

The trilateral cooperation between  
the African Union, the European  
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# The trilateral cooperation between the African Union, the European Union and the United Nations on migration and Libya: a successful example of collaboration?\*

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**Table of contents:** 1. Introduction. 2. Background of the crisis in Libya. 2.1. The “new Libya” and the development of the migration and humanitarian crises. 3. The EU operational response to the crisis in Libya. 3.1. The Operation EUBAM Libya. 3.2. The Operation EUNAVFOR MED or “Operation Sophia”. 4. The AU-EU-UN trilateral cooperation to cope with the Libyan situation. 5. The Trilateral Joint Taskforce on migration and Libya. 5.1. The Voluntary Humanitarian Returns run by the IOM. 5.2. The Emergency Transit Evacuation Mechanism managed by UNHCR. 6. Concluding remarks.

## 1. Introduction

The Mediterranean Sea has always been a context for human mobility and migration. For centuries thousands of persons have travelled across its waters and entered in contact with other populations for the most different reasons. Nowadays, it continues to be a bridge between the “South” and the “North”, with migratory flows towards Europe that have been intensifying during the last decades.

In parallel with the increase of the trans-Mediterranean mobility, the recent period has witnessed the proliferation of a widespread system of irregular migration to Europe, a prosperous “business” accompanied by a growing mortality, which, according to the International Organization for Migration (hereinafter: “IOM”), has made the Mediterranean crossing the world’s deadliest route for migrants.<sup>1</sup>

The increasing migratory pressure against European borders, in particular, has been intensifying from 2011 onwards, in the wake of significant international events as the so-called “Arab Spring” and the outbreak of the war in Syria, giving rise to the “refugee crisis” which reached its peak in 2015, when an estimated one million migrants irregularly entered the territory of the European Union (hereinafter: “EU”) across the

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\* Articolo sottoposto a referaggio.

<sup>1</sup> IOM, *Four decades of cross-Mediterranean undocumented migration to Europe: A review of the evidence*, Geneva, 2017. According to the report, between 2000 and 2017 (30 June), 33,761 migrants have died or gone missing in the Mediterranean during their journeys.

Mediterranean.<sup>2</sup> As a consequence, migration has gradually emerged as a common and long-lasting challenge in the EU, gaining prominence and becoming one of the main concerns for European policymakers and a top priority on the EU political agenda.<sup>3</sup>

This framework has propelled the EU and its most affected Member States to step up cooperation at the international level, especially engaging with the issue of migratory flows from Libya. Such country plays a crucial role in the overall geo-political scenario of the Southern Mediterranean, representing a context of pivotal importance in terms of migratory channels and flows towards Europe. The geographic location at the centre of the North African coast, indeed, makes Libya a major transit area and a pole of attraction for migrants wishing to reach the EU.

The situation of instability of the Libyan country, moreover, has created an ideal breeding ground for the migrant smuggling business, whose proliferation has been facilitated by an articulated mix of factors, including insecurity and territorial fragmentation, political divisions and absence of rule of law. In this complicated context, Libya, as one of the main gateways to the European territory, receives a considerable inflow of migrants, who are turned into a source of income for the human beings smuggling industry. At the same time, migrants remain trapped in Libyan detention centres where they are systematically subjected to widespread and severe violations of their human rights.

Against this background, this article explores the operational responses put in place by the EU, alone and in cooperation with other international actors, in order to cope with the humanitarian and migration crises generated by the situation in Libya. More specifically, following a brief reconstruction of the background of the Libyan crisis (paragraph 2), the focus is put on the EU's operational interventions in Libya (paragraph 3), with the analysis, in particular, of the operations EUBAM Libya (3.1.) and EUNAVFOR MED or "Operation Sophia" (3.2.). The multilateral response to the Libyan crisis put in place at the international level

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<sup>2</sup> For detailed data on migratory flows in the EU during 2015, see Frontex, *Annual Risk Analysis for 2016*, 2499/2016, Warsaw, 2016. For an analysis of the reasons and the features of the European migration crisis, among others, see J.-Y. CARLIER – F. CREPEAU, *De la "crise" migratoire Européenne au Pacte Mondial sur les Migrations: Exemple d'un mouvement sans droit?*, in *Annuaire Français de Droit International*, 2017/1, p. 461 ff; I. ATAK – F. CREPEAU, *Managing migration at the external borders of the European Union: Meeting the human rights challenges*, in *Journal Européen des Droits de l'Homme - European Journal of Human Rights*, 2014/5, p. 601 ff; M. BOSSUYT, *The European Union confronted with an asylum crisis in the Mediterranean: Reflections on refugees and human rights issues*, in *Journal Européen des Droits de l'Homme - European Journal of Human Rights*, 2015/5, p. 598 ff.

<sup>3</sup> According to the data of the Eurobarometer of December 2018, migration represents a major concern for European citizens: 40% of them consider migration as the main challenge to be addressed by the EU, followed by other issues such as terrorism (20%) and the economic situation (18%). See European Commission, *Autumn 2018 Standard Eurobarometer: Positive image of the EU prevails ahead of the European elections*, Press Release, IP/18/6896.

is then addressed (paragraph 4), focusing on the collaboration between the EU, the United Nations (hereinafter: “UN”) and the African Union (hereinafter: “AU”), with particular regard to the Joint Trilateral Task force on migration and Libya established at the end of 2017 (paragraph 5). Finally, after analysing the concrete initiatives put in place by the AU-EU-UN Task Force to protect and evacuate migrants from Libyan detention centres (paragraphs 5.1. and 5.2.), the article concludes by proposing an overall assessment of the trilateral cooperation between these international organisations.

## 2. Background of the crisis in Libya

In order to better understand and analyse the various reactions to the Libyan crisis put in place by the EU and other international partners, it is worthy to briefly trace the country’s complex historical and political context.

A former Italian colony, Libya gained independence in 1951, being governed in the form of monarchy. The authority of the king did not last much, as in 1969 it was overthrown by a *coup d’état* organised by military formations, whose leader, Muammar Gaddafi, took control of the country. As “permanent leader”, he pursued a strategy of centralisation of power and restrictive control over all possible forms of opposition, in this way ensuring his stable command over political, military and economic aspects of the life of the country. The national economy, in particular, was taken under strict control, Libya being one of the major oil-producing African countries. State resources, including minerals, oil infrastructure and banks, were subjected to nationalisation.<sup>4</sup>

While during the years, especially from the 1970s to the 1990s, Libya’s attractiveness increased in terms of possibility of employment and business, gathering unemployed youth from around the region to meet the domestic labour needs, on the international scene, by contrast, the African country became gradually marginalised, also and especially in the eyes of the EU, in light of Gaddafi’s alleged support to international terrorism. The situation led to the imposition of UN-sponsored sanctions, voted by the UN Security Council (hereinafter “UNSC”) in its Resolution 748/92, and including, among other measures, an arms embargo and restrictions related to the oil production.<sup>5</sup>

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<sup>4</sup> For a more detailed analysis of the Libyan historical context, including the evolution of its economic and political structure, among others, see M. TOALDO, *Migrations through and from Libya: A Mediterranean challenge*, in *LAI Working Paper*, 2015/15; A. VARVELLI, *Europe and the Libyan crisis: A failed State in the backyard?*, in *ISPI Analysis*, 2014/237; M. BALDWIN-EDWARDS – D. LUTTERBECK, *Coping with the Libyan migration crisis*, in *Journal of Ethnic and Migration Studies*, 2018.

<sup>5</sup> UNSC, Resolution 748/92, 31 March 1992, UN doc. S/RES/748 (1992).

Following a period of substantial isolation during the 1990s, Libya re-gained consideration by the international community; the sanctions regime was lifted in 2003 and dialogue and cooperation initiatives were resumed with European countries. In this framework Italy was especially active, engaging in the collaboration in a variety of areas, including fight against terrorism, organised crime and illegal immigration.<sup>6</sup> This Italian-Libyan partnership was later reinforced in 2008 through the conclusion of a Treaty of Friendship and Cooperation, signed by Gaddafi and the Prime Minister Berlusconi and aimed in particular at curbing irregular migration flows towards Italy and Europe.<sup>7</sup>

In parallel, dialogues and negotiations with Libya were also conducted by the EU, which considered the African country as a relatively reliable partner and quite an attractive market for European business activities. In 2009, indeed, the European Commission and the European External Actions Service (hereinafter: “EEAS”) issued the Libya Strategy Paper and National Indicative Programme 2011-2013, highlighting the EU strategy and identifying priority areas of cooperation, such as “fighting illegal migration in the Mediterranean or terrorism, developing Libya’s energy resources in hydrocarbons and renewable energies, creating the bases for successful investment in new sectors, improving fundamental freedoms and human rights”.<sup>8</sup>

Such cooperation initiatives were interrupted in 2011, in the wake of the turmoil and instability provoked by the Arab Spring and the popular insurrections spread in North Africa. In Libya protests against Gaddafi’s authoritarian regime led to a severe repression and an escalation of violence, giving rise to widespread human rights violations. Reactions soon came from the international community: on 26 February 2011, the UNSC, unanimously adopting the Resolution 1979/2011, demanded the end of hostilities by invoking the principle of the “responsibility to protect”, imposed economic sanctions and referred the matter to the International Criminal Court for investigation.<sup>9</sup> The EU, for its part, aligning itself with the UN, launched its sanctions regime by adopting a Council Decision implementing the UNSC Resolution and further widening its scope.<sup>10</sup>

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<sup>6</sup> *Accordo per la collaborazione nella lotta al terrorismo, alla criminalità organizzata, al traffico illegale di stupefacenti e sostanze psicotrope e alla immigrazione clandestina*, signed in Rome on 13 December 2000. The agreement was later accompanied by the adoption of two protocols signed in Tripoli on 29 December 2007. On this topic, see M. GIUFFRÈ, *State responsibility beyond borders: What legal basis for Italy’s push-backs to Libya?*, in *International Journal of Refugee Law*, 2012/24, p. 700; F. PACELLA, *Coperazione Italia-Libia: Profili di responsabilità per crimini di diritto internazionale*, in *Diritto Penale Contemporaneo*, 4/2018, p. 7 ff.

<sup>7</sup> The Treaty was signed in Bengasi on 30 August 2008 and ratified in Italy with the Law n. 7/2009.

<sup>8</sup> EEAS, *Libya Strategy Paper and National Indicative Programme 2011-2013*, Brussels, 2011, p. 6.

<sup>9</sup> UNSC, Resolution 1970/2011, 26 February 2011, UN doc. S/RES/1970(2011).

<sup>10</sup> Council Decision of 28 February 2011 implementing the UN Security Council Resolution on Libya of 26 February (UNSCR 1970/2011), 7081/11.

Later on, even more severe measures were put in place, when, by passing the Resolution 1973/2011, the UNSC, considering the situation in Libya as “a threat to international peace and security”, authorised all necessary steps to protect civilians and to immediately establish a ceasefire and an end to violence against them.<sup>11</sup> The Resolution further strengthened the sanctions regime, the assets freeze and the embargoes, also imposing a no-fly zone over the country. NATO military intervention soon followed, eventually leading to the fall of Gaddafi in October 2011.

### **2.1. The “new Libya” and the development of the migration and humanitarian crises**

The events following Gaddafi’s removal from power soon proved that Libya’s “new era” would have been characterised by great instability, disorder and huge difficulties in the transition and restoration of democracy and peace. Following the power vacuum, elections were held in July 2012, with Libyan people voting for the General National Congress, an institutional body enjoying full legislative authority and the power to appoint a new interim government.<sup>12</sup>

Despite the elections and the launch of the institution-building process, Libya’s situation of instability remained critical, with a sharp deterioration of security conditions. The 2011 terrorist attack to the US consulate in Benghazi, in which the Ambassador to Libya and other members of the US diplomatic services lost their lives, made clear that the road to pacification and restoration of order was paved with enormous difficulties and obstacles.

The following years, indeed, witnessed the emergence of a developing phenomenon in Libya: the presence and proliferation of terrorist groups, armed militias and rival tribes in conflict with one another to take control of various areas and portions of the territory.<sup>13</sup> 2013 and 2014, in particular, were marked by the severe deterioration in the security environment, with an escalation of violence and multiple episodes of assassinations, kidnappings, bombings and fights over energy supplies and resources.

In this highly fragmented scenario, characterised by widespread instability, rivalries and violence, Libya’s human rights situation collapsed. Migrants, in particular, have been among the most affected victims, in an environment of organised crime and state of impunity, in which smuggling and trafficking networks took

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<sup>11</sup> UNSC, Resolution 1973/2011, 17 March 2011, UN doc. S/RES/1973(2011), p. 2.

<sup>12</sup> For an analysis of the electoral outcomes, see A. VARVELLI, *Europe and the Libyan crisis*, cit., pp. 2-3.

<sup>13</sup> For an analysis of the phenomenon of armed groups and militias in Libya, see F. EL KAMOUNI-JANSSEN – F. DE BRUIJNE, *Entering the lion’s den: local militias and governance in Libya*, Netherlands Institute of International Relations, Clingendael Report, October 2017.

advantage of the situation of disorder and uncertainty, gaining control of migratory routes through the country and towards Europe. Libya, indeed, is both a destination and transit country for migrants, and has become one of the most important human trafficking routes linking central and northern Africa with Europe. In such context, the UNHCR certified that “the situation of migrants in Libya is a human rights crisis”.<sup>14</sup> While several international actors have stigmatized the widespread conditions of precariousness and extreme vulnerability of aliens that are on the Libyan territory in transit to Europe, the critical situation of migrants and the systematic violations of their human rights have been acknowledged also by the jurisprudence, involving both national and international courts.

At the international level, in particular, the situation in Libya has been referred to the International Criminal Court (hereinafter: “ICC”) by the UNSC with the above-mentioned Resolution 1970/2011 and is currently under investigations for war crimes and crimes against the humanity. The Prosecutor of the ICC, furthermore, has reiterated on many occasions the existence in Libya of a situation of systematic violation of migrants’ human rights, with inhuman and unlawful practices that include torture, slavery and forced labour, rape and sexual violence, human trafficking and arbitrary and indefinite detention.<sup>15</sup> In 2019 the Office of the Prosecutor has also received a Communication regarding the alleged commission of crimes against humanity by the EU and its Member States in the framework of the migration policy conducted in the Mediterranean and in Libya between 2014 and 2019.<sup>16</sup>

The risks faced by migrants in Libya had been acknowledged also by the European Court of Human Rights (hereinafter: “ECtHR”), in particular in a number of cases against Italy. First addressed in 2010 in the case *Hussun*,<sup>17</sup> the issue of migrants’ human rights in Libya was later analysed by the Grand Chamber in its 2012 landmark judgment *Hirsi Jamaa*.<sup>18</sup> The Court of Strasbourg, in dealing with migration control practices carried out under the Italian-Libyan bilateral agreements to combat irregular migration, unanimously declared Italy’s

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<sup>14</sup> UNHCR, “*Detained and dehumanised*”. *Report on human rights abuses against migrants in Libya*, UNHCR, 13 December 2016, p. 1.

<sup>15</sup> ICC Prosecutor Fatou Bensouda, *Statement to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011)*, 8 May 2019; ICC, Office of the Prosecutor, *Seventeenth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UNSCR 1970 (2011)*, 8 May 2019, notably, para. 5 ff.

<sup>16</sup> Communication to the Office of the Prosecutor of the International Criminal Court pursuant to the Article 15 of the Rome Statute, *EU migration policies in the Central Mediterranean and Libya (2014-2019)*, available online.

<sup>17</sup> ECtHR, Judgment of 19 January 2010, *Hussun and Others v. Italy*, Applications nos. 10171/05, 10601/05, 11593/05 and 17165/05.

<sup>18</sup> ECtHR (Grand Chamber), Judgment of 23 February 2012, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09.

violation of the European Convention on Human Rights (hereinafter: “ECHR”) for arbitrarily returning migrants to Libya and, in this way, exposing them to the risk of torture and ill-treatment.

More recently, in 2018, another application to the ECtHR was introduced against Italy with regard to the so-called “pull-back” practices carried out by the Libyan Coast Guard, aimed at preventing migrants from heading to Europe and taking them back to Libya.<sup>19</sup> The case, in particular, addresses potential human rights violations occurred in border management operations carried out under the Memorandum of Understanding concluded in early 2017 between Italy and Libya.<sup>20</sup> The applicants allege several human rights violations with regard to the aggressive conduct of the Libyan Coast Guard, funded, trained and equipped by Italy under the 2017 agreement, invoking, in particular, a breach of various provisions of the ECHR, including Article 2 (right to life), 3 (prohibition of torture) and 4 (prohibition of slavery and forced labour).

The Court of Justice of the EU (hereinafter: “CJEU”), for its part, has indirectly confirmed the situation of systematic infringements of human rights in Libya with some decisions adopted in the framework of the EU’s Libya sanctions regime.<sup>21</sup>

Judicial assertions of the serious human rights violations suffered by migrants in Libya have been made also at national level and, notably, in Italy. In particular, in 2017, for the first time, the Assize Court of Milan acknowledged the inhuman and degrading conditions of the Libyan migration detention centres, sentencing a Somali national to life imprisonment for the crimes committed as member of the criminal network which managed the detention centres of Bani Walid and Sabratha, located near the Libyan coasts.<sup>22</sup> In 2018, the Assize Court of Agrigento, further confirmed the atrocities perpetrated in the Libyan detention centres by condemning a Gambian national to 10 years of imprisonment for holding migrants in slavery in the detention centre of Sabratha.<sup>23</sup>

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<sup>19</sup> *S.S. and Others v. Italy*, Application no. 21660/18, introduced on 3 May 2018, communicated to the Italian Government on 26 June 2019. At the time of writing, the application is pending before the first section of the ECtHR.

<sup>20</sup> The Memorandum of Understanding was signed in Rome on 2 February 2017 between the Italian Government and the UN-backed Libyan Government of National Accord headed by al-Sarraj. For an analysis of the content of the Memorandum and its implications in terms of migration control, see A. PALM, *The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?*, in *EU Migration Law Blog*, 2 October 2017.

<sup>21</sup> CJEU, Judgment of 17 January 2019, *SH*, case C-168/17.

<sup>22</sup> Assize Court of Milan, Judgment of 10 October 2017. For an analysis of the judgment, see G. BATTARINO, *I campi di raccolta libici: un’istituzione concentratoria*, in *Questione Giustizia*, 2/2018; S. BERNARDI, *Una condanna della Corte d’Assise di Milano svela gli orrori dei “centri di raccolta e transito” dei migranti in Libia*, in *Diritto Penale Contemporaneo*, 4/2018, p. 207 ff.

<sup>23</sup> Assize Court of Agrigento, Judgment of 22 June 2019, n.1/2018.

More recently, with a decision delivered in February 2019, the Court of Rome has confirmed the seriousness of the human rights situation of migrants in Libya, and has ordered the Italian Minister of Foreign Affairs to issue a visa on humanitarian grounds pursuant to the EU Visa Code<sup>24</sup> in favour of a Nigerian unaccompanied minor in Libya who was in urgent need of medical treatment, in this way allowing him to legally and safely travel to Italy, have access to a proper health care and join the mother who was residing there.<sup>25</sup>

### 3. The EU operational response to the crisis in Libya

The turmoil provoked by the “Arab Spring” and the following disorders triggered in the Southern Mediterranean neighbouring countries pushed European policymakers to discuss strategies and define measures to be taken. The need for action was first expressed in the 2011 Joint Communication “Partnership for democracy and shared prosperity with the Southern Mediterranean”,<sup>26</sup> envisaging the adoption of an incentive-based approach (so-called “more for more”) in order to foster cooperation with specific countries and accompany their democratic transition. As for Libya, in particular, the Communication expressed the intention to discuss “a shared commitment to the values of democracy, the rule of law and respect of human rights”.<sup>27</sup>

Further diplomatic actions put in place in 2011 included the opening of a EU delegation in Tripoli and the appointment of Bernardino León as the EU’s Special Representative for the Southern Mediterranean, with the aim of “strengthening democracy and institution building, the rule of law, good governance, respect for Human Rights and fundamental freedoms, peace and regional cooperation”.<sup>28</sup>

Building on such principles and objectives, the EU, over the years, has adopted a multitude of measures, strategies and policies towards Libya, in order to address various issues, ranging, for example, from

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<sup>24</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Article 25, para. 1, letter a).

<sup>25</sup> Ordinary Tribunal of Rome, Order of 21 February 2019, *X v. Ministry of Foreign Affairs and Ministry of Health*. For an analysis of the decision, see F.L. GATTA, *A “way out” of the human rights situation in Libya: the humanitarian visa as a tool to guarantee the rights to health and to family unity*, in *Cahiers de l’EDEM*, August 2019.

<sup>26</sup> European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2011)200 final, 8 March 2011.

<sup>27</sup> *Ibidem*, p. 8.

<sup>28</sup> Council Decision 2011/424/CFSP, of 18 July 2011, appointing a European Union Special Representative for the Southern Mediterranean region, Article 2, letter b). The mandate of the Special Representative was later extended by the Council Decision 2013/307/CFSP of 24 June 2013.

humanitarian assistance to fight against irregular migration, from border controls to support in favour of local communities.

European actions and interventions have taken different forms, addressing both immediate needs and longer-term projects and goals. A variety of instruments and strategies have been adopted for these purposes, including diplomatic relations, financial tools, operational measures. Several actors have been involved, including EU major institutions and EU specialised agencies, acting in different fields, such as country stabilisation and reconciliation, respect for human rights, elections and democracy, health and education, humanitarian assistance and migration governance.

The EU response to the crisis in Libya, ultimately, is characterised by a very complex mix of features and aspects. The following paragraphs specifically focus on the operational response put in place by the EU, with the missions “EUBAM Libya” and “EUNAVFOR MED”.

### **3.1. The Operation EUBAM Libya**

The first EUs’ concrete initiative to address the crisis in Libya is the civilian Common Security and Defence Policy mission “EUBAM Libya” (EU Integrated Border Management Assistance Mission) launched in May 2013.<sup>29</sup> The mission, initially endowed with a budget of €30 million and a two-year mandate, was meant to support Libyan authorities to develop and strengthen a system of integrated border management, with the aim to guarantee an enhanced level of security at the country’s borders.<sup>30</sup> To this end, EUBAM Libya promoted support activities in the fields of training of police and border guards, customs practices, risk analysis and border surveillance, including counter-terrorism, fight against irregular migration and smuggling of migrants and trafficking of human beings.

It has been argued that EUBAM Libya has produced a modest impact in terms of effective contribution to the country’s security and capacity to manage borders. The objectives set by the EU, in particular, have appeared to be too ambitious, unrealistic and non-context sensitive, in light of the great complexity of the post-Gaddafi Libyan scenario, characterised by democratic and legal vacuum and intense disputes and conflicts among different forces and factions.<sup>31</sup>

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<sup>29</sup> Council Decision 2013/233/CFSP, of 22 May 2013, on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya).

<sup>30</sup> *Ibidem*, Art. 2.

<sup>31</sup> K. IVASHCHENKO-STADNIK – R. PETROV – L. RANIERI – P. RIEKER – A. RUSSO – F. STRAZZARI, *How the EU is facing crises in its neighbourhood: evidence from Libya and Ukraine*, in EUNPACK Paper, 31 March 2017, pp. 16 – 19; C. LOSCHI – L. RANIERI – F. STRAZZARI, *The implementation of EU Crisis Response in Libya: bridging theory*

In effect, the deterioration of the security conditions in the country considerably undermined the mission's capacity to fulfil its mandate. The EU soon was forced to move EUBAM Libya to Tunis and, given the inability to operate, to reduce its personnel and to substantially put it on hold until 2015. Despite the affirmation of the strong political interest and commitment to assisting Libya, expressed in the October 2014 Council Conclusions on Libya,<sup>32</sup> it had become clear that the changed circumstances in the country, the disorder and the lack of a central authority directly challenged the assumptions upon which the mission EUBAM Libya had been conceived and designed.

As a consequence, a process of re-organisation of the mission was initiated, based on periodic assessments and Interim Strategic Reviews, the first one of which was released in 2015, in view of the officially planned expiry of the EUBAM's mandate. The mission was *de facto* put on hold and its staff further reduced to the minimum required to keep it formally open, the mandate was renewed for one additional year, while waiting for more favourable circumstances allowing the re-launch of its activities.

In 2016, following the establishment of the new Libyan Government of National Accord, EUBAM's mandate was extended for one year, until August 2017, and provided with additional resources amounting to €17 million.<sup>33</sup> The mission's mandate and scope was reviewed and reassessed, with a view to focus more on migration. As affirmed by the Council, indeed, "the EU cannot accept the continuing tragic loss of life at sea of migrants departing from Libya. The irregular movement of people across Libya and through its borders has a dramatic effect on the lives of too many people, and destabilises countries on both shores of the Mediterranean. The challenges posed must be addressed in a comprehensive manner".<sup>34</sup>

The necessity to prioritise the migration issue linked to Libya was later reiterated by the EU institutions, including, the Commission,<sup>35</sup> and the European Council, which, in the Malta Declaration, adopted in early 2017 during the Maltese Presidency of the Council of the EU, emphasised that "efforts to stabilise Libya are

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*and practice*, in EUNPACK Working Paper, January 2018, pp. 9-10; M. BALDWIN-EDWARDS – D. LUTTERBECK, *Coping with the Libyan migration crisis*, cit., p. 9.

<sup>32</sup> Council of the European Union, Council conclusions on Libya. Foreign Affairs Council meeting, 20 October 2014, para. 10.

<sup>33</sup> Council Decision 2016/1339/CFSP, of 4 August 2016, amending and extending Decision (CFSP) 2013/233 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya).

<sup>34</sup> Council of the European Union, Council conclusions on Libya. Foreign Affairs Council meeting, 16 March 2015, para 13.

<sup>35</sup> European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Migration on the Central Mediterranean route. Managing flows, saving lives*, Joint Communication to the European Parliament, the European Council and the Council, JOIN(2017)4 final, 25 January 2017.

now more important than ever”.<sup>36</sup> The Malta Declaration also highlighted the crucial importance of acquiring control over the land and sea borders in order to better combat irregular migratory flows and smuggling activities.

Building on such premise, the Interim Strategic Review of EUBAM released in May 2017 stressed the need to develop a broader border management framework, to this end fostering the cooperation with EU agencies, as Frontex and Europol. The need for increased resources and capacities was also highlighted.<sup>37</sup>

At the end of 2017 a light presence on the ground was re-established in Tripoli and the mission’s mandate was further extended until 31 December 2018.<sup>38</sup> Discussions and proposals have been on the table for the extension of EUBAM’s mandate, going beyond just border management and including guidance and support to Libyan authorities on internal policing, rule of law and justice. The mission’s mandate has been revised and extended again, currently running until 30 June 2020, with a budget of €61 million.<sup>39</sup>

In spite of the reorganisation of its mandate, EUBAM remains confronted with several significant challenges. Libya’s situation of persistent instability, indeed, has had a decisive role in undermining the mission’s capacity to deliver its mandate. EUBAM Libya, in particular, has suffered from the following problems.

First, the persisting fragmentation in terms of authority and sovereignty, coupled with the lack of an organic and integrated system of governance, have forced EUBAM Libya to deal exclusively with the Government of National Accord, the only internationally recognised authority. In this way, however, a number of other relevant actors have been excluded from dialogue, although having a role in terms of territorial control, influence and concrete management of borders and security.<sup>40</sup>

Second, the existence of a considerable gap between the EU and the Libyan counterparts has been highlighted in terms of organisational and operational capacities. Libyan actors, in particular, lack a consolidated and well-established institutional culture, with the consequence that the reception and implementation of European guidelines and standards have often proven to be problematic.<sup>41</sup> On the other hand, directions coming from Brussels have been not always characterised by the proper degree of flexibility

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<sup>36</sup> European Council, Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, Press Release 43/17, 3 February 2017, para 5.

<sup>37</sup> EEAS, *Strategic Review of EUBAM Libya, EUNAVFOR MED Op Sophia & EU Liaison and Planning Cell*, EEAS(2017) 530, 15 May 2017.

<sup>38</sup> Council Decision (CFSP) 2017/1342, of 17 July 2017, amending and extending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya).

<sup>39</sup> Council of the EU, *EUBAM Libya becomes a fully-fledged civilian CSDP mission*, Press Release, 17 December 2018.

<sup>40</sup> C. LOSCHI – L. RANIERI – F. STRAZZARI, *The implementation of EU Crisis Response in Libya*, cit., pp. 10-11.

<sup>41</sup> *Ibidem*.

and adaptation capacity, with some objectives and strategies that have appeared unrealistic since the very beginning.<sup>42</sup>

Third, in addition to the authority vacuum, Libya does not have a proper and comprehensive legal framework, especially in terms of compliance with international standards and principles. When it comes to human rights protection, in particular, Libya provides a very limited recognition of rights and guarantees of asylum seekers and refugees.<sup>43</sup> It is not party to the 1951 Convention relating to the status of refugees, nor it offers specific guarantees in terms of respect of the principle of *non-refoulement*, as the practice of the Libyan Coast Guard clearly demonstrates.<sup>44</sup>

Finally, problems of coherence and coordination with other actors operating in Libya have been underlined. Other providers of assistance, indeed, have acted in the fields covered by the mandate of EUBAM Libya. Italy, in particular, has launched cooperation initiatives in the area of migration governance and border control, based on the Memorandum of Understanding signed with Libya in 2017. While the EU institutions, in their documents, seem to have officially endorsed Italy's action and praised its efforts,<sup>45</sup> at the same time, it has been observed that the autonomous intervention of a single Member State may give rise to criticalities in terms of coordination and coherence with EU-led initiatives. Problems of possible duplication and overlapping of competences may impact on the overall effectiveness of the operations and on their capacity to deliver the objective of strengthening Libya's security.

### **3.2. The Operation EUNAVFOR MED or “Operation Sophia”**

EU legal framework to tackle migrant smuggling essentially dates back to 2002, when, in order to crack down on migrant smuggling activities, the so-called “Facilitators Package” was adopted. This is composed of the so-called “Facilitation Directive” (2002/90/EC) establishing a common definition of the offense of facilitation of unauthorised entry, transit and residence,<sup>46</sup> and an accompanying Framework Decision

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<sup>42</sup> Especially in terms of improvement of justice, rule of law and democracy.

<sup>43</sup> On this topic, see, in particular, Amnesty International, *Libya's dark web of collusion. Abuses against Europe-bound refugees and migrants*, December 2017.

<sup>44</sup> For a detailed analysis of the Libya's relevant legal framework, both at domestic and international levels, see UNHCR, “*Detained and dehumanised*”. *Report on human rights abuses against migrants in Libya*, cit., pp. 8-10.

<sup>45</sup> European Council, Malta Declaration, cit., para. 6, letter i); EEAS, *Strategic Review of EUBAM Libya*, EEAS(2017) 530, cit., para. 163.

<sup>46</sup> Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. For an analysis of the so-called Facilitators Package and the overall effectiveness of the EU legal regime concerning migrant smuggling, see S. CARRERA, E. GUILD, A. ALIVERTI, J. ALLSOPP, M.G. MANIERI, M. LEVOY, *Fit for purpose? The Facilitator Directive and the criminalisation of humanitarian assistance to irregular migrants*, Study for

(2002/946/JHA) on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.<sup>47</sup>

It is however in the aftermath of the major shipwreck occurred off the coasts of the island of Lampedusa on 19 April 2015 that the EU took decisive action with the view to prevent further loss of lives at sea, fight smugglers and combat illegal migration flows in the Central Mediterranean area. Few days after the tragedy, in the extraordinary meeting held on 23 April 2015, the Council of the EU, noting that “instability in Libya creates an ideal environment for the criminal activities of traffickers”, agreed to take action in order “to strengthen our presence at sea, to fight the traffickers, to prevent illegal migration flows and to reinforce internal solidarity and responsibility”.<sup>48</sup>

The European Commission, for its part, had identified the fight against smuggling as a priority in its 2015 European Agenda on Migration and, in May 2015, released its Communication on a “EU Action Plan against migrant smuggling (2015 – 2020)”, where it pointed out the need for a stronger cooperation at EU level, as well as with third countries, so as to counter and prevent smuggling activities, while ensuring at the same time the protection of the human rights of migrants.<sup>49</sup>

Accordingly, in this context, the creation of a new EU military operation in the Southern Central Mediterranean – “EUNAVFOR MED” – was agreed in May 2015 by the Council,<sup>50</sup> and later launched, in the record time of two months, with a subsequent decision adopted in June.<sup>51</sup> The rapidity in the adoption of such measure in and of itself reveals the intention of the EU to show an urgent and tangible reaction to

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the European Parliament, Policy Department for citizens’ rights and constitutional affairs, LIBE Committee, European Parliament, 2016. On the phenomenon of migrant smuggling and human trafficking into Europe, see A. TRIANDAFYLLIDOU, T. MAROUKIS, *Migrant smuggling. Irregular migration from Asia and Africa to Europe*, 2012, Palgrave Macmillan; L. SHELLEY, *Human smuggling and trafficking into Europe, a comparative perspective*, Migration Policy Institute, 2014; J. SALT, J. HOGARTH, *Migrant trafficking and human smuggling in Europe: a review of the evidence*, Geneva, 2000; A. KALAITZIDIS, *Human smuggling and trafficking in the Balkans: is it fortress Europe?*, in *Journal of the Institute of Justice and International Studies*, 5/2005, pp. 1-10; M. LEE, *Human trafficking*, Portland, 2007, notably pp. 92-115.

<sup>47</sup> Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA).

<sup>48</sup> Council of the European Union, Special meeting of the European Council – Statement. Foreign Affairs and Home Affairs Council meeting, 23 April 2015, para. 2.

<sup>49</sup> European Commission, EU Action Plan against migrant smuggling (2015 – 2020), COM(2015)285 final, of 27 May 2015, para II.

<sup>50</sup> Council Decision (CFSP) 2015/778, of 18 May 2015, on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED).

<sup>51</sup> Council Decision (CFSP) 2015/972, of 22 June 2015, launching the European Union military operation in the southern Central Mediterranean (EUNAVFOR MED).

the migrant smuggling business and to deal with the Libyan situation, essentially and primarily understood in terms of migrant crisis.<sup>52</sup>

EUNAVFOR MED, re-named “Operation Sophia” after the name given to a baby born aboard one of the mission’s ships operating off the coasts of Libya, was initially endowed with a 12-month mandate and a budget of almost €12 million, with the headquarters based in Rome. According to the establishing Council Decision, the mission is defined as “a military crisis management operation contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean” (Article 1). Relevant international instruments are explicitly recalled, designing the legal framework in accordance to which the operation has to be carried out; among these, in particular, the Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.<sup>53</sup>

Operation Sophia was originally structured in three phases: i) intelligence-gathering aimed at understanding the business model of migrant trafficking; ii) boarding, searching, seizing and diverting smugglers’ and traffickers’ vessels on the high seas and coastal waters; iii) disposal of vessels and other assets used for smuggling (Article 2).

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<sup>52</sup> For a detailed analysis of the mission EUNAVFOR MED, see M. BALDWIN-EDWARDS – D. LUTTERBECK, *Coping with the Libyan migration crisis*, cit., pp. 9-11; S. BLOCKMANS, *New thrust for the CSDP from the refugee and migrant crisis*, in *CEPS Special Report*, 2016/142, pp. 4-8; K. IVASHCHENKO-STADNIK – R. PETROV – L. RANIERI – P. RIEKER – A. RUSSO – F. STRAZZARI, *How the EU is facing crises in its neighbourhood*, cit., pp. 27-32; P. STRAUCH, *When stopping the smuggler means repelling the refugee: international human rights law and the European Union's Operation to combat smuggling in Libya's territorial sea*, in *Yale Law Journal*, 2017, Vol. 126, Issue 8.

<sup>53</sup> UN Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25 of 8 January 2001 and entered into force on 25 December 2003; the Protocol against the Smuggling of Migrants by Land, Sea and Air, was adopted by General Assembly with the same resolution and entered into force on 28 January 2004 (A/RES/55/25). On the issues of smuggling of migrants and trafficking in persons, among others, see B. NASCIMBENE, A. DI PASCALE, *Riflessioni sul contrasto al traffico di persone nel diritto internazionale, comunitario e nazionale*, in G. PALMISANO (a cura di), *Il contrasto al traffico di migranti: nel diritto internazionale, comunitario e interno*, Milano, 2008, pp. 27 ff; A. ANNONI, *Gli obblighi internazionali in materia di tratta degli esseri umani*, in S. FORLATI (a cura di), *La lotta alla tratta di esseri umani: fra dimensione internazionale e ordinamento interno*, Napoli, 2013, pp. 1 ff; G. MICHELINI, *I protocolli delle Nazioni Unite contro la tratta di persone e contro il traffico di migranti: breve guida ragionata*, in *Diritto immigrazione e cittadinanza*, 4/2002; P. MONZINI, N. ABDEL AZIZ, F. PASTORE, *The changing dynamics of cross-border human smuggling and trafficking in the Mediterranean*, New-Med Research Network, Istituto Affari Internazionali, October 2015; M. SHAW, F. MANGAN, *Illicit trafficking and Libya's transition: profits and losses*, United States Institute of Peace, 2014.

The operational model of EUNAVFOR MED was largely inspired by a previous EU's Naval Force mission, "Operation Atalanta", launched at the end of 2008 off the Horn of Africa and in the Western Indian Ocean.<sup>54</sup> This operation was designed to acquire data and know-how in maritime security, especially focusing on piracy and armed robbery off the coast of Somalia, deterring and disrupting illegal conducts not only on the high seas but also ashore. This operational approach served to plan EUNAVFOR MED, basing it on the idea of a holistic approach to migration-related issues.<sup>55</sup>

So conceived, Operation Sophia was launched in June 2015 with assets made available by 14 Member States, including vessels, helicopters, drones and aircrafts, and completed its first phase in early October of the same year.<sup>56</sup> While this phase was limited to surveillance in international waters and airspace, the other phases had to be carried out into Libyan waters and territory, therefore needing an approval by either the Libyan State or the UNSC. Under Resolution 2240/2015 the Operation was granted, under certain circumstances, the authorisation for interception, inspection, seizure and disposal of vessels off the coast of Libya, for a period of one year.<sup>57</sup>

Phase 2 was initiated in October 2015 and in June 2016 the mandate of Operation Sophia was extended for one more year, until June 2017, with the addition of two new tasks: contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya on the one hand, and training the Libyan Coast Guard and navy to combat trafficking on the other.<sup>58</sup> A further extension of the operation's mandate was agreed in July 2017,<sup>59</sup> prolonging its activity until December 2018 and supplementing it with the additional

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<sup>54</sup> Council Joint Action 2008/851/CFSP, of 10 November 2008, on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast.

<sup>55</sup> The connection between the two operations also lies in the fact that the operational command of Operation Sophia was entrusted to the former force commander of the Operation Atalanta.

<sup>56</sup> For detailed information on resources deployed and made available by Member States in the framework of the Operation Sophia, see EEAS, *EUNAVFOR MED Op Sophia – Six Monthly Report 22 June – 31 December 2015*, (2016)126, 27 January 2016.

<sup>57</sup> UNSC, Resolution 2240(2015), 9 October 2015, UN doc. S/RES/2240(2015). For an analysis of the contents of the UN Resolution, see S. BLOCKMANS, *New thrust for the CSDP from the refugee and migrant crisis*, cit., pp. 5-7. For the issue of Operation Sophia and the use of force against smugglers, including the implications in terms of compliance with international law, among others, see M. FINK, *Protecting Europe or irregular migrants?: The (mis)use of force in the Mediterranean*, in *EJIL:TALK!*, 15 May 15; J. LEHMANN, *The use of force against people smugglers: conflicts with Refugee law and Human Rights law*, in *EJIL:TALK!*, 22 June 2015; S. MANANASHVILI, *The legal and political feasibility of the EU's planned 'war on smuggling' in Libya*, in *EJIL:TALK!*, 10 June 10 2015.

<sup>58</sup> Council Decision (CFSP) 2016/993, of 20 June 2016, amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA).

<sup>59</sup> Council Decision (CFSP) 2017/1385, of 25 July 2017, amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA).

task of surveillance and information-gathering so as to detect and tackle practices violating the UNSC Resolutions on illegal crude oil exports<sup>60</sup>. Oil smuggling from Libya, indeed, has served as a key element to gain and consolidate territorial power across the country, representing a significant source of profit for criminal networks and local militias, and feeding their activities and fuelling the war economy.<sup>61</sup>

Similarly to the mission EUBAM Libya, Operation Sophia has been subjected to criticism. It has been highlighted, first of all, that, beyond the “good intentions” established on paper in the mission’s mandate, in concrete terms Operation Sophia has ended up acting as double-edged sword. As explained by the EEAS itself, models used by traffickers and smugglers change rapidly, demonstrating their capacity to effectively adapt to changing circumstances. This is emblematically exemplified by the fact that Operation Sophia contributed to capturing and disposing hundreds of boats used by migrant smugglers. Such vessels were mainly medium-sized boats made of wood, with a carrying capacity of several hundreds individuals<sup>62</sup>. As a consequence, smugglers have resorted to cheaper rubber boats, fully compensating the loss of wooden vessels and even considerably increasing their profits<sup>63</sup>. Rubber boats are faster, allow to carry a smaller number of migrants but may be easily recovered and re-used.<sup>64</sup>

A further side effect is the tragic increase of migrants’ mortality during the sea journey, as the use of unsafe and unseaworthy rubber boats heavily loaded with people has led to growing numbers of shipwrecks and deaths at sea. At the same time, however, it has been reiterated on many occasions that Operation Sophia’s mandate does not include search and rescue activities.<sup>65</sup> As a consequence, the Council of the EU had to adopt a counter measure, by restricting the export and supply to Libya of inflatable rubber boats and similar vessels.<sup>66</sup> Such developments clearly demonstrate the criminal networks’ adaptability, flexibility and capacity

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<sup>60</sup> UNSC Resolution 2146/2014, 19 March 2014, UN doc. S/RES/2146(2014) and UNSC Resolution 2362/2017, 29 June 2017, UN doc. S/RES/2362(2017).

<sup>61</sup> European Council, Malta Declaration, cit., para. 6, letter i); EEAS, *Strategic Review of EUBAM Libya*, EEAS(2017) 530, cit., paras. 39-40.

<sup>62</sup> *Ibidem*, para. 99.

<sup>63</sup> *Ibidem*.

<sup>64</sup> *Ibidem*, para. 102.

<sup>65</sup> EEAS, Crisis management concept, Working Document of the European External Action Service, May 2015; EEAS, *Strategic Review of EUBAM Libya*, EEAS(2017) 530, cit., para. 103.

<sup>66</sup> Council Regulation (EU) 2017/1325, of 17 July 2017, amending Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya.

to quickly react to changing circumstances. In this sense, thus, Operation Sophia has just altered the business model, not stopped it.<sup>67</sup>

The impact produced by Operation Sophia is generally considered poor also as regards fighting smugglers and criminal activities, especially due to its too limited mandate.<sup>68</sup> On the one hand, the arrest of a number of individuals on the high seas has not contributed significantly to disrupting the whole business model of the migrant smuggling industry. Intercepted smugglers, indeed, were not in apical positions of the trafficking and smuggling supply chain, so their arrest do not represent a major contribution.<sup>69</sup> On the other hand, when dealing with illicit activities such as illegal oil exports from Libya, the Operation Sophia has equally produced a modest impact, since its mandate is limited to passive surveillance and gathering of information and data, without further possibility to intervene and act effectively.

As regards the training of the Libya's Coast Guard, EU institutions have reiterated on many occasions the "immediate priority" to develop Libyan naval Coast Guard's capacities.<sup>70</sup> Starting from 2016, different training modules were designed to allow Libyan authorities to effectively fight illicit smuggling, by focusing on seamanship skills, search and rescue procedures, migrants' interception on the high seas, international and EU human rights law, including *non-refoulement* obligations.

However, criticalities have been highlighted especially with regard to the lack of a proper monitoring mechanism of the training activities. For the first year no specific evaluation and monitoring mechanisms were put in place. Only in the course of 2017 the Council of the EU decided to include in the renewal of the Operation Sophia's mandate a provision to establish a monitoring mechanism of the progress made with regard to the training of the Libyan Coast Guard.<sup>71</sup> Problems in data collection, information-gathering and issues in terms of transparency have also been highlighted.<sup>72</sup>

In any case, the most severe criticism has been expressed about the Libyan Coast Guard's attitude towards migrants in terms of respect of human rights. Several international observers have pointed out the misconduct and the aggressive behaviour towards migrants put in place by officers and military personnel of

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<sup>67</sup> House of Lords, European Union Committee, *Operation Sophia: a failed mission*, 2nd report of Session 2017-19, para. 22.

<sup>68</sup> C. LOSCHI – L. RANIERI – F. STRAZZARI, *The implementation of EU Crisis Response in Libya*, cit., p. 4 ff;

<sup>69</sup> House of Lords, European Union Committee, *Operation Sophia: a failed mission*, cit., para. 17

<sup>70</sup> EEAS, Interim Strategic Review of EUBAM Libya, Working Document of the European External Action Service, 7886/15, 13 April 2015, para. 79.

<sup>71</sup> Council Decision (CFSP) 2017/1385 of 25 July 2017, cit., Art. 1, para. 2.

<sup>72</sup> C. LOSCHI – L. RANIERI – F. STRAZZARI, *The implementation of EU Crisis Response in Libya*, cit., p. 7-8.

the Libyan Coast Guard, including those beneficiaries of EU-sponsored training programmes and funding.<sup>73</sup> In 2017, the UN High Commissioner for Human Rights strongly condemned the EU policies in Libya, explicitly defining the European strategy to assist the Libyan Coast Guard in intercepting and returning migrants as “inhuman”, and leading to a “catastrophic” situation.<sup>74</sup> In 2019, a Communication has been forwarded to the Office of the Prosecutor of the ICC concerning the involvement of the EU in episodes of human rights violations committed in the Central Mediterranean and Libya.<sup>75</sup>

Ultimately, such circumstances have cast doubts on the outcomes and the overall effectiveness of the European strategy aimed at the formation of the Libyan authorities and the personnel of the Coast Guard. After several years at this point, results remain modest, as certified by the UN Office on Drugs and Crimes which, in its 2018 Global Study on Smuggling of Migrants, highlighted how, as regards the Central Mediterranean route, Libya still represents the main departure point of flows, with about the 90% of migrants heading to Italy and Europe departing from there.<sup>76</sup>

In this framework, the risk of being considered legally and/or morally complicit with the serious human rights violations perpetrated by Libyan authorities could undermine the credibility of the EU, thereby not only damaging its reputation, but also compromising its room for action in the future.

#### **4. The AU-EU-UN trilateral cooperation to cope with the Libyan situation**

In addition to the described operations, the EU has also been involved in multilateral dialogues and cooperation initiatives with relevant international actors. Reactions to the Libyan migration and humanitarian crises, indeed, have come from different contexts, involving a multiplicity of stakeholders, whose interaction has been necessary for the EU.

In general terms, international responses to crises and conflict situations in Africa have become complex over the years, involving an articulated array of interventions, carried out by multiple actors operating under different mandates and with different objectives. In this framework, the EU has been increasingly dealing

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<sup>73</sup> Among others, Amnesty International, *Libya's dark web of collusion. Abuses against Europe-bound refugees and migrants*, cit.; Amnesty International, *The state of the world's human rights*, Amnesty International Report 2017/2018, 2018, p. 243; UNHCR, “*Detained and dehumanised*”. *Report on human rights abuses against migrants in Libya*, cit., pp. 19-20.

<sup>74</sup> UN High Commissioner for Human Rights, *UN human rights chief: suffering of migrants in Libya outrage to conscience of humanity*, OHCHR, Geneva, 14 November 2017.

<sup>75</sup> Communication to the Office of the Prosecutor of the International Criminal Court pursuant to the Article 15 of the Rome Statute, *EU migration policies in the Central Mediterranean and Libya (2014-2019)*, cit.

<sup>76</sup> United Nations Office on Drugs and Crimes, *Global Study on Smuggling of migrants 2018*, UNODC, New York, June 2018, p. 145.

with the UN and the AU, progressively developing and consolidating an interesting form of trilateral cooperation.

Partnerships and joint actions in crisis management had already been discussed between the EU and the UN. In particular, with the Joint Statement on UN-EU Cooperation in crisis management released in 2003,<sup>77</sup> the two organisations expressed the commitment to further develop their “positive cooperation” and “examine ways and means to enhance mutual coordination and compatibility” as regards planning, training, communication and sharing of best practices.<sup>78</sup> In a following Joint Statement of 2007, the UN and the EU, besides reaffirming the willingness to intensify their cooperation, specifically addressed the need to develop a closer collaboration with the AU so as to better focus on crisis management in Africa.<sup>79</sup>

The EU expressed its support to UN peacekeeping activities in 2012, also pointing out the need to strengthen the coordination with the UN with regard to the assistance provided to the AU.<sup>80</sup> To this end, coordination initiatives and information-sharing between the respective delegations were suggested, as well as yearly trilateral coordination meetings to discuss benchmarks, goals, actions and strategies.<sup>81</sup>

While the following year, on the occasion of the G8 Summit in Northern Ireland, leaders put the situation in Libya on the international agenda as one of the main priorities by stating their commitment to “leading international support for Libya’s security and democratic transition”,<sup>82</sup> in 2015, the EU and the UN released the Joint document “EU-UN Priorities for 2015-2018”,<sup>83</sup> laying down seven common priorities. Among these, the organisations significantly identified the objective of “support to the African peace and security architecture”, thereby expressing the necessity to “move towards closer trilateral cooperation among the UN/EU/AU”.<sup>84</sup>

The UN, for their part, have explicitly acknowledged the crucial importance of the engagement of regional partners in crisis management and their relevant contribution alongside UN-driven operations.<sup>85</sup> In particular, the African context is considered the most vivid example of fruitful cooperation between the UN

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<sup>77</sup> Joint Declaration on UN-EU cooperation in crisis management, 12510/03, New York, 24 September 2003.

<sup>78</sup> *Ibidem*, para. 3.

<sup>79</sup> Joint Statement on UN-EU cooperation in crisis management, Brussels, 7 June 2007, para. 3.

<sup>80</sup> EEAS, *Plan of Action on Enhancing EU CSDP Support to UN Peacekeeping*, EEAS 01024/2/12 REV 2, 4 July 2012.

<sup>81</sup> *Ibidem*, para. 58.

<sup>82</sup> G8 Summit, 17-18 June 2013, 2013 Lough Erne G8 Leaders’ Communique, para. 7.

<sup>83</sup> EEAS, *Strengthening the UN-EU Strategic Partnership on Peacekeeping and Crisis Management: Priorities 2015-2018*, 7632/15, 27 March 2015.

<sup>84</sup> *Ibidem*, para. 2, b).

<sup>85</sup> UNSC, *Partnering for peace: moving towards partnership peacekeeping, Report of the Secretary General*, 1 April 2015, UN doc. S/2015/229.

and regional organisations, like the AU, as well as the EU, especially in terms of their active involvement throughout the various phases of the conflict and crisis management.

The first contests where all three organisations have collaborated, operating alongside one another simultaneously or consecutively, are represented by the coordinated responses to crises and conflict situations in Somalia, Mali and the Central African Republic. The international responses to these conflict situations have showed the growing potential of the triangular cooperation between the UN, the EU and the AU. Building on these experiences, thus, the three organisations have recently undertaken a new form of trilateral cooperation in order to deal with the humanitarian and migration crisis in Libya.

## **5. The Trilateral Joint Taskforce on migration and Libya**

The Libyan crisis has generated many reactions at the international level.<sup>86</sup> In particular, the issue of migrants trapped in Libya, whether in transit to Europe or intercepted at sea and then put in the detention centres along the Libyan coast, has attracted growing attention within the international community. Human rights abuses and violations perpetrated in the Libyan detention centres have been widely reported, in this way calling for an effective response to tackle the matter.

These issues, in particular, have come to the table of the AU-EU Summit held in Abidjan in November 2017, where dialogues and negotiations were being carried out as regards the management of the humanitarian and migration crises generated by the Libya's situation of great instability. In the final Joint Declaration of the AU-EU Summit, indeed, European and African leaders emphasised the importance of looking for long-term solutions to deal with the Libyan migration crisis, highlighting the need “to address the root causes of irregular migration and forced displacement” and “to promote a (...) multidimensional approach to migration that takes place in a safe, orderly and regular manner”.<sup>87</sup>

In the margins of the AU-EU Summit held in Abidjan, a tripartite meeting took place between the representatives of the two regional organisations and the UN to discuss the dramatic conditions of migrants and refugees, victims of criminal networks. In this context, the leaders of the three organisations agreed to join forces and adopt a common approach to the migrants' situation in Libya. To this end, they decided to

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<sup>86</sup> Among the measures adopted in the framework of the UN, in particular, the UN Support Mission for Libya (UNSMIL) was launched with the objectives to support Libya's transition, strengthen institutions, restore public services, support transitional justice and protect human rights. See UNSC Resolution 2009/2011, 16 September 2011, UN doc. S/RES/2009(2011).

<sup>87</sup> AU, *Final Declaration: Investing in youth for accelerated inclusive growth and sustainable development*, Abidjan, 29 November 2017.

establish a joint AU-EU-UN Task Force specifically focused on dealing with migration-related issues linked to the Libyan crisis and with the mandate to organise and coordinate the trilateral cooperation efforts and ensure the implementation of the common objectives agreed upon by the three organisations.<sup>88</sup>

The AU-EU-UN trilateral cooperation was initially put in place with the view to addressing a broad variety of migration-related issues, including both regular and irregular migration, human rights protection, humanitarian assistance and support to local authorities. The Task Force, in particular, was endowed with the mandate to coordinate both long-term strategies and immediate and urgent interventions.

As for the immediate actions, the focus was put on the organised humanitarian evacuation of migrants and asylum seekers trapped in the official detention centres run by the UN-endorsed Libyan Government of National Accord, with the view to finding durable solutions by either repatriating them in their home countries or resettling them outside Libya. Interventions in this sense were meant to be based on the existing work of specialised actors as the IOM and UNHCR, so as to benefit from their expertise and experience on the ground, as well as to ensure continuity in their on-going projects and operations.

The long-term objectives set by the EU-AU-UN Trilateral Taskforce were identified, on the one hand, in the improvement of conditions of migrants and asylum seekers present in Libya, and, on the other, in fighting smuggling and human-trafficking activities and dismantling the related criminal networks. According to the Task Force, such long-term actions and strategies had to be carried out also in close coordination with key countries of origin, transit and destination.

In order to pursue the mentioned common goals, the EU, the AU and the UN recognised the need to strengthen and further develop their collaboration, emphasising, in particular, the necessity to “upgrade in a systematic manner their trilateral cooperation and to meet on a regular basis at the highest political level, notably in the UN General Assembly”.<sup>89</sup>

After the Abidjan Summit, the formal launch of the AU-EU-UN Trilateral Task Force took place on 4<sup>th</sup> December 2017 in Addis Ababa, and was followed, few days later, by a meeting in Brussels between the representatives of the three organisations to discuss further steps to be taken for the action of the Task Force on migration and Libya. Members of the IOM and UNHCR also joined the discussions, so as to better plan

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<sup>88</sup> European Commission, Joint press release of the United Nations, the African Union and the European Union, Statement/17/5029, Abidjan, 29 November 2017.

<sup>89</sup> *Ibidem*.

and organise actions on the ground.<sup>90</sup> The role played by the UN specialised bodies was considered as decisive for the positive outcome of the operations in Libya, as was later highlighted by the EU, which expressed its strong appreciation for the work of the IOM and UNCHR, underling how they contributed to the creation of “an unprecedented mechanism for cooperation”.<sup>91</sup>

At the summit in Brussels, first of all, the importance of the trilateral cooperation was reaffirmed: the multilateral tripartite collaboration on Libya and migration was defined as “a turning point” creating “a completely different dynamic” in the area of migrants’ protection.<sup>92</sup> The need to engage in dialogues and collaboration initiatives with Libyan authorities was also reiterated, so as to “build a stronger security architecture in the region”.<sup>93</sup> Secondly, concrete actions and interventions were discussed, also focusing on a clear division of tasks between the involved actors. In particular, concerning the immediate actions agreed in the margins of Abidjan Summit, that is to say, the urgent evacuation of migrants inside Libya, two different mechanisms of organised and protected transfer were designed and agreed.

On the one hand, an emergency Voluntary Humanitarian Return (VHR) operation, managed by the IOM and aimed at safely returning migrants from Libya to their home countries, also and especially focusing on their reintegration; on the other hand, an emergency Transit Evacuation Mechanism (ETM), under the UNHCR’s guidance, targeting those individuals present in Libya and unable to be returned to their countries of origin and needing international protection. At the Brussels meeting, finally, the European Commission announced the decision to supply €100 million funding to support the two programmes managed by UNHCR and IOM.

The willingness to further develop the trilateral cooperation was later confirmed on the occasion of the AU-EU-UN Trilateral Meeting, held at the UN headquarters in New York in September 2018, in the margins of the 73<sup>rd</sup> meeting of the UN General Assembly. In the Joint Statement adopted by the leaders and representatives of the three international organisations clearly emerges the commitment to promote “an

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<sup>90</sup> Meeting of the Joint AU-EU-UN Task Force to address the migration situation in Libya, Joint press release, Brussels, 14 December 2017; see also EEAS, Remarks by Federica Mogherini following the meeting at political level of the European Union – African Union – United Nations – Task Force, Brussels, 14 December 2017.

<sup>91</sup> EEAS, Remarks by HR/VP Federica Mogherini at the high-level panel event on migration and structural transformation in Africa during the 2018 UN General Assembly, New York, 25 September 2018.

<sup>92</sup> EEAS, Remarks by Federica Mogherini following the meeting at political level, 14 December 2017, cit.

<sup>93</sup> Meeting of the Joint AU-EU-UN Task Force, 14 December 2017, cit.

effective multilateral system” with the view of “tackling global challenges through international cooperation”.<sup>94</sup>

While maintaining their *ad hoc* initiatives in support of complex and delicate country situations, the three international organisations also agreed to take their cooperation forward, aiming at successfully addressing common global challenges and achieving ambitious goals in terms of stronger economic integration, security and conflict prevention, inclusive and sustainable growth, response to climate change, empowerment of youth and education, protection of human rights.<sup>95</sup>

With specific regard to the trilateral cooperation on Libya and migration, the three organisations welcomed the progress made in addressing the Libyan migrants’ crisis and expressed satisfaction for the work done by the Trilateral Task Force established in Abidjan in November 2017.<sup>96</sup> In the Joint Statement, however, while appreciation is showed with regard to the operations of evacuation of migrants and their following voluntary return and reintegration in the home countries, at same time, further efforts are requested and encouraged to dismantle trafficking and criminal networks.<sup>97</sup>

In general terms, moreover, albeit explicitly recognising the positive potential of the cooperation between the AU, the EU and the UN, the leaders of the three organisations have proven to be well aware of the political, legal and institutional challenges behind such trilateral collaboration. In the Joint Statement, indeed, they acknowledge “the need for a clear definition of roles”, as well as the necessity to “enhance collaboration, coordination and planning” between their respective efforts, especially in terms of effectiveness and coherence between their concrete actions.<sup>98</sup>

The need for further efforts in the assistance of migrants caught in the Libyan conflict has been recently reiterated by the Trilateral Task Force in its *ad hoc* meeting held in Addis Ababa in April 2019.<sup>99</sup> While noting the progress made by the programmes implemented by the IOM and UNHCR, the Task Force called for more efforts and more work to be done, underlining the existence of serious problematic issues: on the one hand, the presence of still more than 7,000 migrants and refugees held in Libyan detention centres and, on the other, the growing number of internally displaced persons in need of assistance and protection.

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<sup>94</sup> Third African Union – European Union – United Nations Trilateral Meeting, Joint Communiqué, New York, 23 September 2018, para. 2.

<sup>95</sup> *Ibidem*.

<sup>96</sup> See also EEAS, *EU, UN and AU take their cooperation forward*, Press release, 24 September 2018.

<sup>97</sup> *Ibidem*, para. 3.

<sup>98</sup> *Ibidem*, para. 7.

<sup>99</sup> The AU-EU-UN Task Force meeting calls to rescue stranded migrants and refugees in Libya, Press release 060/2019, Addis Ababa, 18 April 2019.

### 5.1. The Voluntary Humanitarian Returns run by the IOM

Voluntary humanitarian returns essentially target migrants held in Libyan detention centres and wishing to return home. IOM plays a crucial role in this respect, not only in the organisation of the concrete transfer of migrants away from Libya, but also and especially in assisting them and providing a safe return to their home country with the view to facilitating their positive reception and reintegration in the local communities.

The IOM's engagement in VHR operations is not new, being in place even long before the AU-EU-UN trilateral cooperation was agreed on the occasion of the 2017 AU-EU Summit in Abidjan. The IOM, indeed, has been acting as a facilitator of repatriation processes with operations dating back to 2006 and targeting the return of migrants not only from Libya, but also from several other countries across Africa and along the Central Mediterranean Route.

However, before the establishment of the AU-EU-UN trilateral cooperation on migration and Libya, the success in humanitarian return programmes has been modest, with only limited results in practice.<sup>100</sup> Previous VHR programmes run by the IOM, in fact, were often undermined by the scarce level of cooperation of the involved actors, including Libyan authorities and the governments of the countries of origin where the migrants had to be repatriated. Further practical obstacles, including the lack of coordination and the shortage of economic resources, coupled with delays and slow procedures, determined modest results in terms of successfully assisted and repatriated individuals.

Building on the enhanced trilateral cooperation between EU, AU and UN, IOM-driven VHR initiatives have regained momentum, significantly improving the positive impact of the programmes and allowing to boost the number of returned people and to accelerate the repatriation procedures. The joint work of the trilateral Task Force, indeed, has been decisive in addressing a number of challenges faced in the evacuation of migrants. Each of the involved actors has contributed to overcome practical and organisational difficulties that had undermined the success of the VHR operations in the past.

More specifically, the AU has played an essential role in the active interaction with the African countries of origin of the migrants targeted by the VHR programmes. Establishing and maintaining contacts with the governments of the countries of origin have been decisive for a closer cooperation on repatriating their nationals, especially in addressing issues such as provision of consular and diplomatic services, identification,

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<sup>100</sup> For an overview of the voluntary humanitarian returns carried out by the IOM and the challenges faced during the years, see T. ABDERRAHIM, *Advancing the impossible? Progress of the joint African, European and International response to the migration crisis in Libya*, in ECDPM, Discussion Paper no. 229, September 2018, namely p. 6 ff.

release of relevant documentation and timely issuance of visas so as to allow returns of people to their home countries.<sup>101</sup>

The AU, moreover, has played a fundamental role in the dialogue with the Libyan authorities and the Government of National Accord. Their cooperation, indeed, has been necessary especially to grant IOM staff, NGOs and other international partners unrestricted access to the official detention centres in Libya. As starting point, indeed, VHR programmes have targeted official detention centres, as more easily identifiable and accessible, also with the support of the Libyan UN-recognised government. According to the IOM, the enhanced VHR programme launched under the AU-EU-UN trilateral cooperation has helped reducing the number of detained migrants in official Libyan detention centres from around 20,000 in October 2017 to nearly 4,000 in March 2018.<sup>102</sup>

While VHR programmes have contributed to evacuate migrants from official detention centres, in this way also alleviating the pressure and mitigating problems of overcrowding and poor detention conditions, on the contrary, migrants held in unofficial centres remain subject to severe human rights violations. These centres, indeed, being under the strict control of militias and armed groups, are difficult to locate, less reachable and often impossible to be evacuated, with the consequence that individuals held in detention there still suffer from unlawful and inhuman practices, including torture, forced labour and other severe forms of violence.<sup>103</sup> The contribution of the AU has been also important, together with the logistic support provided by the UN, to interact with Libyan authorities to get access to the territory, establishing camps and facilities, as well as to allow evacuation airplanes to land in airports across the country.<sup>104</sup>

The EU, for its part, has played its role mainly by deploying its diplomatic and financial capacities. Besides promoting relationships, dialogues and consultative processes with African countries and the AU, the EU has funded most of the returns carried out by the IOM. The immediate focus of the trilateral Task Force established in November 2017, indeed, was the voluntary repatriation, by February 2018, of at least 15,000 migrants identified in Government-controlled detention centres.<sup>105</sup> According to the data of the IOM, out

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<sup>101</sup> IOM, *UN Migration Agency moves to relieve plight of migrants trapped in Libya, Backing AU-EU Plan*, IOM, 12 January 2017.

<sup>102</sup> IOM, *Voluntary Humanitarian Returns from Libya continue as reintegration efforts step up*, IOM, 13 March 2018.

<sup>103</sup> T. ABDERRAHIM, *Advancing the impossible? Progress of the joint African, European and International response to the migration crisis in Libya*, cit., p. 8.

<sup>104</sup> *Ibidem*.

<sup>105</sup> Meeting of the Joint AU-EU-UN Task Force to address the migration situation in Libya, 14 December 2017, cit.

of the nearly 15,000 migrants evacuated from Libya between the launch of the Task Force and February 2018, the vast majority of them (over 10,000) were repatriated with the EU financial support.<sup>106</sup>

Overall, in 2017 and 2018, the joint work of the AU, the EU and the UN has supported more than 39,000 migrants to return to their countries of origin under the IOM-led VHR initiatives.<sup>107</sup> In 2019, voluntary repatriations have been slowed down and hampered by the backdrop of continuing armed conflict in Tripoli. In particular, as reported by the IOM, operations on the ground have been affected by the escalation in violence in the capital, with an impact on the functioning of the only airport in the city and on the availability of flights out of the country.<sup>108</sup> Despite security constraints and operational difficulties, however, repatriations have continued and, according to the data, as for April 2019, 3,175 migrants have been evacuated from Libyan detention centres and returned home via the VHR programme run by the IOM.<sup>109</sup>

## **5.2. The Emergency Transit Evacuation Mechanism managed by UNHCR**

When establishing the Trilateral Task Force on migration and Libya, providing “a way out” for asylum seekers and refugees stuck in Libya – especially those reported and identified in the Libyan detention centres – was one of the key objectives to be urgently reached through the AU-EU-UN cooperation. To this end, moreover, international protection seekers, once evacuated, needed to be moved outside Libya and resettled elsewhere.

Indeed, although international sources indicate that the vast majority of migrants traveling to or passing through Libya are in search of better economic and living conditions, individuals fleeing persecution, civil wars and conflicts and eligible for international protection have also been reported. While VHR programmes discussed above mainly target the first category of migrants (those fleeing from difficult living conditions) and are led by the IOM with the view of their repatriation to the respective countries of origin, asylum seekers and people in need of international protection who cannot return to their countries of origin are evacuated from Libya via the ETM mechanism, managed by UNHCR.

In this framework, the UNHCR-driven programme essentially encompasses two different phases and movements: the initial assisted evacuation of asylum seekers and refugees from Libya, followed by their

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<sup>106</sup> IOM, *Voluntary Humanitarian Returns from Libya continue*, cit.

<sup>107</sup> EEAS, *AU-EU-UN Taskforce, one year on – joint work delivers results*, EEAS, Press release, 4 December 2018.

<sup>108</sup> IOM, *IOM Voluntary Humanitarian Return Assistance to Migrants Continues Amid Conflict in Tripoli*, IOM Press release, 26 April 2019.

<sup>109</sup> IOM, *IOM Assists 160 Migrants with Voluntary Humanitarian Return Despite Ongoing Armed Conflict*, IOM Press release, 12 April 2019.

subsequent resettlement to specific host countries. Such evacuation mechanism in view of resettlement aims in particular at targeting individuals deprived of liberty and imprisoned in the Libyan detention centres, where severe human rights violations have been widely reported.<sup>110</sup>

Similarly to the VHR programmes led by the IOM, effective coordination between all the involved actors is equally essential in order to fulfil the various necessary phases of the ETM mechanism: Libyan authorities, granting unhindered access for UNHCR to the detention centres and camps, so as to allow identification and registration of asylum seekers; the AU, contacting and working in close cooperation with African countries of origin to provide adequate consular services to their nationals in Libya, including release of documentation needed for the returns; the UN, providing logistic support and sustaining the UNHCR in organising and orchestrating all the procedural steps. The EU, on the one hand, contributes by making available funds and resources and, on the other, by encouraging its Member States to make available places for resettlement and receive resettled refugees.<sup>111</sup>

As for the VHR initiatives run by the IOM, ETM programmes were already in place, but, following the establishment of the trilateral AU-EU-UN Task Force, they have received a significant acceleration due to the joint efforts of the three organisations. According to the UNHCR, in particular, between September 2017 and April 2018, over 1,300 refugees and asylum seekers were evacuated from Libya and resettled to other countries, including EU Member States, as Italy and Romania.<sup>112</sup>

Refugees moved out from Libya are resettled not only outside Africa, especially in Europe or Canada, but also within other African countries. Indeed, finding resettlement places could entail long waiting periods, coupled with lengthy procedures to process asylum applications once a host country gives its availability for resettling people. For these reasons, asylum seekers evacuated from Libya may be temporarily hosted in other African countries, where they wait, in suitable protected conditions, for the processing of their applications and the conclusion of the relevant resettlement procedures. This is done through the cooperation between the UNHCR and particular partner countries, on the basis of specific agreements.

Examples in this sense are provided by the cooperation between the UNHCR and Rwanda and Niger to accept to temporarily host asylum seekers evacuated from Libya during the processing of their applications

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<sup>110</sup> UNHCR, “*Detained and dehumanised*”. *Report on human rights abuses against migrants in Libya*, cit.

<sup>111</sup> For an overview of the resettlement initiatives carried out in the European Union, see F.L. GATTA, *Legal avenues to access international protection in the European Union: past actions and future perspectives*, in *Journal Européen des Droits de l’Homme - European Journal of Human Rights (JEDH)*, Vol. 2018, n. 3.

<sup>112</sup> UNHCR, *UNHCR flash update LIBYA. 31 March – 6 April 2018*, UNHCR Report, 6 April 2018.

and the resettlement procedures. Cooperation with Niger has been in place since 2017, under an agreement signed between UNHCR and Niger's Government to implement ETM programmes and provide temporary shelter in Niger to people needing international protection, while waiting for alternative, long-term solutions in third countries.<sup>113</sup> Cooperation on ETM operations with Rwanda is more recent, as in September 2019, the Rwandan Government, UNHCR and the AU signed a Memorandum of Understanding to set up a transit mechanism for evacuating refugees out of Libya.<sup>114</sup> Under the agreement, Rwanda will receive and provide protection to refugees and asylum-seekers who are currently being held in detention centres in Libya; the AU will provide assistance with evacuations, strategic political support with training and coordination, and help to mobilise resources; UNHCR will provide protection services and necessary humanitarian assistance including food, water, accommodation, education and healthcare.<sup>115</sup>

According to UNHCR's data, updated to May 2019, overall, since November 2017, 3,612 refugees and asylum-seekers have been evacuated from Libya via ETM operations. The vast majority of individuals (2,782) were destined to Niger, under the agreement concluded between the UNHCR and the government.<sup>116</sup> Outside Africa, 426 refugees have departed on resettlement from Libya directly to Europe (Romania, France, Italy, the Netherlands, Norway and Sweden) and Canada.

## 6. Concluding remarks

The AU-EU-UN trilateral cooperation certainly represents a positive example of enhanced multilateral collaboration aimed at providing international responses to global issues and at achieving strategic objectives. The trilateral Taskforce on migration and Libya, in particular, constitutes an encouraging and fruitful experiment, which has already led to the achievement of good results, showing a promising potential to do even more.

The operations put in place on the ground under the guidance of specialised bodies as the IOM and UNHCR have allowed to offer a tangible response to the Libyan crisis and the situation of migrants. The AU-EU-UN, thus, signal a new momentum in their cooperation on migration, improving their relationships and

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<sup>113</sup> On this topic, see UNHCR, *131 refugees evacuated out of Libya to Niger, amidst ongoing conflict in Tripoli*, UNHCR Press release, 20 June 2019; ASGI, *The "Emergency Transit Mechanism" program and the resettlement from the Niger. Legal analysis, current and future concerns*, November 2018.

<sup>114</sup> UNHCR, Joint Statement: Government of Rwanda, UNHCR and African Union agree to evacuate refugees out of Libya, 10 September 2019.

<sup>115</sup> *Ibidem*.

<sup>116</sup> UNHCR, UNHCR Update Libya, 3 May 2019.

bringing collaboration initiatives to a new level. Differently from the EU-led operations EUBAM Libya and EUNAVFOR MED, indeed, the work of the trilateral Taskforce on migration and Libya has benefited from an enhanced network of cooperation, including the UN and their specialised agencies, and the AU, which has played a fundamental role in fostering the dialogue with African governments and, especially, with the Libyan authorities.

The VHR and ETM operations run by the IOM and UNHCR have received a significant improvement since the launch of the trilateral international cooperation on migration and Libya. Economic, political, diplomatic and organisational joint efforts have given a considerable impulse to humanitarian and assistance operations on the ground, whose outcomes have been positively increased. Evacuation of migrants from Libyan detention centres, in particular, has showed a good combination of functions and tasks, matching together funding and economic support (especially by the EU), diplomatic actions and political pressure (by the AU, with the African governments), logistic and operational capacities (provided by the UN and the agencies UNHCR and IOM).

In spite of the progress made, however, at the same time a number of challenges and problematic questions have emerged, especially in terms of cooperation, coordination and organisational aspects, also and especially in light of the involvement of a variety of actors operating at different levels and through different means. With regard to the VHR and ETM operations carried out in Libya by the IOM and UNHCR, in particular, a number of operational challenges have affected the implementation of the joint response provided by the AU, the EU and the UN.

First, evacuations of migrants from Libyan detention centres are slowed down by the lack of an effective and rapid provision of the necessary consular services. In addition to delays in carrying out the relevant procedures, it has been highlighted that many African countries do not have proper consular and diplomatic capacities to efficiently deal with sometimes complex procedures, involving identification, screening, timely issuance of documents to allow repatriation and/or resettlement.<sup>117</sup> Due to the insecurity situation in Libya, many countries do not have a consular representation in Tripoli, or if they do, the number of competent diplomatic authorities has been reduced, with an impact on consular procedures. The lack of financial resources also plays an important role. For example, rapid and advanced consular services, including through

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<sup>117</sup> T. ABDERRAHIM, *Advancing the impossible? Progress of the joint African, European and International response to the migration crisis in Libya*, cit., p. 9.

online platforms and IT apparatuses, would allow to speed up the processing of applications and to carry out procedures, but they are not always available or affordable.

Second, in order to be evacuated outside Libya, migrants need not only consular services from their countries of origin, but also an authorisation to leave the country by the Libyan government. Libyan legal framework concerning immigration is complex and challenges have been reported in authorising the exit of people from the country.<sup>118</sup> From an operational point of view, moreover, taking migrants out of Libya has proven to be difficult due to security conditions. Criticalities have emerged, in particular, with regard to transportation both inside and outside Libya, especially in terms of access to airports, which has been complicated due to clashes between armed groups and militias.

Third, and more generally, a number of issues have been pointed out with regard to the overall effectiveness of the evacuation programmes themselves. It has been highlighted, for example, that, if it is true, that VHR operations evacuating migrants from Libya help mitigating the pressure on Libyan authorities, reducing the number of people in detention centres, yet moving a significant amount of persons in a short period of time to the countries of origin may put their reception capacities under considerable strains. Thus, national authorities, as well as NGOs and other international organisations operating on the ground, may be put under pressure by the inflow of additional numbers of migrants, especially given their often already limited availability of resources. This may also lead to tensions, as exemplified by the case of the ETM programme in Niger discussed above, as difficulties in the management of incoming refugees induced the Niger's government to suspend the agreed evacuation programme with UNHCR for some months, before accepting additional persons from Libya.<sup>119</sup>

Fourth, difficulties for African receiving countries may arise also with regard to the effective capacity to support, provide proper assistance and reintegrate evacuated migrants. African countries of origin may suffer from shortages in resources and reception capacities, being often unable to support people coming back from Libya, both in terms of immediate assistance, such as medical care and housing, and reintegration perspectives, including education and employment.

Additionally, it has been underlined that returned people find themselves in a very delicate and vulnerable situation, which receiving countries are often not prepared to handle. Migrants evacuated from Libyan detention centres, indeed, are often traumatised and have suffered from severe forms of violence and

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<sup>118</sup> UNHCR, "Detained and dehumanised". *Report on human rights abuses against migrants in Libya*.

<sup>119</sup> T. ABDERRAHIM, *Advancing the impossible? Progress of the joint African, European and International response to the migration crisis in Libya*, cit., p. 12.

exploitation. They also risk to remain jobless and marginalised, as, once returned home, they are often subject to harsh judgment and negative consideration from their original societies.

Finally, with regard to ETM programmes run by UNHCR, despite the progress made, it has been highlighted that the level of commitment in terms of resettlement remains still largely insufficient in relation to the concrete needs. European countries, in particular, would need to increase their efforts and offer bigger number of resettlement places. Also it has been pointed out that the EU itself, despite unlocking financial resources and funds, should make more pressure on its Member States to encourage their commitment to resettle refugees and asylum seekers from Libya.

In general terms, ultimately, the AU-EU-UN trilateral cooperation may be certainly considered as a positive step forward in addressing the Libyan crisis. While it appears too soon to formulate a comprehensive judgment on the overall action of the trilateral Task Force on migration and Libya, as results will be measurable in the long-term, yet, for the future, the trilateral cooperation will need to evolve, becoming more organised and focused more on addressing structural problems rather than having a mere emergency approach.

The complexity of the situation in Libya surely gives raise to significant challenges, however, international coordinated efforts will need to address solutions for systemic problems, as those of the Libyan detention centres, where unacceptable human rights violations are in place. The migrant smuggling business, which continues to proliferate, will also need to be addressed in a more systematic manner.

In this context, the EU, in particular, is called to play a leading role, in supporting international initiatives, as the trilateral cooperation with the AU and the UN, but also and especially in re-thinking its own migration policies. While economic resources and funding are flowing from Brussels towards Libya and other African partners, practices as the externalisation of border controls, the crackdown on departures from the Libyan coasts, the interception of migrants by the Libyan Coast Guard – trained and funded with European resources – and their subsequent deprivation of liberty in the detention centres represent problematic issues that need to be addressed by the EU and its Member States. Last but not least, in reforming its migration policies, the EU should develop a credible and organic system of legal and organised mobility to access international protection in the European territory. Otherwise, the illegal migration business and the smuggling industry will inevitably continue to grow and prosper.