171). He also believes he saw French flags on the shoulder pads of the uniforms of some of the militaries on deck, as well as a rooster insignia at the level of a heart (DHG, 156). This is a detail for which we have found no additional confirmation. However, amongst the “over one hundred people on deck” he recalls that those wearing what he recognised as military uniforms were a minority. Others were dressed in what he describes as a civil dress, and others still in a grey overall, like that of a mechanic (DHG, 157 and 181). While it is common for sailors in the navy to wear overalls during naval operations (see for example the French and Italian Navy) we have not found additional confirmation of the grey colour described.

Dan describes the reaction of the “captain”, who he believes was from a Francophone country, to these French emblems: “When the boat was circling around us, at the second circle the driver said: ‘These are French, they are going to save us.’ We asked: ‘How do you know?’ He replied: ‘The flag is French, the name is French, everything is French’ (DHG, 189). Filmon Weldemichail Teklegerkis also remembers to have read on the ship some words “which might have been French” and that other passengers claimed it was a French ship (FWT, 422-438).

As we have noted above, the migrants’ individual testimonies are remarkably consistent with one another. Furthermore at least 38 naval assets were operating in the MSA both in combat operations and in patrolling the embargo zone, and several amongst them were of the shape and size described by Dan Haile Gebre and carried at least one helicopter. It thus seems highly plausible that the migrants did encounter a military ship of the kind described by the survivors, however we have not been able to further verify the particulars they mentioned so as to lead to the identification of the naval asset in question.

A further question that remains unresolved is: “Why did the military vessel fail to assist the migrants despite witnessing evident signs of distress?” According to Dan Haile Gebre’s account, the military ship progressively came closer to the migrants’ vessel (circling around the migrants’ vessel three times), and seemed to have had the intention to identify it and/or assist it. Why did it not do so? We have no plausible hypothesis to offer in

answer to this question, which also left Dan Haile Gebre deeply puzzled:

"I have thought about this often, any human being should have rescued us, and at least given us some food and water! Even criminals should not be treated in this way. We had adults and children dying, we were drinking water, asking for help, but they didn't give us anything, only taking pictures. So its difficult for me to understand how the people on the ship could behave this way. (...) The helicopter also has a responsibility, but when it left us we were still strong. But when we met this ship 30 people or so had died, some were dying right then and there, on our laps. After that we lost hope. We knew that we would die little by little." (DHG, 239 -248)

3.3 CONCLUSION ON THE INVOLVEMENT OF PARTICIPATING STATES/NATO FORCES

Initial evidence provided by the survivors' testimonies mentioned encounters with military aerial and naval assets. Furthermore our drift model indicated that their vessel remained adrift for 11 days within NATO's maritime surveillance area and for the remaining three days within Libyan territorial waters. This entire zone was populated by a large number of aerial and maritime assets deployed in support of the multi-state military operations in Libya. Taken together these materials prompted our enquiry into NATO/collation involvement in the incident of the "left-to-die boat".

We can now say with certainty that:

1. The migrants' vessel remained for its entire 15 day trajectory within NATO's maritime surveillance area and Libyan territorial waters. It was NATO's mission within the framework of Operation Unified Protector to monitor all traffic in this area so as to prevent the flow of arms and mercenaries and prevent attacks, but also, more generally, to protect civilians as per UNSCR 1973;
2. This area was populated by at least 38 maritime assets as well as many additional aerial assets during the time of the event. Their exact maritime laydown is difficult to ascertain, but we may say that the ships involved in monitoring the embargo area were deployed throughout the entire MSA according to patrol sectors, while the naval assets involved in combat operations were probably concentrated along the Libyan coast.
3. NATO maritime command in Naples and participating states/NATO naval assets were informed of the presence of a vessel in distress, respectively by telephone, fax, and via maritime distress signals. The information received clearly indicated the situation of distress and the necessity to assist the migrants;
4. Participating states/NATO had the detection capability to detect the migrants' vessel during its 14 days of drift back towards the coast of North Africa.

A high degree of involvement on the part of participating states/NATO forces in the "left-to-die boat" case emerges from these four key points. Participating states/NATO forces had the information and the ability to assist the migrants but failed to do so in a way that would have prevented the deaths of 63 people.

With the elements of evidence in our possession, we attempted to corroborate the migrants' statement claiming that they had encountered military aerial and naval assets that failed to assist them. We may now say that they are extremely convincing for the following reasons:

- The consistency of testimony between the survivors.
- Prior practices of assistance and vessel identification within NATO's maritime surveillance area corroborates the migrant claims to having seen such ships.

- The number and type of air and naval assets in operation in the area at that time suggest that the likelihood of such sightings was entirely plausible.

We have argued that the survivors' claim that they encountered a military helicopter and a military ship that failed to assist them in a way that would have prevented their tragic fate, is highly probable given all the facts that we have gathered in the generation of this report. However further investigation and disclosure by the participating states/NATO will be required to arrive at a definitive conclusion.

4. CONCLUSION

This report has led us to inquire into the events that led to death of 63 passengers of the “left-to-die boat” case, one important case amongst the over 1,500 migrants who lost their life in the Mediterranean while fleeing Libya in 2011.¹⁶⁸ All these losses occurred despite the significant naval and aerial presence in the area due to Participating states/NATO operations in Libya.

In attempting to answer the question “what happened to the “left-to-die boat” and who was involved in the events leading to the deaths of 63 migrants?”, we employed novel forms of visualisations and spatial analysis, which allowed us to cross-reference the testimonies of the survivors between each other and with other verifiable sources of data., such as GPS coordinates of the vessel provided for different moments of its trajectory and a drift model calculated specifically for this report. By combining these different sources we arrived at the conclusion that the account of the survivors was highly accurate and credible and we were able to produce a coherent and precise picture of the how the events unfolded through space and time.

Several actors were involved in the events leading to the tragic fate of the “left-to-die boat”. The Gaddafi regime made the crossing of the Mediterranean extremely dangerous for hundreds of people leaving Libya, and in the case of the “left-to-die-boat” specifically. Secondly, according to the testimonies of the survivors, fishermen failed to assist the migrants they encountered in the open sea. Thirdly, Italy and Malta, although informed of the distress of the migrants and while the migrants’ vessel was on the threshold of the Maltese SAR zone, did not intervene to rescue them or ensure that a rescue was coordinated. Finally, at least one patrol aircraft, one helicopter and a military ship, whose identities still remain unknown, had direct contact with the boat. All these parties, although they were informed of the migrants’ distress and while they had the technical and logistical ability to assist the migrants, did not intervene in a way that could have averted the tragic fate of the passengers. The migrants’ vessel drifted slowly, during 14 days, within one of the most surveilled maritime areas in the world, populated by at least 38 naval assets.

Reviewing the different degrees of involvement on the part of all the actors involved in the “left-to-die boat” case, what emerges beyond individual acts or modes of inaction is a generalised reluctance on the part of all parties involved to assist the people on-board this vessel.

How is it possible that the migrants were left to die despite these repeated encounters? Who exactly did they encounter? Who was present in the area, informed of their distress and yet failed to respond? The account of events we have provided should serve as a first contribution to answering these questions, however only through further inquiry and disclosure by all parties involved will they receive the definite answers they deserve.

¹⁶⁸ UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”, Briefing Notes, 31 January 2012. URL: <http://www.unhcr.org/4f27e01f9.html>

OVERVIEW

For the purposes of this report, the duration of the Libya conflict is identified as spanning from 15 February 2011, when public protests first began against the Gaddafi regime in Benghazi, to 23 October 2011, the date when the National Transitional Council officially declared an end to the conflict. By 7 October, 25,935 people had arrived in Italy and 1,530 in Malta after fleeing Libya. The highlighted section on the map below shows the central area of migration from Libya to Italy. The area contains national boundaries that belong to Libya, Tunisia, Italy and Malta.

1

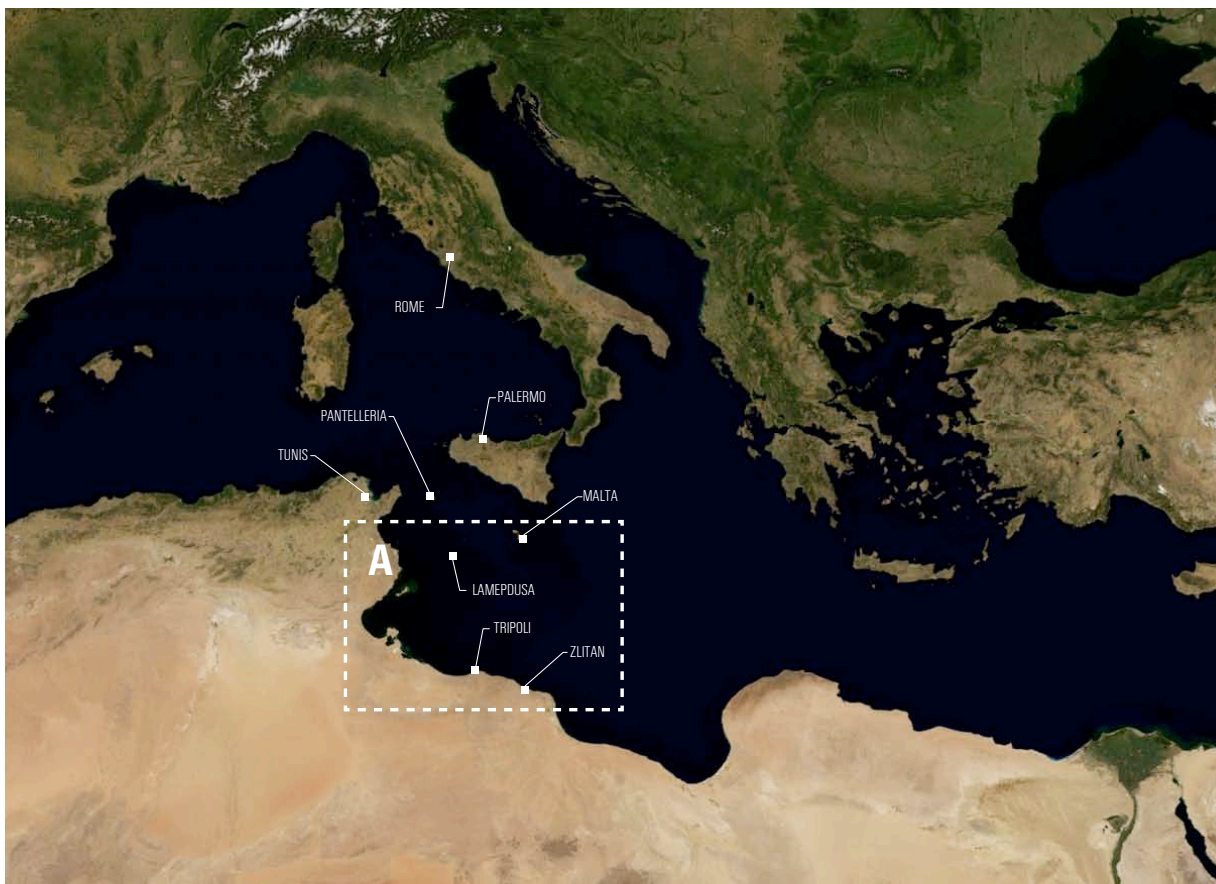


Fig. 1, View of entire Mediterranean with box (A) identifying the area of interest between Tripoli and Lampedusa.

KEY EVENTS

The following is a summary of key events: the migrants' vessel left the Port of Tripoli between 00:00 and 02:00 GMT on 27 March 2011 with 72 migrants on board. The vessel was probably sighted by a French aircraft which transmitted its coordinates to Rome MRCC. After proceeding in the direction of Lampedusa for 15 - 18 hours, the migrants placed a distress call by satellite phone to an Eritrean priest based in Italy. The priest, in turn, called the MRCC in Rome to alert them to the fact that there was a vessel in distress. Shortly following this call, the MRCC in Rome published an Enhanced Group Call message and alerted both Malta MRCC and NATO HQ allied command in Naples that a vessel was in distress. It also provided them with the vessel's geographic coordinates in latitude and longitude at 16:52 GMT. Following the broadcast of the vessel's position, a helicopter arrived, observed the boat and left. After this visit by the helicopter, the position of the boat was determined a second time as 9 nautical miles NNW of the earlier position. The migrants then waited 4 - 5 hours in the same area, where their requests for help from some fishermen went unheeded. Still in the same position, the vessel was visited for a second time by a military helicopter that dropped biscuits and water before leaving. The vessel then continued NNW towards Lampedusa for 5 - 8 hours before running out of fuel at approximately 07:00 GMT on 28 March, at which time the boat began to drift. The boat drifted SSW for 7 - 8 days before it encountered a military ship. On 10 April, the boat landed south-east of Tripoli at Zlitan. Upon landing, 11 migrants were still alive. 2 died shortly thereafter.

2

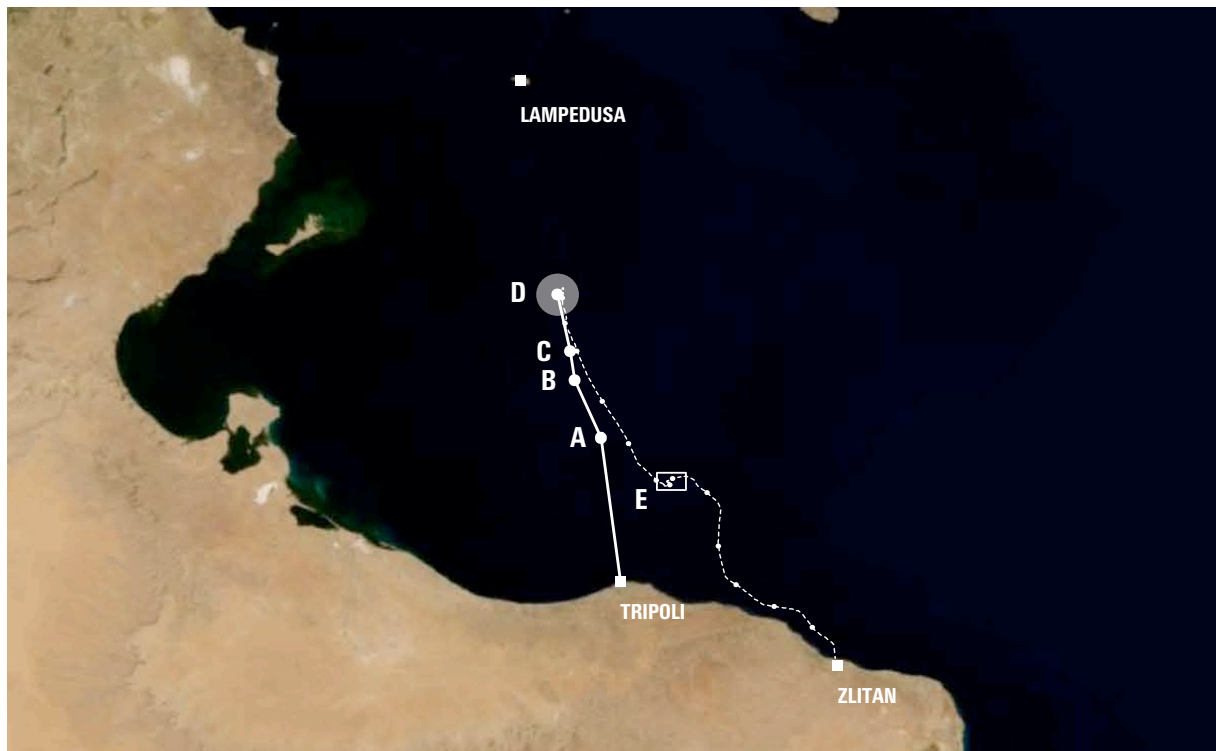
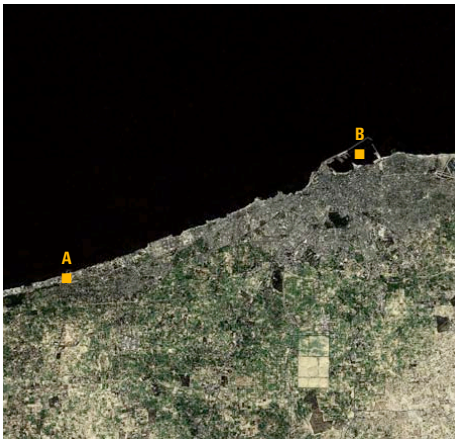


Fig. 2. Departure point at Port of Tripoli between 00:00 and 02:00 UTC on 27 March. Boat first spotted by a French aircraft at 14:55 GMT on 27 March at position LAT 33°40' N, - LON 13°05' E (A). GPS location of vessel (B) at 16:52 GMT on 27 March 2011 at position LAT 33 58.2 N – LON 12 55.8 E as determined by the MRCC based on locations established by the satellite phone provider Thuraya. The GPS position of the boat was determined a second time (C) at 19:08 GMT on 27 March at position LAT 34 07.11 N – LON 12 53.24 E, again based on information provided by Thuraya. The vessel began to drift (D) within a 4.3 nm radius of position 34 24.792 N – 12 48.576 E at approximately 07:00 GMT on 28 March. Between 3 and 5 April the migrants encounter a military ship (E). On 10 April the boat lands back at Zlitan.

VESSEL

The vessel used by the migrants was provided by the Libyan military. The exact manufacturer and model of the migrant’s vessel has not been established; however, the survivors’ testimonies are consistent with a Zodiac-style inflatable boat approximately 10 meters in length. From the information in our possession, it is unclear if it was a completely inflatable vessel or rather a Rigid-Hulled Inflatable Boat (RHIB vessels are constructed of a solid formed hull mounted with inflatable collars to maintain buoyancy). For the purpose of this report, and based upon the dimensions provided by survivors’ testimonies, specifications from the ASIS WB 12 have been used as a guideline. The vessel used by the migrants left the Port of Tripoli with twelve 20-litre containers of fuel.

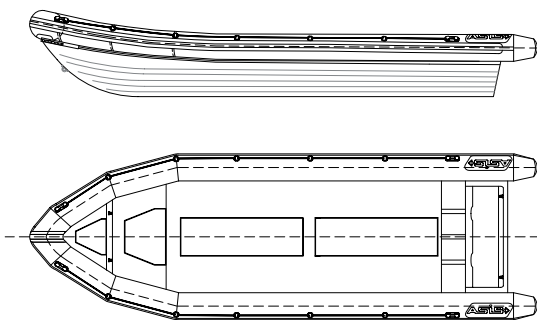
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Dimensions	
Overall length	11900 mm
Overall Beam	3770 mm
Internal Length	9600 mm
Internal Beam	2600 mm
Weight Empty	2500 Kg
Buoyancy Collar diameter	550mm

Capacity	
Max No. of Persons	25 Persons
MaxPayload incl. fuel*	3720 Kg
Floor Board Usable Area	22.2 m2
Buoyancy Volume	3758 L

Fig. 3. The Port of Tripoli in the Medina area where the vessel in question departed from (A) is one of two ports from which migrants were leaving during the conflict in Libya. The other site of departure, approximately 30 kilometers to the west, is the Sidi Bilal port in Janzur (B). **Fig. 4.** Lorenzo Pezzani interviewing survivor Daniel Haile Gebre on 21 December 2011. The image shows Pezzani and Haile Gebre’s drawing of the migrants’ Zodiac style boat. **Fig. 5.** Plan and Elevation of ASIS RHIB model WB 12. **Fig. 6.** Specification sheet for ASIS WB 12. Note: Figs. 5 and 6 are provided as references for an RHIB vessel type of approximate length and do not provide the exact manufacturer or model of vessel used by the migrants.

AIRCRAFT SIGHTING

On 27 March at 14:55 GMT, a French aircraft informed Rome MRCC of the sighting of a boat with about fifty persons on-board. The aircraft established the position of the boat and took a picture of the vessel that was sent to Rome MCRR.

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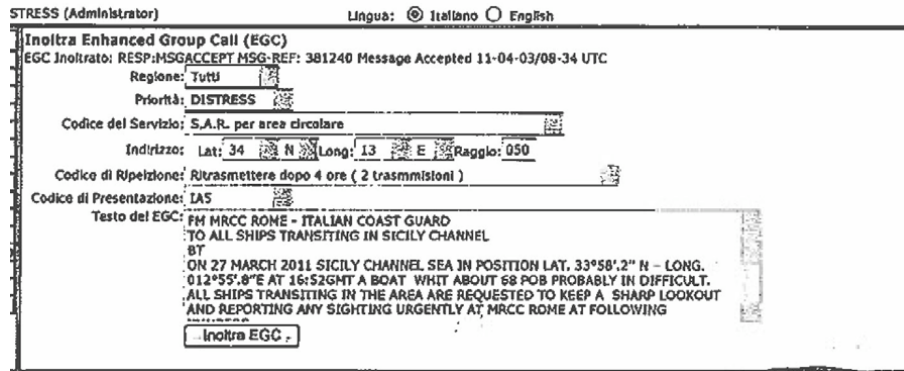


Fig. 7, Picture taken by the French aircraft and sent to Rome MRCC.

POSITIONING AND ALERT

The vessel's location was established at three points during the migrant's journey. After the first position was determined by the French aircraft, the second one was established using GPS coordinates by Thuraya, the satellite phone provider used by the migrants. This location was published by the Italian Coast Guard in geographic coordinates (latitude and longitude) in an Enhanced Group Call (EGC) distress signal intended to alert other crafts in the area. A second alert containing the same information was broadcast in the form of a HYDROLANT alert, which called for all vessels in the vicinity of the Sicily Strait (HYDROLANT areas 52, 53 and 56) to keep a "sharp look out" for a "vessel in need of assistance." A third position was established about 2 hours later approximately 9nm NNW of the previous one, again by Thuraya.

8



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BROADCAST WARNING MESSAGES QUERY RESULTS
CATEGORY: HYDROLANT Warning Number: 512 / 2011
HYDROLANT 512/2011 (52,53,56) (Cancelled by HYDROLANT 637/2011)
EASTERN MEDITERRANEAN SEA. VESSEL: 68 PERSONS ON BOARD, IN NEED OF ASSISTANCE IN 33-58.8N 012-55.8E AT 271652Z MAR. VESSELS IN VICINITY REQUESTED TO KEEP A SHARP LOOKOUT, ASSIST IF POSSIBLE. REPORTS TO MRCC ROME, INMARSAT-C: 424744220, PHONE: 390 6592 4145 OR 3906 5908 4409, FAX: 390 6592 2737 OR 3906 5908 4793, E-MAIL: UFFICIO3.REPARTO@MIT.GOV.IT. (280406Z MAR 2011)

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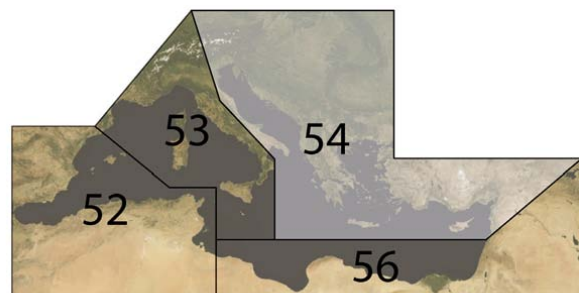


Fig. 8. The Italian Coast Guard issued an Inmarsat-C EGCat 18:54 GMT on 27 March 2011. The Italian Coast Guard based coordinates on the migrants' satellite phone calls. All Thuraya satellite phones are equipped with a GPS receiver that periodically transmits their locations to the Thuraya gateway, and are accurate within 100 meters. Fig. 9. A second HYDROLANT broadcast warning was issued at 04:06 GMT on 28 March 2011 communicating the same information. Fig. 10. HYDROLANT Broadcast Areas 52, 53 and 56 highlighted.

HELICOPTER IDENTIFICATION

The migrants claim that on 27 March their vessel was overflowed by at least one military helicopter. Despite the migrants' requests for help, the aircraft only provided 8 bottles of water and a few packets of biscuits before leaving. Based on survivors' descriptions, we have tried to identify the helicopter in question among those that were participating to the military operations off the coast of Libya.

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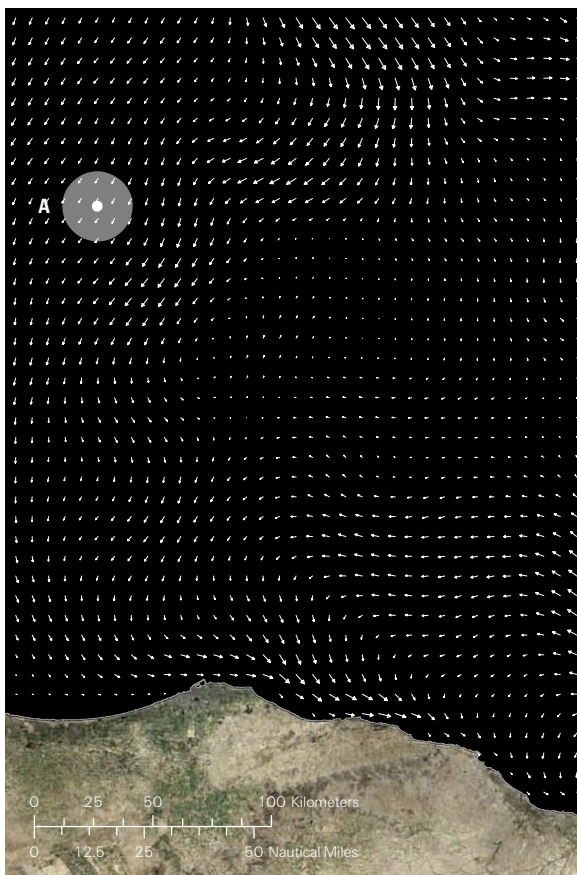
Fig. 11, Daniel Haile Gebre writes the text that he saw on the side of the helicopter. It reads "RESCUE ARMY," although he is not sure about the presence of the first word ("RESCUE"). **Fig. 12**, Haile Gebre, when shown the image of an United Kingdom Army Air Corps Westland Lynx, recognizes that it has a similar color to the helicopter that hovered over the migrants' boat. He says: "Like this, it was mimetic with grey and light green" (DHG, 113). **Fig. 13**, A United Kingdom Army Air Corps Westland Lynx AH.7 photographed onboard the HMS Ocean while making its port call in Malta Grand Harbour on 6 June 2011. **Fig. 14**, An airborne United Kingdom Army Air Corps Westland Lynx. The writing "ARMY" is visible on the initial portion of the tail. **Fig. 15**, The airborne Canadian Navy CH-124 Sea King helicopter, whose profile differs considerably from the British Westland Lynx and which does not bear the writing "ARMY" on the side.

DRIFT MODEL

From the last position provided by the Thuraya Satellite phone's GPS signal, the vessel proceeded due NNW for another 5 - 7 hours at a speed of approximately 4 kt before running out of fuel. From this point on until landing at Zlitan 14 days later, the vessel floated without any use of its motor. Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at the Woods Hole Oceanographic Institution, created a drift model for this report to simulate the path of the migrants' vessel over this 14 days period. Limeburner's model tracks the path of the vessel on the basis of ocean current data and wind data. Tidal currents, which can influence drift track, were ignored for this mode as they are relatively small within the area in question, and only occur periodically within a 24 hour cycle.

A complete summary of Limeburner's findings, methodology and data sources are included at the end of this report (Annex A).

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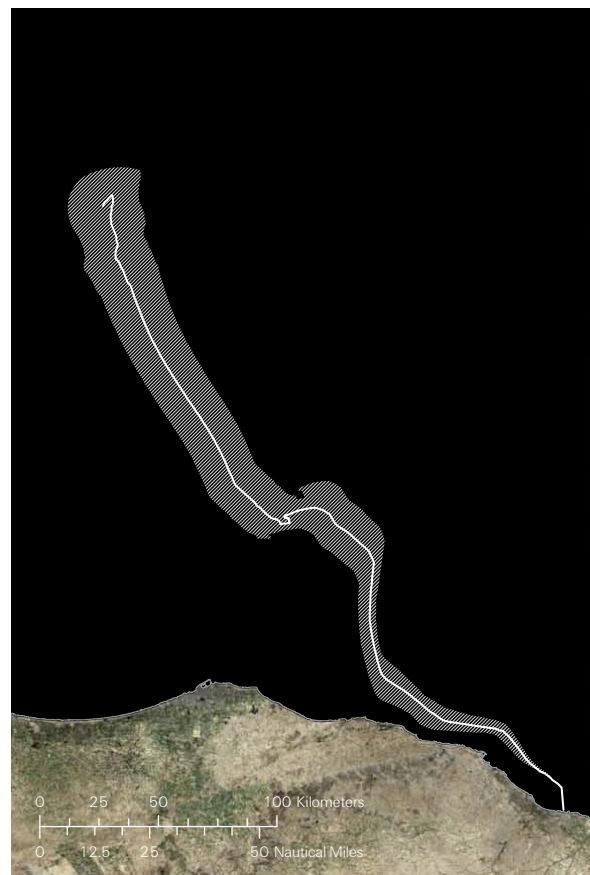


Fig. 16. The difference between the distance traveled over 5 hours and 7 hours at a speed of 4 kt provides an area of 8 NM within which the vessel began to drift. This area becomes the initial error in the drift model (**A**). **Fig. 17.** Over time, the margin of error in the drifting vessel's track linearly decreases to an area of less than 2.2 nm (**B**) after 5 April and less than 1 nm (**C**) after 8 April as it is constrained by the known position of landing.

DRIFT MODEL TIMELINE

The model provides hourly positions of the vessel from 28 March at 00:00 GMT until 10 April at 00:00 GMT.

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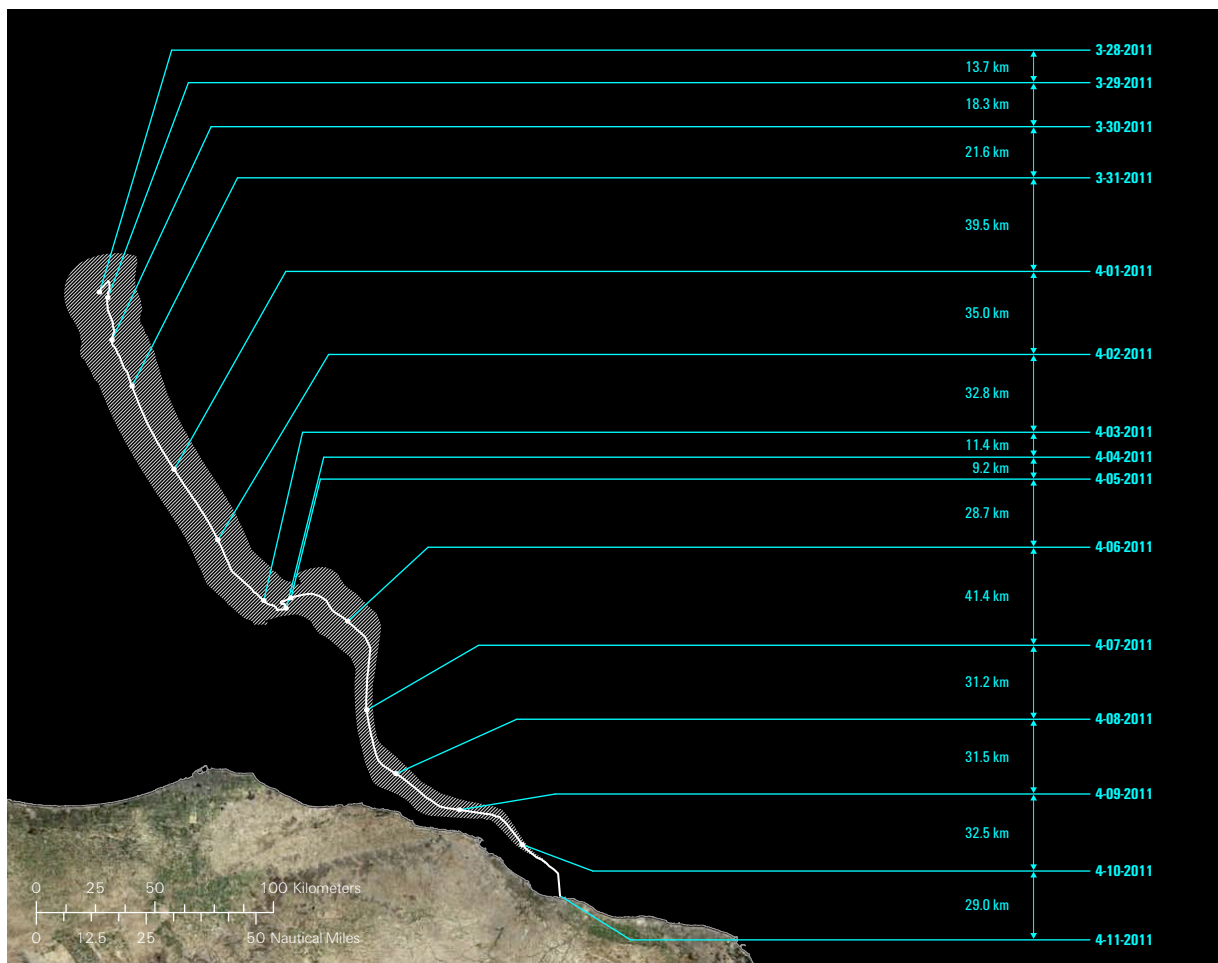


Fig. 18. Hourly positions of the drifting vessel were calculated using daily Nucleus for European Modelling of the Ocean (NEMO) surface current data and hourly Lampedusa airport wind data. Sea surface currents were modeled by Istituto Nazionale di Geofisica e Vulcanologia (INGV) and the meteorological data was provided by Euroweather.

MILITARY SHIP ENCOUNTER

The vessel encountered a military ship approximately midway between its departure and landing dates. Survivor testimony suggests that this encounter occurred at some point between 3 and 5 April. During this 72 hour period, the drift model shows that the vessel traveled 22.6 km (12.1 NM), the shortest distance covered during any two day period between 28 March and 10 April. During this period the wind decreased and the NNW current began to dominate drift, and the vessel remained in a relatively small area. Late on 5 April the winds strengthened and the vessel continued to drift SE again. The survivors describe an encounter that happened between 3 and 5 April during which a two-tiered military vessel equipped with 1 or 2 helicopters came within 10 meters of the migrants' boat. Personnel on the military vessel took photographs of the migrants before leaving.

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Fig. 19. Drift path for dates 3 and 4 April. **Fig. 20.** Lorenzo Pezzani interviewing survivor Daniel Haile Gebre on 21 December 2011. **(A)** Haile Gebre writes down the numbers he remembers on the ship's sides: "It had a number written on the front side: 'MF'...there is a '9' then I think '29' and then I am not sure of the following numbers. 'MF' is sure, '9' is sure, maybe 'MF 929...'" (DHG, 168). **(B)** When shown the image of the Italian ship Borsini, he recognizes the same shape of the ship that the migrants encountered: "The front section was very small, with only room for 1 helicopter, and 1 helicopter in the back, like this...yes, exactly like this, like two steps" (DHG, 174).

SAR COVERAGE

Moderate to fine resolution satellite resources, such as optical satellite imagery, are not normally collected over the open ocean. However, Synthetic Aperture Radar (SAR) data is routinely collected over the Mediterranean Sea. As part of this report, a survey of available SAR data was taken for all available coverage within the Strait of Sicily for the period of 27 March – 10 April. The following SAR providers all have varying amounts and types of coverage over this area during the time frame: iTerraSAR-X, Palsar, COSMO Sky-Med, Radarsat 1, Radarsat 2 and Envisat-1. For the purposes of this report, Envisat data was acquired for 28 March and 29 March which provides a snapshot of maritime activity in the area.

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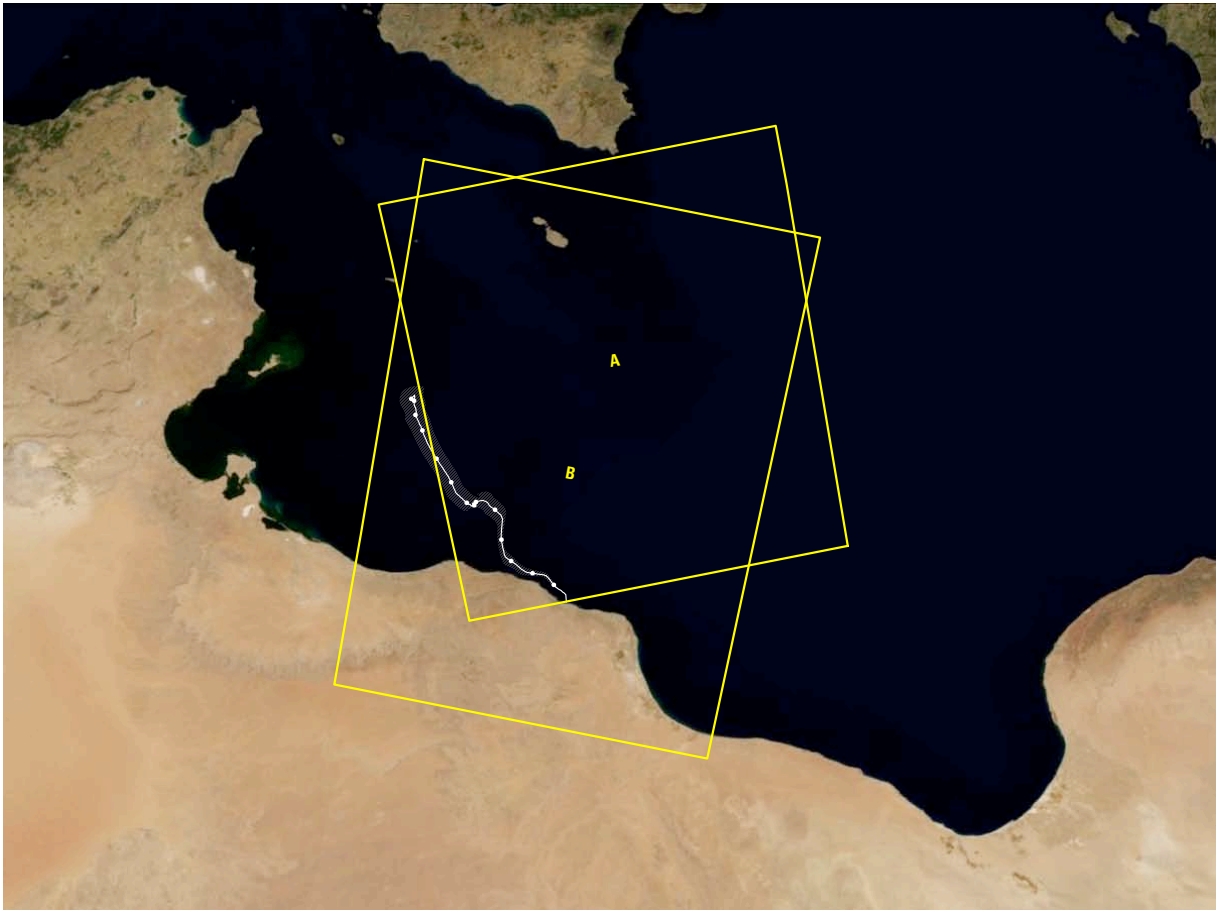
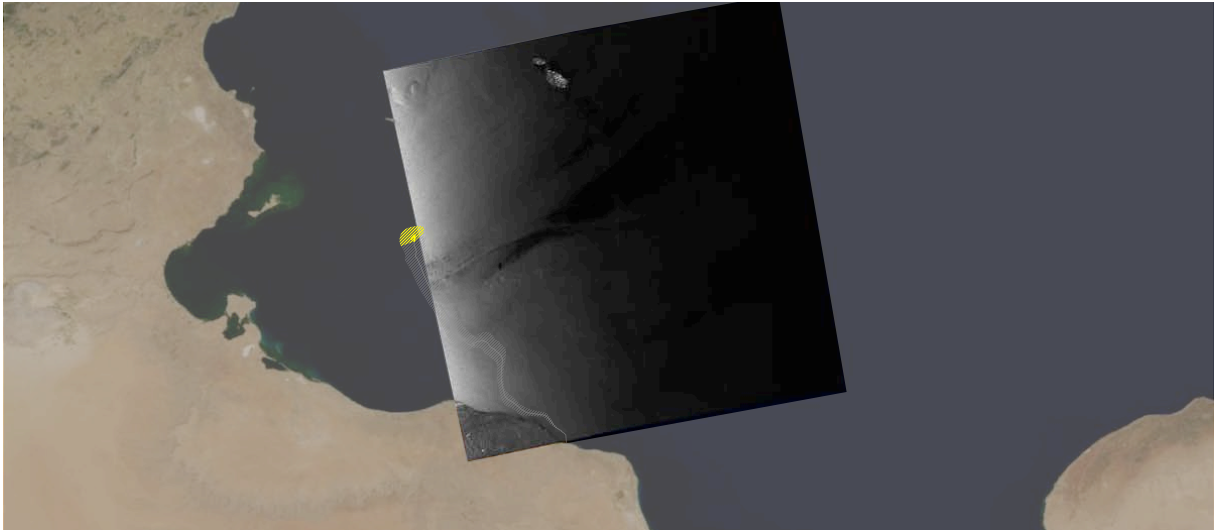


Fig. 21, Envisat-1 Wide Swath coverage area for 28 March 2011 (A) and 29 March 2011 (B).

SAR TILES

03-28-2011, 03-29-2011

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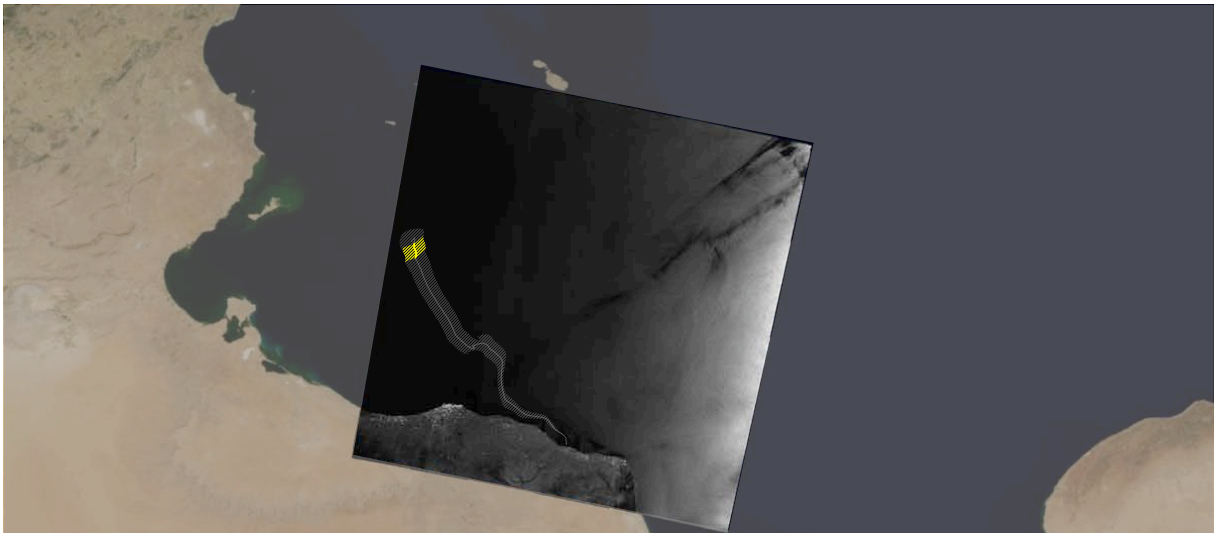


Fig. 22. Data displayed Envisat-1 Sensor: ASAR/WS,Product: ASA_WS_0P,Swath: WS, Start: 2011-03-28 20:56:33.71, Stop: 2011-03-28 20:57:38.80

Fig. 23. Data displayed Envisat-1 Sensor: ASAR/WS,Product: ASA_WS_0P, Swath: WS,Start: 2011-03-29 09:09:26.49, Stop: 2011-03-29 09:10:48.60

SAR VESSEL DETECTION

The SAR returns appear as bright pixels against the surrounding sea surface (eight times the brightness on average in the data analyzed for this report). In the case of the Envisat data, low variability of the background sea pixels means that even moderately bright returns indicate the presence of vessels.

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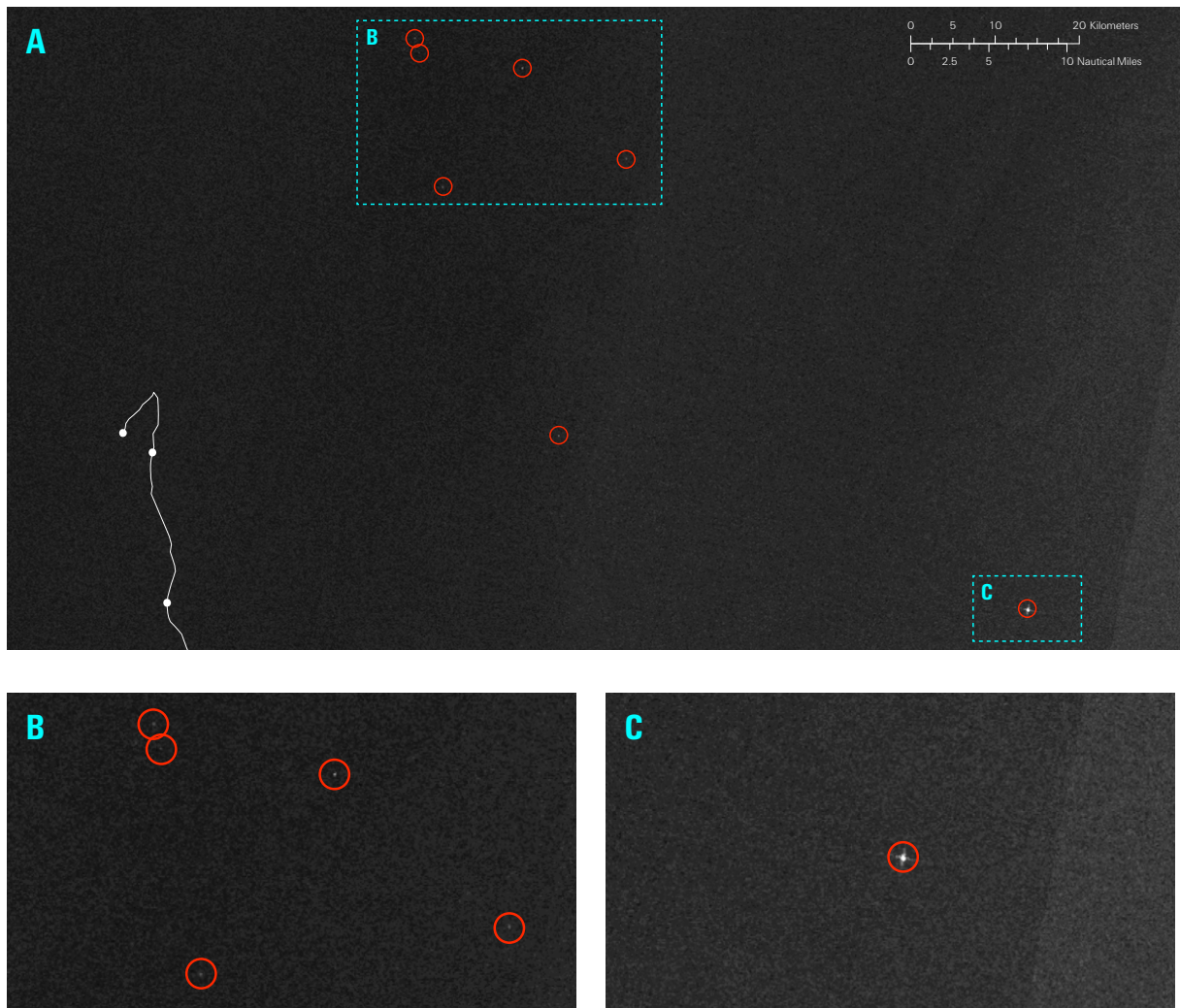
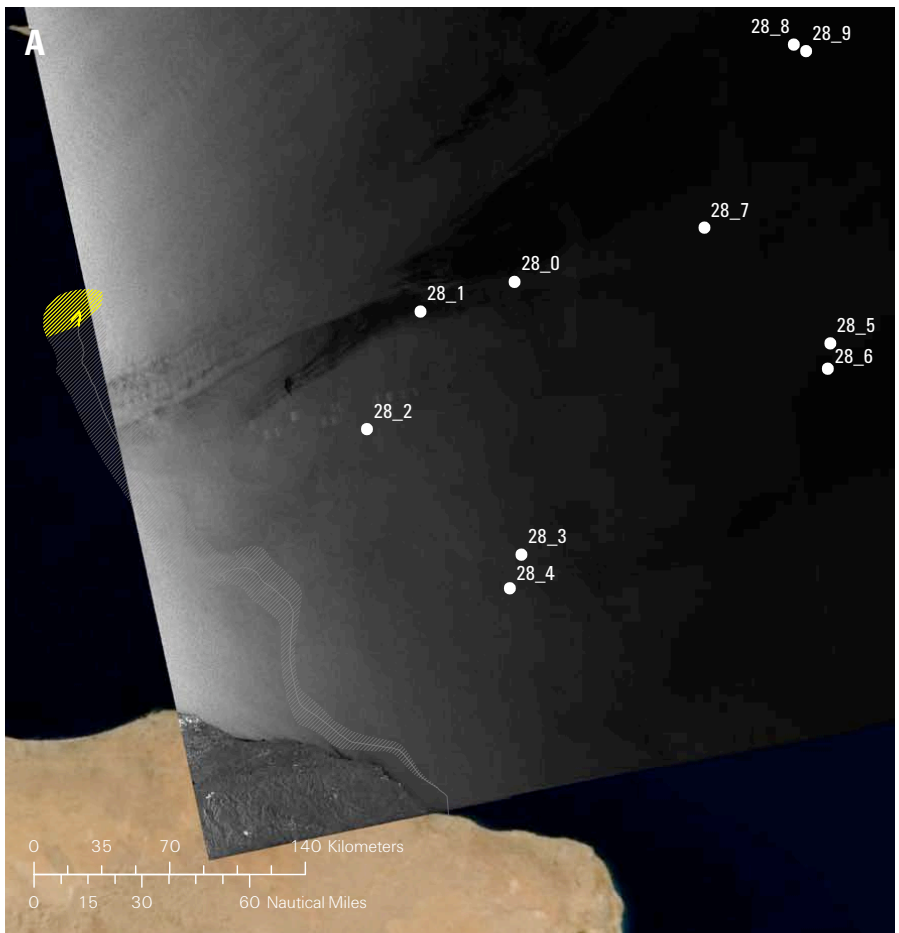


Fig. 24. Overview of ship detections from 29 March Envisat data (A) with enlargements of (B) and (C). The brightness of (C) is due to an interference pattern that occurs when the geometry of the target aligns for maximum return.

SAR ANALYSIS - 28 MARCH

For this report, Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing and consultant, provided analysis of the 28 and 29 March Envisat-1 data. Fox's analysis provides estimates of ship length and quantification of confidence for all returns considered probable vessels. Envisat-1 radar returns considered probable vessels for this report appear, on average, 10 times the signal strength of the surrounding sea surface. The resolution of the Envisat-1 data allows for high confidence detection of ships 75 meters and longer. On 23 March the U.S. Department of Defense disclosed that 38 NATO ships were being deployed in the frame of the 2011 military intervention in Libya. 37 of 38 ships were above 75 meters in length. Return 28_2 was between 82 and 94 NM away from the ship's drift, while return 28_1 was between 89 and 105 NM away and return 28_0 was between 115 and 132 NM away.

25



B

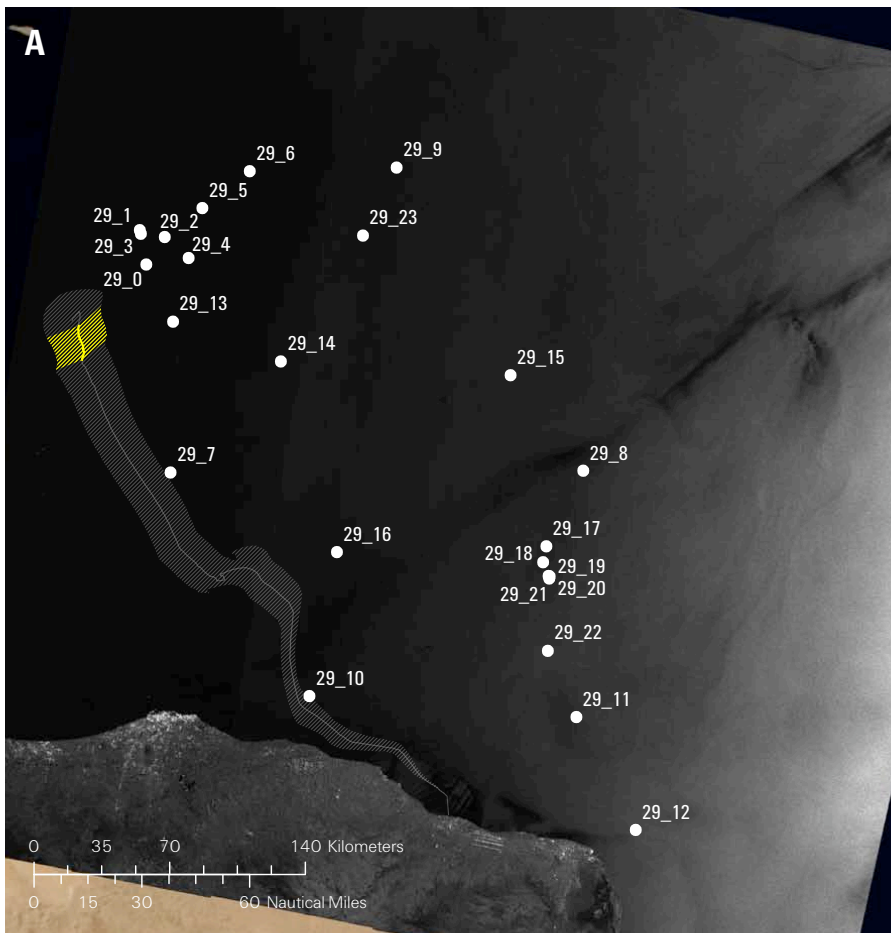
Return	Length	Confidence
28_0	225m	95%
28_1	150m	85%
28_2	150m	95%
28_3	50m	80%
28_4	30m	70%
28_5	150m	95%
28_6	50m	80%
28_7	75m	95%
28_8	150m	95%
28_9	200m	95%

Fig. 25, Envisat-1 data vessel detection for 28 March (A) with corresponding table of returns (B) documenting estimated length of vessel and confidence.

SAR ANALYSIS - 29 MARCH

Return 29_13 was between 20 and 34 NM away from the ship's drift, while return 29_3 was between 25 and 33 NM away and return 29_1 was between 32 and 38 NM away.

26



B

Id	Length	Confidence
29_0	75m	80%
29_1	75m	70%
29_2	75m	95%
29_3	75m	80%
29_4	75m	70%
29_5	75m	90%
29_6	225m	95%
29_7	75m	80%
29_8	75m	70%
29_9	75m	80%
29_10	75m	80%
29_11	150m	95%
29_12	150m	95%
29_13	75m	80%
29_14	300m	95%
29_15	150m	95%
29_16	75m	80%
29_17	75m	95%
29_18	300m	95%
29_19	75m	80%
29_20	75m	80%
29_21	75m	70%
29_22	150m	95%
29_23	225m	95%

Fig. 26, Envisat-1 data vessel detection for 29 March (A) with corresponding table of returns (B) documenting estimated length of vessel and confidence.

SEARCH AND RESCUE ZONES

The area in question is divided into Italian, Maltese and Tunisian Search and Rescue Regions (SRR). SRR have been internationally established for the express purpose of coordinating rescue operations and optimizing their effectiveness, efficiency and safety. States are obligated to exercise SRR services in the area under their responsibility and frequently engage in SAR agreements with neighboring States to coordinate operations and rescue services.

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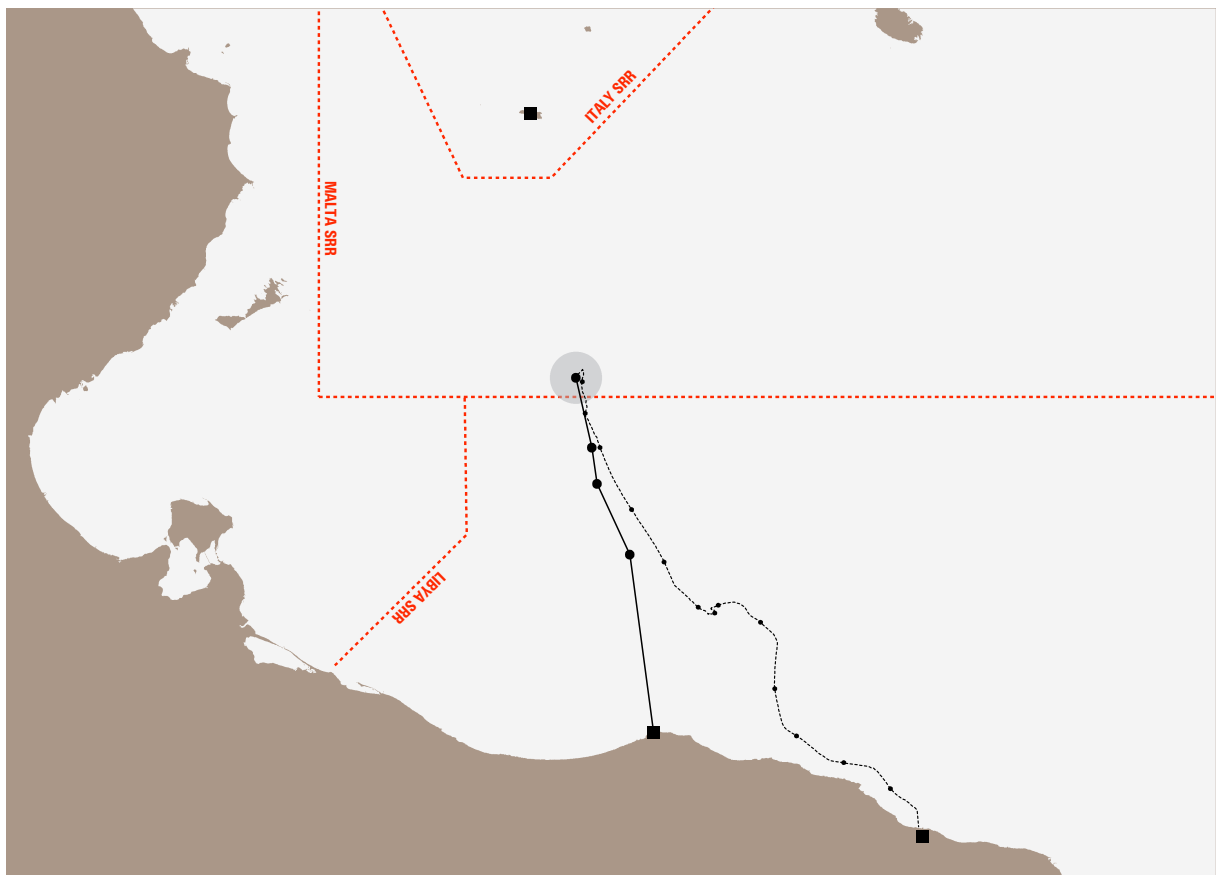


Fig. 27, Search and Rescue Regions within the Strait of Sicily.

NATO MARITIME SURVEILLANCE AREA (MSA)

During the months of March and April 2011, a NATO led arms embargo was implemented in the waters off of Libya. The stated mission of the embargo, titled Operation Unified Protector, was to prevent the flow of arms, related material and mercenaries to Libya. Twelve nations provided naval assets to enforce the embargo: Belgium, Bulgaria, Canada, France, Greece, Italy, Netherlands, Spain, Romania, Turkey, United Kingdom and United States. Ships transiting through the embargo area were required to notify NATO of their cargo and destination. Using a synthesis of Automatic Ship Identification systems as well as surveillance and intelligence means, NATO verified shipping activity in the region to separate legitimate commercial, humanitarian and private traffic from suspicious vessels that warranted closer inspection. The Maritime Surveillance Area (MSA) encompassed by the Embargo Zone was established first on 23 March 2011 and was enforced within the following boundaries: Northern Limit 35 00 N, Western Limit 34 00 N 012 00 E, Southern Limit: Libya Territorial Waters, Eastern Limits 34 00 N 022 00 E and 33 00 N 025 00E. This area was revised on 8 April 2011 at which point the Northern Limit was changed 34 00N.

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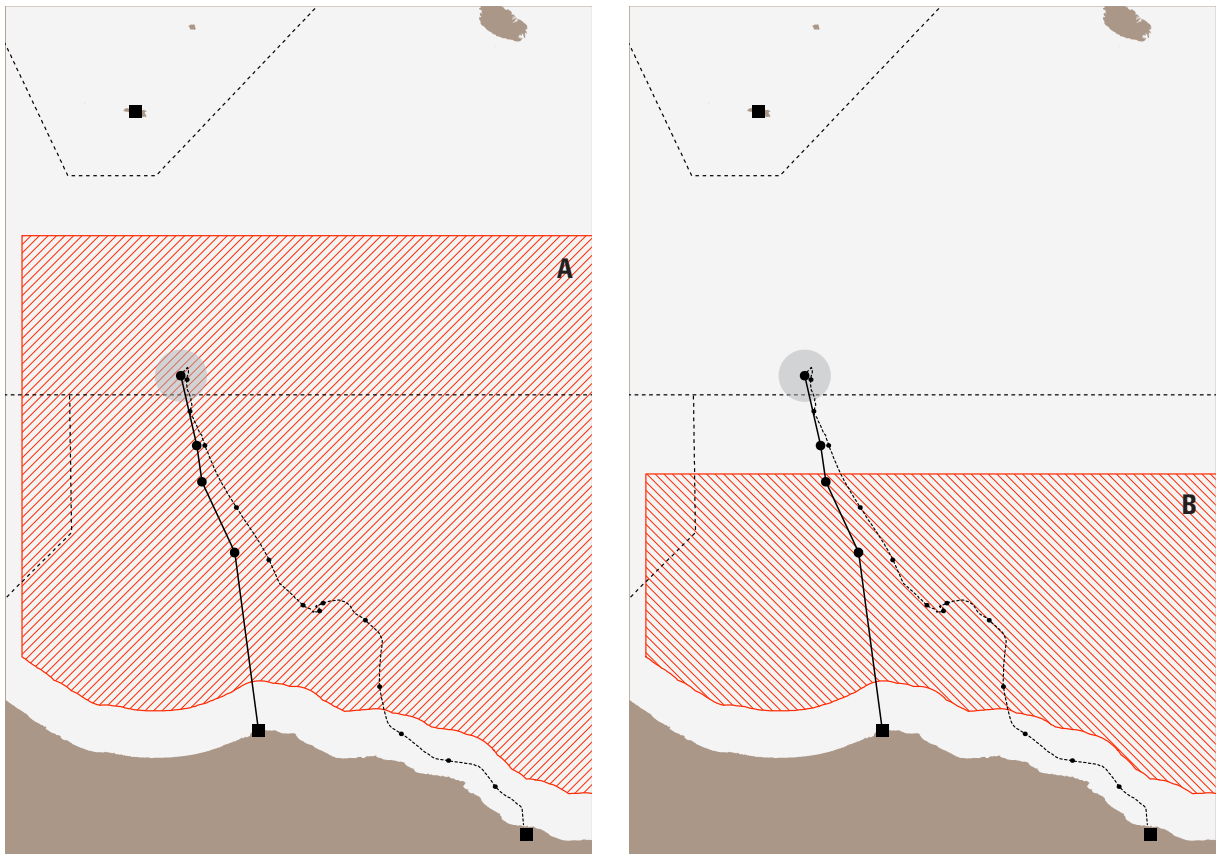


Fig. 28, Northern extents (A) of NATO MSA as of March 23, 2011 and revised northern extents (B) of MSA as of April 8, 2011

PARTICIPATING STATES/NATO'S SENSING CAPABILITIES

NATO/coalition naval and aerial assets were equipped with technologies that offered an extremely high sensing capacity geared both towards combat operations and to the monitoring of the Maritime Surveillance Area. The different sensing capabilities were shared between naval and aerial assets, as explained by Commander Craig Skjerpen, Captain of HMCS Charlottetown, in a video posted on natochannel.tv on 1 April 2011: "What we do is link up all our radar images together, all the ships, and from that we create sort of a map of all contacts in the area. We are also working with aircraft that are tracking vessels. And from that we have a full picture of all vessels in the area."

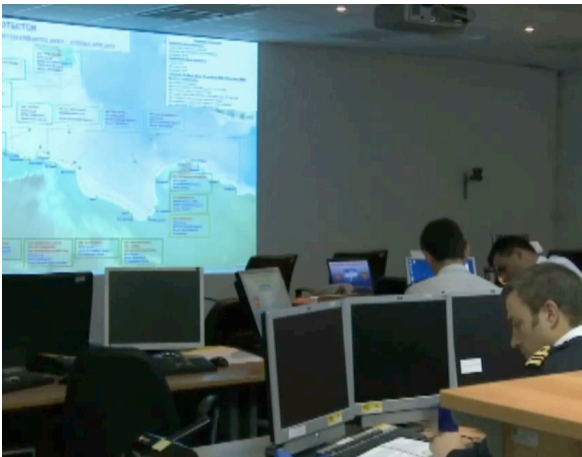
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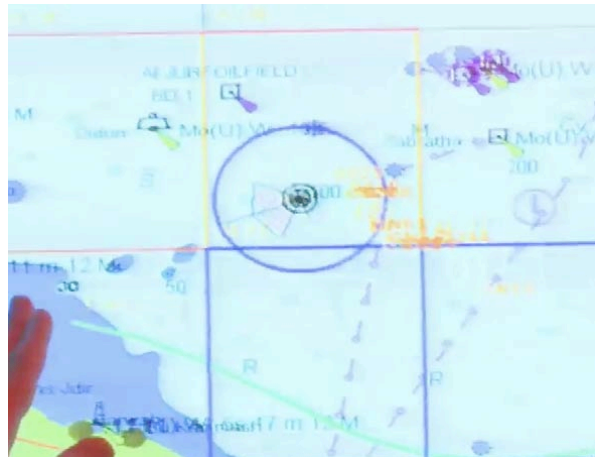


Fig. 29. Inside French E-3F AWACS aircraft. **Fig. 30.** Inside the Operations Room of HMCS Charlottetown (Canada). **Fig. 31.** Inside NATO's Naples Maritime Command. Still from the NATO video "Operation Unified Protector." **Fig. 32.** Inside the operations room of Italian frigate Bettica, as it sails towards its patrol area, "near the border between Tunisia and Libya." Mike Mühleberger, NATO correspondent onboard, explains while describing a monitor presenting maritime traffic and squares delimiting large areas: "The area north of Libya has been divided into patrol sectors assigned to each NATO ship. By sharing information they can be more effective, and ensure that vessels are continuously tracked as they pass from one sector to another." Still from the NATO video "Italian patrol ship Bettica enforcing the arms embargo."

NATO ASSISTANCE AT SEA

NATO has stated that during the military operations, "NATO ships have directly assisted in the rescue of more than 600 people in distress at sea and through coordination with national authorities and coast guards, NATO has facilitated the rescue of many hundreds more." The review of a particular case of rescue that occurred between 25 and 26 March 2011 and saw the involvement of the Canadian HMCS Charlottetown and the Italian ETNA, provides important insight into the way NATO conducted its assistance to migrants.

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Fig. 33, Picture used in the Canadian Navy magazine *Crowsnest* (Lieutenant Michael McWhinnie, "HMCS Charlottetown assists drifting migrant vessel", *Crowsnest*, Vol. 5, No. 2 Summer 2011, p. 4) to illustrate a rescue operation performed by the HMCS Charlottetown on 26 March 2011. In the background it is possible to see the HMCS Charlottetown itself, recognizable from its characteristic chimney openings. **Fig. 34**, Picture presented at a NATO press briefing in Brussels on 10 May 2011. The original caption of the picture reads: "On 26 March 2011 ETNA rescued a stricken boat off the Libya coast with 300 migrants, and carried out 2 medvac to Lampedusa, the first to take ashore a mother with her just born children and the second for a pregnant young woman that unfortunately lost her children." **Fig. 35**, Picture presented at the same press briefing mentioned in the caption of Fig. 37, with the same original caption. In this image it is possible to read "MARINA MILITARE" and "NAVE ETNA" on one of the rubber boats approaching the migrant's vessel.

ANNEX A

Draft - Model Estimate of the Drifting Refugee Boat Trajectory near Libya during 2011

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1. Introduction

On March 27, 2011 a ~10 m rubber boat overloaded with 72 migrants departed the port of Gargash adjacent to the Medina of Tripoli, Libya. This vessel was bound for Lampedusa Island, Italy 160 nm (nautical miles) to the north northwest. Approximately 30 hours after departure the fuel was depleted and the vessel began drifting for 14 days under the influence of the wind and current. On April 10 the vessel came ashore on a beach near Zlitan, Libya with only 11 survivors. Other vessels near the drifting refugee vessel during the 14 day drift did not render any assistance. This report describes an effort to model the trajectory of the refugee vessel over the 14 days from when the drift began to the vessel's final grounding on the beach at Zlitan. The objective of this drift model is to help identify other vessels near the refugee vessel and inquire why they did not give assistance.

2. Chronology of Events

Note: all times in this report will be GMT. Distances will be reported in nm (1 nautical mile = 1.85 km). Speeds at sea are given in kt (knots = nautical miles/hour)

27.03.2011, between 0000 and 0200: vessel departs Tripoli

27.03.2011, 1652 Tel/GPS position #1 - 33° 58.2' N 12° 55.8' E, 66.6nm/15hrs = 4.43kt

27.03.2011, 19.08 GMT: Tel/GPS position #2 - 34° 07.11' N - 12° 53.24' E, after which they waited 4-5hrs

28.03.2011, around 0100 the vessel starts to navigate again in the approximate direction of Lampedusa

28.03.2011, between 0600 and 0800: fuel runs out, adrift begins. Two time/position possibilities for the start of the drift could be calculated:
- if the vessel started to drift at 0600 (after 5hrs navigation) 22.2 nm north northwest of last GPS position

- if the vessel started to drift at 0800 (after 7hrs navigation) 31.1 nm north northwest of last GPS position
10.04.2011: ashore at Zlitan 32° 29.935' N 14° 33.926' E

3. Model Description

The track of the vessel is assumed to be due to the influence of ocean currents and the wind. Tidal currents also influence the vessel's track, but are ignored in this model since these currents are relatively small and mainly periodic every 24 hours in the sea just north of Tripoli and Zlitan.

Ocean currents were obtained from the MyOcean website <http://www.myocean.eu.org/index.php/products-services/catalogue>. MyOcean provides data mainly from EuroGOOS Regional alliances which have deeply contributed to structure the European Operational Oceanography community. The ocean currents were actually provided by the Istituto Nazionale di Geofisica e Vulcanologia (INGV) in Italy. INGV uses NEMO (Nucleus for European Modeling of the Ocean), a state-of-the-art modeling framework for oceanographic research, operational oceanography, seasonal forecasts and climate studies. See <http://www.nemo-ocean.eu/>

Wind data at the Lampedusa Island airport was obtained from EuroWeather <http://www.eurometeo.com/english/home>. Weather data at Libyan meteorological stations was unreliable in early 2011.

The refugee vessel was estimated to begin drifting at 0700 March 28, 2011 from 34° 24.792'N 12° 48.576'E after motoring at 4.4 kt toward Lampedusa Island for 6 hours from the last GPS position #2.

Hourly positions of the drifting vessel were calculated using the daily NEMO model surface current data and the hourly Lampedusa airport wind data. Vessels at sea usually drift at 3-5% times the wind speed depending on the cross sectional area of the vessel above and below the waterline. For the refugee rubber boat similar to a Zodiac we initially choose 4% of the wind speed for the vessels drift. Then we adjusted the windage to 4.8% for the estimated trajectory to end at Zlitan on April 10, 2011.

4. Results

The estimated track of the refugee vessel is shown as a red line in Figs. 1-3. Labeled in Fig. 1 are Tripoli where the vessel departed, GPS1 and GPS2 where the vessel's time and location were known, Adrift - the location where the vessel ran out of fuel and the drift began at 0700 on March 28, 2011, and Zlitan, Libya where the vessel finally came ashore. Lampedusa Island is the large island near the northern edge of Fig. 1. Also shown are the predicted ocean surface currents on March 30, 2011 from the NEMO computer

model. Yellow arrows indicating surface current speed and direction are shown every 6.25 km. A 25 cm/sec (0.5 kt) scale arrow is shown in the upper portion of the image.

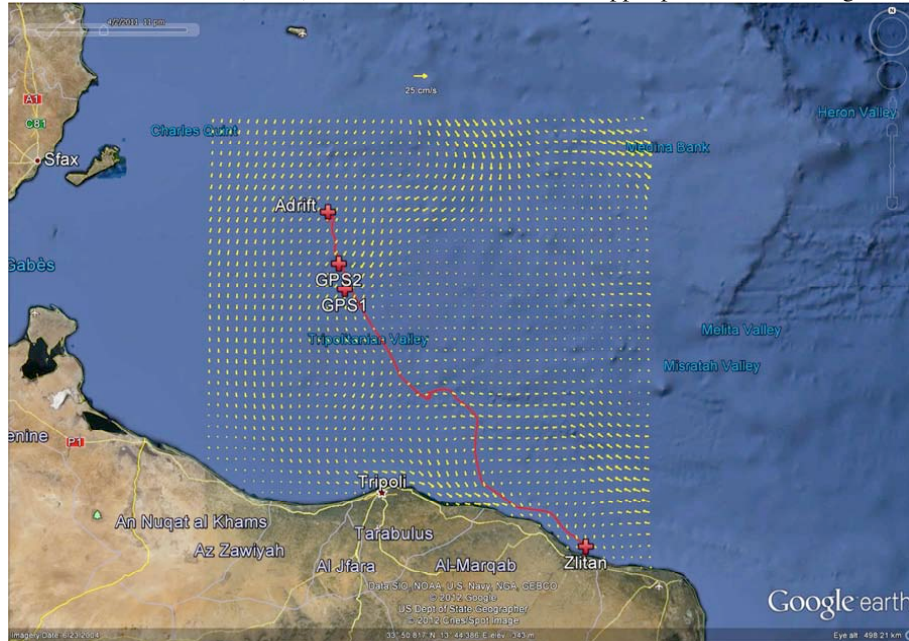


Fig. 1 Estimated track (red) of the refugee vessel adrift during 2011.

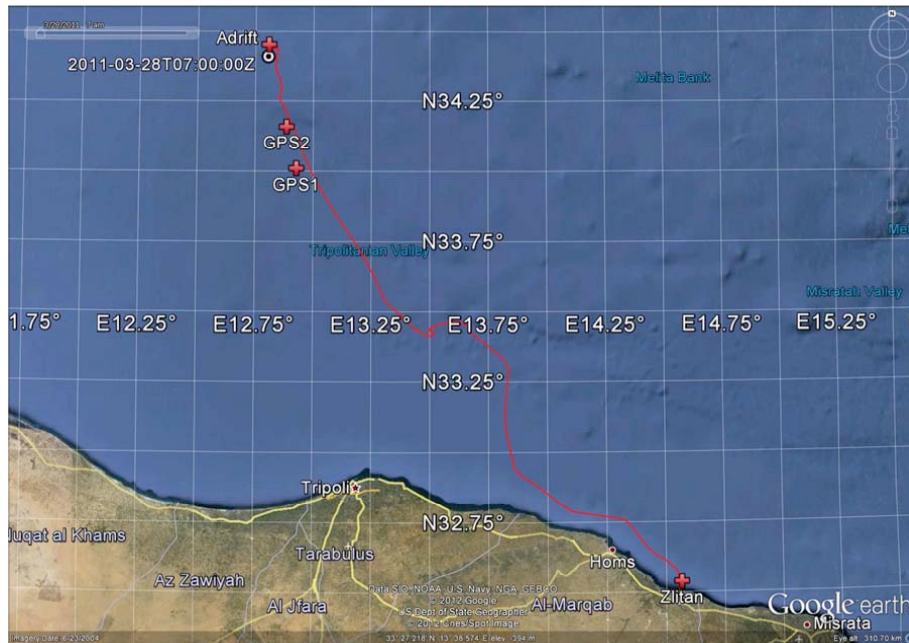


Fig. 2 Estimated track (red) of the refugee vessel adrift during 2011 with lat/lon.

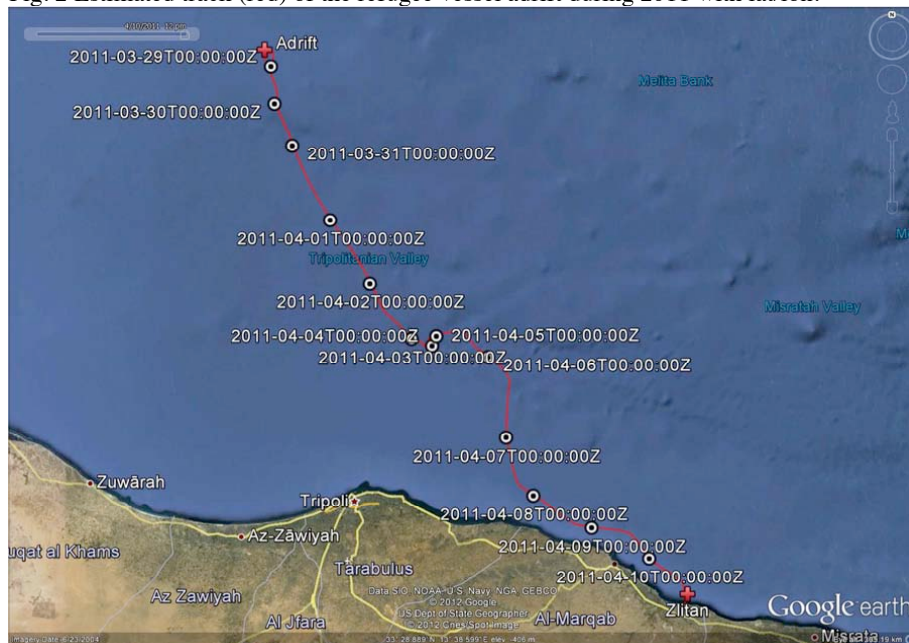


Fig. 3 Estimated track (red) of the refugee vessel with daily time labels.

The error in the model's estimated drift track was initially due to the uncertainty of the time and position where the vessel ran out of fuel and began to drift. An estimated error of +/- 2 hours to the time when fuel ran out and a speed of 4.0 kt implies the initial error around the Adrift position shown in Figs. 1-3 was a circle with a 8 nm radius.

Since the final location of the drifting vessel was known we can assume the error in the drifting vessel's track linearly decreases in time to a circle with less than 2.2 nm after April 5, 2011 and less than 1 nm after April 8.

5. Summary

The estimated vessel drift was more strongly dominated by the southeastward winds than the surface currents by a factor of 2:1. The surface currents were predominantly south westward except near the coast of Libya where they were east southeastward parallel to the coast. The wind was generally east southeastward to southward during March/April 2011.

One limitation of the model estimated refugee vessel drift was the use of Lampedusa Airport wind data to represent the wind for the entire region being modeled. The Lampedusa meteorological data included atmosphere pressure, wind speed and direction, air temperature, humidity, visibility, rainfall and was reported regularly and appeared to be of good quality. Other meteorological data from Libya and Tunis for March/April 2011 had large time gaps and was limited in parameters recorded. Probably the wind data from Lampedusa was good over the open ocean but less representative within 10 km of the coast of Libya.

See the file named "model_track_animation.kml" for a Google Earth animation of the estimated refuge vessel's drift. When this file opens in Google Earth and a time slider appears at the top. Two pointers on the time slider can be separated to control the time stamp labeling of the animation. Try sliding the right slider closer to the left slider. On the top right above the time slider a play/pause button can be toggled to control the animation.

Acknowledgements.

We thank MyOcean website <http://www.myocean.eu.org/index.php/products-services/catalogue> for distributing the surface current data. MyOcean provides data mainly from EuroGOOS Regional alliances which have deeply contributed to structure the European Operational Oceanography community. The ocean currents were actually produced by the Istituto Nazionale di Geofisica e Vulcanologia (INGV) in Italy. INGV uses NEMO (Nucleus for European Modeling of the Ocean), a state-of-the-art modeling framework for oceanographic research, operational oceanography, seasonal forecasts and climate studies. See <http://www.nemo-ocean.eu/>

We also thank EuroWeather for providing meteorological data at the Lampedusa Island airport. See <http://www.eurometeo.com/english/home>.

ANNEX B

Benvenuto marfoccap, Registered User PIN - DISTRESS (Administrator)		Lingua: <input checked="" type="radio"/> Italiano <input type="radio"/> English
Menu	Inoltro Enhanced Group Call (EGC)	
Home Page	EGC Inoltro: RESP:MSGACCEPT MSG-REF: 381240 Message Accepted 11-04-03/08-34 UTC	
Invio msg al Mobile	Regione: TUTU	
Controllo messaggi verso Mobile	Priorità: DISTRESS	
Legol messaggi da Mobile	Codice del Servizio: S.A.R. per area circolare	
Gestione Utenti Gateway	Indirizzo: Lat: 34 28 N Long: 13 28 E Raggio: 050	
Rubrica	Codice di Ripetizione: Ritrasmettere dopo 4 ore (2 trasmissioni)	
Inoltro EGC	Codice di Presentazione: IAS	
Pollina	Testo del EGC: FH MRCC ROME - ITALIAN COAST GUARD TO ALL SHIPS TRANSITING IN SICILY CHANNEL BT ON 27 MARCH 2011 SICILY CHANNEL SEA IN POSITION LAT. 33°58'2" N - LONG. 012°55'4"E AT 16:52GMT A BOAT WENT ABOUT 68 FOBS PROBABLY IN DIFFICULT. ALL SHIPS TRANSITING IN THE AREA ARE REQUESTED TO KEEP A SHARP LOOKOUT AND REPORTING ANY SIGHTING URGENTLY AT MRCC ROME AT FOLLOWING	
Scaricamento DNID	<input type="button" value="Inoltro EGC"/>	
Richiesta Status del Messaggio		
Visualizza Report di Posizione		
Gestione visualizzazione contenuto del DNID		
Visualizza Storico Posizioni		
Visualizza Mappa		
Uscita (rimuove tutti i cookie)		

EV 1339

To 03/0308

NEXT 03/0308

loc^A the

**BROADCAST WARNING MESSAGES
QUERY RESULTS**

CATEGORY: HYDROLANT
Warning Number: 512 / 2011

HYDROLANT 512/2011 (52,53,56)
(Cancelled by HYDROLANT 637/2011)

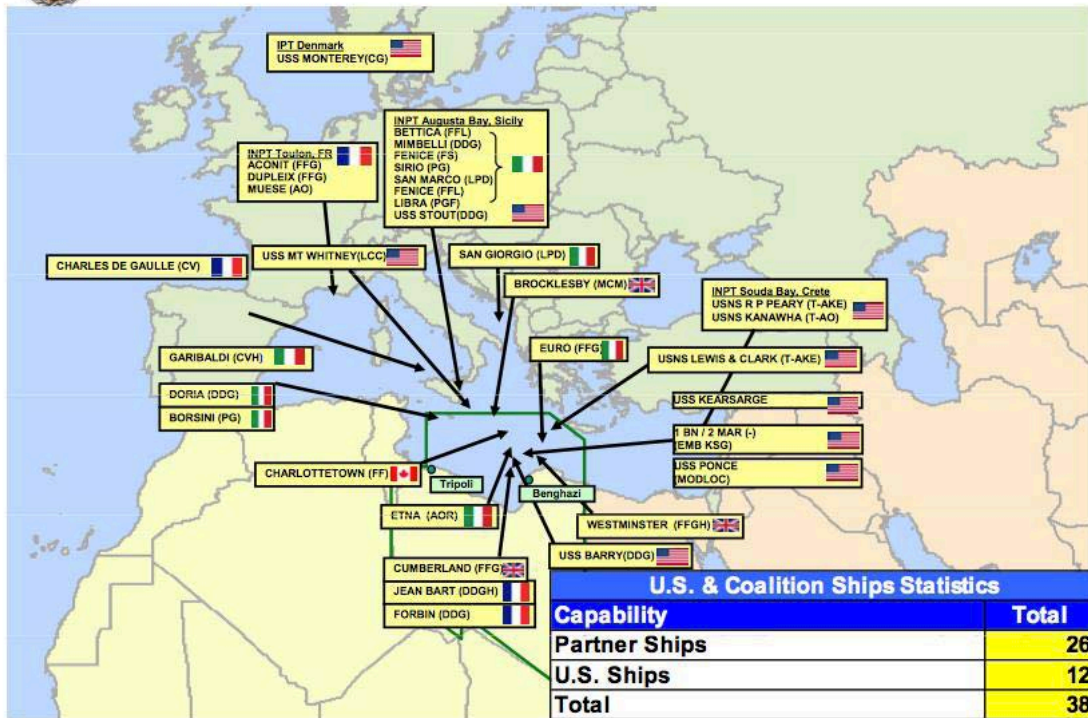
EASTERN MEDITERRANEAN SEA.
VESSEL, 68 PERSONS ON BOARD, IN NEED OF ASSISTANCE
IN 33-58.8N 012-55.8E AT 271652Z MAR. VESSELS
IN VICINITY REQUESTED TO KEEP A SHARP LOOKOUT,
ASSIST IF POSSIBLE. REPORTS TO MRCC ROME,
INMARSAT-C: 424744220,
PHONE: 390 6592 4145 OR 3906 5908 4409,
FAX: 390 6592 2737 OR 3906 5908 4793,
E-MAIL: UFFICIO3.REPARTO3@MIT.GOV.IT.

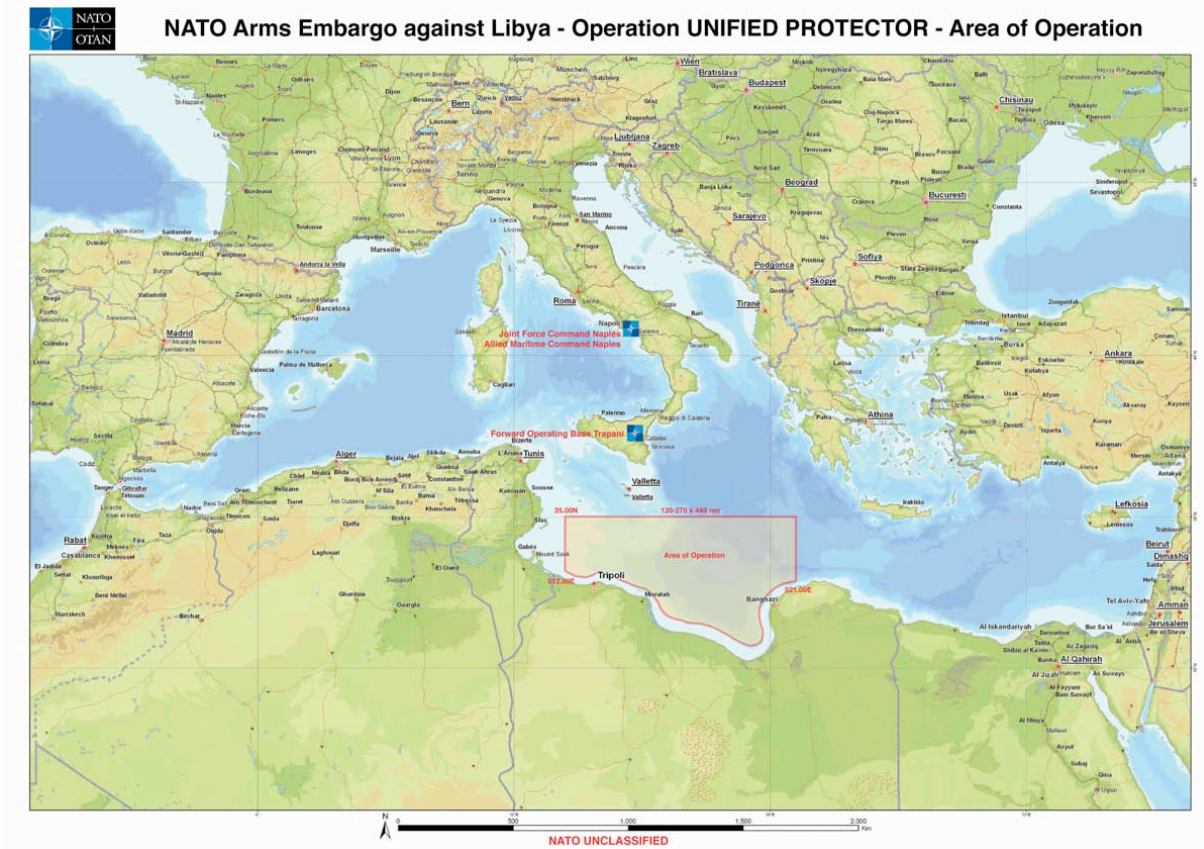
(280406Z MAR 2011)

UNCLASSIFIED

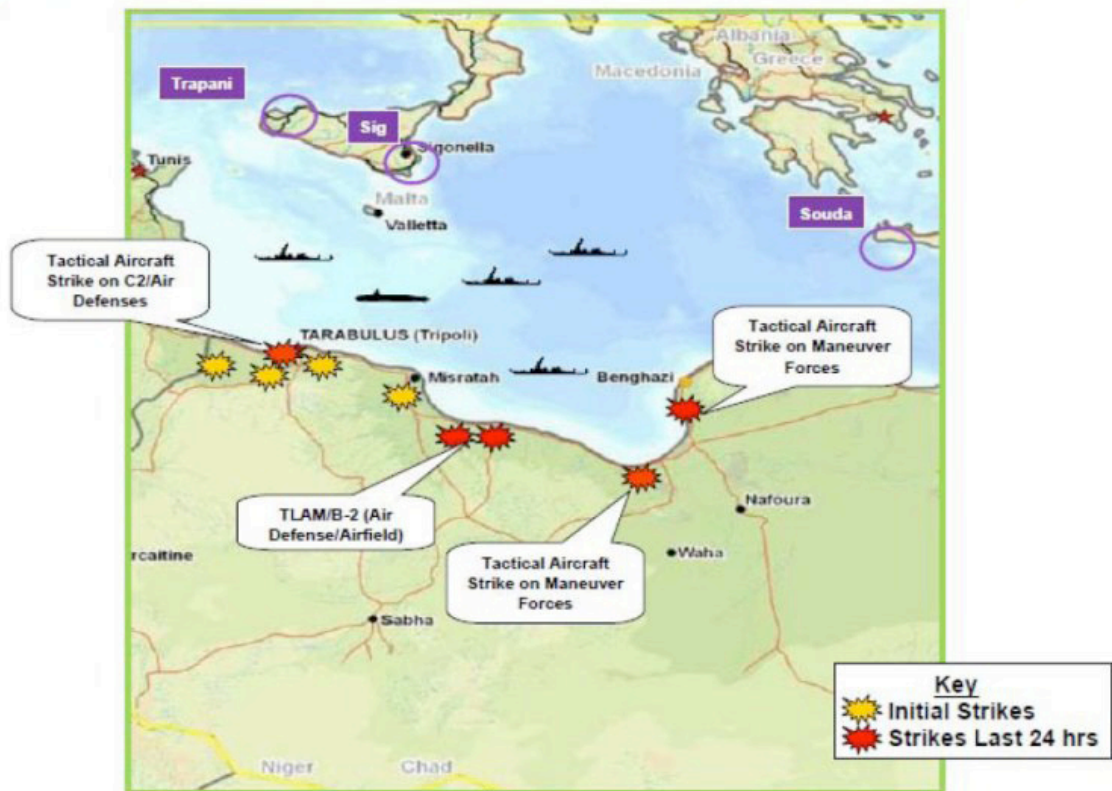


U.S. & Coalition Maritime Forces Laydown





COALITION STRIKES





Warsaw, 28 November 2011
Our ref: 1732/28.11.2011
Please quote when replying

Souhayr Belhassen
President of FIDH
Olivier Clochard
President of Migreurop
Stéphane Maugendre
President of GISTI
Fred Mawet
Director of CIRÉ
Pierre Tartakowsky
President of LDH

Dear Madam, Dear Sirs,

Please accept my apologies for the delay in replying to your letter. I used this time to verify all the details of joint operations that were taking place in the Central Mediterranean between 22nd of March and 10th of April, which you wrote was the period during which the boat was drifting in the open sea.

You will find the outcomes of our internal examination in the two attached documents. The Agency will not be able to answer one of your questions in a precise manner. It is difficult to provide you with exact coordinates of the vessels between 22nd of March and 10th of April, as they were in constant motion. However we indicate precisely the operational area they were moving in.

I would like to use this opportunity to ensure you that one of the main objectives of all maritime operations coordinated by the Agency is to save lives. This year alone (until November) more than 22,000 persons were rescued within the framework of Frontex-coordinated Joint Operations (JOs), the majority of them south of Lampedusa.

All those rescue cases were coordinated by a competent MRCC (Maritime Rescue Coordination Centre) according to internationally approved SAR (Search and Rescue) procedures. Several Italian vessels taking part in the border control operation Hermes coordinated by the Agency were sent more than 140 times to help people in distress.

To put this effort into perspective, I just would like to underline the fact the Mediterranean Sea covers an area of 2.5 million km²; there are more than 20 countries with a Mediterranean coastline. If we take these numbers into account and compare them with the number of assets that take part in JO Hermes (usually two boats on duty) we can quickly draw the conclusion that Frontex as a coordinator of border control operations in the Central Mediterranean is not even a small-scale actor.



I would also like to share with you some of our observations concerning the SAR regime. Recent amendments to the Safety of Life at Sea (SOLAS) and SAR conventions underlie the duty of all Parties to coordinate and cooperate in rescue operations at sea. At the EU level there were guidelines issued (Council Decision of 26th of April 2010) to the Schengen Borders Code. Frontex for its part includes general principles and rules on interception as well as SAR and disembarkation in each Operational Plan. At the same time there is no common European voice in this regard.

From our experience we can highlight a number of issues that if solved would facilitate cooperation in this domain:

- increased capacity of coastal states to fully implement their obligations in terms of controls to prevent the departure of unseaworthy vessels (often persons on board are not aware of the conditions of a boat taking them to the open sea),
- increased SAR capacity of coastal states,
- agreement on a common definition of a “distress situation”,
- agreement on a common interpretation of SAR and SOLAS responsibilities to provide a place of safe disembarkation.

I hope this answer will be of help in your examination of this tragic incident. I remain at your disposal for any further questions you might have.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gil Arias'.

Gil Arias
Deputy Executive Director

Enclosure:

1. Deployment of assets between 22nd of March and 10th of April 2011
2. Summary of maritime Joint Operations coordinated by Frontex

**PERIOD BETWEEN 22 MARCH AND 10 APRIL 2011 IN THE
CENTRAL MEDITERRANEAN**

A. Poseidon Sea Joint Operation

1.

Operational area B coordinates:

A: 36°41'34"N 21°46'06"E

B: 34°52'13"N 24°43'39"E

C: 34°52'13"N 24°43'40"E

D: 34°55'33"N 26°15'35"E

E: 35°34'21"N 27°35'53"E

F: 35°16'02"N 27°42'50"E

G: 34°38'04"N 26°17'16"E

H: 34°25'40"N 24°42'38"E

I: 34°25'10"N 21°46'04"E

2.

Aerial Assets:

Airplane C-296M (Portugal)

*No helicopters

Maritime Assets:

Offshore Patrol Vessel (Romania)

B. Hermes Joint Operation**1.**

Operational area A coordinates (there was a no-fly zone established under the 35th parallel in order to avoid possible missile attacks from Libyan coast-line):

A: 36°45'N	012°15'E
B: 37°00'N	011°40'E
C: 35°15'N	011°42'E
D: 34°40'N	011°55'E
E: 34°04'N	011°30'E
F: 33°47'N	011°55'E
G: 35°35'N	013°18'E

2.

Aerial assets:

March: airplane ATR 42 (Italy), airplane C-295M (Portugal), Dornier 228 (the Netherlands)

April: airplane ATR 42 (Italy), airplane Piaggio (Italy)

* No helicopters

Maritime assets (Italy only):

March: Coastal Patrol Vessel (x2)

April: Coastal Patrol Vessel (x2)

C. Aeneas Joint Operation

1.

Operational area Zulu coordinates:

A: 40°00'N 018°59'E

B: 37°49'N 016°39'E

C: 38°51'N 019°40'E

D: 37°25'N 020°10'E

Operational area Alfa coordinates:

E: 40°34'N 018°34'E

F: 40°34'N 018°54'E

G: 39°30'N 018°34'E

H: 39°30'N 018°54'E

Operational area Bravo coordinates:

I: 37°49'N 016°39'E

L: 37°49'N 017°09'E

M: 39°16'N 017°55'E

N: 39°16'N 018°25'E

2.

Aerial assets: (IT only)

April: airplane ATR 42 (x2)
 helicopter AB-412 HP
 helicopter AW-139

Maritime assets: (IT only)

April: CPV (x3)
 FIB (x5)

ANNEX B.6

	Area	Aerial Assets (type: airplane/helicopter, country)	Maritime Assets (type: CPV/OPV/Fast Boat, country)	Land surveillance assets (country)	Experts (country)	Number of SAR cases	Number of persons rescued	Number of interviews carried out	Number of facilitators arrested	Crime detection (drug trafficking, pollution, illegal fishing, piracy, use of forged/falsified documents etc.)
Hera	between Canary Islands and West African coast	FWA x 3 (Iceland, Italy, Luxembourg)	CPV x 2 (Spain)	nil	no experts deployed	1	15	nil	4	nil
Indalo	Western Mediterranean Sea south of Spain	FWA x 7 (Spain, Italy, Slovakia, Finland, France, Luxembourg, Portugal), Helicopter x 1 (Spain)	CPB x 2 (Spain, Portugal), CPV x 3 (Italy, France, the Netherlands), OPV x 2 (Spain, Iceland)	nil	DBR (Belgium x 10, Spain x 8, France x 16, Portugal x 6, Germany x 4), ICC x 10, IO x 4, TL x 8	75	1919	412	38	102 illegal migration cases; 18 smuggling of drugs cases; 7 oil pollution cases.
Minerva	sea ports on the south coast of Spain	nil	nil	CO2 equipment x 1 (Belgium), Heart Beat equipment x 13 (Spain)	BCE (Austria x 2, Belgium x 2, Bulgaria x 1, Estonia x 1, Spain x 9, France x 3, Italy x 4, Latvia x 1, the Netherlands x 6, Norway x 3, Romania x 3, Slovenia x 1), DT (Belgium x 2, Switzerland x 1, 11 x Spain, Finland x 2, Latvia x 2, the Netherlands x 1, Portugal x 4, Romania x 2, Slovakia x 1), DBR (the Netherlands x 1), Observers (Georgia x 4, Ukraine x 4), ICC x 5, IO x 1, TL x 9	nil	nil	49	13	338 illegal migration related cases (171 hidden in transportation means, 105 illegal border crossing, 56 related to documents false/falsified; 6 facilitation cases); 198 drug smuggling cases; 781 judicial requests; 34 stolen cars cases; 3 smuggling of goods cases
Hermes	South of Lampecusa and Sardinia	FWA x 11 (Italy, Spain, Poland, Portugal, the Netherlands, France), Helicopter x 2 (Italy)	CPV x 3 (Italy)	nil	Experts (DBR) x 16 (Portugal, Spain, Italy), the Netherlands, Belgium, Switzerland, Romania, France, Germany, Austria, Denmark, Hungary, Sweden)	144	20012	2025	165	1 pollution incident

Area	Aerial Assets (type: airplane/helicopter, country)	Maritime Assets (type: CPV/OPV/Fast Boat, country)	Land surveillance assets (country)	Experts (country)	Number of SAR cases	Number of persons rescued	Number of interviews carried out	Number of facilitators arrested	Crime detection (drug trafficking, pollution, illegal fishing, piracy, use of forged/falsified documents etc.)
Aeneas	FWA x5 (Italy, Slovakia, Finland, Iceland, Luxembourg), Helicopter x2 (Italy, Germany)	CPV (Italy), FIB (Italy)*	nil	Experts (DBR) (Denmark x 4, Spain x 14, France x 1, Iceland x 2, Portugal x 2, Romania x 7, Sweden x 4), TL x 10	8	301	583	49	5 sea pollution incidents, 1 illegal fishing incident
Posidon	Helicopter x 3 (Romania, Latvia, Lithuania), FWA x2 (Portugal, Iceland)	FIB x 5 (Latvia, Finland, Lithuania, the Netherlands), OPV x 2 (Romania, Iceland), CPV x 1 (Italy), CPB x1 (Romania)	Mobile Surveillance Units x 3 (Latvia, Lithuania)	Experts (DBR) (Austria x 6, Germany x 6, Denmark x 1, Estonia x 2, France x 1, Hungary x 3, Lithuania x 7, Latvia x 4, Netherlands x 7, Norway x 4, Poland x 5, Romania x 8, Sweden x 2, Slovenia x 1, Slovakia x 2, UK x 1)	6	192	88	24	3 sea pollution incidents, 3 cigarette smuggling cases, 27 falsified documents detected

Acronyms	Coastal Patrol Boat
CPB	Coastal Patrol Vessel
CPV	Offshore Patrol Vessel
OPV	Fixed Wing Aircraft
FWA	Debriefing / Interviewer
DBR	Border Checks Expert
BCE	Coordinators
ICC-Staff	Intelligence Officers (Risk Analysis)
IO	TL
TL	DT
DT	Dog Team
FIB	Fast Interception Boat

Bos, Emiliano

Da: Eichenlaub Matthias [eichenlaub.matthias@hq.nato.int]
Inviato: lunedì, 3. ottobre 2011 14:14
A: Bos Emiliano
Cc: Riley Chris
Oggetto: your query 27 Sep

Classification: NATO UNCLASSIFIED

Dear Mr Bos

I apologise that it has taken us some time to get back to you. Please understand that this event dates back several months and it took a while to check all the facts.

You can use the following as a written statement in response to your specific query of last Tuesday 27 September.

This can be attributed to the NATO spokesperson Ms Oana Lungescu.

"Migrant Vessel Events of 27 March 2011

NATO maritime command did not receive a call for assistance in relation to this migrant ship. Instead, NATO received a general notice in the evening of 27 March 2011 from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people.

This message was not an instruction to begin search and rescue, nor did it request assistance. The message simply requested NATO to keep the Italian coast guard updated "in case of sighting" of the vessel. A telephone call had been made from the boat and coordinates of the call were provided. At the time the message was received, the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel.

Commanders of ships under NATO command are fully aware of their obligation under the Safety of Lives At Sea convention (SOLAS). As such, NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions during the Libya operation.

Since the start of the embargo operation, NATO ships have directly assisted in the rescue of more than 600 people in distress at sea. Through coordination with national authorities and coast guards, we have facilitated the rescue of many hundreds more.

Further Background

Since 23 March 2011, NATO warships and aircraft have been patrolling the approaches to Libyan territorial waters to prevent the flow of arms, related material and mercenaries to Libya.

Issues of migration do not fall within the mandate of this mission. However all ships under NATO command are fully aware of their responsibilities with regard to the International Maritime Law regarding Safety of Life at Sea (SOLAS). As such, NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions;

For example, on 26 March 2011, NATO ships responded to information that two migrant ships with over 500 people on board were in distress, which were then provided direct assistance by the Italian authorities. That included a NATO ship using its helicopter to airlift two women and a newborn child to medical help.

On 10 July 2011, a NATO ship responded to a vessel in distress approximately 75 miles off the coast of Libya. The NATO vessel provided medical support, food and offered mechanical assistance to the distressed migrants. In response to a deterioration of the humanitarian situation onboard, the 114 migrants were transferred onto the NATO ship in accordance with the Safety of Life at Sea (SOLAS) protocol and delivered to safety in Tunisia".

Matthias Eichenlaub

Press and Media Section
Media Operations Centre
NATO HQ
Office: +32 (0) 2 707 1028
Mobile: +32 (0) 475 752 291



ASSISTANT SECRETARY GENERAL FOR OPERATIONS
LE SECRÉTAIRE GÉNÉRAL ADJOINT POUR LES OPÉRATIONS

27 March 2012

OPS(2012)0133

Dear Ms Strik,

Thank you for your letter of 10 February 2012, in which you ask for further detailed information on specific points.

1. Regarding the location of, and actions taken by, the ITS ETNA operating under NATO command at the period concerned, we have received the following information from the Italian authorities.

ETNA received only one distress call on 26th March 2011 and performed a Search and Rescue operation saving 243 people on a boat. On 27th March 2011 at the moment of the MRCC fax to which your letter refers the ITS ETNA was 155 nautical miles from the position reported by the MRCC fax. On the following day, the ship conducted various operational activities (flight operations included) 120/150 nautical miles away from the position reported by the MRCC fax. The helicopter on board never established contact with boats in difficulties on the sea and never released food or material to boats with people on board. In general, no Italian helicopter operated in rescue or in support of boats in need.

As for any other Italian ship, on 27th March at the moment of the MRCC fax, the closest Italian ship to the distress point was ITS Borsini at 37 nautical miles away from the position reported by the distress call.

Finally, the only other Italian ship operating in the area was ITS Garibaldi - 120/150 nautical miles away from the MRCC fax point.

2. Regarding the location of, and actions taken by, the ESPS MENDEZ NUNEZ operating under NATO command at the period concerned, the Spanish delegation in NATO provided the following information, which was separately sent to you by the Minister of National Defence of Spain in response to your letter of 10 February 2012:

North Atlantic Treaty Organization - Organisation du Traité de l'Atlantique Nord
Boulevard Léopold III - B-1110 Bruxelles - Belgique
Tel: 32(0)2 707 41 68 - Fax: 32(0)2 707 38 82 - evans.stephen@hq.nato.int



Regarding the reception of the 27 March 2011 initial notification from the Maritime Rescue Coordination Centre Rome of a small boat probably in difficulty, the Spanish authorities confirm that neither a fax nor any other kind of communication was received by the Spanish frigate MENDEZ NUNEZ related to this issue or events referenced in your letter. They add that, on the 26th and 27th of March, the ship participated in two other search and rescue operations.

With regard to the reported sightings of one helicopter, the Spanish authorities confirm that the helicopter of the frigate MENDEZ NUNEZ did not see or make contact with the small boat in question.

Finally, the Spanish authorities reiterate that all Spanish vessels are aware of their relevant obligations under maritime law, including those with respect to rendering assistance to persons or ships in distress, and recall that during Operation Unified Protector the Spanish frigate MENDEZ NUNEZ actively assisted many vessels in distress.

3. In response to your third question, concerning the fax sent to MCHQ Naples by the MRCC Rome on 27 March 2011 and asking if it was passed to all assets involved in the NATO operations in the area of concern, I can confirm that during the period concerned, all information on the possible movement of migrant vessels was systematically and subsequently passed to the NATO units at sea for their maritime situational awareness. In the tragic incident in question, despite the imprecise nature of the request for information contained in the MRCC fax, which was not a formal request for assistance or "distress call", it was forwarded to NATO Task Force units under its operational control.

In addition, it should be noted that during Operation Unified Protector, SHAPE had meetings with the International Organisation for Migration (IOM), United Nations High Commissioner's Office for Refugees (UNHCR) and the International Maritime Organisation (IMO) to better coordinate in terms of migrants at sea. Contact details were exchanged to improve smooth and functional communication. When migrants were spotted, this was notified to both the responsible national coast guard in that particular Search and Rescue (SAR) area as well as the IOM and UNHCR, in order to be better prepared for a possible landing of migrants. This system worked to the satisfaction of the organisations involved.

It is also worth noting that during the entire period of Operation Unified Protector, NATO maritime assets directly aided the rescue of over 600 migrants in distress at sea, including hundreds the day before the MRCC fax. In all cases, NATO warships did everything they could to respond to distress calls and provide help when necessary. In addition, through coordination with national authorities, NATO has indirectly facilitated the rescue of many hundreds more. Commanders of warships under NATO command were, and remain, fully aware of their obligations under the International Law and Law of the Sea and responded appropriately.

ANNEX B.8

I hope these elements answer your questions and remain available should you have further questions.

Yours Sincerely,



Stephen Evans

Mrs Tineke Strik
Rapporteur
Committee on Migration, Refugees and Population
Parliamentary Assembly
Council of Europe
67075 Strasbourg Cedex
France

AFTERMATH

Two years ago, we published a report¹ on what came to be known as the “left-to-die” boat case. Co-authored with the architectural office SITU Studio, the report used imaging, mapping, and modelling technologies in order to produce a visual and spatial picture² of how, in March 2011, sixty-three migrants lost their lives in the Central Mediterranean while attempting to reach the small Italian island of Lampedusa from the coast of Libya.

The passengers of the “left-to-die” boat were amongst the over 27,000 people who fled Libya towards European shores (over 1,000,000 people³ fled to neighbouring countries in North Africa) after the beginning of the uprising against Gaddafi and the following international military intervention. These crossings occurred in particularly precarious conditions – with the Gaddafi regime playing an active role in forcing migrants onto boats without regard for even the minimal safety measures. As a result, over 1,500 deaths were recorded⁴ among them, one of the all-time highs. These deaths however occurred at a time when the militarization and surveillance of the EU’s maritime frontier was at its apex. The usual assets of national border police from both sides of the Mediterranean, were reinforced by over forty military ships and many patrol aircrafts deployed by western states off the Libyan coast in support of the NATO-led international military intervention. This placed these deaths squarely in the most highly surveyed waters in the entire world, and there were strong indications that military forces were failing⁵ in their obligation to rescue migrants in distress, despite possessing the requisite means of surveillance to witness their plight.

The initial testimonies of the nine survivors of the “left-to-die” boat case provided a devastating indictment of this deadly inaction: they claimed that they were left to drift for 14 days in the area monitored by NATO, despite sending a distress call as well as encountering at least one military helicopter and a military ship. With the aim of identifying direct responsibility for these deaths, a loosely associated network of journalists, NGOs⁶ and institutions such as the Council of Europe⁷ launched parallel investigations on the case.

In support of this endeavour, our report corroborated the survivors testimonies with a wide range of digital mapping and remote sensing technologies – from drift modelling to determine the trajectory of the drifting migrants’ boat to satellite radar imagery to detect military vessels in proximity.

As narrated in a video animation that we have recently produced⁸, by using

surveillance technologies against the grain, we were able to read the traces left on the surface of the sea. Turning the ocean itself into a witness for interrogation, we reconstructed and mapped as accurately as possible what happened to this vessel.

While none of the parallel investigations on this case was able to determine the identity of the helicopter and vessels that entered into direct contact with the migrants in distress, they all concurred that the account of the survivors was highly accurate. In our report, we established with certainty that the Italian and Maltese Maritime Rescue Coordination Centres, as well as NATO command, were informed of the location and distress of the migrants, and that there were several naval assets in the vicinity of the boat that had the ability to detect and assist it, but that none of these actors intervened in a way that could have averted the 63 deaths. The collective failure to assist the passengers amounted to murdering them without touching their bodies, turning the winds and currents into a deadly weapon.

On the basis of our report and the other investigations, a coalition of NGOs has filed legal cases⁹ against several of the states participating in the military operations in Libya, including Italy, France, Spain and Belgium, and submitted Freedom of Information requests in Canada, the US, and the UK. The Dutch Senator Tineke Strik also sent, on behalf of the Council of Europe, official demands to all actors involved to ask for further details about their (in)actions.

In the process, no element either of our or the other reconstructions has been disproved. No public statement, no journalistic investigation, no legal inquiry has even tried to challenge the facts as we have reconstructed them. On the contrary, a French judge reviewing the case lauded the, “exhaustive investigations by prestigious international bodies”, before using the rigour of our inquiry to justify her refusal to investigate the case any further, claiming, on the unique basis of the (non)answer by the French military (i.e., the accused), that French assets were not deployed in the area.

This pattern has repeated itself in all the different procedures. As Strik summarizes in her recent follow up report¹⁰:

“I received denials, referrals back to NATO and/or the member states, or, in some cases, no answer at all. (...) Legal cases and Freedom of Information applications are being pursued in a number of the member states implicated but seemingly in vain.”

In tortuous diplomatic non-answers (of which the correspondence contained in Strik's follow up report provides a striking example), NATO and participating states have failed to provide exhaustive answers to simple questions such as the location of their assets during the time of the events (which are certainly meticulously recorded in their assets' log books) or justify their (non) response to the distress call. Neither have they sought to disprove the allegation of the survivors that they were visited twice by a military helicopter and encountered a large military ship. It is as if the huge military surveillance apparatus that refused to see and react to the slow death of the 63 passengers over a period of 15 days had now itself become invisible to public scrutiny. While fully visible to the public, the collective crime of which the passengers have been the victims has remained invisible to the law.

As a result of the lack of response and legal inquiry, not a single actor has been made responsible for the deaths of the 63 passengers. The indifference which led to their being abandoned to the winds and currents, continues to plague the demand for justice of the survivors, perpetuating their drift even on firm land. Such a continued impunity sends out the message to all actors operating at sea that migrants can be abandoned to their deaths with no consequence. And in effect, similar incidents have repeated this since.

THE MECHANISM OF DEATH BY POLICY: ILLEGALISATION, MILITARISATION AND NON-ASSISTANCE

In her June 2014 follow-up report, Strik notes importantly that several recent incidents – including two of them that occurred near Lampedusa on October 3 and 11,¹¹ causing the death of more than 550 people - demonstrate not only that justice has not been delivered to the survivors of the left-to-die boat case, but that no lessons have been learned from it. The October 11, 2013 shipwreck, which we have jointly documented with the WatchTheMed network, effectively seems in many ways the tragic repetition of the left-to-die case: a boat carrying more than 400 people started taking in water after it was shot by a Libyan vessel. Despite the Italian and Maltese coast guard being warned of the imminent distress of the passengers, rescue was delayed for over 5 hours and patrol vessels arrived only 1h after the boat had sunk and more than 200 people had died.

If this is the last case of migrants' death being caused by the failure to assist them when in distress, several other incidents related to different causes have continued to prolong the list of close to 15.000 documented deaths at the EU's maritime borders over the last 20 years. As the very periodization of these deaths makes evident – the count starts at the end of the 80s, when visa restrictions were imposed by EU states towards

the non-Europeans and the first bodies of migrants washed away on European shores – these are less “tragedies” than deaths by policy, produced by the combined mechanisms of illegalisation, militarisation and refusal to assist.

The initial denial of visas to access the EU’s territory produces ripple effects throughout global space, with bordering practices enforced by or on behalf of the EU extending ever further within and without EU territory, thereby precarizing non-European migrants’ entire trajectory. As they arrive on the southern Mediterranean shore, they are forced to resort to dangerous means of crossing and rely on smuggling networks, which usually provide boats in poor condition, overload them to maximize their profit, and offer only minimal - if any - security measures. While one should not deny the responsibility of smugglers and authorities that allow them to operate - without the EU’s policy of illegalisation, migrants would not resort to them.

Secondly, in order to detect and intercept illegalized migrants, border patrols and surveillance means were deployed by EU member states. Frontex (the European border agency), as well as states located on the southern shore of the Mediterranean were put under pressure by the EU, thus effectively turning the Mediterranean into a vast frontier zone. This militarization on the one hand leads to repeated acts of direct physical violence by border guards – such as shootings, collisions¹², and punctured boats¹³, but also push-backs - which are not only illegal according to international law but may involve the use of violence as has recently¹⁴ been the case in Greece recently. But the most deadly effect of militarisation is less direct. In the attempt to evade border guards and avoid being intercepted, deported and violated, migrants use longer and more perilous routes, which cost more lives. Over the last 20 years, the militarisation of the EU’s maritime frontier has thus not succeeded in stopping illegalised crossings, but has caused the splintering of trajectories to more dangerous routes.

Finally, as a consequence of the very precarious condition that migrants are forced to resort to, they regularly encounter situations of distress – with failing motors, water entering the boat or loss of direction - and call on the rescue agencies operating in the area or the many vessels transiting in the Mediterranean for help. Nevertheless, because rescuing migrants at sea entails taking responsibility for the processing of the asylum requests or for their deportation, coastal states have grown increasingly reluctant to assist migrants in distress. While international conventions on the Laws of the Sea have sought to ensure the responsibility to rescue passengers in distress regardless of nationality or status, coastal states use overlapping Search and Rescue areas, conflicting conventions and differing interpretation of international law to evade their responsibility.

Furthermore, the criminalisation of assistance by states – fisherman for example have been put on trial for “assisting clandestine migration” after rescuing migrants – has also been a disincentive for seafarers to comply with their obligation to provide assistance. Here too then, while one should in no way diminish the responsibility of specific actors for practices of non-assistance – fishermen, commercial ships, or, as we have seen in the left-to-die boat case, the military and coast guard itself - it is clear that their behaviour is framed by the EU’s migration policy of generalised reluctance to accept non-European migrants and refugees on its territory. As such, cases of non-assistance are not “accidents” or simply the product of malevolent actors, but rather occur on a structural basis.

Governed by a partial and deterritorialised sovereignty regime which enables EU states and agencies to selectively expand their elastic bordering practices or retract from their responsibility to assist passengers in distress, the Mediterranean Sea has thus become a space of deeply hierarchised and segmented mobility: speedy and secure for certain goods and privileged passengers, slow and deadly for the unwanted. This regime produces deaths on a large scale far from any civilian gaze. This loss of life remains largely unaccounted for and – with most bodies remaining unidentified in their liquid grave – un-mournable.

POST OCTOBER 3: INTENSIFIED MILITARISATION UNDER A HUMANITARIAN VARNISH

The public outcry that followed the death of more than 550 people in two successive shipwrecks in early October 2013 seemed, for a fleeting moment, to indicate that suddenly a realisation of the deadly effects of the EU’s migration policy was emerging, and that a window of opportunity to rethink another policy had been opened at the cost of these lives.

However, instead of questioning the very migration policies which had produced those and the previous deaths, the EU took what it called a “tragedy” as an opportunity to increase surveillance and militarisation, albeit under a humanitarian varnish: North African states were urged once again to prevent migrants from leaving their shores; Frontex, the European border agency, was called upon to extend its operations to the whole Mediterranean and received extra funding to this effect; a new surveillance tool which had long been in development - Eurosur, the European Border Surveillance System – was launched with the claim¹⁵ that it would help prevent deaths; finally, a large scale operation – *Mare Nostrum* – , defined by the Italian Ministry of Defence¹⁶ as a “humanitarian operation, [...] as well as a security one”, was launched by the Italian

government. However, the claims of these “new” initiatives to save lives are dubious at best and rather show how humanitarian arguments have themselves been enlisted within the same logic of closure and militarisation that, as we have argued, is the root cause of death and violence at the border.

The claim of the proponents of Eurosur that while current surveillance technologies have difficulty detecting small boats used by migrants, Eurosur will be able to do so through cutting-edge remote sensing technologies – such as drones, radars, and satellites – does not withstand the test. On the one hand, the cases of the left-to-die boat and of the 11 October 2013 blatantly demonstrate that it is not enough to detect boats in distress to save lives. On the contrary, migrants are regularly abandoned in all knowledge of their fate. Furthermore, although Eurosur was launched in December 2013, concurring with many critical assessments including our own¹⁷, Frontex has recently admitted¹⁸ that Eurosur does not have the capacity to date to detect migrants’ numerous small boats in such as vast maritime area.

As for the operation *Mare Nostrum*, it has not been able to put an end to deaths at sea, despite the deployment of 6 Navy ships as well as several aerial assets, including unmanned drones. Since the start of the operation, the number of crossings have intensified. While over 50.000 people¹⁹ have been saved since the beginning of the year, (among which are many Syrians families fleeing the civil war) several shipwrecks²⁰ happened in the last weeks costing the lives²¹ of tens of people have shown once again that no surveillance apparatus will ever be able to avoid these deaths. Instead, what *Mare Nostrum* has achieved, has been to transform rescue at sea into border enforcement operations that expedite deportation of certain migrants, while slowing down the mobility of others who are stranded in the camps of southern Italy with no further assistance.²²

As such, we see that the new operational measures implemented by the EU in the aftermath of the October 2013 “tragedies” are far from offering an alternative the continuing deaths of migrants at sea, and rather represent a continuation of the very practices that have caused them in the first place.

On the policy level, the response so far leaves little more hope. A “Mediterranean Task Force”²³ was created by the EU Commission, which made a number of proposals to the December 2013 EU Council meeting. These were already mostly geared towards strengthening border controls, but the little humanitarian provisions they contained – such as increasing resettlement of refugees and opening further possibilities for asylum applications to EU member states from outside the EU - were thrown out²⁴ by the Council in December and would in any case have been insufficient to put an end to the death of

migrants at sea. Neither further strengthening border controls, nor even the desirable guarantee of further compliance with human rights will bring the death of migrants to an end, for these deaths have, as their root cause, the denial of legal access to non-European migrants. Short of lifting this ban, these deaths will continue.

CHALLENGING THE CLOSURE OF THE BORDERS

In the month prior to the EU Council's meeting of the 26-27 June which will address long term European migration policy²¹ groups of activists have been performing collective acts of transgression of the EU borders. A transnational Refugee March,²⁵ composed to a large extent by asylum seekers, refugees and undocumented migrants has been travelling from Strasbourg to Brussels, ignoring the restrictions on movements imposed on them, to demand an end to the policies of border closure. It has been joined by caravans of migrants and activists from Italy who, on board of a no border train²⁶ have been following the routes that migrants rescued in the Mediterranean are usually forced to take in hiding on their way to other European countries. European nationals, migrants, refugees have challenged together the rhetoric of Europe as a space of "free circulation" and questioned their very division into different categories of people, some of which can move, some who cannot. They demand not only freedom but also equality of movement.

In performing collectively and publicly the transgression of the EU's internal borders, they also echo the every-day clandestine crossings of all the other extended external borders of the EU – which, in practice, extend from the Sahara to the Mediterranean, passing by the fences of Ceuta and Melilla. Together, they remind us that human beings are essentially free in their spatial mobility, which persists independently of any attempt to govern them.

Despite this daily reality of movement across borders, demands for freedom of movement and the right to a safe, legal access to European territory have often been portrayed as a distant, unrealistic utopia imagined by a handful of dreamers. But don't more than 20 years of continued illegalised migration and deaths at the EU's borders amply demonstrate that what is utterly unrealistic is in fact the banning of non-EU migrants and the attempt to stem their mobility? The reality is that the number of deaths at the borders of Europe has augmented under the effects of militarization and will continue to rise short of anything less than a radical opening of our political imagination towards freedom of movement.

The actual movement of migrants point towards such a horizon, as do the collective demands of migrants' rights organisations recently expressed in the Lampedusa Charter²⁷

or through the joint call of the Migreurop network.²⁸ Scholars have also explored what the recognition of a Right to Mobility²⁹ might entail.

Certainly, a first incentive for such a reorientation to take place would be to make EU states and policymakers accountable for their (in)actions and the consequences of their practices that produce deaths on a large scale. Rather than an exceptional event, the story of the “left-to-die” boat narrated in our video is just one of the many examples of deaths by policy. This is why, beyond individual responsibilities, bringing justice to the passengers of the “left-to-die” boat would be a modest but fundamental step towards another Europe.

NOTES

AFTERMATH

- 1 See: <http://www.forensic-architecture.org/wp-content/uploads/2014/05/FO-report.pdf>
- 2 See: <http://www.forensic-architecture.org/case/left-die-boat/#toggle-id-2>
- 3 See: www.unhcr.org/4e0201a09.html
- 4 See: <http://www.unhcr.org/4f27e01f9.html>
- 5 See: <http://www.gisti.org/spip.php?article2304>
- 6 See: <http://www.hrw.org/news/2012/03/26/nato-clarify-response-deaths-sea>
- 7 See: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18234&Language=EN>
- 8 See: <https://vimeo.com/89790770>
- 9 See: <https://www.fidh.org/International-Federation-for-Human-Rights/migrants-rights/13484-63-migrants-left-to-die-in-the-mediterranean-survivors-continue-their>
- 10 See: <http://website-pace.net/documents/19863/168397/20140603-LeftToDieStrik-EN.pdf/832628df-dfaf-423d-b06a-f41a351328bd>
- 11 See: <http://watchthemed.net/reports/view/31>
- 12 See: <http://watchthemed.net/index.php/reports/view/33>
- 13 See: <http://ffm-online.org/?s=06.02.2014>
- 14 See: <http://watchthemed.net/reports/view/39asp?FileID=18234&Language=EN>
- 15 See: http://europa.eu/rapid/press-release_SPEECH-13-792_en.htm
- 16 See: http://www.ansamed.info/ansamed/en/news/sections/generalnews/2013/10/15/Immigration-Italy-launches-Mare-Nostrum-400-saved_9466386.html
- 17 See: <http://www.statewatch.org/subscriber/protected/statewatch-journal-vol23n34.pdf>
- 18 See: <https://euobserver.com/justice/124136>
- 19 See: <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2014/pbn-listing/migrant-boat-arrivals-in-italy-t.html>
- 20 See: http://www.nytimes.com/2014/05/13/world/europe/at-least-14-die-as-migrant-boat-headed-for-italy-sinks-off-libyan-coast.html?_r=0
- 21 See: <http://uk.reuters.com/article/2014/06/14/uk-italy-migrants-idUKKBN0EP0NT20140614>
- 22 See: http://www.nytimes.com/2014/06/15/world/europe/palace-of-squatters-is-a-symbol-of-refugee-crisis.html?_r=0
- 23 See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/

jha/139937.pdf

24 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139937.pdf

25 See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/143119.pdf

26 See: freedomnotfrontex.noblogs.org/files/2014/04/English1.pdf

27 See: <http://www.meltingpot.org/Milan-saturday-June-the-21st-Our-Europe-has-no-borders-A.html#.VQMdq0Y6k1K>

28 See: <http://www.meltingpot.org/Milan-saturday-June-the-21st-Our-Europe-has-no-borders-A.html#.VQMdq0Y6k1K>

29 See: <http://www.migreurop.org/article2396.html?lang=fr>

30 See: http://portal.unesco.org/shs/en/files/10373/11636721241Borderlands_Article.pdf/Borderlands_Article.pdf

POSTSCRIPT

FROM TACTICS TO STRATEGY, AND BACK AGAIN: RETHINKING RESEARCH AS INTERVENTION

“Conflicts create a sense of postponement. [...] But ours is an endless struggle.”¹

DAAR – Architecture after revolution

The Forensic Oceanography project has involved me in the complex terrain between political activism, academic research and critical practice, confronting me not only with a vast tradition of political struggle but also with a series of dilemmas and difficult decisions. Facing these challenges has meant constantly renegotiating my own position and that of our collective project within and against the European border regime. This chapter, more self-reflexive in nature, aims to offer some considerations on the process of working through these pitfalls and on the thinking that has oriented it. Rather than providing an overall overview, however, it will follow my personal trajectory across these issues, using as guide the work of some of the people I have had the good fortune of working with. In what follows, I will first position Forensic Oceanography within a wider set of practices that have attempted to rethink the relation between research and political practice. Then I will discuss the temporality of its political engagement as a reversal of the traditional relation between short-term tactical objective and long-term strategic vision, finding in (a qualified) freedom of movement a yardstick in relation to which to rethink its modes of operation. Finally, I will discuss how this reversal has informed some of the project's recent developments.

CRITICAL PROXIMITIES

Forensic Oceanography stems from my direct, subjective encounter with the people, practices, discourses and geographies that constitute the *sea as frontier* as a material field of struggle. As a practice-based project, it has not engaged with its subject matter from afar, nor has it tried to keep the critical distance often deemed necessary for unbiased – and therefore academically valid – research, but as rather tried to use intervention as a heuristic device.

The imperative for a direct engagement with one's own object of research could in part be understood as a response to the crisis of critical thought and its growing inability to “fulfil its transformative promises”.² Critique, as “the primary mode of practicing theory”, has been increasingly accused of lacking “the capacity both to transform the existing

structures of power and to create alternative social arrangements”.³ This has spurred several scholars to rethink the relationship between theory and (political) practice beyond the capacity to produce critical judgements. Michel Foucault is, of course, a crucial reference here. His attempt to redefine the role of critique shaped not only his writings but also his own personal trajectory towards a more active political involvement in the last stages of his life, as already recalled in chapter 2 in the discussion of the “*Bateau pour le Vietnam*” initiative and his work with the *Groupe d’Information sur les prisons*. Foucault saw the task of the critic as that of diagnosing the present, and always searching for the limits imposed on life, as well as for the potentialities for transforming it by transgressing those limits. He describes this task beautifully in 1984 from a reading of Kant. While for Kant the question was to know what limits knowledge must give up the attempt of crossing, Foucault argued that the critical question must be turned around. The critic should ask: in what is given to us as universal and necessary, what is the part which is contingent and arbitrary? His understanding of critique thus involved a reversal from a critique of necessary limitations to a practical critique of possible transgression.⁴

Foucault’s position has inspired, in more or less direct ways, a whole series of authors, to the point that the “critique of critique” has become almost a genre in its own right. Michael Hardt, for instance, has contributed to this area by referring to the late writings of the French philosopher on truth-telling in ancient Greece, and in particular in Cynic philosophy. The militant life of the Cynics comes to represent for Hardt/Foucault an alternative form of theoretical engagement insofar as it “does not stand above the life of others [...] as a vanguard organization, but rather seeks to change social life while being a part of it, exposed to others”.⁵ Importantly, what is at stake here is “not merely a matter of registering or even evaluating the present, but acting on and transforming it.”⁶ From a more epistemological perspective, Latour also famously indicates the limits of critique and its “debunking impetus”, which makes it increasingly unable to get closer to and assemble around what he calls “matters of concern”.⁷ Jacques Rancière, finally, takes *dissensus* as a crucial process of subjectivisation that can break the vicious and endless task of “unmasking fetishes” that critique feeds upon and “reconfigure the landscape of what can be seen and what can be thought”.⁸

None of these thinkers, however, seems to suggest how an alternative to critique might appear in practice. In the search for an answer, I have turned to the work of spatial and visual practitioners and militant researchers who have tried to re-imagine a different relationship between theoretical elaboration and political action based on what could be called *critical proximity*. By “proximity” I do not mean here a condition in which all

distance between oneself and one's object of study is magically abolished: proximity here does not mean identification. Rather, critical proximity refers to a mode of operation that foregrounds the fact that that distance has been produced and therefore attempts to *work through* it and create alliances across it.⁹ The residency I did in Palestine in early 2010, at the beginning of my PhD, with DAAR (Decolonizing Architecture Art Residency) provided me with a good example of how that process might look.¹⁰ The attempt of the DAAR members to move from a predominantly scholarly investigation to an understanding of spatial practice as intervention – “to become part of the constellation of forces that shapes our environment”, as they put it – has been a constant source of inspiration.¹¹

Another important reference has been the different practices usually grouped under the label of “militant research”. From the Italian Workerist tradition of “conricerca” to the “investigation militante” of Latin American and Spanish collectives, all these methods of enquiry have been based on the idea of overcoming “the distance between the researcher and the target of the research” and thus of making “certain knowledges part of, and tools for, social and political struggle”.¹² Finally, the necessity of contesting and challenging the mechanical division between theory and practice has been a leading theme in the ongoing discussions with the architects, filmmakers, writers and artists who have been members (as I have) of the Centre for Research Architecture. As Eyal Weizman has explained in relation of the overall scope of the Forensic Architecture project, which has involved the majority of the Centre's members, “rather than seeing the tension between practice and critique as a problem that needs to be resolved by choosing one or the other, we found in this problematization a productive resource that intensified our research process.”¹³

In keeping with this spirit, Forensic Oceanography has operated as “something akin to a ‘critical forensic practice’ that includes both the production of evidence and the querying of the practices of evidence making.”¹⁴ It has attempted to use spatial and visual practices as a form of political intervention, unsettling the traditional relationship between theory and practice, research and intervention, and knowledge and action. Practice is here neither the supposedly logical outcome of a previous theoretical analysis on a given context (as mainstream architectural theory would have it), nor “a field of confirmation for laboratory hypotheses” (as social sciences might claim instead).¹⁵ Rather, the production of visual and spatial evidence and its circulation across different legal and political *forums* has been used “to provoke politics to reveal itself and act upon it”.¹⁶ Theoretical elaboration, in contrast, becomes an organisational tool that helps orientate one's practice within a complex and historically stratified force field, in this case the European border regime. It often “comes into play from within particular struggles, as a ‘what to do’ question that

attends to the challenge to elude, resist, or interrupt a particular capture in struggle”,¹⁷ forming “a body of practical knowledges of counter power”.¹⁸ In this sense, this knowledge does not only derive from (and feed back into) what could be labelled as “high theory”, but includes as well, for instance, all the mundane organisational tactics employed on a daily basis by migrants to overcome the limitations imposed on their mobility.

However, as soon as one leaves the supposedly isolated ivory tower of academic scholarship (the isolation of academia being of course an already widely contested myth), a series of problems, dilemmas and paradoxes starts to emerge. “Indeed”, as Eyal Weizman acknowledges, “acts of political and legal activism must negotiate a complicated terrain between compromise, complicity, resistance, and evasion.”¹⁹ The line that divides emancipation from oppression is often tenuous and never stable. This is particularly clear in a border regime, where the knowledge produced by critical researchers and by border controllers often dangerously overlaps. Information on patterns of migration, tactics and points of border crossing, and surveillance systems, etc. is fundamental not only for activists willing to document and denounce the violence of the border, but also for all agencies aiming at controlling or managing migration. This question is particularly pressing at a time when “we have witnessed a proliferation of scholarly interest in migration. In this process of ‘becoming a discipline’, migration knowledge has undergone a ‘disciplining effect’,” becoming one of the most effective tools in making the phenomenon of migration more knowable, predictable and ultimately governable.²⁰ Activists and researchers alike are then at risk of participating in a production of knowledge that immediately becomes part of the governmental machine that regulates mobility.

In this scenario, how is it possible to act critically and propositionally at the same time? Or, to put it otherwise: “How can knowledge *about* migration produce transformative [and emancipatory] effects *in* the politics of migration – understood as the contentious force field constituted by the practices and knowledges of multiple actors who together determine who can move and in what condition?”²¹

AIMS AND MEANS

Working through these issues has involved, first and foremost, rethinking the temporality of our engagement. “A militant investigation”, writes Sandro Mezzadra, “should always aim at identifying the conditions under which the very experience of time – time of domination as well as time of struggle – becomes a fundamental stake of political and social conflict.”²²

Traditionally, political practices that aspire to be emancipatory have relied on

two main temporal models, both drawn from the history of socialism. At one end of the spectrum, there has been reformism, grounded on the idea of gradual reforms that would progressively ameliorate the conditions of the working class. At the other end is the messianism of revolution: the promise of a singular event that will institute once and forever a radically new social order. The alternative between reforms and revolution has often been presented as a choice between two opposite and irreconcilable tendencies, spurring fierce debates that have engulfed the critical left.

Yet some amongst the most renowned socialist thinkers from early on rejected the framing of this discussion in terms of an outright dichotomy, pointing rather to the necessity of articulating these two perspectives.²³ The most eloquent proposer of this vision was perhaps Rosa Luxemburg. In a pamphlet originally published in 1900 and entitled “Reform or Revolution”, she famously accused Eduard Bernstein, the “father” of revisionism, to have introduced for the first time “the opposition of the two factors of the labour movement”.²⁴ She, on the contrary, insisted on the necessity of social reforms as a *means* to achieve social revolution. “The daily struggle for reforms, for the amelioration of the condition of the workers within the framework of the existing social order, and for democratic institutions”, she wrote, “offers to the Social-Democracy an indissoluble tie. The struggle for reforms is its *means*; the social revolution, its *aim*.”²⁵ For Luxemburg, then, it was only in the articulation of the daily struggles of social reforms with the long-term goal of overthrowing capitalism that a truly revolutionary perspective could emerge.

This debate has been recently retraced in telling terms by legal scholar Robert Knox, who has effectively framed it as a question of tactics and strategy.²⁶ In his schema, “we might say that strategic interventions are ‘revolutionary’, inasmuch as they address critiquing or abolishing the basic logic of the system,” while tactics, which are “are concerned with conjunctural moments [...], those transitory conflicts and battles that occur in the political sphere, [...] would be more concerned with ‘reform’ than with revolution”.²⁷ As he rightly points out, however, the problem in many fields of political activity today is that long-term strategic goals seem to have been consistently neglected in favour of short-term tactical victories, including by those who would define themselves as progressive. While Knox’s text focuses on legal arguments, the same diagnosis has been shared by Gene Ray and Gregory Sholette in their “reflective assessment” of tactical media, the activist media practice that grew out of a “de facto refusal of strategy”.²⁸ While praising tactical media for its achievements, Ray and Sholette question the continued viability of this approach at a time when “a group of radicals with no [...] inhibitions [towards “strategic thinking, institutionalisation, categorical hierarchies and grand narratives”] are busy imposing their

ultra-conservative vision on the world”.²⁹

A prevalent focus on conjunctural goals over strategic objectives is clearly visible also in the field that opposes the violence of maritime borders. In the age of the “humanitarian border”, most international organisations, NGOs and critical media have often protested against the death of migrants at sea and other violent practices by demanding border controllers’ compliance with human rights and international law standards. When disconnected from a deeper critique of the migration regime, however, tactical criticism of the “failures” of the border regime – the failure to rescue people of distress at sea, the failure to comply with the principle of *non-refoulement*, the failure to bring rescued migrants to a safe port of disembarkation – tends to overshadow the political violence that borders produce because of the very fact of instituting differential rights of mobility.³⁰ Focusing mainly on redressing the most heinous aspects of the border regime, these initiatives have not only left its structural basis (the existence of territorially bound entities claiming a sovereign right to decide who can move and under which condition) substantially unchallenged,³¹ they have even ended up underpinning the very mechanisms of surveillance and militarisation that cause death in the first place, as the official responses to the 3 October 2013 shipwreck have shown (see this thesis’ introduction).

These risks became readily apparent to me in the course of the Forensic Oceanography project. The articulation between, on the one hand, the tactical choice to bring the “left-to-die boat” case to a court of law and, on the other, the strategic commitment to fight the “the political violence of the border regime which structurally produces precarity, exploitation and deaths as its outcome” raised from the beginning a whole series of challenges and questions.³² From the perspective that Robert Knox has called “principled opportunism”,³³ filing a contentious legal case has undoubtedly had the merit of “inserting ‘grains of sand’ into the migration regime’s mechanisms, blocking it temporarily, forcing it to change slightly”.³⁴ In this way it has become “a tool in a practical critique of the ‘governmentality of migration’, which, while not giving up the aim of completely abolishing the control of mobility, adopts the critical attitude consisting in ‘the art of not being governed like that’ that Foucault saw emerging as consubstantial to governmentality practices.”³⁵

However, while a legal victory in the “left-to-die boat” case might, for instance, send the important message to all actors operating at sea that similar events will not go unpunished, it is highly questionable that it would manage to address the structural violence of maritime borders. This failure has to do with the specific characteristics of this type of violence, which kills without touching and is exercised by several actors simultaneously,

thus remaining largely elusive to the law. But it also depends more generally on the fact that, as Robert Knox has written, “legal arguments can never address systemic or structural causes”.³⁶ “Even if the argument is won,” he writes, “the victory is likely to be a very particular one – inasmuch as it will foreclose any wider consideration of the structural or systemic causes of any particular ‘violation’ of the law.”³⁷ Even if the helicopters and the military boat that did not rescue the passengers of the “left-to-die boat” are identified, tried and condemned, it would be utterly unrealistic to think that this might challenge the foundations of the border regime. Much more probable is that the responsible individuals will be singled out as “bad apples” who did not comply with the existing legal framework that *already* establishes rescue at sea as an obligation. What would be sanctioned, then, would be the excessive violence that intervenes to fill the gap between the fantasy of the soft power of migration management – which “can be easily ‘converted’ into accepted technologies of bordering, political statements and humanitarian-securitarian measures” – and the structural violence of bordering.³⁸ “Mobilizing a legal discourse thus runs the risk of depoliticization, turning the quest for bringing an end to violations at sea into a purely technical question and making the migration regime appear ‘more humane.’”³⁹

It was clear to us from the beginning of the project that our work could not be geared exclusively – or even primarily, perhaps – to the legal context. The lack of an existing legal *forum* that would be able to address the structural violence of borders has in this sense become a possibility rather than a limitation. Aware that “diffused fields of causality [...] require a diffused form of political action”,⁴⁰ Forensic Oceanography’s work has in fact been mobilised across a multiplicity of different *forums*, political and juridical, formal and informal, in the attempt “to dismantle or fundamentally reconfigure the political field, as opposed to the standard tendency of international justice to isolate a few culpable individuals while leaving the social and economic hierarchies of a society intact”.⁴¹

To anyone who shares a critical perspective on the contemporary border regime, it is clear that this “reconfiguration of the political field” in which a border’s structural violence takes place needs necessarily to address the very violence that is implicit in the institution of differential rights to mobility. And yet perspectives that have attempted to question the structural basis of the migration regime have been consistently dismissed as unrealistic and confined to a distant, inaccessible future. The ongoing death of migrants at sea is, we have been told, too complex a problem and requires extraordinary diplomatic, political and economic “solutions” (long and costly negotiations with “third countries”, exceptional military deployments, draconian measures of detention and deportation, etc.).

The struggle against the structural violence of maritime borders seems therefore to be caught in an impossible deadlock. On the hand, as explained, tactical manoeuvres seem to lack the strategic vision needed to address the structural causes of violence. On the other, strategic claims cannot find the tactical tools through which they could bring about effective change and are therefore readily dismissed as utopian. In brief, what we are left with is, once again, a choice between tactics without a strategy and a strategy without tactics. As Robert Knox argues, recalling Rosa Luxembour’s position, however, the opposition between reforms/revolution and tactics/strategy is a “false dilemma, since actualising strategic concerns does not necessarily mean jettisoning practical interventions in everyday [...] struggles, but rather framing these struggles in terms of the overall strategic goal”.⁴² In order to break away from this misleading choice, we need to tackle the problem from a different perspective, which is what I would like to do in the remainder of this text.

A SPLIT TEMPORALITY

The concept of “split temporality”, which was put forward by Sandro Mezzadra in a recent interview, can provide, I think, a useful starting point to consider another possible articulation of strategy and tactics.⁴³ Mezzadra briefly outlines this notion in relation to the struggle against detention centres carried out for many years by several activist groups and NGOs in Italy and in particular in relation to the tension that exists between, on the one hand, the demands for more transparency and improvements of detention conditions and, on the other, calls for these centres’ outright closure. These two demands, he argues, can be either articulated according to a principle of “double temporality”, i.e. as two successive steps of the same process (“let’s first reform the detention centres and then, at a later time, we’ll close them”), or as one of “split temporality” (“in the sense that you are yourself split in the moment in which you negotiate with the municipality [...] about the conditions of detention in the centre and in the very same moment you are struggling for the abolition of detention”).⁴⁴

While this might seem at first sight just a nominal difference, it expresses, I think, a much deeper and important distinction. Reframing the question along the lines of the strategy vs. tactics debate outlined above, we might say that while both perspectives share the strategic, long-term goal of closing the camps and not simply of ameliorating the conditions of detention, there is an important difference in the temporal articulation of tactical and strategic goals. What Mezzadra highlights is not only the need for strategic objectives to guide daily political activity, but also the need for a radical simultaneity

between these two moments. His call seems in this sense to echo Foucault's remark that "there is not a time for criticism and a time for transformation; there are not those who need to do criticism and those who have to transform [...]. [T]he work of a deep transformation can be done then in the opened and always turbulent atmosphere of a continuous criticism."⁴⁵

Thinking about a form of political practice that would be capable of keeping together tactical interventions and strategic goals *in the same moment* – and not one as the succession of the other – might seem, at first, counterintuitive, and certainly not an easy task. A possible suggestion of how such a practice might look like comes, I think, from the work of DAAR in Palestine, and in particular from the project dealing with the "right of return" of Palestinian refugees. The call for the "right of return" to the villages from where Palestinians were expelled in the aftermath of the Nakba, as is well known, has been one of the defining legal and political categories of the Palestinian conflict. In official negotiations, return is usually depicted as a messianic (or apocalyptic, depending from the perspective from which one looks at it) event that would redress once and for all the sufferings of the Palestinians. DAAR's members, instead, propose a completely different vision. Starting "from what exists – the present state of affairs and its material manifestation, from the rubble 'unceasingly piled before our feet,'"⁴⁶ they imagine return as "a category that organizes the lives of refugees in the present [...] and grounds the right of return in daily material practices."⁴⁷ From this perspective, return stops being a utopian strategy "abused and traded in the context of futile political negotiations" and becomes instead an operative tactic that aspires to unlock its own transformative potential.⁴⁸ It is in this strategy-becoming-tactic that, I think, we might get a glimpse of how a split temporality might look. While a double temporality implies accepting the idea that change in politics happens chiefly at an institutional level that remains largely inaccessible to "radical" politics (whose role would be only to react to abuses, waiting for "real" improvements to be eventually granted by dominant powers), thinking through a split temporality encourages us to shift our gaze onto already existing practices of struggle and to think ahead of institutional decisions. This shift of perspective liberates politics from the moment of suspension to which it has been confined by "official" negotiations and opens up the political imagination to a whole new set of practices.

RE-JOINING MOVEMENT AND MOVEMENT

Coming back to the politics of migration, an analogy with DAAR's practice can be drawn with a similar shift of perspective that has taken place in relation to the politics

of migration. Theoretical perspectives that are usually gathered around the label of the “autonomy of migration” have for a long time considered struggles against the migration regimes as an heterogeneous field which include not only those experiences “in which migrants openly challenge, defeat, escape or trouble the dominant politics of mobility” but also “the daily strategies, refusals, and resistances through which migrants enact their (contested) presence – even if they are not expressed or manifested as ‘political’ battles demanding something in particular”.⁴⁹

From this point of view, the most important demand of a vast field of struggles usually grouped under the “No Border” slogan, i.e. freedom of movement, is not considered an “utopia of ultimate satisfaction”, but a daily reality of unauthorised movements.⁵⁰ This “creative force” upsets the government of mobility imposed by the border regime not only by means of explicit claims but also through “an *everyday practice* of refusing the border [that] has existed as long as borders have”.⁵¹ This fact is most clearly demonstrated by the presence of large numbers of illegalised migrants across Europe. People are already here, and, as the slogan of one of the most active self-organised group of migrants who have arrived in Europe by sea goes, “are here to stay”.⁵² Insisting on migrants’ “incurable” presence highlights the political value of migration-as-social-movement.⁵³ At the same time, it does not constitute yet another apology of the present, as it does not describe a state of affairs that already comfortably exists out there but rather a condition that is brought into being through acts of refusal, non-compliance and protest that happen in difficult, ambiguous and sometimes violent conditions. Moreover, this perspective does not suggest that any practice of mobility is inherently subversive. As is especially clear now, the softer, post-control spirit of migration management has made the possibility of moving a means of government in its own right,⁵⁴ thus underlining the key role that migration plays “in the routine operation of reproduction of capitalism”.⁵⁵ And yet, in practices of unauthorised mobility there is always something in excess of those structures of power, insofar as they hold the potential of an escape from established social orders. While “escape is frequently considered to be a passive, weak and irresponsible way to deal with an unfolding social conflict or one’s own situation”, it is understood here as “a form of creative subversion capable of challenging and transforming the conditions of power”.⁵⁶ It is in this sense that movement can become a tool for imagining a radical “reshaping of economies and societies in a way that is not compatible with capitalism, nationalism, or the mode of state-controlled belonging that is citizenship.”⁵⁷

This perspective opens up the field of struggles for freedom of movement to a whole series of “imperceptible” practices that would otherwise not be included in the political

field, modifying the very borders of what we understand as political.⁵⁸ Brett Neilson and Angela Mitropoulos have tellingly made this point:

In the case of struggles surrounding undocumented migration, the very notion of movement fractures along a biopolitical or racialised axis: between movement understood in a political register (as political actors and/or forces more or less representable) and movement undertaken in a kinetic sense (as a passage between points on the globe or from one point to an unknown or unreachable destination). To keep these two senses of movement separate not only denies political meaning to the passages of migration but, also, fails to think through the complexities of political movement as such, not simply as the incompleteness and risk of every politics but, more crucially, as the necessarily kinetic aspects of political movements that might be something more, or indeed other, than representational. [...] It is in this nexus of “movement as politics” and “movement as motion” that the non-governmental struggles over undocumented migration take shape as challenges to the demarcations that define politics as always, inexorably, national and/or sovereign.⁵⁹

It is in this re-joining of the two meanings of movement, I would add, that freedom of movement (like the notion of return for DAAR) stops being a strategy confined to an inaccessible future and starts being a tactical tool that animates the present.

INFRASTRUCTURES OF MOVEMENT

This detour into the temporality of politics in the context of the struggle for freedom of movement was necessary to explain the ways in which freedom of movement can be understood not only as a strategic goal, as it is usually conceived, but also as a tactical tool. This conceptual reversal, however, makes sense only insofar as it does not remain a purely theoretical project but informs concrete political initiatives. This has happened in a number of ways. While migration control is increasingly exercised as the control of migrants' trajectories and routes, about which it seeks to acquire more and more information,⁶⁰ several activist groups have recently been more or less explicitly framing their activities as a form of support for migrants on the road. Explicitly recalling the experience of the “underground railway”, the abolitionist network of secret routes and safe houses used by black slaves to escape slavery,⁶¹ the Welcome to Europe Network has, for instance, provided practical information to a growing number of migrants and refugees on their journey to and through Europe. Through an internet website,⁶² printed “info-guides”⁶³ and the regular presence of its members at the borders of the EU, this self-organised grassroots group has provided crucial information about asylum legislation,

work conditions, detention and deportation procedure, and the contacts of local NGOs providing assistance and legal help in various European countries, etc.

This sharing of information is, of course, not a prerogative of solidarity groups but the very condition for every migration. Moving across the dangerous and intensely policed borders of the EU generates a specific knowledge of the crossing that is shared by migrants through family ties, “ethnic” communities, friendship bonds, etc. For if the decision to migrate may be more or less an individual choice, circulating quickly becomes a collective social practice. As Mehdi Alioua and Charles Heller write, the social network that is progressively constituted through the experience of migration “is what allows [migrants] to make the link between the stages, obtaining information about the spaces they intend to traverse and the ways to enter into contact with the collectives there who might be of help to them. Knowing how to cross borders,” they continue, “is a know-how that is built up gradually and tried out collectively at the different stages of the trip.”⁶⁴ In this sense, the mobility of migrants constitutes an infrastructure of sorts, one that includes not only the footpaths, highways, train lines, airports, etc., through which they move; not only the wireless networks that transmit their information, the internet café where they chat with relatives and friends, the mobile phones with which they alert the Coast Guards and the satellite phone which locates their GPS position; it includes, more generally, all the shared information and connections that transform migration into a social movement. Vassilis Tsianos and Dimitris Papadopoulos call this infrastructure “mobile commons”, thereby referring to all “the information about routes, possibilities for survival and [...] tactics of existence”, all “knowledge and affective reservoir that offers vital resources and energies to migrants on the road or when they arrive in a new place”.⁶⁵ This field comprises, of course, all mundane organisational tactics, orientation devices and tools that are used in the very act of moving from one place to the other; but it might also be productively expanded to include other tools and knowledge that, more or less directly, foster the movement of people, such as the information distributed by the Welcome to Europe Network.

These examples have been a constant source of inspiration for Forensic Oceanography. One of the motivations leading us to start the Watch The Med project (WTM) was precisely the idea of collectivising some of the tools and knowledge that we had developed during the “left-to-die boat” investigation. We have understood them as part of these “mobile commons” in a double sense – both as a source of information for future travels; and as a pool of resources that could be used to document past cases of deaths and violations at sea – in the belief that this, in its turn, would make practices such as pushbacks and non-rescue more difficult and hence travel “easier”. The images and maps that have

been produced in the frame of this project, then, do not remain simple representations but have the potential of enabling movement in a quite literal sense, of “creat[ing] possible worlds”.⁶⁶ From this perspective the struggle against the death of migrants at sea stops being simply a claim for greater compliance with international human rights standards, and becomes a tool to alter the very conditions of movement in favour of those on their way and to sustain these continuously shifting infrastructures of mobility. In the light of this, the “efficacy” of a project like Forensic Oceanography could not be assessed “simply” in terms of how much it can alleviate the tragic effects of the current border regime, but also in relation to how it can foster (im-)mobility (a very important consequence of this is, of course, that fewer lives would be lost if people could move more freely).

In the past few months, we have dedicated increasing efforts to a series of initiatives that seek to strengthen this perspective. One of them has been the creation, in the framework of the WTM project, of a series of leaflets that contain information as to risk, rights and safety measure at sea.⁶⁷ Three versions of this leaflet exist, each referring to a specific geographical area: the Western, Central and Eastern Mediterranean. Compiled with a large number of activists and migrants who have often themselves arrived in Europe by sea, they include legal information on how to avoid unlawful practices such as pushbacks, basic technical information on how to locate one’s position with GPS instruments, how to send a distress signal and what to do in case of a damaged boat, and maps that indicate the extent of Search and Rescue Zones, etc. They are available online and have been distributed in the area from where so-called “transit migrants” pass before embarking on a trip by boat to Europe. In this way, they seek to operate as a counterpoint to the “information campaigns” that international organisation such as the International Organisation for Migration undertake to deter people from attempting to reach Europe.⁶⁸ Against the paternalistic tone of these campaigns, which implicitly conceive of migrants as less-than-autonomous subjects who might eventually be turned into rational individuals if removed from the darkness of ignorance, these leaflets are written from the perspective that, on the one hand, migrants are often already quite well informed about the trip they are going to undertake and that, on the other, in many situations no amount of information will make the trip safer. As such, they do not aim to take decisions for anybody, but rather to facilitate an already existing circulation and sharing of information.

Another one of these initiatives has been the Watch The Med Alarm Phone, an emergency phone hotline for those in immediate distress at sea. While the idea of mapping and spreading information about people in distress at sea in real time (so as to put pressure on authorities to carry out rescue operations) has been one of the aim of the WTM project

from its very beginnings in 2012, what was only an hypothesis was turned into a concrete project by a coalition of migrant activist groups and individuals in the aftermath of the shipwreck of 11 October 2013.⁶⁹ This tragedy, in which 266 people drowned while Italy's and Malta's rescue agencies were disputing their obligation to intervene, made it once again painfully clear that an "independent" monitoring group, even without rescue means, might have at least the possibility of putting pressure on the authorities by raising public alarm. As we came to learn during the "left-to-die boat" investigation in relation to the figure of Father Zerai, the Eritrean priest who had received the first call from the boat,⁷⁰ several individuals have over recent years operated as reference points for vast groups of migrants, who have exchanged their phone numbers and contacted them in case of distress at sea.⁷¹ The Alarm Phone was created to support and strengthen this already existing network in several ways: by providing a phone number that, thanks to a management software, can re-route distress calls to a vast number of volunteers, thus ensuring that every call is attended to; by training a growing group of people on how to use the vessel tracking and mapping technologies used by WTM to monitor the border control and rescue activities in the Mediterranean; and by sharing numerous other skills and knowledge about migration at sea provided by the many people participating in the project. As Maurice Steirl, one of the participants in this initiative has written:

it took the collectivisation of various transnational (migrant) activist struggles that a gaze documenting human rights violations after the fact would turn into a disobedient intervention supporting, in real-time, human movements in the Mediterranean Sea. [...] In months of preparation before its launch, distress scenarios in the Western and Central Mediterranean Sea as well as the Aegean Sea were played out in emergency rehearsals. A wealth of technical-legal knowledges and regional expertise was collected, brought together, and fed into detailed handbooks and step-by-step emergency instructions, offering insights into the complex and fast-changing materialities, infrastructures and socio-political conditions decisively shaping and impacting on processes of bordering in the Mediterranean Sea. Uncountable questions were raised and sought to be answered: In what ways do sea journeys between Turkey and Greece, Morocco and Spain, Libya and Italy differ? How do varying weather conditions, winds, waves and currents impact on the movements of vessels? And what types of vessels are commonly used? How far does mobile phone reception and coastal radars stretch into maritime spaces, and where do SAR zones and territorial waters begin and end? What are the languages needed to communicate with refugees on board? How can satellite phones provide us with the position of the vessel? Who are the responsible authorities to alert and what have been prior experiences of engaging with them? What agreements exist between the EU and third-countries and what are the many forms of human rights abuse that occur in these borderspaces?⁷²

Since October 2014, the Alarm Phone is operated day and night by volunteer shift teams located all over Europe, Northern Africa and North America, who can offer advice, information and the possibility of raising public alarm.

These few examples exemplify the way in which Forensic Oceanography has gradually shifted its activities. In this process, mapping and documenting violence have become more and more part of a larger project to sustain infrastructures of mobility. It is here, perhaps, that alliances between the non-reciprocal position of “undocumented migrants who are out of the ‘social contract’ of citizenship, and others, including critical researchers”,⁷³ as well as between “traditional” forms of activism and the “imperceptible” politics of unauthorised migration can be formed, however tenuous and unequal these might be. This thesis can be also read as a diary of the search for those alliances. It testifies to my attempts to think through the possibilities they open up and the pitfalls they create. Hopefully, some of the sense of urgency that has spurred this search still permeates these pages.

NOTES

- 1 Alessandro Petti, Sandi Hilal, and Eyal Weizman, *Architecture After Revolution* (Sternberg Press, 2014), 30.
- 2 M. Hardt, "The Militancy of Theory," *South Atlantic Quarterly* 110, no. 1 (January 1, 2011): 19, doi:10.1215/00382876-2010-020.
- 3 Ibid.
- 4 Ibid., 33.
- 5 Ibid.
- 6 Ibi., 21
- 7 Bruno Latour, "Why Has Critique Run Out of Steam? From Matters of Fact to Matters of Concern," *Critical Inquiry*. 30, no. 2 (2004): 225.
- 8 Jacques Rancière, *The Emancipated Spectator* (London: Verso, 2011), 48–49.
- 9 Glenda Garelli and Martina Tazzioli, "Migration Discipline Hijacked: Distances and Interruptions of a Research Militancy," *Postcolonial Studies* 16, no. 3 (September 2013): 299–308, doi:10.1080/13688790.2013.850048.
- 10 See: <http://www.decolonizing.ps/site/>
- 11 Petti, Hilal, and Weizman, *Architecture After Revolution*, 26.
- 12 Glenda Garelli and Martina Tazzioli, "Challenging the Discipline of Migration: Militant Research in Migration Studies, an Introduction," *Postcolonial Studies* 16, no. 3 (September 2013): 246, doi:10.1080/13688790.2013.850041.
- 13 Eyal Weizman, "Forensis: Introduction," in *Forensis: The Architecture of Public Truth*, ed. Forensic Architecture (Berlin: Sternberg Press, 2014), 11.
- 14 Ibid.,12.
- 15 Colectivo Situaciones, "On the Researcher-Militant," *Www.eipcp.net*, September 2003, <http://eipcp.net/transversal/0406/colectivosituaciones/en>.
- 16 Petti, Hilal, and Weizman, *Architecture After Revolution*, 25.
- 17 Garelli and Tazzioli, "Challenging the Discipline of Migration," 247.
- 18 Colectivo Situaciones, "On the Researcher-Militant."
- 19 Weizman, "Forensis: Introduction," 12.
- 20 Garelli and Tazzioli, "Migration Discipline Hijacked," 299.
- 21 Lorenzo Pezzani and Charles Heller, "A Disobedient Gaze: Strategic Interventions in the Knowledge(s) of Maritime Borders," *Postcolonial Studies* 16, no. 3 (September 2013): 289, doi:10.1080/13688790.2013.850047. [emphasis in original]

- 22** Glenda Garelli and Martina Tazzioli, “Double Opening, Split Temporality, and New Spatialities: An Interview with Sandro Mezzadra on ‘Militant Research,’” *Postcolonial Studies* 16, no. 3 (September 2013): 310, doi:10.1080/13688790.2013.850049.
- 23** Robert Knox, for instance, makes reference to Marx’s seminal discussion of the regulation of the length of the working day in *Capital*, in which he praised the role of the struggle for the limitation of the working day (an example of what was to become known as reformist) for its capacity to produce the working class as a political subject and thus foster the overthrowing of capitalism. See: Robert Knox, “Strategy and Tactics,” *The Finnish Yearbook of International Law* 21 (December 13, 2012): 193–229, doi:10.2139/ssrn.1921759.
- 24** Rosa Luxemburg, *Reform or Revolution* (Rosa Luxemburg Internet Archive (marxists.org), 1900), <http://www.marxists.org/archive/luxemburg/1900/reform-revolution/index.htm>.
- 25** Ibid. [emphasis added]
- 26** While he acknowledges that the terms of the reforms/revolution debate do not exactly overlap with those of the tactics/strategy, Knox also points to their productive proximity. Knox, “Strategy and Tactics.”
- 27** Ibid., 199–200.
- 28** Gene Ray and Gregory Sholette, “Introduction: Whither Tactical Media?,” *Third Text* 22, no. 5 (September 2008): 519–24, doi:10.1080/09528820802439989.
- 29** Ibid., 519.
- 30** Martina Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean” (Goldsmiths, University of London, 2013), 188, <http://research.gold.ac.uk/9607/>.
- 31** William Walters, “Foucault and Frontiers: Notes on the Birth of the Humanitarian Border,” in *Governmentality: Current Issues and Future Challenges*, ed. Ulrich Bröckling, Susanne Krasmann, and Thomas Lemke (New York: Routledge, 2011), 138–64.
- 32** Pezzani and Heller, “A Disobedient Gaze,” 294.
- 33** Robert Knox, “Marxism, International Law, and Political Strategy,” *Leiden Journal of International Law* 22, no. 03 (September 2009): 413–36, doi:10.1017/S0922156509990021.
- 34** Pezzani and Heller, “A Disobedient Gaze,” 294–295.
- 35** Ibid., 295.
- 36** Knox, “Marxism, International Law, and Political Strategy,” 432.
- 37** Knox, “Strategy and Tactics,” 208.

- 38** Tazzioli, “Arab Uprisings and Practices of Migration across the Mediterranean,” 188.
- 39** Pezzani and Heller, “A Disobedient Gaze,” 295.
- 40** Anselm Franke and Eyal Weizman, “Forensis Is Forensics: Where There Is No Law,” interview by Gal Kirn and Niloufar Tajeri, *Mute*, December 16, 2014, <http://www.metamute.org/editorial/articles/forensis-forensics-where-there-no-law>.
- 41** Weizman, “Forensis: Introduction,” 29.
- 42** *Ibid.*, 227–228.
- 43** Garelli and Tazzioli, “Double Opening, Split Temporality, and New Spatialities.”
- 44** *Ibid.*, 318.
- 45** Michel Foucault, “So is it important to think?,” in *Essential works of Foucault 1954–1984. Volume 3*, ed. James Faubion (London: Penguin, 2002), 454–58. Quoted in: Martina Tazzioli, “Troubling Mobilities,” in *Foucault and the History of Our Present*, ed. Sophie Fuggle, Yari Lanci, and Martina Tazzioli (Palgrave Macmillan, 2015), <http://www.palgraveconnect.com/doi/10.1057/9781137385925.0017>.
- 46** This is what DAAR members call “engaging in a less-than-ideal world”. While their practice focuses of course on the situation in Palestine – what they refer to as “real existing colonialism” and the trash it leaves behind – it has deep and wide-ranging consequences for political practice at large. See: Petti, Hilal, and Weizman, *Architecture After Revolution*, 31.
- 47** *Ibid.*, 40.
- 48** *Ibid.*, 39.
- 49** Maribel Casas-Cortes et al., “New Keywords: Migration and Borders,” *Cultural Studies* 29, no. 1 (2 January 2015): 29, doi:10.1080/09502386.2014.891630.
- 50** Petti, Hilal, and Weizman, *Architecture After Revolution*, 31.
- 51** Bridget Anderson, Nandita Sharma, and Cynthia Wright, “Editorial: Why No Borders?,” *Refuge* 26, no. 2 (2009): 11. [emphasis in original]
- 52** I am referring to the “Lampedusa in Hamburg” group, which is composed of people with different legal statuses who arrived in Southern Italy from Libya by boat and moved to Hamburg after the end of the Italian programmes of emergency humanitarian assistance. See: <http://lampedusa-hamburg.info/>. The name of their group (which mirrors that of other similar groups across Europe) brilliantly highlights what Martina Tazzioli calls the “spatial upheaval” provoked by migration. In Amsterdam, another self-organised group of migrants who have been denied residence and refuse to cooperate with their deportation is also called “We are here”. See: <http://wijzijnhier.org/>. Both these slogans evoke those used during the unprecedented mobilisation of migrants in the US

in 2006 (¡Aquí Estamos, y No Nos Vamos!), whose political significance is effectively described in: Nicholas De Genova, “The Queer Politics of Migration: Reflections on ‘Illegality’ and ‘Incorrigibility,’” *Studies in Social Justice* 4, no. 2 (2010): 101–26.

53 Ibid.

54 Martin Geiger and Antoine Pécoud, *The Politics of International Migration Management* (Basingstoke: Palgrave Macmillan, 2012).

55 Casas-Cortés et al., “New Keywords,” 27.

56 Dimitris Papadopoulos, Niamh Stephenson, and Vassilis Tsianos, *Escape Routes: Control and Subversion in the 21st Century* (Pluto Press, 2008), p. 56. This “dark side” of movement is beautifully captured in the way in which several ancient moralists and philosophers characterised the Mediterranean as a “corrupting sea”, believing that the easiness of circulation enabled by the seawaters constituted a threat to the integrity of the social order. See: Henk Driessen, “A Janus-Faced Sea: Contrasting Perceptions and Experiences of the Mediterranean,” *Maritime Studies* 3, no. 1 (2004): 41–50.

57 Anderson, Sharma, and Wright, “Editorial: Why No Borders?,” 12.

58 Dimitris Papadopoulos, Niamh Stephenson, and Vassilis Tsianos, *Escape Routes: Control and Subversion in the 21st Century* (Pluto Press, 2008).

59 Angela Mitropoulos and Brett Neilson, “Exceptional Times, Non-Governmental Spacings, and Impolitical Movements,” *Vacarme*, 8 January 2006, <http://www.vacarme.org/article484.html>.

60 Emblematic in this sense has been, as already recalled, the recent Joint Police Operation Mos Maiorum; with the concerted action of more than 20,000 police officers across Europe, this has carried out “control along the main routes of illegal immigration on the main routes followed by illegal migrant networks” with the aim of gathering information concerning their movements and modus operandi. See: <http://www.statewatch.org/news/2014/sep/eu-council-2014-07-10-11671-mos-maioum-jpo.pdf>

61 See: Welcome To Europe Network, “From Abolitionism to Freedom of Movement? History and Visions of Antiracist Struggles” (Noborder lasts forever, Frankfurt am Main, 2010), <http://conference.w2eu.net/files/2010/11/abolitionism.pdf>

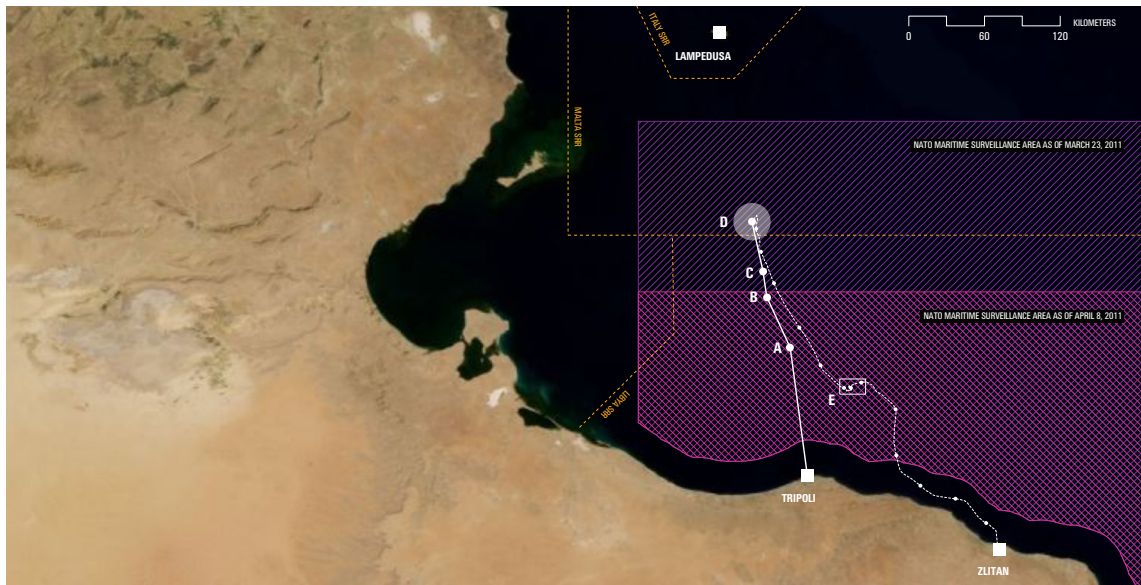
62 www.w2eu.info

63 Such as this: <http://w2eu.info/greece/en/articles/greece-guide.en.html>

64 Medhi Alioua and Charles Heller, “Transnational Migration, Clandestinity and Globalization: The Case of Sub-Saharan Transmigrants in Morocco,” in *New Mobilities Regimes in Art and Social Sciences*, ed. Gerlinde Vogl, Susanne Witzgall, and Sven Kesselring (Ashgate, 2013), 175–84.

- 65** Dimitris Papadopoulos and Vassilis S. Tsianos, "After Citizenship: Autonomy of Migration, Organisational Ontology and Mobile Commons," *Citizenship Studies* 17, no. 2 (April 2013): 190, doi:10.1080/13621025.2013.780736.
- 66** Maurizio Lazzarato, "Struggle, Event, Media," in *The Green Room: Reconsidering the Documentary and Contemporary Art*, by Maria Lind and Hito Steyerl (Berlin; Annandale-on-Hudson, NY: Sternberg Press ; Center for Curatorial Studies and Hessel Museum of Art, Bard College, 2008), 213.
- 67** See: <http://www.watchthemed.net/index.php/page/index/10>
- 68** Charles Heller, "Perception Management – Deterring Potential Migrants through Information Campaigns," *Global Media and Communication* 10, no. 3 (December 1, 2014): 303–18, doi:10.1177/1742766514552355.
- 69** These include, beside WTM, Boats4People, Welcome to Europe, Afrique Europe Interact, Borderline-Europe, No Borders Morocco, FFM and Voix des Migrants and others.
- 70** On the role of Father Zerai, see: Mattathias Schwartz, "The Anchor," *The New Yorker*, 14 April 2014, <http://www.newyorker.com/magazine/2014/04/21/the-anchor>.
- 71** See for instance: Julia Huber, "Nawal Soufi, the Refugee Helper," *Human Dignity Forum*, 14 April 2014, <http://www.human-dignity-forum.org/2015/01/nawal-soufi-the-refugee-helper/>
- 72** Maurice Stierl, "The Watch The Med Alarm Phone - A Disobedient Border-Intervention," *Movements* 1(2), 2015 (forthcoming)
- 73** Tazzioli, "Arab Uprisings and Practices of Migration across the Mediterranean," 18.

PORTFOLIO OF PRACTICE



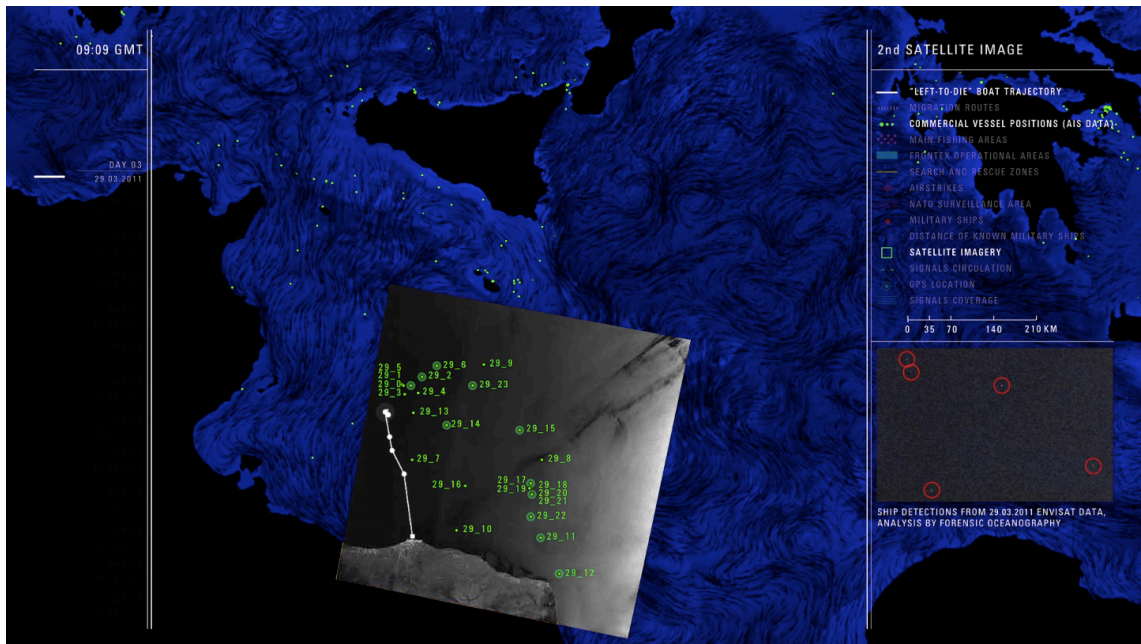
REPORT ON THE “LEFT-TO-DIE BOAT”

Human Rights Report

11 April 2012, 66 pages, 35 figures

The report provides a spatio-temporal reconstruction of the so called “left-to-die boat” case, in which sixty-three migrants lost their lives in the Central Mediterranean while drifting in the maritime zone at the time tightly monitored by the NATO-led coalition intervening in Libya of March 2011. Combining together disparate data (geospatial, meteorological, testimonial, military, and other), the report uses imaging, mapping, and modelling technologies to assemble a coherent spatial narrative of the chain of events. Because of the complex legal structure of the Mediterranean and the high number of actors operating there during the time of the event in question, creating a coherent spatial picture was critical for determining the degree of involvement of each of these parties. The ultimate destination of this report has been a series of legal cases (in France, Spain, Italy, Belgium) and FOIA requests (in the US, UK and Canada) regarding non-assistance to people in distress at sea led by a coalition of NGOs.

Full report available at: www.forensic-architecture.org/wp-content/uploads/2014/05/FO-report.pdf
 Produced in the frame of the ERC-funded “Forensic Architecture” project at the Centre for Research Architecture, Goldsmiths, University of London, UK. With Charles Heller and SITU Research



LIQUID TRACES

Video Animation 2014, HD video, 17 minutes

Liquid Traces offers a synthetic reconstruction of the events concerning what is known as the “left-to-die boat” case. In producing this reconstruction, our research has used against the grain the “sensorium of the sea” – the multiple remote sensing devices used to record and read the sea’s depth and surface. Contrary to the vision of the sea as a non-signifying space in which any event immediately dissolves into moving currents, with our investigation we demonstrated that traces are indeed left in water, and that by reading them carefully the sea itself can be turned into a witness for interrogation. As a time-based media, the animation also gives form to the Mediterranean’s differential rhythms of mobility that have emerged through the progressive restriction of legal means of access to the EU for certain categories of people and the simultaneous acceleration of the flows of goods and capital.

Watch at: www.vimeo.com/89790770
With Charles Heller



DRIFT

**Installation at Forensis
15 March-05 May 2014
Berlin, Haus der Kulturen der Welt**

“From tracing fingerprints to tracking Internet activities, forensics is central to the ways by which states police and govern their subjects. Through its media representations it has also become a defining feature of contemporary culture. Forensis seeks to invert the direction of the forensic gaze and designate the emergence of new aesthetic-political practices by which individuals and independent organisations use new technologies aesthetic practices, and architectural methodologies to bear upon a range of issues from political struggle to violent conflict and climate change. [...] Forensis raises fundamental questions about the conditions under which spatial and material evidence is recorded and presented, and tests the potential of new types of evidence to expand our juridical imagination, open up forums for political dispute and practice, and articulate new claims for justice.”

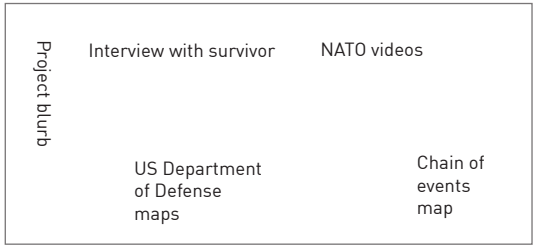
Group show curated by Eyal Weizman and Anselm Franke

See: www.hkw.de/en/programm/projekte/2014/forensis/start_forensis.php

With Charles Heller

A

Forensis, HKW - Berlin “Left-To-Die Boat Case” table display



B

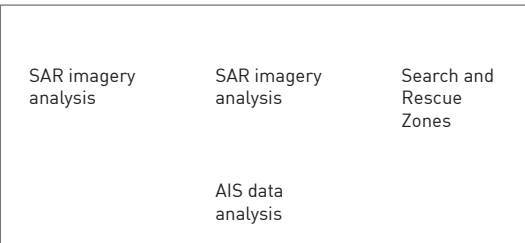
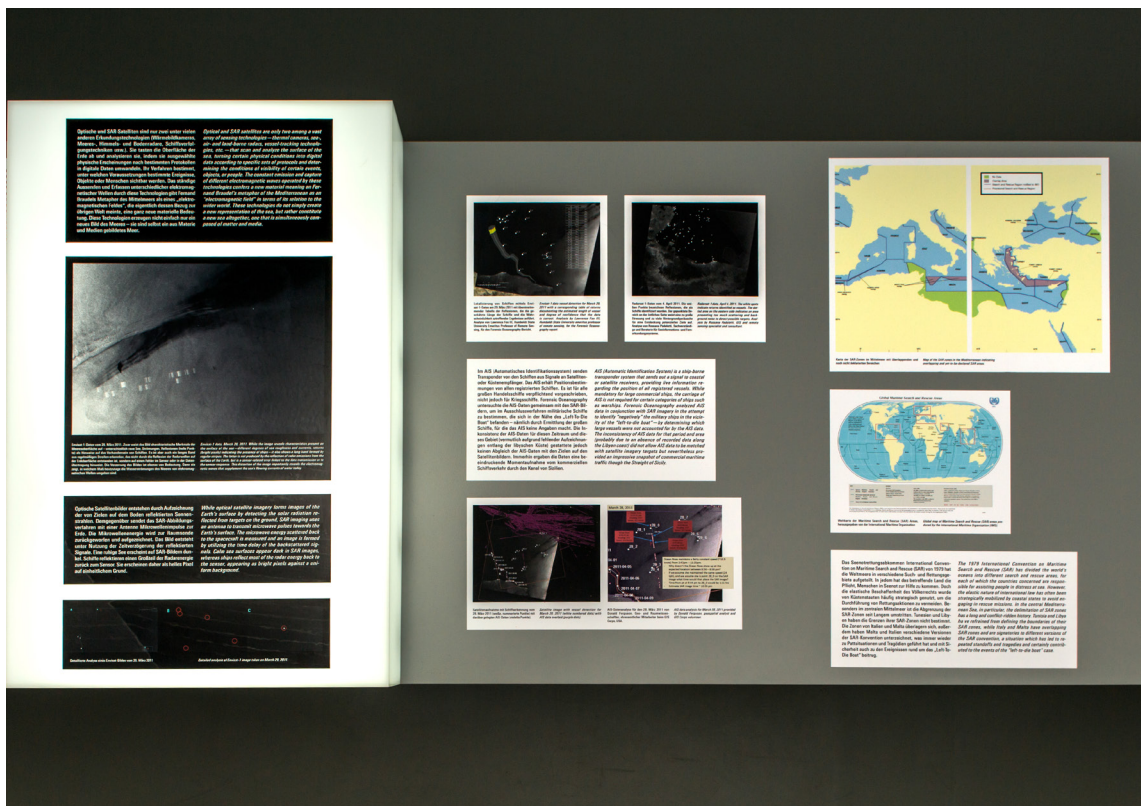
Forensis, HKW - Berlin "Left-To-Die Boat Case" table display



- | | | | |
|-----------------------------|-------------|-----------------------------|--|
| Surveillance aircraft photo | NATO letter | Plane-spotters' photographs | SAR satellite imagery availability over time |
| Maritime distress signals | | Drift model | |

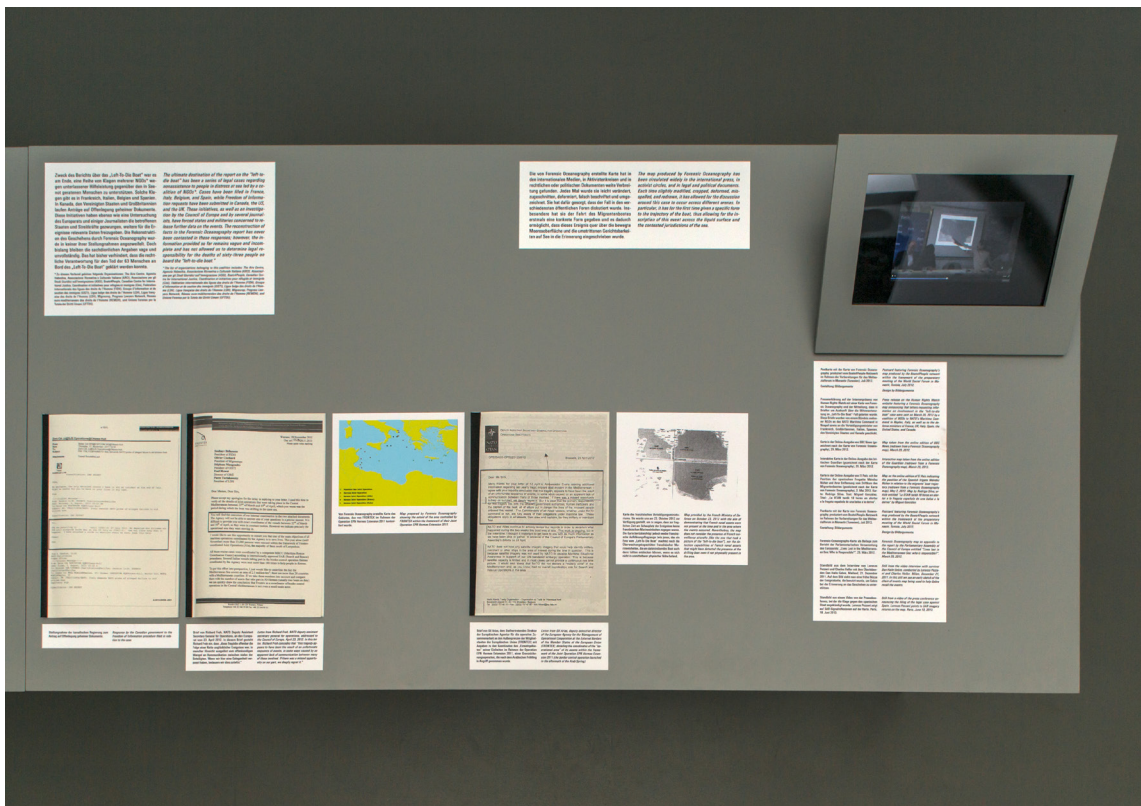
C

Forensis, HKW - Berlin “Left-To-Die Boat Case” table display



D

Forensis, HKW - Berlin “Left-To-Die Boat Case” table display



FO chain of events map circulation

Official responses by national Navies



WATCHTHEMED

Online Mapping Platform 2013 - ongoing

Through the transnational cooperation with migrants' rights organisations, activists, researchers, migrants, seafarers and the use of new mapping technologies, WatchTheMed monitors the deaths and violations of migrants' rights at the maritime borders of the EU. The online platform allows to spatialise incidents across the complex legal and political geography of the Mediterranean Sea. Through the accounts of survivors and witnesses, but also the analysis of ocean currents, winds, mobile phone data and satellite imagery, it provides a spatio-temporal reconstruction of deaths and episodes of violence against migrants at sea. The documentation generated by WatchTheMed seeks to support the work of organisations that defend migrants' rights, inform migrants of their rights and security at sea, pressure authorities into respecting their obligations at sea and support the ongoing campaigns by the relatives of the dead and disappeared at sea.

See: www.watchthemed.net

The WatchTheMed network was initiated in the frame of the Boats4People coalition and now further includes the Forschungsgesellschaft Flucht & Migration, afrique-europe-interact and Welcome2Europe.



BOAT/PEOPLE: a Liquid Atlas

Curatorial and research project (2015-2017)

“BOAT/PEOPLE: a Liquid Atlas” (working title) is a curatorial research project leading to a collective exhibition, a publication and a series of events. This project will seek to re-read the visual archive of migration at sea, re-positioning the current imaginary of contemporary migration across the Mediterranean in a broader context of human mobility and its government. By juxtaposing contemporary and historical artworks with documents pertaining to specific episodes of this wider history and geography; and by mixing visual imagery with other forms of representation (e.g., mapping, statistical analysis, literary works and technical documents), the project seeks to challenge simplistic representations of boat-people in the media. Inserting itself in a tradition that spans from John Berger’s and Jean Mohr’s seminal book “The Seventh Man” to Ursula Biemann’s “The Maghreb Connection”, it further seeks to put the politics of mobility in relation →

→ to larger flows of resources, information, images and capital through a combined analysis of its technical means (BOATS, understood here as spatial diagrams of wider power relations) and its historical subjects (PEOPLES, in the ambiguous quasi-subject/quasi-object position they occupy in history of migration at sea). As in a Warburghian archive, it creates unexpected connections by re-positioning on the same timeline different forms of (free/unfree) mobility at sea that are normally kept separated (such as slave trade across the Black Atlantic, Indian and Chinese indentured migration, transatlantic migration from Europe to the New World, contemporary boat-people “crises” in Vietnam, Haiti and Australia), thereby undoing the conceptual boundaries that served to hinder particular peoples from participation in the “modern” world. More generally, this visual research project strives to develop what we might call, after Fredric Jameson, a new “cognitive mapping” of migration, charting the “nebulous geographies of globalization” by depicting the turbulence of migration in its “vaster and properly unrepresentable totality”.

Image above: One of the two models of the slave ship “Brookes” commissioned by the abolitionist Thomas Clarkson during the campaign to abolish the slave trade. William Wilberforce used this model as a visual aid to highlight the brutality of the Middle Passage during a presentation to Members of the House of Commons

ACKNOWLEDGMENTS

This work is the result of an ongoing conversation with Charles Heller that started in 2011. Sharing a similar interest in politics, aesthetics and activism but coming from different backgrounds (filmmaking for Charles, architecture for myself), we found in our converging but distinct approaches a fruitful mode of operation. A certain “spatial” understanding of imagery, for instance, has allowed us to shift our focus from an analysis of images’ indexicality to that of their circulation across different *forums*; conversely, an “aesthetic” gaze on the politics of space has showed us how certain technologies of spatial control at sea have emerged in relation to the (in-)visibility granted by surveillance means. During these years, we have shared so many discussions and exchanges, we have written and thought so much together, that it would be impossible (nor it would make any sense) to disentangle our thinking. In fact, this thesis should be read in complementarity to his, and hopefully they will be both soon brought together in a co-authored volume. For these reasons, I would find it strange to thank him for his contribution to this work, as it would imply that the latter would constitute an external addition to an already formed body of research, which is clearly not the case. Instead, I want to thank him here “only” for his friendship and for being a constant source of inspiration.

The Centre for Research Architecture has been much more than an academic home to this research. It has been, above all, a place of extraordinary encounters and debates. I still remember when, in 2003, as a young student of architecture dissatisfied with an education that I perceived as too depoliticized and far removed from reality, I first met my supervisor, Eyal Weizman, at an event in Berlin. The excitement that I felt in discovering that a different kind of practice was possible can be hardly forgotten. Eyal’s support, generosity and critical insight have accompanied me ever since and to him goes all my gratitude. The many friends and colleagues whom I have met after joining the Centre in 2008 have often renewed that initial sense of enthusiasm and have brought me in contact with new ideas and modes of political practice that deeply shape this thesis. Amongst them, I would like to thank, in particular, Ayesha Hameed, Lawrence Abu Hamdan, Paulo Tavares, Susan Schuppli (who has, at various times, read and commented parts of this work), Adrian Lahoud, Sidsel Meineche Hansen, Oliver Rees, Emanuel Licha, Francesco Sebregondi, Godofredo Pereira, Shela Sheikh, Karen Mirza, Fusun Turetken, Nabil Ahmed and Gerald Nestler. The passionate conversations that we have shared in the past few years are some of the best memories of this period I carry with me.

During this research, I have encountered an extraordinarily rich tradition of political activism and struggle against the border regime. The practices and modes of organizing of these various groups and individuals are a continuous source of inspiration. Amongst them are some amongst the most knowledgeable legal practitioners, the most determined protesters, the most courageous sea-farers, the most politically intelligent people I know. Many of them have shaped in fundamental ways many of the stories, theories and projects that are narrated in this thesis. More importantly, if freedom of movement is not only an utopia, but also a daily reality is thanks to them and to all the migrants that often risk their lives to make an abstract claim concrete. I know many of them would prefer to be thanked for their collective efforts rather than their individual contributions, so, while knowing that it would be impossible to name them all, I have included just a list of the organisations which have in more or less direct ways greatly shaped this work: The Aire Centre, Agenzia Habeshia, Associazione Ricreativa e Culturale Italiana (ARCI), Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Boats4People, Canadian Centre for International Justice, Coordination et initiatives pour réfugiés et immigrés (Ciré), Fédération internationale des ligues des droits de l'Homme (FIDH), Groupe d'information et de soutien des immigrés (GISTI), Ligue belge des droits de l'Homme (LDH), Ligue française des droits de l'Homme (LDH), Migreurop, Progress Lawyers Network, Réseau euro-méditerranéen des droits de l'Homme (REMDH), Unione Forense per la Tutela dei Diritti Umani (UFTDU), Afrique-Europe-Interact, Borderline Europe, Welcome to Europe and FFM, Berlin. The contributors to the report on the "left-to-die boat" are acknowledged in the first pages of the report itself, while the credits for the "Liquid Traces" video animation are embedded in the video itself.

During the past few years, I have had the privilege of discussing my research together with some of the very people who have most inspired me. I would like to thank each of them for the ways in which they each have contributed to this research: Sandro Mezzadra (who has also been an incredibly supportive second supervisor), for his being militant beyond the West and beyond the rest; Alessandro Petti (who has supervised the beginnings of this research) and Sandi Hilal, for showing me that Bethlehem is better than New York (and Ramallah); William Walters, for the viapolitics; Nicholas De Genova, for his critique of the border spectacle and migrant illegality; Thomas Keenan, for the counter-forensics and many other things; Sebastian Cobarrubias and Maribel Casas Cortes, for the (counter-)mapping; Lindsay Bremner and Philip Steinberg, for our common oceanic passion. Finally, Martina Tazzioli, Nicola Perugini, and Maurice Steirl have not only been precious fellow researchers, but also good friends.

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For their invaluable support in the final stages of this enterprise I would like to thank Alberto and Briallen.

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My deepest gratitude goes to Giulia, with love. None of this would be the same without her.

This thesis is dedicated to Fulvia, who would have like to study, but has no regrets.

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