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## *Reassembling Transnational Legal Conflicts across Global Institutions*

### *Ethnographic Perspectives on Claims of Authority over the Mediterranean Sea*

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### Introduction

Contemporary global governance is characterised by the deterritorialised production of law – a process in which International Organisations (IOs) play an increasingly important role.<sup>1</sup> Some scholars have understood this movement in lawmaking beyond the traditional sites of normative production (‘beyond the state’<sup>2</sup>) as an instance of fragmentation. This, as Koskenniemi has argued, leads to deformalism and managerialism.<sup>3</sup> But this movement has material effects and outcomes that go beyond the normative and ideational, a fact that is often overlooked by legal scholars. Legal fragmentation within the transnational realm can lead to legal conflicts, where actors with differing power positions in the global order seek to shape particular apparatuses or issues of government in distinct ways and according to their interests,<sup>4</sup> within a legal landscape lacking clear hierarchy. These legal conflicts have material outcomes since they shape the social and political world and affect parties to the conflict in differentiated ways.

<sup>1</sup> J. Eckert and P. Dann, ‘Norm-Creation beyond the State’ in M.-C. Foblets, M. Goodale, M. Sapignoli, and O. Zenker (eds.), *The Oxford Handbook of Law and Anthropology*, (Oxford University Press, 2020), pp. 808–26.

<sup>2</sup> Eckert and Dann, ‘Norm-Creation beyond the State’, p. 816.

<sup>3</sup> M. Koskenniemi, ‘Formalism, Fragmentation, Freedom: Kantian Themes in Today’s International Law’ (2007) 4 *No Foundations: Journal of Extreme Legal Positivism* 7–28; T. Broude, ‘Keep Calm and Carry on: Martti Koskenniemi and the Fragmentation of International Law’ (2013) 27 *Temple International & Comparative Law Journal* 279–92.

<sup>4</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission*. Finalized by Martti Koskenniemi (2006) p. 15.

In transnational law, the line between informal and formal norms is blurry and so the lack of hierarchy in the fragmented international legal sphere pushes the question of authority to the forefront of theories of global governance; understanding how authority is exercised helps to grasp which norm(s) takes precedence over another in situations of global legal pluralism. And, in turn, how certain orders or ways of governing are perpetuated in time.

In this chapter, I make the proposal that an ethnographic engagement with Transnational Legal Conflicts (TLCs) can help shed light on the ways in which authority and hierarchisation within TLCs manifest and shape the social and political world and the galaxy of IOs for that purpose. In the context of the conflict over the responsibility to rescue migrants at the contentious border zone in the Central Mediterranean, I examine the struggle for control over a large stretch of international waters, where migrants attempt to make the perilous crossing having departed from Libya and where NGO vessels carry out rescue activities of the former. Feldman has proposed ‘non-local’<sup>5</sup> ethnography not just to describe the dots or sites linked to governance activities or to represent daily practice but rather to decode governance processes or regimes functioning to ‘regulate large populations’.<sup>6</sup> This approach, he argues, is fitted to study ‘historically particular apparatus’,<sup>7</sup> which span several sites and involve many actors, overlapping policies, and different technologies. Apparatuses coalesce to produce historically contingent models and networks geared towards the management of populations or control the economy. In his words, the ethnography of global governance should ‘uncover how discourses give an emerging regime its shape and direction’,<sup>8</sup> as opposed to limiting itself to the description of the components of governance.

In the following, I apply such a non-local approach to the TLC over the responsibility for rescue in the Central Mediterranean. I excavate

<sup>5</sup> G. Feldman, ‘If Ethnography Is More than Participant-Observation, then Relations Are More than Connections: The Case for Nonlocal Ethnography in a World of Apparatuses’ (2011) 11 *Anthropological Theory* 375–95.

<sup>6</sup> G. Feldman, ‘Illuminating the Apparatus: Steps toward a Nonlocal Ethnography of Global Governance’ in C. Shore, S. Wright, and D. Però (eds.), *Policy Worlds: Anthropology and the Analysis of Contemporary Power*, (Berghahn, 2011), pp. 32–49 p. 32.

<sup>7</sup> Ibid., p. 33.      <sup>8</sup> Ibid.

the power dynamics at stake that manifest at sea and beyond and show how operational hierarchies are set despite all actors referring to the lawfulness of their actions. In the Central Mediterranean, international borders – both physical and immaterial – have been redrawn by the actions of international institutions, situated far away from the dilemmas of those carrying out rescues. The emergence of the Libyan Search and Rescue Region (SRR) in the International Maritime Organization's (IMO) Global Search and Rescue (SAR) Plan in June 2018 legitimised European authorities' handing over of responsibility to Libyan authorities to coordinate the rescue of migrants and to thus disembark survivors in Libya. This clashes with the international principle of non-refoulement and the duty to disembark rescued people in a place of safety according to the 1979 SAR Convention. With this in mind, I analyse how the emergence of this new zone enables an extremely formal interpretation of the SAR convention, ultimately meaning that European authorities can delegate the responsibility for rescue to their Libyan counterparts. I start by outlining how an ethnographic approach to TLCs can help us understand the competing and fragmented jurisdictions in spaces of transnational governance. Then, I move to the setting of the Central Mediterranean Sea and depict the materiality and situatedness of TLCs, relating to conflicts over the responsibility to rescue migrants at sea. I show how different claims of authority manifest in these TLCs, and thus, how the EU has managed to shape the governance of a large stretch of international waters shot through by multiple jurisdictions, to meet its own interests of reducing irregular migration.

## Ethnographies of Transnational Legal Conflicts

The de-formalisation induced by global legal pluralism<sup>9</sup> has been criticised for weakening formal rules of procedure and 'formalised limits of competence', and, perhaps counter-intuitively, privileging 'power over plurality'.<sup>10</sup> To delve deeper into the power dynamics of a TLC, it is necessary to pay close attention to time and space and empirically engage

<sup>9</sup> P. Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders* (Cambridge University Press, 2012).

<sup>10</sup> Eckert and Dann, 'Norm-Creation beyond the State', p. 815.

with instances in which ‘law’ is used and referred to.<sup>11</sup> An anthropological approach to ‘the transnational’ can help shed light on which ‘chains of interdependence are deemed relevant’<sup>12</sup> and which can be disregarded, within situations of legal overlap. Such a situational approach enables the micro study of macro-relations within situations of structured contingency.<sup>13</sup> Hence, an ethnographic approach to TLCs leads to a path beyond legal formalism, helps understand the materiality and meaning of the context, and enables the excavation of power dynamics that might often be masked as references to ‘neutral’ international legal frameworks and the IOs upholding them. In the context of the externalisation of migration control in and around the Mediterranean for example containment policies, in which IOs such as the International Organisation for Migration (IOM) are often active partners,<sup>14</sup> are underpinned by the dominant paradigm both in international and domestic law of the nation-state’s prerogative to exclude non-nationals.<sup>15</sup> Their legal architecture masks the racialised and neo-colonial nature of the contemporary migration governance at the borders of Europe.<sup>16</sup>

As mentioned earlier, legal conflicts can be summarised as arising due to actors’ different pursuits and desires in a pluralistic global society.<sup>17</sup> Therefore, fragmentation is not just the result of a lack of formal integrity of international law; it is also fundamentally a question of politics. For Koskenniemi and Leino, fragmentation emerges because of the utopian disposition of international law: it is used by actors in ways that try and advance the political present that has been ‘in some way or another’ revealed to be ‘unsatisfactory’.<sup>18</sup> In this chapter,

<sup>11</sup> This is similar to what Zumbansen proposes in his socio-legal approach to transnational law: P. Zumbansen, ‘Transnational Law as Socio-legal Theory and Critique: Prospects for “Law and Society” in a Divided World’ (2019) 67 *Buffalo Law Review* 909–60.

<sup>12</sup> J. Eckert, ‘Beyond Agatha Christie: Relationality and Critique in Anthropological theory’ (2016) 16 *Anthropological Theory* 241–48 at 244.

<sup>13</sup> Eckert, ‘Beyond Agatha Christie’.

<sup>14</sup> J. Brachet, ‘Policing the Desert: The IOM in Libya beyond War and Peace’ (2016) 48 *Antipode* 272–92.

<sup>15</sup> T. E. Achiume, ‘Migration as Decolonization’ (2019) 71 *Stanford Law Review* 1509–74.

<sup>16</sup> T. E. Achiume and A. Bali, ‘Race and Empire: Legal Theory within, through, and across National Borders’ (2021) 67 *U.C.L.A. Law Review* 1386–431.

<sup>17</sup> International Law Commission, *Fragmentation of International Law*, p. 15.

<sup>18</sup> M. Koskenniemi and P. Leino, ‘Fragmentation of International Law? Postmodern Anxieties’ (2002) 15 *Leiden Journal of International Law* 553–79 at 578.

I am less interested in the worldviews and justifications of international lawmakers than I am interested in examining how to study the material and ideational outcomes of what happens when different (sometimes utopian) visions of law, or sets of international rules, come into collision with one another.

## TLCs Over Responsibility for the Preservation of Life at Sea

Europe's 'obsession'<sup>19</sup> with clandestine migration by sea in the last decade has had to balance the securitisation of the external border with the issue of preserving life at sea. Walters coined the term 'humanitarian border'<sup>20</sup> to describe the rise of importance of borders for Western states, as sites concentrating a set of concerns and fears and therefore in need of being securitised. The counter-intuitive placing of 'humanitarian' next to 'border' is to signify how these sites have increasingly concentrated a variety of activities carried out by state and non-state actors, which mix dynamics of protection and control.<sup>21</sup> In the Mediterranean, policing, humanitarian action, and intelligence-gathering have all become entangled in a series of networks, including states, international organisations, and NGOs within a system designed to both intercept and rescue migrants in distress at sea.

In the face of these paradigmatic tensions, the responsibility for survivors of a distress situation at sea, or for their death, has taken on geopolitical dimensions in the Mediterranean with the increasingly securitised way in which migration and maritime migration has been dealt with in the EU since the early 2000s. In 2004 already, the German humanitarian ship *Cap Anamur* rescued thirty-seven people from an inflatable dinghy in the strait of Sicily and was subsequently denied the right to enter Italian territorial waters. For eleven days, the ship was made to wait in international waters, whilst Malta, Italy, and

<sup>19</sup> R. Andersson, *Illegality, Inc.* (University of California Press, 2014), p. 12.

<sup>20</sup> W. Walters, 'Foucault and Frontiers: Notes on the Birth of the Humanitarian Border' in U. Bröckling, S. Krasmann, and T. Lemke (eds.), *Governmentality: Current Issues and Future Challenges*, (Routledge, 2009), pp. 138–64.

<sup>21</sup> see also P. Pallister-Wilkins, 'Humanitarian Rescue/Sovereign Capture and the Policing of Possible Responses to Violent Borders' (2017) 8 *Global Policy* 19–24.

Germany debated where the people should be allowed to disembark.<sup>22</sup> At the heart of the contention lies the SAR regime and associated 1979 International Convention on Maritime Search and Rescue<sup>23</sup> (hereinafter: SAR Convention), which splits the high seas (the waters beyond territorial waters) into zones and distributes coordination responsibility among coastal states for rescue operations. Whereas in territorial waters (12 nautical miles (NM) off the baseline of a state's coast) and the contiguous zone (up to 24 NM off the coast) states enjoy, respectively, quasi full and some limited policing power, on the high seas or international waters, they can exercise jurisdiction in only very limited ways.<sup>24</sup> On the one hand, the SAR regime was designed to precisely improve safety at sea by ensuring that coordination responsibilities are clear. On the other, in the Mediterranean, states like Malta have disputed the extension of their responsibility to such a large portion of international waters.<sup>25</sup>

The tensions around where to disembark survivors, depending on where they were rescued and by whom, has meant that states have often engaged in a responsibility ping-pong relating to whom should intervene, which has sometimes had deadly consequences. In October 2013 for example, a boat carrying over 400 people, most of them

<sup>22</sup> P. Cuttitta, 'From the Cap Anamur to Mare Nostrum. Humanitarianism and Migration Controls at the EU's Maritime Borders' in C. Matera and A. Taylor (eds.), *The Common European Asylum System and Human Rights: Enhancing Protection in Times of Emergencies*, (Asser Institute, 2014), pp. 21–37.

<sup>23</sup> International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979, United Nations Treaty Series, vol. 1405, p. 119.

<sup>24</sup> V. Moreno-Lax, 'Protection at Sea and the Denial of Asylum' in C. Costello, M. Foster, and J. McAdam (eds.), *The Oxford Handbook of International Refugee Law*, (Oxford University Press, 2021), pp. 483–501 p. 487.

<sup>25</sup> Malta has been a party to the 1974 SOLAS Convention since 1986 and to the 1979 SAR Convention since 2002. Its SAR zone mirrors the state's Flight Information Region, which was inherited from the British Flight Identification Region. The country has long complained that the zone is too big for it to handle and carries too large a responsibility for the issue of migrant rescues. In 2004, Malta refused to sign the amended version of the SOLAS and SAR conventions, thereby not recognizing the principle of disembarkation of survivors to the closest port of safety. See: J. Coppens, 'The Essential Role of Malta in Drafting the New Regional Agreement on Migrants at Sea in the Mediterranean Basin' (2013) 44 *Journal of Maritime Law & Commerce* 89–111; V. Moreno-Lax, 'Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Members States' Obligations Accruing at Sea' (2011) 23 *International Journal of Refugee Law* 174–220 at 197.

Syrian refugees, sunk off the coast of Lampedusa, killing 200 people, about 60 of whom were children. An Italian navy ship, the *Libra*, was stationed a mere 19 miles away from the distress case, in the Maltese SAR zone. The migrants had called the Italian coast guard for help, but the coast guard had repeatedly told them to call Malta instead. The Maltese eventually intervened, hours after the migrants had called and begged for support. And this even though the *Libra* was only about an hour's navigational time away from the scene.

Yet the law of the sea is very clear when it comes to the duty to rescue people who find themselves in distress. The 1982 UN Convention on the Law of the Sea (UNCLOS),<sup>26</sup> the 1974 Convention on Safety of Life at Sea (SOLAS Convention),<sup>27</sup> and the 1979 SAR Convention all require that life be preserved at sea at all costs, regardless of nationality. They set out the duties of the master of a ship to render assistance and to proceed with speed to conduct a rescue, upon receipt of a distress signal. According to the text of the SAR Convention, an SRR<sup>28</sup> does not entail jurisdiction but assumes duties. However, in practice, this is not a clear-cut distinction. *De facto*, SAR zones extend a form of jurisdiction as states carry out patrol and surveillance activities.

### Shaping a Maritime Control Cooperation Partner Anew: The Genesis of the Libyan SRR

Libya has been a partner to the EU and Italy for what concerns maritime migration control since the early 2000s.<sup>29</sup> The Treaty on Friendship, Partnership and Cooperation was signed between Italy and Libya in 2008, which provided the grounds for joint patrols and off-shore pushbacks.<sup>30</sup> The fall of the Gaddafi regime in 2011 after the NATO led intervention brought about the collapse of a stable

<sup>26</sup> United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, United Nations Treaty Series, vol. 1833, p. 397.

<sup>27</sup> International Convention for the Safety of Life at Sea, London, 1 November 1974, United Nations Treaty Series, vol. 1184, p. 278.

<sup>28</sup> In this chapter, I use Libyan SAR zone and Libyan SRR interchangeably.

<sup>29</sup> see: L. Bialasiewicz, 'Off-shoring and Out-sourcing the Borders of Europe: Libya and EU Border Work in the Mediterranean' (2012) 17 *Geopolitics* 843–66.

<sup>30</sup> E. Paoletti, 'Historical Background on the Agreements between Italy and Libya' in *The Migration of Power and North-South Inequalities*, (Palgrave Macmillan, 2010), pp. 139, 157.

discussion and cooperation partner for the EU on migration matters. Libya has been in political turmoil since. The legitimacy of the General National Congress (GNC), established in 2012, came under threat by General Haftar calling for the GNC's dissolution in February 2014 and the Prime Minister, Ali Zeidan, being removed from office in March of the same year. Amidst the insecurity induced by the civil unrest and fall of the dictatorship, migrant crossings increased. This led to the EU changing its external approach to Libya in 2014, shifting from an approach that promoted democracy and institution-building, to one that framed the Libyan crisis as a migration and border crisis.<sup>31</sup> The increase in clandestine crossings also brought about an increase in migrant deaths at sea.

After hundreds of migrants lost their lives in a series of shipwrecks in 2013 off the coast of Lampedusa, the Italian government reacted by launching a national rescue operation *Mare Nostrum*. However, the operation rapidly came to an end a year later under pressure from both domestic critics and European policymakers more generally who blamed the operation for being a 'pull-factor' for immigration into Europe.<sup>32</sup> This narrative was soon to be shifted onto NGO vessels, the first of which began to operate in the Strait of Sicily at the end of 2014. In April 2015, another series of shipwrecks in the Central Mediterranean prompted a special EU Council meeting in which the EU reaffirmed its commitment to preserving life at sea in the face of this 'human emergency'.<sup>33</sup> Despite this, Frontex's area of operation under Joint-Operation Triton, which was launched after the end of *Mare Nostrum*, did not patrol the zone where most distress cases were declared, south of the Italian SAR.

When I interviewed a retired member of the Italian Coast Guard about this period, he clearly stated that these years after 2011 had constituted a great challenge for him and his team. The Italian Coast

<sup>31</sup> K. Ivashchenko-Stadnik, R. Petrov, P. Rieker, A. Russo, and L. Raineri, 'How the EU is facing crises in its neighborhood: Evidence from Libya and Ukraine', *EUNPACK Working Paper* (2018) p. 60.

<sup>32</sup> S. Carrera and L. den Hertog, 'Whose Mare? Rule of law challenges in the field of European border surveillance in the Mediterranean', *CEPS Paper in Liberty and Security in Europe* (2015) p. 5.

<sup>33</sup> EU Council, Special meeting of the European Council Statement: [www.consilium.europa.eu/en/press/press-releases/2015/04/23/special-euco-statement/](http://www.consilium.europa.eu/en/press/press-releases/2015/04/23/special-euco-statement/) (23 April 2015)



Guard often had to intervene in scenes of impending mass casualty, sometimes far outside of their own SAR zone, whilst the Maritime Rescue Coordination Centre in Rome (ITMRCC) was overwhelmed by calls from different sources signalling distress cases. What emerged from the point of view of the ITMRCC, he told me, was a need for an authority with whom they could have a regular dialogue as expected by the conventions.<sup>34</sup> In 2017, an agreement was signed between the Italian Coast Guard and the European Commission's DG Home to grant funds for the action 'Assessment of the Libyan Coast Guard legal framework and capability in terms of SAR Services'.<sup>35</sup> This was to be one of the first steps towards helping the Libyan Coast Guard gain capacity for rescue in the Central Mediterranean. The action was funded by the EU Internal Security Fund (ISF) and included a feasibility study, which was to define under which conditions the LMRCC (Libyan Maritime Rescue Coordination Centre) and an associated SAR zone could be established.

Despite not yet having their own SRR, the Libyan Coast Guard (LYCG) had already massively increased interceptions in 2017. In 2016, NGOs accounted for the highest number of rescues, whilst in 2017, the trend was inverted with the LYCG intercepting more migrants than any other actor.<sup>36</sup> In parallel to the feasibility study being carried out for the establishment of the Libyan SRR, Marco Minniti, Italian interior minister at the time, struck the infamous Memorandum of Understanding with then prime minister Fayed al-Sarraj.<sup>37</sup> Italy also then approached the European Commission in May 2017 with a 'major proposal for integrated border and migration management in Libya'<sup>38</sup> to be funded under the EU Emergency Trust Fund

<sup>34</sup> Interview, retired Italian Coast Guard official, Rome, 11 September 2020.

<sup>35</sup> The full text of the agreement can be found here: [www.guardiacostiera.gov.it/stampa/Documents/progetti-finanziati/Grant%20Agreement%200051%20signed.pdf](http://www.guardiacostiera.gov.it/stampa/Documents/progetti-finanziati/Grant%20Agreement%200051%20signed.pdf) (accessed 25 October 2021)

<sup>36</sup> C. Heller and L. Pezzani, 'Mare Clausum: Italy and the EU's undeclared operation to stem migration across the Mediterranean', Report for Forensic Oceanography project (2018) p. 13. Available at: <https://content.forensic-architecture.org/wp-content/uploads/2019/05/2018-05-07-FO-Mare-Clausum-full-EN.pdf>

<sup>37</sup> Memorandum d'intesa (...) tra lo Stato della Libia e la Repubblica Italiana, 02.02.2017: [www.governo.it/sites/governo.it/files/Libia.pdf](http://www.governo.it/sites/governo.it/files/Libia.pdf) (accessed 2 May 2022)

<sup>38</sup> EUTF, Support to Integrated border and migration management in Libya – First Phase (T05-EUTF-NAO-LY-04) (2017).

for Africa (EUTF),<sup>39</sup> and to complement the ISF funding. The projects caught under the North Africa window of the EUTF to be implemented in Libya focused almost entirely on improving the Libyan authorities' ability to 'manage' migration and secure their borders.<sup>40</sup> On 10 July 2017, the Libyan Ports and Maritime Transport Authority (Ministry of Transport) communicated in a letter to the IMO the designation of the Libyan SRR. In the letter, the Libyan authorities mentioned the lack of resources and facilities of the coast guard and the air forces resulting from the destruction caused by the 2011 military operations. For some time before the actual declaration of the Libyan SRR, when the LYCG had already greatly increased their activity, the Italians were in fact acting as the coordination authority from Tripoli from a military ship.<sup>41</sup>

On 27 June 2018, the coordinates of a new Libyan SRR were uploaded to the IMO's Global Integrated Shipping Information System (GISIS). This banal act had juridical consequences: henceforth, the LYCG had coordination priority for SAR events over a vast area of international waters. It was a unilateral declaration with a constitutive effect, the authority of which was based on the structural dominance of states in their ability to grant powers to specific actors 'at the confluence of legal structures'.<sup>42</sup> Taken alone and distinct from

<sup>39</sup> The EUTF was established at the Valletta Summit on Migration in November 2015.

<sup>40</sup> As quoted from the Action Fiche of project T05-EUTF-NAO-LY-04: 'Activity 3: Assistance to the Libyan concerned Authorities with a view to enabling them to declare a Libyan SAR Region (as per assessment results). Detailed design for the setup of a full-fledged MRCC in Tripoli (or nearby), associated with proper communication facilities'. The Action Fiche is available here: [https://ec.europa.eu/trustfundforafrica/sites/default/files/t05-eutf-noa-ly-04\\_modified.pdf](https://ec.europa.eu/trustfundforafrica/sites/default/files/t05-eutf-noa-ly-04_modified.pdf)

<sup>41</sup> As affirmed by numerous sources, including in a judgement on the confiscation of the ship of the NGO Open Arms in March 2018, which stated: 'the personnel on board the Italian military vessel (NAURAS operation), stationed in Tripoli informed Rome that a patrol boat belonging to the Libyan coastguard would shortly be leaving its moorings to head for the target and specified that the aforementioned coast guard would take responsibility for the rescue operation' (translation from Italian my own). Tribunale di Catania. 2018. *Decreto di convalida e di sequestro preventivo*. Tribunale di Catania: Sezione del giudice per le indagini preliminari. N. 3476/18 R.G.N.R. Available at: [www.statewatch.org/media/documents/news/2018/apr/it-open-arms-sequestration-judicial-order-tribunale-catania.pdf](http://www.statewatch.org/media/documents/news/2018/apr/it-open-arms-sequestration-judicial-order-tribunale-catania.pdf) (accessed 8 June 2022)

<sup>42</sup> Eckert and Dann, 'Norm-Creation beyond the State', p. 816.

the socio-legal context in which it came into being, the notification could seem straightforward: it simply defined which state would take coordination responsibility for rescues in this stretch of international waters. However, it did not emerge in a neutral space. In fact, it was declared in an already saturated legal landscape: the sea, although it has long been portrayed as a ‘lawless space beyond sovereignty and justice’,<sup>43</sup> is permeated by a complex (and expanding) regulatory system,<sup>44</sup> which prescribes the conduct of ships in fields ranging from trade to environmental protection and rescue. The emergence of the Libyan SRR was another layer adding to the legal sediments striating the justifications for different conduct of actors passing through the Central Mediterranean. It made the LYCG into a legitimate cooperation partner for the Italian coast guard to coordinate rescues, as set by the law of the sea. Simultaneously, it formalised a practice of systematic pull-backs of migrants to Libya in violation of the 1951 *non-refoulement* principle. In sum, it further entrenched the conflict between a securitised approach to maritime migration and a more humanitarian and rights-conforming approach.<sup>45</sup>

The Libyan SRR formalised the LYCG’s authority to coordinate rescues in this region, giving Libyan authorities primary responsibility to ensure rescued people be disembarked in a ‘place of safety’.<sup>46</sup> Although ‘place of safety’ (and the concept of ‘safety’ more broadly) has not been clearly defined in international legal frameworks, it is widely accepted that it must be interpreted in accordance with refugee law provisions where the principle of *non-refoulement* is guaranteed.<sup>47</sup>

<sup>43</sup> W. Walters, ‘Bordering the Sea: Shipping Industries and the Policing of Stowaways’ (2008) 7 *borderlands* 1–25 at 5.

<sup>44</sup> A. J. Dickson, ‘Mobility Control in Ungovernable Spaces: Cultivating the Mediterranean’s Fatal Materiality’ (2021) 39 *Environment and Planning C: Politics and Space* 993–1010.

<sup>45</sup> See V. Moreno-Lax, D. Ghezlbash, and N. Klein, ‘Between Life, Security and Rights: Framing the Interdiction of “Boat Migrants” in the Central Mediterranean and Australia’ (2019) 32 *Leiden Journal of International Law* 715–40.

<sup>46</sup> SAR Convention, Annex, para. 1.3.2.

<sup>47</sup> A. Fischer-Lescano, T. Löhr, and T. Tohidipur, ‘Border Controls at Sea: Requirements under International Human Rights and Refugee Law’ (2009) 21 *International Journal of Refugee Law* 256–96. The 2004 IMO Guidelines on the Treatment of Persons Rescued at Sea (Resolution MSC.167(78), 20 May 2004) specify that survivors should not be disembarked to a place ‘where their safety would be further jeopardized’ (para. 5.6). Although ‘place of safety’

There is an obligation of result that comes with the duties of the state responsible for the SAR zone to ensure that rescued people are effectively disembarked.<sup>48</sup> International law scholars and human rights organisations have argued that ‘place of safety’ *should* be interpreted in accordance with refugee law provisions. However, it is not my goal to go into the detail of the normative interpretation of these provisions. Rather, here I want to point out that *despite* the existence of this framework that prohibits the disembarkation of people in a place where their lives and safety are threatened, the enactment of the Libyan SRR enabled a fragmentary reading of these provisions and attributed authority to specific officials in acting out this reading.

As I will show in the following section, the TLC at hand was shaped and hierarchised in such a way that the LYCG were able to gain operational advantage over rescue NGOs and maintained this advantage over time. The way these overlapping jurisdictions could be hierarchised in a specific way was deeply dependent on the way they connected to the priorities and ideologies of the institutions involved in governing the maritime space. In the following section, I show how hierarchy was imposed in that conflict, thus shaping the outcome of political and social behaviours and operational patterns which persist to this day.

has no stable definition in the law of the sea, the IMO Guidelines give some precisions: a place of safety is where ‘rescue operations are considered to terminate (...) where the survivors’ safety of life is no longer threatened’ (para. 6.12, also in SAR Convention 1979, Annex, para. 1.3.2). Another ship cannot be considered as a place of safety, only a temporary accommodation before alternative arrangements are met (ibid., para. 6.13). The Guidelines stress that each rescue case is unique (ibid., para. 6.15), and that provisions should be made to ‘avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea’ (ibid., para. 6.17). The responsibility to ensure that survivors are delivered to a place of safety lies with the coastal state that coordinates the SAR region in question. However, Moreno-Lax (‘Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Members States’ Obligations Accruing at Sea’, p. 196) notes that ‘the duty on the coastal state is limited to ensuring collaboration and does not include a commandment to allow for disembarkation onto its own territory, the amendments establish nonetheless an obligation of result’, referencing the SAR Convention, Annex, para. 3.1.9 and the SOLAS Convention, ch. V, Regulation 33.

<sup>48</sup> Moreno-Lax, ‘Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Members States’ Obligations Accruing at Sea’, 196.

## Authority in the Libyan SRR

To delve deeper into the question of how and which kinds of authority come to shape the governance of the EU's external maritime border in international waters, I take the following examples from fieldwork I carried out at sea onboard an NGO rescue ship in the autumn of 2018.<sup>49</sup> This was shortly after the Libyan SRR had been declared. At the time, NGOs and human rights organisations had already been critical of the role of the LYCG in the growing number of interceptions carried out by them.<sup>50</sup> Violent encounters between the LYCG and NGOs had also taken place, for example in November 2017.<sup>51</sup> In July 2017, the Italian Minniti government had tried to impose a Code of Conduct on rescue NGOs, which was widely criticised for being legally unclear and for imposing obligations on NGOs and leaving out the responsibilities of the Italian state.<sup>52</sup> The code emphasised, amongst other things, the obligation for a ship master to immediately notify the competent authorities of the flag State once a rescue had been conducted in a zone where there was no official SRR. It was a clear attempt by the Italian government to push other states to become involved in the contentious issue of disembarkation of rescued people by trying to establish responsibility through the flag state. Moreover, the wave of criminalisation

<sup>49</sup> I have described these same scenes of rescue in the article 'Governing the Central Mediterranean through Indirect Rule: Tracing the Effects of the Recognition of Joint Rescue Coordination Centre Tripoli' (2019) 21 *European Journal of Migration and Law* 141–65. There I make a different argument. Namely, that the creation of the Libyan SRR enabled the European Union and Italy to govern this stretch of international waters in an indirect manner.

<sup>50</sup> See for example Amnesty International, *Libya's Dark Web of Collusion: Abuses against Europe-Bound Refugees and Migrants* (2017).

<sup>51</sup> On the 6 of November 2017, the LYCG carried out an interception/rescue of a migrant dinghy of 150 people that capsized. The ITMRCC called all ships in the area to head to the distress scene to support the operation since the situation was critical. When the NGO vessel *Sea Watch* arrived on the scene there was an altercation between the LYCG and the NGO ship. At least 20 people died. For a detailed reconstruction of the case see Section B in V. Moreno-Lax, 'The Architecture of Functional Jurisdiction: Unpacking Contactless Control – On Public Powers, S.S. and Others v. Italy, and the "Operational Model"' (2020) 21 *German Law Journal* 385–416 at 388–90.

<sup>52</sup> I. Papanicolopulu, 'Immigrazione Irregolare via Mare, Tutela Della Vita Umana e Organizzazioni Non Governative' (2017) 3 *Diritto, Immigrazione e Cittadinanza* 1–29.

against rescue NGOs had started, drastically reducing their abilities to effectively operate in the Strait of Sicily. Then, in the summer of 2018, Italy, spearheaded by far-right interior minister Matteo Salvini, declared the country's ports shut to all foreign-flagged vessels that had rescued migrants off the coast of Libya. Thus, when I first arrived in Marseille to embark on the NGO ship *Aquarius*, operated by *SOS Méditerranée* and *Médecins sans frontières*, the tension, linked to the political climate in which SAR activities in the Central Mediterranean were unfolding, was palpable. Gibraltar had just announced that it would strip the *Aquarius* from its registers and so, after initially being told that we would leave the port on 1 September, the departure of the ship was delayed from week to week as the search for a new flag dragged on. The ship operator had made a request to the Panamanian authorities for a flag a few days before I arrived, which was finally approved.

We were finally able to leave the port of Marseille on 30 September 2018, in this jittery operational atmosphere. A few days into navigation, we encountered the first dinghy in need of rescue. It was a small fibreglass boat with eleven people on board, which had been spotted by local fishermen. The SAR coordinator on board the *Aquarius* tried calling Joint Rescue Coordination Centre (JRCC) Tripoli to request instruction, but his calls remained unanswered.<sup>53</sup> Since Tripoli was not picking up the phone, the captain reverted to contacting another RCC.<sup>54</sup> The Italian MRCC reacted to the call and the SAR coordinator informed them about the failed attempts to contact Tripoli. Once the rescue was completed, he wrote an email to the Italian Coast Guard again to inform them of the number of people who were now aboard the *Aquarius*, copying Malta and Tripoli in the process. By the end of the morning, JRCC Tripoli had emailed back to inform that it was taking coordination of the SAR event and gave a set of coordinates where they proposed to transfer the rescued people onto a Libyan asset. The *Aquarius* responded that it could not proceed to the transfer, referring to the

<sup>53</sup> According to the SAR Convention, section 2.3.3, any operational Rescue Coordination Centre (RCC) should be available on a 24-hour basis and be manned by trained staff with working knowledge of English.

<sup>54</sup> As outlined in the IMO Guidelines: 'in a case where the RCC responsible for the area where the survivors are recovered cannot be contacted, attempt to contact another RCC' (para. 5.1.4).

SAR conventions, which prevented them from taking survivors back to an unsafe place; by accepting to make the transfer, they would potentially be in violation of the *non-refoulement* principle. The LYCG then responded by saying that the *Aquarius* should contact another RCC or its flag state for coordination and for attribution to a place of safety.

Shortly after this event, the Panamanian Maritime Authority released a press communiqué stating it had initiated proceedings to remove the Panamanian flag from the *Aquarius*. The reason stated in the release was that the vessel had ‘refused to deliver immigrants and refugees to their place of origin’.<sup>55</sup> The information that the *Aquarius* had disobeyed orders from the Libyan authorities had been delivered to Panama by the Italian authorities.<sup>56</sup> Panama had declared it was going to have to exclude the *Aquarius* from its register because not doing so would entail severe political difficulties for the many Panamanian ships operating in European ports.

A second rescue took place a couple of days later. This time, the *Aquarius* was alerted to a boat taking on water, which was said to have left from Zuwara, Libya. The boat was overcrowded and contained around fifty people, including women and children. After having informed the ITMRCC of the potential case – JRCC Tripoli was once again unreachable – the captain and SAR coordinator decided to head towards the area of the GPS coordinates. The Italian authorities were obviously in contact with the Libyans through other means than those that were available to the *Aquarius* because they knew that there was a LYCG patrol boat close by. On the phone, they gave the SAR coordinator the name of the Libyan patrol vessel (PV) and said that he should try to enter into contact with it. About an hour later and after several attempts, the bridge managed to establish contact with the PV in question, *al-Kifah*. *Al-Kifah* informed the NGO ship that it was going to be the on-scene ‘commander’. The SAR conventions give provisions for the designation of an on-scene coordinator, to ensure

<sup>55</sup> Autoridad Marítima de Panama, ‘Aquarius 2 ex Aquarius’ (21 September 2018). Available at: <https://amp.gob.pa/noticias/aquarius-2-ex-aquarius/> (accessed 4 July 2022).

<sup>56</sup> Médecins Sans Frontières, ‘Le Panama révoque le pavillon de l’Aquarius sous la pression du gouvernement italien’ (23 September 2018). Available at: [www.msf.fr/communiqués-presse/le-panama-revoque-le-pavillon-de-l-aquarius-sous-la-pression-du-gouvernement-italien](http://www.msf.fr/communiqués-presse/le-panama-revoque-le-pavillon-de-l-aquarius-sous-la-pression-du-gouvernement-italien) (accessed 20 December 2018).

the smooth sequencing of events during a rescue.<sup>57</sup> The designation of ‘commander’ signalled the way in which roles would be distributed on the scene. This was not so much about collaboration as it was about operational hierarchy.

When, some hours later, the *Aquarius* reached the position of the boat in difficulty, the SAR coordinator informed the LYCG that the small inflatable rescue boats of the *Aquarius* had been launched and were ready to start transferring the survivors. The communication with PV *al-Kifah* became extremely tense and the LYCG demanded that the *Aquarius*’ small rescue zodiacs stabilise the situation but then stay five miles away from it. The SAR coordinator explained calmly that this would not be possible, since the boat was in distress. Both zodiacs were made to station next to the boat in distress for close to an hour, with the rescue teams wondering why they were not being given the order to transfer – they were not aware of the difficult ongoing communications between the Libyans and the bridge of the *Aquarius*. In the early hours of the morning, the LYCG ordered them to move fifteen nautical miles away from the scene and threatened to arrest the rescue ship teams over the radio. Another hour of fraught and volatile communication ensued, with confusing back-and-forth instructions from PV *al-Kifah* and attempts from the bridge to de-escalate the situation. The final order to start transferring the people to the *Aquarius* was only given at 7:00am, after the Libyan patrol boat had drawn itself up very close to the wooden boat and the zodiacs and had then proceeded to circle the *Aquarius* menacingly. The last communication through the radio from the LYCG was an order for the *Aquarius* to leave the Libyan SRR and not to come back.

The SAR Convention states that when multiple facilities are about to engage in SAR operations, the RCC should designate ‘the most capable person’ to act as on-scene coordinator.<sup>58</sup> Details are not given

<sup>57</sup> SAR Convention, Annex, para. 4.7.2: ‘When multiple facilities are about to engage in search and rescue operations, and the rescue co-ordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene co-ordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene co-ordinator, taking into account the apparent capabilities of the on-scene co-ordinator and operational requirements.’

<sup>58</sup> SAR Convention, Annex, para. 4.7.2.



as to what exactly ‘most capable’ might signify. The *Aquarius*, with its extensive experience of rescues and accumulated collective knowledge of how to deal with these kinds of flimsy boats, as well as its medical teams onboard, could certainly qualify for ‘most capable’. UNCLOS and the SOLAS and SAR conventions all stress the duty of the master of the ship to proceed as fast as possible to the scene of distress and to offer their assistance.<sup>59</sup> What is clear from the earlier description of the altercation is that the LYCG took up its role as ‘competent authority’ to mean ‘authority that all assets involved in rescues should obey’. The LYCG effectively became a policing force without the mandate to act as one. This clashed with the NGO boat’s understanding of the ‘spirit’ of solidarity at sea, codified by international law and SAR procedures and which they emphasised their abidance by.

The examples I just outlined show how TLCs are not the product of a legal clash in relation to a set hierarchy, in which clearly defined legal levels conflict with one another. Rather, different actors shape the rescue situations, all the while claiming to be abiding by procedures set in legal regulations. The social and material field in which both the LYCG and the *Aquarius* were pitted against each other is the product of a wider conflict between frames of reference in the contested Central Mediterranean region. Beyond the situations of rescue themselves, the conflict is shaped by decisions, institutional cultures, and ideologies of institutions whose reach extends transnationally. In particular, the EU and Italy were able to institutionalise the ‘right’ procedure to adopt when conducting rescues of migrants in distress, which gave an operational advantage to the LYCG. The power to shape the legal conflict from afar was linked to coercive power (criminalisation of ‘disobedient’ NGOs) and privileged access to information and communication networks, as well as the material and financial support offered to the Libyan authorities. The legitimacy of the support given to the LYCG also came from a specific framing of the migration ‘crisis’ in the Mediterranean and the need to respond to it, which could be observed in the interviews I conducted with European officials and bureaucrats working on the Mediterranean and Libyan migration situation.

The justificatory framing discursively combined the need to act (‘Europe cannot stand by whilst lives are being lost’) with the need

<sup>59</sup> UNCLOS, Art. 98, SOLAS, Reg. 33–1, SAR Convention, Annex, para. 2.1.10, IMO Guidelines on the Treatment of Persons Rescued at Sea.

to secure the external border.<sup>60</sup> This duality could be traced down into the discourses of EU officials and civil servants. Senior officers and managers working on of the North Africa window of the EUTF whom I interviewed expressed the idea that ‘something’ had to be done to preserve life at sea in the Central Mediterranean, combined with the EU’s commitment to combat irregular migration. One manager lauded the EUTF as a successful instrument for the Central Mediterranean because of its capacity to ‘achieve results’. He brushed away the criticism of human rights and international organisations that migrants were being brought back to Libya: ‘at least we are present’, he scoffed, ‘we know that the Libyan Coast Guard is corrupt. But our strategy works! If you look at the numbers, there are way less deaths at sea now, not in absolute but in relative terms’. As the official acknowledged, this way of managing the EU’s external maritime border included risks and came with its load of controversies given the tensions. Another EU official, this time working for the External Action Service (EEAS), asserted to me that if migrants were rescued in the Libyan SRR, ‘they should go back to Libya’. She complained that some NGOs were being disruptive when they did not follow the LYCG’s instructions, adding ‘sorry, but within the Libyan SRR they need to be brought back to Libya. Each country has to manage its borders.’ NGOs, on the other hand, asserted that they were following international law by refusing to hand people over to the LYCG or step aside for the LYCG to conduct rescues.

So, what has enabled the operational advantage of the LYCG to prevail in time despite them acting within international waters which have been characterised as ‘unmanageable’<sup>61</sup> and where freedom of navigation is a fundamental norm limiting sovereign power over the seas?<sup>62</sup> To answer this question, it helps to more closely examine the issue of authority in global governance. In his recent book, Michael Zürn notes that there is something puzzling about international relations and global governance when we start to look more closely at the issue of authority and obedience.<sup>63</sup> According to him, subordination without force in global governance should be a central issue for

<sup>60</sup> See for example European Commission, *A European Agenda on Migration* (2015).

<sup>61</sup> Dickson, ‘Mobility Control in Ungovernable Spaces’, 8. <sup>62</sup> Ibid., 10.

<sup>63</sup> M. Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation* (Oxford University Press, 2018).

scholarly enquiry for four reasons.<sup>64</sup> He says, firstly, that states rarely give up their sovereignty or only in very specific situations, then, that global governance institutions came after states in a historical perspective (so states are not ‘born’ into the authority of IOs) and states have developed many mechanisms to question obligations stemming from the international realm, and, finally, IOs (including the European Union) do not induce obedience or compliance because of a domination through resources since they do not employ large amounts of people. Moving away from rationalist and constructivist conceptions of global authority, he develops the notion of reflexive authority,<sup>65</sup> to revisit the concept of authority under conditions of global governance. Reflexive authorities ‘depend on the epistemic constructions that identify the limits of subordinates and the realm of superiority of an authority’.<sup>66</sup> Because command and deference are not at the heart of this theory of authority, the social processes in which ‘superior knowledge’ or ‘an impartial perspective’<sup>67</sup> is established become of utmost importance. Zürn then speaks of the objectivisation and institutionalisation of authority under global governance, which are necessary for operational hierarchy to be imposed.

With the Libyan SRR both of those processes are at play: they are essential for understanding how such a criticised, conflictual, and contested way<sup>68</sup> of governing the EU’s external border can be maintained in time. The authority of the IMO plays an important role here. An authority relationship is objectivised when the ‘knowledge order that underlies the relationship becomes a dominant worldview or ideology that reaches beyond the immediately involved actors to external audiences’.<sup>69</sup> Although the notification made by Libya to the IMO was voluntary and sovereign, the IMO participates in the process of objectivising the institutions relating to the control and coordination

<sup>64</sup> Ibid., pp. 37–40.

<sup>65</sup> Reflexive, public authority is based on epistemic foundations. It leads to deference through ‘the recognition of the authority as worth observing’, Ibid., p. 45.

<sup>66</sup> Ibid., p. 46. <sup>67</sup> Ibid., p. 47.

<sup>68</sup> Human Rights organisations such as Human Rights Watch and Amnesty International have heavily criticised the EU’s delegated return of migrants to Libya over the past years, UN organisations UNHCR and IOM have also condemned the return of migrants and refugee to Libya.

<sup>69</sup> Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation*, p. 49.

of the area, including JRCC Tripoli. The coordinates of the zone are uploaded to the GISIS, a centralised database of shipping information containing everything from contact for authorities and authorised organisations relating to IMO questions, to relevant regulations and marine data. The EU and European coastal maritime states such as Italy and Malta then take part in the second part of the legitimisation of the LYCG, through institutionalising it; according to Zürn still, the institutionalisation of authority takes place when decisions and interpretations can be delegated or pooled.<sup>70</sup> This is exactly what is enabled by the establishment of the Libyan SRR: neighbouring European RCCs can delegate rescue and the interpretation of whether a case constitutes a distress case or whether a rescue needs to be coordinated by the LYCG. It is important to point out that although there is proximity between authority and legitimacy, they cannot simply be merged by defining authority as legitimate power. There is a *process* of legitimisation which participates in the hierarchisation of authority of the LYCG. Added to the fact they are backed up by coercive force, they can act as a policing force in international waters despite having no formal mandate to act as one.

The formalisation of the authority of the LYCG provided a basis for justification of measures I described in the rescue scenes earlier. For example, disobeying the orders of the so-described 'legitimate' coordination authority provided state authorities with the grounds to strip the *Aquarius* of its flag whilst it was still at sea. Similar other capillary effects are to be observed in the augmented capacity for states to argue against NGOs in cases of criminalisation. In June 2018, the NGO ship MV *Lifeline* entered the port of Valetta after having rescued 234 people in the Libyan SRR.<sup>71</sup> During the rescue operation, MRCC Rome had initially coordinated the rescue and allocated a SAR number to it but they had then informed the captain of the *Lifeline* that the LYCG had taken over the coordination. The captain, judging that Tripoli could not be considered a safe place of disembarkation for the survivors, had then sailed north, considering the port of Valetta as the next port of call. Malta had then not allowed the *Lifeline* to land. The captain

<sup>70</sup> Ibid.

<sup>71</sup> The description of the event is taken from Moreno-Lax, V., D. Ghezelbash, and N. Klein, 'Between Life, Security and Rights: Framing the Interdiction of "Boat Migrants" in the Central Mediterranean and Australia' (2019) 32 *Leiden Journal of International Law* 715–40 at 724–26.

had finally decided to enter the territorial water and port. Importantly, Malta accused the captain of ‘reportedly ignor[ing] instructions of the responsible authority, i.e. the Libyan Coast Guard’.<sup>72</sup> The captain was subsequently arrested, and the ship was impounded.

Operating in the Libyan SRR meant having to collaborate with the recognised authority associated with the zone. However, if this given authority insisted that rescued individuals, migrants, or refugees be taken back to Libya, then NGOs or any other vessel having conducted a rescue faced a situation where they were stuck between a rock and a hard place: either they disobeyed orders and had to face the likely retaliation of European states, refusing or delaying the disembarkation of survivors on European shores. Or they obeyed the orders, and in doing so were in violation of the *non-refoulement* principle in international law. These frames of reference are themselves related to the ‘institutionalised power embedded in scalar relations’:<sup>73</sup> geopolitical stakes are at play in a moment of tense negotiations over the lives of those who have been turned into political chess pieces. This, to the extent that it is more than a simple clash of legal references, but a clash of who is given the right to act and operate in a newly governed zone.

## Conclusive Remarks: The Power to Redraw Borders

In June 2020, over a hundred NGOs and individuals wrote to the IMO to request the revocation of the formal recognition of the Libyan SRR.<sup>74</sup> The signatories of the letter denounced the zone being used ‘opportunistically’ to create a ‘fictional account’ allowing states and the EU to abdicate their duties under international law. Evoking the

<sup>72</sup> Quoted in D. Ghezelbash, V. Moreno-Lax, N. Klein, and B. Opeskin, ‘Securitization of Search and Rescue at Sea: The Response to Boat Migration in the Mediterranean and Offshore Australia’ (2018) 67 *International and Comparative Law Quarterly* 315–51 at 317.

<sup>73</sup> A. Çağlar and N. Glick Schiller, *Migrants & City-Making: Dispossession, Displacement, and Urban Regeneration* (Duke University Press, 2018), p. 9.

<sup>74</sup> Statewatch, *Press Release: Hundreds of NGOs and Individuals Call for the Revocation of Libya’s Maritime Search and Rescue Zone* (29 June 2020). Available at: [www.statewatch.org/news/2020/june/press-release-hundreds-of-ngos-and-individuals-call-for-the-revocation-of-libya-s-maritime-search-and-rescue-zone/](https://www.statewatch.org/news/2020/june/press-release-hundreds-of-ngos-and-individuals-call-for-the-revocation-of-libya-s-maritime-search-and-rescue-zone/) (accessed 10 February 2022)

IMO's role as the 'guardian of the law of the sea', whose responsibility it was to uphold UNCLOS and the SOLAS and SAR conventions, they appealed to the IO's legitimising role in upholding the LYCG's authority.<sup>75</sup> The zone still exists today and pull-backs to Libya have increased every year since 2017,<sup>76</sup> despite the outcry.

An ethnographic and multi-scalar approach to the TLC over responsibility for rescue in the Central Mediterranean provides insights both into the manifestations of authority in the governance of the EU's external border, and into how this authority can be maintained in time. The IMO objectivises the LYCG's authority by continuing to recognise the Libyan SRR. The EU and its member states then participate in the institutionalisation of the LYCG by integrating JRCC Tripoli into the operational procedures that are adopted in case of a distress case being declared in the extensive section of international waters. The material translation of this institutionalisation is then experienced by NGOs having to negotiate or interact with the LYCG when they try to conduct rescues, but also by migrants who testify to being chased by the coast guard or intercepted repeatedly when they try to flee Libya by the sea. This institutionalisation justifies the technical and material support such as patrol boats and trainings offered by EU authorities to the LYCG since 2017.<sup>77</sup>

The externalisation of migration control, which has accompanied other processes of privatisation of migration control and securitisation since the end of the Cold War,<sup>78</sup> has rendered the departure and transit of migrants wanting to head for Europe increasingly difficult. Migration policies from states of the global North are dominated by the deterrence paradigm<sup>79</sup> in which policies and practices

<sup>75</sup> Ibid.

<sup>76</sup> FIDH, ECCHR, and Lawyers for Justice in Libya, *No Way Out: Migrants and Refugees Trapped in Libya Face Crimes against Humanity* (2021) p. 44.

<sup>77</sup> see Amnesty International, *Libya's Dark Web of Collusion: Abuses against Europe-Bound Refugees and Migrants*, pp. 45–47.

<sup>78</sup> T. Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control' (2018) 20 *European Journal of Migration and Law* 452–69.

<sup>79</sup> T. Gammeltoft-Hansen and N. Feith Tan, 'Beyond the Deterrence Paradigm in Global Refugee Policy' (2016) 39 *Suffolk Transnational Law Review* 637–50; N. Feith Tan and T. Gammeltoft-Hansen, 'A Topographical Approach to Accountability for Human Rights Violations in Migration Control' (2020) 21 *German Law Journal* 335–54; Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control';

of externalisation push the occurrences and manifestations of border enforcement and control, always further from the territorial borders of the states sponsoring these policies. In the Central Mediterranean, the imperative of securing the EU's external maritime border has been mixed with the duty posed by international regulations to preserve life at sea. The empowerment of the LYCG since 2017 has enabled a form of 'contactless control'<sup>80</sup> from the part of EU authorities, mixing these two imperatives of border control and 'rescue', whilst limiting their responsibility and accountability for the rights violations induced by these deterrence policies. In the Central Mediterranean, the policing competence of a specific actor – the LYCG – has been inflated under the discourse of increasing rescue capabilities. Simultaneously, overlapping protection regimes of international refugee and human rights law are disregarded or, as Moreno-Lax has claimed, 'deflate[d]'.<sup>81</sup>

The actions of IOs, such as the EU and the IMO redraw international borders both physically and immaterially. The emergence of the Libyan SRR, with the forms of authority associated with it, not only renders the maritime border more impassable for migrants fleeing across the Mediterranean Sea and attempting to reach Europe. It also trickles into the argumentation of states in their attempts to criminalise rescue NGOs. The methodological flexibility offered by more ethnographic approaches to global governance helps to highlight the processual dynamics involved in the formation of authority in spaces of jurisdictional overlaps. In the case of the governance of the EU's external border, I have shown how under the guise precisely of *increasing* the preservation of life at sea, the Libyan SRR has rather exacerbated a politics of irresponsibility for rescue and disembarkation in places of safety. TLCs are not just about legal fragmentation entailing dilemmas of interpretation for international lawyers longing for a long-lost single source of normative validity. They are dynamic

M. Casas-Cortes, S. Cobarrubias, and J. Pickles, "“Good Neighbours Make Good Fences”: Seahorse Operations, Border Externalization and Extra-territoriality" (2016) 23 *European Urban and Regional Studies* 231–51.

<sup>80</sup> V. Moreno-Lax and M. Giuffré, 'The Rise of Consensual Containment: From "Contactless Control" to "Contactless Responsibility" for Forced Migration Flows' in S. S. Juss (ed.), *Research Handbook on International Refugee Law*, (Edward Elgar Publishing, 2017), pp. 82–108.

<sup>81</sup> Moreno-Lax, 'Protection at Sea and the Denial of Asylum', p. 484.

interactions in which particular hierarchies of power and exclusion get sedimented in and through legal orders. Paying close attention to the different types of manifestations of authority within TLCs provides an analytical framework for examining how these hierarchies are made to persist in time within the multi-polar landscape of global governance.