

The path to the Themis Frontex Operation: Italy and SAR operations in the Central Mediterranean Sea

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Abstract

To challenge the consolidated illegal migration routes, in February 2018, the European Union Frontex Agency launched a new sea border control mission. Named Operation Themis, it aimed to replace the Triton Operation (conducted by Italy since 2014) and support the Italian government with new border surveillance and securitization approach in the Central Mediterranean Sea. The Themis Operation has taken a different mandate from its predecessor: a stronger focus on law enforcement and border security, a reduced mandate of sea patrolling, this time much closer to the Italian territorial waters (circa 30 miles zone closed to the Italian shore). But the most important novelty was that the rescued migrants would have been disembarked in the closest port to the point where the rescue at sea was carried out, instead of bringing them only in the Italian ports, like in the case of Triton. Finally, it is not foreseen to transfer rescued people to third countries, outside the European Union. As a consequence, the Maltese government has rejected being a part of the Themis operation, assuming that this could lead to an increase of migrants disembarking only in Malta. This attitude has reflected the disunity among EU states of how to handle massive migration via the Central Mediterranean.

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This study presents the main stages that led to the new Frontex operation and how the 'migration crisis' has affected Italian immigration politics, particularly during Matteo Salvini's tenure in the Ministry of the Interior. Also, it includes a press review, an analysis of the official information provided by the Frontex Agency, and the most relevant secondary sources on this issue.

I. Introduction

The massive number of migrants, refugees, and asylum seekers traveling in mixed migratory movements continues to represent a major political and humanitarian global challenge. Since maritime illegal migration to the European Union's shore increased dramatically in 2011, in the context of the Arab Spring, the European Border and Coast Guard Agency, Frontex, tried to respond by deploying several sea Joint Operations. But none of the main European Joint Operations, conducted by Frontex, had a specific mandate to rescue people or to include civilian and commercial shipping fleets in its activity. They all concentrated more or less on combating and intercepting different cross-border crimes, most of which were related to the flows of migrants, leading to what the European Union space became to be known as *Fortress Europe*.¹

Many scholars suggest that Frontex and the EU member states have chosen to reduce or, worse, to abdicate from their legal responsibility of saving lives at sea, thus violating the human rights of people who are attempting to cross the Mediterranean Sea to reach Europe. To this structural challenge, Europe is still responding with more stringent border closures and by outsourcing

¹ For more information about the role of the Frontex Agency in the militarization and securitization the EU border, see Ainhoa Ruiz Benedicto, *The role of Frontex in the militarisation and securitisation of migration flows in the European Union*, Centre Delàs d'Estudis per la Pau, Barcelona, 2019.

(externalization) its migration burdens to neighboring countries, particularly North Africa. Transferring the responsibility for Search and Rescue operations to Southern partners, the EU has disassociated the rescue missions from territorial access, denying the international protection right of any asylum-seekers among those intercepted or rescued who have no access to an equitable and effective asylum procedure in Europe.

Criminalizing civilian actors such as NGO vessels, which conducting rescue missions since 2015, and outsourcing border management to the Libyan Coast Guard, the EU has drastically decreased its capacity to Search and Rescue (SAR) responsibility, turning the Mediterranean Sea into the deadliest sea for people who fled, mainly from Africa and the Middle East.

Alongside the European obstructive asylum measures, the large illegal migration flows to the EU was presented by the media and the extreme right parties essentially through a discourse of insecurity, immigrant criminality, and criminalisation.² As it is known, the anti-immigration sentiment was highly politicized in the UK domestic politics, associating migration with the EU and warned that Britain did not have control of its borders and migration policy as long as it remained in the EU. In a referendum held on 23 June 2016, the majority of those who voted chose to leave the European Union.

Moreover, the border securitization practices implemented by the EU agencies were coupled with the “push back policies”, conducted by the member states, like Italy that signed with Libya, in February 2017, after two similar

² Sergio Carrera, Roberto Cortinovis, *Search and rescue, disembarkation and relocation arrangements in the Mediterranean. Sailing Away from Responsibility? CEPS Paper in Liberty and Security in Europe No. 2019-10, June 2019* in <http://aei.pitt.edu/100390/>; Katya Franko, *The Crimigrant other. Migration and penal power*, London and New York, Routledge, 2020.

agreements, in 2008 and 2012,³ **The Memorandum of Understanding (MoU)** on development, cooperation, illegal immigration, human trafficking, fuel smuggling, and reinforcement of border security.⁴

The Italian strategy was part of a broader European approach, such the EU-Turkey deal,⁵ and indeed the new Italian-Lybian arrangement was endorsed the very next day by the European leaders in the “Malta Declaration.”⁶ A few days later, on 9th February 2017, Italy signed a similar framework agreement with

³ We have to mention that the cooperation between Italy and Libya to suppress migration is not a recent issue. With the Friendship Treaty stipulated in Benghazi in 2008, ratified in 2009, and then with the Tripoli Declaration of 2012, the contracting parties would undertake to promote a system of land border control in Libya and Italy would undertake to finance the plan for the realization of this system. In the Treaty of Friendship, except for some general principles to be respected underlined in the first seven articles, with a vague reference to respect for the fundamental rights of individuals - the Charter of the United Nations and the Universal Declaration of Human Rights are cited - there are no particular references to respect for the fundamental rights of those who migrate to the Mediterranean. In 2012, with a historic international decision, Italy was unanimously condemned by the European Court of Human Rights for having returned the migrants recovered in the international waters to Libya, violating several articles of the ECHR (European Convention on Human Rights), *the Hirsi Jamaa v. Italy case* in <https://unipd-centrodirittumani.it/it/schede/Hirsi-Jamaa-e-altri-c-Italia-illegali-i-respingimenti-verso-la-Libia-del-2009/249>

⁴ *** *Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic.* https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

⁵ On 18 March 2016, the EU and Turkey reached an agreement providing for ‘rapid return of all migrants not in need of international protection crossing from Turkey to Greece and to take back all irregular migrants intercepted in Turkish waters.’ The EU-Turkey deal has helped sharply reduce illegal crossings into Greece, but it had grave human rights consequences, becoming for the Ankara government an useful financial instrument of pressure on the European Union. On the other hand, in 2021, the EU annual report on Turkey suggested, for the first time, that Ankara was no longer serious about delivering on EU-backed reforms and the continued deterioration of democracy cause Turkey’s accession negotiations to come to a standstill <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

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

Tunisia, another fragile state with weak government institutions and no adequate refugee protection system.⁷

In 2016 Libya represented the main embarkation point for migrants and refugees arriving in Italy: 138,422 migrants arrived in Italy from main departure hubs, like Zuwara or Tripoli, with a total of 181,436 migrants, refugees, and asylum seekers arriving only by sea.⁸ If we consider that 90% of those who embarked for Italy come from the Libyan coast, the potential scope of the agreement can be thus explained. Scholars argued that before any Joint Operation on surveillance and patrolling coordinated by Frontex can take place, it is the main responsibility of the country concerned, in this case Italy, to first conclude a bilateral agreement with the third countries, known as transit/departure main hubs of the clandestine migration.⁹

To summarize, the deal stipulated Libya's commitment to block the passage of migrants from Central Africa, closing the southern border and intercepting/blocking the boats departing from its coasts. In return, Italy

⁷ Italy has been relying upon cooperation with African countries since the 1990s. In 1998, the first agreement between Italy and Tunisia set out a bilateral cooperation to prevent and combat illegal immigration. Also the Italian government committed to finance the establishment of detention centers in Tunisia and provide the Tunisian police forces with means and equipment to patrol the coastline. Similar agreements have been signed with Algeria, Egypt and Libya. For more information, see Andrea Terlizzi, *Narratives in power and policy design: the case of border management and external migration controls in Italy*, in "Policy Sciences", no. 54, 2021, pp. 749–781 <https://doi.org/10.1007/s11077-021-09440-4>; Elizabeth Collett, *New EU Partnerships in North Africa: Potential to Backfire?* February 2017, <https://www.migrationpolicy.org/news/new-eu-partnerships-north-africa-potential-backfire>

⁸ Arcangelo Rociola, *Dalla Libia arriva il 90 per cento dei migranti in Italia. 138 mila nel 2016*, 3th February 2017 in

https://www.agi.it/estero/libia_immigrati_italia_accordo_infografica-1444037/news/2017-02-02/

⁹ Sergio Carrera, *The EU Management Strategy. Frontex and the Challenges of Irregular Immigration in the Canary Island*, CEPS Working Document No. 261/March 2007, p. 21

<https://www.ceps.eu/ceps-publications/eu-border-management-strategy-frontex-and-challenges-irregular-immigration-canary/>

committed furnishing technical and economic support to Libyan bodies and institutions in charge of the fight against illegal immigration, including the Libyan Coast Guard and the staff from the "reception centers," described by observers, since the beginning, as an inhumane place, where migrants and refugees captured had to wait for their voluntary or forced return to home countries. As Carrera argued, this policy did not only move "the border" outside the EU and destroy the territorial link that would create States' obligations, it also delegated "the responsibility" over the migrants to the hands of a third state.¹⁰

Since 2017, a total of 32.6 million euros were granted to the Libyan Coast Guard for boats, training, and other assistance to patrol the sea and pull back refugees and migrants, and another 960 million euros were distributed to the EU naval missions, deployed in the Central Mediterranean, leading by Italy, all of these costs being supported by the Italian taxpayers.¹¹ In the first year of the agreement, about 20,000 people were reported to have been intercepted by the Libyan Coast Guard and taken back to the detention centers in Libya, remaining trapped in these abusive detention camps.¹²

Serious concerns regarding Frontex's activities in Libyan territorial waters and their impact on the death toll at sea were raised, for example, in 2007 when these violations have been presented to the LIBE Committee of the European

¹⁰ *Ibidem*, p. 26.

¹¹ ****Libia, migranti: aumentano di nuovo di mezzo milione di euro i fondi italiani alla Guardia Costiera libica* in "la Repubblica", 3th July 2021

<https://www.repubblica.it/solidarieta/immigrazione/2021/07/03/news/libia-308769119/>

¹² ****Amnesty International, A year after Italy-Libya migration deal, time to release thousands trapped in misery*, 1st February 2018,

<https://www.amnesty.org/en/latest/news/2018/02/a-year-after-italy-libya-migration-deal-time-to-release-thousands-trapped-in-misery/>; Associated Press, *Scarred by Libya Abuse, Migrants Hope for New Life in Europe*, September 13, 2019 <https://www.voanews.com/a/middle-east-scarred-libya-abuse-migrants-hope-new-life-europe/6175759.html>

Parliament. In 2010 a group of MEPs voiced have doubted on Frontex's respect with the migrants' fundamental rights, based on a report that it was commissioned to Migreurop and which included a large number of testimonies from migrants.¹³

European humanitarian rhetoric has been strategically mobilized to justify and legitimize the new migration approach based on externalization of migration controls, using the formula "blocking departures for saving lives", in other words, migrants and refugees had to avoid dangerous journeys, staying closer to their home country. The new measures have been "validated" by the "need" to fight human trafficking, protect human life at sea, and curb migratory pressure on Europe.

A disengagement of national and the EU actors from SAR activities in the Central Mediterranean, accompanied by the progressive delegation of containment tasks to Libyan authorities, including in the form of "pullbacks" policy has translated into a new Frontex Joint Maritime Operation, Themis, launched in 2018. Additionally, the withdrawal of the naval means and SAR-related activities of EUNAVFOR-MED operation Sophia, which had doubled the Triton operation, eventually provoked the cease of the Sophia military mission, in September 2019.

At the moment, none of the main operations carried out by Frontex in the Central Mediterranean doesn't aim for a sole and specific mandate to rescue people. The Search and Research operations did remain part of their objectives, but these operations' ultimate aims are to control borders, train the Libyan

¹³ ****The mandate of frontex is incompatible with human rights in*
<http://www.frontexit.org/images/Bilan%20ENG.pdf>

Coast Guard, and enforce the UN arms embargo to Libya, treating the very act of illegal migration as a risk to national security.

II. Mare Nostrum (October 2013-August 2014)

In 2013, for the first time, a border patrol mission received a specific mandate to rescue people, besides protecting and securitizing the Mediterranean EU border. Being a military and humanitarian mission, the Mare Nostrum operation was launched by the Italian government in October 2013. It was an immediate response to the Lampedusa shipwrecks that raised the number of people deaths, in only a few days, to 636, shocking the world's public opinion. The mission aimed to search and rescue migrants in the Sicily Channel to prevent other similar disasters. Mare Nostrum represented the most significant step in the process of the institution of so-called "humanitarianism of the EU sea border",¹⁴ a human and compassionate European response to the sea-crossing asylum seekers, but regrettably, it was a very short action and it was never replicated.¹⁵

Being a unilateral action of a member state, Mare Nostrum was confronted with criticism both in Italy and at the EU level. Eventually, after just one year, the Italian government decided to shut down the Mare Nostrum operation due to many critics, including from the European institutions which accused the Italian mission of operating too close to the Libyan shore, being considered a "pull factor"

¹⁴ Paolo Cuttitta, *Delocalization, Humanitarianism and Human Rights: The Mediterranean Humanitarian Border between Exclusion and Inclusion*, in "Antipode", 2017, <https://doi.org/10.1111/anti.12337>; Katya Franko Aas, H. Gundhus, *Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life*, *British Journal of Criminology* 55/1 (2015) pp. 1–18; P. Pallister-Wilkins, *The Humanitarian Politics of European Border Policing: Frontex and Border Police in "Evros"*, *International Political Sociology* 9/1 (2015) pp. 53–69;

¹⁵ For more information, see Mihaela Mustatea, *Italy and the Mare Nostrum Operation (October 2013-October 2014)* in "Euro-Atlantic Studies", no. 2, 2019, pp. 103-128;

for migrants. Also, the operation became a politically and economically unsustainable mission for Italy. Ceasing the operation, Italy wanted to send a message to its neighbouring countries and to the whole of Europe that it was not able to cope alone, the Mare Nostrum required huge financial costs (9,5 million euros per month), unsustainable for a single country, and that Europe should act and share the migration burden.¹⁶ The Italian government asked for setting up the humanitarian reception centers in Africa, in particular in Libya, the sea rescue operations had to be done by Europe through Frontex operations, the Frontex office should have to be transferred in Italy, not to remain in Warsaw (sic!), and finally, since the migrants didn't want to remain in Italy, they should have had the possibility to exercise the right of political asylum also in the rest of the EU, revising and replacing the current Dublin Regulation system.¹⁷ In the final phase of Mare Nostrum, the Italian authorities had consistently used a discourse of blaming the EU at the high-level meetings for the lack of support in the management of the irregular immigration phenomenon.

The European Commission replied that there had been deployed all the means at their disposal to support Italy in managing the flows of migrants in the Mediterranean, and the failure of relocating refugees to other EU countries was due to the lack of consensus of the member states. Moreover, to ensure solidarity and responsibility-sharing between the Member States, it should have been specified that disembarkation does not necessarily imply sole responsibility of the state on whose territory persons rescued at sea were disembarked, but this specific

¹⁶ ***Senato della Repubblica, Legislatura 17^a - Dossier n. 210, *Da Mare Nostrum a Triton*, in https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/912705/index.html?part=dossier_dossier1-sezione_sezione11-table_table7

¹⁷ Mihaela Mustatea, *op.cit.*, p. 122.

provision could have had the effect of imposing obligations on the Member States.¹⁸

Italy received over 140,000 migrants in 2014, at the astonishing pace of 15,650 arrivals per month or 516 arrivals each day, most of them rescued at sea by Italy under its Navy operation Mare Nostrum.¹⁹ The entire operation of Mare Nostrum was conducted by the Italian Navy under the Ministry of Defense, with more than 900 personnel dedicated to this operation. The migrants rescued as part of the 563 interventions were 101,000, of which 12,000 unaccompanied minors; 499 bodies were found, while the missing, based on the testimony of the survivors, could be more than 1,800; 728 smugglers were arrested and eight boats seized.²⁰

During the rotating presidency of the EU, in the second semester of 2014, Italy tried to focus the European agenda on the illegal sea migration, stressing that the Mediterranean migration crisis is an EU concern, not just an Italian one, and the EU Member States had to take a common approach and accept the principle that EU member states must share the burden of increased migration flows. On 27th August 2014, after a meeting with the European Commissioner for Internal Affairs, Cecilia Malmström, the Minister of the Interior Angelino Alfano announced the end of the Italian operation and its replacement with a European joint sea initiative "Frontex Plus", later named the Triton operation.

¹⁸ *** la Repubblica, *Immigrati, UE: "Italia dica cosa vuole. A marzo non rispose."* Alfano: "Sono parole ridicole", 13th May 2014 in

https://www.repubblica.it/politica/2014/05/13/news/immigrati_il_gelo_della_ue_italia_dica_cosa_vuole_a_marzo_non_ci_ha_risposto-86002466/

¹⁹ *** UNHCR, *So close yet so far from safety*, in <https://www.unhcr.org/54ad53b69.pdf>

²⁰ *** Senato della Repubblica, *op.cit.*

https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/0/912705/index.html?part=dossier_dossier1-sezione_sezione11-table_table7

III. Triton (November 2014 - February 2018)

In 2006, for the first time in the history of Frontex, Spain used Article 8 of the Council Regulation 2007/2004, which foreseen the possibility for a member state to call for support by the Frontex Agency when confronted with circumstances requiring increased technical assistance, with an attempt to raise awareness of the exceptionality of the Canary Islands case and the need for a rapid and immediate action coming from the EU. The Spanish authorities presented the Canary Islands case as “an unprecedented humanitarian crisis in the whole of Europe” and as “a massive invasion of illegal immigrants” and for which an “urgent European solution” was needed. The pressures by the Spanish authorities led to the launching of the joint operations HERA I, HERA II, and HERA III.

The fact that the two first Joint Operations were launched without it being completely clear what was needed to do, shows how, at that time, it was more important to find an immediate solution to the political pressures, Frontex becoming the only institutional response to the emergency in Europe, deploying its Joint Operations. Hera Joint Operations aimed to reinforce the control of the zone between the occidental African coast and the coast of the Canary Islands. This operation sought to discourage the *cayucos* (small, open wooden boats) transporting irregular immigrants to set off from the African coasts. However, if the boats were already found at sea, the goal pursued was to intercept them in the territorial waters of the third country and then the authorities of the sending country would deal with the actual handling of the immigrants and their subsequent return to their territory. Only if the vessels were intercepted outside the 24-mile zone, they would be escorted to the territory of the Canary Islands and be offered the possibility to submit an asylum claim. The Hera operation is very

important because it established, for the first time in the course of a joint operation, a process of border control externalization and prevention of “irregular immigration.”²¹

In 2014 the new Italian government led by Matteo Renzi, which started its mandate in February, and the Italian Interior Minister, in particular, called for the EU to take over the Italian mission, Mare Nostrum. Various discussions followed with European leaders and the EU Home Affairs Commissioner, Cecilia Malmström. In October 2014, the Italian government concluded the Mare Nostrum Operation and the EU launched Frontex’s Joint Operation Triton.²²

The presence of the naval vessels of Mare Nostrum close to the Libyan coast changed the trends and patterns of sea trips from Libya. It stressed that if the Mare Nostrum operation had continued the activity then a constantly high number of arrivals would have been expected not only in the summer, but also during the wintertime when migrants would normally not attempt crossing the sea. On the other hand, the withdrawal of naval assets from the Mare Nostrum area, if not properly had planned and announced well in advance, would have been resulted in a higher number of fatalities.

In essence, the Mare Nostrum operation was set up to conduct SAR activities, while Triton it was going to be a mission whose primary purpose was

²¹ For more information about Hera I, II, III Frontex Operation see Sergio Carrera, *The EU Management Strategy. Frontex and the Challenges of Irregular Immigration in the Canary Island*, CEPS Working Document No. 261/March 2007, p. 12, <https://www.ceps.eu/ceps-publications/eu-border-management-strategy-frontex-and-challenges-irregular-immigration-canary/>

²² Stefania Panebianco argued that Italy asked for a “New Deal” between the EU Member States, regarding illegal arrivals, with a new burden-sharing scheme and an active part in the relocation mechanism, not just by the riparian states, an effort which had to be made by all to reform European asylum law in *The Mare Nostrum Operation and the SAR approach: the Italian response to address the Mediterranean migration crisis*, “EUMedEA Working Papers”, May 2016.

the border control. Compared with Mare Nostrum, Triton had significantly reduced assets and its main area of patrolling, covered only 30 miles, a far smaller area than that overseen by Mare Nostrum. After more than 1,200 migrants died in two shipwrecks in April 2015, Frontex expanded Triton's reach to 138 nautical miles off the Italian coast, partially overlapping the Maltese Sar area. The reinforcement of the Joint Operation also included another €38 million allocated for a single year, a deployment of rapid intervention forces, including experts in filtering out arrivals by questioning them and analyzing their fingerprints. Simultaneously, following the extraordinary European Council of 23 April 2015, EU Foreign and Defence Ministers agreed to create a naval force, EUNAVFOR Med, and to launch a Common Security and Defence Policy (CSDP) operation in the Mediterranean on 18 May 2015. The military mission had the objective to disrupt the criminal networks of smugglers and traffickers. The Italian-commanded force was in Rome and operate in the southern and central Mediterranean, in co-operation with the Libyan authorities. On 7 October 2015, the operation moved on to Phase II - now renamed Sophia, in international waters. A resolution of the UN Security Council under Chapter VII of the UN Charter was required to enable the operation to be carried out in compliance with international law. On 9 October 2015, the UN Security Council adopted The Resolution *against the trafficking of migrants and the smuggling of people at sea in the Mediterranean*. Under Chapter VII, the Security Council authorized the relevant member states to inspect boats sailing in high seas off the Libyan coast for a year, if the member states had reasonable cause to suspect that the boats were being used for migrant trafficking or human smuggling. The resolution did not authorize the EU to intervene in Libyan territorial waters. On 14 June 2016, the Security Council unanimously

adopted resolution 2292/2016 authorizing the inspection of suspected embargo-breaking vessels off Libya's coast. The resolution represented a significant political approval.²³

The military naval mission rather seemed to be one who had the objective to "protect" the 'protectors' of EU borders and support action against smugglers/traffickers, marking a move from 'defensive' to 'offensive' borders that proactively seek to destroy the (only) means of mobility left to unauthorized crossers – even at the expense of the human rights (and life) of 'boat migrants'.²⁴

Triton operation included in its mandate the Search and Rescue activity, but since the majority of migrant ships in distress were outside its patrol area, the death tolls in the central Mediterranean Sea continued to increase.

The treaty signed in 2014 with Frontex provided the obligation for Italy to take care of the migrants even if they have arrived onboard the foreign ships. In other words, the Triton operation brought all the migrants rescued at sea to Italy and set aside international rules governing migrant disembarkation.²⁵ Moreover,

²³ For more information about Sophia operation, see <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eunavfor-med-operation-sophia>

²⁴ Violeta Moreno-Lax, *The EU Humanitarian Border and the Securitization of Human Rights: The 'Rescue-Through-Interdiction/Rescue-Without-Protection' Paradigm*, in "Journal of Common Market Studies", Volume 56, No. 1, p. 127,

[https://www.alnap.org/system/files/content/resource/files/main/Moreno-Lax-2017-ICMS%253A Journal of Common Market Studies.pdf](https://www.alnap.org/system/files/content/resource/files/main/Moreno-Lax-2017-ICMS%253A%20Journal%20of%20Common%20Market%20Studies.pdf)

²⁵ International law states that people rescued at sea need to be taken to the closest safe harbor and the disembarkation of rescued asylum-seekers and refugees in territories where their lives or freedoms would be threatened must be avoided. Moreover, the principle of non-refoulement is of particular relevance to asylum-seekers. As such persons may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending a final determination of their status. The principle applies not only to recognized refugees, but also to those who have not had their status formally declared in UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, <https://www.unhcr.org/4d9486929.pdf>

an informal agreement between Italy and Malta that was put in place in 2013 by the then Center-left Prime Minister of Italy, Enrico Letta, and that was subsequently continued by successive Socialist Italian governments, dictated that Italy would be responsible for saving migrants in and around its borders, including in Malta's SAR.²⁶ According to this "secret deal" Malta was supposed to give up oil exploration areas in return for Italy taking most rescued migrants in the Mediterranean.²⁷ Malta had always insisted that rescued migrants should be taken to the closest safe port of call, which in many cases was Lampedusa, even if the migrants would have been rescued in Malta's SAR.

While the Maltese government denied the existence of such a deal, Home Affairs Minister Carmelo Abela originally said that there was an informal agreement between the two countries, later changing tune and correcting himself, saying there was "close collaboration."²⁸

The European Commission said that it had not found any evidence of any bilateral agreement between the Maltese and Italian authorities concerning Search and Rescue (SAR) operations in the Mediterranean Sea. However, the Commission noted that the operational area of Joint Operation (JO) Triton hosted by Italy, also with the participation of the Maltese assets, covered a large part of the Maltese SAR area defined under the 1979 International Convention on Maritime Search and Rescue. The disembarkation rules for migrants intercepted/rescued during the

²⁶ Matthew Lowell, *How Europe's migration crisis is heating up the Italy-Malta relationship this summer*, 5th July 2018 in <https://www.atlanticcouncil.org/blogs/new-atlanticist/how-europe-s-migration-crisis-is-heating-up-the-italy-malta-relationship-this-summer/>

²⁷ Kevin Schembri Orland, *Malta-Italy migration 'secret deal' resurfaces in the international media*, 9 April 2016, in <https://www.independent.com.mt/articles/2016-04-09/local-news/Malta-Italy-migration-secret-deal-resurfaces-in-the-international-media-6736156026>

²⁸ *Ibidem*.

OJ Triton were set out in the Operational Plan agreed by Frontex, Italy as a host Member State and the other participating Member States under the Article 3a (1)(i) of the Frontex Regulation. The participating units had been authorized by Italy to disembark on its territory all persons intercepted in its territorial sea as well as in the entire operational area. It should also be noted that most of the SAR cases occurred outside of the pre-defined operational area, largely within the Libyan SAR area.²⁹

We have to mention that other Frontex naval Joint Operations operated simultaneously with Triton, having the same rules. The Poseidon Joint Operation was the EU response to the large numbers of migrants arriving at Europe's borders along the Balkan route and from North Africa. The operation, led by Greece, began in 2006 as part of the **European Patrols Network** (EPN), together with other operations involving joint patrols, such as Hera, Indalo, and Minerva.

The officers, vessels, and other surveillance assets, deployed by Frontex in these operations, assisted the national authorities with border surveillance and none had the sole and specific mandate to rescue people, but rather to combat and intercept cross-border crimes. All of these operations had a host country that conducted the entire mission. The operational plan of Triton mentioned that Italy was the host country of the mission and all activities were led by the Italian Coast Guard.

The Joint Operation Triton replaced two other Frontex Joint Operations, with Italy as a host state, which emerged after the outbreak of the Arab Spring and

²⁹ Triton Operational Plan

https://www.asktheeu.org/en/request/2502/response/8802/attach/5/OPLAN%20TRITON%202014.pdf?cookie_passthrough=1

after a formal request made by Italy. The JO EPN Hermes had started on 20th February 2011 and Aeneas Frontex Joint Operation, the last one mainly focused on migratory flows from Egypt and Turkey (via Greece) to Italy.

On 15 February 2014, Frontex had received a formal request for assistance from the Italian Ministry of Interior regarding the extraordinary migratory situation in the Pelagic Islands. The Italian Government requested assistance in strengthening the surveillance of the EU's external borders in the form of a Joint Operation. In addition, Italy requested a targeted risk analysis on the possible future scenarios of increased migratory pressure in the region in the light of the latest political developments in North Africa and the possibility of the opening up of a further migratory front in the Central Mediterranean area.³⁰

The **JO EPN Aeneas 2014** started on 1 June until 30 September 2014. The Operational Plan defined two operational areas: Apulia and Calabria, covering the coast along the Ionian Sea and a part of the Adriatic Sea remaining active in 2014 to adjust the operational areas to seasonal migration flows. Indeed, in comparison with 2013 (64,647), in 2014 (28,953), the number of persons intercepted by JO Hermes was reduced significantly, mainly due to the massive action of the Mare Nostrum operation that intervened more to the south, intercepting persons in the Libyan waters, before reaching the Frontex JO areas.³¹

Thus, JO Triton was intended to support the Italian efforts, and not to replace or substitute Italian obligations in monitoring and surveying the Schengen

³⁰ *** Frontex, *Concept of reinforced joint operation tackling the migratory flows towards Italy: JO EPN Triton to better control irregular migration and contribute to SAR in the Mediterranean Sea* in https://deathbyrescue.org/assets/annexes/2.Frontex_Concept_JO_EPN-Triton_28.08.2014.pdf

³¹ Mihaela Mustatea, *From the Italian Mare Nostrum Operation to the Frontex Triton Operation (November 2014-February 2018). Italy and Search and Rescue Operations. (SAR) in "Euro-Atlantic Studies" New Series*, no. 3/2020, p. 76.

external borders. The Triton Operational Plan specified that the rescued people, intercepted and arrested in its territorial waters, as well as in the entire operational area beyond its territorial waters, must be "taken to a safe place in Italy" and that "none of the rescued people (...), even outside the operational area, can be landed on the territory of a third country". In the event of a rescue in the territorial waters and contiguous areas of Malta, or to ensure the protection of the lives of people in difficulty, it could be possible to disembark in Malta". It is therefore possible, not required. According to the official plan, wanted by Italy, the landings "could" also take place in Malta. But it could have been an exception and only in certain particular cases, not being a rule, at all.

A shared solution for the migration issue did not find support among other EU countries, primarily the other Mediterranean countries, Malta, Spain and France. The government's request for opening the other European ports received criticism from Antonio Tajani, the president of the European Parliament who argued that "there was a signed treaty and the ministry thinks it needs to be changed. We make mistakes first and then we always try to ask to change things," declared the EU official.³²

To counteract the EU's withdrawal from Search and Rescue activities during the Triton operation, civilian actors and NGOs stepped in to fill the gap. Until 2015, the Member States in the Mediterranean had discouraged private vessels from fulfilling their international obligations to rescue people in distress but did not prosecute them for it. This changed after the expansion of Frontex's

³² Marco Bresolin, *Triton è una missione dell'Italia, non tocca a noi cambiare regole*, in "La Stampa, 11th July 2017
<https://www.lastampa.it/esteri/2017/07/11/news/triton-e-una-missione-dell-italia-non-tocca-a-noi-cambiare-regole-1.34449831/>

powers in 2015, and EU members began actively prosecuting NGOs involved in rescue activities, seizing and impounding their vessels, and charging crew members with facilitating illegal immigration.

It is also worth highlighting that during a Triton SAR activity, according to the Italian authorities, a small fiberglass boat in the area displaying a Libyan flag with persons pretending to be fishermen approached two NGOs vessels *Minden* and *Topaz Responder*. At a certain point, this fiberglass boat approached one of the NGO vessels 'Minden' and transferred two Libyan citizens from the small boat to the EU vessel claiming that they were migrants. The NGO vessel took them aboard and let the Libyan boat leave the area. After the debriefing activities, the migrants stated that the crew aboard the small Libyan boat were the people smugglers. This is the first reported case where the criminal networks directly approached an EU vessel and smuggled the migrants directly into Europe, using the NGO vessel.³³ Thus, vessels chartered by NGOs were accused of not only encouraging smugglers to set migrants out to sea by sailing as close to Libyan waters as possible but also coming to the rescue when the smugglers called.³⁴

In the summer of 2017, Italy started to ask for the opening of other European ports, in the face of a major migrant emergency, and to revise the operational design of JO Triton, even threatening to stop vessels from other

³³ ***Frontex, *JO EPN TRITON 2016 BIWEEKLY ANALYTICAL REPORT*
<https://www.statewatch.org/media/documents/news/2017/apr/eu-frontex-jo-triton-analytical-report-9-12-16.pdf>

³⁴ ***Euroactiv, *Smugglers suspected of using migrant rescue boats as taxis*, 23 March 2017, in
<https://www.euroactiv.com/section/justice-home-affairs/news/traffickers-suspected-of-using-migrant-rescue-boats-as-taxis/>

countries disembarking rescued migrants at its ports. Also, Italy insisted that an EU refugee relocation program should have been implemented:

“There are NGO ships, Sophia and Frontex boats, Italian coast guard vessels” saving migrants in the Mediterranean, Minniti said, referring to the aid boats as well as vessels deployed under EU border security missions. “They are sailing under the flags of various European countries. If the only ports where refugees are taken to are Italian, something is not working. This is the heart of the question,” the official said.³⁵ In the first six months of 2017, 85,183 illegal migrants of 100.000 who landed in Europe, arrived in Italy.

On 4th July 2017, the European Commission unveiled a new plan to help Italy cope with a massive fresh influx of migrants crossing the Mediterranean Sea, mostly Africans setting sail from Libya. The plan presented at the European Parliament in Strasbourg envisaged €35 million in aid for Italy and working with Libya and other countries to stem the flow of migrants at the source. Moreover, it stipulated an enhanced Libyan coast guard able to action in Libyan territorial waters, the establishing of the Maritime Rescue Coordination Centres in Libya, Egypt and Tunisia, an accelerated relocation from Italy to the other Member States, and a Code of Conduct for NGOs carrying out search and rescue, written by Italy.³⁶

In August 2017, the Italian Ministry of Interior, Marco Minniti, submitted an EU-supported *Code of Conduct* that aimed to regulate the Search and Rescue

³⁵ ***Euroactiv, *Italy urges EU ports to take migrants as pressure build*, 3th July 2017, in <https://www.euractiv.com/section/global-europe/news/italy-urges-eu-ports-to-take-migrants-as-pressure-builds/>

³⁶ The European Commission, CENTRAL MEDITERRANEAN ROUTE: COMMISSION ACTION PLAN TO SUPPORT ITALY AND STEM MIGRATION FLOWS, July 2017 https://ec.europa.eu/home-affairs/system/files/2017-07/20170704_factsheet_-_central_mediterranean_route_commission_action_plan_to_support_italy_and_stem_flows_en.pdf

operations of NGOs in the Central Mediterranean. NGOs had to sign if they wanted to continue to operate in collaboration with Italian authorities and dock at Italian ports. Because of the Memorandum of Understanding (MoU) with Libya, the new Code of Conduct effectively limited the NGO ships' available scope of rescue to European territorial waters and redirected most responsibility for Search and Rescue to the Libyan authorities, trained and funded by Italy and the EU. The document introduced 13 provisions to be followed by NGOs operating Search and Rescue activity, including the access of the police officers to board on rescue vessels to conduct "investigations related to migrant smuggling and/or trafficking in human beings". Moreover, the signatory NGOs admitted not to enter in Libyan territorial waters and not to obstruct Search and Rescue activities led by the Libyan Coast Guard.³⁷

Scholars argued that for Italy, the criminalization of these organizations was necessary to reduce the number of people arriving in the country through a sensitive policy of cooperation with Libya and to hide the impact such policy has on human rights.³⁸

³⁷ ***Euronews, *Italy's code of conduct for NGOs involved in migrant rescue: text* in <https://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue>

³⁸ Moreover, a CNN shocking investigation showed some migrants sold at auction as slaves in Libya. Although this phenomenon had been known for some time, the video on US TV has sparked a wave of indignation: in France, Germany, and Switzerland there were demonstrations to ask the governments of the European Union to stop financing the Libyan coast guard, which intercepted migrants in the central Mediterranean and bring them back to detention centers, where they suffered beatings, torture, extortion and rape. The buying and selling of human beings in the country had been known for some time, but the explicit and direct images led the UN secretary general António Guterres to define himself "horrified" by the scenes shown. Guterres said those responsible could be accused of "crimes against humanity". In Italy, the CNN investigation did not have the same effect, although Rome played a leading role in training and funding the Libyan coast guard, who stopped the departures of migrants to Europe in <https://www.youtube.com/watch?v=2S2qtGisT34>

In Italy, l'Associazione per gli studi giuridici sull'immigrazione (Asgi) raised several legitimacy issues of the Italian-Libyan cooperation. According to the ASGI, the Italian government would have used funds for cooperation with Africa to entrust Tripoli with border control and the management of irregular immigration, in contrast with the objectives set for the funding. Moreover, the non-governmental organizations that operated in the Mediterranean have documented aggressive conduct by the Libyan coast guard, blocking other ships presented at the scenes of the shipwreck from proceeding with the rescue operations. On 8 August 2017, the founder of the non-governmental organization Proactiva Open Arms, Oscar Camps, had released a video shot in international waters north of Tripoli, which showed some Libyan coast guard agents firing into the air to intimidate the crew of one of the two ships of the Spanish NGO.³⁹

The Italian Navy and the operation center in Rome were also accused of violating the International Convention on Maritime Search and Rescue which requires that the ships closest to boats in distress have to intervene, instead, in many cases, the Italian coast guard asked NGO ships to remain on *standby*, pending the intervention of the Libyan coast guard. At a hearing of the Civil Liberties, Justice and Home Affairs (Libe) Commission of the European Parliament, the Interior Minister, Mario Morcone, rejected the criticisms leveled at Italy from the United Nations Commissioner for Human Rights and denied the accusations of having conducted push-back practices to Libya.⁴⁰

³⁹ Annalisa Camilli, *Perché l'accordo tra l'Italia e la Libia sui migranti è sotto accusa*, 29th November 2017 <https://www.internazionale.it/notizie/annalisa-camilli/2017/11/29/italia-libia-migranti-accordo>; <https://www.internazionale.it/bloc-notes/annalisa-camilli/2017/08/08/guardia-costiera-libica-spari-open-arms>

⁴⁰ Alessandra Ziniti, *La denuncia della Ong: "Soccorsi in mare ritardati per dare priorità ai libici, noi costretti a guardare impotenti"* in "la Repubblica", 27 November 2017

Data collected by the EU Agency for Fundamental Rights (FRA) shows that 17 NGO ships were involved in legal proceedings between 2017 and June 2020. According to FRA, more than 40 criminal investigations have been initiated by European states since 2017, of which a dozen remain pending. NGOs have nonetheless continued to intervene in rescue activities at their own risk. In the process, some activists have emerged as unlikely celebrities, such as Sea-Watch ship captain Carola Rackete, who squared off against the Italian government, and Pia Klemp, who command the Banksy-funded rescue boat Louise Michel.⁴¹ In 2017 Italy pressed charges against the crew of the German NGO Jugend Rettet's Iuventa for their activities off the Libyan coast.⁴²

Since 2017, both Italy and Malta have prevented civil society search-and-rescue vessels from disembarking at their ports. Moreover, Italy and Malta's cooperation with the Libyan Coast Guard to ensure interceptions and returns to Libya was implemented through practices that exposed people to the risk of dying at sea, such as delayed responses to distress calls and their forwarding to the ineffective and abusive Libyan Coast Guard in order to ensure people to be intercepted and returned to torture in Libya, including the allegations of a migrant boat being towed from the Maltese to the Italian Search and Rescue Region.⁴³

https://www.repubblica.it/cronaca/2017/11/27/news/migranti_guardia_costiera_libica-182274317/

⁴¹ Isabella Lloyd-Damnjanovic, *Criminalization of Search-and-Rescue Operations in the Mediterranean Has Been Accompanied by Rising Migrant Death Rate* in

<https://reliefweb.int/report/world/criminalization-search-and-rescue-operations-mediterranean-has-been-accompanied-rising>

⁴² Amnesty International, *Italy - a slippery slope for human rights: the Iuventa case*, in <https://www.amnesty.org/en/wp-content/uploads/2021/08/EUR3044752021ENGLISH.pdf>;

<https://tg24.sky.it/mondo/approfondimenti/proactiva-open-arms-cosa-e>

⁴³ The Guardian, *We give you 30 minutes': Malta turns migrant boat away with directions to Italy*, <https://www.theguardian.com/global-development/2020/may/20/we-give-you-30-minutes-malta-turns-migrant-boat-away-with-directions-to-italy>

JO EPN Triton can be regarded as a partial success of Italian diplomacy at the EU level, although the operation was consciously inadequate for rescuing the lives of migrants beyond the territorial waters of European countries. Finally, it has turned into a boomerang for Italy which withdrew its willingness to use the Italian ports, asking for a change of the Triton rules. In February 2018, the European Union's border agency Frontex launched a new Mediterranean operation called Themis, removing the obligation of the previous mission to bring rescued migrants only to Italy. A total of 26 European countries participated in Operation Triton by deploying staff and equipment, rescuing almost 85,000 people.

III. EUNAVFOR MED Operation Sophia (May 2015-March 2020)

Operation **EunavforMed** was an Italian-led European operation born shortly after the tragic shipwreck off the Libyan coast of 18th April 2015 in which almost a thousand migrants lost their lives. The European Union decided to react with the utmost urgency. On that occasion, the European Council reaffirmed the strong commitment to act in order to avoid human tragedies resulting from the trafficking of human beings. The military mission was launched on 22 June 2015 and it is part of the EU's comprehensive approach to migration. On 26 October 2015, the Operation officially took the name of "EUNAVFOR MED Operation Sophia " from the name of the Somali girl born on one of its ships on 22 August 2015 which saved her mother off the Libyan coast. The mission operated in the central Mediterranean with the main objective of combating human trafficking through the seizure of boats. On June 20, 2016, his mandate was extended by adding two further purposes: the training of the Libyan Coast Guard and the

support for the arms embargo on Libya. Operation Sophia was the first EU-wide naval military operation and exemplifies the twist of shifting attention from the migrants themselves to the smugglers/traffickers that facilitate their transit.

One of the responses to the 2015 refugee crisis, was that NATO naval vessels began to patrol the Mediterranean Sea, set a precedent for **joint actions** with NATO patrols to control migration flows, consolidate and militarized the practice in the management of migration. Since February 2016, NATO ships have been deployed in the Aegean Sea too, with the aim of monitoring migrant and smuggler movement in the waters between Greece and Turkey. The operation was further mandated to train the Libyan Coastguard and Navy and to support the implementation of the UN arms embargo on the high seas off the coast of Libya in 2016. In July of 2017, the European Council further extended the operation's mandate till 31 December 2018.⁴⁴

In June 2018, the anti-establishment Five Star Movement and right-wing League won Italian elections, announcing a new approach on the migration issue, based on a tough anti-migration policy. Since taking office as interior minister, Matteo Salvini was openly critical of NGOs that performed migrant search and rescue missions in the Mediterranean. Salvini has repeatedly said Italy will “no longer be Europe's refugee camp”, and as the first evidence of the new government's hardline approach closed all Italian seaports to rescue boats operated by non-government organizations in the Mediterranean.

A few days after the new allied government of Salvini's League party and the 5-Star Movement were sworn in, Salvini prohibited two NGO rescue boats

⁴⁴ For more information, see <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eunavfor-med-operation-sophia>

from docking in Italy, beginning so named closed-port policy. The first case was the Aquarius ship, jointly run by SOS Mediterranee and Doctors Without Borders (MSF), who had 629 rescued migrants on board, not dock in Italy but be sent to Malta, where Prime Minister Muscat turned them away as well. Spain's prime minister, Pedro Joseph Sánchez, eventually let the human cargo disembark in Valencia, after 9 days on the sea.⁴⁵

A year later, in the summer of 2019, another ship of the NGO Open Arms, with a group of over 100 migrants who were aboard the boat, off the coast of Lampedusa, was forbidden to go ashore by the Minister of the Interior Matteo Salvini. Among the rescued migrants waiting to disembark there were also many minors. Most of the people remained on board for 19 days, waiting in front of the port of Lampedusa, before being able to disembark after the Agrigento prosecutor decided to arrange the disembarkation and the preventive seizure of the ship, assuming that was made an abuse of the authorities. On July 30th, 2020, the Senate gave the green light to the request for authorization the prosecution against Salvini, made by the court of justice of Palermo, the leader of the Lega being accused of "aggravated multiple kidnapping" and "office abuse"⁴⁶

By the end of 2018, the continuation of Operation Sophia became a source of disagreement between participating member states after a request made by the new Italian government to revise the mandate of the EU's military operation, and specifically, the rule according to which all asylum seekers rescued in the

⁴⁵ ***ANSA, *Salvini versus sea rescue NGOs: An overview*, <https://www.infomigrants.net/en/post/18928/salvini-versus-sea-rescue-ngos-an-overview>

⁴⁶ ***tg24, *Open Arms, la procura dispone il sequestro della nave e sbarco immediato* in <https://tg24.sky.it/cronaca/2019/08/20/open-arms-news>

framework of the mission should be disembarked in Italian ports.⁴⁷ Italy's plan was to rotate landings between Mediterranean ports, with a particular emphasis on France and Spain, and with Greece and Malta also sharing the responsibility.⁴⁸ Moreover, Salvini's policy of *Porti Chiusi* affected the EU military ships as well, criticizing the costs, considered enormous, compared to the number of saved people.⁴⁹

On 29 March 2019, the Council of the European Union formalized the decision taken by the ambassadors of the 28 EU countries gathered in the EU Political and Security Committee (COPS) to extend the Sophia Operation until 30 September 2019, but without any deployment of the naval forces. Therefore, the surveillance of the Central Mediterranean was made only by air assets, temporarily suspending the deployment of the Operation's naval assets. On 26 September 2019, the Council extended the operation until 31 March 2020 with the naval assets remaining suspended.⁵⁰

⁴⁷ Sergio Carrera, Roberto Cortinovis, *Search and Rescue, disembarkation and relocation arrangements in the Mediterranean. Sailing away from responsibility?*, in "CEPS Paper", no.10/June 2019, https://www.ceps.eu/wp-content/uploads/2019/06/LSE2019-10_ReSoma_Sailing-Away-from-Responsibility.pdf; Il Sole 24, *Migranti, cos'è la missione Sophia e perché Salvini la vuole cambiare*, 10 July 2018, in <https://www.ilsole24ore.com/art/migranti-cos-e-missione-sophia-e-perche-salvini-vuole-cambiare-AEtstMJF>

⁴⁸ *** *Italy to push EU for reform of "Operation Sofia"*, in "Euractiv", 30th August, 2018, <https://www.euractiv.com/section/justice-home-affairs/news/italy-to-push-eu-for-reform-of-operation-sophia/>

⁴⁹ Rai news, *Migranti, Salvini, stop a missione Sophia senza nuove regole d'ingaggio*, 5 December 2018, https://www.rainews.it/archivio-rainews/articoli/Migranti-Salvini-stop-Sophia-senza-nuove-regole-ingaggio-bfeea3d6-f81d-4a78-983c-81e911e1f97d.html?refresh_ce

⁵⁰ *** The Council of the European Union, *EUNAVFOR MED Operation Sophia: mandate extended until 30 September 2019*, press release, 29th March 2019 <https://www.consilium.europa.eu/en/press/press-releases/2019/03/29/eunavfor-med-operation-sophia-mandate-extended-until-30-september-2019/>

Eventually, the operation ended in March 2020, without entering the final phase, namely the intervention within Libyan territorial waters to stop traffickers before departure. It was included in the agreements, but the European Union never obtained the consent of the Tripoli authorities, despite hundreds of millions of euros and the training of the Libyan coast guard.

IV. EUNAVFOR Iriini (March 2020-March 2023)

The impossibility for the 28 EU member states to find an agreement on the landing of the people who were rescued at sea in ports other than Italian ones - as requested Italy - has involved the elimination of ships, a measure that in the end led to cease the mission. In March 2020, Operation Sophia was succeeded by Operation **Iriini**, which **has no SAR mandate**. It aims to disrupt the business model of human smuggling and trafficking networks through information gathering and patrolling by planes. With the headquarters in Rome, its core task is the implementation of the UN arms embargo on Libya through the use of aerial, satellite, and maritime assets. In particular, the mission is mandated to carry out inspections of vessels on the high seas off the coast of Libya suspected to be carrying arms or related material to and from Libya following the United Nations Security Council Resolution 2292 (2016) in addition to monitoring violations perpetrated via aerial and land routes. On March 17th, 2021, the EU extended the operation for 2 more years, until the end of March 2023. The decision to prolong the mission comes from the United Nations experts who warned that the embargo imposed on Libya in 2011 was “totally ineffective” as it was being blatantly

violated by numerous international actors.⁵¹ Italy and Greece alternate the Force Commander every six months. Due to the Covid-19 pandemic, the Operation effectively started its activity at sea on 4 May 2020. Operation IRINI is a European Union military operation under the umbrella of the Common Security and Defense Policy (CSDP).

Despite the growing concerns about the treatment used by the Libyan Coast Guard on illegal migrants, a mounting death toll at sea, and the continued lack of any central authority in the North African nation, the EU is determined to train coast guard personnel and bolster Libya's capacity to manage a massive search-and-rescue area of the Mediterranean.

IV Themis (February 2018-

In February 2018, has begun the Themis operation, replacing Operation Themis, launched in 2014. The new Joint Operation has an enhanced law enforcement focus, with the aim of cracking down on criminal activities, such as drug smuggling while continuing to include a search and rescue component, although it was not the main focus of the previous mission. The operation is also characterized by a strong component linked to "security" and data collection and intelligence activities, aimed at detecting *Foreign fighters* and other terrorist threats at the external borders. Once collected, these data are shared with Europol together with the Italian national authorities.

Themis had two new patrol areas in the Mediterranean: one to the east - for migratory flows from Turkey and Albania - and one to the west - for those departing from Libya, Tunisia, and Algeria. Moreover, the patrol line of the Italian

⁵¹ ***Eunavfor Med operation Irini, <https://www.operationirini.eu/about-us/>

naval units was placed at the limit of 24 miles (44.5 kilometers) from the Italian coasts, reducing the operational area compared to the Triton operation (30 nautical miles - 55.6 kilometers). The mission does not cover Maltese waters, as operation Triton did. Accordingly, vessels under the EU mandate could not operate in waters beyond this mark. Already when Triton was established, the EP criticized the insufficiency of the operational area, as it did not cover the area with a high number of fatalities. Consequently, Themis' contribution to rescue at sea is less than operation Triton's contribution. All assets deployed within the framework of Operation Themis operate under the command of the Italian Ministry of Interior.⁵²

The novelty was that Italy was no longer obligated to receive all migrants rescued by the European Union's border agency from the Mediterranean Sea. Themis' mandate has included the disembarking of migrants at the "closest port" instead of only Italian ports, as was in the case of Triton. It was a strong message to Italy's Mediterranean neighbors such as Malta but is unlikely to majorly affect arrivals as Italy coordinates the vast majority of sea rescues between North Africa and its southern coast. The regional Maritime Rescue Coordination Centre (MRCC) in Rome, involved in each rescue will "decides which port to send the boats to".⁵³

The Right-wing coalition collapsed in August 2019 and has been replaced by a more Europhile government which has moved quickly to turn the page on Salvini's anti-migrant policies, which saw the country's ports closed to NGO

⁵² Steve Scherer, *In new EU sea mission, ships not obliged to bring migrants to Italy*, <https://www.reuters.com/article/us-europe-migrants-italy-idUSKBN1FL62M>

⁵³ Frontex, <https://frontex.europa.eu/we-support/main-operations/operation-themis-italy/>; For more information, see Alessandra Giada Dibenedetto, *L'operazione Themis e il suo significato per l'Italia*, Centro Studi Internazionali, <https://www.cesi-italia.org/contents/Loperazione%20Themis%20impaginato%20Ita.pdf>

humanitarian rescue ships. Moreover, Italy has continued to set up an automatic system for distributing migrants rescued in the Mediterranean between European countries. Such a deal would have put an end to the case-by-case negotiations over who will take in those saved during the crossing from North Africa.

In September 2019, Interior ministers from five European Union countries converged on the Mediterranean island of Malta to finalize a deal that would see a redistribution of asylum-seekers who reach the southern shores of Europe from North Africa. EU officials hoped the voluntary burden-sharing scheme being sealed at mini-summit between France, Germany, Italy, and Malta would later be taken up by other EU states and serve as a model for northern and central European states to also take in asylum-seekers, lifting the migration pressure on the "frontline" states of Italy and Greece.

Germany's Interior Minister, Horst Seehofer, said that the EU had a chance to develop a model for the distribution of refugees and migrants rescued at sea:

"The new Italian government represents a great opportunity for Europe to create a concept when it comes to migration — in this case, rescued migrants. It would be a major mistake for the German government to miss such an opportunity," he said. Under the deal, France and Germany could each take 25% of migrants rescued in the Mediterranean. "I hope that the EU's three largest countries will be the locomotive to which several other member states can couple their wagons," Seehofer told the German media.⁵⁴

⁵⁴ Jamie Dettmer, *EU Divided Again on Question of Migrant Burden-Sharing*, in https://www.voanews.com/a/europe_eu-divided-again-question-migrant-burden-sharing/6176275.html

Hungarian officials warned for the first moment that Budapest would not participate under any circumstances, arguing the time-limited and voluntary four-nation deal represented a surreptitious bid to revive the burden-sharing mechanisms Brussels tried to impose on all EU states at the height of the migration crisis in 2015 and 2016.⁵⁵

In September 2020, after the impossibility to introduce solidarity in the Dublin system, allocating responsibility to the Member States for the examination of asylum applications, the European Commission made a proposal for a **New Pact on Migration and Asylum** "that would have replaced the "Dublin Regulation with a new European migration governance system".⁵⁶

In the Commission's proposal, the country responsible for the application could instead be the one where a migrant has a relative or where he or she has worked or studied. Any country that issued a visa to a migrant will have to handle any asylum application. The Dublin Regulation states that asylum claims must be processed by the migrant's country of arrival. Moreover, it aims to create more efficient and fair migration processes, reducing unsafe and irregular routes and promoting sustainable and safe legal pathways to those in need of protection.

In practice, there had been great expectations placed on the Pact on migration and asylum to overcome the failure of the 2015 Agenda on Migration to resolve the failings in the design and implementation of the EU asylum and external border control policy. Solidarity is thus therefore the most important

⁵⁵ Ibidem.

⁵⁶ European Commission, *COMMUNICATION FROM THE COMMISSION on a New Pact on Migration and Asylum*,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0609>;
<https://www.infomigrants.net/en/post/30751/eu-the-new-pact-on-migration-and-asylum>

element of the New Pact, but it has been translated into a flexible relocation mechanism. Member States can choose either to relocate asylum seekers, either to sponsor return or even to provide other types of help or funding and even external cooperation for migration management in countries of origin or of transit of migrants. Sponsoring the return of migrants means supporting the Member State in charge of return, for instance by providing help for the voluntary return of the migrant, for the readmission, or the organization of a return flight. Many scholars suggest that such an arrangement is not a real pact made to reconcile different views, in line with Bratislava Declaration,⁵⁷ but a compromise allowing opposite readings.⁵⁸

Conclusion

After the Mare Nostrum, the Italian governments did not succeed to play a pivotal role in the relaunching of the European integration, nor to promote a new EU migration policy, based upon a humanitarian approach. The lack of state-led search and rescue capacity, a securitized European borders, combined with the obstacles to NGO operations, and the abuses committed by the Libyan Coast Guard had a severe impact on the situation in the Central Mediterranean.

The situation in this area is “not a tragic anomaly”, according to a recent report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), “but rather a consequence of concrete policy decisions and practices by

⁵⁷ Bratislava Declaration, 16 September 2016, <https://www.consilium.europa.eu/media/21250/160916-bratislava-declaration-and-roadmapen16.pdf>

⁵⁸For more analysis on this Pact, see <https://eumigrationlawblog.eu/the-new-pact-on-migration-and-asylum-what-it-is-not-and-what-it-could-have-been/>

the Libyan authorities, European Union, European Member States, and institutions, and other actors". The report, which covers the period from January 2019 to December 2020, notes with concern that the EU and its Member States have cut back significantly on their maritime Search and Rescue operations, while humanitarian NGOs have been obstructed constantly from carrying out their life-saving rescue operations. In addition, private commercial vessels increasingly avoid going to the aid of migrants in distress because of delays and stand-offs over their eventual disembarkation in a port of safety.⁵⁹

⁵⁹ Office of UN's High Commissioner for Human Rights, *"Lethal Disregard" Search and rescue and the protection of migrants in the central Mediterranean Sea*, May 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/OHCHR-thematic-report-SAR-protection-at-sea.pdf>